

**MINUTES**  
**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING**

**December 6, 2019**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 6, 2019, at the North Carolina Judicial Center in Raleigh, North Carolina.

**Members Present:** Chairman Charlie Brown, Sheriff James Clemmons, Louise Davis, Danielle Elder, Judge Sherri Elliot, Representative John Faircloth, Chris Fialko, Willis Fowler, Judge R. Greg Horne, Susan Katzenelson, Chief Henry King, Honorable Maureen Krueger, Honorable Tammy Lee, Representative Allen McNeill, Honorable Jim Mixson, Luther Moore, Tim Moose, Judge Fred Morrison, Senator Bob Steinburg, Calvin Suber, Patrick Weede, and Judge Valerie Zachary.

**Guests:** Lisa Costner (former Commissioner), Sarah Llaguno (DPS, Combined Records), Kim Robuck (DPS, Combined Records), William Lassiter (DPS, DACJJ), Kim Quintus (DPS, DACJJ), Todd Ishee (DPS, DACJJ), Joshua Panter (DPS, DACJJ), Eric Zogry (IDS, Juvenile Justice), Colonel Carter Witten (DEQ, DMF), John Batherson (DEQ), Meagan Honnold (OSBM), Melinda Stevens (NCSA), Tom Bashore (NCSA), and Jesse Sholar (NCSA).

**Staff:** Michelle Hall, John Madler, Ginny Hevener, Tamara Flinchum, Meghan Boyd Ward, Rebecca Dial, John King, Becky Whitaker, Dr. Jennifer Lutz, and Shelley Kirk.

**INTRODUCTION AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS**

Chairman Brown called the meeting to order at 10:02 a.m. He asked members and guest to introduce themselves. Chairman Brown introduced the following new Commissioners: Judge Sherri Elliott, representing the District Court Judges' Association, and Patrick Weede, representing the Bar Association.

Chairman Brown presented a Resolution honoring departing Commissioner Lisa Costner (Bar Association). Luther Moore moved to adopt the Resolution; Sheriff Clemmons seconded the motion, and the motion carried. Ms. Costner made departing remarks.

Chairman Brown reviewed the agenda and then presented the minutes from the September 27, 2019, Sentencing Commission meeting. Luther Moore moved to adopt the minutes as presented; the motion was seconded and carried.

**25<sup>TH</sup> ANNIVERSARY CELEBRATION: PRINCIPLES OF STRUCTURED SENTENCING**

Chairman Brown recognized Michelle Hall, staff, to present an overview of the Principles of Structured Sentencing (*see* Presentation). Ms. Hall began by reminding the members that the Sentencing Commission started the process of developing Structured Sentencing by establishing a set of principles to guide their decisions. The Commission believed that sentencing policies should be truthful, be consistent, be certain, set resource priorities, and be balanced with correctional resources. Ms. Hall explained that at this meeting they were going to focus on two of those principles: sentencing policies should set resource priorities and should be balanced with correctional resources. She explained how the topics for the meeting fit under those two principles.

## **JUVENILE JUSTICE REINVESTMENT: UPDATE ON PLANNING AND IMPLEMENTATION**

Chairman Brown recognized William Lassiter, Deputy Secretary for Juvenile Justice, Department of Public Safety (DPS), to provide an update on the planning and implementation of the Juvenile Justice Reinvestment Act (JJRA) (see Presentation).

Deputy Secretary Lassiter began by explaining the definition of “juvenile” under the JJRA. He then explained the process for transferring qualifying felony cases from the juvenile justice system into the adult system, as well as the new “reverse waiver” process which will allow certain cases to be transferred back into the juvenile justice system. Deputy Secretary Lassiter presented data to explain the rate at which new juvenile complaints are expected to enter the system over time.

Deputy Secretary Lassiter informed the Commission of the stakeholder forums that have been held across the state to provide information on the JJRA. He explained that the inclusion of 16- and 17-year-olds in the juvenile justice system will require additional resources for transportation and detention beds/housing and discussed some of the plans for getting those resources in place. He talked about changes to Juvenile Crime Prevention Council (JCPC) funding. Deputy Secretary Lassiter then remarked on Youth Development Center (YDC) and Detention Center facility design, stating that the addition of 16- and 17-year-olds will necessitate some changes. With regard to YDCs and Detention Centers, Deputy Secretary Lassiter also talked about changes to programming, re-entry and step-down services, health care services, education, and human resources. He stated there will be programming tailored to older juveniles by providing expanded vocational training and job placement, among other initiatives.

Deputy Secretary Lassiter reported on training sessions to educate law enforcement officers about the JJRA and the changes it will have on their work. He mentioned that Juvenile Court Counselors will now have access to CJLEADS to assist in their determination of whether a person qualifies as a juvenile or as an adult. He also briefly described some other changes and updates to the judicial branch in preparation for the implementation of the JJRA.

Deputy Secretary Lassiter concluded his presentation with explaining the budgetary provisions that appropriate funds for various aspects of the implementation of the JJRA, including new court personnel.

Chris Fialko asked if there is a unified database across all 100 counties, and whether it includes charging policies. Deputy Secretary Lassiter explained that the North Carolina Juvenile Online Information Network (NC-JOIN) tracked initial complaints but that it did not include the facts of the cases so it would not be possible to determine if similar cases were charged differently. Mr. Fialko asked if it showed juveniles transferred to the adult system, Deputy Secretary Lassiter replied that it did. Mr. Fialko asked if juveniles can ask to be transferred to the adult system. Deputy Secretary Lassiter responded that they can but they are likely to get more services staying in the juvenile system.

Tammy Lee mentioned that raising the age of juvenile jurisdiction was a legislative goal of the North Carolina Association of County Commissioners and she wanted to thank everyone involved in making this possible.

Chairman Brown asked about the new Madison Detention Center. Deputy Secretary Lassiter replied that it started taking juveniles at the end of November and that it received the first 16/17-year-old charged with a juvenile offense after December 1. Chairman Brown asked about the McWhorter

Detention Center. Deputy Secretary Lassiter replied that it was a unit located on the campus of the Stonewall Jackson YDC. The YDC was repurposed as a detention center to meet the short-term projected needs associated with raising the age; however, the unit can be repurposed to a YDC unit if needed.

Susan Katzenelson asked if the Department would be able to separate the 16- and 17-year-old juveniles from the rest of the population for housing and services. Deputy Secretary Lassiter explained that the plan is to have certain facilities tailored toward the needs of the older population, with a focus on vocational training rather than middle school and high school education. For detention, they are looking at jails with excess capacity for the older population because they tend to be more secure facilities, and current detention facilities for the younger population. Deputy Secretary Lassiter cautioned that they will have to make adjustments as the new population comes in. Other states that have raised their age of juvenile jurisdiction found that the population skewed toward the older population because the courts wanted to focus on the juvenile who were more serious and more violent. The plan is to provide different housing and services for this new population but they want to work with real numbers to avoid wasting resources.

Representative Faircloth asked about gang issues in the juvenile system. Deputy Secretary Lassiter responded that the JJRA included a requirement that the Division of Adult Correction and Juvenile Justice (DACJJ) provide a gang assessment for every juvenile 12 years and older entering the system. The Department is training court counselors to deal with the gang issues once identified.

Chairman Brown thanked Deputy Secretary Lassiter for his presentation.

#### **YOUTH DEVELOPMENT CENTER RESOURCE PROJECTIONS AND FY 2019 JUVENILE DISPOSITIONS**

Chairman Brown recognized Dr. Jennifer Lutz, staff, to present the YDC Population Projections for the Fiscal Year 2020 to the Fiscal Year 2024 (*see Handout*). Dr. Lutz reviewed the purpose of the projections and described the staff's methodology. The projections involved using a combination of FY 2019 juvenile justice disposition data (projecting 10- to 15-year-olds) and adult conviction data (projecting 16- to 17-year-olds, beginning in December 2019). Dr. Lutz then presented the juvenile disposition chart and explained how offense classification and delinquency history level combine to determine the dispositions juveniles receive. She noted that of the 3,220 juvenile delinquent dispositions in FY 2019, 55% involved juveniles with a minor offense and low delinquency history and added that just 3% of all dispositions resulted in a Level 3 (YDC) commitment.

Because of the JJRA, the projections used adult conviction data to estimate the number of 16- and 17-year-olds who will come under juvenile jurisdiction in December 2019. In FY 2019, 2,993 16- and 17-year-olds were convicted of Class H or Class I felonies or non-motor vehicle misdemeanors. Of the 2,993 16- and 17-year-olds, 21% were convicted of a serious offense (excluding classes F and G), and 79% were convicted of a minor offense.

Additionally, the YDC population at the end of the fiscal year is factored into the projections. On June 30, 2019, 204 juveniles were housed in a YDC. 99% of these juveniles were adjudicated for a violent or serious offense, and half had a high delinquency history. A little more than half (53%) of the juveniles in a YDC were committed for a new offense, 41% were committed for a violation of probation, and 6% were committed following revocation of post-release supervision (PRS).

Dr. Lutz reviewed the assumptions used to develop the projections. Additionally, she reviewed trend data (i.e., growth rates based on criminal justice trends, delinquent complaint trends, and population trends), and empirical data from the previous fiscal year (e.g., percentage of juveniles receiving a Level 3 disposition, average YDC length of stay, and the percentage of juveniles entering YDC by admission type).

Dr. Lutz shared the YDC population projections for FY 2020 through FY 2024 and noted that the projection includes 16- and 17-year-olds beginning in the first year of the projection (FY 2020). The projected YDC population will be within available YDC capacity, except in FY 2021; however, as she explained, DACJJ plans to employ flexible space to accommodate the projected bed deficit in FY 2021. Dr. Lutz clarified that the projections for this year are lower than last year because fewer juveniles were committed to a YDC (220 at the end of the previous FY compared to 204 at the end of this FY). Additionally, the projection was lower than last year because there were fewer Level 3 dispositions imposed this year (from 100 last year to 83 this year).

Dr. Lutz concluded her presentation by sharing trend data relating to the accuracy of the projections in the context of YDC admissions and releases. She noted that this is an important element of the projections and that fluctuations within these components can affect the projections' accuracy.

Commenting on the accuracy of the projections, Ms. Katzenelson suggested that evaluations of the projections be done every six months rather than every year. She noted that in the early years of implementation of SSA, evaluations of the accuracy were done every six months.

Chairman Brown asked how the policy change will affect juveniles' length of stay at a YDC. Deputy Secretary Lassiter said that the average length of stay now is 13-14 months. He added, however, that the length of stay could increase with the new older population as judicial practices could change.

Chairman Brown expressed surprise at the YDC population breakdown by admission type. Specifically, he asked for further insight about juveniles that enter a YDC through a probation violation. Deputy Secretary Lassiter suggested that the probation violation admissions are often new offenses, but judges file a probation violation rather than adjudicating a new offense because it is an easier path to a Level 3 disposition. He suggested that additional research is needed on probation violations that lead to juveniles being admitted to YDCs.

### **COMMISSION OPERATIONS REFRESHER**

Chairman Brown recognized Michelle Hall, staff, to provide a refresher on Commission operations. Ms. Hall noted the purpose of the presentation and explained that it would include three parts: a review of the by-laws, an update of communication practices, and Commission members voting on a name for the Sentencing Commission Boardroom.

Ms. Hall began by providing an overview of the Sentencing Commission by-laws (*see Handout*). The by-laws were adopted in 2000 and address membership and vacancies, meeting requirements, conducting business, selecting issues for study, reporting recommendations, and utilizing subcommittees. They are based on the Commission's mandate as well as policy decisions where the mandate is silent. Ms. Hall pointed out that the non-statutory by-laws can be amended, added, or deleted by a majority vote of the Commission. She reviewed details of the various provisions.

Turning to communication practices, Ms. Hall explained the process for notifying Commissioners of upcoming meetings and identified several potential improvements. She asked all members to update their contact cards, explaining that the cards would not be published but would only be used in urgent situations, such as the need to cancel a meeting due to inclement weather.

Finally, Ms. Hall told the members that the Administrative Office of the Courts had asked the Sentencing Commission to pick a name for the Boardroom that would be in keeping with the theme used for naming the other rooms in the building; that is, naming the room after a North Carolina native tree. She offered four options developed by the staff and Chairman: Fraser Fir, Hickory, Poplar, and Sycamore. Commission members cast the following votes: Fraser Fir – 2, Hickory – 8, Poplar – 3, and Sycamore – 8. There being a tie between Hickory and Sycamore, Chairman Brown cast the tie-breaking vote for Hickory.

### **LEGISLATIVE SESSION UPDATE/SUMMARY**

Chairman Brown recognized Becky Whitaker, Ginny Hevener, and Meghan Boyd Ward, staff, to provide a summary of the 2019 Session of the General Assembly and its impact on North Carolina's prison population. Ms. Whitaker referred Commissioners to two handouts relevant to the legislative update: (1) a legislative summary report containing information on bills that created new offenses or reclassified existing offenses, juvenile justice bills, bills of interest, and budget bills; and (2) a table showing new offenses and reclassified offenses grouped by offense classification (*see Handouts*).

Ms. Whitaker reviewed the new offenses and reclassified offenses in felony Classes A through E (*see Handout*). She pointed out that most of the reclassified offenses dealt with assaults on law enforcement officers. Class A through E felonies are the most serious offenses and can carry significant active time.

Ms. Hevener stated that, in addition to the Commission's overall mandate to provide resource projections for correctional and delinquent populations, the Sentencing Commission is legislatively mandated to provide impact projections for each bill that affects criminal penalties or juvenile justice. These mandates are linked to the Structured Sentencing principle that sentencing policies should be balanced with correctional resources. Ms. Hevener stated that the impact of a proposed change primarily depends on the number of convictions/adjudications for that offense and the class of the offense.

Ms. Hevener explained that impact on the prison population occurs for Class A through E felony offenses with a single conviction due to the active sentence requirement in almost every cell of the punishment grid, and that convictions stack up over time due to the length of sentences imposed. While the impact from these bills will depend on the volume of convictions, Ms. Hevener noted that there are fewer convictions in these offense classes, with Class A through E felonies accounting for only 14% of felony convictions last year. She noted that minimal impact is expected for the reclassifications due to the small number of convictions for the reclassified offenses.

Ms. Whitaker reviewed the new offenses and reclassified offenses in felony Classes F through I. Ms. Hevener noted that Class F through I felony offenses impact the prison population through the higher volume of convictions (accounting for 86% of felony convictions last year). Although these offenses are less likely to receive active sentences and carry shorter sentence lengths, they can affect the prison population through revocations of probation for offenders who commit a new crime or abscond from supervision. The impact will depend on the volume of these convictions.

Turning to misdemeanor offenses, Ms. Whitaker reminded the Commissioners that Class A1 misdemeanors were originally created to address assaultive misdemeanors. She then reviewed the new and reclassified misdemeanor offenses.

Ms. Hevener stated that legislative changes to misdemeanor offenses no longer impact the prison population because all misdemeanants serve any active sentences in local jails either directly or through the Statewide Misdemeanant Confinement Program.

Ms. Whitaker provided a summary of the Commission's legislative review for 2019 (*see Handout*). She reminded the Commission they have a statutory duty to review all proposed legislation which creates a new criminal offense, changes the classification of a criminal offense, or changes the range of punishment or dispositional level for a classification, and to then make recommendations to the General Assembly. In 2019, the Commission met twice for the purpose of reviewing bills. They reviewed a total of 61 bills (38 House bills and 23 Senate bills). Twenty-one bills passed which contained criminal provisions (10 with felony provisions, seven with misdemeanor provisions, and four with both felony and misdemeanor provisions). Twenty-nine felony provisions passed, nine of which were not reviewed by the Commission – one provision did not fit the Commission's review policies and eight provisions were added after the last legislative review date. Ms. Whitaker pointed out that seven of the eight provisions added after the review date came from the same bill. Mr. Fialko asked which bill contained those seven provisions. John Madler responded that it was the bill containing absentee ballot fraud provisions. Ten of the reviewed provisions were found to be consistent with the Office Classification Criteria and 10 were found to be inconsistent. Of the 10 inconsistent provisions, all 10 finished the session inconsistent despite Sentencing Commission recommendations.

Ms. Boyd Ward presented information on juvenile justice bills, bills of interest, and budgetary bills (*see Handout*). Within the juvenile justice bills she highlighted the recommendations made by the Juvenile Justice Advisory Committee embodied in Session Law 2019-186 (S.B. 413), which made modifications to the JJRA. The bills of interest ranged across many different areas including: testing of sexual assault kits; relief mechanisms for victims of human trafficking; collateral consequences; prison reform; and recodification and decriminalization of local ordinances and administrative rules.

Ms. Boyd Ward then discussed the budget impasse between the Governor and the General Assembly. At the end of June, the General Assembly ratified a budget and on June 28, 2019 Governor Cooper vetoed the bill. A veto override passed in the House on September 11, 2019, but the Senate did not undertake a veto override in their chamber. During this time, in lieu of a complete budget, the General Assembly passed what became known as "mini budgets" which addressed fewer topics and the Governor signed a majority of these into law. Ms. Boyd Ward noted that while the mini budgets modified some aspects of the FY 2019 budget, the 2016 amendment to G.S. 143C-5-4 allows the state to operate at existing funding levels. She explained that the vetoed budget could be taken up again when the General Assembly reconvenes in January 2020 because the Adjournment Resolution (Res. 2019-20) for the 2019 session included a provision to allow them to consider vetoed bills. She shared relevant information to the Commission from the mini budgets, including describing slight modifications to the overall operating budgets of the Judicial Branch, Department of Justice, and Department of Public Safety. Finally, Ms. Boyd Ward noted that important funding had been appropriated for implementation of the JJRA and to bolster prison safety.

Chairman Brown recognized John Madler, staff, to present an overview of the results of the legislative review process over the last 10 years. Mr. Madler reminded Commissioners of their statutory duty to review proposed legislation that creates a new offense, reclassifies an existing offense, or changes

the punishment to determine whether it is consistent or not with the Offense Classification Criteria or with Structured Sentencing and to report its findings to the General Assembly. He presented a chart which displayed the results of the review of proposed legislation from CY 2010 to CY 2019. The chart focused on criminal provisions that were enacted and which the Commission had reviewed for consistency; it did not include provisions that did not pass or that passed without being reviewed. Mr. Madler reported that for seven of the ten years, the majority of the provisions were consistent with the Offense Classification Criteria or Structured Sentencing, for two years it was evenly split, and for one of the ten years the inconsistent provisions outnumbered the consistent provisions. He added that this can be due to a single bill with multiple changes.

### **SHELLFISH AQUATIC OFFENSES STUDY – RECLASSIFICATION**

Mr. Madler continued to the next agenda item and provided an overview of the Shellfish Aquatic Offenses Study and the proposed recommendations (*see* Handout). Mr. Madler explained that this study was part of Senate Bill 648, an act to provide further support to the shellfish aquaculture industry in North Carolina. Under Section 10 of the bill, the Division of Marine Fisheries (DMF) of the Department of Environmental Quality (DEQ) was mandated to study the penalties associated with violations of laws regarding taking shellfish and shellfish aquaculture operations. DMF was to consult with the Department of Justice (DOJ) and, because the study involved criminal penalties, the Sentencing and Policy Advisory Commission. Mr. Madler stated that Colonel Carter Witten, DMF, and John Batherson, Assistant General Counsel with DEQ, were present to explain the issue and answer any questions. Chairman Brown recognized Colonel Witten.

Colonel Witten stated that the number of shellfish lease applications in North Carolina has increased exponentially, from 22 between 2005 and 2011 to 350 between 2012 and 2019. This represented an increase of approximately 1,491%. The major issue with shellfish leaseholders is the cost of establishing and maintaining private aquaculture operations; theft of gear and product is a significant concern because it makes operations unsustainable. To provide a better deterrent, DMF is recommending changes to the four statutes set out in the study request and expansion of their police powers.

Luther Moore asked about the size of the Marine Patrol and the typical offenses. Colonel Witten responded that he has 54 sworn officers under him that work in three law enforcement districts along the coast and that their jurisdiction includes all coastal waters from the Virginia border to the South Carolina border. They typically see violations of the offenses related to catches, purchases, and transportation of fish and shellfish. Mr. Moore asked if they have police powers like a sheriff. Colonel Witten replied that they have some police powers but are looking for them to be expanded to improve enforcement.

Mr. Madler stated that DMF had provided a copy of the draft report and recommendations. The Commission would review each of the recommendations and provide input for DMF to incorporate into the report. He added that DOJ was also reviewing the report. The final report is due to the General Assembly by March 1, 2020. Mr. Madler then listed the four offenses DMF was asked to study and the issues it was asked to consider. He provided a summary of each offense and the DMF's findings and recommendations.

The first offense was taking shellfish from certain areas forbidden; penalty (G.S. 113-207), a Class 3 misdemeanor with a discretionary fine. DMF did not find any issues with the offense and recommended no change.

The second offense was protection of private shellfish rights (G.S. 113-208), a Class A1 misdemeanor with a discretionary fine of up to \$5,000. DMF found that the statute was limited to shellfish while the conduct was also covered by the newer and broader offense of protection of private marine aquaculture rights (G.S. 113-218). Therefore, DMF recommended repealing G.S. 113-208.

The third offense was protection of private marine aquaculture rights (G.S. 113-218), a Class A1 misdemeanor with a discretionary fine of up to \$5,000. DMF reported that the average fine for this offense is less than \$25 and does not deter violations. It recommended imposing a mandatory minimum fine of \$500 for the first offense, \$1,000 for second and subsequent offenses within 3 years of the first offense, and retaining the maximum fine of \$5,000.

The fourth offense was robbing or injuring hatcheries and other aquaculture operations (G.S. 113-269) and it contained two separate offenses. Subsection (e) addressed taking fish or aquatic species and receiving or possessing stole fish or aquatic species. Violation is a Class 1 misdemeanor if the value of the fish is \$400 or less, a Class H felony if the value of the fish is more than \$400. Mr. Madler pointed out that this offense was similar to the offense of larceny (G.S. 14-72) but that that threshold for that offense was \$1,000. DMF recommended raising the felony threshold to \$1,000 and imposing a mandatory minimum fine of \$500 for the first offense, \$1,000 for second and subsequent offenses within 3 years of the first offense, and retaining the maximum fine of \$5,000. Subsection (f) addressed willfully destroying or injuring an aquaculture facility or aquatic species being reared in an aquaculture facility. Violation is a Class 1 misdemeanor with a discretionary fine. DMF recommended imposing a mandatory minimum fine of \$500 for the first offense, \$1,000 for second and subsequent offenses within 3 years of the first offense, with a maximum fine of \$5,000.

Mr. Moore asked who initiated the study and whether there was any opposition to the recommendations. Mr. Madler replied that it was mandated by the General Assembly as part of a larger bill to support the shellfish aquaculture industry in North Carolina and he was not aware if there was any opposition. Colonel Witten explained that the highest fine imposed was \$25 and, while victim losses can be up to \$25,000, restitution is almost never ordered. He said that DMF felt it needed more of a deterrent. Senator Steinburg stated that he represents a coastal region and that this is a big problem that needs to be addressed.

The Commission did not identify any concerns with the recommended changes to these statutes.

The last item DMF studied was that of expanding the enforcement authority of the DMF Marine Patrol. DMF recommended amending G.S. 113-136 (Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors) to provide DMF Marine Patrol officers with the same law enforcement authorities as Wildlife Resource Commission (WRC) officers. Mr. Madler explained that DMF asked for the Sentencing Commission's feedback on the recommendation even though it was not a penalty change. Mr. Batherson stated that the statute currently grants general police powers to WRC officers but excludes Marine Patrol officers from certain provisions.

Danielle Elder asked if that authority would extend beyond these shellfish offenses to other criminal offenses, such as impaired driving. Colonel Witten responded that it would, allowing them to respond to other offenses if they witnessed them. Ms. Elder asked if they had the manpower to do that. Colonel Witten explained that they would not look for other offenses but that they would have the authority to address them if they witnessed them rather than having to contact other law enforcement agencies. Senator Steinburg stated that the Marine Patrol is a neglected group and it should be on par



with other law enforcement agencies, it is a small department so it is not a budgetary issue and it may help address recruiting difficulties. He added that he plans to introduce legislation to increase their pay in the next session.

Sheriff Clemmons pointed out that an issue that exists with law enforcement agencies is the scope of their authority. Agencies are set up with specific scopes and problems can arise when they overlap.

Representative Faircloth asked if Marine Patrol officers are subject to the same training and standards requirements as other officers. Colonel Witten replied that they are subject to the same requirements as any other sworn law enforcement officer. Representative Faircloth asked if their responsibilities were similar to those of the WRC officers. Colonel Witten replied that they are similar, except that Marine Patrol officers oversee coastal waters while WRC officers oversee inland waters. Representative Faircloth asked if the DMF's interest was to have the authority to function just like WRC officers. Colonel Witten replied that it was, pointing out that they are often the only law enforcement officers in an area following a natural disaster, such as on Ocracoke Island after Hurricane Dorian. Representative Faircloth pointed out that legislation currently allows law enforcement agencies to assist each other and asked whether an agreement could produce the same result. Colonel Witten responded that the problem was that they did not have subject matter jurisdiction. The Marine Patrol only has jurisdiction over marine issues so it cannot enter into a memorandum of understanding with other agencies outside of that area.

Mr. Fialko asked if the Marine Patrol has jurisdiction in all 100 counties. Colonel Witten responded that it does but only within its subject matter. Mr. Fialko then questioned the amendment that would remove the requirement that the Marine Patrol have reasonable suspicion that a violation has been committed in order to make an inspection.

Judge Horne stated that it seemed appropriate for the Sentencing Commission to endorse the recommendations about the four offenses but that the issue of policing authority is not a sentencing issue. Representative McNeill agreed.

Chairman Brown summarized the Commission's input as supporting the recommendations regarding the four offenses and not providing any comment on the question of policing authority. He thanked the guests from DEQ for being present and answering questions.

#### **FY 2018 DWI STATISTICAL REPORT**

Due to time constraints, Chairman Brown postponed this item until the March 2020 meeting of the Sentencing Commission.

#### **PRISON FACILITIES: PLANNING AND SECURITY UPDATE**

Chairman Brown recognized Todd Ishee, Commissioner of Prisons, from DPS, DACJJ, to provide an update on prison planning and security (*see* Presentation). Commissioner Ishee briefly introduced himself saying that he is new to North Carolina and that he started his career in 1989 in Ohio as a correctional officer. Throughout his 29 years there he worked his way up to hold other leadership positions in Ohio corrections.

Commissioner Ishee shared that he has traveled throughout the state visiting a total of 55 DPS facilities. Visiting facilities and meeting staff has helped him to develop a three-year plan to move the prison system forward. He explained broadly that a focus on three areas will help make prison and communities safer, as well as increase public trust: staff safety and wellness, offender rehabilitation, and team and mission unity within DACJJ. He reported that violent incidences in facilities are trending downward in 2019, but the work will continue to drive that number down. He noted that there would also be more of an effort to communicate the good things that are happening within prisons by both offenders and staff to help the public better understand what is occurring within prisons. At the same time, he said that they would also continue to report on any issues that arise within prisons. Commissioner Ishee also discussed improving communication infrastructure (i.e., email accounts) and providing safe, clean, and well-maintained facilities.

Returning to the three areas he identified earlier, Commissioner Ishee explained that staff safety and wellness is the priority and that various components contribute to improving this area, such as zero tolerance for violence, reducing contraband, and providing work and education opportunities to offenders. In the second area, creating one team and one missions within DACJJ, he said they would focus on creating trusted, visible, and competent leadership as the first step in this process. Other components contributing to team and mission unity are creating a culture of engagement, providing training, and rewarding excellence. The last area Commissioner Ishee discussed was their efforts toward improving rehabilitative services for offenders, including creating large and diverse menus of activities and program which focus on technology, career skills training, and evidence-based programs. He lauded the successes he has already seen with the work of the State Reentry Council Collaborative. He also noted that DACJJ has the third most profitable prison industry, Corrections Enterprise, behind Texas and California, and an already existing robust relationship with the Community College System.

Commissioner Ishee closed his presentation by explaining that DACJJ has implemented a new organizational structure for prison leadership. In addition to the existing structure of a Commissioner, Assistant Commissioner, and four Regional Directors, the Division has restructured positions so that they focus directly on discrete areas such as facility management, rehabilitative services, and female facilities.

Ms. Lee stated that it was good to bring in someone from the outside to provide a fresh look at the issues. She noted that safety and morale are big issues which has led to reassigning some correctional officers to facilities that are not close to where they live. Commissioner Ishee responded that DPS had to suspend some prison units in order to divert resources to other units. Approximately 400 correctional officers were impacted by the suspensions but it is believed shifting them will improve conditions for 3,000 correctional officers. Commissioner Ishee explained the they need close custody beds most of all right now.

Chairman Brown thanked Commissioner Ishee for his presentation.

#### **ADJOURNMENT**

Chairman Brown reminded the members of the 2020 Sentencing Commission meeting dates: March 6, June 5, September 11, and December 4. He added that Commissioners will be notified of subcommittee dates when they are set. Chairman Brown adjourned the meeting at 2:50 p.m.

Respectfully submitted,

Shelley Kirk  
Administrative Secretary