

**Alabama Sentencing Commission  
Sentencing Standards Committee**

**April 2, 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);
- Hon. Ben McLauchlin,
- Hon. David Rains,
- Cynthia Dillard, Board of Pardons and Paroles
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Melisa Morrison, Research Analyst, Alabama Sentencing Commission;

**YO and Juvenile Records**

The meeting began at 9:50 a.m. with the committee members discussing the need to have Youthful Offender and Juvenile delinquency records available to both district attorneys and probation and parole officers in order to adequately complete the sentencing worksheets. It was noted that these records are only available to probation and parole officers on a county-by-county basis, depending on authorization of the presiding judge and that district attorneys do not have access to these records unless they obtain a court order. The Committee recommended that a bill be drafted authorizing district attorneys and probation and parole officers to access these records statewide for the purpose of completing the sentencing worksheets and that this bill be presented to the Commission for their approval at their meeting on April 9<sup>th</sup>.

**Pretrial Diversion**

Pretrial diversion programs were discussed, specifically the need for grants for these programs and their consideration in sentencing. District Attorney Ellen Brooks noted that pretrial diversion needs to be built into the sentencing standards. Chair of the Committee, Rosa Davis stated that prior participation in these programs could be built into the standards the same way as juvenile and youthful offender adjudications.

Handouts containing the new worksheets, instructions, sentence ranges and simulation results on the three categories of offenses, drugs, property and personal, were provided to the members. *Attachment A*. Chair Rosa Davis reminded the members that at their last meeting the committee adjusted the sentences to reflect historical prison lengths and that in reviewing the simulation results, the percentages are more important than the numbers.

## **Drug Worksheets**

Starting with the Drug worksheets, Ms. Davis told the committee members that it appeared that cutpoint #9 was as high as the committee should recommend, with any offender receiving a score of 9 or above going to prison. She stated that if this option was chosen, scores of 7 and 8 would be designated for a recommended disposition to community corrections and/or intensive supervision. By adopting the cutpoint of 9, according to the simulation results we could expect a 33.5% reduction in prison admissions over a five year period.

District Attorney Brooks stated that she had problems with recommending offenders to community corrections since she had problems with the local community corrections program. Ms. Davis stated that that was why she wanted an alternative, i.e., to allow a local option for the use of intensive probation.

Judge Rains recommended that the Drug Prison Lengths and Prison In-Out worksheets should include separate line for "sale/distribution of Schedule IV drug to a minor," with a possible score of 125 (Dr. Meredith can help determine the appropriate score) on prison length worksheet. He noted that although this factor may not have been statistically relevant, policy reasons justify adding it.

Ms. Davis explained that the reason this was left off the worksheet and there was no distinction made between the sale to a minor and sale to an adult is because there was insufficient data on the sale of Schedule I-V drugs to a minor. She stated that one reason that it was not found to be statistically relevant could be because many of these offenses were the sale of drugs by a minor to a minor. She noted that the sale of marihuana to other than a minor had a score of 84 and the sale/distribution of Schedule I-V drugs generally had a score of 113.

After an extended discussion about the appropriate score, the committee agreed that sale/distribution to a minor should be added to both worksheets. It was mentioned that the term "minor" should be defined, noting that minor is now defined for purposes of the criminal law as a child under the age of 18. This prompted the recommendation that a definitional section should be added to the worksheet instructions. Judge Rains suggested that the instructions include a general provision noting that the definitions now provided in the Criminal Code would be applied. It could be something as simple as the general statement "The terms used in the standards and worksheets shall not be deemed to alter or amend terms as they are now defined in the Criminal Code."

Judge Ben McLaughlin stated that an offender convicted of the sale of drugs with one prior conviction should go to prison. Judge Rains agreed, noting that most judges would sentence such an offender to prison.

It was noted that the sale/distribution of drugs ranked #7 among the Top 25 most frequently committed offenses, with the data indicating that 11% did not go to prison and 89% went to prison. Of the offenders in the Commission's cohort, 27 received split sentences and 62 were sentenced to the penitentiary.

**Committee voted to adopt Bob's recommendations to lower sentence range by 30% and lower the cut point to 8.** One of the members stated that by adopting this sentence range the maximum sentence would not be the maximum authorized and might require the judge to charge on both the minimum and maximum sentence pursuant to the sentencing standards and those authorized by law, with a colloquy required on both. After some discussion it was decided that since the sentencing standards are voluntary, it would be sufficient to simply charge on the minimum and maximum authorized for the offense under the Criminal Codes, as is presently the case.

Working with 30,000 cases, adopting Bob's recommendation would lower the prison admissions by 37% over a 5 year period, primarily because of the shorter sentences, and because fewer defendants will be sent to prison (37% as compared to the 50% sent to prison now).

District Attorney Brooks questioned how the Board of Pardons and Paroles would respond to the adoption of the standards, specifically asking if their release policies would change. Ms. Davis assured her that their policies would change. She also asked if would have enough data to determine if these standards were working before the Truth-in-Sentencing standards were implemented in 2006. Ms. Davis advised that if we did not have sufficient data, the truth-in-sentencing standards would have to be postponed. She noted that we will have to update our data to reflect the affect of the early release policies that have been in effect over the last year. Ms. Brooks assured the committee members that she was 100% for truth-in-sentences.

### **Property Worksheets**

In reviewing the property In-Out Worksheet it was determined to increase the score for Burglary 1 on the Prison in/out worksheet from 13 to 15, to change the cut point from 13 to 15 and to raise victim injury to 3. Ms. Davis noted that more drug offenders are sent to prison than property offenders but they stay in shorter periods of time; only 37% of the property offenders get straight incarceration now.

After an extended discussion on the problems presented with the offense of Robbery as listed on the property sentence length worksheet, and after review simulations of Bob William's sentence recommendations (which Dr. Meredith and Dr. Speir provided after a conference call), it was decided to change burglary 1 from 120 to 275 and on the sentence length table to add score 275 at end with a low of 120 months, (Dr. Meredith to fill in the rest after further multifivariate analysis).

The Committee also noted a problem with using prior Classifications on the Property worksheet. It was decided that the worksheet should be modified to just reflect the number of priors ; not grouped by classifications. Points should be reassigned values of 2,3,5,6,7 for priors - as now scored for drugs, to maintain a consistency between forms, as well as similar format. The Committee recognized that they had originally requested the Dr. Meredith add the classifications of priors and that now they were asking her to go back and just show the number of priors not grouped by classifications.

The committee questioned keeping the separate category and additional points for prior convictions for same felony. It was determined that there was a need for additional testing to determine if this was truly a statistically significant factor. It was decided that Dr. Meredith would be asked to perform another status quo analysis. It was expected that this category would stay since it had been found to be significantly relevant when tested before. If it stays, you would score points under Prior Offenses and for Prior Conviction(s) for the Same Offense.

**Burglary II – In/Out worksheet fine, leave as is. Change minimum sentence range from 26 to 24.**

**Theft of Property I – In reviewing the sentence range of Theft of Property I, it was noted that the sentence range was 20 months to 58 months and that the statutory minimum fell within this range. It was recommended that we include in the general instructions that if the score sets the minimum recommended sentence lower than the statutory minimum, the statutory minimum is deemed to control.**

### **Personal Worksheet**

It was noted that the range of sentences appeared inconsistent for sentences between scores between 231 and 232, the minimum sentences jumped from 12 to 24. This was thought to be a typographical error and the Committee noted that staff should check with Dr. Speirs and have him make the corrections.

Committee adopted personal worksheets with corrections made on the split ranges. Motion made by McLaughlin, seconded by Rosa, unanimously approved..

### **All Instructions**

It was questioned if we needed a definitional section in our instructions. Judge Rains suggested that we have one and include a general statement that says something like "the terms used in applying the standards and completing the worksheets should not be deemed to amend terms as they are now defined in the criminal code." "Minor" was one of the definitions discussed and noted that now statutorily defined as a child under 18.

There being no further business, the meeting was adjourned.

Include explanation that if the lowest sentence range is below the statutory minimum authorized, that the statutory minimum controls. (Care needed here because you could inadvertently be reestablishing minimum mandatories and apply HFOA) I believe what the committee meant was below the general penalty provisions for felonies include in 13A-5-6.

Check to make sure that use of weapon counted even if also an element of offense.

#### Sentence Ranges

Discussion around use of "midpoint/weighted average" It was noted that we might want to use "customary sentence". Rosa to talk to Tammy about what we might call it. Members voted to leave in now and work on it with Tammy - authorized Rosa to play with midpoints and adopt a label that is saleable.

### **Miscellaneous Matters Discussed**

#### Need for Community Corrections

Judge Rains noted that we are making recommendations based on the assumption that the Legislature is going to fund community corrections. Ms. Davis stated that if community corrections programs are not available as an option in the use of the standards, judges can deviate and indicate that the reason for not following the standards was because there were no local programs available. She noted that there was a great need for more Community Corrections overnight facilities, as well as treatment beds in DOC facilities. She stated that perhaps we could recommend that DOC change their requirements of program participation. Judge Rains cautioned against trying to micromanage DOC programs.

#### Need of Adequate Funding for Courts

Another issue, the adequate funding of the trial courts was discussed. With the reporting requirements that will be placed on court clerks when the sentencing standards are implemented, adequate staff will have to be available to meet these new demands.

#### Need for Education Seminars

Everyone agreed that it was imperative that the sentence ranges the Commission adopts reflect meaningful sentences that can be demonstrated to legislators, judges and district attorneys and that the Commission was going to have to undertake an extensive educational effort before the standards went into effect. It was recommended that the Commission try to get former Circuit Judge Inge Johnson to speak to the Commission since she had conducted several good sessions on sentencing (One which was entitled "What is Time to A Pig") for the Judicial College.

It was noted that it would be helpful to get the Montgomery judges involved to test the standards, the same as was done by Judge Rains, Judge McLauchlin and Judge Vinson. Since Montgomery has a docket scheduled for April 19<sup>th</sup>, it was recommended that Rosa call Monday and try to schedule a meeting with Judge Price. Judge Rains stated that with the testing he had done, the feedback in Ft. Payne had been generally favorable. He said on a 10 point scale, he would give it a 8 or 9.

Ellen Brooks stated that with two negatives coming together – the Parole Board’s early releases and standards with shorter sentences for property and drug offenders – the sentencing standards would be tough to sale to district attorneys now. For this reason, she suggested that the Commission emphasize that truth-in-sentencing will be implemented in 2006 and prepare them for the reduction of sentences that will reflect the “true” time served.

#### Color Coding of Worksheets, Instructions and Sentence Ranges

Judge Rains requested that we continue to use color coding to distinguish the worksheets, instructions and sentence ranges for the categories of property offenses, personal offenses and drug/alcohol offenses as follows:

Property – Salmon  
Drugs – Green  
Personal – Blue  
General Instructions - Yellow

#### Use of Mid-Point

Ms. Davis noted that the sentence ranges were still too high and that the midpoint was still too high. She stated that the midpoint was simply the middle of the range and did not indicate the mode or mean. A general discussion of the terms “mode,” “mean” and “median” followed. Everyone agreed that the when reviewing the sentence ranges as they are now written, the reader’s attention is immediately drawn to the midpoint. There was a general reluctance to include the midpoint as it is now computed for fear that judges would automatically believe this was the recommended sentence.

Judge Rains suggested that we use the “customary” sentence, rather than midpoint or discuss this issue with Dr. Meredith to determine the proper sentence to include and how it should be labeled. Ms. Davis stated that there was room for adjustment on the midpoints.

Judge McLauchlin moved to leave the mid-point in as it reads now, with an adequate explanation in the instructions telling what the mid-point represents. It was recommended that the Rosa work on changes to the midpoint and, with Dr. Meredith’s assistance, determine what the midpoint should represent and how it should be labeled. District Attorney Ellen Brooks seconded the motion and it passed by unanimous vote.

### Need of Authority to Make Modifications

It was generally noted that the Commission needed authority to make changes to the sentencing standards without having to obtain Legislative approval. After the standards are implemented, immediate changes may need to be made before the Legislature comes back into session. The Legislature's reluctance to grant this authority was discussed and alternatives considered.

*"Under some of the first sentences we considered, you'd have to "break in" to prison to get there." PB McLaughlin*