

**Alabama Sentencing Commission  
Sentencing Standards Committee**

**February 18, 2004  
Minutes**

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, 15<sup>th</sup> Judicial Circuit (Montgomery County);
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Melisa Morrison, Research Analyst, Alabama Sentencing Commission;
- Hon. Tommy Smith, District Attorney, 6<sup>th</sup> Judicial Circuit (Tuscaloosa County);
- Hon. Virginia Vinson, Judge, 10<sup>th</sup> Judicial Circuit (Jefferson County); and
- Bob Williams, Shelby County Public Defender's Office.

Judge Vinson asked if all misdemeanor convictions – including those for traffic offenses – should be scored as priors on the worksheets. Ms. Goggins replied that *criminal non-traffic* misdemeanor convictions should be counted. The only traffic convictions that should be counted would be: Driving Under the Influence (DUI), Boating Under the Influence (BUI), Leaving the Scene of an Accident, Attempting to Elude Law Enforcement, Driving without a License and Driving While License is Suspended or Revoked. Ms. Goggins noted that this would be clarified on the general worksheet instructions.

Judge Vinson next asked whether or not the sentence length recommendations should be used to determine the length of time to which a person is sentenced to probation. Initially, there was a discussion of filling out both worksheets – even when the “in/out” worksheet recommended a non-prison sentence – to determine what amount of time should be imposed in the event a person receives a recommendation of probation. However, Ms. Davis noted that the sentence length recommendations are only intended to give guidance in imposing prison sentences. This is because the data analysis conducted by Applied Research Service, Inc. (ARS) only analyzed the length of prison sentences – not probation sentences. Under the sentencing standards, judges will be expected to impose probation in the same manner as under existing law.

Bob Williams noted that he had completed the sentencing worksheets on a number of recent “real-life” cases he had defended. He reported that he generally agreed with the recommendations produced by the worksheets. However, in some cases – especially those with a large number of Negotiating Worthless Instrument (bad check) convictions – the results of the score sheets were higher (more severe) than the sentences that were actually imposed. Mr. Williams noted that it is very common for defendants to have dozens of these convictions. He suggested that perhaps these offenses should be counted differently to more accurately reflect how judges customarily treat these priors.

Judge Vinson reported that she had also completed a number of worksheets based on the facts of actual cases sentenced in her courtroom. She found that the sentence recommendations were pretty accurate in terms of predicting sentence dispositions and terms of incarceration. She did, however, find that the sentence length recommendations for Possession of Marijuana I were a bit higher than what she would typically impose.

Ms. Davis asked the committee for feedback as to what needs to be included as a part of the legislation to implement the sentence standards. She suggested that, at a minimum, the bill include the worksheets, worksheet instructions and the sentence length recommendation tables.

Ms. Davis also reported that Dr. Meredith and Dr. Speir are in the process of determining what impact changing the in/out cutoff points would have on the state's prison population if the cut offs were set to recommend non-prison sentences for all offenders who score less than 10 points on the Department of Corrections' (DOC) 10-point scale that is used to determine reimbursement for offenders assigned to community corrections programs. Ms. Davis noted that right now this is the only instrument in use in the state expressing a policy concerning who should go to prison and who should not. Since DOC will not provide reimbursement for offenders sentenced to community corrections who score less than 10-points on this instrument, they have indicated that these offenders are not considered "prison-bound" based on the offender's offense and criminal history. It is expected that the simulation model will show a marked decline in the prison over the next several years if offenders scoring less than 10 points are eliminated from the new admissions dataset. This is because an earlier analysis revealed that 56 percent of all drug offenders and 34 percent of all property offenders who currently enter the state prison system score under the 10-point cutoff.

Ms. Brooks reported that she had just completed an interview with members of the local media. The purpose of the interview was to discuss the success of the Pre-Trial Diversion program operated by her office. She noted that over 900 clients have completed the program, and that only 2.1 percent of these clients have recidivated. Presently, there are 168 clients assigned to the program, and the Montgomery County Commission has recently appropriated additional funding for the program, which will allow it to be expanded to approximately 200 clients. The program is offered at no cost to the participants, since the county commission supplies funding to cover the operations of this program.

Ms. Davis noted there will be an increasing need for additional community-based punishment and treatment resources in the coming years as more offenders are shifted out of the state prison system and into the community. This is particularly true since the federal Residential Substance Abuse Treatment (RSAT) funds, which used to cover much of the cost of "in-house" treatment in the prison system, has been eliminated from the federal budget effective October 1, 2004. While the state has some unexpended RSAT funds from previous grant awards, it is anticipated there is only enough money left to continue funding the existing programs for another two years. Additionally, with more and more paroles being granted to nonviolent offenders, the funds generated through work release and correctional industries – funds that help DOC cover its operations – are shrinking. It is expected that these programs will eventually be either partially or completely phased out, meaning many of the offenders who currently participate in these programs will have to be shifted into community based settings.

Ms. Brooks asked if there was a way for district attorneys to access juvenile and youthful offender adjudication records through the Administrative Office of Courts' (AOC) on-line database. Ms. Flynt asked Mike Carroll to join the group to respond to this inquiry. Mr. Carroll reported that a mechanism could be set up to allow district attorneys to have limited access to this information. For instance, it would be impermissible for district attorneys to have access to any and all juvenile and youthful offender records simply for the purpose of perusing these records. However, he did not see any reason that district attorneys should not be able to obtain authorization to review the juvenile and youthful offender records of persons being investigated as a part of an active criminal case. (e.g. As long as a "DC" or "CC" number has been assigned to the case under investigation, the prosecutor could be allowed to have access to this information.)

Mr. Carroll advised the group that the worksheets being designed by the Sentencing Commission should be made available on-line, and the results should be stored in central database. This would serve two purposes. One, it would allow the Sentencing Commission to have a continuously updated database containing the results of the worksheets and/or dispositional information on the cases sentenced after the implementation of sentencing standards. Additionally, when the worksheets have been completed once for a particular offender, the information can simply be updated if the person is sentenced again in the future.

Ms. Brooks noted that with the rapid increase in the number of pardons being awarded by the parole board, the instructions need to specify that only a pardon for innocence will prevent a prior conviction from being scored on the worksheets. Ms. Goggins reported that she would include this in the worksheet instructions.

Ms. Brooks next suggested that it would be beneficial to "test" the worksheets in several pilot sites prior to their statewide implementation in October 2004. This will give judges, district attorneys and defense lawyers a chance to become familiar with the worksheets and make suggestions for how they might be improved prior to implementation. She suggested that Ms. Davis contact Judge Reese to see if he would like to participate in this project. Ms. Davis said she thought this was a good suggestion and agreed to contact Judge Reese. Tommy Smith reported that Tuscaloosa County might like to participate, and Judge Vinson noted that several of the Jefferson County judges would like to be a part of this "unofficial" pilot project too.

Mr. Smith asked that the sentence length worksheets be revised to include the "midpoint" sentences printed beside the ranges. He thought this would be helpful to district attorneys and defense attorneys in their plea bargaining negotiations.

Ms. Davis called Judge Rains in DeKalb County requesting him to advise the committee members about the results that he and his local district attorneys' office came up with when they tested the proposed drug and property offense worksheets on some real-life cases. He reported that the sentence recommendations for Felony DUI cases seem a little too lenient, while the sentences for other offenses seemed a bit severe.

Judge Rains noted that the minimum recommended sentence for drug offenses should be adjusted to start at 12 months to remain consistent with the statutory range for many of these offenses. He also mentioned that the Sentencing Commission may want to adjust the point scores for Felony DUI and Unlawful Possession of Marijuana I (POMI). He felt the number of points given for Felony DUI should be higher than those assigned to POMI, because DUI offenders represent a greater threat to public safety.

Judge Rains reiterated his position that any legislation related to the implementation of the sentence worksheets adopted this year should include provisions allowing the Sentencing Commission to make adjustments as needed to prevent prison overcrowding or other unintended consequences on the criminal justice system. Mr. Williams reported that he agreed with this position. Ms. Davis noted that such provisions would be desirable, however, several members of the Legislature are insistent that any recommended changes to state sentencing policies come before the Legislature for a vote prior to being implemented.

Judge Rains noted that his district attorney's office feels that it is important that offenders who "flunk out" of drug court continue to be eligible to receive the maximum sentence allowed by law upon receiving a prison sentence. This is because they have already been given "break" by having the opportunity to have their cases dismissed upon successful completion of drug court. Ms. Davis said this would be fine – these offenders will just be a part of the expected 25 percent of offenders admitted to prison who fall outside of the range recommended by the standards.

Judge Rains asked if the worksheets have to be completed for drug court offenders. Ms. Davis responded that it will not be necessary to fill out these sheets up front, because the expectation is that these cases will not be adjudicated. However, in the event a person fails to complete drug court and is sentenced, then it will be necessary to complete the worksheets. The same concept would also hold true for other "specialty" courts operating throughout the state.

It was noted that the general instructions for completing the worksheets need to clarify that misdemeanor DUI's should be counted as prior convictions – even though they are an element of the offense of Felony DUI. Ms. Goggins stated that she work add this to the general instructions.

Mr. Wallace and Mr. Smith noted that they believe there should be a point subtracted from a defendant's score on the in/out worksheet for "acceptance of guilt" or "demonstrating remorse." In other words, a point should be taken away in exchange for a guilty plea. Ms. Goggins noted that she viewed this as institutionalizing the "trial tax" by effectively penalizing a person for waiving his or her right to a trial by jury. Mr. Williams noted that this is a legitimate concern, however, as a practical matter, there needs to be some mechanism to encourage plea bargaining under the new system.

Judge Vinson noted that she thought there would need to be an instruction added requiring judges to inform defendants as to both the statutory sentence ranges and the sentencing standards recommendation for their crime(s) prior to taking a guilty plea. Ms. Goggins said she would add this to the general worksheet instructions.

Ms. Davis reported that the next meeting date would depend on when Dr. Meredith completes the crimes against the person worksheets. The “personal” worksheets, instructions and recommended sentence ranges will be sent to members of the committee as soon as they are completed.

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