



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

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

Members Present: Chairman Charlie Brown, Art Beeler, Natalia Botella, Lindsey Granados, Judge Greg Horne, Joe Houchin, Honorable Tracey Johnson, Dr. Harvey McMurray, Honorable Jim Mixson, Luther Moore, Judge Fred Morrison, Calvin Suber, Judge Scott Ussery, Pamela Walker, Honorable Mike Waters, Elizabeth Watson, Patrick Weede, Chief AZ Williams, and Judge Valerie Zachary.

Guests: Danielle Marquis Elder (former Commissioner), Ryan Boyce (Director, AOC), Todd Ishee (Secretary, DAC), William Lassiter, (Deputy Secretary, DJJD/DPS), Meagan Pittman (AOC), Marek Bedrich (AOC), Becky Whitaker (IDS), Amber Barwick (NCCDA), Justin Davis (DAC), Charles Mautz (DAC), Kim Quintus (DPS), William Crozier (DPS), LaToya Powell (DPS), Meghan Barney (OAH Extern), Ben Thomas (NCPLS), Marie Evitt (NCSA), and Cortney Goodwin (NCSA).

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

INTRODUCTIONS AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 9:58 a.m. and asked members and guests to introduce themselves. He introduced the following new Commissioners:

- Natalia Botella, representing the Attorney General.
- Judge Scott Ussery, the President of the District Court Judges’ Association.
- Pamela Walker, representing the Department of Adult Correction.
- Elizabeth Watson, representing the NC Victims Assistance Network.
- Chief Adrian “AZ” Williams, the president of the NC Association of Chiefs of Police.

Chairman Brown presented resolutions recognizing outgoing Commissioners for their service:

- Chief Henry King. Luther Moore moved to adopt the resolution; Art Beeler seconded the motion and the motion carried. Chief King was not present to offer remarks.
- Frances Battle. Ms. Battle was not present but Ms. Watson offered remarks on her behalf. Mr. Moore moved to adopt the resolution; Lindsey Granados seconded the motion and the motion carried.
- Danielle Marquis Elder. Mr. Moore moved to adopt the resolution; Dr. McMurray seconded the motion and the motion carried. Ms. Elder made remarks upon receiving her resolution.

Chairman Brown presented the minutes from the June 2, 2023, meeting and called for a motion. Mr. Beeler moved to adopt the minutes as written; Judge Fred Morrison seconded the motion and it carried.

Chairman Brown reminded Commissioners of the remaining 2023 Commission meeting date of December 8. He provided the 2024 meeting dates: March 1, June 7, September 13, and December 13 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 informed the members that there were no new criminal provisions introduced since the Sentencing Commission meeting in June so there would be no legislative review. He then provided a brief update on the legislative session, beginning with a summary of the relevant criminal justice provisions that had passed so far (*see* Presentation and Handout).

Art Beeler asked what the projected impact was of the new offenses in Classes A through D. Ginny Hevener replied that staff will provide a complete impact analysis after the session ends but that each conviction for an offense in those classes results in an additional bed the first year and growth in the population over time due to the longer sentences. Mr. Beeler noted that it was important to know for planning purposes because the Department of Adult Correction needs to get staffing levels back to normal.

Lindsey Granados asked if staff anticipated an increase in the number of convictions as a result of the new offenses or just a shifting of offenders from existing offenses. Mr. Madler replied that it was a combination of the two; some of the offenses were criminalizing new behavior while others were imposing longer punishments for certain violations of existing offenses. Ms. Granados asked if these changes would result in a significant increase in the prison population. Ms. Hevener responded that it could be a wash in the earlier years if the offenders are already being convicted under existing offenses. The impact would come in the later years due to the longer sentences.

Luther Moore asked how many of the provisions the Commission found to be inconsistent with Structured Sentencing passed and how many were changed based on the recommendations. Mr. Madler stated that staff summarizes the results of the legislative review at the end of the session when they know all of the bills that have passed. He pointed out that many of the bills that they reviewed and found inconsistent have not passed.

Mr. Madler reviewed two bills of interest that have passed, House Bill 87 (Probation Modifications) and House Bill 193 (Amend Expunction). Mr. Beeler asked about the impact of House Bill 186 (Juvenile Justice Modifications). Mr. Madler explained that it is not clear that the changes to the transfer process will have any impact since they are primarily procedural.

Finally, Mr. Madler stated that the General Assembly had not passed a budget yet but that there have been indications they would be voting on a compromise budget bill the following week.

JUSTICE AND PUBLIC SAFETY AGENCY INITIATIVES

Chairman Brown noted that representatives from the criminal justice agencies would be sharing their plans and priorities for the next two years. He explained that these presentations and information are provided to help the Sentencing Commission know what will be happening over the biennium and how it might help the agencies.

Administrative Office of the Courts

Chairman Brown recognized Ryan Boyce, the Director of the Administrative Office of the Courts (AOC), to present an overview of the Judicial Branch and its initiatives for the next two years (*see* Presentation). Director Boyce began by providing background on the AOC, its mission, and personnel. He then discussed how the AOC and court system had responded to the COVID-19 pandemic. By sharing information and practical tools among districts, the court system was able to reduce the backlog of cases and provide timely justice.

Director Boyce discussed eCourts, a package of new software applications and technology infrastructure improvements that will transition the court system from paper to digital. He reviewed the development of the project from 2017 as well as the projected rollout timeline over the next two years. He provided metrics from the pilot counties. Director Boyce also described several other technology projects that are underway including providing wireless access in every courthouse (WAVE – Wireless Access for Virtual Enhancement) and equipping courthouses for remote court proceedings (CRAVE – Courtroom Audio Visual Experience). He concluded with some AOC initiatives focused on recruiting employees and on addressing mental health issues and the courts.

Chairman Brown asked how the court system has responded to eCourts. Director Boyce acknowledged that change is difficult and that there have been some problems, but that they are focused on the goals of improving access to justice and making the system more efficient. Judge Ussery added that the worry seems to be about the change; the chief district court judges in the pilot counties say that eCourts itself is nothing to worry about.

Department of Adult Correction

Chairman Brown recognized Todd Ishee, Secretary of the Department of Adult Correction (DAC), to present an overview of the Department and its initiatives for the next two years (*see* Presentation). Secretary Ishee provided details of the Department's structure, staffing, budget, and offender population. DAC has approximately 31,000 inmates in 53 facilities across the state, and 80,000 offenders under community supervision (probation, parole, or post-release).

Secretary Ishee addressed DAC's staffing shortage. DAC has a total workforce of over 19,000 with a vacancy rate of approximately 28%. The vacancy rates for correctional and probation officer positions are 42% and 15% respectively. DAC has temporarily addressed the correction officer shortage by hiring private security to assist in facility operations. Furthermore, a bed-vacancy rate of approximately 30% statewide has alleviated staffing issues as well. Secretary Ishee pointed out that the Justice Reinvestment Act has affected the retention rate for correctional officers as the percentage of violent offenders in prison has increased since the General Assembly passed the Act. He then stated that the current prison population is getting near the projected prison population for 2026 as well as the current Standard Operating Capacity.

Secretary Ishee outlined DAC's major initiatives and priorities over the next two years, beginning with initiatives in the prison facilities. For the institutions themselves, DAC will focus on improving the recruitment and retention of staff, enhancing safety and security, providing air conditioning for all prisons over the next three years, giving offenders access to tablets for educational, self-help, entertainment, and communication options, and achieving full American Correctional Association accreditation. For comprehensive health service for inmates, DAC will focus on opening Central Prison's long term care

facilities, providing medication programs for opioid use disorder, and expanding telehealth services. DAC is expanding Correctional Enterprises initiatives to include commercial driver's license training and developing a partnership with NC WORKS to connect releasing offenders with jobs. Regarding education, DAC is installing secure internet access called INET at the facilities to enable video classrooms with teachers outside of the facilities, partnering with Southeastern Baptist Theological Seminary and Joe Gibb's "Game Plan for Life" program to develop a degree program to train offenders to be field ministers, and challenging prison facilities to increase the number of Hi-Set (formerly GED services) certificates awarded and vocational training courses completed. Under Rehabilitation and Reentry, DAC is partnering with DMV to get offenders state issued IDs prior to release, providing local reentry councils, designating prison facilities as reentry units, and offering reentry simulations statewide. Lastly, Secretary Ishee described Hope University, academic, vocational and self-improvement courses offenders can take at their own pace on electronic tablets.

Turning to Community Supervision, Secretary Ishee described how the Department is working to provide medicated assisted treatment for opioid addiction and to have licensed mental health professionals on staff advising probation and parole officers. DAC is also expanding its specialty officers who work with offenders who have special needs.

Secretary Ishee concluded by listing the major initiatives currently underway. DAC has achieved ACA accreditation for some facilities already, it is installing LED energy efficiency lighting inside and outside facilities, it is moving toward fuel efficient/electric vehicles and charging stations, and it is developing a mental health program (SHIELD) for DAC employees.

Judge Morrison asked what the reasons were for the shortage of correctional officers. Secretary Ishee stated there are many factors including the pay scale, bad publicity over some incidents, working conditions across facilities, the lack of air conditioning in some facilities, and the ratio of inmates to existing personnel.

Mr. Waters asked whether there were concerns over inmates' access to tablets and whether they could be used for unlawful external communication. Secretary Ishee stated that the external service provider must make sure the tablets remain secure in order to keep the contract and that DAC monitors the use of the tablets as well.

Judge Zachary asked Secretary Ishee what reentry councils were and why they are not available across the state. Secretary Ishee stated reentry councils are not available statewide due to funding; however, NC Cares 360 is an online reentry resource offered statewide. He explained that reentry councils serve as a support system for people who have recently exited prison by assessing their immediate needs. Chairman Brown added that they link individuals to local resources.

Dr. McMurray asked if DAC had an active internship program. Secretary Ishee replied that they do and they would like to see it grow. He recommended that people who are interested contact the Department.

Chairman Brown asked about the Secretary's vision regarding privatization. Secretary Ishee reiterated that the DAC is a public employer and only uses private security guards as a temporary measure. He added that there are no private prisons in North Carolina.

Mr. Moore asked if DAC's vacancy rate was producing more escapes and assaults on staff. Secretary Ishee replied that escapes occur mostly from minimum custody units or work release and that current rates are not endangering public safety.

Ms. Granados asked if there are plans to expand the states substance abuse treatment facilities. Secretary Ishee stated that there is the potential for expansion as staffing and available beds are not an issue at these facilities.

Chairman Brown asked for more information about the DAC's Commercial Driver's License (CDL) program. Secretary Ishee said DAC has purchased simulators and a disabled tractor unit and is finalizing a partnership with a CDL school.

Mr. Moore asked if the IDs inmates are receiving are valid for voting. Secretary Ishee replied that they are valid state-issued IDs.

Judge Ussery asked whether jails were holding on to offenders for a longer period given prison staffing shortages and whether these facilities would be reimbursed by the state. Secretary Ishee stated that, while there use to be a significant jail backlog, DAC is now able to take inmates as they enter the system and DAC has not experienced any issue in this matter for several months.

Department of Public Safety

Chairman Brown recognized William Lassiter, the Deputy Secretary of the Division of Juvenile Justice and Delinquency Prevention (DJJDP) of the Department of Public Safety (DPS)), to present an overview of the Department and its initiatives for the next two years (*see* Presentation). Secretary Lassiter began by providing an overview of the divisions and sections that make up DPS and its overall strategies. He then focused on DJJDP specifically, reviewing the vision for the Division and some of its goals, as well as recent reform efforts in juvenile justice.

Secretary Lassiter provided statistics on the capacity of detention centers and the current population. He pointed out that, as of two days earlier, the population was 65 juveniles over capacity. Judge Ussery asked where the Division was housing the additional juveniles. Secretary Lassiter replied that they are putting temporary beds on the floors in the detention centers. Secretary Lassiter presented population projections for the detention population, showing an expected growth for the next five years.

Commissioner Johnson asked if the detention population numbers included children in DSS awaiting placement. Secretary Lassiter replied that DSS is trying to hold onto juveniles when they act out and not to criminalize them unless they have committed a crime. By statute DJJDP only takes those juveniles with active secure custody orders. Chairman Brown added that it does not include out-of-home placements either.

Mr. Beeler asked if the Sentencing Commission should be reporting the need for detention beds on a regular basis. Secretary Lassiter responded that DJJDP and SPAC staff had worked together on developing detention projections and a model in the past. Ms. Hall added that the Sentencing Commission staff could project detention beds if the General Assembly asked for it.

Judge Ussery asked about the cost of a detention bed. Secretary Lassiter responded that it was approximately \$300 per day.

Chairman Brown cited the example of Mecklenburg County closing its facility and the impact to the Division. Secretary Lassiter pointed out that Mecklenburg County provided 72 beds and that the population was 65 over capacity recently, so one facility makes a difference. He stated that the growth in the detention population is due in large part to holding juveniles who are being transferred to superior court. DJJDP is required by statute to hold them until they turn 18 or are convicted in superior court, but they are not under the jurisdiction of DJJDP. Mr. Moore asked about their average length of stay. Secretary Lassiter stated that it was 7 months.

Secretary Lassiter described several ways that DJJDP was addressing the need for detention beds, including opening new facilities and taking over former adult facilities. Mr. Moore asked if DJJDP had offered to staff the Mecklenburg County detention facility. Secretary Lassiter replied that they offered to do so but the County did not accept the offer. He stated that the problem is DJJDP salaries are not competitive. DJJDP starting salary is \$35,000 while Mecklenburg County starting salary is \$55,000. DJJDP staff are also the only state employees working in that type of setting without a step pay plan.

Secretary Lassiter discussed the following DPS priorities: supporting staff, including addressing the high vacancy rates (e.g., DJJDP is at 37%); increasing diversity, equity, inclusion, and reducing racial and ethnic disparities; preventing crime; facilitating school safety; and tailoring services to fill gaps.

Ms. Granados asked what alternatives there are to continued incarceration in the juvenile system given the bed shortage. Secretary Lassiter explained that the goal is to keep juveniles out of detention; DJJDP is working to develop more alternatives.

Mike Waters stated that his county has an excellent local list of defense attorneys who have agreed to take juvenile cases, but he has been told that that process will be eliminated and replaced with a centralized system. Secretary Lassiter replied that that will only be for murder charges. Becky Whitaker from Indigent Defense Services added that it is a pilot program that would find local attorneys who are qualified to handle first degree murder cases and Indigent Defense Services would assign them. The goal is to streamline the process and assign qualified attorneys.

Secretary Lassiter presented recent trends in juvenile justice: raise-the-age juveniles have continued to increase since implementation and have caused the overall number of delinquent complaints and delinquent juveniles to increase over pre-raise-the-age numbers, and the percentage of juveniles with a mental health diagnosis increased. He also provided a breakdown of felony complaints overall and pointed out the growth in firearm complaints. Secretary Lassiter concluded with an analysis of House Bill 186 – Juvenile Justice Modifications.

Mr. Beeler asked if DJJDP was incorporating restorative justice concepts into its initiatives. Secretary Lassiter replied that they were doing so. DJJDP is focusing on getting a teen court program with a restorative justice component in every jurisdiction and it has a federal Office of Juvenile Justice and Delinquency Prevention grant to incorporate restorative justice concepts in the facilities.

HIGHLIGHTS FROM 2023 NASC CONFERENCE

Chairman Brown stated that staff and Commission members attended the National Association of Sentencing Commissions (NASC) annual conference. He recognized Michelle Hall, staff, to provide an update (*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. The most recent meeting was held in Lake Tahoe, Nevada, in August 2023. Chairman Brown noted lots of great information is always gained from these conferences. Due to time constraints, he postponed the rest of the presentation until later in the afternoon.

UPDATE ON SENTENCING PRACTICES STUDY

Chairman Brown recognized Michelle Hall, staff, to provide an update on the Sentencing Practices Study (*see Presentation*). Ms. Hall 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. Are there disparities in sentencing outcomes based on extralegal factors (e.g., age, sex, race)? She reviewed the discretionary decision points that were being examined as part of the study: a felony charge resulting in a misdemeanor conviction; a felony charge resulting in a less serious felony conviction; and the imposition of active punishment in cells on the punishment chart where active punishment is non-mandatory. She informed Commissioners that the content for the presentation would cover the last set of multivariate models, which used a multi-level modeling technique.

Melissa (Mel) Lugo, staff, was then recognized to review the methodology and results. She explained that staff had opted to use Multi-Level Modeling (MLM) in order to control for location. In MLM, the district characteristics are tied to the *unit* (in this case, the judicial district) and not the individual cases, which allows for improved understanding of the relationships between variables, particularly between district and outcomes. Dr. Lugo then shared a visual representation of the MLM concept, which showed which level of the model contained which variables. Level 1 variables relate to the case information, while level 2 variables (i.e., district characteristics such as population density) are nested within the unit (judicial district).

Dr. Lugo then explained the key findings from the MLM results by each individual model, reviewing which variables were significant, and more or less likely to predict each outcome. Next, Dr. Lugo summarized the findings across all models noting that district characteristics were generally not significant in predicting outcomes, legal variables were the strongest predictors, and while some extralegal factors were significant predictors, they were generally weak in magnitude. Lastly, Dr. Lugo noted the next steps for the project including final report publication by the next Commission meeting when it was anticipated the Commission would discuss any policy implications from the report findings.

PRISON POPULATION PROJECTION UPDATE

Chairman Brown recognized Ginny Hevener, staff, to provide an update on the current prison population projections (*see Handout*). The handout provides information on the accuracy of the current prison population projection and a look at prison population trends. In terms of the accuracy of the projections, Ms. Hevener highlighted that the average prison population for June 2023 was 30,791 compared to the projected population of 30,197, a difference of 594 or 2%, which is within the target accuracy range. The August 2023 prison population is higher than the projection for June 2024. Ms. Hevener noted that the FY

2022 court data used to develop the prison projections was still affected by the pandemic as more serious cases lagged behind less serious cases in terms of recovery of case processing. It is likely that the next projection will adjust upwards as the system continues to recover.

Ms. Hevener 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); following the onset of the pandemic it has been below Standard Operating Capacity (SOC). However, the August 2023 prison population is only about 20 below SOC. The population is currently projected to be above SOC but still below EOC for later years of the projection.

Ms. Hevener also reviewed historical trends for the prison population. The prison population had been stable around 36,000 for FY 2018, FY 2019, and up until the pandemic began in the last quarter of FY 2020. The population increased 4% across FY 2022 and 2% across FY 2023, the first increases since the pandemic.

In closing, Ms. Hevener stated that staff have started working on conviction data from AOC in preparation for producing new projections and will be receiving data from Adult Correction soon. The new projections are typically finalized in January or early February.

JUVENILE RESOURCE PROJECTION UPDATE

Chairman Brown recognized Tamara Flinchum to present an update on the Youth Development Center or YDC Population Projection (see Handout). Ms. Flinchum began the YDC population projection update and acknowledged that the mandate and the process for producing the YDC projections were similar to the adult prison projections presented by Ms. Hevener earlier. The original projections were developed using FY 2022 court or disposition data and YDC population or “stock” as of June 30, 2022 and were presented to Commissioners in December 2022. Ms. Flinchum reminded Commissioners that these projections included the second full year of RtA juveniles (16- and 17-years) and that the pandemic’s effect on the juvenile justice system was still apparent with the FY 2022 data.

Ms. Flinchum pointed out the current YDC population and the YDC projection in the first figure. In FY 2023, the projection was 176 and the average June population was 175, a difference of 1 bed between the projection and the average June population. She shared with Commissioners that this projection was the most accurate since we have begun producing them. Ms. Flinchum continued by explaining another methodology for examining accuracy within the context of the actual minimum and maximum YDC populations across the past 5 fiscal years. The FY 2023 projection was 176, the highest population was 193 and the lowest was 161 in FY 2023 – within the acceptable accuracy range.

Finally, Ms. Flinchum concluded by pointing the average monthly YDC population by month and by fiscal year. She mentioned that FY 2019 was pre-RtA and pre-pandemic and compared the remaining FYs to FY 2019. There has been a steady, gradual increase in the YDC population since July 2020, but the YDC population is not back to the pre-pandemic and pre-RtA numbers. Thirty-eight percent (38%) of the YDC population in FY 2023 was RtA juveniles. Staff have already received data for the upcoming projections from Juvenile Justice and plan to have the YDC projections completed by the end of the year.

SMCP CAPACITY PROJECTION UPDATE

Chairman Brown recognized Meghan Boyd Ward, staff, to present an update on the Statewide Misdemeanant Confinement Program (SMCP) Capacity Projections (see Handout). Ms. Boyd Ward first thanked Cortney Goodwin and Marie Evitt from the North Carolina Sheriffs' Association (NCSA) for their assistance in the capacity projections. Ms. Boyd Ward began the update by noting the capacity for June 2023 was 948, which included capacity from all receiving counties because the temporary moratorium status that started during the COVID-19 pandemic ended in February 2023.

Ms. Boyd Ward stated that two scenarios were developed to account for the impact of the COVID-19 pandemic and fluctuations in program participation. The first scenario is based on a broad definition of capacity that includes capacity from receiving counties and the full capacity from temporary moratorium counties. The projected capacity for scenario 1 was 1,170, which is 23% higher than the June 2023 reported capacity.

Ms. Boyd Ward then turned to the scenario 2 projection and explained that under this scenario capacity is more narrowly defined using data from allocation forms submitted to the NCSA and housing reimbursement estimates developed from the NCSA's monthly status reports. For scenario 2, the projected capacity was 1,106, which was 17% higher than the June 2023 reported capacity.

Ms. Boyd Ward highlighted the remaining years of the projection for both scenario 1 and scenario 2. She noted that the projected capacity for these two years is visually depicted in the capacity and population trends figure. She noted that, for both scenarios, the projected capacity deviated from the reported SMCP capacity trend line. She also highlighted the capacity for the month of February 2023 when the moratorium policy ended, which was 939. Ms. Boyd Ward discussed the average monthly population (AMP) shown in the figure. She stated that the lowest AMP occurred in January 2021 (536 inmates).

Ms. Boyd Ward then presented two new figures demonstrating the projections accuracy overtime. The figures showed the highest and lowest capacity reported in each of the projection years and where the projected capacity fell for each of the two scenarios. Ms. Boyd Ward commented that in each of the projection years, barring one year in FY 2022 for scenario 1, the projection was within the lowest to highest range.

HIGHLIGHTS FROM 2023 NASC CONFERENCE (Cont'd)

Chairman Brown recognized Michelle Hall to resume her update on the NASC conference. Ms. Hall stated that at the conference the Executive Committee decided unanimously to ask North Carolina to be the host for the 2024 Annual Conference. The dates have been set for August 5 – 7, 2024 with the exact location to be determined. The theme will be "Sentencing Commissions Then and Now: 1993/94 through 2023/24." She explained the duties of the Executive Committee and those of the host state regarding the conference, and informed Commissioners that AOC has two former event planners on staff who are willing to help the Commission scout locations and pre-plan for the conference. She stated that some of the tasks that SPAC staff will be responsible for are soliciting sponsors and providing support during the conference. The Executive Committee and NASC funding will support the conference, the bulk of the funding comes from registration fees. Mr. Moore asked how many people typically attended the conference. Ms. Hall replied approximately 100 people.

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, December 8, 2023.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:02 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary