Alabama Sentencing Commission
Structured Sentencing Work Group Meeting
Friday, August 10, 2001
Alabama Judicial Building
Small Classroom

Minutes

Group Chair: Ms. Rosa Davis

Members/Guests Present: Judge William M. Bowen, Jr., White, Dunn and Booker; Ms. Rosa Davis, Chief Assistant Attorney General, State of Alabama; Mr. Stephen R. Glassroth, Esquire, Glassroth & Van Heest, P.C.; Hon. Mike Godwin, District Attorney, 21st Judicial Circuit; Ms. Becki R. Goggins, Research Specialist, The Sentencing Institute; Ms. Betty Teague, Alabama Department of Corrections.

Summary of Discussion:

Rosa Davis called the meeting to order. Ms. Davis asked the work group members present if there were any additions or corrections to the minutes from the meeting held on June 15, 2001. There were no additions or corrections. Mr. Glassroth moved that the minutes be approved as distributed, and the group members voted affirmatively to carry the motion.

Ms. Davis reported that she had recently attended two national conferences related to criminal justice matters. The first meeting, which was held in Boston, Massachusetts, was on mental health services within correctional settings. Ms. Davis noted that a number of presenters at the Boston meeting reported that the national corrections population had increased dramatically over the past 30 years, while at the same time the number of residential treatment beds for individuals with mental illness had shown a steady decrease. When graphed together, the two populations appear to have a direct inverse relationship. While no firm evidence has been identified to correlate the changes in these often overlapping populations, many national experts believe that the decreased emphasis on the institutionalization of individuals with serious mental illness could help explain part of the rapid expansion in prison population in recent decades. Ms. Davis remarked that it had been beneficial for representatives from the Sentencing Commission to have the opportunity to discuss mental health issues with representatives from Alabama's Department of Correction while in Boston to gain further understanding of some of the challenges facing the prison system in managing offenders with serious mental illness and mental disabilities.

Ms. Davis also reported that a number of representatives from Alabama had also attended the National Association of Sentencing Commissions meeting held in Kansas City, Missouri on August 5-7, 2001. She indicated that the meeting was very helpful in terms of gaining greater knowledge and understanding of the issues confronting states in their efforts to establish systems of guided discretion in sentencing. While Alabama has its own political climate and unique set of challenges, Ms. Davis reported that it was very beneficial to have the opportunity to find out about experiences in other states by interacting with members of other sentencing commissions.

Ms. Davis suggested that it would be helpful to continue to review sentencing structures in other jurisdictions as Alabama moves toward comprehensive sentencing reform.

Ms. Davis explained that there are essentially three types of sentencing structures states have adopted in their sentencing reform efforts: mandatory sentencing guidelines, presumptive guidelines and voluntary guidelines. Mandatory guidelines, such as those used in the federal system, are the most restrictive in terms of limiting judicial discretion in sentencing. The statutory ranges established in this type of system are typically very narrow, thus leaving very little room to individually tailor sentences to fit the crime and the defendant. Additionally, deviation from the guidelines is usually not allowed, since mandatory guidelines require judges to sentence within the ranges specified. The only exceptions occur in cases where the prosecution requests a downward departure based on substantial assistance offered by the defendant. Presumptive guidelines offer considerably more flexibility in sentencing, since judges have the ability to depart (either upward or downward) from the recommended ranges of punishment in exceptional cases. In most jurisdictions with presumptive guidelines, however, sentences falling outside of the recommended ranges are subject to appellate review. Voluntary guidelines are the least restrictive type of sentencing structure, since the recommendations are offered merely as suggestions. Judges may be required to state their reasons for departures, but there is no appellate review on the basis of deviations from the guidelines as long as the sentence imposed is within the statutorily defined range of punishment.

Ms. Davis reported that at the Structured Sentencing Work Group meeting held on June 15, 2001, several attendees volunteered to review and report on presumptive and voluntary guidelines systems adopted by other states. (Since the Sentencing Commission has categorically stated that "federal-style" mandatory sentencing guidelines are not an option for implementation in Alabama, there was no need to review this type of system.) Ms. Davis indicated that Mike Godwin would be reporting on North Carolina's presumptive guidelines, and that Bill Bowen and Becki Goggins would be reporting on the voluntary guidelines adopted by Arkansas and Virginia.

Mr. Godwin reported that North Carolina's structured sentencing system, as their set of presumptive guidelines are known, establishes ranges of punishment for all offenses based on the crime committed and the defendant's criminal history. The structured sentencing system was adopted in 1993 and went into effect on October 1, 1994. This system replaced the "fair sentencing" system which was adopted in the 1980's to limit the virtually unfettered discretion previously afforded to judges in determining criminal sentences. Mr. Godwin distributed copies of North Carolina's felony sentencing grid which shows that sentence lengths under structured sentencing are determined based on the level of the offense committed (vertical axis) and the severity of the defendant's criminal record (horizontal axis). Additionally, within each "cell" on the sentencing grid, there are three separate ranges of punishment – a *lower range* for cases where there were considerable mitigating circumstances, a *presumptive range* for most "average" cases and an *aggravated range* for cases where there were significant aggravating circumstances present.

According to North Carolina's Administrative Office of Courts (AOC), the structured sentencing system works smoothly now that the judges and district attorneys have adjusted to the

change. No data were available regarding the number of appeals related to the implementation of the new system, and North Carolina's AOC was unable to estimate the approximate amount of time judges spent learning the new system once it was put into place. The North Carolina researcher contacted was also unable to provide information regarding the impact of structured sentencing on plea bargaining or on the number of cases appealed as a result of the new system. There was also no way to correlate the influence of structured sentencing on the number of violent offenses committed before and after the policy's implementation.

Researchers in North Carolina report that structured sentencing has changed both the number and types of offenders going to prison since its implementation. Prior to structured sentencing in 1993, offenders released from prison were serving on average less than 20 percent of their imposed sentence. Today, offenders serve 100 percent of their sentencing in North Carolina. Additionally, the new structure has reduced prison overcrowding by diverting more offenders to community-based punishment programs. These diversions were accomplished in part by adding 500 new probation officers and offering funds to all 100 counties to build community-based rehabilitation programs.

Mr. Godwin indicated that additional information from North Carolina needs to be obtained through their sentencing commission, before Alabama can assess the applicability of this type of model within our state.

Judge Bowen briefly reported on Arkansas's voluntary guideline system, however, he indicated that his initial research did not reveal much in the way of findings that would be useful for implementation in Alabama.

Ms. Goggins indicated there were four primary reasons Virginia decided to undertake sentencing reform during the early 1990's. First, policymakers and criminal justice officials wanted to help eliminate the *lack of truth in sentencing* that characterized the state's sentencing and corrections system. Because of the parole and good time policies that were in place, many citizens, victims and criminal justice officials agreed that the state's corrections policy suffered from a serious lack of credibility. Good time policies allowed inmates to earn credit for up to half of their imposed sentence, and the parole board had virtually unfettered discretion in making release decisions. When a prison sentence was ordered, it was basically impossible to make any sound prediction regarding when the defendant would be released.

Next, policymakers in Virginia wanted to *reduce or eliminate unnecessary disparity* in sentencing. The criminal justice system had been repeatedly criticized for disparity on the basis of race and gender. In many cases, it appeared as if sheer geography would very often lead to quite different outcomes for similar crimes – prosecutors and judges in different counties often had very different sentencing practices from those in other jurisdictions. Virginia officials believed that sentencing guidelines – even if they were voluntary – would help reduce this problem by providing better information to judges and district attorneys.

Additionally, it was perceived that this *lack of predictability* in sentencing outcomes often slowed down the justice process. Defendants in a jurisdiction known to have particularly harsh sentencing practices were reluctant to reach plea bargained agreements. New judges and

prosecutors also had to spend an inordinate amount of time devoted to determining what kind of sentencing style they would use.

Finally, Virginia was experiencing an unprecedented *expansion in its corrections population*. Given the lack of certainty and predictability in sentencing, there was no way for researchers to predict the impact of changes to the criminal code or future bedspace requirements. Officials in Virginia wanted to establish a system that would allow resource needs to be forecasted, so that the General Assembly could allocate the necessary funding to the state's prison system to keep up with bedspace demand without experiencing constant overcrowding.

According to Ms. Goggins, the first sentencing reform efforts in Virginia occurred in 1990. Researchers began to compile organized information concerning sentencing practices and procedures in order to create a comprehensive database of sentencing outcomes. The early reform efforts retained the existing six-tiered sentencing structure, but called for recommended ranges for judges to use in determining sentences. The ranges were established by looking at historical sentencing patterns from throughout the state, and setting voluntary guidelines based on what was occurring most frequently. Basically, the "extreme outlyers" – those sentences falling within the highest and lowest tenth percentiles were eliminated – and the "normal" range of sentences was established as the general guideline.

The early guidelines were reported to have a favorable impact on sentencing. Disparity was reduced, and sentences for different offenses became more predictable. On the other hand, this early system had an undesirable impact on the parole process. After the guidelines were established, the parole board was reluctant to release individuals until they had served at least as long as the minimum range established by the sentencing guidelines. However, the sentencing guidelines were constructed based on the assumption that the parole board would continue to review inmates in much the same way as they always had. As a result, the prison population continued to soar, because the parole process had largely broken down. The sentences being imposed were artificially inflated, because the "norms" used to set the guidelines had been imposed based on the knowledge that inmates would be considered for parole prior to serving the entire sentence. Additionally, the good time policies were not changed, so truth in sentencing for inmates who were good-time eligible was still nonexistent.

Ms. Goggins reported that in 1994, Virginia's General Assembly – at the urging of Governor Allen – created a sentencing commission to address the shortcomings of the state's first sentencing reform effort. The sentencing commission was established under the judicial branch of government an was comprised of 17 members: an appointee of the Chief Justice; six trial court judges; an appointee of the Attorney General; two Senators; three members of the House of Delegates; and four appointees of the Governor. (At least one of the Governor's appointees must be a victim of crime.)

Generally, the goals of the Virginia Sentencing Commission were:

- Establishing truth in sentencing and abolishing parole – Under the new system, parole has been abolished and good time credit has been limited to 15 percent of an inmate's

sentence. This means that all offenders must serve at least 85 percent of their imposed sentence prior to release.

- Increasing penalties for violent offenders – Under the Virginia sentencing guidelines, violent offenders serve up to six times longer in prison than under the old indeterminate system.
- Establishing more alternatives to incarceration for nonviolent offenders – Nonviolent offenders serve about the same amount of time, however, many more community-based punishment options are now available for sanctioning this population.

To facilitate these goals, the sentencing commission recommended a comprehensive set of felony sentencing guidelines that went into effect on January 1, 1995. The baseline for the new guidelines was based on the actual time served under supervision. Sentences for violent offenses were set to ensure that these offenders served significantly longer terms for the most part, and terms for most nonviolent offense remained about the same (even though sentences for nonviolent offenses appeared much shorter). Importantly, under the new system, significant resources were devoted to creating sentencing alternatives to prison where supervision of nonviolent offenders could occur outside of a traditional incarcerative setting.

Next, Ms. Goggins explained features of the Virginia Sentencing Guidelines. First, the original six-tiered sentencing structure (as enacted in the Code of Virginia 1975) remains intact. Judges are encouraged to follow the recommended guidelines, however, a judge may depart from the guidelines with a written explanation. Departure from the guidelines is not grounds for appellate review, as long as the sentence imposed is within the statutory range. The reason for requiring judges to explain departures is to allow researchers at the sentencing commission to understand why deviations are happening. If it becomes evident that judges are consistently departing either upward or downward from the recommendation sentencing tables provided by the sentencing commission, then it is likely that the guidelines may need to be adjusted.

Sentences are determined based on scores calculated using scoring worksheets which were developed as a part of the guidelines. After score is calculated, the judge turns to the sentencing recommendation table that corresponds with the scoring sheet. There are 14 separate scoring sheets and sentencing recommendation tables covering the various types of felony offenses in Virginia:

1) Assault;
2) Burglary/Dwelling;
3) Burglary/ Other;
4) Drugs/Schedules I and II (more serious drug offenses);
5) Drugs/Other (less serious drug offenses);
6) Fraud;
7) Kidnapping;
8) Larceny;
9) Murder/Homicide;
10) Rape;
11) Other Sexual Assault;
12) Robbery;

13) Traffic (felony DUI); and
14) Miscellaneous (all other felonies not specifically covered under one of the broader categories).

Prior to sentencing, the probation officer (or district attorney in cases where a pre-sentence investigation is waved) completes a scoring sheet based on the crime committed by the defendant. If there are multiple cases or counts against the defendant, then the most serious case – that is the case that carries the stiffest penalty – is selected for scoring. If it appears likely that consecutive sentences may be ordered, the probation officer may be required to complete several sheets. Each scoring sheet contains a "baseline" point score for the offense, and then other points may be added to the defendant's score based on prior convictions and/or aggravating factors. For instance, the absolute minimum point score for burglary of a dwelling is 16 points, while the minimum for a fraud case is six points. The more criminal convictions and/or aggravating factors, the higher the total score. Higher point scores correspond with longer sentences in the sentencing recommendation table.

Ms. Goggins also reported that Virginia uses risk assessment instruments to aid judges in making sentencing decisions. The sentencing commission has developed two different instruments – one for sex offenders and another for other offenders. Both instruments have been statistically validated as predictors for future criminal behavior, and are very useful in assisting judges in deciding whether or not to place an offender in an incarcerative or less restrictive punishment option.

The Virginia Sentencing Commission continues to play a vital role in the implementation of sentencing guidelines. First, the commission provides impact assessments of bills introduced in the General Assembly that would impact the criminal justice system. This allows legislators to know the cost of proposed policy changes prior to their passage – thus tying policy decisions to resources available. (In many cases, legislators may decide against a policy, because of the sheer amount of funding that would be needed for implementation.) Additionally, the commission provides ongoing information and education to members of the criminal justice system and the community. By informing all interested parties about the guidelines – including any proposed changes and the reasons for them – the sentencing commission has been able to help maintain a high degree of support and enthusiasm for the new sentencing system.

One of the most important roles of the Virginia Sentencing Commission, according to Ms. Goggins, is that of making recommendations to the General Assembly regarding changes to the guidelines. In Virginia, proposed changes are presented to the General Assembly prior to the beginning of the legislative session. These changes will automatically go into effect unless the General Assembly takes specific action to amend the proposal submitted by the commission. This is important, because most of the modifications to the original guidelines have been to decrease penalties for certain crimes based on the number of downward departures reported. By not requiring legislators to vote on specific proposals, it makes it easier politically to reduce sanctions where deemed appropriate in consideration of prevailing judicial sentiment.

Next, Ms. Goggins discussed the general outcomes that have resulted from Virginia's sentencing reform effort. The impact (as reported by Dr. Richard Kern, Executive Director,

Virginia Sentencing Commission, and Dr. James C. Creech, Manager, Research Unit, Virginia Sentencing Commission) has been:

- Stabilized prison population growth – Because of the enhanced emphasis on community based punishment programs and the improved ability to accurately predict prison resource requirements associated with proposed sentencing policies, the rate of growth within the Virginia corrections has slowed significantly. Since 1996, one year after the new system was put into place, the annualized growth rate in the prison population has dropped from 16 percent to 2.2 percent.
- Reduction in sentencing disparity – Despite their voluntary nature, studies show a 77.4 percent compliance rate with Virginia's sentencing guidelines. Departures above and below the suggested ranges are almost even. (Upward departures account for 11.2 percent of deviations, and downward departures account for 11.4 percent.)
- Violent offenders are treated proportionally much more harshly than nonviolent offenders – Violent offenders serve on average up to six times longer under the new system than under the old indeterminate system. Additionally, violent offenders make up much higher percentage of the state's prison system than before – achieving the goal of prioritizing scarce prison resources for the most dangerous offenders.

Ms. Goggins indicated that she asked Dr. Kern whether or not disciplinary actions against inmates had increased due to the increased proportion of violent offenders housed within the state's prison system. Dr. Kern reported that contrary to initial expectations, the number of disciplinaries has actually decreased. Corrections officials believe there are two primary reasons for this. First, "long-termers" – those inmates who know they are facing many years behind bars – tend to be more well-behaved inmates. Since these inmates realize they will be spending a significant amount of time in prison, there is a strong motivation to "get along" from the outset. Inmates with good disciplinary records are allowed more privileges (i.e. television or recreation time) and usually receive the more desirable job duties. As a result, it is preferable to establish a good disciplinary record from the outset of one's prison sentence in order to gain such privileges as soon as possible.

The next reason cited for the decrease in disciplinaries was unintended, but appears to have been quite effective. Because corrections officials were concerned about housing a more violence-prone population, the prison commissioner at the time the guidelines were passed insisted to the General Assembly that there was a need to fund the construction of two new "Super-Max" facilities. Virginia's General Assembly agreed, and two 1,000 bed single-cell facilities of this type were completed during the late 1990's. While much more expensive to construct than traditional dormitory-style facilities, the super-max facilities actually cost less to operate. With the state-of-the-art electronics that are a design feature of the new facilities, cells and other areas can be constantly monitored from a centralized location via closed circuit cameras. Additionally, cell doors and other entrances and exits can be opened and closed automatically from a central location. Because of these features, fewer correctional officers are needed to provide security in these facilities than in the other traditional institutions.

Inmates assigned to one of the super-max facilities spend 23 hours per day locked alone in a cell, and are only allowed outside for one hour each day for exercise purposes. (Even during

exercise periods, inmates are segregated from any contact with others.) Additionally, because of the technology employed within these facilities, inmates have very little direct contact with prison staff. The result is that these inmates spend the vast majority of their time alone in a cell. Built primarily as a measure for dealing with problem inmates, the super-max facilities have not been filled in the years since their completion. It seems that inmates who might otherwise represent disciplinary problems are deterred from bad behavior because of the prospect that they might be assigned to one of these facilities – another factor that has actually lowered the number of disciplinary infractions since the implementation of sentencing guidelines. In fact, since Virginia has not needed all of these beds to handle inmates with disciplinary problems, one of Virginia's super-max facilities now houses "problem" inmates from throughout the country. Not every state has access to these types of beds, so prison officials in several states have elected to contract with Virginia to provide security for their most disruptive inmates.

Finally, Ms. Goggins indicated that her conversations with representatives from the Virginia Sentencing Commission revealed that overall satisfaction with the criminal justice system has increased significantly since the implementation of truth in sentencing and sentencing guidelines in Virginia. Following is a summary of the responses received to the following questions posed by Ms. Goggins, "How is structured sentencing perceived by the following entities? Why?"

- *Victims – Favorably*
  - Predictability
  - Truth in Sentencing
- *Judges – Favorably*
  - Truth in Sentencing
  - More Information
  - Risk Assessment
  - Increased Plea Bargains
  - Increased Public Confidence
- *District Attorneys – Mostly Favorably*
  - Truth in Sentencing
  - Increased Plea Bargains
  - *Some prosecutors would prefer more presumptive prison sentences for property and drug offenders.*
- *Defense Attorneys – Favorably*
  - Predictability
  - Increased likelihood of community based sanctions for nonviolent offenders
- *Prison Officials – Favorably*
  - Increase in Prison Budgets
  - Improved Institutional Behavior
  - Addition of two "Super-Max" Facilities
- *Jail Officials – Favorably*
  - Decrease in Inmates Awaiting Trial (Improved Population Management)
- *Probation Officials – Favorably*
  - Increased Budgets

    - More emphasis on community based punishment options
- *Media – Favorably*
    - Truth in Sentencing
    - Prioritization of criminal justice resources
- *Public – Favorably*
    - Truth in Sentencing
    - System is perceived as much fairer

Mr. Glassroth stated that he would like to have additional information relative to Minnesota's sentencing structure, since these are the nation's oldest sentencing guidelines. Mr. Glassroth volunteered to research the Minnesota guidelines and report his findings at the next structured sentencing work group meeting.

Ms. Davis advised the group members that lunch was being provided upstairs where the structured sentencing group was expected to join the truth-in-sentencing/post-incarceration work group. After lunch, group members listened to a brief report from Judge McLaughlin concerning the findings of the truth-in-sentencing/post-incarceration group. Additionally, the structured sentencing work group scheduled two additional meetings for September 7, 2001 and September 14, 2001. Both meetings are to be held at the Alabama Judicial Building.

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