

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
December 3, 2021

The North Carolina Sentencing and Policy Advisory Commission met by Webex on Friday, December 3, 2021.

Members Present: Chairman Charlie Brown, Louise Davis, Danielle Elder, Willis Fowler, Lindsey Granados, Judge R. Greg Horne, Joe Houchin, Honorable Tammy Lee, Sheriff Garry McFadden, Honorable James Mixson, Luther Moore, Tim Moose, Judge Fred Morrison, Representative William “Billy” Richardson, Calvin Suber, Honorable Michael Waters, and Patrick Weede.

Note: Pursuant to G.S. 166A-19.24, the meeting was simultaneously streamed live online on a private Judicial Branch YouTube channel and the public was notified of the means by which it could access the meeting.

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

INTRODUCTIONS

Chairman Brown called the meeting to order at 10:00 a.m. He welcomed Commission members, thanked them for their virtual attendance, and reminded members of the 2022 Commission meeting dates: March 4, June 3, September 9, and December 2.

Chairman Brown introduced a new Commission member, Sheriff Garry McFadden, representing the NC Sheriff’s Association. Chairman Brown then presented the minutes from the September 10, 2021 meeting and called for a motion. Luther Moore moved to adopt the minutes as written and Patrick Weede seconded. Chairman Brown introduced Michelle Hall, staff, to call the roll for attendance and for each member’s vote on the minutes. At completion of the roll call, the motion carried.

LEGISLATIVE SESSION UPDATE

Chairman Brown recognized John Madler, staff, to provide the session update (*see Presentation*). Mr. Madler explained that the 2021 Session of the General Assembly had not ended yet so he would provide an update on legislation that had passed thus far and staff would provide a written summary of all of the relevant ratified legislation once the General Assembly officially adjourned.

Beginning with new criminal provisions, Mr. Madler stated that there were very few new or reclassified offenses this session. Looking at them by offense class, he explained that there were no changes in the higher classes (Classes A - D) and most of the changes were in Classes H and I. The sentence lengths are the shortest in those classes and the judge has the most discretion to impose an intermediate or active sentence, so the changes were not expected to have a big impact on the system. There were no punishment changes from this session to date.

Mr. Madler noted that several bills had passed that did not contain criminal provisions but would affect the criminal justice system. He highlighted two bills: House Bill 68, which deletes provisions that

criminalize violations of rules of certain licensing boards and commissions; and Senate Bill 301, which expands the number of prior non-violent convictions that can be expunged.

Turning to juvenile justice, Mr. Madler stated that one bill passed (Senate Bill 207) containing a number of changes in response to raising the age of juvenile jurisdiction. He highlighted two sections with the first one giving the prosecutor the discretion to decline to transfer to superior court 16- and 17-year-old juveniles charged with a Class D - G felony; currently, transfer is mandatory. The other section raises the minimum age of juvenile jurisdiction from six years old to 10 years old; however, an eight- or nine-year-old juvenile who committed a Class A - G felony, or who committed any offense and had previously been adjudicated delinquent, will be under juvenile jurisdiction.

Finally, Mr. Madler reviewed relevant provisions in the budget bill (Senate Bill 105). He highlighted certain appropriations for the Administrative Office of the Courts, the Department of Justice, and the Department of Public Safety (DPS). In addition, he explained a provision that moves the Divisions of Community Corrections and Prisons, as well as the Post-Release Supervision and Parole Commission, out of the DPS and into a newly formed Department of Adult Correction. Juvenile Justice would remain in the DPS as its own division.

Mr. Madler also shared with the members a special provision that renames the bridge on U.S. Highway 1 that crosses the U.S. Highway 74 Bypass in Richmond County as the "Sheriff James E. Clemmons, Jr. Bridge" in memory of former Commission member Sheriff Clemmons.

Tammy Lee stated that Senator Bob Steinburg was instrumental in getting the General Assembly to create the Department of Adult Correction and she thanked him for his efforts.

SPECIAL REPORT: SCHOOL-BASED OFFENSES AND JUVENILE RECIDIVISM

Chairman Brown recognized Tamara Flinchum, staff, to present the Special Report: School-Based Offenses (SBO) and Juvenile Recidivism (*see* Presentation). The report was based on data from the Juvenile Recidivism Study: FY 2018 Juvenile Sample published in 2021. Ms. Flinchum described the two groups of juveniles examined: diversion and probation. Their inclusion in the study was based on their exit from the juvenile justice system (JJS) during FY 2018 and examined their outcomes by two recidivism time periods analyzed (i.e., during their juvenile justice (JJ) involvement and a two-year follow-up).

Information was presented separately for the diversion and probation groups. Chairman Brown confirmed with Ms. Flinchum that there were a small number of juveniles who were adjudicated and not placed on probation that were excluded from the analysis. Juveniles in the diversion group had more SBOs than juveniles in the probation group (70% and 46% respectively). Examining the SBO and non-SBO groups, diverted juveniles were more alike in terms of diversion profile, personal characteristics, prior juvenile justice (JJ) contacts, assessed needs and recidivism rates during their JJ involvement and during their two-year follow-up. The differences for diverted juveniles were in the four geographic areas across the state, assessed risk, and offense profile. Chairman Brown questioned Ms. Flinchum if he understood that the non-SBO group committed more serious crimes and had higher recidivism rates. Ms. Flinchum clarified that juveniles in the non-SBO group had similar recidivism rates compared to the SBO group; however, juveniles in the non-SBO group had committed more felonies for their sample offense and when they recidivated compared to the SBO group. She went on to state that the juveniles in the non-SBO group tended to commit more felony property offenses. When comparing the SBO group to the non-SBO group, juveniles in the probation group were more different than alike in their profile. Their age at offense, prior

JJ contacts, assessed needs, and recidivism rates during the two-year follow-up were similar when compared. For probationers, the differences between the two SBO groups were geographic area, disposition profile, gender, race, prior confinement, assessed risk, offense profile, and recidivism rates during their JJ involvement.

In the last sections of her presentation, Ms. Flinchum focused on juveniles with an SBO only. She described the offenses schools are required to report to law enforcement by the Department of Public Instruction (DPI). About a third of the SBO were DPI offenses for both diverted juveniles and probationers. She provided information on the top 5 offenses for DPI and non-DPI offenses and the recidivism rates. Finally, Ms. Flinchum discussed the juveniles whose complaints were referred to the JJS by a School Resource Officer (SRO). Information was presented separately for the diverted juveniles and probationers. Over 80% of the SBO for each group was referred to the JJS by an SRO. She compared the personal characteristics, offense profile, and recidivism rates for both the diverted juveniles and probationers by SRO and non-SRO referral. Chairman Brown asked Ms. Flinchum to summarize the key findings and the group with the highest recidivism rates. She reported that it was a surprise that there was so little impact in recidivism rates for the SROs and that most of the differences were found in the type of offenses committed between the two groups. Chairman Brown also asked for clarification on Ms. Flinchum's comment about low recidivism rates. She reported that it was a comparison between the two groups. Generally, diverted juveniles have lower recidivism rates compared to juveniles in the probation group who have higher recidivism rates. The less contact the juvenile has with the system the lower the recidivism rate.

NASC MEMBER STATES' STUDIES / NC SENTENCING PRACTICES STUDY UPDATE

Chairman Brown recognized Ms. Hall to provide an update on the National Association of Sentencing Commissions (NASC) and on progress with the Commission's Sentencing Practices Study (see Presentation). Ms. Hall described NASC as a membership organization that is comprised of states that have either sentencing commissions or sentencing guidelines. It provides members with tools to develop sentencing systems that reflect the priorities of that individual state and it gives members the opportunity to share research findings on topics associated with sentencing policy. Currently, there are 23 members. Ms. Hall stated that the major activity of NASC is an annual conference hosted for members and interested parties. The 2021 conference was held virtually because of the pandemic. Part of that conference was the business meeting and election of officers. Ms. Hall explained that she had been filling a seat on the executive committee previously held by Rebecca Dial, former staff, and that at this meeting Ms. Hall was elected to a new three-year term.

The second part of the NASC meeting was dedicated to updates from 15 member states on significant developments in their states over the last two years. SPAC staff had grouped state responses into seven topics: studies examining disparity, sentencing revisions, organizational changes, the pandemic, data collection enhancements, probation changes, and public information. Notably, most states reported conducting disparity studies focused on sentencing issues. Ms. Hall provided some details about some of the more specific topics within each states' disparity studies.

Next, Ms. Hall provided an update on the status of the various components of the Commission's Sentencing Practices study. The literature review, the review of studies from other states, and the examination of North Carolina statewide conviction data have been completed. The multivariate analyses are still in progress. Ms. Hall then reviewed key findings from each of the completed components. She noted the work on the multivariate analyses is not as far along as staff hoped for it to be, work continues

with Dr. Engen (the consultant). She noted an interim report, including the information highlighted at the meeting, would be emailed to the Commission when it was completed, hopefully early in the new year.

Representative Billy Richardson asked how severe the disparities were that were found in the study. Ms. Hall clarified that the staff found *differences* in looking at the conviction data by race, sex, and age but that it did not necessarily mean there was disparity. While descriptive statistics are limited to the individual variables, multivariate analysis will examine the relationship among the variables. It is possible that the variations in sentencing outcomes are explained by differences in offense class and prior record level or some other legal factor, but staff will not know for sure until they delve into the findings from the multivariate analysis.

Chairman Brown stated that while Representative McNeill and Dr. McMurray were not present, both had expressed a great interest in the study, as had other Commissioners. While the study is not finished yet, he thanked Ms. Hall for explaining the ways staff will be examining the data.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Ms. Hall then provided status reports on several projects that began in 2019 as part of the 25th anniversary celebration of Structured Sentencing but had been delayed due to the pandemic.

She noted most of the projects have revolved around improvements to the Sentencing Commission's website with the goal of making it easier to navigate. She thanked the AOC Communications Office for their assistance with improvements. Staff is developing interactive Structured Sentencing exercises to allow users to test their knowledge of the sentencing laws as well as provide explanatory information. Staff has also been working on a data visualization project for the website and will allow users to interact with the Commission's felony and misdemeanor conviction data in a variety of ways. They will be able to produce maps, pie charts, and graphs of data on the state level as well as the district level. Staff hopes to add other Commission datasets in the future but is currently focused on making the conviction dataset available. Ms. Hall stated that staff hopes to have the projects completed in early 2022.

ADJOURNMENT

Chairman Brown thanked all the staff for their presentations and reminded the members that the next full Commission meeting is Friday, March 4, 2022. Chairman Brown adjourned the meeting at 11:59 a.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary