

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
June 4, 2021

The North Carolina Sentencing and Policy Advisory Commission met by Webex on Friday, June 4, 2021.

Members Present: Chairman Charlie Brown, Art Beeler, Danielle Elder, Senator Toby Fitch, Willis Fowler, Lindsey Granados, Judge R. Greg Horne, Susan Katzenelson, Chief Henry King, Honorable Tammy Lee, Dr. Harvey McMurray, Representative Allen McNeill, Luther Moore, Tim Moose, Judge Fred Morrison, Calvin Suber, Honorable Michael Waters, Patrick Weede, and Judge Valerie Zachary.

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, Melissa Lugo, Jennifer Lutz, Becky Whitaker, and Shelley Kirk.

INTRODUCTIONS

Chairman Brown called the meeting to order at 10:01 a.m. He welcomed Commission members and thanked them for their virtual attendance. He reviewed the meeting process and how questions, motions, and votes would be handled, and stated that members of the public were able to view the meeting online but could not ask questions. If they had questions, they could contact staff and staff would follow-up with them. He announced the remaining 2021 Commission meeting dates: September 10, and December 3.

Chairman Brown presented the minutes from the May 7, 2021 meeting and called for any changes or a motion. Luther Moore moved to adopt the minutes as written and Art Beeler seconded. Chairman Brown introduced Michelle Hall, staff, to call the roll for attendance and for each member's vote on the motion. The motion carried.

SESSION UPDATE AND LEGISLATIVE REVIEW

Chairman Brown recognized John Madler, staff, to provide the session update and legislative review (*see Presentation*). Mr. Madler stated that there were no new criminal provisions for the Commission to review so he would focus on an overview of the session. He explained that this was the first session of the two year cycle and then reviewed the various deadlines for introducing bills and for bills crossing over from one chamber to the other. All of those deadlines had passed as of the date of this meeting.

Beginning with the proposed criminal provisions, Mr. Madler explained that the Legislative Review Subcommittee met four times so far this session and reviewed a total of 99 felony provisions that would either create a new offense, reclassify an existing offense, or change a punishment and the members could review the various provisions in the three reports (*see Handouts*). None of these provisions had passed yet and only one criminal provision had passed, a Class 2 misdemeanor contained in Senate Bill 103.

Turning to bills of interest, Mr. Madler stated that a number of bills had been introduced that addressed several criminal justice topics relevant to the work of the Commission. Some of the bills had crossed over to the other chamber but none of them had passed so far. He reviewed the bills relevant to each topic. The first topic was post-conviction issues. Much of the proposed legislation was based on recommendations from the Governor's Task Force for Racial Equity in Criminal Justice. Several bills would provide an opportunity for specific groups of offenders to get their sentences reduced after having served a portion, either by parole or by resentencing. Mr. Madler pointed out that this change would be in conflict with the truth-in-sentencing aspect of Structured Sentencing. Another bill would expand eligibility for expunctions.

The second topic was revisions to the criminal code. Mr. Madler described several bills that would decriminalize certain categories of misdemeanors (e.g., rules and local ordinances) by reclassifying them as infractions. Other bills would create a legislative study group to work on updating and streamlining the entire criminal code.

The third topic was juvenile justice. Based on recommendations from the Juvenile Justice Advisory Committee, several bills would give prosecutors the discretion to decline to transfer certain 16- and 17-year old juveniles to adult court, while others would raise the minimum age of juvenile jurisdiction.

Turning to criminal justice resources, Mr. Madler described one bill that would move prisons from the Department of Public Safety to a newly-created Department of Adult Correction, leaving community corrections and juvenile justice in the Department of Public Safety. Other bills would move juvenile justice out of the Division of Adult Correction and Juvenile Justice (DACJJ) and into its own division.

Finally, Mr. Madler stated that the governor had submitted his budget but that neither the House nor the Senate had produced their version of the budget as of June 4. Staff would continue to monitor activities in the legislature and provide updates. Chief Henry King expressed concern about changing some local ordinances, like noise ordinances, from misdemeanors to infractions. He said that some ordinances need to be enforced by criminal sanctions, especially for repeat offenders.

Chairman Brown commented on the bills to expand expunctions and how they relate to juvenile justice; in particular, to 16- and 17- year-olds who were convicted as adults for certain offenses prior to the state raising the age of juvenile jurisdiction. He stated that it is the most common petition for expunction that he sees in Rowan County. Michael Waters explained that the District Attorney has the statutory authority to initiate those expunctions en masse but they lack the personnel to do it. They need the time and the personnel to implement the laws so people can benefit from them. Chairman Brown added that about 50% of the petitions he sees are submitted by private counsel, which is not normal. The eligible population is much larger than just those who have filed petitions. Finally, Chairman Brown noted that staff has been reporting on efforts to recodify the criminal code over the last several years and asked staff to continue to keep the Commission informed as that legislative initiative moved forward.

2021 JUSTICE REINVESTMENT ACT (JRA) IMPLEMENTATION EVALUATION REPORT: KEY FINDINGS

Chairman Brown recognized Dr. Jennifer Lutz, staff, to review key findings of the JRA Report (see Handout). Dr. Lutz began by discussing the reasons for monitoring JRA, which included fidelity, outcomes, and enhancements. In CY 2020, convictions and correctional populations decreased in part due to the COVID-19 pandemic, which altered court operations and correctional policies. Turning to sentencing practices, there were 87 entries for habitual felon breaking and entering and 122 Advanced Supervised

Release (ASR) prison entries. The number of inmates receiving ASR sentences decreased from 147 (CY 2019) to 122 (CY 2020) with the majority sentenced in Class E (42%), which is different from previous trends. Across the past five years, she added, the lowest percentage of habitual felons were sentenced to Class D. Habitual felons accounted for the largest proportion of inmates (14%) of the December 31, 2020 prison population (30,395).

Dr. Lutz noted that the Treatment for Effective Community Supervision (TECS) completion rates remained the same over the past three years, with over two-thirds of offenders not completing programming. The highest rates of completion were for participants in Supervision Level 5 (55%) (see Presentation). The number of entries decreased from 2019 to 2020 (11,732 and 9,088 respectively). Continuing to probation revocation rates, Dr. Lutz stated that PRS entries and population had increased due to the addition of post release supervision (PRS) for Class F-I felons.

In concluding, Dr. Lutz remarked that in this year's report, population trends were examined in the context of the COVID-19 pandemic. The overall community corrections population declined 25% since JRA implementation and 45% of this decrease occurred last year as a result of court changes due to COVID-19. Additionally, the average prison population declined 13% from December 2019 to December 2020. Chairman Brown thanked Dr. Lutz and then opened the floor up for questions and comments.

Ms. Katzenelson commented that these reports are wonderful for analyzing what is currently happening and for future considerations for both the Commission and the Legislature. For example, she stated, we know prison does not deter people as we thought, so maybe we can lower certain sentences for certain offenders and open the door of possibilities to see how this population is impacted.

Mr. Beeler asked if the Extended Limits of Confinement (ELC) numbers were included here. Ginny Hevener, staff, responded that there are ELC offenders in the 2020 data, but they are captured in the prison data because they are not considered a release from custody. After completion of ELC, they would go to PRS, if eligible, and then be represented in the community supervision population data.

Representative McNeill mentioned the impact of COVID-19 on the prison population and prison releases and questioned how long the lawsuit and COVID-19 would impact the prison population. Ms. Hevener took the question and stated it will be some time and staff has not received annual data from Administrative Office of the Courts (AOC) concerning convictions from the past year at this time. Once staff starts looking at it, we will have some ideas of the impact of COVID-19, but as for the prison projections, staff will be looking closely at prison entries and what that group has been doing the past year as well. While COVID-19 is still impacting the population, Ms. Hevener added, other factors are at play. For example, in Asheville they're having issues keeping police officers on the force, so they are not arresting as much for low-level offenses and these changes in practices may continue post-pandemic into a new normal.

Representative McNeill thanked Ms. Hevener for the follow-up, then commented that certain prison releases were due to COVID-19 and the lawsuit, but at some point, the prison system will stop releasing people because of COVID. He then asked Mr. Moose to comment, to which Mr. Moose replied that the releases related to the lawsuit are continuing for just a short period of time, but there is no intent to continue anything related to ELC. He then said that the modified discretionary behavior credit system will likely continue and that they are seeing a more normal pace at intake, but it is not back to 100% normal. Mr. Moose continued by saying that a "reopening plan" is in the works, such as community colleges coming back to facilities, etc., but, as courts resume with their cases, the jail backlog could also pick up

again. Representative McNeill thanked Mr. Moose and followed up by asking how much COVID-19 impacted the reduction policies that were previously mentioned. Mr. Moose mentioned that a small part of it was, for example, the awarding of credit for those who got vaccinated, or credit for good behavior.

Chairman Brown noted the failure of probation revocations, which was very much a part of the foundation for North Carolina adopting the various JRA approaches. He also noted the juxtaposition of the increase in Class E habitual felony convictions and the decrease in Class E habitual breaking and entering felony convictions.

2021 JUVENILE RECIDIVISM REPORT: KEY FINDINGS

Chairman Brown recognized Tamara Flinchum, staff, to present the Juvenile Recidivism Study: FY 2018 Juvenile Sample (see Handout). Ms. Flinchum informed the Commission that this report is one of their legislatively mandated biennial reports on juvenile recidivism in North Carolina. 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 2018. She reminded Commissioners that this is the second report using a new methodology: a sample of juveniles exiting the juvenile justice system and two recidivism time periods analyzed (i.e., during their juvenile justice involvement and a two-year follow-up). Those methodological changes were made in anticipation of raising the age (RtA) of criminal accountability and the incoming 16- and 17-year-olds in the juvenile justice system (i.e., 2017 Juvenile Justice Reinvestment Act, effective date December 1, 2019). She informed them that RtA affected 30% of the current sample during the end of their two-year follow-up. She commented that while the COVID-19 pandemic did occur during the final months of the follow-up period, the pandemic did not have an impact on the current report's findings.

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. Ms. Flinchum then provided the recidivism rates for the juvenile sample. Key findings for the diverted juveniles by successful and unsuccessful diversion and adjudicated juveniles by Levels 1, 2, and 3 dispositions were discussed separately as well. Ms. Flinchum summed up the key findings from the report and the potential policy considerations. She reported that the DACJJ implemented a new risk and needs assessment tool, the Youth Assessment and Screening Instrument (YASI) on January 1, 2021. Additionally, she mentioned that staff anticipate that the RtA and the pandemic will impact the findings in the 2023 Juvenile Recidivism Report. Mr. Beeler thanked everyone for the work done on this report (in particular for the inclusion of diversion in the report) and asked if the new YASI factors in the impact of race better than the prior assessment tool – if it factors in racial bias. Mr. Moose noted that the YASI was developed in such a way that race was considered. He went on to include that they (DACJJ) are considering some improvements with the risk and needs assessment tools in the adult side as well. Chairman Brown follow-up that he has reviewed how the YASI has been revised.

2021 JCPC PROGRAM EFFECTIVENESS REPORT: KEY FINDINGS

Chairman Brown again recognized Dr. Lutz to discuss the key findings from the JCPC Program Effectiveness Report. Dr. Lutz thanked Chairman Brown and began by noting that the JCPC recidivism report uses an exit sample of all juveniles who exited from a JCPC Program in FY 2018. She noted that the JCPC recidivism study uses the same methodology as the Juvenile Recidivism report. She also noted that the RtA legislation and the COVID-19 pandemic did not affect the current study, but that future reports would examine the

effects of both on the juvenile justice system and JCPC programs. The number of juveniles exiting a JCPC program in FY 2018 decreased 4% (from 14,184 to 14,806) from the previous FY 2016 report. Dr. Lutz noted that court-involved juveniles had more priors and that recidivism rates were lower for the at-risk juveniles. She said that the overall recidivism rate was down 2% from the previous cycle and added that having a prior complaint was associated with having an increased recidivism rate (see Presentation). Further, as risk level and the number of prior behaviors increased, recidivism increased.

Dr. Lutz next focused on the differences across the JCPC program categories. Juveniles in the sample participated in over 500 programs across the state, but the report organizes the programs into seven broad categories with each category serving various proportions of at-risk and court-involved juveniles (see Handout). There were differences in the populations that each program served, and the amount of time juveniles spent in programs, but all programs had high rates of completion (see Handout). Turning to recidivism rates, Dr. Lutz commented that across the program categories, most recidivism occurred during the two-year follow-up, which is not surprising considering the average time in the programs is less than four months. Juveniles who completed their JCPC program generally had much lower recidivism rates during the two-year follow-up. Court-involved juveniles had higher recidivism rates across all programs. Interestingly, at-risk juveniles and court-involved juveniles exiting teen court programs, which predominately serve lower-risk juveniles, had similar recidivism rates.

In summary, Dr. Lutz reiterated that prior system contact is strongly associated with recidivism. This finding suggests that the lowest possible intervention should be used. Further, she restated that program completion yields positive results in reducing recidivism. Chairman Brown thanked Dr. Lutz and then opened the floor up for questions or comments. Seeing none, Chairman Brown then introduced Ms. Hall to provide an update to the Sentencing Practices Study.

SENTENCING PRACTICES STUDY UPDATE

Ms. Hall thanked Chairman Brown and then reminded the Commission that at the May 7th meeting, they had the opportunity to hear from Dr. Rod Engen on his work for the sentencing practices project. Dr. Engen has nearly completed the replication of the multivariate models from the 2002 analysis. While there are no results to share yet, there should be some additional information to share soon.

ADJOURNMENT

Chairman Brown thanked Ms. Hall and then thanked staff for their presentations and reminded the members that the next full Commission meeting is Friday, September 10, which, if everyone feels safe to do so and we can accommodate you, will be held in-person in Raleigh. Ms. Hall reminded the Commission that membership appointments end on June 30, 2021 and that notices to appointing authorities went out last week. If a member would like to continue to serve, she encouraged them to talk to their appointing authority. Chairman Brown adjourned the meeting at 11:52 a.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary