



MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
December 8, 2023

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 8, 2023, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Natalia Botella, Honorable James Gailliard, Representative Dudley Greene, Joe Houchin, Honorable Darren Jackson, Honorable Tracey Johnson, William Lassiter, Sheriff Garry McFadden, Honorable Jim Mixson, Senator Mujtaba Mohammed, Luther Moore, Representative Reece Pyrtle, Calvin Suber, Judge Scott Ussery, Pamela Walker, Honorable Mike Waters, Elizabeth Watson, Patrick Weede, Chief AZ Williams, and Judge Valerie Zachary.

Guests: Art Beeler (former Commissioner), Judge Sherri Elliott (former Commissioner), Meagan Pittman (AOC, RP&P), Will Crozier (NCDPS, JJ), Jared Pane (NCDPS, JJ), Kim Quintus (NCDPS, JJ), Jimbo Perry (CJCP), Marie Evitt (NCSA), Cortney Godwin (NCSA), and Carl Reynolds (CSG).

Staff: Michelle Hall, Ginny Hevener, John Madler, John King, Meghan Boyd Ward, Julio Cazares, and Sierra Satterfield.

INTRODUCTIONS AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:02 a.m. and asked members and guests to introduce themselves. He introduced the following new Commissioners:

- Honorable James Gailliard, appointed by the Governor.
- Deputy Secretary William Lassiter, representing the Department of Public Safety.
- Representative Reece Pyrtle, member of the NC House of Representatives.
- Honorable Darren Jackson, representing the Post-Release Supervision and Parole Commission.

Chairman Brown presented resolutions recognizing outgoing Commissioners for their service:

- Willis Fowler and Louise Davis (neither were present). Luther Moore moved to adopt the resolutions; Tracey Johnson seconded the motion and it carried.
- Art Beeler. Mr. Moore moved to adopt the resolution; Ms. Johnson seconded the motion and it carried. Mr. Beeler made remarks upon receiving his resolution.
- Judge Sherri Elliott. Mr. Moore moved to adopt the resolution; Judge Scott Ussery seconded the motion and it carried. Judge Elliott made remarks upon receiving her resolution.

Chairman Brown presented the minutes from the September 8, 2023, meeting and called for a motion. Mr. Moore moved to adopt the minutes as written; Judge Ussery seconded the motion and it carried. Chairman Brown reminded Commissioners of the 2024 meeting dates: March 1, June 7, September 13, and December 13, and then reviewed the revised agenda.

SENTENCING PRACTICES STUDY: UPDATE

Chairman Brown recognized Michelle Hall, staff, to provide an update on the Sentencing Practices Study (see Presentation). Ms. Hall informed the Commission that, due to an unprecedented number of staff illnesses, the presentation and discussion would not be as in depth as originally planned but that they would provide the foundation for a discussion of the full report at the March 2024 meeting. As context for the study, Ms. Hall reviewed the principles and elements of Structured Sentencing. Chairman Brown asked if the principles of Structured Sentencing were listed in rank order. Mr. Moore stated that all five of the principles were equally important and the Commission made sure its final product addressed all five principles. Chairman Brown and Mr. Moore discussed the history of structured sentencing in North Carolina and the role the principles played.

Ms. Hall stated that the Sentencing Practices study was attempting to answer the question of whether the principles of Structured Sentencing are being realized in practice, with a focus on whether sentences are consistent. The Commission first examined this issue in its 2002 Sentencing Practices Study. Ms. Hall reviewed the purpose, methodology, and findings of that study. The 2023 study had the same purpose and similar methodology but did not look at the sentence length decision point. Ms. Hall highlighted the key elements of the study and the enhancements from the 2002 study.

Chairman Brown asked what enhancements were made to the methodology in the 2023 study. Ms. Hall explained that staff utilized multi-level modeling, which was not used in the 2002 study. Multi-level modeling allowed them to look at the relationships between offender and district variables in an enhanced way, those that are related to the offender are tied to the case while those that are related to the district are tied to the district.

Chairman Brown stated that the legal variables appeared to be inherently good, expected to control at the discretionary decision points, but asked if the extralegal variables were therefore inherently bad at those decision points. Ms. Hall responded that the question was whether extralegal variables were having an effect on a discretionary decision point. The goal is for the discretionary decisions to be influenced by legal factors and not by extralegal factors. Chairman Brown asked about the interplay between legal and extralegal factors. Ms. Hall explained that the study was looking at that interplay within certain contexts and that it may suggest some areas for further study. She cited some of the findings related to prior record as an example. Chairman Brown added that prior record level is a legal factor and that it should be influencing the discretionary decisions but that the study may prompt the Commission to consider what is included in prior record. It is possible that some of the extralegal factors may be influencing the impact of certain elements in prior record.

Darren Jackson asked if the current study compared the results of having a public defender to having an appointed private attorney. Ms. Hall replied that the current study looked at privately retained attorneys versus all others, similar to the analysis done in the 2002 study. She said that breaking it down beyond two categories would require ranking the types of attorneys, which they could not do. The members discussed the decline in the number of attorneys available for appointment and the placement of the eight new public defender offices.

Judge Ussery asked if the study compared the results of Class H and I pleas in district court to those in superior court. Ms. Hall stated that staff did look at that issue but that she did not have the results with her, she would have to get back to him with that information. Judge Ussery pointed out that if the

sentencing is consistent between the two courts, there would be no incentive to take the plea to district court.

LEGISLATIVE SESSION SUMMARY

Chairman Brown recognized John Madler, staff, to provide a summary of the 2023 Session (*see* Presentation and Handouts). Due to time constraints, Mr. Madler explained the handouts and summarized his presentation. He informed the members that the Session adjourned October 25 and that staff had compiled summaries of the new provisions related to criminal and juvenile justice into a report. That report also included the Sentencing Commission's findings on the consistency of each felony provision with the Offense Classification Criteria and with Structured Sentencing. Mr. Madler pointed out the second handout that contained the new offense and punishment provisions by class. He informed the members that these were the most new and reclassified offenses overall, as well as the most in Classes A-D and E-G, staff had seen in one session in at least 10 years. Because these provisions are in the more serious classes, with higher percentages of active sentences and longer sentence lengths, any convictions under these offenses will have impact on the prison population.

JUVENILE RESOURCE (YOUTH DEVELOPMENT CENTER) PROJECTIONS

Chairman Brown recognized Sierra Satterfield, staff, to present the FY 2023 Juvenile Disposition Data and the FY 2024 – FY 2028 Youth Development Center (YDC) Projection and accompanying Juvenile Disposition Quick Facts (*see* Handouts). Ms. Satterfield thanked the Division of Juvenile Justice and Delinquency Prevention (DJJDP) staff for providing the data for the project and for their collaboration.

Ms. Satterfield first highlighted key differences between detention centers and YDCs. Detention centers (funded by the county and/or state) are secure temporary facilities where juveniles are held pending a hearing disposition for placement or transfer, or for periods of intermittent confinement. YDCs (funded by the state) are secure residential facilities for juveniles that receive a level 3 disposition. They have long-term treatment, educational and rehabilitative services.

Next, Ms. Satterfield reviewed the purpose of the projections: to determine the long-range needs of the juvenile justice system, for the examination of current and historical trends for juvenile dispositions and the YDC population, and as a planning tool for the General Assembly and DJJDP. Two sources of data were used to produce the projections: FY 2023 data on delinquent dispositions and stock data (i.e., juveniles that are in a YDC on June 30, 2023). The projections consider the decline of the stock population and the buildup of the new YDC population over the projection period, which includes new YDC commitments that occur through the imposition of a Level 3 disposition or due to a probation violation or a revocation of post release supervision.

Ms. Satterfield then reviewed the five-year YDC projection (*see* Handout, Table 1). She noted the YDC population was 172 on June 30th, 192 on November 15th, and 199 on December 8th. She stated that DJJDP provided capacity information and explained that some detention and YDC beds have flexibility for either purpose based on need as determined by the Division. A new 60-bed facility is anticipated to open in early 2024, designed for the flexible use of beds for either detention or commitment purposes.

Ms. Satterfield then reviewed the assumptions used in the projection, including growth rates, YDC admission type, lag time, and length of stay. She provided the statistical characteristics of the two populations that informed the projections, the FY 2023 dispositions and the YDC population on June 30,

2023. Lastly, trend data (FY 2019 – FY 2023) were reviewed. Ms. Satterfield discussed the similarities and differences over the past five years regarding delinquent dispositions, offense classification, delinquency history level, the number of level three dispositions, and YDC population characteristics.

Chairman Brown noted that when a juvenile on probation commits a new crime, they often have both a new crime and a probation violation. The court will deal with the probation violation because it is easier to handle, which could result in a YDC commitment. He asked how that situation is represented in the data – would the admission be recorded as entry for a new crime or a violation of probation? Deputy Secretary Lassiter responded that court counselors usually process those situations as probation violations. Chairman Brown then asked him for a description of the juveniles in YDCs. Deputy Secretary Lassiter responded that they have extensive delinquency histories, mental health problems, and are behind in their education, specifically reading and math. He stated that the juvenile justice system must work with them to prevent them from entering the adult criminal justice system.

Senator Mujtaba Mohammed asked about the percentage increase in offenses classified as violent. Ms. Satterfield responded that the increase was 2% from the previous year. Ms. Hall added that the statistic does not include the transferred population of 16- and 17-year-olds, which include violent offenses. She also noted that juveniles adjudicated for violent offenses have historically been a small group.

NASC UPDATE AND 2024 CONFERENCE PLANNING

Chairman Brown again recognized Michelle Hall, staff, to present an update on the 2024 National Association of Sentencing Commissions (NASC) Conference (*see* Presentation). Ms. Hall informed members that the mission of NASC is to facilitate the exchange and sharing of information, ideas, data, expertise, and experiences and to educate individuals on issues related to sentencing policies, sentencing guidelines, and sentencing commissions. NASC does this primarily through an annual conference, which North Carolina will be hosting in 2024. The dates have been set for August 6 – 8, 2024 and will be held at the Marriott City Center in downtown Raleigh. The theme will be “Sentencing Commissions Then and Now: 1993/94 through 2023/24” and will focus on how commissions have changed and contributed to sentencing over time. She explained the duties of the Executive Committee and those of the host state regarding the conference and encouraged Commissioners to provide ideas for session topics and for potential sponsors. Ms. Hall concluded by reviewing session topics from the previous conference as examples.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown thanked the staff for their presentations and reminded the members that the next full Commission meeting will be Friday, March 1, 2024.

ADJOURNMENT

Chairman Brown adjourned the meeting at 12:32 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary