MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
September 9, 2022

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 9, 2022, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Senator Warren Daniel, Danielle Marquis Elder, Judge Sherri Elliott, Lindsey Granados, Joe Houchin, Sheriff Garry McFadden, Representative Allen McNeill, Honorable James Mixson, Luther Moore, Tim Moose, Judge Fred Morrison, Calvin Suber, Patrick Weede, and Judge Valerie Zachary.

Guests: Hon. Bob Steinburg, Sr., (NCGA), Mary Stevens (attending for Willis Fowler, PRSPC), Cortney Goodwin (NCSA), Sheriff Kevin Frye (NCSA), Mark White (NCGA), Morgan Weiss (NCGA), Julianna Kirschner (AOC), Amber Lueken-Barwick (CODA), and Megan Perrault (DPS).

Staff: Michelle Hall, Ginny Hevener, John Madler, Tamara Flinchum, John King, Meghan Boyd Ward, Shelley Kirk, Melissa Lugo, and Becky Whitaker.

INTRODUCTION AND RECOGNITION OF OUTGOING COMMISSIONER

Chairman Brown called the meeting to order at 10:01 a.m. He asked members and guests to introduce themselves.

Chairman Brown read a Resolution for Senator Bob Steinburg (North Carolina Senate). Luther Moore moved for adoption of the Resolution; Representative McNeill seconded the motion and the motion carried. Senator Steinburg made departing remarks.

Chairman Brown presented the minutes from the June 3, 2022 meeting and called for a motion. Art Beeler moved to adopt the minutes as written; Patrick Weede seconded the motion and it carried. Chairman Brown announced the 2023 Sentencing Commission meeting dates: March 3, June 2, September 8, and December 8. He reminded the Commission of the remaining quarterly meeting of 2022 on December 2. Chairman Brown reviewed the agenda for the meeting.

LEGISLATIVE SESSION SUMMARY AND IMPACT

Chairman Brown recognized Becky Whitaker and Ginny Hevener, staff, to provide a summary of the 2022 Session of the General Assembly (*see* Handouts) and the impact of the enacted bills on correctional resources. Ms. Whitaker began by stating that the 2022 legislative short session convened on May 18 and ended on July 1.

Turning to new criminal provisions (*see* Handouts), Ms. Whitaker stated there were 6 bills which created new criminal offenses, with the two bills estimated to have the most impact: House Bill 315, Arson Law Revisions, and Senate Bill 766, Organized Retail Theft. She noted there were 14 new felony offenses created during the 2022 Session, and one reclassified felony offense. By class, Ms. Whitaker stated there were no changes to Class A, B1, or B2 felonies. There were 3 new Class C felonies, 2 new Class D felonies, 2 new Class E felonies, 4 new Class F felonies, 1 new Class G felony, 1 new Class H felony, and 1 new Class I felony. One felony was reclassified from a Class G to a Class E felony. There were no punishment changes from the 2022 Session.

Ms. Hevener stated that the Sentencing Commission is required to provide impact projections for each bill that affects criminal penalties or juvenile justice in addition to the broader mandate to project correctional and delinquent populations. The impact projections estimate the number of prison beds or YDC beds that will be affected by the proposed change. The potential impact depends on the number of convictions involved and, tied directly to the Structured Sentencing punishment charts, offense class, type of punishment imposed, and sentence length.

Ms. Hevener noted that substantial impact on the prison population is not expected from the felony changes Ms. Whitaker reviewed, with the changes affecting offenses for which there have been small numbers of convictions historically. Misdemeanants who receive an active sentence are housed in county jails either directly (90 days or less) or through the Statewide Misdemeanant Confinement Program (more than 90 days) and, therefore, typically do not impact the prison population.

Ms. Whitaker stated there were 2 new Class A1 misdemeanors, 1 new Class 1 misdemeanor, 2 new Class 2 misdemeanors, and 1 new Class 3 misdemeanor. Ms. Hevener stated that, due to lack of data and a statewide jail database, the Sentencing Commission does not project the impact of new misdemeanor offenses.

Commissioner Art Beeler asked about the need for a unified jail system and whether any progress was being made on that issue. Ms. Hevener responded that the N.C. Government Data Analytics Center (GDAC) is discussing the matter. Chairman Brown added that the Governor's Crime Commission also talked about data needs and the necessity of being able to quantify jail capacity. He stated there is a lot of interest in the issue of jail data and that uniformity is necessary. Sheriff Garry McFadden stated that there is a need for consistency across different agencies.

Ms. Whitaker informed the Commission that there were no juvenile justice bills enacted in the 2022 Legislative Session.

Turning to bills of interest, Ms. Whitaker reviewed relevant provisions from House Bill 607 related to automatic expunctions, House Bill 674 related to mandatory collection of a DNA sample connected with certain offenses, Senate Bill 448 related to Schedule VI of the Controlled Substances Act, and Senate Bill 455 related to North Carolina's hemp laws. Commissioner Jim Mixson stated that the stakeholders' group on automatic expunctions is scheduled to meet and is open to suggestions regarding expunctions. Commissioner Joe Houchin asked about the composition of the stakeholders' group. Commissioner Mixson responded that the group is comprised of representatives from the Sheriff's Association, AOC legal counsel, the Conference of District Attorneys, and others.

Finally, Ms. Whitaker reviewed House Bill 103, the 2022 Appropriations Act, and highlighted relevant provisions related to funding for the Administrative Office of the Courts, the Department of Justice, Adult

Correction, and Juvenile Justice and Delinquency Prevention. Regarding a provision in the bill mandating credit for PRS offenders who comply with certain reintegrative conditions of PRS, Commissioner Lindsey Granados asked if the PRS credit would ease staffing issues within Community Corrections. Commissioner Tim Moose responded that it would.

PRISON POPULATION PROJECTIONS UPDATE

Chairman Brown recognized Ginny Hevener, staff, to provide an update on the current prison population projections (*see* Handout). Ms. Hevener stated that the handout provides information on the accuracy of the current prison population projection and an assessment of whether the projections appear to be on target for the later years of the ten-year projections. In terms of the accuracy of the projections, Ms. Hevener highlighted that the average prison population for June 2022 was 30,205 compared to the projected population of 29,624, a difference of 581 or 2%, a return to pre-pandemic projection accuracy. The August 2022 prison population is higher than the projection for June 2023. Ms. Hevener indicated that early examination of FY 2022 data suggests that the next projection will adjust upwards in response to increases in felony convictions and prison entries.

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); however, following the onset of the pandemic it has been closer to Standard Operating Capacity (SOC). The prison population is projected to be below SOC for the first four years of the projection but not for the remaining years.

Ms. Hevener 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. From the beginning of the pandemic through the lowest population point reached, the prison population declined by about 6,000 or 17%. The population increased 4% across FY 2022, the first increase since the pandemic and the largest increase seen since FY 2009. Ms. Hevener noted that the decreases of 10% each for FY 2020 and FY 2021 are the largest decreases experienced over the past 20 years, indicating the disruption caused to the court and correctional systems by the pandemic. The next largest decrease (6%) was in FY 2012 following implementation of the Justice Reinvestment Act (JRA). Otherwise, decreases have ranged from less than 1% to just under 3%, with an average decrease of 1%.

In closing, Ms. Hevener stated that staff have started working on conviction data from the Administrative Office of the Courts (AOC) in preparation for producing the projections and will be receiving data from Adult Correction soon. It is anticipated the projections will be completed near the start of the legislative session.

Referring to the note on the handout, Sheriff McFadden pointed out that offenders awaiting transfer to prison from local jails (i.e., jail backlog) also affect the local jails. Fifteen inmates in his jail are awaiting transfer. Ms. Hevener added that the backlog has been large but that it was currently at less than 150.

Senator Daniel asked if staff had looked at how North Carolina's incarceration rate compares to other states and the national average. Ms. Hevener replied that she did not know the current rank but that North Carolina is usually at the lower end of the states, around 30th. She added that staff convenes the Forecasting Technical Advisory Group (FTAG) annually to look at demographic and criminal justice trends in North Carolina in order to help develop growth rates for the projections. At the last meeting, they saw

growth but in the older age groups; growth in the younger age groups would be more likely to affect the prison population.

Representative McNeill asked how raising the age of juvenile jurisdiction affected the projections and how reducing the backlog of cases pending will affect them. Ms. Hevener replied that she has not received any recent reports on the pending case backlog but could follow up with that information. She added that the FTAG discussed the backlog at its last meeting in 2021 and questioned how much of the increase in convictions is due to the backlog and how much will it slow down once the backlog, and the related additional court resources, are gone. Tim Moose stated that the DAC has a group that looks at backlog every morning because of its impact on correctional resources. They make adjustments several times a week to compensate for it. Representative McNeill asked if they were nearing the end of the backlog. Mr. Moose said that it was smaller but not gone. Chairman Brown recognized Julianna Kirschner, AOC Research, Policy, and Planning, to discuss the court backlog. Ms. Kirschner stated that the court backlog is down by 2% statewide and trending toward pre-pandemic levels, but that it varies by county and by type of case. The AOC is tracking the backlog and publishes a monthly report.

Art Beeler commented how important it was to have the conversation about backlog because it affects everyone: courts, prisons, and jails. He gave the example of the DAC only having five medium custody beds available recently and how that affects the processing of inmates. Sheriff McFadden added that the court backlog affects detention. Offenders are willing to take pleas they would not otherwise accept because they have been in confinement waiting trial for so long.

UPDATE ON ESTABLISHMENT OF DEPARTMENT OF ADULT CORRECTION

Chairman Brown recognized Tim Moose, Commission member and Chief Deputy Secretary for the Division of Adult Correction, to provide an update on the transition of adult correction from a division within the Department of Public Safety (DPS) to a stand-alone Department of Adult Correction (DAC). Mr. Moose stated that the entities involved have been working on the transition and will probably continue to do so beyond the official start date of January 1, 2023. So far, they have separated the DAC budget from the DPS budget and identified 533 administrative positions that will be moving to the DAC; these changes will take effect October 1, 2022. A Transition Team is currently conducting a gap analysis to determine where the DAC will need additional positions to maintain baseline operations. Mr. Moose estimated that 65% to 70% of the Department's needs will be met by the transfer of the existing positions and then they will have to figure out how to fill the rest of the needs. The Division is in the process of filling the new positions funded by the General Assembly and hiring for some leadership positions. In October, the existing senior leadership will begin transitioning to the new Department. The Transition Team is also working on locating office space; the administration will return to the Shore Building where the Department of Correction was originally housed.

As part of the process, the Transition Team has multiple working groups studying issues including establishing three new divisions, developing policies, transferring positions, and reviewing the CRV/DART/Black Mountain model. Mr. Moose highlighted the workforce development group that was developing a new human resources model where human resources professionals would be embedded in the field rather than located in a central office. They believed this would improve the hiring process as well as service delivery to staff.

Mr. Moose concluded by explaining that a second phase of the transition will begin in January, after the DAC has officially launched. This phase will involve building out once the baseline structure of the

Department is set up and it will require using a combination of existing resources and vacancies. The DAC may have to ask the General Assembly for additional assistance.

REVIEW OF KEY FINDINGS: 2022 ADULT RECIDIVISM STUDY

Chairman Brown recognized John King to summarize the key findings of the 2022 Correctional Program Evaluation for Offenders Placed on Probation or Released from Prison in FY 2019 (*see* Presentation). Mr. King noted the Commission is mandated to study adult recidivism every two years and this report is designed to provide insight on the effectiveness of the state's correctional system. He reminded commissioners they received copies of the adult recidivism report and the companion Quick Facts at the June 2022 meeting. Mr. King concluded his opening comments by outlining the presentation, as well as recognizing project partners and staff.

Mr. King explained the adult recidivism study examined 47,090 offenders who either entered probation (n=30,750) or were released from prison (n=16,340) in FY 2019. A separate cohort of CRV offenders (n=2,002), who were released from prison or a CRV Center in FY 2019, was also examined. Each of these cohorts was tracked for two years for a variety of recidivist events, including arrests, convictions, and incarcerations.

The two-year follow-up period coincided with the COVID-19 pandemic that led to alterations of typical court processes (e.g, court closures or delays in criminal proceedings). Mr. King explained that the follow-up periods for offenders in the study were differentially impacted by the pandemic. Offenders whose follow-up period began at the start of FY 2019 had as few as 4 months of their follow-up affected by COVID; however, offenders whose follow-up started toward the end of FY 2019 had as many as 15 months of their follow-up affected by the pandemic. Mr. King pointed out that offenders who entered the FY 2019 sample in the last two quarters of FY 2019 (i.e., offenders whose follow-up overlapped the most with the pandemic) had lower recidivist arrest rates than offenders who entered the sample in the first two quarters of FY 2019.

Next, Mr. King compared findings for prisoners and probationers. He pointed out that, regardless of measure, prisoners had higher recidivism rates than probationers. He noted that all recidivism rates were lower this cycle than last cycle, which may be explained in part by the pandemic. Chairman Brown asked if arrests that occurred as a result of a probation violation counted toward recidivism. Mr. King responded that the SBI tracks fingerprinted arrests, so if the arrest for a probation violation was not fingerprinted, it would not appear in the data. Commissioner Moose and Ms. Hevener also added that fingerprinted arrests occur for criminal offenses and not probation violations. Mr. King continued by highlighting that 36% of prisoners released in FY 2019 returned to prison during the two-year follow-up. Mr. King also pointed out that recidivist arrests generally occurred during the first year of follow-up and that recidivist arrest rates declined with age. He shared that, when controlling for prior arrests, there was little difference in recidivist arrest rates between prisoners and probationers. Mr. King noted that Class H and I felons had the highest recidivist arrest rates compared to offenders with offenses in other classes. Finally, he shared that recidivist arrest rates decreased as offender risk decreased.

Mr. King moved on to share findings specifically related to the prison release cohort. He pointed out that following the implementation of the JRA, a greater proportion of prison entries are coming from PRS revocations; in FY 2019, 23% of the sample entered prison as a result of a PRS revocation whereas, in FY 2013, 3% entered prison that way. He explained that this change in distribution of prison entry types has an effect on the overall recidivist arrest rate because offenders who enter prison following a revocation

of PRS had the highest recidivist arrest rates (61%) compared to new crime offenders (46%) and offenders incarcerated as a result of a probation revocation (47%).

Mr. King shared some of the characteristics of prisoners who had the highest recidivist arrest rates (e.g., youthful offenders, offenders who served a sentence for common law robbery, and offenders who were in close custody at the time of release). He also presented some of the strongest predictors of recidivist arrest among prison releases (e.g., being male resulted in an 8% increase in the probability of recidivist arrest). Chairman Brown asked how "extreme need" is defined. Mr. King responded that offenders are assessed for criminogenic needs; Commissioner Moose added that probation officer impressions and offender self-reports are also part of determining need levels. Mr. King continued by pointing out that risk level was not predictive of recidivist arrest and mentioned a recommendation from the report that suggested validating the risk instrument for the prison population.

The final part of the prison release section of the presentation focused on a different recidivism measure, recidivist incarcerations. Mr. King shared that many of the same characteristics that described prisoners with recidivist arrests were present among prisoners with recidivist incarcerations. He also pointed out which factors were predictive of recidivist incarceration (e.g., being married resulted in a 4% decrease in the probability of recidivist incarceration). Finally, he noted the trend for recidivist incarcerations is upward and is driven by prisoners returning to prison rather than probationers.

Offenders who entered probation in FY 2019 were the focus of the next section of the presentation. Mr. King said a majority of the probation sample was comprised of misdemeanants (58%) and that almost 1/3 of the probationers were supervised in Level 3. He reported that 72% of probationers violated probation and that violation rates decreased as the supervision level decreased. He noted a greater proportion of offenders had a technical violation as their most serious violation this cycle compared to last cycle, while a smaller proportion of offenders had an absconding violation as their most serious violation this cycle compared to last cycle. Moving on from violations, Mr. King showed that 19% of the probation sample had their probation revoked. He explained some of the factors that made revocation more likely (e.g., assessed as extreme risk or extreme need) and less likely (e.g., having received a CRV or quick dip).

Mr. King concluded the probationer section of the presentation by sharing that 37% of the probation entries had a recidivist arrest during the two-year follow-up and that the recidivist arrest rate decreased as the supervision level decreased. He shared some of the factors that made recidivist arrest more likely (e.g., assessed as extreme risk or extreme need) and less likely (e.g., being 21 or older and being employed before being placed on probation). He showed that not only did the recidivist arrest rates decrease as supervision levels decreased, but also as risk and need levels decreased.

The remainder of the presentation included a brief recap of findings and possible policy implications. Mr. King shared that staff was not able to fully explore the employment data received this cycle and hoped that an opportunity presented itself for additional examination of those data. Commissioner McFadden pointed out the data are great and stressed the need to better prepare inmates for re-entry.

REVIEW OF KEY FINDINGS: 2022 SPECIAL REPORT – PROBATION RELEASES

Chairman Brown recognized Tamara Flinchum to summarize the key findings of the 2022 Special Recidivism Report on Probation Releases in FY 2019 – a first examination of probationers released from supervised probation by the Commission (*see* Presentation). Ms. Flinchum mentioned that Commissioners received a copy of the report in their packet. The data sources, agencies that provided data and support,

and the primary measure of recidivism (i.e., fingerprinted arrests) were the same as the 2022 Correctional Program Evaluation report presented earlier.

Staff examined probation releases to better understand the timing and order of program interventions, sanctions for noncompliance, and recidivist arrests during supervision and to analyze those events and recidivism separately during the two-year follow-up period, enabling a more robust multivariant analysis. A total of 30,809 offenders exited probation. Almost half (47%) of probationers exited for positive reasons, 25% exited for negative reasons, and 28% exited due to a revocation of their probation. These three groups were developed in conjunction with staff at the Division of Community Corrections. Ms. Flinchum explained that each of the groups were comprised of three subgroups.

Most probation releases were primarily misdemeanants (60%) similar to probation entries. A higher percentage of probationers in the negative and revocation groups were convicted of a felony (42% each) compared to the positive group (38%). Ms. Flinchum provided the top 3 convictions for each group, all misdemeanor offenses, and then reported the top 3 felony convictions. Probationers in the negative group were on supervision the longest on average 24 months, while the revocation group had the shortest supervision length at 15 months. Overall, the sample spent 20 months on supervision. The revocation group had the highest percentage missing a completed RNA (27%) due primarily to the absconding group compared to the positive and negative groups (5% and 9% respectively). Judge Brown confirmed with Ms. Flinchum that other offenders besides absconders did not have a completed RNA. Since a completed RNA is used to assign supervision level, those same offenders were missing a supervision level. Probationers in the revocation group were more often assigned to the most restrictive levels of supervision compared to the negative and positive groups. Meanwhile, probationers in the positive group were more often assigned to the least restrictive levels compared to the negative and revocation groups.

A higher percentage of probation releases (80%) had a violation during supervision compared to the probation entry sample (72%) during the two-year follow-up. Ms. Flinchum explained that the higher violation rate for the released group was due to capturing the entirety of the supervision period while the probation entry sample only captures the first two years of probation. Offenders in the positive group had the lowest violation rates (61%) compared to the other two groups who were not as successful in their supervision (93% for the negative group and 100% for the revocation group). The revocation group committed their first violation earlier than the positive and negative groups. In addition, the revocation group committed more serious violations (i.e., criminal and absconding).

Ms. Flinchum discussed the two separate periods examined for recidivism – during *supervision* and during the *two-year follow-up*. Generally, the release sample had higher recidivism rates during supervision. The positive group had the lowest recidivist arrest rates during both time periods, while the revocation group had the highest recidivist arrest rates. Probationers in the revocation group committed their first arrest earlier (7 months on average) compared to probationers in the positive and negative groups (9-10 months). Ms. Flinchum also reported on the recidivist arrest rates for those offenders by group who received a response for noncompliance compared to those offenders who did not receive a response for noncompliance. There were four nonconfinement responses for noncompliance examined (delegated authority, additional probation conditions, modified probation conditions, and continued probation supervision) and two confinement responses for noncompliance (quick dip for all offenders and CRV for felons only). For the positive and negative groups, offenders who had received a response for noncompliance had higher recidivist arrest rates compared to those offenders who did *not* receive a response for noncompliance. However, offenders in the negative group had lower recidivist arrest rates

if they did receive a response for noncompliance compared to those probationers who did *not* receive a response for noncompliance.

Ms. Flinchum then reported on the multivariate analyses to help explain the recidivism results she presented. She focused on the key factors that were statistically predictive of recidivist arrests. Few characteristics were in common across the three groups. The number of prior arrests, the number of probation violations, a recidivist arrest during supervision, and being male increased the probability for recidivist arrest, while being older decreased the likelihood of an arrest. For the positive group, the use of delegated authority and continued probation supervision decreased the likelihood of a recidivist arrest. Also, if the offender was placed on unsupervised probation, they were less likely to recidivate. Ms. Flinchum reported that offenders in the negative group who were employed decreased their probability of recidivist arrest. For the revocation group, offenders who had received responses for noncompliance such as the use of delegated authority, additional probation conditions added, probation conditions modified, or received a quick dip were less likely to have a recidivist arrest. Ms. Flinchum also referred Commissioners to the report for additional multivariate analyses by felons and misdemeanants.

In conclusion, Ms. Flinchum explained that probationers in both the entry and release samples had higher recidivist arrest rates during supervision compared to probation releases during the two-year follow-up period. Moving forward, staff would like to examine consistencies in the data and any policy implications trend data would provide. Ms. Flinchum pointed out that the release sample was also affected by the COVID-19 pandemic during the two-year follow-up that Mr. King had discussed earlier. Future reports will provide insight on the impact of the pandemic on offenders' recidivism. Staff plan to include the programmatic piece (e.g., Treatment for Effective Community Supervision or TECS) in future reports and to analyze more fully the relative success of the positive group in comparison to the failure of supervision of the negative and revocation groups – can it be explained in order to inform policy.

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 that the Sentencing Practices Study was started during the fall of 2020. Its purpose 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.

Ms. Hall reviewed the components of the study and their status, as well as the data source (FY 2019 conviction data from the annual Statistical Report) and the unit of analysis (convictions disposed of in a sentencing episode). She reiterated that there is no agreed upon definition of disparity among researchers and in the literature; for the purpose of this study, disparity is defined as decisions made where extralegal factors are used to arrive at the decision. Finally, she reminded the Commission that staff examined FY 2019 felony conviction data and found differences by race, sex, and age when looking at convictions overall by offense class, by prior record level, and in the use of active punishment, as well as when examining charge class to conviction class. The multivariate analysis examines charge class to conviction class more closely to identify possible factors affecting that outcome.

Ms. Hall reviewed the findings from the two multivariate models that she presented at the June Commission meeting and summarized the initial findings from the two multivariate models (felony charge to misdemeanor conviction; felony charge to less serious felony conviction). Sex, age, and method of disposition (i.e., jury trial) had the same effect in both models; district characteristics were significant in

the misdemeanor model, but not in the felony model; removing district characteristics changed the significance of race from nonsignificant to significant for the misdemeanor model; as the most serious charge class increased, there was a decreased probability of a misdemeanor conviction (misdemeanor model) but an increased probability of a less serious felony conviction (felony model); and, with the exception of PRL VI, prior record level was not significant in the felony model.

Next, Ms. Hall stated that staff had been exploring additional variables in order to improve the models. She reminded Commissioners that they were looking at criminal justice variables only and not social variables like education and employment. New variables of interest came from the discussion at the June Commission meeting as well as feedback from presentations to the Superior Court Judges Conference and the Conference of District Attorneys' Executive Committee. Ms. Hall listed the suggested variables and identified those that could be explored (e.g., mandatory active punishment cells, district variations, variation in offenses committed) and those that could not (e.g., strength of case, components of the plea, custody status at sentencing) based on availability of data.

Chairman Brown asked what was meant by "variations in offenses committed." Ms. Hall explained that it would involve looking at the types of offenses committed by the race, age, and gender variables.

Lindsey Granados asked if staff had consulted with the AOC about what new data would be available with eCourts. Ms. Hall responded that staff is in close contact with the AOC and have shared a list of variables they would like to see captured, but do not know what will be included yet. Some suggested variables, such as the plea agreement and strength of case, could not be captured because they would be qualitative rather than quantitative. Representative McNeill pointed out that eCourts is rolling out into 2025 so data will not be available for a while. He asked if staff was seeing any significant changes so far from the 2002 report and whether it will be fair to compare the two reports. Ms. Hall replied that staff has tried to follow the 2002 report methodology but that there have been changes to data collection and to the criminal justice system since then. Staff will have to assess how comparable the two reports are at the end of the study. Regarding changes staff have seen so far, Ms. Hall pointed to the significance of all prior record levels in the first report while only PRL VI appears to be a factor this time; race was not a significant factor before while it appears to be a small factor in some of the models in the current study.

Art Beeler asked what was meant by the "components of the plea agreement." Ms. Hall responded that it would indicate if the sentence was part of the agreement and what the sentence was based on.

Ms. Hall then presented information on the new variables staff added to the multivariate models. For both models, staff looked at the conviction rate per population in the district, single versus multi-county districts, and the presence of credit for time served. For the second model only (felony charge to less serious felony conviction), staff also looked at whether the most serious charge was in a mandatory active grid cell in Classes E through H and whether the conviction included an habitual felon charge.

In the first model, most of the convictions had credit for time served, slightly more than half occurred in a single county district, and the largest percentage of convictions occurred in a district that had a high conviction rate per population. Turning to the multivariate analysis, all of the new variables proved to be significant predictors; being convicted in a single county district made the reduction from a felony to a misdemeanor more likely while having credit for time served and being convicted in a district with a higher conviction rate per population made the reduction less likely. Like the original model, removing district characteristics made race a significant factor. Ms. Hall explained that staff will further examine the interaction between the variables.

Looking at the convictions in the second model, Ms. Hall stated that most of the convictions had credit for time served, slightly more than half were convicted in a single county district, 12% were charged in a mandatory active grid cell in classes E through H, and 5% were charged as habitual felons. As with the first model, the new variables proved to be significant predictors in the multivariate analysis; a charge in a mandatory active grid cell and conviction in a single county district made the reduction more likely while having an habitual felon charge, credit for time served, and being convicted in a district with a higher conviction rate per population made the reduction less likely. Ms. Hall pointed out that, unlike the original model, the district characteristics moved from nonsignificant to significant with the addition of the new variables. The effect was small, but staff will examine it further.

Summarizing the findings with the new variables, Ms. Hall stated that the significance and direction of the variables included in original models generally remained the same; credit for time served, single vs. multi-county districts, and conviction rate per population were significant predictors of outcomes in both the misdemeanor and the felony models; an habitual felon charge and a charge in a mandatory active cell in Classes E through H were also predictive of outcomes in the felony model; the addition of the new variables changed the significance of district characteristics in the felony model from nonsignificant to significant; and, with the exception of PRL VI, prior record level remained nonsignificant in the felony model.

Ms. Hall noted that at the June meeting and subsequent presentations, discussion pointed to prior decision points and their potential affect on sentencing. Data are not always available to account for earlier decision points; however, staff plans to examine dismissal dispositions for possible inclusion in the models. Ms. Hall presented some descriptive statistics on dismissals during FY 2019. She pointed out that different filing practices can affect how dismissals appear in the data. Staff will have to figure out how to account for that variation in practice before they can incorporate dismissal rates into the models.

Ms. Hall concluded by outlining the plan for the coming months, including examining and including district dismissals, further examining criminal history, and looking at modeling additional discretionary decision points, such as the imposition of active sentences and the length of active sentences.

Chairman Brown asked about the number of convictions from single-county districts versus multi-county districts. Mel Lugo responded that the distribution was pretty even with slightly more coming from the multi-county districts. Chairman Brown asked what the hypothesis was regarding those districts. Ms. Hall responded that there was no hypothesis, only a question staff is exploring.

SMCP CAPACITY PROJECTION UPDATE

Chairman Brown recognized Dr. Melissa (Mel) Lugo, staff, to present an update on the Statewide Misdemeanant Confinement Program (SMCP) Capacity Projections (see Handout). Dr. Lugo first recognized Sherriff Frye and Cortney Goodwin from the North Carolina Sherriff's Association (NCSA) and thanked them for their assistance in the capacity projections. Chairman Brown also recognized and thanked the representatives from the NCSA. Dr. Lugo began the update by noting the capacity for June 2022 was 1,231, which included capacity from both receiving counties (37 counties) and temporary moratorium counties (31 counties). She explained that temporary moratorium counties are those that have a temporary suspension on receiving additional inmates from other counties to their facilities.

Dr. Lugo reminded members that two scenarios were developed to account for the impact of the COVID-19 pandemic. She explained that the first scenario is a broad definition of capacity that includes capacity

from receiving counties, temporary capacity from sending only counties to house in-county inmates, and the full capacity from temporary moratorium counties. Dr. Lugo highlighted that the projected capacity for scenario 1 was 1,466, which is 19% higher than the reported June 2022 capacity.

Dr. Lugo then turned to the scenario 2 projection and explained that under this scenario capacity includes the full allocation of receiving counties and only occupied beds from temporary moratorium counties. She noted that under this scenario a recovery of beds is assumed. For scenario 2, she stated that the projected capacity was 1,057, which was 14% lower than the June 2022 capacity. She explained for both scenarios, the effects of the pandemic affected the accuracy of the projections, but capacity appears to be rebounding compared to last year.

To follow this point, Dr. Lugo highlighted the lowest capacity for fiscal year 2022 was 1,049. She added that the lowest capacity for fiscal year 2022 was the highest reported capacity for last year's capacity projection and further emphasized capacity is getting better. She also noted that the highest capacity reported in fiscal year 2022 was 1,456.

Dr. Lugo highlighted that the remaining years of the projection for both scenario 1 and scenario 2 are also shown for June 2023 and June 2026. She noted that the projected capacity for these two years is visually depicted in the capacity and population trends figure. Dr. Lugo explained the trend lines shown in the figure by noting that the blue solid line represents the SMCP capacity, the dotted blue line represents the scenario 1 projected capacity, and the blue with dashes represents the scenario 2 projected capacity. She noted that, for both scenarios, the projected capacity slightly deviated from the reported SMCP capacity trend line. She also highlighted that the lowest capacity is shown for reference which was 755 in April 2020 and the capacity for June 2022, the 1,231 beds, is a 63% increase. This indicates that capacity is continuing to improve.

Dr. Lugo also discussed the average monthly population (AMP) shown in the figure, represented by the green line. She explained that the lowest AMP occurred in February 2021 (535 inmates) and the June 2022 AMP was 46% higher with 782 inmates reported. Dr. Lugo concluded the capacity projections update and opened the floor for questions.

With no questions, Chairman Brown invited the NCSA representatives to provide any insights to the capacity projections. Sherriff Frye noted that things are getting better except for staffing. He further explained that staffing shortages are continuing to get worse due to the COVID-19 pandemic.

JUVENILE RESOURCE PROJECTION UPDATE

Chairman Brown recognized Tamara Flinchum again to present an update on the Youth Development Center or YDC Population Projection (*see* Handout). Before beginning her presentation, Ms. Flinchum responded to an earlier question regarding the impact of Raise the Age (RtA) youth on the projections inquired by Rep. McNeil during Ms. Hevener's update on the adult prison projections. Ms. Flinchum stated that the RtA youth did not impact the adult prison system since so few 16- and 17-year juveniles did not receive an active sentence; however, the juvenile justice system was affected by the increase in juvenile age of accountability. 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 2021 court or disposition data and YDC population or "stock" as of June 30, 2021 and were presented to Commissioners in March 2022. Ms. Flinchum reminded Commissioners that these projections included

the first 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 2021 data.

Ms. Flinchum pointed out the current YDC population and the YDC projection in the first figure. In FY 2022, the projection was 183 and the average June population was 168, a difference of 14 beds between the projection and the average June population. The projection for FY 2023 was 210 and the average August population was 165; a difference of 45 beds between the projection and the August population. Ms. Flinchum continued by explaining the projected YDC population within the context of the actual minimum and maximum YDC populations across the past 5 fiscal years. The FY 2022 projection was 183, the highest population was 184 and the lowest was 158 in FY 2022 making this year's projection fairly accurate since the projected number was close to the maximum YDC population for the FY.

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. From FY 2019 to FY 2020, there was a 28% decrease in the YDC population – a decrease that occurred shortly after the RtA implementation and the start of the pandemic. The YDC population continued to decrease (6%) from FY 2020 to FY 2021. The YDC population increased 7% from FY 2021 to FY 2022. For the first two months of FY 2023, the YDC population mimics FY 2022. While the YDC population had increased, it is still below pre-RtA and pre-pandemic levels (FY 2019). 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.

Mr. Beeler questioned whether the Division of Juvenile Justice and Delinquency Prevention (DJJDP) would need all of the YDC beds that are planned. Ms. Flinchum pointed out that new YDC beds can be converted to detention beds as needed. Megan Perrault from DJJDP stated that juvenile complaints have increased and the system was returning to normal after the pandemic and stated that detention beds were the biggest need. Sheriff McFadden described the work that had been going on at the Mecklenburg County Detention Facility and stated that the county had decided to close it.

HIGHLIGHTS FROM 2022 NASC CONFERENCE
CHAIRMAN AND DELEGATE

Chairman Brown discussed the attendance of staff and Commission members at the National Association of Sentencing Commissions' (NASC) annual conference in Portland, Oregon in August 2022. Chairman Brown noted 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. He shared that this year's conference was hosted by the Oregon Criminal Justice Commission and was titled "Documenting Disruption: New Ideas for Data, Sentencing, and Justice."

Chairman Brown asked staff to share their insights from the conference. Ms. Mel Lugo said that it was a great first conference for her and was interesting to see how member states could come together to share data and expertise. Ms. Meghan Boyd Ward echoed Ms. Lugo's sentiments and shared that some of the most interesting sections were on voting rights and mental health in probation.

Finally, Chairman Brown congratulated the Commission's Executive Director, Ms. Michelle Hall, on being voted President of the NASC Executive Committee at the Conference for a three-year term.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown thanked the staff for their presentations and reminded the members that the next full Commission meeting Is Friday, December 2, 2022.

ADJOURNMENT

Chairman Brown adjourned the meeting at 2:54 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary