

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

November 9, 2006

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

- Hon. Ellen Brooks, District Attorney, 15th Judicial Circuit;
- Eddie Cook, Alabama Board of Pardons and Paroles;
- Cynthia Dillard, Deputy Director, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, UCR Division Manager, Alabama Criminal Justice Information Center;
- Randy Hillman, Executive Director, Office of Prosecution Services;
- Hon. Ben McLaughlin, Presiding Judge, 33rd Judicial Circuit (Dale and Geneva Counties);
- Melisa Morrison, Analyst, Alabama Sentencing Commission;
- Hon. David Rains, Presiding Judge, 9th Judicial Circuit (Cherokee and DeKalb Counties);
- Robert Ray, Defense Attorney, Ft. Payne, Alabama;
- Bill Segrest, Director, Alabama Board of Pardons and Paroles;
- Shelly Linderman, Victims of Crime and Leniency (VOCAL);
- Mitzie Wheat, VOCAL;
- Hon. Virginia Vinson, Judge, 10th Judicial Circuit;
- Bob Williams, Shelby County Public Defender's Office; and
- Bennet Wright, Statistician, Alabama Sentencing Commission.

Ms. Davis explained to the Committee that the purpose of the day's meeting was to update the members on how the sentencing standards worksheet implementation process was working. She noted that the effective date of the sentencing standards was October 1, 2006, and that the Alabama Sentencing Commission (Commission) had begun receiving worksheets in both electronic and hardcopy formats from the courts that have begun using the standards.

Ms. Davis reported that Joel Sogel from Tuscaloosa had been appointed to the Commission as the representative for the Alabama Defense Lawyers Association. He is replacing Stephen Glassroth who left Alabama to become Federal Public Defender in Atlanta. Ms. Davis also reminded Mr. Hillman that the District Attorneys' Association needs to appoint a new member to the Sentencing Worksheets and Standards Committee (Committee) to replace Eugenia Loggins who recently retired from her position.

Ms. Davis asked how many of the members have used the worksheets. Ms. Brooks, Judge McLaughlin, Judge Rains and Mr. Ray reported that they had utilized the worksheets in the courtroom.

Next, Ms. Morrison was asked to provide a demonstration of the online sentencing standards worksheets reporting program developed by the Administrative Office of Courts (AOC). During Ms. Morrison's presentation, several suggestions for improvements to the reporting system were made. Following is a summary of the recommendations of the committee.

- Remove the "city" field from the summary screen display, unless it serves a real purpose.
- Make sure that the web-based application is up and running 24/7. (Several members remarked that they periodically experienced problems logging onto the system. Ms. Morrison asked that in the future they note the dates and times when problems were experienced as this would assist AOC in identifying the source of connectivity problems.)
- Where the user clicks on the worksheet to select a scoring factor should be made consistent. (It was noted that presently, users click on the offense in order to score it on the worksheet, while other sentencing factors require the user to click on a check box to the right of the factor. All scoring factors should be selected in the same way to avoid confusion).
- Allow users to enter the actual sentence imposed on the worksheet instead of relying on the mainframe to populate this data.
- Have the system store a copy of the form that has been partially completed, but do not allow the form to be submitted for analysis until the sentencing has occurred.
- Allow users to enter a final disposition date on the worksheets.
- Link the information on the forms to the District Attorneys' Information System (DAIS) database and allow DA's to search cases by their name.

Judge McLaughlin reminded the committee that no matter how many changes are made to the forms, each circuit will need to develop its own local policies for completing and submitting the worksheets. Since jurisdictions have such different processes, the Commission should not seek to force everyone to use exactly the same procedures for filling out the required forms.

Ms. Davis asked if there were any other implementation issues to bring before the committee. Following is a summary of the other concerns that were raised.

- It was reported that four (out of six) circuit judges in Montgomery are not using the standards.
- In Birmingham, it was noted that all eight circuit judges were using the standards, but the district judges are not. Furthermore, the district attorney's office is not making negotiated plea offers for sentences covered by the standards. Defendants who wish to plead guilty to a covered offense must "plead blind" without an agreement from the district attorneys office concerning a recommended sentence.
- Defense attorneys are not allowed to access juvenile records and feel generally disenfranchised by the whole worksheet process.

Following this discussion, Ms. Davis thanked Mr. Morrison for her presentation and called the Committee's attention to the list of topics distributed at the beginning of the meeting. She

also noted that it seems clear that members of the ASC will need to convene additional meetings with officials in several circuits to promote and explain the sentencing guidelines.

Ms. Davis reported that in some counties the DA's are finding more prior convictions than those reported on the Pre-Sentence Investigation (PSI) prepared by the probation officers. Ms. Dillard noted that she was aware of the opposite problem in other jurisdictions where the PSI reports show more convictions than the prosecutors' records. Mr. Hillman suggested that the discrepancies in prosecutor records were likely a result of insufficient manpower to devote enough time to researching criminal history records. He reported that he had heard numerous complaints from DA's concerning the amount of time it takes to complete the worksheets. Ms. Davis stated that she agreed that local DA's need more personnel, and that this issue needs to be taken to the Legislature in order to try to obtain additional funding.

Mr. Segrest reported that his office had learned that several presiding judges were issuing orders requiring probation officers to complete the sentencing worksheets. He reminded the Committee that the statute states the sentencing judge – not presiding judge – handling the case is required to select the worksheet preparer. Mr. Davis noted that he was correct in his reading of the law; however, it would be up to the other judges to object to the procedure prescribed by the presiding judge. Judge McLaughlin reminded the Committee that it is common for presiding judges to issue standing orders concerning circuit-wide policies.

Judge McLaughlin reported that DA's want Habitual Felony Offender Act (HFOA) sentences while defense attorneys are arguing that their clients be sentenced under the ranges set by the sentencing standards. He noted that this puts a little more pressure on judges, because they are the ones who ultimately decide which sentencing rules will be applied. He also pointed out that this tension between the DA's and defense attorneys can help to encourage plea bargains.

Judge Vinson asked the other judges if defendants need to be advised of the sentence range recommended by the guidelines. She and Judge Rains discussed that this is not absolutely required by the law; however, they agreed that judges probably should make this a part of their sentencing colloquy.

Ms. Brooks asked how clerks are supposed to know when a case is "final." She suggested a "final" checkbox on the worksheets. It was also discussed that the clerks should be instructed to always update the sentencing screen on the AOC mainframe when sentences are changed. (For instance, a clerk might enter a sentence as a prison sentence prior to a probationary hearing. In the event probation is granted, this event needs to be recorded on the sentencing screen.) Ms. Davis reported that Commission staff planned on speaking to clerks at their next conference, and this could be one of the discussion topics.

It was asked whether or not those who aid and abet a crime involving a weapon are subject to the same "weapons enhancement" as the principal offender. Ms. Davis answered "yes", explaining that under Alabama law, those who merely participate (e.g. aid and abet) in the commission of an offense are subject to the same penalties as the person who actually commits the offense. Ms. Morrison noted she would add this issue to the list of Frequently Asked Questions (FAQ's) on the Commission's website.

It was asked whether a commitment to a Department of Youth Services (DYS) facility should count as a previous incarceration when scoring worksheets. Those present agreed that full commitments to DYS should be counted the same as other incarcerations. Partial commitments – e.g. to a youth drug rehabilitation program or to a group home – should not be counted.

Mr. Williams asked how worksheets should be scored for an arrest that happened a long time ago but is just now making its way to court. In these cases, there may be numerous convictions that occurred after the arrest date of the offense. (The worksheet instructions state that only those convictions occurring before the arrest date of the offense being sentenced should be counted.) Ms. Davis noted that this scenario would most likely be the exception – not the rule – and that these may be cases that need to fall outside of the standards. Mr. Williams agreed that these cases are not the norm; however, he stated that they do occur relatively frequently. He noted that he was aware of several cases where defendants have a “hold” placed on them at the Department of Corrections (DOC), and they are required to be released to the custody of a county where there is an outstanding warrant to undergo trial there. Ms. Davis reported that the Commission would monitor this issue in order to determine if any specific action is required to give direction when handling these cases.

Ms. Davis asked whether a sentence to “time served” in a county jail should count the same as other incarcerations that occur after sentencing. The consensus was to count these incarcerations the same.

Judge McLaughlin suggested taking out the “midpoint” on the sentence range tables. He noted that lawyers tend to think this is generally where sentences should fall. Ms. Goggins agreed, noting that the midpoint on the sentence recommendation tables is not a statistical midpoint and can be misleading. (A statistical midpoint would reflect the point at which one half of the sentences imposed were longer and one half were shorter. For most offenses, the statistical midpoint would be lower than the mathematical midpoint currently displayed.)

Ms. Davis read the questions submitted by Joel Sogel to the group. (These had been distributed at the beginning of the meeting.) It was noted that most of the concerns expressed by Mr. Sogel had already been addressed in the deliberations of the Commission.

Ms. Davis next asked the group which additional crimes need to be added to the worksheets. She noted that it takes approximately 18 months to perform the statistical analyses needed to create new sentence scores and sentence length tables, so it will likely be a couple years before any new offenses can be added by the Legislature. Following is a list of additional offenses the Committee would like to see added to the worksheets.

- Attempts/Conspiracies/Solicitations
- Child Abuse
- Drug Manufacturing (Methamphetamine)
- Drug Trafficking
- Identity Theft
- Possession of Precursor Chemicals
- Vehicular Homicide

Ms. Brooks asked whether it would be possible to provide sentencing statistics on the above offenses prior to their inclusion on the worksheets. Ms. Davis indicated that this would be possible; however, previous experience shows that providing statistical data alone does not tend to have any meaningful influence on sentencing practices.

One of the victims' advocates noted that for Manslaughter offenses where the offender has no previous criminal history, the maximum sentence recommended by the sentencing standards is less than 180 months (15 years). This means that an offender sentenced to the maximum punishment for Manslaughter in this scenario would be eligible for good time according to current DOC policies. She recommended increasing the maximum recommended sentence to 181 months so judges could order the defendant to a sentence that would make the person ineligible for good time while still remaining in compliance with the sentencing standards. She noted that this is particularly important because many murder charges are reduced to manslaughter by juries or as a part of the plea bargaining process. Ms. Davis noted that this sounded like a good suggestion and advised that she would ask the Commission staff to analyze the impact of making this change.

Judge Rains advised the group that it was Rosa's 60th birthday.

Ms. Dillard reminded everyone of Mr. Segrest's upcoming retirement and invited all of the Committee members to attend his retirement party at 2:00 p.m., Friday, November 17th at the Alabama Criminal Justice Building.

Ms. Davis asked if there were any other matters to bring to the committee. There being no other business to discuss the meeting was adjourned.