

Alabama Sentencing Commission Sentencing Standards Committee

June 18, 2004

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

- Chris Booth, Project Director, The Sentencing Institute;
- Ellen Brooks, District Attorney, 15th Judicial Circuit (Montgomery County);
- Cynthia Dillard, Assistant Executive Director, Alabama Board of Pardons and Paroles;
- Lynda Flynt, Executive Director, Alabama Sentencing Commission;
- Becki Goggins, UCR Program Manager, Alabama Criminal Justice Information Center;
- Virginia Vinson, Circuit Judge, 10th Judicial Circuit (Jefferson County); and
- Bob Williams, Public Defender's Office, Shelby County.

Ms. Davis asked Ms. Dillard if the Alabama Board of Pardons and Paroles was paroling inmates sentenced to split sentences. Ms. Dillard stated that it is unlawful to parole offenders who are serving split sentences; therefore the Parole Board does not consider these offenders for parole. (Offenders serving a straight sentence concurrently with a split sentence may be granted a parole on the straight sentence; however, the entire split sentence must be served before the inmate is released from prison unless the sentencing judge amends the sentence.) Ms. Davis explained that a number of people have reported inmates being paroled while serving splits. Ms. Dillard asked that anyone who is aware of specific cases where this has occurred should report this to the Parole Board, because this is illegal and could only happen as a result of an error. No one present was aware of the names of any inmates paroled while serving splits. Ms. Davis indicated she would ask anyone who reports these occurrences in the future to please provide the names of the inmates involved to Ms. Dillard or any Parole Board member.

Next Ms. Davis advised the group that the Alabama Sentencing Commission, in cooperation with the Alabama Judicial College and The Sentencing Institute, would be hosting a series of six regional training sessions to explain the proposed sentencing standards. The workshops will be conducted on the following dates:

- Montgomery – July 8 & 9, Mezzanine Classroom, Judicial Building, 300 Dexter Avenue;
- Huntsville – July 22 & 23, Huntsville Public Library, 915 Monroe Street;
- Dothan – August 5 & 6, Troy University, Dothan Campus, Malone Hall (T. Harrison Room), 500 University Drive;
- Tuscaloosa – August 26 & 27, Location to be announced;
- Mobile – September 9 & 10, Mobile Government Plaza, Ceremonial Courtroom. 1st Floor; and

- Birmingham – September 16 & 17, Cumberland School of Law.

Ms. Davis explained that the workshops are free and 4.5 hours of CLE credit will be awarded to attendees. Judges, district attorneys, defense attorneys, probation and parole officers, circuit clerks, court referral officers and community corrections personnel are all invited to attend. Due to space limitations, pre-registration is required. Ms. Davis said she expects a large turnout at these sessions, and she encouraged everyone present to let anyone they know who is interested in attending to pre-register as soon as possible.

Ms. Davis also reported that Seth Hammett, Speaker of the Alabama House of Representatives, has requested that Governor Bob Riley call a Special Session in October 2004 to address sentencing reform. Ms. Davis noted that the timing of the session would allow comments and feedback from the regional training workshops to be incorporated into any proposed legislation. Ms. Davis further reported that other criminal justice legislation designed to facilitate the implementation of the sentencing standards should be addressed during the upcoming Special Session. For instance, legislation will be drafted to allow for access to statewide juvenile records for the purposes of completing the sentencing worksheets. Additionally, it may be necessary to adopt legislation that specifically authorizes probation and parole officers to complete pre-sentence investigations (PSI's) prior to adjudication. Ms. Davis asked the committee to please start thinking about any other sentencing reform related issues that needed to be addressed by the Legislature and to please let her know about any other bills that need to be drafted and considered for introduction by the Commission.

Next, Ms. Davis informed the group that she attended the oral arguments before the Alabama Supreme Court (*Kirby v. State of Alabama*) concerning the retroactive application of the 2001 amendments to the Habitual Felony Offender Act. Ms. Davis said she felt the Supreme Court was likely to uphold the retroactive amendment as constitutional.

After covering these preliminary matters, Ms. Davis explained to the committee that the purpose of this meeting was to address several issues that have emerged in recent discussions concerning the implementation of the sentencing standards. Following is a summary of the questions that have been raised and the committee's responses.

Issue # 1 – Sentence Lengths for Personal Offenders

Question: Why is there no “life” sentence for personal offenders in the sentence length tables?

Answer: The maximum sentence length listed on the personal sentence length table is an 85 year (1,020 month) sentence which is effectively a “life” sentence. (Under the initial voluntary standards, sentences will still be subject to parole. Inmates would be considered for parole under the same docketing procedures whether the sentence is 85 years or life.)

Commentary: The sentencing standards should not be construed to apply to offenders who would receive a sentence to life without parole (LWOP) under Alabama's current sentencing laws.

Issue # 2 – Habitual Felony Offender Act

Question: How should the standards be applied in cases where a defendant with three prior felony convictions is being sentenced for a Class A felony?

Answer: They do not apply since these cases could result in a LWOP sentence. These cases should be sentenced under the state’s Habitual Felony Offender Act (HFOA).

Commentary: Ms. Brooks and Mr. Williams suggested that the following should be printed on the front of all sentencing worksheets. *“The voluntary sentencing standards do not apply to Class A felonies where the defendant has three prior felony convictions. In these cases, the Habitual Felony Offender Act (Section 13A-5-9, Code of Alabama 1975) should be applied.”* The committee agreed with this suggestion, and this language will be added.

Ms. Davis said she would ask Applied Research Services, Inc. (ARS) to review historical sentences for Class A felonies with three priors to see if there are any statistically relevant factors that determine when a life rather than a LWOP sentence is imposed when both are an option under the Habitual Felony Offender Act. Once this analysis is performed, the committee noted they may want to revisit this issue if statistically significant factors can be isolated. (For instance, if there are variables that are predictive in determining a life v. LWOP sentence, then the committee may want to offer additional guidance to judges relative to how to sentence in these cases.)

Issue # 3 – Boykin Pleas

Question: Under existing law, during their colloquy judges must advise defendants of the range of punishment that might be imposed prior to allowing them to enter a guilt plea. Will this same requirement apply to require the judge to also advise a defendant of the sentence ranges possible under the voluntary sentencing standards, once they become effective?

Answer: Yes, because there are instances in which the standards will be less than the sentence that would be otherwise imposed, i.e., where the habitual felony offender act or another mandatory enhancement would be applicable if the standards were not followed. When the plea is entered, the judge should explain the statutory range of punishment to the defendant. At sentencing, the judge should advise the defendant of both the statutory and standards range of punishment and give the defendant the option of withdrawing his or her plea if the standards range is different from the statutory range.

Commentary: Because it is unlikely that the worksheets will have been completed at the time the plea is entered, it would be impractical to require the defendant to be advised of the standards range at this point. Since the recommended sentence ranges may be lower than the statutory ranges – especially in HFOA cases – most defendants would be unlikely to withdraw their plea at the time of sentencing once they are advised of the standards range.

Issue # 4 – Ireland Form

Question: Will the recommended sentence ranges be included on the Ireland form?

Answer: Yes. It will be recommended that the UJS Forms Committee revise the forms to add blanks to the bottom to allow the suggested punishment range to be entered where applicable.

Issue # 5 – Probation

Questions: Should the sentence length worksheet be completed for cases where the “In/Out” worksheet recommends a non-prison sentence? Should the recommended sentence ranges be followed in cases where a probationary sentence is imposed?

Answer: Yes to both. Although the sentence ranges were calculated based on prison-bound offenses, judges should still be encouraged to refer to the sentence length table to determine the length of probation to be imposed.

Commentary: When a probation sentence is revoked and a prisoner is serving a split sentence, the judge must order the defendant to serve the entire original imposed sentence in prison. In order to ensure offenders who enter prison due to a probation violation do not serve significantly different sentences than those who were sent directly to prison, the same standards should be used to determine the sentence lengths imposed for all defendants.

Issue #6 – Compliance

Question: How will the Commission determine compliance?

Answer: When determining “compliance” with the standards, the Alabama Sentencing Commission will only count those cases where the sentence imposed conforms with both the recommended duration *and* disposition of sentence.

Issue # 7 – Drug Courts

Question: Do the worksheets and standards apply to drug court cases?

Answer: The worksheets should be filled out at whatever point sentencing occurs. If a defendant is not sentenced upon initial placement in drug court, then the worksheets do not need to be filled out unless he or she is about to be revoked and sentenced to prison. If sentencing occurs upon entering drug court, then the worksheets should be completed up front.

Issue # 8 – Attempts and Conspiracies

Questions: Why aren’t attempts and conspiracies listed among the worksheet offenses? Should the standards be used in sentencing these cases?

Answers: Attempts and conspiracies are not included on the worksheets because there were not enough of these cases to be able to derive statistically significant sentencing factors for these offenses. Because sentences imposed for these cases were not included when the recommended sentence ranges and prison/probation “cut points” were being developed, the standards should not be used when sentencing attempts and conspiracies.

Issue # 9 – Effective Dates for Both Sets of Standards (“Time Imposed” and “Time Served/Truth-in-Sentencing” Standards)

Question: Since the standards were not adopted during the 2004 Regular Session, will the effective dates be changed from those shown in the Sentencing Reform Act of 2003?

Answer: Yes. Amendments to the act will be offered during the proposed 2004 Special Session to change the effective date of the initial standards to January 1, 2005 and the effective date of the time served/truth-in-sentencing standards to January 1, 2007.

After all of the issues contained on the agenda had been resolved, Ms. Davis asked the committee if there were any other items to be discussed. Mr. Williams noted that the general instructions need to explain that “violations of probation” for juvenile offenders should not be counted as an offense even though they appear as new offenses on juvenile records. This will make the treatment of juvenile records consistent with adult criminal histories – e.g. only convictions/adjudications count as actual offenses. Ms. Davis noted she would make sure this is noted in the instructions.

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