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ALABAMA SENTENCING COMMISSION

SENTENCING REFORM

Initial Report to the Legislature

January 7, 2002

INITIAL REPORT

ALABAMA SENTENCING COMMISSION

JANUARY 7, 2002

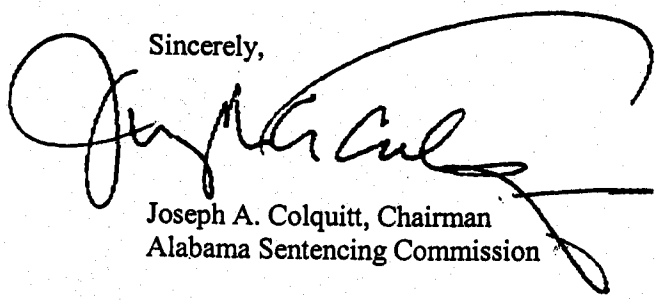
Commission. Although an office and staff for the Commission was not provided until the latter part of January 2001, the Commission has been very active during the past 12 months. The Commission has met ten times, our task forces and subcommittees met over 23 times from March through September of 2001. In addition to the frequent meetings, several members and staff made valuable contacts with trial and appellate judges, prosecutors and community leaders. Various members participated in and attended national seminars on sentencing policies, community corrections, reentry programs and probation and parole issues. Crucial technical assistance was provided by the Vera Institute of Justice through briefings with executive board members and staff on key policy issues, sentencing practices in other states and national sentencing trends. Vera also provided mentoring assistance though their Associates who serve as directors, chairmen or key members of Sentencing Commissions in other states.

Much of the work of the Commission is dependent on accurate sentencing data. Just as every building project requires precise measurements before construction begins, the Commission must determine from reliable data the current sentencing patterns, their impact on jail and prison populations, and the effect of existing release practices. Sentencing reform must, of necessity, begin by an adequate assessment of the current practice to determine the changes needed and where they should be made. Applied Research Services, Inc., operating under contract, is now in the process of creating a comprehensive database for the Sentencing Commission that will enable the Commission to address these issues and begin developing specific proposals that will improve our criminal justice system. Measurements are being taken and the foundation is being laid for a successful plan.

While the Commission's recommendations to you at this time do not include comprehensive sentencing reform proposals or a specific truth-in-sentencing legislative package, the recommendations that are presented constitute initial building blocks on which the Commission intends to formulate a rational and carefully constructed sentencing model. This model will be based on accurate and reliable data and careful, deliberate analysis. It will propose more effective ways of punishing convicted criminals without jeopardizing the safety of citizens and will better utilize limited resources.

The Commission is enthusiastic about its mission and is overcoming the problems it encounters with relentless resolve. With your continued support, I am confident that the Sentencing Commission can improve Alabama's criminal justice system and make it one that will be a model for the rest of the nation.

Sincerely,



Joseph A. Colquitt, Chairman
Alabama Sentencing Commission

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EXECUTIVE SUMMARY

ALABAMA SENTENCING COMMISSION

EXECUTIVE SUMMARY

The Legislature charged the Alabama Sentencing Commission to review Alabama's existing sentence structure, and to recommend to the Legislature and Supreme Court changes in the criminal code, criminal procedures, and other aspects of sentencing policies and practices appropriate for the State of Alabama that best provide for the protection and safety of Alabama's citizens.

Without a comprehensive, accurate database of sentenced offenders, Alabama has never been able to reliably answer

- ❑ Where and how sentences can be made to bear a more certain relationship to actual time served;
- ❑ Where disparity exists and whether that disparity is warranted;
- ❑ Whether statutory sentencing policies are followed, *i.e.,* whether mandatory minimums and enhancements are consistently imposed;
- ❑ In what cases more economical community based punishment could be effective;
- ❑ How sentence enhancements are used and their impact;
- ❑ How the Habitual Offender Act is used and its impact;
- ❑ What specific factors are used by judges to guide sentence decisions; and
- ❑ How to best distinguish between "violent" and "non-violent" offenders, and to test the impact of that definition?

To conduct its review and to answer these questions, the Commission is establishing a comprehensive database of offender and incident demographics showing

- ❑ What type of offender is being sentenced;
- ❑ For what type of crime;
- ❑ To what form of punishment;
- ❑ For how long; and
- ❑ The time actually served in incarceration, in community-based punishment, and/or on probation or parole.

This database will be used to build a computer simulation model that can track movement of the inmate population and project the impact of specific policies and suggested changes.

Three major obstacles slowed the Commission's review of Alabama's sentence structure:

- ❑ No centralized source of the information needed for the comprehensive offender database;
- ❑ Insufficient funding for completing the comprehensive database or hiring personnel with the expertise to properly analyze the information gathered and to maintain the database; and
- ❑ Statutory confidentiality of certain records containing specific information necessary for the Commission's review.

The Commission has begun to overcome these obstacles but needs legislative assistance to complete the task. The Commission has

- ❑ Located the necessary offender and incident information in four agencies, and begun the process of merging the data.
- ❑ Obtained temporary funding through federal grants, the governor's contingency funds, and an interagency transfer of funds to begin its work.
- ❑ Obtained limited access, for initial statistical research purposes, to some otherwise confidential information.

The Commission asks the Legislature to

- ❑ Fund the Commission at a sufficient level to hire a permanent researcher/analyst/ programmer to continue and maintain the database and to create a simulation model.
- ❑ Adopt legislation authorizing the Commission to receive state appropriations and fund the Commission through the State General Fund in the amount of $377,000 to continue present staff, add a researcher/analyst programmer, build a simulation model, and purchase additional equipment and software for the simulation model.
- ❑ Adopt legislation to allow the release of confidential offender information to the Commission for research purposes.

The Commission is reviewing truth-in-sentencing but cannot make specific recommendations until the offender population data base is complete and the impact of proposals can be measured.

- ❑ "Good time" credits and discretionary parole substantially reduce most sentences making the length of incarceration indeterminate and, in many cases, incomprehensible.
- ❑ Truth-in-sentencing without impact planning will exacerbate Alabama's prison overcrowding problems and endanger public safety.

The Commission is reviewing sentence structures but cannot make reliable and substantiated recommendations for changes until the offender population database is complete and the impact of proposals can be measured.

- ❑ Alabama's sentence structure was designed without impact planning for corrections needs and without evaluation capability.
- ❑ Alabama's broad sentence ranges are susceptible to disparate sentences.
- ❑ A reliable picture of Alabama's sentencing experience must form the foundation for consideration of any changes in Alabama's sentence structure.
- ❑ The federal system of mandatory structured sentencing is too rigid to meet the policy goal of allowing meaningful judicial discretion and, thus, cannot be used as a model for Alabama.
- ❑ Many state structured sentencing models are less rigid than the federal system.

The use of Community Based Punishment Programs is increasing in Alabama but the need for these programs cannot be reliably estimated until the offender population database is complete and the population that should participate is identified.

- ❑ Community based punishment programs are more economical than incarceration.
- ❑ Community based punishment programs can be used for some offenders, reserving prison space for those offenders most in need prison.
- ❑ The Sentencing Commission and Alabama corrections system agencies are working with the Alabama Community Corrections Associations to provide local communities with technical assistance to establish community based punishment programs.
- ❑ The Governor's plan for short-term solutions to immediate prison overcrowding is providing increased community based punishment alternatives, especially addressing alcohol and substance abuse. These programs will be evaluated for continuation and expansion.
- ❑ A reliable picture of Alabama's sentencing experience must form the foundation for specific recommendations further implementing community based punishment programs.

REPORT SYNOPSIS

Building a Long-Term Solution to Criminal Sentencing Issues

A fair, certain, and efficient criminal sentencing system that assures the safety of our citizens, both now and in the future, requires a sure and solid foundation.

In a nation questioning whether old and fragmented sentencing policies best protect public safety, Alabama is positioning itself to join the ranks of those states that base sentencing policies on factually supported criteria rather than anecdotal data that is unproven by reliable research. With present day budgetary limitations, states, including Alabama, can no longer afford to guess at those policies that most effectively secure the safety of citizens, nor can government plan for correctional needs without the ability to determine the impact of sentencing policies.

The Sentencing Commission is undertaking a thorough and systematic review and analysis of sentencing in Alabama. Based on accurate and complete data, the Commission will make recommendations designed to achieve sentencing goals established by the Legislature and the Alabama Supreme Court.

Alabama's current sentencing policies have led to a mushrooming prison population, increasing from about 4,000 inmates in 1970 to over 27,000 in 2001. This growth took place as Alabama adopted greater and greater punitive measures that "sounded good" or appeared "tough on crime," or appeared to correct inequities in existing practices. These measures have been passed without projecting their impact on either crime, the criminal justice system or Alabama's communities. Alabama was, therefore, unable to evaluate the effectiveness of the new laws or to adequately plan for the increases in prison bed space and other associated costs.

Without changes in the way sentencing policies are adopted, the future offers no long-term relief. Alabama will continue to pass criminal laws based on anecdotal or incomplete data with no reliable means of projecting the actual impact of those measures Rather than curing Alabama's present problems, these well-meaning laws may actually exacerbate Alabama's troubles and potentially put citizens at a greater risk.

The Sentencing Commission is establishing a new way to judge the merits of criminal justice legislation. The Commission will soon have the ability to:

- ❑ Accurately assess the status of current sentencing policies and practices;
- ❑ Evaluate the effectiveness of criminal justice programs and policies; and Project the impact of criminal justice legislation.
- ❑ This ability to assess, project, and evaluate will provide a sure foundation for judging the effectiveness and costs of specific criminal justice policies.

Building and Maintaining a Sure Foundation – Three Steps

Every state undergoing successful sentencing policy review and reform has followed a methodology using three basic steps.

The Sentencing Commission has adopted this proven approach to review sentencing policies and practices in this state and to propose changes for Alabama.

The First Step – Gathering Information for a Reliable Picture of Current Policies and Practices

The Sentencing Commission is gathering reliable information on Alabama's sentenced population. The information must be detailed enough to produce a clear and accurate picture of Alabama's current sentencing practices.

The completed picture will show :

- ❑ what type of offender is being sentenced;
- ❑ To what form of punishment;
- ❑ for how long; and

- ❑ the time actually served in incarceration, in community-based punishment, on probation, and on parole.

This picture will provide the Alabama Sentencing Commission and the Legislature with the ability to determine if Alabama's valuable and limited correctional resources are being best used to protect public safety.

The Second Step – Analyzing the Picture to Evaluate Current Policies and Practices and Develop Recommendations for Necessary Changes

The Commission will analyze the picture produced by the gathered information to determine whether, how, and to what extent current sentencing practices reflect the sentencing policies recognized and adopted by the Legislature. The picture will provide the Commission with the foundation on which to more accurately identify matters such as:

- ❑ Where and how sentences imposed can be made to bear a more certain relationship to actual time served;
- ❑ Where disparity exists and whether that disparity is warranted;
- ❑ Whether statutory sentencing policies are followed, *i.e.*, whether mandatory minimums and enhancements are consistently imposed;
- ❑ In which cases community-based punishment could be effective;
- ❑ How sentence enhancements, such as the Habitual Felony Offender Act, are used and their impact;
- ❑ The specific factors are used by judges to guide sentence decisions; and
- ❑ How to best distinguish between "violent" and "non-violent" offenders and test the impact of that definition.

The information will also be used to evaluate Alabama's sentence structure and develop recommendations for changes. The Commission can also use this information to evaluate the effectiveness of various correctional programs or policies.

The Third Step – Projecting the Impact of Proposed Changes in Policies and Practices –Building a Simulation Model

As the Sentencing Commission develops recommendations for changes in current sentencing policies and practices, the third step of the Commission's plan is to project the impact of those recommendations on the criminal justice system.

The Sentencing Commission will use the collected information to build a computer simulation (forecasting) model to project the impact any contemplated changes to present sentencing practices. This simulation model will be designed to predict how many offenders a suggested change will impact (by increasing or decreasing numbers) and the predicted cost of the suggested change. The model will also be used to evaluate the effectiveness of proposed criminal justice programs or polices.

Simulation models provide a reliable opportunity for evaluating legislation and programs and planning for the future. The models have proven to be invaluable planning tools in the states where they are used. One state, Kansas, has projected policy impact with a 98% accuracy rate.

When this foundation is firmly established and this process is followed, the Sentencing Commission can bring to the Legislature reliable recommendations for sentence reform in Alabama.

For the first time in the history of this State, proposed changes in sentencing policies will be supported by accurate data and Alabama will be able to project impact of the proposals on the entire criminal justice system. The sentencing simulation model will enable Alabama to appropriately plan to meet projected resource needs.

Overcoming Obstacles to Building a Sure Foundation

The Sentencing Commission encountered obstacles to its systematic and thorough review of sentencing policies and practices in Alabama. The Commission has overcome some of these obstacles, temporarily

overcome others, and needs legislative assistance to overcome those that remain.

The major obstacles are:

1. The lack of a single comprehensive or completely automated source of the information necessary to build the necessary database;

2. The lack of a reliable source of funding for building the necessary unified database and for the necessary personnel with the expertise to analyze the information gathered and to maintain the database; and

3. The statutory confidentiality of certain records containing specific information necessary for the Commission's review.

The First Obstacle – No Single Source of Comprehensive Information

Alabama has a number of excellent automated systems that gather information on crimes, offenders, and victim impact, but there is no single source of comprehensive information on criminal justice matters.

The Commission confirmed that four separate state agencies gather various pieces of the essential information. There is, however, no common identifier to connect information on individual offenders between agencies. Some of the information is automated but some of the most pertinent information is kept only on hard copy.

The agencies that have pieces of information are the

- ❑ Administrative Office of Courts,
- ❑ Alabama Department of Corrections,
- ❑ Alabama Criminal Justice Information Center, and
- ❑ Alabama Board of Pardons & Paroles.

What the Commission did to Overcome the First Obstacle

The Commission has

- ❑ Obtained automated data from three of the four agencies;
- ❑ Worked with the Board of Pardons and Parole to begin to automate essential data collected by that department in the future.
- ❑ Contracted with consultants experienced in sentencing reform to merge the information from the separate agencies.

The merger of available data from three of the four agencies is underway and is beginning to produce partial results.

Assistance Needed to Maintain the Database.

The ongoing work of the Commission requires an in-house staff person who can manage the computer program for merging the agency information produce reports for the Commission. This person will be a programmer/analyst/researcher who will replace the consultants and assist in building the simulation model.

The Second Obstacle – Confidentiality of Some Offender Records

Some regulatory and statutory confidentiality provisions have precluded some agencies from providing essential information to the Commission. These agencies are willing to provide offender and incident information to the Commission if confidentiality is maintained and clear legal authorization is given for the release of the information.

Assistance Needed to Overcome Confidentiality of Records

Specific legislation is needed to allow the Board of Pardons and Paroles, the Alabama Criminal Information System, and the

Administrative Office of Courts to release confidential offender based information to the Commission for general research purposes. The Commission is submitting legislation to authorize the release of all offender-based information to the Commission, allow the Commission to use the information for research and statistical analysis, and require the Commission to maintain the confidentiality of the information as to individual offenders.

The Third Obstacle – No Reliable Source of Annual Funding

The Alabama Sentencing Commission was created without funding.

Overcoming Lack of Funding

The Commission obtained temporary federal grants, matching funds from the Administrative Office of Courts, an interagency transfer of funds, and contingency funds provided by the Governor to fund its initial operation. In addition, a number of private entities, the Attorney General's office and other state and local agencies and officials have given thousands of hours of employee time to the work of the Commission. The Chief Justice and the Alabama Court of Criminal Appeals have provided office space for the Commission.

Grant funding was used to

- ❑ Hire an executive director and secretary;
- ❑ Purchase equipment;
- ❑ Pay expenses to identify the best process for reviewing and evaluating sentencing policies and practices;
- ❑ Adopt and begin to implement the plan for building a foundation on which sound policy decisions can be based;
- ❑ Hire experienced sentencing data consultants to merge information from the various agencies, beginning to build the reliable foundation through which sentencing policies can be assessed and sentence reform can be achieved.
- ❑ Employees of public and private agencies and institutions have assisted the Commission in identifying key information and the sources of the information necessary

to evaluate and improve Alabama's sentencing policies and practices. The process is not yet complete and a reliable funding source is necessary.

- ❑ Grant funding, interagency transfers, and contingency funds are no longer available to continue the effective and reliable process adopted by the Commission for reviewing and evaluating sentencing policies and practices and recommending improvements.

Assistance Needed to Fund the Commission's Work

The Commission must now appeal to the Legislature to provide a reliable source of funding through regular appropriations from the State General Fund.

Continued funding is needed to

- ❑ Retain the Commission's executive director and secretary to coordinate and record Commission Activities;
- ❑ Hire a researcher/analyst/programmer to continue merging separate agency information on offenders (including new offenders), maintain the information database, assist in developing and using a simulation model, and to project the impact of proposed changes;
- ❑ Develop or purchase software for the simulation model and to maintain and expand the model and the database as the needs of the state and the policymakers require.
- ❑ Fund the work of the Commission an appropriation of $377,000 is requested for FY 2003.

With this investment, the State obtains

- ❑ An accurate and reliable evaluation of existing sentencing policies and practices;
- ❑ the foundation for recommending changes; and

- the means of projecting the impact of proposed changes.

The Commission will make recommendations for changes in sentencing policies and practices that will be based on reliable information and specifically designed to accomplish the goals of sentencing in Alabama.

The Commission must also have statutory authority to assure that its budget can be included in the budget request for the Unified Judicial System. Legislation is submitted authorize the Commission to receive appropriations. Without this authority, the Commission was not included in the General Appropriations Act for fiscal year 2000-2001 or 2002-2003.

Addressing Specific Concerns

The Alabama Sentencing Commission is addressing the specific concerns raised by the Alabama Judicial Study Commission and recognized by the Legislature in establishing the Sentencing Commission. During the last fiscal year, six work groups investigated and researched major issues in sentencing reform.

Areas researched include

- Truth-in sentencing;
- Post incarceration release and supervision;
- The use of mandatory-minimum sentences and sentence enhancements (including the Habitual Felony Offender Act);
- Structured-sentencing;
- Community corrections, and
- Juvenile programs.

These work groups reviewed many aspects of sentence structure in Alabama and other states including

- Alabama laws affecting sentencing;

- ❑ Sentencing laws in other states;
- ❑ Community based punishment programs in Alabama;
- ❑ Alabama's use of drug courts;
- ❑ The use of other specialty courts such as re-entry courts and mental health courts;

Several work groups specifically considered the application of Alabama's "good time" laws, the Felony Offender Act, Alabama's parole laws and regulations, and Alabama's mandatory minimum and sentence enhancement provisions.

Many hours of research and study led to the same conclusions. While the Commission became more and more familiar with Alabama's complex sentencing laws and practices, this State does not have the means to accurately asses the status of the sentence structure, to evaluate programs, or to project the impact of proposed changes.

Therefore, although many ideas were discussed and considered, the Commission cannot at the present time make specific recommendations for positive and successful long-term sentencing policies and practices in this state.

Alabama must first build the firm foundation of reliable accurate data that can be used to assess, evaluate and plan the best sentence system for Alabama. Meaningful and successful reform must be founded on a reliable database of offender and offense demographics that can be used to examine and project the impact of specific reform provisions.

Conclusion

A long-term plan for sentence reform will only be as solid as its foundation. The Commission is moving decisively toward building that foundation. From that foundation, the Sentencing Commission can make reliable, factually supportable recommendations to the Legislature. These recommendations will include a statement of the expected impact of each provision on the criminal justice system.

The Sentencing Commission asks the Legislature to

- ❑ Amend the Sentencing Commission Act to authorize the Commission to obtain essential offender and offense-based information from agencies otherwise required to maintain confidentiality;

- ❑ Amend the Sentencing Commission Act to allow the Commission not only to request but also to receive direct appropriations from the Legislature;

- ❑ Appropriate $377,000 for FY 2003 as a sufficient amount to continue its present staff, hire a research analyst programmer, purchase or develop a simulation model, and continue its research;

- ❑ Extend the time for the completion of the Commission's review of Alabama's sentence structure and recommend changes until the 2003 Regular Session of the Alabama Legislature.

The Commission will submit the completed results of its on-going research and make specific recommendations to address sentencing needs in Alabama to the Legislature at its 2003 Regular Session.

INITIAL REPORT

ALABAMA SENTENCING COMMISSION

Paramount to any Reform is the Protection of the Public.

The Commission's Major Concerns Are To Enhance Public Safety, Guard Against the Premature Release of Dangerous Criminals and Restore the Public's Confidence in Alabama's Criminal Justice System.

Protection of the public is the primary objective of sentencing reform. The statutory goals of resolving prison and jail overcrowding, achieving truth-in-sentencing, eliminating unwarranted sentencing disparity, establishing a wider array of sentencing options and promoting the rehabilitation of offenders will be accomplished only by ensuring that this basic principle is the foundation for reform.

A decade ago, as a result of several civil rights suits involving unconstitutional conditions in Alabama prisons, a federal court order required the release of prisoners to resolve the prison-overcrowding problem that existed at that time. Little regard, if any, was given to the risk such wholesale release would pose to the general public. The Sentencing Commission is committed to ensuring that its recommendations for sentencing reform in Alabama do not adopt a similar shortsighted approach, focusing only on the immediate concerns of the day. The Commission's recommendations must provide long term solutions that allow for planning for adequate bed space and sufficient reliable alternatives to incarceration designed to allow the best use of Alabama's limited resources to secure public safety.

RATIONAL REFORM REQUIRES A COMPREHENSIVE REVIEW OF ALABAMA'S ENTIRE CRIMINAL JUSTICE SYSTEM AND AN IN DEPTH ANALYSIS OF CHANGES THAT HAVE BEEN EFFECTIVE IN OTHER STATES

Rational recommendations for reform must take into consideration all aspects of the criminal justice system. Proposals to modify our existing system must be justified by accurate and factual data and future

implications of any proposed change should be predictable. The Sentencing Commission has, therefore, adopted a cautious and considered, rather than a piecemeal, approach to achieve its statutory mandates. The experience of other states that have hastily adopted partial reform measures dictates that sentence reform in Alabama must be based on thorough, systematic review of sentencing practices, the effect of those practices and the projected impact and effectiveness of any proposed changes. The Commission cannot, therefore, propose changes to some parts of Alabama sentencing practices without considering the impact of those changes on other aspects of the system. Following this approach, the Commission will develop a comprehensive reform package grounded on complete and accurate data. As a long term solution, this approach is reasonable and preferable to a "quick fix" that could pose a greater danger to the public, exacerbating existing problems or create new ones.

A Permanent Solution Can Not Be Attained by "Quick Fix" Measures

A well thought-out plan for reform is sensible and justified. There have been no major changes to our present sentencing practices and criminal justice system in over a decade, despite recommendations from various commissions and committees. Well thought out comprehensive reform requires time and resources. The Sentencing Commission with staff has been organized for less than a year. This timeframe has proven insufficient to assimilate the data on which reform must be grounded, analyze that data and make informed recommendations to the Legislature for specific reform proposals.

RELIABLE DATA IS ESSENTIAL TO SENTENCING REFORM

The Commission has also lacked the resources to complete the data assimilation and analysis necessary for developing reliable reform recommendations. With additional resources as recommended in this report, the Commission will complete its comprehensive review of our state's sentencing policies and practices and develop a comprehensive reform package for Alabama.

ADEQUATE AND ACCURATE SENTENCING INFORMATION ON OFFENDERS IN ALABAMA IS ESSENTIAL FOR A THOROUGH ANALYSIS OF CURRENT AND FUTURE PRACTICES AND PROCEDURES

Every state that has adopted successful sentence reform has based its reform recommendations on a reliable accurate database that developed a true picture of its existing sentencing system and from which the impact of proposed changes could be measured. Simulation models were developed from these databases and used to project the impact of proposed changes to sentencing practices and requirements.

Alabama has never developed an accurate comprehensive database that records and maintains complete information on crimes and offender demographics with complete sentence information on each offender. Data is available through the assimilation of information from various state agency data systems to obtain complete criminal histories of offenders, complete sentence information showing actual time served and time on supervised release, as well as offense and offender demographics. Parts of this information exist in four separate state agencies databases that were developed to meet the needs of each individual agency, rather than for the study and evaluation of sentencing practices and trends. The Administrative Office of Courts (AOC) maintains its database for case management planning purposes. The Department of Corrections (DOC) maintains its database for inmate population location, planning, and classification purposes. The Board of Pardons and Paroles (P&P) maintains its automated database to track parole eligibility and parole and probationary status. Pardons and Paroles also maintains pre-sentence reports as hard copy files on most convicted offenders showing offender and offense demographics. These pre-sentence reports, which contain much of the most useful information, are not presently available to the Commission because of statutory confidentiality concerns. The Alabama's Criminal Justice Information System (CJIS), maintains its database to track arrest status, frequency, and disposition in Alabama.

There is no unique identifier common to all the data sources. Each agency tracks data with a different identification number. AOC's data is based on court case numbers. DOC's data is offender-based; however, DOC assigns its own number, the AIS number, to each individual inmate. P&P, like DOC, assigns its own identification number to each offender. Similarly, CJIS assigns its own number, the "State Identification Number" (SID), to each arrestee. None of the agencies consistently relate offenders to the identification numbers assigned by the other agencies.

No agency maintains the complete data set of information necessary to form a comprehensive picture of criminal sentencing practices in Alabama. Recognizing this deficiency, it became apparent to the Commission that the separate databases are not easily susceptible to merger, not only because of the lack of a unique identifier, but because of varying orientations and the utilization of different terminologies.

The Sentencing Commission has taken the first step to address this deficiency and is now in the process of developing a complete offender database that will enable the Commission to accurately identify jail and prison populations, sentencing disparities among like offenders, how much time is actually served on each sentence, and the impact of legislative enactments on sentencing practices and prison populations.

THE PATH TO REFORM

AN INTEGRATED COMPREHENSIVE STATEWIDE SENTENCING DATABASE AND RESEARCH ANALYSIS CAPACITY IS BEING DEVELOPED

To achieve the goals mandated by the Legislature, it is critical for the Commission to develop an integrated comprehensive statewide database with the ability to capture detailed personal and criminal history information about offenders, as well as detailed information regarding the crime(s) charged, the crime(s) at conviction, the length and type of sentence imposed, and whether the defendant is a first or repeat offender or has been sentenced under the various mandatory and enhanced punishment statutes.

Using a statewide sentencing database, the Sentencing Commission will be able to accurately determine:

- the specific type of offenders that are now incarcerated (personal injury, property, drug offenders);
- which ones are first time offenders, multiple or habitual offenders;
- how the Habitual Felony Offender Act is applied;
- how mandatory minimum sentences and statutory enhancements are applied; and
- which offenders have been returned due to revocations of probation or parole.

An integrated database with comprehensive information will also provide a reliable picture of the current sentencing practices according to counties and circuits, reflecting geographic distribution (urban vs. rural), demographic and personal characteristics of felony offenders, and the most common offenses being punished. The integrated database will also enable the Sentencing Commission to extract essential information for a forecasting (simulation) model

that will be utilized to project future prison needs and costs and evaluate the effectiveness of existing and proposed programs.

A Comprehensive Database Consisting of a 3-Year Cohort of Felony Offenders is Now Being Developed.

The Commission has taken steps to integrate existing databases. On July 12, 2001, The Alabama Sentencing Commission entered into a 10-month contract with Applied Research Services, Inc., (ARS), to provide a program for merging the available databases. ARS is a research, planning and statistical analysis firm specializing in criminal justice matters.

Applied Research Services is developing a comprehensive database by merging databases of the courts (the Administrative Office of Courts), corrections (Department of Corrections), probation and parole (Board of Pardons and Paroles) and the Criminal Justice Information System (CJIS), utilizing a 3-year cohort of convicted adult felony offenders and inmates. The necessary data mining techniques employed to convert AOC's data on case filings (an offense-based system), to an offender-based system and to track down key identifiers for members of the cohort are complicated by the fact that there is no unique identifier common to all four databases.

Once completed, the database will be used by the Sentencing Commission for all research activities and result in the baseline data required for future simulation model development. This database will provide a snapshot of Alabama's felony offenders from which accurate information can be obtained in regard to Alabama's current sentencing practices. Applied Research Services, Inc., will also provide the Commission with guidance on up-dating the database for future needs.

Assisting Applied Research Services with this project, the Commission, through its subcommittees and staff, have:

- identified primary data variables that should be included in the database;
- cross-checked and updated the criminal offenses, code sections and classifications contained in AOC's database;
- completed a preliminary list of offense-seriousness ranking;
- obtained several program runs to cross-check information on enhanced sentences and convictions for specific offenses; and
- identified data entry deficiencies that have resulted in the failure to capture essential information.

THE CAPACITY TO ACCURATELY PREDICT JAIL AND PRISON POPULATION AND CONTROL FUTURE GROWTH ARE ESSENTIAL COMPONENTS OF SENTENCING REFORM.

Managing the prison population is a constant challenge in the State of Alabama, where the inmate population has been increasing steadily over the past 25 years. Reliable sentencing reform requires the ability to predict future prison populations and the effect that proposed criminal legislation will have on existing resources – a capability Alabama now lacks. Alabama has enacted legislation that appeared to be "tough on crime," or correct disparities without the ability to project the impact of those laws or to determine if the laws really accomplished their intended purpose. As an example, one such law is the Habitual Felony Offender Act, cited as among the toughest habitual felony offender laws in the nation.[1]

THE COMMISSION WILL BE ABLE TO PROVIDE THE LEGISLATURE WITH RELIABLE IMPACT STATEMENTS ON CRIME BILLS

In addition to serving as a clearinghouse for the collection, preparation and dissemination of information on sentencing practices, the Alabama Sentencing Commission has been given the statutory mandate to make recommendations to the Governor, Legislature, Attorney General and the Judicial Study Commission concerning the enactment of laws relating to criminal offenses, sentencing, and correctional or probation matters. In its report outlining strategies to reduce the overcrowding problem in county jails and prisons, the

[1] Mobile Press Register, June 28, 2001.

Governor's Jail and Prison Overcrowding Task Force recognized that a major part of the work of the Commission was developing "the capability to more accurately predict the impact of new laws on the state's corrections system. This capacity is essential if Alabama is to improve resource planning and management and avert further prison crises. In this regard, the Task Force noted that its recommendation to open 2,000 new prison beds within the next five to six years *would depend on data collected by the Sentencing Commission*, suggesting that the Commission be charged with issuing a follow-up report before the 2003 Legislative session on the number of additional beds needed.

The Commission Must Have Statistical Analysis Capability and A Forecasting Model to Achieve Its Goals

To accomplish these mandates, the Sentencing Commission must acquire statistical analysis capability and develop a forecasting model to identify optimal sentencing policies and the rational allocation of correctional resources. With impact assessments developed from computer simulations, legislators and other policymakers will be provided with probable outcomes when considering laws providing for mandatory minimum and enhanced punishment, truth-in-sentencing legislation and the implementation of sanctions that provide alternatives to incarceration.

DEVELOPMENT OF THE COMPREHENSIVE OFFENDER DATABASE DEPENDS ON THE SENTENCING COMMISSION OBTAINING OFFENDER INFORMATION FROM OTHER DEPARTMENTS AND AGENCIES

Completion of the comprehensive database has been delayed because essential information maintained by the Board of Pardons and Paroles is considered confidential. Although the Board has provided invaluable support and assistance throughout the year and wants to cooperate with the Sentencing Commission, the Board must have express statutory authority to release confidential information to the Sentencing Commission. This confidential data and information possessed by the Board of Pardons and Paroles, as well as the Alabama Criminal Justice Information System

and the Administrative Office of Courts, is essential and must be obtained for statistical research purposes.

Legislation is needed to make this information accessible to the Commission and to specifically ensure that once this confidential information is provided for data compilation and analysis purposes, it will remain confidential and not be subject to public disclosure. The Sentencing Commission recommends the adoption of legislation amending section 12-25-11 to expressly authorize release of this information to the Commission for data purposes only. *See Appendix A.*

RECOMMENDATION #1

Enact Legislation Expressly Authorizing the Release of Information to the Sentencing Commission by the Board of Pardons and Paroles, the Alabama Criminal Justice Information Center and the Administrative Office of Courts.

TO ACCOMPLISH LEGISLATIVE MANDATES AND GOALS, ADEQUATE RESOURCES MUST BE PROVIDED TO THE SENTENCING COMMISSION

The Alabama Sentencing Commission was created as a new state agency in June, 2000, but was not funded by the State. Utilizing federal grants obtained by the Administrative Office of Courts, matching funds from the Administrative Office of Courts (AOC), staff from AOC and the Attorney General's Office, and assistance provided by the Vera Institute of Justice, the Commission was able to function through the remainder of the fiscal year. Thus far, the Commission has been unsuccessful in obtaining funding from the State General Fund, although appropriation bills were introduced during the last general session and three of the special sessions. The Commission was able to continue to operate during the first quarter of this fiscal year because Governor Siegelman provided funding sufficient to cover the two employees' salaries and basic travel expenses for commission members for FY 2002. On December 26, 2001, the Commission was notified of the award of a federal grant for $100,000. This award, along with an interagency transfer of funds will ensure the Commission's continued existence through October 2002.

The Alabama Sentencing Commission Was Created As An Unfunded State Agency

The Sentencing Commission must have sufficient resources to continue its work, a major component of which includes obtaining the means to obtain adequate and accurate data. With sufficient resources, the Commission would be able to develop its own database, collect data on a continuous basis, and analyze the data to provide policymakers with accurate and reliable information on which they can base their decisions. Essential needs of the Commission that have been identified include:

- Staff with necessary analytical/statistical background (including training).Support staff.
- Adequate computer capacity and software that would include the acquisition of an appropriate forecasting model.
- Development of forecasting ability.

Using projections, the Sentencing Commission could determine the state's future needs for prison space and substance abuse beds, determine the number and type of community corrections programs needed, and would have the ability to systematically predict hiring needs in order to maintain appropriate officer-to probationer/parolee and officer-to-inmate ratios. The Legislature, Governor and state officials would have essential information for long-term fiscal planning, i.e., the ability to plan for prison construction and other resource allocation, via the Commission's capability to project the impact of proposed legislation on prison and jail population, to identify the source of jail and prison population growth, and to project prison population by custody classification level.

Future Goals

After a comprehensive database is established for adult felony offenders and a forecasting model is operative, the Commission plans to pursue the following objectives:

- Development of a comprehensive statewide database for juveniles and youthful offenders.
- Development of a separate supervised-release/ probation and parole revocation database.
- Development of a community corrections database, with the capability of determining rates of recidivism.

THE SENTENCING COMMISSION CONSIDERS PROTECTION OF THE PUBLIC TO BE ITS PRIMARY OBJECTIVE.

RECOMMENDATION #2

Provide Funding from the State General Fund to Enable the Alabama Sentencing Commission To Fulfill its Statutory Duties

THE PUBLIC MUST HAVE CONFIDENCE IN ALABAMA'S CRIMINAL JUSTICE SYSTEM

Public confidence in the criminal justice system is eroded where, prison sentences served do not bear a consistent relationship to sentences imposed. The prison sentence imposed by the trial judge is too frequently reduced by the application of "good time" credits and discretionary parole release procedures. Under Alabama's current system, the court's pronounced sentence becomes a fiction, and the time a prisoner ultimately serves often bears no resemblance to the sentence imposed. Judicial decisions are modified by procedures that have been established and operate beyond the court's control.

Without Truth There Can Be No Justice

Alabama Must Have A Fair, Certain, and Efficient Criminal Sentencing System

Truth-In-Sentencing

"Truth-in-sentencing" refers to a system designed to ensure that the amount of time an offender actually serves in prison bears a consistent relationship to the sentence imposed by the judge. In other words, at the time the sentence is imposed, all parties, including the trial judge, the offender, the prosecutor and the victim, know the length of the sentence, how the sentence will be served, and, if the offender is incarcerated, the expected minimum release date.

Under a sentencing system that incorporates truth-in-sentencing as one of its policies, the minimum release date is known in advance. This is one of the major objectives the Commission is working to achieve in Alabama.

Alabama has a confusing combination of discretionary parole grants and "good time" credits. This system creates an atmosphere of uncertainty and possibly contributes to sentence disparities, as judges and prosecutors attempt to determine the sentence that should be given to achieve roughly the amount of incarceration deemed appropriate.

True sentencing reform and truth-in-sentencing can only be achieved in Alabama if our laws providing for "good time" and the procedures established for parole eligibility are reviewed and their impact carefully evaluated. Reforms that include only the adoption of truth-in-sentencing laws without any other changes have resulted greater and unplanned increases in prison population, the necessity for subsequent corrective measures, and the failure of the new law to accomplish its purpose. "Good time" and parole policies must, therefore, be addressed along with the need for a more structured sentencing system.

States that adopted Truth-In-Sentencing without making any other changes noticed an increase in their prison population.

"Good Time" Law Reform

If Good Time is To Be Retained, A Simplified and Understandable Formula Should Be Adopted

In Alabama "good time" credits are automatically calculated and granted upon entry into the prison system. It is the consensus of the Commission that truth-in-sentencing reform can only be recommended after calculating the data to evaluate its effect on the entire criminal justice system.

"Only Leonardo DeVinci, Sir Isaac Newton, Albert Einstein and Mrs. Betty Teague of the Department of Corrections can calculate an inmates' release date under our present 'good time' laws and regulations."
- Judge Ben McLauchlin

Under Alabama's current system, the amount of credit an inmate is granted varies depending on such factors as which "good time" law applies, the applicable earning class, disciplinary action taken, the type of sentence received, the crime or crimes of conviction, and whether multiple terms are being served concurrently or consecutively. The current system is a complicated four-level structure, making it difficult to reliably calculate an inmate's release date or actual time he will be incarcerated. The time an offender will actually serve is further obscured because juxtaposed on "good time" credit, which has now become an entitlement and in no sense "earned," are calculations to determine the eligibility release date under Alabama's discretionary parole procedures.

In addition to the criticisms raised about the system's mathematical complexity and its deceptive effect on the victims and public who have mistakenly relied on the sentence imposed by the judge, Alabama's "good time" system has also been criticized for being too lenient. Under the current system the average inmate is given 243 days credit for every 365 days served (a total of 608 days per year).

- Correctional Incentive Time (CIT), §§ 14-9-40, et seq., applies to inmates who committed crimes on or after May 19, 1980.
- Inmates who committed crimes prior to May 19, 1980, fall under the old good conduct time system known as "Statutory Good Time" (SGT).
- Incentive Good Time (IGT) is an additional one-for-one (maximum by statute is 2 days for each day served) reduction in sentence authorized for *inmates serving SGT* who exhibit exceptional behavior and are approve by the proper authorities.

SENTENCE SERVED APPLYING CORRECTIONAL INCENTIVE TIME
Automatic Elevation – No Jail Credit

Sentence	Year	Month	Day
1 Year	---	6	18
2 Years	---	11	5
3 Years	1	2	18
4 Years	1	6	---
5 Years	1	9	13
6 Years	2	---	26
7 Years	2	4	9
8 Years	2	7	22
9 Years	2	11	5
10 Years § 14-9-41(e)	3	2	18
11 Years	3	6	---
12 Years	3	9	13
13 Years	3	11	28
14 Years	4	4	9
15 Years	4	7	22
16 Years (Consecutive)	4	11	5
17 Years (Consecutive)	5	2	18
18 Years (Consecutive)	5	6	---
19 Years (Consecutive)	5	9	13
20 Years (Consecutive)	6	---	26
25 Years (Consecutive)	7	6	---
30 Years (Consecutive)	8	11	5
40 Years (Consecutive)	11	9	13
50 Years (Consecutive)	14	7	22

- A defendant (not convicted of a Class A felony) who is sentenced to 15 years can actually serve 4 years, 7 months and 22 days and be released at the end of sentence with no supervision.
- A defendant sentenced to 10 years imprisonment will be released in 3 years, 2 months and 18 days.
- Earlier release dates apply if parole is granted.

Good Conduct Credit – Correctional Incentive Time

		Minimum Time in Each Class
Class IV	- No Credit	30 days
Class III	- 20 days for every 30 served	90 days
Class II	- 40 days for every 30 served	180 days
Class I *	- 75 days for every 30 served	Remainder of Sentence

*Inmate convicted of an assault where the victim suffered the permanent loss or use or permanent partial loss or use of any bodily organ or appendage or convicted of sexual abuse of a child under the age of 17 cannot be place in Class I.

Offenders Not Entitled To "Good Time" Credit

- Inmates convicted of a Class A felony or sentenced to life death, or those receiving a sentence of more than 15 years at hard labor.
- Inmates serving a split sentence.
- Defendants on probation
- Defendants sentenced under mandatory enhancement statutes - sentences of 15 years or more).

§ 14-9-41, *Code of Alabama* 1975.

"Good Time" *Credit* Is Misleading
Alabama's Current "Good Time" System Is Simply A Euphemism For Routine Release.

Recognizing the deficiencies of Alabama's "good time" laws, the Truth-In-Sentencing subcommittee reviewed reform systems adopted by other states. The various possibilities for improvement considered including the complete elimination of "good time"; the adoption of a system of *earned* "good time" credits based on meritorious conduct; the implementation of a "bad time" plan in which an inmate would have extra time added to his sentence; and modification of the existing system.

Acknowledging the importance of developing a total sentencing package before recommending a complete restructuring of our current "good time" and the significant impact it would have on the entire system, the Commission has determined that any recommendations in this area must await decision on the other sentencing reforms measures adopted.

It is crucial to ascertain the impact on prison and jail populations of any change that is made; however, an accurate impact assessment invariably requires a review of the total reform package and cannot be realistically ascertained from one component. The Commission's proposal regarding "good time" will, therefore, depend on the comprehensive system adopted.

Task for 2002

The Commission will continue its evaluation of current sentencing practices and the effectiveness of our current "good time" laws and, following receipt of accurate sentencing data on all felony offenders, conduct a comprehensive analysis to determine whether and to what extent our "good time" practices and procedures should be modified.

PAROLE REFORM

The Commission is reviewing Alabama's parole practices and procedures as part of its thorough examination of criminal sentencing. Under Alabama's parole system, the release of an offender is based on the decision of a three-member board appointed by the Governor. The Board has broad discretionary authority.

For most inmates not receiving "good time," the parole consideration date is set at 1/3 of the sentence or 10 years,

whichever is less, and parole can be granted by a majority vote of the Board. By unanimous vote, the Board can set the consideration date earlier and, taking into account the time required for investigations and notices to be completed, it is conceivable that someone could be paroled six weeks after being sentenced.

THE CASELOADS OF ALABAMA'S PROBATION AND PAROLE OFFICERS ARE AMONG THE HIGHEST IN THE NATION.

The Parole Board recently amended its procedures to require certain serious offenders to serve 85% or 15 years, whichever is less, before being eligible for parole consideration. Realistically this sets the parole consideration date for most of these offenders at 15 years since the sentences imposed will be 18 years or more. The Sentencing Commission has reviewed the rules and procedures of the Parole Board and is considering whether more comprehensive changes should be recommended.

After a critical analysis of Alabama's probation and parole system, the Commission is in the process of identifying the specific needs for additional supervision personnel and will make recommendations accordingly. Alabama probation and parole officers currently have caseloads averaging 176 offenders - more than double the federal inmate-to-officer ration of 75:1 and three and a half times the 50:1 inmate-to-officer ratio that exists in Florida. Not only does our state have one of the nation's highest inmate-to-officer ratios, in addition to their supervisory functions over both probationers and parolees, the officers conduct all pre-sentence investigations for the trial courts and investigations for the Board of Pardons and Parole.

The need for additional probation and parole officers and more intensive supervision is apparent.

The Sentencing Commission Addresses Parole Reform

As a part of the effort to achieve truth-in-sentencing, states have taken different approaches to parole reform. Some states have abolished parole completely. These states still include some form of post-release supervision. Other states have reorganized and restructured their existing system, requiring offenders to serve a certain percentage of their sentence prior to being eligible for parole or mandating that some portion of an offender's sentence be served on supervised release.

There is a current national emphasis for providing post-incarceration

supervision, based on the belief that such supervision is essential to enable offenders released from prison to effectively reintegrate into society. The Commission is now evaluating the effect of post-incarceration supervision to determine if this is feasible alternative for Alabama. The Commission is continuing to review, and will use the data collected to evaluate, methods of reintegrating released inmates into society.

Many reforms adopted by other states include a mandatory term of supervised post-incarceration release for all offenders as a part of the sentence imposed. An important aspect of these sentencing models is that some form of post-incarceration supervision is provided for all felony offenders, not just those that are granted parole, and supervised release is mandatory. These laws were adopted based, in part, on the recognition that offenders leaving prison should be placed in some type of supervised reentry program. In Alabama, the vast majority of inmates (approximately 95%) return to the community after serving their sentence (referred to as "end of sentence" or "EOS") with no supervision or reentry plan in place.

They Will Come Back!!!

Key issues identified by the Commission in its review of these types of truth-in-sentencing laws that will require further study include:

- the type of release;
- degree of supervision;
- the term of incarceration and supervision;
- how the term of supervision is determined;
- who determines the release date;
- what are the conditions of release;
- sanctions for violations of release conditions; and

- scope of the sentencing judge's authority in regard to releases and revocations.

Task for 2002

The Sentencing Commission will continue to examine truth-in-sentencing issues. When data is available to allow an accurate impact assessment of changes to our "good time" laws and parole procedures, the Commission will be able to present its recommendations to the Legislature.

SENTENCING STRUCTURES

Alabama's Existing Sentencing Structure

For over twenty years, Alabama has operated under a determinate sentencing system, (made indeterminate by our parole procedures and "good time" laws), consisting of three broad classifications that provide wide punishment ranges for felony offenders. Under the current classification system, a Class C felon can receive a minimum sentence of imprisonment of one year and a day up to a maximum of 10 years. A minimum prison sentence of two years and maximum of 20 years is provided for the commission of a Class B felony. Class A felons convicted of noncapital offenses are subject to a 10 year minimum term of imprisonment up to a maximum sentence of 99 years or life imprisonment. Variations in the length and type of sentences depend, in part, on whether part of the prison sentence imposed is suspended pursuant to the split sentence statute, probation is granted, statutorily mandated minimum terms of imprisonment or sentence enhancements apply or the Habitual Felony Offender Act is applicable.

SENTENCES FOR FELONS – NO PRIORS

§§ 13A-5-6, *Code of Alabama* 1975

Class A Felony	**Not less than 10 years and not more than ninety-nine (99) years imprisonment or life imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed $20,000.**
Class B Felony	**Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary including hard labor and may include a fine not to exceed $10,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor for the county.**
Class C Felony	**Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed $5,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor for the county.**

SENTENCE ENHANCEMENTS UNDER ALABAMA'S HABITUAL FELONY OFFENDER LAW

§13A-5-9, *Code of Alabama* 1975

Prior Felonies ➤ **This Offense ▼**	**NO Prior Felonies**	**One Prior Felony**	**Two Prior Felonies**	**Three + Prior Felonies**
Class A Felony (No prior conviction for a Class A Felony)	10-99 Years or Life in State Penitentiary Fine up to $20,000	15-99 Years or Life in State Penitentiary (Fine up to $20,000)	Life Imprison-ment or Any Term of Years Not Less than 99 Years (Fine up to $20,000)	Mandatory Imprisonment for Life or Life Imprisonment Without Possibility of Parole (Fine up to $20,000)
Class A Felony (One or more prior convictions for any Class A Felony)	10-99 Years or Life in Penitentiary Fine up to $20,000	15-99 Years or Life in Penitentiary (Fine up to $20,000)	Life Imprison-ment or Any Term of Years Not Less than 99 Years (Fine up to $20,000)	Mandatory Imprisonment For Life Without Possibility of Parole (Fine Up to $20,000)
Class B Felony	2-20 Years In Penitentiary Fine up to $10,000	10-99 Years or Life In Penitentiary Fine up to $20,000	15-99 Years or Life In Penitentiary (Fine up to $20,000)	Minimum of not less than 20 years or Life Imprisonment (Fine up to $20,000)
Class C Felony	1 Year & 1 day-10 Years Fine Up to $5,000	2-20 Years In Penitentiary Fine up to $10,000	10-99 Years or Life Fine up to $20,000	15-99 Years or Life In State Penitentiary (Fine up to $20,000)

Periodically the Legislature has enacted statutes mandating the imposition of minimum and enhanced sentences for certain types of crimes, such as the Habitual Felony Offender Act, the firearm enhancement statute, and various statutes applicable to sex offenders, drug possession, sales, and drug trafficking. *See Appendix B* These laws, enacted in an effort to address public safety concerns and serve as a deterrent to crime, have not always been uniformly applied or achieved their intended results, primarily due to their broad application, with no allowance for sentence deviation based on mitigating circumstances. Sentencing discretion, originally vested in the trial judge, has merely shifted to the district attorney who, recognizing the injustice in applying the enhancements to a particular case, offers a plea agreement and reduces the charged offense. From reports provided to the Commission, supported by initial data collected on charged offenses and sentencing patterns, this practice appears to occur particularly in regard to application of the five-year enhancement statutes for the sale of drugs within three miles of a school or housing project.

The Commission is in the process of reviewing sentencing disparity of offenders convicted for the same offense. Data has been obtained from the Department of Corrections but only includes prisoners actually incarcerated. Although the initial results revealed extreme sentencing variations between some circuits, it is premature to rely on the accuracy of the data until the Commission can verify its reliability by cross checking with combined databases from the Administrative Office of Courts, the Board of Pardons and Paroles and the Criminal Justice Information System and reviewing each offender's criminal history.

SENTENCE DISPARITY IN ALABAMA

The issue of sentencing disparity is generally examined in two ways – dispositional disparity

(differences in the proportion of people sentenced to prison as compared to those placed on probation or punished by alternatives to incarceration) and durational disparity (differences in the length of prison sentences). Alabama's sentencing practices are being tested for both types of disparity, although emphasis has been placed on durational disparity during the initial phases of our study.

Based on the public's perception of unwarranted disparity and the results of our initial study, the Sentencing Commission believes that a thorough evaluation of Alabama's Criminal Code is warranted at this time to review provisions for certain crimes that seem to lend themselves to disparate treatment. It has been suggested that if unwarranted disparity is found to exist, the Commission should consider increasing or sub-dividing the classifications of offenses to narrow the sentence ranges for each classification or sub-division and amending the definition of certain crimes to narrow the elements for those offenses.

A critical analysis will be undertaken of the current mandatory minimum and enhanced punishment statutes to determine if they should be revised to more accurately achieve their intended results. To effectively evaluate the issues, however, the Sentencing Commission must continue to pursue the development of a comprehensive and accurate database of convicted offenders.

Mandatory Minimum and Enhanced Punishment Statutes

Over the last year, the Mandatory Minimum and Enhanced Punishment subcommittee conducted an extensive review of Alabama's sentence enhancement statutes. The subcommittee also reviewed data provided by the Department of Corrections on the number of inmates serving split sentences and those sentenced under the minimum mandatory statutes for trafficking, possession of a firearm during the commission of a trafficking offense, the five year enhancement statutes for sales of controlled substances within three miles of a school or housing project and those sentenced pursuant to the Habitual Felony Offender Act. The reliability of the data was questioned because some

Complete and accurate data is essential to determine the impact mandatory minimum and enhanced punishment statutes have on the sentencing practices and prison population in Alabama.

of the figures were lower than would be expected and only reflected those defendants who were actually sentenced to the penitentiary and are presently serving. The subcommittee determined that accurate data was needed to give a true picture of the sentencing practices in the state, reflecting not only the present prison population, but also those that have been released or sentenced to probation and never served a prison sentence.

Among the proposals presented to the Commission in regard to existing mandatory minimum and enhanced punishment statutes, was amendment of the 3-mile radius drug sale statutes. These statutes have recently been criticized for the broad scope of their provisions, which sweep wider than the range of the targeted group of offenders they were enacted to include, (defendants selling drugs to school children and residents of housing projects). Objections have been raised that the laws encourage disparities in the sentences imposed on like-offenders with similar criminal histories based strictly on rural and urban distinctions, because the banned strike zones encompassed virtually every area of some cities. A common complaint is that these laws are not being uniformly applied across the state. It was noted that the law was not being consistently applied when, due to the harsh penalty provisions that were unwarranted in certain cases, prosecutors would offer plea bargains and reduce the charged offense or would fail to offer proof that the sale occurred within the prohibited zone

The future impact of these statutes and the continued existence of many of Alabama's enhancement statutes are now being questioned in light of the recent opinion of *Soles v. State*, 2001 WL 1148130 (Ala.Crim.App. 9/28/01). In *Soles*, the Court of Criminal Appeals held that Alabama's split sentencing statute (§ 15-18-8), as last amended, allows a trial court to suspend a sentence imposed, avoiding application of the five year enhancement statutes for person's convicted of the unlawful sale of a controlled substance within three miles of a school or public housing project. Although the *Soles* case only involved enhancements pursuant to

the 3-mile radius statutes, applying the same rationale to other enhancement statutes (firearm enhancement, domestic violence, hate crimes, DUI, enticing a child to enter a vehicle, house, etc., and drug trafficking), would apparently lead to the same conclusion because the amendment of the split sentencing statute was the latest expression of the Legislature on the subject.

It is too early to determine what impact, if any, the *Soles* opinion will have on sentencing practices in the state. It is the Commission's opinion that, in the exercise of their judicial discretion, judges will analyze aggravating and mitigating factors on a case-by-case basis and apply these in a reasonable manner, reducing the need for prosecutorial charge bargaining that is inherent in a system with enhanced and minimum penalties statutorily mandated and applicable to all defendants convicted of certain crimes, without consideration being given to the particular circumstances of the case.

As previously noted, the Commission must await the completion of its research database before a recommendation can be made as to the sentencing structure Alabama should adopt. The determination of whether the current mandatory and enhanced sentencing statutes should be amended or incorporated into a sentencing structure as aggravating factors also depends on accurate data, the structure that is adopted, and legislative action that may be taken in reaction to the *Soles* opinion.

Structured Sentencing

What is Structured Sentencing?

Structured sentencing is the term used to describe a variety of sentencing formats in which recommended determinate sentences are designed to meet stated sentencing policies. Generally the structures are designed by classifying felony sentences according to seriousness levels of the offense, the offender's prior record, the availability of sentencing alternatives and concerns for community safety. In many structures the sentence recommendations include not only a recommended term of sentence, but also, the type of

punishment or dispositional alternative, i.e. probation, community punishment, or incarceration. The sentencing authority decides the sentence based on these recommendations. In these systems, lengthy incarceration is reserved for the most serious offenses and offenders.

While both judicial and prosecutorial discretion may be more limited in many structured systems, some discretion is maintained within the sentence ranges recommended and through allowance for departures from the recommended sentence. The sentencing authority can depart from the recommended range, entering a higher or lower sentence, stating reasons for the departure.

Structured sentence systems may be voluntary, presumptive or mandatory - terms used to describe the degree to which the sentencing authority is bound to follow the recommended sentences. Voluntary sentencing structures, such as the system implemented in Virginia, are advisory only. State presumptive or mandatory sentencing systems, while establishing sentencing ranges, do make allowance for departures. Presumptive sentence structures are not completely devoid of an element of discretion, although the discretion is more limited than presently exists in Alabama.

The application of a structured sentence format may be either simple or complex. In the more simply applied formats, a limited number of criteria are used to arrive at sentencing decisions and reasons for departures from recommended sentences may be briefly stated. These systems involve very little paperwork and do not require written formal orders when the sentencing authority states reasons for departure from the recommended sentence. The most complex application is also one of the most structured and mandatory, the federal system. *That system is not recommended as a model for Alabama.*

At the outset, the Commission decided that the federal system of mandatory sentencing guidelines would not be used as a model for Alabama. The federal system has been criticized by many participants in both the state and federal criminal justice systems as not meeting the types of goals and objectives outlined for Alabama by the Judicial Study Commission or the Alabama Legislature. Many

participants including judges, prosecutors, defense attorneys and corrections officials continue to criticize the system, most often for its lack of flexibility and judicial discretion.

Unlike the frequently criticized system implemented in the federal courts, both presumptive and voluntary structured sentencing systems have been successfully implemented in states where the sentence standards have been carefully developed to reflect the state's sentencing policies. The design of these successful systems began with a clear picture of this state's sentenced population. Alabama is still developing this picture. With accurate data, during 2002, the Sentencing Commission can determine whether to recommend the adoption of a new sentencing system for Alabama.

Faced with the demand for truth in sentencing and sentencing reform, Alabama has now taken the first step toward resolving the problems of our state's sentencing and corrections systems. When compared with the reform measures that other states initiated in the 1980s and 1990s, Alabama is certainly a latecomer to the reform scene; however, this delay has the redeeming feature of allowing the Commission to review many different types of systems that have been implemented and learn from those experiences. It was, therefore, to other states that have successfully implemented structured sentencing, that the Commission looked for guidance.

Tasks for 2002

- **The Alabama Sentencing Commission will continue to collect and review sentencing data and corrections resources in Alabama to form an accurate portrayal of existing sentencing practices in this state, and that will ultimately allow researchers to accurately project the impact of proposed policy changes.**

- **After analyzing the data, the Alabama Sentencing Commission will consider specific alternatives for a more comprehensive sentencing system accurately reflects stated sentencing goals.**

Any reformed sentencing structure recommended for Alabama will be experience-based (take into account current sentencing practices), with adjustments made to reflect a more uniform and responsible sentencing policy while achieving certainty in sentencing. Alternative sanctions for non-violent offenders (i.e., halfway house, drug treatment, community-based punishment, probation, etc.), utilizing effective risk-needs assessment instruments, must be incorporated into any sentencing system that is recommended.

Alabama Must Find More Economical and Productive Ways to Punish Non-Violent Offenders

The Need for Expansion of Community-Based Programs and Greater Use of Alternative Punishment/Treatment Options

The success of a reform system that implements truth-in-sentencing, reducing or eliminating the early release of prisoners through "good time" credits and parole, depends heavily upon the increased availability and use of sentencing options. Some options now exist in Alabama, but they are not available statewide. For example, certain offenders can be diverted to community-based programs in those counties where pretrial diversion programs have been established by the district attorney or through drug court programs, in the counties where they exist.

New and Expanded Use of Community-based Punishment Programs For Non-Violent Offenders Is Essential

Most felony offenders can be placed on probation for up to five years, or longer utilizing Alabama's split sentencing statute. Certain offenders can be sentenced to serve time in boot camps, placed on electronic monitoring or ordered to attend drug and alcohol abuse programs, but only if those resources are available. Unlike other states, Alabama has failed to develop a comprehensive community-based system consisting of day reporting centers, halfway houses, and faith-based, restorative justice, educational, and vocational rehabilitation programs.

In the Sentencing Commission's enabling act the Legislature expressly noted that the judges of Alabama

should have more punishment options, other than imprisonment, that they can consider when assessing the proper sentencing sanction to impose. Our choices are limited; either build more prisons or find other forms of punishment for offenders that do not pose a threat to the public. The practice of imposing long prison terms for all offenders, including non-violent and first offenders, has filled our prisons with non-violent offenders who could be punished in other ways, reserving valuable prison space for violent offenders. Alabama must use its limited resources wisely and develop a comprehensive statewide system of community-based punishment programs.

The Most Frequent Crimes Committed Are Non-Violent Drug, Alcohol and Property Offenses

From the data the Sentencing Commission has been able to collect on felony offenders sentenced and admitted to the Department of Corrections over the last three years, it is readily apparent that the most frequent crimes committed are non-violent offenses, most of which are Class C felonies (80% of the top 10 most frequent crimes and 70% of the top 20 most frequent crimes. Preliminary data shows of the top 20 crimes most frequently committed, only one is a Class A felony – robbery I.

9 of the top 10 Crimes of Conviction of State Inmates during FY1999-2001 were Drug, Alcohol and Property Offenses.

The number one most frequent offense was possession of drugs (schedule I – IV), accounting for nearly one in five felony offenders (19%). Drug and alcohol offenses represented 42% of the top 20 crimes and 36% of all felony offenses. The top ten most frequent offenses account for over two-thirds of all convicted felony offenders (68%) and drug, alcohol and property offenses account for nine of these top ten crimes.

Of the most frequently committed crimes, the vast majority of felons (84%) were convicted of non-violent offenses – 3 out of 4 non-violent crimes were drug or property offenses. The most frequent property offenses included theft, burglary and forgery/fraud, while the most frequent drug offenses included possession of a schedule I-V drug, selling or trafficking in drugs and possession of marijuana. Sixteen percent of all felony offenders were convicted of a violent crime (personal

injury or sex), the most common being robbery, assault, and murder and manslaughter.

Over the Last Three Years, The Majority of Felony Convictions Have Been for the Commission of Non-Violent Offenses

Existing Community Corrections Programs

There are 18 existing community corrections programs in Alabama,[2] with the majority of these established as a result of passage of the Community Punishment and Corrections Act passed by the Alabama Legislature in 1992. This Act authorizes the Alabama Department of Corrections to contract with a county, a community punishment corrections authority or a non-profit organization to provide programs of intermediate sanctions for eligible offenders, which include but are not limited to, work release, day reporting, home detention, restitution, education and community service, drug testing, and treatment. Local programs may receive state funding through the Department of Corrections (DOC); however, to be eligible they must be approved by their local county commission and be organized in one of three ways: (1) through the county government; (2) by a local authority established for that purpose or; (3) through an existing non-profit agency.

[2] The 24th Circuit has a program, which serves a three-county circuit: Fayette, Pickens and Lamar. Madison, Montgomery and Walker Counties have Community Correction programs, but these do not currently receive funding from DOC under the Community Corrections Act. Montgomery County has established a pilot program called the Montgomery County Certified Mentor Program which assists offenders in various ways to comply with the terms of their sentences, including finding employment, finding a residence, participating in substance abuse programs, etc. The 17th Judicial Circuit, a three-county circuit consisting of Marengo, Greene and Sumter, organized a joint community corrections program, however, due to lack of local support, the program is no longer in existence.

Although county boards define the form and scope of offender intervention locally, the Department of Corrections provides funding and oversight for these programs based on submitted local plans. State Funding is provided based on the number of non-violent offenders diverted from prison, using a declining rate scale based on the number of days the offender remains in the program. In addition, all programs require offenders to pay user fees, generally in the amount of $25 per month. For FY 2002, the Department of Corrections has allotted $1,866,975 for 15 approved programs throughout the state, an increase from the $1.5 million allotted to 12 programs during FY 2001.

Alabama's Community Punishment and Corrections Act provides the means for developing a coordinated state and local effort to establish community corrections programs. The details of how to expand these programs to establish community corrections programs for non-violent offenders in every county of the state and obtain adequate funding are issues that are currently being addressed by the Sentencing Commission.

During 2002, the Sentencing Commission will develop a program to provide peer-to-peer assistance through Community Corrections Teams to establish, improve or expand community-based punishment programs statewide. Utilizing judges, county commissioners, program directors and others who have been involved with successful programs, teams of experienced practitioners could be sent to counties interested in establishing, expanding or improving such programs. An integral part of this plan is to increase awareness of the existence and need for an expanded array of sentencing options.

Drug Courts

A drug court is a specialized court given the responsibility to handle cases involving drug-addicted offenders through an extensive supervision and treatment program. There are presently seven drug courts in operation in Alabama, Jefferson, Mobile, Tuscaloosa, Montgomery, Gadsden, DeKalb, Franklin, and on the Poarch Creek Indian reservation in Escambia County. These courts, made available through

grant funding, were established when it became apparent that jail and prison sentences were not solving the economic and social effects of crack cocaine and other drugs on the community, resulting in increased recidivism rates of drug addicts.

Drug court programs bring the full weight of all interveners (judge, prosecutor, defense counsel, substance abuse treatment specialists, case managers, law enforcement, educational and vocational experts, community leaders and others) to bear, forcing the offender to deal with his or her substance abuse problem. The mission of drug courts is to stop the abuse of alcohol and other drugs and related criminal activity. Drug courts offer offenders the choice of participation in treatment and, in exchange for successful completion of the treatment program, the court may dismiss the original charge, reduce or set aside a sentence, offer some lesser penalty, or offer a combination of these. Fines and court costs are assessed and collected.

Drug courts transform the roles of both criminal justice practitioners and alcohol and other drug treatment providers. The judge is the central figure in a team effort that focuses on sobriety and accountability as primary goals, assuming an active role in trying to keep participants engage in treatment. Judges that have assumed the additional responsibilities drug courts entail are committed to helping change the lives of individuals with alcohol and drug addictions and reducing the effect drug and alcohol abuse have had on our criminal justice system.

Governor's Plan

Through the recent efforts to alleviate the overcrowded conditions of our jails and prisons, Governor Siegelman's Task Force acknowledged the prevalence of alcohol and substance abuse among the inmate population and the need for effective alcohol and drug programs to address these problems. The Governor's Plan included the following objectives in response to this need:

- Creation of the position of Interagency Coordinator for Substance Abuse to coordinate all programs in his

proposal related to alcohol and substance abuse intervention, education, treatment and aftercare.

- Provide for more regional substance abuse beds. Two facilities are to be fully operational by February 15, 2002, housing 300 offenders (600 annually) and providing six-month programs.

- Establish regional substance abuse offender re-entry programs within correctional/detention

- The facilities for addicted offenders who are in the last six months of their sentence. These will be six-month programs consisting of counseling, drug testing, employment readiness training, and job placement assistance. One program is to be operational by January 15, 2002, and another by February 15, 2002 (Providing 266 annually).

- Reinstitution of the DOC Supervised Intensive Restitution Program (SIR) authorizes community placement of eligible offenders who are within four years of their expected release date (Expected to serve 500 inmates).

Target parolees for participation in substance abuse treatment programs. Governor's plan reflects his recognition of the importance of effective substance abuse programs, intensive supervision, community support and the need for agency coordination. This is demonstrated by his creation and appointment of an Interagency Coordinator for Substance Abuse, the reinstitution of the Supervised Intensive Restitution Program, the establishment of substance abuse reentry programs and the initiatives taken for parolees with substance abuse problems to receive early treatment. The Sentencing Commission plans to build on these accomplishments and coordinate its efforts with those of the Governor's Task Force, The Sentencing Institute, and the Alabama Department of Economic and Community Affairs in establishing ties within the community to garner general support, recruit volunteers and obtain funding for community-based programs.

Recommendations

- #1 Enact Legislation Expressly Authorizing the Release of Information to the Sentencing Commission by the Board of Pardons and Paroles, the Alabama Criminal Justice Information Center and the Administrative Office of Courts.

- #2 Provide Funding from the State General Fund to Enable the Alabama Sentencing Commission To Fulfill its Statutory Duties

- #3 The budget of the Department of Corrections should be increased to expand community correction programs statewide, to enable appointment of a full-time Director for Community Corrections. This position would aid in initiating and pursuing collaborative efforts to take advantage of all available resources in the local communities and further develop and expand community-based punishment programs.

- #4 Each community-based punishment program operating in this state should develop a comprehensive database and provide quarterly reports to the Alabama Sentencing Commission. The reports should identify program participants and include information such as race, age, sex, the offense at arrest and conviction, sentence, program participation, i.e., successful completion, length of the program, recidivism rates, etc., in order to have more reliable data on the effectiveness of such programs.

TASKS FOR 2002

- The Sentencing Commission will continue its evaluation of current sentencing practices and the effectiveness of our current "good time" laws and, following receipt of accurate sentencing data on all felony offenders, conduct a comprehensive analysis to determine whether and to what extent our "good time" practices and procedures should be modified.

- The Sentencing Commission will continue to examine truth-in-sentencing issues. When data is available, the Commission will be able to present its recommendations to the Legislature.

- The Alabama Sentencing Commission will continue to collect and review sentencing data and corrections resources in Alabama to form an accurate portrayal of sentencing practices presently existing in this state and that will ultimately allow researchers to accurately project the impact of proposed policy changes.

- After analyzing the data, the Alabama Sentencing Commission will consider specific alternatives for a more comprehensive sentencing system that may include recommended sentences for all felony offenses based on the severity of the offense and the number of prior convictions of the offender.

- Through judicial education seminars sponsored in conjunction with the Administrative Office of Courts, the Sentencing Commission intends to promote the statewide establishment of drug courts, along with the expanded use of sentencing alternatives and creation of new community-based punishment programs.

- The Sentencing Commission will develop a program to provide peer-to-peer assistance through Community Corrections Teams to establish, improve or expand community-based punishment programs statewide. Utilizing judges, county commissioners, program directors and others who have been involved with successful programs, teams of experienced practitioners could be sent to counties interested in establishing, expanding or improving such programs. An integral part of this plan is to increase awareness of the existence and need for an expanded array of sentencing options.

APPENDICES

Appendix A	Proposed Legislation
Appendix B	Alabama Minimum Mandatory and Enhanced Punishment Statutes
Appendix C	History of the Alabama Sentencing Commission and Timeline of Events Leading to Its Creation
Appendix D	Statutes Creating the Alabama Sentencing Commission
Appendix E	Sentencing Commission Members Members of the Executive Committee Members of the Advisory Council Subcommittee Members

Appendix A

Proposed Legislation

Appendix A

SYNOPSIS: Under existing law, the Alabama Sentencing Commission is responsible for reviewing Alabama's existing criminal laws and procedures and developing a comprehensive discretionary sentencing plan for felony offenses. Although the provisions of Act 2000-596 provide for agency cooperation with the sentencing commission in the sharing of offender information essential for data collection and analysis of sentencing practices, this information has not been released because of confidentiality concerns.

This bill will expressly authorize the release of confidential information to the sentencing commission for research purposes only and ensure that any confidential information provided to the sentencing commission retains its confidentiality and shall not be released to the public.

The Alabama Sentencing Commission was created as an agency with the authority to submit requests to the Legislature; however, it has been interpreted that funding requests must be included in the budget proposals submitted by either the Administrative Office of Courts or Supreme Court. This bill will resolve questions regarding the applicable budget process and expressly provide that the Sentencing Commission may apply for and receive appropriations from the Legislature as a separate state agency.

A BILL

TO BE ENTITLED

AN ACT

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 12-25-8 of the Code of Alabama 1975, is amended to read as follows:

§ 12-25-8. Powers.

The commission shall have the power to perform the functions as necessary to carry out the purposes of this chapter and may delegate power to any member or designated person. The commission may do all of the following:

(1) Submit appropriation requests to the Legislature and receive appropriations from the State general fund as a separate state agency.

(2) Serve as an agency to apply for and receive grants, donations, or other monies from public or private sources and to coordinate and conduct studies in connection with any of its purposes and functions.

(3) Enter into and perform contracts, leases, cooperative agreements, and other transactions as may be necessary to fulfill the responsibilities of the commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization.

(4) Accept voluntary and uncompensated services.

(5) Request information, data, and reports from any Alabama agency or judicial officer as the commission may from time to time require and as may be produced consistent with other law. The Department of Corrections, the Board of Pardons and Paroles, the Administrative Office of Courts and the Alabama Criminal Justice information Center shall release data to the commission without regard to confidentiality restrictions. Information, otherwise confidential, received by the commission, may be used by the commission for analysis and statistical purposes and shall retain its confidential status.

(6) Hold hearings, conduct factfinding tours, and call witnesses to assist the commission in

fulfilling its responsibilities.

(7) Perform other functions as may be necessary to carry out this chapter.

Section 2. Section 12-25-11 of the Code of Alabama 1975, is amended to read as follows:

§ 12-25-11. Cooperation with commission.

Agencies of the state government shall cooperate with the commission as necessary for the commission to carry out its responsibilities. Upon the request of the commission, each agency and department of the state shall make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the commission in the execution of its functions without cost to the commission. The sentencing commission shall have access to all offender records maintained by other state departments and agencies, including the Department of Corrections, Board of Pardons and Paroles, Administrative Office of Courts and Alabama Criminal Justice Information System, without regard to confidentiality, for statistical and analysis purposes only. The commission shall not release any information identifying any individual. Personal offender information provided to the commission shall remain confidential. When possible, information shall be provided to the commission electronically.

Section 3. All laws or parts of laws which conflict with this act are repealed.

Section 4. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 5. This act shall become effective immediately after its passage and approval by the Governor, or upon its otherwise becoming a law.

Appendix B

Alabama Minimum Mandatory and Enhanced Punishment Statutes

MANDATORY MINIMUM SENTENCES AND ENHANCEMENT PROVISIONS

Authority	Offense	Minimum Mandatory
§ 13A-5-6	**Felony with Firearm/Deadly Weapon Enhancement**	
	Class A Felony	20 years
	Class B or C Felony	10 years
§ 13A-5-13	**Hate Crimes**	
	Class A Felony	15 years
	Class B Felony	10 years
	Class C Felony	2 years
	(Subsequent Offenders also subject to HFOA)	
	Misdemeanor	3 months
§ 13A-6-69	**Enticing a Child to Enter a Vehicle, House, etc, for Immoral Purposes**	2nd Conviction not less than 2 nor more than 10 years Not eligible for Probation
§ 13A-6-130	**Domestic Violence 1st Degree - 2nd & subsequent**	One Year without Possibility of Probation, Parole or Good Time
		If Committed In Violation of a Protection Order Minimum Doubled And no probation, parole or Good Time

§ 13A-6-131	**Domestic Violence 2nd Degree -**	2nd & subsequent	6 months without Possibility of Probation, Parole or Good Time
	Committed In Violation of Protection Order		***Minimum*** Doubled And no probation, parole or Good Time

Authority	Offense	Minimum Mandatory
§ 13A-6-132	**Domestic Violence 3rd Degree**	
	2nd & subsequent	48 hours in city or county jail without reduction
	Committed In Violation of Protection Order	Minimum Doubled and no reduction in time
§ 13A-8-52	**Pharmacy Robbery as Defined in § 13A-8-51(2)**	
		Hard Labor for not less than 10 years and not eligible for parole, probation or suspension of sentence.
	2nd and Subsequent	Life w/o parole, probation or suspension of sentence
§ 13A-11-60	**Possession and Sale of Brass or Steel Teflon-coated Handgun Ammunition In commission or attempted commission of a felony**	Additional Consecutive Punishment of 3 years in Penitentiary

Appendix B

DRUG TRAFFICKING

§ 13A-12-231 Trafficking in Cannabis, Cocaine, etc.; Trafficking In Amphetamine and Methamphetamine

Selling, Manufacturing, Delivering, bringing into state, actual constructive possession of:

Cannabis

Excess of one kilo or 2.2 pounds but less than 100 pounds	3 years mandatory minimum and $25,000 fine
In excess of 100 pounds but less than 500 pounds	5 years mandatory minimum and $50,000
In excess of 500 pounds but less than 1,000 pounds	15 years mandatory minimum and $200,000
In excess of 1,000 pounds	Life without Parole No fine stated

Morphine, Opium (or any salt, isomer or salt of an isomer thereof), Heroin; Lysergic Acid Diethylamide

4 grams or more but less than 14 grams	3 years mandatory minimum and $50,000 fine
14 grams or more but less than 28 grams	10 years mandatory minimum and $100,000 fine
28 grams or more but less than 56 grams	25 years mandatory minimum and $500,000 fine
56 grams or more	Life Imprisonment without Parole

Phencyclidine or Mixture

4 grams or more but less than 14 grams	3 years mandatory minimum and $50,000 fine
14 grams or more but less than 28 grams	5 years mandatory minimum and $100,000 fine

28 grams or more but less than 56 grams	15 years mandatory minimum and $250,000 fine
56 grams or more	Life Imprisonment without Parole

Methaqualone

1000 – 4999 pills	3 years mandatory minimum and $50,000 fine
5,000 – 24,999 pills	10 years mandatory minimum and $100,000 fine
25,000 – 99,999 pills	25 years mandatory minimum and $500,000 fine
100,000 or more pills	Life without Parole

Hydromorphone

500 – 999 pills	3 years mandatory minimum and $50,000 fine
1,000 – 3,999 pills	10 years mandatory minimum and $100,000 fine
4,000 – 9,999 pills	25 years mandatory minimum and $100,000 fine
10,000 or more pills	Life without Parole

Cocaine or Mixture Containing Cocaine; 4-Methylenedioxy Amphetamine or Mixture Thereof; 5-methoxy-3, 4-ethylenedioxyAmphetamine or Mixture Thereof; Amphetamine or Mixture Thereof; Methamphetamine or Mixture Thereof

28 grams or more but less than 500 grams	3 years mandatory minimum and $50,000 fine
500 grams or more but less than one kilo	5 years mandatory minimum and $100,000 fine
One kilo but less than 10 kilos	15 years mandatory minimum $250,000 fine
10 Kilos or more	Life without Parole

Habitual Offenders Convicted of Drug Trafficking § 13A-12-231 (12)
Sentence provided in Drug Statute or HFOA, whichever is greater

Drug Trafficking with Possession of Firearm § 13A-12-231 (13)
Additional 5 years not subject to suspension or probation and $25,000 fine

Minimum Mandatory Sentence for Drug Trafficking Not Subject to Suspension, Deferral, Parole, Work Release, Supervised Intensive Restitution Program; Good Time Furlough, Pass, Leave or any Other Type of Early Release – Exceptions § 13A-12-232

Mandatory minimum term of Imprisonment prescribed under Drug Trafficking Act or 15 years, whichever is less.

Reduction is authorized for a defendant sentenced to any term except life imprisonment without parole, if (s)he provides substantial assistance in the arrest or conviction of any accomplices, accessories, coconspirators, or principals. Motion must be made by the district attorney a judge may not reduce or suspend a sentence *ex mero moto.*

Drug Trafficking Enterprise § 13A-12-233

1st Conviction	25 Years minimum mandatory (up to and including life without parole) and a fine of not less than $50,000 nor more than $500,000
2nd Conviction	Mandatory term for life without parole and fine not less than $150,000 nor more than $1,000,000

Neither time of imprisonment or fine can be less than that authorized under Drug Trafficking Statute, including application of the Habitual Felony Offender Act.

§ 13A-12-250	**Drug Sale Within 3 Mile Radius of School**	Additional Penalty of 5 Years Imprisonment
§ 13A-12-270	**Drug Sale Within 3 Mile Radius of Housing Project**	Additional Penalty of 5 Years Imprisonment
§ 13A-12-215	**Selling, Furnishing, etc. to child under 18**	Class A Felony (10-99 Years) Punishment which cannot be suspended or probated
Act 2000-687 § 9-11-91.1	**Illegal Fishing from Fish Farm**	2nd and Subsequent - 30 days
§ 9-12-113	**Using Net or Sein without Required License or Permit**	Subsequent Violations within 3 years of conviction - 10 days
§ 9-12-125	**Selling, Brokering, Trading, Processing Etc. Seafood without License**	2nd and Subsequent within 3 years of conviction - 10 days

Appendix B

§ 30-5-9	**Violating Domestic Violence Protection Order**	2nd Conviction - 30 days 3rd and subsequent -120 days
§ 30-5A-3	**Willful Violation of Family Violence Protection Order**	2nd Conviction - 48 hours continuous imprisonment 3rd and subsequent - 30 days
§ 32-5A-191	**Driving Under the Influence (DUI)**	2nd conviction within 5 years - 5 days OR 30 days community service 3rd - 60 days 4th & subsequent - one year and one day *or* 10 days if defendant enrolls and completes an approved chemical dependency program.
	DUI -Defendant over age 21 with passenger under 14 years of age	Double minimum punishment
§ 32-5A-191.3 as amended by Act 2001-695	**Boating Under the Influence (BUI)**	2nd and subsequent – same as penalties for DUI
	BUI -Defendant over age 21 with passenger under 14 years of age	Double minimum punishment

ENHANCEMENTS FOR REPEAT OFFENDERS

ALABAMA'S HABITUAL OFFENDER ACT

§ 13A-5-9. Habitual felony offenders -- Additional penalties.

(a) In all cases when it is shown that a criminal defendant has been previously convicted of a felony and after the conviction has committed another felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished for a Class B felony.

(2) On conviction of a Class B felony, he or she must be punished for a Class A felony.

(3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(b) In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies and after such convictions has committed another felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished for a Class A felony.

(2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not less than 99 years.

(c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies and after such convictions has committed another felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.

(3) On conviction of a Class A felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.

(4) On conviction of a Class A felony, where the defendant has one or more prior convictions for

any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.

(As last amended by Act 2000 § 1)

HISTORY

The 2000 amendment, effective May 25, 2000, inserted "or she" in eleven places; in subsection (a), in the introductory matter substituted "a felony and after the" for "any felony and after such"; in subsection (c), in subdivision (1) inserted "of" following "term", in subdivision (2) substituted "by imprisonment for life or any term of not less than 20 years" for "for life in the penitentiary", in subdivision (3) substituted "where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court" for "he must be punished by imprisonment for life without parole", and added subdivision (4); and made nonsubstantive changes.

Code Commissioner's Notes

Sections 13A-12-210 through 13A-12-216 were designated as Division 2 of Article 5 of Chapter 12 of Title 13A by Acts 1988, 1st Ex. Sess., No. 88-918, S 2, effective September 30, 1988.

Acts 1987, No. 87-603, which enacted Division 2 of Article 5 of Chapter 12, provides in S 11: "The provisions of this act are to be included in the Code of Alabama 1975, as a part of Title 13A, 'Alabama Criminal Code', and all provisions of Title 13A, including the Habitual Felony Offender Act, are applicable thereto; provided that any of the provisions of this act may also be included in Title 20." Acts 1987, No. 87-603 also amended §§ 20-2-71 through 20-2-74, and repealed §§ 20-2- 70, 20-2-76 and 20-2-77.

Act 2000-759, which became effective May 25, 2000, in Section 1 amended Section 13A-5-9 and in Section 2 amended Section 15-18-8. Section 3 of Act 2000-759 provides: "The provisions of Sections 1 and 2 shall be applied prospectively only and shall apply only to any case in which the sentence is not final at the trial court on the effective date of this act. Sections 1 and 2 shall not be construed to create a right of any person currently serving a term of imprisonment imposed pursuant to Section 13A-5-9, Code of Alabama 1975, prior to the effective date of this amendatory act to petition the parole board or court for review of his or her sentence based on Section 13A-5-9, Code of Alabama 1975, as amended."

ENHANCED PENALTIES FOR REPEAT FELONY OFFENDERS

ALABAMA'S HABITUAL FELONY OFFENDER ACT - . 13A-5-9

Prior Felonies ➤ **This Offense ▼**	**NO Prior Felonies**	**One Prior Felony**	**Two Prior Felonies**	**Three + Prior Felonies**
Class A Felony (No prior conviction for a Class A Felony)	10-99 Years or Life In State Penitentiary Fine up to $20,000	15-99 Years or Life In State Penitentiary (Fine up to $20,000)	Life Imprisonment or Any Term of Years Not Less than 99 years (Fine up to $20,000)	Mandatory Imprisonment for Life or Life Imprisonment Without Possibility of Parole (Fine up to $20,000)
Class A Felony (One or more prior convictions for any Class A Felony)	10-99 Years or Life in State Penitentiary Fine up to $20,000	15-99 Years or Life in State Penitentiary (Fine up to $20,000)	Life Imprisonment or Any Term of Years Not Less than 99 Years (Fine up to $20,000)	Mandatory Imprisonment For Life Without Possibility of Parole (Fine Up to $20,000)
Class B Felony	2-20 Years In State Penitentiary Fine up to $10,000	10-99 Years or Life In State Penitentiary Fine up to $20,000	15-99 Years or Life In State Penitentiary (Fine up to $20,000)	Minimum of not less than 20 years or Life Imprisonment (Fine up to $20,000)
Class C Felony	1 Year & 1 day - 10 Years In State Penitentiary Fine Up to $5,000	2-20 Years In State Penitentiary Fine up to $10,000	10-99 Years or Life In State Penitentiary Fine up to $20,000	15-99 Years or Life In State Penitentiary (Fine up to $20,000)

As amended by Act 2000-759 and Act 2001-977

Appendix C

History of the Alabama Sentencing Commission and Timeline of Events Leading to Its Creation

Appendix C

Alabama Joins the Ranks of Progressive States in Establishing the Sentencing Commission as a Permanent State Agency.

Creation of The Alabama Sentencing Commission

The history of Alabama's struggle with jail and prison overcrowding problems and its reluctance to change unless forced to comply with court orders, demonstrate the fact that our State's criminal justice system is one that has evolved based on short-term political expediency rather than one based on strategic planning with an awareness of long-term consequences. For two decades, jails and prison officials have been operating by crisis management, with little or no help from other participants in the criminal justice arena. Although commissions and committees have been established to help resolve the crisis of the moment, all were formed on a temporary basis and most focused on one aspect – the end result of a systemic problem, prison and jail overcrowding. When system-wide analysis was undertaken and long-range recommendations made for the reform of Alabama's criminal justice system, there has been an obvious lack of follow-through for effective implementation.

By establishing a permanent State Sentencing Commission, the Alabama Legislature has recognized that our criminal justice system deserves continuous evaluation, planning and management from arrest, through prosecution, sentencing, punishment and the reintegration of offenders after the completion of their sentence. There will be no quick fix to resolve the problems that have developed over two decades, but with a cooperative effort and through strategic planning, Alabama can establish a criminal justice system that is fair, effective, efficient, responsible and responsive to the public.

Precursor to the Alabama Sentencing Commission: The Judicial Study Commission's Sentencing Committee

On January 23, 1998, the Judicial Study Commission (JSC), under the chairmanship of Chief Justice Perry Hooper, Sr., created a special committee to study sentencing policies and practices in Alabama. This committee, charged with identifying and studying the strengths and weaknesses of Alabama's

entire criminal sentencing system, met bi-monthly during calendar year 1998. During this time, they reviewed each area of Alabama's criminal sentencing structure, as well as other state and federal sentencing models. In conducting its investigation, the committee heard from local, state, and national experts on current sentencing practices and reform efforts. This broad-based group of criminal justice system officials (judges, defense lawyers, prosecutors, corrections officials, district attorneys, and law enforcement leaders) and victims' rights advocates, concluded that significant problems exist within the current sentencing and corrections structure in Alabama that demand immediate attention. As a result of their study, the JSC Sentencing Committee recommended the creation of the Alabama Sentencing Commission as a separate state agency, to serve as a permanent research arm of the criminal justice system responsible for acquiring, analyzing and reporting necessary information to officials and state agencies involved in the sentencing process, the Legislature and the public.[1]

Formation of the Alabama Sentencing Commission

Pursuant to the Judicial Study Commission's recommendations, the Alabama Legislature passed Act 2000-596, creating a permanent Sentencing Commission as a separate state agency under the Alabama Supreme Court. The enabling legislation for the Alabama Sentencing Commission enumerates the Commission's responsibilities to: (1) "serve as a clearinghouse for the collection, preparation, and dissemination of information on sentencing practices;" (2) "make recommendations to the Governor, Legislature, Attorney General, and Judicial Study Commission concerning the enactment of laws relating to criminal offenses, sentencing, and correctional and probation matters" and (3) "Review the overcrowding problem in county jails, with particular emphasis on funding for the county jails and the proper removal of state prisoners from county jails pursuant to state law and state and federal court orders, and to make recommendations for resolution of these issues to the Governor, Legislature, Attorney General, and the Judicial System Study Commission before the 2002 Regular Legislative Session."[2] The Act provides

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[1] Currently, more than 20 states have established sentencing commissions to study their sentencing structure. These commissions, while varying in composition and authority, are generally permanent in nature.

[2] In response to federal and state lawsuits concerning the overcrowded conditions of county jails due to the backlog of state prisoners awaiting transfer to the Department of Corrections, in May of 2001, Governor Siegelman established a Task Force to provide short-term solutions to the jail and prison-overcrowding crisis. Recognizing that implementation of their recommendations would provide only a temporary solution to a systemic problem, in its report, the Governor's Task Force noted that it was relying on the Alabama Sentencing Commission to propose long-term solutions to address the continued issue of prison overcrowding. The Task Force also recognized that a major component of the Commission's work includes plans to develop the capability to more accurately predict the

TIMELINE OF EVENTS

1971

Protracted litigation commenced involving conditions of Alabama's prison system.

Work Release Act Passed, Act 71-307, 3rd SS

1972

10/4/72

In class action brought by state inmates (represented by court appointed attorney Joe Phelps), Federal District Court Judge Frank M. Johnson found 8th and 14th Amendment violations relating to the inadequate medical care and treatment of state inmates, granting declaratory and injunctive relief and awarding attorney fees. *Newman v. State of Alabama et al.*, 349 F.Supp. 278 (Ala. M.D. Ala. 1972), aff'd in part, 503 F.2d1320 (5th Cir. 1974), cert. Denied, 421 U.S. 948, 95 S.Ct. 1680, 44 L.Ed.2d 102 (1975).

Study prepared by University of Alabama Center for Correctional Psychology under contract with Board of Corrections, highlighted woefully inadequate mental health programs in Alabama prisons and suggested minimum standards.

Work Release program initiated (335 inmates) State inmate population of 3,842 and prison budget of $8.8 million.

8/29/73

Federal District Court finds unconstitutional conditions existing in local Alabama Jails. *Thrasher v. Bailey*, CA 73P 816-S (N.D. Ala. 1973).

1974

9/30/74

Class action for declaratory and injunction relief, brought by 6 inmates incarcerated in Holman's maximum security unit alleging 8th and 14th Amendment violations for the state's failure to provide adequate facilities and programs. Motion to dismiss complaint denied. *James v. Wallace*, 382 F. Supp. 1177 (M.D. Ala. 1976). Complaint originally filed on 6/21/74. Amended complaint filed by court appointed attorney, Peach Taylor, on 6/29/74.

11/8/74

Appeal by the State and Alabama's Attorney General from Judge Johnson's order that the Board of Corrections undertake extensive changes in its present practice to provide adequate medical care to inmates. The 5th Circuit Court of Appeals, en banc, remanded to a 3-judge panel, which held that the case was properly disposed of by a single-judge district court, sustaining Judge Johnson's finding of constitutional violations. *Newman v. State of Alabama* et al., 503 F.2d

9/16/77 Three class actions filed by Alabama inmates alleging unconstitutional prison conditions in Alabama prisons, *Pugh v. Lock* et al., 406 F. Supp 318 (M.D. Ala. N. Div. 1976), James v. Wallace et al., 382 F. Supp. 1177 (M.D. Ala. 1976) and *Newman v. Alabama, 349 F. Supp. 278* (M.D. Ala. 1972), were consolidated on appeal by the 5th Circuit in *Newman v. Alabama,* 559 F. 2d 283 (CA5 1977). Affirming the District Court's finding of constitutional violations, the Court of Appeals dissolved the 39 member Human Rights Committee for the Alabama Prison System that was formed by Judge Johnson, ordered that their functions would terminate, remanding the cause to the District Court to appoint a monitor for each prison.

9/30/77 Alabama Supreme Court restrains Commissioner Locke from transferring state prisoners from Mobile County to Washington County, due to failure to comply with Alabama's notice provisions. *Locke v. Wheat, 350 2d 451* (Ala. 1977). In his dissent, Justice Maddox notes that the emergency conditions exist in county jails because of a federal court order prohibiting the Board of Corrections from accepting state prisoners from county jails,

12/2/77 Prison Commissioner Locke's attempt to transfer 20 state prisoners from Marshall County jail to Fayette County jail restrained, as exercise of authority did not comply with notice provisions of Alabama's transfer statute. *Alabama State Bd. Of Corrections v. Norris*, 352 So.2d 1106 (Ala. 1977).

Alabama passes Habitual Felony Offender Act. Act 77-607, subsequently amended in 1979 (Act 79-664), in 2000 (Act 2000-759, effective 5/25/00) and 2001 (Act 2001-977, effective 12/1/01)

7/3/78 United States Supreme Court holds civil rights suit against the State of Alabama and the Alabama Board of Corrections brought to eradicate alleged cruel and unusual punishment in Alabama prisons was barred by the 11th Amendment. *Alabama v. Pugh*, 438 U.S. 781, 98 S. Ct. 3057, 57 L.Ed. 2d 1114 (1978).

1979

Feb.1979 District Court entered order appointing Governor Fob James receiver of Alabama's prison system.

1980 Revised Criminal Code with increased penalties for repeat felons and violent offenders.

Adoption of Habitual Felony Offender Law, mandatory-minimum sentences for violent offenders and abolition of good-time credits for long-term (over ten years) inmates.

Sentence enhancements for felonies involving a firearm or other deadly weapon (20 year mandatory imprisonment for Class A, 10 years for Class B and C).

Parole Board adopts guidelines to increase the amount of time served by violent offenders.

Significant Changes in Alabama's Good Time Law - abolishing good time for all Class A felons. Correctional Incentive Time Act, Act 80-446.

Federal District Judge Frank M. Johnson appoints a 21-person committee to oversee the operation of the system; later replaced by a 3-member monitoring panel to ensure state compliance with federal court orders.

7/21/80 Civil rights suit alleging unconstitutional condition of confinement brought against state and county officials by inmates incarcerated in Montgomery County jail. Consent decree entered and Judge Varner taxed attorney fees against the State alone. In a per curiam opinion, the 5th Circuit Court of Appeals reversed, holding the State could not be held solely responsible for conditions in the county jail. *Bibb v. Montgomery* County Jail et al., 622 F. 2d 116 (CA 5 1980).

10/9/80 District Court finds Alabama prison system has failed to comply with standards in prior orders and establishes deadlines. District court approves consent decree which required state to remove inmates from county jails by September 1, 1981, comply with all other minimum standards established by the *Pugh* and *James* cases and set standards relating to living space.

5/18/81 District Court hearing held where it was stipulated that Alabama prisons had not met deadlines set by the federal court order, and in fact, overcrowding situation had gotten worse.

7/15/81 District Court ordered release of 400 named inmates on 7/24/81.

7/16/81	Attorney General Graddick seeks to intervene and stay district court release order. Hearing set for 8/6/81.
7/22/81	Attorney General Graddick files notice of appeal with the 5th Circuit Court of Appeals, requesting stay pending appeal.
7/23/81	5th Circuit Court of Appeals denied stay.
7/24/81	Pursuant to Order of the District Court, Alabama Middle District, 400 inmates were to be released at midnight on 7/24/8. Justice Powell, as Circuit Justice, granted temporary stay.
7/25/81	Powell, as Circuit Justice, denied Attorney General Graddick's request for permanent stay.
9/2/81	Graddicks's reapplication for a stay filed with the Chief Justice denied by full court. *Graddick v. Newman*, 453 U.S. 928, 102 S.Ct. 4, 69 L. Ed 2d 1025 (1981).
1982	36% increase in Criminal Court Filings and 30% increase in criminal dispositions since 1979, doubling the number of inmates received by the Department of Corrections (despite the decrease in crime rate).
8/9/82	Federal Circuit Court, Robert Varner held that District Court erred in ordering DOC to release prisoners to reduce unconstitutional overcrowding, abusing its discretion by ordering relief that was "impermissibly intrusive on State's prerogative to administer its prison and parole system." *Newan v. Alabama*, 683 F. 2d 1312 (11th Cir. 1982).
1982-85	4 new major prisons built, equipped and staffed
1982-1983	Work Release Expanded (1,865 –20% of inmate population) 11 work release facilities in operation Prediscretionary Release Program (PDL) established by DOC Supervised Intensive Restitution Program (SIR) established Act 83-838.
1983	
January 18, 1983	U.S. District Judge Robert Varner approves consent agreement filed January 6, 1983, setting up a 4 person Prison Oversight Committee, chaired by Rod Nachman (members Ralph Knowles, Dr. George Beto and John Conrad). Attorney General Graddick did not agree to the settlement.

July 21, 1983	Supplemental interim report of Implementation Committee filed.
September 30, 1983	District Court orders Smith and Graddick to show cause.
October 18, 1983	October 14th Interim report of Implementation Committee filed.
November 4, 1983	District court order and judgment restraining defendants from enforcing State court order, ordering release of prisoners (effective March 15th), ordering Commissioner Smith to continue implementation of SIR program and holding Graddick in contempt of court. *Graddick v. Smith*, No. 83-1262-P. Graddick appeals.
December 7, 1983	District Court denies Commissioner Smith's request to delay release until hearing held to determine current conditions of prison system.
September 10, 1984	The United States Court of Appeals for the 11th Circuit, reviewing the orders issued by District Judge Varner (Ala. M.D.), reverses finding of Graddick in contempt and held that the District Court erred in ordering release of inmates without allowing a showing that conditions of confinement were no longer unconstitutional. *Newman v. Graddick*, 740 F. 2d 1513 (11th Cir. 1984).
Nov. 27, 1984	Federal District Judge Robert Varner rules case will be dismissed without prejudice December 3, 1984 with the Prison Oversight Committee continuing in existence until January 1, 1988 unless a majority of Oversight Committee recommends otherwise.
June 15, 1987	*B.W. Johnson, et al. v. M.R. Nachman, et.al.*, (suit against members of the Prison Oversight Committee by inmates of Holman Prison alleging violation of constitutional right by failure to monitor conditions at Homan prison and seeking to reactivate *Newman* case). Complaint Dismissed with prejudice by Federal District Judge Varner.
September 9, 1987	Judicial Study Commission, Chief Justice Torbert, Chair, forms Prison Review Task Force, chaired by Administrative Director of Courts, Allen Tapley. At the request of the District

	Court's Prison Oversight Committee, the Judicial Study Commission accepts responsibility to make recommendations concerning the incarceration of prisoners and how they are housed and to study and develop plans to prevent future prison overcrowding in the state's corrections system. (state inmate population 12,360 with capacity for 11,435; prison budget of $114 million)
1987	Passage of 5 year Enhancement Statute for sale of controlled substance within 3 miles of a school. Act 87-610
Oct. 7-8, 1987	Task Force holds its first meeting.
1988	Termination of *Pugh* injunctions.
January 7, 1988	Report of Prison Review Task Force
1989	Passage of 5-year enhancement statute for sale of a controlled substance within 3 miles of a housing project. Act 89-951
May 1989	6 Regional Sentencing Workshops presented by UJS Judicial College in conjunction with Pardons and Paroles and the Department of Corrections to review existing sentencing and custody options. *Findings Included:* 85% of Alabama inmates are first time offenders, compared to the national average of 38%, with correctional officers having caseloads of 160 cases per officer. Absence of intermediate sentencing and custody options. 50% of inmates incarcerated for non-violent offenses. 46% of the inmates received by DOC in 1987 had sentences of 4 years or less; 16% were sentenced to 2 years or less. *Recommendations Included:* Expanded supervision options More intensive probation and parole supervision programs. Increased Use of community agencies Wider array of correctional options Support for Supervised Intensive Release

1990	*Barbour County v. Thigpen* (Commissioner Haley substituted), CV-92-388, 92-399, Montgomery Circuit Court (two civil actions consolidated). Class action brought by counties and sheriffs against the Department of Corrections for refusal to accept state inmates.
1991	Community Punishment and Corrections Act of 1991 enacted.
February 1991	The Sentencing Institute (TSI) established as a private nonprofit corporation by Allen Tapley.
November 15, 1991	Class action lawsuit filed by sheriffs of Barbour, Bullock, Calhoun, Fayette and Limestone counties against Prison Commissioner Morris Thigpen and the Department of Corrections (counties not having existing federal court orders permanently enjoining the Commissioner and the Department of Corrections from retaining inmates in county jails.
2/21/92	TRO issued in Barbour County case.
2/25/92	Circuit Judge Randall Thomas entered a preliminary injunction enjoining Commissioner Thigpen from refusing to accept state inmates incarcerated in county jails, and ordered transfers from the county jails to be made within 30 days of receipt of transcripts from counties.
August 6, 1992	Randall Thomas, Presiding Judge of Alabama's 15th Judicial Circuit, requested TSI to review the problem of jail and prison overcrowding in Alabama and offer recommendations.
1994	Passage of Hate Crime Act, Act 94-581, effective 4/21/94.
1995	ADECA awarded grant to AOC, TSI and the University of Alabama to conduct a series of sentencing workshops in the fall of 1995 with follow-up regional training programs held in 1996. Alabama Criminal Justice Advisory Commission (ACJAC) established. Working Committee of the Alabama Criminal Justice Advisory Commission (ACJAC) formed. August 17, 1995 report - "There is a serious need to provide community based programs and punishment options." FY 1996 DOC received $2.7 million for community correction programs.

	September 22, 1995 Report of ACJAC on Alabama's Criminal Justice System, Criminal Sentencing, Punishment Options and Criminal Law. Recommendations included: Enhance SIR; Require evaluation of all new and existing punishment programs in terms of their effectiveness; Implement the Community Punishment and Corrections Act of 1991;Establish a comprehensive network of punishment options; Improve informational systems "to assist the Legislative Fiscal Office in development of economic impact assessments of legislation affecting the state's criminal justice system;" Reserve prison bed space for violent/serious offenders requiring incarceration; Develop community and other community based punishment programs and other programs designed to divert property offenders from the state's prison system; Increase the number of probation officers to achieve the nationally recommended caseload (50 offenders per officer compared to current caseload of 179 offenders per officer); Implement the Community punishment and Corrections Act of 1991with DOC working with local communities to develop a plan for adequately funding and implementing a formal, comprehensive community corrections network.
November 17, 1995	Mandatory Incarceration Act proposed.
January 23, 1998	The Judicial Study Commission creates a special committee to study sentencing policies and practices in Alabama, appointing Retired Judge Joe Colquitt as chair.
9/9/98	Plaintiffs file contempt petition in the Montgomery Circuit Court, *Barbour County v. Thigpen, supra*, Settlement agreement was approved and adopted by the court (Judge William A. Shashy), and petition dismissed without prejudice.
October 22, 1999	Sentencing Committee of Judicial Study Commission issues its report.
2000	
March 24, 2000	Governor Don Siegelman issued Executive Order 24, establishing the Commission on Corrections, Sentencing and Law Enforcement, appointing Chris Retan, Executive Director of Aletheia House in Birmingham, as chair.

May 17, 2000	Alabama Sentencing Commission is established as a state agency. Act 2000-596.
12/4/2000	Circuit Court, 20th Judicial Circuit (Houston and Henry Counties), entered order directing Houston County Sheriff to transfer certain inmates from county jail to the Department of Corrections and if the Department refuses to accept inmates, secure inmates to DOC property.
2001	
January 15, 2001	Governor's Commission issues its report.
January 29, 2001	Alabama Sentencing Commission director and staff established, with office provided in the judicial building.
April 7, 2001	Class action brought by inmates of Morgan County jail against state and county officials. District Judge Clemon held jail conditions violated 8th Amendment (housing 221 inmates in a jail with the capacity to house 96) and issued preliminary injunction, ordering DOC to present plan for removal of all state ready inmates by 4/23/01 and transfer inmates by 5/18/01. *Maynor v. Morgan County Alabama*, 147 F. Supp.2d 1185 (U.S. Dist. N.D. Ala. 2001).
5/4/2001	Commissioner Haley petitioned the Alabama Supreme Court for writ of mandamus to direct the Houston County Circuit Judges to vacate order directing sheriffs to transfer certain inmates from the county jail to the Department of Corrections. The petition was denied by the Court, holding that mandamus was not the proper method for challenging the circuit court order. *Ex parte Glover*, 2001 WL 470181 (Ala. 2001).
May 18, 2001	Montgomery County Circuit Court, Hon. William A. Shashy issued an order directing Prison Commissioner Haley to comply with the 1998 Consent Order and accept all inmates sentenced to the penitentiary and held over 30 days in county jails awaiting transfer by June 18, 2001. *Barbour County et al. v. Commissioner of Corrections et al.* (CV-92-399-SH), 15th Judicial Circuit.
	Governor Don Siegleman establishes Prison Task Force to Resolve Jail and Prison Overcrowding Problem
June 14,2001	Prison Task Force Report issued.
June 28, 2001	Show Cause hearing before Judge Shashy.

September 21, 2001	Work Groups of the Alabama Sentencing Commission Submit their Reports to the Commission.
October 18-19, 2001	Alabama Sentencing Commission meets to consider work groups recommendations and the Commission's report to the Legislature.
November 30, 2001	Alabama Sentencing Commission meets to review 1st draft of Legislative Report
January 4, 2002	Meeting of Commission
	Legislative Report Due
January 8, 2002	2002 Regular Session of the Legislature Convenes

Appendix D

Statutes Creating the Alabama Sentencing Commission

TITLE 12. COURTS
CHAPTER 25. ALABAMA SENTENCING COMMISSION.

Act 2000-596, 2000 Regular Session, which created the Alabama Sentencing Commission, became effective May 17, 2000.

§ 12-25-1. Created.
There is created within the judicial branch as an agency of the Supreme Court the Alabama Sentencing Commission, hereinafter called the "commission." (Act 2000-596, p. 1192 § 1.)

§ 12-25-2. Purpose.
(a) The purposes of the commission shall be to review existing sentence structure, including laws, policies, and practices, and to determine and recommend to the Legislature and Supreme Court changes regarding the criminal code, criminal procedures, and other aspects of sentencing policies and practices appropriate for the state which:

(1) Secure the public safety of the state by providing a swift and sure response to the commission of crime.

(2) Establish an effective, fair, and efficient sentencing system for Alabama adult and juvenile criminal offenders which provides certainty in sentencing, maintains judicial discretion and sufficient flexibility to permit individualized sentencing as warranted by mitigating or aggravating factors, and avoids unwarranted sentencing disparities among defendants with like criminal records who have been found guilty of similar criminal conduct. Where there is disparity, it should be rational and not related, for example, to geography, race, or judicial assignment.

(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.

(4) Prevent prison overcrowding and the premature release of prisoners.

(5) Provide judges with flexibility in sentencing options and meaningful discretion in the imposition of sentences.

(6) Enhance the availability and use of a wider array of sentencing options in appropriate cases.

(7) Limit the discretion of district attorneys in determining the charge or crime.

(b) In fulfilling its purposes, the commission shall be mindful of the purposes of sentencing that include, but are not limited to, all of the following:

(1) Protecting the public.

(2) Promoting respect for the law.

(3) Providing just and adequate punishment for the offense.

(4) Deterring criminal conduct.

(5) Imposing sanctions which are least restrictive while consistent with the protection of the public and the gravity of the crime.

(6) Promoting the rehabilitation of offenders.
(Act 2000-596, p. 1192 § 2.)

12-25-3. Membership.

(a) The commission shall consist of the following voting members:

(1) The Chief Justice of the Supreme Court, or at his or her designation, a sitting or retired judge, who shall serve as chair, or at his or her designation another member of the commission shall serve as chair.

(2) The Governor, or his or her designee.

(3) The Attorney General, or his or her designee.

(4) A district attorney appointed by the President of the Alabama District Attorneys' Association.

(5) Two circuit judges, active or retired, appointed by the President of the Alabama Association of Circuit Court Judges.

(6) A district judge, active or retired, appointed by the President of the Alabama Association of District Court Judges.

(7) A victim of a violent felony or a person whose immediate family member was a victim of a violent felony, appointed by the Governor.

(8) The Chair of the House Judiciary Committee, or his or her designee who is a member of the House Judiciary Committee.

(9) The Chair of the Senate Judiciary Committee, or his or her designee who is a member of the Senate Judiciary Committee.

(10) A private attorney specializing in criminal defense appointed by the President of the Alabama Criminal Defense Lawyers' Association.

(11) A private attorney specializing in criminal law appointed by the President of the Alabama Lawyer's Association.

(12) A county commissioner appointed by the Governor.

(13) The Commissioner of the Department of Corrections, or his or her designee.

(14) The chair of the Alabama Board of Pardons and Parole, or his or her designee.

(15) A member of the academic community with a background in criminal justice or corrections policy appointed by the Chief Justice.

(b)(1) Appointed members of the commission shall serve terms of four years and may be reappointed for a second term. Members of the commission who serve because of their public office or position shall serve only as long as they hold such office or position.

(2) A member appointed to fill a vacancy on the commission which occurs before the expiration of the term for which his or her predecessor was appointed shall serve only for the remainder of such term.

(3) The membership of the commission shall be inclusive and reflect the

racial, gender, geographic, urban/rural, and economic diversity of this state. (Act 2000-596, p. 1192 § 3.)

12-25-4. Advisory council.

(a) An advisory council to the commission shall be established to advise and consult the commission on sentencing matters. The advisory council shall be composed of representatives from the various state and non-state agencies and organizations having an interest in or whose operations directly or indirectly impact upon the criminal justice system. Membership of the advisory council shall include:

(1) The Director of Public Safety, or his or her designee.
(2) The Director of the Department of Youth Services, or his or her designee.
(3) A sheriff appointed by the Alabama Sheriff's Association.
(4) A police chief appointed by the Alabama Association of Chiefs of Police.
(5) A director of a community corrections program appointed by the Chief Justice.
(6) A representative of a prison ministry organization, who is not employed by the state, appointed by the Commissioner of the Department of Corrections.
(7) A rehabilitated former prison inmate appointed by the Commissioner of the Department of Corrections.
(8) Additional advisory members appointed in the numbers and manner as the commission deems advisable.

(b)(1) Appointed members of the advisory council shall serve terms of four years and may be reappointed. Members of the advisory council who serve because of their public office or position shall serve only as long as they hold the office or position.

(2) A member appointed to fill a vacancy on the advisory council that occurs before the expiration of the term of his or her predecessor shall serve only for the remainder of the term. (Act 2000-596, p. 1192 § 4.)

12-25-5. Compensation and expenses.

(a) Members of the commission and advisory council shall serve without compensation.
(b) Members of the commission and advisory council are entitled to reimbursement for expenses while on official business of the commission or attending its meetings. Expenses shall be paid as follows:

(1) The expenses of members who are legislators may be paid out of any funds appropriated to the Legislature or out of any funds appropriated for joint interim committees of the Legislature, but in the amounts as if they were performing legislative duties.
(2) The expenses of the members representing state or local government departments or agencies may be paid out of any funds available for travel in their respective departments or agencies.

(3) The expenses of the other members may be paid out of funds available to the commission for travel and shall be reimbursed in accordance with Sections 36-7-20 to 36-7-22, inclusive. (Act 2000-596, p. 1192 § 5.)

12-25-6. Meetings.

(a) The commission shall meet quarterly at the State Capitol or at other places as is deemed necessary or convenient and at other times upon call of the chair. All meetings shall be open to the public. The advisory council shall convene at the discretion of the commission, but in any event shall meet jointly with the commission at least once annually.
(b) A majority of the members of the commission shall constitute a quorum for conducting business.
(c) Except as hereinafter provided, the commission shall act by affirmative vote of a majority of members present and voting.
(d) The commission will keep or cause to be kept a record of all transactions discussed or voted on by the commission. (Act 2000-596, p. 1192 § 6.)

12-25-7. Executive committee.

The executive committee of the commission shall be composed of the chair and four other members selected by the commission and shall conduct business as authorized by the commission or as permitted in Section 12-25-12. (Act 2000-596, p. 1192 § 7.)

12-25-8. Powers.

The commission shall have the power to perform the functions as necessary to carry out the purposes of this chapter and may delegate power to any member or designated person. The commission may do all of the following:

(1) Submit appropriation requests to the Legislature.
(2) Serve as an agency to apply for and receive grants, donations, or other monies from public or private sources and to coordinate and conduct studies in connection with any of its purposes and functions.
(3) Enter into and perform contracts, leases, cooperative agreements, and other transactions as may be necessary to fulfill the responsibilities of the commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization.
(4) Accept voluntary and uncompensated services.
(5) Request information, data, and reports from any Alabama agency or judicial officer as the commission may from time to time require and as may be produced consistent with other law.
(6) Hold hearings, conduct factfinding tours, and call witnesses to assist

the commission in fulfilling its responsibilities.

(7) Perform other functions as may be necessary to carry out this chapter. (Act 2000-596, p. 1192 § 8.)

12-25-9. Duties.

The commission shall have the following responsibilities:

(1) To review state sentencing structure, including laws, policies, and practices, and recommend changes to the criminal code, criminal rules of procedure, and other aspects of sentencing necessary to accomplish the purposes and objectives of this chapter.

(2) To review the overcrowding problem in county jails, with particular emphasis on funding for the county jails and the proper removal of state prisoners from county jails pursuant to state law and state and federal court orders, and to make recommendations for resolution of these issues to the Governor, Legislature, Attorney General, and Judicial System Study Commission before the 2002 Regular Legislative Session.

(3) To make recommendations to the Governor, Legislature, Attorney General, and Judicial System Study Commission concerning the enactment of laws relating to criminal offenses, sentencing, and correctional or probation matters.

(4) To publish an annual report and other reports as the chair deems necessary.

(5) To serve as a clearinghouse for the collection, preparation, and dissemination of information on sentencing practices.

(6) To maintain and make available for public inspection records of actions taken by the commission. (Act 2000-596, p. 1192 § 9.)

12-25-10. Comprehensive discretionary sentencing plan.

Before the 2002 Regular Legislative Session, the commission shall review the present sentencing structure, including laws, policies, and practices, and recommend for consideration in the 2002 Regular Session changes to the criminal code, criminal rules of procedure, and other aspects of sentencing necessary to accomplish a comprehensive discretionary sentencing plan for all felony offenses consistent with the purposes and objectives of this chapter. (Act 2000-596, p. 1192 § 10.)

12-25-11. Cooperation with commission.

Agencies of the state government shall cooperate with the commission as necessary for the commission to carry out its responsibilities. Upon the request of the commission, each agency and department of the state shall make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the commission in the execution of its functions without cost to the commission. When possible, information shall be provided electronically. (Act 2000-596, p. 1192 § 11.)

12-25-12. Director; employees.

(a) The Chief Justice shall appoint a director for the commission. The Chief Justice may also authorize other employee positions for the commission. The director and employees of the commission shall be paid from any funds appropriated to the commission and shall be employed in the same manner as employees of the Supreme Court.

(b) The executive committee of the commission may employ and fix the compensation of consultants and experts to assist the commission as may be necessary to carry out its responsibilities. (Act 2000-596, p. 1192 § 12.)

Appendix E

Sentencing Commission Members
Members of the Executive Committee
Members of the Advisory Council
Subcommittee Members

Alabama Sentencing Commission Members

Joseph Colquitt, Chairman
Circuit Judge (Ret.) and Beasley Professor of Law,
University of Alabama School of Law

Representative Marcel Black, 3rd District, Colbert County
Eleanor I. Brooks, District Attorney, 15th Judicial Circuit
Rosa Davis, Chief Assistant Attorney General
Stephen Glassroth, Esq.
Michael W. Haley, Commissioner, Alabama Department of Corrections
Lou Harris, D.P.A., Faulkner University
Edward A. Hosp, Legal Advisor to the Governor
Judge O.L. (Pete) Johnson, District Judge, Jefferson County
Clyde E. Jones, Esq., Birmingham
Samuel Jones, County Commissioner, Mobile
Emily A. Landers, Deputy Director of Constituent Services, Governor's Office
Judge P.B. McLauchlin, Presiding Circuit Judge, 33rd Judicial Circuit
William C. Segrest, Executive Director, Alabama Department of Pardon and Paroles
Judge David A. Rains, Circuit Judge, 9th Judicial Circuit
Senator Rodger M. Smitherman, 18th District, Jefferson County

Executive Committee

Judge Joseph Colquitt, Chairman
Circuit Judge (Ret.) and Beasley Professor of Law,
University of Alabama School of Law

Rosa Davis, Chief Assistant Attorney General
Mike Haley, Commissioner, Department of Corrections
Samuel Jones, County Commissioner, Mobile County
Senator Rodger M. Smitherman, Jefferson County

Advisory Council to the Commission

Col. James H. Alexander, Director, Alabama Department of Public Safety
Sheriff Prince Arnold, President, Alabama Sheriff's Association
Deborah Daniels, Prison Fellowship Ministries
Doug Parker, Director, DeKalb County Community Punishment & Corrections Authority, Inc.
Miree Tolbert, Prison Fellowship Ministries – reformed inmate
Chief Charles F. Trucks, President, Alabama Police Chief's Association
Walter Wood, Director, Alabama Department of Youth Services
Justice Hugh Maddox, Association Justice (Ret.), Alabama Supreme Court
Scott Coogler, Presiding Circuit Judge, 6th Judicial Circuit, Tuscaloosa
Representative John F. Knight, 77th District, Montgomery
Doris Dease, Victim Service Officer, Crime Victims Compensation Commission
Senator Sundra E. Escott-Russell, 20th District, Jefferson County
Chaplin Adolph South, Tuscaloosa DOC
Henry "Sonny" Reagan, Director, Victims Assistance, Office of the Attorney General

Sentencing Commission Staff

Lynda Flynt, Executive Director
Mary Duncan, Administrative Assistant

Technology Subcommittee

Chairman
Mike Carroll, Chief Information Officer
Data Center
Administrative Office of Courts

Honorable G. Daniel Reeves
Circuit Judge
18th Judicial Circuit

John Hamm, Public Information Officer
Alabama Department of Corrections

Dr. M. Keivan Deravi
Department of Economics
Administrator
AUM School of Business

Honorable Tommy Boswell, Sheriff
Russell County

Honorable John David Whetstone
District Attorney
28th Judicial Circuit

Honorable Steven P. Grimes Judicial
Circuit Clerk, Washington County

Honorable Charles C. Partin
Circuit Judge, 28th Circuit

Isaac Kervin, Alabama Criminal
Justice Information Center

Jim Accardi, Asst. District Attorney
23rd Judicial

Martin Miller, Network
Alabama Department of Corrections

William C. Segrest, Acting Assistant
Executive Director of Administrative
Operations
Board of Pardons and Paroles

Structured Sentencing Subcommittee

Chairman
Rosa Davis, Esquire
Chief Assistant Attorney General
Office of the Attorney General

Honorable Charles Price
Presiding Circuit Judge
15th Judicial Circuit

Honorable Samuel H. Monk II
Circuit Judge
7th Judicial Circuit

Honorable Eleanor I. Brooks
District Attorney
15th Judicial Circuit

Becki R. Goggins
The Sentencing Institute

Miriam Shehane, Executive Director
Victims of Crime and Leniency

Brenda Roberts
Crime Victims Compensation Commission

Honorable Prince Preyer, Commissioner
Madison County Commission

Honorable Rodger Smitherman
Chair, Senate Judiciary Committee

Clyde E. Jones, Esquire
Attorney at Law

Retired Circuit Judge Dan Reynolds
Hoover, AL

Stephen Glassroth, Esquire
Glassroth & Van Heest, P. C.
Attorneys at Law

Honorable Dianne Harris, Sheriff
Butler County

Hon. William M. Bowen, Jr.
White, Dunn and Booker
Attorneys at Law

Carolyn Flack, District Supervisor
State Pardons and Paroles

Betty Teague, Director, Central
Records, Department of Corrections

Mandatory Minimum and Enhanced Sentences Subcommittee

Chairman
Honorable O. L. (Pete) Johnson
District Judge, Jefferson

Rosa Davis, Esquire
Chief Assistant Attorney General

Mike Haley
Commissioner
Department of Corrections

Lynda Flynt, Executive Director
Alabama Sentencing Commission

Honorable David Rains, Circuit Judge
9th Judicial Circuit

Stan Batemon, Chairman
St. Clair County Commission

Honorable Tommy Nail
Circuit Judge
10th Judicial Circuit

Tom Sorrells, Executive Director
Alabama District Attorneys
Association

Richard K. Keith, Esq.
Keith & Hamm P. C.
Attorneys At Law

Honorable Russell Thomas, Sheriff
Pike County

Doris Dease
Crime Victims Compensation
Commission

Community Based Punishment

Chairman
Dr. Jim Merk
J. F. Ingram Technical College

Honorable Samuel L. Jones
Mobile County Commissioner

Honorable Marcel Black, Chair
House Judiciary Committee

Joe A. Mahoney, Director
Mobile County Community Corrections

Kent Hunt, Assistant Commissioner for
Substance Abuse
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Lou Harris, D.P.A.
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HonorableTim W. Morgan
Madison County District Attorney

Ralph Hendrix
UAB TASC

Honorable Harold L. Crow
Presiding Judge, 1st Judicial Circuit

Honorable Jacob Walker III
Presiding Judge, 37th Judicial Circuit

Angelo V. Trimble
Alabama Coalition Against Domestic
Violence

Cynthia S. Dillard, Assistant Executive
Director of Field Services
Board of Pardons and Paroles

Honorable O H. Edward McFerrin, Presiding
Circuit Judge, 2nd Judicial Circuit

Honorable Ron Jackson, District Judge
Shelby County

Chris Retan, Director
Aletheia House

John Rice, Court Referral Officer
Ft. Payne, Alabama

Bill Curtis, District Supervisor
State Pardons and Paroles

Roger Brown, Chief Deputy District Attorney
Jefferson County District Attorney's Office

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