

## 1. THE SENTENCING COMMISSION

**Q. 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 and serves as the research arm of the state's criminal justice system.<sup>1</sup>

**Q. 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 Lawyer's 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 Sheriff's 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

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<sup>1</sup> 2000 Ala. Acts 596, p. 1192, § 1; Alabama Sentencing Commission (2019), <http://sentencingcommission.alacourt.gov/about-us/> (last visited August 8, 2019).

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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.<sup>2</sup>

The Commission also has an advisory council that consults on sentencing matters and meets with the commission at least once annually. The advisory council consists of:

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

**Q. 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.<sup>4</sup>

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

The Commission has two full time employees: an Executive Director and a Senior Research Analyst.<sup>5</sup> The Executive Director is appointed by the Chief Justice of the Alabama Supreme Court.<sup>6</sup>

**Q. What is the commission's current statutory mandate?**

The Commission's mandate is divided between statutory responsibilities and broader purposes. The responsibilities are: (1) 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; (2) to publish an annual prison report and other reports as the Commission chair deems necessary; and (3) to serve as a clearinghouse for the collection, preparation, and dissemination of information on sentencing practices.<sup>7</sup>

<sup>2</sup> Ala. Code § 12-25-3 (2019).

<sup>3</sup> Ala. Code § 12-25-4 (2019).

<sup>4</sup> Ala. Code § 12-25-1 (2019).

<sup>5</sup> See *Members of Commission*, Ala. Comm. on Sentencing, <http://sentencingcommission.alacourt.gov/about-us/members/#commissionstaff> (last visited June 24, 2019).

<sup>6</sup> Ala. Code § 12-25-12 (2019).

<sup>7</sup> Ala. Code § 12-25-9 (2019).

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The above responsibilities serve several broad purposes: (1) to secure and protect the public safety of the state; (2) establish an effective, fair, efficient, and certain sentencing system; (3) maintain judicial discretion to permit individualized sentencing as warranted by mitigating or aggravating factors; (4) avoid unnecessary sentencing disparities; (5) promote truth in sentencing; (6) prevent prison overcrowding and the premature release of prisoners; and (7) limit the discretion of district attorneys in determining the charge or crime.<sup>8</sup>

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.<sup>9</sup>

## Q. 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.<sup>10</sup> Additionally, the Alabama Legislature identified the preservation of inmate beds and space for violent offenders as a target goal of the statewide sentencing system.<sup>11</sup>

## Q. 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.<sup>12</sup> 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.<sup>13</sup>

## 2. THE GUIDELINES

### Q. When were the guidelines first implemented?

The Alabama Sentencing Standards went into effect on October 1, 2006. The initial Sentencing Standards were advisory.<sup>14</sup> The present Sentencing Standards, which impose presumptive standards for non-violent offenses, went into effect on October 1, 2013.<sup>15</sup>

<sup>8</sup> Ala. Code § 12-25-2 (a) (2019)..

<sup>9</sup> Ala. Code § 12-25-2 (b) (2019).

<sup>10</sup> 2000 Ala. Acts 596, p. 1192, 1196-97 § 9.

<sup>11</sup> Ala. Code § 12-25-31 (2019).

<sup>12</sup> Ala. Code § 12-25-33 (2019).

<sup>13</sup> *Sentencing Data*, Ala. Sentencing Comm'n, <http://sentencingcommission.alacourt.gov> (last visited June 25, 2019).

<sup>14</sup> 2003 Ala. Acts 354, p. 948, 955-58 §§ 4-5.

<sup>15</sup> 2012 Ala. Acts 473, p. 1304, 1315, § 2(b).

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### Q. 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.

### Q. 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.<sup>16</sup>

### Q. 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.<sup>17</sup>

### Q. 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, and Drug crimes.<sup>18</sup> The Personal Worksheet applies to eleven violent offenses, all of which are subject to voluntary sentencing standards.<sup>19</sup> The Property Worksheet applies to 23 property offenses, all of which are subject to voluntary sentencing standards.<sup>20</sup> The Drug Worksheet applies to eight offenses, likewise subject to presumptive sentencing standards.<sup>21</sup> In its 2019 Annual Report, the Commission proposed the creation of new Class D Felony Property and Class D Felony Drug Worksheets to reflect the lower severity of those crimes.<sup>22</sup>

### Q. 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

<sup>16</sup> Ala. Code. § 12-25-34(d) (2019).

<sup>17</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 16 (2016).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *Id.* at 22.

<sup>21</sup> *Id.* at 21.

<sup>22</sup> Ala. Sentencing Comm'n, *2019 Annual Report* at ix (2019).

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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.<sup>23</sup>

Second, if an offender is prison eligible, the length of the sentence is determined by filling out a Prison Sentence Length Worksheet.<sup>24</sup> 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, the 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, 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.<sup>25</sup>

**Q. 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 or 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 Worksheet.<sup>26</sup> The Alabama Presumptive and Voluntary Sentencing Manual provides additional guidance as to what is considered a prison versus non-prison sentence.<sup>27</sup>

**Q. Are there border boxes or other 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.<sup>28</sup> 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

<sup>23</sup> *Id.* at 31, 37-39, 51-53, 67-69.

<sup>24</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 43, 57, 73 (2019).

<sup>25</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 32-34, 41-47, 55-63, 71-80 (2016).

<sup>26</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 31, 37-39, 51-53, 67-69 (2016).

<sup>27</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 28 (2016).

<sup>28</sup> Ala. Code § 12-23A-2(15) (2019).

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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 durational recommendations on the sentence-length tables.<sup>29</sup> Some Alabamian judges have imposed reverse split sentences wherein the defendants serve a period of time on probation before serving the remainder of the sentence in jail or prison. Reverse split sentences give defendants who pose little risk to society an opportunity to succeed on probation and potentially suspend their incarceration.<sup>30</sup>

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

Offenses listed on Drug Worksheet, and some offenses listed on the Property Worksheet, are subject to presumptive, legally binding sentences. Offenses listed on the Personal Worksheet, and burglary offenses listed on the Property Worksheet, are subject to voluntary guidelines compliance.<sup>31</sup>

## 3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

### Q. What is the overall/general standard for departure?

Alabama has both presumptive (mandatory) and voluntary sentencing guidelines. For offenses sentenced under the Presumptive Sentencing Standards (i.e., drug and certain property offenses), “[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.<sup>32</sup> Departures from the Presumptive Sentencing Standards should be rare. The disposition and duration of the sentence should be considered separately, and require separate mitigating and aggravating factors.<sup>33</sup> There is no standard for departure under the Voluntary Sentencing Standards because they are advisory.<sup>34</sup> Voluntary sentencing guidelines apply to personal and certain property (i.e., burglary) offenses.<sup>35</sup>

### Q. 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.<sup>36</sup> The Commission codified a list of aggravating and mitigating factors, which are defined as “substantial and compelling reasons justifying an exceptional sentence whereby the sentencing court may impose a departure sentence above [or below] the presumptive sentence recommendation for an offense.”<sup>37</sup> However, neither list is exhaustive, and a

<sup>29</sup> Ala. Code § 15-18-8(a)(1) (2016); Ala. Presumptive & Voluntary Sentencing Standards Manual at 25 (2016).

<sup>30</sup> Ala. R. Crim. P. Rule 26.8 (2019).

<sup>31</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 13-15 (2016).

<sup>32</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 29 (2016); Ala. Code § 12-25-34.2(a)(1), (5) (2019).

<sup>33</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 28 (2016)

<sup>34</sup> *Id.* at 25 (2016).

<sup>35</sup> *Id.* at 57, 65.

<sup>36</sup> Ala. Code § 12-25-34.2(b) (2019).

<sup>37</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 16-17 (2016).

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sentencing judge may justify a departure based on any factor “reasonably related to sentencing.”<sup>38</sup> There is no list of prohibited factors.<sup>39</sup> No similar list of mitigating and aggravating factors exists for the Voluntary Sentencing Standards because the standards are advisory.

**Q. 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 or if they paid restitution to the victim(s).<sup>40</sup> There is no need for the Voluntary Sentencing Standards to address these items because they are merely advisory.

**Q. 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.<sup>41</sup> Voluntary guidelines are only used to guide judge’s sentencing decisions, not restrain them, so there is no limit to durational departures. That said, the sentencing commission will take these departures into account when crafting future iterations of the voluntary guidelines.<sup>42</sup>

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

Dispositional departures for presumptive sentencing standards are subject to appellate appeal, and only allowed for Class D felonies if an offender has been convicted of three or more felonies, or of two or more felonies if those were Class A or Class B.<sup>43</sup>

## 4. PRISON RELEASE DISCRETION

**Q. Does the 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,”<sup>44</sup> the Alabama Parole Board retains parole release discretion for noncapital felony prison sentences, except for the incarceration portion of a split sentence.<sup>45</sup> Alabama does have a

<sup>38</sup> *Id.* at 28–30 (2016)

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 29.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.* at 28.

<sup>44</sup> Ala. Code § 12-25-31(a)(2) (2019).

<sup>45</sup> Ala. Code §§ 15-22-24, 15-18-8 (2019) (covering parole authority and split sentencing, respectively). Capital offenses are offenses punishable by a sentence of death or life imprisonment without parole. Ala. Code § 13a-5-39 (1) (2017).

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“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 October 2020.<sup>46</sup>

**Q. Does this jurisdiction have a “truth in sentencing” law, limiting the extent of early release?**

Alabama does have a “truth in sentencing law,” but the effective date has been delayed multiple times. It is currently slated to take effect in 2020, but legislation is pending to further delay the effective date to 2025.<sup>47</sup> 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.<sup>48</sup> Part of the intention of Alabama’s truth in sentencing law would be to ensure that parties involved in the criminal justice process understand the nature and length of a sentence and its basis.<sup>49</sup>

**Q. Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the 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.<sup>50</sup> The sentence pronounced by the judge from this range, or by departure, represents the maximum time the offender will serve. If the court imposes a straight sentence, then the pronounced duration and the offense committed are taken into account by parole authorities in setting the date for initial parole consideration.<sup>51</sup> In the case of a split sentence, the court will pronounce the total sentence duration, then split the sentence between a shorter period of incarceration and a suspended execution of the remaining balance of the sentence. The offender serves the incarceration portion of the split followed by a period of probation equal to the suspended term.<sup>52</sup> The sentencing guidelines provide recommendations for how to proportion the split, but ultimately it is up to the sentencing judge’s discretion.

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

The period of post-release or 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.”<sup>53</sup> If a person on post-release supervision violates the conditions of that supervision, then they may be re-incarcerated for a length of time not exceeding the remainder of the maximum sentence imposed at the time of sentencing.<sup>54</sup>

<sup>46</sup> Ala. Code §§ 12-25-36 - 12-25-38 (2019).

<sup>47</sup> Ala. Code § 12-25-36 (2019).

<sup>48</sup> Ala. Code §§ 12-25-36 - 12-25-38 (2019).

<sup>49</sup> Ala. Code § 12-25-2(a)(3) (2019).

<sup>50</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 32-34, 41-47, 55-63, 71-80 (2016).

<sup>51</sup> Ala. Board of Pardons and Parole, Operating Procedures, Art. 1, [http://www.pardons.state.al.us/RFP/19-RFP-043-002\\_Executive\\_Order.pdf](http://www.pardons.state.al.us/RFP/19-RFP-043-002_Executive_Order.pdf) (last visited June 24, 2019).

<sup>52</sup> Ala. Code § 15-18-8(a) (2019).

<sup>53</sup> Ala. Code §§ 15-22-33, 12-25-37 (2019).

<sup>54</sup> Ala. Code § 12-25-38(d)(2) (2019).

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### Q. 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 40 days credit for every 30 days actually served. Eligible Class III prisoners will receive 20 days credit for every 30 days actually served. Class IV prisoners do not accrue incentive time.<sup>55</sup>

### Q. Are prisoners 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 granted by the Commissioner of the Department of Corrections when an offender is terminally ill, permanently incapacitated, or suffers from a chronic infirmity, disease or illness related to aging. Similar to some second-look mechanisms, eligibility for medical furloughs takes into consideration the individual’s propensity for violence, institutional behavior, criminal history, and specific release plan.<sup>56</sup>

## 5. RELATIONSHIP TO CRIMINAL LAWS

### Q. 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.<sup>57</sup>

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

Alabama sets general minimum sentences based upon level of offense. For Class A and Class B felonies, the minimum sentences are 10 years and 2 years respectively; for Class C and D felonies, the minimum sentences are 1 year and 1 day. A judge cannot pronounce a prison sentence lower than these minimums.<sup>58</sup> 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.<sup>59</sup>

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<sup>55</sup> Ala. Code § 14-9-41 (2019); Sentencing Reference Manual for Circuit and District Judges at 34-40 (2012), [http://sentencingcommission.alacourt.gov/Publications/Judges%20Reference%20Manual\\_July2012.pdf](http://sentencingcommission.alacourt.gov/Publications/Judges%20Reference%20Manual_July2012.pdf); *Ferris v. State*, 648 So.2d 657, 658 (Ala. Crim. App. 1994).

<sup>56</sup> Ala. Code § 14-14-5 (2019).

<sup>57</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 23 - 24 (2016).

<sup>58</sup> Ala. Code § 13a-5-6 (2019).

<sup>59</sup> Ala. Code § 12-25-34(c) (2019); Ala. Presumptive & Voluntary Sentencing Standards Manual at 15 (2016).

## Q. 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 and D felonies, the minimum sentence is a year and a day.<sup>60</sup>

## 6. CRIMINAL HISTORY SCORING

### Q. 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 revocation; 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.<sup>61</sup>

### Q. Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

Under the Alabama Guidelines, convictions do not decay or contribute less to an offender’s score for either the In/Out or Sentence Length Worksheets.<sup>62</sup>

### Q. 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. If a defendant received a pardon for innocence regarding a conviction, that conviction will not be scored as a prior.<sup>63</sup>

<sup>60</sup> Ala. Code § 13a-5-6 (2017); Ala. Presumptive & Voluntary Sentencing Standards Manual at 25 (2016).

<sup>61</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 32-34, 41-47, 55-63, 71-80 (2016).

<sup>62</sup> Ala. Sentencing Comm’n, 2004 Annual Report 12 (2004).

<sup>63</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 24 (2016).

## 7. MULTIPLE CURRENT OFFENSES

**Q.** 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)?

Alabama's default is for separate sentences of imprisonment imposed on a defendant for two or more offenses to run consecutively,<sup>64</sup> 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.<sup>65</sup> The court may at any time create a retroactive order that consecutive sentences run concurrently.<sup>66</sup>

**Q.** 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.<sup>67</sup> 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.<sup>68</sup>

## 8. ENFORCEMENT MECHANISMS (LOCATION ON THE "ADVISORY"-TO-"MANDATORY" CONTINUUM)

**Q.** Are recommended sentences enforced by prosecution and defense sentence appeals?

Both the prosecution and the defense may appeal durational and dispositional departures from the presumptive sentencing standards. However, neither the prosecution nor defense can appeal a departure from the voluntary sentencing standards. Therefore, a trial court's decision not to apply or consider the

<sup>64</sup> Ala. R. Crim. P. 26.12(a) (2019).

<sup>65</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 26-27 (2016); *Ala. Sentencing Comm'n*, 2019 Annual Report at 69 (2019).

<sup>66</sup> Ala. R. Crim. P. 26.12(c) (2019).

<sup>67</sup> Ala. Code § 15-19-6 (2019).

<sup>68</sup> *Id.* at 23 (2016) (Determining the Most Serious Offense at a Sentencing Event, Rule 2).

voluntary guidelines does not represent the occasion to overturn or modify an offender's sentence length or provide post-conviction relief.<sup>69</sup>

**Q. 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 on an abuse of discretion standard.<sup>70</sup> Judges that depart from the Voluntary Sentencing Standards are requested to forward the basis for the departure to the Sentencing Commission for data compilation.<sup>71</sup> Judge-specific departure rates are not published; however, county-specific departure rates are annually published.<sup>72</sup>

**Q. Are some deviations from the guidelines not deemed departures?**

All deviations from the Sentencing Standards are departures, but judges do not have to report their rationale for Voluntary Sentencing Standards departures because those are merely recommendations.<sup>73</sup> For a sentence to comply with Alabama presumptive sentencing standards, it must conform to the In/Out Worksheet recommendation and corresponding sentence length from the Prison Sentence Length Table.<sup>74</sup>

**Q. Do some deviations require especially strong justification? Or minimal justification?**

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, but they can be subject to appellate review.<sup>75</sup> If a sentencing judge deems it appropriate to depart from the Presumptive Sentencing Standards, they must file the reasons for the departure with the court clerk.<sup>76</sup> Departures from the Voluntary Sentencing Standards are discretionary; sentencing judges that choose to depart from the voluntary standards may provide the court clerk with a reason for the departure, but they are not required to.<sup>77</sup> Neither the departure from the voluntary standards nor the reason for the departure are subject to appellate review, but they are sometimes used for making modifications to the sentencing standards.<sup>78</sup>

<sup>69</sup> Ala. Code §§ 12-25-34.2(c), 12-25-35(c) (2019).

<sup>70</sup> See, e.g., *Hyde v. State*, 185 So. 3d 501 (Ala. Crim. App. 2015).

<sup>71</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 19, 34 (2016).

<sup>72</sup> Ala. Sentencing Commission, *Publications*, <http://sentencingcommission.alacourt.gov/publications/> (last visited June 24, 2019).

<sup>73</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 31 (2016).

<sup>74</sup> Ala. Presumptive & Voluntary Sentencing Standards Manual at 26 (2016).

<sup>75</sup> *Williams v. State*, 3 So.3d 285, 294 (Ala. Crim. App. 2008).

<sup>76</sup> *Id.* at 29 (2016).

<sup>77</sup> Ala. Code § 12-25-35(c) (2019).

<sup>78</sup> *Id.*