

**Alabama Sentencing Commission (ASC)
Sentencing Standards and Worksheets
Committee Meeting**

September 16, 2005

Minutes

Rosa Davis, Chief Assistant Attorney General and Chair of the Sentencing Standards and Worksheets Committee, called the meeting to order. Also present were:

- Hon. Ellen Brooks, District Attorney, 15th Judicial Circuit;
- Eddie Cook, Alabama Board of Pardons and Paroles;
- Stephen Glassroth, Defense Attorney, Montgomery, Alabama;
- Becki Goggins, UCR Division Manager, Alabama Criminal Justice Information Center;
- Hon. Ben McLaughlin, Presiding Judge, 33rd Judicial Circuit (Dale and Geneva Counties);
- Hon. David Rains, Presiding Judge, 9th Judicial Circuit (Cherokee and DeKalb Counties)
- Robert Ray, Defense Attorney, Ft. Payne, Alabama;
- Miriam Shehane, Victims of Crime and Leniency (VOCAL); and
- Hon. Tommy Smith, District Attorney, 6th Judicial Circuit (Tuscaloosa County).

Ms. Davis explained to the Committee there may be a Special Session of the Alabama Legislature in late October 2005 to address the issue of prison overcrowding and sentencing reform. In preparation for the possible upcoming Special Session, the Alabama Sentencing Commission will be meeting on September 30, 2005 to vote on a legislative package to be submitted to the Governor's Office and Legislature to go into the call. Attorney General Troy King asked her to bring the following agenda items to the Sentencing Standards and Worksheets Committee for their consideration and possible referral to the Alabama Sentencing Commission for inclusion in their legislative package.

1. **Changing the point value for "Possession/Use of a Deadly Weapon or Dangerous Instrument" on the Drug Prison In/Out Worksheet** – Attorney General King would like for the Drug Sentencing In/Out Worksheet to be modified to include a higher point value for use of a weapon during the commission of a drug sale. As currently drafted, the sentencing factor "Possession/Use of a Deadly Weapon or Dangerous Instrument" receives only one point. This means a person convicted of Sale or Distribution of a Schedule I-V Controlled Substance or Marijuana (other than to a minor) would receive a "base" score of six points – plus one point for the weapons factor if one was used – for a total of seven points. A score of seven results in a recommendation of a non-prison sentence, and Attorney General King would like to see this increased to a score of at least eight which is the minimum score for a recommended prison sentence.
2. **Include a "sunset" provision in the voluntary sentencing standards bill that would automatically repeal the standards in the event the Legislature does not pass truth-in-sentencing by 2009** – Ms. Davis noted that some people are afraid sentencing reform efforts in Alabama will stagnate once the initial voluntary standards are passed, and the Attorney

General wants to keep the Sentencing Commission and Legislature focused on the goal of implementing truth-in-sentencing.

Following this introduction, Ms. Davis reviewed the minutes of the Legislative Committee which met on Tuesday, September 13, 2005. One of the topics discussed – but on which no action was taken by the Legislative Committee – was a bill that would define a “unit of prosecution” in child pornography cases to allow prosecutors to seek charges for each individual photograph, video, likeness, etc. found in the possession of a defendant charged with the production, dissemination and display of obscene material concerning children. This would mean, for instance, that an individual found in possession of 50 nude photographs of children could be charged with 50 separate offenses rather than with a single count indictment as under current law. Mr. Glassroth noted that this law may be unnecessary because in the future the quantity of illicit material could be treated as a sentencing factor on the worksheets with enhanced sentences for offenders found in possession of large quantities of obscene material. Ms. Davis indicated she would mention this possibility to the bill’s supporters as an option to consider in the event the legislation fails to pass.

Changing the point value for “Possession/Use of a Deadly Weapon or Dangerous Instrument” on the Drug Prison In/Out Worksheet – Passed

After reviewing the Legislative Committee minutes, Ms. Davis asked the committee to discuss whether or not the point value for “weapons factor” on the Drug Prison In/Out Worksheet should be changed. She noted that the Committee could recommend assigning a point value of one for “possession of a weapon” and including a new factor for “use of a weapon” that would have a point value of two. The other option would be to simply increase the point value where the definition of “Use/Possession of a Deadly Weapon or Dangerous Instrument” to two.

Mr. Glassroth asked what impact any change to this factor would have on the prison population. Ms. Davis noted that there were insufficient data to make such a determination. In fact, in the original analysis of sentencing practices and procedure this factor was not found to be statistically significant for drug offenders.

Mr. Smith noted that many methamphetamine production cases involve weapons being present, and the point value of this factor should be probably be increased to reflect the propensity of danger associated with the presence of weapons in “meth” labs.

Judge McLaughlin and Judge Rains stated that they like the current definition which states that the weapons factor should only be counted if there is a connection between the presence of a weapon and the offense being committed. In other words, if the weapon’s proximity to the crime is merely incidental, then the point should not be added to the Prison In/Out Score. They both agreed the judge should have the discretion to decide whether or not the point(s) should be allowed.

Following this discussion, Judge McLaughlin moved that the Committee recommend to the Sentencing Commission that the worksheets be modified to increase the point value of the

“Use/Possession of a Deadly Weapon or Dangerous Instrument” factor to two points and keep the current language concerning when to apply the point in the worksheet instructions. Judge Rains seconded the motion, and the motion passed.

Including a “sunset” provision in the voluntary sentencing standards bill that would automatically repeal the standards in the event the Legislature does not pass truth-in-sentencing by 2009 – Tabled

Next, Ms. Davis asked the Committee to consider whether the initial voluntary sentencing standards should include a sunset provision that would repeal the standards if truth-in-sentencing is not passed during 2009. Ms. Goggins pointed out that even without truth-in-sentencing, the standards should result in the reduction of unwarranted disparity in sentencing which is one of the primary goals of sentencing reform in Alabama. Ms. Brooks noted that as additional data become available concerning the impact of the voluntary guidelines, there may be a need to delay the implementation of truth-in-sentencing in order to revise the standards to achieve the desired results. In other words, if the standards are not working as predicted, it would be unwise to pass truth-in-sentencing standards based on the faulty assumptions or research methodology simply to meet an arbitrary implementation deadline. Judge McLaughlin pointed out that the Legislature could always sunset the guidelines at their own discretion in the future if the standards become unwanted or unneeded.

Following this discussion, Mr. Williams offered a motion to table the “sunset provision” suggestion. Mr. Glassroth seconded the motion. The Committee voted to table this issue. No recommendation was made to the Sentencing Commission in regard to a sunset provision for the initial voluntary standards.

Other Business

Next Ms. Davis asked the Committee for a recommendation concerning when the initial standards should become effective if passed during a Special Session in October 2005. According to the current draft, implementation would be delayed until October 2006. (Under the current draft, all future changes to the standards would become effective on October 1 after their passage.)

Ms. Brooks noted this would put off the standards for a full year. She noted that training could probably be completed in six months and that the Committee might want to consider moving up the effective date. Mr. William noted that it would be better to start sooner, but keeping an October 1st start date would make it much easier to compile fiscal analyses based on what occurred during the course of a fiscal year. Plus – by consistently implementing changes in October – there would be less confusion among members of the criminal justice system as to when changes go into effect.

Following this discussion, Mr. Glassroth moved to amend Lines 6-9, Page 4 of the Sentencing Standards Bill to read, “These standards shall become effective on October 1 following the legislative session in which they are passed by the an act of the Legislature and approved by the Governor or otherwise become law.” Ms. Brooks seconded the motion, and the

Committee voted to recommend this change to the Sentencing Commission. The Committee also asked Ms. Davis to make sure all other dates referenced in the bill are correct prior to submitting the final draft to the full commission.

Ms. Davis asked if there were any other matters to bring to the committee. There being no other business to discuss the meeting was adjourned.