

ALABAMA SENTENCING COMMISSION

A Rational Sentencing Plan - Ready for Approval

2005 Annual Report



Commission Highlights

Voluntary Sentencing
Standards

Community Punishment
&
Corrections

Database & Simulation Model

Criminal Justice Research
&
Clearinghouse

THE ALABAMA SENTENCING COMMISSION

Reform of Alabama's Criminal Justice System

2005 Report

“A Rational and Planned Approach to Sentence Reform”



Recommending Approval
of the Initial Voluntary
Sentencing Standards

February 22, 2005

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ALABAMA SENTENCING COMMISSION

300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 353-4830
Fax: (334) 353-5785
<http://sentencingcommission.alacourt.gov>

February 1, 2005

Joseph A. Colquitt, Chairman
*Retired Circuit Judge & Beasley
Professor of Law*

Vernon Barnett, Esq.
Governor's Deputy Legal Advisor

Hon. Marcel Black
State Representative

Hon. Terri Bozeman
District Judge

Hon. Eleanor I. Brooks
District Attorney

Donal Campbell, Commissioner
Department of Corrections

Rosa Davis, Esq.
Chief Assistant Attorney General

Stephen Glassroth, Esq.
Attorney at Law

Rhonda Hardegree
Victims' Advocate

Dr. Lou M. Harris, Jr.
Faulkner University

Hon. P. B. McLaughlin, Jr.
Circuit Judge

Steve Nodine
County Commissioner

Hon. David A. Rains
Circuit Judge

Joe Reed, Jr., Esq.
Attorney at Law

William C. Segrest
Board of Pardons and Paroles

Hon. Rodger M. Smitherman
State Senator

Lynda Flynt, Esq.
Executive Director

To: Honorable Bob Riley, Governor of Alabama
Honorable Drayton Nabers, Jr., Chief Justice of the Alabama Supreme Court
Honorable Troy King, Attorney General, State of Alabama
The Honorable Members of the Alabama Senate
The Honorable Members of the Alabama House of Representatives
The Honorable Members of the Judicial Study Commission
The Citizens of Alabama

On behalf of the members of the Alabama Sentencing Commission, the Executive Committee and the Commission's Advisory Council, I am pleased to present to you the Sentencing Commission's fourth annual report. In addition to providing a synopsis of the Commission's work and reform efforts over the past year, we have included data that provides a revealing assessment of the current status of our state's criminal justice system. We also present the legislation the Commission is supporting during the 2005 Regular Legislative Session, with an emphasis on the proposed voluntary sentencing standards.

Pursuant to the provisions of the Sentencing Reform Act of 2003, the Commission developed voluntary historically-based sentencing standards and submitted these to the Legislature for approval in the 2004 Regular Session. Although we had initially hoped that the standards would be approved for implementation in October of 2004, legislators were reluctant to give their endorsement until they had an opportunity to more thoroughly review the worksheets and instructions.

Success is not always achieved in the way we imagine. There was no real opposition to the proposed sentencing system; only a request for more time for legislators and criminal justice officials to become thoroughly familiar with standards and worksheets. The delay in implementation afforded the Commission an invaluable opportunity to provide education and hands-on training in completing the worksheets, scoring and applying the recommended sentence. We conducted twelve regional workshops and pilot tested the standards in three sites. This proved to be a valuable training tool. Moreover, we garnered support for the Commission's reform efforts and obtained useful recommendations from the participants. Many of those recommendations have been incorporated into the instructions and worksheets.

I hope you will carefully consider and endorse the voluntary sentencing standards and the other legislative recommendations from the Commission. With your leadership and dedication to improving our state's criminal justice system, change for the better is possible. Thank you for your continued support and interest in the work of the Alabama Sentencing Commission. If you have any questions or need our assistance, please do not hesitate to call on me or the Commission's staff.

Sincerely,

Joseph A. Colquitt, Chair
Alabama Sentencing Commission

Acknowledgements

The Commission's accomplishments over the past four years have been achieved only because of the exceptional assistance and support provided by many people and the cooperative efforts of several departments, agencies and associations. The Sentencing Commission members and staff would like to express our appreciation for their outstanding service and acknowledge their dedication and determination to improve Alabama's Criminal Justice System. Special recognition is extended to the following individuals and organizations for providing their knowledge, expertise and time to this important project.

Joseph A. Colquitt, Chair of the Sentencing Commission
Chief Justice Drayton Nabers, Jr.
Acting Chief Justice Gorman Houston
Governor Bob Riley and staff
Attorney General Troy King
U.S. Circuit Judge and Former Attorney General Bill Pryor
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U.S. Representative Bud Cramer
Judges of the Alabama Court of Criminal Appeals
Alabama Circuit and District Judges' Associations
Randy Helms, Administrative Director of Courts
Mike Carroll, Deputy Administrative Director of Courts
Leslie Jacques, Budget Manager, Administrative Office of Courts
Callie Dietz, Director of Judicial College, Administrative Office of Courts
Rob Sachar, Judicial College, Administrative Office of Courts
Tom Monroe, Judicial College, Administrative Office of Courts
Cynthia Dillard, Assistant Executive Director, Board of Pardons & Paroles
Jim Gibbs, Research & Planning, Board of Pardons & Paroles
Alabama Crime Victims' Compensation Commission
Victim Advocates; VOCAL, MADD, Angel House, Coalition Against Domestic Violence
Tom Goree, Alabama Department of Economic and Community Affairs
Don Lee, Alabama Department of Community Affairs
The Office of Prosecution Services and the Alabama District Attorneys' Association
Alabama Lawyers' Association
The Criminal Defense Lawyers' Association
Becki Goggins, Analyst, Alabama Criminal Justice Information Center
Legislative Reading and Research Service
Frank Caskey, Legislative Reference Service
Joe MaHoney, President, Alabama Community Corrections Association
Steve Hayes, Assistant to the Commissioner, Department of Corrections
Paul Whaley, Research and Evaluation Department of Corrections
Steve McBee, Research and Evaluation, Department of Corrections
Dr. John Speir and Dr. Tammy Meredith, Applied Research Services
Vera Institute of Justice and Associates
Mark Dowdy, Law Clerk
Laura Hancock, Law Clerk

MEMBERS OF THE ALABAMA SENTENCING COMMISSION

Joseph A. Colquitt, Chair
Retired Circuit Judge and Beasley Professor of Law,
University of Alabama School of Law

Vernon Barnett, Esquire
Deputy Legal Advisor to the Governor

Representative Marcel Black
Chair, House Judiciary Committee
3rd District, Colbert County

Terri Bozeman, District Judge
Lowndes County

Eleanor I. Brooks
District Attorney, 15th Circuit

Donal Campbell, Commissioner
Alabama Department of Corrections

Rosa Davis, Chief Assistant
Attorney General

Stephen Glassroth, Esquire
The Glassroth Law Firm, P.C.

Rhonda Hardegree
Victims' Advocate

Lou Harris, D.P.A.
Faulkner University

P.B. McLaughlin, Presiding Circuit Judge
33rd Judicial Circuit

Steve Nodine, Commissioner
Mobile County Commission

David A. Rains, Circuit Judge
9th Judicial Circuit

Joe Reed, Jr., Esquire
Faulk & Reed, L.L.P.

Senator Rodger M. Smitherman
18th District, Jefferson County
Chair, Senate Judiciary Committee

William C. Segrest, Executive Director
Board of Pardons and Paroles

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Joseph A. Colquitt, Chair
Alabama Sentencing Commission

Rosa Davis, Chief Assistant
Attorney General

Senator Rodger M. Smitherman, Chair
Senate Judiciary Committee

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Alabama Sheriff's Association

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Alabama Department of Public Safety

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Department of Corrections' Appointee

Ms. Doris Dease
Victims' Advocate

Denis Devane
Department of Corrections' Appointee

Senator Sundra E. Escott
Alabama Senate

Representative John F. Knight
Alabama House of Representatives

Justice Hugh Maddox, *former Justice
of the Alabama Supreme Court*

Joe Mahoney, Director
*Mobile County Community Corrections
& President of the Alabama Community
Corrections' Association*

Willa Kate Matthews Richardson
Department of Corrections Appointee

Chaplin Adolph South
Tuscaloosa, Alabama

Chief Charles F. Trucks, *President
Alabama Police Chiefs' Association*

Walter Wood, Executive Director
Department of Youth Services

COMMISSION STAFF

Lynda Flynt, Executive Director

Mary Duncan
Administrative Assistant

Melisa Morrison
Research Analyst

Chris Booth
Legal Research Assistant and
Community Corrections Coordinator

Interns: Laura Hancock
Mark Dowdy

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EXECUTIVE SUMMARY

A Rational and Planned Approach to Sentencing Reform - The Next Step

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 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. *2003 Report of the Alabama Sentencing Commission*. p. 6

The Sentencing Commission is addressing sentencing reform with short-range and long-range strategies.

Alabama is following a planned and rational approach to sentencing reform and is addressing sentencing issues with both short-range and long-range strategies. So far, short-range solutions to Alabama’s prison overcrowding problems have provided some relief, albeit temporary. These short-range strategies do not, however, address the elemental problems permeating the Alabama Corrections system over the past 30 years. These issues require a more long-range approach.

It is through these long-range strategies that the Alabama Sentencing Commission answers the Legislature’s directives to achieve comprehensive reform of our corrections system by making recommendations that:

Long-range strategies are needed to achieve legislative directives.

- Ensure sentencing practices that promote public safety and recognize the impact of crime on victims by concentrating on the incarceration of violent, sex, and dangerous offenders.

- Alleviate unwarranted sentencing disparity while maintaining meaningful judicial discretion, allowing judges the flexibility to tailor sentences based on the unique circumstances of each case.
- Provide 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.
- Assist in avoiding prison overcrowding and the premature release of inmates who need and deserve continued incarceration.
- Establish a sentencing system where time served in prison will bear a close resemblance to the court imposed sentence.

Voluntary sentencing standards can:

(1) manage corrections over the long-term.

(2) alleviate unwarranted disparity in sentencing.

(3) retain meaningful judicial discretion.

(4) lay the foundation for truth-in-sentencing.

Some long-range strategies, such as changes to the theft statutes, increased community punishment alternatives, increased probation and parole officers, and the opening of a transition center, have already been implemented and are beginning to provide relief. *It is time now, however, to take the next step and approve the structured sentencing system adopted by the Alabama Sentencing Commission and submitted to the Legislature.* The strategy is to address and manage corrections over the long-term. Our proposed sentencing standards can do this, and is the very system needed to implement and maintain a rational sentencing structure that guides judicial discretion and allows Alabama to progress to a system that establishes truth-in-sentencing. This sentencing system, the initial voluntary sentencing standards, will begin to address the directives given the Alabama Sentencing Commission by the Legislature to alleviate unwarranted disparity while retaining meaningful judicial discretion. In addition, the voluntary sentencing standards implement a system that is data driven and can be used to alter the course of sentencing offenders to meet realistic expectations of available resources. When the voluntary sentencing standards are shown to be effective, Alabama will be ready to adopt a system designed to achieve truth-in-sentencing, assuring that the victim, the judge, the prosecutor, and the offender know the real effect of a sentence at the time the sentence is imposed. Without this comprehensive sentence reform, the crisis that Alabama has experienced over the last three decades will continue.

Short-term Measures Provide only *Temporary Relief*.

Over the last three years, Alabama has implemented a number of short-term measures to relieve prison overcrowding without jeopardizing public safety. All of these measures have been successful, but the effects are temporary. These measures, along with a few selective long-term solutions, have increased bed space in the prison system and reduced the overall number of inmates in the system from a high of 28,440 in July 2003, to a low of 26,220 in November 2004. The number, however, is again increasing. On January 31, 2005, the number had increased to 27,255. Without adopting permanent long-term comprehensive reform measures, this number will continue to rise.

Two major short-term solutions to our prison and jail overcrowding crisis have proven effective:

- Housing inmates out-of-state in private prisons served as a temporary release valve for several thousand offenders. This cost Alabama, with its financially strapped corrections system, over \$12.3 million for FY 2003 and FY 2004.
- The institution of a temporary panel of the Parole Board to review a backlog of non-violent offenders and assist the Board with review of other eligible inmates, allowed the Board to review 10,084 inmates for parole consideration. Of those considered, 4,123 or less than 41% were granted parole. Those released under this review were all non-violent offenders, using the definition of “non-violent offender” adopted by the Legislature in the Sentence Reform Act of 2003.

Alabama does not have the money to continue to house large numbers of offenders in private prisons. In addition, the Parole Board has completed its initial review of backlogged “non-violent” offenders, and other measures must now be taken.

Short-term measures were successful - dropped prison inmate population from 28,440 to 26,220.

Despite emergency measures, the inmate population is again on the rise. At the end of January 2005, the population was up to 27,255.

Comprehensive Reform is Multifaceted, Requiring Long-term Solutions and Continued Evaluation for Effectiveness.

Comprehensive reform is needed in every area of Alabama's criminal justice system.

While these emergency measures have proved effective for temporarily reducing overcrowding, their effect is short-lived, emphasizing the need for adopting permanent measures to achieve long-term success. Comprehensive reform is needed in every area of Alabama's criminal justice system. The reform required is extensive. Because of our state's limited resources, reform must be carefully planned and implemented incrementally to achieve the best results.

There is no one solution that will miraculously resolve 30 years of crisis. The Sentencing Commission and the Legislature, through approval of the Sentence Reform Act of 2003, have, therefore, adopted an approach of incremental implementation of long-term solutions requiring an ongoing analysis of their effectiveness. Each reform measure that has been adopted has already had a positive effect on our corrections system.

Long-term Reforms Already Impacting the System

A number of long-term reforms have already been adopted. Alabama needs to continue to implement and expand several of these reforms.

- Reforms to the theft statutes raising the threshold for theft offenses – projected to provide more than 3,000 prison beds over a 5-year period, implemented in 2003.
- Expansion of community corrections programs serving felony offenders in Alabama from 17 to 34 counties over the last three and one-half years (2002 to 2005) and increased prison diversions from 1414 to 2000 paid for by the Department of Corrections. An increase in appropriations from \$2.5 million to \$5.1 million to the State County Community Partnership Fund, through the Department of Corrections, would allow for the addition of community corrections programs in more counties or circuits in Alabama and could increase the number of offenders diverted from prison by an additional 1500.
- Increase in the number of probation and parole officers to intensively supervise more offenders in the community.

The impact of implemented long-term solutions:

(1) Theft Amendments - more than 3,000 beds over 5 years.

(2) With additional funding 1,500 more offenders could be diverted from prison to Community Corrections.

- Institution of L.I.F.E. Tech, a parole transition facility established to assist in the transition of female inmates from prison back to the community. This concept should be expanded to accommodate male offenders and to provide additional alcohol and substance abuse treatment options prior to release from prison.
- Amendment of the Habitual Felony Offender Act to increase judicial discretion for some Class A and Class B felonies.

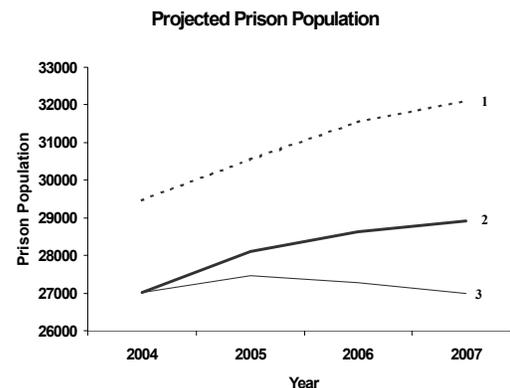
L.I.F.E. Tech parole transition facility established.

Alabama is ready to take the next step toward achieving a rational and manageable sentencing system through adoption of a planned approach to comprehensive sentence reform. We have taken the first step of laying the foundation for reform by the creation of a reliable offender database, and the intermediate step of developing sentencing standards and worksheets to promote informed sentencing decisions. The Sentencing Commission is now submitting the initial voluntary sentencing standards with worksheets and instructions for Legislative approval as required by the Sentence Reform Act of 2003. Adoption of these standards, with worksheets and instructions, will address three of the legislative directives to the Sentencing Commission: (1) protecting public safety by reserving prison beds for the most violent and dangerous offenders; (2) eliminating unwarranted disparity in sentencing by guiding judicial discretion in the imposition of sentences; and (3) alleviating prison and jail overcrowding by providing a mechanism to more specifically recommend who goes to prison and who should receive alternative punishment.

Positive change reflected by the solutions already implemented.

The Voluntary Sentencing Standards and Worksheets – A Structured Sentencing System.

- Developed by judges, prosecutors, defense lawyers, victim advocates, and other criminal justice officials to address unwarranted sentencing disparity and prison overcrowding (reserving scarce prison space of the most dangerous and violent offenders).
- As directed, created from historical sentencing data, reflecting the major factors considered in making sentencing decisions and the importance of those factors to each other.



1 – 2003 5-year projection - status quo
 2 – 2004 4-year projection with short-term and long-term relief measures already implemented (current status quo)
 3 – 2004 4-year projection with implementation of the standards (75% compliance)

**Proposed Voluntary
Sentencing Standards....**

*- developed by judges,
lawyers, victim advocates
and public officials.*

- from historical data.

*- subjected to public scrutiny
(over 700 participants).*

*- standardize sentencing
recommendations.*

- retain judicial discretion.

- Includes the historical application of all of Alabama’s statutory sentence enhancements and mandatories, except the sentences of life without parole. (The Commission is currently analyzing and evaluating life without parole sentences).
- Have been presented to over 700 participants in 12 workshops in six regions of the state with suggestions considered and changes made to the initial proposals.
- Mimic the two decisions in criminal sentencing – the length of the sentence (duration), and where the sentence is served (disposition), prison or non-prison.
- Cover 87% of sentenced offenders.
- Should be followed in 75% of the covered cases, leaving flexibility with judges to sentence higher or lower as appropriate in approximately 25% of the covered cases.
- Can halt annual growth in prison population.
- Standardize sentence recommendations for more informed and uniform sentencing practices and the elimination of unwarranted disparity.
- Shorten sentence length recommendations in non-violent cases to alleviate overcrowding and to make room for violent offenders.
- Allow judges to retain discretion in arriving at sentencing decisions.
- Encourage the use of probation and community corrections programs for non-violent offenders.
- Have been pilot tested in several counties, including Jefferson County, and determined to achieve projected results.

-
- Make all mandatories, except life without parole, discretionary.
 - Address overcrowding by providing a mechanism for changing sentence recommendations to meet economic reality while preserving public safety.

When these standards, worksheets, and instructions are implemented and prove effective, they will form the basis for implementing truth-in-sentencing to produce sentences that are certain and effective. The initial voluntary sentencing standards are based on historical time-imposed sentence lengths. This same framework will be used to analyze time actually served on those imposed sentences to produce recommendations for the truth-in-sentencing standards in the future. Like those states that successfully implemented truth-in-sentencing, Alabama, through the Sentencing Commission and this Legislature, has made the wise decision to make sure this format will achieve the planned goals before truth-in-sentencing is implemented.

Legislation

The Sentencing Commission recommends that the Legislature consider and pass 12 bills relating to sentencing in Alabama. These bills fall into three categories: 1) the Sentencing Standards and companion bills necessary for implementing the standards; 2) bills necessary to provide a wider array of sentencing options and to relieve overcrowding; and 3) statutory updates.

Bills Supporting Implementing Sentencing Standards

- HB 476; SB 13 and SB 258 – Proposing the approval of the Sentencing standards, worksheets and instructions.
- HB 477; SB 264– Providing judges, prosecutors and probation and parole officers statewide access to juvenile and youthful offender records to properly evaluate prior criminal history on the worksheets.
- HB 484; SB 271 - Correcting the Theft of Property 2nd Degree statute to reflect the changes made by the Legislature in 2003, making the property value for second degree Theft of Property \$500-\$2,500.

Implementing historical “time imposed” standards is the first step toward truth-in-sentencing.

Legislation supporting sentencing standards (4 bills).

- HB 480; SB 270 - Amending Burglary 1st and Burglary 2nd to apply the “Loot Rule,” providing that the mere fact of the existence of a deadly weapon or dangerous instrument as part of burglary “loot” does not constitute “use” or threatened use of the deadly weapon or dangerous instrument.

Bills to provide sentencing options (4 bills).

Bills affecting a wider array of sentencing options, prison and jail overcrowding, and addressing unwarranted disparity.

Supplemental appropriations of \$2.6 million for Community Corrections programs will provide more sentencing options.

- HB 478; SB 269 - Supplemental appropriations of \$2.6 million to the Department of Corrections for the expansion of community corrections programs, providing judges with more sentencing options. With this level of funding, 1,500 additional felony offenders can be diverted from prison to close community supervision.
- HB 481; SB 272 - Increasing the amount deducted from wages of offenders in Pardons and Paroles residential facilities to match amounts allowed for deduction of offenders participating in community corrections programs and work release programs. This bill supports extending re-entry facility options for male offenders and extending these options to allow re-entry offenders to work in the community.
- HB 479; SB 261 - Amending the split sentence statute to provide judges more options upon revocation of probation.
- HB 486; SB 10 - Providing a procedure for considering the release of offenders serving less than life without the possibility of parole where the offender has become incapacitated due to age and/or medical condition.

Medical and Geriatric Release

Statutory updates

- HB 482; SB 266 - Increasing authorized maximum fine limits for all state offenses to account for inflation since the fine amounts were first established and to comport with maximum fine amounts authorized in other states.
- HB 483; SB 268 - Amending the fine provision in drug trafficking statutes to establish fines for the most serious trafficking offenders and to provide a graduated fine for trafficking in hydromorphone.
- HB 485; SB 267 - Amendment of Alabama's DUI statute to authorize the use of out-of-state convictions to enhance punishment.
- A bill to extend the time to develop and present truth-in-sentencing standards from 2006 to 2008 to allow full implementation and evaluation of the initial voluntary sentencing standards.

**Updating criminal statutes
(4 bills).**

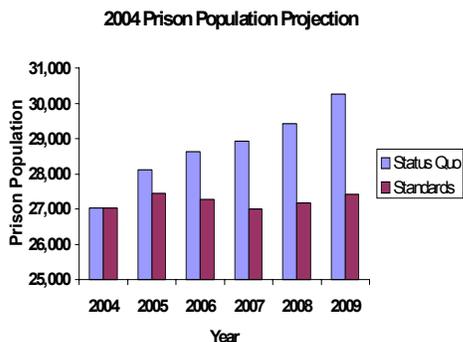
Future Projects

Next year the major project of the Commission will be to provide the necessary forms and education for implementation of the initial voluntary sentencing standards and to establish a "help line" to answer questions that arise during the implementation process.

In addition to the implementation of the standards, the Commission has a number of projects planned over the next several years that address specific issues in sentencing and ways to improve the criminal justice system. These projects include a continuing review of various aspects of Alabama's sentence structure with recommendations for change supported by data. The projects already underway and those suggested for future action are contained in Chapter 6 of this report.

**Reform must continue -
there is much left to
accomplish.**

There is Light In Alabama’s Future



The effect of sentencing standards - reduction in prison population.

Alabama is now addressing criminal justice issues realistically, with an eye toward accountability through empirically-based reforms.

Through the measures already implemented, Alabama has slightly improved its projected prison population by more than 4,500 beds over the next 3 years. In 2003, the Sentencing Commission projected the 2007 prison population at 32,106, assuming no annual growth in admissions, and 33,450 if maintain a 2% annual growth in admissions. Having adopted the measures taken in 2003 and 2004, the new projection for this same period of time, ending December 2007, is 28,922. If the standards, worksheets and instructions are implemented this year and followed in 75% of the cases, that number would drop to 26,988. The measures taken thus far, coupled with the implementation of the standards, should have an impact of slightly less than 6,500 beds by December 2007.

While these numbers still far exceed design capacity for the prison system, for the first time, Alabama is addressing criminal justice issues realistically with an eye towards accountability protecting public safety. Basing reform on empirical data is a massive undertaking, which must continue lest we return to old habits and old problems. In truth, the process has just begun. The Commission will continue its assigned task of evaluating and re-evaluating Alabama’s corrections system. It will make recommendations that build on one another to protect public safety, achieve consistent sentencing, truth-in-sentencing, and establish a wider array of sentencing options to provide a manageable prison population, while securing prison space for Alabama’s most dangerous and violent offenders. Achieving results through empirically-based reforms has brightened Alabama’s future and promises a more rational approach to criminal sentencing.

YEAR IN REVIEW – FY 2004

- ***Technical Training***

With the beginning of the fiscal year, the analyst for the Alabama Sentencing Commission (ASC) began training on updating ASC's felony offender database, performing simulation runs on SPSS and obtaining and analyzing data using the Crystal Reports program. In-house training was provided by consultant, Dr. John Speir of Applied Research Services, Inc. on October 2, 2003, October 3, 2003, November 4, 2003, November 5, 2003, October 21, 2004, and October 22, 2004.

The Commission received technical training in data analysis and forecasting.

- ***Meetings***

Of the Commission and Advisory Council

The Sentencing Commission and Advisory Council met four times during FY 04: November 7, 2003, January 9, 2004, February 20, 2004 and April 9, 2004, and also on October 29, 2004.

The Commission and committees met 20 times in 2004.

Of the Commission's Subcommittees

There were 16 subcommittee meetings held: the Sentencing Standards and Worksheets Committee met 11 times – October 31, 2003, November 6, 2003, December 11-12, 2003, February 5-6, 2004, February 18, 2004, March 18-19, 2004, April 2, 2004, and June 18, 2004. The Legislative Committee met three times – November 5, 2003, January 6, 2004 and January 7, 2004. The Education Committee met twice May 14, 2004 and May 28, 2004.

- ***Community Corrections***

Staff of the Sentencing Commission worked closely with directors of the community corrections programs and the Alabama Association of Community Corrections (AACC). Last year staff of the ASC attended the Association's monthly meetings, periodically met with the various program directors, attended Fayette/Walker County Community Corrections Workshop and the annual conference of AACC. The Sentencing Commission also sent DOC staff, ASC staff and the President of the Alabama Association of Community

The Commission works closely with Community Corrections programs.

Corrections to the National Community Sentencing Association's Annual Conference held in Philadelphia, Pennsylvania. The President's trip to the International Community Corrections Association in Cincinnati, Ohio, was also sponsored by the Commission. As members of the AACC, staff served on various subcommittees of the Association, the Legislative Committee, the Community Corrections Standards Committee, and the Committee formed to draft and review a response to a request for an Attorney General's Opinion.

The Commission conducted 12 regional workshops on the sentencing standards, worksheets and instructions.

- ***Sentencing Standards Workshops***

To introduce judges, prosecutors, defense attorneys, court clerks, legislators, probation and parole officers, victims' advocates, community corrections directors and staff, and the general public to the proposed sentencing standards and worksheets, during the summer the Sentencing Commission conducted twelve regional workshops throughout the state: Montgomery, July 8th and 9th; Huntsville, July 22nd and 23rd; Dothan, August 5th and 6th; Tuscaloosa, August 26th and 27th; Mobile, September 9th and 10th; Birmingham, October 7th and 8th, 2004. The workshops, which were made possible through funding provided by LETS Subgrant 01-DB-15B-004, were attended by over 773 people.

The proposed Sentencing Standards have been presented to professional associations and citizens.

- ***Presentations***

The Sentencing Commission staff made numerous presentations to professional and civic organizations explaining Alabama's corrections crisis, the proposed sentencing standards, and other reform efforts of the Commission. The groups included the Circuit and District Judges winter and summer conferences; the Criminal Defense Lawyers' Association; District Attorney's Association Annual Conference; Council on Crime and Delinquency; Alabama State Bar Annual Conference; Defense Lawyer's Fall CLE Conference; Dale County Rotary Club; the Montgomery Women's Club; Jefferson County Judges and District Attorney's Office; Montgomery County Judges and prosecutors; DeKalb County Judges and District Attorney's Office; and legislators.

-
- ***Sentencing Standards and Worksheets Pilots***
Judges and prosecutors in three sites - Jefferson, Montgomery and DeKalb Counties - agreed to pilot test the standards by comparing them to the actual sentences imposed. Suggestions from these pilots proved very helpful and were incorporated into the sentencing standards worksheets and instructions. In other jurisdictions judges, prosecutors and defense attorneys experimented with the standards, worksheets, and instructions in a more informal manner.

Pilot projects of standards prove helpful.

- ***Conferences and Other Meetings***
Commission staff and members represented Alabama at the National Association of Sentencing Commissions, held in Santa Fe, New Mexico and attended a Virginia Sentencing Guidelines Workshop in Fairfax, Virginia. Meetings that were either hosted or co-hosted by the Commission were those on the drafting of the Geriatric Medical Release Bill and proposed *Kirby* procedures for retroactive implementation of the amendments to the Habitual Felony Offender statute.

- ***Surveys***
To obtain vital information which is not available from any other department or agency in the state, the Commission undertook surveys of community correction programs and county jails.

Surveys still the only way to obtain some information.

Chapter 1: Agency Overview

Overview of the Alabama Sentencing Commission

The Alabama Sentencing Commission was created by the Legislature in 2000 to review Alabama's criminal justice system and to serve as a criminal justice research and information center. It is an independent agency of the judicial branch of government, with a diverse membership, composed of representatives from all segments of the criminal justice system. The Commission is a nonpartisan body, composed of 16 members: (1) the Chief Justice of the Supreme Court, or a sitting or retired judge designated by the Chief Justice, who serves as chair; (2) a member of the academic community with a background in criminal justice or corrections policy appointed by the Chief Justice (3) the Governor or his designee (4) the victim of a violent felony or family member appointed by the Governor; (5) a county commissioner appointed by the Governor; (6) the Attorney General, or his designee; (7-8) two circuit judges appointed by the President of the Alabama Association of Circuit Court Judges; (9) a district judge appointed by the President of the Alabama Association of District Court judges; (10) a district attorney appointed by the President of the Alabama District Attorneys' Association; (11) the Chair of the House Judiciary Committee or designated committee member; (12) the Chair of the Senate Judiciary Committee or designated committee member; (13) a private defense attorney specializing in criminal law appointed by the President of the Alabama Criminal Defense Lawyer's Association; (14) a private attorney specializing in criminal law appointed by the President of the Alabama Lawyers' Association; (15) the Commissioner of the Department of Corrections, or his designee; and (16) the Chair of the Board of Pardons and Paroles or his designee.

Except for members who serve by virtue of the office they hold, members of the Commission serve for four year terms. This year, four new members were appointed to the Commission: District Judge Terri Bozeman, Lowndes County; Vernon Barnett, Assistant Legal Advisor to the Governor; Steve Nodine, Mobile County Commissioner; and victims advocate, Rhonda Hardegree. The other twelve members were reappointed to the Commission to begin serving their second terms.

The Sentencing Commission, created in 2000 as a state agency, has a diverse membership.

Commission members begin new 4-year term. Four new members appointed.

The Chair and four other members selected by the Commission make up the Executive Committee of the Sentencing Commission. The Committee is authorized to fix the compensation of consultants and experts that are needed to assist the Commission in carrying out its responsibilities and conduct other business as authorized by the Commission.

The Commission’s Advisory Council consists of 13 members.

To assist the Commission, an Advisory Council was established by the Legislature when the Sentencing Commission was created. The Council also has a diverse membership, composed of representatives from the various state and non-state agencies and organizations having an interest in, or that impact the criminal justice system. There are currently thirteen members: (1) the Director of Public Safety; (2) the Director of Youth Services; (3) a sheriff appointed by the Alabama Sheriff’s Association; (4) a police chief appointed by the Alabama Association of Chiefs of Police; (5) a representative of a prison ministry not employed by the state who is appointed by the Commissioner of the Department of Corrections; (6) a rehabilitated former prison inmate appointed by the Commissioner of the Department of Corrections; (7) a chaplain; (8) a victim’s advocate; (9) a member of the Crime Victims Compensation Commission; (10) a former justice of the Alabama Supreme Court; (11) a member of the Alabama House of Representatives and (12) a member of the Alabama Senate; and (13) a community correction’s representative appointed by the Chief Justice of the Alabama Supreme Court.

Purpose and Guiding Principles

The enabling act creating the Alabama Sentencing Commission established specific responsibilities for the Commission; however, the Commission believed it was important to incorporate these into a mission statement which emphasized public safety: *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.*

The Sentencing Commission’s mission statement emphasizes public safety.

In creating the Alabama Sentencing Commission, the Legislature provided explicit directives, primary of which were that the Commission:

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- ❖ Serve as a clearinghouse for the collection, preparation and dissemination of information on sentencing practices;
 - ❖ Make recommendations to the Governor, Legislature, Attorney General and the Judicial Study Commission concerning the enactment of laws relating to criminal offenses, sentencing, and correctional and probation matters;
 - ❖ Review the overcrowding problem in county jails, with particular emphasis on funding for the county jails and the proper removal of state prisoners from county jails; and recommend changes in Alabama’s criminal justice system to ensure an effective, fair and efficient sentencing system.

Legislative directives to the Alabama Sentencing Commission.

In carrying out this last mandate the Legislature instructed the Sentencing Commission to recommend a sentencing system that does the following:

- provides certainty and consistency in sentencing;
- avoids unwarranted disparity;
- promotes truth-in sentencing;
- provides proportionality in sentencing;
- maintains judicial discretion to permit individualized sentencing as warranted;
- enhances the availability of and use of a wide array of sentencing options;
- prevents prison overcrowding by recognizing those offenders who could best be punished, supervised and rehabilitated through more cost-effective alternatives to incarceration;
- prevents the premature release of inmates;
- provides restitution to the victim and community and promotes offender accountability.

Reformed sentencing system mandated.

The enabling act emphasized the need for the Sentencing Commission to apply the guiding principle of sentencing adopted by the Supreme Court in Rule 26.8 of the Alabama Rules of Criminal Procedure: *Sentences should be the least restrictive, while consistent with the protection of the public and gravity of the crime.* The Legislature directed that changes to our state’s sentencing laws and practices should be those that promote respect for the law, provide just and adequate punishment for the offense, protect the public, deter criminal conduct, and promote the rehabilitation of offenders.

Applying the guiding principle of sentencing adopted by the Supreme Court.

Chapter 2: Meeting Statutory Mandates of Enabling Act & Sentence Reform Act of 2003

Prison and Jail Overcrowding

Temporary Solutions Grant Limited Relief

As noted in the last two annual reports, Alabama must adopt a planned approach to address the problems in its criminal justice system and abandon its routine reliance on crisis management. While temporary measures are necessary to resolve emergency matters, their immediate positive results often lead to further delay in the implementation of long-term solutions. Nowhere is this more evident than in the backlog of our jail population, which was decreased significantly from its record high in 2002 by implementing accelerated parole release dockets, the creation of a second parole board and the utilization of out-of-state private prisons. Although the total county jail backlog in December 2004 reflected a decrease of more than 50% from December 2002, and there were no state inmates with transcripts over 30 days ready incarcerated in county jails December 2003, the numbers are now rising.

Emergency measures provide temporary relief.

| Summary - DOC Weekly Jail Reports | | | | | | | | |
|-----------------------------------|-------|-------|-------|-------|-----------------------|-----------------------|------------------|--------------|
| | 12/01 | 12/02 | 12/03 | 12/04 | Difference from 12/03 | Difference from 12/02 | Jan 2005 Average | Feb 18, 2005 |
| Transferred to DOC from Jail | 210 | 248 | 196 | 179 | (17) (9%) | (69) (28%) | 194 | 164 |
| State Inmates in Jails | 1,839 | 2,643 | 1,039 | 1,299 | +260 25%+ | (1,344) (51%) | 1,343 | 1,448 |
| Transcripts Over 30 Days Ready | 331 | 1,564 | 0 | 182 | +182 182%+ | (1,382) (88%) | 217 | 258 |
| Total Transcripts Ready | 998 | 2,261 | 557 | 585 | +28 5%+ | (1,676) (74%) | 645 | 711 |
| Empty Work Release | 45 | 7 | -- | -- | -- | -- | -- | -- |
| Waiting Work Release | 60 | 40 | -- | -- | -- | -- | -- | -- |
| SIR | 355 | 295 | 89 | 14 | (75) (86%) | (281) (95%) | 12 | 11 |

As of February 18, 2005, there are 1,448 state inmates in county jails. Less than December 2001 but more than December 2003 or 2004.

Utilizing the weekly jail reports provided by the Department of Corrections (DOC), Sentencing Commission staff compared monthly averages of each December for the years 2001, 2002, 2003 and 2004. This analysis reflects that there has been an overall decrease in state inmates housed in the county jails awaiting transfer to a DOC facility. Comparing December 2004 figures with those of December 2001, shows that there has been a 41% decrease of transcript-ready inmates awaiting transfer to DOC and a 45% decrease of inmates in jails with transcripts over 30 days ready.

These reductions were made possible only through the implementation of emergency measures – transferring inmates out-of-state to private prison facilities and adopting an early release parole procedure, which required establishing another parole board. Both measures have been costly and cannot continue indefinitely.

Private Out-of-State Prisons

Since the Department of Corrections first began transferring prisoners to out-of-state private prisons, Alabama has spent over \$12.7 million and it is projected that an additional \$2.7-\$2.8 will be spent during the remaining fiscal year to house female prisoners. Alabama’s reliance on this form of relief has now abated. There have been no male inmates serving time in private out-of-state prisons since March of 2004, and the number of out-of-state inmates housed in private prisons has decreased from a high of 1485 in 2003 to 232 (which represent female inmates only). However, unless other measures are taken to address our state’s prison and jail overcrowding problems, it is anticipated that this practice will resume, and in even greater numbers than before. The Department of Corrections has projected that more than 500 inmates may be housed in private prisons in FY 05 and has conservatively estimated the cost to be between \$2.7 and \$2.8 million.

Housing prisoners in out-of-state private prisons has already cost our state over \$12.7 million.

| Inmates Housed in Out-Of-State Facilities | | |
|--|----------------|----------------|
| | FY 2003 | FY 2004 |
| Total # of Inmates | 1485 | 1398 |
| Males | 1,230 (3 mo.) | 1192 (5 mo.) |
| Females | 255 (6 mo.) | 206 (12 mo.) |
| Cost | \$3,495,498 | \$8,808,283 |

**Statistics provided by the Department of Corrections and are based on the average number of inmates transferred during the fiscal year.*

Early Parole Releases

While the early parole release plan granted substantial relief when it was first implemented, paroling 3,329 non-violent offenders, this release valve is apparently closing and cannot be expected to offer much relief for the jail and prison overcrowding problems predicted for FY 05. As the following chart reflects, of the 2,873 inmates considered for early release, only 28% were granted parole. Although the latest data covers only 10 months of last year, it is apparent that there was a substantial decrease in both the

number of inmates that were considered for early release and those that were granted early releases the year before (46% of those considered). The number of eligible non-violent inmates is dwindling.

The number of non-violent inmates eligible for parole is decreasing.

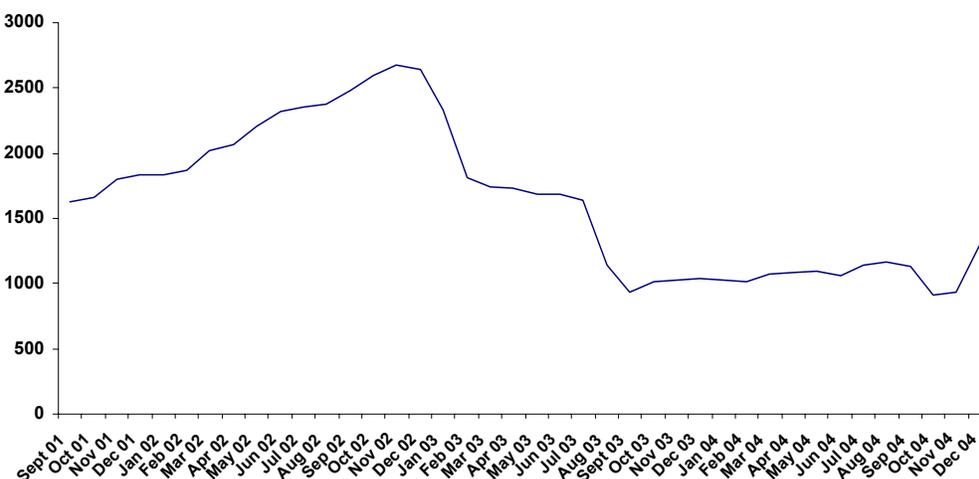
| Special Parole Dockets | | | | |
|--------------------------|--|-----|--|-----|
| | 4/6/03 - 3/1/04 | | 3/1/04 - 1/11/05 | |
| Total Paroles Considered | 7,211 | | 2,873 | |
| Granted | 3,329 | 46% | 794 | 28% |
| Denied | 3,882 (2,406 with reset) (1,476 without reset) | 54% | 2,079 (1,314 with reset) (765 without reset) | 72% |

Jail Backlogs Continue

Despite improvement since 2001 (when the Department of Corrections was found in contempt for noncompliance with a 1998 consent decree regarding the removal of state inmates housed in county jails awaiting transfer to the penitentiary), overcrowding of county jails by state inmates continues to be a problem and one that has been gaining momentum. When comparing December 2004 data with 2003 figures during the same month, there were 9% fewer inmates transferred from the county jails to DOC, a 25% increase in state inmates in the county jails, a 5% increase in the total number of inmates ready to transfer and a 182% increase in the number of inmates with transcripts over 30 days ready.

Backlogs of state inmates in county jails continue to be a problem.

Jail Backlog



Decrease in Work Release and SIR Inmates

There has been a significant decrease of inmates in work release and SIR programs in the last 2 years.

According to information provided in the Department of Correction’s monthly statistical reports, since 2000, there has been a 55% decrease of inmates in work release facilities. Likewise, the number of inmates participating in the SIR program appears to signify a new trend, reflecting a decrease of 96% since November 2001.

| Yearly Work Release Populations | | | | |
|--|-------------|-------------|-------------|-------------|
| 2000 | 2001 | 2002 | 2003 | 2004 |
| 3,656 | 3,609 | 3,618 | 2,657 | 1,612 |

Yearly Work Release Populations

\$4.5 million loss in work release revenue during FY2004.

The decrease in work release inmates was expected since most of the candidates for early release were non-violent offenders who were participating in the Department of Corrections work release programs. While the special parole dockets helped to decrease the prison population and jail backlogs, there was a downside to this success – the loss of revenue to the Department of Corrections from wages of work release inmates. Compared to the revenue generated in FY 2003, there was a loss of \$4,554,612 in 2004. In FY 2003, the Department of Corrections received \$16,571,269 in total work release revenue, while in FY 2004 it realized only \$12,015,657 – a 27% reduction.

Eliminating Unwarranted Sentencing Disparity and Easing Prison and Jail Overcrowding Through Adoption of Voluntary Sentencing Standards

Voluntary sentencing standards are needed for informed sentencing decisions.

The first step has been accomplished to achieve the goals established by the Legislature in the Sentencing Reform Act (Act 2000-596) to eliminate unwarranted sentencing disparity and address prison overcrowding. The Sentencing Commission developed, and now presents to the Legislature, the initial set of voluntary sentencing standards. The proposed standards are voluntary, non-appealable guidelines designed to provide the tools needed for making informed sentencing decisions, while at the same time ensuring retention of meaningful judicial discretion. The standards provide participants in the criminal justice system with a set of norms for recommended sentence dispositions and sentence ranges. These standards can be evaluated and recalculated to attain the additional goal of

truth-in-sentencing. Adoption and implementation of the proposed standards is the first step to establishing truth-in-sentencing in Alabama.

Initial Voluntary Sentencing Standards - Ready for Approval

After considering structured sentencing systems implemented in other states, one of the Commission’s first decisions was to reject a system that would remotely resemble the mandatory federal guidelines or the mandatory sentencing guidelines of states like North Carolina or Washington. Voluntary sentencing states, such as Virginia and Utah, were models that the Commission preferred.

In developing these standards, the Commission not only looked at structured sentencing systems utilized in other states, but also considered recent developments in sentencing, including court challenges to existing sentencing systems. The Commission was especially concerned about the landmark decisions of *Apprendi v. New Jersey* 540 U.S. 466 (2000) and *Blakely v. Washington*, 124 S.Ct. 2531 (2004) and how these cases would affect Alabama’s proposals. After the *Blakely* decision, mandatory or presumptive guidelines that required a judge, rather than a jury, to find aggravating factors for guidelines departures would come under constitutional scrutiny. Because the Commission was cautious and recommended *voluntary* sentencing standards, Alabama is one of the few states in the nation whose proposed sentencing system would not be subject to such a constitutional attack. In the recent case of *U.S. v. Booker*, 125 S.Ct. 738 (2005), in which the United States Supreme Court struck down the mandatory provisions of the Federal Sentencing Guidelines as violative of the Sixth Amendment, the Court basically converted the mandatory federal “guidelines” to voluntary guidelines. In *Booker*, the Court expressly held that “voluntary” guidelines that merely guide a judge’s discretion would withstand constitutional scrutiny. This is exactly the type of system the sentencing Commission has developed. Thus, the *Booker* decision endorses the type of voluntary sentencing standards the Commission is presenting to the Legislature for adoption.

The Supreme Court’s decision in U.S. vs. Booker endorses voluntary sentencing standards like Alabama is proposing.

The sentencing standards and worksheets were developed for crimes in three general categories - “property,” “personal,” and “drug” offenses. They provide sentence recommendations for 26 felony offenses that represent 87% of the convictions and sentences in Alabama over the last five years. As more data becomes available, additional felony offenses will be added. These standards are historically-based sentence recommendations, which were developed by examining sentencing practices

The sentencing standards were developed for 26 felony offenses that represent 87% of the convictions in Alabama.

and patterns throughout the state for the most frequent crimes of conviction. The recommended sentence ranges were determined based on statistically significant sentencing factors pertaining to the crimes of conviction and offender characteristics obtained by examining 14,000 pre/post-sentence investigative reports.

12 workshops conducted on proposed sentencing standards and worksheets.

The first draft of the standards, finalized by the Sentencing Commission on April 9, 2004, and presented to the Legislature late in the 2004 Regular Session, failed to gain approval. Failure of the bill did not appear to be due to specific objection to this type of sentencing reform, but rather, due to the Legislature's hesitancy to grant approval without a thorough understanding of the standards and worksheets and without obtaining input from judges, prosecutors, defense attorneys, victims' advocates and others that would be affected. To address these concerns, immediately after the session, the Sentencing Commission organized a series of 12 workshops conducted at six locations around the state to introduce the proposed standards. Workshops were held in Montgomery, Huntsville, Dothan, Mobile, Tuscaloosa, and Birmingham for judges, prosecutors, defense attorneys, victims' representatives, court clerks, probation and parole officers, community correction officials, legislators and the general public. Over 773 people attended the regional workshops and provided valuable input. Suggestions made during those workshops were considered by the Commission and many were incorporated into the worksheet instructions and standards.

Pilot testing of the standards conducted in Jefferson, Montgomery and DeKalb counties.

In addition, the new sentencing system has been tested in Jefferson, Montgomery and DeKalb Counties. Suggestions coming from these pilot sites have been considered by the staff and incorporated into the recommendations. The Commission has utilized the delay in implementation of the standards in a productive manner. *The Commission believes it is now time for the Legislature to act and to approve the first set of standards for implementation.* A bill has been introduced in the 2005 Regular Session which, if passed, will authorize implementation of these standards effective October 1, 2005, for all offenders sentenced for covered offenses on or after that date.

It is now time for approval and implementation of the sentencing standards.

The structured sentencing proposal recommended by the Commission includes three sets of worksheets for the 26 most frequent crimes of conviction. A separate set of worksheets and instructions was adopted for each of three offense categories, drug offenses, property offenses, and personal offenses. Each set includes two worksheets and a set of sentence length tables.

The two worksheets represent the sentencing decisions made by trial court judges. The Prison In/Out Worksheet produces a score to determine whether a sentence of actual incarceration is recommended. The second worksheet, the Prison Sentence Length Worksheet, produces a score that determines a recommended sentence range from which the trial judge may select the actual sentence. The score is applied to the Sentence Length Tables, which contain recommended sentence length ranges for the offense group from which the sentence is selected.

The worksheet scores and sentence length tables were determined by a two step process. Initially, the Commission performed a multivariate statistical analysis on historical sentencing data. The analysis included offender and offense demographics to determine those factors that are statistically relevant in criminal sentencing and the relationship of those factors to each other. The factors that were shown to be statistically relevant were placed on the worksheets. The scores given each factor show the relationship of the factors to each other (their relative importance in the initial sentencing decision). The second step of the process simulated the results of using the worksheets and sentence length tables, with adjustments made to achieve the goals mandated by the Legislature. These goals include reserving prison space for the most violent and dangerous offenders (personal offenses and armed burglary), and encouraging the use of alternative sentencing for nonviolent offenders. The adjustments also address the issue of prison overcrowding.

Adjustments were made in two areas on the property and drug worksheets. The adjustments were made to the “cut points” determining who is recommended for prison and to the length of sentences recommended in these two categories. These adjustments permit additional admissions for violent offenders sentenced for committing personal offenses. In this way, the Commission met the goal of reserving scarce prison beds for the most violent and dangerous offenders.

The standards and worksheets are based on an analysis of historical sentencing data. They, therefore, reflect how offenders are sentenced in Alabama, taking into consideration sentence enhancement provisions such as the “3-mile radius” statute, the habitual felony offender law, and the use or attempted use of a weapon during the commission of a crime. By using the historical practice of sentencing as the reference point for the standards, these provisions are incorporated in the manner in which they are applied, rather than as mandatory enhancements. Because the standards are

The development of worksheets and recommended sentences is based on empirical data.

Sentence enhancements are not applicable if the sentencing standards are followed.

voluntary and are expected to be followed in at least 75% of the sentenced cases, judges may opt-out of the standards and sentence based on the enhancements when appropriate. All enhancements are, therefore, made discretionary when sentences are imposed utilizing the sentencing standards.

The approval and implementation of the standards, worksheets and worksheet instructions adopted by the Sentencing Commission lay the groundwork for beginning to address disparity in sentencing, prison overcrowding, and truth-in-sentencing. The Commission will continue to monitor the effectiveness of the standards, adding to them and suggesting modifications where appropriate. Several additions to the standards are currently under study and consideration. These additions include adding sexual offenses, drug manufacturing offenses, and drug trafficking crimes.

The standards will be monitored and tested by the Commission over the next two years to determine their effectiveness. When these standards prove to be effective in producing more rational sentencing, the Commission will proceed to the second step in sentence reform approved by the Legislature in 2003 - sentencing standards that effect truth-in-sentencing.

Truth-In-Sentencing

Truth-in-sentencing standards the second phase of sentencing reform.

In the Sentence Reform Act of 2003, the Legislature passed the Sentencing Commission's recommendation directing the Sentencing Commission to present voluntary Truth-in-Sentencing standards to the Legislature in 2006. This second set of sentencing standards will be developed based on historical data reflecting "time served" by offenders in Alabama prisons. From this data, the Commission will develop worksheets and sentence length tables recommending sentences that will be served day-for-day. Thus, all parties to a criminal proceeding will know the sentence and the projected release date for the offender at the time of sentencing. Under this structure, each sentence will have three parts: 1) the sentence imposed that is served day for day without good time or parole; 2) an additional 20% of the original sentence that can be utilized by the Department of Corrections where necessary (bad time that can be added due to violations by the offender while incarcerated); and 3) in addition to the original sentence and any "bad time" given to the offender, a one year sentence of post-incarceration supervision.

The Sentencing Commission requests that the Legislature delay the date for presenting the Truth-in-Sentencing standards until 2 years after

implementation of the initial voluntary sentencing standards, for several reasons. The Commission and the Legislature are cognizant of the problems presently created by overcrowding in prisons. Many states that have adopted untested truth-in-sentencing guidelines have exacerbated their prison population explosion. For this reason, the Commission believes it to be prudent to implement the initial standards that do not implement truth-in-sentencing, testing the efficacy of these standards to make sure the standards accomplish the intended result and will be followed, as expected, by trial court judges. In addition, prior to adopting truth-in-sentencing, Alabama must expand alternative sentencing programs to increase prison bed space for violent and dangerous offenders by diverting less dangerous offenders to effective community punishment programs. The continued development of these programs, as well as increased capacity for post-release supervision, is an essential part of the Commission reform plan. When these programs are in place and the voluntary sentencing standards have been shown to work, Alabama will be prepared to effect the second phase of sentencing reform, Truth-In-Sentencing standards.

The Truth-In-Sentencing standards projected for 2008.

Truth-In-Sentencing standards are the second phase of sentencing reform.

Providing a Wider Array of Sentencing Options and Easing Overcrowding

Continued Expansion of Intermediate Punishment Alternatives

The fundamental principle concerning criminal sentencing in Alabama has been established by the Alabama Supreme Court in Rule 26.8 of the Alabama Rules of Criminal Procedure.

Fundamental principle of criminal sentencing.

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.

Alabama has struggled with the use of sentencing options ranging from minimally supervised probation to imprisonment. Historically Alabama judges have had only these two options from which to choose when handing down criminal sentences. Even with the primary use of these two options,

Community-based corrections programs provide punishment and rehabilitation.

sentencing judges can only speculate as to what their sentences mean. Through the use of community punishment and corrections programs, local judicial officials have greater control over elements of the sentences imposed. Community-based corrections programs seek to add more dimensions in sentencing that fall somewhere between the two extremes, with an emphasis on the dual characteristics of criminal sentencing of rehabilitation and punishment. The primary focus of the programs is to ensure protection to the public, with a safe reentry into the community of offenders who have completed the terms of their punishment.

Community Punishment and Corrections Programs

As part of its stated purposes under §12-25-2, *Code of Alabama* 1975, the Alabama Sentencing Commission is mandated to review and consider existing sentencing and make recommendations to the Legislature and Supreme Court regarding changes to the system within certain guidelines. These guidelines touch on several important areas which are included in the use and practices of community corrections programs. The primary statutory guidelines applicable to community corrections programs are: maintaining public safety, flexible individualized sentencing, and providing judges with a wider array of sentencing options in appropriate cases.

25 Community Punishment programs now serve 34 counties.

Eight Community Correction programs established since 2000.

There are currently 25 community corrections programs in the state serving 34 counties. Eight of those programs, or one-third of the active programs, has been formed since 2000. Several counties, some individually and others as a judicial circuit, have expressed interest in forming community corrections programs. These include Barbour and Bullock counties of the 3rd Judicial Circuit and Washington, Clarke and Choctaw counties of the 1st Judicial Circuit. Butler, Crenshaw and Lowndes counties of the 2nd Judicial Circuit are currently in the startup phase of forming a community corrections program. The continued development, growth and expansion of these programs will provide judges with more sentencing alternatives, increasing the range of interim punishment options between that of incarceration and standard probation.

Counties served by Community Punishment and Corrections Programs

The 25 existing community punishment and corrections programs in the state that serve 34 counties are:

1. Jefferson - Jefferson County Community Corrections – TASC
2. Mobile - Mobile County Community Corrections Center
3. Montgomery - Montgomery County Community Punishment and Corrections
4. Madison¹ - Madison County Office of Alternative Sentencing and Release
5. Tuscaloosa - Tuscaloosa County Community Corrections
6. Houston - Houston County Community Corrections
7. Etowah - Etowah Community Corrections
8. Calhoun - Calhoun County Community Punishment & Corrections Authority
9. Shelby - Shelby County Community Corrections
10. Cullman - Cullman County Community Corrections
11. Walker - Walker County Community Corrections
12. Marshall - Marshall County Community Corrections
13. Lauderdale -Lauderdale County Community Corrections & Punishment Authority
14. Colbert² -Lauderdale County Community Corrections & Punishment Authority
15. Dekalb - Dekalb County Community Corrections
16. Cherokee - Cherokee County Community Corrections
17. Jackson - Jackson County Community Punishment & Corrections
18. Franklin - Franklin County Community Corrections
19. Dale - Dale County Community Corrections
20. Geneva - Geneva & Coffee County Community Corrections
21. Coffee³ - Geneva & Coffee County Community Corrections
22. Fayette - Fayette, Lamar & Pickens Counties Community Corrections
23. Lamar - Fayette, Lamar & Pickens Counties Community Corrections
24. Pickens - Fayette, Lamar & Pickens Counties Community Corrections
25. Lawrence - Lawrence County Community Corrections
26. Winston - Marion & Winston Counties Community Corrections
27. Marion - Marion & Winston Counties Community Corrections
28. Bibb - 4th Judicial Circuit Community Corrections
29. Dallas - 4th Judicial Circuit Community Corrections
30. Hale - 4th Judicial Circuit Community Corrections
31. Perry - 4th Judicial Circuit Community Corrections
32. Wilcox - 4th Judicial Circuit Community Corrections
33. Escambia - Escambia County Community Corrections
34. Blount⁴ - Blount County Community Corrections

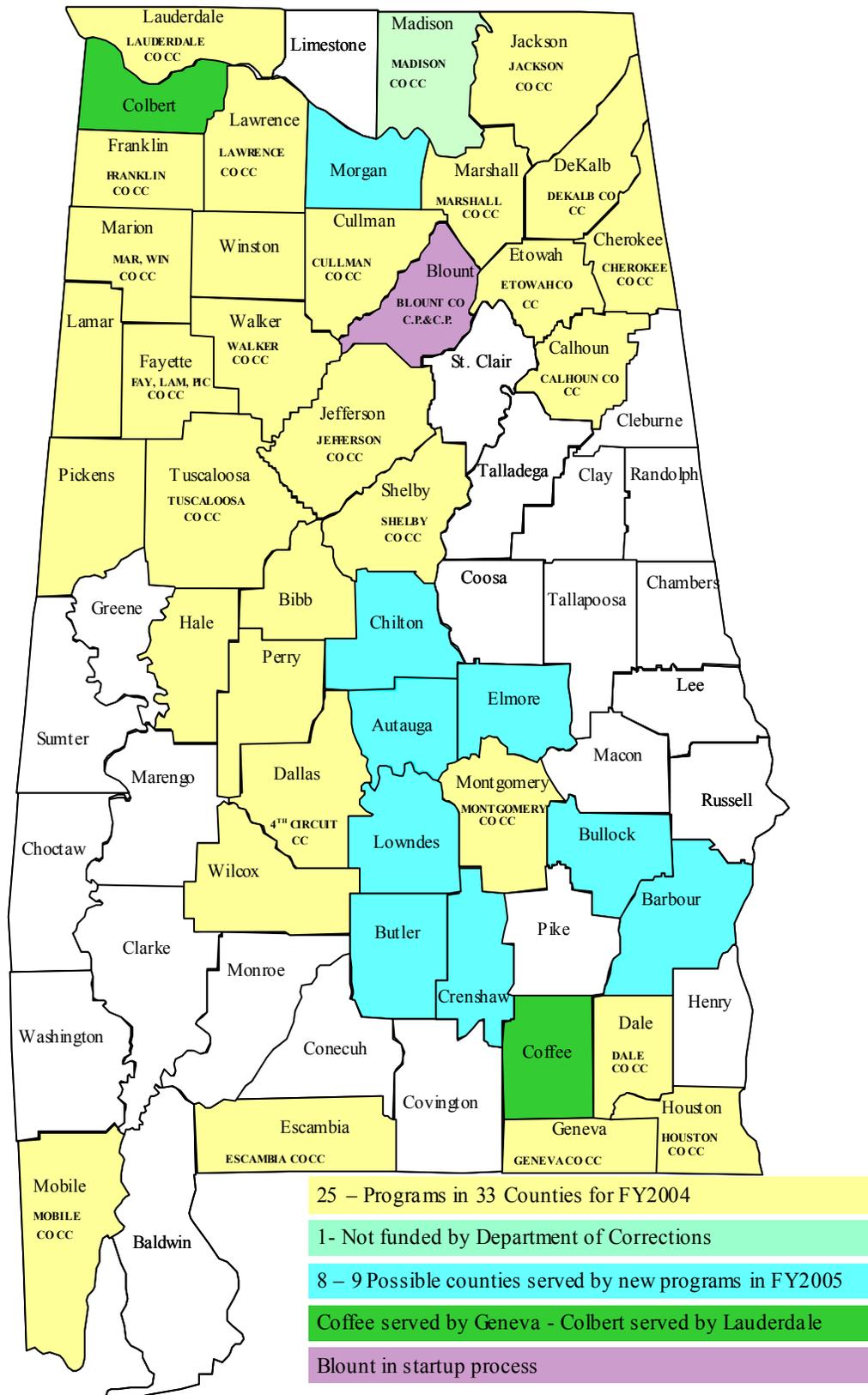
¹ Madison County Office of Alternative Sentencing and Release is not funded by the Alabama Department of Corrections (DOC)

² Colbert County is served by Lauderdale County for DOC felony diversions.

³ Coffee County served by Geneva & Coffee Community Corrections does not receive funding through the Department of Corrections.

⁴ Blount County plan was approved by the Blount County Commission October 2004 and has been submitted to DOC for funding.

MORE WORK REQUIRED TO ACHIEVE STATEWIDE COMMUNITY CORRECTIONS SYSTEM



History of Community Punishment and Corrections

With the passage of the 1991 Community Punishment and Corrections Act, community punishment options have grown, but at a slow rate. The 1991 Act sought to encourage the establishment of community punishment and correctional programs, offering a range of sanctions and services with active involvement by local officials and citizens. The 1991 Act provided for the creation of county operated community-based corrections programs for non-violent offenders. It also provided for counties to locally define the shape and scope of interventions for offenders (with oversight by local officials), while considering their respective local criminal justice system and the possibilities for expanding the options available for sentencing criminal defendants. While the number of programs and services grew, the funding sources stagnated from 1996 to 2003.

The Community Punishment and Corrections Act of 2003 recommended by the Sentencing Commission, implemented changes in the Act to ensure accountability and to encourage the growth of local community corrections programs as alternatives to incarceration. These changes recognize that state appropriations for community corrections could be used as start-up grants for local programs, as well as the continued operation of existing programs. The Act streamlined the start-up process by authorizing counties to establish community correction programs via passage of resolutions, rather than requiring the creation of county agencies or nonprofit authorities. Other key initiatives in the Act were the creation of a separate community corrections division in the Department of Corrections with a full-time director and support staff and the formation of the State-County Community Partnership Fund as an identifiable fund to receive appropriations for community corrections programs (not to supplant General Fund appropriations to the Department). Monies appropriated to this fund are now earmarked solely for community corrections. Another major provision of the Act was the appropriation of \$5.5 million for community corrections programs. This provision was amended out of the bill and was not later included in the General Fund Budget, as requested. When the Appropriations bill passed in the 2003 special session, only \$2.9 million was authorized for community correction programs. This same amount is included for community corrections programs for FY 05.

There were also provisions in the Act for the creation of multi-county programs and for assigning inmates to programs in jurisdictions other than where the offender is sentenced. These programs provide multiple services,

Alabama's Community Punishment & Corrections Act provides the means for alternative punishment, rehabilitation and community involvement.

The primary purpose of the 2003 Act was to ensure the growth of local community corrections programs throughout the state.

including but not limited to, work release, day reporting, victim restitution, community service, electronic monitoring, drug testing, drug treatment, literacy training, job training, job placement and GED preparation. The majority of counties also provide pretrial supervision and misdemeanor probation to address local jail overcrowding.

The majority of Alabamians support community correction alternatives for non-violent offenders.

The public's view toward community corrections programs was described in a report prepared by Public Agenda Foundation.¹ According to this survey, conducted even before passage of Alabama's Community Punishment and Corrections Act, the majority of Alabamians chose prison for violent offenders even if alternatives were available, but when given the option of keeping non-violent offenders in the community to work, pay restitution to victims and pay taxes, ninety percent (90%) of Alabamians supported community corrections alternatives. Seventy-five percent (75%) felt non-prison sanctions "improved the chance that an offender will be rehabilitated." Ninety percent (90%) believed alternatives gave judges "the flexibility to make the punishment fit the crime."

What are Community Corrections Programs?

By diverting non-violent offenders to Community Correction's programs, space becomes available for the incarceration of violent offenders.

Community Punishment programs offer a variety of services as alternative punishment options for judges to utilize to assist the state, counties and municipalities with overcrowding in jails and prisons. A purpose of community corrections is to provide services that expand the options available for sentencing criminal defendants. By diverting non-violent felony offenders from prison, space is available for the incarceration of violent offenders.

Among the services provided, is supervised pre-trial release from jails when a defendant is unable to make bail. Participants are non-violent offenders that are monitored by the community corrections program to ensure compliance with conditions of the release agreement pending completion of their case. Offenders may be required to make restitution to victims, repay the community through community service work, undergo drug and alcohol testing and treatment, intensive supervision, or participate in work release programs, undergo house arrest (with or without electronic monitoring), comply with day reporting requirements and probation monitoring with varying levels of supervision. Community corrections programs provide

¹ John Doble & Josh Klein, Public Agenda Foundation Punishing Criminals: The Public's View – An Alabama Survey (1989).

enhanced supervision and treatment options between sentencing to incarceration or traditional probation. Rehabilitative programs that can be offered through community programs include literacy training, job training, job placement and GED preparation.

Types of Programs

Community corrections programs can be one of three types pursuant to the Community Punishment and Corrections Act of 2003: a county agency, a county (non-profit) authority or a private non-profit 501(c)(3). Currently 17 of the 25 programs (68%), are private non-profit organizations: Jefferson, Calhoun, Shelby, Cullman, Walker, Marshall, Dekalb, Cherokee, Jackson, Franklin, Dale, Geneva/Coffee, the 24th Circuit (Fayette, Lamar, and Pickens), Lawrence, the 25th Circuit (Winston and Marion), the 4th Circuit (Dallas, Bibb, Hale, Perry and Wilcox counties), and Blount. 5 of the 25 programs (20%) are non-profit county authorities: Montgomery, Tuscaloosa, Houston, Etowah and Lauderdale/Colbert. 3 programs (12%) are county agencies: Mobile, Madison and Escambia (Escambia is considering converting to a non-profit county authority for fiscal year 2005).

Felony Diversions

The felony diversion program is designed as an alternative to incarceration to the penitentiary for a convicted felon. Institutional and Front-end diversions allow more state correctional space for violent offenders and encourage more rehabilitative measures than those found within Department of Corrections' facilities. Front-end diversions are for felons sentenced directly to a community corrections program rather than to incarceration in a DOC facility. Through institutional diversions, inmates sentenced to the penitentiary are authorized to serve their sentence under the supervision of a local community corrections provider. The Department approves inmates for diversion from state prisons if they are not excluded because of the commission of a crime under § 15-18-171 (14), have a good institutional record, are ordered by the sentencing or presiding judge to community corrections, and are accepted by the program.

Community Corrections programs contract with the Alabama Department of Corrections to manage felony diversion inmates. The Department approves contract payments for front-end diversions if they are not excluded by the commission of a violent crime, and score 10 points or more on the Department of Corrections diversion checklist. The Department of

Existing Community Corrections Programs:

- 17 private non-profit
- 5 non-profit county authorities
- 3 county agencies

Front-end and institutional diversions of felons.

DOC 10-point diversion checklist.

DOC diversion pay rate.

Corrections’ diversion checklist is a measure of the likelihood that a defendant will be committed to prison based on factors such as the type of crime committed, prior convictions, (both felony and misdemeanor), victim injury, juvenile record and probation/parole status. The Department pays programs for front-end diversions at the rate \$15 per day for the first six months, \$10 per day for the next three months, and \$5 per day for any remaining days up to a total of a two-year period. For institution diversions, the Department pays the contracting program \$10 per day for the first six months in the program and \$5 per day for the next year and a half.

A 14% overall increase in diversions in FY2004.

In fiscal year 2003, the Department paid programs for 1754 felony diversions; 1,415 (81%) front-end diversion and 339 (19%) institutional diversions. In 2004, there was a 11% increase of front-end diversions and a 29% increase in institutional diversions. There was an overall increase of fourteen percent (14%) in Department-paid felony diversions between 2003 and 2004. These figures do not include felony offenders who did not meet the ten point scale, yet served some or part of their time in a community corrections program.

| Fiscal Year 2004 Felony Diversions | | | | | | |
|------------------------------------|-------------------------------|---------------------------|-----------------------|-------------------------------|---------------------------|-----------------------|
| County | 2003 Institutional Diversions | 2003 Front-End Diversions | 2003 Total Diversions | 2004 Institutional Diversions | 2004 Front-End Diversions | 2004 Total Diversions |
| Calhoun | 0 | 4 | 4 | 1 | 4 | 5 |
| Cherokee | 14 | 2 | 16 | 9 | 6 | 15 |
| Cullman | 5 | 47 | 52 | 10 | 39 | 49 |
| Dale | | | | 1 | 3 | 4 |
| DeKalb | 22 | 84 | 106 | 23 | 86 | 109 |
| Escambia | 1 | 0 | 1 | 23 | 11 | 34 |
| Etowah | 26 | 43 | 69 | 16 | 66 | 82 |
| Fayette | 5 | 29 | 34 | 5 | 28 | 33 |
| Franklin | 32 | 17 | 49 | 39 | 13 | 52 |
| Geneva | 0 | 2 | 2 | 3 | 3 | 6 |
| Houston | 72 | 9 | 81 | 125 | 4 | 129 |
| Jackson | 0 | 13 | 13 | 7 | 10 | 17 |
| Jefferson | 30 | 349 | 379 | 34 | 393 | 427 |
| Lauderdale | 7 | 58 | 65 | 13 | 62 | 75 |
| Lawrence | 2 | 6 | 8 | 21 | 21 | 42 |
| Marion | 0 | 0 | 0 | 8 | 4 | 12 |
| Marshall | 21 | 37 | 58 | 4 | 67 | 71 |
| Mobile | 41 | 465 | 506 | 56 | 433 | 489 |
| Montgomery | 5 | 60 | 65 | 5 | 112 | 117 |
| Shelby | 0 | 93 | 93 | 0 | 109 | 109 |
| Tuscaloosa | 0 | 97 | 97 | 2 | 78 | 80 |
| Walker | 56 | 0 | 56 | 32 | 8 | 40 |
| 4 th Circuit | | | | 0 | 3 | 3 |
| Total | 339 | 1,415 | 1,754 | 437 | 1,563 | 2,000 |

Expansion of felony diversions depends on adequate funding.

The Commission supports expansion of felony diversions for non-violent offenders and is requesting funding during FY 05 through a supplemental appropriations of \$2.6 million for community corrections. Increase in these diversions will not only allow more bed space in prison for violent inmates, but will expand the possibilities for the rehabilitation of offenders participating in the programs.

Department of Corrections

Supplemental Appropriations

Pursuant to the provisions of the Community Punishment and Corrections Act of 2003 (codified at § 15-18-170, et seq., *Code of Alabama*, 1975), the State-County Community Corrections Partnership Fund was created. The other major provisions of the Act was for the Department of Corrections to establish and maintain a Community Corrections Division, with a full-time director and support staff. The Division was to carry out the responsibilities of the Department of Corrections specified in the Act, administer state funds earmarked for community corrections programs and assist in establishing and expanding community-based punishment programs throughout the state.

The Act was amended at the request of the Department to provide that if the State-County Community Corrections Partnership Fund did not receive an annual appropriation of at least \$5.5 million, a Community Corrections Division did not have to be established or a full-time employee hired as director to handle community corrections matters. Without this level of funding, the community corrections responsibilities of the Department could be carried out as determined by the Commissioner. Despite failure to receive this amount of funding, Commissioner Campbell recently selected Warden Jeffery Williams as Community Corrections Program Director for the Department. Warden Williams was previously employed as a Warden II at Draper Correctional Director and has worked for the Department since 1980 in various positions.

The Commission recommends that a supplemental appropriation in the amount of \$2.6 million be approved for FY 2005 to continue the growth of community punishment programs and allow a Community Corrections Division to be established within the Department with adequate staff to perform the duties required under the Community Punishment and Corrections Act.

Creation of state-county Community Corrections Partnership Fund.

Creation of DOC Community Corrections Division contingent on supplemental funding.

\$2.6 million in supplemental funding requested for expansion of community corrections programs.

Expansion of Programs and Specialized Facilities

As part of its FY 2006 budget request, the Department of Corrections has asked for staffing and repair/upgrade funds to implement facility and program changes. These changes include converting three work release centers into pre-release centers, converting Frank Lee Youth Center into a relapse/aftercare center, upgrading J.O. Davis to a minimum in-house facility, transforming the East Thomas facility into a DUI treatment facility, and staffing for the Department's Community Corrections Division.

During the Departments of Correction's presentation at the legislative budget hearing, Dr. Roy Johnson, Chancellor of the Alabama Department of Postsecondary Education, suggested that Postsecondary Education and the Department of Corrections pursue joint education and training for inmates inside prison facilities to assist inmates in re-entry into their communities.

The Sentencing Commission recommends:

Recommendations of the Sentencing Commission: Community Corrections and DOC facilities.

- ❖ Supplemental appropriations of \$2.6 million dollars to the Department of Corrections earmarked for Community Corrections and *deposited in the State-County Community Corrections Partnership Fund*;
- ❖ Establishment of a Community Corrections Division within the Department with adequate staff;
- ❖ The accumulation and reporting of diverted offenders who successfully complete programs funded through the Department;
- ❖ Conducting a recidivism study of the community corrections participants;
- ❖ Establishing a drug relapse and aftercare center;
- ❖ Creation of a DUI treatment facility;
- ❖ Establishing separate housing for parolees and probationers revoked for technical violations.

Probation and Parole

Transition Centers

The Pardons and Paroles Board, working in conjunction with the Alabama Department of Mental Health's Substance Abuse Division, Vocational Rehabilitation Services, Post-Secondary Education, the Department of Public Health, Department of Corrections, and local city and county agencies from surrounding areas, opened a residential transition center for paroled female inmates in April 2004. Utilizing the former J. S. Tarwater mental health facility in Wetumpka, a life skills program, referred to as L.I.F.E. Tech (Life Skills Influenced through Fundamentals and Education), was established by Pardons and Paroles for female inmates. L.I.F.E. Tech is a residential program that provides intensive supervision and training to inmates that would otherwise be housed in DOC correctional facilities or released back to the community without any additional support. Participants approved for the program are actually granted parole, with successful completion of the program included as a condition of release from the penitentiary.

The L.I.F.E. Tech program focuses on several areas of importance for re-entry into society by inmates. The center is served by the Alabama Department of Mental Health's Substance Abuse Division for drug abuse issues. In addition to substance abuse classes, the inmates spend 60-65 hours a week in different courses. These include courses in parenting, math, English, horticulture, and GED classes, as well as classes teaching construction skills, such as framing, welding and dry-walling.

With a capacity of 225 female inmates, the number of residents has been increasing since L.I.F.E. Tech was opened, and as of February 24, 2005, there were 162 residents. There have been 148 successful completions of the program. It is encouraging to note that the 27 female inmates who did not successfully complete the program failed because of technical violations, rather than because of the commission of new offenses.

The Board of Pardons and Paroles has requested a \$10.1 million dollar budget increase for fiscal year 2006. \$4.75 million of that increase is to establish a transition center in Thomasville to serve up to 315 male inmates. The requested budget increase includes up to \$2 million for repairs to the Thomasville Mental Health Rehabilitation Center and \$2.75 million for staffing and operational costs.

L.I.F.E. Tech established as transition center for female inmates.

148 inmates have successfully completed the L.I.F.E. Tech program.

Additional transition centers are needed.

3 Transition Centers recommended in the next 3 years.

The Commission continues to support the establishment of transition centers which assist with re-entry issues for inmates and recommends that the Thomasville facility be opened and operational during FY 06, with sufficient appropriations provided to the Board during FY 07 and FY 08 to open two additional transition facilities.

Additional Probation/Parole Officers

With 35 new officers, the caseload could drop from 167 to 133 clients per officer.

There are many aspects to weigh when considering the efficiency and effectiveness of a probation/parole officer. One of the measures of efficiency is the caseload of the officer. Quite simply, the caseload is the number of probationers or parolees the officer handles. In fiscal year 2003, the officer caseload was 183 clients per officer. This was reduced to 167 clients per officer in fiscal year 2004. If the Board is able to hire 35 new officers during fiscal year 2005, the ratio is expected to drop to approximately 133:1, still above the Board's goal of 100:1. Reducing the caseload per officer, along with the recent implementation of the electronic pre/post-sentence report and case management systems, will allow officers to focus on the Board's mission of "enhancing public safety... by providing investigation, supervision, and surveillance services in a holistic approach to rehabilitating adult offenders."

With 40-50 additional officers in FY2006, the caseload per officer could be reduced to 100:1.

The Commission recommends that the Board hire 35 new officers before October 2005 and an additional 40-50 officers in FY 06 to meet the Board's caseload-to-officer ratio goal of 100:1.

Expanded Data Collection

Electronic PSIs will improve case management and data collection.

The Board is responsible for preparing pre/post-sentence investigation (PSI) reports for persons convicted of felony offenses. In the past, these investigations have been performed by a manual process, utilizing information from the Administrative Office of Court's mainframe computer. Working with the Administrative Office of Court's Information System Division, the Board of Pardons and Paroles has developed a new web-based computer application to enable officers to utilize electronic PSI reports. This new procedure will allow officers to access earlier investigations and prior criminal records if an offender is convicted of a new crime. The

new system maintains valuable and accurate information on criminal defendants convicted and sentenced in Alabama and enhances the case management ability of each officer.

As of December, the new electronic pre/post-sentence investigation and case management system is available statewide for use by all parole officers. The system already holds over ten thousand (10,000) electronic pre/post-sentence reports. Continued expansion and use of the electronic PSI will enhance the ability of the officers to manage their caseload, help ensure the proper supervision of probationers and parolees, and assist in the collection of valuable data that can be utilized by the Sentencing Commission.

The Commission recommends expansion of the electronic pre/post-sentence reports to provide information on all inmates currently serving time in the penitentiary and strongly encourages the Board of Pardons and Paroles to modify the electronic PSIs and system data to include reasons for revocations, subcategorizing the technical violations by the most common types, i.e., dirty urine, failure to report, failure to notify of address change.

Medical/Geriatric Release Procedure

The Alabama Sentencing Commission has included the “Alabama Medical and Geriatric Release Act,” as part of its 2005 legislative package. If enacted, this bill would provide for the discretionary release of “terminally ill,” “permanently incapacitated,” and “geriatric inmates.” This bill sets out statutory procedures for release, specific eligibility criteria, definitions, and timeframes within which the Department of Corrections and the Board of Pardons and Paroles must act when applications are submitted with the required documentation.

Inmates convicted of a capital offense or any crime involving sexual misconduct of a minor are not eligible for release under the bill’s provisions. A “terminally ill inmate” is defined as a person sentenced to the penitentiary, who has an incurable condition caused by illness or disease which would, within reasonable medical judgment, produce death within 12 months.

The new electronic PSI system is now available statewide.

Electronic PSIs on all inmates recommended.

Data needed on types of technical violations.

A procedure for consideration and release of terminally ill and permanently incapacitated inmates is recommended.

A “permanently incapacitated inmate” is one who does not constitute a danger to himself or herself or society and who, by reason of an existing medical condition which is not terminal, is permanently and irreversibly incapacitated and as a result of the medical condition requires immediate and long-term residential care. A “geriatric inmate” is defined as a person 70 years of age or older who suffers from a chronic life threatening infirmity, life threatening illness, or life threatening disease related to aging and who poses a low risk to the community and does not constitute a danger to himself/herself or society.

According to the latest information provided by the Department of Corrections, there are only 378 inmates that could possibly qualify for release under this act: 52 that could qualify as a terminally ill inmate, 311 as a permanently incapacitated inmate and 15 that are geriatric inmates over 70 suffering from a chronic illness related to aging.¹

**Medical/Geriatric Release:
If legislation fails to pass,
administrative procedures
should be adopted and
implemented.**

The Commission included this bill in its 2004 and 2005 legislative packages and supports this type of release for inmates who do not pose a danger to the public due to age or illness and can be cared for by their families. Although we urge the Legislature to approve this bill, should it fail to pass, the Commission recommends that the Board of Pardons and Paroles, in conjunction with the Department of Corrections, explore adopting and publishing administrative procedures for inmates that would be eligible for such release.

¹ These figures are from March 15, 2004.

Chapter 3: Criminal Justice Clearinghouse

Legal Research

Research and Review of Existing and Proposed Criminal Laws

As a criminal research center and clearinghouse, in 2004 the Alabama Sentencing Commission was involved with various projects ranging from reviewing and assisting in the development of proposed procedures for the implementation of new laws to reviewing marijuana and three strike statutes in other states and comparing them with Alabama's laws. In addition, the Commission's analyst responded to inquiries from legislators, public officials and the general public regarding the impact that proposed changes in the laws would have on our state's inmate population.

Recap of Habitual Felony Offender Act Amendments and Proposed Procedure for Retroactive Implementation

Alabama's Habitual Felony Offender law has been referred to as one of the toughest repeat offender laws in the nation and, with one exception, does not take into consideration the classification of prior convictions.¹ From a review of other state enhancement statutes dealing with repeat felony offenders, most are limited to the more serious offenses and many have restricted application to prior convictions occurring within a certain timeframe.

In recognition of the harsh mandatory penalties imposed by Alabama's Habitual Felony Offender Act (HFOA) for defendants convicted of a fourth Class A or B felony, the Legislature amended our state's repeat offender statute to provide alternatives to the only punishments that were available—life without parole or life imprisonment, respectively. These amendments and those that came a year later providing for retroactive application have had a tortuous history.

The Habitual Felony Offender statute was first amended, effective May 25, 2000, to provide that a person convicted of a Class A felony after three prior felony convictions, none of which were a Class A felony, could be

Alabama's Habitual Felony Offender Act is one of the toughest repeat offender laws in the nation.

¹ As amended in 2000, a repeat offender convicted of a Class A felony with 3 prior felony convictions can be punished to life imprisonment instead of life without parole if none of his prior convictions is for a Class A felony.

Retroactive amendments of the Habitual Felony Offender Act have had a torturous history.

sentenced to life without parole *or life imprisonment* and to expand the sentencing options for a defendant with three prior felony convictions who is subsequently convicted of a Class B felony to include an imprisonment term of *not less than 20 years or life imprisonment*. These amendments were only to be applied prospectively. The following year the statute was further amended by Act 2001-977 to provide for the retroactive application of such sentences by the sentencing judge or presiding judge upon the evaluation of non-violent offenders for early parole performed by the Department of Correction (DOC) and approved by the Board of Pardons and Paroles.

By Executive Order #62, Governor Don Siegelman ordered the Department of Corrections (DOC) to establish a procedure for the evaluation of non-violent offenders and submit its proposal on June 1, 2002, to the Attorney General and the Sentencing Commission for their recommendations and comments. Based on this Executive Order, implementation of Act 2001-977 was delayed pending review and input of DOC's proposed procedure by the Sentencing Commission and Attorney General and final approval by the Governor.

The Sentencing Commission seeks clarification of DOC's proposed procedure.

The Department of Corrections submitted a proposed procedure to the Sentencing Commission on June 1, 2002, which was immediately mailed to the members of the Sentencing Commission and Advisory Council and placed on the agenda for the next meeting, held June 28, 2002. Because the proposed procedure failed to include a definition of a "violent offender" or "violent offense," Commission members requested that Chairman Judge Colquitt write the DOC Commissioner, Dr. Haley, and request clarification on this matter, as well as other issues. Commissioner Haley responded to Judge Colquitt's letter requesting that Judge Colquitt and members of the Sentencing Commission meet with representatives of the District Attorneys, VOCAL, and Department of Corrections to discuss DOC's proposed procedure. A meeting was held on Monday, August 19, 2002; however, following a detailed discussion of the issues raised by the legislation and proposed procedure for retroactive application, those present were unable to resolve the legal and procedural problems associated with Act 2001-977 and the implementation procedure proposed by the Department of Corrections.

When the Sentencing Commission met on August 23, 2002, the proposed procedure was again on the agenda; however, because there were still issues that had not been addressed by DOC regarding the proposed

evaluation procedure, no vote was taken on the definition that was submitted by the Department of Corrections. The primary issues that the members of the Sentencing Commission indicated still needed to be addressed in the proposed procedure for evaluation and implementation were: 1) the omission of the Board of Pardons and Paroles from the evaluation process; 2) the authority of the trial courts and the role they were to play in this “early parole” process; 3) the effect of the preclusion grounds, statute of limitations and other provisions governing Rule 32 petitions; and 4) whether adequate input had been obtained from victims, victim advocates and prosecutors in developing the proposed procedure.

Questions regarding recommended procedure continued to exist.

After an extended discussion regarding the problems associated with implementing Act 2001-977, by unanimous vote of the members present, the Sentencing Commission recommended that these questions were ones that should be presented to the courts for clarification, perhaps in an action brought by the Attorney General’s Office, Board of Pardon and Paroles, and/or Department of Corrections. In making this suggestion, it was noted that the key issues that should be addressed were the constitutionality of Act 2001-977 and the jurisdiction of the trial court under the Act’s provisions.

Constitutionality of Act 2001-977 questioned.

Although the Department of Corrections and the Sentencing Commission attempted to interpret the amendments to the Habitual Felony Offender Act and develop a workable procedure for implementation of Act 2001-977, it was felt that until there was a judicial interpretation of the Act’s provisions and a definitive determination of the role and authority granted to the trial courts and the Board of Pardons and Paroles, any recommendation for implementation would be premature.

Issues more appropriately addressed by courts.

Complying with the Governor’s Executive Order to comment on the procedure proposed by DOC, the Sentencing Commission, through its Chairman, notified Commissioner Haley on August 26, 2002, of its recommendation for judicial interpretation. There was no further action by the Department of Corrections on developing an implementation procedure after that time.

In compliance with the Governor’s Executive Order, the Commission recommended judicial interpretation of the Act’s provisions.

In an attempt to resolve the impasse and clarify the procedures that should be followed for retroactive implementation, staff of the Sentencing Commission assisted in drafting corrective legislation and met with interested groups. During the 2003 Legislative Session, Representative Demetrius Newton introduced HB 523, and Representative Brewbaker, along with D. Newton, introduced HB 744, neither of which passed. During the 2004

Regular Session, Demetrius Newton introduced HB 365 and Representative Brewbaker introduced HB 61. Neither of these bills were enacted into law.

**Act ruled unconstitutional
by Circuit Court.**

In *State of Alabama v. Junior Mack Kirby*, CC-1989-252, the Circuit Court of Jackson County held Act 2001-977 unconstitutional on the grounds it constituted an unlawful delegation of legislative power in violation of the separation of powers doctrine. In the opinion, the court invited the Legislature to revisit this issue, utilizing the work done by DOC and the Sentencing Commission regarding who should be considered violent and nonviolent. The Supreme Court granted *certiori* in this case and in an opinion issued August 27, 2004, reversing the Court of Criminal Appeals' order dismissing the appeal, held that there should be no further delay of the retroactive application of the 2000 amendment to § 13A-5-9 to allow trial courts to modify the sentences of those eligible inmates formerly sentenced under the HFOA. *Ex parte State of Alabama (In re Junior Mack Kirby)*, __So.2d__, 2004 WL 1909345.

**Act held constitutional by
the Alabama Supreme
Court.**

Prior to issuance of a Certificate of Judgment and denial of the Attorney General's request for rehearing, staff of the Sentencing Commission, the Administrative Office of Courts, the Department of Corrections, and the Board of Pardons and Paroles met on Friday, September 24, 2004, and discussed possible procedures and a form motion that could be adopted by Supreme Court rule. These, along with a flowchart outlining the primary stages in the process were subsequently submitted to the Supreme Court's Standing Committee on the Rules of Criminal Procedure.

**Criminal Rules Committee
declines to recommend
procedural rule.**

The Criminal Rules Committee (chaired by former Presiding Judge of the Court of Criminal Appeals, Bill Bowen), originally scheduled a meeting for September 29th to consider the Kirby Opinion and proposed procedures for implementation; however, this meeting was cancelled and was rescheduled for Tuesday November 23, 2004, following issuance of the Certificate of Judgment by the Supreme Court October 22nd. When the Rules Committee met on November 23rd, the majority of the members voted not to recommend a rule of procedure to govern motions or petitions to modify sentences pursuant to Act 2001-977 and the Kirby Opinion.

The Supreme Court noted in *Ex parte Kirby*, that while the retroactive provisions of the HFOA as provided in Act 2001-977 (codified at §13A-5.9.1) are not "a model of clarity," they do "provide reasonably clear standards for its execution and administration." It therefore appears that

the issues that were not specifically addressed by the Court or which are not readily apparent will have to be determined by the courts on a case-by-case basis or clarified by subsequent legislation.

Possession of Marijuana Statutes

In establishing the Alabama Sentencing Commission, the Legislature charged the Commission with reviewing our state criminal laws and making recommendations for change that would accomplish the purposes and objectives outlined in the Commission’s enabling act. Due to the large number of drug and alcohol convictions and admissions to the penitentiary, the Commission requested the staff to study our statutes on possession of marijuana in the 1st and 2nd degrees, as well as our felony DUI statute, and compare the penalties authorized or required with those of other jurisdictions.

The Commission members are well aware that Alabama’s laws cannot be reviewed in a vacuum. Early in the developmental stages of the Commission, the membership acknowledged the importance of detailed and thorough research, noting that an essential first step before considering any changes to existing laws was to obtain accurate information on how Alabama ranks with other states. Following this directive, Mark Dowdy, Intern to the Commission provided by the Attorney General’s office, conducted a detailed study of the marijuana laws in all states, as well as Washington DC and the federal statutes.

Because Alabama’s marijuana statutes differ from those of other states and there are numerous variations among the different jurisdictions, the best method of comparison was to focus on the maximum amount of marijuana that could be possessed under Alabama’s marijuana possession laws and the maximum incarceration authorized upon conviction. Taking the same quantity of marijuana (2.2 lbs. or 997.92 grams) and the maximum authorized period of incarceration of 10 years as set out in our laws and comparing punishment in other states, it became apparent that Alabama’s punishment is more severe than most other states and also under federal statutes.

**Commission staff
researches state
marijuana laws.**

**Study focused on maximum
amount of marijuana and
maximum incarceration
authorized.**

The specific results of the research are highlighted below:

The maximum punishment authorized in Alabama is greater than 47 jurisdictions.

- The maximum punishment authorized in 47 jurisdictions, including Washington DC and federal statutes, is less severe than under Alabama law.
- Eighteen jurisdictions or 35% of the jurisdictions studied had maximum sanctions of imprisonment of one year or less.
- Twenty four, or 46% of the jurisdictions authorized maximum punishment of imprisonment for less than three years.
- Eighty-five percent (85%) of the jurisdictions authorized five years or less incarceration as maximum punishment – which is half that authorized under Alabama law.

Mississippi is the only state authorizing more severe punishment than Alabama.

- Alabama ranks with only four other states, Arkansas, Georgia, Mississippi and South Dakota that authorize up to 10 years of incarceration as punishment for possession of 2.2 pounds or less of marijuana.
- Mississippi is the only state that authorizes more severe punishment, i.e. up to 16 years incarceration.
- More than fifteen jurisdictions, including DC and the federal government, provide that the offense for first offenders is a misdemeanor.

- Less than 1 year – California, Delaware, Washington D.C., Iowa, Louisiana, Massachusetts, Virginia, West Virginia, Wisconsin, North Carolina

- 1 year – Kansas, Maryland, Michigan, New Hampshire, Ohio, Oklahoma, Rhode Island, **Federal statute**

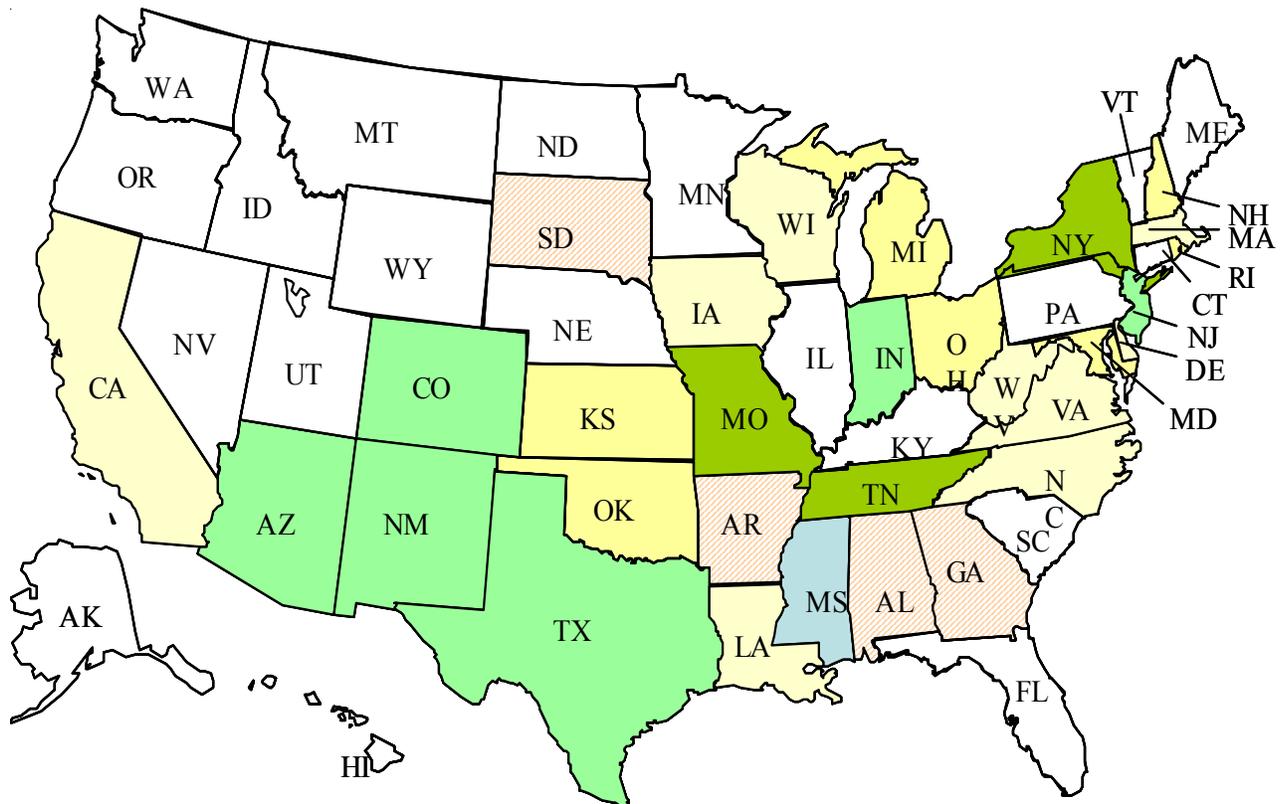
- 1.5 – 3 yrs. – Arizona (2 yrs.), Colorado (3 yrs.), Indiana (1.5 yrs.), New Jersey (1.5 yrs), New Mexico (1.5 yrs.), Texas (2 yrs.)

- Over 3 – 5 yrs. – Alaska (5 yrs.), Connecticut (5 yrs.), Florida (5 yrs.), Hawaii (5 yrs.), Idaho (5 yrs.), Illinois (5 yrs.), Kentucky (5 yrs.), Maine (5 yrs.), Minnesota (5 yrs.), Nebraska (5 yrs.), Nevada (4 yrs.), North Dakota (5 yrs.), Oregon (3.7 yrs.), South Carolina (5 yrs.), Utah (5 yrs.), Vermont (5 yrs.), Washington (5 yrs.), Wyoming (5 yrs.), Pennsylvania, Montana

- Over 6 – 8 yrs. – Missouri (7 yrs.), Tennessee (6 yrs.), New York (7 yrs.)

- 10 yrs. – Alabama, Arkansas, Georgia, South Dakota

- Over 10 yrs. – Mississippi



Other states provide for deferred prosecution of first offenders or place time limits on the use of priors for enhancement.

It became readily apparent when reviewing these laws that there was no clear line of demarcation on the amount of marijuana that can be considered possessed “for personal use only” under Alabama’s possession of marijuana statutes (13A-12-213 and 13A-12-214). Under existing law, a first offender who possesses 2.2 pounds or less of marijuana can be charged and convicted of a Class C felony under 13A-12-213 or as a Class A misdemeanor pursuant to §13A-12-214. Other states have provided a specific quantity within a narrow range, provided for deferred prosecution for first offenders, or placed time limits on the prior conviction that can be used for enhancement. In addition, other states have decriminalized small amounts (generally an ounce or under) of marijuana, providing for deferred prosecution with drug treatment and education required.

Although the Commission is not recommending amending our marijuana statutes this year, the members will carefully review the research and discuss possible changes.

Felony DUI

The Commission examined the felony DUI laws in all 50 states and the District of Columbia. The analysis focused on the felony DUI threshold, maximum authorized imprisonment, mandatory minimum terms of imprisonment, and minimum/maximum fines.

Felony DUI ranks 3rd as the most frequent crime of conviction and 4th among crimes of admission to the prison system.

Below are the findings among the 50 states, including the District of Columbia, regarding the number of prior DUI convictions that can be considered to enhance a subsequent conviction to a felony offense. The majority of states establish a timeframe for which prior DUI convictions can be considered for felony enhancement purposes. Alabama is not one of these states.

- Seven states impose DUI only as a misdemeanor: Colorado, Georgia, Maryland, New Jersey, Pennsylvania, Washington, and Wyoming. Colorado and Wyoming recognize felony DUI only if it is a second or subsequent DUI with injury. Maine does not distinguish between felonies and misdemeanors and the District of Columbia does not classify a DUI.

- 88% of the States with felony DUI laws provide maximum penalties of less than 10 years. Alabama ranks among the states that authorize imprisonment for ten years or more. Forty-four states and the District of Columbia have statutes authorizing less punishment than Alabama.

Authorized Punishment - Felony DUI

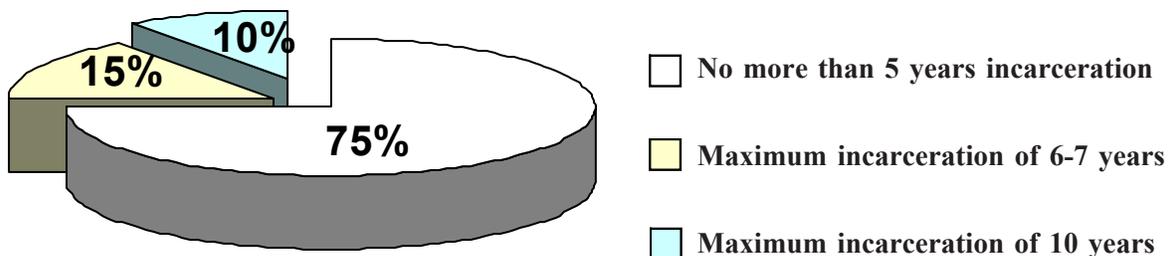
45 jurisdictions authorize less severe punishment than Alabama.

Maximum Imprisonment:

Of the states that have felony DUI statutes:

- 30 states have maximum terms of imprisonment of not more than 5 years.
Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin.
- 10 states authorize imprisonment over 5 years but not more than 10 years.
 - o Four states (including Alabama) authorize a maximum of 10 years imprisonment - Alabama, Arkansas, Oklahoma, Texas
 - o Six states have maximum incarceration terms of six or seven years: Illinois (7 years), Minnesota (7 years), Nevada (6 years), New Hampshire (7 years), New York (7 years), and Tennessee (6 years).

Alabama and three other states authorize a maximum of 10 years imprisonment for Felony DUI.



The majority of states authorize a maximum term of imprisonment of 5 years or less.

Comparing the maximum imprisonment authorized, Alabama is one of 6 states that authorizes a term of imprisonment of 10 years or more, the majority of states set their maximum term of imprisonment at 5 years or less.

Mandatory Minimum Terms of Imprisonment for Felony DUI:

Of the states analyzed:

- 21 states impose mandatory minimum terms of imprisonment of more than 10 days.
Alaska, Arizona, Arkansas, Connecticut, Delaware, Idaho, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Montana, Nevada, North Carolina, New Mexico, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, and West Virginia.
- 4 states require 10 days minimum mandatory incarceration.
Alabama, Hawaii, New Hampshire, and Virginia.
*Indiana and Missouri allow community service as an alternative.
*Texas requires 10 days continuous minimum imprisonment if community supervision is granted.
- 11 states require at least 48 hours incarceration to be served consecutively.
Florida, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Michigan, Nevada, North Dakota, and Rhode Island.

Minimum/Maximum Fines:

Of the states analyzed:

- 17 states impose a minimum fine <\$1,000.
Arkansas, California, Connecticut, Delaware, Florida, Kentucky, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Ohio, Rhode Island, and Wisconsin.
- 14 states impose a minimum fine of \$1,000 - \$4,000.
Connecticut, Delaware, Iowa, Kansas, Illinois, Louisiana, Massachusetts, Mississippi, Nevada, New York, Oregon, Tennessee, Utah, and West Virginia.

-
- 2 states, Alaska and Alabama, impose a minimum fine of \$4,000 or more.
 - 13 states impose no minimum, only a maximum amount set.
Arizona, Hawaii, Idaho, Indiana, Minnesota, Missouri, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Vermont, and Virginia.

Alabama imposes a minimum mandatory fine of \$4,100 for a felony DUI conviction. Only Alaska imposes a higher minimum mandatory.

Only Alaska has a higher mandatory fine for felony DUI than Alabama.

Felony Thresholds

In terms of threshold level for felony DUI, while not raising second and third DUI convictions to a felony classification, Alabama does recognize that any 4th or subsequent DUI conviction, regardless of when it occurs, will be punished as a felony offense. All states that consider 2nd and 3rd DUI offenses as felonies do so by restricting consideration of prior convictions to those occurring within a specified period of time (i.e., within a 10 or 5 year period).

Of the 42 states with felony DUI statutes, ¹11.9% punish as a felony on a 2nd+ conviction, 50.0% convict on a 3rd+ conviction, 33.3% convict on a 4th+ conviction, and 4.8% convict on a 5th+ conviction. Thus, 38.1% of these states confer felony status for DUI offenses that do not involve personal injury upon the 4th or subsequent conviction.

Some states punish DUI as a felony offense after conviction of a 2nd or 3rd offense if they occur within a specified period of time.

Only 5 states impose a felony DUI on the 2nd+ conviction, with all having some time limitation:

Connecticut, Idaho, Indiana, New York, Oklahoma.

- 40.0% of the 5 states have a 5-year limitation for convictions that can be considered for felony DUI (2nd+).

7 jurisdictions do not classify DUI as a felony offense. 2 states only punish as a felony if personal injury is involved.

¹ The analysis excludes the District of Columbia, Georgia, Maine, Maryland, New Jersey, Pennsylvania, and Washington since they do not classify DUI as a felony offense. Also excluded are Wyoming and Colorado that only punish DUI as a felony if personal injury is involved.

- 60.0% of the 5 states have a 10-year limitation for convictions that can be considered for felony DUI (2^{nd+}).

States that punish DUI as a felony on the 3rd conviction.

21 states first impose felony punishment for DUI on the 3^{rd+} conviction, with 17 having some time limitation:

Alaska, Arizona, Delaware, Florida, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Nevada, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia and West Virginia.

71% of the 21 states have a *10-year or less* limitation (decaying provision) for prior convictions that can be considered for felony DUI (3^{rd+}).

- 10 of the 21 states (47%) have a 10-year limitation for convictions that can be considered for felony DUI (3^{rd+}).
- Iowa has a 12-year limitation for convictions that can be considered for felony DUI (3^{rd+}).
- Illinois has a 20-year limitation for convictions that can be considered for felony DUI (3^{rd+}).
- 4 of the 21 states (19%) have a 5-year limitation for convictions that can be considered for felony DUI (3^{rd+}).

Felony DUI imposed on 4th conviction.

Alabama is one of the 14 states that impose a felony DUI for the 4th or subsequent DUI conviction, with 10 of those states having some time limitation (noted with *):

Alabama, Arkansas*, California*, Hawaii*, Kentucky*, Minnesota*, Montana, Nebraska*, New Hampshire, New Mexico, North Carolina*, Ohio*, South Carolina*, and Tennessee.*

- 9 of the 14 states (64%) have a *10-year limitation or less* for prior convictions that can be considered for felony DUI (4^{th+}), with Nebraska having a 12-year limitation.
- 4 of the 14 states (Hawaii, Minnesota, South Carolina and Tennessee) have a 10-year limitation for convictions that can be considered for felony DUI (4^{th+}).

-
- California and North Carolina have a 7-year limitation for convictions that can be considered for felony DUI (4th).
 - 2 of the 14 states, Arkansas and Kentucky, have a 5-year limitation for convictions that can be considered for felony DUI (4th), Ohio has a 6-year limitation period for prior convictions.
 - 4 of the 14 states (*Alabama*, Montana, New Hampshire and Minnesota) do not carry a limitation for convictions that can be considered for felony DUI (4th).

Alabama is 1 of 4 states that place no time limits on the use of prior convictions for enhancement.

2 states, North Dakota and Wisconsin, impose a felony DUI on the 5th+ conviction.

- North Dakota has a 7-year limitation for prior convictions that can be considered for felony DUI (5th).
- Wisconsin does not carry a limitation for prior convictions that can be considered for felony DUI (5th).

Repeat Felony Offender Statutes¹

The Sentencing Commission studied repeat felony offender laws of the 50 states and U.S. territories for the purpose of comparing them with Alabama's Habitual Felony Offender law. As expected, where enhanced punishment statutes were found to exist for repeat felony offenders, there was great variation between the type/classification of the subsequent felony offense,

A wide variation was found to exist among state repeat felony offender statutes.

¹ Research conducted by Sentencing Commission Intern Mark Dowdy. Excerpt from the publication *Habitual Felony Offender Acts, A Compilation of Habitual Felony Offender Acts of the United States and Its Territorial Possessions*, dated as of January 8, 2004. Copies of the complete report may be obtained from the Alabama Sentencing Commission. The following states' or possessions' statutes were reviewed: Alabama, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Indiana, Iowa, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin. No statute exists or was found for the following states or possessions: Alaska, Arizona, Connecticut, Idaho, Kansas, Maine, Michigan, Missouri, Montana, New York, Oregon, Pennsylvania, Puerto Rico, Texas, Vermont, Virgin Islands, and Wyoming. For review purposes, habitual offender laws relating to motor vehicles or juveniles were intentionally excluded.

the classification/crime type and number of prior offenses, the timeframe for prior convictions, as well as the punishments authorized.

Alabama’s Habitual Felony Offender Act considers all prior convictions, regardless of when committed or their classification.

Unlike most states, Alabama’s repeat felony offender statute is all-encompassing, applicable to all types of felony offenses and all prior felony convictions, with no time limitations regarding when the prior convictions occurred. Alabama’s Habitual Felony Offender statute was recently amended to consider the classification of priors; however, this change was in one very limited instance, i.e., for defendants convicted of a Class A felony offense with three prior felonies. With this amendment, defendants who qualify under this exception can be sentenced to life imprisonment (rather than life without parole) if they have no prior Class A felony conviction. Otherwise, no distinction is made as to the classification of prior convictions, resulting in a defendant convicted of a Class B felony with three prior Class A felonies being subject to the same enhancement as a defendant with three prior Class C felonies or any combination of felony classifications.

Although there are wide variations among all repeat offender statutes, the following summary focuses on common characteristics that facilitate comparison. It should be noted that some of these states are currently considering amendment of their statutes and there are also states that have first offender laws providing less severe punishment. Alabama is not one of those states, and in fact, ranks as the state with the highest punishment range.

Alabama’s Habitual Felony Offenders Act has the highest punishment range.

What a State Weighs in Determining Sentence Enhancement

States determine whether the conviction of a subsequent felony offense makes the actor a habitual felony offender by weighing (i) the classification of the instant offense against the classification of the previous felony conviction(s); (ii) the degree of the instant offense against the degree of the previous felony conviction(s); or (iii) the instant offense against the total number of previous felony convictions.

1. States Weighing the Classification of the Instant Offense or Prior Offenses:

10 states (Alabama, Arkansas, Hawaii, Iowa, Kansas, Nevada, North Dakota, South Carolina, South Dakota and Tennessee) weigh the classification of the instant offense in determining the enhancement of punishment. Generally, states that impose an enhancement based upon classification of offense, punish the

instant conviction at the next more serious classification or increase the penalty for that Class, when the offender has a prior felony conviction. There appears to be a disparity in enhancement ranges due to the types of classifications, i.e., some states have Class A, B and C felonies only, other states have Class A, B, C, D, Y and unclassified felonies.

- (a) When a state considers the Class of a previous felony, it generally restricts that Class offense to a particular offense *type*. For example, Nevada considers whether a person convicted of a subsequent Class B drug offense has a prior Class B drug offense.
- (b) Tennessee considers only previous convictions for Class A or B drug related offenses, or any Class of violent felonies.
- (c) South Carolina, which is unique in its enhancement consideration, considers all previous Class A, B and C offenses when applying an enhancement to a subsequent felony offense, but only if such subsequent offense is committed within 365 days of release from prison for a previous offense which carried a maximum imprisonment of 20 years or more.
- (d) When the classification of the prior offense is considered, the Class is not considered *carte blanche*, but rather limited by a particular type of offense within that Class. *See* subsection 3 below.

Repeat felony offender laws are usually restricted to specific types of crimes, i.e. drug or violent crimes.

2. States Weighing the Degree of the Instant Offense:

6 states and 1 territorial possession (Colorado, Florida, Guam, Maryland, New Jersey, Ohio and Utah) weigh the degree of the instant offense in determining the enhancement of punishment. Generally, states that impose an enhancement based upon a prior felony conviction and the degree of the instant offense, punish the instant conviction as follows: (i) if a 1st degree offense, then life;

- (ii) if a 2nd degree offense, then not exceeding 25 to 30 years; and
- (iii) if a 3rd degree offense, then not exceeding 10 years.

(a) When a state considers the degree of a previous felony, it generally restricts that degree of offense to a particular offense type. For example, Maryland provides that a previous felony conviction for child abuse 1st with a subsequent felony conviction for child abuse 1st is punished by imprisonment not exceeding 25 years, or if the violation results in death of the victim, then 30 years. Maryland's other enhancements apply only to drug related felonies concerning previous and subsequent offenses.

(b) New Jersey, on the other hand, considers whether the instant violent 1st degree felony offender has been previously convicted of a violent 1st degree felony offense, or whether the instant violent 2nd degree felony offender has been previously convicted of a violent 2nd degree felony offense. In both cases, New Jersey limits 1st and 2nd degree felony offenses only to those which are violent.

(c) As with classification of offenses, when the degree of the prior offense is considered, the degree is not considered *carte blanche*, but rather, limited by a particular type of offense within that class. *See* subsection 3 below.

3. States Weighing the Number of the Instant Offense:

12 states (California, Delaware, the District of Columbia, Georgia, Indiana, Louisiana, Maryland, Minnesota, Mississippi, Nevada, New Mexico and Wisconsin) weigh the number of prior offenses in determining the enhancement of punishment. This type of enhancement appears to be the broadest area for enhancement. Generally, states define enhancements for a 2nd, 3rd and sometimes 4th and subsequent offenses. Punishment ranges from a sentence enhancement of 4 years for a 3rd conviction in New Mexico to life without parole in Indiana.

4. Other Factors:

In addition, many of these states also consider the type of either the previous felony conviction or the instant felony conviction, or both, when determining enhanced punishments. The classification of the previous offense is generally not established as either a Class A or a Class B felony offense, but rather as a specific offense, such as a violent or drug related offense within a specified Class. The most common types of felonies include those that are (i) serious; (ii) dangerous; (iii) violent; (iv) sexual; (v) drug; (vi) inflict great bodily injury; (vii) child abuse; and (viii) burglary.

a. Serious felonies

1 state (Georgia), considers serious felonies when imposing sentence enhancements.

b. Dangerous felonies

1 state (Minnesota), considers dangerous felonies when imposing sentence enhancements.

c. Violent felonies

11 states (Arkansas, Delaware, the District of Columbia, Florida, Georgia, Indiana, Minnesota, New Jersey, Ohio, South Dakota and Utah), consider violent felonies when imposing sentence enhancements.

d. Sexual felonies

9 states (California, Colorado, Delaware, Florida, Indiana, Louisiana, Minnesota, Utah and Wisconsin), consider sexual felonies when imposing sentence enhancements.

e. Drug felonies

5 states (Delaware, Indiana, Louisiana, Nevada and Tennessee), consider drug felonies when imposing sentence enhancements.

f. Great bodily injury felonies

1 state (California), considers great bodily injury felonies when imposing sentence enhancements.

g. Child abuse felonies

2 states (Maryland and Wisconsin), consider child abuse felonies when imposing sentence enhancements.

h. Burglary felonies

1 state (Colorado), considers burglary felonies when imposing sentence enhancements.

Types of Sentence Enhancement Imposed

Enhancements:

- *increased range of punishment*
- *mandatory minimums*
- *specific number of years*
- *multiples of maximum penalties*

States enhance punishments by specifying a (i) certain number of years; (ii) range of years; (iii) mandatory minimum; (iv) x times the maximum punishment for previous felony conviction; and (v) specific period of time within which the crime was committed.

1. Enhancement for a certain number of years

3 states (New Mexico, South Carolina and Wisconsin), provide the specific number of years that a subsequent felony sentence may be enhanced.

2. Enhancement for a certain range of years

13 states (Alabama, Arkansas, the District of Columbia, Florida, Guam, Iowa, Kansas, Maryland, Minnesota, Nevada, New Jersey, North Dakota and Ohio), provide a range of years that a subsequent felony conviction may be enhanced.

3. Enhancement for a mandatory minimum

7 states (Hawaii, Iowa, Louisiana, Maryland, Minnesota, Mississippi and Wisconsin), provide a mandatory minimum number of years that a subsequent felony conviction may be enhanced.

4. Enhancement for x times the maximum sentence

2 states (Colorado and Indiana), provide that a subsequent felony conviction may be enhanced by x times the maximum punishment.

5. Enhancements that apply only if subsequent crime is committed within a certain period

1 state (South Carolina), provides that enhancements for subsequent felony convictions shall only apply to those offenses committed within 1 year of release from prison.

Enhancements for Life Imprisonment

16 states and 1 territorial possession (Alabama, Arkansas, California, Delaware, the District of Columbia, Florida, Georgia, Guam, Indiana, Kansas, Louisiana, Minnesota, Mississippi, New Jersey, North Dakota, Tennessee and Wisconsin), provide for life imprisonment upon conviction for a subsequent felony offense.

Alabama’s Habitual Felony Offender Act provides the highest range of punishment.

Highest and Lowest Range of Enhancement

Highest Range of Enhancement

Alabama: 15 – 99 years, or life without parole.

Lowest Range of Enhancement

South Carolina: additional 1-5 years.

Alabama is 1 of 16 states authorizing life imprisonment for repeat offenders.

| | | |
|-----------------------------------|--|----|
| No Statute | Alaska, Arizona, Connecticut, Idaho, Kansas, Maine, Michigan, Missouri, Montana, New York, Oregon, Pennsylvania, Puerto Rico, Texas, Vermont, Virgin Islands, Wyoming. | 17 |
| Priors and class of felony | Alabama, Arkansas, California, Delaware, DC, Florida, Georgia, Guam, Hawaii, Kentucky, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Washington, West Virginia | 18 |
| Priors only | Indiana (special for controlled substance & sex), Iowa (low classification only), Louisiana (special for controlled substance & sex w/ victim under 18), New Mexico, Ohio, South Carolina, Wisconsin (special for sex-including child, violent) | 7 |
| Certain crimes only | Colorado, Illinois (sex assault, aggr. Kidnapping, Murder 1), Maryland (child abuse & drugs), Massachusetts (Assault w/weapon intent rob victim 60+ years, robbery unarmed victim 60+ years, theft victim 65+ years), Minnesota (sex, violent felonies), Nevada (drugs only), New Jersey (violent), Rhode Island (shoplifting), Tennessee (Drugs & Violent), Utah (Violent, Drugs), Virginia (Violent) | 11 |
| Prior sentencing only | New Hampshire (prior incarceration 1+ year) | 1 |

Felony Offender Database and Simulation Model

Felony Offender Cohort

To effectively study and analyze sentencing patterns across our state, the Commission must maintain an on-going felony offender cohort to collect historical data on convicted felons. To accomplish this task, the Commission must rely on data collected from the various agencies within the criminal justice system - the Administrative Office of Courts, Board of Pardons & Paroles, Department of Corrections, and Alabama's Criminal Justice Information Center. Without the support and help of these agencies, our recommendations would not be possible.

The Commission's felony offender cohort consists of over 95,000 felons convicted and sentenced since October 1998.

Each year, the Commission updates the felony offender cohort to include the latest year's sentencing data. To date, the cohort contains over 95,000 felons convicted and sentenced from October 1998 through May 2004. The felony offender cohort allows the Commission to examine multiple factors such as offense specifics, sentencing patterns, and offender demographics, as well as determine sentencing trends across the state. The cohort data was used to develop the initial "time imposed" sentencing standards and worksheets and will be utilized for changes to these standards.

Inmate cohort allows the Commission to study sentence lengths and time served.

Inmate Cohort

In conjunction with the database created to study sentencing patterns for felony offenses, the Commission has also developed a prison cohort, consisting of inmates incarcerated within the facilities of the Department of Corrections. This cohort allows the Commission to study sentence length and time served for those offenders entering the prison system. As of December 31, 2004, Alabama's prison system had an inmate population of 27,016. Although this figure is slightly lower than at year's end in 2003¹, representing the first decrease Alabama has seen since 1979, the inmate population is still 208%² over design capacity.

Emergency measures provide temporary relief.

The lesson is – we can depend on emergency measures like the early parole dockets to help alleviate the prison overcrowding problem for a limited time only. The success realized from the special releases does not

¹ According to DOC's monthly statistical report, there were 27,344 inmates on December 31, 2003.

² Design capacity of 12,792 as reported by DOC.

resolve the problem, it only temporarily keeps the problem from escalating. Success is short-lived and continued reliance on this release mechanism will most likely be unproductive, simply because the pool of qualified offenders is being exhausted. Permanent solutions will require reevaluation of our criminal laws and sentencing practicing and the implementation of criminal justice reform measures. The Alabama Sentencing Commission is making recommendations to achieve sentencing reform through the adoption of voluntary sentencing standards. The Commission continuously monitors the number of inmates entering the system, the sentences imposed and how much of their imposed sentence they are actually serving. This inmate cohort is crucial to the development of the Commission’s “time served,” truth-in-sentencing standards that will be developed and presented to the Legislature for adoption in two years following implementation of the initial “time imposed” standards.

Simulation model

Alabama now has the ability, with the use of the Commission’s simulation model, to project changes within the criminal justice system. The ability to forecast the impact of legislative changes on our jail and prison populations is essential to enable legislators to make informed decisions and avoid being forced to rely on crisis management. Through the work of our consultants, Applied Research Services, Inc., the Sentencing Commission has developed a simulation model to mimic the flow of offenders into, through, and out of Alabama’s prison system. Within the last year, the simulation model has been modified to incorporate the Commission’s proposed sentencing standards and worksheets’ structure. With the new probation/parole and corrections data, the Commission is now capable of analyzing the impact of changes to the worksheets and how these changes will affect the prison population. The enhanced model offers an experimental, risk-free environment for policymakers 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 raising or lowering cutpoints on the Prison In/Out decision and how this change affects institutional bed space, jail backlog, correctional alternatives, resource allocation, prison admissions, and commitments.

The Commission continuously monitors prison admissions, sentences imposed and time served.

Simulation model mimics the flow of offenders into, through and out of our prison system.

Next Phase of Simulation

Tracking parole and probation revocations is the next phase.

The next step in simulation includes gathering data from Pardons & Paroles to incorporate probation and parole revocations. A new module will be developed to track those offenders returning to prison based on probation or parole revocations. Once completed, simulation can predict the number of offenders returning to prison on a probation or parole revocation, as well as for a new offense. This new module will allow the Commission to study the impact this group of offenders has on the total prison population and allow us to make the necessary adjustments to divert them from prison.

Security classifications will be factored into the simulation model.

The current simulation model does not include data to determine an inmate's security classification; however, the data is available and we anticipate including this data in the near future. Once an inmate's security classification level is factored into the simulation model, the Commission will be able to project the need for more prison beds for violent inmates. In addition, it will give the Commission the ability to identify those inmates classified as non-violent low risk that can be diverted to a community corrections' facility or considered for probation or parole.

Chapter 4: Alabama Sentencing Commission's 2005 Legislative Package

1. Sentencing Standards Bill - HB 476; SB 13 & SB 258

In compliance with the directives included in the Sentencing Reform Act of 2003, Act 2003-354, this bill proposes adoption of voluntary sentencing standards for 26 felony offenses. These sentencing standards are historically-based voluntary, non-appealable sentencing recommendations developed for personal, property and drug felony offenses, representing 87% of all felony convictions and sentences imposed in Alabama over a five-year period. The proposed sentence ranges and dispositions for the covered offenses are in lieu of the wider ranges under existing statutory law and provide uniform sentencing recommendations for trial court judges in sentencing convicted felons. These standards address both the length of sentences and the disposition of the offender (probation, intermediate alternative or prison). After approval of these standards by the Legislature, these standards will be implemented October 1, 2005. In other states, structured sentencing, like that proposed for Alabama, has provided a useful mechanism for making informed decisions relating to the management of prison populations, while retaining meaningful judicial discretion.

This legislation is substantially the same as the sentencing standards bill that was introduced during the 2004 Regular Session, with the exception that dates were changed for implementation effective October 1, 2005. Minor changes were made following recommendations received during the 12 regional workshops and pilot tests conducted last summer. In addition, a provision was added to require filing of the standards with the Clerks of the Senate and House, as well as the Clerk of the Alabama Supreme Court.

2. Access to Juvenile and YO Records HB 477; SB 264

This bill amends §§ 12-15-100 and 15-19-7 of the *Code of Alabama* 1975, to provide statewide access to juvenile and youthful offender records for judges, prosecutors, victim service officers, probation and parole officers and court personnel, which is essential for the completion of worksheets required for the implementation of the sentencing standards.

Structured sentencing, like the sentencing standards proposed for Alabama, have proved useful in other states for making informed decisions relating to the management of prison populations.

Access to juvenile and YO records essential for completion of Sentencing Standards Worksheets.

\$2.6 million supplemental appropriations requested for Community Punishment and Corrections to increase the use of these programs.

Amendment of the split sentencing statute needed to provide judges options when revoking probation.

3. Supplemental Appropriations for Community Corrections HB 478; SB 269

The Commission voted to pursue supplemental funding to DOC for Community Corrections programs again this year because funding has been a major part of our reform efforts and \$5.5 million is the minimum amount that must be appropriated (and deposited in the State-County Community Punishment Partnership Fund) before DOC is required to establish and staff a Community Corrections Division. This bill was a priority in last year's legislative package and continues to be essential for the state-wide expansion of community corrections and the development of adequate alternatives to incarceration for non-violent offenders. The bill expressly provides that this money is supplemental to, and will not supplant General Fund appropriations to DOC for FY 2005, and that these monies shall be deposited into the State-County Community Partnership Fund.

4. Split Sentence Statute – Probation Revocation Options HB 479; SB 261

This bill amends Alabama's split sentencing statute, § 15-18-8, to grant trial judges authority to impose various sanctions upon revocation of the probation portion of the sentence. Options include modifying any condition of probation, ordering the offender to participate in a substance abuse or community corrections program or incarcerating the offender for a portion of the suspended sentence or for the entire term. It also amends § 15-22-54, the general probation statute, to eliminate the provision authorizing the granting of half-credit for time spent by an offender while serving intermittent terms of incarceration or while on home detention or work release, consistent with Alabama's Community Punishment and Corrections Act.

In *Hollis v. State*, 845 So.2d 5 (Ala.Crim.App. 2002)¹, the Court of Criminal Appeals held that under the provisions of the existing statute, if a defendant has completed his term of incarceration and has begun serving his probationary sentence, upon revocation of probation, *the judge's only option is to impose the remainder of the sentence that was suspended*, because he has no jurisdiction

¹ The *Hollis* decision was recently overruled by the Court of Criminal Appeals in *Dixon v. State*, So.2d, 2005 WL182827 (Jan. 28, 2005).

to amend the sentence. This amendment will specifically provide that a judge has other options upon revocation of probation, allowing him to revoke a sentence and impose all or a part of the suspended sentence.

5. Amendment of Burglary 1st and 2nd Statutes to Eliminate Loot Rule for Deadly Weapons HB 480; SB 270

This bill amends §§ 13-7-5 and 13-7-6 of the *Code of Alabama* 1975, relating to burglary in the 1st and 2nd degrees to require the offender to either be armed with a deadly weapon upon entry into a dwelling or building or use or threaten the immediate use of a deadly weapon in order to commit these crimes. It is specifically provided that the fact alone that a deadly weapon or dangerous instrument is one of the items stolen in the burglary does *not* constitute “use” or threatened use of the deadly weapon or dangerous instrument.

Clarification on “use” or threatened use of a deadly weapon or dangerous instrument during a burglary offense.

6. Correction of Theft of Property 2nd Degree Statute HB 484; SB 271

This bill is needed to change the theft of property 2nd statute to reflect the value changes recommended by the Sentencing Commission and made by the Legislature in 2003. The statute was inadvertently amended in 2004 using the prior values of \$250-\$1000, rather than \$500-\$2500, and was grammatically changed to spell out the amounts, thereby amending that part of the statute.

7. DUI Statute - Out of State Convictions HB 485; SB 267

This bill amends Alabama’s DUI statute to specifically authorize the use of out-of-state DUI convictions for enhanced punishment under the provisions of Alabama’s DUI law, as well as in-state or out-of-state convictions pursuant to municipal ordinance violations. In *Ex parte Bertram*, 884 So.2d 889 (Ala. 2003), the Alabama Supreme Court held that, as the statute’s currently written, prior out-of-state convictions for DUI cannot be considered for enhancement purposes and only prior convictions of DUI in Alabama can be considered.

Use of prior out-of-state DUI convictions authorized to enhance punishment.

8. Pardon and Parole Facility Fees HB 481; SB 272

This bill was included in last year’s Legislative package at the request of Bill Segrest, Director of the Board of Pardons and Paroles and Sentencing Commission member. It amends § 15-22-30 of the

Authorizing deductions of an additional 20% from wages of residents of Pardons & Paroles for court costs, fines, fees and victim restitution.

Code of Alabama 1975, to increase the amount that can be deducted from the wages of residents of residential facilities operated by the Board, from 25% to 45%, designated for the payment of court costs, fines, fees, assessments and victim restitution. This comports with the amounts now authorized to be deducted in 15-18-180 *Code of Alabama* 1975, as amended by Act 2003-353, for defendants assigned to a work release or other residential program operated by a community corrections provider. Of the person's earnings, 25% of the gross wages are to be applied to costs incidental to the person's supervision and upkeep, 10% to court costs, fines, court-ordered fees and assessments and 10% to victim restitution. After the full 45% is deducted for these expenses, the remainder of the wages is to be credited to an account established for the person by the Board and may be paid out for dependent care, savings and spending money.

Changes were made from last year's bill to specifically provide that if either fines, costs or court ordered fees are paid in full, then the 10% shall continue to be deducted and applied to restitution, or vice versa. Based on the recommendation of the Budget office, the provision directing distribution to the General Fund for expenditure by the Board of Pardons and Paroles was changed to reference the Probationer's Upkeep Fund operated by the Board of Pardons and Paroles.

Procedure for considering eligibility of medical and geriatric release is needed.

9. Medical and Geriatric Release HB 486; SB 10

This bill provides for discretionary medical and geriatric release by the Board of Pardons and Paroles of "terminally ill," "permanently incapacitate," and "geriatric inmates," who do not constitute a danger to themselves or society, and establishes procedures for submitting applications for consideration of eligibility and timeframes for the Board and the Department of Corrections. The authority to grant medical or geriatric release is within the Board's discretion and not subject to judicial review in either the exercise of authority or the manner in which it is exercised. In determining an inmate's eligibility for release, the Board is to consider the inmate's 1) risk for violence; 2) criminal history; 3) institutional behavior, 4) age (currently and at the time of the offense); 5) the severity of the illness, disease or infirmities; 6) all available medical and mental health records; and 7) release plans, which include alternatives to caring for terminally ill, permanently ill, or geriatric inmates in traditional prison settings.

Authority to grant medical and geriatric release remains with the Board.

Inmates convicted of capital murder, sentenced to life without parole or convicted of a crime involving sexual misconduct with a minor are not eligible for release under the provisions of this bill.

10. Maximum Fine Increase HB 482; SB 266

This bill amends §§13A-5-11 and 13A-5-12 of the *Code of Alabama 1975*, to increase the maximum amount of fines authorized to be assessed upon conviction for a felony, misdemeanor or state violation. The judge retains discretion to impose a fine and set the amount; the amendment simply authorizes a larger fine in appropriate cases. It is not mandatory.

The fine amounts in the Criminal Code have not been revised since they were originally set in 1977. The Commission included this bill in its Legislative package last year, justifying the increase based on the inflation index, the fact that the fine amounts in the Criminal Code have not been revised since they were originally set in 1977, and that the increased amounts are similar to those authorized to be imposed in surrounding states. The proposed fines are comparable to those authorized in Tennessee, Georgia and Virginia and to the fines imposed for new offenses in Florida, Mississippi and South Carolina (states that do not have a general fine statute or that have not revised their statutes in many years.)

11. Trafficking Statute HB 483; SB 268

Alabama's current trafficking statute fails to provide fines for the most serious trafficking offenses (those involving the largest quantities of drugs). This bill, amends Alabama's trafficking statute, §13A-12-231, to provide fines for the most serious trafficking offenses and to correct the fine for trafficking in hydromorphone involving 4,000-9,999 pills to impose a graduated increase consistent with the other provisions of the statute. As now written the fine for this offense is the same as trafficking in hydromorphone involving 1,000-3,999 pills.

Higher fines authorized for state offenses. Fine increase justified based on inflation index and laws of surrounding states.

Establishing fines for the most serious trafficking offenses.

Chapter 5: Data - Where We Have Been, Where We Are Now and Where We are Headed

Where We Have Been and Where We Are Now

In Terms of Overcrowding, Alabama's Prison System Is the Worst In the Nation

According to the U.S. Department of Justice, Bureau of Justice Statistic's latest publication, *Prisoners in 2003*, our prison system not only leads all other states in having the highest percent of capacity occupied, but was 109% over the lowest capacity reported by any state.

Figure 1.

| DOC Prison Population | | | |
|-----------------------|-------------------|----------------------|----------|
| Calendar Year | Inmate Population | Increase or Decrease | % Change |
| 1977 | 5,545 | | |
| 1978 | 5,529 | -16 | -0.29% |
| 1979 | 5,464 | -65 | -1.18% |
| 1980 | 6,368 | 904 | 16.54% |
| 1981 | 7,199 | 831 | 13.05% |
| 1982 | 8,581 | 1,382 | 19.20% |
| 1983 | 9,641 | 1,060 | 12.35% |
| 1984 | 10,246 | 605 | 6.28% |
| 1985 | 10,749 | 503 | 4.91% |
| 1986 | 11,365 | 616 | 5.73% |
| 1987 | 12,277 | 912 | 8.02% |
| 1988 | 12,462 | 185 | 1.51% |
| 1989 | 13,391 | 929 | 7.45% |
| 1990 | 14,758 | 1,367 | 10.21% |
| 1991 | 16,288 | 1,530 | 10.37% |
| 1992 | 17,209 | 921 | 5.65% |
| 1993 | 18,189 | 980 | 5.69% |
| 1994 | 19,145 | 956 | 5.26% |
| 1995 | 20,131 | 986 | 5.15% |
| 1996 | 21,357 | 1,226 | 6.09% |
| 1997 | 22,047 | 690 | 3.23% |
| 1998 | 22,593 | 546 | 2.48% |
| 1999 | 24,299 | 1,706 | 7.55% |
| 2000 | 25,619 | 1,320 | 5.43% |
| 2001 | 26,855 | 1,236 | 4.82% |
| 2002 | 27,425 | 570 | 2.12% |
| 2003 | 28,052 | 627 | 2.29% |
| 2004 | 26,627 | -1,425 | -5.08% |

Figures for 1986-2004 represent the total of monthly average populations for calendar years obtained from DOC's monthly reports. Figures from the calendar years 1977-1985 are taken from the Department of Justice website and represent figures reported to them by the Alabama Department of Corrections.

DOC Historical Summary

| | |
|------------|---|
| 6/24/64 | Frank Lee Youth Center Opened |
| Nov. 1969 | Holman Prison Completed |
| Jan. 1970 | Mt. Meigs Diagnosis Opened (now known as Kilby) |
| 4/3/72 | Draper Work Release Center (WR) opened and 27 Road Camps closed (only 5 remained) |
| 7/31/72 | Atmore WR Center opened |
| 1974 | Alexander City and Childersburg WR Centers opened and last of road camps closed |
| May 1975 | Wetumpka WR Center opened |
| June 1976 | Elba WR Center opened |
| July 1976 | Hamilton WR Center opened |
| April 1977 | Mobile and Loxley WR Centers Opened |
| June 1977 | Staton Facility opened |
| Aug. 1980 | Brookly WR opened in Mobile |
| May 1981 | Decatur WR opened and Hamilton WR/&Aged and Infirm opened |
| Nov. 1981 | Staton Annex opened (later named Elmore Corr. Facility) |
| Nov. 1982 | West Jefferson opened (later named Donaldson) |
| Apr. 1983 | SIR non-residential program operational |
| 6/1/83 | St. Clair facility opened |
| Apr. 1984 | East Thomas Community-Based Facility opened |
| Aug. 1984 | Fountain Trusty Barracks opened |
| 10/22/84 | Limestone Facility opened |
| 8/10/85 | Old Hamilton WR Centers reopened and WR inmates from Hamilton WR/A&I reassigned |
| Apr. 1987 | Bullock Facility opened |
| Sept. 1988 | Boot Camp Initiated |
| Mar. 1990 | Easterling Facility opened |
| May 1998 | Bibb Facility opened |
| | |
| 2005 | |

Figure 2.

| PRISON POPULATION AT YEAR'S END AS OF DECEMBER 31ST | |
|---|-----------------------|
| <i>Dec. 2000</i> | <i>26,332</i> |
| <i>Dec. 2001</i> | <i>26,741</i> |
| <i>Dec. 2002</i> | <i>27, 947</i> |
| <i>Dec. 2003</i> | <i>27,344</i> |
| <i>Dec. 2004</i> | <i>27,016</i> |

The stock prison population changes daily and population and offender types vary accordingly. Figure 2 reflects the inmate population on a specific day, December 31st of each year. These numbers may differ from those shown in other charts reflecting Alabama's inmate population.

Jail Backlog Trends

Figure 3.

| Summary - DOC Weekly Jail Reports | | | | |
|--|-------|-------|-------|-------|
| | 12/01 | 12/02 | 12/03 | 12/04 |
| Transferred to DOC from Jail | 210 | 248 | 196 | 179 |
| State Inmates in Jails | 1,839 | 2,643 | 1,039 | 1,299 |
| Transcripts Over 30 Days Ready | 331 | 1,564 | 0 | 182 |
| Total Transcripts Ready | 998 | 2,261 | 557 | 585 |
| Empty Work Release | 45 | 7 | --- | --- |
| Waiting Work Release | 60 | 40 | --- | -- |
| SIR | 355 | 295 | 89 | 14 |

The backlog of state inmates in county jails has decreased in the last two years, primarily because bedspace was made available when inmates were transferred to out-of-state private prisons and because of the implementation of the early parole docket. The cost of out-of-state bed space has already exceeded \$12.7 million.

Use of Private Out-of-State Prisons

Figure 4.

| Inmates Housed in Out-Of-State Facilities* | | |
|---|----------------|----------------|
| | FY 2003 | FY 2004 |
| Total # of Inmates | 1485 | 1398 |
| Males | 1,230 (3 mo.) | 1192 (5 mo.) |
| Females | 255 (6 mo.) | 206 (12 mo.) |
| Cost | \$3,495,498 | \$8,808,283 |

Cohort Analysis - Conviction Trend by Year

Most Serious Non-Capital Offense at Conviction

June 1, 1999 - May 31, 2004

Figure 5.

| | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | |
|---|------|---------------|------|---------------|------|---------------|------|---------------|------|---------------|
| Possession of Controlled Substance | 1 | 3,591 | 1 | 3,225 | 1 | 3,411 | 1 | 3,525 | 1 | 3,823 |
| Theft of Property 2nd | 2 | 1,234 | 3 | 1,167 | 3 | 1,164 | 3 | 1,091 | 2 | 1,023 |
| Felony DUI | 3 | 1,116 | 2 | 1,257 | 2 | 1,285 | 2 | 1,091 | 3 | 993 |
| Burglary 3rd | 4 | 1,077 | 4 | 1,004 | 6 | 946 | 5 | 921 | 5 | 934 |
| Possession of Marijuana 1st | 5 | 998 | 6 | 946 | 5 | 972 | 6 | 834 | 7 | 833 |
| Theft of Property 1st | 6 | 997 | 5 | 984 | 4 | 1,054 | 4 | 999 | 4 | 963 |
| Distribution of Controlled Substance | 7 | 951 | 7 | 856 | 7 | 860 | 7 | 820 | 6 | 895 |
| Possess Forged Instrument 2nd | 8 | 730 | 8 | 791 | 8 | 783 | 8 | 741 | 8 | 782 |
| Assault 2nd | 9 | 515 | 9 | 478 | 11 | 449 | 11 | 402 | 11 | 397 |
| Receiving Stolen Property 2nd | 10 | 501 | 11 | 420 | 9 | 484 | 10 | 404 | 9 | 418 |
| Robbery 1st | 11 | 393 | 10 | 442 | 10 | 450 | 9 | 495 | 10 | 407 |
| Receiving Stolen Property 1st | 12 | 334 | 12 | 361 | 12 | 358 | 12 | 351 | 12 | 362 |
| Robbery 3rd | 13 | 308 | 14 | 291 | 14 | 292 | 16 | 254 | 16 | 240 |
| Breaking/Entering a Vehicle | 14 | 279 | 13 | 331 | 13 | 324 | 13 | 324 | 13 | 331 |
| Forgery 2nd | 15 | 257 | 15 | 270 | 16 | 274 | 15 | 277 | 15 | 273 |
| Trafficking Drugs | 16 | 233 | 16 | 243 | 15 | 285 | 14 | 288 | 14 | 284 |
| Robbery 2nd | 17 | 213 | 20 | 189 | 20 | 168 | 18 | 217 | 22 | 147 |
| Sexual Abuse 1st | 18 | 208 | 18 | 202 | 18 | 173 | 19 | 175 | 20 | 151 |
| Assault 1st | 19 | 200 | 17 | 205 | 21 | 152 | 22 | 135 | 25 | 124 |
| Fraud Use of Credit/Debit Card | 20 | 176 | 19 | 192 | 17 | 224 | 17 | 234 | 17 | 228 |
| Murder | 21 | 164 | 22 | 150 | 19 | 169 | 20 | 154 | | |
| Burglary 2nd | 22 | 149 | 24 | 123 | 22 | 150 | 21 | 143 | 23 | 146 |
| Manslaughter | 23 | 144 | 21 | 155 | 25 | 111 | 23 | 124 | | |
| Escape 3rd | 24 | 139 | 23 | 135 | 23 | 135 | 24 | 121 | 24 | 125 |
| Escape 2nd | 25 | 118 | | | | | | | | |
| Manufacture of Controlled Substance 2nd | | | | | | | 25 | 121 | 18 | 228 |
| Manufacture of Controlled Substance 1st | | | | | | | | | 19 | 158 |
| Burglary 1st | | | 25 | 108 | | | | | 21 | 150 |
| Obstruct Justice-False Identity | | | | | | | | | 25 | 124 |
| Rape 2nd | | | | | 24 | 112 | | | | |
| Promote Prison Contraband 2nd | | | 25 | 108 | | | | | | |
| Top 25 Offenses | | 15,025 | | 14,633 | | 14,785 | | 14,241 | | 14,539 |
| Other Offenses | | 1,749 | | 1,562 | | 1,865 | | 2,053 | | 1,904 |
| Total Felony Convictions | | 16,774 | | 16,195 | | 16,650 | | 16,294 | | 16,443 |

* Drug offenses - combined all Attempt/Conspiracy/Complicity offenses into the original drug offense.

The Top 25 offenses represent 87% of the most frequent crimes of conviction. As Figure 5 reflects, there has been a slight increase in total felony convictions from last year (16,433 compared to 16,294), but a decrease from the number in 2002 (1.2%) and 2000 (2%).

Comparing the Top 10 crimes in 2004 with those of 2003, four crimes ranked the same:

Possession of a Control Substance remained #1; Theft of Property 1st #4; Burglary 3rd #5; and Possession of Forged Instrument 2nd #8. The crimes where the rankings changed were: Felony DUI fell from #2 to #3; Possession of Marijuana 1st fell from #6 to #7; and Robbery 1st fell from #9 to #10. The crimes of conviction that rose in rank were: Theft of Property 2nd from #3 to #2, Distribution of a Controlled Substance from #7 to #6 and Receiving Stolen Property 2nd from #10 to #9.

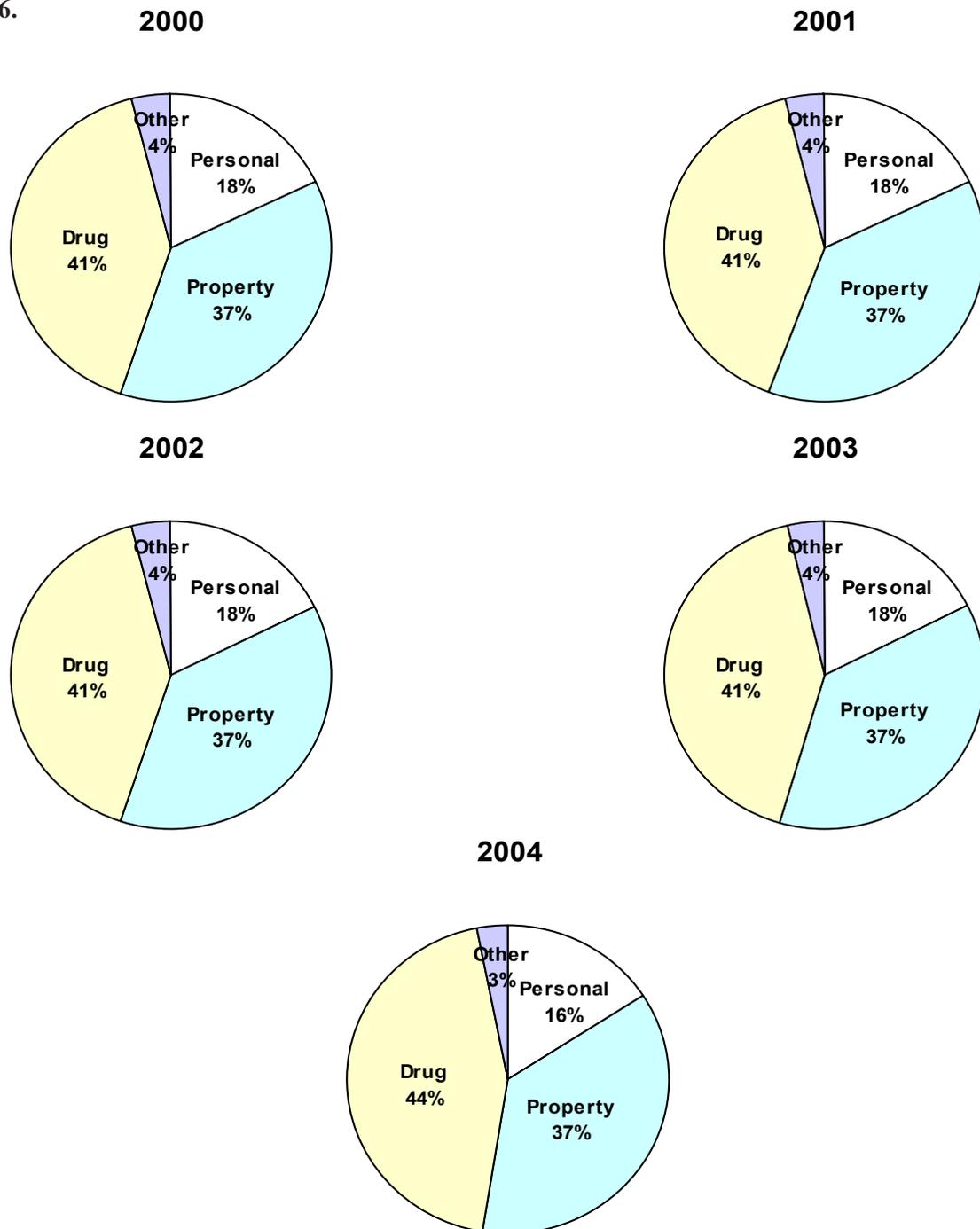
NOTE: Manufacturing of a Controlled Substance appears in the Top 25 for the first time in 2003 and 2004.

Offense Category by Most Serious Offense at Conviction

June 1, 1999 - May 31, 2004

Comparing the crimes of conviction over the past five years, from 2000 until 2004, there has been a recent increase in drug convictions (3%), and a slight decrease in the number of convictions for personal crime convictions (2%), while property crimes have remained the same.

Figure 6.



Most Serious Offense at Conviction

Drug Offenses

June 1, 1999 - May 31, 2004

Figure 7.

| | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | |
|--------------------------------------|------|---------------|------|---------------|------|---------------|------|---------------|------|---------------|
| Possession of Controlled Substance | 1 | 3,591 | 1 | 3,225 | 1 | 3,411 | 1 | 3,525 | 1 | 3,823 |
| Felony DUI | 2 | 1,116 | 2 | 1,257 | 2 | 1,285 | 2 | 1,091 | 2 | 993 |
| Possession of Marijuana 1st | 3 | 998 | 3 | 946 | 3 | 972 | 3 | 834 | 4 | 833 |
| Distribution of Controlled Substance | 4 | 951 | 4 | 856 | 4 | 860 | 4 | 820 | 3 | 895 |
| Trafficking Drugs | 5 | 233 | 5 | 243 | 5 | 285 | 5 | 288 | 5 | 284 |
| Manufacture Controlled Substance 2nd | | | | | | | 6 | 121 | 6 | 228 |
| Manufacture Controlled Substance 1st | | | | | | | 7 | 66 | 7 | 158 |
| Total Drug Offenses | | 6,889 | | 6,527 | | 6,813 | | 6,745 | | 7,214 |
| Other Offenses | | 9,885 | | 9,668 | | 9,837 | | 9,549 | | 9,229 |
| Total Felony Convictions | | 16,774 | | 16,195 | | 16,650 | | 16,294 | | 16,443 |

* Drug offenses - combined all Attempt/Conspiracy/Complicity offenses into the original drug offense.

Over the past five years, the same drug offenses have ranked as the top five drug crimes of conviction: #1) Possession of a Controlled Substance, #2) Felony DUI, #3) Possession of Marijuana 1st, #4) Distribution of a Controlled Substance, and #5) Drug Trafficking. The number of drug convictions has increased 6.9% since 2003, and in the last two years there have been more frequent convictions for the serious crimes of Manufacturing of a Controlled Substance 1st and 2nd. While these crimes were not among the “Top 10” drug convictions in the past, they now occupy the ranks of #6 and #7. With convictions increasing for the more serious drug offenses of trafficking and manufacturing, prison space must be reserved for punishing those offenders and alternatives to incarceration in the penitentiary found for the offenders convicted of the less serious crimes of Possession of Marijuana 1st, Felony DUI and Possession of a Controlled Substance.

Figure 8.

Trafficking by Drug Type - Top 5

| 2000 | 2001 | 2002 | 2003 | 2004 |
|---------------------|--------------------|--------------------|--------------------|--------------------|
| 1. Marijuana | 1. Cocaine | 1. Marijuana | 1. Methamphetamine | 1. Cocaine |
| 2. Cocaine | 2. Marijuana | 2. Cocaine | 2. Cocaine | 2. Methamphetamine |
| 3. Illegal drugs* | 3. Methamphetamine | 3. Methamphetamine | 3. Marijuana | 3. Marijuana |
| 4. Methamphetamine | 4. Illegal drugs* | 4. Illegal drugs* | 4. Illegal drugs* | 4. Illegal drugs* |
| 5. Methyl-Amphetam. | 5. LSD | 5. Opium | 5. Opium | 5. Amphetamine |

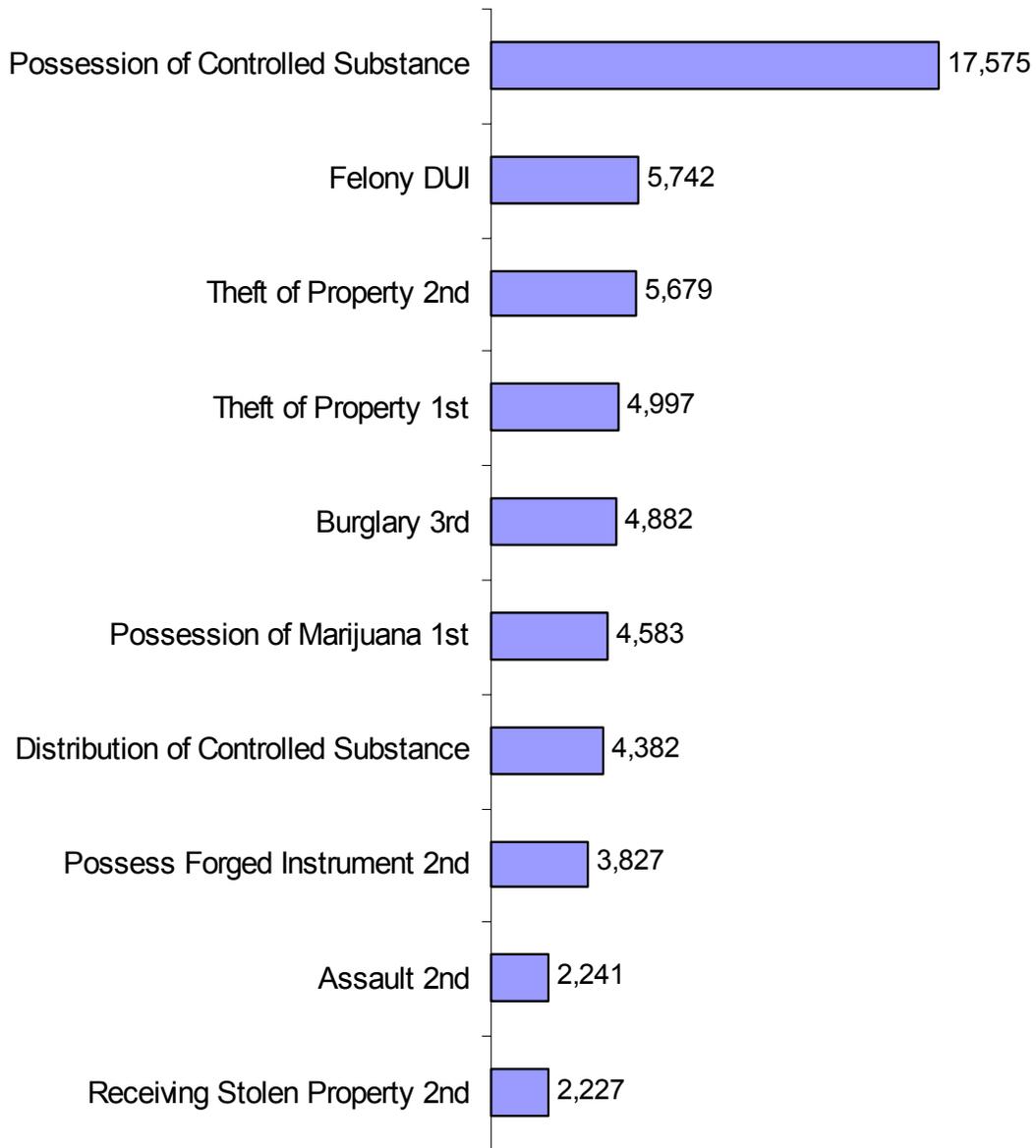
*Cases in which the type of drug was not listed and only the general trafficking statute was cited. The instances of these errors in data entry is increasing.

As Figure 8 reflects, the drug type for offenses of Trafficking in Illegal Drugs has changed over the last five years. Cocaine now holds the #1 position as the most frequent drug involved, with Methamphetamine ranking #2. (Methamphetamine was ranked #1 in 2003). Marijuana, which led all other drugs in the past, now occupies rank #3.

Most Serious Crimes at Conviction
Cohort Analysis of Top 10 Offenses
 June 1, 1999 - May 31, 2004

The Top 10 most frequent crimes of conviction from our 5-year felony cohort consist of 67% of all felony convictions from June 1999 through May 2004. There are four drug offenses, five property crimes, and only one personal crime, Robbery 1st.

Figure 9.



Prison Admissions
Cohort Analysis
Fiscal Years 1999 - 2004

Figure 10.

| | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | |
|--------------------------------------|------|---------------|------|---------------|------|---------------|------|---------------|------|---------------|------|---------------|
| Possession of Controlled Substance | 1 | 1,199 | 1 | 1,336 | 1 | 1,223 | 1 | 1,372 | 1 | 1,492 | 1 | 1,531 |
| Distribution of Controlled Substance | 2 | 848 | 2 | 928 | 2 | 795 | 2 | 846 | 2 | 844 | 2 | 820 |
| Burglary 3rd | 3 | 715 | 3 | 691 | 4 | 665 | 4 | 685 | 4 | 708 | 3 | 697 |
| Theft of Property 1st | 4 | 594 | 5 | 571 | 5 | 575 | 5 | 669 | 5 | 586 | 5 | 594 |
| Felony DUI | 5 | 562 | 4 | 670 | 3 | 761 | 3 | 780 | 3 | 742 | 4 | 656 |
| Robbery 1st | 6 | 487 | 6 | 486 | 6 | 540 | 6 | 549 | 6 | 543 | 6 | 453 |
| Theft of Property 2nd | 7 | 467 | 8 | 407 | 8 | 397 | 7 | 413 | 8 | 422 | 8 | 404 |
| Possession of Marijuana 1st | 8 | 439 | 7 | 481 | 7 | 406 | 8 | 409 | 7 | 483 | 7 | 419 |
| Possess Forged Instrument 2nd | 9 | 366 | 9 | 320 | 9 | 324 | 9 | 392 | 9 | 381 | 9 | 388 |
| Assault 2nd | 10 | 285 | 11 | 271 | 10 | 310 | 10 | 277 | 12 | 266 | 12 | 248 |
| Robbery 3rd | 11 | 278 | 10 | 272 | 12 | 270 | 11 | 271 | 10 | 276 | 13 | 231 |
| Breaking/Entering a Vehicle | 12 | 240 | 13 | 228 | 14 | 238 | 14 | 238 | 11 | 272 | 10 | 300 |
| Murder | 13 | 239 | 14 | 214 | 13 | 242 | 15 | 220 | 15 | 209 | 20 | 131 |
| Robbery 2nd | 14 | 237 | 17 | 191 | 16 | 197 | 17 | 195 | 17 | 197 | 21 | 129 |
| Receiving Stolen Property 1st | 15 | 212 | 12 | 242 | 11 | 283 | 12 | 260 | 13 | 258 | 11 | 268 |
| Receiving Stolen Property 2nd | 16 | 197 | 15 | 203 | 15 | 201 | 16 | 206 | 16 | 203 | 15 | 214 |
| Assault 1st | 17 | 169 | 18 | 179 | 17 | 191 | 20 | 160 | 22 | 132 | 23 | 108 |
| Trafficking Drugs | 18 | 143 | 16 | 198 | 18 | 186 | 13 | 249 | 14 | 257 | 16 | 212 |
| Forgery 2nd | 19 | 141 | 20 | 138 | 19 | 173 | 21 | 150 | 18 | 162 | 17 | 172 |
| Burglary 2nd | 20 | 140 | 23 | 130 | 21 | 146 | 19 | 163 | 21 | 143 | 18 | 151 |
| Manslaughter | 21 | 136 | 22 | 137 | 22 | 144 | 23 | 113 | 23 | 122 | 25 | 91 |
| Burglary 1st | 22 | 127 | 21 | 138 | 20 | 146 | 22 | 150 | 19 | 151 | 19 | 139 |
| Discharge Gun Occupied Bldg/Vehicle | 23 | 88 | | | | | | | | | | |
| Fraud Use of Credit/Debit Card | 24 | 86 | 24 | 88 | 25 | 82 | 24 | 113 | 25 | 110 | 22 | 117 |
| Sexual Abuse 1st | 25 | 78 | 19 | 161 | 23 | 133 | 18 | 174 | 24 | 120 | 24 | 107 |
| Manufacture Controlled Substance 1st | | | | | | | | | 20 | 149 | 14 | 220 |
| Rape 2nd | | | 25 | 83 | 25 | 82 | | | | | | |
| Rape 1st | | | | | 24 | 86 | 25 | 98 | | | | |
| Top 25 Offenses | | 8,473 | | 8,763 | | 8,796 | | 9,152 | | 9,228 | | 8,800 |
| Other Offenses | | 1,692 | | 1,425 | | 1,326 | | 1,588 | | 1,593 | | 1,467 |
| Total Prison Admissions | | 10,165 | | 10,188 | | 10,122 | | 10,740 | | 10,821 | | 10,267 |

* Drug offenses - combined all Attempt/Conspiracy/Complicity offenses into the original drug offense.

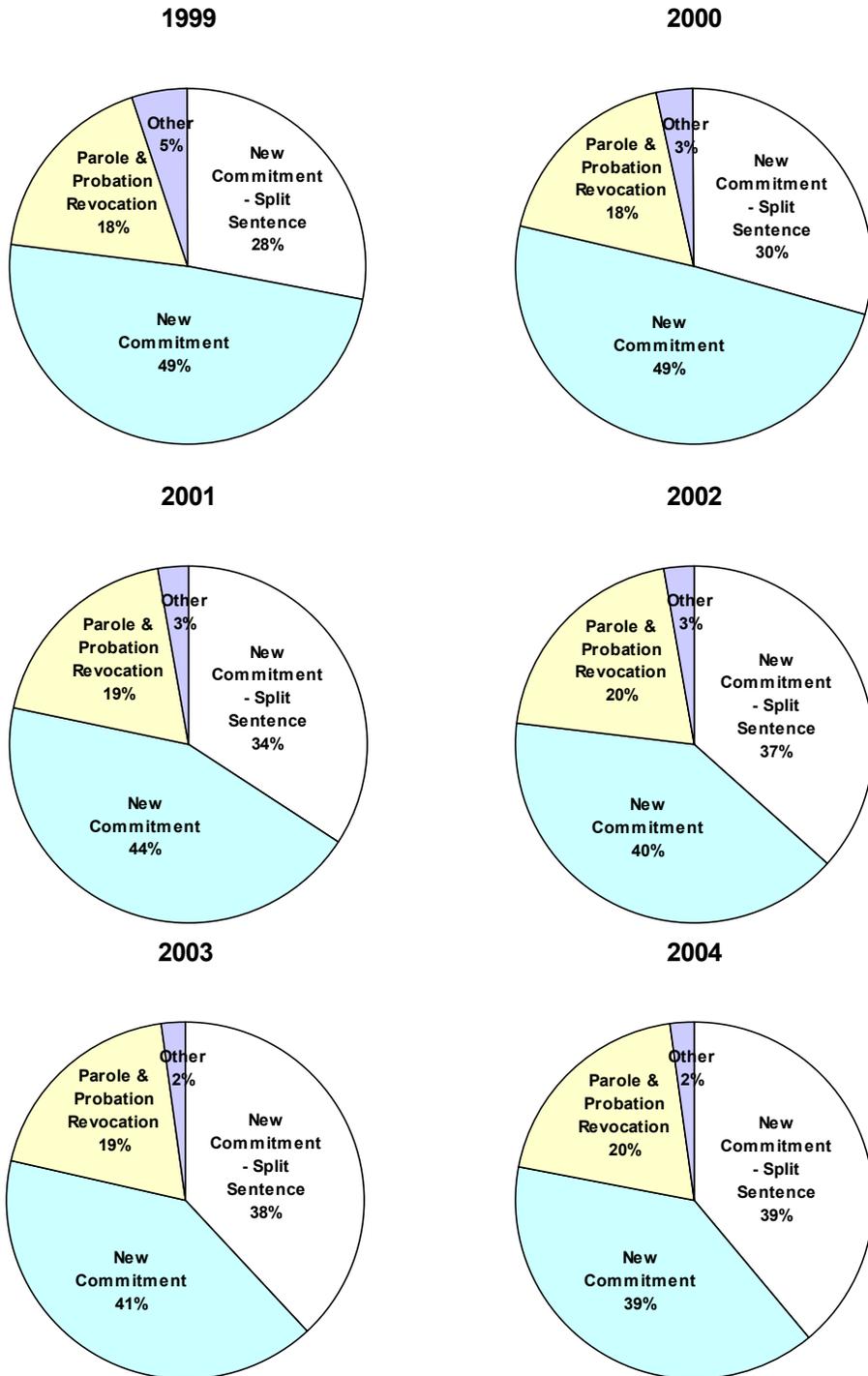
The most notable changes in the Top 25 offense ranking from 2003 to 2004 was Manufacturing of a Controlled Substance 1st, which moved from #20 to #14 as the most frequent crime of admissions. Other offenses rising in rank were Burglary 2nd and 3rd, Receiving Stolen Property 1st and 2nd, Breaking/Entering a Vehicle, Forgery 2nd, and Fraudulent Use of a Credit/Debit Card. The crimes of admission that retained the same ranking as last year were: Possession of a Controlled Substance, Distribution of a Controlled Substance (#1 and #2 respectively), Theft of Property 1st (#5), Robbery 1st (#6), Possession of Marijuana 1st (#7), Theft of Property 2nd (#8), Possession of Forged Instrument 2nd (#9), Assault 2nd (#12), Burglary 1st (#19), and Sexual Abuse 1st (#24). The crimes that received a lower ranking for admissions to prison were: Felony DUI (from #3 to #4), Robbery 3rd (from #10 to #13), Drug Trafficking from (#14 to #16), Murder (from #15 to #20), Robbery 2nd (from #17 to #20), Assault 1st (from #22 to #23) and Manslaughter (#23 to #25).

Type of Prison Admissions

Fiscal Years 1999 - 2004

According to the data on types of prison admissions, it can be generally stated that over the last six years 80% - 82% of prison admissions has been for the commission of a new offense, while approximately 18% - 20% have been admissions based on parole and/or probation revocation. As Figure 11 reflects, there has been a constant increase over the years in the use of the split sentence (28% to 39%) as a means of allowing local courts to retain jurisdiction of convicted offenders.

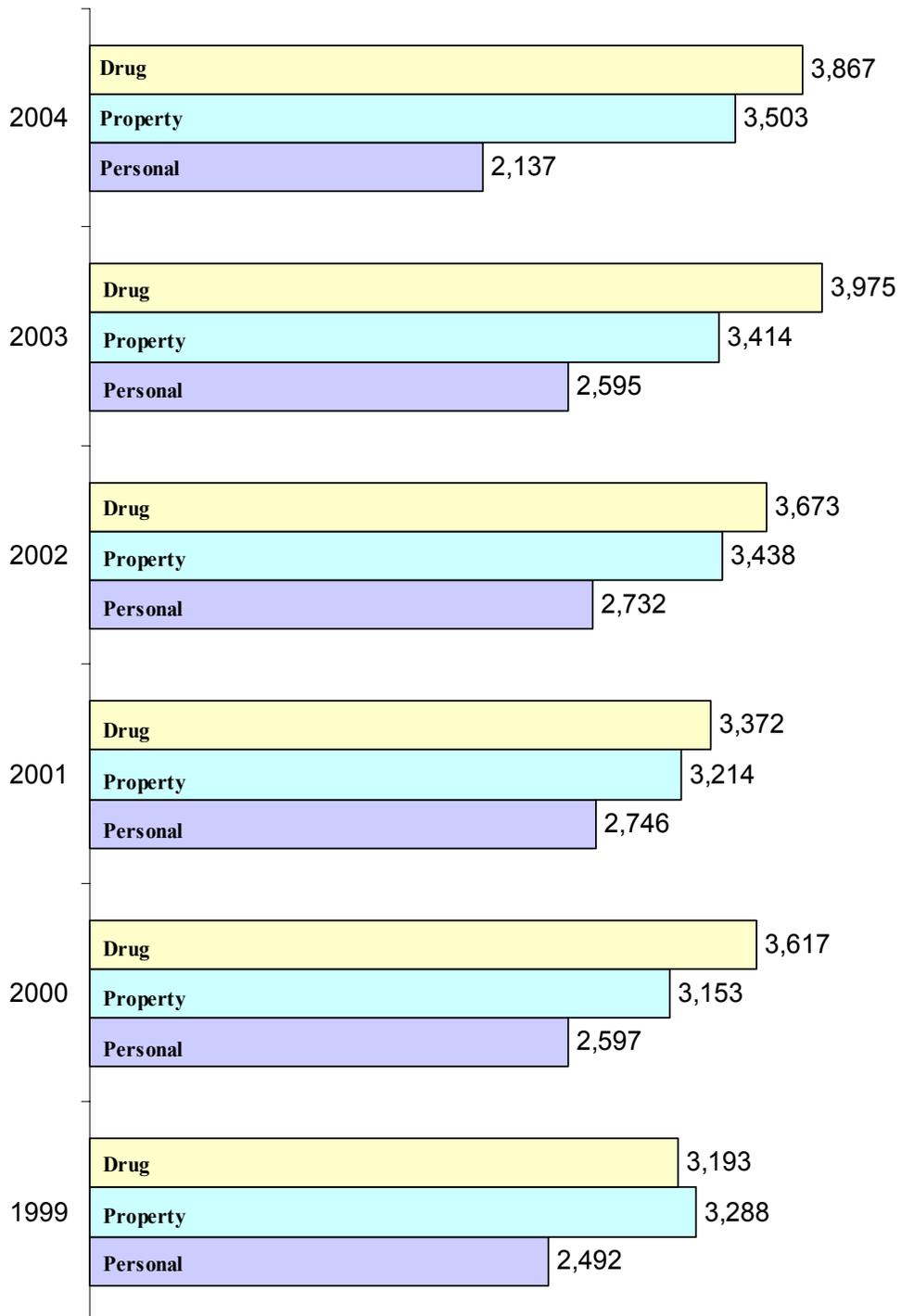
Figure 11.



Offense Category of Prison Admissions
Fiscal Years 1999 - 2004

Drug and property offenders still dominate prison admissions.

Figure 12.



Prison Releases
Fiscal Years 1999 - 2004

Drugs dominate prison releases, with Possession and Distribution of a Controlled Substance the top crimes of release.

Figure 13.

| | 1999 | | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | |
|--------------------------------------|------|--------------|------|--------------|------|--------------|------|--------------|------|---------------|------|---------------|
| Possession of Controlled Substance | 1 | 1,000 | 1 | 1,090 | 1 | 1,161 | 1 | 1,246 | 1 | 1,422 | 1 | 1,588 |
| Distribution of Controlled Substance | 2 | 607 | 2 | 646 | 2 | 710 | 2 | 909 | 2 | 1,072 | 2 | 1,176 |
| Burglary 3rd | 3 | 589 | 3 | 595 | 4 | 631 | 4 | 646 | 4 | 732 | 3 | 913 |
| Theft of Property 1st | 4 | 451 | 4 | 470 | 5 | 528 | 5 | 496 | 5 | 629 | 5 | 753 |
| Theft of Property 2nd | 5 | 378 | 6 | 391 | 7 | 371 | 7 | 418 | 6 | 442 | 6 | 478 |
| Possession of Marijuana 1st | 6 | 337 | 7 | 382 | 6 | 423 | 6 | 426 | 7 | 394 | 7 | 470 |
| Possess Forged Instrument 2nd | 7 | 270 | 9 | 257 | 8 | 313 | 8 | 302 | 8 | 388 | 8 | 432 |
| Robbery 1st | 8 | 247 | 8 | 298 | 9 | 245 | 10 | 262 | 9 | 327 | 9 | 432 |
| Assault 2nd | 9 | 244 | 10 | 257 | 10 | 235 | 9 | 275 | 10 | 268 | 12 | 291 |
| Robbery 3rd | 10 | 217 | 11 | 234 | 11 | 220 | 11 | 232 | 13 | 241 | 13 | 270 |
| Felony DUI | 11 | 215 | 5 | 452 | 3 | 641 | 3 | 749 | 3 | 836 | 4 | 754 |
| Breaking/Entering a Vehicle | 12 | 191 | 12 | 202 | 13 | 186 | 13 | 208 | 11 | 256 | 11 | 312 |
| Receiving Stolen Property 1st | 13 | 172 | 13 | 187 | 12 | 192 | 12 | 222 | 12 | 253 | 10 | 332 |
| Receiving Stolen Property 2nd | 14 | 160 | 15 | 158 | 14 | 180 | 16 | 168 | 14 | 226 | 15 | 240 |
| Robbery 2nd | 15 | 153 | 14 | 183 | 15 | 170 | 14 | 202 | 16 | 194 | 17 | 214 |
| Assault 1st | 16 | 146 | 16 | 140 | 16 | 142 | 17 | 168 | 17 | 182 | 20 | 142 |
| Trafficking Drugs | 17 | 128 | 19 | 124 | 17 | 139 | 15 | 173 | 15 | 201 | 14 | 246 |
| Sexual Abuse 1st | 18 | 121 | 18 | 128 | 18 | 134 | 20 | 109 | 20 | 137 | 21 | 134 |
| Forgery 2nd | 19 | 118 | 17 | 130 | 20 | 118 | 18 | 163 | 18 | 180 | 18 | 177 |
| Burglary 2nd | 20 | 104 | 20 | 113 | 19 | 129 | 19 | 129 | 19 | 138 | 16 | 221 |
| Burglary 1st | 21 | 77 | 23 | 80 | 25 | 70 | 24 | 84 | 24 | 91 | 19 | 148 |
| Manslaughter | 22 | 77 | 22 | 90 | 21 | 113 | 21 | 100 | 22 | 110 | 23 | 127 |
| Murder | 23 | 73 | 21 | 106 | 22 | 90 | 22 | 99 | 23 | 105 | 22 | 132 |
| Rape 2nd | 24 | 68 | 25 | 69 | 24 | 71 | 25 | 72 | 25 | 84 | | |
| Fraud Use of Credit/Debit Card | 25 | 62 | | | 23 | 86 | 23 | 85 | 21 | 113 | 25 | 120 |
| Manufacture Controlled Substance 1st | | | | | | | | | | | 24 | 126 |
| Rape 1st | | | 24 | 77 | | | | | | | | |
| Top 25 Offenses | | 6,205 | | 6,859 | | 7,298 | | 7,943 | | 9,021 | | 10,228 |
| Other Offenses | | 1,056 | | 1,160 | | 1,160 | | 1,180 | | 1,418 | | 1,518 |
| Total Prison Releases | | 7,261 | | 8,019 | | 8,458 | | 9,123 | | 10,439 | | 11,746 |

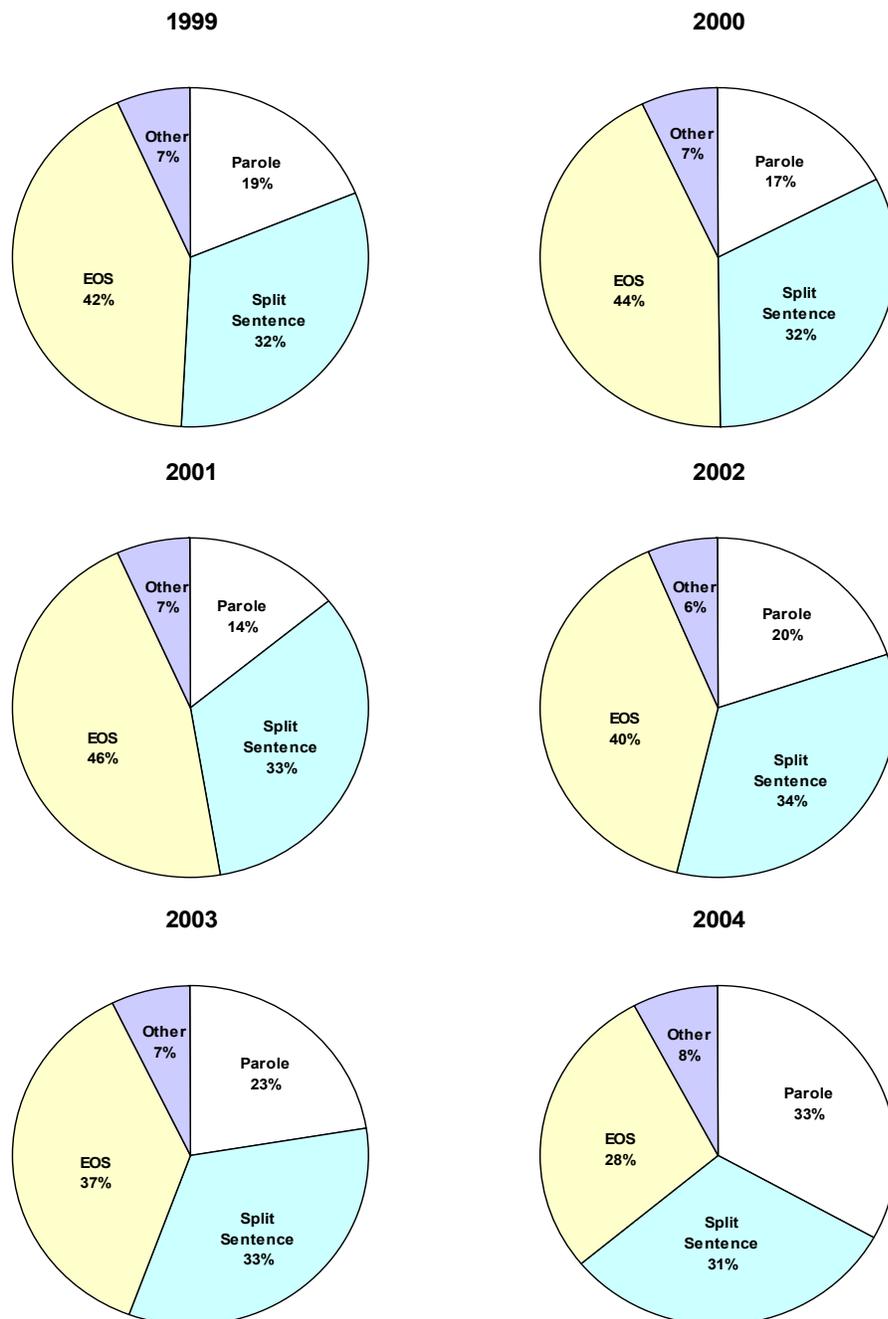
* Drug offenses - combined all Attempt/Conspiracy/Complicity offenses into the original drug offense.

Type of Prison Releases

Fiscal Years 1999 - 2004

Parole releases have increased 16% since 2000, with an increase of 11% from 2003 to 2004 due to the implementation of the special parole dockets. Approximately 33% of all inmates released over the last six years were released under a split sentence. There are now less inmates being returned to communities with no supervision. Releases without supervision have dropped from a high of 46% in 2001 to a low of 28% in 2004.

Figure 14.



Offense Category of Prison Releases

Fiscal Years 1999 - 2004

As they dominated admissions, drug and property offenders also dominate releases from prison. Comparing the number of releases in 2004 by crime type with those of 2003, there was an 11% increase for drug offenders, 19% increase for property offenders and a 12% increase for personal offenders. Except for the decrease in releases for personal offenders between 2000 and 2001, releases for all types of offenders have steadily increased over the last six years.

Figure 15.

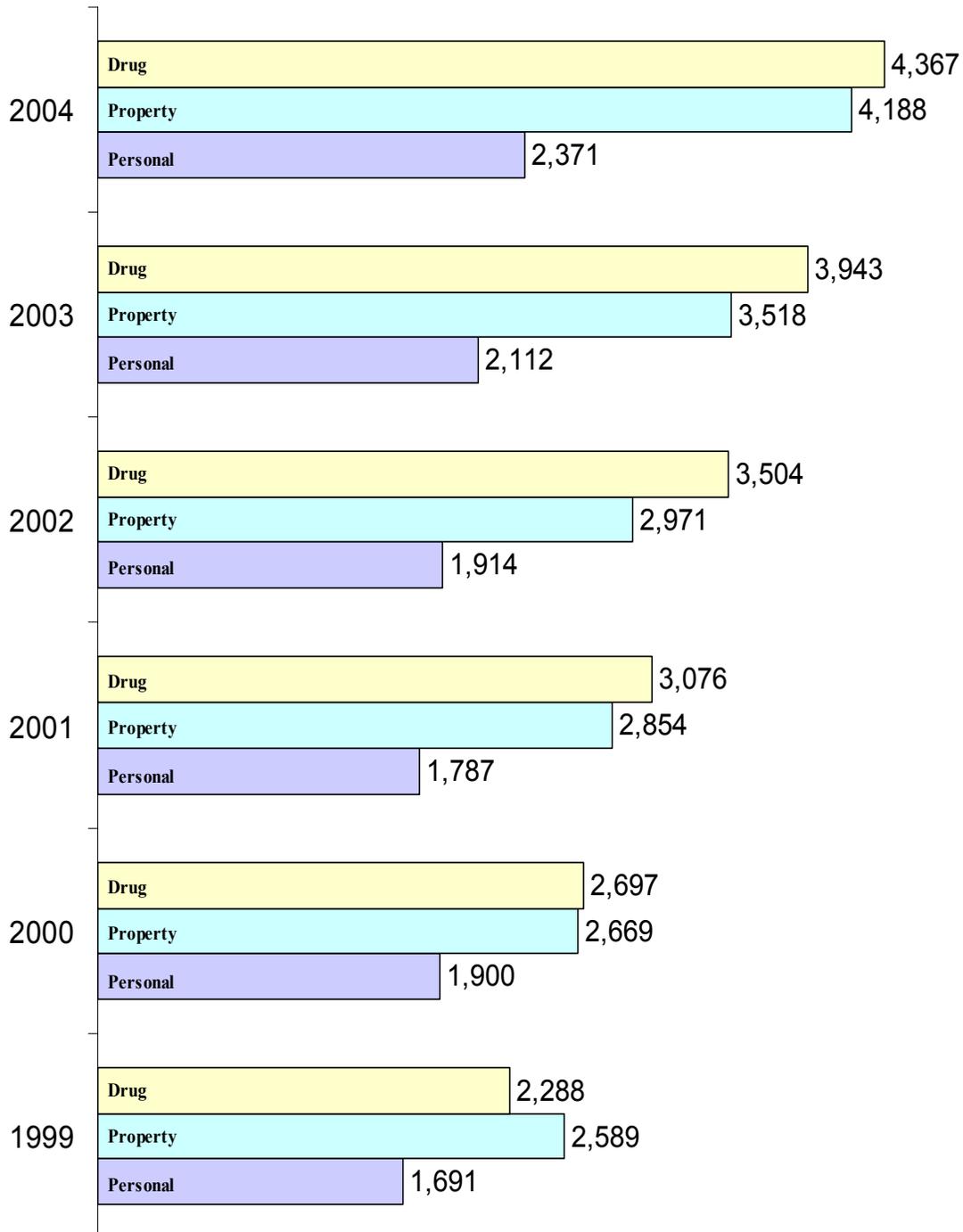


Figure 16.
Paroles

| FY | Probation/ Parole Officers | Under Parole Supervision | Parole Considered | Parole Denied | Parole Granted | % Granted of those considered | Parole Revocations |
|------|-------------------------------|-----------------------------|----------------------|---------------|-------------------|-------------------------------------|-----------------------|
| 1983 | 144 | 2,350 | 3,165 | 1,921 | 1,244 | 39% | 485 |
| 1984 | 140 | 2,415 | 2,609 | 1,320 | 1,289 | 49% | 300 |
| 1985 | 139 | 2,599 | 3,401 | 2,035 | 1,366 | 40% | 348 |
| 1986 | 158 | 3,205 | | | 1,784 | | 357 |
| 1987 | 159 | 3,698 | 3,659 | 2,005 | 1,657 | 45% | 459 |
| 1988 | 180 | 4,952 | 4,751 | 2,172 | 2,579 | 54% | 451 |
| 1989 | 220 | 5,765 | 3,905 | 1,595 | 2,310 | 59% | 725 |
| 1990 | 221 | 6,629 | 5,039 | 2,350 | 2,487 | 49% | 1,021 |
| 1991 | 216 | 6,786 | 5,363 | 3,054 | 1,973 | 37% | 857 |
| 1992 | 213 | 6,983 | 5,423 | 2,750 | 2,287 | 42% | 883 |
| 1993 | 220 | 7,172 | 5,443 | 2,930 | 2,093 | 38% | 765 |
| 1994 | 221 | 7,306 | 5,633 | 3,338 | 1,942 | 34% | 860 |
| 1995 | 222 | 7,249 | 6,155 | 3,868 | 2,287 | 37% | 1,000 |
| 1996 | 220 | 6,609 | 6,549 | 4,300 | 1,644 | 25% | 855 |
| 1997 | 217 | 4,631 | 7,822 | 5,110 | 2,712 | 35% | 425 |
| 1998 | 218 | 5,423 | 7,834 | 5,073 | 2,761 | 35% | 288 |
| 1999 | 224 | 4,988 | 5,592 | 3,863 | 1,729 | 31% | 335 |
| 2000 | 222 | 5,069 | 5,406 | 3,570 | 1,836 | 34% | 487 |
| 2001 | 232 | 4,772 | 5,452 | 3,680 | 1,772 | 33% | 581 |
| 2002 | 238 | 5,195 | 5,811 | 3,642 | 2,169 | 37% | 609 |
| 2003 | 261 | 6,153 | 6,936 | 3,738 | 3,198 | 46% | 796 |
| 2004 | 326 | 7,645 | 11,603 | 7,649 | 3,954 | 34% | 676 |

Since FY 2000, the number of probation and parole officers has increased by 47%, a new parole board was created and a special release docket for non-violent offenders was implemented. These changes have had a positive effect - a 51% increase of offenders under parole supervision, a 115% increase in offenders considered for parole, with a corresponding increase in those offenders that were granted parole. As expected, there has also been an increase in the number of paroles denied.

Figure 17.
Probations

| FY | Under Probation Supervision | Probation Granted | Probation Revocations |
|------|--------------------------------|----------------------|--------------------------|
| 1983 | 16,192 | 5,819 | 704 |
| 1984 | 17,219 | 5,193 | 656 |
| 1985 | 17,535 | 5,277 | 745 |
| 1986 | 17,954 | 5,416 | 838 |
| 1987 | 18,714 | 5,788 | 830 |
| 1988 | 19,584 | 7,241 | 962 |
| 1989 | 20,707 | 7,351 | 1,117 |
| 1990 | 22,462 | 8,909 | 1,326 |
| 1991 | 24,915 | 7,583 | 1,268 |
| 1992 | 27,425 | 9,672 | 1,552 |
| 1993 | 28,196 | 9,295 | 1,718 |
| 1994 | 27,996 | 8,347 | 1,930 |
| 1995 | 27,349 | 8,588 | 1,948 |
| 1996 | 27,442 | 8,170 | 1,982 |
| 1997 | 28,033 | 9,276 | 2,106 |
| 1998 | 29,375 | 9,024 | 1,958 |
| 1999 | 30,516 | 11,619 | 1,925 |
| 2000 | 31,204 | 10,933 | 1,925 |
| 2001 | 31,348 | 11,493 | 2,401 |
| 2002 | 31,752 | 11,774 | 2,665 |
| 2003 | 33,112 | 12,105 | 2,369 |
| 2004 | 33,845 | 11,315 | 1,652 |

Over the last five years, the number of offenders under probation supervision has increased by 8.5%. This increased caseload was made possible by the addition of 104 probation officers. During this same time frame, the number of offenders granted probation increased by 3.5%, while the number of probation revocations decreased by 14%.

Where Are We Now

Figure 18.

Most Serious Offense at Conviction

June 1, 2003 - May 31, 2004

| | 2004 | |
|---|-------------|---------------|
| Possession of Controlled Substance | 1 | 3,823 |
| Theft of Property 2nd | 2 | 1,023 |
| Felony DUI | 3 | 993 |
| Theft of Property 1st | 4 | 963 |
| Burglary 3rd | 5 | 934 |
| Distribution of Controlled Substance | 6 | 895 |
| Possession of Marijuana 1st | 7 | 833 |
| Possess Forged Instrument 2nd | 8 | 782 |
| Receiving Stolen Property 2nd | 9 | 418 |
| Robbery 1st | 10 | 407 |
| Assault 2nd | 11 | 397 |
| Receiving Stolen Property 1st | 12 | 362 |
| Breaking/Entering a Vehicle | 13 | 331 |
| Trafficking Drugs | 14 | 284 |
| Forgery 2nd | 15 | 273 |
| Robbery 3rd | 16 | 240 |
| Fraud Use of Credit/Debit Card | 17 | 228 |
| Manufacture of Controlled Substance 2nd | 18 | 228 |
| Manufacture of Controlled Substance 1st | 19 | 158 |
| Sexual Abuse 1st | 20 | 151 |
| Burglary 1st | 21 | 150 |
| Robbery 2nd | 22 | 147 |
| Burglary 2nd | 23 | 146 |
| Escape 3rd | 24 | 125 |
| Assault 1st | 25 | 124 |
| Obstruct Justice-False Identity | 25 | 124 |
| Top 25 Offenses | | 14,539 |
| Other Offenses | | 1,904 |
| Total Felony Convictions | | 16,443 |

Figure 19.

Prison Admissions

FY2004

| | 2004 | |
|--------------------------------------|-------------|---------------|
| Possession of Controlled Substance | 1 | 1,531 |
| Distribution of Controlled Substance | 2 | 820 |
| Burglary 3rd | 3 | 697 |
| Felony DUI | 4 | 656 |
| Theft of Property 1st | 5 | 594 |
| Robbery 1st | 6 | 453 |
| Possession of Marijuana 1st | 7 | 419 |
| Theft of Property 2nd | 8 | 404 |
| Possess Forged Instrument 2nd | 9 | 388 |
| Breaking/Entering a Vehicle | 10 | 300 |
| Receiving Stolen Property 1st | 11 | 268 |
| Assault 2nd | 12 | 248 |
| Robbery 3rd | 13 | 231 |
| Manufacture Controlled Substance 1st | 14 | 220 |
| Receiving Stolen Property 2nd | 15 | 214 |
| Trafficking Drugs | 16 | 212 |
| Forgery 2nd | 17 | 172 |
| Burglary 2nd | 18 | 151 |
| Burglary 1st | 19 | 139 |
| Murder | 20 | 131 |
| Robbery 2nd | 21 | 129 |
| Fraud Use of Credit/Debit Card | 22 | 117 |
| Assault 1st | 23 | 108 |
| Sexual Abuse 1st | 24 | 107 |
| Manslaughter | 25 | 91 |
| Top 25 Offenses | | 8,800 |
| Other Offenses | | 1,467 |
| Total Prison Admissions | | 10,267 |

Figure 20.

Prison Releases

FY2004

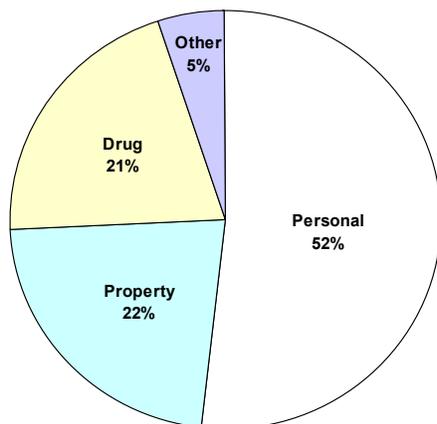
| | 2004 | |
|--------------------------------------|-------------|---------------|
| Possession of Controlled Substance | 1 | 1,588 |
| Distribution of Controlled Substance | 2 | 1,176 |
| Burglary 3rd | 3 | 913 |
| Felony DUI | 4 | 754 |
| Theft of Property 1st | 5 | 753 |
| Theft of Property 2nd | 6 | 478 |
| Possession of Marijuana 1st | 7 | 470 |
| Possess Forged Instrument 2nd | 8 | 432 |
| Robbery 1st | 9 | 432 |
| Receiving Stolen Property 1st | 10 | 332 |
| Breaking/Entering a Vehicle | 11 | 312 |
| Assault 2nd | 12 | 291 |
| Robbery 3rd | 13 | 270 |
| Trafficking Drugs | 14 | 246 |
| Receiving Stolen Property 2nd | 15 | 240 |
| Burglary 2nd | 16 | 221 |
| Robbery 2nd | 17 | 214 |
| Forgery 2nd | 18 | 177 |
| Burglary 1st | 19 | 148 |
| Assault 1st | 20 | 142 |
| Sexual Abuse 1st | 21 | 134 |
| Murder | 22 | 132 |
| Manslaughter | 23 | 127 |
| Manufacture Controlled Substance 1st | 24 | 126 |
| Fraud Use of Credit/Debit Card | 25 | 120 |
| | | |
| Top 25 Offenses | | 10,228 |
| | | |
| Other Offenses | | 1,518 |
| | | |
| Total Prison Releases | | 11,746 |

With the exception of Receiving Stolen Property 1st, the Top 10 most frequent crimes of release are also the Top 10 crimes of conviction. Possession of a Controlled Substance holds the #1 rank in both convictions and releases.

Stock Population on December 31, 2004

Figure 21.

| | | |
|--------------------------------------|----|---------------|
| Robbery 1st | 1 | 3,701 |
| Murder | 2 | 3,397 |
| Possession of Controlled Substance | 3 | 2,259 |
| Distribution of Controlled Substance | 4 | 1,390 |
| Burglary 3rd | 5 | 1,379 |
| Rape 1st | 6 | 1,011 |
| Theft of Property 2nd | 7 | 981 |
| Theft of Property 1st | 8 | 913 |
| Robbery 3rd | 9 | 761 |
| Manslaughter | 10 | 719 |
| Burglary 1st | 11 | 682 |
| Felony DUI | 12 | 639 |
| Possess Forged Instrument 2nd | 13 | 610 |
| Trafficking Drugs | 14 | 610 |
| Robbery 2nd | 15 | 540 |
| Sodomy 1st | 16 | 526 |
| Possession of Marijuana 1st | 17 | 525 |
| Assault 2nd | 18 | 506 |
| Receiving Stolen Property 2nd | 19 | 493 |
| Assault 1st | 20 | 454 |
| Sexual Abuse 1st | 21 | 427 |
| Breaking/Entering a Vehicle | 22 | 350 |
| Receiving Stolen Property 1st | 23 | 332 |
| Burglary 2nd | 24 | 310 |
| Attempted Murder | 25 | 297 |
| | | |
| Total Top 25 Offenses | | 23,812 |
| | | |
| Other Offenses | | 3,377 |
| | | |
| Total Stock Population | | 27,189 |

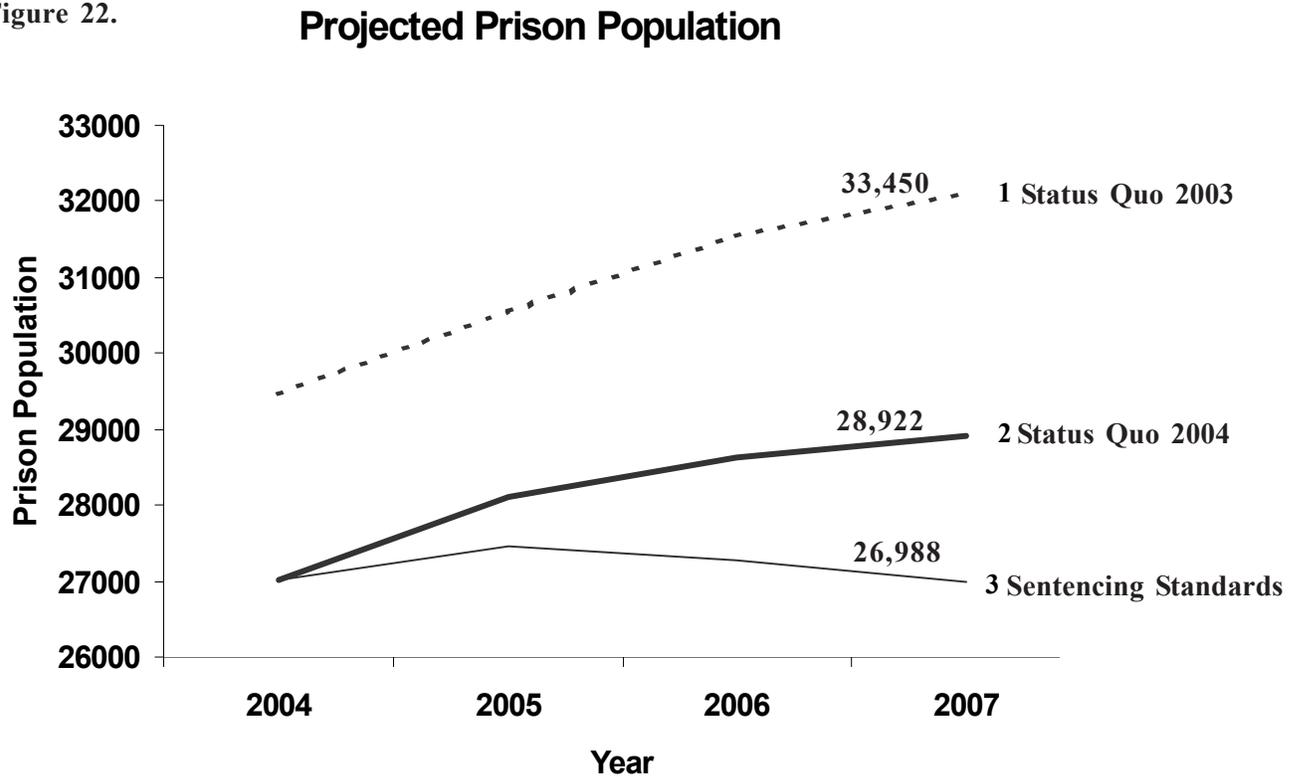


The stock population differs from admissions and releases most notably in that personal crimes Robbery 1st (#1), Murder (#2), Rape 1st (#6), Robbery 3rd (#9), and Manslaughter (#10) make up 5 of the top 10 offenses in Alabama’s prisons. These offenses account for slightly more than 1/3 of the prison population. Possession of a Controlled Substance (#3) and Distribution of a Controlled Substance (#4) continue to have a heavy influence on the population. Most notable is an offense that did not make the Top 25 this year but is sure to make it next year. Manufacturing of a Controlled Substance 1st barely missed the Top 25.

Where We Are Headed

Simulation of DOC Population

Figure 22.



In 2003, the Sentencing Commission projected that the prison population in 2007 would be 32,106, assuming no annual growth in admissions, and 33,450 if we continued with the same 2% annual growth in admissions. New projections were required in 2004 because of the changes that occurred as a result of implementing the special parole dockets and establishing an additional parole board. Based on these improvements the new projection for December 2007 was 28,922.

With adoption of the sentencing standards, assuming 75% compliance, the projected prison population growth for 2007 will be less - reduced by 6,462.

Chapter 6. Future Projects

Sentencing Commission Projects for 2005 and 2006

Developing and maintaining a fair, effective, and efficient criminal sentencing system will require continuing efforts to stay abreast of conditions and changes in the system. By remaining aware of ever-changing issues in the criminal justice system, the Sentencing Commission can make recommendations each year to address critical issues and improve the system. To this end, the Sentencing Commission has begun planning its agenda for the next two years.

The Commission's primary focus is the adoption and implementation of the sentencing standards. In anticipation of the passage of the standards during this legislative session and their implementation on October 1, 2005, the Sentencing Commission is preparing to concentrate on essential administrative, reporting, and educational projects. If the standards are approved, the Commission's primary project will be the continued education of judges, prosecutors, court clerks, probation and parole officers and other criminal justice officials in completing the worksheets, applying the standards and compliance reporting. On the basic management level, Commission staff will concentrate on finalizing the procedure for electronic reporting of compliance with the standards, which is now being developed by the Management Information Systems Division of the Administrative Office of Courts, and analyzing the data received with past sentencing practices.

Although Legislative approval of the sentencing standards is of foremost importance and will continue to be the Commission's top priority, there are many other aspects of our criminal justice system that need attention. The Commission's research, data collection, and evaluation of sentencing in Alabama will dictate next year's legislative package. A number of projects are already underway and as the Commission staff completes each project, the staff will submit the issues to the Commission for its consideration. Some of the projects currently under study or that are included on the Commission's agenda for further research over the next two years, are summarized in this chapter.

The Commission's primary focus is adoption and implementation of the Sentencing Standards.

Education, reporting and analyzing sentencing practices.

More Offenses Added to the Commission's Sentencing Standards

The Sentencing Commission's initial standards include 26 of the most frequent crimes of conviction, representing 87% of the offenders convicted and sentenced over the past five years. As the data develops each year, additional offenses will be added to the sentencing standards. The Commission must obtain additional demographics on specific offenses to conduct the multivariate analysis between statistically relevant offense and offender characteristics.

Sentencing Standards will be developed for more crimes.

Offenses now under consideration for addition to the standards are arson, sexual abuse, drug trafficking, and manufacturing of a controlled substance. Over the last two years, the crimes of Trafficking in Cocaine and Manufacturing of a Controlled Substance in the 1st and 2nd degrees have graduated to the Top 25 list of most frequent crimes of conviction. In 2004, Manufacturing of a Controlled Substance 2nd ranked 18th, while Manufacturing of a Controlled Substance 1st was 19th on the convictions ranking and #14 as the most frequent crime of conviction for admissions to prison. With additional data obtained from electronic pre/post-sentence investigation reports for these offenses, standards and worksheets can be developed that integrate the statistically relevant sentencing factors trial courts consider in imposing sentences. Although prior approval of the Legislature will have to be obtained to incorporate these crimes into the standards, the Commission will pilot test the recommendations against regular sentencing practices in several pilot sites before presenting them to the Legislature for adoption.

Evaluating Sentencing Practices Under The Initial Sentencing Standards

Evaluating and reporting the effectiveness of the Sentencing Standards.

As the initial voluntary sentencing standards, worksheets and instructions are implemented, the Alabama Sentencing Commission will collect data demonstrating the use of the new sentencing system. The Commission will analyze this data and report to the Legislature on the effectiveness of the system at the beginning of each Legislative Session. Because the system will be so newly implemented, the first in-depth report will not be available until 2007, after the system has been in effect for at least one year. A preliminary report will be filed during the 2006 Legislative Session; however, it will be based on very limited data, since the standards are scheduled to be implemented in October of 2005.

Develop Truth-in-Sentencing Standards, Work Sheets, and Instructions.

The Legislature has directed the Sentencing Commission to begin drafting and testing sentencing standards that will implement truth-in-sentencing in Alabama. Truth-in-sentencing standards will be developed in the same manner as the initial voluntary sentencing standards. The only substantial difference is that sentence ranges will be based on “time served” rather than “time imposed.” The Sentencing Commission must now begin to gather detailed demographic data on offenders and offenses and the time actually served in prison of the sentence imposed. The Sentencing Commission will use this data to establish the relationships between the statistically relevant factors for each offense and offense category.

Developing truth-in-sentencing standards.

Examination of Offenders Receiving Sentences of Life and Life Imprisonment without the Possibility of Parole

Over the last several years, much interest and a great deal of discussion has centered around sentences to life imprisonment and life imprisonment without the possibility of parole. Because of their severity, life and life without parole sentences stand apart from other sentences. These sentences will be analyzed by the Commission as an independent project that will closely examine the type of offenses for which the sentences have been given and the offenders receiving the sentences. Demographic data will be collected on each offender and offense, to the extent possible, and the results will be reported to the members of the Sentencing Commission to determine what issues, if any, need to be brought before the Legislature for consideration. It is very likely that this project will require more than one year to complete because of the standards for accuracy that Commission staff will require, especially in regard to an offender’s prior criminal history.

Analyzing life and life without parole sentences.

Consolidation of Community Supervision Services

In the 2003 Report, the Commission recommended considering consolidating all field services in the corrections system under one administrative head. At present, four separate state agencies and all three branches of government operate separate community punishment alternatives.

Overlapping programs demonstrate need for consolidation of community services under one department.

- The judicial branch, through the Court Referral Officer Program, administers supervision of drug treatment and rehabilitation of convicted offenders on DUI and other drug-related offenses.

- The executive branch, through the Department of Corrections, administers funding for community corrections programs in 34 counties and provides community punishment in work release centers throughout the state.
- The legislative branch, through the Board of Pardons and Paroles, administers probation and parole supervision and a parole transition facility for female offenders returning to society from prison.

Rather than forming a rational continuum of sanctions with clearly defined responsibilities, these programs and services overlap so that at times offenders are being supervised by more than one program, receive duplicative services and are paying supervision fees to more than one agency. This system does not appear to provide the most effective use of the state's limited resources. For the first time, many participants in these separate agencies are amenable to discussing how to consolidate the administration of community punishment programs into a cohesive unit. The time is ripe for substantial progress in this area.

Probation and Parole Revocations

Having initially looked at sentences imposed in developing the voluntary sentencing standards, the Sentencing Commission staff recognizes that the next areas where improvements can be made are probation and parole terms and revocations. Recommendations in this area will be based on research of probation and parole practices in Alabama and other states. Questions that need to be addressed include: How much supervision is required, for how long, and based on what criteria? How often is probation or parole terminated prior to the end of the sentence; when and under what circumstances? Are we using tax dollars wisely for parole and probation supervision? For what reasons are probation and parole revoked? Are there alternatives to revocation to prison that could be more effective? How are technical violators punished? What is the most efficient and effective way for the system to handle technical violations of conditions of probation and parole? Policymakers must explore these and other issues to determine the best practice for Alabama.

Studying probation and parole terms and determining the most effective and efficient way to handle technical violations.

Data Reporting Deficiencies That Need To Be Corrected

Although Alabama has made many advances in technological reporting of criminal justice statistics, there are many areas where work is needed. At a time in which law suits are being brought over the number of state inmates

in county jails, there is no one agency or department that can provide an accurate inmate count of the population of each county jail at any given time. The same is true of other programs, such as local DAs pre-trial diversion programs and community correction programs. In this computer age, we are still forced to rely on periodic surveys to provide a glimpse of the makeup, population, and cost of these programs. With few exceptions, the effectiveness of these programs remains unmeasured. Even in those instances where effectiveness is measured, these measurements are not reported to a central agency. Alabama is beginning to address some of these deficiencies in various ways. Much, however, remains to be done.

County Jail Surveys

With the assistance of the Alabama Sheriff's Association, the Sentencing Commission completed a jail survey in 2002, the first statewide survey of local jails conducted in two years. Because the State of Alabama does not have a central statewide source for county information reflecting current jail inmate population, the Sentencing Commission has again initiated another survey of each county jail through the Alabama Sheriff's Association. The Sheriff's Association plans to distribute the survey to all county jails this month, requesting responses by the end of March.

DA Pre-Trial Diversion Programs

At least thirteen counties have had district attorney pre-trial diversion programs established by local act – Conecuh and Monroe (Act 2004-478); Fayette, Lamar and Pickens (Act 2003-190); Henry and Houston (Act 2003-25); Baldwin (Act 97-692); Calhoun (Act 960539); Escambia (Act 95-388); Madison (Act 94-391), Montgomery (Act 706, 1978 Acts), and Walker (Act 93-660). The majority of these provide for no, or limited, judicial involvement. None contain a central reporting requirement and most authorize the expungement of records upon successful completion of the program. There are no uniform standards, allowing for disparate treatment of offenders from circuit to circuit. Whether a defendant is eligible for the program depends on the district attorney and the provisions of the local act.

Because there are no reporting requirements, there is no central depository that a judge, district attorney or victim could consult to determine how many times that an offender has been approved for a program or in which counties. Further, if a person fails to complete the program, his record

Data needed on pretrial diversion programs, community corrections programs and county jail populations.

New county jail survey initiated.

Alabama needs central reporting of offenders admitted to pre-trial diversion programs.

simply shows that he was convicted, not whether there was a conviction following acceptance to a pre-trial diversion program. There are no records readily available that can compare the level of participation in existing programs or the rate of success for each program. The Commission will consider ways to ensure that information on criminal offenders accepted into these programs is readily available to all judges and prosecutors for sentencing purposes upon conviction of subsequent offenses and that appropriate records and data are maintained by the Office of Prosecution Services, the Sentencing Commission or the Courts for evaluation of the effectiveness of each program at both the local level and in the broader criminal justice system.

Community Correction Surveys

Data from new surveys now being analyzed.

Reliable and current information on existing community corrections programs is necessary to evaluate the programs and to plan for the expansion of these programs throughout Alabama. The Commission has obtained essential information in the past through surveys filled out by the programs and sent to the Commission. The Commission has recently distributed revised surveys to update the information that was obtained from the Commission's 2002 survey. This new data collection project was initiated to obtain defendant specific information from community correction and drug court programs. The survey was developed by Commission staff and distributed to the programs in order to collect detailed data on felony offenders sentenced to each program, and to determine the type of offenders participating in each program. This information has been entered into a database and is now being analyzed.

The importance of the Commission retaining this information was recently highlighted by a computer malfunction by the Department of Corrections. Although the community corrections information was unavailable to the Department of Corrections, the Sentencing Commission was able to assist the Department to obtain current information requested by the Governor, the Budget Office, and the Alabama Department of Economic and Community Affairs.

MIDAS case management and reporting system for community corrections programs.

The Administrative Office of Courts, through the development and implementation of the MIDAS case reporting and case management system is beginning to address this deficiency. MIDAS (Model Integrated Defense Application System) is a web-based case and client management system that allows all community punishment programs to utilize common data

elements. The implementation of this system will allow the Commission to retrieve reliable data more readily and obtain a better understanding of the operation and effectiveness of community corrections programs in the State. The system will be utilized by community corrections programs and court referral officer programs throughout the state and can be integrated with the Board of Pardons and Paroles case management system. Data from all of these systems will be available for analysis over the next five years.

Risk Assessments

As one of its duties, the Sentencing Commission was charged with the evaluation of risk assessment instruments used by the Board of Pardons and Paroles, the Department of Corrections, and other agencies and entities. Several risk assessments have recently been developed for use in Alabama. As these instruments are used, the Commission will review these tools and will evaluate their effectiveness.

Dr. Dennis Wagner, Ph.D. and Shelby Connell of the National Council on Crime and Delinquency have developed several assessment tools for the Board of Pardons and Paroles. They have designed two risk assessments - one for defendants under supervision and the second for those being considered for parole. The Board also had the National Council on Crime and Delinquency develop a needs-assessment instrument for probationers and parolees under supervision. Staff and officers of the Board are now being trained in the use of these instruments, which will be operational statewide this year. The Commission will pursue the possibility that these tools could also be utilized by the Department of Corrections.

The Alabama Association of Community Corrections has been negotiating with Triant Psychometrics Inc. for the development and implementation of a risk assessment tool for individual programs. The instrument is referred to as the Corrections Risk Analysis System (C-RAS), which is an advanced pattern recognition algorithm technique that can identify the risk of recidivism and violence. It is also a needs assessment tool that identifies areas for treatment intervention among offenders. The C-RAS tool will be used by community correction programs to predict whether offenders are likely to re-offend after re-entering society, the offender's capacity for violence and areas that can be targeted for treatment intervention. Currently Mobile, Franklin, and Dale Counties have contracted to use this instrument and are currently in the training and implementation stage. Other community corrections programs, such as Shelby and Montgomery Counties, have also

The Board of Pardons and Paroles has two new risk assessment instruments and a needs assessment instrument.

New risk and needs assessment instrument to be utilized by Community Corrections programs.

expressed an interest in using the C-RAS risk and needs assessment instrument.

Recidivism

Comprehensive recidivism study needs to be conducted.

Recidivism rates are commonly used to assist in measuring the effectiveness of criminal justice programs designed to rehabilitate or incapacitate criminal offenders. Alabama has never had a valid comprehensive recidivism study performed. The last study conducted was by the Department of Corrections in 1999, which considered only those inmates returning to the Alabama prison system within three years of their release. Inmates that were rearrested and convicted in other states and those who were subsequently convicted in Alabama but sentenced to county jails, granted probation, or admitted into drug courts or pre-trial diversion programs were not considered.

Since Alabama has never conducted a comprehensive study, it is not surprising that it has never adopted a consistent definition of how recidivism should be measured. Recidivism is measured using many values and could refer to the point at which the offender is re-arrested, re-convicted or sentenced to the penitentiary. The Sentencing Commission plans to review recidivism studies conducted throughout the nation to determine recommended procedures and the basics of a valid recidivism study. Only by initiation of a valid recidivism study can we evaluate the effectiveness of our treatment and rehabilitation programs, both inside the prison walls and in the community.

Faith-Based Programs For Inmates

Federal funds may become available for faith-based re-entry programs.

Faith-based initiatives for offenders who choose to participate have proven highly effective both in Alabama and in other states. Congress is now considering the President's recommendation to fund the implementation of faith-based initiatives designed to effect a positive re-entry into society for incarcerated offenders. Faith-based organizations in Alabama have recognized incarcerated offenders need assistance in successfully adjusting to the demands of living in the free world. These organizations are interested in designing or adopting and establishing programs to provide this assistance. If the recommendations made by President Bush are adopted by Congress, Alabama needs to be in a position to take advantage of federal grants that may be made available for these purposes. The Sentencing Commission staff will monitor Congress' action on these recommendations and pursue any funding opportunities to develop such programs.

Conclusion

The Alabama Sentencing Commission is an agent for systematic and perpetual reform. The Commission staff, in partnership with other departments and agencies, works daily acquiring and analyzing data on which to base policy changes, and develops recommendations based on that data. The Commission brings together the major stakeholders in the criminal justice system to recommend improvements. Through these collaborative efforts, the Commission has recommended policies that will effect the change in Alabama's projected prison population as shown in Figure 22. These policies represent a strong beginning. *The Commission encourages the Legislature to approve the initial voluntary sentencing standards to implement this new beginning.*

This beginning must continue. To this end, the Alabama Sentencing Commission invites every legislator, public official, victims' advocate, and citizen to bring suggestions to the Commission. The Commission staff will apply these suggestions to facts known and data collected and will analyze and develop them into positive policy recommendations wherever possible. All are invited to use the Commission and join our efforts to finally address Alabama's criminal justice problems with sound policy decisions supported by empirical data, providing accountability to the public on these important issues.

Sentencing Reform takes patience, commitment, and data. The Alabama experience of chronic prison overcrowding shows that the problems created over decades cannot be solved hastily or with temporary committees or task forces.

...

Years of work on data-driven recommendations and research of sentencing practices are necessary to create lasting sentencing policies that allow fiscal planning and reliability for both officials in the sentencing system and policymakers in the legislative and judicial branches.

Excerpt from Judge William H. Pryor's presentation delivered January 21, 2005, at the Columbia Law Review Symposium, "*Sentencing: What's at Stake for the States.*"

ALABAMA SENTENCING COMMISSION



Initial Sentencing Standards

Instructions and Worksheets

**Approved by Sentencing Commission Members
December 3, 2004**

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GENERAL INSTRUCTIONS FOR COMPLETING SENTENCING WORKSHEETS

- Worksheets should be completed and considered when the “most serious conviction offense” at a sentencing event, is one of the following:

| Personal Worksheets | Property Worksheets | Drug Worksheets |
|---------------------------|--|--|
| Assault I § 13A-6-20 | Burglary I § 13A-7-5 | Felony DUI § 32-5a-191(h) |
| Assault II § 13A-6-21 | Burglary II § 13A-7-6 | Possession of Marihuana I § 13A-12-213 |
| Manslaughter § 13A-6-3 | Burglary III § 13A-7-7 | Unlawful Possession of a Controlled Substance § 13A-12-212 |
| Murder § 13A-6-2 | Forgery II § 13A-9-2 | Sale/Distribution of Marihuana (other than to a minor) § 13A-12-211 |
| Rape I § 13A-6-61 | Possession Forged Instrument II § 13A-9-6 | Sale/Distribution of Schedule I-V (other than to a minor) § 13A-12-211 |
| Rape II § 13A-6-62 | Theft of Property I § 13A-8-3 | |
| Robbery I § 13A-8-41 | Theft of Property II § 13A-8-4 | |
| Robbery II § 13A-8-42 | Receiving Stolen Property I § 13A-8-17 | |
| Robbery III § 13A-8-43 | Receiving Stolen Property II § 13A-8-18 | |
| Sodomy I § 13A-6-63 | Unauthorized Use/B&E Vehicle § 13A-8-11(a)(4) & (b) | |
| Sodomy II § 13A-6-64 | Unlawful Possession/Use Credit/Debit Card § 13A-9-14 | |

A “sentencing event” includes all convictions disposed of at one time.

- To determine the “most serious conviction offense” for the purpose of scoring worksheets, the preparer should select the offense with the highest number of points listed in the first section of the corresponding sentence length worksheet.
- Both worksheets must be completed even if the recommended disposition is “non-prison.”
- If a defendant is being sentenced for more than one crime type at the same sentencing event – e.g. both drug and property offenses – more than one set of worksheets may be completed to

determine which offense would most likely result in a recommended prison sentence and/or longest sentence length.

Example:

- If a defendant is being sentenced for Assault II (72 points) and Burglary II (70 points) at the same sentencing event, the worksheet preparer should first complete the Personal Sentencing Worksheets to determine the recommended sentencing outcome. This is because Assault II has the highest point value in the first section of the “personal” sentence length worksheet. Then, the preparer could elect to score Burglary II as the primary offense on the Worksheets to determine which sentencing outcome would be most appropriate in this particular case.
5. If a “worksheet” offense and a “non-worksheet” offense being sentenced at the same sentencing event have the same statutory maximum penalty, then the user should select the “worksheet” offense as the primary offense and the “non-worksheet” offense should be scored as an additional offense.

Example:

- The maximum statutory penalty for Criminal Mischief I (with no prior felony convictions) is 10 years and the maximum statutory penalty for Assault II (with no prior felony convictions) is 10 years. If both are being sentenced at the same event, the worksheet preparer should score the personal worksheets for Assault II. This is because Assault II is covered by the worksheets and Criminal Mischief I is not.
 - In the above scenario, if worksheet offense was a drug or property offense, the non-worksheet offense(s) should be scored under the “Number of Additional Felony Convictions (Including Counts)” section of the Sentence Length Worksheets.
6. If the “non-worksheet” offense has a higher maximum statutory penalty than a “worksheet” offense being sentenced at the same event, then the entire sentencing event is not covered by the worksheets.

Example:

- The maximum statutory penalty for Attempted Arson I (with no prior felony convictions) is 20 years and the maximum statutory penalty for Assault II (with no prior felony convictions) is 10 years. If both are being sentenced at the same event, no worksheets should be prepared. This is because the statutory maximum penalty for Attempted Arson is greater than that for Assault II.
7. Once a sentence has been selected from the recommended sentence range, it is up to the sentencing judge to decide how it shall be imposed.

For instance, if a defendant is being sentenced for three felonies and the recommended time imposed is 30 years, then the judge has several options. He or she could:

1. order the defendant to serve a 360 month sentence for each offense to be served concurrently;
 2. order the defendant to serve three 120 month sentences consecutively; or
 3. order the defendant to serve one 240 month sentence and two 60 month sentences consecutively, etc.
8. Prior records are to be scored based on convictions, juvenile delinquency and/or youthful offender adjudications occurring before the arrest date(s) of the offense(s) being sentenced. If an ambiguous entry on a prior record document cannot be resolved, the scorer should treat

the information in a way that gives the benefit of the doubt to the offender. If any prior record disposition information is missing, the scorer should assume that no conviction occurred. In the event of a dispute, the burden of proving the prior conviction is on the prosecutor. For the purposes of proving in-state prior convictions, any official court document – whether automated or hard copy – shall be sufficient for meeting the burden of proof requirement. When meeting the burden of proof for out-of-state convictions, certified copies of official court records shall be sufficient evidence. Out of state records need not be exemplified.

9. When completing the worksheets, matters disposed of by pleas of *nolo contendere* or “no contest” should be counted as prior convictions. In addition, any incarceration resulting from a plea of *nolo contendere* or “no contest” should be counted in the appropriate places on the worksheets.
10. In the event a defendant has received a pardon for innocence, the conviction for which he or she received the pardon should be excluded when scoring prior convictions. All other pardons – e.g. those to restore voting rights – should not be construed to affect a defendant’s criminal history.
11. Worksheets are designed to be used only when the offense being sentenced is on a worksheet. They are not intended to provide guidance when sentencing similar crimes. This is because the factors included on the worksheets have been statistically derived specifically for the listed offenses and may or may not be statistically significant in predicting sentencing outcomes for others.
12. When scoring prior misdemeanor or violation convictions, all criminal convictions should be counted. Traffic convictions do not count except: Driving Under the Influence, Boating Under the Influence, Leaving the Scene of an Accident, Attempting to Elude Law Enforcement, Driving without a License and Driving While License is Suspended or Revoked.
13. Sentence lengths recommended on the worksheets are intended to give guidance in imposing prison sentences. They are not intended to suggest terms of probation. Compliance with the standards occurs when the sentence conforms with the recommended disposition (prison v. non-prison) and prison duration (months) indicated on the sentencing standards tables is imposed. Judges may however, sentence offenders sentenced to probation for the duration listed on the tables or any other lawful term and still be considered in compliance.
14. Worksheets do not have to be filled out for offenders who are assigned to drug court or pre-trial diversion until a sentence is imposed. Some jurisdictions imposed sentence as soon as a person enters drug court. In these cases, the worksheets should be completed at this time. If sentencing does not occur until later – e.g. when the person “flunks out” of the program – then the worksheets do not need to be completed until the time of sentencing. In short, for drug court and other diversionary programs, the worksheets need not be filled out until the time of sentencing.
15. All previous convictions of misdemeanor Driving Under the Influence (DUI) should be counted as priors, including when the worksheets are being completed for Felony DUI cases.

16. The court's obligation to advise the defendant as to the statutory range of punishment prior to accepting a guilty plea is not affected by the standards.
17. The recommended sentence ranges, in months, presented in the sentencing standards are expected to be applied in 75 percent of all cases being sentenced. They do not apply to mandatory life without parole sentences pursuant to the Habitual Felony Offender Act, Section 13A-5-9, Code of Alabama where a defendant who has been previously convicted of three felonies - one of which is a Class A felony. It is expected that 25 percent of all cases will fall outside of the suggested range.
18. The minimum sentence imposed under the sentencing standards must not be less than the statutory sentences specified in Paragraphs 1-3, Section 13A-5-6, Code of Alabama 1975. (Provided, however, the minimum sentence may still be "split" pursuant to Section 15-18-8, Code of Alabama 1975.)
 1. For a Class A felony, the minimum sentence imposed must be at least 120 months.
 2. For a Class B felony, the minimum sentence imposed must be at least 24 months.
 3. For a Class C felony, the minimum sentence imposed must be at least 12 months and 1 day.

A recommended sentence of 13 months includes any portion of the 13th month, i.e. 12 months and 1 day.
19. Pursuant to § 12-25-35, Code of Alabama, 1975, worksheets should be completed and the sentencing standards recommendations shall be considered for all offenders to whom they are applicable.
20. The Sentencing Commission requests that in any case in which a sentence is imposed that is a departure from the voluntary standards, the court provide a brief reason for the departure. Such statements may be included on forms (electronic or hard copy) provided by the Sentencing Commission and used solely by the Sentencing Commission in evaluating the effectiveness of these standards. See §12-25-35 (c) and (e).

Examples:

More severe

- Worksheets do not express the severity of criminality of the offender's history.
- No alternatives to prison available.
- Offender needs long-term substance abuse treatment available only through the Department of Corrections.
- Injury to victim deserves greater punishment.

Less severe

- The worksheets exaggerate the severity of the offender's prior history.
- Prior history not relevant to this proceeding because the prior history is too remote.
- The recommended sentence punishes too harshly or too leniently.
- Offender shows sufficient progress toward rehabilitation to allow alternative to prison.

21. If a score falls between two scores listed on the sentence length ranges, select the lower of the two scores to determine the recommended sentence range.

INSTRUCTIONS FOR COMPLETING DRUG OFFENSE WORKSHEETS

Worksheet # 1 - DRUG PRISON IN/OUT WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Prior Adult Felony Convictions** - Count all prior felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
3. **Number of Prior Adult Convictions for Misdemeanors or Violations** - Count all prior criminal convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event. Traffic convictions do not count except: Driving Under the Influence, Boating Under the Influence, Leaving the Scene of an Accident, Attempting to Elude Law Enforcement, Driving without a License and Driving While License is Suspended or Revoked.
4. **Prior Incarceration of One Year or More** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters (or re-enters) the prison system, whether or not the person actually serves at least a year. As long as the "non-suspended" portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

5. **Prior Probation or Parole Revocation** - Count prior probation or parole revocations that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event. Only felony probation revocations should be scored.

Note: If the current sentencing event is part of a probation revocation proceeding, this factor should not be scored unless the offender has a prior revocation.

6. **Number of Prior Delinquency and Youthful Offender Adjudications (Violation/Misd/Felony)** - Count all prior juvenile delinquency and youthful offender adjudications that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
7. **Possession/Use of a Deadly Weapon or Dangerous Instrument** - Count this factor if there was a connection other than the mere possession of a weapon between the presence of a deadly weapon (or dangerous instrument) and the commission of any of the offense(s) being sentenced at the current sentencing event. This factor should not be counted if the deadly weapon or dangerous instrument is merely "loot" or proceeds of a sale. For the purposes of completing the worksheets, a deadly weapon or dangerous instrument shall be defined pursuant to Sections 13A-1-2 and 13A-11-72.

Most Serious Offense at Conviction Ranking

Sale Distribution of Schedule I-V (other than to minor) – 113
§ 13A-12-211

Sale/Distribution of Marihuana (other than to minor) – 84
§ 13A-12-211

Unlawful Possession of a Controlled Substance – 71
§ 13A-12-212

Felony DUI – 42
§ 32-5a-191(h)

Possession of Marihuana I – 42
§ 13A-12-213

Worksheet # 2 - DRUG PRISON SENTENCE LENGTH WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Additional Felony Convictions (Including Counts)** - The scorer should total all offenses being sentenced other than the most serious offense being sentenced at the present time. In the event of a multi-count indictment, all counts in which the defendant was found guilty or entered a guilty plea should be counted the same as separate convictions.
3. **Number of Prior Adult Felony Convictions** - Count all prior felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
4. **Number of Prior Adult Class C Felony Convictions** - Count only the number of prior Class C felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.

Note: These offenses should have been scored in # 3 also. These are counted again, because they are statistically significant independent of the total number of adult prior felony convictions.

5. **Prior Incarceration of One Year or More** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters (or re-enters) the prison system, whether or not the person actually *serves* at least a year. As long as the "non-suspended" portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

Please Print

Drug Prison In/Out Worksheet

Defendant _____ Case No. _____
 Judge _____ Asst. DA _____
 Probation Officer _____ Defense Attorney _____
 Worksheet Preparer, Title _____

Most Serious Conviction Offense _____

| | |
|---|---|
| Possession of Marihuana or Controlled Substance | 1 |
| Felony DUI | 4 |
| Sale/Distribution of Marihuana (other than to minor) | 6 |
| Sale/Distribution of Schedule I-V (other than to minor) | 6 |

Score

Number of Prior Adult Felony Convictions _____

| | |
|-----------------|---|
| None | 0 |
| 1 | 2 |
| 2 | 3 |
| 3 | 5 |
| 4 | 6 |
| 5 or more | 7 |

Score

Number of Prior Adult Convictions for Misdemeanors or Violations _____

| | |
|------------------|---|
| 0-1 | 0 |
| 2-5 | 1 |
| 6-9 | 2 |
| 10 or more | 3 |

Score

Prior Incarceration with Sentence Imposed of 1 Year or More _____

If Yes 3

Score

Prior Probation or Parole Revocation _____

If Yes 1

Score

Number of Prior Juvenile Delinquency or YO Adjudications (Violation/Misd/Felony) _____

| | |
|-----------------|---|
| 0 | 0 |
| 1-2 | 1 |
| 3-4 | 2 |
| 5 or more | 3 |

Score

Possession/Use of a Deadly Weapon or Dangerous Instrument _____

If Yes 1

Score

Recommendation

Total Score

1-7 points: Non-Prison

Probation _____
 Community Corrections Probation _____
 County Jail / Work Release _____
 Other Alternative _____
 Reason Recommendation Not Accepted _____

8 or more points: Prison

Department of Corrections _____
 DOC at Community Corrections _____
 DOC Split Sentence _____

Defendant _____ Case No. _____

Most Serious Conviction Offense _____

| | |
|---|-----|
| Felony DUI/ Possession of Marihuana | 42 |
| Unlawful Possession of a Controlled Substance | 71 |
| Sale/Distribution of Marihuana (other than to minor) | 84 |
| Sale/Distribution of Schedule I-V (other than to minor) | 113 |

Score

Number of Additional Felony Convictions (Including Counts) _____

| | |
|-----------------|----|
| None | 0 |
| 1 | 15 |
| 2 | 29 |
| 3 | 44 |
| 4 or more | 58 |

Score

Number of Prior Adult Felony Convictions _____

| | |
|-----------------|----|
| None | 0 |
| 1 | 10 |
| 2 | 20 |
| 3 | 30 |
| 4 | 40 |
| 5 or more | 50 |

Score

Number of Prior Adult Felony Class C Convictions _____

| | |
|-----------------|----|
| None | 0 |
| 1 | 7 |
| 2 | 14 |
| 3 | 21 |
| 4 | 28 |
| 5 | 35 |
| 6 | 43 |
| 7 or more | 50 |

Score

Prior Incarceration with Sentence Imposed of 1 Year or More _____

| | |
|--------------|----|
| If Yes | 14 |
|--------------|----|

Score

See Prison Sentence Length Recommendation Table

Total Score

Recommended Sentence Range _____ to _____ (straight) _____ to _____ (split)

Actual Sentence Imposed _____

Reason did not accept sentence length recommendation _____

Drug Prison Sentence Length Ranges for Worksheet

Time in Months

| <u>Score</u> | <u>Total Sentence</u> | | | <u>Time to Serve On Split</u> | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | <u>Low</u> | <u>Mid</u> | <u>High</u> | <u>Low</u> | <u>Mid</u> | <u>High</u> |
| 42 | 13 | 23 | 32 | 6 | 9 | 12 |
| 49 | 13 | 23 | 32 | 6 | 10 | 14 |
| 52 | 13 | 23 | 32 | 6 | 10 | 14 |
| 56 | 13 | 23 | 32 | 6 | 10 | 14 |
| 57 | 13 | 23 | 32 | 6 | 10 | 14 |
| 59 | 13 | 23 | 32 | 6 | 10 | 14 |
| 62 | 13 | 23 | 32 | 6 | 10 | 14 |
| 64 | 13 | 23 | 32 | 6 | 10 | 14 |
| 66 | 13 | 23 | 32 | 6 | 12 | 18 |
| 67 | 13 | 23 | 32 | 6 | 12 | 18 |
| 69 | 13 | 23 | 32 | 6 | 12 | 18 |
| 70 | 13 | 23 | 32 | 6 | 12 | 18 |
| 71 | 13 | 23 | 32 | 6 | 12 | 18 |
| 72 | 13 | 23 | 32 | 6 | 12 | 18 |
| 73 | 13 | 23 | 32 | 6 | 12 | 18 |
| 74 | 13 | 23 | 32 | 6 | 12 | 18 |
| 76 | 13 | 39 | 65 | 6 | 12 | 18 |
| 77 | 13 | 39 | 65 | 6 | 12 | 18 |
| 78 | 13 | 39 | 65 | 6 | 17 | 27 |
| 79 | 13 | 39 | 65 | 6 | 17 | 27 |
| 80 | 13 | 39 | 65 | 8 | 18 | 27 |
| 81 | 13 | 39 | 65 | 8 | 18 | 27 |
| 82 | 13 | 39 | 65 | 8 | 18 | 27 |
| 83 | 13 | 39 | 65 | 8 | 18 | 27 |
| 84 | 13 | 39 | 65 | 8 | 18 | 27 |
| 86 | 13 | 39 | 65 | 8 | 18 | 27 |
| 87 | 13 | 39 | 65 | 8 | 18 | 27 |
| 88 | 13 | 39 | 65 | 8 | 18 | 27 |
| 89 | 13 | 39 | 65 | 8 | 18 | 27 |
| 90 | 13 | 39 | 65 | 8 | 18 | 27 |
| 91 | 13 | 39 | 65 | 8 | 18 | 27 |
| 92 | 13 | 39 | 65 | 8 | 18 | 27 |
| 93 | 13 | 39 | 65 | 8 | 18 | 27 |
| 94 | 13 | 39 | 65 | 8 | 18 | 27 |
| 95 | 13 | 39 | 65 | 8 | 18 | 27 |
| 96 | 13 | 39 | 65 | 8 | 18 | 27 |
| 97 | 13 | 39 | 65 | 8 | 18 | 27 |
| 98 | 13 | 39 | 65 | 8 | 18 | 27 |
| 99 | 13 | 39 | 65 | 8 | 18 | 27 |
| 100 | 13 | 39 | 65 | 8 | 18 | 27 |
| 101 | 13 | 39 | 65 | 8 | 18 | 27 |
| 102 | 13 | 39 | 65 | 8 | 18 | 27 |
| 103 | 13 | 39 | 65 | 8 | 18 | 27 |
| 104 | 13 | 55 | 97 | 8 | 18 | 27 |
| 105 | 15 | 56 | 97 | 8 | 18 | 27 |
| 106 | 15 | 56 | 97 | 8 | 18 | 27 |
| 107 | 15 | 56 | 97 | 8 | 18 | 27 |
| 108 | 15 | 56 | 97 | 8 | 18 | 27 |
| 109 | 15 | 56 | 97 | 8 | 18 | 27 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 110 | 15 | 56 | 97 | 8 | 18 | 27 |
| 111 | 15 | 56 | 97 | 8 | 18 | 27 |
| 112 | 15 | 56 | 97 | 8 | 18 | 27 |
| 113 | 15 | 56 | 97 | 8 | 18 | 27 |
| 115 | 15 | 56 | 97 | 8 | 18 | 27 |
| 116 | 15 | 56 | 97 | 8 | 18 | 27 |
| 117 | 15 | 56 | 97 | 8 | 18 | 27 |
| 118 | 15 | 56 | 97 | 8 | 18 | 27 |
| 119 | 15 | 56 | 97 | 8 | 18 | 27 |
| 120 | 15 | 56 | 97 | 8 | 18 | 27 |
| 121 | 15 | 56 | 97 | 8 | 18 | 27 |
| 122 | 15 | 56 | 97 | 8 | 18 | 27 |
| 123 | 15 | 56 | 97 | 8 | 18 | 27 |
| 124 | 15 | 56 | 97 | 8 | 18 | 27 |
| 125 | 15 | 56 | 97 | 8 | 18 | 27 |
| 126 | 18 | 58 | 97 | 8 | 18 | 27 |
| 127 | 18 | 58 | 97 | 8 | 18 | 27 |
| 128 | 18 | 58 | 97 | 8 | 18 | 27 |
| 130 | 18 | 58 | 97 | 8 | 18 | 27 |
| 132 | 18 | 58 | 97 | 8 | 18 | 27 |
| 133 | 18 | 58 | 97 | 8 | 18 | 27 |
| 134 | 18 | 58 | 97 | 8 | 18 | 27 |
| 135 | 18 | 58 | 97 | 8 | 18 | 27 |
| 136 | 18 | 58 | 97 | 8 | 18 | 27 |
| 137 | 18 | 58 | 97 | 8 | 18 | 27 |
| 138 | 18 | 58 | 97 | 8 | 18 | 27 |
| 139 | 18 | 58 | 97 | 8 | 18 | 27 |
| 140 | 18 | 58 | 97 | 8 | 18 | 27 |
| 141 | 21 | 62 | 104 | 8 | 18 | 27 |
| 142 | 21 | 62 | 104 | 8 | 18 | 27 |
| 143 | 21 | 62 | 104 | 8 | 18 | 27 |
| 144 | 21 | 62 | 104 | 8 | 18 | 27 |
| 145 | 21 | 62 | 104 | 8 | 18 | 27 |
| 146 | 21 | 62 | 104 | 8 | 18 | 27 |
| 147 | 21 | 62 | 104 | 8 | 18 | 27 |
| 148 | 24 | 64 | 104 | 8 | 18 | 27 |
| 149 | 24 | 64 | 104 | 8 | 18 | 27 |
| 150 | 24 | 64 | 104 | 8 | 18 | 27 |
| 152 | 24 | 64 | 104 | 8 | 18 | 27 |
| 154 | 30 | 67 | 104 | 12 | 20 | 27 |
| 155 | 30 | 67 | 104 | 12 | 20 | 27 |
| 156 | 30 | 67 | 104 | 12 | 20 | 27 |
| 157 | 30 | 67 | 104 | 12 | 20 | 27 |
| 158 | 30 | 67 | 104 | 12 | 20 | 27 |
| 159 | 30 | 67 | 104 | 12 | 20 | 27 |
| 160 | 30 | 67 | 104 | 12 | 20 | 27 |
| 161 | 30 | 67 | 104 | 12 | 20 | 27 |
| 162 | 30 | 67 | 104 | 12 | 20 | 27 |
| 163 | 30 | 67 | 104 | 12 | 20 | 27 |
| 164 | 30 | 67 | 104 | 12 | 20 | 27 |
| 165 | 30 | 67 | 104 | 12 | 20 | 27 |
| 166 | 30 | 67 | 104 | 12 | 20 | 27 |
| 167 | 30 | 67 | 104 | 12 | 20 | 27 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 168 | 30 | 67 | 104 | 12 | 20 | 27 |
| 169 | 30 | 67 | 104 | 12 | 20 | 27 |
| 170 | 30 | 67 | 104 | 12 | 20 | 27 |
| 171 | 30 | 67 | 104 | 12 | 20 | 27 |
| 172 | 36 | 70 | 104 | 12 | 20 | 27 |
| 173 | 36 | 70 | 104 | 12 | 20 | 27 |
| 174 | 36 | 70 | 104 | 12 | 20 | 27 |
| 176 | 36 | 70 | 104 | 12 | 20 | 27 |
| 177 | 36 | 70 | 104 | 12 | 24 | 36 |
| 178 | 36 | 70 | 104 | 12 | 24 | 36 |
| 181 | 45 | 87 | 130 | 16 | 26 | 36 |
| 182 | 45 | 87 | 130 | 16 | 26 | 36 |
| 183 | 45 | 87 | 130 | 16 | 26 | 36 |
| 184 | 45 | 87 | 130 | 16 | 26 | 36 |
| 185 | 45 | 87 | 130 | 16 | 26 | 36 |
| 188 | 45 | 87 | 130 | 24 | 30 | 36 |
| 189 | 45 | 87 | 130 | 24 | 30 | 36 |
| 191 | 45 | 87 | 130 | 24 | 30 | 36 |
| 192 | 45 | 87 | 130 | 24 | 30 | 36 |
| 195 | 45 | 87 | 130 | 24 | 30 | 36 |
| 196 | 45 | 87 | 130 | 24 | 30 | 36 |
| 198 | 45 | 87 | 130 | 24 | 30 | 36 |
| 199 | 45 | 87 | 130 | 24 | 30 | 36 |
| 200 | 45 | 87 | 130 | 24 | 30 | 36 |
| 203 | 45 | 87 | 130 | 24 | 30 | 36 |
| 205 | 45 | 87 | 130 | 24 | 30 | 36 |
| 206 | 45 | 87 | 130 | 24 | 30 | 36 |
| 212 | 45 | 87 | 130 | 24 | 30 | 36 |
| 213 | 45 | 87 | 130 | 24 | 30 | 36 |
| 214 | 45 | 87 | 130 | 24 | 30 | 36 |
| 220 | 45 | 87 | 130 | 24 | 30 | 36 |
| 222 | 45 | 87 | 130 | 24 | 30 | 36 |
| 227 | 45 | 87 | 130 | 24 | 30 | 36 |
| 232 | 45 | 87 | 130 | 24 | 30 | 36 |
| 235 | 45 | 87 | 130 | 24 | 30 | 36 |
| 242 | 45 | 87 | 130 | 24 | 30 | 36 |

INSTRUCTIONS FOR COMPLETING PROPERTY OFFENSE WORKSHEETS

Worksheet # 1 - PROPERTY PRISON IN/OUT WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Prior Adult Felony Convictions** - Count all prior felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
3. **Number of Prior Adult Felony Convictions for the Same Felony** - Count all prior felony convictions for the same offense that occurred prior to the arrest date of the most serious offense being sentenced at the current sentencing event. Only count those offenses where the crime and the degree are identical to the current offense. For instance, if the current most serious offense is Burglary I, then a prior Burglary II or III conviction would not be scored.
4. **Number of Prior Adult Convictions for Misdemeanors or Violations** - Count all prior criminal convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event. Traffic convictions do not count except: Driving Under the Influence, Boating Under the Influence, Leaving the Scene of an Accident, Attempting to Elude Law Enforcement, Driving without a License and Driving While License is Suspended or Revoked.
5. **Prior Incarceration of One Year or More** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters (or re-enters) the prison system, whether or not the person actually *serves* at least a year. As long as the "non-suspended" portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

6. **Prior Incarceration with Sentence Imposed of Less Than One Year** - Count prior prison, jail sentences or Department of Corrections/community corrections sentences where the non-suspended time imposed was less than one year. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Note: If a defendant received a non-suspended sentence of less than one year to be served concurrently with a sentence of more than one year, it should not be counted here. This factor should only be scored in cases where the defendant received a non-suspended sentence of less than one year separate and apart from any longer period of incarceration imposed.

7. **Prior Probation or Parole Revocation** - Count prior probation or parole revocations that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event. Only felony probation revocations should be scored.

Note: If the current sentencing event is part of a probation revocation proceeding, this factor should not be scored unless the offender has a prior revocation.

8. **Number of Prior Delinquency and Youthful Offender Adjudications (Violation/Misd/Felony)** - Count all prior juvenile delinquency and Youthful Offender adjudications that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
9. **Possession/Use of a Deadly Weapon or Dangerous Instrument** - Count this factor if there was a connection other than the mere possession of a weapon between the presence of a deadly weapon (or dangerous instrument) and the commission of any of the offense(s) being sentenced at the current sentencing event. This factor should not be counted if the deadly weapon or dangerous instrument is merely “loot” or proceeds of a sale. For the purposes of completing the worksheets, a deadly weapon or dangerous instrument shall be defined pursuant to Sections 13A-1-2 and 13A-11-72.
10. **Victim Injury** – Count this factor if a victim suffered physical injury or serious physical injury during the commission or flight from the offense. For the purposes of completing the worksheet, physical injury shall be defined pursuant to Section 13A-1-2 (12), Code of Alabama 1975 and serious physical injury shall be defined pursuant to Section 13A-1-2 (14), Code of Alabama 1975.

| Most Serious Offense at Conviction Ranking |
|--|
| Burglary I – 275 points §13A-7-5 |
| Burglary II – 70 points §13A-7-6 |
| Theft of Property I – 58 points §13A-8-3 |
| Receiving Stolen Property I – 58 points §13A-8-17 |
| Theft of Property II – 46 points §13A-8-4 |
| Receiving Stolen Property II – 46 points §13A-8-18 |
| Burglary III – 45 points §13A-7-7 |
| Forgery II – 44 points §13A-9-2 |
| Possession of a Forged Instrument II – 42 points §13A-9-6 |
| Possession/Use Credit/Debit Card – 39 points §13A-9-14 |
| Unauthorized Use ¹ /B&E Vehicle – 32 points §13A-8-11 (a)(4) & (b) |

¹ Only includes felony Unauthorized Use of a Motor Vehicle, Section 13A-8-11, Code of Alabama 1975.

Worksheet # 2 - PROPERTY PRISON SENTENCE LENGTH WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Additional Felony Convictions (Including Counts)** - The scorer should total all offenses being sentenced other than the most serious offense being sentenced at the present time. In the event of a multi-count indictment, all counts in which the defendant was found guilty or entered a guilty plea should be counted the same as separate convictions. This does not include prior convictions - they are counted elsewhere.
3. **Number of Prior Adult Felony Convictions** - Count all prior felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
4. **Number of Prior Adult Felony Property Convictions** - Count only the number of prior felony property convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.

Note: These offenses should have been scored in # 3 also. These are counted again, because they are statistically significant independent of the total number of adult prior felony convictions.

5. **Prior Incarceration of One Year or More** - Count prior prison, jail sentences or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters the prison system, whether or not the person actually serves at least a year. As long as the "non-suspended" portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

6. **Prior Probation or Parole Revocation** - Count prior probation or parole revocations that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event. Only felony probation revocations should be scored.

Note: If the current sentencing event is part of a probation revocation proceeding, this factor should not be scored unless the offender has a prior revocation.

7. **Possession/Use of a Deadly Weapon or a Dangerous Instrument and/or Victim Injury** – Count this if the offender used or brandished a deadly weapon or dangerous instrument. This factor should not be counted if the deadly weapon or dangerous instrument is merely "loot" or proceeds of a sale. There should be a connection other than the mere possession of the deadly weapon or dangerous instrument for this factor to be scored. For the purposes of completing the worksheets, a deadly weapon or dangerous instrument shall be defined pursuant to Sections 13A-1-2 and 13A-11-72.

Count this factor if a victim suffered physical injury or serious physical injury during the commission or flight from the offense. For the purposes of completing the worksheet

physical injury shall be defined pursuant to Section 13A-1-2 (12), Code of Alabama 1975 and serious physical injury shall be defined pursuant to Section 13A-1-2 (14), Code of Alabama 1975.

Additionally, this factor should be counted if the defendant enters a dwelling with a deadly weapon whether or not it was used or brandished during the commission of the offense.

8. **Acquired a Firearm During Offense** – Count this if a firearm was acquired during the commission of the offense(s) being scored at the current sentencing event.

Property Prison In/Out Worksheet

Please Print

Defendant _____ Case No. _____

Judge _____ Asst. DA _____

Probation Officer _____ Defense Attorney _____

Worksheet Preparer, Title _____

Most Serious Conviction Offense

- | | | | |
|--|----|--------------------|----|
| Possession/Use Credit/Debit Card | 8 | Burglary III | 11 |
| Possession Forged Instrument II, Forgery II, | | Burglary II | 13 |
| Theft of Prop. II, Receive Stolen Prop. II | 9 | Burglary I | 14 |
| Theft of Prop. I, Receive Stolen Prop. I, | | | |
| Unauthorized Use/B&E Vehicle | 10 | | |

Score

Number of Prior Adult Felony Convictions

- | | |
|-----------------|---|
| None | 0 |
| 1-2 | 1 |
| 3-4 | 2 |
| 5 or more | 3 |

Score

Number of Prior Adult Convictions for Same Felony

- | | |
|-----------------|---|
| None | 0 |
| 1 | 1 |
| 2 | 2 |
| 3-4 | 3 |
| 5 or more | 4 |

Score

Number of Prior Adult Convictions for Misdemeanors or Violations

- | | |
|------------------|---|
| 0-1 | 0 |
| 2-5 | 1 |
| 6-9 | 2 |
| 10 or more | 3 |

Score

Prior Incarceration with Sentence Imposed of 1 Year or More

- | | |
|--------------|---|
| If Yes | 6 |
|--------------|---|

Score

Prior Incarceration with Sentence Imposed of Less Than 1 Year

- | | |
|--------------|---|
| If Yes | 3 |
|--------------|---|

Score

Prior Probation or Parole Revocation

- | | |
|--------------|---|
| If Yes | 2 |
|--------------|---|

Score

Number of Prior Juvenile Delinquency or YO Adjudications (Violation/Misd/Felony)

- | | |
|-----------------|---|
| None | 0 |
| 1 | 1 |
| 2-3 | 2 |
| 4 | 3 |
| 5 or more | 4 |

Score

Possession/Use of a Deadly Weapon or Dangerous Instrument

- | | |
|--------------|---|
| If Yes | 1 |
|--------------|---|

Score

Injury to Victim

- | | |
|--------------|---|
| If Yes | 2 |
|--------------|---|

Score

Recommendation

Total Score

8-14 points: Non-Prison

15 or more points: Prison

Probation ____ Community Corrections Probation ____

Department of Corrections ____

County Jail / Work Release ____ Other Alternative ____

DOC at Community Corrections ____

Reason Recommendation Not Accepted

DOC Split Sentence ____

Defendant _____ Case No. _____

Most Serious Conviction Offense

| | | | |
|--|----|--|-----|
| Unauthorized Use/B&E Vehicle | 32 | Theft of Prop. II, Receive Stolen Prop. II | 46 |
| Possession/Use Credit/Debit Card | 39 | Theft of Prop. I, Receive Stolen Prop. I | 58 |
| Possession Forged Instrument I | 42 | Burglary II | 70 |
| Forgery II | 44 | Burglary I | 275 |
| Burglary III | 45 | | |

Score

Number of Additional Felony Convictions (Including Counts)

| | |
|-----------------|----|
| None | 0 |
| 1 | 5 |
| 2 | 10 |
| 3 or more | 15 |

Score

Number of Prior Adult Felony Convictions

| | | | |
|------------|----|------------------|-----|
| None | 0 | 6 | 72 |
| 1 | 12 | 7 | 84 |
| 2 | 24 | 8 | 97 |
| 3 | 36 | 9 | 109 |
| 4 | 48 | 10 or more | 121 |
| 5 | 60 | | |

Score

Number of Prior Adult Felony Property Convictions

| | |
|-----------------|----|
| None | 0 |
| 1 | 7 |
| 2 | 14 |
| 3 | 21 |
| 4 | 27 |
| 5 or more | 34 |

Score

Prior Incarceration with Sentence Imposed of 1 Year or More

If Yes 15

Score

Prior Probation or Parole Revocation

If Yes 7

Score

Possession/Use of a Deadly Weapon/Dangerous Instrument or Injury to Victim

If Yes 37

Score

Acquired a Firearm During Offense

If Yes 12

Score

See Prison Sentence Length Recommendation Table

Total Score

Recommended Sentence Range ____ to ____ (straight) ____ to ____ (split)

Actual Sentence Imposed _____

Reason did not accept sentence length recommendation _____

Property Prison Sentence Length Ranges for Worksheet

Time in Months

| <u>Score</u> | <u>Total Sentence</u> | | | <u>Time to Serve On Split</u> | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | <u>Low</u> | <u>Mid</u> | <u>High</u> | <u>Low</u> | <u>Mid</u> | <u>High</u> |
| 32 | 13 | 18 | 23 | 6 | 9 | 12 |
| 37 | 13 | 22 | 31 | 6 | 9 | 12 |
| 39 | 13 | 22 | 31 | 6 | 9 | 12 |
| 42 | 13 | 22 | 31 | 6 | 9 | 12 |
| 44 | 13 | 22 | 31 | 6 | 9 | 12 |
| 45 | 13 | 22 | 31 | 6 | 9 | 12 |
| 46 | 13 | 22 | 31 | 6 | 9 | 12 |
| 47 | 13 | 22 | 31 | 6 | 9 | 12 |
| 49 | 14 | 23 | 31 | 6 | 9 | 12 |
| 51 | 14 | 23 | 31 | 6 | 9 | 12 |
| 52 | 14 | 27 | 38 | 6 | 9 | 12 |
| 53 | 14 | 27 | 38 | 6 | 9 | 12 |
| 54 | 14 | 27 | 38 | 6 | 9 | 12 |
| 55 | 14 | 27 | 38 | 6 | 9 | 12 |
| 56 | 14 | 31 | 46 | 6 | 9 | 12 |
| 57 | 14 | 31 | 46 | 6 | 9 | 12 |
| 58 | 14 | 31 | 46 | 6 | 9 | 12 |
| 59 | 14 | 31 | 46 | 6 | 9 | 12 |
| 60 | 14 | 31 | 46 | 6 | 9 | 12 |
| 61 | 16 | 31 | 46 | 6 | 9 | 12 |
| 62 | 16 | 31 | 46 | 6 | 9 | 12 |
| 63 | 16 | 31 | 46 | 6 | 9 | 12 |
| 64 | 16 | 31 | 46 | 6 | 9 | 12 |
| 65 | 16 | 31 | 46 | 6 | 9 | 12 |
| 66 | 16 | 31 | 46 | 6 | 9 | 12 |
| 67 | 16 | 31 | 46 | 6 | 9 | 12 |
| 68 | 16 | 31 | 46 | 6 | 9 | 12 |
| 69 | 16 | 31 | 46 | 6 | 9 | 12 |
| 70 | 16 | 31 | 46 | 6 | 9 | 12 |
| 71 | 19 | 32 | 46 | 6 | 9 | 12 |
| 72 | 19 | 32 | 46 | 6 | 9 | 12 |
| 73 | 19 | 32 | 46 | 6 | 9 | 12 |
| 74 | 19 | 32 | 46 | 6 | 9 | 12 |
| 75 | 19 | 32 | 46 | 6 | 9 | 12 |
| 76 | 19 | 36 | 54 | 6 | 9 | 12 |
| 77 | 19 | 36 | 54 | 6 | 9 | 12 |
| 78 | 22 | 42 | 61 | 6 | 9 | 12 |
| 79 | 22 | 42 | 61 | 6 | 9 | 12 |
| 80 | 22 | 42 | 61 | 6 | 9 | 12 |
| 81 | 22 | 42 | 61 | 6 | 9 | 12 |
| 82 | 22 | 42 | 61 | 6 | 9 | 12 |
| 83 | 22 | 42 | 61 | 6 | 9 | 12 |
| 84 | 22 | 42 | 61 | 6 | 9 | 12 |
| 85 | 22 | 42 | 61 | 6 | 9 | 12 |
| 86 | 22 | 42 | 61 | 6 | 9 | 12 |
| 87 | 22 | 42 | 61 | 6 | 9 | 12 |
| 88 | 22 | 42 | 61 | 6 | 9 | 12 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|-------------------|--------------------|-------------------------------|-------------------|--------------------|
| | <u>Low</u> | <u>Mid</u> | <u>High</u> | <u>Low</u> | <u>Mid</u> | <u>High</u> |
| 89 | 22 | 42 | 61 | 6 | 12 | 19 |
| 90 | 22 | 45 | 69 | 6 | 12 | 19 |
| 91 | 22 | 45 | 69 | 6 | 12 | 19 |
| 92 | 22 | 45 | 69 | 6 | 12 | 19 |
| 93 | 22 | 45 | 69 | 6 | 12 | 19 |
| 94 | 22 | 45 | 69 | 6 | 12 | 19 |
| 95 | 22 | 45 | 69 | 6 | 12 | 19 |
| 96 | 22 | 45 | 69 | 6 | 12 | 19 |
| 97 | 22 | 45 | 69 | 6 | 12 | 19 |
| 98 | 22 | 45 | 69 | 6 | 12 | 19 |
| 99 | 22 | 49 | 77 | 6 | 12 | 19 |
| 100 | 22 | 49 | 77 | 6 | 12 | 19 |
| 101 | 22 | 68 | 115 | 6 | 12 | 19 |
| 102 | 22 | 68 | 115 | 6 | 12 | 19 |
| 103 | 22 | 68 | 115 | 6 | 12 | 19 |
| 104 | 22 | 68 | 115 | 6 | 12 | 19 |
| 105 | 22 | 68 | 115 | 6 | 12 | 19 |
| 106 | 24 | 70 | 115 | 6 | 12 | 19 |
| 107 | 27 | 71 | 115 | 6 | 12 | 19 |
| 108 | 27 | 71 | 115 | 6 | 12 | 19 |
| 109 | 27 | 71 | 115 | 6 | 12 | 19 |
| 110 | 27 | 71 | 115 | 6 | 12 | 19 |
| 111 | 27 | 71 | 115 | 6 | 12 | 19 |
| 112 | 27 | 71 | 115 | 6 | 12 | 19 |
| 113 | 27 | 71 | 115 | 6 | 12 | 19 |
| 114 | 27 | 71 | 115 | 6 | 12 | 19 |
| 115 | 27 | 71 | 115 | 6 | 12 | 19 |
| 116 | 27 | 71 | 115 | 6 | 12 | 19 |
| 117 | 27 | 71 | 115 | 6 | 12 | 19 |
| 118 | 32 | 74 | 115 | 6 | 12 | 19 |
| 119 | 54 | 85 | 115 | 6 | 12 | 19 |
| 120 | 54 | 85 | 115 | 6 | 12 | 19 |
| 121 | 54 | 85 | 115 | 6 | 12 | 19 |
| 122 | 54 | 85 | 115 | 6 | 12 | 19 |
| 123 | 54 | 85 | 115 | 6 | 12 | 19 |
| 124 | 54 | 85 | 115 | 6 | 12 | 19 |
| 125 | 54 | 85 | 115 | 6 | 12 | 19 |
| 126 | 54 | 85 | 115 | 6 | 12 | 19 |
| 127 | 54 | 85 | 115 | 6 | 12 | 19 |
| 128 | 54 | 85 | 115 | 6 | 12 | 19 |
| 129 | 54 | 85 | 115 | 6 | 12 | 19 |
| 130 | 54 | 85 | 115 | 6 | 12 | 19 |
| 131 | 54 | 85 | 115 | 6 | 12 | 19 |
| 132 | 54 | 85 | 115 | 6 | 12 | 19 |
| 133 | 54 | 85 | 115 | 6 | 12 | 19 |
| 134 | 54 | 85 | 115 | 6 | 12 | 19 |
| 135 | 54 | 85 | 115 | 6 | 12 | 19 |
| 136 | 54 | 85 | 115 | 6 | 12 | 19 |
| 137 | 54 | 85 | 115 | 6 | 12 | 19 |
| 138 | 54 | 85 | 115 | 6 | 12 | 19 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 139 | 54 | 85 | 115 | 6 | 12 | 19 |
| 140 | 54 | 85 | 115 | 6 | 12 | 19 |
| 141 | 54 | 85 | 115 | 6 | 12 | 19 |
| 142 | 54 | 85 | 115 | 6 | 12 | 19 |
| 143 | 54 | 85 | 115 | 6 | 12 | 19 |
| 144 | 76 | 95 | 115 | 6 | 12 | 19 |
| 145 | 76 | 95 | 115 | 6 | 12 | 19 |
| 146 | 76 | 95 | 115 | 6 | 12 | 19 |
| 147 | 76 | 95 | 115 | 6 | 12 | 19 |
| 148 | 76 | 95 | 115 | 6 | 12 | 19 |
| 149 | 76 | 95 | 115 | 6 | 12 | 19 |
| 150 | 76 | 95 | 115 | 6 | 12 | 19 |
| 151 | 76 | 95 | 115 | 12 | 15 | 19 |
| 152 | 76 | 95 | 115 | 12 | 15 | 19 |
| 153 | 76 | 95 | 115 | 12 | 15 | 19 |
| 154 | 76 | 95 | 115 | 12 | 15 | 19 |
| 155 | 76 | 95 | 115 | 12 | 15 | 19 |
| 156 | 76 | 95 | 115 | 12 | 15 | 19 |
| 157 | 76 | 95 | 115 | 12 | 15 | 19 |
| 158 | 76 | 95 | 115 | 12 | 15 | 19 |
| 159 | 76 | 95 | 115 | 12 | 15 | 19 |
| 160 | 76 | 95 | 115 | 12 | 15 | 19 |
| 161 | 76 | 95 | 115 | 12 | 15 | 19 |
| 162 | 76 | 95 | 115 | 12 | 15 | 19 |
| 163 | 76 | 95 | 115 | 12 | 15 | 19 |
| 164 | 76 | 95 | 115 | 12 | 15 | 19 |
| 165 | 76 | 95 | 115 | 12 | 15 | 19 |
| 166 | 76 | 95 | 115 | 12 | 15 | 19 |
| 167 | 76 | 95 | 115 | 12 | 15 | 19 |
| 168 | 81 | 102 | 123 | 12 | 15 | 19 |
| 169 | 81 | 102 | 123 | 12 | 15 | 19 |
| 170 | 81 | 102 | 123 | 12 | 18 | 25 |
| 171 | 81 | 102 | 123 | 12 | 18 | 25 |
| 172 | 81 | 102 | 123 | 12 | 18 | 25 |
| 173 | 81 | 102 | 123 | 12 | 18 | 25 |
| 174 | 81 | 102 | 123 | 12 | 18 | 25 |
| 175 | 81 | 102 | 123 | 12 | 18 | 25 |
| 176 | 81 | 102 | 123 | 12 | 18 | 25 |
| 177 | 81 | 102 | 123 | 12 | 18 | 25 |
| 178 | 81 | 102 | 123 | 12 | 18 | 25 |
| 179 | 81 | 102 | 123 | 12 | 18 | 25 |
| 180 | 81 | 102 | 123 | 12 | 18 | 25 |
| 181 | 81 | 102 | 123 | 12 | 18 | 25 |
| 182 | 81 | 102 | 123 | 12 | 18 | 25 |
| 183 | 81 | 102 | 123 | 12 | 18 | 25 |
| 184 | 81 | 102 | 123 | 12 | 18 | 25 |
| 185 | 81 | 102 | 123 | 12 | 18 | 25 |
| 186 | 81 | 102 | 123 | 12 | 18 | 25 |
| 187 | 81 | 102 | 123 | 12 | 18 | 25 |
| 188 | 81 | 102 | 123 | 12 | 18 | 25 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 189 | 81 | 102 | 123 | 12 | 18 | 25 |
| 190 | 81 | 102 | 123 | 12 | 18 | 25 |
| 191 | 81 | 102 | 123 | 12 | 18 | 25 |
| 192 | 81 | 117 | 154 | 12 | 18 | 25 |
| 195 | 81 | 117 | 154 | 12 | 18 | 25 |
| 197 | 81 | 117 | 154 | 12 | 18 | 25 |
| 198 | 81 | 117 | 154 | 12 | 18 | 25 |
| 199 | 81 | 117 | 154 | 12 | 18 | 25 |
| 201 | 81 | 117 | 154 | 12 | 18 | 25 |
| 202 | 81 | 117 | 154 | 12 | 18 | 25 |
| 204 | 81 | 117 | 154 | 12 | 18 | 25 |
| 205 | 81 | 117 | 154 | 12 | 18 | 25 |
| 206 | 81 | 117 | 154 | 12 | 22 | 31 |
| 207 | 81 | 117 | 154 | 12 | 22 | 31 |
| 208 | 81 | 117 | 154 | 12 | 22 | 31 |
| 209 | 81 | 117 | 154 | 12 | 22 | 31 |
| 210 | 81 | 117 | 154 | 12 | 22 | 31 |
| 211 | 81 | 117 | 154 | 12 | 22 | 31 |
| 213 | 81 | 117 | 154 | 12 | 22 | 31 |
| 214 | 81 | 117 | 154 | 12 | 22 | 31 |
| 215 | 81 | 117 | 154 | 18 | 25 | 31 |
| 216 | 81 | 117 | 154 | 18 | 25 | 31 |
| 217 | 81 | 117 | 154 | 18 | 25 | 31 |
| 219 | 81 | 117 | 154 | 18 | 25 | 31 |
| 220 | 81 | 117 | 154 | 18 | 25 | 31 |
| 222 | 81 | 117 | 154 | 18 | 25 | 31 |
| 223 | 81 | 117 | 154 | 18 | 25 | 31 |
| 225 | 81 | 117 | 154 | 18 | 25 | 31 |
| 228 | 81 | 117 | 154 | 18 | 25 | 31 |
| 232 | 81 | 117 | 154 | 18 | 25 | 31 |
| 233 | 81 | 117 | 154 | 18 | 25 | 31 |
| 235 | 81 | 117 | 154 | 18 | 25 | 31 |
| 245 | 81 | 117 | 154 | 18 | 25 | 31 |
| 246 | 81 | 117 | 154 | 18 | 25 | 31 |
| 250 | 81 | 117 | 154 | 18 | 25 | 31 |
| 260 | 81 | 117 | 154 | 18 | 25 | 31 |
| 274 | 81 | 117 | 154 | 18 | 25 | 31 |
| 275 | 120 | 135 | 156 | 24 | 30 | 36 |
| 280 | 120 | 135 | 156 | 24 | 30 | 36 |
| 282 | 120 | 135 | 156 | 24 | 30 | 36 |
| 285 | 120 | 135 | 156 | 24 | 30 | 36 |
| 287 | 120 | 135 | 156 | 24 | 30 | 36 |
| 290 | 120 | 135 | 156 | 24 | 30 | 36 |
| 292 | 120 | 135 | 156 | 24 | 30 | 36 |
| 294 | 120 | 135 | 156 | 24 | 30 | 36 |
| 299 | 120 | 135 | 156 | 24 | 30 | 36 |
| 302 | 120 | 135 | 156 | 24 | 30 | 36 |
| 304 | 120 | 135 | 156 | 24 | 30 | 36 |
| 306 | 120 | 135 | 156 | 24 | 30 | 36 |
| 308 | 120 | 135 | 156 | 24 | 30 | 36 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 309 | 120 | 135 | 156 | 24 | 30 | 36 |
| 311 | 120 | 135 | 156 | 24 | 30 | 36 |
| 312 | 120 | 135 | 156 | 24 | 30 | 36 |
| 313 | 120 | 135 | 156 | 24 | 30 | 36 |
| 314 | 120 | 135 | 156 | 24 | 30 | 36 |
| 317 | 120 | 135 | 156 | 24 | 30 | 36 |
| 318 | 120 | 150 | 180 | 24 | 30 | 36 |
| 320 | 120 | 150 | 180 | 24 | 30 | 36 |
| 321 | 120 | 150 | 180 | 24 | 30 | 36 |
| 323 | 120 | 150 | 180 | 24 | 30 | 36 |
| 324 | 120 | 150 | 180 | 24 | 30 | 36 |
| 326 | 120 | 150 | 180 | 24 | 30 | 36 |
| 329 | 120 | 150 | 180 | 24 | 30 | 36 |
| 331 | 120 | 150 | 180 | 24 | 30 | 36 |
| 333 | 120 | 150 | 180 | 24 | 30 | 36 |
| 335 | 120 | 150 | 180 | 24 | 30 | 36 |
| 336 | 120 | 150 | 180 | 24 | 30 | 36 |
| 338 | 120 | 150 | 180 | 24 | 30 | 36 |
| 339 | 120 | 150 | 180 | 24 | 30 | 36 |
| 341 | 120 | 150 | 180 | 24 | 30 | 36 |
| 342 | 120 | 150 | 180 | 24 | 30 | 36 |
| 343 | 120 | 150 | 180 | 24 | 30 | 36 |
| 345 | 120 | 150 | 180 | 24 | 30 | 36 |
| 347 | 120 | 150 | 180 | 24 | 30 | 36 |
| 350 | 120 | 150 | 180 | 24 | 30 | 36 |
| 351 | 120 | 150 | 180 | 24 | 30 | 36 |
| 353 | 144 | 192 | 240 | 36 | 48 | 60 |
| 356 | 144 | 192 | 240 | 36 | 48 | 60 |
| 358 | 144 | 192 | 240 | 36 | 48 | 60 |
| 359 | 144 | 192 | 240 | 36 | 48 | 60 |
| 362 | 144 | 192 | 240 | 36 | 48 | 60 |
| 363 | 144 | 192 | 240 | 36 | 48 | 60 |
| 364 | 144 | 192 | 240 | 36 | 48 | 60 |
| 369 | 144 | 192 | 240 | 36 | 48 | 60 |
| 370 | 144 | 192 | 240 | 36 | 48 | 60 |
| 375 | 144 | 192 | 240 | 36 | 48 | 60 |
| 380 | 144 | 192 | 240 | 36 | 48 | 60 |
| 382 | 144 | 192 | 240 | 36 | 48 | 60 |
| 385 | 144 | 192 | 240 | 36 | 48 | 60 |
| 396 | 144 | 192 | 240 | 36 | 48 | 60 |
| 404 | 144 | 192 | 240 | 36 | 48 | 60 |
| 418 | 144 | 192 | 240 | 36 | 48 | 60 |

INSTRUCTIONS FOR COMPLETING PERSONAL OFFENSE WORKSHEETS

Worksheet # 1 – PERSONAL PRISON IN/OUT WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Prior Adult Felony Convictions** - Count all prior felony convictions that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
3. **Prior Incarceration of One Year or More** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters the prison system, whether or not the person actually *serves* at least a year. As long as the “non-suspended” portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

4. **Number of Prior Delinquency and Youthful Offender Adjudications (Violation/Misd/Felony)** - Count all prior juvenile delinquency and Youthful Offender adjudications that occurred prior to the arrest date(s) of the offense(s) being sentenced at the current sentencing event.
5. **Possession/Use of a Deadly Weapon or a Dangerous Instrument**– Count this if the offender used or brandished a deadly weapon or dangerous instrument. This factor should not be counted if the deadly weapon or dangerous instrument is merely “loot” or proceeds of a sale. There should be a connection other than the mere possession of the deadly weapon or dangerous instrument for this factor to be scored. For the purposes of completing the worksheets, a deadly weapon or dangerous instrument shall be defined pursuant to Sections 13A-1-2 and 13A-11-72, Code of Alabama 1975.

Additionally, this factor should be counted if the defendant enters a dwelling with a deadly weapon whether or not it was used or brandished during the commission of the offense.

Most Serious Offense at Conviction Ranking

Murder – 728 points
§13A-6-2

Rape I – 386 points
§13A-6-61

Robbery I – 374 points
§13A-8-41

Manslaughter – 238 points
§13A-6-3

Sodomy I – 235 points
§13A-6-63

Robbery II – 173 points
§13A-8-42

Assault I – 148 points
§13A-6-20

Rape II – 129 points
§13A-6-62

Robbery III – 89 points
§13A-8-43

Sodomy II – 81 points
§13A-6-64

Assault II – 72 points
§13A-6-21

Worksheet # 2 - PERSONAL PRISON SENTENCE LENGTH WORKSHEET

1. **Most Serious Conviction Offense** - The scorer should select only the most serious offense being sentenced at the current sentencing event. (See General Instructions.)
2. **Number of Additional Felony Convictions (Including Counts)** - The scorer should total all offenses being sentenced other than the most serious offense being sentenced at the present time. In the event of a multi-count indictment, all counts in which the defendant was found guilty or entered a guilty plea should be counted the same as separate convictions.
3. **Prior Incarceration of One Year or More** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was one year or greater. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Notes: This should be counted each time a person enters the prison system, whether or not the person actually *serves* at least a year. As long as the “non-suspended” portion of the sentence was one year or longer at the time of admission, this should be counted.

This factor is not cumulative. For instance, if a defendant was sentenced to serve two separate non-suspended six month sentences, they should not be counted here. Only count those sentences where the non-suspended time imposed at one sentencing event was at least one year.

4. **Prior Incarceration with Sentence Imposed of Less Than One Year** - Count prior prison, jail or Department of Corrections/community corrections sentences where the non-suspended time imposed was less than one year. Count only sentences that occurred prior to the arrest date(s) of the offense(s) being sentenced.

Note: If a defendant received a non-suspended sentence of less than one year to be served concurrently with a sentence of more than one year, it should not be counted here. This factor should only be scored in cases where the defendant received a non-suspended sentence of less than one year separate and apart from any longer period of incarceration imposed.

Please Print

Personal Prison In/Out Worksheet

Defendant _____ Case No. _____
 Judge _____ Asst. DA _____
 Probation Officer _____ Defense Attorney _____
 Worksheet Preparer _____

Most Serious Conviction Offense _____

| | | | |
|------------------|---|---|----|
| Assault I | 1 | Rape II, Sodomy II, Robbery II | 5 |
| Robbery III..... | 3 | Rape I, Sodomy I, Manslaughter, Robbery I | 8 |
| Assault I | 4 | Murder | 10 |

Score

Number of Prior Adult Felony Convictions _____

| | |
|-----------------|---|
| None | 0 |
| 1 | 2 |
| 2 | 3 |
| 3 | 5 |
| 4 | 6 |
| 5 or more | 8 |

Score

Prior Incarceration with Sentence Imposed of 1 Year or More _____

If Yes 1

Score

Number of Prior Juvenile Delinquency or YO Adjudications (Violation/Misd/Felony) _____

| | |
|-----------------|---|
| None | 0 |
| 1-2 | 1 |
| 3-4 | 2 |
| 5 or more | 3 |

Score

Possession/Use of Deadly Weapon or Dangerous Instrument _____

If Yes 4

Score

| | | |
|--|------------------------------------|---|
| Recommendation | Total Score | <input style="width: 60px; height: 30px; border: 3px double black;" type="text"/> |
| 1-7 points: Non-Prison | 8 or more points: Prison | |
| Community Corrections Probation _____ | Department of Corrections _____ | |
| County Jail / Work Release _____ | DOC at Community Corrections _____ | |
| Other Alternative _____ | DOC Split Sentence _____ | |
| Reason Recommendation Not Accepted _____ | | |

It is anticipated the standards will be applied only 75 percent of the time, and that upward or downward departures are authorized and expected to occur.

Personal Prison Sentence Length Worksheet

Defendant _____ Case No. _____

Most Serious Conviction Offense

| | |
|-------------------|-----|
| Assault II | 72 |
| Sodomy II | 81 |
| Robbery III | 89 |
| Rape II | 129 |
| Assault I | 148 |
| Robbery II | 173 |

| | |
|--------------------|-----|
| Sodomy I | 235 |
| Manslaughter | 238 |
| Robbery I | 374 |
| Rape I | 386 |
| Murder | 728 |

Score

Number of Prior Adult Felony Convictions

| | |
|------------------|-----|
| None | 0 |
| 1 | 19 |
| 2 | 37 |
| 3 | 56 |
| 4 | 75 |
| 5 | 93 |
| 6 | 112 |
| 7 | 130 |
| 8 | 149 |
| 9 | 168 |
| 10 or more | 186 |

Score

Number of Prior Incarcerations with Sentence Imposed of 1 Year or More

| | |
|-----------------|-----|
| None | 0 |
| 1 | 51 |
| 2 | 101 |
| 3 | 152 |
| 4 | 202 |
| 5 or more | 253 |

Score

Prior Incarceration with Sentence Imposed of Less Than 1 Year

If Yes

33

Score

See Prison Sentence Length Recommendation Table

Total Score

Recommended Sentence Range _____ to _____ (straight) _____ to _____ (split)

Actual Sentence Imposed _____

Reason would not accept sent. recommendation _____

Personal Prison Sentence Length Ranges for Worksheet

Time in Months

| <u>Score</u> | <u>Total Sentence</u> | | | <u>Time to Serve On Split</u> | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | <u>Low</u> | <u>Mid</u> | <u>High</u> | <u>Low</u> | <u>Mid</u> | <u>High</u> |
| 72 | 13 | 37 | 60 | 6 | 15 | 24 |
| 81 | 13 | 37 | 60 | 6 | 15 | 24 |
| 89 | 13 | 37 | 60 | 6 | 15 | 24 |
| 91 | 13 | 37 | 60 | 6 | 15 | 24 |
| 100 | 13 | 37 | 60 | 3 | 14 | 24 |
| 105 | 13 | 47 | 80 | 6 | 15 | 24 |
| 108 | 13 | 47 | 80 | 6 | 15 | 24 |
| 109 | 13 | 47 | 80 | 6 | 15 | 24 |
| 122 | 13 | 47 | 80 | 6 | 15 | 24 |
| 123 | 13 | 47 | 80 | 6 | 15 | 24 |
| 124 | 13 | 47 | 80 | 6 | 15 | 24 |
| 126 | 13 | 47 | 80 | 6 | 15 | 24 |
| 128 | 13 | 47 | 80 | 6 | 15 | 24 |
| 129 | 39 | 71 | 102 | 6 | 15 | 24 |
| 132 | 47 | 74 | 102 | 12 | 18 | 24 |
| 133 | 47 | 74 | 102 | 12 | 18 | 24 |
| 137 | 47 | 74 | 102 | 12 | 18 | 24 |
| 141 | 55 | 78 | 102 | 12 | 18 | 24 |
| 142 | 55 | 99 | 143 | 12 | 24 | 36 |
| 145 | 55 | 99 | 143 | 12 | 24 | 36 |
| 147 | 55 | 99 | 143 | 12 | 24 | 36 |
| 148 | 55 | 99 | 143 | 12 | 24 | 36 |
| 156 | 55 | 99 | 143 | 12 | 24 | 36 |
| 159 | 62 | 103 | 143 | 12 | 24 | 36 |
| 160 | 62 | 103 | 143 | 12 | 24 | 36 |
| 162 | 62 | 103 | 143 | 12 | 24 | 36 |
| 164 | 62 | 103 | 143 | 12 | 24 | 36 |
| 166 | 62 | 108 | 153 | 12 | 24 | 36 |
| 167 | 78 | 116 | 153 | 12 | 24 | 36 |
| 169 | 78 | 116 | 153 | 12 | 24 | 36 |
| 170 | 78 | 116 | 153 | 12 | 24 | 36 |
| 173 | 78 | 116 | 153 | 12 | 24 | 36 |
| 175 | 78 | 116 | 153 | 12 | 24 | 36 |
| 177 | 78 | 116 | 153 | 12 | 24 | 36 |
| 178 | 78 | 116 | 153 | 12 | 24 | 36 |
| 179 | 78 | 116 | 153 | 12 | 24 | 36 |
| 180 | 78 | 116 | 153 | 12 | 24 | 36 |
| 181 | 78 | 116 | 153 | 12 | 24 | 36 |
| 182 | 78 | 116 | 153 | 12 | 24 | 36 |
| 184 | 78 | 116 | 153 | 12 | 24 | 36 |
| 185 | 78 | 116 | 153 | 12 | 24 | 36 |
| 192 | 78 | 126 | 173 | 12 | 24 | 36 |
| 193 | 78 | 126 | 173 | 12 | 24 | 36 |
| 196 | 78 | 126 | 173 | 12 | 24 | 36 |
| 197 | 78 | 126 | 173 | 12 | 24 | 36 |
| 198 | 78 | 126 | 173 | 12 | 24 | 36 |
| 199 | 78 | 126 | 173 | 12 | 24 | 36 |
| 200 | 78 | 126 | 173 | 12 | 24 | 36 |
| 201 | 78 | 126 | 173 | 12 | 24 | 36 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 204 | 78 | 126 | 173 | 12 | 24 | 36 |
| 206 | 78 | 126 | 173 | 12 | 24 | 36 |
| 209 | 78 | 126 | 173 | 12 | 24 | 36 |
| 210 | 78 | 126 | 173 | 12 | 24 | 36 |
| 215 | 78 | 126 | 173 | 12 | 24 | 36 |
| 217 | 78 | 126 | 173 | 12 | 24 | 36 |
| 218 | 78 | 126 | 173 | 12 | 24 | 36 |
| 219 | 78 | 126 | 173 | 12 | 24 | 36 |
| 223 | 78 | 126 | 173 | 12 | 24 | 36 |
| 224 | 78 | 126 | 173 | 12 | 24 | 36 |
| 225 | 78 | 126 | 173 | 12 | 24 | 36 |
| 227 | 78 | 126 | 173 | 12 | 24 | 36 |
| 229 | 78 | 126 | 173 | 12 | 24 | 36 |
| 230 | 78 | 126 | 173 | 12 | 24 | 36 |
| 231 | 78 | 126 | 173 | 12 | 24 | 36 |
| 232 | 78 | 126 | 173 | 18 | 29 | 40 |
| 233 | 78 | 126 | 173 | 18 | 29 | 40 |
| 235 | 78 | 126 | 173 | 18 | 29 | 40 |
| 236 | 78 | 126 | 173 | 18 | 33 | 48 |
| 237 | 78 | 126 | 173 | 18 | 33 | 48 |
| 238 | 78 | 126 | 173 | 18 | 33 | 48 |
| 243 | 78 | 126 | 173 | 18 | 33 | 48 |
| 248 | 78 | 141 | 204 | 18 | 33 | 48 |
| 249 | 78 | 141 | 204 | 18 | 33 | 48 |
| 251 | 78 | 141 | 204 | 18 | 33 | 48 |
| 252 | 78 | 141 | 204 | 18 | 33 | 48 |
| 253 | 78 | 141 | 204 | 18 | 33 | 48 |
| 254 | 86 | 145 | 204 | 18 | 33 | 48 |
| 255 | 86 | 145 | 204 | 18 | 33 | 48 |
| 256 | 86 | 145 | 204 | 18 | 33 | 48 |
| 257 | 86 | 145 | 204 | 18 | 33 | 48 |
| 260 | 86 | 145 | 204 | 18 | 33 | 48 |
| 261 | 86 | 145 | 204 | 18 | 33 | 48 |
| 262 | 86 | 145 | 204 | 18 | 33 | 48 |
| 265 | 86 | 145 | 204 | 18 | 33 | 48 |
| 266 | 86 | 145 | 204 | 18 | 33 | 48 |
| 267 | 86 | 145 | 204 | 18 | 33 | 48 |
| 268 | 86 | 145 | 204 | 18 | 33 | 48 |
| 269 | 86 | 145 | 204 | 18 | 33 | 48 |
| 271 | 86 | 145 | 204 | 18 | 33 | 48 |
| 272 | 86 | 145 | 204 | 18 | 33 | 48 |
| 274 | 86 | 145 | 204 | 18 | 33 | 48 |
| 275 | 86 | 145 | 204 | 18 | 33 | 48 |
| 276 | 86 | 145 | 204 | 18 | 33 | 48 |
| 280 | 86 | 145 | 204 | 18 | 33 | 48 |
| 281 | 86 | 145 | 204 | 18 | 33 | 48 |
| 283 | 101 | 153 | 204 | 18 | 33 | 48 |
| 286 | 101 | 153 | 204 | 18 | 33 | 48 |
| 287 | 101 | 153 | 204 | 18 | 33 | 48 |
| 288 | 101 | 153 | 204 | 18 | 33 | 48 |
| 289 | 101 | 153 | 204 | 18 | 33 | 48 |
| 290 | 101 | 153 | 204 | 18 | 33 | 48 |
| 291 | 101 | 153 | 204 | 18 | 33 | 48 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 292 | 101 | 153 | 204 | 18 | 33 | 48 |
| 294 | 101 | 153 | 204 | 18 | 33 | 48 |
| 299 | 101 | 153 | 204 | 18 | 33 | 48 |
| 300 | 101 | 153 | 204 | 18 | 33 | 48 |
| 305 | 101 | 153 | 204 | 18 | 33 | 48 |
| 307 | 101 | 153 | 204 | 18 | 33 | 48 |
| 308 | 101 | 153 | 204 | 18 | 33 | 48 |
| 311 | 101 | 153 | 204 | 22 | 41 | 60 |
| 313 | 101 | 153 | 204 | 22 | 41 | 60 |
| 316 | 101 | 153 | 204 | 22 | 41 | 60 |
| 317 | 101 | 153 | 204 | 22 | 41 | 60 |
| 319 | 101 | 153 | 204 | 22 | 41 | 60 |
| 322 | 101 | 153 | 204 | 22 | 41 | 60 |
| 323 | 101 | 153 | 204 | 22 | 41 | 60 |
| 324 | 101 | 153 | 204 | 22 | 41 | 60 |
| 326 | 117 | 161 | 204 | 22 | 41 | 60 |
| 330 | 117 | 161 | 204 | 22 | 41 | 60 |
| 331 | 117 | 161 | 204 | 22 | 41 | 60 |
| 332 | 117 | 161 | 204 | 22 | 41 | 60 |
| 334 | 117 | 161 | 204 | 22 | 41 | 60 |
| 335 | 117 | 161 | 204 | 22 | 41 | 60 |
| 336 | 117 | 161 | 204 | 22 | 41 | 60 |
| 337 | 117 | 161 | 204 | 22 | 41 | 60 |
| 338 | 117 | 161 | 204 | 22 | 41 | 60 |
| 339 | 117 | 161 | 204 | 24 | 42 | 60 |
| 342 | 117 | 161 | 204 | 24 | 42 | 60 |
| 344 | 117 | 161 | 204 | 24 | 42 | 60 |
| 345 | 117 | 161 | 204 | 24 | 42 | 60 |
| 349 | 117 | 161 | 204 | 24 | 42 | 60 |
| 350 | 117 | 161 | 204 | 24 | 42 | 60 |
| 355 | 117 | 161 | 204 | 24 | 42 | 60 |
| 356 | 117 | 161 | 204 | 24 | 42 | 60 |
| 358 | 117 | 161 | 204 | 24 | 42 | 60 |
| 359 | 117 | 161 | 204 | 24 | 42 | 60 |
| 362 | 117 | 161 | 204 | 24 | 42 | 60 |
| 363 | 117 | 161 | 204 | 24 | 42 | 60 |
| 364 | 117 | 161 | 204 | 24 | 42 | 60 |
| 366 | 117 | 161 | 204 | 24 | 42 | 60 |
| 367 | 117 | 161 | 204 | 24 | 42 | 60 |
| 371 | 117 | 186 | 255 | 24 | 42 | 60 |
| 373 | 117 | 186 | 255 | 24 | 42 | 60 |
| 374 | 117 | 186 | 255 | 24 | 42 | 60 |
| 375 | 117 | 186 | 255 | 24 | 42 | 60 |
| 376 | 117 | 186 | 255 | 24 | 42 | 60 |
| 378 | 117 | 186 | 255 | 24 | 42 | 60 |
| 379 | 117 | 186 | 255 | 24 | 42 | 60 |
| 381 | 117 | 186 | 255 | 24 | 42 | 60 |
| 386 | 117 | 186 | 255 | 24 | 42 | 60 |
| 387 | 117 | 186 | 255 | 24 | 42 | 60 |
| 389 | 117 | 186 | 255 | 24 | 42 | 60 |
| 393 | 117 | 186 | 255 | 24 | 42 | 60 |
| 400 | 117 | 186 | 255 | 24 | 42 | 60 |
| 403 | 117 | 186 | 255 | 24 | 42 | 60 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 404 | 117 | 186 | 255 | 24 | 42 | 60 |
| 405 | 117 | 186 | 255 | 24 | 42 | 60 |
| 406 | 117 | 186 | 255 | 24 | 42 | 60 |
| 407 | 117 | 186 | 255 | 24 | 42 | 60 |
| 409 | 117 | 186 | 255 | 24 | 42 | 60 |
| 411 | 117 | 186 | 255 | 24 | 42 | 60 |
| 412 | 117 | 186 | 255 | 24 | 42 | 60 |
| 414 | 117 | 186 | 255 | 24 | 42 | 60 |
| 418 | 117 | 186 | 255 | 24 | 42 | 60 |
| 419 | 117 | 186 | 255 | 24 | 42 | 60 |
| 423 | 117 | 186 | 255 | 24 | 42 | 60 |
| 425 | 117 | 186 | 255 | 24 | 42 | 60 |
| 426 | 117 | 186 | 255 | 24 | 42 | 60 |
| 427 | 117 | 186 | 255 | 24 | 42 | 60 |
| 428 | 117 | 186 | 255 | 24 | 42 | 60 |
| 430 | 117 | 186 | 255 | 24 | 42 | 60 |
| 431 | 117 | 186 | 255 | 24 | 42 | 60 |
| 436 | 117 | 186 | 255 | 24 | 42 | 60 |
| 437 | 117 | 186 | 255 | 24 | 42 | 60 |
| 438 | 156 | 231 | 306 | 24 | 42 | 60 |
| 439 | 156 | 231 | 306 | 24 | 42 | 60 |
| 442 | 156 | 231 | 306 | 24 | 42 | 60 |
| 444 | 156 | 231 | 306 | 24 | 42 | 60 |
| 449 | 156 | 231 | 306 | 24 | 42 | 60 |
| 450 | 156 | 231 | 306 | 24 | 42 | 60 |
| 451 | 156 | 231 | 306 | 36 | 48 | 60 |
| 455 | 156 | 231 | 306 | 36 | 48 | 60 |
| 456 | 156 | 231 | 306 | 36 | 48 | 60 |
| 457 | 156 | 231 | 306 | 36 | 48 | 60 |
| 458 | 156 | 231 | 306 | 36 | 48 | 60 |
| 460 | 156 | 231 | 306 | 36 | 48 | 60 |
| 461 | 156 | 282 | 408 | 36 | 48 | 60 |
| 462 | 156 | 282 | 408 | 36 | 48 | 60 |
| 463 | 156 | 282 | 408 | 36 | 48 | 60 |
| 465 | 156 | 282 | 408 | 36 | 48 | 60 |
| 467 | 156 | 282 | 408 | 36 | 48 | 60 |
| 470 | 156 | 282 | 408 | 36 | 48 | 60 |
| 474 | 156 | 282 | 408 | 36 | 48 | 60 |
| 475 | 156 | 282 | 408 | 36 | 48 | 60 |
| 476 | 156 | 282 | 408 | 36 | 48 | 60 |
| 477 | 156 | 282 | 408 | 36 | 48 | 60 |
| 483 | 156 | 282 | 408 | 36 | 48 | 60 |
| 487 | 156 | 282 | 408 | 36 | 48 | 60 |
| 491 | 156 | 282 | 408 | 36 | 48 | 60 |
| 493 | 156 | 282 | 408 | 36 | 48 | 60 |
| 494 | 156 | 282 | 408 | 36 | 48 | 60 |
| 495 | 156 | 282 | 408 | 36 | 48 | 60 |
| 498 | 156 | 282 | 408 | 36 | 48 | 60 |
| 500 | 156 | 282 | 408 | 36 | 48 | 60 |
| 501 | 156 | 282 | 408 | 36 | 48 | 60 |
| 505 | 156 | 282 | 408 | 36 | 48 | 60 |
| 506 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 507 | 156 | 588 | 1020 | 36 | 48 | 60 |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|------------|-------------|-------------------------------|------------|-------------|
| | Low | Mid | High | Low | Mid | High |
| 510 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 512 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 513 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 520 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 524 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 526 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 528 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 529 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 530 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 531 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 533 | 156 | 588 | 1020 | 36 | 48 | 60 |
| 540 | 156 | 588 | 1020 | | | |
| 543 | 156 | 588 | 1020 | | | |
| 544 | 156 | 588 | 1020 | | | |
| 545 | 156 | 588 | 1020 | | | |
| 548 | 156 | 588 | 1020 | | | |
| 550 | 156 | 588 | 1020 | | | |
| 551 | 156 | 588 | 1020 | | | |
| 552 | 156 | 588 | 1020 | | | |
| 553 | 156 | 588 | 1020 | | | |
| 556 | 156 | 588 | 1020 | | | |
| 558 | 156 | 588 | 1020 | | | |
| 562 | 156 | 588 | 1020 | | | |
| 564 | 156 | 588 | 1020 | | | |
| 582 | 156 | 588 | 1020 | | | |
| 590 | 156 | 588 | 1020 | | | |
| 594 | 156 | 588 | 1020 | | | |
| 595 | 156 | 588 | 1020 | | | |
| 601 | 156 | 588 | 1020 | | | |
| 602 | 156 | 588 | 1020 | | | |
| 607 | 156 | 588 | 1020 | | | |
| 619 | 156 | 588 | 1020 | | | |
| 620 | 156 | 588 | 1020 | | | |
| 627 | 156 | 588 | 1020 | | | |
| 632 | 156 | 588 | 1020 | | | |
| 652 | 156 | 588 | 1020 | | | |
| 665 | 156 | 588 | 1020 | | | |
| 676 | 156 | 588 | 1020 | | | |
| 677 | 156 | 588 | 1020 | | | |
| 684 | 156 | 588 | 1020 | | | |
| 688 | 156 | 588 | 1020 | | | |
| 695 | 156 | 588 | 1020 | | | |
| 701 | 156 | 588 | 1020 | | | |
| 706 | 156 | 588 | 1020 | | | |
| 709 | 156 | 588 | 1020 | | | |
| 710 | 156 | 588 | 1020 | | | |
| 728 | 156 | 588 | 1020 | | | |
| 732 | 156 | 588 | 1020 | | | |
| 735 | 234 | 627 | 1020 | | | |
| 747 | 234 | 627 | 1020 | | | |
| 757 | 234 | 627 | 1020 | | | |
| 761 | 234 | 627 | 1020 | | | |
| 765 | 234 | 627 | 1020 | | | |

| Score | Total Sentence | | | Time to Serve On Split | | |
|--------------|-----------------------|-------------------|--------------------|-------------------------------|-------------------|--------------------|
| | <u>Low</u> | <u>Mid</u> | <u>High</u> | <u>Low</u> | <u>Mid</u> | <u>High</u> |
| 780 | 234 | 627 | 1020 | | | |
| 784 | 234 | 627 | 1020 | | | |
| 790 | 234 | 627 | 1020 | | | |
| 798 | 234 | 627 | 1020 | | | |
| 803 | 234 | 627 | 1020 | | | |
| 812 | 234 | 627 | 1020 | | | |
| 816 | 234 | 627 | 1020 | | | |
| 817 | 234 | 627 | 1020 | | | |
| 831 | 234 | 627 | 1020 | | | |
| 835 | 234 | 627 | 1020 | | | |
| 836 | 234 | 627 | 1020 | | | |
| 840 | 234 | 627 | 1020 | | | |
| 848 | 234 | 627 | 1020 | | | |
| 849 | 234 | 627 | 1020 | | | |
| 854 | 234 | 627 | 1020 | | | |
| 868 | 234 | 627 | 1020 | | | |
| 872 | 234 | 627 | 1020 | | | |
| 885 | 234 | 627 | 1020 | | | |
| 904 | 234 | 627 | 1020 | | | |
| 905 | 234 | 627 | 1020 | | | |
| 918 | 234 | 627 | 1020 | | | |
| 936 | 234 | 627 | 1020 | | | |
| 950 | 234 | 627 | 1020 | | | |
| 955 | 234 | 627 | 1020 | | | |
| 986 | 234 | 627 | 1020 | | | |
| 1010 | 234 | 627 | 1020 | | | |
| 1111 | 234 | 627 | 1020 | | | |
| 1126 | 234 | 627 | 1020 | | | |
| 1130 | 234 | 627 | 1020 | | | |

Sentencing Standards and Worksheets Frequently Asked Questions

1. What are the sentencing worksheets?

There are three sets of worksheets – one for each major type of offense – property, drugs and personal. For each offense type, there is an In/Out Worksheet and a Sentence Length Worksheet. Each sheet has a set of statistically relevant sentencing factors specific to each offense type. Examples of factors include: most serious current offense, other offenses being sentenced at the current sentencing event, previous convictions, previous incarcerations, juvenile/youthful offender adjudications, etc. The worksheets will result in a score that is calculated based on the information provided for each factor.

2. What is the difference in the In/Out Worksheet and the Sentence Length Worksheet?

The In/Out Worksheet produces a score that recommends either a prison, probation or community corrections sentence. The Sentence Length Worksheet score tells the judge what sentence range (in months) is recommended based on the defendant’s characteristics?

3. When should they be completed?

Worksheets should be completed when the most serious felony offense being sentenced is any of those listed below. (Standards do not apply to misdemeanors.)

| Personal Worksheets | Property Worksheets | Drug Worksheets |
|----------------------------|---|---|
| Assault I | Burglary I | Felony DUI |
| Assault II | Burglary II | Possession of Marihuana I |
| Manslaughter | Burglary III | Possession of Schedule I-V |
| Murder | Forgery II | Sale/Distribution of Marihuana (other than to a minor) |
| Rape I | Possession Forged Instrument II | Sale/Distribution of Schedule I-V (other than to a minor) |
| Rape II | Theft of Property I | |
| Robbery I | Theft of Property II | |
| Robbery II | Receiving Stolen Property I | |
| Robbery III | Receiving Stolen Property II | |
| Sodomy I | Unauthorized Use/B&E Vehicle | |
| Sodomy II | Unlawful Possession/Use Credit/Debit Card | |

4. Who completes the worksheets?

They may be completed by the district attorney, defense attorney, probation officer, court referral officer and/or community corrections personnel. The sentencing judge can designate who is responsible. It is envisioned that the DA and defense attorney will both prepare sheets and settle on a score prior to sentencing. If the two sides disagree, then the judge decides which is accurate.

5. What if one offense being sentenced is covered by the worksheets and another is not?

If the non-worksheet offense is more serious than the worksheet offense, then the worksheets and standards simply do not apply. For example, if a defendant is being sentenced for Arson I (Non-worksheet, Class A felony) and Theft of Property II (Worksheet, Class C felony), then this case would not be covered. If the most serious offense is included on the worksheets, then they should be scored and the less serious, non-worksheet offense would be counted as an additional offense.

6. What are the standards?

These are the suggested punishment ranges for prison sentences expressed in months. (The range is selected based on the Sentence Length Worksheet score.)

7. How were the ranges selected?

The ranges were established by examining historical sentencing data and making certain minor adjustments to reflect current sentencing policies. To set the range, statisticians working for the ASC first calculated the middle 50 percent of all sentences imposed for each potential score from the Sentence Length Worksheet. Then, based on results from the Sentencing Commission's simulation model, slight adjustments were made to reflect current sentencing priorities. *Specifically, under the standards, drug and property offenders are slightly less likely to go to prison than under historic sentencing practices. Offenders convicted of personal crimes on the other hand are slightly more likely to receive a prison sentence. Similarly, drug and property offenders are likely to receive a slightly shorter sentence, while the sentence recommendation for violent offenders is likely to be a bit longer.*

8. Does a judge have to sentence within the range suggested in the standards?

No. It is fully expected and intended the standards will only apply 75 percent of the time. Downward and upward departures are left up to the judge's discretion based on the facts presented in each individual case.

9. What if a judge sentences outside of the standards?

He or she is requested to write a brief explanation as to why the standards are not followed. This statement is provided solely to assist the ASC in making future modifications to the standards based on courtroom feedback.

10. Are the sentences imposed under the standards subject to appellate review?

No.

11. Is this system the same as “truth-in-sentencing?”

No. Sentences imposed under the standards still allow offenders to receive good time and parole consideration. Truth in sentencing (where the time imposed matches the time to be served) is not scheduled to go into effect until 2006. By this time, a new set of standards will have been developed so the ranges recommended correspond with the amount of time actually served.

12. Are these like the federal guidelines?

Definitely Not!!! They are not even similar to mandatory or presumptive state guidelines like North Carolina, Minnesota or Kansas have. They were patterned after Virginia's guidelines and are voluntary and not subject to appellate review.

13. If they are voluntary and not subject to appellate review then why do you think judges will follow them?

There are several advantages, one of which is the fact that these standards reflect the sentencing practices generally used by judges around the state, throwing out the extremes. These standards will provide judges with the information needed to make informed sentencing decisions. Another incentive to use the standards is that the HFOA and mandatory enhancements that otherwise would apply are not applicable to sentences imposed pursuant to the standards. Additionally, the standards should also encourage plea agreements.

14. Are the standards retroactive?

No. The initial standards only apply to offenses sentenced after they become effective.

15. Why are there two sets of standards?

The initial standards were created with ranges that account for good time and parole consideration. The “time served” standards that will go into effect in 2006, will have recommended sentence ranges that appear much lower than those presented in the initial standards. This is because under the time served standards offenders will be required to serve their sentences day-for-day with no reductions.

Additionally, it is important to field test the standards and prison population simulation model prior to moving to truth in sentencing. This way, if unanticipated prison overcrowding occurs, the population can be managed through the current release mechanisms.

16. How do you decide if an offender is sentenced under the standards or the Habitual Felony Offender Act?

This is a matter of judicial discretion. Additionally, the DA may make a recommendation as to which should be applied.

17. What if the recommended range is above/below the statutory minimum?

The judge should not sentence an offender to a term that is below the “base” term for the felony class. The “base” terms are as follows:

- *Class A felonies – 10 years to life;*
- *Class B felony – 2 years to 20 years; and*
- *Class C felonies – 1 year and 1 day to 10 years.*

18. When calculating prior incarcerations, should sentences resulting from nolo contendere pleas be included?

Yes. These are included in the data as an incarceration if the plea results in an unsuspended period of incarceration.

19. What if an offender had several convictions in her early twenties, but for the past 15 to 20 years has committed no crimes? What happens under the standards?

The prior offenses should still be counted just as they are under the existing Habitual Felony Offender Act. However, the judge may take the lack of criminal activity for such a long time into consideration when sentencing and use this as the basis for departing from the standards.

20. Will the Habitual Felony Offender Act disappear once the standards are fully implemented?

This could happen, because prior felony convictions will already be taken into account when determining the recommended sentence ranges. However, this is unlikely to occur until the time served (truth in sentencing) standards go into effect.

21. If the Habitual Felony Offender Act is eliminated, will the changes be applied retroactively?

Not without additional legislation. The Habitual Felony Offender Act will still apply to sentences outside the standards.

22. What if the DA and the defense attorney disagree over whether or not the victim was injured? What about other factual disputes? How do you eliminate the possibility of this sentence being appealed? Does this represent a problem under *Apprendi v. New Jersey* and/or *Blakely v. Washington*?

As long as the sentence imposed is within the statutory range of punishment, there is no legal problem with the sentence since sentencing under the standards is voluntary. To avoid disputes, however, it is recommended that any sentencing factors that affect the recommended sentence length under the standards – e.g. victim injury, prior convictions, previous incarcerations, etc. – be stipulated to in the plea bargain. In a jury trial, factors other than prior convictions may have to be determined by the jury.

23. What happens if a judge does not consider the standards at all?

Although the failure to consider the standards is not appealable, judges are required to consider the standards pursuant to Section 12-25-35, Code of Alabama 1975. It is expected that judges will respect and comply with state law relative to consideration of the standards. The fact that no right of appeal is granted does not affect the judge's responsibility.

24. What if a defendant's score is not on the worksheet?

If a score falls between two scores listed on the sheet, then select the lower of the two scores to determine the recommended sentencing range. The "breaks" in the scores simply mean there was no one in the five year cohort of sentenced offenders who received this exact score.

25. The drug worksheet sentence length scores end at 242. What happens if a defendant's score is greater than 242?

The judge may wish to depart upward from the standards. The scores listed on the sentence length tables reflect actual scores based on a five year cohort of offenders, and the maximum score on each table represents the highest score calculated for this set of cases.

26. Where were sentencing disparities found? Was there disparity between urban versus rural circuits?

Disparity was found across the board. Urban jurisdictions differed from other urban jurisdictions, and rural jurisdictions differed from other rural jurisdictions. There was even disparity within individual circuits depending on the sentencing judge. This high degree of disparity was one of the primary reasons for developing the standards.

27. What is the reason for piloting the standards?

There are several reasons. First, the ASC wants to determine how well the worksheets and instructions work in the real world to make any necessary changes before statewide implementation begins. Next, the ASC wants to collect data to determine how often the standards are being applied and why departures are occurring. These types of information will be used to "fine-tune" the worksheets, standards and instructions to make sure they are workable prior to full implementation.

28. What if mistakes are made in completing the worksheets? Will this lead to an increase in lawsuits for ineffective assistance of counsel?

This is not anticipated.

29. When scoring the youthful offender (YO) factor, do you look at the underlying offense?

No. For YO cases you just count the total number of adjudications. For juvenile cases, however, you do need to look at the underlying offense to see if it would have been a criminal offense had the person been an adult.