



MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
March 3, 2023

The North Carolina Sentencing and Policy Advisory Commission met on Friday, March 3, 2023, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Louise Davis, Danielle Marquis Elder, Judge Sherri Elliott, Willis Fowler, Lindsey Granados, Representative Dudley Greene, Judge Greg Horne, Joe Houchin, Honorable Tracey Johnson, Representative Charles Miller, Honorable Jim Mixson, Luther Moore, Judge Fred Morrison, Calvin Suber, Honorable Mike Waters, Patrick Weede, and Judge Valerie Zachary.

Guests: George Pettigrew (representing DAC), Susan Sitze (NCGA), Anna Parsons (NCGA), Alejandro Ramirez (NCGA), Robert Ryan (NCGA), Emily Mehta (AOC), Marie Evitt (NCSA), Cortney Godwin (NCSA), Thedric Moseley (NCSA), and Ben Thomas (NCPLS). Also, former Commissioners Representative Allen McNeill, Tim Moose, and the Honorable Tammy Lee.

Staff: Ginny Hevener, John Madler, Tamara Flinchum, John King, Meghan Boyd Ward, Shelley Kirk, Melissa Lugo, 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 and new staff member:

- Representative Dudley Greene, appointed by the Speaker of the House.
- Representative Charles Miller, appointed by the Speaker of the House.
- Honorable Tracey Johnson, the president of the N.C. Association of County Commissioners.
- Sierra Satterfield, Staff.

Chairman Brown introduced the outgoing Commissioners and presented resolutions recognizing their service:

- Representative Allen McNeill. Luther Moore moved to adopt the resolution; Art Beeler seconded the motion and the motion carried.
- Mr. Tim Moose. Luther Moore moved to adopt the resolution; Art Beeler seconded the motion and the motion carried.
- Honorable Tammy Lee. Luther Moore moved to adopt the resolution; Art Beeler seconded the motion and the motion carried.
- Senator Toby Fitch (in absentia). Luther Moore moved to adopt the resolution; Art Beeler seconded the motion and the motion carried.

Each of the former Commissioners made remarks upon receiving their resolution.

Chairman Brown presented the minutes from the December 2, 2022 meeting and called for a motion. Luther Moore moved to adopt the minutes as written; Mike Waters seconded the motion and it carried. Chairman Brown reminded Commissioners of the remaining 2023 Sentencing Commission meeting dates: June 2, September 8, and December 8, and reviewed the agenda.

SESSION UPDATE AND LEGISLATIVE REVIEW

Chairman Brown recognized John Madler, staff, to provide an update on the 2023 Session and to facilitate the legislative review. Mr. Madler began the Session update by explaining that the General Assembly was in the first year of its biennium, the long session when the members introduce the majority of bills and establish the budget for the next two years. The Session began January 11, there were several bill filing deadlines coming up in April, and the Crossover deadline for bills is May 4. Mr. Madler listed several categories of bills that had been introduced that related to the work of the Sentencing Commission and added that no one had introduced a budget bill yet.

Turning to the Legislative Review, Mr. Madler reviewed the duty the General Assembly assigned to the Sentencing 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 began the review with a proposal for which a member of the General Assembly had requested feedback from the Sentencing Commission (*see Handout*).

Draft – Increase Punishment for Hit and Run.

The members discussed the proposal to reclassify hit and run resulting in any injury from a Class H felony to a Class F felony and to combine it with hit and run resulting in serious bodily injury. Lindsey Granados pointed out that it would be inconsistent with the Offense Classification Criteria because there are statutory definitions for the different injuries and the Criteria are based on those differences.

The members discussed the proposal to reclassify hit and run resulting in death from a Class F felony to a Class D felony. Mike Waters stated that it would be consistent for the reasons stated for previous proposal. Joe Houchin added that it addressed the most serious bodily injury.

Finally, the members discussed the proposal to raise the failure of a passenger to provide information or assistance from a Class 1 misdemeanor to a Class H felony if the accident resulted in injury or death. Danielle Elder asked how this provision related to G.S. 20-166.2(a). Mr. Madler explained that subsection (a) addressed the passenger removing the vehicle by acting as the driver while this subsection addressed the failure to provide information or assistance. The members discussed how raising the age of the passenger to 16 related to juvenile jurisdiction. Mr. Waters pointed out that under subsection (a) the passenger is taking action to obstruct justice and that is consistent with a Class H felony but that this provision would not be consistent unless it included willfully leaving the scene of the accident by acting as the driver. Mr. Houchin agreed that there was a difference between the act in subsection (a) and subsection (b). Chairman Brown asked staff to convey the Commission's thoughts and concerns to the legislator who requested feedback on the proposal.

Mr. Madler then presented the bills introduced in the House of Representatives for review (*see handout*).

HB 34 – Protect Those Who Serve and Protect Act [Ed. 2]

(G.S. 14-34.1A) Mr. Waters moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and the motion carried.

(G.S. 14-34.8(b)(1)) Patrick Weede moved to find the proposed Class I felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with a Class A1 misdemeanor. Ms. Granados seconded the motion, the motion failed. Luther Moore moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and the motion carried.

HB 40 – Prevent Rioting and Civil Disorder [Ed. 2]

(G.S. 14-288.2(c1)) Ms. Granados moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2021 (inconsistent). Mr. Waters offered an amendment stating that it would be consistent if it was limited to serious bodily injury, Ms. Granados accepted the amendment. Judge Elliot seconded the motion and the motion carried.

(G.S. 14-288.2(c2)) Mr. Moore moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2021 (consistent). Ms. Granados seconded the motion and the motion carried.

(G.S. 14-288.2(e)) Mr. Moore moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2021 (inconsistent). Ms. Elder seconded the motion and the motion carried.

(G.S. 14-288.2(e1)) Ms. Granados moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2021 (inconsistent). Mr. Weede seconded the motion and the motion carried.

(G.S. 14-288.9(c)) Ms. Granados moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2021 (inconsistent). The motion failed for lack of a second. Mr. Moore moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Representative Greene seconded the motion. Ms. Granados pointed out that there is no personal injury requirement in this bill; Ms. Elder suggested that there was a societal harm. The motion carried.

(G.S. 14-288.9(e)) Mr. Moore moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Representative Greene seconded the motion and the motion carried.

(G.S. 14-288.9(f)) Art Beeler moved to find the proposed Class D felony consistent with the Homicide Offense Classification Criteria. Mr. Waters offered an amendment stating that it would also be consistent with a Class B felony if it included the element of malice, Mr. Beeler accepted the amendment. Mr. Moore seconded the motion and the motion carried.

HB 142 – Protect our Students Act [Ed. 2]

(G.S. 14-27.32(b)) Mr. Moore moved to find the proposed reclassification to a Class G felony inconsistent with the Offense Classification Criteria with a note that the offense would be consistent with the Offense Classification Criteria for either a Class H felony or a Class F felony. Ms. Granados seconded the motion and the motion carried.

(G.S. 14-202.4(a)) Mr. Moore moved to find the proposed reclassification to a Class G felony inconsistent with the Offense Classification Criteria. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-202.4(b)) Judge Horne moved to find the proposed reclassification to a Class G felony inconsistent with the Offense Classification Criteria. Ms. Granados seconded the motion and the motion carried.

(G.S. 115C-326.20) Mr. Waters moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Representative Miller seconded the motion and the motion carried.

HB 189 – NC Constitutional Carry Act [Ed. 1]

(G.S. 14-415.35(b)) Mr. Moore moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in March 2021 (inconsistent). Mr. Beeler seconded the motion and the motion carried.

HB 199 – DMV Proposed Legislative Changes [Ed. 1]

(G.S. 20-111(2)) Ms. Granados moved to find the proposed reclassification to a Class I felony inconsistent with the Offense Classification Criteria. Mr. Weede seconded the motion and the motion carried. Members pointed out that the statute did not state any intent on the offender's part.

(G.S. 20-111(6)) Ms. Granados moved to find the proposed reclassification to a Class I felony inconsistent with the Offense Classification Criteria. Judge Elliot seconded the motion and the motion carried.

HB 237 – Criminal Law Revisions [Ed. 1]

(G.S. 14-118.8(f)(1)) Mr. Waters moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Representative Greene seconded the motion and the motion carried.

(G.S. 14-118.8(f)(2)) Mr. Waters moved to find the proposed Class C felony consistent with the Offense Classification Criteria. Representative Greene seconded the motion and the motion carried.

(G.S. 15A-1340.16F) Mr. Houchin moved to find the proposed sentence enhancement inconsistent with G.S. 164-41 but with a note that it would be consistent as an aggravating factor. Mr. Waters seconded the motion and the motion carried.

HB 249 – January 6 Riot/Attempt to Overthrow the Gov't [Ed. 1]

(G.S. 14-288.2(c1)) Mr. Moore moved to find the proposed Class F felony consistent with the Offense Classification Criteria. Ms. Elder seconded the motion and the motion carried.

(G.S. 14-288.2(f)) Ms. Granados moved to find the proposed Class F felony consistent with the Offense Classification Criteria. Mr. Moore seconded the motion and the motion carried.

Meghan Boyd Ward presented the bills introduced in the Senate for review (*see* handout).

HB 250 – Death by Distribution Revisions [Ed. 1]/SB 189 – Fentanyl Drug Offenses/Increase Punishment [Ed. 1]

(G.S. 14-18.4(a1)) Ms. Granados moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in April 2019 (inconsistent). Mr. Weede seconded the motion with a note that it would be consistent with a Class E or B2 felony; Ms. Granados accepted the amendment. The motion carried.

(G.S. 14-18.4(a2)) Mr. Waters moved to find the proposed Class B2 felony consistent with the Homicide Offense Classification Criteria. Ms. Elder seconded the motion and the motion carried.

(G.S. 14-18.4(b)) Ms. Elder moved to find the proposed Class B2 felony inconsistent with the Homicide Offense Classification Criteria with a note that it would be consistent with Class B if it included the element of malice. Mr. Waters offered an amendment stating that it would also be consistent with Class C. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-18.4(c)) Mr. Moore moved to find the proposed reclassification from a Class B2 felony to a Class B1 felony consistent with the Homicide Offense Classification Criteria. Representative Miller seconded the motion and the motion carried.

SB 3 – NC Compassionate Care Act [Ed. 3]

Mr. Moore moved to adopt the previous findings the Sentencing Commission made when it reviewed substantially similar provisions in September 2021. Mr. Houchin seconded the motion and the motion carried.

SB 58 – Protect Critical Infrastructure [Ed. 2]

(G.S. 14-150.2(b)) Ms. Elder moved to find the proposed Class C felony consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and the motion carried.

(G.S. 14-150.2(c)) Mr. Waters moved to find the proposed Class B2 felony consistent with the Offense Classification Criteria. Mr. Moore seconded the motion and the motion carried.

(G.S. 14-159.12(c)(1)) Mr. Moore moved to find the proposed reclassification from a Class A1 misdemeanor to a Class I felony consistent with the Offense Classification Criteria. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-159.12(d)(1)) Ms. Elder moved to find the proposed reclassification from a Class H felony to a Class G felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with a Class F felony when it results in serious bodily injury. Mr. Beeler seconded the motion and the motion carried.

(G.S. 14-154) Mr. Moore moved to find the proposed reclassification from a Class I felony to a Class C felony consistent with the Offense Classification Criteria with a note that it would also be consistent with a Class F or Class H felony. Mr. Waters stated that it would be helpful if the statute defined the level of harm. Mr. Weede seconded the motion and the motion carried.

(G.S. 62-323) Mr. Moore moved to find the proposed reclassification from a Class 1 misdemeanor to a Class C felony consistent with the Offense Classification Criteria. Mr. Beeler seconded the motion and the motion carried.

FY 2022 FELONY CONVICTIONS

Chairman Brown recognized John King, staff, to present the highlights from the felony section of the *FY 2022 Structured Sentencing Statistical Report*. Mr. King pointed out that both the Felony and Misdemeanor Quick Facts were part of the meeting packet (*see Handouts*) and that the full Statistical Report is under final review and will be available later in the month.

Mr. King began by stating that the purpose of the Statistical Report is to monitor convictions and sentences under Structured Sentencing. In addition, the report informs potential recommendations for modifications to Structured Sentencing. The unit of analysis in the report is based on offenders' most serious conviction on a given day in court. He pointed out that the presentation includes information on FY 2022 felony convictions, as well as comparisons to previous fiscal years where applicable.

During FY 2022, there were 25,760 felony convictions, a 21% increase over FY 2021. Mr. King noted that, despite this increase, felony convictions were still down 10% compared to pre-pandemic FY 2019 (28,526). The median time to sentencing for FY 2022 felony convictions was 4 months, or 57%, longer than in FY 2019. Commissioner Beeler asked about the rationale for the increase in time to sentencing. Mr. King suggested that the courts may be disposing of older cases backlogged as a result of the pandemic. Commissioner Waters reported that his district had a moratorium on jury trials during the COVID-19 pandemic followed by restrictions. As a result, the low-level offenses have been dealt with and the more serious offenses remain. Judge Horne stated that larger, urban districts are still dealing with backlogged cases and that he is seeing more plea offers in an effort to clear cases. He added that it

will be more difficult as they deal with the more serious offenses. Members discussed the current difficulties in seating a jury and finding attorneys for indigent defense.

Next, Mr. King presented information on the personal characteristics (e.g., sex, race, and age) of those who received a felony conviction last year. He explained that Class H and Class I felonies comprised the largest numbers of convictions and that this led to property and non-trafficking drug convictions constituting the largest proportions of convictions. In FY 2013, Breaking and Entering Buildings (Class H) was the most common felony conviction and Possession of a Firearm by a Felon (Class G) was fourth; however, in FY 2022, Possess Methamphetamine (Class I) was the top conviction and Possession of a Firearm by a Felon (Class G) had moved into second.

Mr. King stated that, over the past 10 years, the distribution of prior record level (PRL) has shifted toward the more serious levels. In FY 2013, 60% of convictions involved offenders in PRL I and II, but in FY 2022, that percentage was 48%. For the first time, a majority of convictions (52%) were in PRL III and higher. The percentage of active sentences (37%) increased from the previous year (34%), returning to its typical level. He also noted that 2/3 of felony active sentences were sentenced in the presumptive range, which is also historically typical. Judge Horne commented that he has seen an increase in prosecutors stipulating to mitigating factors presumably in an effort to move cases. He suggested the State may see an increase in the proportion of mitigated sentences in the future.

Mr. King shared additional information on active sentences, including active rates by offense class, PRL, and crime type. Shifting to nonactive (e.g., probation) sentences, Mr. King reiterated that a nonactive sentence was imposed in 63% of felony convictions in FY 2022, which represented over 16,000 convictions. He compared the average length of probation to the average length of suspended sentences and noted that, as offense class decreased, so did the lengths of both probation and the suspended sentence.

Mr. King concluded with items contained in the Special Issues of the report. He noted that death and life sentences and drug trafficking convictions were close to FY 2019 levels. In addition, Habitual Felon convictions returned to FY 2020 level and there were more convictions involving Advanced Supervised Release (ASR) than ever before (221). Mr. King then shared some overall key points regarding FY 2022 felony convictions.

Patrick Weede asked how many of the life sentences were the result of a jury trial versus a plea agreement and what offenses received ASR sentences. Mr. King responded that staff could look at the data regarding life sentences and that they provide the offense classes for ASR sentences in the Report. The members discussed reasons for imposing longer and shorter periods of probation.

FY 2023 – FY 2032 PRISON POPULATION PROJECTION

Chairman Brown recognized Ginny Hevener, staff, to review the current prison population projections (see Handouts). Ms. Hevener stated that producing prison projections is part of the Commission's original mandate to develop a tool to be used for accurate long-term planning of correctional resources. The projections are prepared annually in conjunction with the Department of Adult Correction (DAC) and are used for multiple purposes including determining whether existing capacity is adequate for the current and future population, assisting with the determination of future staffing needs and inmate housing needs, and allowing for consideration of correctional policies within the context of available resources.

Ms. Hevener noted that the FY 2022 felony conviction data reviewed by Mr. King provide the foundation for the projections and are used to project new admissions across the projection period. The projections also take into account the release of the prison population at the beginning of the projection period. The projections include all offenders in prison and those awaiting transfer from local jails (i.e., jail backlog).

Ms. Hevener described the impact the pandemic had on the prison population, with the population declining 17% from March 2020 to its lowest point in July 2021. The population then increased 4% across FY 2022. The population is currently stable at around 30,000, which is well below pre-pandemic levels.

Ms. Hevener reviewed the prison projections and capacity, indicating that the prison population is projected to increase from 30,197 to 33,680 (12%) across the ten-year projection period. Standard Operating Capacity (SOC) is projected to be 31,055 and Expanded Operating Capacity (EOC) is projected to be 35,420. The current projection is similar to the previous projection for the first few years and slightly lower for the later years. The prison population is projected to be below EOC for all ten years and below SOC for the first three years. Ms. Hevener reminded the Commission that, as reviewed at the September 2022 meeting, the previous projection was within the historical accuracy range of 2% for the first year.

Mr. Beeler commented that prison staffing is an important issue to consider along with the projections, although it should not change the projections. He expressed concerns about whether staffing issues will improve in the current job market. Mr. Waters noted that there are similar issues on the law enforcement side with fewer people choosing law enforcement careers than five years ago. Michelle Hall responded that the projections can be modified to account for changes in policies and practices but, without such changes, this projection represents the population expected for the next ten years.

Ms. Hevener summarized the key assumptions used to develop the projections and discussed how the 21% increase in felony convictions in FY 2022 impacts the current projection. While increases occurred across all offense classes, a 46% increase in Class A – D convictions brought the volume of Class A – D convictions nearly to FY 2019 levels. Consequently, the active rate returned to FY 2019 levels (37%), as did average estimated time served (38 months). Ms. Hevener also noted that the percentage of probation and post-release supervision exits resulting from revocation increased over the past fiscal year (both to 19%), although not to pre-pandemic levels.

Ms. Hevener concluded with a discussion of how the prioritization of resources for violent and repeat offenders under Structured Sentencing affect the prison population. Class A – D convictions account for the smallest proportion of convictions but comprise over half of the projected population as a result of their mandatory active sentences and long sentence lengths. Most low-level felons (Class H – I) who receive active sentences are repeat offenders and impact the prison population through their high volume; however, they comprise only 20% of the prison population due to their shorter sentence lengths.

FY 2022 MISDEMEANOR CONVICTIONS

Chairman Brown recognized John King, staff, to present the highlights from the misdemeanor section of the FY 2022 Structured Sentencing Statistical Report.

Mr. King reviewed the purpose of the Statistical Report and shared how staff counts convictions using the “most serious conviction on a given day of court” methodology. He also encouraged Commissioners to consider pandemic impact when reflecting on the misdemeanor data and reminded them that staff began tracking convictions for Class 2 and Class 3 traffic misdemeanors in FY 2020.

Mr. King stated that in FY 2022, there were 102,709 misdemeanor convictions, including 37,845 Class 2 and Class 3 traffic offenses. Misdemeanor convictions increased 26% from FY 2021 and 6% from FY 2020. These increases suggest that the state’s district courts have returned to more normal operations following the pandemic. The median time to sentencing for misdemeanor convictions in FY 2022 was 1-2 months longer than misdemeanor convictions in FY 2020.

Next, Mr. King shared some information on the personal characteristics of misdemeanants and noted that 72% of misdemeanor convictions were in Class 1 or Class 3. He pointed out that 40% of misdemeanor convictions involved offenders in Prior Conviction Level I (i.e., no prior convictions). The percentage of convictions in Prior Conviction Level I has increased 4 percentage points since FY 2020. This increase might be connected to the 5-percentage point increase in the proportion of traffic offenses during that same time frame. Mr. King noted that non-DWI related DWLR (a Class 3 offense) remained the most common misdemeanor conviction, comprising 15% of all misdemeanor convictions. In FY 2022, 4 of the top 5 misdemeanor convictions were traffic offenses.

Mr. King stated that 72% of misdemeanor convictions resulted in a Community punishment. Among misdemeanants who received a nonactive sentence, 52% received no probation, 24% received unsupervised probation, and 24% received supervised probation. Offenders in Prior Conviction Level III were most likely to receive Active punishment (43%). Class A1 and Class 1 misdemeanor offenses had the highest Active punishment rates (36% each). Mr. King noted that in 74% of active sentences, the active sentence imposed was equal to the credit for time served pre-trial. He continued by showing that the average active sentences imposed appeared to factor in both the seriousness of the offense and prior criminal history.

Turning to nonactive sentences, Mr. King noted that supervised probation was imposed in 77% of Class A1 convictions and that percentage decreased substantially as offense class decreased. Cases resulting in no probation moved in the opposite direction, with just 3% of Class A1 misdemeanor convictions resulting in no probation, but that proportion substantially increased as offense class decreased. He also noted the difference in average probation lengths compared to the average suspended sentence. Mr. King concluded by sharing some overall key points regarding FY 2022 misdemeanor convictions.

FY 2023–FY 2027 STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM CAPACITY PROJECTION

Chairman Brown recognized Meghan Boyd Ward, staff, to present the Statewide Misdemeanant Confinement Program (SMCP) Capacity Projections. Ms. Boyd Ward thanked the North Carolina Sheriffs’ Association (NCSA) and staff for their contributions to the capacity projections. She explained the objective of the projection is to assess future capacity and to ensure that adequate bed space is provided. Participation in the SMCP is voluntary given that receiving counties are voluntarily offering space to the program and all other counties are considered as sending only. Ms. Boyd Ward described the impact of external factors on the capacity projections, specifically from the COVID-19 pandemic and staffing issues.

Ms. Boyd Ward presented the average monthly population and capacity trend results (see Presentation). In June 2022, the SMCP average monthly population increased 13% from the previous year; from 691 in June 2021 to 782 in June 2022. When examining the historical capacity trends, capacity remained relatively consistent throughout the first years of the program but began to decline in fiscal year 2017. She highlighted that in 2021 the NCSA changed their reporting style. Using the new reporting method, they reported that the SMCP capacity rebounded to 1,231 beds by June 2022, an increase of 63% from the lowest capacity figure in FY 2020.

Ms. Boyd Ward shared additional information on the impact of the pandemic on SMCP capacity. In FY 2019 capacity was substantially higher compared to the end of FY 2020 and FY 2021. FY 2021 capacity increased over the course of the year, while FY 2022 fluctuated, returning to near pre-pandemic levels at one point (November 2021 at 1,450 beds), before declining again. Finally, Ms. Boyd Ward emphasized that the COVID-19 impact may not account for all the changes in capacity during 2022, as the NCSA and jail administrators reported issues with jail staffing as a reason for reducing capacity.

The number of temporary moratorium counties (TMCs), those that are only taking inmates from within their own county, fluctuated with prominent events of the pandemic, as well as from staffing issues in the later months. The NCSA decided to end the use of TMCs, returning to pre-COVID operations starting February 1, 2023. The TMCs will continue to be a factor in next year's projection.

Ms. Boyd Ward presented the short-term assumptions used to develop the SMCP capacity projections, which are tailored to two different Scenarios. The assumptions for both sending only and receiving counties were identical for Scenario 1 and Scenario 2 such that these counties are assumed to continue operating in their respective roles. Scenario 1 provides the broadest definition of capacity using the NCSA monthly reports. This scenario also assumes the despite TMCs participating at a reduced capacity, these counties will provide capacity at full participation or allocation levels. Scenario 2 provides a narrower definition of capacity using the NCSA allocation forms and housing reimbursement data to estimate occupied beds. Scenario 2 assumes there will be a recovery of beds from TMCs based on an occupied bed estimate and bed recovery from the elimination of TMCs in 2023.

Ms. Boyd Ward discussed the key long-term assumptions informing both Scenario 1 and Scenario 2 projections. The number of jail backlog cases was considered (8 inmates as of December 31, 2022). The projections also included the assumption that counties will remain in their respective statuses throughout the projection period and 25 new beds will be committed to the SMCP in the future. The projections also included a 3-year average growth rate from FY 2020 to FY 2022, which was -2%.

Ms. Boyd Ward then presented two Scenarios for the five-year projections. She reiterated that the Scenario 1 projection focuses on the broadest definition of capacity while Scenario 2 provides a narrower view of capacity. For Scenario 1, the current capacity is 1,145 inmates which includes the full capacity of temporary moratorium counties. In this Scenario, the capacity is projected to decrease by 7% in June 2027 to 1,089 – a decrease of 81 beds. The projection for Scenario 2 included a recovery of beds taken offline due to the COVID-19 pandemic. The starting capacity was 1,031 beds and the capacity is projected to decrease from 1,106 beds in the first year of the projection, to 1,036 in June 2027 – a reduction of 70 beds, or -6%.

Ms. Boyd Ward discussed the key takeaways from the projections. Scenarios 1 and 2 project declines in capacity starting in FY 2027, which is in line with the historical pre-pandemic declines in capacity. Specifically, there was a 5% decline from FY 2016 to FY 2017 then a 6% decline from FY 2018 to FY 2019.

Ms. Boyd Ward emphasized the projections should be interpreted with caution given unforeseen factors, such as the pandemic and staffing issues, that may impact the projections. She also emphasized that participation in the SMCP is voluntary such that counties may change their participation status. Issues relating to funding were not captured in the capacity projections.

Art Beeler asked whether DWI offenders were counted separately. Ms. Boyd Ward explained that they were included with the overall population for the purposes of this projection. DAC Deputy Secretary George Pettigrew asked if female SMCP beds were still an issue. Ms. Boyd Ward responded that staff could look at that, the NCSA reports genders separately but the projection population and bed capacity is not differentiated by gender.

REVIEW AND DISCUSSION OF KEY FINDINGS: SENTENCING PRACTICES STUDY

The Chairman recognized Michelle Hall, staff, to provide an update on the Commission's ongoing Sentencing Practices study (*see* Presentation). Ms. Hall noted she would reduce the content she and Mel Lugo had been planning to cover to fit the time remaining. She reminded the Commission of the purpose of the study, which is to examine sentencing practices to determine if and to what extent legal and extralegal variables are a factor in determining sentencing outcomes.

Ms. Hall reviewed the discretionary decision points that are being studied using multivariate analysis models: a felony charge reduced to a misdemeanor conviction, a felony charge reduced to a less serious felony conviction, and a conviction within a discretionary cell where active punishment is imposed.

Next, Ms. Hall reviewed some key findings from the analysis to date. There are very few variables that have the same effect on each particular discretionary decision; sex, age and method of disposition are the only variables that have the same effect in each model. Across the board, males are less likely to receive the favorable outcome (e.g., charge reduction), older offenders are more likely to receive the favorable outcome, and convictions that are resolved by jury trial are more likely to end up with the less favorable outcome.

Ms. Hall addressed feedback from the Commission at its previous meeting related to court (superior vs. district court) influencing outcomes. This discussion surrounded felony pleas for Class H and I offenses accepted in district court. Ms. Hall reviewed some basic information about the practice of accepting felony pleas in district court and shared some statistics about the volume and number of districts engaging in the practices in FY 2019. She welcomed input as to the history of this practice.

Judge Horne noted that allowing Class H and I felony pleas in district court was done in part to ease the caseload in superior court but also to ease jail overcrowding. In some districts there is a long time between superior court sessions and some defendants want to plead and get it over with. A practical issue, however, is that district court case volume is larger than superior court. He noted the discretionary nature of the practice resulted in a lack of uniformity across the state.

Ms. Hall reviewed new findings from the models when court was included as a variable, noting its significance in both the felony reduction and active punishment models. As a result, the team would carry the variable forward in the analysis.

The last segment of the presentation focused on new data to be included in the models, FY 2019 disposition data. Ms. Hall noted that the Commission has had a lot of discussion in previous meetings

about prior decision points and their potential effect on later outcomes. Examination and inclusion of new data is an attempt to capture some of that context in the models. She provided a description of the data which includes all dispositions imposed in 2019. The data allows for examination of charges that are dismissed. Staff is attempting to determine if there was variability by district, and by extralegal variables of interest, which might explain later outcomes in the conviction and sentencing phases.

Ms. Hall reviewed some initial findings from the preliminary examination of the disposition data: a high percentage included dismissed charges; there was some variation in dispositions by offense class, very little variation by sex, and some variation by race. Ms. Hall reviewed the possible variables staff was considering including in the models that would capture disposition practices by district. She concluded by saying the data would be incorporated and staff looked forward to having more to share at the next update.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown pointed out that the General Assembly was in session and that it may be necessary to review additional bills prior to the June Commission meeting. He announced the formation of a Legislative Review Subcommittee and asked Commission members to volunteer; the meeting date was to be determined. He thanked the staff for their presentations and reminded the members that the next full Commission meeting will be Friday, June 2, 2023.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:04 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary