

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

September 27, 2019

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 27, 2019, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Sheriff James Clemmons, Lisa Costner, Chris Fialko, Willis Fowler, Judge R. Greg Horne, Susan Katzenelson, Chief Henry King, Honorable Maureen Krueger, Honorable Tammy Lee, Dr. Harvey McMurray, Representative Allen McNeill, Honorable Jim Mixson, Tim Moose, Judge Fred Morrison, Senator Bob Steinburg, Calvin Suber, and Judge Valerie Zachary.

Guests: Judge Robert Ervin (former Commissioner), Senator Floyd McKissick (former Commissioner), Jim Toms (former Commissioner), Jane Allen Wilson (for Francis Battle, VAN), Sarah Llaguno (DPS - Combined Records), Kim Robuck (DPS - Combined Records), Melissa Roark (OSBM), Jesse Sholar (NCSA), Ying He (SPAC Intern), and Jamie Markham (UNC SOG).

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

INTRODUCTION AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:00 a.m. He introduced the following new Commissioners: Judge R. Greg Horne, representing the Conference of Superior Court Judges; James (Jim) Mixson, representing the Conference of Superior Court Clerks; Calvin Suber, the Chairman's Appointee; and Senator Bob Steinburg, representing the NC Senate. Chairman Brown then introduced new staff: Jennifer Lutz; Ying He (intern); and Quay (Guiding Eyes Puppy-in-Training). Finally, Chairman Brown asked members and guests to introduce themselves.

Chairman Brown read a Resolution for Judge Tom Jarrell (District Court Judges' Association) (in memorial). Art Beeler moved for adoption of the Resolution; Sheriff Clemmons seconded the motion and the motion carried. It was resolved that a copy of Judge Jarrell's resolution be spread upon the minutes of this meeting and a copy be sent to his beloved widow and children to preserve for future remembrances the contribution he made to the North Carolina Sentencing and Policy Advisory Commission and to the State of North Carolina. (See attached.)

Chairman Brown read several Resolutions for departing Commissioners and asked that they step to the front of the room to be recognized: Jim Toms (Chairman's Appointee); Judge Robert Ervin (Conference of Superior Court Judges); Senator Floyd McKissick (NC Senate); and Judge Rueben Young (NC DPS) (not in attendance). Motions were made to adopt each resolution; the motions were seconded and carried. Members present made departing remarks.

Chairman Brown announced the 2020 Sentencing Commission meeting dates: March 6, June 5, September 11, and December 4. He reminded the members that the last meeting of 2019 is December 6. Chairman Brown added that Commissioners will be notified of subcommittee dates when they are set.

Chairman Brown reviewed the agenda and then presented the minutes from the June 7, 2019, Sentencing Commission meeting. Sheriff Clemmons moved to adopt the minutes as presented; the motion was seconded and carried. Chairman Brown briefly discussed the 25th Anniversary Celebration Reception, held the previous night at the Art Museum in Raleigh. He thanked all that attended and hoped they enjoyed it, and spoke about what it meant to the Commission.

25TH ANNIVERSARY CELEBRATION: TWENTY-FIVE YEARS OF STRUCTURED SENTENCING IN NORTH CAROLINA

Chairman Brown recognized Michelle Hall, staff, to present an overview of twenty-five years of Structured Sentencing (SS) in North Carolina (see Presentation). Ms. Hall noted the purpose of the presentation and outlined the presentation content which would include four parts: the development of the Structured Sentencing Act (SSA), implementation and outside changes to the SSA, monitoring and maintaining the SSA, and a twenty-five-year look back at sentencing.

Ms. Hall began with the development of the SSA. In the late 1980s and early 1990s, the criminal justice system was in crisis. Prisons were overcrowded and under threat of federal takeover. Discretionary parole was in place; the Parole Commission was releasing inmates at an unprecedented rate. As a result, judges started imposing longer sentences. Defendants were refusing probation and elected to serve knowing they would be released early. Ultimately, the General Assembly created the Sentencing Commission to develop a systemic approach to dealing with the criminal justice system crisis. Ms. Hall described the original mandate of the Commission, as well as the process the Commission followed in the early days of its work, including its development of the principles of Structured Sentencing (Truth, Certainty, Consistency, Prioritize Resources, Balance Resources).

Judge Brown initiated a discussion amongst Commissioners regarding the SS principle of truth in sentencing. He noted its personal importance to him, as he recalled the transition to Structured Sentencing in North Carolina during his career—and specifically how bad things were prior to the SSA. Maureen Krueger noted the importance of truth in sentencing to victims; it is a critical feature of sentencing for victims' confidence in the system. Mr. Beeler agreed truth should be the number one framework of sentencing and highlighted the importance of truth in reducing disparity in sentencing. He shared the impact of truth in sentencing on inmates – in his experience, variance in sentences led to fights among inmates. Ms. Katzenelson voiced her support for truth in sentencing. She noted her belief that the public did not understand that judicial discretion was limited by truth in sentencing, but not totally curtailed. Representative McNeill shared his experience in law enforcement pre-SSA, when he believed judges were giving longer and longer sentences due to the lack of truth in sentencing. Ms. Hall then reviewed the process the Commission undertook to develop the SSA, and the ultimate package of recommendations it submitted to the Legislature. She described the legislative process and passage of the SSA, and its ultimate inclusion in the statutes, once enacted.

Next, Ms. Hall moved to the implementation and outside changes section of the presentation. She noted the SSA experienced almost immediate change in the Special Crime Session of 1994 – the biggest change was the moving up of the effective date of the legislation to October 1, 1994. She noted some implementation changes and other changes to sentence lengths that were enacted in 1995. In 2001, the General Assembly tasked the Sentencing Commission with developing alternatives to curb prison population growth – which was projected to exceed 40,000 inmates by 2010. Ultimately the Commission recommended six alternatives, some of which were adopted and had the desired effect on the prison population. The next change to SSA came with the United States Supreme Court decision in *Blakely v*

Washington. The Commission examined the ruling, which prohibited judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant, and found a way to maintain the SSA while complying with the opinion. Last, Ms. Hall noted changes made to the criminal justice system under the Justice Reinvestment Act; she described the Commission's involvement in the JR process and its ongoing mandate to evaluate the implementation of the Act.

Ms. Hall moved to the third section of the presentation, a summary of the ways in which the Commission monitors and maintains Structured Sentencing. She started with the Commission mandate to perform legislative review – which is a key way it maintains the integrity of Structured Sentencing. The Commission uses its offense classification criteria to perform this function – criteria that were developed to provide clear guidelines, to maintain similarity in harm within classes and proportionality between classes, and to be transparent to the public in order to maintain public confidence in the system. Since 1994, the Commission has reviewed legislation 45 times, and reviewed 1,239 bills. Another ongoing responsibility of the Commission is to project the prison projection on an annual basis. Ms. Hall noted the accuracy of the projections over time, and their importance in informing resource discussions at the Department of Public Safety (DPS) and the General Assembly.

Ms. Katzenelson praised the projections and highlighted the difficulty of projecting a changing system. It requires a reliable simulation model, but also requires knowledge and expertise on the part of staff for data and research, as well as policy and legal components. Judge Brown thanked Ms. Katzenelson for her comments and noted the difference between Judge Ross's and Judge Spainhour's remarks at the anniversary reception. Judge Ross featured the principle of "truth" in his comments, while Judge Spainhour focused on resources. Judge Brown said both principles were important, and it was up for debate as to whether there was any true ranking as to which was and is the most important.

Ms. Hall then discussed the Commission's mandate to monitor convictions and sentences imposed under Structured Sentencing – performed through the annual publication of the Statistical Report, and finally, the Commission's subcommittee work, where the Commission studies a variety of issues to make recommendations about the criminal justice system.

Ms. Hall then moved to the final section of the presentation – the twenty-five year look back at sentencing. She noted she was going to show some data from "then" (i.e., pre-SSA) and "now" (2019, twenty-five years later), and make comparisons in the context of the principles of Structured Sentencing. She started with "truth" – noting that in 1993, the percent of sentence served was 19%, compared to FY 2018 at 100%. Next, she reviewed "consistency" by comparing sentence lengths pre- and post-SSA and showing greater consistency now. In terms of "certainty", Ms. Hall reviewed the components of an SSA sentence compared to a pre-SSA sentence – there are few areas of uncertainty now. In terms of prioritizing resources, Ms. Hall showed a comparison of the violent and non-violent composition of the prison population over time. Pre-SSA, the prison population was majority non-violent offenders, while now it is majority violent.

Secretary Moose noted that the composition of the prison population shown on the slide informed the difficulties that were being experienced in prisons currently, specifically the security and staffing issues. He explained his understanding that the system was not adequately prepared to handle this change in the way prisons were constructed and staffed. Judge Brown acknowledged the challenges the system faces but pointed out the change in composition was intentional – that prisons should house the violent offenders. The solution was not to add more nonviolent offenders back in the system. Secretary Moose responded that it is the correct thing to do – have the violent offenders in the prisons,

however, over time, prisons did not adjust adequately with technology and staffing. Judge Brown noted that while public safety is achieved by incarcerating violent offenders, it does create needs for resources for DPS. Mr. Beeler commented that it should not be forgotten that the stresses and needs of the correctional officers have changed over time as well – the state has not done a good job supporting those needs. The average correctional officer dies at 58, due to the stresses of the profession. He emphasized the importance of protecting the officers. Senator Steinburg noted the suicide rates for correctional officers after they retire are the highest of any profession. He shared that when he asks law enforcement officers whether they would take a hypothetical salary of \$100,000 and retirement after 25 years to serve as a correctional officer, all respond “no”. The risk to the correctional officers is constant. He continued by noting that the closing of prisons to get current staff ratios under control will help, but will not be a panacea. Correctional officers should be compensated according to the risk they are taking every day. He outlined several other strategies for officer retention, some of which included shorter time to retirement, higher pay, and ability to move up to higher pay grades more quickly.

Judge Brown reiterated the success of Structured Sentencing in achieving its goal of prioritizing prison bed space for violent offenders and noted that however, that did not address the Human Resource needs or the needs of DPS to manage the population and he would welcome that discussion. He added that while the Commission did not have a specific mandate at the current time to look at the related issues regarding prison population composition, it certainly could and has responded to requests for study, especially from legislators.

Mr. Beeler noted that North Carolina correctional officers are not classified as law enforcement officers. They do not get the benefits of retirement and other benefits that other law enforcement officers do. It would be costly to make that change to classification, but he emphasized that until the state treats correctional officers as it does other law enforcement, it will continue to experience retention issues. Senator Steinburg noted the General Assembly had taken steps to correct a similar situation with the Highway Patrol to address retention, and attrition rates declined as a result. He noted his belief that the same could happen with correctional officers.

Commissioner Lee voiced her support for re-classifying correctional officers as law enforcement, and shared an experience from a local memorial service in her district honoring a correctional officer who was killed inside of an institution.

Sheriff Clemmons noted that beyond prisons, there were issues in law enforcement recruiting and retention generally. Young applicants do not want public safety as a career, especially if there aren't any long-term benefits. He noted that salary has always been an issue for law enforcement, as has recognition for their service. He also explained that retirement at 25 years is not full retirement – it's a partial retirement. All of these issues should be looked at more fully.

Ms. Hall concluded her presentation discussing the last principle of Structured Sentencing – balancing resources. Over the course of Structured Sentencing's history, there have been times when the prison population projections and fiscal note statements have informed tweaks to policy. The rational system allows for this to occur as needed.

25TH ANNIVERSARY CELEBRATION: SENTENCING DATA WEB VISUALIZATION

Chairman Brown recognized Ginny Hevener, staff, to present on a new initiative. Ms. Hevener announced that the Commission is also marking the 25th anniversary of the enactment of the SSA by

developing a data dashboard for the felony and misdemeanor statistical report data. She stated that this seemed especially fitting given the role data played in the development of the SSA and has continued to play in the Commission's work in developing or considering changes to sentencing and correctional policies over the years. The project is in partnership with the Administrative Office of the Courts and will be developed using OpenDataSoft, a data visualization software that is used by several state government entities.

The annual statistical report on felony and misdemeanor convictions and sentences imposed under Structured Sentencing provides information at the statewide level, with limited information at the local level. The data dashboard would provide more information at the local level (e.g., county, judicial district, division) that could be used by criminal justice professionals, local government officials, and others to inform local policies, practices, and programs – similar to how the statewide data is used to inform the work of the Commission.

Ms. Hevener stated that the dashboard will consist primarily of visualizations. Initially five years of trend data will be provided, with the ability to filter by various fields such as fiscal year and county. Ms. Hevener then provided a demonstration of some early visualizations in the developer environment and invited Commissioners to share ideas about data to include on the dashboard and any other feedback. The data dashboard will be more fully developed over the course of the next year, with completion anticipated by September 2020.

DWI SUBCOMMITTEE REPORT - SUBCOMMITTEE RECOMMENDATION ON SENTENCING RANGES

Chairman Brown recognized John Madler, staff, to present the DWI Sentencing Subcommittee's recommendation for DWI sentence ranges (*see* DWI Sentencing Subcommittee Final Report, September 27, 2019). Mr. Madler began by reviewing the mandates, the Subcommittee's study of the DWI laws, and its Final Report to the Commission. He pointed out that the Commission reviewed the Subcommittee's report at its June 7 meeting and adopted 13 of the 14 recommendations; it did not adopt the recommendation to eliminate good time for DWI offenders. The Commission was concerned about the impact the elimination of good time would have on the amount of time the offenders serve and the number of additional beds needed to house the offenders if the sentence ranges were not changed. The Commission referred the recommendation back to the Subcommittee and asked it to develop a proposal to revise the sentence ranges in such a way that the recommendation to eliminate good time would be impact neutral. Staff was asked to prepare options for the Subcommittee to consider.

Mr. Madler explained the process that was used to develop the proposed sentence ranges. Staff began by considering various approaches based on different principles, they tried to avoid just randomly reducing numbers to reach a specific impact. They estimated the impact of each option and decided on two approaches, with two options for each approach, to present to the Subcommittee. The Subcommittee met on September 13, 2019, to consider the options developed by staff. The Subcommittee reviewed DWI sentencing and incarceration statistics for FY 2018 for context, studied the options, and considered the impact the options might have on some of its other recommendations. Finally, the Subcommittee decided on its recommendation to the Commission.

For information purposes, Mr. Madler reviewed the DWI sentencing and incarceration statistics for FY 2018. He highlighted several key findings from the AOC conviction data: the majority of DWI convictions were in Level 5, active sentences were imposed in only 8% of the cases, and the judge imposed the statutory maximum sentence more frequently for suspended sentences than for active sentences.

Turning to the Department of Public Safety (DPS) incarceration data, he pointed out that most incarcerations occurred following a revocation, judges tended not to change the maximum sentence imposed when revoking probation, and most of the DWI offenders served half of their maximum sentences.

With that information as background, Mr. Madler presented the DWI Sentencing Subcommittee's proposed revisions to the sentence ranges. He began by listing the elements the two options had in common: they make the impact of the recommendation to eliminate good time neutral as to time served and additional beds needed, they are based on the other recommendations from the Subcommittee being in place, they retain the current statutory sentence range for Aggravated Level 1, and they only change the statutory maximum sentences for the remaining punishment levels. Turning to the differences, he explained that the first option focuses on the average time DWI offenders currently serve while the second option reduces the statutory maximum sentences by a set percentage. Mr. Madler added that each option included two estimated impacts, one that assumed sentences would average out to the midpoint of each range (the neutral estimate) and one that assumed the judge would impose the statutory maximum sentence in every case (the high estimate). The second estimate was less likely but was included as a "worst-case" scenario.

The first option (Option 1) used the average time served for each punishment level and built a range around it using the current statutory minimum sentence as the base. Mr. Madler explained how the ranges were developed and how they compared to the current sentence ranges, pointing out that this option would only reduce the maximum sentences for Punishment Levels 1 and 2. He then reviewed the estimated impact which showed no additional beds needed if the midpoint is used as the estimate and 328 beds needed in the first year and 451 beds needed in the second year if the statutory maximum sentence is used as the estimate.

Chris Fialko asked for clarification as to whether this option assumed the average time served for all of the sentences would equal the midpoint of each range. Mr. Madler responded that it did.

The second option (Option 2) used the existing sentence ranges but reduced the statutory maximums by 50% to compensate for the loss of the 50% sentence reduction for good time. Mr. Madler explained how the ranges were developed and how they compared to the current sentence ranges, pointing out that this option would reduce the maximum sentences for Punishment Levels 1 through 5. He then reviewed the estimated impact which showed a potential bed savings of 160 beds if the midpoint is used as the estimate and only 196 beds needed in the first year and second year if the statutory maximum sentence is used as the estimate.

Mr. Madler informed the Commission that the Subcommittee considered what effect each of the options would have on other recommendations the Subcommittee had already made, specifically the recommendations regarding split sentences, post-release supervision, and the confinement location for active sentences. He reviewed each of the recommendations in light of the proposed changes to the sentence ranges. The Subcommittee did not identify any conflicts. Mr. Madler concluded by stating that the Subcommittee was recommending the elimination of good time credits for DWI offenders along with Option 1 for changes to the sentence ranges but that it was also submitting Option 2 without recommendation for the Commission's consideration.

Mr. Beeler asked if the Subcommittee considered whether there would be enough time for treatment under the proposed ranges. Mr. Madler responded that they did and they felt that at least 90

days would still be available in Aggravated Level 1 and Level 1. Chairman Brown added that the Subcommittee acknowledged that DPS's role in treatment under the recommendations is limited to the offenders in the highest levels and that these options would not carve into their access to treatment.

Commissioner Lee asked why the Subcommittee was recommending Option 1 over Option 2. Chairman Brown explained that Option 1 changed the least in Levels 1 and 2 and made no change to Levels 3, 4, and 5, whereas Option 2 had a dramatic effect on the sentences for the high volume of offenders in Levels 3, 4, and 5.

Mr. Beeler moved to recommend eliminating good time credits for DWI offenders and amending the DWI sentence ranges consistent with Option 1. Maureen Krueger seconded the motion.

Mr. Fialko explained that one of the reasons that some of the members supported Option 2 was because the easiest way to make up for eliminating good time was to reduce the maximum sentences by 50%. They also thought that sentences imposed under the new ranges might average above the midpoint of the range and that, as a result, Option 2 would be the only one that would actually result in a neutral impact. Mr. Fialko added that he thought offenders in the lower levels might not need as much time as they currently receive. Sheriff Clemmons stated that Option 2 provided a way to save money but still make sure the offenders were getting punished.

Representative McNeill asked if the recommendations required legislation. Mr. Madler responded that a few of the recommendations were to the Chief Justice or DPS but that most of them would require legislation. Mr. Fialko pointed out that good time for DWI offenders could be eliminated through policy changes by the Secretary of DPS. Mr. Beeler agreed that it could be but stated that the recommendation is to eliminate it completely and that would require legislative action. Secretary Moose questioned whether the State wanted the agency with supervisory authority over the offenders to also have authority to change the amount of time they would serve. In addition, DPS did not want to make an arbitrary decision regarding good time, that is why it requested the study. Ms. Krueger suggested that they might have the enabling legislation for the dedicated treatment facilities to go along with these recommendations so that it would have even less of an impact on the SMCP. Ms. Katzenelson pointed out that the recommendations should be considered as a package because the impact of some of the recommendations is based on the elimination of good time.

Representative McNeill asked if the General Assembly's bill filing rules would allow for these issues to be addressed in the 2020 Session. Mr. Madler responded that the Sentencing Commission is authorized to report its recommendations, including any recommended legislation, to the General Assembly annually. This allows the Commission to submit proposed legislation under the rule which permits the General Assembly to consider bills implementing the recommendations of study commissions authorized to report to that session.

Ms. Lee stated that Option 2 sounded more neutral because it saved beds. Ms. Krueger responded that requiring fewer beds did not equate to being neutral, it may be going further than necessary. She questioned whether there would be much legislative interest in a package that reduced all of the sentences that much. Chairman Brown stated that these were the best estimates possible but that it was not known how much judges would change their practices in reaction to the elimination of good time. Ms. Krueger pointed out that the data showed offenders in Levels 3, 4, and 5 were more likely to receive probation but that they were also more likely to receive the statutory maximum sentence. Option 1 would

not affect those sentencing practices. In addition, the changes to Levels 1 and 2, where the most serious offenders are, were less under Option 1.

Mr. Beeler said that if the State wants to make a difference, it needs to spend its money on those high-level offenders, both for incarceration and for treatment. He added that he did not think that Option 2 would go anywhere in the legislature because of various stakeholders. Representative McNeill stated that he would not want his name on a bill that reduced DWI sentences across the board by 50%. Senator Steinburg agreed, stating that Option 1 would be a difficult sell anyway, there was no way Option 2 would succeed.

Lisa Costner asked if the Subcommittee considered reducing Levels 1 and 2 by 50% but leaving Levels 3, 4, and 5 alone. Ms. Hall responded that staff considered a variety of ways to achieve neutral impact but felt that there had to be an organizing principle behind the changes rather than just adjusting each level separately. Chairman Brown stated that staff suggested, and the Subcommittee agreed, that it was important to have a rationale to explain the changes. Ms. Hall added that the Subcommittee considered a 25% reduction across the board but that the impact was not neutral, it would require additional beds.

Chairman Brown called for a vote on the motion, the motion carried.

For the last issue, Mr. Madler reviewed the Commission's previous decision regarding the recommendation to replace gain time with earned time. At the June meeting, the Commission decided to recommend to the Secretary of DPS to make the change through sentence credit policies rather than legislation because it would be easier than a legislative change, especially if there was not a recommendation to eliminate good time. In light of the new legislative recommendations to eliminate good time and to change the sentence ranges, he asked if the Commission wanted to add the gain time recommendation to the group of legislative recommendations. Mr. Beeler moved to make the gain time recommendation a legislative recommendation; the motion was seconded and carried.

LEGISLATIVE REVIEW AND SESSION UPDATE

Chairman Brown recognized Becky Whitaker, staff, to provide a legislative update (*see Handout*). Ms. Whitaker stated that the legislature is still in session so there could be additional bills passed during this session, then summarized the bills enacted during this session that create new felony offenses and change the offense classification of existing felony offenses. Mr. Fialko stated that he is concerned about the bill which creates the felony offense of Death by Distribution because it lacks the element of intent.

Ms. Whitaker also summarized bills enacted which create new misdemeanor offenses and then summarized a bill which makes modifications to the "Raise the Age" legislation, originally enacted in 2017. She then discussed the 2019 Appropriations Act, which was passed by the legislature and vetoed by the Governor. The Governor's veto was overridden by the House of Representatives and is awaiting action by the Senate. Because the Appropriations Act has not yet been enacted, Ms. Whitaker reviewed some "mini budget" bills that specifically address appropriations pertaining to prison safety and correctional employees.

Ms. Whitaker informed the members that the Commission has been directed to collaborate on a study of criminal penalties associated with shellfish aquaculture pursuant to a bill enacted during this

session. She also reviewed several other bills that are particularly of interest to the criminal justice and court systems.

Lastly, Ms. Whitaker discussed several bills which have not yet been enacted but are still pending in the legislature which, if enacted, would be of interest to Commission members.

CORRECTIONAL POPULATION PROJECTION UPDATES

Chairman Brown recognized Tamara Flinchum, staff, to provide an update on the long-term projections for the correctional (i.e., prison) population that are produced on an annual basis with the Department of Public Safety (*see Handout*). She began with an update on the prison population, with a focus on the short-term and long-term accuracy of the projections. The current projection is on target in terms of short-term accuracy (i.e., the first projection year) – the average prison population for June 2019 was 36,256 compared to the projected population of 36,128 (within 0.4%). The projected population is below capacity until the eighth year of the projection. A conservative accuracy range of plus or minus 2% is used when assessing the accuracy of projections within the short-term. Ms. Hall discussed the short-term accuracy of the prison population projections during her 25th Anniversary of Structured Sentencing presentation during the morning session. Looking at the projections historically, all but one of the past ten projections have been within the 2% accuracy range. An examination of the long-term accuracy of the projections – focusing on all ten years of the individual projections – was also provided. Projections for FY 2013 to FY 2019 – following JRA implementation – were within a 5% accuracy range compared to the actual prison population. Ms. Flinchum concluded with recent policy changes that affect the prison population – the increase in jail backlog, the suspension of the Robeson Confinement in Response to Violations (CRV) Center, and the upcoming suspension of three prisons.

Mr. Beeler reminded Commissioners that the capacity Ms. Flinchum referenced is operational capacity and not rated capacity. Rated capacity is defined as the number of prison beds needed based on the architectural design and construction and represents the number of inmates at which a facility can operate safely. Chairman Brown asked Mr. Moose how staffed capacity is determined and he replied that it is based upon Standard Operating Capacity numbers. Ms. Katzenelson inquired about the reason for the 9% projected population growth. Ms. Flinchum replied it is due to NC's population growth and the stacking up of violent offenders in prison, while Ms. Hevener included the increase of post-release supervision offenders over time also contributed to the growth in the latter years. Chairman Brown asked Secretary Moose why the Robeson Confinement in Response to Violation (CRV) Center closed. Secretary Moose responded that it was primarily due to staffing needs in the prisons. DPS is using short-term solutions to get to long-term items. All of these issues are connected – staffing shortages, jail backlog increasing, CRV Centers suspensions and prisons closing. Chairman Brown questioned Commissioners if the jail backlog for prison admissions had any impact on the jail facilities? Sheriff Clemmons responded that the staffing problem in prisons is understood at the local level and they work closely with DPS to help. Secretary Moose commented that there is a process in place to not burden one county with too many offenders on jail backlog.

Chairman Brown recognized John King to provide an update on the 5-year (i.e., FY 2019 through FY 2023) projection for the Youth Development Center (YDC) population (*see Handout*). Mr. King stated that, similar to the adult prison population projections, the Commission is mandated to project juvenile commitments to YDCs on an annual basis.

Mr. King noted that the YDC projection includes all adjudicated juveniles with a Level 3 disposition. Given the small population in YDCs (189 as of September 15) and that the numbers can fluctuate substantially over the course of the year, the accuracy of the juvenile projections is assessed by examining the projected population within the context of the lowest and highest YDC populations over the fiscal year. A projection is considered to be accurate if it is between those two numbers and, ideally, the projection should be closer to the highest population of the fiscal year. In examining the projections since FY 2015, the projected YDC population was typically within the range of the lowest and highest YDC populations for any given fiscal year. The projection for FY 2019 (213) was right in between the lowest (199) and the highest population of the year (225).

Mr. King then shared two additional figures that showed YDC population trends. He pointed out the variability in the YDC population over the past 5 years, which has at times made projecting this population difficult. He also shared that staff reviewed whether seasonality affects the YDC population. He noted that, for the past 3 years, the YDC population did not increase or decrease at consistent points. FY 2017 was characterized by a steady decline in population; FY 2018 was a year of steady increase; and FY 2019 was relatively stable.

Mr. King stated that staff had received the data needed to develop the FY 2020 through FY 2024 projections and expected to be able to share those projections at the Commission's December meeting.

STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM (SMCP) CAPACITY PROJECTION UPDATE

Chairman Brown recognized Rebecca Dial, staff, to present an update on the SMCP capacity projections. Ms. Dial reviewed the original mandate to prepare the projections and the two scenarios developed for the five-year SMCP capacity projections. Both estimates were above actual capacity at the end of FY 2019. Ms. Dial informed the Commission that Mecklenburg County ended its participation as a receiving county in April.

Ms. Katzenelson asked if there is a statewide movement to not impose cash bail. Ms. Hall responded that staff is aware of pilots but no statewide efforts. Chairman Brown commented on the national trend of states ending cash bail and referenced the panels and discussion occurring at the annual National Association of Sentencing Commissions conference. Representative McNeill added that no legislation is currently on the table and that if some of the pretrial population was removed from jails, counties participate voluntarily in the SMCP and they may not choose to or may have less incentive to build new facilities.

FY 2020 COMMISSION WORKPLAN

Chairman Brown recognized Ms. Hall to review the Commission's FY20 Work Plan (*see Handout*). Ms. Hall highlighted important dates for Commission and subcommittee meetings and project deadlines.

ADJOURNMENT

Chairman Brown stated that the next meeting for the full Commission was December 6th and then adjourned the meeting at 3:00 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary