

ALABAMA SENTENCING COMMISSION
Legislative Committee Meeting of November 5, 2003

Minutes

The Legislative Committee of the Alabama Sentencing Commission met in the formal conference room of the Judicial Building in Montgomery on Friday, September 12, 2003. Present at the meeting were:

Lou Harris, Chair, D. P. A., Faulkner University
Rosa Davis, Chief Assistant Attorney General
William Segrest, Executive Director, Pardons and Paroles
Steve Hayes, Department of Corrections
Lynda Flynt, Director, Alabama Sentencing Commission
Mark Dowdy, Intern, Alabama Sentencing Commission

Welcome and Introductory Remarks

The meeting convened at 10:00 a.m. with Chairman Harris making introductory remarks. He thanked members for their attendance and began reviewing the agenda, along with the proposed bills that had been compiled and distributed to committee members.

The committee reviewed the following bills, discussing the merits and drawbacks of each:

A. Proposed Prison Population Control

This is a bill that was drafted for the Special Session but was never introduced and is currently being redrafted by Legislative Reference Service for possible introduction in the 2004 Regular Session. The primary provisions are:

- Creation of a Prison Population Control Board of 8 members and a Temporary Parole Board Appointed by the Governor.
- The Governor and Board determine if control measures need to be implemented when the inmate population exceeds design capacity by 50% for 90 consecutive days and releases inmates until the population is reduced by the amount determined by the Board.
- Defines violent offender and offense – While similar to the definition used in the ASC's Sentence Reform Act, Act 2003-353, it is more limited and does not include as many offenses.
- Employment of temporary employees of the Parole Board is assured, with funding requests channeled through the Prison Population Control Board or temporary PPC Board and authorizes the Governor to provide emergency appropriations to hire additional employees for the Board of Pardons and Paroles.
- Requires released inmates to be supervised by Pardon and Paroles officers for not less than 6 months unless the officer determines supervision is no longer necessary and the Board of Pardon and Paroles or the Temporary Prison Population Control Board Approves.
- Revocations are by the Board or Pardons and Paroles or the temporary Pardon and Parole Board.

- Restoration of Right to Register to Vote.

The Committee reviewed this bill, along with Act 2003-415 (Expansion of Board of Pardon and Paroles and Restoration of Voting Rights) and determined that the proposed bill needed significant overhaul and definitions. The Committee voted not to support the bill in its present form.

The major problems noted were:

- ✘ Temporary employees are provided but the board would be unable to hire sufficient and qualified employees on a temporary basis.
- ✘ Unclear how the Prison Population Control Board, the Temporary Board and the existing Board were to share responsibilities
- ✘ With Alabama's existing overcrowded problem – 200% over design capacity – and no plans to build additional facilities, the 50% over design capacity figure was probably unrealistic.

In reviewing Act 2003-415 the Committee discussed whether changes were needed or whether the offenses listed as violent offenses should be revisited. The Committee determined that no action by the Commission should be taken at this time.

B. Legislation Drafted for Senator Escott

The Sentencing Commission Staff are often called upon to draft legislation for legislators and these were a package of bills drafted at the request of Senator Escott and CURE (Citizens United for the Rehabilitation of Errants). The Staff is always willing to assist, but made it clear that these bills were not the Sentencing Commission bills and had never been reviewed or approved by the Commission.

The following documents were provided to the committee members to review:

1. Letter to Senator Escott
2. Proposed bill providing for retroactive application of HFOA amendments
3. Proposed bill providing for retroactive application of split sentence amendments
4. Amendment of statutes to comply with amendments to Split Sentence Act.
5. Proposed Constitutional amendment expanding the Governor's authority to commute a sentence of life imprisonment without parole
6. Proposed bill to amend Act 2003-300 (expanding Governor's authority to commute a death sentence to life without parole).

The Committee Voted not to support the retroactive amendment of the Split Sentence Act, and not to revisit the HFOA retroactivity provision. The *Kirby* case that held the existing statute unconstitutional is now pending cert in the Supreme Court. It was suggested that the Commission staff may want to run the simulation model to determine what effect retroactive amendment of the Split would have on the prison population.

[The Sentencing Commission subsequently voted with the Committee not to revisit legislation providing for the retroactive application of the Habitual Felony Offender Act amendments, a

proposed bill to make the provisions of the Split Sentencing Act retroactive or to pursue legislation that would change the Governor's authority to commute sentences.]

C. **Alabama Medical and Geriatric Parole Act**

This bill was drafted from several state statutes. While there was no opposition to the bill; however, the Committee requested that Bill Segrest, Director of Pardons and Paroles and Steve Hayes of DOC closely review it for possible problems and report back to the Committee. Although the Board does have parole for inmates chronically ill, this bill sets time limits in which the inmates must be considered for release.

The Commission liked the proposal when it was presented to them on November 7th, but wanted to await comments from Steve and Bill and revisit at their next meeting, scheduled for January 9, 2004.

Felony DUI

There were two bills presented, both would reduce the maximum time that a person charged with felony DUI could serve from 10 years to 5 years and would provide that imprisonment not exceeding 18 months (now one year and a day) would have to be served in the county jail. It was noted that some states prohibit any felony DUI offenders from being sentenced to the penitentiary.

The second bill presented would also rewrite the DUI statute to cure problems that have been noted by the court, i.e. the fact that out-of-state DUI convictions cannot be used to enhance punishment under our statute and jurisdictional problems when a felony DUI is charged but later reduced to a misdemeanor because of problems with proving prior offenses.

The Committee voted to bring this issue to the Commission for further discussion.

[When later presented to the Sentencing Commission, the Commission members voted not to pursue these changes at this time, voicing strong opposition to the requirement that counties would have to bear the burden of more prisoners and expressing concern over the lack of drug and alcohol treatment programs.]

D. **Bondsman's Process Fee for Community Corrections**

Places a \$15 fee on bondsmen's processes to be utilized for community corrections. Now there is no fee and no limit on the number of bondsmen processes that a bondsman can request. Assessment of this fee was not opposed by the Bondsmen's Association several years ago when the Bail Reform Act was passed. Committee determined that this might be a bill the Commission would want to consider introducing or supporting if the Association of Community Corrections decides to pursue.

COMMISSION DID NOT FORMALLY APPROVE OR DISAPPROVE BUT STAFF

[The Commission did not formally approve or disapprove but requested staff to find out if the Association of Community Corrections were planning to pursue this option.]

The Commission also discussed the need for a supplemental appropriations for Community Corrections to make up for the \$2.9 million provided and the \$5.5 million needed for FY 2004 (and which was originally included in the Community Punishment and Corrections bill, but taken out by the Legislature for inclusion in the appropriations bill). No formal vote was taken on whether to include a supplemental appropriations bill in the Commission's legislative package.]

Possession of Marihuana

The Committee members were provided with copies of the following:

1. State Comparison Charts
2. Bill for Drafting (using amounts and penalties under existing Alabama law.

The Committee determined to review more closely how marijuana possession was treated in other states (usually combined with treatment alternatives), as well as cocaine possession. They are to study other state statutes and determine if changes are needed to bring Alabama more in line with the rest of the nation.

[When subsequently presented to the Commission, the members voted to pursue, but requested further study, with the Legislative Committee suggesting specific quantities.

E. Drug Trafficking

The Committee members were provided with copies of state comparison charts and Alabama's Drug Trafficking statute.

The Legislative Committee voted not to change the drug trafficking laws, since most are charged as federal offenses.

[The Commission voted to consider and asked for further study, comparing the laws of more states and including recent revisions]

H. Possible Legislation

The Legislative Committee voted to present the following proposals to the Commission for consideration:

1. **Probation Revocation - Limitation on prison time imposed on revocation for violations that are not separate offenses.**

[The Commission voted to pursue and requested for Commission staff to also look at parole revocations for technical violations].

2. **Pharmacy Robbery – Eliminate as Separate Offense**
[The Commission members voted not to pursue this suggestion]

3. **Revision of Habitual Felony Offender Act (HFOA) – (Not retroactive Provision) One suggested revision has been to take into account the**

classification of prior convictions, since the existing statute only makes a distinction in the classifications of priors for defendants sentenced as a class A OR B felony for their fourth offense (with three priors. No distinction is made for defendants convicted and sentenced for a second or third offense for Class A, B, or C felonies) The same punishment is authorized for someone with one or two Class A felony convictions as someone who has just been previously convicted of Class C felonies.

[The Commission was advised that intern Mark Dowdy was finalizing a comparison study of three strike laws and would have the results ready in January. A proposed bill will be presented at that time]

4. Amendment of Split Sentencing Statute to Provide Continuing Jurisdiction – Clarification needed following the Court of Criminal Appeal’s holding in *Hollis v. State*, 845 So.2d 5 (Ala.Crim. App. 2002).

[The Commission voted to pursue this legislation. A copy of a proposed bill will be presented to the Commission at their next meeting January 9, 2003].

5. Revamp Criminal Code

[The Commission voted not to pursue a complete revision of the Criminal Code this year, but to undertake perhaps in two years after the sentencing standards are drafted for introduction in 2004 and 2006.]

6. First Offender Legislation

[The Commission voted to pursue this legislation and requested that the Legislative Committee review other state laws.]

7. Raise Amount of inmates wages deducted to 40% for community corrections and transition centers. Amending § 15-22-30 and Community Punishment Act of 2003 – Act 2003-353

[The Commission voted to pursue]

8. Transition Centers

{Noting that no specific legislation needed to be drafted, the Commission voted to support funding to establish transition centers}.

9. Sentence Reform Elimination of no parole in 2006 – H.B. 489 (now Act 2003-354) contained the provision that defendants sentenced under the Truth-in-Sentencing Standards developed for implementation in 2006 would not be eligible for parole. This provision was eliminated by the Legislature at the last minute before the bill was

approved. This is a vital part of truth-in-sentencing and must be put back in.

[The Commission agreed that it was an essential part of sentencing reform and had to be corrected, but voted not to pursue during the 2004 Regular Session.]

10. Reorganization of DOC/Community Corrections, Pardons and Paroles, Court Referral Programs – (Unifying Field Services).

[The Commission supported the concept of these services being under one Department but requested more details on how this would work and the agencies and departments that would be included before determining whether to pursue this year. The topic was carried over until the Commission's January 9th meeting.]

The next meeting of the Legislative Committee was scheduled for January 7, 2004.