

**Alabama Sentencing Commission
Sentencing Standards Committee**

November 6, 2003

Chairman Rosa Davis, Chief Assistant Attorney General and Attorney General Bill Pryor's Appointee to the Sentencing Commission, called the meeting to order. Also present were:

- Hon. Ellen Brooks, District Attorney, 15th Judicial Circuit (Montgomery County);
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Stephen Glassroth; Member, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Hon. Pete Johnson, District Judge, Jefferson County;
- Hon. David Rains, Judge, 9th Judicial Circuit (Cherokee and Dekalb Counties)

Ms. Davis began the meeting by advising those present that the next Sentencing Standards Committee meeting would be held on December 11-12, 2003. At this meeting, consultants Tammy Meredith and John Spear of Applied Research Services, Inc. (ARS) will be presenting their statistical analysis of sentences imposed for drug offenses based on the data obtained from the PSI data collection forms completed by state probation and parole officers in recent months. The goal of the two-day meeting will be to develop a draft of the sentencing standards worksheet to be used by judges in sentencing drug offenders under the "time imposed" guidelines slated to go into effect on October 1, 2004. The worksheet will be designed to weigh various sentencing factors which go into making dispositional ("in/out") and durational (amount of time imposed) decisions concerning how to punish offenders once an adjudication has occurred.

Ms. Davis further advised the group that she anticipates the development of a total of three worksheets for use in sentencing under the new system – one for drug offenses, one for property offenses and one for offenses against the person. The reason for having three sheets is to ensure that the factors included when sentencing each offense type are given proper weight for the purposes of imposing sentence. For example, when sentencing an offender for a property crime, a judge might be likely to consider the value of the property which was stolen and the defendant's criminal history when deciding on whether or not to sentence a defendant to incarceration or a non-custodial sanction. On the other hand, the sentence for a drug offense might be driven by the quantity of the controlled substance possessed or sold by the defendant. Finally, when sentencing a defendant for a crime against the person, the degree of victim injury may outweigh the monetary value of any lost property or the defendant's criminal record. Because different factors that come into play when sentencing different types of offenses, Ms. Davis noted that it seems necessary to have separate worksheets for each broad category of crime.

Ms. Davis asked the committee members to begin thinking about how split sentences should be treated under the "sentence imposed" guidelines. Under the current sentencing scheme, split

sentences are often imposed to ensure that a defendant serves a definite period of incarceration. (e.g. If a judge “splits” a 10 year sentence and imposes three years in the penitentiary, then the offender must serve the entire incarcerative portion of the sentence without the benefit of good time or the possibility of parole.) The initial time imposed guidelines, however, will be based on an indeterminate sentencing structure – thus allowing for good time and parole when recommending sentence ranges. This presents a problem, since offenders sentenced to a relatively short period of incarceration under the split sentence act often serve longer than offenders sentenced to relatively long straight sentences. There is no simple answer for how the new guidelines should deal with this issue, therefore Ms. Davis asked the members of the group to start devising strategies for how to take into account split sentences when formulating the time imposed standards.

Ms. Davis reminded the group that the provision in the Sentence Reform Act of 2003 which would have abolished parole eligibility for inmates sentenced on or after October 1, 2006 was deleted prior to the Act’s passage during the Regular Session. One reason for striking this provision was that some lawmakers feared rampant prison overcrowding without some type of “release valve” to allow for early release of inmates in the event the sentencing standards result in an unexpected increase in the number of offenders sentenced to prison. Ms. Davis pointed out that truth in sentencing – which is one of the primary goals of Alabama’s sentencing reform efforts – cannot be accomplished if the state retains its existing system of parole. However, she noted that some type of “release valve” is a good idea until the state can be assured of the accuracy of the results of the sentencing simulation model currently under development. To this end, Ms. Davis asked the members of the committee to think about how best to establish a mechanism for the release of inmates after October 1, 2006 in the event of massive prison overcrowding.

Judge Rains agreed that some sort of measure to prevent unanticipated overcrowding is needed, and he reminded the group that a draft of this type of “emergency release” legislation had been prepared once before. Ms. Goggins indicated that she would locate the sample legislation she had drafted and make copies available to the group for consideration.

Ms. Davis next advised the group as to the progress being made relative to entering and analyzing the data collected from the PSI data collection forms. She explained that all of the data regarding drug offenses have been “cleaned” and are being analyzed by the ARS consultants. (The results of this analysis will be presented to the sentencing standards committee at the meeting to be held December 11-12.) Ms. Davis further reported that the property crime data entry will be completed by November 7, 2003, and the data entry for crimes against the person will be completed by November 14, 2003. The analyses of these latter two crime types should be completed by the end of 2003 in order to allow the Sentencing Commission time to review and recommend time imposed worksheets and standards to the Regular Session of the Alabama Legislature in February 2004.

Ms. Davis next informed those present Hon. Eugene W. Reese, Judge, 15th Judicial Circuit (Montgomery County) had been selected by the President of the Alabama Circuit Judges Association to join the Sentencing Standards Committee. Judge Rains asked if Judge Reese would be briefed concerning the ongoing work of the committee prior to joining the group at its

next working session. Ms. Davis indicated she would meet with Judge Reese in the meantime to bring him up to date as the progress made by the committee thus far.

Mr. Glassroth reiterated his belief that judges and district attorneys are going to resist any new sentencing scheme that is too complicated or cumbersome. Ms. Davis agreed and noted that Alabama should seek to implement a more concise set of standards than those in use in Virginia.

Judge Johnson asked who would be responsible for filling out the sentencing worksheets which will be required under the new system. Ms. Davis explained that probation officers in other states are usually responsible for completing the worksheets. Ms. Brooks noted that in Alabama, probation officers typically do not become involved in a case until there has been an adjudication. Ms. Brooks indicated that district attorneys would have access to information needed to fill out the forms, but it would be impossible for them to complete the worksheets without additional personnel.

Ms. Brooks reminded the group that pretrial diversion programs such as the one in Montgomery can be effective in reducing the number of offenders going to prison. Ms. Davis agreed and noted that the Sentencing Commission's next report should include information on the effectiveness of pretrial diversion and how these programs generally work.

Judge Johnson reported that programs such as "Breaking the Cycle" (BTC) in Jefferson County should also be emulated as a part of ongoing efforts to reduce the number of criminal offenders entering the states jails and prisons. As a part of BTC, all offenders who are released on bond are required to submit to random drug tests as condition of their release. Judge Johnson noted that this program has been effective in reducing drug use among defendants before adjudication has occurred. By giving defendants an incentive to remain free of drugs, it is believed that BTC has led to a decrease in the number of drug related offenses committed by offenders in Jefferson County.

Next, Ms. Davis called the group's attention to a recent publication of the Vera Institute of Justice titled, "Corrections Policy and Budget Actions in States: 2003." This report was presented to participants at a recent National Governors' Association Conference and outlines state responses to increasing criminal justice system costs during the current economic downturn. Ms. Davis asked those present to look over the various strategies to curb criminal justice costs and determine which strategies should be reviewed for possible implementation in Alabama. Following is a summary of those items identified by group members for further exploration and the state(s) where similar approaches are underway:

- Reviewing the mandatory minimum sentences for drug trafficking offenses to see which ones should be repealed or reduced (Kansas);
- Mandating drug treatment rather than incarceration for minor drug offenders (Kansas);
- Requiring probation for first time drug possessors (Texas);
- Imposing a tax on liquor sales to fund drug courts (Idaho);
- Creating an emergency prison population release mechanism to increase the number of paroles when the backlog of state inmates in county jails reaches 500 (Arkansas);

- Imposing a prison population cap and establishing an emergency release mechanism when the cap is exceeded (Nebraska);
- Increasing good time credits for prison inmates who earn a GED or complete a literacy or life skills program (Indiana);
- Decreasing the amount of time violent offenders must serve from 85 percent to 70 percent (Iowa);
- Eliminating certain restrictions on parole eligibility for drug offenders (Nebraska);
- Creating a drug offender transition program and allowing inmates to be placed in this program three months prior to their scheduled release date (Arizona);
- Authorizing the Department of Corrections to place drug offenders in home confinement during the last 180 days of incarceration and to house DUI offenders in home confinement for the duration of their incarceration (Delaware); and
- Requiring offenders to pay additional supervision and administrative fees to help defray criminal justice costs (Colorado, Georgia, Idaho, Illinois, Indiana, Mississippi, Montana, Nebraska, Nevada, Oklahoma, Tennessee and Utah).

Judge Rains noted that another creative idea would be to allow probationers to end their supervision early if they obtain a GED.

Judge Rains reiterated his position that it might be preferable to have a single sentencing worksheet as opposed to multiple worksheets. He also mentioned that the Sentencing Standards Committee may want to revisit Utah's sentencing structure as a possible model for implementation in Alabama.

Judge Johnson noted that he thought it would be better to keep Alabama's basic sentencing structure in place. He advocated increasing the number of felony classifications and narrowing the range of punishments for each class.

Next, Ms. Davis asked the committee to read over the Virginia Structured Sentencing Manual which was distributed at the beginning of the meeting. She noted that sentencing decisions in Virginia are based on a "sentencing event." This means that a defendant with multiples convictions at the time of sentencing will be sentenced only once. For example, a defendant convicted of both robbery and homicide at the same time would be sentenced based on the score from the homicide worksheet in Virginia. The homicide worksheet would be used since this is the most serious of the two, and the robbery conviction would be scored as a part of the overall sentencing event. In cases where a defendant has multiple convictions for offenses with the same seriousness rating, two or more worksheets may have to be completed to see which one results in the highest score for the purposes of sentencing.

Judge Johnson indicated that he thought it would be helpful to get copies of actual completed worksheets from Virginia to assist in understanding how sentencing events work in practice. Ms. Davis reported that she would ask Rick Kern in Virginia for several examples for the group prior to the next meeting.

Ms. Brooks stated that she favored adopting Virginia's practice of using "verified information" for the purpose of establishing a defendant's criminal history when completing the

sentencing worksheets. This means that the person filling out the worksheet may use prior record information verified by court reports, police files and/or Department of Corrections' reports or reports. This means that the worksheet preparer does not have to present the court with certified, attested or exemplified copies of the offender's prior record. Ms. Brooks noted that this would be very helpful to district attorneys' and clerks' offices if Alabama adopts sentencing worksheets similar to those used Virginia.

Ms. Brooks also noted that nolo contendere pleas from other states should be counted as previous convictions for the purposes of completing the sentencing worksheets (although perhaps with a lesser weight than a finding or plea of guilty).

Ms. Davis noted that existing mandatory minimums – Habitual Felony Offender Act, trafficking enhancements, etc. – will be factored into the sentencing standards. However, it is likely that normative adjustments as to the duration of sentence will be made in some cases.

Ms. Davis asked the members of the Committee to continue to reflect upon the issues raised at the meeting and to contact her with any ideas or suggestions prior to the next meeting.

There being no other business to discuss, the meeting was adjourned.