

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

June 7, 2019

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 7, 2019, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Sheriff James Clemmons, Lisa Costner, Louise Davis, Danielle Elder, Judge Robert Ervin, Chris Fialko, Willis Fowler, Susan Katzenelson, Chief Henry King, Honorable Tammy Lee, Senator Floyd McKissick, Dr. Harvey McMurray, Tim Moose, Judge Fred Morrison, Representative William Richardson, and Jim Toms.

Guests: Sarah Llaguno (DPS, Combined Records), Kim Robuck (DPS, Combined Records), Kim Quintus (DPS, JJ), Cindy Porterfield (DPS, JJ), Meagan Honnold (OSBM), Brianna Van Stelkenburg (OSBM), Thomas Bashore (NCSA), and Kathy Catlett (NCSA).

Staff: Michelle Hall, John Madler, Ginny Hevener, Tamara Flinchum, Meghan Boyd Ward, Rebecca Dial, John King, Becky Whitaker, and Shelley Kirk.

INTRODUCTION AND RECOGNITION OF NEW COMMISSIONERS

Chairman Brown called the meeting to order at 10:00 a.m. He introduced the new Commissioner, Timothy (Tim) Moose, representing the Department of Public Safety. Mr. Moose is replacing Judge Young who was recently appointed to the Court of Appeals. Members and guests then introduced themselves.

Chairman Brown informed the Commission that one of its reports had received national recognition. He recognized Michelle Hall, staff, to explain. Ms. Hall stated that the American Library Association recognized the Commission's "Study of Employment Collateral Consequences in North Carolina" as a Notable Government Document in the May edition of Library Journal magazine. The report was nominated by the State Library of North Carolina and then reviewed by a national committee using a specific set of criteria. Chairman Brown commended the staff for their work on the report.

Chairman Brown reminded Commissioners of the remaining 2019 Sentencing Commission meeting dates (September 13 and December 6) and then reviewed the agenda for the meeting. He then presented the minutes from the March 1, 2019, Sentencing Commission meeting. Art Beeler moved to adopt the minutes as presented; the motion was seconded and carried.

RECOMMENDATIONS FROM DWI SENTENCING SUBCOMMITTEE

Chairman Brown recognized Becky Whitaker and John Madler, staff, to present the recommendations of the DWI Sentencing Subcommittee. (See DWI Sentencing Subcommittee Final Report for a description of the recommendations.) Ms. Whitaker stated that the DWI Subcommittee was convened in 2016 and recently concluded its work, culminating in a package of recommendations to the Commission. She reminded the Commission of the Subcommittee's background and the study requests from the Division of Adult Correction and Juvenile Justice (DACJJ) of the Department of Public Safety (DPS) and from the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety. The

Subcommittee initially identified some primary concerns with the current system of DWI laws: the availability and adequacy of treatment, swift resolution of cases, the structure and administration of sentences, the complexity of the laws in general and as they relate to other sections of the General Statutes, and lack of access to existing tools for treatment and administration of sentences. To respond to those concerns, the Subcommittee established a set of working goals as the framework for its study: that DWI policies should be swift and certain, be truthful in sentencing, reduce recidivism, and enhance public safety. Ms. Whitaker stated that the Subcommittee's made two initial decisions: DWIs are different from other types of offenses and should be treated as such, and the approach should be to amend existing DWI laws to meet the established goals. The Subcommittee studied DWI laws in segments: pretrial, sentencing, and post-conviction, as well as the issue of treatment as applicable throughout those three segments.

Ms. Whitaker presented the Subcommittee's recommendations for the pretrial portion of the DWI laws and practices. She stated that the primary concerns about the pretrial period of DWI case were swift resolution and the complexity of DWI laws. The Subcommittee wanted swift and certain policies that would reduce recidivism and enhance public safety. The Subcommittee looked at five primary areas of the pretrial process: pretrial resources, time to disposition, prioritizing among DWI cases, statutory requirements on DWI case processing, and incentives for defendants to plead.

Ms. Whitaker presented Recommendation 1. Promote a state-funded pretrial continuous alcohol monitoring (CAM) pilot program in smaller counties through the Governor's Crime Commission and collect data for further analysis. Mr. Beeler commented that he works with Wake County Reentry and that, while they do not have CAM, they have electronic monitoring which includes alcohol monitoring. He stated that they set aside one-third of the electronic monitoring fees to cover monitoring services for indigent defendants. Representative Richardson asked how that system works. Mr. Beeler replied that the court makes a determination of indigency and the program has a number of slots reserved for indigent offenders. Chairman Brown added that the Subcommittee delved deeply into the issues of access and expense when discussing CAM.

Ms. Whitaker presented Recommendation 2. Ask the Chief Justice to direct judicial districts to update their case management plans and continuance policies consistent with the North Carolina Commission on the Administration of Law and Justice's (CALJ) recommendations to the Administrative Office of the Courts (AOC) in implementing its case management plan. Danielle Elder asked if there was any significant statistical difference in time to disposition between counties with public defender's offices and those without. Ginny Hevener, staff, responded that the Commission does not have data on that. Mr. Beeler commented that it would be interesting to see that information. Chairman Brown stated that time to disposition also includes appeals to Superior Court for trial de novo. He pointed out that judicial districts in North Carolina can be very different from one another and that policies should be tailored to specific districts.

Judge Ervin asked if there has been any discussion of getting rid of legislatively-enacted procedural rules in DWI cases. He pointed out that DWI cases can bounce back and forth between District and Superior Court with appeals of rulings on motions and the like. Chairman Brown responded that there had been no discussion of the specific procedure of appealing pretrial rulings, but that the

Subcommittee did discuss certain procedures that are unique to DWI. Judge Ervin added that data on time to disposition could be skewed by delays caused by *Turner* issues.

Regarding prioritizing among DWI cases, Ms. Whitaker explained that the Subcommittee did not recommend any changes.

Ms. Whitaker presented Recommendation 3. Simplify the prosecutor's dismissal and explanation requirements by eliminating G.S. 20-138.4(b)(5); combining subsections (2), (3), and (4) of G.S. 20-138.4(b); and deleting the last line of G.S. 20-138.4(a).

Ms. Whitaker presented Recommendation 4. Ask the General Assembly to study the idea of a lesser included offense for DWI. Mr. Beeler asked if the recommendation was specific as to the lesser included offense the General Assembly is being asked to consider. Ms. Whitaker replied that the recommendation did not specify a lesser included offense but that a version of an alcohol-related reckless driving offense was the most common type of lesser included offense for impaired driving in other jurisdictions. Mr. Beeler commented that jurisdictions that have lesser included offenses for DWI have higher clearance rates of DWI cases. Representative Richardson stated that any lesser included offense would have to carry license revocation as a consequence in order to work and that Mothers Against Drunk Driving would have to be on board with it.

Ms. Whitaker presented Recommendation 5. Enumerate a mitigating factor if "the defendant has accepted responsibility for the defendant's criminal conduct at an early stage of the criminal process" for DWI sentencing. Judge Ervin asked if this mitigating factor would apply to Level 1 and 2 DWIs or just to Levels 3 through 5. Chairman Brown responded that the Subcommittee did not specify which Levels it would apply to, although it would be irrelevant for cases where a Grossly Aggravating Factor is present. Judge Ervin stated that if prosecutors and defense attorneys were able to negotiate the punishment level, that could be an added incentive for defendants to plead. Representative Richardson commented that even for first-time offenders with blood alcohol concentration of 0.08 to 0.12 sentences can be very tough.

Ms. Elder asked if all of this ultimately affects the amount of time an offender is actually spending incarcerated. Chairman Brown replied that the Subcommittee's work was not just about incarceration. Ms. Whitaker added that while the first study request did deal specifically with incarceration, the second study request was broader.

Ms. Whitaker presented Recommendation 6. Authorize conditional discharge for certain eligible DWI offenses, including the condition that a prior conditional discharge shall be counted as a prior DWI conviction for any subsequent DWIs.

Ms. Whitaker presented the final pretrial recommendation, Recommendation 7. Authorize an expunction option for DWI Levels 4 and 5 after a guilty plea. Ms. Elder asked how prosecutors would ascertain whether a person had a prior DWI expunction. Chairman Brown replied that there is already a process in place for offenses that do allow for expunction. AOC has a process for same-day expedited transmission of a defendant's expunction history. Ms. Elder asked how many of those requests AOC gets

in an average day. Chairman Brown replied that there are likely multiple requests per day. Ms. Elder stated that she wonders how many additional requests would result from allowing DWI expunctions. Chairman Brown stated that workload is a concern but that the expunction process is already in place for many other types of cases.

John Madler presented the Subcommittee's recommendations for the sentencing portion of the DWI laws. He stated that the Subcommittee focused on concerns over the structure and administration of the sentences as well as the complexity of the laws in general and as they relate to other sections of the General Statutes. The primary goal was to develop policies that were truthful in sentencing, as well as policies that reduce recidivism and enhance public safety. The Subcommittee studied five areas of sentencing: the parts of the sentence structure, sentence credits that are available, statutory sentence ranges, the rules governing multiple DWI convictions, and the effect of release on the sentence, both parole and post-release supervision (PRS).

Beginning with the sentence structure, Mr. Madler presented Recommendation 8. Eliminate the requirement that the judge impose a minimum term of imprisonment for DWI offenders.

Turning to sentence credits, Mr. Madler presented Recommendation 9. Eliminate the awarding of good time credit. He raised the issue that this could be a recommendation to the Secretary of the Department of Public Safety to eliminate the good time policy or to the General Assembly to repeal the statutory provisions that authorize good time.

Judge Ervin referred to the reduction of sentence lengths that occurred when Structured Sentencing was enacted to reflect what had actually been happening because of good time. He pointed out that just eliminating good time for DWI offenders effectively doubles their time served and has resource implications. He asked whether the Subcommittee thought about reducing the DWI sentences to match the existing reality and to try to be resource neutral. Chairman Brown responded that the Subcommittee discussed it often. Mr. Madler agreed that they repeatedly went back to the issue but stated that they chose not to recommend any changes. They understood that without a change in judicial behavior, this recommendation would require additional beds.

Regarding who should receive the recommendation, Susan Katzenelson stated that a change to the law should be done by the legislature, it should not be dependent on the politics of a governor or a department secretary. It takes away the flexibility but it also reduces the disparity between offenders sentenced under different administrations. Mr. Beeler suggested that it is a policy decision, not a change of law, and should be in the secretary's discretion, it can be subsequently revised or corrected if necessary.

Chairman Brown asked if the Commission wanted to make a motion regarding the question. Chris Fialko suggested that the Commission wait until Mr. Madler has presented all of the recommendations before discussing eliminating good time. The Commission agreed. Before leaving the issue, Mr. Madler informed the Commissioners that the Subcommittee did add the note stating that if the recommendation is enacted, sufficient time be allowed for the General Assembly to appropriate the necessary addition resources prior to it taking effect.

Representative Richardson asked how this recommendation affects prisons and how it interacts with the Effective Setting Study from the last Commission meeting. Mr. Madler responded that the

recommendations are interrelated and that subsequent recommendations will affect the impact. Chairman Brown stated that the issues are complex and interrelated and reiterated that Mr. Madler will present the remaining recommendations before the Commission makes any decisions.

Mr. Madler presented Recommendation 10. Eliminate gain time credits for DWI offenders and instead authorize misdemeanor earned time credit for all DWI offenders. He raised the issue that, similar to good time, the Commission could recommend to the Secretary of DPS to change the gain time policies to follow the earned time policies or to the General Assembly to repeal the statutory provisions that authorize gain time and instead authorized earned time for DWI offenders.

Moving to the statutory sentence ranges, Mr. Madler explained that the Subcommittee discussed this issue several times but did not recommend any changes.

Regarding the rules governing the sentencing of multiple DWI convictions, Mr. Madler explained that the judge cannot consolidate multiple DWI convictions but can run them concurrently or consecutively without limit, this is the opposite of the rules for non-DWI convictions. The Subcommittee did not recommend any changes. Judge Ervin stated that running multiple DWI convictions concurrently achieves the same result as consolidating offenses. Mr. Madler responded that the larger concern of the Subcommittee was unlimited consecutive sentencing for DWI convictions.

Mr. Madler presented Recommendation 11. Eliminate discretionary parole release for DWI offenders. Judge Ervin asked whether staff was able to calculate the amount of additional time an offender would serve with the elimination of good time and parole. Mr. Madler responded that staff was able to estimate the impact of eliminating good time but not of eliminating parole. He added that the data showed DWI offenders in punishment levels 3 through 5 rarely got paroled. Ms. Hevener explained that, using FY 2015 prison exit data from DPS, staff was able to estimate the time offenders would serve after eliminating good time but retaining other credits. She referred the Commissioners to Appendix G of the Report and explained the changes in time served. Chairman Brown stated that the Subcommittee struggled with not knowing whether eliminating good time would cause judges to change their sentencing practices, and thereby reduce the impact, or not.

Ms. Katzenelson suggested that the package could go to the Legislature with the understanding that the estimated time served and the resource projections are based on what DWI offenders have been serving (past practice). If the Legislature thinks the current penalties are too low, it can leave the sentence ranges as they are and basically double time served. If it thinks the current penalties are appropriate, it can adjust the sentence ranges. Ms. Katzenelson stated that this would bring together the justice issue, the legal issue, and, to a degree, the capacity issue. It would also free the Commission to recommend the change based on its merit without worrying about the resources. Chairman Brown explained that the Subcommittee considered the concerns the Commissioners were expressing and specifically rejected revisiting the sentence ranges.

Ms. Hall informed the Commissioners that staff could amend the report to clarify that the impact analysis is based on past practice and assumes no change in judicial behavior. Judge Ervin explained that if he were a legislator, he would want to know the impact adopting these recommendations would have on sentencing. Ms. Hall responded that Mr. Madler was going to walk through an example of how these recommendations would change DWI sentencing and that could be added to the report as well.

Mr. Fialko stated that DPS could make the change to the policy very easily but that the Statewide Misdemeanant Confinement Program (SMCP) is tasked with finding the necessary beds. Mr. Moose responded that that was the reason DPS asked the Sentencing Commission to study the issue of sentence credits, it did not want to force a change on the sheriffs and then leave them to figure out how to implement it. Judge Ervin added that the SMCP represented an agreement between the State and the sheriffs – the sheriffs would house the offender and the State would pay for it. If the State made this change without providing additional resources, it would be a breach of the agreement.

Jim Toms asked what the position was of the current secretary of DPS on the issue of good time. Mr. Moose responded that he could find out but that he thought the Department was looking for guidance on whether it should be eliminated and, if so, how it should be done. They would want to do it in a way that was fair to the offender and to the sheriffs, and with the help of the General Assembly. Representative Richardson stated that so much of it is timing. He pointed out that the Justice and Public Safety Appropriations Subcommittee is very strong right now and could help.

Mr. Madler presented Recommendation 12. Expand post-release supervision (PRS) to all DWI offenders in Aggravated Level One and to DWI offenders in Level One who receive a sentence of 12 months or more. PRS for DWI offenders should have the following elements:

- a. A nine month period of supervision in the community.
- b. Six months of confinement for violation of a condition of supervision; confinement may be imposed in three-month increments for technical violations.
- c. The term of supervision and the suspended period of confinement should be added on to the end of the active sentence and pronounced as part of the sentence.

Judge Ervin asked if the period of PRS would be deducted from the sentence or added on to it. Mr. Madler responded that the Subcommittee recommended adding the period onto the end of the active sentence, believing that this would increase the truthfulness in DWI sentencing.

Mr. Madler shared an example of how the recommendations would change DWI sentencing and reviewed the impact analysis of the sentence credit recommendations. Judge Ervin asked if the impact analysis included PRS revocations. Ms. Hevener responded that staff was not able to estimate that.

Mr. Madler then presented the Subcommittee's recommendations concerning the post-conviction phase of the DWI laws. He stated that the Subcommittee had expressed concern over access to exiting tools for treatment and administration of sentences. The Subcommittee attempted to recommend policies that would reduce recidivism and enhance public safety. There were three topics the Subcommittee studied: the availability of delegated authority, the use of confinement in response to violation (CRV), and the place of confinement for split sentences and for active sentences.

Mr. Madler presented Recommendation 13. Authorize DPS to use delegated authority on DWI offenders who are sentenced to probation. Mr. Fialko stated his opinion that delegated authority is unconstitutional.

Regarding the appropriateness of imposing CRVs on DWI offenders who violate probation, as well as housing them in the SMCP, Mr. Madler explained that the Subcommittee did not recommend any changes.

Regarding the location where DWI offenders serve a split sentence, Mr. Madler explained that the Subcommittee did not recommend any changes.

Mr. Madler presented Recommendation 14. Develop state-run dedicated treatment facilities for housing and providing treatment services to DWI offenders in Aggravated Level One and Level One, as recommended by the Sentencing Commission in its Effective Setting Study. Based on that recommendation, Mr. Madler showed the Commission the estimated impact the recommendations would have on DACJJ and on SMCP.

Finally, Mr. Madler presented the Subcommittee's recommendations concerning treatment. He stated that the Subcommittee had expressed concern over the availability and adequacy of treatment as well as the access to exiting tools for treatment and administration of sentences. The Subcommittee's goal was to recommend policies that would reduce recidivism. After reviewing the various treatment options that are currently available, the Subcommittee agreed that there were gaps in the options that are available and that it would help DWI offenders if there were a continuum of programs, but that the Subcommittee lacked the expertise to identify the appropriate programs. The Subcommittee did not recommend any changes.

At the conclusion of the review of the Subcommittee's recommendations, Mr. Beeler spoke in favor of recommending that the secretary of DPS make the changes through the sentence credit policies. He said that it was an opportunity to try the changes and see if they are effective without going to the Legislature, to have the flexibility to adjust the policies if necessary. He suggested evaluating the changes in 2 years to see if they should go to the Legislature and be made permanent.

Judge Ervin questioned how they would deal with the fiscal impact on the SMCP if the Department made the change. Mr. Beeler pointed out that Recommendation 14 would result in less DWI offenders in the SMCP. Sheriff Clemmons expressed opposition to changing good time through the Department, he felt it should go through the Legislature so they could adequately fund it. Ms. Katzenelson added that it would require more time to pass than 2 years before they could properly analyze the effects of the change.

The members discussed disparate treatment at sentencing versus disparate impact of sentencing schemes on offenders. Chairman Brown suggested that these recommendations could offer some relief by bringing more objectivity to the process.

Mr. Beeler asked if earned time was factored into the impact analysis. Ms. Hevener responded that gain time and any other existing sentence credits DWI offenders currently receive was factored into the analysis, but that the recommendation to authorize earned time was not.

Chief King stated that the Legislature should make the changes, it was not fair to put that burden on the secretary of DPS. Representative Richardson pointed out that most of the recommendations required legislative action, and it is hard to push recommendations individually, so he suggested that the recommendations be put together into a legislative package.

Mr. Fialko suggested that the Commission vote on whether to recommend eliminating good time first and then, if so, who should do it. He moved to delete Recommendation 9 from the package, thereby retaining good time. Judge Ervin seconded the motion.

Chairman Brown stated that Maureen Krueger was not able to attend the meeting but that the position of the Conference of District Attorneys was to eliminate good time.

Representative Richardson asked what the effect was of eliminating Recommendation 9. Chairman Brown explained that the recommendation to eliminate good time was designed to help achieve truth in sentencing and deleting it would maintain the status quo where DWI offenders serve less than one-half of their sentence. He added that he understands the concern but wants the Commission to understand that this recommendation was developed in a deliberate way, it was not proposed recklessly. The impact is the cost of making the change, the Legislature can act on it or not, but the intent was to implement truth in sentencing, not to increase punishments. Judge Ervin stated that he values truth in sentencing but that he would get there in another way, by reducing the sentence ranges.

Representative Richardson stated that these recommendations could really change the way North Carolina handles DWI offenses, it could have national impact.

Commissioner Lee pointed out that, pursuant to Recommendation 14, many DWI offenders would be serving their time in a dedicated treatment facility and that would be different than serving time in a correctional facility. Hopefully, the treatment would be more beneficial.

Chairman Brown called for a vote on Mr. Fialko's motion to delete Recommendation 9: 10 voted in the affirmative and 4 voted in the negative, the motion carried.

Mr. Beeler moved to recommend that the secretary of DPS make the appropriate changes to the gain time policies for Recommendation 10. Judge Ervin seconded the motion and the motion carried.

Mr. Toms moved to accept the package of recommendations from the DWI Sentencing Subcommittee as amended. Mr. Beeler seconded the motion and the motion carried.

Following lunch, Chairman Brown noted that there was discussion during the lunch break about the issue of good time and how that impacted the package of recommendations. He asked the members if there was any further discussion on time served for DWI offenders and its impact.

Ms. Katzenelson stated that good time opens the door to disparity by moving the punishment decision away from the judge to someone later in the process. She understood Judge Ervin's concern about the resulting increase in punishment but suggested telling the General Assembly that the Commission strongly recommends getting away from good time and the resulting disparity but, because of the potential impact on time served and the disparity that might create, it should consider sentence lengths in conjunction with eliminating good time.

Judge Ervin stated that eliminating good time without making changes to the sentences effectively doubles DWI sentences without telling people that is what is being done. He suggested that reducing sentence ranges to match actual time served, like what was done under Structured Sentencing, along with eliminating good time would effectively bring DWI sentences within the Structured Sentencing system.

Ms. Elder asked if the Subcommittee addressed the issue of changing the sentencing ranges. Chairman Brown responded that staff raised the issue several times but that the Subcommittee did not address it because it did not want to get into sentence ranges.

Mr. Beeler stated that he voted against the motion because of the truth in sentence aspect but that he felt it was important to put all aspects of DWI sentencing under the Structured Sentencing system. He suggested that going back and looking at the ranges might result in a proposal they can reach consensus on.

Mr. Moose stated that DPS would work with whatever package went forward to get a decision made about good time. From a public policy perspective, the Department felt that an executive agency is not the appropriate place for a decision to be made that cuts sentences in half. However, the secretaries of DPS have been hesitant to change the policy because of the impact it would have on the SMCP. He stated that this decision should be made by the legislature and not by the agency that supervises these offenders. Judge Ervin pointed out that if the recommendation included making changes to the punishment ranges, it would require legislative action.

Based on the discussion, Chairman Brown asked if the Commission wanted to reconsider its previous decision. He noted that Sheriff Clemmons, Chairman Fowler, and Representative Richardson had to leave the meeting. Judge Ervin moved to refer the good time issue back to the DWI Sentencing Subcommittee asking them to consider an impartial changing of the sentence ranges. Mr. Beeler seconded the motion.

Mr. Fialko asked if this meant the Commission would delay submitting the report. He stated that there was strong support for the other recommendations and he would strongly oppose any motion to delay the report. If someone was interested in why the Commission did not recommend deleting good time, they could write a letter asking for the reasons.

Senator McKissick asked if the staff had given any thought to what adjusting the punishment ranges would look like if it was paired with the good time recommendation to bring sentencing in line with what is actually happening. Chairman Brown responded that they had not because the Subcommittee had not asked them to do so.

Chairman Brown stated that despite concerns about delaying the report, if the Commission was asking the Subcommittee to stay active and go back, he stands ready to reconvene the Subcommittee.

Mr. Beeler raised a point of order, noting that there was a motion and a second on the floor.

Chairman Brown stated that there was a motion and a second that the recommendation to eliminate good time be referred back to the Subcommittee so that the Subcommittee can instruct staff to prepare sentence range revisions that would make a neutral impact to the recommendation. The motion carried.

LEGISLATIVE REVIEW AND SESSION UPDATE

Chairman Brown recognized Meghan Boyd Ward, staff, to present an update on the 2019 Session of the General Assembly (see handout). Ms. Boyd Ward provided a summary of the proposed budgets for the Judicial Branch, Department of Justice, and Department of Public Safety. Additionally, she presented proposed appropriations for the implementation of the Juvenile Justice Reinvestment Act ("Raise the Age"). She described where the Governor, House, and Senate budget bills agreed and where they departed from one another. She noted that the House and Senate recommended funding for an

additional SPAC Policy and Research Associate, a rate increase for private counsel representing indigents, the Standing Up for Rape Victims Act, and the creation of a long-term care facility at Central Prison for chronically ill inmates. Relating to Raise the Age, Ms. Boyd Ward said that the House and Senate recommended funding for additional personnel within the Judicial Branch and the Department of Public Safety, as well as resources for transportation and housing at Juvenile Detention Centers.

Ms. Boyd Ward provided an update on bills of interest from the 2019 long session. She noted several bills relating to Raise the Age, including two bills from the House and Senate (HB 609 and HB 413, Raise the Age Modifications) that would implement the Juvenile Jurisdiction Advisory Committee's recommendations. Another bill effecting both juvenile and adult offenders is SB 562/HB 874, The Second Chance Act, which allows for expunctions of certain nonviolent felony or misdemeanor offenses, as well as expunctions for when the charges were dismissed or the person was found not guilty. She also cited HB 885, Study Criminal Justice Data Collection, as particularly pertinent to the Commission for its focus on identifying criminal justice data throughout the state to better utilize the data.

JUVENILE RECIDIVISM STUDY – 2019 REPORT HIGHLIGHTS

Chairman Brown recognized Tamara Flinchum, staff, to present the Juvenile Recidivism Study: FY 2016 Juvenile Sample (*see* handout). Ms. Flinchum informed the members that this report is one of the Commission's legislatively mandated biennial reports on juvenile recidivism in North Carolina. The report was submitted to the General Assembly on May 1, 2019. She described the three groups of juveniles in the sample: diversion, probation, and commitment. Their inclusion in the study was based on their exit from the juvenile justice system during FY 2016. Ms. Flinchum also informed Commissioners that due to selection of an exit cohort (new for this report) and a shortened fixed follow-up period to examine outcomes, recidivism results from this report cannot be compared to previous juvenile recidivism reports (i.e., no trend data available). Juvenile Justice and Commission staff agreed upon the methodological changes in anticipation of raising the age of criminal accountability and the incoming 16- and 17-year-olds in the juvenile justice system (i.e., 2017 JJRA, effective date December 1, 2019). Information was presented on the juvenile sample's profile, including the personal characteristics, the delinquency histories, the charged offense (juvenile complaint), results for the risk and needs assessments, and the length of time the juveniles spent in the juvenile justice system.

During the sample profile presentation, Mr. Beeler asked if the composition of the types of charged offenses the juvenile commit will change with the increased age of accountability. Ms. Hall referenced the report to Commissioners to view the percentages of crime type by age and reported that the data did reflect an increase in drug offenses as the juveniles aged in the current sample. Commissioners speculated that those percentages may increase with the addition of the older juveniles. Ms. Katzenelson commented that the variables examined were not independent of each other, but are intertwined – meaning that the chances of being diverted in the past will affect the chances of diversion in the future. Chairman Brown suggested inevitability; Ms. Katzenelson responded it is the probability of diverted juveniles who continue their involvement with the juvenile justice system to become adjudicated delinquent. She also expressed that risk is another expression of the juvenile's later involvement. Mr. Beeler complimented staff by stating that the report does a good job by including the diversion group as a comparison to the adjudicated group (i.e., probation and commitment groups).

Ms. Flinchum then provided the recidivism rates for the juvenile sample. With regard to the small number of juveniles in the commitment group, Mr. Beeler offered a potential solution to neutralize the small number by applying a per 1,000 technique to the population. Mr. Moose asked if information was available for the probation group with regards to family involvement with the criminal justice system. Ms. Flinchum referred Commissioners to the report and provided the appropriate percentages. Mr. Beeler agreed with those findings and stated that it is sometimes difficult for JCPCs to include juveniles not involved with juvenile court since parents are unwilling to give consent for participation in programs. He reported that juveniles in Granville County had 40% with a parent or guardian who was unwilling or unable to provide supervision for the juvenile. Ms. Davis asked if juveniles in the commitment group included those who had exited from the Children's Methodist Home and commented that that program had had great success with their juveniles. Ms. Flinchum responded to Ms. Davis that the commitment group were exits from a Youth Development Center facility only. In conclusion, Ms. Flinchum summed up the key findings from the report and the potential policy considerations.

EFFECTIVENESS OF PROGRAMS FUNDED BY JUVENILE CRIME PREVENTION COUNCILS – 2019 REPORT HIGHLIGHTS

Chairman Brown recognized John King, staff, to present on the highlights of the JCPC Program Effectiveness Study: FY 2016 Sample (see handout). Mr. King provided an overview of JCPCs – their responsibilities and duties, as well as the youth populations JCPC programs serve. Mr. King also shared how JCPC programs were studied for this year's report, which included a new methodology using a sample of juveniles who exited from a JCPC program in FY 2016 and measuring their recidivism rates during a two-year follow-up period. The new methodology also enabled analyses of recidivism that occurred while juveniles participated in a JCPC program (i.e., in-program recidivism). Mr. King added that the study sample included both at-risk and court-involved juveniles for the first time since 2013 and that new data were available to staff that increased the breadth of the report's findings.

Mr. King continued by describing the sample, noting that 54% of the sample was at-risk at the time they were referred to their JCPC program. Almost 80% of the sample exited from one of three program categories: Structured Activity (38%), Restitution (21%), and Teen Court (20%). He shared that juveniles who exited from Assessment and Residential programs had the highest two-year follow-up recidivism rates (43% and 41% respectively). Juveniles who exited from Clinical, Teen Court, and Structured Activity programs had the lowest recidivism rates during the two-year follow-up (16% each). He noted that in-program recidivism rates were lower for all program categories than two-year follow-up recidivism rates.

Having shared the recidivism rates by program category, Mr. King explained other findings that help put these recidivism rates in context. For example, he attributed the finding that in-program recidivism rates were lower than two-year follow-up recidivism rates to the shorter amount of time juveniles are in their programs (less than 4 months on average) compared to the two-year follow-up period. He also pointed out that program categories serve different populations and that these compositional differences (e.g., percent of court-involved juveniles) can explain some of the differences in recidivism rates. He noted that, regardless of program category, juveniles who completed their programs had lower recidivism rates than juveniles who did not complete their programs.

Mr. King explained that this was the Commission's first opportunity to analyze JCPC programs by their Standardized Program Evaluation Protocol (SPEP) scores. He briefly described the SPEP scoring system and shared that the developers of the system expected to see lower recidivism rates for programs with SPEP scores of 50 points or more. Staff did find lower recidivism rates for juveniles who exited programs with SPEP scores of at least 50 points, but only among juveniles who were in the highest risk level (RL5). Juveniles in the other four risk levels had lower recidivism rates when they exited from programs with SPEP scores of less than 50 points. Mr. King explained some preliminary ideas about why this occurred and looked forward to next cycle which will provide additional opportunities to delve deeper into the relationship between SPEP scores and recidivism.

Following the discussion of SPEP scores, Mr. King shared the recidivism findings by legal status and noted that court-involved juveniles had higher recidivism rates than at-risk juveniles. He noted that court-involved juveniles were often higher risk and had more problem behaviors, which may explain some of the differences in recidivism rates. He also noted that juveniles with a prior complaint, regardless of whether they were at-risk or court-involved at the time they began their JCPC program, had higher recidivism rates than juveniles without a prior complaint.

Mr. King concluded his presentation with a few key findings and policy implications. He reiterated the need consider recidivism rates in the context of who programs served. He mentioned that, because prior contact with and deeper penetration into the juvenile justice system appeared to be strongly associated with recidivism, system actors should consider employing the lowest possible interventions with juveniles. Finally, Mr. King pointed out that juveniles who completed their JCPC program had lower recidivism rates than those who did not, which suggests that efforts to ensure program completion should continue. Mr. Beeler commented that he appreciated this report very much, especially in that it gives a better picture on JCPC effectiveness than previous reports.

JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION – 2019 REPORT HIGHLIGHTS

Chairman Brown recognized Ms. Hall and Ms. Hevener to present highlights from the 2019 Justice Reinvestment Implementation Evaluation Report. Ms. Hall stated that this report was the eighth report produced in response to the statutory mandate. This report included a new analysis which Ms. Hevener would explain.

Ms. Hevener presented results from an analysis that examined the question of whether the expansion of post-release supervision (PRS) to Class F – I felons has had an effect on recidivism (*see* handout, Preliminary Evaluation of the Expansion of PRS). Propensity score matching, an advanced statistical technique used to create matched samples, was used to compare differences in recidivist arrest rates for Class F – I felons with no PRS (FY 2011 pre-JRA sample) to those with PRS (FY 2015 post-JRA sample). The preliminary study indicated there was no difference in recidivist arrest rates between these groups after accounting for individual factors and system-level changes. Ms. Hevener noted that the strategies used for supervising Class F – I felons on PRS were in early stages for the post-JRA sample. Future research should evaluate the effect of the expansion of PRS by using data further along in implementation and by examining additional variables and outcomes.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:05 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary