

**Alabama Sentencing Commission  
Sentencing Standards Committee**

**March 18, 2004  
Minutes**

Chairman Rosa Davis, Chief Assistant Attorney General and Attorney General Troy King'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);
- Cynthia Dillard, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Emily Landers, Victims' Advocate;
- Hon. Eugenia Loggins, District Attorney, 22<sup>nd</sup> Judicial Circuit (Covington County);
- Hon. P. B. McLauchlin, Jr., Judge, 33<sup>rd</sup> 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, 9<sup>th</sup> Judicial Circuit (Cherokee and Dekalb Counties);
- Dr. John Speir, Applied Research Service, Inc;
- 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.

Mr. Williams asked how the standards under development should be applied when the most serious being sentenced is not covered by the worksheets. Ms. Davis replied that she was uncertain and suggested that the Committee review how Virginia's Sentencing Guidelines work in this situation. After reviewing the instructions provided by the Virginia Criminal Sentencing Commission, Ms. Goggins reported the following:

1. In the event a "worksheet" and a "non-worksheet" offense both have the same statutory maximum penalty, then the "worksheet" offense should be scored. The other "non-worksheet" offense(s) should be scored in the section for "additional offenses."
2. If a "non-worksheet" offense has a higher statutory maximum penalty than the one(s) covered by the worksheets, then worksheets *should not* be completed for the sentencing event. In this scenario, the entire sentencing event is not covered by the worksheets.

Members of the Committee agreed Alabama should follow the same rules for determining how the worksheets and standards should be used when one or more of the offenses being sentenced are not included on the worksheets. Ms. Goggins noted that she would include this in the general instructions.

Ms. Davis next asked Dr. Meredith to review the work performed by Applied Research Services, Inc. (ARS) since the last Committee meeting date. Dr. Meredith reported that since February's meeting, ARS has:

1. edited the drug and property worksheets;
2. created new sentence length worksheets based on the *total* sentence imposed for covered offenses;
3. drafted the personal worksheets;
4. developed new sentence length tables for all three worksheets; and
5. simulated the impact of all worksheets and recommendations with the newly completed simulation model.

She reminded the group that these worksheets cover a total of 27 felony offenses<sup>1</sup> and cover 86 percent of all convicted felons over the past five years in Alabama. (Please see attached handout titled "Sentencing Commission Research Update, March 18, 2004.")

Dr. Meredith explained the factors included on the worksheets were those that were statistically significant in determining sentencing outcomes based on information supplied on the Pre-Sentence Investigation (PSI) data collection surveys returned to the Sentencing Commission<sup>2</sup>. Additionally, because the offender information contained in PSI survey data was used to develop the worksheet factors, the sentence length ranges presented to the committee are based on the same dataset. Dr. Meredith pointed out that when the predicted sentence lengths from this dataset (comprised of about 7,000 cases) are compared to the prison sentences received by offenders sentenced for the same crime in the entire cohort of convicted offenders (comprised of about 72,000 cases), the sentence lengths are longer for the PSI dataset for drug and property offenders. Dr. Meredith said she was uncertain why this occurred, but she suspects it is because PSI's are more frequently completed for offenders in cases where there is greater uncertainty regarding what sentence to impose<sup>3</sup>. For example, a PSI would probably not be completed for a first-time drug possessor with no criminal history. This is because he or she will in all likelihood receive straight probation as a result of a plea bargained arrangement – so there is really no need to conduct a full-fledged investigation prior to sentencing. On the other hand, an offender with a longer criminal history and/or more serious charge would be more likely to have a PSI completed. This is because the sentence imposed in this case may very well result in a prison term, and the actual sentencing outcome would be more dependent on what was revealed as a part of the pre-sentence investigation. In short, since PSI's are completed more frequently for more serious offenders, the PSI dataset over-represents these cases, making the sentences appear higher.

---

<sup>1</sup> Later in the meeting, Ms. Loggins suggested that Sale/Distribution of a Schedule I-V Controlled Substance be listed separately from Sale/Distribution of Marihuana to a Minor. The Committee agreed to this which makes the total number of offenses covered by the worksheets equal 28.

<sup>2</sup> The exceptions to this rule are the "Possession of a Deadly Weapon" points on the Drug and Property "In/Out" Worksheets. However, the Committee agreed this factor needed to be added to each sheet in order to make them more politically acceptable.

<sup>3</sup> Of the 14,000 survey instruments distributed by the Alabama Sentencing Commission, only 50 percent were returned. This means the probation officers completing the surveys could not locate PSI's for the other 7,000 cases, and it is very likely that PSI's simply were not ordered for these cases.

Specifically, Dr. Meredith revealed that the average sentences for drug offenders were 42 months (or 31 percent) higher in the PSI dataset compared to the entire five-year cohort of drug offenders. Similarly, the average sentences for property crimes were six months (or five percent) higher in the PSI dataset, and the average sentences for personal crimes were 14 percent higher than those in the larger cohort. When the recommended sentence ranges were tested in the simulation model, it predicted a large increase in the DOC population compared to what would normally occur given current sentencing practices and procedures. Dr. Meredith suggested that the Committee might want to adjust the recommended sentence ranges in the proposed standards to make them reflect the sentences for the entire five year cohort, because this would likely result in a reduction in the “stacking” effect currently predicted by the simulation model.

Ms. Loggins asked why ARS and the Alabama Sentencing Commission used the PSI surveys to collect data for the worksheets rather than using all 72,000 cases sentenced over the past five years. Dr. Meredith explained that automated information concerning many of the factors included on the worksheets either does not exist or is unreliable. For example, there is no database that consistently collects information on offense details such as weapons use, number of victims, degree of victim injury, monetary value of stolen property, amount of drugs sold or possessed, legal status of offender, etc. Without the PSI data, the worksheets would be limited to the current offense and criminal history as the only two factors to be weighed when determining a sentence. Because Alabama’s Sentencing Commission decided to have a more robust system for making sentence recommendations – as opposed to a simple two-dimensional grid or “bingo sentencing” system – a data collections instrument was needed to provide enough data to produce the type of worksheets under review at the present time.

There was a lengthy discussion as to whether or not to add a factor to the worksheets that would deduct a point for a defendant’s cooperation (e.g. pleading guilty in timely manner). After considerable debate, it was decided that it would be problematic to add this factor at the present time. This was because: 1) there was insufficient data to be able to predict the impact of including this factor on the state prison population; and 2) there was no way to ensure this factor would be counted consistently from circuit to circuit.

Next, Mr. Smith pointed out that the definition of a dangerous instrument on the sentencing worksheets was inconsistent with the one in the current criminal code. Ms. Goggins reported that she would change this definition to make it consistent with existing law.

It was asked whether or not the “acquiring a firearm during offense” factor on the Property Prison Sentence Length Worksheet should be counted in Burglary I cases even if the acquisition of the firearm was an element of the offense. (e.g. The defendant was charged with Burglary I rather than a lesser charge, because a weapon was stolen.) Dr. Meredith indicated that this factor *should* be counted in this scenario, because this factor is statistically significant in predicting sentence length independent of the other factors.

There was a discussion regarding whether or not the “use of a deadly weapon” factor on the Personal Prison In/Out Worksheet should be counted *any* time a defendant enters a dwelling with a deadly weapon. After some discussion, it was decided that this factor should be counted if the defendant enters a dwelling with a deadly weapon, whether or not it was used or brandished

during the commission of the offense. This was because the very presence of a weapon increases the dangerousness of the offense. It was also decided that this factor should be counted any time a defendant possesses a weapon at the initiation of an offense.

Ms. Landers suggested that a factor should be added on the Property In/Out Worksheet that gives an additional point for victim injury. Those present agreed with this suggestion, and Dr. Meredith noted she would make this change to the worksheet. Ms. Goggins indicated she would add this factor to the worksheet instructions and define victim injury in a manner constituent with the current law. It was also decided that “victim injury” should be added to the factor that counts “use of a deadly weapon” on the Property Sentence Length Worksheet.

Ms. Loggins asked if “Sale/Distribution of Marihuana or Schedule I-V” could be separated into two lines to make the drug worksheets easier to read. Dr. Meredith noted this was a good suggestion and indicated she would make this change.

Mr. Williams also asked Dr. Meredith to replace the word “juvenile” and replace it with the word “delinquency” on the worksheets. Dr. Meredith reported that she would make this change.

Several members of the Committee asked how consecutive and concurrent sentences should be counted when scoring the factors dealing with prior incarcerations. According to Dr. Meredith, these factors should be counted each time a person *enters or re-enters* the prison system. For example, consecutive sentences should be counted only once unless the person has been released at some point while serving the sentences. In other words, if an inmate receives a sentence that is imposed while he or she is serving time in prison, it does not count as an additional incarceration unless he or she is released then *returned* to prison as a result of the sentence. According to Dr. Meredith, the rule is that the number of prior incarcerations simply refers to the total number of times a person has been in DOC custody.

Next the Committee began discussing the personal offense worksheets. Dr. Meredith explained that for computational purposes, life sentences were set to equal 1,200 months (or 100 years.) This is because this give life sentences a greater weight than the next highest sentence which is 99 years.

Several of those present asked why Sexual Abuse I was not included on the personal worksheets. Dr. Meredith explained that there were not enough of these cases in the PSI data to develop statistically significant factors for this offense. It was suggested that the reason so few of these cases are reflected in the PSI data is because these are usually plea bargained cases where no PSI is ordered by the sentencing judge. (For instance, a district attorney might agree to reduce a Rape II charge to Sexual Abuse I in exchange for a guilty plea.) Dr. Meredith explained that in the future there should be sufficient information on these cases to add this offense to the worksheets, and the Committee members suggested that this should be added once the data are available.

Dr. Speir explained to the group the ARS’s simulation model was now developed to the point where the Committee could propose adjustments to the proposed sentence ranges and midpoints and view the changes which would result over the next five years when compared to current

sentencing practices and procedures. Dr. Speir reminded the group that the model assumes that – other than changes made to the sentence ranges – everything else about the system remains constant over the next five years. This analysis does not take into account returns to prison for parole revocations, and it does not account for other law/policy changes that might be made in addition to changing sentence ranges.

Ms. Brooks asked if the impact of increasing the monetary thresholds for the state’s theft statutes was factored into the simulation model. Dr. Meredith explained that these changes are not currently factored in because the model only reflects history, and these changes have not been in place long enough to have made any significant impact. Dr. Meredith further noted that these changes would be included in the future once enough cases have made it through the system to simulate the change. Ms. Davis reminded the group that early estimates provided by ARS revealed the amendments to the theft laws would result in 3,000 fewer DOC inmates over the next five years.

Next, Dr. Meredith and Dr. Speir demonstrated how the simulation model can be used to predict changes to the state prison population when adjustments are made to the proposed sentence ranges. Following is a summary of the simulations that were run on March 18, 2004<sup>4</sup>:

<b>Drug Standards Simulation</b>	<b>Increase (Decrease) in DOC Population</b>
Current Sentencing Practices	4,080
Decreasing Proposed Low, Midpoint and High Recommendations by 31%	4,150
Decreasing Proposed Low and High Recommendations by 31%	4,680
Decreasing Proposed Low Recommendation by 65% and Midpoint by 31%	4,370
Decreasing Proposed Low Recommendation by 65% and the Midpoint and High Recommendations by 31%	3,810

<b>Property Standards Simulation</b>	<b>Increase (Decrease) in DOC Population</b>
Current Sentencing Practices	4,970
Decreasing Proposed Low Recommendation by 45%	5,460
Decreasing Proposed Low Recommendation by 45% and High by 5%	5,380
Decreasing Proposed Low Recommendation by 45% and High by 10%	5,270
Decreasing Proposed Low Recommendation by 45% and High by 10%	5,090

<sup>4</sup> These simulations are based on running 10 percent of the cases through the model and multiplying the results by ten. This methodology was selected because it allows results to be produced much faster when compared to running all cases through the model.

<b>Personal Standards Simulation</b>	<b>Increase (Decrease) in DOC Population</b>
Current Sentencing Practices	4,290
Decreasing Proposed Low Recommendation by 25%	4,770
Decreasing Proposed Low Recommendation to 13 months and High to 60 months	4,700
Decreasing Proposed Low Recommendation by 25% and High by 15%	4,670
Decreasing Proposed Low Recommendation by 35% and High by 15%	4,610

Mr. Williams suggested that blanks should be added to the worksheets to give a place to fill in the defendant's name and case number. Judge Rains suggested that a column showing the midpoint should be added to the sentence standards. Dr. Meredith noted she would make these changes.

Dr. Speir indicated he would run the simulations listed above for the entire DOC cohort overnight and present the results at the March 19 meeting.

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

---

**March 19, 2004**

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

- Cynthia Dillard, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, Research Specialist, The Sentencing Institute;
- Emily Landers, Victims' Advocate;
- Hon. Eugenia Loggins, District Attorney, 22<sup>nd</sup> Judicial Circuit (Covington County);
- Hon. P. B. McLaughlin, Jr., Judge, 33<sup>rd</sup> 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, 9<sup>th</sup> Judicial Circuit (Cherokee and Dekalb Counties);
- Joe Reed, Public Defender, Montgomery;
- Dr. John Speir, Applied Research Service, Inc;
- 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.

Mr. Williams withdrew his motion to include a worksheet factor that would subtract one point for pleading guilty. Those present concurred with this decision.

Dr. Speir presented the following results of the simulation model that he ran overnight based on the same proposed changes to the standards presented on the previous day:

<b>DRUG STANDARDS</b>	<b>Current Sentencing Practices</b>	<b>Standards Draft 1</b>	<b>Standards Final Draft</b>	<b>Percent Increase (Decrease)</b>
Year 1	2,349	2,401	2,349	(0.1%)
Year 2	3,399	4,017	3,584	5.3%
Year 3	3,922	4,658	3,851	(2.2%)
Year 4	4,178	5,138	4,035	(3.4%)
Year 5	4,215	5,329	4,114	(2.3%)

<b>PROPERTY STANDARDS</b>	<b>Current Sentencing Practices</b>	<b>Standards Draft 1</b>	<b>Standards Final Draft</b>	<b>Percent Increase (Decrease)</b>
Year 1	2,368	2,705	2,667	12.6%
Year 2	3,621	4,512	4,283	18.3%
Year 3	4,379	5,366	4,880	11.4%
Year 4	4,770	5,887	5,130	7.5%
Year 5	5,117	6,063	5,101	(0.3%)

<b>PERSONAL STANDARDS</b>	<b>Current Sentencing Practices</b>	<b>Standards Draft 1</b>	<b>Standards Final Draft</b>	<b>Percent Increase (Decrease)</b>
Year 1	1,460	1,500	1,497	2.5%
Year 2	2,554	2,861	2,840	11.2%
Year 3	3,405	3,961	3,880	14.0%
Year 4	3,974	4,735	4,538	14.2%
Year 5	4,415	5,078	4,800	8.7%

Dr. Speir reminded the group that these numbers only reflect *new* admissions for worksheet offenses. The simulation model – at least at this time – does not take into account those offenders in the stock (current) population who will remain in the system, nor does it take into account offenders sentenced for “non-worksheet” offenses.

Judge Rains and Ms. Loggins indicated that they favor amending the Sentencing Commission legislation to allow the Commission to amend the standards as needed based on data collected subsequent to the implementation of the standards. Those present concurred. Ms. Davis noted that such an amendment would be desirable, however, it is unlikely the Legislature would agree to adopting such a provision.

Ms. Loggins noted that she favored constructing an offense seriousness table that determines which worksheet should be completed based on the historic sentences for the crimes covered by the worksheets. (This was opposed to the table presented by Ms. Goggins that ranked offenses sorted on the following criteria: 1) felony class of offense at conviction, 2) offense seriousness rank adopted by the Alabama Sentencing Commission, and 3) historic sentence length imposed.) Those present agreed with Ms. Loggins, and the following offense seriousness ranking scheme was adopted. Additionally, it was decided that this table would be used only to determine which offense would be scored *first*. The Committee also wanted the instructions to state that more than one worksheet may be scored to arrive at a sentencing outcome that most closely reflects the actual offense behavior and/or can be used as a plea bargaining tool. Ms. Goggins noted she would include this in the instructions.

<b>Rank for Determining Worksheet to be Completed</b>	<b>Offense</b>	<b>Felony Class</b>	<b>Sentence Length Score</b>
1	Murder	A	728
2	Rape I	A	386
3	Robbery I	A	374
4	Manslaughter	B	238
5	Sodomy I	A	235
6	Robbery II	B	173
7	Assault I	B	148
8	Rape II	B	129
9	Burglary I	A	120
10	Sale/Distribution of Marihuana (to Minor)	B	113
11	Sale/Distribution Schedule I-V	B	113
12	Robbery III	C	89
13	Sale/Distribution of Marihuana (Other than to Minor)	B	84
14	Sodomy II	B	81
15	Assault II	C	72
16	Possession of Schedule I-V	C	71
17	Burglary II	B	70
18	Theft of Property I	B	58
19	Receiving Stolen Property I	B	58
20	Theft of Property II	C	46
21	Receiving Stolen Property II	C	46
22	Burglary III	C	45
23	Forgery II	C	44
24	Felony DUI	C	42
25	Possession Forged Instrument II	C	42
26	Possession of Marihuana	C	42
27	Possession/Use Credit/Debit	C	39
28	Unauthorized Use/B&E Vehicle	C	32



Ms. Davis asked Dr. Speir if there was a way to set the cut-points on the Prison In/Out Worksheets so that offenders who score less than 10 on DOC's Diversion Checklist no longer enter the prison system. Dr. Speir noted that it may be possible to conduct such an analysis, but the 10 point checklist score should not be used as the primary indicator of whether or not someone should go to prison. He reminded the group that 54 percent of drug offenders and 35 percent of property offenders currently entering the prison system score less than 10 points – which would mean far fewer offenders would have recommended prison sentences under a scheme that uses the 10-point scale as a basis for determining the cut points.

Mr. Williams reminded the group that if the Sentencing Commission wants to recommend sentence ranges designed to increase the number of violent offenders who go to prison – and increase the amount of time they serve – then they must reduce the number of drug property offenders going to prison and/or the amount of time they serve. He suggested that Dr. Speir run a simulation that would show what would happen if the cut points for drug and property offenders were raised in order to divert more people from the prison system.

Ms. Goggins suggested that the Committee review the ranges for split sentence recommendations at the next meeting.

Dr. Meredith and Dr. Speir suggested that if the group is interested in adding a factor which would deduct a point from the In/Out scores of defendants who plead guilty in a “timely” manner in the future, then the Sentencing Commission should start collecting data on the number of guilty pleas and when they are entered. Judge Rains agreed that more statistical information is needed before a decision is made relative to adding this factor. Judge Rains also indicated that more legal research is needed on this topic.

Next, Dr. Speir was asked to use the simulation model to estimate the impact of raising the cut point for a recommended prison sentence for property crimes from 13 to 14. The results of running this scenario revealed an 11 percent decrease in the number of offenders in prison for property offenses at the end of five years.

Based on this analysis, Mr. Williams suggested raising the cut point to 14. Ms. Landers agreed with doing this, but she asked that the worksheet enhancement for victim injury be increased to two points. Those present concurred with both of these suggestions.

Ms. Davis asked the group to submit any ideas for additional simulation scenarios to her prior to the next meeting date. She said she would pass them along to Dr. Meredith and Dr. Speir, therefore allowing them to run the simulations at their office and present their findings to the group at the next meeting. Dr. Speir indicated this would be much more efficient than running simulation after simulation while everyone is present.

Ms. Davis reported that the next meeting date would be on April 2, 2004. At this meeting, the committee will vote on the sentencing standards to be presented to the Sentencing Commission at their meeting on April 9, 2004.

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