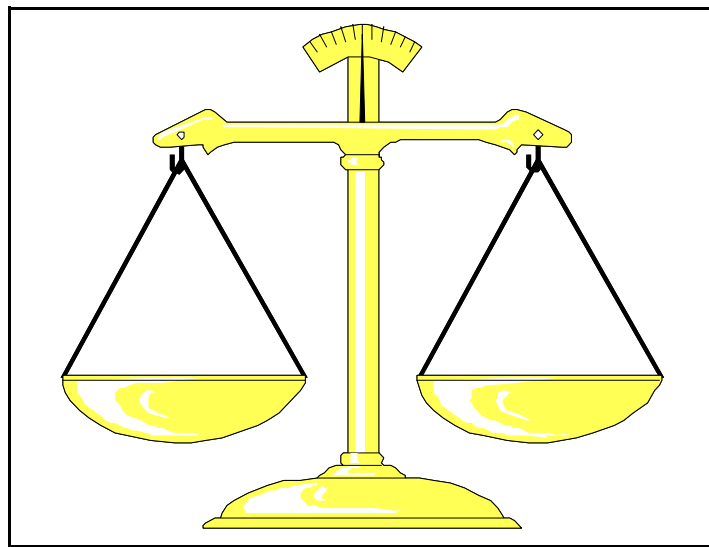


# **NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**



*Research Findings and Policy Recommendations  
from the Correctional Program Evaluations, 2000-2008*

**FEBRUARY 2009**

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# NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION

## Research Findings and Policy Recommendations from the Correctional Program Evaluations, 2000-2008

### *Introduction*

Under G.S. §164-44(a), the North Carolina Sentencing and Policy Advisory Commission (hereinafter referred to as the Sentencing Commission or Commission) has the statutory duty of “collecting, developing, and maintaining statistical data relating to sentencing, corrections, and juvenile justice.” The Commission has access to a plethora of data that is used in the analysis of ongoing mandated research products, special legislative studies, and requests from other agencies. The most extensive of these reports is the Correctional Program Evaluation (*i.e.*, recidivism report), which legislatively directs the Commission to evaluate the effectiveness of the State’s adult correctional programs.

Understanding the need and value of studies that measure recidivism, the North Carolina General Assembly incorporated recidivism reports into the Sentencing Commission’s mandate almost from its inception. During the 1998 Session, the General Assembly revised the Commission’s original directive to study recidivism and expanded its scope to include a more in-depth evaluation of correctional programs on a biennial basis. To date, there have been five of these expanded reports, with the latest one completed in April 2008.

The Sentencing Commission held a planning session in December 2006 in which one of the discussion topics centered on the vast body of research publications that support the work of the Commission. Members considered ways in which the findings in these data-rich research products, especially the recidivism reports, could be applied to policy development. The Commission moved forward on these discussions by establishing the Research and Policy Subcommittee at its March 7, 2008, meeting. The primary task assigned to the Subcommittee was to review findings from the Commission’s five previous recidivism studies and develop policy recommendations based on these findings that could be brought before the Commission for their consideration.

### *Process*

The Subcommittee met a total of six times: May 16, June 20, August 22, October 10, November 21, 2008, and January 23, 2009. In order to ensure that members were equipped with the same base of information, the Subcommittee initially heard presentations by staff on the major findings and recurring themes from the last five recidivism reports. Following this, members identified three major points that emerged from the recidivism studies for their policy implications: the use of offender risk assessments, the sharing of juvenile records, and the effectiveness of Post-Release Supervision (PRS). These topics became the focus of the Subcommittee’s work for the subsequent meetings. The Subcommittee submitted its final report to the Commission -- and the Commission accepted it with a unanimous vote -- on February 27, 2009.

## *Summary of Findings and Recommendations*

### **1. Risk**

The Commission finds that a risk assessment instrument is a valuable informational tool for understanding the risks posed by defendants at various stages of the criminal justice system. By providing an objective measure of an individual's likelihood of engaging in certain behaviors, a risk assessment allows officials to make better-informed and more consistent decisions.

The Commission finds that structured sentencing already takes account of several recidivism risk factors by considering the offender's prior criminal history. The Commission also recognizes and supports the Department of Correction's uses of risk assessments for post-sentencing decision-making. The Commission believes that it is appropriate to consider information about a defendant's risk level in making pre-sentencing decisions about bail, pretrial release, charging, and plea negotiation. Therefore, the Commission directs its staff to develop risk assessment tools for discretionary use statewide by magistrates, judges, prosecutors, and defense attorneys at the decision points prior to sentencing.

### **2. Juvenile Records**

The Commission supports the efforts currently underway to provide greater access to juvenile records by key decision makers in the criminal justice system (*e.g.*, Governor's Crime Commission Study to Expand the Age of Juvenile Jurisdiction and the Criminal Justice Data Integration Project). It further directs staff to continue tracking these projects and report back to the Commission on their work.

### **3. Post-Release Supervision**

The Commission studied the possibility of expanding post-release supervision and expressed its concern about the barriers to reentry faced by felony offenders who are released from incarceration. However, based on available data and the current economic climate in our State, the Commission does not recommend an extension of post-release supervision to other felony classes in the absence of a cost-benefit analysis justifying such an expansion.

## ***Major Findings from the Recidivism Reports***

Major findings presented to the Research and Policy Subcommittee included research results that have been consistently found for each of the Commission's five biennial recidivism studies. Over the course of these studies, the Commission has examined the recidivism of almost 300,000 offenders (with approximately 60,000 offenders in each study sample) sentenced prior to the Fair Sentencing Act (FSA), under the FSA, or under the Structured Sentencing Act (SSA). The Commission has been inclusive in its definition of recidivism by utilizing three common measures – arrests, convictions, and incarcerations – with fixed follow-up periods ranging from two to four years.<sup>1</sup> In addition, three interim outcome measures were examined: employment, prison infractions, and technical revocations of probation and post-release supervision. Within each of the recidivism studies, correctional programs and/or special populations were selected for further examination. The latest recidivism report<sup>2</sup> highlighted offenders on post-release supervision and aging inmates. Other programs and groups examined in previous reports included: in-prison substance abuse and work programs, community supervision programs, and the female and youthful populations. The research findings presented to the Subcommittee were anchored with data from the most recent recidivism report, which was based on a FY 2003/04 sample of 56,983 offenders including 39,890 (70%) probation entries and 17,093 (30%) prison exits. Each offender was followed for a fixed period of three years after their placement on probation or their release from prison to determine whether recidivism occurred.

The large volume of data from the Sentencing Commission's recidivism studies has produced a wealth of consistent, valid, and reliable findings on recidivism in North Carolina. In particular, there are three recurring themes that were a constant throughout the ten years of data reflected in the reports: 1) stability of recidivism rates, 2) value of the highly predictive risk score, and 3) variations by populations of offenders and correctional programs. Following is a short description of these findings.

### Stability of Recidivism Rates

One of the most important findings from the recidivism reports is that recidivism rates have been stable over time, which is notable considering societal changes and the differing sentencing laws under which the offenders were sentenced across the study samples. Irrespective of sample composition, rearrest rates ranged from 31-32% for studies with a two-year follow-up and from 37-39% for studies with a three-year follow-up (*see* Figure 1). Of the FY 2003/04 sample, 39% were arrested, 26% had a conviction, and 29% were incarcerated during the three-year follow-up period (*see* Figure 2).

In addition, recidivism rates for each of the study samples varied consistently by type of punishment (*see* Figure 2). Of the FY 2003/04 sample, 49.5% were community punishment probationers, 20.5% were intermediate punishment probationers, and 30.0% were prison

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<sup>1</sup> For the past three recidivism reports, the Commission has used a fixed three-year follow-up with recidivism rates reported for one-, two-, and three-year follow-up periods.

<sup>2</sup> North Carolina Sentencing and Policy Advisory Commission in conjunction with the North Carolina Department of Correction. (2008). *Correctional Program Evaluation: Offenders Placed on Probation or Released from Prison in Fiscal Year 2003/04*. Raleigh, NC: North Carolina Sentencing and Policy Advisory Commission.

**Figure 1**

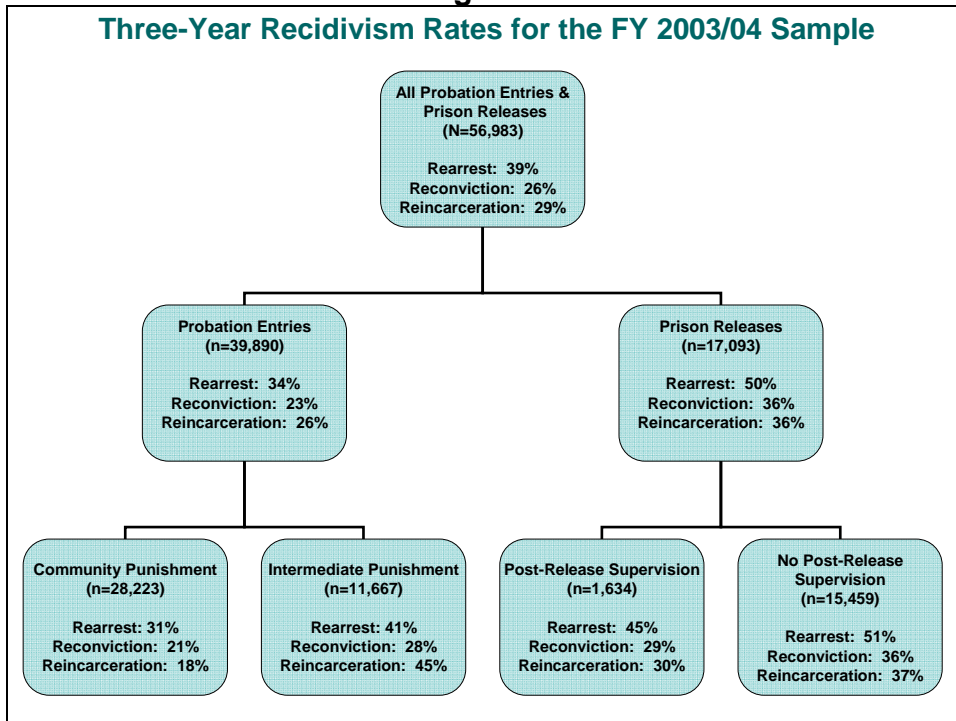
**Rearrest Rates for North Carolina Offenders**

Sample Year	2-Year Follow-up Period	3-Year Follow-up Period
1993/94	N/A	37%
1994/95	N/A	37%
1998/99	31%	38%
2001/02	32%	38%
2003/04	32%	39%

SOURCE: NC Sentencing and Policy Advisory Commission

**Figure 2**

**Three-Year Recidivism Rates for the FY 2003/04 Sample**



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data



releases. As shown in Figure 2, a stair-step pattern in rearrest rates was found with 31% of community punishment probationers (the least serious offenders supervised in the community), 41% of intermediate punishment probationers (the most serious offenders supervised in the community), and 50% of prison releases being rearrested during the follow-up period.

### Risk of Recidivism

Another primary finding is the highly predictive quality of the risk score developed for and used in data analysis for the recidivism studies. In studies of recidivism, including but not limited to the Commission's studies, certain characteristics of offenders have been identified as either increasing or decreasing an offender's probability of being rearrested. For the Commission's recidivism studies, a composite risk score that measures each offender's probability of rearrest was developed based on their personal characteristics, criminal history, and current offense. It should be noted that the risk score does not incorporate an offender's juvenile delinquency history. An offender's risk score places him or her in one of three risk levels: low, medium, or high. The use of risk scores in the recidivism reports has proven to be the most comprehensive predictive measure of an offender's probability of future criminal behavior. Offender risk level has been consistently associated with the type of disposition and program assignments imposed by the court, as well as with the offender's probability of reoffending.

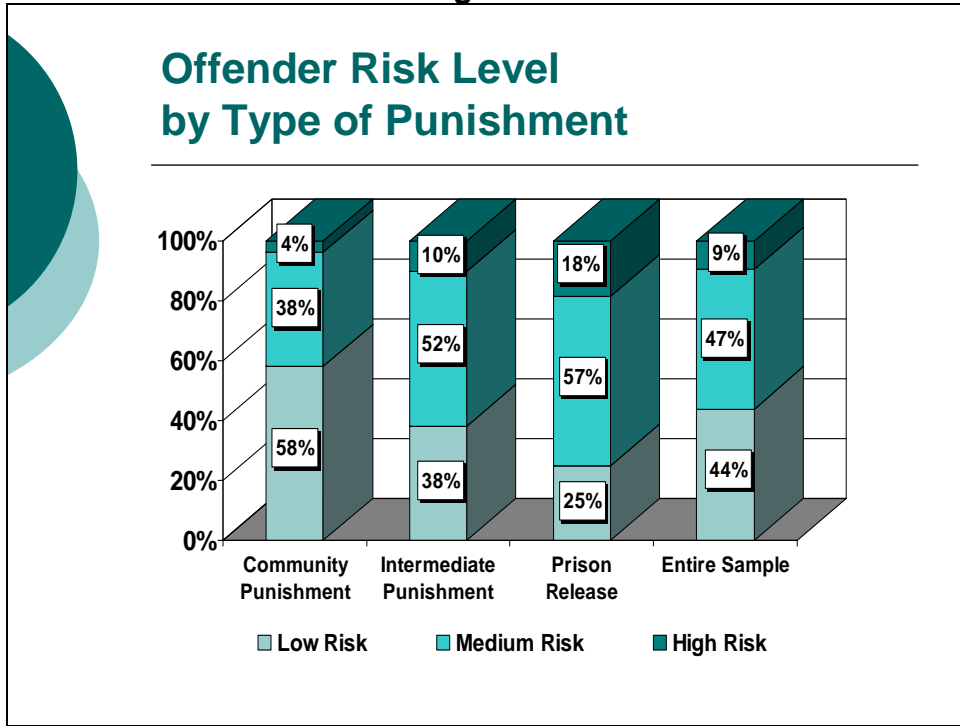
Of the FY 2003/04 sample, 44% of offenders were low risk, 47% were medium risk, and 9% were high risk. As expected, recidivism rates increased as offender risk increased, with 21% of low risk, 49% of medium risk, and 75% of high risk offenders being rearrested during the three-year follow-up period. When examining the risk level distribution by type of punishment, a consistent pattern in the distribution of offender risk level for the different subgroups has been found across the recidivism studies: risk level increases as the severity of punishment increases from community to intermediate to prison (*see* Figure 3).

While recidivism rates have been found to vary by both type of punishment and offender risk level, findings from the recidivism studies indicate that offender risk level is more important than type of punishment in predicting rearrest. When controlling for offender risk level, the differences in rearrest rates between the groups of probationers and prisoners were not nearly as large; the predominant differences in rearrest rates were between low-, medium-, and high-risk offenders (*see* Figure 4). This finding might point to a targeting of resources for medium-risk offenders, as opposed to low- or high-risk offenders, for the optimal use of and the maximum benefit from correctional resources.

### Variations by Populations and Programs

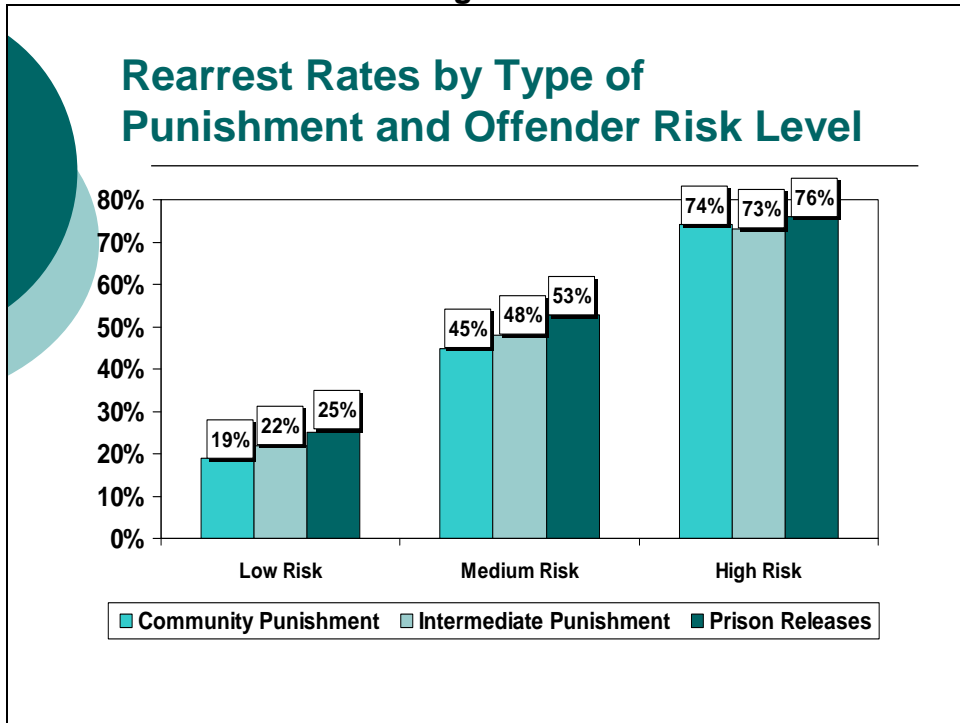
For each of the Commission's recidivism studies, special focus areas (either a specific population or program) were selected for further analysis. Special populations studied included female offenders, youthful offenders (age 21 and under), and aging offenders (age 50 and older). The programs studied to date can be broadly categorized as substance abuse treatment programs (DART and private substance abuse treatment), prison work training programs (Work Release

Figure 3



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

Figure 4



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

and Correction Enterprises), and community supervision programs (Intensive Supervision Probation and PRS).

Findings from the special populations demonstrate that these subgroups of offenders have different needs and require varied services while in the correctional system. They also pose different degrees of risk for rearrest. Overall, female offenders were less likely to be rearrested than male offenders; youthful offenders had the highest recidivism rates of any age group; and aging offenders the lowest. Findings from the programs and populations studied indicated that correctional assignments and specific programs have varying degrees of effect on the diverse offender population.

Overall, the recidivism studies indicate that expectations for the impact of correctional program participation on an offender's future criminality should be modest and viewed in the context of the criminogenic factors that accompany an offender into the system as well as the limited correctional resources and time that an offender has to participate in these programs. Correctional impact on recidivism might be enhanced by targeting the type and level of intervention based on the offender's risk and needs.

### ***Research Information and Policy Discussion of Selected Topics***

#### **Risk**

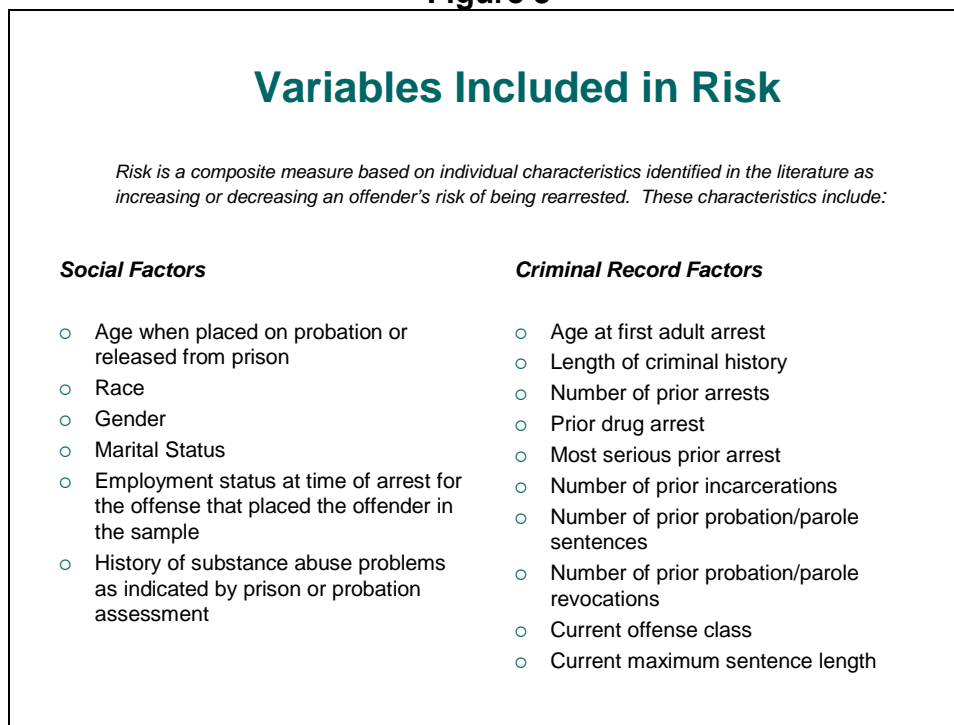
The Subcommittee observed that the direction and size of each risk factor's relationship to recidivism remained consistent across all of the Commission's biennial recidivism reports. Moreover, the offender risk score was more predictive of recidivism than other variables studied in the reports.

#### ***Statistical Findings from the Recidivism Reports***

The Commission's recidivism reports identified a number of variables or "risk factors" as statistically significant predictors of an offender's likelihood to engage in future criminal activity. These include social factors such as the offender's age and marital status and criminal record factors such as the offender's current offense and number of prior incarcerations. (See Figure 5 for the list of variables included in the measurement of risk.)

Through the use of multivariate analysis, each risk factor was weighted based on its relative contribution to recidivism and a risk score was predicted for each offender in the sample. Risk scores ranged from 0.01 to 0.99, representing each offender's probability of rearrest during the study's follow-up period. In order to differentiate the scores into low-, medium-, and high-risk categories, risk scores were divided into terciles. "Low Risk" offenders had a risk score between 0.01 and 0.33; "Medium Risk" offenders had a score between 0.34 and 0.66, and "High Risk" offenders had a score between 0.67 and 0.99. It should be noted that while grouping offender risk scores into categories might be useful for research purposes, raw risk scores of individual offenders might be

Figure 5



more useful for policy considerations and field application. Depending on the context in which the risk score would be used, a decision-maker could interpret the score by comparing an individual's risk score against the distribution of scores among the sample population.

The Subcommittee identified a variety of potential applications for risk assessments within the criminal justice system. Although many forms of risk can be measured, a defendant's risk of recidivism is of particular interest at sentencing and may also inform such pre-conviction decisions as charging and plea bargaining. Despite the utility of a valid risk assessment, North Carolina currently lacks a tool to quantify a defendant's recidivism risk prior to conviction. Moreover, because an offender is typically sentenced immediately after the determination of guilt, there is no opportunity for a post-conviction risk assessment before sentencing. Therefore, the Subcommittee decided to begin its work by focusing on the possible policy applications of the Commission's offender risk score.

#### *Legal Analysis of the Use of Risk Assessments*

The use of risk assessments in the criminal justice system raised important legal questions, insofar as the government would be treating people differently based on characteristics identified as "risk factors." Although many jurisdictions utilize risk scores in post-sentencing decisions about custody, supervision, and parole release, the use of risk scores at sentencing is decidedly less common; and there is little legal authority addressing the issue.

The Subcommittee explored the potential impact of the United States Supreme Court's holding in *Blakely v. Washington*<sup>3</sup> on the use of a risk score at sentencing. It concluded that a court would be free to consider evidence about recidivism risk without running afoul of *Blakely*, provided the offender's sentence fell within the applicable presumptive or mitigated range under structured sentencing. Some members cautioned that the reliance on an offender's risk score or risk factors at sentencing would likely result in numerous appeals based on *Blakely*, regardless of the merits of these appeals.

The Subcommittee found no apparent legal impediment to the court's consideration of an offender risk assessment at sentencing. However, certain risk factors included in the Commission's risk score – specifically, race, gender, and prior arrests – would be subject to challenge on constitutional grounds. Several members objected in principle to treating race as a risk factor, believing that race was standing in for other, socio-economic variables not tracked in the data.

Having identified three legally suspect risk factors in the Commission's recidivism reports, the Subcommittee asked staff to determine if an accurate risk score could be produced without relying on these factors.

#### *Additional Statistical Analysis*

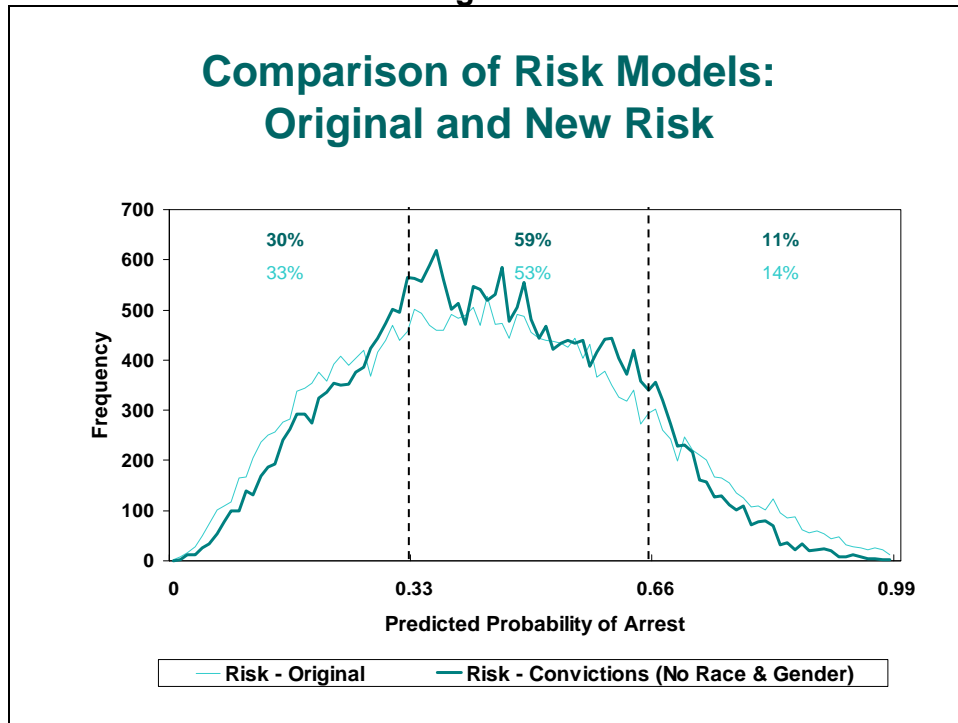
To address these legal concerns, a variation to the risk score used in the Commission's recidivism reports was examined, omitting both offender race and gender and substituting conviction data for arrest data. Overall, when comparing the new risk score to the original risk score, the same personal and most of the criminal history factors remained significantly related to rearrest. Further, overlaying the offender risk score distributions for the new and the original risk score created very similar distributions of the sample population by offender risk (*see* Figure 6). More importantly, the final comparison of the new and original risk score showed similar rearrest rates by offender risk, 23% v. 21% rearrest for low risk offenders; 49% rearrest in both models for medium risk offenders; 74% v. 75% rearrest for high risk offenders, respectively (*see* Figure 7). In general, these findings confirmed the predictive validity of the revised risk score, even when deleting legally suspect factors such as offender race, gender, and prior arrests.

In exploring the concept of risk scoring, the Commission also addressed the availability of information containing offender-based risk factors. The intent was to identify a pre-sentencing phase where the computation of a risk score would be feasible, and its use would inform pre-trial decisions about bail, charging, and plea negotiations. Commission staff undertook a feasibility study to determine whether a valid recidivism risk score could be prepared for a defendant based solely on information found in the district attorney's case file. In site visits to four prosecutorial districts, felony case files

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<sup>3</sup> 542 U.S. 296 (2004). Under *Blakely*, any fact other than a prior conviction which is used to increase an offender's sentence above what is authorized for the offense itself must be found by a jury beyond a reasonable doubt, or admitted by the offender.

Figure 6



SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

Figure 7

### Rate of Rearrest by Risk Level

Risk Level	Original Risk	New Risk
Low	21	23
Medium	49	49
High	75	74

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

were reviewed to ascertain the types of documents routinely included in each file and the level of pertinent information contained in them.

The results of the feasibility study suggested that prosecutors' files consistently contain information about many of the risk factors included in the Commission's risk score, specifically the factors related to a defendant's demographic characteristics, current offense seriousness, and criminal history. The files tend to lack information about other factors often used in risk instruments, such as the defendant's education level, employment, and substance abuse history. Overall, there appeared to be sufficient data in the case files to produce a valid risk score for the defendant. Furthermore, district attorneys might adjust their data collection and record keeping protocols if the use of a risk assessment tool became standard practice.

#### *Use of Risk Assessments in North Carolina*

The Subcommittee studied the risk assessment instruments that are currently in development or in use within North Carolina's criminal and juvenile justice systems. Representatives from Sentencing Services, the Department of Correction's (DOC) Division of Community Corrections (DCC) and Division of Prisons (DOP), and the Department of Juvenile Justice and Delinquency Prevention (DJJDP) made presentations and provided materials to the Subcommittee about their respective risk tools.

Sentencing Services utilizes a risk and needs assessment called the Level of Services Inventory-Revised (LSI-R) to develop sentencing plans for approximately 2,000 felony offenders each year at the request of the court or defense counsel. The LSI-R requires the offender to complete a 15-page intake form and submit to a two- to three-hour interview. Program staff also interviews the offender's family, employers, and other parties to learn about the offender's criminal history. All of this information goes into computing the offender's risk score.

DCC performs a risk assessment of all offenders placed on supervision in order to determine their risk of revocation, and is in the process of implementing an expanded risk and needs assessment (RNA) with four components: (1) the Offender Traits Inventory (OTI), which assesses the offender's risk of revocation; (2) the Offender Self-Report, which measures the offender's motivation; (3) the Officer Interview and Impressions, which provides a structure for dialogue between the offender and the probation officer; and (4) the trial court's judgment, which includes any special conditions of probation. Probation officers are being trained to administer the RNA, which will ultimately guide DCC programming and supervision and form the foundation of an offender's case plan.

DOP administers a Diagnostic Risk Assessment to all felons admitted to prison. This assessment is the same as the OTI used by DCC. Data from the Diagnostic Risk Assessment are entered into the DOC's Offender Population Unified System (OPUS) database. DOP has a separate risk assessment tool for use in custody classification and prison assignment.

DJJDP administers an automated Assessment of Juvenile Risk of Future Offending and Assessment of Juvenile Needs to all juveniles at the intake stage of the delinquency process. The instrument was designed and validated by the UNC School of Social Work. The risk assessment portion of the instrument consists of nine factors. The juvenile's risk level is reported to the court so that it can select a disposition providing an appropriate level of control. In all other contexts, both the risk assessment and the needs assessment help in formulating the juvenile's service plan.

### *Use of Risk Assessments in Other Jurisdictions*

The Subcommittee also reviewed the uses of offender risk assessment instruments in other jurisdictions. The United States Parole Commission developed the nation's first such instrument, the Salient Factor Score (SFS). The Parole Commission has gradually refined the SFS into a quick, easily scored, objective tool consisting of six items related to prior criminal behavior and age. Notably, the SFS takes the offender's juvenile record into account in assessing risk.

Virginia was the first state to develop a standardized pretrial risk tool, the Virginia Pretrial Risk Assessment Instrument (VPRAI), to assist magistrates and judges in making decisions about bail and conditions of pretrial release. The VPRAI is automated and provides an objective measure of a defendant's probability of failure if released on bail while awaiting trial. Failure is defined as either failing to appear for a scheduled court hearing or rearrest for a new offense pending trial. The VPRAI assigns a defendant to one of five risk levels, based on six criminal history factors and three social factors. The defendant's risk level is included in a Pretrial Investigation Report that is submitted to the court by the pretrial services program. Since adopting the VPRAI, Virginia has increased the percentage of felony defendants granted pretrial release while decreasing both the defendants' failure rate and the State's jail population.

The Director of the Virginia Criminal Sentencing Commission (VCSC) appeared before the Subcommittee to explain Virginia's incorporation of a risk score into its sentencing of felony larceny, fraud, and drug offenders. VCSC received a legislative mandate to develop a risk assessment tool to identify non-violent felons who could be safely diverted from prison into a community-based punishment. The risk score is based on four demographic or social factors and five factors related to offense type and the offender's criminal and juvenile delinquency history. An offender whose risk score falls below a cutoff point is recommended for diversion. Following the recommendation is discretionary, but judges have shown an 80% compliance rate.

Missouri has also been at the forefront of using evidence-based sentencing practices. The Missouri Sentencing Advisory Commission (MOSAC) developed a risk assessment that is similar to the instrument used by the Missouri Parole Board in making decisions about early release. The MOSAC risk tool consists of six criminal history factors and five offender characteristics and produces a point score corresponding to one of five risk levels. The risk score is included in the pre-sentencing report that is completed by a probation officer at the judge's request following conviction. An



automated version of the MOSAC risk assessment worksheet appears on its website. By completing the worksheet, a user can determine an offender's risk level and the expected amount of time the offender will serve in prison, based on historic data about sentencing and parole practices. Though designed primarily for sentencing, the risk score is used at the pre-sentencing phase by prosecutors and defense attorneys for plea negotiations, and by the Department of Corrections for post-sentencing decisions about offender supervision and management.

### *Discussion*

Because the North Carolina Department of Correction has already taken significant steps towards the development of risk assessment tools for post-sentencing stages of the criminal justice system, the Subcommittee focused its discussion on the possible uses of a risk assessment at sentencing and prior to sentencing. Members cited the absence of mandatory pre-sentencing reports in North Carolina as a factor severely limiting the information currently available to a judge at the sentencing hearing. In view of its high predictive quality, the Subcommittee believed that a simple, easily-completed risk instrument similar to the one found in the Commission's recidivism reports would enable decision-makers – whether it be a judge, prosecutor, or magistrate – to make better, more informed decisions.

In examining the use of a risk assessment tool at sentencing, the Subcommittee considered the following:

- The value of an objective forecast of the offender's likelihood to engage in future criminal behavior, to assist the judge in exercising his or her discretion within the appropriate grid cell of the sentencing chart.
- The fairness of punishing an individual based on the past actions of other offenders, or based on what the individual might do in the future.
- The possibility that judges would rely too heavily on the risk score and would not undertake a more searching inquiry into the offender's background and character.
- The fact that judges were already accurately assessing the offender's risk level (as borne out by the Commission's recidivism reports) without a formal risk assessment.
- The recognition that many of the risk factors related to the offender's criminal history were already factored into the calculation of the offender's prior record level.

After addressing each of these issues, the Subcommittee agreed not to recommend incorporating a risk score into the sentencing phase.

The Subcommittee favored the use of risk assessments at decision points prior to sentencing. Specifically, members cited pretrial decisions about bail and plea negotiations as appropriate for considering a defendant's risk level. The Subcommittee saw value in establishing uniform risk assessment practices through the adoption of a single risk assessment instrument for use across the State, but agreed that the use of pre-trial risk

assessments by criminal justice practitioners should be voluntary. While recognizing the logistical problems of delivering the necessary information to decision-makers in a timely manner, the Subcommittee believed that the State's current data integration projects and the inevitable trend toward computerized records would allow for more information to be available at these early stages of the criminal justice process.

### Juvenile Records

In reviewing the findings of the Commission's recidivism reports, the Subcommittee observed a strong correlation between an offender's prior criminal activity and the propensity to reoffend. However, the information on criminal history and its impact on recidivism were incomplete without the availability of juvenile records.

#### *Juvenile Delinquency and Adult Recidivism*

The Subcommittee learned that the State's information systems did not provide for the tracking of adult offenders backward into the juvenile system. Therefore, the Commission's recidivism reports did not include data about offenders' delinquency histories; nor was juvenile delinquency factored into the offender risk score. The Subcommittee noted that information about an offender's juvenile record was included in the risk assessment tools used in Virginia and by the United States Parole Commission.

Members raised a related issue regarding the restrictions placed on the use of juvenile records information by officials in the adult criminal justice system. Because juvenile records are deemed confidential in North Carolina, young people enter the adult system with a "clean slate" regardless of prior juvenile delinquency.

The Subcommittee found that information about an offender's juvenile record would result in greater accuracy in predicting adult recidivism but recognized that access to these records is limited by the North Carolina Juvenile Code.

#### *North Carolina Juvenile Records Laws*

The Subcommittee heard information on the current state of North Carolina law regarding access to and sharing of juvenile records, the permissible uses of juvenile records in an adult criminal prosecution, and areas of ambiguity in the relevant provisions of the Juvenile Code.

Generally, juvenile court records are confidential. Only the juvenile, the parent, the court counselor, and the prosecutor may examine and copy a juvenile's court record without a court order. The Juvenile Code defines "prosecutor" as the elected district attorney or the assistant district attorney who is assigned to juvenile proceedings. However, other provisions of the Juvenile Code contemplate the use of juvenile records by the adult court prosecutor. For example, an adjudication of delinquency for a felony may be used by the magistrate and the prosecutor for making decisions about pretrial release and plea negotiations. Similarly, a defendant's prior adjudication of delinquency

for a Class A through E felony may be used in an adult criminal proceeding, upon a motion by the prosecutor. It is unclear how the adult court prosecutor or magistrate would obtain this information, absent a statutory right of access to the juvenile court record. Some district attorneys interpret the Juvenile Code not to allow the sharing of juvenile record information with their adult court prosecutors without a court order.

The Subcommittee learned of the difficulties faced by district attorneys in obtaining juvenile record information from other districts. Even where the right of access is not in question, members expressed concern that the confidentiality of juvenile records will effectively conceal information from the district attorney and the criminal court. Unless the district attorney or judge has personal knowledge of a defendant's history of delinquency, there is no mechanism to alert them that the juvenile record exists.

North Carolina's juvenile records statutes do not address the revolution in data-collection and information-sharing brought about by computerization. The Department of Juvenile Justice and Delinquency Prevention's North Carolina Juvenile Online Information Network (NC-JOIN) and the Administrative Office of the Courts' JWis database mark the beginning of a transition that will fundamentally alter the concept of access to a court record or the information contained therein. The most recent revisions to the Juvenile Code in 1998 did not account for these changes.

The Subcommittee received information about other states' juvenile records statutes. Many states have enacted detailed provisions that address the sharing of court and agency juvenile records and the uses of statewide electronic information systems. In Washington and approximately six other states, the juvenile court record is a public record unless it is sealed. Pennsylvania law is similar to North Carolina's but allows more parties to obtain the juvenile record, including adult correctional institutions and the commonwealth's attorney. Texas law also lists the persons who may access the juvenile record and provides a process for the prosecutor to get a certified record from the clerk of court for admission into evidence in an adult criminal case.

#### *Current Projects Affecting the Use of Juvenile Records*

The Subcommittee identified two recent legislative mandates that may impact the use of juvenile records information in the criminal justice system. The Governor's Crime Commission (GCC) Study to Expand the Age of Juvenile Jurisdiction calls for a review of "the relevant State laws on sharing of juvenile information." The GCC has contracted with an outside vendor to complete the study, which is due to the General Assembly by April 1, 2009. The second mandate coincides with a recent surge of interest in the collecting, linking, and sharing of information among State agencies for use at early stages of the criminal justice system. The Criminal Justice Data Integration Pilot Program (CJDIPP) was enacted during the 2008 Legislative Session to establish a framework for collecting and sharing information between entities within the criminal justice system. Wake County is the site of the pilot program, which has an implementation deadline of May 1, 2009. The CJDIPP Advisory Committee has been discussing whether to include juvenile record data in the project for use by magistrates, law enforcement, and probation

officers. It was also unclear what, if any, juvenile record information could be included in the CJDIPP database under current law.

### *Discussion*

The Subcommittee weighed the idea of providing decision-makers in the adult system with access to juvenile record information. Members agreed that the sharing of juvenile records was a relevant and timely topic with significant implications for law enforcement agencies, the court system, and the Department of Correction. The Subcommittee further agreed that it was important for the judge, district attorney and defense counsel to have access to juvenile records, and that currently there were legal barriers to obtaining the information. Some members stressed the importance of assigning juveniles an identifier that would preserve juvenile confidentiality but allow for the tracking of juveniles across districts and into the adult system. Others suggested that the Commission should address the ambiguities in the juvenile records statutes and recommend specific changes to the legislature. Several members of the Subcommittee expressed concern over the consequences of withholding juvenile records information from key decision makers in the criminal justice system. Despite these many concerns, the Subcommittee decided to delay any formal recommendations on the issue of juvenile records sharing pending the completion of the Governor's Crime Commission report and the Criminal Justice Data Integration Pilot Program in the Spring of 2009. It suggested that the Commission staff continue to follow these two projects and report back to the Commission at the appropriate time.

### Post-Release Supervision

PRS has continued to be of interest to the Commission and was one of the special topics studied in the 2008 recidivism report. Members wanted to review these findings, as well as the Commission's previous work to determine any relevant policy issues.

### *Structured Sentencing and Post-Release Supervision*

When the Structured Sentencing Act (SSA) became effective on October 1, 1994, a new sentencing structure was established and parole was abolished. However, the General Assembly believed that the most serious group of offenders should continue to have some form of supervision following their release from prison. To address that concern, post-release supervision, a non-discretionary, mandatory period of post-prison supervision for Class B1 through E felons was incorporated into the SSA. The period of supervision for PRS supervisees is nine months, unless inmates have been convicted of a sex offense which requires registration with the State's sex offender registration program. For these offenders, the length of PRS is five years.

PRS is administered by the Post-Release Supervision and Parole Commission (PRSPC). The Department of Correction's Division of Community Corrections monitors offenders on PRS and is also responsible for reporting violations of PRS conditions to the PRSPC. PRS, in much the same way as parole for pre-SSA offenders, is conditional and

subject to modification, violation, and revocation by the PRSPC. If the PRSPC revokes an offender's PRS, recommitting him/her to prison, the offender is returned to prison for up to the time remaining on the maximum imposed term (the nine months built into the maximum sentence). When the offender either completes the nine month period of supervision in the community or the nine month revocation period in prison, PRS is terminated.

Since 1997, the Sentencing Commission has studied PRS on a number of occasions and has developed PRS-related proposals which have been introduced as bills in the General Assembly but have never been enacted into law. While some of the proposals involved making minor adjustments to the PRS statutes to conform them to the PRSPC practices, others recommended substantial changes to PRS. One of the Commission's proposed changes would have expanded PRS to Class F and G felons. This proposal was found by legislators to be cost prohibitive, primarily due to the increase in probation staff that would be needed to supervise the additional offenders who would be placed on PRS, the additional community programming that would be required, as well as the additional prison beds that would be needed for revoked supervisees.

Two other unsuccessful proposals resulted from legislative mandates. In 2002, as one of the responses to a General Assembly mandate to develop alternatives to slow the projected increase in the need for prison beds, the Commission offered an alternative that involved making modifications not only to the PRS statutes, but also to the felony punishment grid. This suggestion reallocated three months from the minimum sentence for Class B1 through E felonies, for the purpose of increasing the period of imprisonment following the revocation of PRS by three months, and also increasing the period of supervision in the community by three months. In 2005, the Commission suggested transferring the administration and enforcement of PRS to the Judicial Department.

#### *Statistical Findings for Post-Release Supervision*

Findings from the 2008 recidivism report were presented to the Subcommittee, followed by further analysis as members expressed an interest in the possibility of expanding PRS to other felony classes. Subcommittee members requested that Commission staff address two questions:

1. Is there evidence of the effectiveness of PRS?
2. If found effective, should PRS be extended to offenders in additional felony classes?

Of the 17,093 prisoners released in FY 2003/04, 1,634 (9.6%) were convicted of Class B1 through Class E felony offenses and were released from prison onto PRS. The remaining 15,459 (90.4%) prisoners were convicted of Class F through Class I felony offenses (73.8%, n=11,402) or Class A1 through Class 3 misdemeanor offenses (26.2%, n=4,057) and were released from prison with no supervision. The following analyses were based only on the subsample of felony prison releases (n=13,036).

Differences in criminal justice outcome measures were examined between the two groups of prisoners in an attempt to determine if PRS was beneficial for prison releases.<sup>4</sup> Prisoners with PRS had lower recidivism rates on all three outcome measures -- rearrest, reconviction, and reincarceration -- when compared to prisoners with no PRS (*see* Figure 8). Post-release supervisees also fared better than prisoners with no PRS on two additional criminal justice indicators: average number of rearrests and average time to rearrest (*see* Figure 8). It is possible that supervision following incarceration for PRS prisoners is linked to their longer average time to rearrest. In other words, offenders may be less likely to reoffend while supervised in the community following release from prison and, if they reoffend, their reoffending may be delayed until after the period of PRS ends.

**Figure 8**

<b>Criminal Justice Outcome Measures for Prison Releases Three-Year Follow-Up Period</b>		
<b>Outcome Measures</b>	<b>PRS</b>	<b>Non-PRS</b>
% Rearrest	44.7	51.3
% Reconviction	28.6	37.0
% Reincarceration	30.1	34.9
Average # of Arrests	.95	1.2
Average Time to Rearrest	14	12

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

A profile of prisoners with PRS and with no PRS indicated that post-release supervisees were convicted of more serious, violent offenses, but had fewer prior arrests and had lower risk scores than prison releases with no PRS. Conversely, prisoners with no PRS were convicted overwhelmingly for drug and property offenses, had longer criminal careers, and higher risk scores. As expected, prison sentence imposition and length were closely associated with the severity of the offense for prisoners with PRS; however, imprisonment was associated with prior record severity for prisoners with no PRS. The characteristics of these two groups of prison releases point to different reentry

<sup>4</sup> Differences between prison releases with PRS and without PRS do not necessarily mean that PRS was or was not effective for post release supervisees. There may be other variables that explain the differences between the two groups that are not accounted for in these comparisons.

and rehabilitation needs which should be considered if PRS is extended beyond Class E felons.

Current conviction, risk level, and rearrest rates were examined for Class F through I felony prison releases in consideration of whether or not PRS should be extended to offenders in additional felony classes. Class F offenders resembled Class B2 through E prisoners more than the Class G through I offenders. The majority of Class F prisoners had a person offense and a low risk score.<sup>5</sup> In contrast, most Class G through I prison releases had property and drug offenses and a larger percent of high risk offenders. Last, rearrest rates for Class F through I prisoners indicated that Class F prisoners had the second lowest rearrest rate of all felony offense classes while Class G through I had the highest rearrest rates of all offense classes (*see* Figure 9).

**Figure 9**

<b>Rearrest Rates by Offense Class: Prisoners FY 03/04</b>		
Offense Class	N	% Rearrest
B2	31	26
C	306	43
D	541	43
E	756	47
F	1,171	36
G	2,204	50
H	5,284	55
I	2,743	52

PRS is mandatory for B1-E felons released from prison. Due to the length of sentences imposed for Class B1 felonies, there were no prisoners released in FY 2003/04 with a most serious conviction for a Class B1 felony.

SOURCE: NC Sentencing and Policy Advisory Commission, FY 2003/04 Correctional Program Evaluation Data

A closer look at Class F offenses indicated that almost 36% were for indecent liberties with children and 6% were for failure to register as a sex offender. Knowing that the recidivism rate for some sex offenders is relatively low aids in the explanation of the comparatively low rate of rearrest for Class F prison releases. This relatively low rearrest rate for Class F offenders called into question the value of extending PRS to this particular offense class.

<sup>5</sup> PRS is mandatory for all B1-E felons released from prison. Due to the length of sentences imposed for B1 felonies, there were no prisoners released in FY 2003/04 with a most serious conviction for a Class B1 felony.

## *Discussion*

The Subcommittee recognized that released prisoners, some completing lengthy sentences, face formidable barriers to their reintegration efforts into society. Their difficulties include reversing the effects of prisonization; battling substance abuse and mental health problems; lacking sufficient education, work, and life skills; and dealing with the limitations, economic and social, associated with a record of criminal convictions.

Reviewing the research, the Subcommittee confirmed the importance of PRS in assisting offender reintegration, and voiced its support for some type of reentry effort for all released felons, not only those convicted of Classes B1 through E offenses. Based on early estimates, extending PRS to Classes F through I would result in the potential prevention of 2,901 rearrests for new crimes in a three-year period. The Subcommittee did not promote an extension of PRS for Class F prison releases only, given their comparatively low recidivism rates; and did not feel justified in recommending an extension of PRS for all prisoners at the current time due to the scarcity of correctional resources.

## *Final Findings and Recommendations*

### **1. Risk**

**The Commission finds that a risk assessment instrument is a valuable informational tool for understanding the risks posed by defendants at various stages of the criminal justice system. By providing an objective measure of an individual's likelihood of engaging in certain behaviors, a risk assessment allows officials to make better-informed and more consistent decisions.**

**The Commission finds that structured sentencing already takes account of several recidivism risk factors by considering the offender's prior criminal history. The Commission also recognizes and supports the Department of Correction's uses of risk assessments for post-sentencing decision-making. The Commission believes that it is appropriate to consider information about a defendant's risk level in making pre-sentencing decisions about bail, pretrial release, charging, and plea negotiation. Therefore, the Commission directs its staff to develop risk assessment tools for discretionary use statewide by magistrates, judges, prosecutors, and defense attorneys at the decision points prior to sentencing.**

*Commentary:* Through five biennial cycles, the Commission's recidivism reports have identified certain "risk factors" that are strongly and consistently correlated with recidivism. Risk factors include demographic and social characteristics of the offender, as well as the offender's current offense and criminal history. Using these risk factors, the Commission can calculate a risk score for an individual offender, representing his or



her probability of recidivism over a three-year period. The risk score is more accurate in predicting offender recidivism than other variables studied in the recidivism reports.

Risk assessment instruments have a variety of potential applications within the criminal justice system. The North Carolina Department of Correction has developed risk assessments to assist in managing the State's prison population and in supervising offenders who have been placed on probation. Sentencing Services programs perform detailed risk and needs assessments in preparing sentencing plans for a select group of felony offenders. North Carolina's juvenile courts also use a risk assessment to select an appropriate disposition for a juvenile who is adjudicated delinquent. Other states, such as Virginia and Missouri, have successfully incorporated risk assessments into the sentencing of adult offenders and in making pre-sentencing decisions about bail and plea negotiations. Currently, North Carolina lacks a tool to quantify a defendant's risk level prior to conviction.

The Commission determined that it would be inappropriate to adopt a risk assessment instrument for sentencing purposes. Though mindful of the limited information that is typically available to the judge at sentencing, it decided not to endorse the use of statistical risk for decisions about punishment. The Commission further noted that many of the factors used to calculate an offender's risk level are already factored into structured sentencing through the felony prior record level and the misdemeanor prior conviction level.

The Commission believes that empirically validated risk assessments would improve the quality of decision-making at pre-sentencing decision points such as the bail hearing and plea negotiations. It further believes that the use of pre-sentencing risk assessments should be voluntary, in order to avoid any potential burden to the criminal justice system. After a decade of analyzing offender recidivism data, the Commission is well positioned to construct objective, easily-scored risk assessment tools for use at these pre-sentencing decision points. After developing these tools, the Commission should then promote their use across the State through training and other outreach efforts.

## **2. Juvenile Records**

**The Commission supports the efforts currently underway to provide greater access to juvenile records by key decision makers in the criminal justice system (e.g., Governor's Crime Commission Study to Expand the Age of Juvenile Jurisdiction and the Criminal Justice Data Integration Project). It further directs its staff to continue tracking these projects and report back to the Commission on their work.**

*Commentary:* Access to information in juvenile records is an important and appropriately timed issue which has significant implications for decision makers in the juvenile and adult criminal justice systems. Findings from the Commission's recidivism reports have shown that a person's prior criminal record is strongly correlated with a propensity to reoffend. Having information from a juvenile's delinquent record would allow greater accuracy in predicting adult recidivism.

The current laws governing the sharing of juvenile records are sometimes vague and subject to different interpretations across North Carolina. Also, the Juvenile Code does not adequately address the new realm of accessing and maintaining records that has been brought about by the computerization of information.

In the Commission's discussions, concern was expressed over the limited availability of juvenile records to key decision makers in the criminal justice system. The Commission heard presentations on two mandated initiatives, Governor's Crime Commission Study to Expand the Age of Juvenile Jurisdiction and the Criminal Justice Data Integration Pilot Program, both of which are examining the area of juvenile record sharing. Reports on these projects are due into the General Assembly later this spring. The Commission decided that any formal recommendations on this issue should be delayed until these two studies are completed. Meanwhile, staff will continue to follow these efforts and give periodic updates to the Commission.

### **3. Post-Release Supervision**

**The Commission studied the possibility of expanding post-release supervision and expressed its concern about the barriers to reentry faced by felony offenders who are released from incarceration. However, based on available data and the current economic climate in our State, the Commission does not recommend an extension of post-release supervision to other felony classes in the absence of a cost-benefit analysis justifying such an expansion.**

*Commentary:* PRS is the mandatory period of supervision given to convicted B1 through E felons following the completion of their prison sentence. The term of supervision is nine months, with the exception of sex offenders who are supervised for five years. Since the early years of structured sentencing, the Sentencing Commission has been involved in studying PRS and creating PRS-related proposals in response to legislative mandates. These proposals have usually resulted in bills which were introduced in the General Assembly but were not passed into law.

Because the topic of PRS was highlighted in the 2008 recidivism report and has been the subject of previous work by the Commission, the Commission reviewed PRS to determine if any policy-relevant recommendations could be developed from the report's findings. It was particularly interested in the concept of expanding PRS to Class F and other felony classes, an idea that had previously been endorsed by the Commission but failed to move forward in the General Assembly due to cost concerns.

Analysis from the report showed some benefits for offenders placed on PRS compared to offenders not placed on PRS (*i.e.*, Class F through I offenders), especially in terms of a lower percentage of rearrests and a longer time to rearrest. Further data analysis by staff showed that Class F offenders had lower rearrest rates and risk levels, when compared to Class G through I offenders. Additionally, Class F had lower rearrest rates than the B1 through E offenders who had been placed on PRS. Because Class F

offenders displayed comparatively low recidivism rates, the Commission did not see the value in extending PRS to this group.

Members recognized the merits of having all felons on PRS, especially in light of the difficulties faced by this group in obtaining employment and treatment services upon their release from prison. However, the Commission did not believe that the cost that would be incurred in expanding PRS to other felony classes could be justified given the financial and resource constraints faced by the State. The Commission did note that a cost-benefit analysis relative to this issue might provide further insights that could guide future policy decisions.