

**Alabama Sentencing Commission (ASC)
Sentencing Standards and Worksheets
Committee Meeting**

October 19, 2007

Rosa Davis, Chief Assistant Attorney General and Chair of the Sentencing Standards and Worksheets Committee, called the meeting to order. Also present were:

- Cynthia Dillard, Director, Alabama Board of Pardons and Paroles;
- Becki Goggins, UCR Division Manager, Alabama Criminal Justice Information Center;
- Joel Sogol, Defense Attorney, Tuscaloosa, Alabama;
- Hon. Virginia Vinson, Judge, 10th Judicial Circuit;
- Bob Williams, Shelby County Public Defender's Office; and
- Bennet Wright, Statistician, Alabama Sentencing Commission.

Ms. Davis advised the group that the purpose of the day's meeting was to have the committee help clarify some of the instructions and procedures associated with the voluntary sentencing standards to make them easier to use.

The first topic discussed by the group was how judges' sentencing orders are being completed. At present, there is no standardized sentencing order in use within the courts in Alabama, and some judges have not been fully educated in what sentences are available. In addition, the many variances in sentencing sometimes makes it difficult for the court specialist to know how to enter the sentence correctly in the AOC data base. It was suggested that the Alabama Sentencing Commission (ASC) establish a subcommittee to develop a model sentencing order for implementation within the courts. Some suggestions for the subcommittee membership include:

1. Judges
2. District Attorney
3. Representative from the Alabama Department of Corrections (DOC)
4. Probation and Parole Officer
5. Community Corrections Representative (other than DOC)
6. Court Clerk
7. Defense Attorney

This subcommittee would be tasked with:

1. Reviewing various sentencing orders already in place in various jurisdictions;
2. Evaluating what information should be contained on a model order;
3. Designing a proposed model sentencing order; and
4. Making a recommendation to the ASC concerning the design and content of a new order.

Once the ASC approves a model sentencing order, it would be recommended for use in the state trial courts either by order of the Alabama Supreme Court or legislative action. Additionally, it

was suggested that the ASC might wish to have the order formally adopted as the Ms. Dillard noted that the subcommittee might wish to review the sentencing order used by in Calhoun County. Mr. Williams indicated that the order from Shelby County would be another good model to evaluate.

It was discussed that such a proposed order would clarify for judges and court specialists the sentences available. The court specialist must be able to enter the appropriate sentence in the AOC database for that data base to be used as a research tool for evaluating the Voluntary Sentencing Standards and constructing Truth in Sentencing Standards.

Next Ms. Davis asked the members to the committee look a number of items related to “instructions clarification” for the voluntary sentencing standards and worksheets.

1. *Offender scores higher than covered on worksheet* – Ms. Davis noted that many worksheet preparers do not know what to do when a defendant’s worksheet score exceeds those provide in the sentencing standards tables. The committee members present agreed this should be considered to be a “non-worksheet” offense, because the sentencing standards were not intended to offer guidance for offenses or scores not specifically covered within the standards. Ms. Davis noted that she would clarify this in the General Instructions that are noted under rule #4 on page 155 of the Reference Manual and all other worksheets instructions.
2. *Split Sentence Issues – the recommended range for a straight sentence goes higher than the sentence allowed for a split*
Ms. Davis noted that the sentence recommendation tables sometime reflect a range of split sentences that is partially inconsistent with the statutory range. For instance, a score of 353 would recommend a straight sentence of 144 months to 240 months and a split range of 36 to 60 months. If a judge orders a sentence of 144 months to 180 months, then the 36 month split sentence is legal. However, if the judge orders a sentence greater than 180 months, then the only available split sentence is 36 months to 60 months. The instructions need to be clarified to remind judges that the statutory provisions for split sentences still apply even if the worksheets are being used to determine the sentence range. It was suggested that an asterisk be added to the bottom of each sentencing table with language that appropriately describes the availability of a split and the proper length, i.e., “Straight sentences ≤ 180 months may be split to a term ≤ 36 months. Straight sentences > 180 months and ≤ 240 months may be split to a term > 36 months and ≤ 60 months.
3. *Clarify compliance – when to use the sentence length tables.* Ms. Davis noted she would clarify the language used on the bottom of page 156 of the 2007 Judges’ Sentencing Reference Manual and in all other instructions to show that the sentence tables are used only with a prison recommendation when the actual sentence is “Prison” (IN). If the recommendation is “Prison” and the judge decides that the sentence or the split portion of the sentence will not be served in DOC or DOC at Community Corrections, the sentence tables cannot be used and the sentence length must follow general law outside the standards.

4. A YO incarceration is an incarceration, therefore, an unsuspended YO sentence to do time is counted as a prior incarceration on the worksheets. The Committed suggested that a section on YO be added to the worksheets.
5. Nolle prossed counts of a multi-count indictment do not count towards sentencing. This will be addressed specifically in the instructions.
6. A sentence of to “prison as a condition of probation” will be treated as a “Prison” sentence for compliance purposes.
7. All applicable felony convictions count as prior convictions for work sheet purposes. There is no exclusion of a prior felony DUI when the current offense sentenced is also a felony DUI.
8. There needs to be an instruction on making changes to the e-worksheets where the offender pleads to a lesser offense or a mistake is found after a worksheet has been completed.
9. There needs to be more instruction on the e-worksheet merge feature in the next revision of the worksheet instructions, especially what cases may be merged, i.e. those sentenced at one sentencing event.
10. The instructions need to clarify further that cases in different counties may not be combined or merged for worksheet purposes. These cases require separate worksheets and worksheet recommendations.

Truth in Sentencing (TIS)

The committee members present discussed the need to re-evaluate the time line for presenting truth-in-sentencing to the legislature. With one exception, those present agreed to recommend an extension of the time for submitting truth-in-sentencing standards until 2011. The reasons discussed included:

1. The Alabama Sentencing Commission is required to develop a plan for TIS while addressing “overcrowding” in the prison system. The commission and the Legislature must therefore be assured there are sufficient prison beds available accommodate offenders sentenced to day for day terms in order for those sentences to become effective.
2. Alabama is currently operating prisons at almost 200% of capacity. Sound public policy demands sufficient bed space to assure that the State will be able to sustain TIS sentences.
3. Bed space must be created in one of two ways or probably, both, i.e. building one or two more prisons and diverting more non-violent prisoners to effective community punishment alternatives. Alternatives to prison are developing in Alabama but have not reached a level that will free sufficient beds, even with building new prisons, to accommodate an effective TIS system. The DOC, the Alabama Sentencing Commission and other state and local agencies, are working to improve Alabama’s alternative punishment system so that TIS may be implemented in a meaningful way.
4. The development of TIS requires reliable data on which to construct an effective TIS system. Many positive changes in criminal justice data systems have slowed the Alabama Sentencing Commission’s access to data such that there has been a delay in access to data necessary to develop TIS. The barriers to data access are being addressed by the agencies and should be resolved within the next 12 – 18 months.

5. In addition to data barriers, the implementation of the Initial Voluntary Sentencing Standards is going more slowly than expected and the effectiveness of these standards and the general acceptance and use of these standards is a condition precedent to the implementation of truth-in sentencing. Until some of the data barriers are resolved, there can be no accurate evaluation of the effectiveness of the Initial Voluntary Sentencing Standards.
6. The Alabama Sentencing Commission is continuing to work diligently to address the issues that require a delay in developing and recommending TIS standards and will develop a work plan with a time line for continuing the development of TIS standards.

Because so few committee members were available for the meeting, the above items are recommendations that can be considered by the Commission with a motion at its next meeting or that can be considered for recommendation at the next meeting of the Standards Committee.