

Alabama Sentencing Commission Sentencing Standards Committee

December 11-12, 2003

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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:

- Cynthia Dillard, Assistant Executive Director, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Billy Hill, Attorney at Law;
- Hon. Pete Johnson, District Judge, Jefferson County;
- Hon. Eugenia Loggins, District Attorney, 22nd Judicial Circuit (Covington County);
- Hon. P. B. McLauchlin, Jr., Judge, 33rd Judicial Circuit (Dale and Geneva Counties);
- Dr. Tammy Meredith, Consultant, Applied Research Services, Inc;
- Melisa Morrison, Research Analyst, Alabama Sentencing Commission;
- Hon. David Rains, Judge, 9th Judicial Circuit (Cherokee and DeKalb Counties);
- Hon. Eugene W. Reese, Judge, 15th Judicial Circuit (Montgomery County);
- Hon. Tommy Smith, District Attorney, 6th Judicial Circuit (Tuscaloosa County);
- Dr. John Speir, Applied Research Service, Inc;
- Bob Williams, Shelby County Public Defender's Office.

Ms. Davis explained that the purpose of the morning portion of the meeting would be to provide an orientation for the new members of the Structured Sentencing Committee, and she asked the new members to introduce themselves to the group.

Ms. Davis indicated that the concept for establishing the Alabama Sentencing Commission arose from the work of the Alabama Judicial System Study Commission in 1999. After meeting with and hearing from representatives of the state's criminal justice system over the course of many months, this group found there was reason to believe that unwarranted disparity existed within Alabama's sentencing system. The Judicial System Study Commission also determined the state should find a better way to ensure that scarce prison bedspace is reserved for violent and dangerous offenders. Because of these findings, the Commission recommended the establishment of a permanent agency charged with reviewing Alabama's sentencing policies, practices and procedures and making suggestions for improvement to the Alabama Legislature.

In 2000, the Legislature acted on the Judicial System Study Commission's recommendation and created the Alabama Sentencing Commission as a new state agency. The purposes of the commission, as defined in Section 12-25-2, *Code of Alabama 1975*, are:

- To review existing sentence structure, including laws, policies, and practices, and to determine and recommend to the Legislature and Supreme Court changes regarding the criminal code, criminal procedures, and other aspects of sentencing policies and practices appropriate for the state which:
 - Secure the public safety of the state by providing a swift and sure response to the commission of crime.
 - Establish an effective, fair, and efficient sentencing system for Alabama adult and juvenile criminal offenders which provides certainty in sentencing, maintains judicial discretion and sufficient flexibility to permit individualized sentencing as warranted by mitigating or aggravating factors, and avoids unwarranted sentencing disparities among defendants with like criminal records who have been found guilty of similar criminal conduct. Where there is disparity, it should be rational and not related, for example, to geography, race, or judicial assignment.
 - Promote truth in sentencing, in order that a party involved in a criminal case and the criminal justice process is aware of the nature and length of the sentence and its basis.
 - Prevent prison overcrowding and the premature release of prisoners.
 - Provide judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences.
 - Enhance the availability and use of a wider array of sentencing options in appropriate cases.
 - Limit the discretion of district attorneys in determining the charge or crime.
- In fulfilling its purposes, the commission shall be mindful of the purposes of sentencing that include, but are not limited to, all of the following:
 - Protecting the public.
 - Promoting respect for the law.
 - Providing just and adequate punishment for the offense.
 - Deterring criminal conduct.
 - Imposing sanctions which are least restrictive while consistent with the protection of the public and the gravity of the crime.
 - Promoting the rehabilitation of offenders.

According to Ms. Davis, the Alabama Sentencing Commission began meeting in 2001. One of the first things to become clear to the members of the Commission was the need for accurate data concerning historic sentencing patterns within the state. It was determined that automated criminal justice records in Alabama have been kept by a variety of state agencies for many years prior to the establishment of the Alabama Sentencing Commission. Although, while the

computer systems for each agency appeared to be adequate for retrieving records needed for internal purposes, it was soon discovered that no system was equipped to communicate with any other. As a result, there was no single source for retrieving complete sentencing and criminal history data for all offenders in Alabama.

In order to construct an integrated database using information from multiple agencies, the Sentencing Commission hired Dr. Tammy Meredith and Dr. John Speir¹ to assist the state in compiling more complete data concerning Alabama's adult offender population. Additionally, Dr. Meredith and Dr. Speir were asked to develop a computerized simulation model which can be used to forecast the impact changes to Alabama's sentencing laws will have on the state's prison and probation populations. Both consultants worked previously with officials in other states – including Georgia and Virginia – as they constructed their sentencing guidelines and developed computer simulation models.

Ms. Davis next explained that the Alabama Legislature – based on the recommendation of the Sentencing Commission – passed the Sentencing Reform Act of 2003 during the Regular Session earlier this year. This Act requires the Sentencing Commission to develop and present sentencing worksheets which are slated to go into effect in July 2004 to the legislature during the 2004 Regular Session which begins in February. The Act also specifies that the recommended sentence ranges listed on the worksheets should reflect historic sentencing patterns in the state with adjustments made to reflect current sentencing philosophy – e.g. to ensure there are adequate state prison beds to house the most violent and dangerous offenders more nonviolent offenders may need to be punished in a non-incarcerative setting given the current lack of funds to construct new prisons.

According to Ms. Davis, the sentencing worksheets will be similar to those which have been used in Virginia for the past 10 years. She explained to the new members of the committee that the Sentencing Commission and its various sub-committees had studied sentencing systems in numerous other states prior to deciding to model Alabama's system after Virginia. With the assistance of the Vera Institute of Justice, members of the Sentencing Commission had the opportunity to meet with officials from Kansas, Massachusetts, Minnesota, North Carolina, South Carolina and Virginia to discuss their sentencing systems and reform efforts. Additionally, the Commission reviewed the sentencing guidelines in use in Utah. Ms. Davis also noted that the Commission had studied the federal sentencing guidelines, but had quickly determined that this system would not be a good model for implementation in Alabama.

Next Ms. Davis asked Dr. Speir to discuss the database which has been constructed by ARS for the Alabama Sentencing Commission. According to Dr. Speir, ARS has collected sentencing and criminal history information from a cohort of offenders sentenced in Alabama's courts over the past five years. Information included in the database was provided by the Alabama Administrative Office of Courts (AOC), Department of Corrections (DOC), Criminal Justice Information Center (CJIC) and Board of Pardons and Paroles. In addition to merging the automated information from these disparate data sets into a single database, ARS also assisted the Sentencing Commission in constructing a survey instrument to collect additional offense

¹ Drs. Meredith and Spears operate Applied Research Services, Inc. (ARS) which is a consulting firm based in Atlanta, Georgia.

information which was not available in an electronic format from the Board of Pardons and Paroles and community corrections providers. Examples of information collected through the surveys include: weapons used during the commission of an offense; degree of victim injury as a result of an offense; history of substance abuse; history of domestic violence; treatment history; type and value of property damaged or stolen during an offense; type and amount of drugs possessed, sold or manufactured by offenders; etc.

Dr. Speir emphasized the need for reliable data when making decisions to modify sentencing policies. For instance, he noted that Florida experienced a dramatic spike in their state prison population shortly after implementing truth in sentencing several years ago. However, this could have been avoided had the state developed a prison population simulation model prior to making sentencing policy changes.

Ms. Davis next explained that the data analysis conducted by Dr. Meredith and Dr. Speir revealed that there is very little truth in sentencing in Alabama. In other words, inmates usually do not serve the entire prison sentence imposed because of parole and good time policies. The exception to this has been in cases where an inmate received a split sentence where the incarceration portion of the sentence must be served day for day. However, several members of the Committee noted that these inmates are now eligible for early release, so these sentences are no longer determinate either.

Ms. Davis noted that one big contributor to the lack of truth in sentencing is the state's good time laws. Under ideal circumstances, inmates should be required to participate in educational, vocational and/or substance abuse treatment programs in order to be awarded good time credits toward sentence reduction. However, because there are insufficient funds to make such programs available to all inmates, good time credits are now awarded automatically. This is because inmates cannot be penalized for not participating in programs which were inaccessible to them.

Ms. Davis asked Judge McLaughlin to discuss the work of the Truth in Sentencing Subcommittee which he chaired. Judge McLaughlin reported that the subcommittee recommended the imposition of "bad time" credits as opposed to "good time." Under this scheme, an inmate would receive a minimum sentence which must be served in its entirety. If the inmate fails to behave, then the Department of Corrections may add additional time (up to 20 percent) to the sentence to correct the inmate's behavior. As a result of this recommendation, this type of "bad time" system is set to go into effect in 2006 concurrently with the implementation of truth in sentencing and "time served" standards pursuant to the Sentencing Reform Act of 2003. Under this system, offenders sentenced to the penitentiary will receive a minimum and maximum sentence under the sentencing standards with the maximum time set to equal 120 percent of the minimum time imposed. Once sentenced, the offender must serve all of the minimum time imposed, and it will be up to DOC officials to determine whether or not the inmate serves the additional time.

Judge McLaughlin also noted that his Committee recommended that no offender be allowed to leave the state prison system without some form of post-incarceration supervision. This recommendation was also incorporated into the Sentence Reform Act of 2003. Starting in 2006,

all offenders will be required to serve at least one year of post-release supervision after completing their term of imprisonment. Judge McLaughlin indicated that this system makes more sense than the current system where the most serious offenders (who serve their whole sentence because they are denied parole) leave prison with no supervision while less dangerous offenders (who are granted parole) receive supervision upon release.

Ms. Davis also noted that the Sentencing Commission recognized the need for additional intermediate sanctions for offenders. To this end, the Sentence Reform Act of 2003 contains a section listing a wide variety of punishment programs which can be used to safely punish offenders. She explained that this list was not intended to be exhaustive, but was rather intended to highlight what types of different punishment strategies could be employed with sufficient resources.

Ms. Flynt indicated that she had spoken with a senator who is interested in sponsoring legislation which would allow all counties to create a pre-trial diversion program. Those present agreed this would be desirable as long as any programs implemented pursuant to the act were affordable to all defendants.

At the end of the morning session, Ms. Davis guided the group in reviewing the section of the Sentencing Reform Act of 2003 which sets forth the timetable and procedures for developing the initial set of standards which will go into effect in 2004. These are the “sentence imposed” standards which will recommend sentences based on the assumption that existing early release programs will remain in effect. (These will be different than the “time served” standards which will have sentences which are likely to appear shorter in many instances, because their implementation will occur simultaneously with the abolition of parole and good time credits for offenders committing crimes on or after October 1, 2006.)

Ms. Davis reiterated that it was necessary to implement two sets of standards. There are several reasons for this. First, the Sentencing Commission will need some time to measure how well the initial voluntary standards are working. For instance, if there are a great number of departures from the recommended sentence ranges, this would be an indication that the suggested sentences need to be reviewed and amended. Several of those present suggested that the standards should be implemented in several pilot sites prior to being introduced statewide. Those present agreed this was a good idea. Possible pilot sites identified by the group included: Covington County, Dekalb County, Jefferson County and Montgomery County.

After the morning orientation session, the following members of the Sentencing Standards Committee joined the meeting:

- Hon. Ellen Brooks, District Attorney, 15th Judicial Circuit (Montgomery County); and
- Stephen Glassroth; Member, Alabama Sentencing Commission;

To begin the afternoon session, Ms. Davis asked Dr. Meredith and Dr. Speir to update the group relative to their work over the last several months. Dr. Meredith reported that they have developed programs for creating research databases for the information collected through the PSI data collection forms. She further reported that the drug data analysis had been completed, and

this information was used to create the two draft worksheets for sentencing drug offenders which were distributed at the beginning of the meeting. One sheet pertains to the “in/out” decision (e.g. whether a person receives a prison or probationary sentence), and the other would be used to determine the length of sentence imposed.

According to Dr. Meredith, the drug sentencing worksheets can be used to score the five most frequent drug offenses: 1) Felony DUI; 2) Possession of Marijuana; 3) Possession of Schedule I – V Controlled Substances; 4) Sale of Marijuana; and 5) Sale of Schedule I – V Controlled Substances. It was decided that drug trafficking and manufacturing would not be covered by the worksheets. This was because: 1) trafficking cases contain such a wide variety of circumstances that it is hard to arrive at a “typical” case and relatively few cases appear in the data; and 2) the manufacturing statutes are so new there are very few cases in the data.

Next Dr. Meredith explained that she conducted a statistical analysis of all of the variables contained within the sentencing database to determine which factors are statistically significant in terms of impacting whether or not an offender receives a prison term and the length of the term imposed. After determining which variables were statistically significant, Dr. Meredith next assigned “weights” to each factor in order to develop a worksheet which will be predictive in estimating sentences based on the factors present in individual cases. This was accomplished using multivariate statistical equations (linear and logistic regression).

The factors found to be statically significant in determining whether or not a person receives a prison sentence – the “in/out” decision – were:

- Most serious offense at conviction;
- Number of adult prior convictions;
- Number of prior misdemeanor convictions;
- Prior prison incarceration;
- Prior probation or parole revocation ; and
- Prior juvenile adjudications.

The factors found to be statistically significant in determining the length of sentence were:

- Most serious offense at conviction;
- Number of additional offenses;
- Total number of prior felony convictions;
- Number of Class C prior convictions;
- Prior incarceration greater or equal to one year; and
- Prior incarceration for less than one year.

For some variables, the sentence outcome varies depending on how many times a certain event has occurred. For other variables, it only matters whether or not the factor is present – not how often it has occurred. This is why on both worksheets some variables multiple categories from which a score can be selected while others factors have only “yes or no” as options. For instance, the number of adult felony convictions is statistically significant in predicting a sentencing outcome. On the other hand, prior juvenile adjudications affect a sentence, but the

actual number of events does not change the outcome. For these “yes or no” variables, it only matters if the factor is present – the degree to which it is present is not statistically relevant in predicting the outcome.

Dr. Speir reported that he had developed a simulation model which can be used to predict the number of drug offenders in the state prison population based on existing sentencing practices and procedures. When comparing actual data to the simulation model’s prediction over a five year time frame, the simulation model was accurate to within 0.4 percent – the computer model predicted 2,720 inmates while in reality there were 2,709. This represents a difference of only 11 inmates.

Dr. Speir reported that the development of this module is an important first step in designing the final simulation model which will be used to predict the impact of the sentencing standards on the state’s inmate population.

Dr. Meredith and Dr. Speir next reported on their upcoming tasks. Dr. Meredith indicated she would continue to analyze the crimes against the person and property data and develop worksheets for these types of offenses. Dr. Speir indicated he would continue working on the simulation model to add modules which will allow the Sentencing Commission to estimate the impact that the implementation of sentencing worksheets will have on the state prison population. Importantly, the finished simulation model will allow the Commission to see what effect changes to existing sentencing patterns will have on the corrections system prior to making any actual changes.

After the consultant’s report, Judge McLaughlin reminded the group that he believes that it is imperative that the judge control the final “in/out” decision when sentencing offenders after the length of term is determined. Ms. Davis assured him that this discretion would remain intact after the implementation of the sentencing worksheets. She noted the instructions for completing the worksheets should say “prior to determining disposition and sentence, the worksheets must be filled out and presented to the sentencing judge.” The sentencing judge could then determine in what order to review the worksheets. For instance, the judge could first review the recommended sentence range, and then make his or her decision as to whether or not to sentence the offender to a period of incarceration.

Several members of the Committee asked Dr. Meredith to provide information relative to what the recommended sentence ranges will be based on the scores from the worksheets prior to the next meeting. She reported that she would provide this.

Ms. Loggins and Mr. Smith expressed concern that youthful offender cases were excluded from the worksheet. The Committee decided these adjudications should be included in the section which scores juvenile adjudications on the “in/out” worksheet. Dr. Meredith said this would be fine. However, since youthful offender cases do not appear to be statically significant in determining sentencing outcomes, it will be difficult to predict to precise impact of including these adjudications for the purposes of scoring.

Similarly, both the judges and district attorneys present wanted to count other convictions which are part of the same sentencing event in the “Number of Additional Felony Offenses” section of the “sentence length” worksheet. (The worksheet scoring system provided by Dr. Meredith only counted additional offenses when they were for a different offense type. For instance, if a person was convicted of two drug distribution cases at the same time, the worksheet preparer would check “none” in the section related to additional felony offenses. On the other hand, if the person was convicted of drug distribution and possession, then the person doing the scoring would check “1.”) The Committee voted to include all other felony adjudications which are being sentenced at the same time. The worksheet instructions will be drafted to reflect this decision. Once again, the group was reminded that since this was not found to be a statically significant factor, it will be difficult to predict the exact impact of this policy decision.

Ms. Loggins wanted to know whether or not nolo contendere pleas from other states would be counted for the purposes of scoring previous convictions. Dr. Meredith indicated that they do not in the current draft of the worksheets. Some members of the group reported seeing quite a few of these cases on rap sheets, while others reported seeing very few. It was agreed that Dr. Meredith would assist the Committee in developing a data collection instrument to sample cases from Alabama counties which border other states to see if including these pleas would be statistically significant. The counties selected for sampling included: Covington, Escambia and Russell.

Ms. Brooks, Ms. Loggins and Judge Rains were concerned that use or possession of a firearm was not included on the worksheet. Mr. Glassroth pointed out that in many areas of the state it is very common for people to carry firearms in their vehicle, and the firearms may or may not have any relationship to drug use or sales by the weapon’s owner. He suggested that the presence of a firearm should only be counted if the weapon’s presence was contemporaneous to the commission of the crime. Mr. Hill and Mr. Williams concurred with Mr. Glassroth’s position. Dr. Meredith reported that this factor was omitted, because it was not statistically significant in the data. After this discussion, the Committee was asked to vote on whether or not to include possession of a firearm at the time of the offense as a sentencing factor. The motion passed, however, Ms. Brooks and Ms. Loggins voted “no” citing the fact that they believed the worksheet should include any “deadly weapon” as a factor – not just firearms.

Dr. Meredith indicated that most states with sentencing guidelines include whether or not a defendant was under legal restraint – e.g. on probation, parole and/or bond – at the time the offense was committed on their worksheets for scoring purposes. She reported that she had tested this variable to see if it was statistically significant in Alabama, and she found it was not. However, she noted the data indicating a person’s legal status was probably not reliable, because so few cases contained this information. The Committee decided that this variable might need to be added to the worksheets prior to submitting them to the Legislature. However, the Committee wanted to wait and see what the data for property and person injury crimes show prior to making a decision as to whether or not to add this factor.

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

December 12, 2003

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

- Cynthia Dillard, Assistant Executive Director, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Billy Hill, Attorney at Law;
- Hon. Eugenia Loggins, District Attorney, 22nd Judicial Circuit (Covington County);
- Dr. Tammy Meredith, Consultant, Applied Research Services, Inc;
- Hon. David Rains, Judge, 9th Judicial Circuit (Cherokee and Dekalb Counties);
- Hon. Tommy Smith, District Attorney, 6th Judicial Circuit (Tuscaloosa County);
- Dr. John Speir, Applied Research Service, Inc;
- Bob Williams, Shelby County Public Defender's Office.

Ms. Davis began the meeting by asking the Committee to think about how we want to treat multiple counts and/or convictions when they occur in a single "sentencing event." In Virginia, offenders are scored on the worksheet that corresponds with the most serious offense at conviction, then they receive additional points for additional counts and/or offenses. (Virginia uses 15 worksheets covering all of the most frequently occurring crimes. Alabama will only use three worksheets – one each for drug, property and personal injury.) It was suggested that Alabama would adopt a similar model to Virginia where the most serious offense would be scored and other offenses disposed of at the same sentencing event would be "added on" for the purpose of computing the worksheet scores. As currently drafted, the additional offenses (e.g. other offenses disposed of in addition to the "primary offense") would only be scored on the "sentence length" worksheet. However, no decision was made as to whether or not they should be scored on the "in/out" worksheet too.

Ms. Loggins asked if prior offenses in cases where a defendant committed multiple crimes over a period of time would be counted on the "in/out" worksheet when all of the cases are disposed of at the same sentencing event. As it presently stands, they would not – they would only count as "additional felony offenses" on the sentence length worksheet. Prior offenses (which are counted on both worksheets) only apply if the *conviction date* occurred before the current offense(s) being sentenced. It was also noted that pending cases – those that are not disposed of at the current sentencing event – are not to be counted as priors or additional felony offenses for the purposed of scoring the worksheets.

Mr. Smith asked how the primary offense would be decided. Ms. Davis and Dr. Meredith explained that it would be based on the "offense seriousness score" determined previously by the sentencing commission. (Note: Before these scores were decided, Drs. Meredith and Speir providing the Sentencing Commission with detailed information about historic sentences for crimes committed to allow the Commission to get an understanding of how judges have traditionally viewed the relative seriousness of various offenses. Crimes that were consistently sentenced to prison more frequently and/or received longer sentences were given higher rankings

than those where the punishment more often involved more probation sentences and/or shorter sentences.)

Ms. Loggins asked if multiple counts would be counted. She noted in her county it is customary to charge offenders in a multi-count indictment as opposed to creating separate case numbers for each charged offense. Dr. Meredith note that Virginia adds multiple counts for the purposes of scoring, but they do not carry the same weight as an additional offense. She noted this could be added to Alabama's worksheets. However, she cautioned that it will be impossible to predict the exact impact of adding multiple counts on the prison population should Alabama decide to add these, because no reliable information is available concerning how often this occurs statewide.

Mr. Williams pointed out that the issue of multiple counts could be addressed at the time of sentencing by moving to the higher end of the recommended sentence range. Since each score will have a corresponding range to which an offender may be sentenced, judges should have the flexibility to give an appropriate sentence to defendants whether they have one count or many counts.

Next, it was formally decided that only **convictions** should be counted when scoring "prior offenses" and "additional felony offenses." Pending charges – where there is no disposition – should not be scored. It was also decided that **all** other offenses disposed of during the current sentencing event – whether they are for the same crime type or not – should be counted on the sentence length worksheet where it lists "Number of Additional Felony Offenses." The Committee noted these instructions should be included on the worksheets when they are disseminated.

Following this discussion, it was decided that the titles on the sentencing worksheets should be changed as follows:

1. DUI should be labeled FELONY DUI;
2. PRIOR JUVENILE ADJUDICATIONS should become PRIOR JUVENILE AND/OR YOUTHFUL OFFENDER ADJUDICATIONS;
3. PRIOR PRISON INCARCERATION should be labeled PRIOR INCARCERATION OF ONE YEAR OR MORE; and
4. PRIOR JAIL INCARCERATION should be labeled INCARCERATION OF LESS THAN ONE YEAR.

(Changes 1, 3 and 4 were suggested to more accurately reflect what the data element actually represents. Change # 2 represents the addition of a new data element for the purpose of scoring.)

Judge Rains asked if traffic offenses were being counted the same as criminal misdemeanors. Ms. Davis and Dr. Meredith indicated only Driving Under the Influence (DUI) and Driving Without a License (or Driving While License Suspended) were counted in the data analysis.

One of the defense attorneys asked whether or not a person would be given points for both "prior incarceration of one year or more" **and** "prior incarceration of less than one year" if a

defendant had served both on separate occasions. Dr. Meredith explained that both were statistically relevant independently of one another, and should both be scored as a result. It was noted that this should also be included in the worksheet instructions when they are prepared.

Someone asked whether or not a concurrent sentence should be counted in both of these categories. For instance, if a person served a six month sentence concurrently with a two year sentence, should they both count? The answer to this was no. In the data analysis, this would be reflected as having served two years. It was noted this too should appear in the instructions.

Dr. Meredith reminded the group that she would begin analyzing the property data soon. She asked what to do in the event two or more offenses have the same “offense seriousness ranking.” (This was not an issue when analyzing the drug offenses, but many property offenses carry the same relative weight.) The group decided that in the event of “ties,” the crime with the longest historic average sentence should be ranked highest. The crime with the next longest average sentence should be ranked next and so on. Dr. Meredith agreed with this protocol and indicated she would keep a record of the changes made. The Sentencing Commission will be advised of the changed scores and will be given a chance to vote on the new ranking structure.

Several members of the Committee wanted to know why sale of marijuana had a higher weight than selling other controlled substances. Dr. Meredith indicated this was likely a statistical anomaly resulting from the fact there were very few sale of marijuana cases in the data. (It would appear these cases are usually charged under the more generic charge of unlawful distribution of a controlled substance.) Because of this apparent anomaly, the Committee asked Dr. Meredith to combine marijuana sale with other drug sales for worksheet scoring purposes. After much discussion, it was decided that only **sale of marijuana to a minor** would count the same as other drug sales on the worksheet. Marijuana sales – other than those to a minor – should be assigned to a new sentence length worksheet category with a point value of “60.” The changes to the sentence length worksheet should be:

1. Change SELL MARIJUANA to SALE OF MARIJUANA TO AN ADULT and change point value from 92 to 60; and
2. Change SELL SCHEDULE I-V to SALE OF SCHEDULE I-V CONTROLLED SUBSTANCE OR SALE OF MARIJUANA TO A MINOR.

Judge Rains noted that the sentence length worksheet instructions should explain why Class C felonies appear to be counted twice when scoring prior convictions. (Dr. Meredith reminded the group that the “total number of prior felony convictions” and “number of prior Class C convictions” both are independently significant in predicting the amount of time imposed.)

Ms. Loggins asked if “prior probation or parole revocation” should be scored if the sentence was being imposed during a revocation hearing – e.g. the person is being revoked at the sentencing event. The answer, according to Dr. Meredith, was no. They are only significant – and therefore should only be counted – when the revocation occurred prior to the arrest date for the current offense(s). It was noted this should also appear in the “in/out” worksheet instructions.

It was noted that the draft legislation should reflect the fact that these are initial worksheets and standards which are subject to change as more information becomes available. It was noted that it would be highly desirable if the Alabama Legislature would allow the Sentencing Commission to change the worksheets without specific authorization. It was also noted that it will likely be necessary to submit a bill covering only some offenses at the beginning of the Regular Session with the understanding that a substitute will be introduced later.

The next meeting of the Sentencing Standards Committee will be a two day meeting on February 5-6, 2004. At this meeting, members should be prepared to discuss the property crime worksheets.

The following meeting will be held on March 18-19, 2004. At this meeting member should be prepared to discuss the crimes against the person worksheets and finalize legislative recommendations.

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