



THE ALABAMA SENTENCING COMMISSION

Recommendations for Reform of
Alabama's Criminal Justice System

2003 Report

“A Rational Approach to Sentence Reform”



March 10, 2003



ALABAMA SENTENCING COMMISSION

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To: Honorable Bob Riley, Governor of Alabama
Honorable Roy Moore, Chief Justice of the Alabama Supreme Court
Honorable Bill Pryor, Attorney General, State of Alabama
The Honorable Members of the Alabama Senate
The Honorable Members of the Alabama House of Representatives
The Citizens of Alabama

A crisis exists in Alabama's criminal justice system. Unless changes occur, the present situation will only deteriorate.

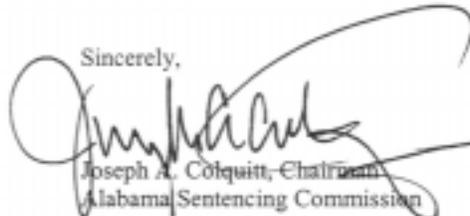
The Alabama Sentencing Commission respectfully submits to you its recommendations for a reformed sentencing system. Through this report, the Commission hopes to provide you with a good overview of the current crisis that exists in Alabama's Criminal Justice System, emphasize the importance of immediate action and offer realistic short-term and long-term solutions to avoid a complete collapse of the system. In studying the deficiencies in our current criminal laws and procedures, the Commission soon recognized the need for vast improvement. We concluded that no simple "tweaking" of the existing system was going to bring about the lasting change that is needed. As noted in its report, the Commission contemplates making additional recommendations for change in the future, but the proposals submitted to you during this Legislative session were considered to be of first priority and an essential first step for sentencing reform.

The reforms contained in this report are realistic. They are designed to protect the public, establish truth-in-sentencing in Alabama, create a wider array of sentencing options for trial judges, better utilize limited resources and eliminate unwarranted sentencing disparity. The proposals presented in this report and in the Commission's legislative package are the result of extensive research and vigorous debate, and are based on considerable information as well as statistical analysis of Alabama's sentencing practices and their impact on the entire criminal justice system.

For the first time in history, Alabama now has available a reliable sentencing database of felony offenders that can be used to determine past and current sentencing practices and the effect those practices have had on other criminal justice departments and agencies. Not only was this database essential to determine existing and past sentencing practices, but it also was vital for the development of a forecasting model that will be able to predict the future impact of existing or modified criminal laws and practices.

The members of the Sentencing Commission, the Advisory Council, the various committees and the Commission staff recognize the importance of this project. We are pleased to be involved in ongoing efforts to improve Alabama's criminal sentencing laws and procedures.

Sincerely,



Joseph A. Colquitt, Chairman
Alabama Sentencing Commission

Acknowledgements

The reform of Alabama's criminal justice system is a monumental project requiring examination of many different aspects in addition to sentencing laws. Data collection and analysis, alternative sentencing programs, drug and alcohol treatment programs, district attorney pre-trial diversion and release programs, DOC work release, supervised intensive restitution release programs, good time and probation and parole policies and procedures all play a major role. The Commission's accomplishments over the past two years has only been possible because of the exceptional assistance and support provided by many people and through cooperative efforts undertaken by several departments, agencies, and associations. The Sentencing Commission members and staff would like to take this opportunity to express our appreciation for the many hours they devoted to this project and acknowledge their invaluable assistance and outstanding service in our efforts to improve Alabama's Criminal Justice System.

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Executive Summary: A Rational and Planned Approach to Reform

The Alabama Sentencing Commission has now completed its systematic review and analysis of sentencing practices, criminal laws and procedures, and their impact on jail and prison populations. After devoting the past two years to research, data collection, and data analysis, we propose a rational and carefully planned approach to system-wide reform based on reliable data rather than anecdotal experiences. In a nation questioning whether old and fragmented sentencing policies best protect public safety, Alabama will now join the ranks of states that base sentencing policies on empirically supported research rather than unproven ideas. With present day budgetary limitations, we can no longer afford to guess which policies will most effectively secure the safety of citizens. Nor can we plan for correctional needs without the ability to determine the impact of our sentencing policies.

Alabama can no longer afford to guess which policies will most effectively secure the safety of our citizens.

For the first time in history, Alabama has a reliable and comprehensive sentencing database of 64,000 felony offenders convicted and sentenced over the last four years. The Sentencing Commission is in the process of completing a computertized simulation model based on this data that can be used to predict the impact of changes in sentencing laws and practices on jail and prison populations. This model is an essential tool for the development of an intelligent and carefully planned criminal justice system.

We obtained data from the Department of Corrections, Board of Pardons and Paroles, the Administrative Office of Courts, and the Alabama Criminal Justice Information System. In addition, we conducted manual file searches and surveys. Now we are ready to make several recommendations designed to achieve the sentencing goals established by the Legislature. Our goals and mandates are comprehensive, and by their very nature, require a progressive and carefully designed plan of implementation. In this spirit, the Sentencing Commission is recommending the adoption of legislation that, if approved and implemented, will:

- establish an effective, fair, and efficient sentencing system that promotes truth-in-sentencing;
- provide a wider array of sentencing options for non-violent offenders;
- authorize individualized sentencing as warranted by mitigating and aggravating factors, maintaining judicial discretion in sentencing -- both in the time imposed and the use of sentencing options;
- avoid unwarranted sentencing disparities among felony offenders with similar criminal records who have been found guilty of the same or comparable offenses, eliminating distinctions of sentences based on race, gender, wealth, or the jurisdiction of conviction; and

- prevent prison overcrowding, while avoiding the premature release of prisoners.

In developing our recommendations, the Commission has been attentive to the directives of the Legislature to create a sentencing system that fosters punishment reflecting the gravity of the crime, promotes respect for the law, provides just and adequate punishment for the offense, deters criminal conduct, is consistent with the protection of the public, and promotes the rehabilitation of offenders.

The Need for Long Range Planning is Apparent

This report confronts the deficiencies in Alabama's criminal justice system.

We begin this report by confronting the glaring the deficiencies that currently exist in Alabama's criminal justice system. Our inmate population has climbed to almost 28,000 prisoners, a 600% increase in just 30 years. The jail overcrowding problem also recently hit an all time high, which culminated with county sheriffs dropping busloads of state prisoners on the doorsteps of the Department of Corrections and ta state court assessing fines for failing to transfer state inmates to the Department of Corrections in a timely manner. While the Department of Corrections is under a state court order to accept 100 additional prisoners a week (resulting in a total of roughly 275 weekly admissions), it has also been hit with federal lawsuits alleging that the overcrowded conditions of Alabama's prisons violate the constitutional prohibition against the imposition of cruel and unusual punishment. This is not surprising, as Alabama's five maximum security prisons are at 175% of design capacity. Recently, the United States District Court (Middle District, Northern Division) ordered the State of Alabama to submit a plan to immediately and fully redress the unconstitutionally unsafe conditions caused by the overcrowding and understaffing conditions existing in Alabama's 60 year old prison for women (which now houses over 1,000 inmates in a facility designed to hold 417). Additional litigation is pending alleging inadequate medical and mental health care of prisoners.

Despite efforts to alleviate the backlog of state inmates housed in county jails and to increase participation in community-based programs such as Supervised Intensive Restitution (SIR) programs, the situation has gotten worse. From October 2001 to October 2002, there has been a 65% increase in the number of state inmates housed in county jails and over a six-fold increase of inmates awaiting transfer to the Department of Corrections. Although one short-term solution proposed in 2001 was the reinstatement of the SIR program and diversion of eligible prisoners to work release programs, there are 50% fewer participants in the SIR program now than a year ago and there are still empty work release beds.

1 in 3 new inmates enters prison for a drug or alcohol offense.

At the same time that our prisons are becoming severely overcrowded, it is apparent that Alabama warehouses many *treatment-needy* offenders. One-third of the new offenders sent to prison are convicted of drug possession, drug sales or felony DUI. These offenders report extensive histories of alcohol and drug abuse,

yet little experience with treatment. Although substance abuse programs are available in the penitentiary, they are not equipped to handle the influx of offenders requiring treatment. For example, between January and August 2002 the Department of Corrections had a total of 12,744 inmates participating in one of nine substance abuse programs, with an additional 7,493 inmates on waiting lists. Our state lacks sufficient programs in the prisons and the community to address the drug and alcohol addictions of offenders.

For a state penitentiary that is already bursting at the seams and operating well beyond staffing and physical capacity, there is no simple solution. Since the problem is multifaceted, resolution will require the adoption of multiple strategies.

Alabama Must Now Pay The Cost of 30 Years of Inaction

Alabama's criminal justice system is nationally recognized for its high rate of prison commitments, long sentences, and its heavy reliance on incarceration as the favored option for the punishment of drug and property offenders. We can retain this distinction, but it will cost much more than adopting the recommendations proposed by the Commission. We can continue locking up all of our criminals, regardless of offense seriousness, but we will have to build a lot more prisons, hire many more correctional officers, and spend a great deal more money. We suggest that it is not really a matter of how much we want to spend, but how smart do we want to be in planning our state's criminal justice future.

*Doing nothing now will cost much more later.
It is time to be smart on crime.*

While many of the Commission's recommendations call for the expenditure of money, these recommendations are designed to save the State General Fund millions of dollars over the long term. General fund monies are scarce and must be expended wisely. Doing nothing now, however, will cost much more *later*. Considering the pending lawsuits and those looming in the background, these inflated and avoidable expenses must be addressed now.

The Commission's proposed recommendations are designed to assist in addressing the current prison overcrowding crisis and avoid the reoccurrence of the same scenario in the future. It is time that Alabama begins to be *smart on crime*, locking up violent and repeat offenders and providing alternatives to incarceration for non-violent offenders.

Long-Term Plan

Utilizing the data collected and analyzed, the Alabama Sentencing Commission has mapped out both long-term and short-term strategies for change. The long-term plan formulated by the Commission is a new sentencing system designed to be phased-in over four years. The key components of this system are the imple

We need voluntary sentencing standards and a statewide continuum of punishments.

mentation of voluntary sentencing standards and the establishment of a continuum of punishments that utilize a statewide system of community-based punishment programs including expanded and improved probation and parole services. Coinciding with the final adoption of these standards in 2006 will be the abolition of parole and good time credits as they presently exist, and the implementation of sentences which include a minimum term of confinement, a mandatory term of post-release supervision for all felony offenders, and the imposition of “bad time” for prison disciplinary infractions.

Short-Term Proposals

The Commission recommends several short-term proposals essential for the development and implementation of its reformed sentencing structure. These include:

- amendment of 30 theft and value-based property statutes;
- amendment of the Community Punishment and Corrections Act of 1991;
- increase funding for additional probation and parole officers; and
- funding for substance abuse treatment for offenders.

Amendment of Theft Statutes

Included within the sentencing reform legislative package that is being introduced this session is legislation amending Alabama’s theft statutes, changing property values to reflect inflationary increases that have occurred since these statutes were initially adopted. This legislation will raise the felony threshold level for theft, receiving stolen property, and similar offenses, making property values consistent among the various types of crimes. The Commission has submitted legislation proposing amendments to theft statutes which increase property value amounts for Class B felonies to property valued over \$2,500, Class C felonies to property over \$500 up to \$2,500, and Class A misdemeanors to property valued at \$500 or less. Amendments are recommended for all degrees of theft of property, theft of lost property, theft of services, receiving stolen property, criminal mischief, charitable fraud, illegal possession of food stamps, defacement of public property, utility theft, identity theft in the 1st and 2nd degrees, offenses against intellectual property, and fraudulent leasing/rental of property. Amendments to four of the statutes alone are expected to reduce our projected prison population growth by 3,000 inmates over the next five years.

Amending 4 theft statutes alone will reduce the prison population growth by 3,000 inmates over a 5 year period.

Amendments to the Community Punishment and Corrections Act of 1991

To assist in the statewide development and expansion of community punishment programs and encourage involvement by local communities, the Alabama Sentencing Commission is recommending several amendments to the Community Punishment and Corrections Act of 1991. Among the Commission's major recommendations is the creation of a Division of Community Corrections within the Department of Corrections with a full-time director and executive staff. To ensure adequate funding for the statewide expansion of community corrections programs and to prevent diversion of these funds to other projects, the Commission is recommending an appropriation of \$5.5 million from the State General Fund for FY 2004 and the creation of a separate fund (State-County Community Punishment Partnership Fund), with the funds earmarked for program implementation and operating costs.

Increase Funding for Probation and Parole Officers

The caseloads of Alabama probation and parole officers are among the highest in the nation. There are currently 32,975 probationers and 5,234 parolees assigned to 194 supervising officers. Last year, when Alabama had 44 more officers and a smaller caseload, we thought the situation was dismal and could not get much worse. The Sentencing Commission is recommending that the Legislature provide funding to enable the Board of Pardons and Paroles to hire an additional 60 probation officers immediately (28 to cover the re-instituted weekly special dockets and 32 to more intensely supervise probationers and parolees).

Funding for Substance Abuse Treatment for Offenders

The Commission recommends that the Legislature approve supplemental appropriations in the amount of \$325,000 to the Department of Mental Health to provide drug treatment through Aletheia House to 40 additional inmates from July through the remainder of the fiscal year. Full funding of the program is recommended for FY2004 at the cost of \$1,350,000 for substance abuse treatment of 180 felony offenders.

Our Optimism For the Future

Alabama's criminal justice system is in need of comprehensive reform. Some believe that our problems are too numerous to resolve – an overcrowded prison system that has existed for years; county jails backlogged with state prisoners; a system that lacks truth-in-sentencing; confusing and illogical prison release policies; and insufficient community-based sentencing options. To compound the problem, looming on the horizon is an expected population boom of persons entering their "crime prone age years" and a general fund that has no money to spare.

Despite these seemingly insurmountable obstacles, the potential for improvement is promising. Our new governor, our attorney general, and our chief justice have all committed to support the work of the Sentencing Commission and are well aware of the problems confronting Alabama's criminal justice system.

There is an increasing awareness among political leaders that Alabama can no longer afford to continue *business as usual*. It is now generally recognized that sentencing reform must be implemented and that long-range planning for prison growth, community corrections programs, and offender supervision is a necessity. Many of our legislators are now aware of the consequences of "get tough on crime" bills that fail to consider the costs involved and intend to work with the Commission to help resolve existing problems and avoid similar problems in the future. Through the collaborative efforts already demonstrated by our criminal justice agencies and the Sentencing Commission, Alabama can resolve these problems and implement a model sentencing system that merits positive national recognition.

Chapter 1: Introduction

In 2000, the Alabama Legislature created a Sentencing Commission to review Alabama's existing sentencing structure, including all laws, policies, and practices. The Legislature directed the Commission to evaluate Alabama's criminal sentencing against several benchmarks:

- To ensure that sentencing practices promote public safety and recognize the impact of crime on victims by concentrating on the incarceration of violent, sex, and repeat offenders.
- To maintain meaningful judicial discretion allowing judges the flexibility to individualize sentences based on the unique circumstances of each case.
- To establish a system where the time served in prison will bear a close resemblance to the court imposed sentence.
- To provide for sentencing alternatives, other than incarceration in prison, for offenders who can best be supervised and rehabilitated through more cost-effective means while still protecting the public.
- To assist the executive branch in avoiding prison overcrowding and premature release of inmates.
- To ensure that there exists no unwarranted disparity with respect to sentencing of felony offenders.

Our Mission:

The Alabama Sentencing Commission shall work to establish and maintain an effective, fair, and efficient sentencing system for Alabama that enhances public safety, provides truth in sentencing, avoids unwarranted disparity, retains meaningful judicial discretion, recognizes the most efficient and effective use of correctional resources, and provides a meaningful array of sentencing options.

Data To Support Recommendations

Since its first meeting in 2001, the Commission has spent much time collecting, analyzing, and interpreting information on Alabama sentencing and correctional practices in order to draft recommendations for change. Until the Commission was established, Alabama did not have a single, reliable data source in which to evaluate the sentencing system against the legislative benchmarks. Therefore, the Commission undertook an intensive data analysis effort involving the cooperation and support of numerous agencies, including the Administrative Office of the Courts, Department of Corrections, Board of Pardons and Paroles, Alabama Sheriff's Association, the Alabama Criminal Justice Information Center, and the Alabama Community Corrections Association.

We now have a reliable data source to evaluate the sentencing system.

The Commission relied on existing data maintained by agency information systems, as well as initiated a number of ad hoc data collection projects, to fill gaps in Alabama's existing records system. This included collection and analysis of defendant pre-sentence investigative reports and surveys of county jails, community corrections programs, and drug court programs. As a result, Alabama now has an integrated database on which the Sentencing Commission will rely to obtain unprecedented insight into the state's sentencing and correctional system.

Commission Collaborations

The Commission has been involved in the coordination of the Board of Pardons and Paroles and the Administrative Office of the Courts statewide information system to automate investigative reports for felony defendants. This data will ultimately assist in the continued monitoring and evaluation of sentencing and correctional practices. Additionally, the Commission is working with the Community Corrections Association to incorporate a central reporting component within the case management system that is currently being developed. Finally, in close collaboration with the Department of Corrections, the Commission has developed the first state prison population simulation model. As a decision support tool, the simulation model will assist decision-makers in assessing the operational and budgetary impact of proposed legislative and policy changes.

The Commission developed Alabama's first state prison population simulation model.

Our Report Answers Four Questions

With new information and new analytical tools, the Commission and advisory members undertook the painstaking task of interpreting the results of months of analyses in an effort to link today's crisis with the decisions made decades ago. In addition, we identified areas for reform. In articulating the need for reform, the Commission focused on four essential questions:

- What is the nature and extent of overcrowding in Alabama's correctional system?
- Does truth-in-sentencing exist in Alabama?
- Is there sentencing disparity among defendants with similar criminal histories and criminal conduct?
- Is Alabama concentrating its scarce prison resources on dangerous and habitual offenders, while employing less expensive yet more effective intermediate and community-based sanctions for low risk offenders?

The first part of this report (Chapters 2 – 5) specifically addresses these four issues, providing a sobering insight into the nature and extent of Alabama’s current crisis and how our system measures up against the legislatively established benchmarks. Chapter 6 looks into Alabama’s future and investigates the impact on the system if we decide *not* to take the bold steps needed for reform. That is, what does the future hold if Alabama adheres to a policy of inaction? Finally, Chapter 7 presents the Commission’s recommendations for reform, incorporating the professional experience of judges, district attorneys, defense attorneys, corrections and probation/parole administrators, and takes into consideration the needs and interests of victims and the citizens of Alabama.

This report provides sobering insight into the nature and extent of Alabama’s current prison crisis and the impact of not taking steps toward reform.

Chapter 2: Alabama's Struggle With Overcrowded Prisons

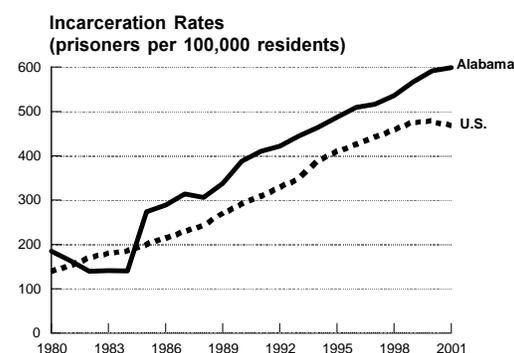
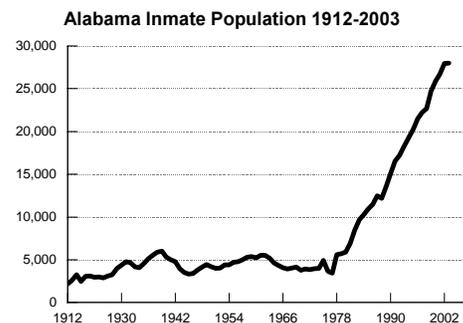
Over the past 30 years, Alabama has witnessed unprecedented growth in the state's prison system – an increase of over 600% while the state's total population grew only 30%. Compared to other southern states and the rest of the nation, Alabama consistently has one of the highest rates of incarceration (prisoners per 100,000 residents). Today, there are roughly 28,000 inmates housed in Alabama prisons. Between 2000 and 2001, Alabama's inmate population grew at nearly twice the national average (2% compared to 1.1% nationally). From 2001 to 2002 the population grew another 4.5%. If left unchecked, Alabama can expect to see its prison population reach 32,000 inmates in the next five years. The basis for this prediction is examined in detail in Chapter 6.

The Path to Reform

Justice Oliver Wendell Holmes once said that *a page of history is worth a volume of logic*. As the Sentencing Commission examined the problems facing Alabama's criminal justice system, the words of Justice Holmes have guided us in understanding the past, as well as in shaping a new future for Alabama. Today's problems are rooted in Alabama's 30-year struggle to punish offenders more severely while at the same time respond to a burgeoning inmate population, class action lawsuits, and federal intervention.

To moderate the spiraling prison population growth and in response to crisis conditions, Alabama has utilized various alternatives such as work release, pre-trial diversion programs, supervised intensive restitution, community corrections programs, correctional incentive time (good time), parole, special release dockets, drug courts, and new prison construction. While Alabama's correctional history is replete with efforts to alleviate overcrowding, these efforts have always had to compete with laws and practices geared to punish offenders more severely, including the Habitual Felony Offender Act, sentence enhancements, good time restrictions, parole minimum time-served policies, and mandatory minimum sentences. The result of this *balancing act* is a complex system of laws, policies, and processes, each instituted over the past 30 years, to deal with the unique problems of the day.

Unfortunately, Alabama's history follows a very distinct cycle that repeats itself every decade. The cycle begins with a flurry of prison overcrowding lawsuits, followed immediately with a patchwork of short-term solutions, such as new prison construction, new release or good time programs, or accelerated parole releases. Although these efforts may solve the immediate crisis, the long-term benefits are lost a few years later as new, unfunded criminal penalties or enhanced sanctions re-initiate an entirely new cycle of jail and prison population growth



beyond existing capacities. These more punitive policies are usually “get tough on crime” responses to programs implemented years earlier to relieve a prison overcrowding crisis.

The timeline below chronicles the antagonism between efforts aimed at reducing prison overcrowding and policies and legislation intended to increase penalties. This history demonstrates that the shortsighted, ad hoc reforms lead only to more unintended consequences and further reform. In looking toward the future, the Commission was very mindful of the past.

Alabama Corrections History Highlights

1971	Commencement of Protracted Litigation Involving Prison Conditions
1973	Federal Court Declares Unconstitutional Conditions Exist in Jails
1975-76	Federal Courts Hold Alabama Prison Conditions Unconstitutional
1976	Split Sentencing Act
1977	Habitual Felony Offender Act
1979	Federal Court Appoints Governor Receiver of Alabama Prisons
1980	Revised Criminal Code (increased habitual/violent penalties)
1980	Sentence Enhancement for Felonies Involving a Weapon
1980	Parole Guidelines to Increase Time Served by Violent Offenders
1980	Significant Changes in Good Time Law Reducing Earned Credits
1982	Work Release Expanded
1982	Supervised Intensive Restitution Program
1982	Pre-Discretionary Release Program
1983	Consent Decree Sets Up Prison Oversight Committee
1982-85	Four New Prisons Constructed
1985	Split Sentencing Act Amended
1987	Judicial Study Commission Forms Prison Review Task Force
1987-89	Drug Sale Enhancements (3-mile radius of school/project)
1988	Split Sentencing Act Amended to Include Boot Camp
1991	Plans for Construction of New Prison (Bibb)
1994	Serious Juvenile Automatic Transfer Statute (Age 16+)
1995	Alabama Criminal Justice Advisory Commission on Prisons
1998	Bibb Correctional Facility Opens
1998	Consent Order in State Prison Lawsuit
2000	Legislature Establishes Alabama Sentencing Commission
2000	Governor Establishes Corrections Task Force
2001	County Jail Class Action Lawsuit, Montgomery County Circuit Court orders DOC Commissioner to comply with 1998 Consent Order and accept all inmates over 30-days awaiting transfer in local jail
2001	Thursday Special Parole Dockets Begin (accelerated release)
2002	Special Dockets Stop (April) and Resume (September)
2002	Tutwiler Prison Class Action Lawsuit
2002	Southern Center for Human Rights Suit (medical care)

Alabama has once more reached a crisis crossroad.

What Is Fueling Our Prison Growth Today?

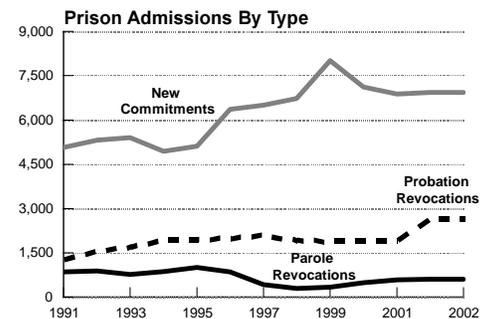
Prison populations are a function of two simple factors: how many people walk in the front door (admissions) and how long they stay (length-of-stay). A slight change in one or both of these factors can have a dramatic effect on the overall prison population. For example, suppose 100 inmates enter a 100-bed prison and each stays 365 days. This hypothetical 100-bed prison would not exceed capacity since the incoming inmates would need only 100 beds for a one-year period (100 admissions x 365 days = 36,500 bed days/365 days per year = 100 beds). What would happen if admissions jumped five-fold to 500 inmates? In order to stay within the 100-bed capacity, each inmate's length-of-stay would need to drop from 365 days to an average of 73 days, or an 80% decline (500 admissions x 73 days = 36,500 bed days/365 days per year = 100 beds). This is an extreme example. Most prison population management problems occur when there are modest, undetected increases in the length-of-stay among a large volume of inmates, such as drug and property offenders. What may appear to be inconsequential increases of three to six months in the length-of-stay can lead to dramatic increases in the prison population when applied to thousands of offenders.

More New Offenders

In 2002, new admissions to Alabama prisons climbed to 10,210 inmates, up 9% from the previous year. The year marked only the second time in Alabama correctional history that annual admissions surpassed 10,000. Over the past decade, Alabama has witnessed a significant increase in new prison admissions (up 26%). Since 1991, inmates sentenced by the courts have increased 35% while prison admissions for parole or probation revocations increased 17%. Today, new commitments from court make up 73% of the prison population, while probation and parole revocations make up 21% and 6% respectively.

As a result of the trend toward restricted parole release policies and a drop in the active parole population, it is not surprising that parole revocations to prison declined 32% over the past decade. In contrast, probation revocations to prison have significantly increased, up 51% over the past ten years. Yet despite such a significant jump, probation revocations still account for only 21% of all prison admissions, up from 17% a decade ago.

While revocations are not driving the recent prison growth, there are some notable trends. For example, the graph to the right shows a recent increase in probation revocations to prison. Also, the percentage of probationers and parolees entering prison for a technical violation (as opposed to committing a new offense) has increased considerably. For example, one out of five revoked parolees in 1991 entered prison for a technical violation. Today, almost one-half of both the probation and parole revocations sent back to prison are the result of a technical violation. It would appear the prisons are increasingly becoming the favored sanction for violators in the community.



1/2 of revoked probationers & parolees are sent back to prison for a technical violation, not a new offense.

Longer Stays

25 high volume crimes account for 4/5 of the inmate population.

In addition to an increase in admissions, Alabama has experienced increases in the length of prison stays for many high volume offenses. Inmates entering the prison system for one of the 25 most frequent offenses stayed, on average, 22% longer in 2002 than they did in 1999. These 25 offenses account for 88% of prison admissions and 80% of the inmate population (see Appendix A for a list of the top 25 offenses). Interestingly, the increase in prison stays happened during a time period when prison sentences for new inmates actually declined.

Change In Average Prison Stays

Offense	Avg. Length-of-Stay (Months)		% Change
	1999	2002	
Poss. Forged Instrument II	10.6	16.5	+55%
Theft of Property II	13.3	20.1	+51%
Robbery II	14.5	17.0	+43%
Burglary III	14.7	19.8	+34%
Poss. Controlled Substance	11.4	15.2	+33%
Receiving Stolen Property II	13.0	15.9	+23%
Felony DUI	9.3	11.3	+22%

As the table to the left indicates, the average length-of-stay for a number of high volume offenders in our prisons has increased over the past few years. Although these increases may only account for two to eight months, this extra time is substantial considering the volume of inmates. For example, in 1999, Alabama needed 109 beds to incarcerate 100 defendants serving time for 2nd degree theft of property when the average stay was 13.3 months. Due to the slight average increase in length-of-stay of 7 months, by 2002 we needed an *additional* 57 beds to incarcerate these same offenders. When such increases are taken together across dozens of offenses, these modest increases in length-of-stay translate into a substantial impact on the correctional system.

Drug and Property Offenders Overwhelm Our System

Top 10 Offenses at Prison Admission

Offense	%
Possession or Receipt of Controlled Substance	13.3
Unlawful Distribution of Controlled Substance	9.1
Felony DUI	8.8
Burglary 3rd Degree	6.7
Robbery 1st Degree	5.8
Theft of Property 2nd Degree	5.7
Theft of Property 1st Degree	5.6
Possession of Pre-Cursor Chemicals	5.0
Murder	3.1
Assault 2nd Degree	2.8

Drug and property offenders account for almost half (44%) of Alabama's prison population. In fact, seven out of the ten most frequent crimes among new prison admissions are drug/alcohol or theft related. One third of all new offenders walking into prison are convicted of drug possession, drug sales, or felony DUI.

The Impact of Growth on Facilities

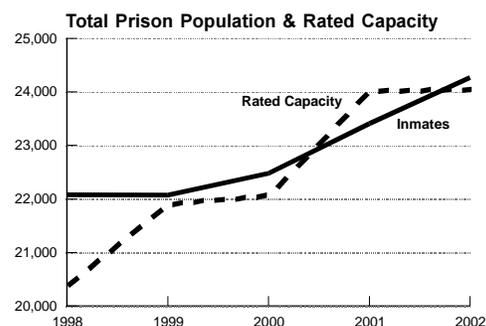
Growing admissions are placing a significant strain on Alabama's prison system. The extent of overcrowding in a prison system is measured against two definitions of prison capacity. First, *design capacity* refers to the number of inmates a facility was designed to house, based on architecture and overall facility engineering. The table below highlights the extent of overcrowding in some of Alabama's largest correctional institutions.

Institution	Design Capacity	Avg. Monthly Population	Overcrowding Index*
Tutwiler	417**	1,001	240%
Limestone	874	2,103	241%
Kilby	440	1,321	300%
Ventress	650	1,399	215%
Staton	508	1,346	265%

*Overcrowding index reflects the average monthly inmate population divided by design capacity.
 **Recently cited as 617 because Mitchell Work Release closed and referred to as Tutwiler Annex.

Overall, Alabama's five maximum-security facilities are at 175% of design capacity while medium-security facilities exceed 210% of design capacity. While the Department of Corrections has found creative ways to squeeze additional inmates into the system, this burden is taking its toll on our facility infrastructure. Kitchens, laundry, wastewater and sanitation, and facility maintenance operate 24 hours a day, rendering little down time for repair and maintenance.

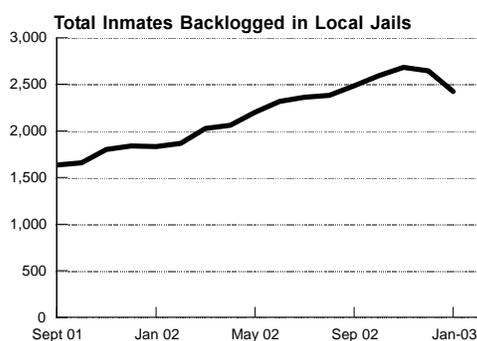
Rated capacity represents the second measure used in assessing the extent of overcrowding. *Rated capacity* is the number of beds or inmates assigned by the Department of Corrections to an institution. Capacity is expanded beyond design capacity to include new beds without the addition of new space, such as double-bunk cells, adding beds to dormitories, as well as converting facility space that was not designed to house inmates. The graph to the right shows the total inmate population, excluding jail backlog, and Alabama's rated capacity. Today, Alabama's prison population has clearly exceeded even its rated capacity.



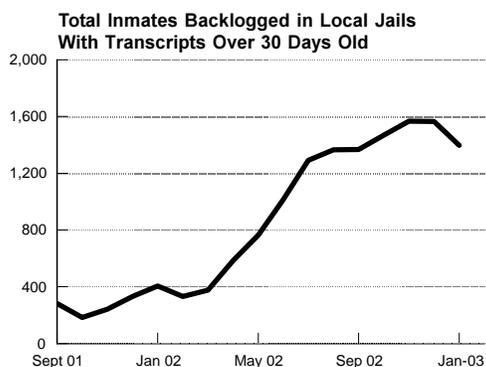
While the population has soared, bed space utilization has changed very little in the past five years, with only a 10% increase in the total number of beds available. In comparison, Alabama's inmate population grew 4.5% in just the most recent year. One in five new prison beds are medium security beds, which account for almost one-half (47%) of the current beds. In five years the number of maximum security beds increased 6%, minimum security beds increased 5%, and work release beds increased 6%.

Populations Back Up in Local Jails

In Alabama's history, jail-overcrowding litigation has been the first line of attack in the struggle with prison overcrowding. As the prison system becomes more crowded, it becomes increasingly difficult to transfer newly sentenced felony offenders from local jails. During the past few months, Alabama has had between 1,500 and 2,400 jail inmates ready for transfer to the Department of Corrections (referred to as "jail backlog"). What is especially disturbing is the change in the past several years. Jail backlog has increased 31% in the past year alone. Due to an increase in jail capacity, the state's overall jail population has experienced only an 8% increase since 1999. However, during this same time frame jail backlog has doubled.



To place the seriousness of this backlog problem into perspective, consider the state of Georgia. Although Georgia has 22,000 more prison inmates and a jail capacity three times greater than Alabama, Georgia has 400 *fewer* jail backlog inmates. In other words, Alabama's backlog comprises 20% of the overall state jail population while Georgia's backlog is less than 6%.



It is not surprising to find an unusually large number of Alabama inmates waiting in the jail for a bed in the prison system. One measure of this backlog is the

number of inmates with transcripts over 30 days old (after 30 days of receiving a transcript from the local court, DOC is under court order to transfer the inmate to prison). Since last year, the number of inmates waiting in a local jail with a transcript over 30-days old increased 322%, up from 331 to 1,396 inmates as of January 2003.

Based on our own December 2002 survey of local jails, 27 Alabama jails report that their population has reached or exceeded capacity. In fact, four jails report populations of *twice* their rated capacity. Overall, 46% of the jail inmates are awaiting trial, one-third are serving a jail sentence for a felony, misdemeanor, or municipal ordinance violation, and 20% represent state inmates ready for transfer. Among DOC inmates ready to transfer, 74% have remained in the jail beyond 30-days.

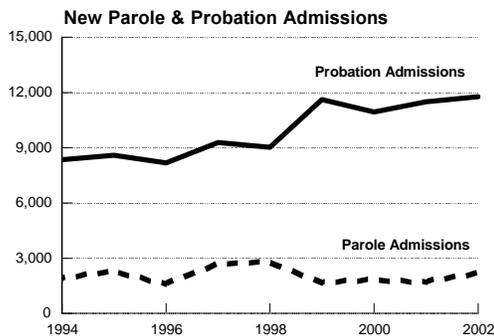
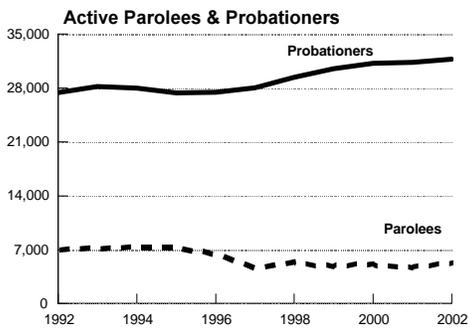
Although jail backlog is a major problem in Alabama, it is not attributable entirely to the local jail overcrowding problem. Among the 27 jails with an inmate population at or over capacity, even if all state inmates were picked-up today, 13 county jails would still have populations of 100% or more of capacity.

Probation & Parole: A Neglected & Overcrowded Option

As a result of jail and prison overcrowding, many states deal with the problem in the short-term by accelerating parole releases or diverting offenders to non-custodial options, such as probation. Unfortunately, Alabama's probation and parole systems are also crowded and are unable to absorb an influx of new offenders, particularly prison-bound inmates, without a significant investment in additional staffing and programs. Judges refuse to continue to overburden this local sentencing option.

Today, almost 33,000 offenders are serving time on probation, a 20% increase since 1992. During the past ten years, the annual number of new probationers has increased 22%. On the other hand, the active parole population has declined 26% over the past decade, while there has been a modest (5%) decrease in the number of new inmates starting parole.

One statistic that has received very little attention is the increase in split sentences, where an offender serves a maximum of three or five years in prison followed by a term of probation. Since 1992, the number of inmates leaving prison on a split probation sentence has increased 51%. Unlike other offenders who are placed on straight probation, split sentence offenders serve time in prison. Thus they typically demand more staff time in transitioning to post-release supervision.



Staffing Standards

Despite an increased caseload, the number of probation/parole officers has changed little. Alabama has witnessed only an 8% increase in the number of supervising officers over the past ten years. As of February 1, 2003, there were only 209 probation and parole officers available to supervise cases (down 29 officers from a year ago). In 2002, the Board of Pardons and Paroles commissioned a probation and parole workload study.¹ The purpose of the study was to estimate the number of officers required to supervise offenders placed on probation and parole. Using standards recommended by the National Institute of Corrections, this study assessed the time required to perform investigative and supervisory tasks. The study concludes that the Board is significantly understaffed and would need a minimum of 64 additional officers to meet the Board's current performance standards, applying current caseloads. This figure does not take into account expected caseload increases if Alabama begins to divert more non-violent offenders from prison to intermediate sanctions and require post-incarceration supervision of all released prisoners.

Few Other Non-Prison Options Available To Judges

The majority of Alabama judges rely on probation or the split sentence (short prison term followed by probation) as the *only* alternatives to prison. Community corrections options exist, but they are still in their formative stage. Compared to other states, Alabama has minimal community punishment and correctional alternative programs available. Those that do exist provide services in limited geographic areas and rely primarily upon state funding and fees collected from offenders. The programs vary in terms of services provided, program capacity, fees charged, qualifications for participation, criterion for success and failure, and completion rates. As it currently stands, Alabama's community corrections "system" is far from ready to take on any volume of offenders diverted from prison (see Chapter 5 for details).

Alabama's community corrections "system" is far from ready to take on more diverted offenders.

Conclusion

The Alabama prison system has witnessed unprecedented growth in the past 30 years. Today, roughly 28,000 inmates are housed in severely overcrowded prisons or are backed up in local jails. Both increased admissions and longer prison stays are fueling the unprecedented growth. Remaining cognizant of the already overburdened and underfunded probation and community corrections systems, our reform efforts must begin with a clear recognition of the need for more efficient and effective use of Alabama's limited correctional resources.

¹National Council on Crime and Delinquency, Alabama Board of Pardons and Paroles Probation and Parole Workload Study (Draft), January 2003.

Chapter 3: No Truth Or Certainty In Sentencing

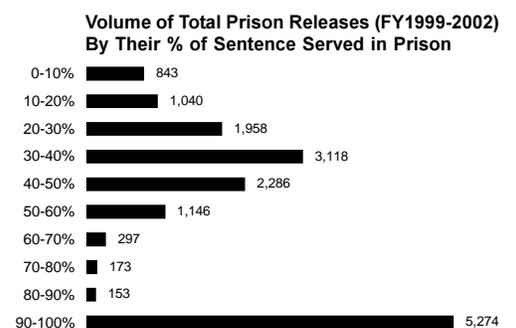
Public safety demands that offenders be held accountable for their criminal behavior. Confidence in the criminal justice system is seriously eroded when the amount of time served in prison does not bear a consistent relationship to the sentence articulated in the courtroom. With a complicated system of embellished sentences, discretionary parole, and generous “good time” credits, the typical criminal leaving an Alabama prison serves no more than 45% of his court imposed sentence.

Confidence in Alabama’s criminal justice system has seriously eroded.

Determining how much time an inmate will serve in prison begins with the sentence imposed by the trial judge. The Alabama criminal code classifies the type of crime committed as a Class A, B or C felony to provide general statutory ranges for imprisonment. The penalty for a Class A felony is ten years to life (not more than 99 years), two to 20 years for a Class B felony, and one year and one day to ten years for a Class C felony. Variations within these broad ranges occur based on whether part of the sentence imposed is suspended pursuant to the split sentence statute, probation is granted, or whether mandatory minimum terms of imprisonment apply, such as the mandatory ten additional years when a firearm is used in the crime. Further deviations occur for specific offenses in which the minimum and enhanced sentences have been mandated by the Legislature due to prior convictions, the age of the victim, the occupation of the intended victim, motive, or the place where the offense occurred.¹

Most Inmates Serve Only a Portion of Their Sentence

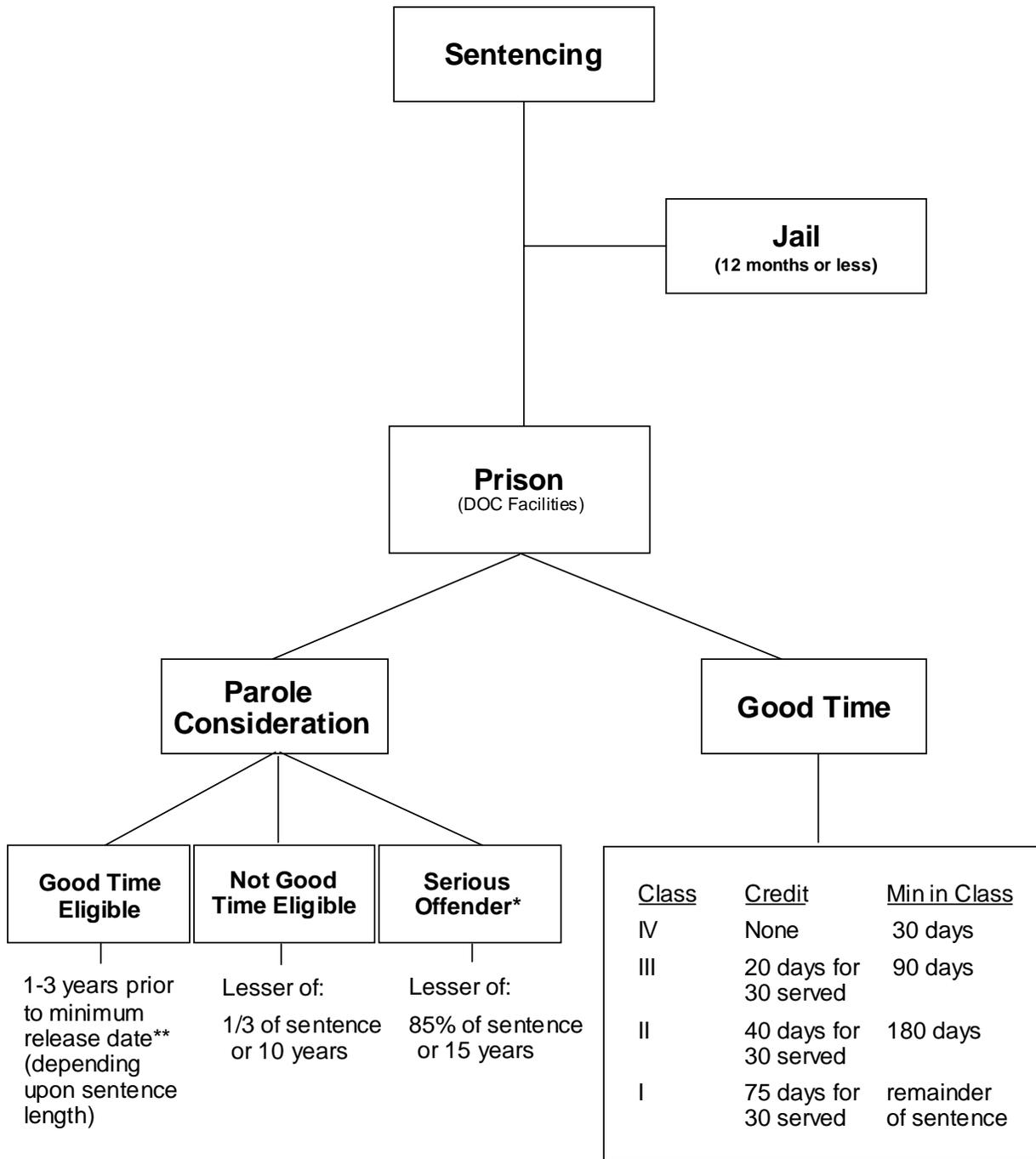
The prison release date for many inmates is determined not by the judge, but rather, based on the amount of “good time” awarded and the discretionary release decisions of a three-member Parole Board. “Good time” credits, like parole, directly affect the length of time a prisoner spends behind bars. While Alabama has one of the highest incarceration rates in the nation and sentences defendants to longer prison terms than most states, our state has the distinction of having one of the most generous good time laws. Under the current system the average inmate is given 243 days credit for every 365 days served (a total of 608 days per year).



In practice, good time credits are not *earned* but are considered a right that can be denied by statute for certain offenses or due to a prison disciplinary action. The grant of good time credits in Alabama does not depend on an inmate’s participation in prison programs, work time, or outstanding service.

¹ §13A-6-69 Enticing a child to enter a vehicle/house for immoral purposes; §13A-12-215 Selling controlled substances to a child under 18; §13A-6-21 Assault 2nd with intent to cause or causing physical injury to another while preventing peace officer, emergency personnel or firefighter from performing lawful duties, intent to injure teacher, employee of public education and causing physical injury to another; §13A-5-13 Hate crimes; §13A-12-250/§13A-12-270 Drug sales within 3-miles of a school or housing project.

Description of Alabama’s Parole and “Good Time” Laws



*Murder, Attempted Murder, Rape I, Sodomy I, Sexual Torture, Kidnapping I, the following crimes if serious physical injury occurs: Arson I, Robbery I and Burglary I.

**Minimum release date is the term of sentence with deductions for jail credit and maximum good time.

The credits an inmate is expected to accumulate are calculated upon entry into the prison system and are only denied or forfeited for bad conduct or rule violations. Because they are awarded automatically, these credits have come to be considered, at least by the inmates, as an entitlement and any forfeiture or denial of these credits as punishment.

Discretionary Parole Release

The time an offender will actually serve behind bars involves complex discretionary parole eligibility rules in addition to good time credits. For prisoners receiving good time, the first date for parole consideration by majority vote of the Board is determined by the imposed sentence. An inmate sentenced to five years or less can be immediately scheduled for parole consideration. For an inmate with a sentence between five and ten years, the approximate date for parole consideration is 12 months prior to the minimum release date (the sentence minus all possible good time credit earned); for sentences between ten and 15 years, approximately 24 months prior to the minimum release date; and for inmates sentenced to more than 15 years, 36 months prior to the minimum release date.

For most inmates not receiving good time, parole is considered after serving one-third of the sentence or ten years, whichever is less. However, this only determines the first date the inmate is *eligible* for parole. The Board's rules and regulations specify a longer wait for parole consideration for serious offenders. Inmates convicted of violent offenses² generally are not eligible for parole consideration until serving 15 years or 85% of their sentence, whichever is less.

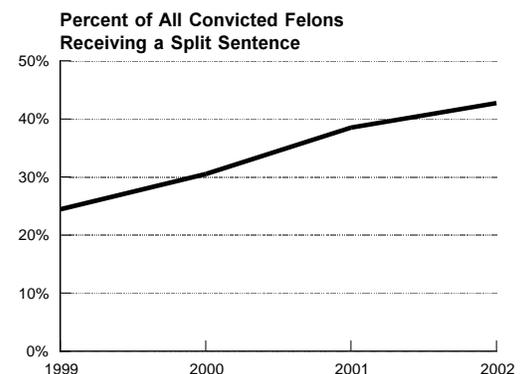
Despite these general eligibility rules, the Board can set earlier dates for parole consideration by unanimous vote of its three members. In exercising its broad discretionary authority, the Board could conceivably parole a prisoner as early as six weeks after being sentenced.

The Popular Split Sentence

Alabama judges can impose a "split sentence," which includes a combination of imprisonment and probation.³ Split sentences are often used by judges to avoid the harsh impact of mandatory minimum sentences, for shock effect, or to ensure some form of drug treatment or re-entry supervision for inmates returning to the community. The statute can be applied to defendants sentenced to imprisonment up to 20 years, and the offender serves some fraction of the term in prison – no more than a quarter (five years) for sentences of over 15 to 20 years and one fifth (three years) for sentences up to 15 years – with the remainder of the term on probation.

² Murder, attempted murder, rape 1st degree, sodomy 1st degree, sexual torture, kidnapping 1st degree or where serious physical injury occurred, robbery 1st degree, burglary 1st degree, and arson 1st degree.

³ §15-18-8, Code of Alabama 1975.



The term of imprisonment is typically ordered to be served on the front end, prior to probation (regular split) but can follow probation (reverse split). The maximum term of actual imprisonment is limited (three or five years), and inmates are *not* entitled to earn good time credit or discretionary parole release during the mandatory term of imprisonment imposed.

Important features of a split sentence:
- *retention of jurisdiction*
- *longer probation*
- *no good time or parole*

An important feature of the split sentence is that judges can impose a longer probationary period than the five-year statutory limit on straight probation generally applicable to felons. In addition, the trial judge retains jurisdiction to modify the term or any condition of probation beyond the usual 30 days from sentencing. The statute expressly provides that, “[r]egardless of whether the defendant has begun serving the minimum period of confinement ordered, the court shall retain jurisdiction and authority throughout said period to suspend that portion of the minimum sentence that remains and place the defendant on probation... .” This feature is an attractive incentive for a judge who wants an opportunity to reevaluate a sentence after the defendant has served a portion of the prison term. It can also encourage an inmate’s good behavior while in prison.

In addition to providing an important intermediate sanction, the split sentence also expands the judge’s options for determining *where* the defendant will serve his term of imprisonment. The actual time of incarceration imposed under the Split Sentence statute can be served in a facility other than the state penitentiary because the statute specifically provides that “the sentencing judge may order the convicted defendant to be confined in a prison, jail-type institution or treatment institution” for a period not exceeding five years.

Since a split sentence cannot be reduced by good time credit, proponents often argue that a split sentence is the only form of sentence that borders on truth-in-sentencing in Alabama. Yet for the vast majority of citizens it is not clear that a “15 year sentence of imprisonment, split with two to serve,” means that the defendant will be incarcerated for only two years.

Harsher, But Not Certain, Sanctions For Habitual Felons

Punishment in Alabama can be enhanced due to the past criminal history of the defendant under the provisions of our Habitual Felony Offender Act,⁴ described as one of the harshest in the nation. Offenders convicted of a Class A, B or C felony can receive escalating sanctions for having one, two and three or more prior felony convictions. Prior to amendment by the Legislature in 2000, the only sentence a defendant convicted of a Class A felony with three prior felony convictions could receive was a mandatory life sentence without the possibility of parole, and a Class B felon with three priors could only receive a mandatory life sentence. No distinction was made as to the type of prior felony convictions.

⁴ §13A-5-9, *Code of Alabama* 1975; as amended by Act 2000-759 in 2000.

The statute, as amended, now authorizes a life sentence for a person convicted of a Class A felony if none of the three priors was a Class A felony, and provides an alternative punishment of “not less than 20 years imprisonment” for a defendant convicted of a Class B felony with any three prior felony convictions. Even under the amended statute, it is only when the present offense is a Class A felony and the defendant has three prior felony convictions that any distinction is made as to the classification of prior offenses for purposes of enhanced punishment (a prior Class A felony mandates life without parole, whereas no prior Class A felonies authorizes imposition of a life sentence).

The potential for unwarranted disparity in sentencing is not only inherent in the law as now written, it is also apparent in the nonuniform application of the habitual felony offender statute. As noted by the Commission in our report of last year, many enhancements are not being uniformly applied or achieving their intended result (addressing public safety concerns and serving as a deterrent to crime). It has been noted that some District Attorneys have offered plea agreements and reduced charges to avoid the harsh consequences of mandatory law.

Additional variations can occur due to the wide sentencing ranges provided in the existing statute. The uncertainty resulting in the application of sentence enhancements is evident by examining a similar group of offenders, such as those convicted of 1st degree theft of property (a Class B felony). Among theft offenders sentenced to prison who have a known prior felony conviction, only 28% are classified as a habitual offender by the courts. Even if they are classified as a habitual offender by the courts, actual sentences for a single count vary widely, from one to 18 years.

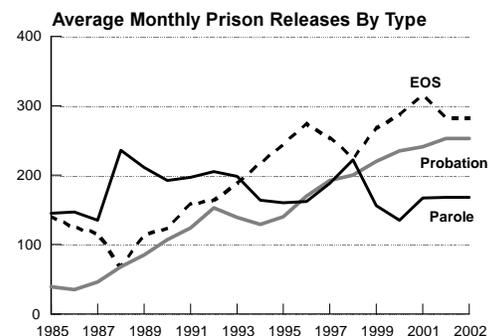
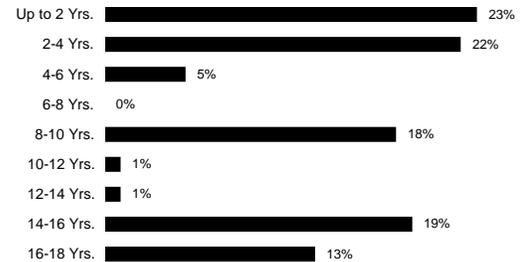
Time In Prison Does Not Reflect Sentence

The complexity of the system described above results in *anything but* truth-in-sentencing. The proportion of an inmate’s sentence served in prison depends upon many things – his offense, prior record, whether his sentence is a split, good time credits earned, parole eligibility rules, and how these factors are applied.

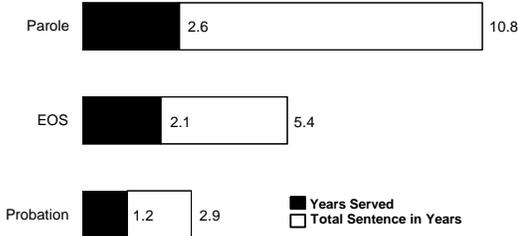
The Department of Corrections currently releases around 740 inmates per month, two-thirds of whom are affected by parole and good time policies. The typical criminal released from prison on parole serves one-quarter of his sentence. The typical inmate released at the end of his sentence (EOS) serves no more than 40% of his sentence.

An examination of inmates released from Alabama prisons during the past three years indicates that early release is not confined to certain offenses. In fact, there is a distinct lack of truth-in-sentencing among all types of offenders, regardless

Prison Sentence Distribution of Theft of Property I Habitual Violators



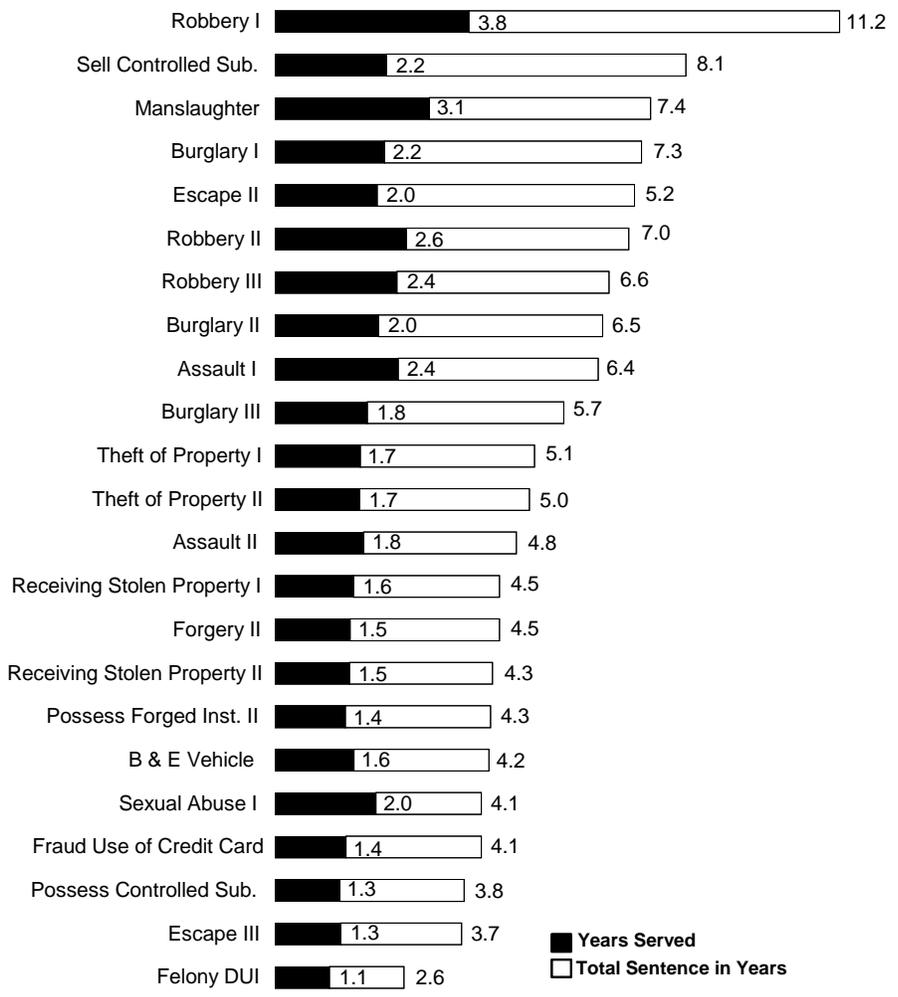
Average Sentence & Time Served in Years For All Prison Releases by Release Type



of the seriousness of their offense. For example, those released from prison for 1st degree robbery served almost four years, on an 11 year sentence. Drug dealers served three years, and felony DUI inmates served a year.

Of course, when examining a cohort of released inmates many were subjected to sentencing practices of years ago, especially those imprisoned for violent crimes. Also, the sentence and time-served statistics presented below for robbery 1st degree, rape, and other serious violent crimes represent released offenders who received a non-life sentence and were not on probation or parole at the time of the offense. Historical data show that most offenders who commit such crimes usually receive a life-sentence. Finally, for any given time period *few* violent offenders are released from prison. Therefore, the Commission also examined the “expected” time to serve on inmates currently entering Alabama prisons. New inmates entering prison for 1st degree robbery with no prior felony convictions, for example, are now expected to serve five years on average.

Average Sentence & Time Served in Years For All Non-Life Sentence Prisoners Releases FY1999-2002 by Offense Type



Conclusion

Determining how much time an inmate will serve in prison is a complicated process in Alabama. Prison release for many inmates is impacted by the amount of “good time credit” awarded and the discretionary release decisions of a three-member Parole Board. As a result, the sentence articulated in court by the judge rarely reflects any “truth” in how the inmate will be handled. To achieve truth-in-sentencing, Alabama must consider a sentencing system that repairs the inconsistencies created by a patchwork of policies such as good time credit, discretionary parole release, and habitual felony offender enhancements.

Chapter 4: Unwarranted Disparity In Sentencing

Alabama has operated under a sentencing system for over 20 years in which variations in the type and length of sentences depend upon the statutory class of offense committed, the applicability of mandatory minimum and enhanced punishment sentencing laws, and how the judge articulates the sentence (which determines the rules and regulations governing good time credits and discretionary parole release). One criticism of the current system is that it allows for a wide array of unwarranted disparity in sentencing. Our review of the sentences imposed for 64,000 felony offenders over the past four years demonstrated that unwarranted sentencing disparity does exist in Alabama.

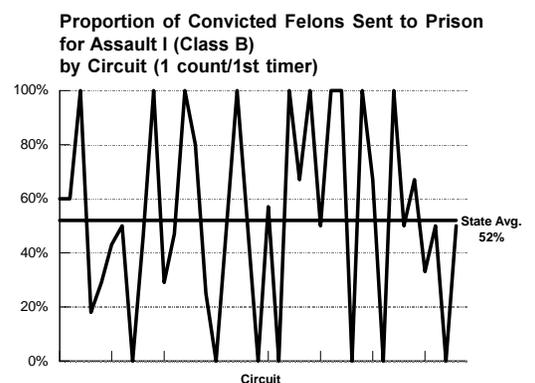
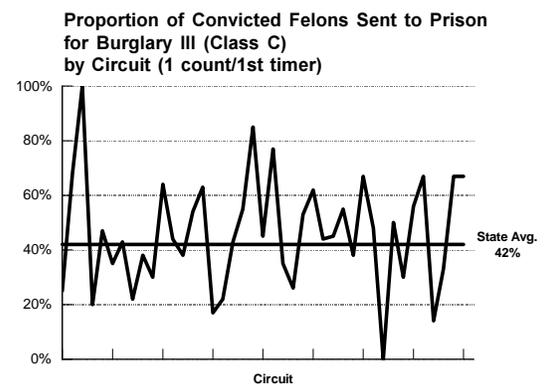
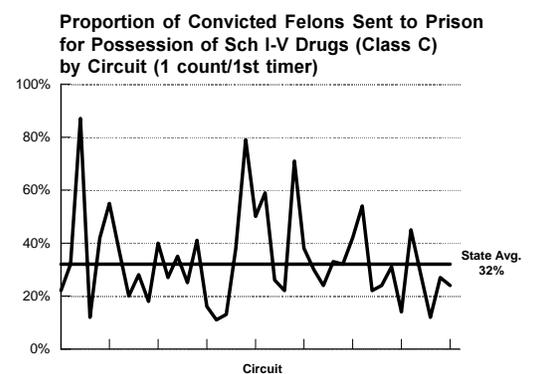
Disparity in sentencing exists when similarly situated offenders receive different sentences. Some differences in sentencing practices among similarly situated offenders are desired – such as harsher punishments for robbers that seriously injure a victim as opposed to those that do not. *Unwarranted* disparity exists when sentences for similarly situated offenders differ according to non-legally relevant factors, such as race, gender¹ and jurisdiction.

Sentencing disparity is generally examined in two ways – dispositional (sentence *type*, such as prison vs. probation) and durational (sentence *length*). This chapter compares similarly situated offenders convicted of three very different offenses: possession of a schedule I-V drug (Class C drug felony), 3rd degree burglary (Class C property felony), and 1st degree assault (Class B violent felony). Because offense and prior record are consistently offered as the primary legal factors that should drive sentencing decisions, similarly situated offenders are defined as those convicted of a single count of one crime (no additional offenses) who have no known prior felony convictions (referred to as “1st timers”).

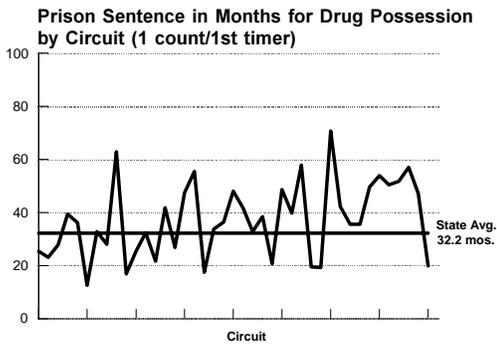
Dispositional Disparity

When we examine sentencing trends for 1st timers convicted of a single count of each of the three example crimes we find that the proportion of offenders sentenced to prison varies from 32% for drug possession to 52% for 1st degree assault. However, the volume of offenders sentenced to prison varies dramatically by jurisdiction, indicating widely varying sentencing practices in Alabama across the 41 judicial circuits. For example, between 12% and 87% of drug possession 1st timers are sentenced to prison depending upon circuit.

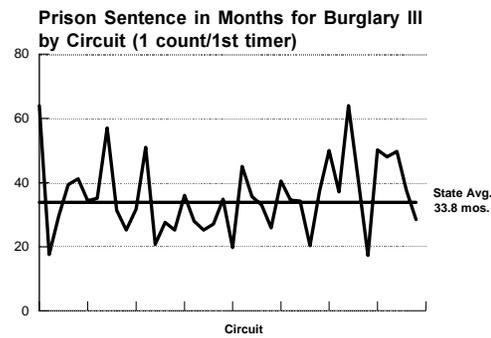
¹ Possible sentencing disparity based upon race and gender will be thoroughly examined by the Commission. The data is currently being collected by the Commission’s research consultants and will be presented at the next Commission meeting for review and discussion. Recommendations, if any, based upon the findings in the data will be the subject of an addendum to this report.



Durational Disparity



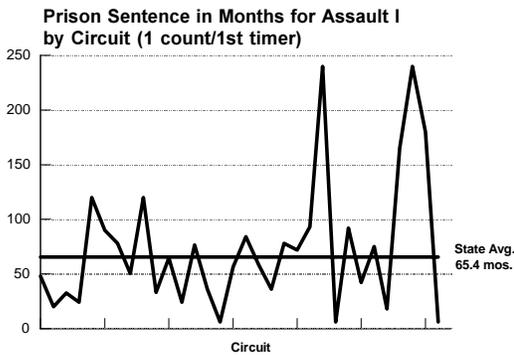
Even among offenders sentenced to prison, judges differ dramatically in their response to similarly situated offenders. When we examine trends in the length of prison sentences for 1st timers convicted of a single count of each of the three example crimes we also find wide variation. First timers convicted of drug possession and 3rd degree burglary who are sentenced to prison from one to ten years. Assault sentences range from one to 20 years.



When we add the dimension of court location to the mix we again find dramatically varying sentencing practices across Alabama’s 41 judicial circuits. For example, drug possession 1st timers who are sent to prison are sentenced from 13 months to almost six years, depending upon circuit.

Conclusion

The criticism of Alabama’s current sentencing system that it leads to unwarranted disparity in sentencing (similarly-situated offenders receive widely varying sentences) can be addressed through changes in Alabama’s sentencing practices. Disparity is problematic when such non-legal factors as location of the courtroom, race, wealth or sex are critical in determining an offender’s sentence. To eliminate unwarranted disparity in the sentencing of similarly-situated offenders, Alabama must adopt a sentencing system that demands consistent responses to offenders with similar criminal histories and criminal conduct.



Chapter 5: Prioritizing Our Prison Capacity

There is no denying the heavy reliance upon imprisonment as the favored response to crime in Alabama (see Chapter 2). Roughly one out of every 160 citizens in Alabama is housed in jail or prison. As 44% of our current inmates are serving time for property or drug/alcohol offenses and 39% of our inmates are non-violent offenders, the need for a more rational method of prioritizing scarce prison resources becomes apparent.

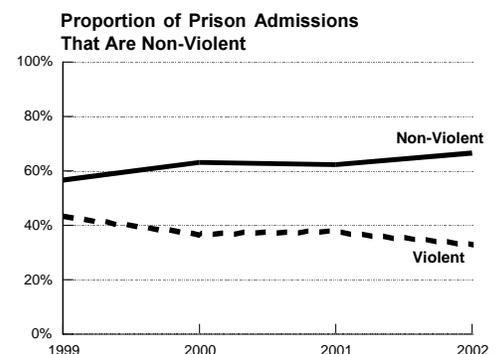
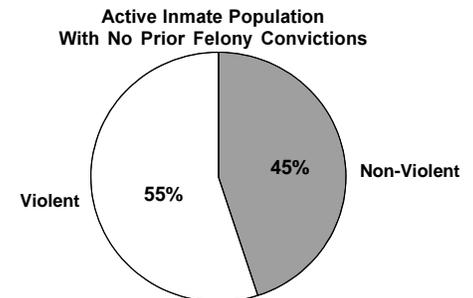
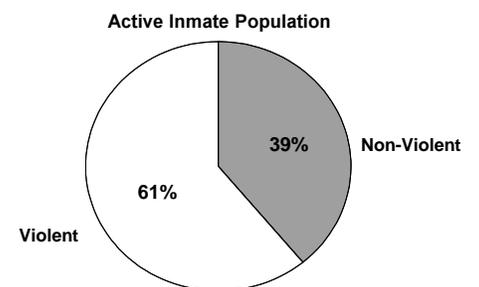
Prison Resource Allocation

There are many low-risk, non-violent inmates occupying expensive beds in maximum and medium security prisons in Alabama – beds that could be used to incapacitate dangerous violent offenders. Taking into account both the economic and social costs of crime, the U.S. Department of Justice estimates that society spends an average of 17 times more by releasing violent offenders early than it does to incarcerate them.¹ In a prison system defined by limited resources, the question of *who* occupies a prison bed becomes critical.

The Commission defines a violent offender as one convicted of a violent or sex crime, as well as burglary and drug trafficking (for a complete list of offenses, see Appendix B). In addition, an offender can be defined as “violent” if the current offense placing him in prison is non-violent but he has a prior conviction for a violent or sex crime. Using this definition, 39% of the current inmate population is non-violent. Among inmates that have no known prior felony convictions, almost half (45%) can be defined as non-violent.

The changing prison population (toward non-violent) can be predicted by the trend toward admitting more non-violent offenders to prison. Just four years ago 56% of our admissions to prison were non-violent offenders, compared to 67% today.

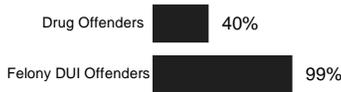
Alabama judges, however, already show a propensity to use alternative methods of incarceration for non-violent offenders, if available. Today, one-third of convicted felons that are sentenced to prison get a split sentence – they are serving shorter periods in prison followed by probationary supervision. With the knowledge that non-violent offenders hold the most promise for success with intervention and rehabilitation, the Commission is convinced that Alabama judges are looking for an alternative to warehousing potentially divertible populations.



¹ Zedlowski, E. *Making Confinement Decisions*. National Institute of Justice, 1987.

Profile of Drug & Alcohol Inmate Population

History of Alcohol Abuse



History of Alcohol Treatment



History of Drug Abuse



History of Drug Treatment

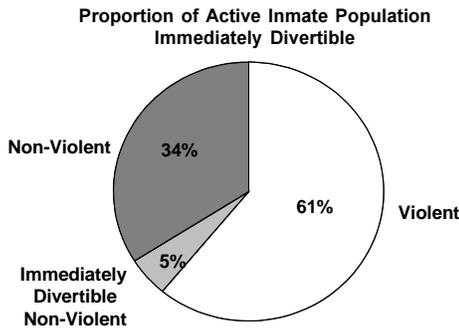


Warehousing Treatment-Needy Offenders

One out of every five new inmates walking into an Alabama prison over the past four years was a drug possession (Schedule I-V) or felony DUI offender. A study undertaken by the Commission to ascertain details of pre-sentence investigations on these offenders indicates that they have extensive histories of alcohol and drug abuse. At the same time, these offenders reported having little experience with treatment. Among drug possession offenders sentenced to prison, 80% have a history of drug abuse yet only 28% have any history of drug treatment. Felony DUI offenders are similar – nearly all (99%) have a history of alcohol abuse but only one-half report having had any history of alcohol treatment.

Immediately Divertible Inmates

The Department of Corrections assesses every inmate’s *risk* in order to determine an appropriate security level assignment. Along with our proposed definition of non-violent, we utilized the DOC risk criteria to identify a potential pool of offenders currently housed in Alabama prisons that could be immediately diverted to non-prison options.



Of the 39% of the inmate population defined as non-violent, we estimate that a minimum of 1,270 inmates (or 5% of current prison population) could be *immediately* diverted from an expensive and scarce prison bed. These inmates are non-violent offenders classified as minimum or medium risk, with a three-year sentence or less, who have no history of escapes or disciplinary reports, and are not currently assigned to a DOC facility or dorm for any program participation or work release. Three-fourths of these inmates are drug and theft offenders. If we relax our criteria and accept any inmate with a sentence of five years or less we can identify almost 2,000 inmates for immediate diversion. This analysis demonstrates that we certainly have a pool of prison inmates that could qualify for non-prison options.

The Need To Expand Intermediate Punishment

Over a decade ago the Alabama Supreme Court set forth the fundamental principles that should guide the sentencing practices of trial judges:

“The sentence imposed in each case should call for the least restrictive sanction that is consistent with the protection of the public and the gravity of the crime.... Judges should be sensitive to the impact their sentences have on all components of the criminal justice system and should consider alternatives to long-term institutional confinement or incarceration in cases involving offenders whom the court deems to pose no serious danger to society.” Rule 26.8 A.R.Crim.P.

Although the use of alternative sanctions for non-violent offenders was recognized ten years ago as reasonable and rational, few intermediate punishment options between minimally supervised probation and imprisonment have been made available to judges since that time. Thus judges rely heavily upon probation supervision for felony offenders. Alabama currently has 32,975 offenders on probation, with 194 supervising probation officers located around the state. As noted in Chapter 3, probation and parole already have significant overcrowding problems.

In addition, in 1991 the Legislature passed the Community Punishment and Corrections Act to encourage the establishment of community punishment and correctional programs that offered a range of sanctions and services and involved local officials and citizens. Yet resources were needed to fuel its implementation. The \$400,000 seed money for start-up costs that enabled partial implementation of the Act came from the McConnell Clark Foundation; no state funding was initially provided. Appropriations from the General Fund were provided in 1996 and subsequent years, but in the minimal amounts. Over the past decade, state funding has actually decreased from \$2.5 million in 1996 to \$2 million in 2002. Today there are 18 community corrections programs receiving state funding through the Community Punishment and Corrections Act, located primarily in the northern portion of the state.

Over the past decade, funding for community corrections has declined.

Community Punishment as an Intermediate Sentencing Option

The majority of Alabama judges rely on probation or the split sentence (short prison term followed by probation) as the only alternatives to prison. Other community punishment exists, but it is still in the formative stage. Compared to other states, Alabama has minimal community punishment and correctional alternative programs available. Although some more intensive intermediate punishments exist, these services are found in limited geographic areas and rely primarily upon state funding and fees collected from offenders. The programs vary in terms of services provided, program capacity, fees charged, qualifications for participation, criterion for success and failure, and completion rates.

Compared to other states, Alabama has few community punishment options available.

Other states have relied on a more well defined system of “intermediate sanctions” as an alternative to incarceration to punish non-violent offenders, ranking punishment in degrees of intensity according to the seriousness of the offense and risk and needs of the offender. Drug and other types of treatment programs, coupled with intensive supervision or required as a part of participation in a community program, have been found to reduce both later drug use and criminal activity. Well-managed intermediate sanctions can provide the punitive measures that citizens expect, at a lower cost than prisons (\$11 per day compared to \$26 per day in prison). Examples of the most commonly utilized intermediate punishment programs in other states include halfway houses, detention and diversion centers, work release programs, house arrest with or without electronic monitoring,

Intermediate programs can provide punitive sanctions at a lower cost than prisons.

day reporting centers, intensive supervision probation, inpatient and outpatient drug and alcohol treatment programs, community services and intermittent “shock” incarceration. These sanctions can be provided two ways: through expansion of probation and parole services; or through local community corrections programs working in conjunction with probation and parole services.

Alabama does not have a *statewide community corrections system*. Unfortunately, these services are provided in some areas exclusively by probation and parole services. In other areas they are provided by community corrections along with probation and parole supervision.

There are some counties in which community corrections programs have been established and now provide programs that are available as an option for judges to utilize when sentencing an offender. Only 21 of Alabama’s 67 counties have established community corrections programs (19 programs, with one covering multiple counties), five which have been established in the past two years. Most of these programs have been in operation less than ten years. The vast majority of these programs are nonprofit corporations rather than county programs, and many receive little or no funding assistance from local government.

According to our recent survey of community corrections programs, the total offender capacity reported by existing programs is 23,515, yet 25,146 offenders were served last year (10,820 felony and 14,326 misdemeanor offenders). While felons comprise 43% of the participants in these programs, many counties primarily serve misdemeanants. For example, felons comprise at most 10% of program participants in Calhoun, Geneva,² Jackson, and Madison Counties; 25% in the programs operating in DeKalb, Houston, Walker, and Fayette/Lamar/Pickens Counties; and 50% in Franklin and Mobile Counties. The seven programs that focus primarily on felons are those established in Montgomery (100% felons), Jefferson (96%), Cherokee (83%), Etowah (80%), Tuscaloosa (79%), Cullman (60%), and Shelby (55%) Counties. Misdemeanor programs help alleviate overcrowding in jails and protect public safety by providing pre-trial supervision and early intervention in an effort to correct an offender’s criminal behavior. The table on the next page lists the community corrections programs established in Alabama, some of which are not fully operational (Lauderdale and Walker County programs were just established in 2002). The map highlights the counties with programs, illustrating the deficiency of programming that exists in the southern portion of our state.

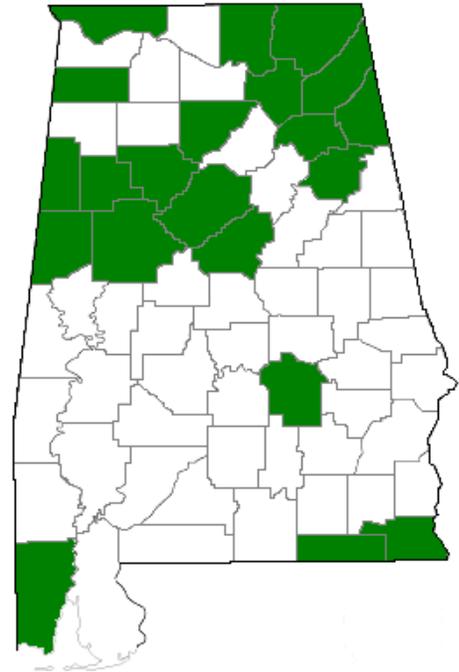
² Geneva County Community Corrections is a tri-county program which includes Coffee and Pike Counties. However, only misdemeanants are served in those two counties. Geneva County serves both felons and misdemeanants.

Community Corrections Programs in Alabama

County Served	Circuit	Established	Capacity
Calhoun	7	1993	172
Cherokee	9	1997	55
Cullman	32	1993	300
DeKalb	9	1993	1,331
Etowah	16	1995	500
Fayette/Lamar/Pickens	24	1995	3,000
Franklin	34	2001	200
Geneva	33	2001	300
Houston	20	1993	300
Jackson	38	1999	183
Jefferson	10	1973	3,000
Lauderdale	11	2002	500
Madison*	23	1978	1,800
Mobile	13	1991	7,000
Marshall	27	1993	110
Montgomery**	15	2002	60
Shelby	18	1991	2,374
Tuscaloosa	6	1994	1,200
Walker	14	2002	1,400

* Not receiving DOC funds.

** Increased programs are expected to be implemented after March 10, 2003, under directorship of John Hamm.



Drug Courts

As an alternative to incarceration for defendants charged with drug and alcohol crimes and drug-related offenses, drug courts have been established in Alabama. There are now 17 existing drug court programs serving 16 counties, including two serving juvenile offenders and one established as a part of family court. Spurred by the increase in drug crime convictions and the desire to decrease the rate of re-offending among drug offenders, the popularity of drug courts took hold in Alabama, with the first drug court being established in Mobile in 1993.

In 1995, Judge Pete Johnson initiated the Drug Court in the District Court of Jefferson County (Birmingham division), funded by a grant awarded to the University of Alabama at Birmingham (UAB) Treatment Alternatives to Street Crime (TASC). The program has graduated more than 1,000 clients (over one-half of program participants) and during FY 2002 served 1,065 offenders. A recently conducted outcome evaluation indicates that participants in the drug court did “markedly better than their counterparts,” with fewer arrests and longer times to re-arrest. In fact, the Jefferson County Drug Court sample was about 35% less likely than their counterparts to be rearrested in the year after disposition. This successful program recently received national recognition in the February 2002 issue of *Reader’s Digest*.

According to our recent survey of all existing drug court programs, most drug courts have an average of 100 defendants participating in the program each month with approximately 14 new offenders being approved per month. All adult programs except two reported that the majority of the participants are

Drug Courts in Alabama

Circuit	Program
2	Butler/Crenshaw/Lowndes
6	Tuscaloosa
9	DeKalb
10	Bessemer (Jefferson Co.)
10	Jefferson
10	Jefferson Juvenile Court
13	Mobile
15	Montgomery*
16	Etowah
18	Shelby
27	Marshall
28	Baldwin
31	Colbert
32	Cullman
34	Franklin
18	Shelby Juvenile Court
23	Madison Family Court

* Montgomery Drug Court has not accepted clients in the past 12 months.

defendants charged with a felony offense, indicating that these programs are diverting offenders who otherwise could be sentenced to imprisonment. All but a few of the programs require an offender to attend a 12-month or longer program and nine out of the 16 programs utilize court referral officers. To successfully complete a program an offender is typically required to remain drug free, maintain a job, complete approximately 40-50 hours of community service, obtain a GED, pay drug court fees, and return to court for performance evaluations. An offender can expect to pay \$1,500 in a program, which includes initial program fees, drug testing fees, and monthly monitoring fees. The vast majority of drug court programs receive their funding from grants and client fees, although the programs in Tuscaloosa, Mobile, Jefferson (Birmingham and Bessemer), and Shelby reported receiving funds from their county commissions.

An offender must meet certain eligibility criteria before being accepted into a drug court. The majority of programs report that an offender can be excluded due to prior crimes of violence, firearms involved in an arrest, drug distribution or trafficking offenses, and previous participation in a drug court program. Possession of a controlled substance is the most frequent crime among drug court offenders. With a few exceptions, successful program completion results in a dismissal without prejudice of the charges (no felony conviction).

Over 85% of drug court programs in Alabama keep manual records of their participants, illustrating the need for an automated, unified system of tracking participant progress. In most instances, although prior participants of drug court are not considered eligible for subsequent participation, there is no central reporting system that can track who has been approved or attended drug courts in other parts of the state. To remedy this deficiency, the Sentencing Commission has requested the assistance of the Administrative Office of Courts to capture this information on the automated case action summary when the offender is initially approved for program participation and at the time of final case disposition.

Conclusion

There is growing evidence that Alabama could find more economical options for punishing non-violent offenders. Utilization of intermediate sanctions in lieu of warehousing offenders has many advantages -- cost savings, more intensive supervision than simple probation, meeting the need for proportionality in sentencing, breaking the cycle of crime, and increasing the likelihood of payment of restitution, fines, and court costs. A less obvious and often overlooked benefit is the reduction in related societal costs associated with the imprisonment of an offender, as community programs can put offenders to work to help support themselves and their families. Prioritizing scarce resources for the concentration

of violent, sex and repeat offenders in prison requires a careful and deliberate plan for the expansion of intermediate sanctions for non-violent offenders. That plan must provide for a meaningful array of sentencing options for judges.

Community Corrections Act programs are designed to help counties provide punishment for misdemeanants and to hold them accountable for restitution, court costs and fines, as well as provide misdemeanants with substance abuse treatment. At the other end of the scale, they provide more intense supervision for a divertible population of traditionally prison-bound offenders. Most other felons directed to these programs are drug court offenders, needing treatment and intensive supervision. For this growing class of felons, treatment and supervision must be provided by expanding community punishment programs and increasing the number of probation and parole officers.

Chapter 6: The Impact Of Staying The Course

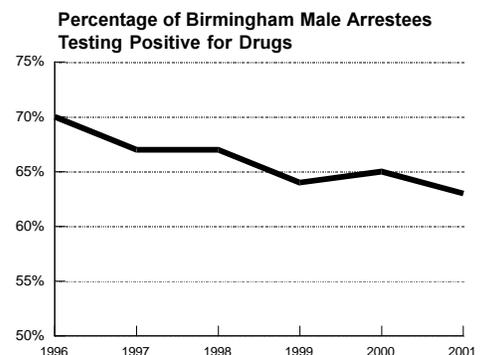
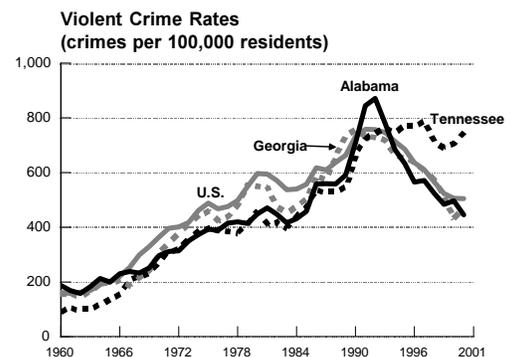
During the past year, the Commission developed a customized simulation software application to mimic the flow of offenders through the Alabama prison system. The simulation model offers an experimental, risk-free environment to test the impact of proposed sentencing reforms on the prison population. The first goal of our simulation model is to look five years into the future and estimate the impact on the prison system if *no changes* are made – what we refer to as “staying the course.” While *no change* may appear to be a viable option, the current jail and prison overcrowding crisis is disturbing when we consider that today could represent the *best of times* for Alabama’s criminal justice system. Over the past five years, Alabama has enjoyed an unprecedented decline in crime and low unemployment rates – factors consistently associated with a favorable criminal justice environment.

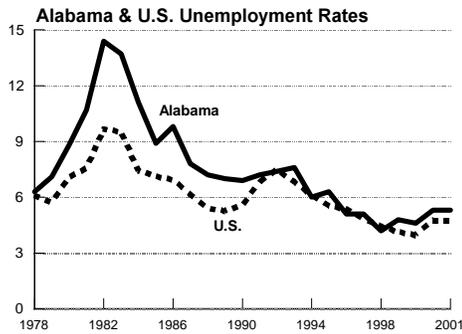
These Are The “Best Of Times”

During the past decade, Alabama’s crime rate (crimes per 100,000 residents) dropped significantly. According to the F.B.I., our violent crime rate dropped 48% while our property crime rate declined 17%. In fact, there were 8.1 reported homicides for every 100,000 residents in 2001, down from 16 in 1975. Even the sheer volume of people arrested fell 10 % in just the last five years. Among arrests for serious offenses (murder, rape, robbery, aggravated assault, burglary, larceny & auto theft), the number of people arrested dropped 29% resulting in 10,000 fewer people arrested than just five years ago.

An abatement of the “crack cocaine epidemic” is also apparent. Although “crack” cocaine remains a serious problem, federal and state officials agree that the problem does not approach the emergency situation witnessed in the 1970s or the epidemic of the late 1980s. For example, in 1996 there were 15,580 arrests for drug possession or sales. In 2001, the number of drug arrests had fallen off 8% to 14,295.

Another indication of a reduction in the drug crisis is found in Birmingham, which has participated in the U.S. Department of Justice arrestee drug testing program (Drug Use Forecasting Program, later named the Arrestee Drug Abuse Monitoring Program) since the early 1990s. On a quarterly basis, samples of Birmingham arrestees are drug tested randomly. In 1996, 70% of the Birmingham arrestees tested positive for drug use. Today, the test-positive rate has declined to 63%. The results are even more dramatic for cocaine use, where today 29% of Birmingham arrestees test positive for cocaine use compared to over one-half in 1994.





The past eight years of economic expansion in the U.S. and Alabama are also tied to the reduction in crime. Clearly, many property and drug crimes have their root in unfavorable economic conditions. As the figure shows, Alabama’s unemployment rate has crept close to 6% recently but did drop to 4.1% in 1998. In larger population centers, the unemployment rate dropped below 3.5% and even fell to 2.5% in Birmingham in 1998.

Finally, Alabama’s recent demographic trends help to explain the unprecedented drops in crime, particularly the ten-year decline in the number of people in the “high risk” crime prone ages. As the graph shows, the number of youth between the ages of 15 and 19 years of age has decreased 18% over the past 16 years (despite a 22% increase in the overall state population during the same period).

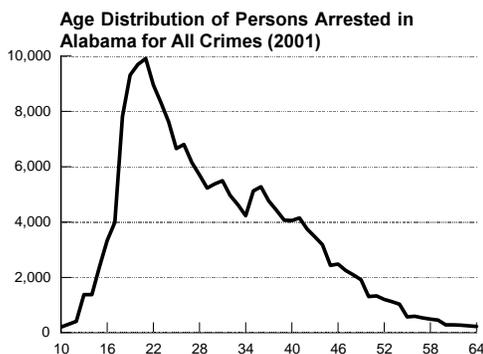
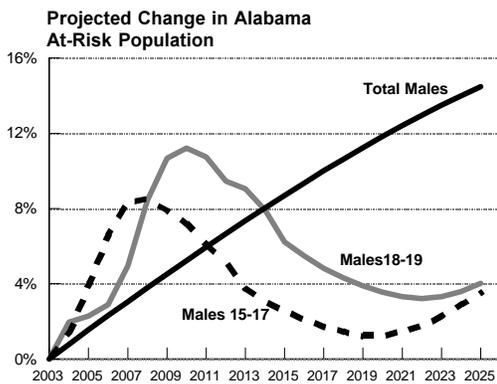
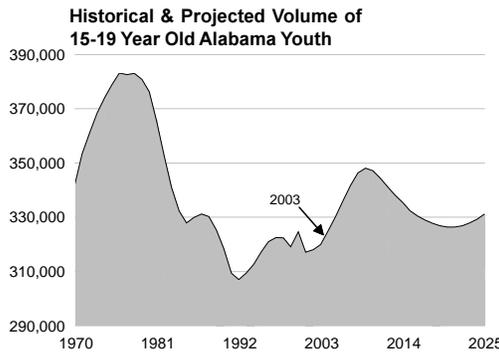
Demographic Changes On The Horizon

Alabama is facing specific demographic trends, apart from national trends, that could threaten momentum of the current decline in crime and could send the correctional system further into crisis. First, Alabama’s population is projected to increase approximately 8% over the next ten years and 21% by the year 2025. While such growth will certainly have an impact on the criminal justice system, it is age-specific trends that are particularly disturbing to criminologists. As the U.S. Census projections indicate, the percent increase in the size of the population will not be uniform across all age and racial groups. For example, Alabama can expect an 11% increase in the number of 18 and 19 year old males in the next six years and an 8% increase in the number of 15 to 17 year old males in just the next four years.

The reason such trends are disturbing is the long established relationship between age and crime. The age distribution of offenders arrested in Alabama indicates that the bulk of offenders are between 17 and 25 years of age. The same trend is apparent in Alabama prisons, where offenders between the ages of 18 and 25 represent a majority of the state’s admissions to prison. If the state experiences a significant increase in the volume of this high-risk age group, we can logically foresee an increase in arrests, convictions, and new admissions to prison.

Projecting The Future With Simulation Technology

During the past year the Commission contracted with Applied Research Services (ARS) to develop a customized discrete-event simulation software application to mimic the flow of offenders into, through, and out of the Alabama prison system. The simulation model provides the ability to analyze the impact of changes in operating policies, sentencing practices, post-release practices, and external system pressures on the system. The model offers an experimental, risk-free environment for policy makers to test different “what-if” scenarios quickly to assess the



potential impact associated with complex policy decisions or changes in criminal sanctions. This includes, for example, the projected impact of different sentencing models (current vs. structured) on institutional bed space, jail backlog, correctional alternatives, resource allocation, specialized services (medical and mental health), and prison admissions. In addition to modeling prison bed space needs, the model will be able to support ad hoc amendments to the underlying logic in order to support future modifications, expansions, or system changes.

Defining Simulation

Simulation is the imitation of the operation of a real-world process or system over time.¹ A simulation model consists of a set of assumptions concerning the operation of a system that are usually grounded in historical observations and data. These assumptions are expressed in the model as mathematical, logical or symbolic relationships between the entities moving through the system (offenders) and their interaction with decision processes in the model. These models, once completed and validated, provide the analyst with a risk-free, experimental platform to investigate a wide range of “what if” scenarios, assessing the impact of policy changes on system processing times and resources. Investigators can manipulate the system to predict the potential impact such changes would have on actual system performance. Simulation can be used to evaluate different systems while still in the design phase to test the efficiency and performance of competing system designs under different operation conditions.

Simulation is a “risk-free” platform for testing the impact of changes to the current sentencing system.

The Commission’s Simulation Model

The Commission’s model is built in *Simul8 Enterprise Edition*, an off-the-shelf industrial engineering software package that comes complete with national training courses and technical support. Discrete-event simulation models are commonly found in the manufacturing sector, aviation, computer and telecommunications, health care, financial planning, environmental planning, transportation, and other areas where analysts want to model the flow of entities through a system. Georgia also employs this new technology for the simulation of their criminal justice system.

The software was selected for several reasons: ARS has experience in building criminal justice-related models in Simul8; it is compatible with all Windows-based applications; it can operate within Visual Basic programs or front-end applications; it has an easy-to-use internal programming language (Visual Logic); and it is an internationally recognized software application with an extensive network of trainers, consultants and on-line support, ensuring that the Commission staff will always have access to national/international experts and training if the need arises. The simulation model is currently in its development phase, and further validation and analysis will be conducted during the coming months.

¹ Banks, Carson, and Nelson. *Discrete-Event System Simulation*. Prentice Hall, 1999.

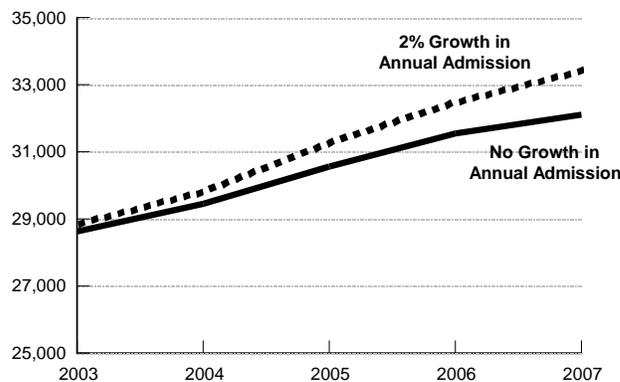
“Status Quo” Projections

A “status quo” simulation model with a five-year prison population projection was developed as a starting point from which to evaluate proposed sentencing reforms. The status quo model estimates Alabama’s total prison population in five years, including jail backlog, if Alabama makes *no changes* to current sentencing practices, correctional incentive time, and parole release practices. The status quo model first assumes that the annual number of new admissions to prison from the courts and the number of probation and parole revocations entering prison would remain at the level it is today (constant over the next five years). This assumption allows for a conservative estimate of the impact of “staying the course” if we have no more people entering our prison system.

Of course, such an assumption may not be realistic since Alabama has experienced slight increases in admissions over the past few years. Therefore, the next step in the simulation modeling process was to estimate the impact of growing admissions on the status quo projections. For this second set of projections, we assume that admissions to prison will grow at a rate of 2% per year over the next five years. This growth rate was selected because it closely mirrors admission trends of the past few years. The following table and graph present the status quo model projections, assuming no growth and 2% annual growth in prison admissions.

Simulation Results: 5 Year Prison Population Projections

Fiscal Year End	Status Quo Projection: No Annual Growth in Admissions	% Change FY03-FY07	Status Quo Projection: 2% Annual Growth in Admissions	% Change FY03-FY07
2003	28,627		28,865	
2004	29,449		29,839	
2005	30,561		31,278	
2006	31,550		32,489	
2007	32,106	+12.2%	33,450	+15.9%



Conclusion

The Commission developed a customized simulation software application to mimic the flow of offenders through the Alabama prison system in order to empirically test the impact of any proposed sentencing reforms on the prison population. In five years, we project a 12% increase in Alabama's prison population if *no changes* are made to current sentencing practices, correctional incentive time, and parole release practices (assuming we receive no more admissions to prison than we do today). Given modest increases in the volume of offenders entering prison (2% annual growth in admissions), we project a 16% increase in the prison population. If current conditions in Alabama change – factors associated with the current favorable criminal justice environment turn bad – these projections will be overly optimistic. In order to avoid further crisis, it is apparent that reform is necessary.

Chapter 7: Recommendations For Change

Unless Alabama is willing to imprison 32,000 inmates in five years, *staying the course* is not a viable option. This state can, however, through careful planning and close attention to its sentencing choices, adopt a different and more rational action strategy. The Sentencing Commission recommends the development and implementation of a new sentencing system for Alabama that relies heavily upon an increase in community or intermediate punishment options. The development and modification of this new sentencing system should include an empirical analysis of the effect of any proposed sentencing changes on the total correctional system with the simulation model described in Chapter 6. Recognizing that this new system will depend on a well-developed structure of intermediate sanctions that is conspicuously lacking in our state, the Commission also recommends a number of short-term actions that will fold into the Commission's long-term plan. After careful deliberation and study, the Commission offers the following recommendations for short and long term changes to Alabama's current sentencing system.

The Commission recommends the development and implementation of a new sentencing system.

Two Short-Term Recommendations

Adopting a few short-term recommendations, designed with an emphasis on public safety, can have an immediate affect on relieving Alabama's prison and jail overcrowding crisis, as well as begin to address certainty and truth-in-sentencing and provide for a wider array of sentencing options. These short-term recommendations are based on empirical data that indicates the options will be effective. In the short-term, the Commission recommends that Alabama:

- change the felony threshold and ceiling amounts for theft and related property offenses;
- develop a statewide community punishment system by (a) amendment of the Community Punishment and Corrections Act of 1991; (b) providing increased funding to the Board of Pardons and Paroles to hire additional officers to supervise more parolees at adequate levels of supervision; and (c) providing funding for comprehensive assessment and intensive substance abuse treatment for otherwise prison-bound offenders who are chronic alcoholics or drug addicts.

These recommendations also mark the beginning, and are the foundation for implementation of the long-term recommendations offered by the Commission. In the long-term, to reduce unwarranted sentencing disparity, implement truth-in-sentencing, achieve certainty in sentencing, and provide a means of managing

limited correctional resources, the Sentencing Commission recommends the careful and studied development and implementation of a new sentencing system in Alabama. This system consists of voluntary sentencing standards, the utilization of a continuum of punishments, the abolition of parole and “good time” as they exist today, and will require the implementation of post-release supervision for all offenders sentenced to incarceration.

Short-Term Change #1: Eliminate Inconsistencies and Increase Property Values on Theft Statutes

A thief can be charged as a misdemeanor while someone receiving the same property is charged with a felony.

Alabama’s theft statutes have not been amended in over a decade and as they currently exist, vary according to the value amount of property stolen. Due to the amendment of some statutes, the felony threshold amounts regarding property value are inconsistent. In 1992, when the minimum threshold level for theft of property 2nd degree (Class C felony) was raised from property exceeding \$100 in value to property exceeding \$250, and theft of property in the 3rd degree (Class A misdemeanor) was changed from property not exceeding \$100 to property not exceeding \$250 (which were the original amounts established in 1977 when the Criminal Code was adopted), no corresponding changes were made in the other theft statutes, including the crime of receiving stolen property. Because of the inconsistent values that now exist, a person *stealing* property of more than \$100 but less than \$250 would only be guilty of a Class A misdemeanor, while a person *receiving* this same property would be guilty of a Class C felony. To eliminate these discrepancies, the Commission recommends amending all felony theft statutes to establish consistent property values among each crime class.

When compared with other states, the property values in our theft statutes are too low.

The recommended amendment of the theft statutes is also based on a comparison of Alabama’s theft statutes with sister states. The majority of states have established felony thresholds of \$500 or more and property values above \$2,500 for the most serious felony theft classifications. Forty-one of the 50 states (82%) have established higher felony threshold levels than Alabama, and of 48 states surveyed, 29 (60%) had property values higher than the amount Alabama now applies to its most serious theft offenses (more than \$1,000).

Increase felony property values thresholds to comply with inflation.

It is the recommendation of the Sentencing Commission that Alabama’s felony threshold and ceiling limits for theft offenses should be amended to be consistent and increased not only to comport with theft statutes from other states, but to more realistically reflect the current economy and inflated property values. The Commission is, therefore, proposing legislation to amend the following 1st degree, Class B felony statutes to increase the value of the property stolen or received to more than \$2,500: §13A-8-3 theft of property 1st degree; §13A-8-7 theft of lost property 1st degree; §13A-8-10.1 theft of services 1st degree; and §13A-8-17 receiving stolen property 1st degree.

In addition, the Commission recommends the amendment of the following 2nd degree, Class C felony statutes to increase the value of the property stolen or received to over \$500 but not more than \$2,500: §13A-8-4 theft of property 2nd degree; §13A-8-8 theft of lost property 2nd degree; §13A-8-10.2 theft of services 2nd degree; §13A-8-18 relating to receiving stolen property 2nd degree; and §13A-8-23 felony utility theft.

Amendments are recommended to the following Class A misdemeanors, to increase the value of the property involved to \$500 or less: §13A-8-1 relating to the value of property that cannot be ascertained; §13A-8-5 theft of property 3rd degree; §13A-8-9 theft of lost property 3rd degree; §13A-8-10.3 theft of services 3rd degree; §13A-8-19 receiving stolen property 3rd degree; and §13A-8-23 misdemeanor utility theft.

Finally, the Commission recommends amendment of the following Class B and C felony statutes to comport with the new value amounts: §13A-9-73(a) charitable fraud 1st degree; §13A-9-91(b) illegal possession of food stamps 1st degree; §13A-8-102(d)(3) damage to intellectual property which causes a disruption in services; §13A-7-21 criminal mischief 1st degree; §13A-9-74(a) charitable fraud 2nd degree; §13A-9-91(c) illegal possession of food stamps; §13A-8-144 fraudulent leasing/rental of property; §13A-8-192(b) identity theft 1st degree; §13A-8-72(b) defacement of public property §§13A-7-22 and 23, the misdemeanor counterparts for criminal mischief 2nd and 3rd degrees; §13A-9-75 charitable fraud 3rd degree, §13A-9-91 illegal possession of food stamps 3rd degree; §13A-8-144 fraudulent leasing; and §13A-8-72(d) defacement of public property.

Simulating the Impact

Four of these offenses account for extremely high volume crimes among convicted felons and among new inmates admitted to prison: theft of property 1st and 2nd degree and receiving stolen property 1st and 2nd degree. Currently, 11% of Alabama's inmate population was convicted of theft of property or receiving stolen property (1st and 2nd degree). We would, therefore, expect the proposed statutory changes to reduce Alabama's prison population. To test this expectation, we altered the status-quo simulation model presented in Chapter 6 to test the impact of changing the monetary values and crime class of these high volume offenses.

11% of Alabama's inmate population was convicted of theft of property or receiving stolen property.

Our data collection effort on the pre- and post-sentence investigation reports on a sample of more than 1,500 convicted felons indicates the following changes would occur: 42% of theft of property 1st degree and 36% of receiving stolen property 1st degree offenders would be reclassified as 2nd degree (Class C) felony offenders because they involve \$2,500 or less. In addition, 36% of theft of property 2nd degree and 48% of receiving stolen property 2nd degree offenders would be reclassified as misdemeanants because they involve \$500 or less.

The proposed amendment to four theft statutes will reduce the projected female inmate population by 12%.

Our simulation model indicates that the proposed changes to the theft statutes could result in a prison population that is 9% lower than the status quo projection presented in Chapter 6 (assuming no annual growth in prison admissions). In other words, the population hovers at 29,000 inmates in 2007 instead of 32,000, a decrease of 3,000 inmates over the next five years. The simulation model indicates the new statutes would have the most impact on the female inmate population, which would be 12% lower in five years compared to the status quo projection. This is not surprising, as female inmates are more likely to be property offenders than males (35% of female inmates are property offenders compared to 22% of male inmates).

The most substantial difference in the inmate population resulting from the new treatment of theft crimes is the diversity of offenders housed in prison. Currently, 35% of the inmate population is classified as a low security risk. Under the new theft statutes, our simulation model indicates that an estimated 29% of Alabama inmates (a 6% decrease) will be classified as a low security risk in five years. This means that the reduction in inmates will be seen at the lowest risk levels, typically work release inmates, and not a reduction in the number of inmates housed in maximum security facilities, which is consistent with the Commission's emphasis on public safety. It is apparent that this short-term change will directly assist in our efforts to reserve scarce prison resources for the most violent and dangerous offenders.

Short-Term Change #2: Develop a Statewide Community Punishment System

If scarce prison space is to be reserved for violent and repeat offenders, alternative methods of punishment and supervision must be provided for offenders convicted of less serious offenses. Since a large proportion of these offenders are alcohol and drug abusers or addicts, adequate supervision and treatment are essential. The experience of other states and our own existing programs indicate that well-managed intermediate punishment programs at the community level can fulfill this need. To provide community-based intermediate punishment programs we must expand community corrections programs statewide and achieve the potential of the Alabama Community Punishment and Corrections Act of 1991, as well as expand the availability of parole and probation supervision services.

(A) Amend the Community Punishment and Corrections Act of 1991

The Alabama Community Punishment and Corrections Act of 1991 provided a procedure for developing intermediate punishment programs and established an application procedure for the receipt of state funds. Unfortunately, more than 65% of Alabama counties still do not have established programs. Community Corrections Act programs that provide a wide array of punishment options, as

well as pre-trial supervision, have been shown to decrease jail overcrowding in numerous counties. These programs also help decrease prison overcrowding by providing community supervision for qualified offenders diverted from prison. These programs are more effective than incarceration for many offenders since they allow the offender to receive long-term substance abuse and mental health treatment, as well as education and job training. Offenders also pay restitution and contribute to the cost of their punishment while helping to support their families.

While the benefits of community corrections programs are many, the primary reason counties fail to implement the programs is the lack of “start up” funding and the lack of community involvement and commitment. To address some of these concerns, the Commission recommends amending the existing Community Punishment and Corrections statute to:

Counties fail to implement community programs due to a lack of start-up funding and community commitment.

- provide state funds for FY 2004 in the amount of \$5.5 million for the development of new programs and the maintenance and expansion of existing programs for felony offenders who would not ordinarily qualify for traditional probation;
- clarify that community corrections programs established by resolution of the county commission can apply for state funding, the same as programs operated by authorities or nonprofit entities;
- specify that allotments received through the Department of Corrections may be used for start-up costs as well as the maintenance of existing programs;
- safeguard funds appropriated for community corrections programs by establishing a separate fund in the state treasury known as the “State-County Community Punishment Partnership Fund,” which can be used only for the implementation and operation of community-based punishment programs formed under the Act serving felony offenders;
- establish a separate division of Community Corrections within the Department of Corrections and provide an executive management staff;
- eliminate the provision that provides increased liability for multi-county programs;
- increase accountability by providing that the rules and regulations of the Department of Corrections relating to community corrections programs shall be subject to the Administrative Procedures Act, an annual report will be provided to the Legislature’s Prison Oversight Committee and the Alabama Sentencing Commission regarding the effectiveness

of diversion of offenders from state and local correctional institutions, and specifically providing that program standards, regulations, and evaluations are public records subject to inspection and copying;

- specify that no inmate assigned to a community punishment and corrections program will be eligible for parole consideration;
- require that each program establish a maximum capacity cap for felony offenders and prohibit further referrals of felons to programs by judges and district attorneys when doing so would exceed the design and staffing capacity of the program; and
- ensure that limited liability is preserved for counties maintaining and utilizing community corrections programs.

Programs under this Act will play an instrumental role in both short and long-term sentence reform in Alabama and must be available statewide. The Sentencing Commission has begun the process of identifying and defining the appropriate offender eligibility criteria for alternative punishment programs, taking into account offender risk. We are working with the Alabama Association of Community Corrections, probation and parole officers, the recently created Drug Court Coordinating Committee, mental health experts, and vocational training professionals to identify essential core program components needed to ensure the success of community punishment in this state including, substance-abuse treatment, education, life skills training, employment readiness, and mental health counseling and treatment. We estimate that \$5.5 million in state funds will allow for the diversion of approximately 3,000 offenders from prison, doubling the number now diverted, and allow for \$500,000 to provide start-up costs for additional programs. This recommendation is cost-effective, as Alabama spends roughly \$27 per day to treat these offenders in a state prison, as opposed to the estimated \$11 per day that would be required in an intermediate alternative punishment program.

(B) Increase Funding for Probation and Parole Officers

As noted in Chapter 2, funding for probation and parole supervision in Alabama has been inadequate. Providing additional funding for the Board of Pardons and Paroles to carry out more intensive supervision of a greater number of offenders would allow the Board to intensify parole releases of eligible inmates and to supervise additional probationers in the community. To this end, the Commission makes several recommendations.

Funds are needed to hire 120 more probation/parole officers.

The Commission recommends immediate supplemental funding in the amount of \$1 million to the Board of Pardons and Paroles. The Governor has already implemented this recommendation and released these funds to the Board of Pardons

and Paroles. These funds will be used to hire a minimum of 28 additional officers to supervise selected offenders paroled on the reinstated weekly special dockets. These parole dockets, first established in 2001, are designed to return offenders to the community so they can begin paying restitution, court costs and fines, and contribute to the cost of their own supervision, as well as provide a means to immediately relieve the overcrowded conditions in prisons and the county jails. During the time frame the dockets were in full operation between August 1, 2001 and April 2, 2002, over 761 additional offenders were granted early release.

Because these special docket offenders were provided more intensive supervision, the parole revocation rate of these offenders has been lower than for prisoners released through regular parole. Officers also report that they can correct behavior more effectively with intensive supervision because of the increased ability to interact with parolees. The release through special dockets and intensive supervision has, therefore, proved to be effective in reducing prison overcrowding and protecting public safety. From past experience, this program should have an immediate positive effect on the inmate population and could divert approximately 750 non-violent offenders within 6 months.

The Commission recommends that the Board of Pardons and Paroles immediately spend additional funds, collected as user fees this year, to hire a minimum of 32 additional supervising officers to more intensely supervise probationers and parolees. These supervising officers will carry a reduced caseload, working with probationers or parolees with high needs. The purpose of the reduced caseloads is to provide more intensive supervision, with the goals of enhancing public safety and providing greater assistance for achieving a crime-free lifestyle.

More intensive supervision of parolees has led to fewer revocations.

The Commission recommends that during the 2003-2004 fiscal year the legislature fund, and the Board of Pardons and Paroles hire, an *additional* 60 supervising officers, for a total of 120 more officers than were initially funded for this fiscal year. The additional officers will again be used to provide more intensive community supervision to assist offenders with higher needs in transforming to a crime-free life style. All of these supervising officers are needed to achieve the goal of providing community-based punishment for non-violent offenders.

(C) Provide Funding for Substance Abuse Treatment

During the 2002 prison-overcrowding crisis, state funding was provided for 40 beds in a 6-month intensive inpatient drug treatment program for chronically addicted offenders. This program, Aletheia House in Birmingham, provides not only drug treatment, but also life skills and job training. The program has the capacity to divert 180 offenders during each year at a cost of about \$7,500 per diverted offender (total cost to the state of \$1,350,000). While this option is more expensive than other community punishment options, the program is still less expensive than traditional incarceration. Although the Aletheia House program

Provide immediate funding for intensive inmate drug treatment.

for diverted offenders is still in its infancy, the program shows a great deal of promise for effectively changing the criminal life patterns of chronically addicted offenders. The Commission recommends the full funding of this program for fiscal year 2003-2004.

In addition, the Commission recommends providing immediate funding in the amount of \$325,000 by the Department of Mental Health to continue this intensive drug treatment program for 40 inmates from July 1, 2003 to September 30, 2003 at the cost of \$3,750 per inmate. This additional recommendation has already been implemented by the provision of funds by the Department of Mental Health.

Two Long-Term Recommendations

Long-term Recommendations:

- 1. Development of a continuum of punishment options;***
- 2. Establishment of a new sentencing structure.***

The Commission recommends two major long-term changes to affect sentencing reform in Alabama and to avoid the predicted continued escalation of the influx of offenders into state penitentiaries by assuring a fair, effective, and efficient corrections system. Alabama must first establish a complete coordinated continuum of punishments to hold offenders accountable for their criminal behavior and to protect public safety by punishing offenders and providing a transition from prison back to the community. This change is an essential foundation to restructuring criminal sentences in Alabama. The second major long-term change recommended by the Commission is the establishment of a new sentencing structure that eliminates unwarranted disparity in sentencing both in duration and disposition, relieves jail and prison overcrowding, and retains judicial discretion in sentencing. Together, these two changes can bring about rational sentencing reform in Alabama and establish a fair, effective and efficient corrections system.

Long-Term Change #1: A Continuum of Punishment Options

A strong and effective criminal punishment system that protects public safety depends on a complete continuum of punishment options that varies in degrees of supervision and intensity of punishment, depending on the severity of the crime and the risk level of the offender. The Commission recognizes that many offenders can be more effectively held accountable for their crimes through community punishment alternatives, while others *must* be incarcerated in state prisons. Even among those offenders who can be punished in the community, various intensities of supervision or restrictions are appropriate, depending on the risk and need levels of the offender. Some offenders will need overnight supervision, while others may need daily or weekly contact with community supervisors. Some offenders will need intensive, long-term drug addiction treatment programs, while others may need less intensive outpatient programs or a combination of both. In addition, offenders who have been incarcerated have different risks and needs levels upon release from prison. To protect public safety and prevent re-

offending, almost all offenders released from prison need supervision in transitioning from incarceration to living in a free community. The continuum of sanctions must, therefore, range from the simple assessment of costs, fines, and restitution to the victim, to incarceration in prison, back to re-entry into a free society. As discussed in Chapters 2 and 5, this continuum is sadly lacking in Alabama. This continuum *must* be firmly established as a necessary foundation if this state is to address the issues confronting the criminal justice system today. The Alabama Sentencing Commission therefore makes the following recommendations to establish a continuum of punishment options. The full continuum is described in Appendix C.

(A) Consolidate State Administration of Community-Based Punishment for Felony Offenders

To provide a continuum of punishment options there must be a coordination of community-based punishment. Under current law and practices, there is no coordinated or comprehensive planning or provision of community-based punishment alternatives for felony offenders. This lack of coordination and planning has led to a failure to provide a sufficient scope of community punishment alternatives. The alternatives that exist are provided in a variety of ways through a number of agencies with no coordination of services. Local Community Corrections Programs provide varying degrees of pre-trial release supervision, supervision of some felony probationers, and supervision of offenders with prison sentences diverted to the community (funded through the Department of Corrections). Probation and parole supervision, as well as pre-sentence and post-sentence investigation services, are provided by the Board of Pardons and Paroles. Work Release and SIR programs, both community punishment alternatives, are provided by the Department of Corrections. A few Court Referral programs established for misdemeanants under the Mandatory Drug Treatment Act are beginning to expand into providing services for felons. These Court Referral Programs are administered through the Administrative Office of Courts. Finally, the primary transition (or re-entry) facilities in operation today are the work release facilities provided by the Department of Corrections. Thus, *three different State agencies and 19 independent community corrections programs* now provide some degree of community and intermediate punishment options for felony offenders in Alabama.

3 state agencies and 19 independent community corrections programs are now providing punishment options for felony offenders.

Because the provision of these services is not coordinated, agencies duplicate services. Dissention exists between agencies as to which agency should provide services for which offenders and where funding should be provided. While in many instances the services provided are sound, this does not vitiate the effect of the lack of coordination on the system as a whole. The current provision of community-based punishment options is insufficient and fragmented. The consolidation of the state administration of community-based punishment services and programs is essential to establishing a fair, efficient, and effective corrections

system. How and where this consolidation should take place is yet to be resolved, but a proposal will be developed by the Sentencing Commission and should be presented to the Legislature in the near future.

(B) Continue Increased Funding for Community Corrections Programs and Increased Probation and Parole Supervision

Expansion of community corrections programs and increased probation and parole supervision are essential to resolve our current crisis.

The short-term recommendations for increased funding for community corrections and probation and parole supervision and services must be continued if Alabama is to establish the full continuum of punishment options necessary to a fair, effective, and efficient criminal justice system. These alternatives have been traditionally so under-funded as to lose their effectiveness. A probation officer cannot effectively supervise 150 to 200 probationers. Offenders who would otherwise serve time in prison cannot be placed in community-based punishment alternatives that *do not exist*. Although these programs currently lack a coordinated plan for the provision of services, the programs are so essential to a resolution of the existing crisis in Alabama's corrections system that even the fragmented development of programs must continue until the efforts can become more coordinated.

(C) Provide a System of Intermediate Community-Based Punishment Options Allowing Overnight Incarceration as Both a Sentencing Option and a Re-Entry Option

For the most part, work release centers operated by the Department of Corrections provide the only community-based punishment overnight facilities for state inmates. These facilities can give the criminal justice system two options in the continuum of punishments. On the front end, these facilities allow courts an additional sentencing option, placing non-violent offenders in the community to live in a penal facility and to work and pay for their incarceration, restitution, and family support. In addition, this type of facility can be used on the back end of a sentence of incarceration to require a gradual re-entry into the community for all incarcerated offenders who will be eventually released from prison back into the community.

In both instances, the offender bears most of the cost of his own supervision and incarceration, thus substantially reducing the cost to the state. This type of facility is now provided almost exclusively as a custody option during imprisonment by the Department of Corrections. The criminal justice system would benefit by having these facilities as a *sentencing option* operated as a community-based punishment program for non-violent offenders. The benefits include a more effective and truthful punishment option known at the time of sentencing, a less costly option than incarceration, and more immediate accountability by the offender who must pay court costs, fines, and victim restitution.

(D) *Provide Regional Community-Based Intensive Substance Abuse Treatment Programs*

Research has shown that the majority of convicted offenders abuse or are addicted to drugs or alcohol. To protect the public from the future effects of the addiction of these offenders, especially those who are chronically addicted, and to effectively deal with the issues that lead to the criminal conduct of these offenders, criminal sanctions must also include effective long-term intensive substance abuse treatment. Long-term treatment must include a gradual re-entry into the community and work environment to effectively transfer the offender from the isolated effects of confinement to living in a free community. These programs provide the public with the greatest opportunity for safety from the future criminal activity of these offenders.

**Long-Term Change #2:
A New Sentencing Structure**

To reduce disparity, implement truth-in-sentencing, achieve certainty in sentencing, and provide a means of managing limited correctional resources, the Sentencing Commission recommends the careful and studied development and implementation of a new sentencing system in Alabama. This system should be guided by voluntary sentencing standards, the utilization of a continuum of punishments, the abolition of parole and “good time” as they exist today, and require the implementation of post-release supervision for all offenders sentenced to incarceration. After considering several alternatives, including an immediate rewriting of the sentencing provisions of the Alabama Criminal Code and adopting presumptive sentencing standards, the Commission determined that a system of *voluntary sentencing standards* is the best approach to resolve the issues confronting the criminal justice system in Alabama today and accomplish the goals of this Commission.

A system of voluntary sentencing standards is the best approach to resolving our problems.

This long-term solution was selected for several reasons. Voluntary sentencing standards can be designed to work within Alabama’s present sentence structure. The standards will take into consideration numerous offender and offense characteristics and historical sentencing practices. This information will be organized and weighted to inform judges of typical sentencing practices. Voluntary standards, because they are constantly re-evaluated, provide a more rational method for supporting needed changes to sentencing practices than do traditional statutory provisions. In addition, recommended sentence ranges will enable to individualize sentences and still provide sufficient guidance to discourage unwarranted disparity. It is expected that the sentencing standards (with modifications made as experience suggests) and research supporting the recommended sentences, will provide the basis for future Criminal Code revisions.

Voluntary sentencing standards are not like Federal or other mandatory guidelines.

Why Voluntary?

The Commission recommends voluntary sentencing standards because this structure is less rigid than mandatory or presumptive standards, thus maintaining meaningful judicial discretion. Voluntary sentencing standards are not subject to the rampant criticism directed toward the federal sentencing guidelines and allow more easily for departures in cases where the public interest demands an outcome different from that recommended. With appropriate safeguards, careful development, and judicial education, similar standards have been used successfully in other states to achieve the same sentencing goals recognized by Alabama. By requiring judges to only *consider* the sentencing recommendations in each felony case and provide a *short* explanation for departures from the standards, Virginia and Utah, two states that have implemented voluntary guidelines, have experienced a favorable reaction from judges. Departure reasons are reported to the Sentencing Commissions and are used to suggest changes to the guidelines where appropriate. Voluntary guidelines are truly recommendations for sentences and are *not subject to appellate review*. Reporting is necessary to provide a basis for comparison to determine if unwarranted disparity has been eliminated or reduced and to demonstrate when modifications of recommended sentences are needed.

What Are The Standards and How Are They Developed?

The standards will be recommended dispositions (prison vs. alternatives) and recommended prison sentence ranges for offenders in non-capital felony cases. The development of the recommendations will be based on an analysis of historical sentencing practices in Alabama and reflect only those factors that are shown to be relevant in determining historical sentencing outcomes among similarly-situated offenders. The Commission recommends the development of sentencing worksheets that score the most historically relevant offense and offender characteristics to produce a score that corresponds to a recommended sentence.

After analyzing historical sentencing practices, the Commission must determine if the historical practices reflect the sentencing goals recognized by the Alabama Legislature and determine where adjustments are needed to achieve those goals. For example, adjustments to historical practice can assure that available prison resources are reserved for Alabama's most violent and dangerous offenders and that effective, less costly punishments are recommended where appropriate.

The dispositions must also be designed to take advantage of a continuum of punishment options that allow targeted offenders to work, earn a living, and pay for their own punishment through user fees. Because the Commission is recommending the development of additional community punishment options, the standards must take advantage of these changes. To this end, the standards will identify the category of offenders to target for community punishment.

Three Steps to Adopting Voluntary Standards

The experiences of other states have led the Commission to conclude that Alabama must take a careful and studied approach to sentencing standards development and implementation. This is especially necessary if the Commission and the Legislature are to implement truth-in-sentencing and abolish parole and good time without immediately exacerbating Alabama's prison overcrowding problem. States that have successfully developed and implemented voluntary standards took many years in the process. In Virginia, for instance, historical data was collected and evaluated for five full years before the development and implementation of the initial recommendations. Alabama can shorten this process, but must do so carefully to insure the voluntary standards will be effective. States that rushed to standards development, including the implementation of truth-in-sentencing and the abolition of parole and good time without adequate study, experienced an immediate and drastic increase in their prison population. To avoid this consequence, we recommend that voluntary sentencing standards be developed and adopted over a four-year period in three stages.

Voluntary sentencing standards should be developed and adopted over a 4-year period in 3 steps.

The first stage includes the development and distribution of a reference manual for judges showing the most frequent ranges of sentences imposed for the top 25 offenses for which felons are sentenced in Alabama. This stage will also include the development of time imposed standards; development of worksheets and reporting forms; the education of judges, prosecutors and defense attorneys on the use of these standards; and planning for the expansion of alternative sanctions for non-violent felony offenders. Stage two will include implementation of voluntary sentencing standards based on sentences imposed; development of worksheets and reporting forms; and additional education and further expansion of alternative sanction programs. The final phase will entail the development and implementation of truth-in-sentencing (time-served) standards, to include the abolition of parole and good time; education on utilizing these standards; and detailed analysis and recommendations regarding the existing availability of alternative sanctions and future needs. These three stages are necessary to develop the infrastructure necessary for sentence reform, to create a set of standards for all offenders, and to assure the system is working before parole and good time are abolished.

Step 1: Judges' Reference Manual

By July 1, 2003, the Sentencing Commission will develop and distribute a reference manual for judges showing the most frequent sentence ranges for the top 25 offenses for which offenders are sentenced in Alabama each year (see Appendix C). The top 25 offenses account for 87% of felony offenders sentenced annually, or roughly 14,000 offenders per year. The manual will assist judges by identifying the characteristics of those offenders most likely to qualify for intermediate punishments, where such punishments are available. This step is designed to give the state the opportunity to develop and make available the intermediate punish-

ment options necessary for the successful implementation of sentence reform in Alabama and to make judges aware of how those options are used and where they are available. This step will also allow judges to become more aware of historical sentencing practices for high volume offenses. During this phase, the Commission will continue to collect and analyze offender and offense specific data for the development of sentencing standards.

Step 2: Voluntary Standards Based on Sentences Imposed

During the 2004 Regular Legislative Session, the Commission will present to the Legislature the initial voluntary sentencing standards. These standards will recommend sentence ranges for felony offense groups that have been developed based on the analysis of historical sentences imposed. The standards, if approved by the Legislature, will become effective on October 1, 2004. The Commission will also develop the worksheets necessary to create scores that will assign recommended sentence ranges under the standards.

The standards will be subjected to rigorous testing in the simulation model (described in Chapter 6) to estimate their effect on the overall criminal justice system. This step is necessary for several reasons. If parole and good time are abolished with the implementation of truth-in-sentencing standards, legal requirements dictate the application of that change only to offenses occurring after the abolition. After the implementation of truth-in-sentencing standards, Alabama will need to continue the use of the initial standards for all offenses committed prior to the effective date. The time-imposed standards are also necessary as the first step in eliminating unwarranted disparity in sentencing and to serve as a baseline for comparison when time-served standards are imposed.

Step 3: Voluntary Truth-In-Sentencing Standards

The third stage of sentence structure reform in Alabama will be the development and implementation of voluntary truth-in-sentencing standards. These standards will be developed and submitted to the Legislature for consideration during the 2006 legislative session. If adopted, these standards will become effective on October 1, 2006.

To effect truth-in-sentencing and assure certainty in sentencing in Alabama, parole and good time must be abolished; however, this should not occur without safeguards in place to protect against an increase in the prison population. These safeguards, including changes to the voluntary sentencing standards system, would have to be implemented simultaneously with this stage of standards development. The Commission suggests that the implementation of the truth-in-sentencing standards be delayed until 2006 to give the Commission an opportunity to evaluate the effectiveness of the initial standards and to determine if

additional changes need to be made to that system to protect against unwarranted prison overcrowding.

Reporting Procedures

The Commission has considered and recommends reporting procedures essential for the effective use of voluntary sentencing standards. In all felony cases, a probation officer or the district attorney, after notice to the defendant or his attorney, will present a completed sentencing standards worksheet to the sentencing judge for consideration. The judge will be required to review and consider the suitability of the applicable standards recommendation. Before imposing a sentence, the judge will state for the record that the standards recommendation has been reviewed and considered, and the completed worksheet will be made a part of the record in the case.

If the judge imposes a sentence that departs from the voluntary sentencing standards, the court will file, as part of the record (on a form provided by the Sentencing Commission), a *brief* statement concerning the reason for departure. Reporting departures is essential to determine the level of compliance, whether the recommended sentence ranges should be modified, and if so, to what extent. *Neither the sentence nor the reason for departure will be subject to appellate review. No appellate review of sentencing standards decisions will be authorized.*

Neither the sentence nor the reason for departure will be subject to appellate review.

Additional Rules For The Use of Truth-In-Sentencing Standards

No offender will be eligible for good time or parole for any offense committed after the effective date of the truth-in-sentencing voluntary standards. Sentences imposed pursuant to these standards will not be subject to any other provision of law relating to length of sentence. Time served data and factors now subject to sentence enhancements and mandatory minimums will be considered and incorporated into the standards with adjustments recommended by the Commission and, therefore, sentence enhancements and mandatory minimums need not be added to the sentence standards. Under current law, the decision of whether to impose the additional enhancement, other than some aspects of the habitual felony offender law, is discretionary with the sentencing judge. The Sentencing Commission intends to review the habitual felony offender law and consider adjustments that may be needed to properly weigh prior convictions so that a just and effective sentence may be recommended by the standards, and to assure that sentences are proportionate to the severity of the offense and offender.

As part of the truth-in-sentencing standards, the Commission recommends that all incarcerated offenders serve a one-year term of post release supervision. At present, almost one-third of Alabama inmates are released from prison with only \$10 and a bus ticket after serving their full sentence. Post-release supervision provides a time for supervised readjustment to living outside an institution and has been shown to be effective in protecting public safety by reintegrating inmates into the community. Assistance in re-integration has also been shown to reduce recidivism, often as a result of needed mental health or substance abuse follow-up treatment.

To implement post-release supervision in all cases involving a sentence of incarceration, the Commission recommends that all sentences include three elements: a minimum term, a maximum term, and a period of post-release supervision. The minimum term is chosen from the standards recommendation and is considered to be the initial or base sentence of the offender. Added to the base sentence is an additional sentence equal to 20% of the initial sentence. This 20% is an additional term of imprisonment that can be applied for bad conduct. The third element is a mandatory term of post-release supervision. The additional sentence consisting of imprisonment and supervision serves two purposes. The sentence allows an offender to qualify for a release date between the minimum and maximum sentence and, thus, creates an incentive to comply with the requirements and conditions of his incarceration. The additional sentence also allows for a period of post-incarceration supervision to assist the offender in reintegrating into society.

Future Tasks of the Commission

Regardless of any changes recommended by the Commission, Alabama will need new prisons. At best we can slow some of the growth in our inmate population. However, a heavier reliance upon prisons for the incarceration of violent and repeat offenders will ultimately lead to a heavier reliance on maximum security facilities to imprison more high risk inmates. The Department of Corrections is currently undertaking an in-depth analysis by a private consulting firm, and will soon publish a Master Plan. It is the hope of this Commission that this report can assist the Commission, the Department and the Governor in defining Alabama's need for future prison beds.

In conclusion, the Commission is currently undertaking a number of additional tasks that will produce additional recommendations. These include:

- evaluating data on habitual felony offenders;
- continuing to review existing criminal laws, specifically Alabama's drug laws;

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- pursuing revision of Alabama’s Criminal Code;
 - reviewing levels of probation and parole supervision, as well as revocation procedures and trends;
 - supporting the work of Alabama Supreme Courts’ Drug Court Committee established to evaluate drug courts in Alabama, and to develop uniform standards and reporting procedures;
 - pursuing legislation that would authorize the establishment of pre-trial diversion programs statewide; and
 - reviewing the juvenile justice system.

In each of these areas the Commission is examining data, meeting with experts, collaborating with other criminal justice stakeholders, and formulating additional recommendations for change. The Commission will continue to monitor sentencing data, review proposed laws that affect sentencing and the corrections system, and further refine our correctional simulation model.

Appendices

Appendix A: Alabama Top 25 Felony Offenses

Top 25 Felony Crimes at Conviction in Alabama

Among All Felony Offenders Convicted FY1999-FY2002

			% of	Average
	Criminal	Felony	Convicted	Annual #
<u>Most Serious Offense* At Conviction</u>	<u>Code</u>	<u>Class</u>	<u>Offenders</u>	<u>of Offenders</u>
1 Possession or Receipt of Controlled Substance (Schedule I-V)	13A-12-212	C	19.4	3,296
2 Theft of Property 2nd Degree	13A-8-4	C	7.3	1,244
3 Felony DUI	32-5A-191	C	7.0	1,183
4 Burglary 3rd Degree	13A-7-7	C	6.2	1,054
5 Theft of Property 1st Degree	13A-8-3	B	6.2	1,051
6 Possess Marijuana 1st Degree	13A-12-213	C	5.9	1,005
7 Unlawful Distribution of Controlled Substance	13A-12-211	B	4.7	804
8 Possess Forged Instrument 2nd Degree	13A-9-6	C	4.7	791
9 Receiving Stolen Property 2nd Degree	13A-8-18	C	2.9	494
10 Assault 2nd Degree	13A-6-21	C	2.9	490
11 Robbery 1st Degree	13A-8-41	A	2.6	443
12 Receiving Stolen Property 1st Degree	13A-8-17	B	2.0	347
13 Unauthorized Use Of/Breaking & Entering a Vehicle	13A-8-11	C	1.9	326
14 Robbery 3rd Degree	13A-8-43	C	1.8	301
15 Forgery 2nd Degree	13A-9-3	C	1.6	277
16 Robbery 2nd Degree	13A-8-42	B	1.2	212
17 Possess/Fraudulent Use of Credit Card	13A-9-14	C	1.2	199
18 Sexual Abuse 1st Degree	13A-6-66	C	1.1	194
19 Assault 1st Degree	13A-6-20	B	1.1	193
20 Murder	13A-6-2	A	1.0	165
21 Escape 3rd Degree	13A-10-33	C	0.9	149
22 Manslaughter	13A-6-3	B	0.9	146
23 Burglary 2nd Degree	13A-7-6	B	0.8	144
24 Escape 2nd Degree	13A-10-32	C	0.7	113
25 Burglary 1st Degree	13A-7-5	A	0.7	112
Top 25 Crimes			87%	
All Other Crimes			13%	
ALL CONVICTED FELONY OFFENDERS			100%	

* Most serious offense determined by Commission seriousness ranking.

Data Source: Alabama Administrative Office of the Courts.

Appendix B: Alabama Sentencing Commission Violent Offenses

Offense	Criminal Code
Capital Murder	13A-5-40
Murder	13A-6-2
Manslaughter	13A-6-3
Criminal Negligent Homicide - DUI	13A-6-4
Vehicular/Vessel Homicide	32-5A-192
Assault 1st Degree	13A-6-20
Assault Sports Official 1st Degree	13A-11-144(f)
Assault 2nd Degree	13A-6-21
Assault Sports Official 2nd Degree	13A-11-144(e)
Compel Streetgang Membership	13A-6-26
Kidnapping 1st Degree	13A-6-43
Kidnapping 2nd Degree	13A-6-44
Rape 1st Degree	13A-6-61
Rape 2nd Degree	13A-6-62
Sodomy 1st Degree	13A-6-63
Sodomy 2nd Degree	13A-6-64
Sexual Torture/Abuse	13A-6-65.1
Sexual Abuse 1st Degree	13A-6-66
Enticing Child to Enter	13A-6-69
Aggravated Stalking	13A-6-91
Stalking	13A-6-90
Solicitation of Child by Computer	13A-6-110
Domestic Violence 1st Degree	13A-6-130
Domestic Violence 2nd Degree	13A-6-131
Burglary 1st Degree	13A-7-5
Burglary 2nd Degree	13A-7-6
Burglary 3rd Degree (if w/ intent to commit violent felony)	13A-7-7
Arson 1st Degree	13A-7-41
Explosives - Criminal Possession	13A-7-44
Extortion 1st Degree	13A-8-14
Robbery 1st Degree	13A-8-41
Robbery 2nd Degree	13A-8-42
Robbery 3rd Degree	13A-8-43
Robbery of Pharmacy	13A-8-51
Discharge Gun in Occupied Building/Vehicle	13A-11-61
Promoting Prison Contraband 1st Degree	13A-10-36
Intimidating a Witness	13A-10-123
Intimidation of a Juror	13A-10-127
Escape 1st Degree	13A-10-31
Transmitting Obscene Material to Child	13A-6-111
Promoting Prostitution 1st Degree	13A-12-111
Producing Pornography with Minors	13A-12-197
Child Abuse	26-15-3
Abuse and Neglect	38-9-7
Terrorist Threats	13A-10-15
Terrorism	13A-10-152
Terrorism/Hindering Prosecution	13A-10-154
Terrorism/Soliciting or Providing Support	13A-10-153

**Includes an attempt, solicitation to commit, or complicity in the commission of any of these offenses.*

Appendix C: Continuum of Punishments **(From most restrictive to least restrictive)**

Most Restrictive: Full Prison

Residential Short-Term

- Revocation Centers
- Intermittent Confinement
- Split Sentences
- Boot Camp
- Jail

Residential Part-Time

- Work Release
- Halfway Houses
- Community-Based Corrections Facilities
- Re-entry Transitional Centers (similar to work release)

Non-Residential Punishment -- movement restricted

- Home Confinement
- Day Reporting Center
- Electronic Monitoring
- Intensive Supervised Probation/Parole
- Voice recognition & curfew restrictions
- SIR
- Intensive parole supervision

Non-Residential Sanctions

- Drug Courts**
- Prosecutor's Diversion program
- Ignition Interlock
- Sobriety (Home alcohol breath monitoring)
- Community Service
- Discretionary Rehabilitation Program (out patient)
- License suspension

Least Restrictive: Financial Sanctions

- Payment of costs, fines and restitution
- Forfeiture

In this continuum of punishments various services should be provided to prevent recidivism and encourage a crime free lifestyle, especially at levels B through D, and at Re-entry. These services may include, but should not be limited to assessment testing for substance abuse and addiction; educational programs; job readiness and work skills training; Literacy and Basic Education; Residential and Out-Patient drug and alcohol treatment, including both long and short term programs and relapse programs; Voluntary Restorative Justice Programs; mental health treatment; Self-help groups, and drug courts or other speciality programs.

The continuum should also include intensive supervised pre-trial release for offenders charged with non-violent offenses who are unable to make a minimum bond for which they are eligible.

Penalties generally include a combination of these sanctions and/or combinations of levels of restrictiveness.

Appendix D: The Commission's Efforts to Improve Information Sharing

During the last year, the Alabama Sentencing Commission has made great strides towards achieving its goals of sentencing reform through the collection and analysis of data. In this process, it became apparent Alabama's Criminal Information systems are in need of improvement. In the last year the Commission has assisted in the development of central reporting systems to capture vital information regarding various components of Alabama's criminal justice system. In many instances, a central location that captures and maintains current information on community corrections programs, drug courts, and county jail populations, is nonexistent. Where the information is available, it is often only contained in manual files and is not readily accessible. In this regard, the Sentencing Commission has recommended and provided assistance to improve our state's fragmented or nonexistent information systems in the following areas.

Development of a Uniform Case Management System for Community Correction Programs

Among the Commission's recommendations last year was the development of a comprehensive community corrections reporting system to obtain essential information on existing programs and their effectiveness. This recommendation motivated the Alabama Community Corrections Association to pursue the development of a uniform case management system, which is to include a reporting component that will enable the Sentencing Commission to gather current information on the existing programs. Centralized reporting will enable the Commission to obtain vital information on the services provided, the types of offenders participating, and program effectiveness.

Because of the inability to obtain information from one central source on the operation of existing community corrections programs, the Sentencing Commission conducted a survey of all 19 programs to determine program capacity, cost, and effectiveness. For program accountability, Alabama must establish a better method to retrieve current data and annual evaluations on these programs.

Drug Courts

Effective management and reporting is also being pursued for drug courts. On June 14, 2002, by Order of the Alabama Supreme Court, a Drug Court Coordinating Committee was established and staffed by the Administrative Office of Courts. This committee, composed of judges, prosecutors, victims advocates, drug court coordinators, and treatment providers has been charged with developing uniform guidelines and standards for the operation of drug courts and the development of specialized reporting procedures that will enable each court's effectiveness and statewide needs to be evaluated. To provide a centralized clearinghouse of information on these programs for effective evaluation and the sharing of information, the Supreme Court specifically directed the Committee to develop an automated drug court management information system for the sharing of information with the Alabama Sentencing Commission and other entities. The Drug Court Coordinating Committee is also tasked with overseeing on-going drug court programs and assisting these programs by providing technical assistance, pursuing alternative funding, developing procedural manuals, scheduling training programs and forging partnerships among drug courts, public agencies, and community-based organizations.

Automated Pre-Sentence Investigation (PSI) Reports

The information now maintained in electronic databases on offenders is limited and does not include information that will be needed by the Sentencing Commission to make further recommendations for sentencing reform. To obtain social and legal background information on offenders (such as education, family history, prior drug and alcohol history and treatment, offense details, prior juvenile adjudications), the Commission staff and parole officers selectively reviewed paper-copy PSI reports on a sample of offenders convicted in the past four years. Our review focused on offenders convicted of theft of property 1st and 2nd degree, receiving stolen property 1st and 2nd degree, possession or receipt of controlled substances (schedule I-V), and felony DUI. This slow and tedious process prompted the Commission to assist in the development of an automated PSI system, which is a joint project undertaken by the Administrative Office of Courts and staff of the Board of Pardons and Paroles. As of March 6, 2003, this system is only available in Mobile County. However, the system should be up and running in Montgomery by mid March. By year's end, automated PSIs should be available in Huntsville, Bay Minette, Brewton, Evergreen, Monroeville, Butler, and Jefferson Counties.

County Jails

Because there is no one state agency or association that captures current information on county jail populations, with the assistance of the Alabama's Sheriff Association, the Sentencing Commission surveyed the county jails to obtain basic information. Data from these surveys include details on the number and type of county inmates, jail capacity, inmates awaiting trial, the number convicted and the type of offense (felony, misdemeanor, or municipal ordinance violation), how many convicted inmates housed in the county jails received a split sentence, the gender of the inmates, and identification of the jail administrator or contact person from whom the Commission staff can contact for additional information.

In response to this lack of a central source for information on all county jails, the Administrative Office of the Courts began the development of a statewide county jail information system. To date there are only 17 jails participating in this project, and the Sentencing Commission joins the Administrative Office of Courts, in encouraging more county jails to sign up and participate in this project.