



MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
June 2, 2023

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 2, 2023, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Danielle Marquis Elder, Judge Sherri Elliott, Lindsey Granados, Representative Dudley Greene, Judge Greg Horne, Honorable Tracey Johnson, Sheriff Garry McFadden, Dr. Harvey McMurray, Honorable Jim Mixson, Senator Mujtaba Mohammed, Luther Moore, Judge Fred Morrison, Calvin Suber, and Honorable Mike Waters.

Guests: Doug Holbrook (representing DAC), Brad Fowler (AOC), Julianna Kirschner (AOC), Amber Lueken Barwick (NCCDA), Stephen Henvelen (OAH), William Crozer (DPS, DJJDP), Billy Lassiter (DPS, DJJDP), Cindy Porterfield (DPS, DJJDP), Marie Evitt (NCSA), Cortney Goodwin (NCSA), and Ben Thomas (NC PLS).

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

INTRODUCTIONS AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:01 a.m. and asked members and guests to introduce themselves. He introduced a new Commissioner, Senator Mujtaba Mohammed appointed by the President Pro Tempore of the Senate, and new staff member Julio Cazares, Research and Policy Associate. Chairman Brown then introduced a resolution recognizing outgoing Commissioner Representative William Richardson's service to the Sentencing Commission. Judge Sherri Elliot moved to adopt the resolution; Art Beeler seconded the motion and it carried.

Chairman Brown presented the minutes from the March 3, 2023, meeting and called for a motion. Mr. Beeler moved to adopt the minutes as written; Lindsey Granados seconded the motion and it carried. Chairman Brown reminded Commissioners of the remaining 2023 Commission meeting dates: September 8 and December 8, then he reviewed the agenda.

UPDATE FROM NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS

Chairman Brown recognized Michelle Hall, staff, to provide an update on the National Association of Sentencing Commissions (NASC). Ms. Hall began by reviewing the mission and membership of NASC. Ms. Hall stated that NASC was holding its 2023 Annual Conference in Lake Tahoe, Nevada, focusing on challenges faced by state criminal justice systems and approaches to reform from 1993 (the beginning of NASC), to 2023. NASC is looking for a state to host its 2024 Annual Conference, Ms. Hall shared and that its Executive Committee had inquired whether North Carolina would be interested in hosting it.

Luther Moore asked how much it would cost the Commission. Ms. Hall responded that she did not have an exact figure but that she contacted the Oregon Sentencing Commission, who hosted the last NASC Conference, and they estimated that it cost them less than \$10,000 (NASC membership fees pay the majority of the cost). They did not quantify the staff time involved. Mr. Moore asked if the Commission would have to shut down while the staff prepared for the NASC Conference, to which Ms. Hall replied it would not. Most of the work is done by the NASC Executive Committee and any work this staff would have to do would be in addition to their regular duties. Mike Waters pointed out that 2024 was a short session for the General Assembly so it would be easier for staff.

Dr. Harvey McMurray asked if students were encouraged to attend the conference. Ms. Hall responded that anyone could attend as long as they paid the membership fee. Tracey Johnson asked how many people attend this conference. Ms. Hall replied that the average attendance is approximately 100 people. Mr. Waters asked if the NASC President is required to host the conference. Ms. Hall explained that they are not; conference location has varied among states with Sentencing Commissions. Chairman Brown pointed out that Nevada is one of the newest member of NASC and they are hosting this year's conference.

Ms. Granados asked what would be Commissioners' involvement. Ms. Hall replied that currently the Commission had to decide whether it was willing to host the 2024 NASC Conference if asked; after that, the Commissioners' role would be to attend the conference if interested and perhaps serve on some of the panels. Mr. Beeler asked if Ms. Hall wanted Commissioners to start soliciting speakers. Ms. Hall explained that the Executive Committee would determine the panels later based on submitted proposals, but that was one reason for putting this question to the Commission at this time. Mr. Moore asked if Ms. Hall and staff wanted to host the conference to which Ms. Hall replied that they do.

Mr. Beeler moved to indicate interest in hosting the 2024 NASC Conference in North Carolina if asked, with the exact location to be determined. Dr. McMurray seconded the motion and it carried.

SESSION UPDATE AND LEGISLATIVE REVIEW

Chairman Brown recognized John Madler, staff, to facilitate the legislative review and to provide an update on the 2023 Session. Mr. Madler began by reviewing the duty the General Assembly assigned to the Commission to review proposed legislation that either created a new offense, reclassified an existing offense, or changed a punishment (*see* handout). He then reviewed the Offense Classification Criteria that the Commission used to perform this duty, and the policies the Commission established for guidance. Mr. Madler presented the bills for review (*see* handout).

HB 125 – NC Health & Human Services Workforce Act [Ed. 3]

(G.S. 95-269A(c)) Danielle Elder moved to find the proposed sentence enhancement inconsistent with G.S. 164-41. Lindsey Granados seconded the motion and the motion carried.

(G.S. 95-269A(e)) Art Beeler moved to find the proposed Class H felony inconsistent with the Offense Classification Criteria because the Structured Sentencing punishment chart take a defendant's prior record into account through the Prior Record Level. Mike Waters offered an amendment to the motion stating that having been previously convicted of two offenses under the same Article could be an aggravating factor, Mr. Beeler accepted the amendment. Ms. Granados seconded the motion and the motion carried.

(G.S. 95-269A(f)) Ms. Elder moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-34.6(b)) Judge Horne moved to find the proposed reclassification to a Class F felony consistent with the Offense Classification Criteria. Luther Moore seconded the motion and the motion carried.

(G.S. 14-34.6(c)) Mr. Moore moved to find the proposed reclassification to a Class D felony inconsistent with the Offense Classification Criteria with a note that the provision would be consistent with the Offense Classification Criteria for a Class C or E felony. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-16.6(c)) Judge Horne moved to find the proposed reclassification to a Class E felony inconsistent with the Offense Classification Criteria with a note that the provision would be consistent with the Offense Classification Criteria for a Class E felony if it required the use of a deadly weapon. Mr. Beeler seconded the motion and the motion carried.

HB 347 – Sports Wagering/Horse Racing Wagering [Ed. 5]

(G.S. 18C-1020(c)) Mr. Beeler moved to find the proposed Class G felony inconsistent with the Offense Classification Criteria with a note that the provision would be consistent with the Offense Classification Criteria for a Class H felony. Judge Horne seconded the motion and the motion carried.

(G.S. 18C-1020(d)) Ms. Granados moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Judge Elliot seconded the motion and the motion carried.

HB 587 – NC Genetic Counselors Workforce Act [Ed. 3]

(G.S. 90-758(c)) Judge Elliot moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Ms. Elder seconded the motion and the motion carried.

(G.S. 90-758(c)) Ms. Granados moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Ms. Elder seconded the motion and the motion carried.

Mr. Madler presented an update on the 2023 Legislative Session (*see* handout). He explained that the General Assembly was still in session and he reviewed the criminal justice bills that it had ratified so far. Mr. Madler then highlighted some bills of interest that had not passed yet but had crossed over from one house to the other, as well the relevant budgetary provisions in the proposals from the Governor, the House of Representatives, and the Senate.

Chairman Brown informed the members that the Legislative Review Subcommittee met on Friday, April 28, 2023, and reviewed a number of bills. Those bills were compiled into Legislative Review Report #2 which the Commissioners received electronically prior to the meeting and by hard copy at this meeting. Mr. Moore moved to adopt Legislative Review Report #2; Mr. Waters seconded the motion and it carried.

2023 JUVENILE RECIDIVISM REPORT

Chairman Brown recognized Tamara Flinchum, staff, to present the Juvenile Recidivism Study: FY 2020 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 2020. She reminded Commissioners that this is the third 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). Only 4% of the sample were aged

16 or 17 at the time of their offense; Ms. Flinchum explained that the number is too low to be considered an RtA sample. However, RtA did affect the recidivism time periods by extending the time juveniles were under the juvenile justice system. She added that the COVID-19 pandemic occurred during the final months of FY 2020 for the exit sample and during the follow-up periods. The pandemic did have an impact on the current report's findings.

Ms. Flinchum presented information 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 (RNA), and the length of time the juveniles spent in the juvenile justice system. She 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 summarized the key findings from the report and the potential policy considerations. The decrease in the sample size along with the increase in diverted juveniles in the sample will be trends to watch in future reports for potential effects on recidivism. She explained that a greater number of RtA juveniles should be exiting in FY 2023, the next report's sample year. The Division of Juvenile Justice and Delinquency Prevention (DJJDP) implemented a new risk and needs assessment tool, the Youth Assessment and Screening Instrument (YASI) on January 1, 2021, which will be used in the next report as well. Finally, Ms. Flinchum mentioned the consistent finding that the lowest recidivism rates corresponded to the least invasive systemic responses – utilizing diversion and keeping juveniles out of a Youth Development Center (YDC).

Mr. Beeler asked if juxtaposing the RNA to criminal behavior on the streets would help to validate the instrument. Ms. Flinchum confirmed that it would. Judge Brown asked how the School Justice Partnership (SJP) program fits into the findings using Mecklenburg County as an example. Ms. Flinchum reported that she could compare Mecklenburg numbers to earlier samples; however, SJP program happens prior to a complaint being filed in juvenile court. Deputy Secretary Billy Lassiter responded that Mecklenburg County has a lot of resources and was one of the first counties to implement the SJP program. In addition, law enforcement directly refers juveniles to diversion programs bypassing the juvenile justice system. Mr. Beeler mentioned that commitments to a YDC are down, while detention admissions have increased. Ms. Flinchum provided detention admissions statistics from the report. Dr. McMurray raised the issue of racial disparity for the adjudicated juveniles, particularly those in a YDC. Mr. Lassiter responded that racial disparity for juveniles of color has been and continues to be a problem. The problem is complex and starts prior to the juvenile entering the juvenile justice system. Mr. Lassiter gave examples of measures in place at DJJDP to not add bias to the process by using a detention screening tool and to provide racial equity training for staff. Dr. McMurray suggested a round table to discuss these issues. Mr. Waters updated the other Commissioners on the lack of availability of defense attorneys for juveniles and the impact it is having on court processing for juveniles. Sheriff Garry McFadden commented he hoped that Dr. McMurray's request for a round table discussion on racial disparity would go beyond discussion into implementation in detention facilities and communities.

2023 JCPC EFFECTIVENESS REPORT

Chairman Brown recognized John King, staff, to present the key findings from the Juvenile Crime Prevention Council (JCPC) Program Effectiveness Report (see Handout). Mr. King began by briefly describing JCPCs and, specifically, JCPC-funded programs. He explained the study sample, which included all juveniles who exited from a JCPC Program in FY 2020, and pointed out that the JCPC recidivism study used the same methodology as the Juvenile Recidivism report. He also shared that the RtA legislation had a limited effect on juveniles selected for the sample; however, the COVID-19

pandemic affected some portion of the two-year follow-up for the entire sample. The number of juveniles in the FY 2020 sample decreased 19% (from 13,720 to 11,070) from the previous FY 2018 report. At-risk juveniles comprised 60% of the sample and most juveniles exited from programs in three categories: structured activity, teen court, and restitution. Mr. King shared some key differences found between juveniles classified as at-risk and court-involved before noting that recidivism rates were lower for the at-risk juveniles. He explained that having a prior delinquent complaint was associated with having a higher recidivism rate regardless of legal status. Further, he pointed out that as risk level and the number of prior behaviors increased, recidivism increased for both groups. A majority of recidivist offenders recidivated with a felony for the first time in several report cycles.

Mr. King pointed out the differences across the JCPC program categories. Juveniles in the sample participated in over 500 programs across the state, but the report organized the programs into six categories with each category serving various proportions of at-risk and court-involved juveniles. There were differences in the populations that each program served, and the number of hours-of-service juveniles received in programs, but all programs had high rates of completion. Turning to recidivism rates, Mr. King stated that across the program categories, most recidivism occurred during the two-year follow-up rather than during juvenile justice involvement, which was not surprising considering the average time in the programs was about 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 served lower-risk juveniles, had similarly low recidivism rates.

Mr. King presented information comparing the FY 2020 sample to the FY 2016 and FY 2018 samples. He noted recidivism rates have declined each cycle starting in FY 2016 and shared historical data related to possible explanations for the decreases. Namely, an increasingly larger percentage of at-risk juveniles, a decreasing and smaller percentage of juveniles in the higher risk levels, and the pandemic.

Mr. King concluded by summarizing a few key points from the study. First, that recidivism has declined and there are several explanations for the decreases. Next, that each JCPC program has a different profile and these differences between programs have an effect on recidivism rates. He pointed out that deeper involvement in the juvenile system was strongly associated with recidivism, which suggests that the lowest possible intervention should be used. Finally, Mr. King restated that program completion yielded positive results in reducing recidivism. Mr. Beeler commented that limited JCPC resources can make it difficult for counties to provide mental health and substance abuse programming. Deputy Secretary Lassiter stated that DJJDP would like to do more braided funding across agencies and service providers to develop one comprehensive plan for each family. Director Cindy Porterfield (DJJDP) mentioned the Community Programs Division is already using blended JCPC funding wherever possible, which involves host counties providing services to juveniles in other counties.

RAISE THE AGE UPDATE

Chairman Brown recognized William Lassiter, Deputy Secretary for the Division of Juvenile Justice and Delinquency Prevention (DJJDP), Department of Public Safety, to provide an update on the impact of raising the age of juvenile jurisdiction (*see* presentation). Mr. Lassiter began by listing some of the juvenile reform efforts that have occurred since 2017, including forming SJPs, raising the minimum and the maximum age of juvenile jurisdiction, and developing Care Team Reviews. He listed some of the goals DJJDP has attained including expanded detention capacity, new residential sites, and expanded

JCPC funding for community programs like teen court and restorative justice. Mr. Lassiter stated that, overall, juveniles require more services following the COVID-19 pandemic.

Mr. Lassiter informed the members about the lack of a juvenile standard for capacity to stand trial. Currently, courts apply the incapacity criterion for adults, which is “mental illness or defect.” If a juvenile is found to lack capacity to stand trial, their case is dismissed regardless of the severity of the juvenile offense. Mr. Lassiter stated HB 834, which is currently in the legislature, would establish a juvenile capacity standard and create remediation programming throughout the state. Mr. Lassiter also presented statistics from risk and needs assessments of the 15,740 at-risk and court involved juveniles in FY 2022.

Turning to raising the maximum age of juvenile jurisdiction, Mr. Lassiter discussed the changes DJJDP has seen over the three years since implementation. The number of delinquent complaints and the number of delinquent juveniles has increased, as has the percentage of RtA delinquent juveniles (16- and 17-year-olds). Sixty percent of Violent complaints are received on RtA juveniles while 60% of Minor complaints are received on non-RtA juveniles. RtA juveniles are approved for court more frequently than non-RtA juveniles.

Regarding community programs, Mr. Lassiter stated that the number of RtA juveniles in the programs has steadily increased since implementation (57.5% increase since FY 2020). RtA juveniles are also more likely to be served in intensive services versus their non-RtA counterparts.

Mr. Lassiter stated that juvenile detention is where DJJDP is spending a lot of financial and staffing resources. The average daily population, including the number of juveniles transferred to superior court (TSC), has been increasing, with the number of juveniles transferred increasing by 80% since January 2022. The population increases are due to a slight increase in detention admissions and in the median length of stay, in particular for TSC juveniles. Over the last five years, juvenile admissions and detentions have increased 9% and 20%, respectively. Mr. Lassiter explained that, as a result, the state has exceeded state-operation detention bed capacity for the last 12 months.

Ms. Granados asked if he had data regarding juveniles who go further into the juvenile system at the various prosecutorial discretion points, such as the juvenile’s race or the types of charges they face. Mr. Lassiter replied that the DJJDP annual report includes racial and ethnic disparities data, it is available online.

Mr. Lassiter reported that the percentage of RtA juveniles in YDC commitments has been growing over the last three years. He provided statistics on the RtA juveniles who were reverse waived from superior court to juvenile court, as well as the impact of the recent change to the minimum age of juvenile jurisdiction.

Ms. Johnson asked where the new juvenile detention facilities would be located. Mr. Lassiter stated they would be located in Richmond, Rockingham, and Perquimans County.

2023 JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION REPORT

Chairman Brown informed the Commission that due to time constraints, the report on the 2023 Justice Reinvestment Implementation Evaluation Report would be removed from the agenda.

TRANSITION TO E-COURTS/ODYSSEY

Chairman Brown recognized Brad Fowler, the Chief Business Officer for the Administrative Office of the Courts (AOC), to provide an update on the Judicial Branch's transition to eCourts (*see* Presentation). Mr. Fowler began by summarizing the timeline for eCourts, including the recent milestones for launching Guide and File, Brazos Enforcement Mobile, and eWarrants. He explained that in February 2023, the pilot of the Integrated Case Management System launched in four counties (Harnett, Johnston, Lee, and Wake), with the next pilot county planned for some time this year. A full statewide rollout for the Integrated Case Management System is planned through 2025.

Mr. Fowler provided some key metrics on data conversion for each new system, as well as on the implementation of Brazos and eWarrants. He explained that extensive surveying has been conducted, specifically from users of Guide and File. The results from the survey, completed by over 800 respondents, indicate that the new system is easy to use. Mr. Fowler said that Guide and File is almost entirely used by the public (98%). In explaining this aspect of the rollout, Mr. Fowler emphasized the main purpose of eCourts is to improve access to justice.

Turning to eFiling and eCourts in the pilot counties of Wake, Johnson, Harnett, and Lee, Mr. Fowler noted that there has already been nearly 140,000 eFilings accepted since the launch on February 13, 2023. He said this amounted to about 37,000 cases disposed, which is an estimated 640,000 pieces of paper saved. Mr. Fowler also shared that almost 3,000 users have been granted access to eCourts in the pilot counties. They are currently working to resolve identified issues since the pilot counties launched, before moving forward with the second pilot phase in Mecklenburg County. Mr. Fowler shared a map of the state showing the three phases of the roll out.

Mr. Beeler asked what electronic storage redundancies will be established within eCourts. Mr. Fowler responded that the AOC and Tyler Technologies will maintain separate backups for all files, in separate geographic locations in the United States. Lindsey Granados asked about the rough start that the pilot counties have experienced and what is being done to help make the process more efficient. Mr. Fowler responded saying the AOC is looking at both eCourts and court processes to identify efficiencies. Jim Mixson thanked Mr. Fowler for his tireless efforts on this project.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown thanked the guests and the staff for their presentations and reminded the members that the next full Commission meeting will be Friday, September 8, 2023. Ms. Hall reminded the members that this was the last meeting of their term and that they should look for their appointment request or nomination request if they have not already received it.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:01 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary