

**Alabama Sentencing Commission  
Structured Sentencing Work Group Meeting  
Friday, September 14, 2001  
Alabama Judicial Building**

**Minutes**

**Group Chair:** Ms. Rosa Davis

**Members/Guests Present:** Judge William M. Bowen, Jr., White, Dunn and Booker; Hon. Ellen Brooks, District Attorney, 15<sup>th</sup> Judicial Circuit; Ms. Rosa Davis, Chief Assistant Attorney General, State of Alabama; Ms. Carolyn Flack, Alabama Board of Pardons and Paroles; Ms. Lynda Flynt, Executive Director, Alabama Sentencing Commission; Mr. Stephen Glassroth, Esquire, Glassroth & Van Heest, P.C.; Ms. Becki R. Goggins, Research Specialist, The Sentencing Institute; Ms. Emily Landers, Alabama Sentencing Commission; Hon. Ben McLaughlin, Presiding Judge, 33<sup>rd</sup> Judicial Circuit; Dr. Prince Preyer, Madison County Commission; Hon. Charles Price, Presiding Judge, 15<sup>th</sup> Judicial Circuit; Hon. Daniel J. Reynolds, Jr., Retired Senior Judge, 10<sup>th</sup> Judicial Circuit (Bessemer Division); and Ms. Miriam Shehane, Victims of Crime and Leniency.

**Summary of Discussion:**

Rosa Davis called the meeting to order.

Ms. Davis distributed copies of the results of a recent survey of sentencing practices published by the District of Columbia Commission on Sentencing on August 17, 2001. The survey covered sentencing practices in 21 states, and Ms. Davis suggested that members of the working group to review this information.

Ms. Davis asked the members present for a motion to approve the Structured Sentencing Work Group minutes from August 10, 2001 and September 7, 2001 as circulated. A motion was made and seconded, and the minutes were approved.

Ms. Davis explained that while Alabama must collect and analyze more data prior to making specific recommendations for sentencing reform to the Legislature, that the Sentencing Commission Work Groups have reviewed enough research to be able to report their initial findings to the membership of the Sentencing Commission. Ms. Davis suggested that it would be useful for the Structured Sentencing Work Group to provide a report to the Sentencing Commission describing how well the various state sentencing structures reviewed by members of the work group have met the statutory goals of Alabama's Sentencing Commission as outlined in the legislation creating the Sentencing Commission as a governmental entity. (The purposes of the Alabama Sentencing Commission are described in Section 12-25-2, Code of Alabama 1975.) Ms. Davis also indicated that the work group should also include attachments to this report to include: 1) minutes of the work group meetings; 2) summary information regarding the sentencing structures in states where voluntary or presumptive guidelines have been implemented; and 3) general recommendations for programs and policies that should be

eliminated, enhanced or expanded in anticipation of broader sentencing reform over the next several years.

Ms. Davis next guided the group in a discussion regarding the effectiveness (or lack of effectiveness) of sentencing structures in other states in terms of meeting the statutory goals of the Alabama Sentencing Commission.

- **Goal # 1 – Secure the public safety of the state by providing a swift and sure response to the commission of crime.**

Members of the work group agreed that all of the state sentencing structures reviewed to date – Delaware, Kansas, Minnesota, North Carolina and Virginia – have enhanced public safety due to the increased emphasis on providing longer periods of incarceration for violent offenders within these systems. Without exception, those states who have adopted sentencing guidelines (or “guided discretion”) have significantly increased penalties and time served for inmates convicted of crimes against the person. The work group members also agreed that prioritizing scarce prison resources to house violent and predatory offenders should be a part of any sentencing reform effort in Alabama.

Members of the work group also noted that the amount of time between arrest and conviction has been decreased in a number of states where guidelines have been implemented. For instance, Ms. Brooks noted that when Kansas reformed its sentencing system, the pre-sentence investigations completed by state probation officers were streamlined to allow probation officers to complete their investigations in a more timely fashion, thus eliminating one of the delays which can occur within the sentencing process. Additionally, several group members noted that the number of cases disposed through plea bargains have tended to increase in states with voluntary and presumptive sentencing guidelines – another factor that increases the swiftness of punishment. This trend is attributable to the fact that if all parties know the likely sentencing outcome of case whether or not it goes to trial, then there is an increased likelihood that an agreed upon sentence can be negotiated in a more timely fashion.

Furthermore, it was noted that one of the problems with Alabama’s criminal justice system is that given the overcrowding within the prison system, there is often a long delay in transferring an offender into DOC custody as ordered by the sentencing judge. Since states with sentencing guidelines have an enhanced ability to forecast resource needs, bedspace requirements can be predicted in advance and capacity can be added to avoid such delays.

Dr. Preyer noted that the key to reducing crime is to focus on early childhood intervention and education. He stated that he hoped that the Children’s First program would be fully implemented soon so that needed reforms could get underway. Dr. Preyer also noted that research is needed to determine what childhood risk factors are most prevalent in Alabama’s Department of Corrections (DOC) population, so programs can be developed to address the specific needs of those who are most likely to become a part of the state’s prison-bound population. Ms. Davis noted that the Technology Working Group would be looking at this issue as they continue to assess the long-term information needs of the state’s criminal justice system.

Members of the work group also noted that crime prevention should be considered as much a part of protecting public safety as locking up violent offenders. The group agreed that the Sentencing Commission should continue to review programs in other states to determine which policies have resulted in the sharpest declines in recidivism rates. Those programs which have been demonstrated as having the greatest impact on recidivism should be replicated to the extent possible within Alabama.

- **Goal # 2 – Establish an effective, fair and efficient sentencing system for Alabama adult and juvenile criminal offenders which provides certainty in sentencing and maintains meaningful judicial discretion.**

One of the most important goals of sentencing reform in other states has been to eliminate unnecessary disparity in sentencing. In other words, the states reviewed have sought to increase the level of “fairness” in their sentencing practices and procedures.

Based on its research over the last several months, the Structured Sentencing Work Group concluded that disparity appears to have been reduced in those states where guidelines have been implemented. It is important to note, however, that disparity has not been totally eliminated. As long as there is any degree of flexibility built into the sentencing process, there will likely be some departures from the recommended sentencing ranges. Nevertheless, most states have decided that maintaining judicial discretion to deal with unique cases is more important than having highly rigid sentencing guidelines – even if the potential for some disparity continues to exist.

The Structured Sentencing Work Group agreed that judges need to have meaningful discretion in order to preserve their ability to individually tailor sentences for defendants. However, the work group was not prepared to make specific recommendations regarding how Alabama’s system should be altered to meet the goal of reducing disparity while simultaneously retaining judicial discretion.

Despite the lack of specific recommendations for sentencing reform, the work group members agreed the state should strongly consider expanding the number of felony classifications and reducing the range of punishment prescribed for each class. For instance – even though burglary of a home while in possession of a loaded weapon and stealing an unloaded during a home invasion and getting caught with it while fleeing the crime scene are two very different offenses – both are treated as Class A felonies under current law. Similarly, under Alabama’s existing system, a defendant who brandishes a weapon while robbing a store must be charged with the same crime as a defendant who enters a store and robs it by merely threatening that a weapon is present. Both are serious crimes, however, there should probably be two different punishment ranges for these offenses.

At this point, the work group took a break from discussing how other states have been successful in meeting the statutory goals of the sentencing commission to hear Stephen Glassroth’s report on the Minnesota Sentencing Guidelines.

Mr. Glassroth reported that he had spoken with the new director of the Minnesota Sentencing Commission to find out more about their commission and how their sentencing guidelines are working. According to their director, the Minnesota Sentencing Commission has a staff of nine, and the Commission serves as the state granting authority for many criminal justice programs. In addition to its role as a granting agency, the Sentencing Commission also collects information regarding guideline compliance rates and provides impact analyses of proposed changes to the state's sentencing structure.

Essentially, the Minnesota guidelines system is comprised of a sentencing grid that sets forth punishment levels based on the severity of the offense committed and the defendant's criminal history. The grid makes specific recommendations for both probationary and prison sentences, and it was specifically designed to place a higher priority on locking up violent offenders and providing more community based punishment resources for nonviolent offenders.

Mr. Glassroth reported that he had also asked about compliance rates and the judiciary's reaction to the guidelines. According to the Commission's director, compliance rates are generally high – especially in the state's most populous regions. (Compliance rates in more rural jurisdictions seem to be somewhat lower.) Overall, judges tend to like the grid, and they had considerable input into how it was designed. For instance, prior to the adoption of the guidelines, judges had the opportunity to review the state's criminal code and establish priorities for which inmates should be incarcerated. Because they were allowed to help create the system, judges had a greater appreciation for the guidelines when they were implemented.

According to the director, incarceration rates in Minnesota have decreased since the state's sentencing guidelines were implemented. However, the Minnesota Legislature has done a great deal of "tinkering" with the system over the last twenty years or so – mainly by adding new mandatory minimums to the state's criminal code. It is expected that the sentencing guidelines would work much better if policymakers would allow the sentencing commission to have more input into making constructive suggestions for how the state's sentencing grid should be amended. In this regard, Governor Jesse Ventura has called upon the Legislature to be more reasonable in establishing sentencing policy for the state. Specifically, he has asked the Legislature to be "more realistic" in dealing with drug offenders and has called for more spending on treatment resources. However, at this point it is unclear as to what impact this will have on the future of the Minnesota guidelines.

After Mr. Glassroth's report, members of the working group were advised that lunch was ready. Additionally, Ms. Davis reported that the Governor had advised state agencies that there would be a prayer vigil held on the steps of the State Capitol at 12:00 p.m. to remember those individuals killed in the tragic terrorist attacks in New York, Washington and Pennsylvania on September 11, 2001, and that the group would take a half hour break to allow those desiring to participate in the prayer vigil to attend.

After lunch, the work group returned to its discussion regarding the extent to which sentencing reforms in other states have met the goals set out for the Alabama Sentencing Commission.

- **Goal # 3 – Promote truth in sentencing, in order that a party involved in a criminal case and the criminal justice process is aware of the nature and length of the sentence and its basis.**

The work group found that enhancing truth in sentencing was a primary goal in the states reviewed, and the group members agreed that Alabama must incorporate truth in sentencing as a primary element of any sentencing reform measure that is eventually considered. Generally speaking, the work group has defined truth in sentencing as “a sentencing system in which the time served by a defendant bears a consistent relationship to the sentence imposed by a judge.” Additionally, the group stated that it is imperative that all parties know at the time of sentencing the minimum amount of time that must be served prior to release consideration. Furthermore, the working group stated that a period of post-incarceration supervision should be mandatory for anyone released from prison.

There was also a discussion about the point that sentencing guidelines are unlikely to be followed unless truth in sentencing is implemented. Ms. Goggins noted that in Virginia’s early sentencing reform efforts, sentencing guidelines were established based on historic practices under their six-tiered felony sentencing system. However, no changes were made to parole or good time policies within the state’s correctional system. As a result, while the first voluntary guidelines adopted in Virginia improved the level of consistency in sentencing, they had very little effect on improving the actual outcome in regards to what happened to an inmate after sentencing. Additionally, the first sentencing “reform” did very little to enhance public confidence in the system, because it was still impossible to determine at the time of sentencing exactly how long an offender would serve prior to being released. Because of these kinds of potential problems, the members of the group agreed that truth in sentencing must be a part of any sentencing reform effort adopted in Alabama.

- **Goal # 4 – Prevent prison overcrowding and the premature release of prisoners.**

In all of the states studied, one of the purposes of establishing a sentencing commission and creating voluntary or presumptive guidelines was to allow policymakers to predict resource needs associated with proposed changes to sentencing policy. Ms. Davis reported that the Alabama Sentencing Commission is presently working with a group of technology consultants to develop a similar capability within Alabama. Members of the work group agreed that such a forecasting system is vital to the success of sentencing reform, because truth in sentencing cannot exist unless there are enough resources to house offenders sentenced to various levels of confinement and/or supervision. In other words, sentencing policy decisions must be linked to resource availability. (For instance, as long as prisons are overcrowded, there is a continued incentive to release inmates early to help alleviate the burden on the state’s corrections system.)

- **Goal # 5 – Provide judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences.**

All of the sentencing systems reviewed have retained some degree of judicial discretion, and the work group strongly agrees that Alabama should do likewise. In nonviolent cases, the

work group recommends that judges should have appropriate flexibility in determining both the length of sentence and level of supervision (i.e. probation, community corrections, prison and/or aftercare) to which an offender is confined. In cases involving violent offenders, the work group suggested that judges should be able to set a minimum term of confinement and a set period of supervision following an inmate's release.

If Alabama opts to move toward a structured sentencing system, the work group recommends that departures from the guidelines should be reported. Additionally, judges should be asked to state a reason for the departure to allow researchers at the Alabama Sentencing Commission to determine the reason for departures. This type of detailed information concerning departures will allow the Sentencing Commission to recommend needed changes to the suggested terms of punishment based on prevailing attitudes towards certain crimes.

In some cases, states have provisions allowing for appellate review of sentences falling outside of the sentencing guidelines. The Structured Sentencing Work Group has strongly rejected any system of guided discretion that would provide for appellate review of sentences based on departure, because this type of system would place an undue burden on the trial courts and appellate courts.

- **Goal # 6 – Enhance the availability and use of a wider array of sentencing options in appropriate cases.**

In all of the state sentencing systems reviewed by the Structured Sentencing Work Group, there was a strong emphasis on the development of community based punishment programs as an integral part of sentencing reform. Since one of the primary purposes of adopting sentencing guidelines and truth in sentencing has been to ensure that violent offenders serve longer prison terms, policymakers in other states have realized that there will be an increased demand for meaningful community supervision and/or confinement as more nonviolent offenders are diverted from the correctional system. In fact, most sentencing guidelines specifically recommend community based punishment programs for many offenders within their punishment grids.

Members of the work group agreed that Alabama should begin allocating more resources to the development of a network of community based punishment programs immediately.

- **Goal # 7 – Limit the discretion of district attorneys in determining the charge or crime.**

Members of the work group were unaware of any state sentencing structures that had been successful in limiting prosecutorial discretion in determining the charge brought against a defendant. (In fact, it was unclear whether or not this had ever been defined as an objective in the other states reviewed by the work group.) After a brief discussion of this matter, the members of the work group agreed that limiting the discretion of prosecutors to determine criminal charges would be very difficult to achieve.

Ms. Davis advised the group that she would prepare a final report to present to the Sentencing Commission at the upcoming meeting on September 21, 2001. Additionally, Ms. Davis reminded members of the group that she would disseminate a draft of the working group's report prior to the commission meeting for review and comment, and that it was important that she receive any suggestions or changes to the report in a timely fashion due to the short turnaround time involved.

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