Alabama Sentencing Commission

Minutes of Legislative Committee Meeting
September 10, 2007

The Legislative Committee of the Alabama Sentencing Commission met in the Formal Conference Room of the Judicial Building in Montgomery on Monday, September 10, 2007. Present at the meeting were:

Vernon Barnett, Deputy Commissioner, Department of Corrections
Sharon Bivens, Legislative Fiscal Office
Vaughn Branch, TASC, Jefferson County Community Corrections
Ellen Brooks, District Attorney, 15th Judicial Circuit
Eddie Cook, Jr., Deputy Director, Board of Pardons and Paroles

Rosa Davis, Chief Assistant Attorney General and Commission member
Lynda Flynt, Director, Alabama Sentencing Commission
Becki Goggins, Alabama Criminal Justice Information Center
Ralph Hendrix, TASC
Melisa Morrison, Analyst, Alabama Sentencing Commission
Robert Oakes, Deputy Director, Board of Pardons and Paroles
Alexia Ward, AWRN
Jeff Williams, Department of Corrections
Bennet Wright, Statistician, Alabama Sentencing Commission

Welcome and Introductory Remarks

The meeting convened at 2:00 p.m. in the formal conference room of the judicial building, with Lynda Flynt calling the meeting to order and filling in for the chair of the committee, Dr. Lou Harris, who was sick. Ms. Flynt distributed notebooks containing the agenda and copies of the bills to be reviewed, along with a handout summarizing the main provisions of each bill/agenda item. The following items were considered and addressed by the committee:

A. Victim Notification Act

Ms. Flynt referred the committee members to the copy of HB 312 introduced by Representative Black last year (Tab H of the handout) and went over the bill's major provisions:

- Prior notice of meetings to the Attorney General, district attorney, chief of police, and sheriff increased from seven to 30 days. Page 3, line 16

- Procedure for notification of Pardon and Parole hearings amended to specify that victims shall be defined as "human" victims, and shall not include businesses. Page 6, Line 20

- Provides an exception of due diligence search and 30 day prior written notice of hearings involving Class A drug offenders and certain felons convicted of burglary in

the first degree, i.e., those not involving physical injury to any person or the threat thereof and the offender was not armed with a deadly weapon or explosives upon entry into the dwelling. Page 7, lines 1-7

- Due diligence notice is now required for "any felony involving violence." To narrow the broad use of that phrase, the bill provides that due diligence notice will be required for any felony involving physical injury, death, or threat thereof to the person of another. Page 7, lines 11-13.

  Further clarification is provided for the delivery of notices in foreign countries. Following the Alabama Rules of Civil Procedure for foreign service of summons and complaint, the type of mail that will be sufficient for notices sent to a foreign country is specified as "by certified mail or its equivalent which shall be any form of mail requiring a signed receipt." Page 8, lines 7-10

- Due diligence notice to victims and, for those victims that are deceased as a result of the crime, their immediate family, is clarified. The due diligence standard is met by the Board searching "the police records, district attorney's records, and court records in the county of conviction, a statewide internet person locator database, Alabama Public Safety drivers' license records, and the local telephone and city directory of the county of the victim's last known Alabama residence. Page 10, beginning on line 8.

- The "immediate family" of a victim is specifically defined for notice purposes to include the following persons or their respective guardians in the following order of priority:
  1. The spouse, and children, and parents of the victim
  2. If there is no surviving spouse, child or parent of the victim, the victim's siblings. Page 10, lines 24-26

- Where there is no immediate family member, it is provided that a relative or friend of the victim who represents the interest of the victim shall be notified, provided he or she has given written notice to the Board of Pardons and Paroles. Page 11, lines 1-5.

  Provides a procedure for appointment of a family representative after the first due diligence notice to the family, which is strictly elective with the victim's family. Page 11, beginning on page 8

- Where the representative election is made, the Board sends notices to the family through this designated representative. Courtesy notices are provided to any other family member who requests notice.

- It is specifically provided that any member of the victim's immediate family will be afforded a reasonable opportunity to communicate his or her views to the Board.

Page 11, line 27, Page 12, lines 1-2.

- It is specified that due diligence notices must be sent by certified mail, return receipt requested. Page 11, lines 19-21.

- A provision is included for notices mailed to verified addresses by certified mail, when the return receipt is returned "refused" or "unclaimed." It is specifically provided that notice sent at least 14 days prior to the hearing by ordinary mail to the verified address of the victim or the victim's representative will be deemed adequate notice. Page 12, lines 3-7.

After reviewing the major provisions of the bill, Eddie Cook, Deputy Director of the Board of Pardons and Paroles raised the following questions:

1. Why was the change made on page 3, line 21, providing that notice of a meeting by the Board must be mailed to the "Chief of police of the municipality wherein the crime occurred, if the crime was committed in an incorporated area with a police department." This provision originally read that "if the crime was committed in a municipality." It was noted that this provision, as amended, would be consistent to the reference as it now exists on page 6 line 11. Rosa Davis advised that she would contact the League of Municipalities and find out the reason. No suggestion to change the amendment was made.
2. Requested the amendment of the bill on page 3, line 6 and page 5, line 1 to omit the word "other" from the phrase "any pardon parole, remission of fine or other forfeiture…" since this appears to be a grammatical error.
3. Inquired as to whether it was discussed that subsection (i) of the proposed bill did not require that the family of a deceased victim select a primary family representative, that this was optional. Ms. Flynt assured him that we discussed this issue at length and it was a major item that the victims insisted be included and to which the Board of Pardons and Paroles finally agreed.

Becki Goggins moved to recommend to the Commission that this bill as amended to correct the grammatical error (#2 above), be included in the Commission's Legislative package for 2008. Ellen Brooks seconded the motion and the motion was unanimously approved.

B. Amendment of Probation/Parole Statutes

The Committee reviewed the engrossed version of HB 538, a bill introduced by Representative Black. It was noted that this bill was not a Sentencing Commission bill but did have provisions that the Commission had pursued as a separate bill in the past. Lynda Flynt stated that she wanted the Committee members to review all of the bill's provisions carefully because this bill was probably going to be introduced again and could be supported by the Joint Prison Committee. Rosa Davis advised the members that this bill almost passed

during the last days of the 2007 Legislative Session.

Ms. Flynt covered the primary provisions of the bill as written, noting problem areas that had been raised in the past:

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

- **All authority and supervision of a court over a defendant sentenced for a non-violent offense[1] to a split sentence automatically terminates after 24 months *upon satisfactory compliance with the conditions of probation over a continuous period of 21 months*, unless the district attorney shows cause in a hearing to the court that terminating probation would create a danger to public safety. This showing must be "based on an assessment by a trained probation officer or other person appointed by the Board of Pardons and Parolees using an objective risk assessment tool adopted by the Board of Pardons and Paroles.") Objective assessments shall not override the subjective judgment of the court.**

Ellen Brooks opposed this provision and other similar provisions throughout the bill because it placed a burden on the district attorneys to take an affirmative action and to prove that the defendant was a danger to public safety in order to prohibit his or her release to the community. She also noted that the probation officers, not the district attorneys, would have the results of the assessment tool and other information on the defendant needed to make this decision.

§15-18-8 amendment

The cut point of 24 months for automatic termination of probation 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 probation revocations and 80% of the parole revocations occur within two years or less. Ninety-two percent (92%) of

[1] An offender is considered "non-violent" under this Act for purposes of probation or parole 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.**

probation revocation and 87% of parole revocations occurred were revoked within 3 years or less.

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 are also available. 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.

- **If the Court fails to make a determination within 3 months following the 21 month period of compliance, probation is automatically terminated.**

Hearings will be required to be scheduled prior to end of the 24 month period. It was suggested that judges will either avoid using the split sentence and will have to 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.

- **Satisfactory compliance shall include "being current on payment of restitution, fines and costs payable by the probationer.**

- **If an offender fails to remain current after release from probation – court can reinstitute probation up to an additional 24 months. *But see* page 7, subsection (e) which provides that "***the defendant's*

liability for any fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation."

The provisions relating to reinstituting probation after discharged and the apparent conflicting provisions in the bill itself were major concerns of the committee, with many voicing the opinion that this could not be done.

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 district attorney.

Ms. Flynt stated that both she and ADOC Commissioner Richard Allen recommended that all provisions relating to boot camp be deleted since these programs are no longer operative.

- **Amends subsection (c) of §15-18-8 to specifically authorize revocation of suspended portion of the sentence either in whole or part: "<u>Upon determination of a violation of a condition of probation, either prior to</u>**
  <u>or after serving a term of incarceration, the court may impose any of the sanctions authorized in Section 15-22-54, which may include incarcerating the defendant for any portion of his or her suspended sentence</u>." (page 6 lines 22-27)

It was noted that the Sentencing Commission had recommended legislation that included a similar provision several years ago. The appellate courts continue to take the position that if the defendant's originally imposed sentence was incarceration for the maximum authorized to be imposed (3 years for a 15 year and 5 years on a 20 year sentence), if he or she is later revoked from the probation portion of the split, the judge's only option is to revoke for the remaining suspended term.

- **Amends subsection (d) of §15-18-8 to specifically provide that while the defendant is "incarcerated or on probation" (s)he may be ordered "<u>To participate in and complete a substance abuse or community punishment and corrections program, which may include residential facilities operated by the Board of Pardons and Paroles</u>." (page 7, lines 9-12)**

It was suggested that if the split sentence statute was amended this might be a good amendment. While Ms. Flynt questioned whether this provision, as written, would allow participation in a non-residential community punishment program in lieu of imprisonment, other members of the committee stated that they thought it clearly did.

It was also suggested that the statute should be amended to reference serving the incarceration portion of the split in "a prison, jail-type institution or treatment ~~institution~~ program" to ensure that all community correction programs and drug treatment programs were included. (Page 2 line 16 and Page 8, line 25). It was also suggested that page 6, lines 7-9 be amended to read "If an offense is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation or community corrections supervision as to imprisonment."

Ms. Flynt stated that the Chief Justice has expressed concerns about judges being authorized to impose consecutive split sentences, stacking mandatory terms of imprisonment and is opposed to no limitation on the probation portion of a split sentence. Legislation will be considered by the UJS Legislative Council on these issues. Chief Justice Cobb has requested that the Sentencing Commission consider including a bill amending the appropriate statutes in its Legislative package to address these issues.

- **Section 15-22-32 – Parole Revocation**
  Amended to require revocation hearings to be held within 30 days (was "within a reasonable time).

Ms. Flynt stated that it was not clear when the 30 days commences. Line 13, page 8 still refers to "as soon as practicable" for holding parole court. She questioned whether the hearing of the parole court referenced in line 13 was the same as the hearing as in line 20 and was told by Mr. Oakes and Mr. Cook that it was.

More hearings will be required by the Parole Board to conduct "Parole Courts."

- **Adds provision to §15-23-32 authorizing Board to order that the prisoner serve the balance of his or her term for which he or she was originally sentenced or some portion thereof (calculated from the date of delinquency) "in a jail-like institution or a treatment institution, or a county–generated facility with approval of the county" only if the revocation was the result of the commission of a new offense.**

  In addition to recommending changing the reference from "treatment institution" to "treatment program," the limiting provision referencing county-generated facility with approval of the county was noted as confusing and apparently precluding use of non-profit community corrections programs or those with no county facility.

  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 are either reinstatement of parole or revocation of parole and commitment for the remainder of the sentence.

Limits time for technical violations. Provides that the Parole Board can require violator to serve no more than 90 days in a "prison, jail-like institution, or treatment institution) and at the end of the 90 days parole is automatically reinstated unless the Board has assigned the prisoner to serve "up to 180 days in a technical violation center where the prisoner shall receive, and be released upon satisfactory completion of, educational training and therapy to prepare the prisoner for release."

- **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).

- **Section 15-22-33 – Discharge from parole. Amends this statute to specifically provide an exception to release on parole prior to expiration of the maximum term for parolees convicted of a nonviolent offense (defined in new section 15-22.32.1 page 16-18) Page 10, subsection b. <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.

- **§ 15-22-33 New subsection (b) a person convicted of a nonviolent offense that complies with all of the conditions of parole for 21 consecutive months must be discharged from parole after 24 months *unless the board, a single member of the board, a parole revocation hearing officer, or a designated parole officer shows cause to the reasonable satisfaction of the board based on risk assessment (a tool***

adopted by the Board and operated by a trained officer or other designated person) that termination of parole would create a danger to public safety.

- **Parole automatically terminates if no show cause determination is made within the last 3 months of the 24 month period (immediately following he 21 month period of compliance).**

- **Subsection (b) of § 15-22-33 is amended to provide that a person convicted of a <u>nonviolent</u> 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.**

It was suggested that the committee should carefully review these provisions and consider proposing an amendment that would allow the Board of Paroles to revoke in whole or part and/or to modify parole to provide that participation in treatment program or LifeTech would be required. Mr. Cook and Mr. Oakes stated that they would need to discuss this change with the Board.

Amendment of § 15-22-54

- **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.**

- **§ 15-22-54, is amended 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.**

Ms. Flynt noted that Chief Justice Cobb opposes this provision and believes a provision should be included specifically limiting all probation sentences to no more than 5 years.

- **Amends Subsection (d) (2) of §15-22-54 to provide that in addition to imposition of the sentence originally suspended or imposition of a lesser sentence, upon revocation of probation the court can "Order the defendant to participate in a substance abuse or community corrections program."**

- **Amends Subsection (3) of §15-22-54 to eliminates reference to discretionary half credit for time served on work release, home detention or intermittent confinement. Deletes provision that states the court shall also give significant weight to the time the probationer spent on probation in compliance with the supervision terms and the sentence stating "The total time spent in confinement may not exceed the term of confinement of the original sentence." (page 15, Lines 7-15)**

- **Adds new code section §15-22-32.1 to define when an offender would be considered nonviolent for purposes of probation and parole. Pages 15-18).**

Under the bill's provisions an offender is considered "non-violent" under this Act for purposes of probation or parole 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.*

Reviewing these offenses, several committee members asked where this definition came from and if it was consistent with the definition used by the Sentencing Commission for worksheet purposes. Rosa Davis stated she did not know, but Commission staff would compare the offenses listed with the definition of "violent offense" in the Sentence Reform Act, §12-25-32 (13). [The definition of "violent offense" in the Sentencing Reform Act is more comprehensive, with 33 additional offenses specifically listed (including criminal negligent homicide, assault II, kidnapping II, Rape II, Sodomy II, stalking, burglary 1st, 2nd and 3rd degrees, escape I, promoting prison contraband I, intimidating a juror or witness, promoting prostitution, child and elder abuse, etc.). Under the Sentencing Reform Act any offense having the element of using, attempting to use or threatened to use a deadly weapon or dangerous instrument or physical force against the person of another is included within the definition, as well as any offense is an attempt, conspiracy or solicitation to commit one of the specified offenses.

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.

The Committee voted not to support the bill as written but to recommend that a meeting with Ben Patterson (of Fine and Geddy, who lobbied for this bill), be scheduled to discuss the issues raised by the committee and to determine if changes could be made to resolve these concerns. Motion made by Ellen Brooks, seconded by Eddie Cook and unanimously approved.

C. §15-22-28 Release on Parole, Temporary furloughs, Employment of Parolees by State, Parole Eligibility

The committee discussed deletion of subsection (c) pertaining to furloughs granted by the Commissioner since this provision is no longer utilized.

The statute authorizes the grant of parole to a person who has served at least one third or 10 years of his sentence, whichever is less, except by a unanimous affirmative vote of the Board of Paroles. The parole eligibility date for serious Offenders of 85% or 15 years, whichever is less is established by an administrative regulation of the Board (Article 1, Section 7). The Committee was asked whether the statute should be amended to include this provision.

Rosa Davis made a motion to not pursue amendment of the statute, it was seconded by Ellen Brooks and passed by unanimous vote of the committee.

D. Medical Geriatric Release

- Does not apply to inmates convicted of capital murder.

- Defines Geriatric Inmate as a person 55 years of age or older suffering from a chronic life-threatening infirmity, life-threatening illness, or life-threatening disease relating to aging, who poses a low risk to the community and who does not constitute a danger to himself or herself or society.

- Applicable to inmates that have not served the minimum sentence.

- Requires at a minimum, biannual medical evaluations.

- Authorizes revocation of furlough by the Commissioner upon violation of condition of release, if he becomes a danger to himself or others, or if no longer eligible due to improvement of his medical condition.

HB617 for Judiciary - Dated 05/02/2007

Committee: Judiciary Sponsor: Ball
Analyst: Sharon Bivens Date: 05/02/2007

FISCAL NOTE

House Bill 617 as amended by the Committee on Judiciary could reduce the obligations (including expenditures for medical services) of the Department of Corrections by an amount dependent upon the number of inmates who qualify and are subsequently approved for release by the Commissioner of the Department of Corrections under the geriatric and medical furlough program to be established by the Commissioner pursuant to this bill. The Department of Corrections reports that there are currently up to 233 inmates that could qualify for consideration for medical or geriatric furlough.

This bill would increase the administrative obligations of the Board of Pardons and Paroles for the supervision of these persons and could increase the obligations of the Department of Public Health, the Department of Human Resources, the Department of Mental Health and Mental Retardation, Medicare, Medicaid, hospice organizations, and other public agencies by an amount dependent upon the extent of participation by the agencies in developing and implementing discharge plans; however, this bill states it is not intended to create new or expanded responsibilities for these agencies in providing or arranging for care of the discharged inmates.

The Committee members were provided copies of the Sentencing Commission's original Medical Geriatric Release bill (HB 486, 2005 Regular Session), along with bullets summarizing the major provisions, and the Medical Geriatric Release bill proposed by the Department of Corrections and introduced by Representative Ball last year, HB 617.

Vernon Barnett addressed the committee members asking for support of the provisions of the bill as reflected in the House Judiciary Committee's engrossed substitute. The substituted bill was obtained and copies distributed to those present. Mr. Barnett advised that a bill tracking the language of the engrossed version of the bill would be introduced by the Department of Corrections in the 2007 Legislative Session.

It was noted that there is a provision in the bill that authorizes the Commissioner of the Department of Corrections to Corrections revoke any medical or geriatric furlough granted if the inmate's condition improves to the extent he or she would no longer be eligible for medical or geriatric furlough.

Ms. Brooks stated that the district attorneys would oppose that portion of the bill that allowed offenders convicted of a non-capital offense and sentenced to life without parole to be eligible for furlough. She also noted that the district attorneys would want to see the medical records on these offenders before they were granted medical or geriatric release.

There being no further discussion, Rosa Davis moved to table the bill to allow review of the engrossed version of the bill, Ms. Brooks seconded the motion and the motion was approved by unanimous vote.

E. Prison Industry

Authorizes employment of prisoner within DOC by private industry

Authorizes purchase of prison made products by nonprofit organizations operating in Alabama, state employees, political subdivisions, municipalities and associations.

Authorizes sale of products produced by probationers, parolees and community correction participants.

Authorizes DOC to contract with private industry to establish work-oriented rehabilitation programs within DOC facilities.

HB618 for Government Operations - Dated 04/25/2007

Committee: Government Operations — Sponsor: Ball
Analyst: Sharon Bivens — Date: 04/25/2007

FISCAL NOTE

House Bill 618 as amended by the Committee on Government Operations could increase receipts to the Department of Corrections as a result of the provisions of this bill which would expand upon the entities that would be allowed to purchase prison-made products of the Department. This bill would rename the Industrial Revolving Fund the Prison Industries Account, which would continue to be a revolving account, for the operations of the prison industries program. This bill would further provide that the Commissioner rather than the Governor and the Legislature would determine if there is a sum in the account in excess to that needed for the

requirements of the program and provide that any excess would be used by the Department for certain of its expenses rather than be transferred to the State General Fund as required by under current law (no such transfers have been made in recent years).

The obligations of the Finance Department would increase as a result of monitoring state entities to ensure compliance with the requirement to procure goods, products, and services from the Division of Prison Industries.

Finally, this bill authorizes the Commissioner of Corrections to contract or enter into agreement with private individuals and entities to implement work-oriented rehabilitation programs at facilities on property owned or operated by the Department or at any prison facility housing inmates sentenced to the Department. The bill further provides that no inmate participating in the program may earn less than the prevailing wage for work of a similar nature in the private sector of which up to 40% of the wage would be deposited into the Department of Corrections Special Revenue Fund. This would result in an increase in receipts to that fund of an undetermined amount dependent upon several unknown factors, including, but not limited to, the amount of the prisoners' wage deducted and the number of programs established as authorized by this bill.

This bill further provides that the provisions of the bill will not result in a reduction in the number of prisoners provided for training and work programs conducted by two-year colleges and that prison education programs and appropriations shall continue to be funded within the two-year college system pursuant to the Education Trust Fund Budget.

Mr. Barnett, Deputy Commissioner of the Department of Corrections, advised that the bill the Department wanted to pursue next year was actually the Substitute that passed the House during the 2007 Session, rather than the bill as originally introduced.

Since the bill provided to the committee to review did not contain the changes included in the engrossed bill, Rosa Davis moved to table the bill, with the recommendation that it be carried over for later review and vote by the committee. Following a second by Ellen Brooks, the motion was approved by unanimous vote.

F. Institutional Diversions to LifeTech - §15-18-172

The committee reviewed the provisions of Section 15-18-172, subsection (d), which authorizes the Commissioner of the Department of Corrections to divert inmates to community correction programs (with the approval of the sentencing judge) for possible amendment to allow diversions to LifeTech programs. It was noted that, while this might be a good idea, including it within provisions of the Community Corrections and Punishment

Act may not be appropriate since transition centers are operated by the Board of Pardons and Paroles.

Ms. Brooks indicated that the language referring to the sentencing judge or judge designated by the presiding judge in case the sentencing judge is unavailable should be changed to refer to the sentencing judge or his successor**.**

To allow these amendments (and concept) to be fully discussed by the Department of Corrections or the Board of Pardons and Parole, Ellen Brooks moved to table the proposed amendment. The motion was seconded by Eddie Cook and approved by a unanimous vote.

G. Community Corrections Act - §15-18-170 through §15-18-186

The following amendments to the Community Corrections Act were discussed and voted on:

1. Provision authorizing community corrections directors and employees to have limited arrest power if they were P.O.S.T. certified. This amendment would authorize, not require, directors and employees to acquire law enforcement authority.

   Vernon Barnett moved to approve, Becki Goggins seconded the motion, and it was approved by unanimous vote.

2. §15-18-175(e) now provides 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 from a state penal institution in the case of a state inmate and an escape from the custody of the sheriff in the case of a county inmate and shall be punishable accordingly."

   At least two judges had requested that the Commission consider amending the bill to change the term "shall" to "may." It was mentioned that this was the same provision now appearing under the work release statutes. Ms. Brooks and Ms. Davis both stated that it would be improper to change the term "shall" to "may" since it would appear to grant uncontrolled discretion over whether or not to treat such action as a criminal offense.

   Becki Goggins made a motion recommending that escape provision of §15-18-175 (e) not be amended. Rosa Davis seconded the motion and it was approved by unanimous vote.

3. It was suggested that a provision be included in the Community Punishment and Corrections Act to specifically provide that the court retains continuing jurisdiction over offenders sentenced to community corrections. After a discussion about the current provisions of the Act, it was decided that the statute

as currently written provides for continuing jurisdiction.

Eddie Cook moved to reject the proposed amendment, the motion was seconded by Vernon Barnett and unanimously approved.

4. A recommendation was made that §15-18-172(d) be reviewed for possible amendment to clarify that diversion inmates to programs other than the county of conviction, and required approval, applies to both front-end diversions and institutional diversions. It was the general consensus of the committee that no further amendment for clarification was needed.

   Lynda Flynt moved to reject this proposed amendment, the motion was seconded by Becki Goggins and unanimously approved.

5. An amendment to the definition of "Excluded Felony Offenders" as provided in subsection (14) of § 15-18-171was recommended to remove the sale of drugs from the list of excluded offenses. It was discussed that the drug distribution statute includes both the delivery and sale of drugs and that both should be eligible for community corrections punishment.

   Becki Goggins moved to approve this amendment, the motion was seconded by Lynda Flynt and passed by unanimous vote.

6. It was recommended that § 15-18-171(14) be amended to provide that these exclusions shall not apply to inmates who are within 24 months of ending their sentence (EOS) if otherwise recommended for diversion to a community corrections program for assistance with reentry.

New Business
Ralph Hendrix of TASC and Rosa Davis volunteered to join as members of the Legislative Committee.

It was brought up that the community correction programs had asked for assistance, legislatively or otherwise, in obtaining access to NCIC records. Becki Goggins explained that there were prerequisites that must be met but that she would explore this issue further and advise the Alabama Association of Community Corrections of the requirements to obtain "read only" access to NCIC.

Scheduling of Next Committee Meeting
The next committee meeting was not announced at the meeting. (Dr. Harris has scheduled the next meeting for Monday, October 15th at 1:30 p.m. in the formal classroom of the Judicial Building. The parking code for October is 072*.

Adjourn –
There being no further business the meeting was adjourned at 5:30.