1. THE SENTENCING COMMISSION

What year was the commission established? Has the commission essentially retained its original form, or has it changed substantially or been abolished?

The Alabama Legislature established the Alabama Sentencing Commission on May 17, 2000. The Commission remains in existence to the present.¹

Membership: who appoints them, for what terms, with what required qualifications?

The Commission consists of twenty one voting members:

1. the Chief Justice of the Alabama Supreme Court, or designee;
2. the Governor, or designee;
3. the Attorney General, or designee;
4. three district attorneys appointed by the President of the Alabama District Attorneys' Association;
5. two circuit judges, active or retired, appointed by the President of the Alabama Association of Circuit Court Judges;
6. a district judge, active or retired, appointed by the President of the Alabama Association of District Court Judges;
7. two victims of a violent felony or persons whose immediate family member was a victim of a violent felony, appointed by the Governor;
8. the Chair of the House Judiciary Committee, or designee member of the House Judiciary Committee;
9. the Chair of the Senate Judiciary Committee, or designee member of the Senate Judiciary Committee;
10. a private attorney specializing in criminal defense appointed by the President of the Alabama Criminal Defense Lawyers Association;
11. a private attorney specializing in criminal law appointed by the President of the Alabama Lawyers Association;
12. a county commissioner appointed by the Governor;
13. the Commissioner of the Department of Corrections, or designee;
14. the Chair of the Alabama Board of Pardons and Paroles, or designee;
15. a member of the academic community with a background in criminal justice or corrections policy appointed by the Chief Justice;
16. a sheriff appointed by the Sheriffs’ Association;
17. an active police officer appointed by the Association of Chiefs of Police.

The Chief Justice or his or her designee serves as chair unless the Chief appoints another member to serve as chair. Appointed members of the Commission serve terms of four years and may be reappointed for a second term. Members of the Commission who serve because of their public office or position serve only as long as they hold such office or position. The membership of the Sentencing Commission must reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.²

Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Sentencing Commission is a judicial state agency operating under the aegis of the Alabama Supreme Court.³

How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission has three fulltime employees: an Executive Director, Senior Research Analyst, and Sentencing Worksheet Specialist.⁴ The Executive Director is appointed by the Chief Justice of the Alabama Supreme Court.⁵

What is the commission’s current statutory mandate?

The Commission’s mandate is divided between statutory duties and broader purposes. The duties are to review state sentencing structure, which includes laws, policies, and practices, and recommend changes to the criminal code, criminal rules of procedure, and other aspects of sentencing; to publish an annual prison report and other reports as the Commission chair deems necessary; to serve as a clearinghouse for the collection, preparation, and dissemination of information on sentencing practices.6

The duties serve several broad purposes, namely, to secure and protect the public safety of the state; establish an effective, fair, efficient, and certain sentencing system; maintain judicial discretion to permit individualized sentencing as warranted by mitigating or aggravating factors; avoid unnecessary sentencing disparities; promote truth in sentencing; prevent prison overcrowding and the premature release of prisoners; and limit the discretion of district attorneys in determining the charge or crime.7

Apart from its specific directives, the Commission is required to be mindful of certain enumerated purposes of sentencing:

1. Protecting the public.
2. Promoting respect for the law.
3. Providing just and adequate punishment for the offense.
4. Deterring criminal conduct.
5. Imposing sanctions which are the least restrictive while consistent with the protection of the public and the gravity of the crime.
6. Promoting the rehabilitation of offenders.8

Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The Commission’s enabling statute identified the prevention of prison overcrowding as a purpose of structured sentencing in Alabama.9 Additionally, the Alabama Legislature identified the preservation of inmate beds and space for violent offenders as a target goal of the statewide sentencing system.10

Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

The Commission is required by statute to collect, analyze, and maintain data related to felony sentencing practices, crime trends, projected correctional needs, and proposed legislation to determine the potential impact on inmate populations.11 The Commission compiles the data and publishes a summary in an annual report, which can be accessed on the Commission’s website. The data sets include the number of offenders who receive a sentence within or outside the Sentencing Standards, the charges for which sentences are imposed under the Sentencing Standards, the demographics of state offenders, sentence length, and the number of executed prison sentences imposed.12

2. THE GUIDELINES

When were the guidelines first implemented?

The Alabama Sentencing Standards went into effect on October 1, 2006. The initial Sentencing Standards were advisory.13 The present Sentencing Standards, which impose presumptive standards for non-violent offenses, went into effect on October 1, 2013.14

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In recent years have they been modified at least once a year?

Although the Commission issues annual reports and maintains data sets as required by statute, the Sentencing Standards are not modified annually.

Do the commission’s recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

Any proposed modifications to the Sentencing Standards must be included in the Commission’s annual report, which must be presented to the Governor, Legislature, Chief Justice, and Attorney General at least 45 days prior to the legislative session. Modifications for nonviolent offenses become effective on October 1 following the legislative session in which they were presented unless they are rejected by an act of the Legislature. Modifications for violent offenses must be approved by an act of the Legislature, and if they are, will become effective on October 1 following the legislative session in which they were presented.15

How is the presumptive sentence determined?

Worksheet sentencing in Alabama is a two-step process. First, a Prison In/Out Worksheet is filled out by the worksheet preparer. This Worksheet is used to determine if a term of prison or probation is appropriate. Points are allocated for a variety of factors, which vary by worksheet, but include things like current offense severity, prior adult convictions, prior unsuspended incarcerations, prior felony probation or parole revocations, prior juvenile delinquency or youth offender adjudications, possession or use of a deadly or dangerous instrument when committing a current offense, and injury to the victim. If an offender accumulates more than a specified number of points, the presumptive sentence is an executed term of prison. The executed-prison threshold is 8 points for the Personal and Drug Worksheets and 15 points for the Property and Property “A” Worksheets.20

Second, if an offender is prison eligible, the length of the sentence is determined by filling out a Prison Sentence Length Worksheet. The sentence length is determined by adding the points for various factors, which vary by worksheet, and include things like the most serious conviction offense, number of additional current felony convictions, number of prior adult felony convictions, number of prior property (for Property A and Property Worksheets) or prior Class C convictions (for Drug Worksheet), prior incarceration with an unsuspended sentence of 1 year or more, prior felony probation or parole revocation, possession or use of a deadly weapon or dangerous instrument or injury to the victim.

Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The Sentencing Standards do not apply to misdemeanors. Some felonies are excluded: sex crimes involving a child victim under the age of 12 and all convictions that carry a mandatory life without parole sentence.16

Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

The Alabama Sentencing Standards are not represented in a grid format, but consist of Worksheets, instructions, and sentence length tables for Alabama’s most frequently sentenced offenses. There are Worksheets for Personal, Property, Property “A,” and Drug crimes.17 The Personal Worksheet applies to eleven violent offenses, all of which are subject to Voluntary Sentencing Standards. The Property Worksheet applies to the felony burglary offenses that are subject to Voluntary Sentencing Standards.18 The Property “A” Worksheet applies to eight less serious property offenses which are subject to Presumptive Sentencing Standards. The Drug Worksheet applies to eight offenses, likewise subject to Presumptive Sentencing Standards.19

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victim, and whether a firearm was acquired during the offense. Each worksheet contains a prison sentence length table that assigns a presumptive prison length range in months, with a low, mid, and high sentence for the particular score.21

Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion of prison for those cases?

The choice of a prison or non-prison sentence is determined by completing an “In/Out” worksheet. Points are allocated for a variety of factors, which vary by worksheet, but include things like current offense severity, prior adult convictions, prior unsuspended incarcerations, prior felony probation or parole revocations, prior juvenile delinquency or youth offender adjudications, possession or use of a deadly or dangerous instrument when committing a current offense, and injury to the victim. If an offender accumulates more than a specified number of points, the presumptive sentence is an executed term of prison. The executed-prison threshold is 8 points for the Personal and Drug Worksheets and 15 points for the Property and Property “A” Worksheets.22 The Alabama Presumptive and Voluntary Sentencing Manual provides additional guidance as to what is considered a prison versus non-prison sentence.23

Are there border boxes or other case categories permitting multiple sentence types?

The Alabama Sentencing Standards do not include a border box concept. However, Alabama law permits judges to impose a “split sentence” consisting of a shorter period of incarceration (with the remainder of the imposed prison term suspended), followed by a period of probation. The Sentencing Standards incorporate this concept by providing recommended sentence ranges for the incarceration portion of a split sentence in months, with low, mid, and high sentences. Like standard sentences, the offender’s score is used to locate the presumptive range on the sentence length table. The decision to impose a split sentence is solely within the discretion of the sentencing judge. A split sentence comports with the Sentencing Standards so long as the split portion of the sentence is not suspended and both the total prison sentence and the incarceration portion of the split conform to the duration recommendations on the sentence-length tables.24

Are the guidelines purely advisory, or are they legally binding?

Offenses listed on Drug and Property “A” Worksheets are subject to presumptive, legally binding sentences. The sentencing standards are voluntary for violent offenses, offenses listed on the Personal Worksheets, and non-A offenses on the Property Worksheets.25

3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

What is the overall/general standard for departure?

For offenses sentenced under the Presumptive Sentencing Standards, “[a] sentence that does not conform to the Standards . . . is a departure sentence and may be entered only upon a finding of aggravating and/or mitigating factors that justify a departure from the presumptive sentence recommendations.” Aggravating and mitigating factors are defined in statute as “substantial and compelling reasons justifying an exceptional sentence” above or below the presumptive sentence recommendation. The sentencing judge must state on the record the mitigating or aggravating factors relied upon in imposing the departure.26 There is no standard for departure under the Voluntary Sentencing Standards because they are advisory.27

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Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The Legislature directed the Sentencing Commission to identify aggravating and mitigating factors that permit departure from the Presumptive Sentencing Standards. The Commission codified a list of aggravating and mitigating factors. However, neither list is exhaustive, and a sentencing judge may justify a departure based on any factor “reasonably related to sentencing.” There is no list of prohibited factors. No similar list of mitigating and aggravating factors exists for departures from the Voluntary Sentencing Standards.

Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

When departing from the Presumptive Sentencing Standards, a sentencing judge may consider as a mitigating factor, whether the defendant provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense.

Are there limits on the degree of durational (length-of-custody) departure?

There are no limits, in either the Sentencing Standards or case law, to the degree of durational departure. However, for offenses sentenced under the Presumptive Sentencing Standards, the sentencing judge must identify, in the sentencing order, the mitigating or aggravating factors relied upon in imposing the departure outside of the presumptive sentence.

Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

There are no special limits on the availability of dispositional departures beyond the general requirement that for offenses sentenced under the Presumptive Sentencing Standards, the court identify in the sentencing order the mitigating and aggravating factors relied upon.

4. PRISON RELEASE DISCRETION

Does this jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

Although the Legislature has stated that it serves public safety to abolish “traditional parole and good time credits for convicted felons,” the Alabama Parole Board retains parole release discretion for noncapital felony prison sentences, except for the incarceration portion of a split sentence. Alabama does have a “truth in sentencing” law that would relate time served to the sentence pronounced in accordance with the Sentencing Standards, but the law does not take effect until 2020.

Does the state have a “truth in sentencing” law, limiting the extent of early release?

Alabama does have a “truth in sentencing law,” but it does not take effect until 2020. Under the law, the court would pronounce a minimum and extended term of sentence (equal to 120 percent of the minimum term) as well as a period of post-release supervision. Offenders would typically serve the minimum sentence, but could serve additional time based on conduct while incarcerated or conduct on post-release supervision.

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28 Ala. Code § 12-25-34.2(b) (2014).
32 Ala. Presumptive & Voluntary Sentencing Standards Manual at 25 (2013). Similar information is requested but not required for offenses sentenced under the voluntary sentencing standards. Id. at 51.
5. RELATIONSHIP TO CRIMINAL LAWS

Are recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

The Sentencing Standards specify prison duration as a target range or continuum within which a judge can pronounce a sentence. The sentence pronounced by the judge from this range, or by departure, represents the maximum time the offender will serve. When the court imposes a straight sentence, the pronounced duration and the offense committed are taken into account by parole authorities in setting the date for initial parole consideration. When the court imposes a split sentence, the court pronounces the total sentence duration, then splits the sentence by pronouncing a shorter period of incarceration and suspending execution of the balance of the sentence. The offender serves the incarceration portion of the split followed by a period of probation equal to the suspended term.

Is the period of post-prison supervision independent of any unserved prison term?

The period of post-prison supervision is related to the prison term only insofar as an offender cannot be discharged from parole “prior to the expiration of the full maximum term for which he was sentenced unless he is sooner fully pardoned.”

What good-time credits do prisoners earn? Is program participation considered?

Under the “Correctional Incentive Time Act” certain inmates may earn good behavior deductions from their sentence for “faithful observation of prison rules.” Deductions are not available for offenders serving a life sentence, a sentence of 15 years or greater, convicted of a sex crime with a victim under age 12, or serving a split sentence. Inmates are classified based upon their willingness to engage in work and the level of supervision required for them to do so. Eligible Class I prisoners may receive 75 days credit for every 30 days actually served. Eligible Class II prisoners will receive 45 days credit for every 30 days actually served. Eligible Class III prisoners will receive 30 days credit for every 20 days actually served.

Are prison terms subject to exceptional, “second look” releasing mechanisms?

Inmates sent to prison under the Alabama Sentencing Standards may be eligible for parole or pardon, but “second-look” releasing mechanisms are not available. Inmates are eligible for medical furloughs when an offender is terminally ill, permanently incapacitated, or suffers from a chronic infirmity, disease or illness related to aging.

Did the guidelines replace some or all previous statutory maxima?

The Sentencing Standards did not replace previous statutory maximum sentences, but were designed to operate within existing maxima. The statutory maximum sentence determines the most serious conviction for purposes of scoring worksheets.

Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and overridden whenever a mandatory applies?

Alabama sets general minimum sentences based upon level of offense. For Class A, Class B, and Class C felonies the minimum sentences are 10 years, 2 years, and a year and day, respectively, and a judge cannot pronounce a prison sentence lower than these minimums. Both the Presumptive and Voluntary Sentencing Standards were designed to include the historical application of statutory minimums and sentencing enhancements, such as those applicable to drug and weapons offenses.
6. CRIMINAL HISTORY SCORING

What are the major components of the criminal history score?

An Alabama offender’s criminal history contributes to both In/Out (dispositional) and Sentence Length Worksheet (durational) point systems. Factors for which criminal history points may be allocated, depending on the offense of conviction, are: the number of prior adult felony convictions and misdemeanor convictions; prior incarceration; the number of prior felony probation or parole revocations; and the number of prior juvenile delinquency or youthful offender adjudications. The worksheets may also assign points for attributes about the current offense such as possession or use of a deadly or dangerous instrument when committing a current offense; acquiring a firearm during the offense; and injury to the victim.

Do the guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

Use of prior records is limited to adult convictions or juvenile delinquency and youthful offender adjudications occurring before the arrest date of the offense being sentenced. If an ambiguous entry on a prior record or document cannot be resolved, the scorer must 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.

7. MULTIPLE CURRENT OFFENSES

Are consecutive sentences limited? If so, how (e.g., prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

The default is for separate sentences of imprisonment imposed on a defendant for two or more offenses to run consecutively, but their total duration is limited. Once a sentence has been selected from the recommended Prison Sentence Length Table, the sentencing judge may determine how the sentence shall be imposed for that sentencing event. The total or aggregate sentence for the sentencing event cannot exceed the sentence selected for the most serious offense. For example, if a defendant is sentenced for three Class B felonies at one sentencing event and the chosen sentence is 120 months, the court could impose: 120 months for each conviction to run concurrently; 40 months for each conviction to run consecutively; or one 60 month sentence and two 30 month sentences to run consecutively.

Are some “mandatory” minima subject to case-specific “departure” or other exception?

Under the Presumptive Sentencing Standards, the court may depart from the presumptive sentence recommendation only upon a finding of aggravating and/or mitigating factors that justify a departure. The judge has more discretion under the Voluntary Sentencing Standards. However, under both sets of Standards, the minimum sentence imposed must not be less than the minimum specified in statute. For Class A felonies, the minimum sentence is 10 years; for Class B felonies, the minimum sentence is 2 years; for Class C felonies, the minimum sentence is a year and a day.

Do the guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

Use of prior records is limited to adult convictions or juvenile delinquency and youthful offender adjudications occurring before the arrest date of the offense being sentenced. If an ambiguous entry on a prior record or document cannot be resolved, the scorer must 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.

No, the Alabama Sentencing Standards do not include a decay or washout policy.

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In consecutive sentencing, how is the offender’s criminal history taken into account?

The offender’s total sentence cannot exceed the sentence for the most serious sentenced offense, even in a consecutive sentence. The most serious offense is the offense with the highest number of points shown on the corresponding Prison Sentence Length Worksheet. Those points may have been increased by the offender’s criminal history; but given the total sentence limit, that history will only be counted once.

For example:
If a defendant is being sentenced for Forgery II (44 points on the property Prison Sentence Length worksheet) and Sale/Distribution of Marijuana (84 points on the drug Prison Sentence Length worksheet) at the same sentencing event, the offender’s sentence cannot exceed the sentence for Sale/Distribution of Marijuana because Sale/Distribution of Marijuana has the higher point value as reflected on the Drug Sentence Length Worksheet.

Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

Departures from the Presumptive Sentencing Standards must be based on aggravated or mitigated factors, and are subject to appellate review. Judges that depart from the Voluntary Sentencing Standards are requested to forward the basis for the departure to the Sentencing Commission for data compilation. Judge-specific departure rates are not published; however, county-specific departure rates are published annually.

Are some deviations from the guidelines not deemed departures?

All deviations from the Sentencing Standards are departures. A sentence only complies with the Sentencing Standards when the sentence conforms to the recommendation on the In/Out Worksheet and the sentence length is chosen from the recommended sentence ranges on the Prison Sentence Length Table.

Do some deviations require especially strong justification? Or minimal justification?

No. All departures from the Presumptive Sentencing Standards are subject to the requirement that they be justified by aggravated or mitigated factors. Neither aggravated nor mitigated departures require especially strong justification. Departures from the Voluntary Sentencing Standards are discretionary, as is imposition of a sentence in accord with the standards.

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54 Ala. Code §§ 12-25-34.2(c) (2014); 12-25-35(c) (2014).