

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

March 1, 2019

The North Carolina Sentencing and Policy Advisory Commission met on Friday, March 1, 2019, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Louise Davis, Danielle Elder, Chris Fialko, Willis Fowler, Judge H. Thomas Jarrell, Susan Katzenelson, Chief Henry King, Honorable Tammy Lee, Honorable Ray Matusko, Dr. Harvey McMurray, Representative Allen McNeill, Luther Moore, Judge Fred Morrison, Representative William Richardson, Jim Toms, Judge Reuben Young, and Judge Valerie Zachary.

Guests: Jane Allen Wilson (for Frances Battle, VAN), Emily Mehta (AOC), Mildred Spearman (AOC), Sarah Llaguno (DPS, Combined Records), Kim Robuck (DPS, Combined Records), Mary Stevens (PRSP Commission), Robert Kurtz (DMH/DD/SAS), Eddie Caldwell (NCSA), Thomas Bashore (NCSA), Jesse Sholar (NCSA), Caroline Martin (Intern-OAH), and Luke Wollard (DRNC).

Staff: John Madler, Ginny Hevener, Tamara Flinchum, Meghan Boyd Ward, Rebecca Dial, John King, Becky Whitaker, and Shelley Kirk.

INTRODUCTION AND RECOGNITION OF NEW AND OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:00 a.m. Chairman Brown introduced the newest Commissioners, Chief Henry King, Jr., representing the NC Association of Chiefs of Police and replacing the now retired Tammy Hooper; the Honorable Raymond Matusko, representing the NC Association of Clerks of Superior Court and replacing the now retired June Ray; and Representative William Richardson, representing the NC House of Representatives and replacing Representative Darren Jackson who recently resigned. Members and guests then introduced themselves.

Chairman Brown presented a Resolution honoring outgoing Commissioner Chief Tammy Hooper. Luther Moore moved to adopt the Resolution; the motion was seconded and carried. Ms. Hooper made parting remarks.

Chairman Brown presented a Resolution honoring outgoing Commissioner Representative Darren Jackson (not present). Luther Moore moved to adopt the Resolution; the motion was seconded and carried.

Next, Chairman Brown presented the minutes from the December 7, 2018, Sentencing Commission meeting. Luther Moore moved to adopt the minutes as presented; the motion was seconded and carried. Chairman Brown provided the remaining 2019 Sentencing Commission meeting dates (June 7, September 13, and December 6) and the DWI Sentencing Subcommittee meeting dates (April 26, May 17) and reviewed the agenda for the meeting.

APPROPRIATE SETTING FOR DWI INMATES STUDY

Chairman Brown recognized John Madler, staff, to present information on the Appropriate Setting for DWI Inmates Study. Mr. Madler reviewed the mandate for the study (see Session Law 2018-5, Section

18B.2). The mandate requires the Sentencing Commission, in consultation with the Department of Public Safety and the N.C. Sheriffs' Association, to study the most effective setting to house and provide appropriate treatment services for DWI offenders. He reviewed the work the Commission had done at the December meeting. Staff compiled that work into the draft report the members received prior to this meeting. At this meeting, the Commission was to review relevant information for context, then evaluate possible solutions and develop recommendations. Mr. Madler added that they could identify any additional issues or suggestions during the process that they wanted to include in the report. Mr. Madler then reviewed the offenses involved, the sentencing provisions, sentencing statistics from FY 2016, and statutory provisions related to housing and treatment for these offenders. He listed the four options the Commission was considering for the appropriate setting: county jails, state prisons, dedicated multicounty jail treatment facilities, and dedicated prison treatment facilities. Based on the mandate, Mr. Madler suggested focusing the discussion around two questions: (1) Should DWI Aggravated Level One and Level One offenders be housed across the state or in dedicated facilities, and (2) Should DWI Aggravated Level One and Level One offenders be in locally run facilities (through the SMCP) or in state facilities run by DPS. In order to facilitate the discussion, Mr. Madler led the members through a worksheet that summarized their previous comments and considerations regarding each of the questions (*see Appropriate Setting Study worksheet*).

Turning to the first question of whether DWI offenders should be housed across the state or in dedicated facilities, Mr. Madler reviewed the positive and negative considerations regarding the population in question. Susan Katzenelson stated that she found it difficult to pick one solution knowing that there were recommendations coming from the DWI Sentencing Subcommittee that would affect the sentence lengths and time served. Chairman Brown asked how the Commission should proceed and Mr. Madler suggested that the Commissioners keep this study separate from the recommendations of the DWI Sentencing Subcommittee since those recommendations are not currently the law.

Art Beeler stated that, based on all of the considerations, he supported regional centers for this population. These offenders do not need to be mixed in with non-DWI offenders and they need to be given access to treatment. He acknowledged that it would cost more but putting them back into institutions was not the answer.

Representative McNeill told the members that the calls he receives from constituents with incarcerated loved-ones focus on three issues: (1) getting them moved closer to home, (2) getting treatment, and (3) getting vocational programs. He said that regional facilities could provide treatment but that they would also have to provide vocational programming to help the offender. Chris Fialko stated that that was why the criminal defense lawyers favored sending the offenders to a facility run by the Division of Adult Correction and Juvenile Justice (DACJJ). They could be housed in a prison, sent to another facility for treatment, and then returned to the prison to receive programming while they served the rest of their sentence.

Tammy Lee spoke in support of regional facilities with treatment and added that sometimes it is better for the offender if they do not have contact with their family during treatment. Judge Zachary questioned whether families might be more understanding of their loved-ones being further from home if they knew they were in a specialized treatment facility. Representative Richardson and Dr. McMurray emphasized the need for treatment in the facilities. Members discussed the advantages and disadvantages of restricting family visits.

Judge Young explained that DACJJ is constantly working to improve its programming and make it more effective. He pointed out, however, that this is a population with a special need and they would not be able to get the focused treatment they need if housed in the general population. He felt that regional facilities would probably be best for people with substance abuse issues because they deal with these issues on a daily basis and they need extended treatment. In addition, he stated that putting people together who have a common objective is beneficial for them.

Jim Toms raised the concern that some of these offenders might not be willing to participate in treatment which could reduce the effectiveness of the program for the others. He suggested that there be a precondition to qualify the participants. Danielle Elder mentioned the need to incentivize treatment as well.

Chairman Brown asked if the consensus was that dedicated facilities would be best for the population in question. The Commission members agreed.

Next, Mr. Madler reviewed the positive and negative considerations regarding providing treatment in the different types of facilities. Mr. Beeler stated the importance of having fidelity to the treatment program in each facility. Having a limited number of dedicated facilities would make it easier to maintain fidelity; in addition, it would make it easier to employ a sufficient number of clinical staff.

Ms. Katzenelson raised a question about where the inmates would be housed if they complete the treatment program before they complete their sentence. Members discussed the cost of having a separate treatment facility as well as the risk of moving these offenders back into the general population upon completing treatment. Chairman Brown noted that their discussions had not revealed any positive considerations for providing treatment in each of the SMCP jails across the state. Judge Young reiterated that these offenders should be housed separate from the general population. He talked about the different culture in each prison facility and issues with contraband and territory. It could be detrimental to house these offenders in the general population at any time during their sentence.

Judge Morrison asked about whether the offenders would go to mandatory treatment or whether there would have to be an incentive. Mr. Madler said that attending treatment would qualify for gain time credits against the sentence.

Members discussed various elements of a treatment program that should be considered, including screening, assessments, and aftercare.

Ms. Katzenelson raised the issue of parity. She explained that these recommendations should be subsequently reviewed for use with non-DWI substance abusers as well. Chairman Brown stated that ten years from now the State might have a best-practice model to use with other offenders.

Chairman Brown asked if the consensus was that dedicated facilities would be the best for providing treatment to DWI offenders. The Commission members agreed.

Finally, Mr. Madler reviewed the positive and negative considerations regarding the cost of the different types of facilities. Chairman Brown added the consideration of the cost of providing curriculum and employing clinical staff in each facility. Dedicated facilities would be fewer in number and therefore less expensive.

Ms. Lee asked if the counties where DWI offenders are currently housed through the SMCP have any expense involved. Chairman Brown responded that where treatment is provided, it is paid for by the county. Jane Allen Wilson pointed out that that could cause disparity in treatment if counties do not have the tax base to support these types of programs. Ms. Katzenelson added that the SMCP pays for housing these offenders so the funding might come from the SMCP. Eddie Caldwell told the Subcommittee members that these offenders are not receiving much treatment now so there would be an additional cost whether they are housed in the county jails or in dedicated facilities. Representative McNeill added that if the State picked up the cost, it would also have to assume the cost of existing county programs to be fair to them. The members also discussed the potential availability of Medicaid funding.

Mr. Beeler reminded the Subcommittee that this is a small population but that they have the opportunity to recommend dedicated, effective treatment for them that could potentially reduce recidivism. Representative Richardson agreed based on what he has seen with clients. Ms. Wilson pointed out the societal costs that occur because of addiction that could be saved as well.

Chairman Brown asked if the consensus was that, as far as cost was concerned, dedicated facilities would be the best for DWI offenders. The Commission members agreed. Based on the decisions they made under the three categories, the Commission members agreed that DWI offenders should be housed in dedicated facilities.

Turning to the second question of whether DWI offenders should be in locally run facilities (through the SMCP) or in state facilities run by DPS, Mr. Madler reviewed the positive and negative considerations regarding space needs. Mr. Beeler stated that there were pros and cons on each side of this issue and asked for Mr. Caldwell's thoughts. Mr. Caldwell stated that the Association has not surveyed sheriffs on their willingness and ability to provide designated facilities but he noted that even if they did, it is not known whether they would have space for treatment. Mr. Fialko stated that the defense attorneys felt the State already has experience creating similar types of facilities (e.g., DART Cherry, CRV Centers) while sheriffs would have to learn how to develop these facilities, in amongst all their other duties. Members discussed the potential security requirements for these facilities.

Judge Young reminded the members that new facilities require staffing and DACJJ is currently having problems staffing its prisons. Chairman Brown pointed out that these facilities might be a more attractive place to work. Ms. Wilson added that they do not want to attract correctional officers away from the existing prisons.

Chairman Brown observed that in the course of its discussion, the Commission had touched on all of the issues related to the second question. He asked if the consensus was that DWI offenders should be in state facilities run by DPS. The Commission members agreed.

Jim Toms moved to recommend that dedicated treatment facilities run by the State would be the most appropriate setting for housing and providing treatment services to DWI Aggravated Level One and Level One offenders. Judge Young seconded the motion, the motion carried.

RECOMMENDATIONS FROM JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION REPORT SUBCOMMITTEE

Chairman Brown recognized Meghan Boyd Ward, staff, to present recommendations from the Justice Reinvestment Implementation Evaluation Report Subcommittee (see handout). Ms. Boyd Ward

stated that the recommendations stem from findings in the Commission's 2018 Justice Reinvestment Report and that staff had originally presented the proposed recommendations to the Commission on June 8, 2018. The Commission voted to have the Subcommittee review the proposed recommendations and conduct additional study. The Subcommittee received additional information at its meeting on October 19, 2018, and adopted three recommendations. The Subcommittee made the following recommendations to the Sentencing Commission: (1) support giving Probation and Parole Officers delegated authority to use with offenders on post-release supervision; (2) support increasing the number of mental health PPOs; and (3) encourage the Division of Adult Corrections and Juvenile Justice to enhance existing evidence-based prison programs that improve re-entry.

Relating to the first recommendation, Mr. Fialko expressed concern because his organization felt it was inappropriate to expand delegated authority due to constitutional considerations. Representative McNeill noted that bills seeking to expand delegated authority often meet resistance in the General Assembly. Willis Fowler added that there was no need to expand delegated authority to the post release population because the Post Release Supervision and Parole Commission (PRSP Commission) responds immediately to any requests for modification to conditions of post release supervision. In response, Chairman Brown explained that giving delegated authority to officers would potentially increase consistency and Mr. Beeler added that the response would be even more immediate.

Mr. Beeler made a motion to adopt recommendations two and three. The motion was seconded by Susan Katzenelson and the motion carried. Mr. Beeler moved to adopt recommendation one. The motion was seconded by Representative McNeill and the motion carried.

LEGISLATIVE REVIEW AND SESSION UPDATE

Chairman Brown recognized Mr. Madler to provide an overview of the legislative review process. Mr. Madler explained the process the Commission follows and reviewed the Commission's policies and offense classification criteria. He then recognized Becky Whitaker, staff, to present the House Bills and Meghan Boyd Ward, staff, to present the Senate Bills for review (*see* handout).

HB 61 – Omnibus Gun Changes [Ed. 1].

(G.S. 14-415.35(d)) Luther Moore moved to find the proposed Class H felony for second and subsequent offenses inconsistent with the Offense Classification Criteria with a note that the Structured Sentencing punishment chart takes a defendant's prior record into account though the Prior record Level. Art Beeler seconded the motion and the motion carried.

HB 66 – Req Active Time Felony Death MV/Boat [Ed. 1].

(G.S. 20-141.4(a1)) Chris Fialko moved to find that the proposed punishment is inconsistent with G.S. 164-41, Structured Sentencing. He noted that this would create a second exception to the punishment chart created for these two offenses, the first being allowing a non-active sentence in Class D. Luther Moore seconded the motion and the motion carried.

(G.S. 75A-10.3(a)) Luther Moore moved to find that the proposed punishment is inconsistent with G.S. 164-41, Structured Sentencing. Art Beeler seconded the motion and the motion carried.

HB 86 – Gun Violence Prevention Act [Ed. 1].

(G.S. 14-409A(b)) Luther Moore moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Danielle Elder seconded the motion and the motion carried.

(G.S. 14-409.13(a)) Luther Moore moved to find the proposed Class I felony for second and subsequent offenses, inconsistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

(G.S. 14-409.61(b)) Luther Moore moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

HB 125 – GSC Revised Uniform Athlete Agents Act [Ed. 1]

(G.S. 78C-124(a)) Luther Moore moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Susan Katzenelson seconded the motion and the motion carried.

(G.S. 78C-124(b)) Luther Moore moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Susan Katzenelson seconded the motion and the motion carried.

HB 138 – Damage Jail & Prison Fire Sprinkler/Penalty [Ed. 1]

(G.S. 14-286(b)) Luther Moore moved to find the proposed Class I felony consistent with the Offense Classification Criteria. Danielle Elder seconded the motion and the motion carried.

HB 198 – Human Trafficking Commission Recommendations. -AB [Ed. 1]

(G.S. 14-43.13(a) – adult victim) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria but that it would be consistent with a Class E or C felony. Art Beeler seconded the motion and the motion carried.

(G.S. 14-43.13(a) – minor victim) Luther Moore moved to find the proposed Class C felony consistent with the Offense Classification Criteria. Tammy Lee seconded the motion and the motion carried.

(G.S. 14-208.1(b)) Luther Moore moved to find the proposed Class G felony inconsistent with the Offense Classification Criteria but that it would be consistent with a Class H or F felony. Danielle Elder seconded the motion and the motion carried.

HB 231 – The Harrison Kowiak Act [Ed. 1]

(G.S. 14-35(b)(2)) Luther Moore moved to find the proposed Class H felony consistent with the Offense Classification Criteria and also noted it would be consistent with a Class I felony. Art Beeler seconded the motion and the motion carried. Judge Jarrell voted against the motion, stating that he felt it covered broad conduct and should remain a misdemeanor.

(G.S. 14-35(b)(1)) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria. Art Beeler seconded the motion. Chris Fialko proposed dividing the elements and noting that the element of hazing that results in serious bodily injury or death of the victim would be consistent with a Class E felony. Danielle Elder proposed noting that the element of hazing involving forced or coerced alcohol consumption would be consistent with a Class H or I felony. Mr. Moore accepted the amendments. The motion carried.

(G.S. 14-35(b)(1)) Luther Moore moved to find the proposed punishment range inconsistent with G.S. 164-41 and noted that North Carolina does not have statutory maximums for individual offenses, Structured Sentencing establishes maximum sentences based on offense class and prior record level.

Susan Katzenelson seconded the motion and the motion carried.

SB 9 – Female Genital Mutilation/Clarify Prohibition [Ed.1]

(G.S. 14-28.1(a)(1)) Luther Moore moved to find the proposed Class C felony consistent with the Offense Classification Criteria. Tammy Lee seconded the motion and the motion carried.

(G.S. 14-28.1(a)(2)) Danielle Elder moved to find the proposed Class C felony inconsistent with the Offense Classification Criteria and noted that it would be consistent with a Class B2 felony. Tammy Lee seconded the motion. After some discussion, Luther Moore offered a substitute motion to find the proposed Class C felony consistent with the Offense Classification Criteria and note that it would also be consistent with a Class B2 felony. Art Beeler seconded the motion and the motion carried.

(G.S. 14-28.1(a)(3)) Luther Moore moved to find the proposed Class C felony consistent with the Offense Classification Criteria. Danielle Elder seconded the motion and the motion carried.

SB 20 – Emergency Worker Protection Act [Ed. 1]

(G.S. 14-34.5(a)) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria and noted it would be consistent with a Class C or E felony. Chris Fialko asked if the Offense Classification Criteria differentiated classes based on the victim. Mr. Madler responded that it did not, the Criteria focus on the harm that results from the conduct and not on the victim. Danielle Elder seconded the motion and the motion carried.

SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)/HB 224 – Assault w/ Firearm on LEO/Increase Punishment [Ed. 1]

(G.S. 14-34.5(a1)) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria and noted it would be consistent with a Class C or E felony. Art Beeler seconded the motion and the motion carried.

SB 20 – Emergency Worker Protection Act [Ed. 1] (cont'd)

(G.S. 14-34.5(b)) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria and noted it would be consistent with a Class C or E felony. Judge Jarrell seconded the motion and the motion carried.

(G.S. 14-34.6(b)) Luther Moore moved to find the proposed Class G felony inconsistent with the Offense Classification Criteria and noted it would be consistent with a Class F felony. Danielle Elder seconded the motion and the motion carried.

(G.S. 14-34.6(c)) Luther Moore moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Danielle Elder seconded the motion and the motion carried.

(G.S. 14-34.7(a)) Luther Moore moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

(G.S. 14-34.7(a1)) Luther Moore moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

(G.S. 14-34.7(b)) Luther Moore moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

(G.S. 14-34.7(c)) Luther Moore moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Art Beeler seconded the motion and the motion carried.

(G.S. 14-288.9(c) – physical injury) Art Beeler moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Susan Katzenelson seconded the motion and the motion carried.

(G.S. 14-288.9(c) – dangerous weapon) Luther Moore moved to find the proposed Class E felony inconsistent with the Offense Classification Criteria and noted that it would be consistent with Class F felony. Chris Fialko seconded the motion and the motion carried.

(G.S. 14-31(b)) Luther Moore moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria. Chris Fialko seconded the motion and the motion carried.

SB 29 – Move Over Law/Increase Penalties [Ed. 2]

(G.S. 20-157(i)) Chris Fialko moved to find the proposed Class F felony consistent with the Offense Classification Criteria. Danielle Elder seconded the motion and the motion carried.

SB 151 – Break or Enter Pharmacy/Increase Penalty

(G.S. 14-54.2(b)) Danielle Elder moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria and noted that it would be consistent with a Class H or F felony. Chris Fialko seconded the motion and the motion carried.

(G.S. 14-54.2(c)) Chris Fialko moved to find the proposed Class F felony consistent with the Offense Classification Criteria and noted that it would also be consistent with a Class H felony. Danielle Elder seconded the motion and the motion carried.

Chairman Brown thanked Mr. Madler, Ms. Whitaker, and Ms. Boyd Ward, then noted that the bill filing deadline has not closed yet and there could be more bills. He asked for volunteers for the Legislative Review Subcommittee. Mr. Moore strongly recommended the conference call method to save from traveling; Mr. Beeler agreed. Chairman Brown stated he would consider that request and also mentioned that it could be combined with a previously-scheduled DWI Sentencing Subcommittee Meeting.

SMCP CAPACITY PROJECTION AND POPULATION PROJECTION FEASIBILITY REPORT

Chairman Brown recognized Rebecca Dial, staff, to present the Statewide Misdemeanant Confinement Program Capacity Projection: FY 2019 – FY 2023, which was submitted to the legislature in February pursuant to N.C. General Statute § 164-51. Ms. Dial explained the mandate, which required the Commission to develop projections of available bed space in the SMCP for five fiscal years, and annually thereafter. She then went over background on North Carolina jails and their design capacity and the capacity and population of the SMCP. Ms. Dial highlighted trends affecting jails, including North Carolina population growth, crime rates, misdemeanor convictions, and length of stay trends. Next, she detailed jail capacity considerations and listed the known new jail projects in the state. Ms. Dial informed the Commission of the process for determining the projections of SMCP capacity, the assumptions, and laid out the two scenarios developed for the five-year projections. Scenario 1 shows a 5 percent decline in SMCP capacity by FY 2023 and Scenario 2 shows a 2 percent decline in SMCP capacity by FY 2023. Ms. Dial noted funding was not addressed in the projections, and emphasized that the projected population for

the same time period would need to be known in order to know whether the projected capacity for the SMCP is sufficient.

Mr. Fialko noted that there appears to be excess capacity for males but not females and inquired whether that was an issue to point out in the report. Ms. Dial responded that historically, the split has been 80% males and 20% females. She noted that on site visits, staff had heard that the female population is growing but that it was not yet exceeding capacity; it was not an issue yet but was worth monitoring. Mr. Beeler concurred that the female population should be monitored closely.

Representative Richardson inquired if the projections factored in the opioid crisis. Ms. Dial replied that while not directly, it would be incorporated through criminal justice trends.

Chairman Brown recognized Ginny Hevener, staff, to review the SMCP Population Projection Feasibility report (see handout). The feasibility study, which was conducted with the assistance of the NC Sheriffs' Association, was submitted to the legislature on February 15, 2019, in compliance with Session Law 2018-5, Section 18B.3.(b). The study encompasses a review of data available to produce a projection of the SMCP population and potential projection methods. Ms. Hevener commented that the feasibility study is a companion to the SMCP capacity projection mandate. By having projections of both population and capacity, it will be possible to assess whether capacity will meet future population needs.

Information for the report was compiled from meetings with the Sheriffs' Association, a review of jail projections from other states and within North Carolina, and phone conversations with criminal justice professionals who produced some of the jail projections. In addition, the Commission relied on its own extensive experience projecting criminal justice populations. Based on the review of available data and potential projection methods, staff concluded that it is possible to project the SMCP population.

Staff reviewed databases that contain information on the SMCP population and determined that the SMCP database maintained by the Sheriffs' Association contains the most comprehensive data on this population. The SMCP database contains the critical information needed (e.g., demographic and sentence information) to produce a projection of the SMCP population. Importantly, data are available that distinguish between SSA misdemeanants and DWI misdemeanants, allowing for the determination of resource needs and policy considerations for these two groups separately. Ms. Hevener described the two types of projections that are often considered for criminal justice populations – system flow models and trend models. Data from the SMCP database would be appropriate to use with either of these projection methods. In selecting a projection method, factors such as cost and development time should be considered. As a result, it is recommended that trend models be used initially due to the cost and time involved in developing or modifying an existing system flow model (such as the prison projection model). As with the prison projections and juvenile justice projections, SMCP projections would be a valuable tool for policymakers to consider future resource needs. Ms. Hevener noted that the Commission has extensive experience projecting criminal and juvenile justice populations and would also be able to project the SMCP population if directed to do so.

STRUCTURED SENTENCING STATISTICAL REPORT FY 2018: FELONY CONVICTIONS

Chairman Brown recognized Ms. Dial to present the Structured Sentencing Statistical Report for FY 2018 for felony convictions. Ms. Dial highlighted the Quick Facts for the report, noting that most trends are relatively stable and that felony convictions increased 2 percent from FY 2017 to 29,623.

CURRENT PRISON POPULATION PROJECTIONS – FY 2019 – FY 2028

Chairman Brown recognized Ms. Hevener to review the current prison population projections (*see* handout). She stated that, pursuant to statute, the projections are prepared annually in conjunction with DACJ and, in combination with prison capacity estimates, are a valuable tool for considering correctional policies within the context of available resources.

The prison population is projected to increase from 36,128 to 39,268 across the ten-year projection period – an increase of about 9%. Ms. Hevener noted that the current projections include a Department of Public Safety (DPS) policy change related to CRV Centers. Effective February 26, 2018, DPS began placing post-release supervision (PRS) offenders in a CRV Center to serve their three-month revocation period. This change contributes to the decline in the projected prison population as compared to the previous projection. Comparing the projected prison population with the capacity estimates provided by Prisons Administration, the projected prison population is projected to be below Expanded Operating Capacity (38,225) for all but the last three years of the projection.

Ms. Hevener described the impact that the Justice Reinvestment Act (JRA) and other policy changes have had on the prison population, with the prison population currently around FY 2005 levels. As anticipated, the composition of prison admissions has shifted following implementation of the JRA. In FY 2018, 56% of all felony admissions to prison resulted from active sentences for a new conviction, 23% resulted from probation revocations other than conviction for a new crime, and 21% resulted from PRS revocations other than conviction for a new crime.

Ms. Katzenelson asked whether the assumptions explain the increases seen in the later years of the projection. Ms. Hevener responded that they do and noted that the later years of the projection also include growth.

Mr. Beeler inquired if separate capacity estimates are available for females. Ms. Hevener responded that she thought that information would be available from DPS through their capacity estimates for individual facilities.

Representative McNeill asked whether the cap of Expanded Operating Capacity at 130% is based on the agreement between the state and the federal government regarding prison capacity. Ms. Hevener replied that it is. Representative McNeill stated that bringing more prison beds online may need to be considered as the projected population is over Expanded Operating Capacity for the final years of the projection and over Standard Operating Capacity for all years of the projection. Representative Richardson commented on the impact that the JRA has had on declines in the prison population and that it has kept NC from having to build prisons.

In addition, Ms. Hevener discussed how offense seriousness factors into the prison population. While Class A – D convictions account for the smallest proportion of convictions (7%), they comprise over half (53%) of the prison population as a result of their mandatory active sentences and long sentence lengths. Class H-I convictions impact the prison population through their high volume (representing 64% of convictions), but have a limited impact on the prison population (accounting for 20% of the population) due to their lower rate of active sentences and shorter sentence lengths.

Due to time constraints, Chairman Brown postponed the remaining items on the agenda until the June meeting of the Sentencing Commission.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:05 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary