

**MINUTES**  
**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING**  
**September 10, 2021 via WebEx**

The North Carolina Sentencing and Policy Advisory Commission met by Webex on Friday, September 10, 2021.

**Members Present:** Chairman Charlie Brown, Frances Battle, Danielle Elder, Judge Sherri Elliott, Senator Toby Fitch, Lindsey Granados, Judge R. Greg Horne, Joseph Houchin, Honorable Tammy Lee, Dr. Harvey McMurray, Representative Allen McNeill, Honorable James Mixson, Luther Moore, Tim Moose, Judge Fred Morrison, Honorable William Richardson, Calvin Suber, Patrick Weede, and Judge Valerie Zachary.

**Guest:** Mary Stevens (for Willis Fowler).

**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 10:02 a.m. He welcomed Commission members and thanked them for their virtual attendance again since COVID-19 restrictions and uptick have prevented meeting in person as planned. 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 next Commission meeting is December 3 and then added the 2022 meeting dates: March 4; June 3; September 9; and December 2.

Chairman Brown introduced a new Commission member, Joseph (Joe) Houchin, appointed by the Lieutenant Governor. Mr. Houchin stated he is looking forward to working with his fellow Commissioners and meeting everyone in person.

Chairman Brown presented the minutes from the June 4, 2021 meeting and called for any changes or 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 motion to approve the minutes. The motion carried.

Then Chairman Brown asked for a few moments of silence in memory of Sheriff James Clemmons, who recently passed away. He then read a resolution honoring the life and memory of Sheriff Clemmons. The Resolution and passed unanimously (attached). Chairman Brown asked if any Commissioners wanted to share remembrances of Sheriff Clemmons. Calvin Suber spoke of his friendship with Sheriff Clemmons and how much he will be missed. Art Beeler, former Commissioner, provided his comments to the Chairman to be read, and are as follows:

*“Although no longer a member of the Commission, I would like to say just a word regarding my friend Sheriff James Clemmons, whose recent death shocked us all. He had a passion regarding the elevation of criminal justice in the State of North Carolina and provided a role model for many people of color who obtained leadership positions in the state. His work in protecting his country, his state, and his county will not long be forgotten. And while he and I would get into conversations about the best way to approach issues, he always listened and provided sage counsel. I will miss him. In the Naval service there is a saying, may you find fair winds and following seas. Sheriff, rest in peace and thank you for your service and sacrifice.”*

## LEGISLATIVE REVIEW AND SESSION UPDATE

Chairman Brown then recognized John Madler, staff, to facilitate the legislative review process and to provide an update on the 2021 Session (see Handout/Presentation). Mr. Madler began by stating that the Commissioners had received in their mailing a copy of the Commission’s policies and offense classification criteria for the review process (see Handout). He referred to Policy #9 which states that the Offense Classification Criteria were not used in the classification of drug offenses but that the Commission would review drug offenses on an ad-hoc basis by comparing them to existing offenses; he indicated that most of the offenses in the bill appear to be drug-related offenses. Mr. Madler presented Senate Bill 711 for review (see Handout).

### **SB 711 – NC Compassionate Care Act [Ed. 5].**

**(G.S. 90-113.121(a))** Mr. Moore moved to find the proposed Class G felony inconsistent with the Offense Classification Criteria. Lindsay Granados seconded the motion and the motion carried.

**(G.S. 90-113.121(b))** Mr. Houchin asked whether the General Assembly created an any additional criminal offenses when hemp was legalized several years ago or relied on the existing marijuana offenses. Mr. Madler responded that he was not aware of any new offenses related to controlled substances, but that staff would check the statutes. Lindsay Granados moved to find the proposed Class H felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with a Class I felony. Mr. Weede seconded the motion and then it carried.

**(G.S. 90-113.121(d))** Ms. Granados moved to find the proposed Class H felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with a Class I felony. Jim Mixson seconded the motion and the motion carried.

**(G.S. 90-113.121(f))** Danielle Elder asked whether the bill set out any parameters about the amount of cannabis the cardholder could possess. Mr. Madler responded that it did not. Mr. Houchin asked if there were any similar offenses where the license holder commits a felony if he or she violates a licensing rule, most of the examples he was aware of were misdemeanor offenses. Mr. Madler responded that he did not recall any that would be similar to this offense. Judge Valerie Zachary asked if there were any offenses related to the possession of Suboxone. Mr. Madler responded that he was not aware of any offenses. Mr. Houchin added that that the offense might be similar to obtaining a controlled substance by fraud, which is a Class 1 misdemeanor unless certain circumstances exist. Ms. Elder moved to find the proposed Class I felony inconsistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.

**(G.S. 90-113.121(g))** Mr. Moore moved to find the proposed sentence enhancement inconsistent with

G.S. 164-41. Ms. Granados seconded the motion and it carried.

Mr. Madler provided a brief update on the legislative session (*see Handout*). He explained that the General Assembly had not passed a budget yet, so staff provided a summary of the relevant provisions from the proposed budgets of the Governor, the Senate, and the House of Representatives. Staff also included a list of bills that had passed that contained new offenses.

### **PRISON POPULATION PROJECTIONS UPDATE**

Chairman Brown thanked Mr. Madler and recognized Ginny Hevener, staff, to provide an update to the current prison population projections (*see Handout*). Ms. Hevener commented that the handout provides an assessment of the accuracy of the first year of the projection and whether the projections appear to be on target for the later years of the ten-year projections. In terms of the accuracy of the projections, Ms. Hevener noted that the average prison population for June 2021 was 29,194 compared to the projected population of 30,568, a difference of nearly 1,400 (just under 5%). The projections were within the standard acceptable accuracy range of 5%, although given the size of the prison population a more conservative accuracy range of 2% is typically used. In comparing the actual and projected prison populations, the actual population has typically closely tracked the projected population (within 2%), with the exception of the two projections affected by the pandemic.

Ms. Hevener also highlighted the comparison of the actual and projected prison populations within prison capacity. Historically, the prison population has typically been closer to Expanded Operating Capacity (EOC); however, with the continued impact of the COVID-19 pandemic on the courts and corrections, the prison population is currently closer to Standard Operating Capacity (SOC).

Ms. Hevener reviewed historical trends for the prison population (*see Presentation*). The prison population had been stable around 36,000 for several years prior to the pandemic. The population declined nearly 17% – by 5,912 – from the onset of the pandemic (March 2020) through the end of June 2021. Ms. Hevener also pointed out the decline in the prison population following the NAACP v. Cooper settlement agreement. She explained that the number of inmates to be released under the settlement agreement (3,500) does not translate directly to a decrease of the same size in the prison population; the population is also driven by prison admissions. The population declined by about 500 from the time of the February 2021 settlement agreement to the end of the fiscal year. There has been some leveling of the population around 29,000 since March and that jail backlog, while zero at the end of the fiscal year, is currently around 800.

Chairman Brown mentioned that jury trials are resuming normal practices but asked how the Delta and additional slowdowns that may occur will be accounted for. Ms. Hevener responded that the team will consult with DPS and examine quarterly data. She noted that it will be challenging not knowing what is coming in the Fall/Winter, but the annual forecasting meeting in preparation for the new projection will feature a discussion of trends with several different agencies.

Ms. Hevener closed by noting that work has begun on next year's projections, which will be based on data from FY 2021, representing a full year of court and correctional operations under pandemic conditions. Data through the end of CY 2021 will also be used, to provide as much information as possible on the current state of the system to inform the projections.

## **INMATE SETTLEMENT AGREEMENT UPDATE**

Chairman Brown thanked Ms. Hevener and recognized Tim Moose, Chief Deputy Secretary of the Division of Adult Correction and Juvenile Justice (DACJJ), Department of Public Safety (DPS) to update the Commission on the settlement agreement in the case of NC NAACP; ACLU v. Cooper. Mr. Moose's PowerPoint presentation provided an operational overview of how DPS responded to the settlement. Under the terms of the settlement, DPS, with the Post-Release Supervision and Parole (PRSP) Commission, were directed to complete an early reentry or transition of 3,500 offenders out of prison facilities over a six-month period that began February 25, 2021; this was in addition to normal releases.

Mr. Moose explained that three mechanisms were used to meet the early reentry requirements of the settlement: Extended Limits of Confinement (ELC), Discretionary Sentence Credits, and Special Reviews by the PRSP Commission. He described each of the three mechanisms and noted that ELC was used for 546 transitions to the community; discretionary credits were used for 2,058 transitions; and special reviews were used for 2,256 transitions. Overall, under the terms of the settlement, 4,862 offenders were transitioned to the community by August 24, 2021.

Next, Mr. Moose mentioned some of the additional requirements of the settlement and how DPS met those requirements. He specifically mentioned COVID mitigation efforts, including continuous testing and vaccine distribution. To date, 72% of offenders and 56% of staff have been vaccinated. He noted that the COVID-19 infection rate continues to be low, with 89 active cases at the moment, mostly from jail intake. He concluded by mentioning that the current prison population continues to be at 1995 levels (28,300 offenders, plus jail backlog). Representative McNeill asked why there is a jail backlog if the prison population is lower than in many years. Mr. Moose responded that if there are COVID cases in jails, offenders will quarantine in the jails until cleared for entry into the prison system. Representative McNeill followed up by asking if jails are being paid \$40/day/offender for offenders quarantining in jails; to which Mr. Moose responded in the affirmative.

## **JUVENILE RESOURCE PROJECTION UPDATE**

Chairman Brown recognized Dr. Jennifer Lutz, staff, to present an update on the Youth Development Center (YDC) projections (see Handout). Dr. Lutz reminded the Commission that the projections were published in January 2021. Importantly, these YDC projections considered two factors: 1) The Juvenile Justice Reinvestment Act which increased the age of juvenile jurisdiction to include most 16- and 17-year-olds, (effective December 1, 2019); and 2) the effects of the COVID-19 pandemic.

First, Dr. Lutz showed a figure (see Presentation) with the projections, the current YDC population and the YDC capacity. In FY 2021, the projection was 169 and the average June population was 159, a difference of 10 beds between the projection and the June average. The projection for FY 2022 was 205 and the August average was 168; a difference of 37 beds between the projection and the August average. Dr. Lutz continued by showing the projected YDC population within the context of the actual minimum and maximum YDC populations across the past 5 fiscal years. The FY 2021 projection was 169, the highest population was 163 and the lowest was 144 in FY 2021.

Finally, Dr. Lutz concluded by displaying the average monthly population by fiscal year and raise the age. With the enactment of Raise the Age (RtA) in FY 2020, the YDC population was anticipated to increase. However, with postponement of some court processes as response to the COVID-19 pandemic, the population began declining in March 2020. In FY 2021, the non-RtA population declined from 130 to 104,

but the RtA population of juveniles increased from 19 to 55. In the beginning of FY 2021 (July 2020), RtA juveniles accounted for just 13% of the total YDC population. However, by the end of FY 2021 (Jun 2021), the RtA juveniles accounted for 35% of the total YDC population. The slight growth seen in FY 2021 was driven by the new RtA juveniles now under juvenile jurisdiction. Representative McNeill asked if juveniles charged in the adult system are included in the projections, to which Dr. Lutz responded that they are not included in the YDC resource projections.

#### **STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM (SMCP) CAPACITY PROJECTIONS UPDATE**

Chairman Brown recognized Meghan Boyd Ward, staff, to present an update on the SMCP Capacity Projections (see Handout). Ms. Boyd Ward reminded members that the projection was published in February 2021 and presented two scenarios for capacity within the SMCP. She explained that unlike previous years, the two scenarios were developed to account for the COVID-19 pandemic, which resulted in many of the participating counties going to an offline status (i.e., no longer receiving inmates from the program).

Ms. Boyd Ward noted that scenario 1 predicted offline counties would return to the same level of participation they had prior to the pandemic and scenario 2 predicted that not all counties would participate at the same level as they did before the pandemic. She explained that despite these constraints, the projections were relatively accurate with a difference of 7% between the projected capacity of 976 for year 1 of the projection (scenarios 1 and 2 projected the same capacity for year 1) and the actual capacity at the end of the fiscal year of 1,049 on June 30, 2021.

Turning to the later years of the projection, Ms. Boyd Ward highlighted projections for June 2022 with a capacity of 1,072 for scenario 1 and 1,027 for scenario 2. She explained that by year 3 of the projection, scenario 1 predicts a full recovery from the counties who went offline in the pandemic. By year five of the projection, scenario 1 projected a capacity of 1,240 and scenario 2 projected 1,106.

Lastly, Ms. Boyd Ward reviewed the historical trends for SMCP capacity and average monthly population (AMP). Prior to the pandemic, the program had a relatively consistent participation level with a slight decrease of 4% in capacity overtime. The effects from COVID caused a sharp decrease in both capacity and AMP, with capacity being lowest in April 2020 at 755 and AMP being lowest in February 2021 at 535.

Chairman Brown observed a comment in the chat from Tammy Lee that the HVAC filter used in the Bertie Martin Regional Jail has possibly attributed to no COVID cases and Mr. Moose stated that they too have done this and has definitely helped in the reduction of cases.

#### **NASC MEMBER STATES' STUDIES / SENTENCING PRACTICES STUDY UPDATE**

Noting the time, Chairman Brown thanked Ms. Boyd Ward and then introduced Ms. Hall to review the National Association of Sentencing Commissions (NASC) all-states' studies and provide an update on the Commission's Sentencing Practices Study. Ms. Hall noted that in the interest of time, the NASC states' updates will be moved to the December meeting, but she provided a very brief review of what NASC is and what they do. Moving to the Sentencing Practices Study, she provided a brief update. She reminded Commissioners of Dr. Rodney Engen's presentation in May and his contribution to the project – the multivariate analysis. While behind the anticipated timeline for the project, staff continues to work closely with Dr. Engen and anticipates results from the analysis soon.

## COMMISSION WORKPLAN

Next, Ms. Hall reviewed the staff's upcoming projects/reports for the next year, noting the anticipated content for each meeting and legislative deadlines for mandated reports. She concluded by highlighting two new publications included in the recent mailing to Commissioners - FY 2020 Driving While Impaired Convictions Statistical Report and a new quick facts publication on DWI convictions (*see Handout*).

## INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown then introduced Georgie, Tamara Flinchum's 10<sup>th</sup> puppy being raised for Guiding Eyes for the Blind (*see Presentation*). Ms. Flinchum held up a wiggling Georgie for the Commission to see and explained that Georgie is 10 weeks old and hopes to meet everyone in person soon.

Lastly, Chairman Brown then shared an excerpt from a column that resonated with him and found it aspirational in the need to take more time off. Chairman Brown then read the piece (*see below*):

*From this 20-year practicing lawyer, we need to take more time off, particularly during COVID-19. I feel like my vacations haven't truly been a time to recover. I've continued to respond to emails, to take calls, and to do work that could otherwise await my return to the office. This has caused me to be anxious, less present with my family and not better for my time off. Even after we get past this seemingly endless pandemic, I hope we will find the time to truly be away from our jobs and not just on vacation, we should go for a walk or just be still without the disruption and distraction of an email, an incomplete task or an upcoming hearing. We need that so that we are not just better practitioners or researchers, but better people.*

## ADJOURNMENT

Chairman Brown thanked Commissioners for their attendance and participation, thanked all the staff for their presentations and reminded the members that the next full Commission meeting is Friday, December 3, meeting format to be determined. Chairman Brown adjourned the meeting at 11:51 a.m.

Respectfully submitted,

Shelley Kirk  
Administrative Secretary

Attachment



## A RESOLUTION HONORING THE SERVICE AND MEMORY OF SHERIFF JAMES CLEMMONS, JR.

Richmond County Sheriff James (“Clem”) Clemmons passed away at the age of 60 on August 5, 2021, survived by his son, James Clemmons III. Sheriff Clemmons served as a member of the North Carolina Sentencing and Policy Advisory Commission since 2012, representing the North Carolina Sheriffs’ Association. He was a dedicated member of the Sentencing Commission who brought experience, humor, and open-mindedness to deliberations and decision-making. He was a steadfast supporter of the Commission and its work.

Sheriff Clemmons was a devoted public servant. He began his career serving the state of North Carolina in 1981 as a correctional officer for the Division of Prisons. He joined the Richmond County Sheriff’s Office as a patrol deputy in 1989, steadily rising through the ranks until he was elected Sheriff in 2010. He was the first person of color to become a major within the Richmond County Sheriff’s Office and to be elected as the Sheriff of Richmond County. His passion for law enforcement and public safety was obvious to everyone who had the good fortune of knowing him.

Sheriff Clemmons was recently appointed to his sixth term on the Sentencing Commission. He was a committed member of the Commission, generously imparting his knowledge and expertise. Sheriff Clemmons served on the Justice Reinvestment Act Implementation Evaluation Report Subcommittee, Credit for Time Served Subcommittee, Research & Policy Study Group, Legislative Review Subcommittee, and DWI Sentencing Subcommittee. The contributions he made to the work of the Sentencing Commission over his nearly ten years of service will always be remembered.

In addition to his work with the Sentencing Commission, Sheriff Clemmons previously served as President of the North Carolina Sheriff’s Association and as a member of the Presidential Commission on Law Enforcement and the Administration of Justice. In 2020, he was appointed by Governor Roy Cooper to serve on the North Carolina Task Force for Racial Equity in Criminal Justice. Over the course of his career, Sheriff Clemmons received numerous awards and accolades and was involved with many civic organizations in his community. He attended Livingstone College and Mount Olive College and was a proud member of Omega Psi Phi Fraternity.

**NOW, THEREFORE, BE IT RESOLVED**, that his untimely death leaves the Commission, the justice system, and community to grieve for the loss of a kind, dedicated, and exceptional public servant.

**BE IT FURTHER RESOLVED**, that a copy of this resolution be spread upon the minutes of this meeting with copies to his son, the Richmond County Sheriff’s Office, and the North Carolina Sheriffs’ Association 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,

THIS THE 10TH DAY OF SEPTEMBER, 2021.

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Charlie Brown  
*Chairman*