

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

June 5, 2020

The North Carolina Sentencing and Policy Advisory Commission met remotely by Webex on **Friday, June 5, 2020.**

Members Present: Chairman Charlie Brown, Frances Battle, Sheriff James Clemmons, Danielle Elder, Judge Sherri Elliot, Chris Fialko, Willis Fowler, Judge Greg Horne, Susan Katzenelson, Honorable Tammy Lee, Dr. Harvey McMurray, Representative Allen McNeill, Honorable Jim Mixson, Luther Moore, Tim Moose, Judge Fred Morrison, Representative Billy Richardson, Calvin Suber, Patrick Weede, and Judge Valerie Zachary.

Guests: 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, Rebecca Dial, Becky Whitaker, Jennifer Lutz, and Shelley Kirk.

INTRODUCTION

Chairman Brown called the meeting to order at 10:00 a.m. He thanked the Commission members for their willingness to participate in a virtual meeting and assured them that they would meet together in a physical setting again as soon as it was safe to do so. He recognized Michelle Hall, staff, to provide an overview of the WebEx functions. At the conclusion of the overview, Chairman Brown informed the members 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 then reviewed the meeting process and how questions, motions, and votes would be handled.

Chairman Brown reminded Commission members of the remaining Commission meeting dates of September 11, and December 4. He then presented the minutes from the March 6, 2020 Sentencing Commission meeting. Ms. Hall pointed out that on page 4 of the minutes, "Second Change Act" should read "Second Chance Act". Luther Moore moved to adopt the minutes as corrected; the motion was seconded by Sheriff Clemmons. Ms. Hall called the roll for attendance and for each member's vote on the motion. The motion carried. Chairman Brown then reviewed the agenda noting staff presentations and topics to be covered.

SESSION UPDATE AND LEGISLATIVE REVIEW

Chairman Brown recognized John Madler, staff, to provide an update on the legislative session. Mr. Madler recognized Becky Whittaker and Meghan Boyd Ward of the staff for their assistance in preparing the materials. He explained that the legislative session began on April 28 and that the last bill filing deadline was May 26, the materials covered bills introduced or amended during that period (see Handout). Mr. Madler reviewed three bills that had been ratified during the session that were relevant to the Commission's work: (1) HB 1043 – 2020 COVID-19 Recovery Act, which appropriated some of the federal funds appropriated by Congress to the states, (2) SB 704 – COVID-19 Recovery Act, which makes

policy changes, and (3) HB 1187 – Raise the Age Funding, which provides funds for youth development center renovations and construction. Mr. Madler then reviewed relevant bills which had been introduced during the session but which had not yet passed the General Assembly (see Handout).

Turning to the bills for review, Mr. Madler explained the Commission’s process, policies, and the offense classification criteria. He added that pursuant to G.S. 166A-19.24, all votes would be taken by roll call. He then reviewed the following bills (see Handout).

HB 1169 – Elections 2020 [Ed. 1].

(G.S. 163-237(d7)) Mr. Moore moved to find the proposed Class I felony consistent with Offense Classification Criteria. Calvin Suber seconded the motion and it carried.

SB 710 – Strengthening DWI Laws [Ed. 1]. (New Offense)

(G.S. 20-141.4(a7)) Chris Fialko stated that the criteria for Class F contemplates criminal or culpable negligence and that this offense does not include that, it does involve a traffic violation so it could fit the criteria for Class H. He explained that he had previously asked Mr. Madler whether the Commission had defined “serious traffic violation” but it had not. He moved to find the proposed offense inconsistent with Homicide Offense Classification Criteria for a Class F felony but consistent with the criteria for a Class H felony. Patrick Weede seconded the motion.

Danielle Elder pointed out that involuntary manslaughter is a Class F felony and it involves an unintentional killing resulting from criminal negligence or recklessness; recklessness is sufficient to prove culpability there. She commented that driving on a revoked license for DWI could support recklessness. Mr. Fialko agreed, but stated that they look at whether the traffic offense was the proximate cause of the death. He questioned whether the status of Driving While License Revoked (DWLR) due to DWI proximately caused the homicide.

Chairman Brown asked Mr. Madler if he could clarify the criteria. Mr. Madler explained that when the Commission developed the Homicide Offense Classification Criteria, it did not define “serious traffic violation” but that speeding to elude arrest resulting in death and passing a stopped school bus resulting in death were homicide offenses involving a motor vehicle that were classified in Class H. Representative Richardson asked if “serious traffic offense” could be defined and questioned how to make a recommendation without knowing that definition. Mr. Madler said the Commission could further define the homicide offense classification criteria to explain what “serious traffic offense” means and added that the proposed offense was essentially misdemeanor death by vehicle with the additional requirement that the offender’s license was revoked due to DWI. Representative Richardson noted that this offense is often a person running a stop sign and it is just an accident, the practical application of this statute troubled him. Chairman Brown stated that it is often difficult on both sides of this offense and finding it consistent with a Class H probably recognizes that issue. Patrick Weede added that there are varying levels of the severity of DWLR due to DWI, such as driving during the one-year license suspension versus driving after the suspension but prior to retrieving the license.

Chairman Brown restated Mr. Fialko’s motion but Mr. Weede withdrew his second stating that he was not sure it would be consistent with the criteria for a Class H felony. Ms. Elder seconded the motion and the motion carried.

SB 710 – Strengthening DWI Laws [Ed. 1]. (Punishment)

(G.S. 20-141.4(a7)) Mr. Moore moved to find the proposed punishment to be inconsistent with G.S. 164-41. Mr. Fialko seconded the motion and the motion carried.

2020 ADULT RECIDIVISM REPORT KEY FINDINGS

Chairman Brown recognized Ginny Hevener, staff, to present the key findings of the 2020 Adult Recidivism Report (*see Handout*). Ms. Hevener noted that the 11th biennial evaluation was completed in conjunction with the Department of Public Safety (DPS) and submitted as required on April 15, 2020. Turning to the handout, she noted that this year's report focused on prison releases and probation entries from FY 2017 with a fixed follow-up period of two years. Ms. Hevener noted that the report provides information for policymakers in terms of setting priorities for the use of limited resources and making sure that what the state is doing with offenders is effective. She then reviewed key finding from the report.

Susan Katzenelson commented that one of the expectations of success for the Justice Reinvestment Act (JRA) was a reduction in recidivism and that it appears the Commission cannot come to that conclusion looking at this data. She suggested that this may be something the Commission should work on with DPS or think about. Chairman Brown stated that it will take time to have sufficient data to demonstrate effects of the JRA.

Ms. Hevener then asked the Commission to consider some potential policy questions based on the findings from the report:

- 1) While the overall sample size has decreased over the time period covered, overall recidivist arrests first remained stable and then have subsequently increased for the current study.
To consider: What factors could explain the increase in recidivist arrests?
- 2) The probation violation rate has been increasing each year, while the probation population has been decreasing (not highlighted in the handout). There are fewer on probation, yet the violation rate has increased.
To consider: What factors could be contributing to this increase and what implications does this increase have for probation supervision strategies?
- 3) Recidivist incarceration rates for prisoners have increased, primarily as a result of the increase in revocation of Post Release Supervision (PRS) with the expansion of PRS to lower-level felons.
To consider: What does this mean in terms of the effectiveness of PRS?

Ms. Katzenelson recommended that these be discussion points for the JRA Subcommittee when they next convene and then report back to the Commission. Chairman Brown concurred and stated that he would be interested in examining the interplay between recidivism and the JRA as well.

2020 JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION REPORT KEY FINDINGS

Chairman Brown recognized Ms. Hall, staff, to present the key findings of the 2020 Justice Reinvestment Implementation Evaluation Report (*see Handout*). Ms. Hall highlighted the key points of the handout, noting that it was for Calendar Year 2019. Representative McNeill asked about the prison population and recent reductions due to COVID-19 – specifically how staff will take the reductions into

account moving forward. Ms. Hall responded that staff will be tracking the numbers very closely and that prison population projections will be harder in this unprecedented pandemic.

Ms. Hall then asked the Commission to consider some potential policy questions based on the findings from the report:

- 1) The Justice Reinvestment Act was designed to save the state in corrections costs, avoid the projected growth in the state prison population, and increase public safety. *To consider:* Is it accomplishing its goals?
- 2) JRA provisions were designed to strengthen probation supervision, hold offenders accountable in more meaningful ways, and reduce the risk of reoffending. *To consider:* Are the tools accomplishing their objectives?
- 3) *To consider:* How are the individual provisions of the JRA contributing (or not) to the overall goals of the legislation?

Representative McNeill pointed out that COVID-19 is forcing the state to reduce the prison population. He asked how staff will measure that going forward. Ms. Hall replied that staff was tracking the prison population very closely but that the impact of the virus will make it harder to project. It is unprecedented and it will influence almost every report the Commission produces.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown again recognized Ms. Hall for other business. Ms. Hall mentioned that she had good news to share: the Commission had received national recognition for the second year in a row for one of its report, *Study of the Most Effective Setting for Housing and Treatment of DWI Offenders*. This publication was one of only four in North Carolina designated as a Notable Government Document by the American Library Association for 2019. Chairman Brown thanked the Commission and staff for their hard work in this back-to-back national recognition and stated he would forward the link to members after the meeting.

Judge Brown then asked to the Commissioners that were in courthouses about practices during COVID-19 restrictions. Discussion ensued about the effect of COVID-19 across the state.

Chairman Brown thanked everyone for their comments and then welcomed Dr. Harvey McMurray before turning to Ms. Hall for any other items. Ms. Hall stated that staff missed seeing everyone and reminded Commissioners that staff is available any time.

ADJOURNMENT

Chairman Brown reminded the members that we will meet on September 11th and adjourned the meeting at 11:42 a.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary