

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

December 7, 2018

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 7, 2018, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Lisa Costner, Louise Davis, Danielle Elder, Chris Fialko, Willis Fowler, Chief Tammy Hooper, Judge Thomas Jarrell, Susan Katzenelson, the Honorable Maureen Krueger, the Honorable Tammy Lee, Senator Floyd McKissick, Dr. Harvey McMurray, Luther Moore, Judge Fred Morrison, the Honorable June Ray, the Honorable Thomas “Tommy” Thompson, and Jim Toms.

Guests: Jane Allen (for Frances Battle, VAN), Tim Moose (for Judge Reuben Young, DPS), Emily Mehta (AOC-Communications), Mary Stevens (PRSP Commission), Thomas Bashore (NCSA), Jesse Sholar (NCSA), Melinda Stevens (NCSA), Erin Hickey (DPS), Kim Quintus (DPS) Jim Speight (DPS), and Eric Zogry (OJD).

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

INTRODUCTION AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:00 a.m. Members and guests introduced themselves.

Chairman Brown presented a Resolution honoring outgoing Commissioner June Ray. Luther Moore moved to adopt the Resolution; the motion was seconded and carried. Ms. Ray made parting remarks.

Chairman Brown presented a Resolution honoring outgoing Commissioner Tommy Thompson. Mr. Moore moved to adopt the Resolution; the motion was seconded and carried. Mr. Thompson made parting remarks.

Chairman Brown introduced the newest Commissioner, the Honorable Tammy Lee, representing the NC Association of County Commissioners and replacing the retiring Tommy Thompson.

Next, Chairman Brown reviewed the agenda for the meeting and provided the 2019 Sentencing Commission meeting dates (March 1, June 7, September 13, and December 6) and the DWI Sentencing Subcommittee meeting dates (January 18 and February 15). He then presented the minutes from the September 7, 2018, Sentencing Commission meeting. Mr. Moore moved to adopt the minutes as presented; the motion was seconded and carried.

APPROPRIATE SETTING FOR DWI INMATES STUDY – UPDATE AND FACILITATED DISCUSSION

Chairman Brown recognized John Madler, staff, to present information on the Appropriate Setting for DWI Inmates Study. Mr. Madler explained that this was one of three mandates the Commission

received to study issues related to DWI sentencing; the Commission referred the other two to the DWI Sentencing Subcommittee. For this study, he asked the Commission members to set aside the changes the DWI Sentencing Subcommittee was proposing and just consider DWI offenders as they are currently sentenced.

Mr. Madler reviewed the mandate for the study (*see* Session Law 2018-5, Section 18B.2). The mandate requires the Sentencing Commission, in consultation with the Department of Public Safety and the N.C. Sheriffs' Association, to study the most effective setting to house and provide appropriate treatment services for DWI offenders. Mr. Madler pointed out that the mandate is to identify two things, the most effective setting for housing these offenders and for providing appropriate treatment services, it does not ask the Commission to identify those appropriate treatment services. In addition, the study only applies to offenders in the two most serious DWI punishment levels, Aggravated Level One and Level One. These offenders could receive sentences of two or three years. The mandate requires the Sentencing Commission to report its findings and recommendations to the General Assembly by February 1, 2019. Mr. Madler explained that the Commissioners discussed the timeline and the ability to meet and make recommendations at the September meeting. Legislative members had suggested requesting an extension to accommodate the Commission's schedule. After discussing the issue with Chairman Brown and with Fiscal Research staff at the General Assembly, staff will be requesting an extension until early March. This will allow the Commission to develop recommendations at its regularly-scheduled March 1 meeting. Mr. Madler then reviewed the steps they would be taking at this meeting: defining the issues, developing criteria for evaluating possible solutions, and identifying possible solutions.

Define the Issues

Mr. Madler began by reviewing the offenses and the sentencing provisions related to DWI Aggravated Level One and Level One offenders. He pointed out that Level One offenders are eligible for good time credits and discretionary parole release while Aggravated Level One offenders are not eligible for either one. He then presented conviction and sentencing data for that population in Fiscal Year 2016. Out of 3,688 convictions in the two punishment levels, approximately 22% received an active sentence. Sentence lengths varied but the majority of the active sentences were in the lower half of the corresponding sentence range with 79% of the active sentences imposed in Aggravated Level One between 12 and 24 months and 59% of the active sentences in Level One between one and 12 months. Mr. Madler added that approximately 22% of the overall convictions were females. Regarding housing this population, Mr. Madler pointed out that they were originally split between the local jail and the state prison but that they were all sentenced to local jails through the Statewide Misdemeanant Confinement Program (SMCP) as of January 1, 2015. Finally, Mr. Madler reviewed the treatment requirements and availability.

Following the presentation, the members of the Commission discussed several issues regarding the DWI population and confinement facilities. They began by discussing the volume and distribution of the offenders and their sentence lengths. Chairman Brown noted the similarities and the differences between Aggravated Level One and Level One and pointed out that most of the offenders are in Level One. Art Beeler stated that they need to provide different programs to accommodate the various sentence lengths; less than 90 days is not optimum but doing something is better than nothing.

Susan Katzenelson stated that there needs to be a certain volume of offenders in a program to justify it. It would be easier for programming in one or two facilities than 66 jails. Tim Moose responded that the population would get diluted in prison because they would be mixed in with the general population since the Division of Adult Correction and Juvenile Justice (DACJJ) does not have stand-alone

facilities for substance abuse treatment. Judge Jarrell pointed out that there was no continuity between SMCP counties and treatment programs. The ideal would be to place all of these offenders in counties that have treatment programs.

Louise Davis stated that offenders with common goals should be kept together. Commissioner Lee supported the idea of regional SMCP facilities, putting these offenders together and apart from other offenders. Judge Jarrell added that they are treated differently in court and should be housed differently. Ms. Davis stated that most offenders do not initially think they need treatment but being in a group with similar offenders can help with buy-in. She asked if the CRV Centers would be appropriate. Mr. Moose responded that the initial outcome data is good for CRV Centers. They are not treatment facilities, but they do provide a different approach for offenders. He reminded the members that the prison system is struggling with staffing and that it does not have a stand-alone treatment facility.

Chris Fialko pointed out that county jails are very chaotic with lots of offenders going in and out each day, it is not conducive to long term treatment. He believed that the General Assembly was not thinking of DWI offenders when it set up the SMCP since they were originally excluded. He suggested that offenders with a sentence of more than one year should go to DACJJ.

Susan Katzenelson stated that they are a unique population and they need treatment, but that those with shorter sentences may not have enough time for treatment. She also pointed out that there is a cost difference between a prison and a jail.

Based on the discussion, Dr. McMurray raised the question of whether the priority was identifying appropriate housing for the offenders or the appropriate setting for treatment for the offenders.

Mr. Beeler suggested that the recommendation address dosage and fidelity. He explained that they must be able to replicate a program and be consistent across providers but added that short programs are not really worth doing. Judge Jarrell agreed stating that if offenders relapse after a short program, they believe treatment in general does not work.

Jim Toms recommended incentivizing offenders to participate, similar to a program in the federal system. Danielle Elder agreed, questioning whether mandated treatment is effective without the offender's buy-in.

Rebecca Dial, staff, presented information gathered by staff from site visits. Ms. Dial stated that staff conducted site visits to assist in better understanding local detention settings and inform staff work on the study mandates given to the Commission. She explained the selection process for the sites chosen and what types of inmates are housed in jails. The overarching theme staff observed from the visits was limited space and staffing. Ms. Dial reviewed the questions staff set out to learn about: how the inmate populations, space, and staffing affect operations; how regional facilities operate; how decisions regarding participation in the Statewide Misdemeanant Confinement Program (SMCP) are made; what has been the experience housing DWI offenders; and, what treatment opportunities are there in local detention settings. It was also noted that staff visited DART Cherry and Black Mountain facilities. Last, Ms. Dial summarized feedback from sites visited and a survey of jail staff as to where DWI offenders should be housed – the majority thought a state-funded regional facility where treatment was available would be most appropriate.

Mr. Madler asked the members for their observations about the current facilities and structure based on the information presented. Mr. Beeler stated that treatment can be provided almost anywhere regardless of space if the provider is creative. His concern was having clinical staff trained to provide treatment, something that is currently limited across North Carolina. Mr. Moose added that programming often gets canceled due to staffing issues.

Commission members discussed the differences between the regional jails and the local jails. They also pointed out the variations between local jails.

Judge Jarrell pointed out that funding affects every aspect of providing treatment. He stated that the SMCP works for non-DWI offenders but questioned whether it was appropriate for DWI offenders. Ms. Katzenelson said that the State can increase funding for the SMCP but questioned whether it is willing to invest more.

The members discussed the potential benefits of using trained former offenders to help provide treatment in a prison or jail and the barriers they encounter. Ms. Davis stated that former offenders are sometimes better suited to provide treatment but not allowed in a correctional facility because of their prior record.

Dr. McMurray asked if any facilities collaborate with academic institutions to provide support for the DWI population. Michelle Hall replied that it depended upon what was available near the facility but added that the General Assembly requested a study in the 2018 Session to look at how community college classes could be made available in local jails.

Chris Fialko pointed out that the DWI Sentencing Subcommittee's potential recommendation to eliminate good time could cause the offenders in punishment Level One to serve twice the amount of time they are currently serving and thereby increase the population.

Develop Criteria

Meghan Boyd Ward, staff, presented an overview of the literature on housing and providing appropriate treatment services to DWI offenders. In researching the question of where to house long-term DWI inmates, key findings from the literature revealed that while administrative codes, statutes, and other resources set out minimum requirements and standards for jails and prisons, these resources are often silent on where to incarcerate an offender based on their offense or sentence. However, she explained that how the literature commonly defined prison and jail was an indicator on how sentence length may determine where an inmate serves their sentence. Specifically, the literature often defines jails as only short-term facilities, holding people under a year, and prisons are long-term facilities with offenders serving sentences for a year or more.

Ms. Boyd Ward presented information on drug abuse treatment principles and components. She explained that there are a range of treatment component options that are used in the criminal justice system; a few examples of substance abuse programming are therapeutic communities, medicated assisted therapy or pharmacotherapy, and brief interventions. Ms. Boyd Ward explained that in addition to providing certain treatment components, there are overarching treatment principles consistently discussed in the literature, for example, treatment should last a minimum of 90 days, tailoring treatment to the individual is important for effectiveness, and treatment should address criminal thinking.

In attempting to answer the question of where to house DWI inmates to provide appropriate treatment programs, Ms. Boyd Ward explained that the literature is silent on what is the most effective setting to provide substance abuse treatment for DWI inmates and that when the literature does focus on setting (e.g., space, facility design, or administration) it describes providing any form of correctional programming. She explained that when space and facility considerations were described in the literature, the primary consideration was that a space or facility design must complement the programming being offered. Thus, the space or facility requirements could drastically change based on which treatment component is selected.

Finally, Ms. Boyd Ward explained that administrative planning is a necessary component to designing and implementing an effective treatment program. Administrative planning can balance the control elements of corrections with clinician's efforts to restore individuals to productive lives.

Mr. Madler asked the members what factors from the literature should be considered in housing the inmates and in providing a setting for treatment. Mr. Beeler stated that Medical Assisted Therapy is essential for drug and alcohol users as is aftercare; the highest level of mortality for these offenders is two weeks after release. He also suggested including programs to change their way of thinking.

The members again questioned the effectiveness of mandated treatment. They felt it needed to be incentivized in some way.

Commission members agreed that providing some treatment, even if it is not the optimum model, is beneficial. Mr. Beeler reiterated the benefits of housing like-minded individuals together as well as having a similar mindset for the staff and the facility overall.

Becky Whitaker, staff, presented an overview of practices in other states regarding substance abuse treatment in correctional settings, particularly with respect to impaired driving offenses. Ms. Whitaker explained that staff looked at a variety of states, including states that neighbor North Carolina, states with a similar DWI sentencing scheme as North Carolina, and states with particularly innovative or different approaches to substance use treatment in correctional settings. Ms. Whitaker stated that staff looked at several different treatment programming models including jail treatment programs, impaired driving specific in-prison treatment programs, prison therapeutic communities, and designated state prison substance abuse treatment facilities. While these models are not exhaustive, they provide a general sense of the range of programming available within jails and prisons across the country.

Ms. Whitaker presented staff's key findings about practices in other states. Jail programming is less prolific than prison programming and is typically not impaired driving specific. It is often not statewide, but rather found in individual counties and localities. Jail programming is more commonly found in major metropolitan areas and their suburbs. The availability of programming varies greatly amongst and within states. Prison programming exists to some degree in every state staff studied. Like jail programs, prison programs are typically not impaired driving specific.

Ms. Whitaker provided examples of several jail treatment programs across the country. She also highlighted several varieties of impaired driving specific prison programming. She then described several other models of in-prison substance abuse treatment programs that are not specific to impaired driving, ranging from therapeutic communities to peer-based programming. Lastly, Ms. Whitaker provided examples of several dedicated state prison substance abuse treatment facilities.

Mr. Madler asked the members if there were any models or components of the models from other states that they wanted to use in this study. Members discussed whether it might be necessary to develop a treatment facility separate from the confinement facility, a place where the offenders would go while serving their sentence but not for their whole sentence. Maureen Krueger stated that it was important to get the offender into treatment quickly and for a sufficient amount of time. Ms. Katzeneslon suggested that treatment might be more effective near the end of the sentence than the beginning because it can help them reintegrate back into the community. Mr. Beeler added that it can be helpful to get treatment near the end of the sentence but not at the end of the sentence, graduates could return to the inmate population and serve as peer advisors.

Mr. Madler asked the members if there were any factors that were not raised in the presentations that they thought should be considered. Members pointed out that it might be helpful to address offenders with co-occurring mental health disorders and to take into account other population differences such as gender.

Identify Possible Solutions

Mr. Madler reviewed the three options listed in the mandate: county jails, dedicated multicounty jail treatment facilities, and state prisons. He informed the Commissioners about the option being considered in the DWI Sentencing Subcommittee to develop dedicated State prison treatment facilities. He asked if the members wanted to add any other options or subtract any of the options listed but they did not. Mr. Madler informed the members that staff would develop criteria from the factors they identified and send them out along with the options prior to the March 1 meeting. At that meeting, the Commission would apply the criteria to the options to determine one or more possible recommended solutions.

YOUTH DEVELOPMENT CENTER POPULATION PROJECTIONS AND FY 2018 JUVENILE DISPOSITIONS

Chairman Brown recognized John King, staff, to present the Youth Development Center (YDC) Population Projections for Fiscal Year 2019 to Fiscal Year 2023 (see Handout). Mr. King reviewed the purpose of the projections and described the staff's methodology for developing the projections, which involved using a combination of FY 2018 juvenile justice disposition data (projecting 10- to 15-year-olds) and adult conviction data (projecting 16- to 17-year-olds, beginning in December 2019). Mr. King then presented the juvenile disposition chart, explaining how offense classification and delinquency history level combine to determine the dispositions juveniles receive. He noted that of the 3,780 juvenile delinquent dispositions in FY 2018, 54% involved juveniles with a minor offense and low delinquency history and added that just 3% of all dispositions resulted in a Level 3 (YDC) commitment.

In addition to the FY 2018 juvenile disposition data, the current YDC population factored in to the projections. As of June 30, 2018, 220 juveniles were already committed to a YDC; 96% of these juveniles were adjudicated for a violent or serious offense and half had a high delinquency history. A little more than half (52%) of the juveniles in a YDC were committed for a new offense, 41% were committed for a violation of probation, and 7% were committed following a revocation of post-release supervision (PRS).

Mr. King reviewed the assumptions used to develop the projections, including trend data (i.e., growth rates based on criminal justice trends, delinquent complaint trends, and population trends) and empirical data from the previous fiscal year (e.g., percentage of juveniles receiving a Level 3 disposition, average YDC length of stay, and the percentage of juveniles entering YDC by admission type).

Mr. King shared the YDC population projections for FY 2019 through FY 2023 and noted the projection includes 16- and 17-year-olds beginning in the second year of the projection (FY 2020). The projection for each year of the projection period is within available YDC capacity, although the projection of 276 commitments is just two beds under capacity in FY 2021. The projections for this year are higher this year than last year because more juveniles are currently committed to a YDC (182 at the end of last year compared to 220 at the end of this year) and 25% more Level 3 dispositions were imposed this year.

Mr. King concluded his presentation by sharing trend data relating to the accuracy of the projections in the context of YDC admissions and releases, delinquent dispositions, and Level 3 dispositions imposed. He noted that these are all important elements of the projections and that fluctuations within any of these components can affect the projections' accuracy. Mr. King closed by mentioning that staff has completed another edition of Quick Facts: Juvenile Disposition Data (see Handout) and encouraged the Commission to review it.

Chairman Brown expressed surprise at the fact that two of the top three offenses that lead to a Level 3 punishment were Class H felonies. Mr. King responded that this was a consistent finding and representatives from the Division of Adult Correction and Juvenile Justice agreed.

Regarding adding the 16- and 17-year-olds to the projection, Ms. Katzenelson stated that in the future the number will be larger because it will include revocations, but that it is still not as bad as was originally anticipated. In addition, future numbers may be different because they will incorporate actual court practices when judges have figured out how they are going to treat 16- and 17-year-olds. Mr. King agreed, pointing out that one of the assumptions for the current projections is that judges will treat them like they treat 15-year-olds, but that they do not know at this point.

Art Beeler shared some facts that he learned at a recent "Raise the Age" seminar put on by the Juvenile Justice Section of DACJJ: (1) the size of the lower age criminality group is increasing; (2) Juvenile Justice is expecting 60,000 more contacts next year than this year; and (3) every YDC commitment now has a mental health diagnosis.

Jane Allen asked about the frequency of juveniles being convicted of impaired driving. Ms. Hall responded the number is very small. Mr. Beeler suggested that they are often convicted of a different motor vehicle offense.

Due to time constraints, Chairman Brown postponed the remaining items on the agenda until the March meeting of the Sentencing Commission.

ADJOURNMENT

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

Respectfully submitted,

Shelley Kirk
Administrative Secretary