Alabama Sentencing Commission (ASC)
Legislative Committee Meeting
December 12, 2006

Minutes

Commission member Dr. Lou Harris, Chair of the Legislative Committee was unable to attend the entire meeting due to a prior engagement, therefore he asked Lynda Flynt to fill in for him. Lynda called the meeting to order at 10:00 a.m. Also present were:

- Vernon Barnett, Alabama Governor's Office;
- Sharon Bivens, Legislative Analyst, Legislative Fiscal Office;
- Rosa Davis, Alabama Attorney General's Office and Member of the Alabama Sentencing Commission;
- Robert Oakes, Alabama Board of Pardons and Paroles;
- Marty Ramsay, Victims Compensation Commission;
- Retired Circuit Judge Robert Harper
- Nick Abbett, District Attorney Lee County
- Eddie Cook, Alabama Board of Pardons and Paroles;
- Bennet Wright, Statistician, Alabama Sentencing Commission

After calling the meeting to order, Lynda Flynt explained that the purpose of the meeting was to consider what bills, if any, should be submitted by the Alabama Sentencing Commission during the 2007 Regular Session. It was noted that the General Session did not begin until March 6, 2007, therefore, the committee may want to meet again prior to that time and make final recommendations to the Sentencing Commission.

A summary of the Commission bills that passed last year, along with other crime bills was distributed to the members. Based on the number of our bills that did pass during the 2006 session (most important of which was the sentencing standards) and the fact that successful implementation of those standards and data entry will require a good deal of the staff's attention, it was suggested that the Commission may wish to limit any new legislation or not plan to introduce any bills during the 2007 General Session. Even following this recommendation, the Legislative Committee was encouraged to review topics that have been suggested and be prepared to make recommendations for introduction at another time.

The agenda, draft bills and information were distributed to the members on the following topics, with recommendations as noted:

1. **Community Corrections Act – Change Escape provision – authorize ½ time credit? Arrest powers for community correction officers? (Attachment A)**

One of the legislative recommendations to Commission staff was amendment of the Alabama Community Punishment and Corrections Act (CPCA) to eliminate the mandatory provision in § 15-18-175 (e) providing that "the willful failure of an inmate to remain within the extended limits of his or her confinement or to return to the place of confinement within

the time prescribed shall be deemed an escape … and shall be punishable accordingly." It was suggested that there word "shall" be deleted and replaced by the discretionary term "may."

In anticipation of this legislation coming before the committee for consideration, Commission staff e-mailed copies of the existing Act to members of the Alabama Association of Community Corrections, requesting that they thoroughly review all of the Act's provisions and provide them with any recommendations they may have for change. Copies of the Act were also distributed to members present at the Association meeting held Monday, December 11, 2006. Two of the Association members expressed opposition to changing the word "shall" to "may." It was pointed out that § 14-8-42 which relates to the extended limits of work release has a provision utilizing the term "shall" and is identical to the language regarding escapes now included in the Community Corrections Act. Considering this fact, the Legislative Committee voted not the recommend changing this provision in the Act.

Another issue regarding amendment of the Community Corrections Act was to include a provision authorizing ½ time credit, in the judge's discretion, for time supervised under community corrections prior to revocation as it is now allowed in the general probation statute, § 15-22-54(3). This provision reads as follows: "If revocation results in a sentence of confinement, credit shall be given for all time spent in custody prior to revocation. Full credit shall be awarded for full-time confinement in facilities such as county jail, state prison, and boot camp. *Credit for other penalties, such as work release programs, intermittent confinement, and home detention, shall be left to the discretion of the court, with the presumption that time spent subject to these penalties will receive half credit. The court shall also give significant weight to the time spent on probation in substantial compliance with the conditions thereof*…." In discussing this proposed amendment to the CPCA, it was noted that the Commission's 2003 amendment deleted a similar provision because the Commission members believed that the authorization of discretionary ½ time credit would only encourage more sentencing disparity among trial judges. The Committee, therefore, voted not to put this provision back into the Community Corrections Act and suggested that the committee might want to later consider amending §15-22-54 (3) to delete reference to discretionary ½ time credit, making it compatible with he revocation provisions of the CPCA.

It was also recommended that the Community Corrections Act be amended to expressly authorize community correction officers and employees to have limited arrest powers, provided that they qualify under the Peace Officers and Training Act. Under such provision, the programs would have their choice on whether to obtain arrest authority or not.
See Attachment A

Recommendation: **The Legislative Committee voted to recommend no changes during this Legislative Session, but to consider possible amendment in future years after further study.**

2. **Amendment of Split Sentencing Statute to allow for partial revocation. (Attachment B)**

The proposed bill, which is the same as HB 479 that passed the House in 2005 but was not approved by the Senate, amends the split sentencing statute to expressly grant trial courts authority to impose various sanctions upon revocation of probation, including modifying any condition of probation, ordering the offender to participate in a substance abuse or community corrections program, incarcerating the offender for any portion of his or her suspended sentence or for the entire term of the suspended sentence.

The Committee was provided portions of the Judge's Reference Manual summarizing appellate opinions relating to interpretation of the split sentencing statute, specifically those provisions governing options available upon revocation of the probation portion of the sentence. It was the consensus of the Committee that they should thoroughly review this proposal, along with the case law and make a final decision on whether to recommend to the Commission that a bill amending § 15-18-8 and clarifying the options available upon revocation, be included in the 2007 Legislative package.

Recommendation: **The Legislative Committee voted to review this proposed amendment further and make a final decision at its next meeting scheduled for February 21, 2007.**

3. **Victim Notification – Pardons and Paroles (Attachment C)**

The Committee members were provided a copy of HB 489, the Victim Notification bill that was introduced late in the session last year by Representative Black, but which did not pass. The members were reminded that this was the bill that was drafted and agreed to by Board of Pardon and Paroles and victims' advocates. At the request of Governor Riley, the Sentencing Commission assisted in forming a committee to consider legislation to alleviate problems experienced by Pardons and Paroles under the current victim notification statutes. After many meetings, with much work by chair Ellen Brooks, HB 489 was finalized and approved by both the Board and victim advocates. It is expected that this bill will alleviate some of the problems associated with finding victims or family members when no address is available in the court records or indictment and with the requirement that businesses (many of which are no longer in operation) and their employees.

Recommendation: **The Committee voted to recommend that this bill be approved by the Sentencing Commission for introduction in the 2007 Legislative Session.**

4. P & P Facility Fee - *Increase in Pardon and Parole Facility Fees* **(Attachment D)**

Last year HB 28 was introduced in the House but did not pass. This bill amends § 15-22-30 of the Code of Alabama 1975, increasing the amount that can be deducted from the wages of residents of residential facilities operated by the Board, from 25% to 45%, for the payment of court costs, fines, fees, assessments, and victim restitution. This would comport with the amounts now authorized to be deducted in § 15-18-180 Code of Alabama 1975, as amended by Act 2003-353, for defendants assigned to a work release or other residential program operated by a community corrections provider.

Recommendation: **The Committee voted not to recommend this bill as part of the Commission's Legislative package for 2007 Session.**

5. DOC Legislation – i.e. Prison Industry (Attachment E)

In accordance with the recommendations of the Governor's Prison Crowding Task Force, the Department of Corrections is drafting legislation to authorize the establishment of Prison Industry Enhancement (PIE) Certification programs, authorize the establishment of non-PIE service programs with private sector business partners, ,authorize sales to local entities without requiring public bid, exempt purchases by Correctional Industries for raw materials and constriction supplies from the bid law, and authorizing the sale of prison goods and services to nonprofits and state employees. A copy of SB 569 introduced by Senator Penn last year which addresses these issues was distributed to the committee members for review. Vernon Barnett, Deputy Commissioner of the Department of Corrections, advised that the legal division is still in the process of reviewing that proposal and other legislation for introduction in the 2007 Regular Session. The Department of Corrections will provide copies of the final legislation to the committee members and requests that the Sentencing Commission include their bill or bills in their Legislative package.

Recommendation: **The Committee voted to table this proposal until DOC provided copies of the latest legislation to them for consideration.**

6. First Offender Legislation (Attachment F)

Ms. Flynt next distributed a copy of a proposed First Time Felony Offender Act which was previously considered by the Commission. When it was proposed before, it was explained that the primary objective of this bill was to allow offenders of any age with no previous felony conviction to apply for an adjudication status similar to that offered under the provisions of the state's current Youthful Offender Act. This would mean that offenders granted "First Offender" status would not lose voting rights and other privileges forfeited as a result of a felony conviction. The committee noted that they would like additional research conducted on first offender laws now in existence or proposed in other states and suggested that the Commission staff request assistance in this regard from Vera Institute of Justice.

Recommendation: **The Committee voted to table consideration of this bill until further research could be conducted. It was requested that research on similar laws in other states be conducted prior to the next Legislative Committee meeting.**

7. Pharmacy Robbery – Eliminate as Separate offense (Attachment G)

After a brief discussion and review of the current statutes regarding Pharmacy robbery (§13A-8-50) and Robbery (§13A-8-41 and 42), the Committee voted that no change should be made to eliminate pharmacy robbery as a separate offense at this time.

Recommendation: **The Committee voted not to recommend this bill as part of the Commission's Legislative package for 2007 Session.**

8. Medical/Geriatric Release (Attachment H)

Once again the Legislative Committee considered whether to approve the Medical and Geriatric Release bill or some version of it for introduction in the 2007 Regular Session. This bill has been included as part of the Commission's Legislative package for two years; however it there have been several amendments which major changes to the bill as originally introduced. Legislators and prison officials have expressed concern over the growing cost of keeping certain critically ill and geriatric offenders incarcerated who for reasons associated with advanced age or health problems no longer pose a threat to the pubic safety. The hope was that this bill would provide for the discretionary medical and geriatric release by the Board of Pardons and Paroles of "terminally ill," "permanently incapacitated," and "geriatric inmates" who do not constitute a danger to themselves or society, would establish policies and procedures for submitting applications for consideration to the Board of Pardons and Paroles and the Department of Corrections. The authority to grant medical or geriatric release would be within the Board's discretion and not subject to judicial review in either the exercise, authority or the manner in which it is exercised. In determining an inmate's eligibility for release, the Board would be required to consider the inmate's 1) risk for violence; 2) criminal history; 3) institutional behavior; 4) age (both at present and at the time of the offense); 5) the severity of the illness, disease or infirmity; 6) all available medical and mental health records; and 7) release plans which could include alternatives to caring for terminally ill, permanently ill, or geriatric inmates in settings other than prison. Inmates convicted of capital murder and sentenced to life without parole or inmates convicted of a crime involving sexual misconduct with a minor would not be eligible for release under the provisions of this bill.

Many problems with the bill were noted by members of the committee, primary of which was the fact that the amendments requested by the Office of Prosecution Services had made eligibility under the bill virtually impossible to obtain. There was also concern that the bill would place an undue burden on the existing public health and social services systems in terms of providing services if offenders were released under the provisions of this bill. It would also slow down the docketing and parole review process at the Board of Pardons and Paroles due the high volume of petitions for relief under this act which would likely be filed

upon passage of the bill. The committee members agreed that the bill was unworkable as amended and voted *not* to recommend this bill to the Alabama Sentencing Commission for inclusion in its legislative package.

Recommendation: **The Committee voted not to recommend that this bill be approved by the Sentencing Commission for introduction in the 2007 Legislative Session, noting that the bill needs further study and work.**

9. Revision of the Habitual Felony Offender Act (Attachment I)

The committee was asked if there was any interest in modifying Alabama's Habitual Felony Offender Act (HFOA). Ms. Flynt reminded the members that there were two major views that had been expressed each year when this issue was discussed, i.e. some members noted that they did not believe further amendment of the statute was needed because 1) the Kirby amendments to the HFOA and the Split Sentence Act gave judges the discretion to handle the vast majority of cases in an appropriate manner; and/or 2) the effect of the initial Voluntary Sentencing Standards should be assessed before additional changes in Habitual Felony Offender Act are considered. Existing problems may be resolved with the use of the standards. The other view is that even though the standards have been adopted and enhancements under the HFOA are not added to the recommended worksheet sentences, with the existing HFOA applied to nonworksheet offenses or in instances where the judge chooses not to follow the standards recommendation, there will be greater sentencing disparity. The Committee voted not to pursue this legislation in 2007 but asked that additional research be conducted on habitual offender statutes in other states for an up-to-date statewide comparison.

Recommendation: **The Committee voted not to recommend approval of a bill amending Alabama's Habitual Felony Offender Statute.**

10. Amend Good Time Statute (14-9-41) to authorize credit to a felon sentenced to more than 15 years but not more than 20. (Attachment J)

It was noted that there had been inquiries from legislators, inmates, inmate's families and others regarding amendment of Alabama's "good time" statute to allow the Department of Corrections to award Correctional Incentive Time (CIT) to inmates serving sentences of up to 20 years. While the Committee has discussed the pros and cons of such legislation, it has never recommended that the Commission include a bill in their legislative package. This bill was tabled last year pending further study.

Recommendation: **The Committee voted not to recommend approval of a bill amending Alabama's Good Time statute.**

11. Proposed Legislation from other Sources. (Attachment K)

Copies of the following bills which were introduced last year were distributed to the members of the committee for informational purposes only. It is not known if similar legislation will be introduced in 2007, but there is a good possibility.

- HB 117 - Parole Eligibility Consideration of Habitual Offenders sentenced to Life without Possibility of Parole after 20 years of incarceration.

For informational purposes only, Ms. Flynt distributed copies of HB 117 introduced last year by Representative Brewbaker, which would have authorized certain offenders sentenced to life without the possibility of parole to be considered for parole after they served a minimum of 20 years. Ms. Flynt reminded the committee members that this bill was not one of the Sentencing Commission's bills and that, while it could be reintroduced this year, because Representative Brewbaker is no longer serving in the legislature, it would have to be sponsored by someone else.

- SB 168 - Limits on duration of probation/parole

A bill introduced by Senator Smitherman last year on behalf of Justice Strategies would have amended Alabama's probation and parole statutes and its split sentencing statutes. A summary of the bill's provisions and problems that were noted are as follows:

Amendment of Probation/Parole Statutes
HB 647 and SB 365

Amends Alabama's Split Sentencing Statute, § 15-18-8 to provide:

- **That a judge granting probation for a non-violent offense[1] can terminate authority and supervision prior to the date the probation is to terminate** ***upon satisfactory compliance with the conditions of probation over a continuous period of 24 months*****, unless the probation officer shows cause to the court that terminating probation would create a danger to public safety.**

[1] An offender is considered "non-violent" under this Act for purposes of probation or parole if if (s)he has not been convicted of any of the following offenses: - 1)murder (13A-6-2); 2)Manslaughter (13A-6-3); 3)Assault 1st (13A-6-20); 4)Kidnapping 1st (13A-6-43); 5)Rape 1st (13A-6-61); 6)Sodomy 1st (13A-6-63); 7)sexual torture (13A-65.1), 8)sexual abuse 1st (13A-6-66); 9)Arson 1st (13A-7-41) ; 10) robbery 1st (13A-8-41), robbery 2nd (13A-8-42) or robbery 3rd (13A-8-43); 11)any federal offense that would constituted any offense listed in 1-9; 12) any offense in which a weapon was used; and 13) any conviction involving domestic violence. **NOTE THAT ROBBERY IN ALL DEGREES WOULD NOT BE COVERED UNDER SUBSECTION 11, SINCE REFERENCE IS TO OFFENSES IN SUBSECTIONS 1-9.**

Existing law allows a judge to terminate probation early, with no requirement that the probationer comply with the terms of probation for any specified period, continuous or otherwise. This provision will restrict the authority a judge now has to modify the term of probation under the split statute, allowing for early termination

The cut point of 24 months for automatic termination does not appear to be based on statistical data. On March 11, 2005, the Alabama Sentencing Commission reviewed offenders whose current status is either a probation or parole revocation. These included revocations for technical violations, revocations for committing a new offense or a combination of the two, technical violation and a new offense. The data showed that 67% of probation revocations occurred within one year or less and 68.76% of parolees were revoked within one year or less. Eighty-Four percent (84%) of the probationers and 80% of the parolees were revoked within two years or less. Ninety-two percent (92%) of probationers and 87% of parolees were revoked within 3 years or less.

- **To prevent probation from automatically terminating after 2 years of compliance, a probation officer must offer "clear and convincing evidence" that terminating probation would create a danger to public safety *based on an objective assessment by a duly qualified person who is trained to conduct an assessment.***

  The standard of proof applicable to revocation of probation is reasonable satisfaction, rather than the more exacting proof of "clear and convincing evidence." This amendment would require a higher level of proof to avoid the automatic early termination of probation than is now required for revoking probation based on a breach of condition.

- **Probation is automatically terminated if the sentencing court fails to make a determination within the 24 month period.**

  Hearings will be required to be scheduled prior to end of the 24 month period. It can be expected that judges will either avoid using the split sentence or conduct more hearings, which will not only mean an increased caseload for judges and court clerks but will mean that probation officers will be required to spend more time on administrative matters and in courts, rather than supervising probationers and parolees.

- **The clear and convincing evidence that a probation officer must produce to prove that early termination of parole will create a danger to public safety must be "based on an objective assessment by a duly qualified person who is trained to conduct an assessment."**

The Act does not define who would be a "duly qualified person" or what an "objective assessment" would be. If a probation or parole officer trained in the use of P&P's new risk and needs assessment instrument is sufficient, the bill should so provide, rather than leave this issue for the courts to have to determine on a case-by-case basis.

- **The Boot Camp provision of the statute, § 15-18-8 (a)(2), is also amended under the bill to limit the amount of time that an offender may be required to serve on probation to two years unless affirmative action is taken by the probation officer and the court. The same problems noted above apply.**

- **Subsection (b) of § 15-18-8 now provides that, absent express limitation, probation may extend to the entire sentence and judgment. This bill would provide that probation shall be limited to five years, unless otherwise ordered. This provision is a change in existing law and differs from the provisions of the Commission's bills, HB 479 and SB 261, which amend § 15-22-54, the general probation statute, to expressly provide that felons sentenced to a split sentence are not limited to 5 years probation, as are felons that are placed on straight probation.**

  - **The general probation statute, § 15-22-54, is amended by this bill to provide for the automatic termination of probation for nonviolent offenders under the same terms as provided in the amendments to the split sentencing statute. The same problems exist as discussed above.**

    Adoption of these amendments may have adverse consequences, i.e., deter judges from utilizing general probation sentences, require more hearings to challenge automatic termination which will increase the workload of judges, prosecutors and probation officers, and increase the administrative duties of probation officers, thereby reducing the time officers have available to supervise offenders.

  - **Amendment of § 15-22-32 pertaining to revocation of parole. The proposed amendment would specifically authorize the Board of Pardons and Parole to require offenders that have had their parole revoked because of the commission of a new offense to serve out the remainder of their sentence in a *jail-like institution or treatment institution* or prison.**

This amendment gives the Board of Pardons and Paroles more options when parole is revoked based on a new offense, but only in regard to the place of incarceration. As under existing law, the Board's options upon revocation for the commission of a new offense is either reinstatement of parole or revocation of parole and commitment for the remainder of the sentence.

- **A new provision is added to § 15-22-32 in regard to parole revocations based on technical violations. Under the proposed bill, a technical parole violator can only be required to serve up to 90 days in prison, a jail-like institution or treatment institution," after which time parole would automatically be reinstated.**

Although it may be a good idea to place time limits on time served for parole revocations based on technical violations, 90 days appears to be too short a time frame. It may also be worth considering whether a limit should be placed on the length of parole after serving time for the parole revocation(s).

Reviewing the offenders listed in current status for probation or parole revocations over the past five fiscal years, 46% of the probation revocations were for technical violations and 39% parole revocations were for technical offenses. Analysis of these revocations by year showed that technical probation violations remained fairly constant over the last five years, representing 46% of all revocations for every year except 2002 when it decreased to 45%. The parole revocation rate for technical violations over this 5 year period was 39%, with a high of 47% in FY 2002 and a low of 36-37% in FY 2003 and FY 2004.

Of the total probation revocations for technical violations for FY 2000 – FY 2004, 77% of the technical probation revocations have occurred within one year or less. Reviewing the technical revocations by year there were 63% of the technical revocations that occurred within one year or less in FY 2000, 70% in FY 2001, 75% in FY 2002, and 95% of all technical probation violations occurred with one year or less in FY 03 and FY O4.

The statistics for parole revocations based on technical violations is worse. Looking at the total technical revocations over the five year period, 89% have occurred within one year or less. In FY 01 and FY 02, of all parole revocations based on technical violations, 100% occurred within 3 years or less. In FY 2003, 99% of the technical parole revocations occurred within one year or less and in FY 04,100% occurred within 1 year or less.

- **Section 15-22-33 relating to parole, is amended to provide that <u>violent offenders</u> (as defined by the bill), may be discharged from parole prior to the expiration of the maximum term only if they are granted a full pardon, but the Board can relieve them from making further reports and may permit them to leave the state or county. Existing law makes no distinction between violent and nonviolent offenders. This provision is now included in the statute but applicable to all types of offenders**.

If reporting requirements are eliminated and a parolee is authorized to leave the state (with or without compliance with the Compact provisions) what type of supervision is he on?

Despite wording requiring a full pardon for discharge, this provision allows the defendant to be effectively released from the any type of parole supervision.

- **Subsection (b) of § 15-22-33 is amended to provide that a person convicted of a nonviolent offense will be discharged from parole upon successful completion of all the conditions for 24 consecutive months *unless* a Board member, parole revocation hearing officer or designated parole officer "shows cause that terminating parole would create a danger to public safety based on an objective assessment by a duly qualified person who is trained to conduct an assessment." After 12 months of compliance with all conditions of parole, the Board is required to relieve a nonviolent parolee from making further reports and permit the him to leave the county or state (subject to the compact) unless affirmative action is taken in a parole court by the Board, board member, revocation hearing officer or designated officer. To avoid automatic termination of notice requirements, a parole court must be held and it must be proved that terminating the reporting requirements (how about leaving the county or state?) would create a danger to public safety.**

More hearings will be required by the Parole Board to conduct "Parole Courts," thereby increasing the need for another board or more board members which is counter to termination of the Special Parole Board.

Ms. Flynt announced that she had no other issues to bring before the Committee and asked if anyone else had other issues to discuss. Dr. Harris thanked everyone for their participation and attendance, and obtained a consensus among the members present to schedule the next Legislative Committee meeting for Wednesday, February 21, 2007. There being no other business to discuss the meeting was adjourned.