

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
March 8, 2013

The North Carolina Sentencing and Policy Advisory Commission met on Friday, March 8, 2013, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Honorable Charlie Brown, Paul Butler, Sheriff James Clemmons, Christopher Clifton, Chief Scott Cunningham, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, Bill Hart, Honorable Jeff Hunt, Robin Jenkins, Ilona Kusa, Honorable Floyd McKissick, Moe McKnight, Dr. Harvey McMurray, Luther Moore, Honorable Fred Morrison, Sandy Pearce, Billy (Buck) Sanders, and Tommy Thompson.

Guests: Carla Gray (Extern for Judge Morrison at Office of Administrative Hearings), Keenon James (NC Sheriffs' Association), Karen Jayson (NC Governor's Crime Commission), Jennie Lancaster (former Commissioner), Moe McKnight (former Commissioner), Sandra Moore (Citizen), Susan Sitze (Research Division, General Assembly), and Yolanda Woodhouse (AOC Court Programs).

Staff: Susan Katzenelson, Ginny Hevener, John Madler, Amy Craddock, Vicky Etheridge, Tamara Flinchum, Michelle Hall, and Sara Perdue.

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:00 a.m. He introduced new Commissioners Paul Butler, Jeff Hunt, Robin Jenkins, and Thomas (Tommy) Thompson. Resolutions were read for departing Commissioners Jennie Lancaster and Moe McKnight. Motions were made to accept the resolutions, and the resolutions were adopted. Other departing Commissioners were Tony Rand, Clark Everett, Tim Spear and Paul Gibson. After Judge Spainhour reviewed the agenda for the meeting, Luther Moore moved that the minutes be adopted for the December 14, 2012, meeting and the motion carried.

CURRENT POPULATION PROJECTIONS – FISCAL YEAR 2013 TO FISCAL YEAR 2022

Ginny Hevener presented the Current Population Projections for Fiscal Year 2013 to Fiscal Year 2022 (*see handout*). The projections were prepared in conjunction with the Department of Public Safety's Office of Research and Planning, and are produced on an annual basis as part of the Commission's original mandate to develop a projection tool for accurate long-term planning of correctional resources.

Ms. Hevener described the data from the Administrative Office of the Courts and from the Department of Public Safety that are used to project the prison population. The projections

are based on the most recent empirical data available – FY 2012 – and were prepared using the new simulation model that was developed in collaboration with SAS Institute.

Ms. Hevener noted that NC has been implementing substantial changes to the criminal justice system in response to the Justice Reinvestment Act (JRA) of 2011. Consequently, the prison projections are based on assumptions about how the criminal justice system will operate under JRA. Ms. Hevener cautioned that limited empirical data were available on criminal justice practices under JRA for FY 2012 since many of the provisions of JRA went into effect midway through the fiscal year. As a result, assumptions for the projections were made by extrapolating from other sources where possible or by making informed estimates based on the policies and procedures developed for implementation.

The prison population is projected to increase from 36,838 to 37,680 across the ten-year projection period – an increase of 842 or just over 2%. Comparing the projected prison population with the capacity estimates provided by the Section of Prisons of the Division of Adult Correction, the projected prison population is below Expanded Operating Capacity, but above Standard Operating Capacity.

Ms. Hevener described demographic trends, criminal justice trends, and policy changes that factor into the decline of the prison population that preceded the passage of the Justice Reinvestment Act. The prison population leveled off from FY 2009 through FY 2011 due in part to declines in criminal justice trends, but also because of changes to the felony punishment chart that were passed in 2009. Earned time credits that went into effect in June 2011 are largely responsible for the sharp decline in the prison population beginning with July 2011, while declines later that year result from changes in prison entries due to JRA. JRA changes that had an almost immediate impact on the prison population were the shift of most misdemeanants from prison to local jails through the establishment of the Statewide Misdemeanant Confinement Program and the legal change that places limits on revocations and confinement for technical violations of probation. In addition, Ms. Hevener noted that the state prison population has also declined nationwide, with just over one-half of states with declines in their prison populations from 2010 to 2011.

Ms. Hevener summarized the assumptions that were used to develop the projections. She cautioned that there were no reliable data available for several of the major assumptions for the projections. These include: Confinement in Response to Violation (CRV) for technical violations of probation; PRS (90-day) confinements and revocations; the use of Advanced Supervised Release (ASR) for prisoners; convictions for Habitual Breaking and Entering.

While all current indicators support lowered – within-capacity – projections for the next 10 years, Ms. Hevener mentioned some factors that might indicate caution: NC's population might return to a higher growth rate; crime might trend up; and a second wave of JRA's impact – such as the expansion of PRS to Class F through Class I felons – might increase the need for prison beds.

Judge Spainhour said that with all the cases he was seeing in Superior Court, it was hard to believe that there was a drop in the crime rate. He wanted to know what could be attributed to

that drop. Ms. Hevener said that it was difficult at this time to pinpoint one thing, but that demographics played a big part. Although the population rate is increasing, it is growing at a declining rate. The biggest change in demographics is for the age group 16-24. The largest increase in population is in the over 50 group. Representative Faircloth added that crimes are easier to detect in this age due to the advances in technology. Because the 16-24 age group is savvy in their knowledge of this technology, they are probably committing few crimes. Mr. Thompson, who is new to the Commission, asked what was meant by “empirical data”. Ms. Hevener answered that this was hard numbers collected by the Administrative Office of the Courts and other agencies. Ms. Katzenelson added that empirical data is always true of the past, but is not necessarily predictive of future events.

Judge Spainhour asked about the Statistical Report. He wanted to know if his assumption that the number of convictions referred to individual defendants and not case numbers was correct. Ms. Hevener confirmed this.

Senator McKissick asked how the data in Table 1 would affect capacity by custody. Ms. Hevener answered that the Division of Adult Correction uses this data for their custody projections – including capacity for the different custody levels, as well as for youthful offenders, males, females, and so on. The Commission’s model projects the overall prison population, as well as projections by age, gender, and other breakdowns of interest. Further, Senator McKissick asked to what extent does that information come back from the Division of Adult Correction and is shared with the Sentencing Commission? Ms. Katzenelson said that the information does not come back per se. Judge Spainhour recognized former Commission Jennie Lancaster. She responded to Senator McKissick’s question by saying that there would be adequate beds for both closed custody and medium custody prisoners. She also said that minimum custody should be looked at very closely as these post-release felons are revoked. She believes, however, that the budget coming out will show the changing mission. Senator McKissick suggested that a five or ten-minute overview should be given to the new Commissioners.

Dr. McMurrary commented that this was a superb report. Sandy Pearce said that the Department of Public Safety’s Office of Research and Planning have their own model and that their report could be made to the public. Chief Cunningham also said that this is a great report. He said that part of the document’s purpose is to help NC entities make their own predictions about the future. He was wondering if it would be possible to look specifically at the impact of certain changes, *e.g.*, misdemeanor confinement program. Ms. Katzenelson answered that we have the numerical value, but the fiscal value is in the General Assembly. There are two reports that provide further information on this – the Justice Reinvestment Implementation Report and the Recidivism Report. Mr. Sanders said that the staff does a good job on the front end when changes are being contemplated. What they don’t have is the back-end review of the projections. Representative Faircloth added that the General Assembly is trying to equip the system with more options, and that this report is so important to that end.

JUSTICE REINVESTMENT IMPLEMENTATION REPORT SUBCOMMITTEE – STATUS REPORT

Judge Spainhour introduced Judge Charlie Brown, Chairman of the Justice Reinvestment Implementation Report Subcommittee. Judge Brown provided background information on the formation of the Subcommittee, its purpose, submission of the first report in April 2012, and also mentioned its presentation of recommendations to the Commission and the adoption of those recommendations.

The Subcommittee met most recently on February 15, 2013. Agencies involved in the implementation of the Act provided updates on what has happened since the Commission submitted the Implementation Evaluation Report and what information will and will not be available for the 2013 report. Judge Brown told the Commission that limited data will be available for the 2013 report. Very few cases were processed through the system under the JRA in the first half of the 2012 Calendar Year; this is partly due to the effective dates of the JRA and partly due to the fact that implementation takes time. The report will focus primarily on cases processed in the second half of CY 2012. In addition to the limited numbers, it should be noted that early cases may not be fully representative of the changes under JRA.

Judge Brown noted that as of November 9, 2012, AOC's current automated data system (Automated Criminal Information System) started capturing when Advanced Supervised Release (ASR) is imposed, when a Confinement in Response to Violation (CRV) is imposed, and when an offender is sentenced to the Statewide Misdemeanant Confinement Program (SMCP). However, that automated data system will be replaced by the Criminal Court Information System late in 2013. The new system will collect additional information including habitual felon and habitual breaking and entering findings, community and intermediate punishment data, commitments to the SMCP, the ASR term, CRV and Quick Dip data. He emphasized that data collection is vitally important to the court's response to revocations.

Pursuant to legislative authorization, the Department of Adult Correction has transferred 50 positions to Community Corrections, 31 having been filled. Pursuant to a legislative mandate, the Department of Adult Correction studied the feasibility and cost-effectiveness of technical revocation centers and found that they were not feasible at this time. Judge Brown asked former Commissioner Jennie Lancaster to speak to this. Ms. Lancaster first made the distinction that these are not really revocation centers but violation centers. She stated that the idea has been to use closed prison facilities, e.g., Charlotte, to house the CRV population and to focus on why they are resisting compliance. Presently, the CRV population is being housed in five different prison facilities. She believes the DAC will continue to use closed prison facilities as community-based revocation centers. The Division of Prisons has transferred 50 positions to Community Corrections to accommodate the influx of approximately 15,000 prisoners into post-release supervision due to the JRA. There are no housing facilities for sex offenders. Ms. Lancaster believes that this is truly an opportunity to close more prisons and take that money and reinvest it into more community-based programming. Judge Brown then reported that there are currently 78-80 counties who have responded to the RFP's for the Treatment for Effective Community Supervision (TECS).

Ginny Hevener gave some context to what Jennie Lancaster had said about the increase in the post-release supervision population. She said that the state will be going from a PRS population of 2,500 to 15,000. Ms. Katzenelson added that this group coming into the PRS system is quite different from the population in the past. They are younger low-level felons and will continue to repeat, and keep the Post-Release Supervision and Parole staff very busy. Dr. Jenkins emphasized that it was going to take a very different skill-based probation officer to handle this kind of program. It's about training, equipment, and location of these facilities.

Judge Spainhour asked Ms. Lancaster what her recommendations had been for housing sex offenders. She said that they had put out a second RFP asking for programs and housing for sex offenders and they received only one response but it was not acceptable. A rural-based community setting is needed for these sex offenders. If a rural prison is closed, she believes the money should be taken and used to house sex offenders there. Senator McKissick agreed with Ms. Lancaster that the General Assembly really needs to consider these things. If they are going to make laws that are so restrictive to sex offenders and make housing virtually impossible in urban areas, attention must be given to finding the resources to house these people in rural areas. The State has to assist with and accommodate their needs for housing. Luther Moore asked if anyone knew the sex offender population in North Carolina. Ms. Hevener offered to find out and report back. Sheriff Clemmons said that he had 125 in his county alone. He said that the new law concerning church day cares and/or youth activities at the church have greatly impacted the sex offender population. There are so many issues dealing with those coming out.

In the area of Post-Release Supervision and Parole, 761 offenders have been released onto post-release supervision; 20 have received 90 day confinements in response to violations. Supervision is revoked for new crimes more than for technical violations. Electronic reports and video conferencing have greatly increased the efficiency of the violation process.

The N.C. Sheriffs' Association manages the Statewide Misdemeanant Confinement Program. Fifty counties have volunteered 1,604 jail spaces and the average daily population of the Program is 722 inmates. Currently, there are only 30 CRV inmates in the program.

The Subcommittee is tentatively scheduled to meet April 5 to review the Justice Reinvestment Act Implementation Evaluation Report. The Commission must submit that report to the General Assembly by April 15. The Report will cover legal and implementation aspects as well as provide data where available. Data will be limited because of the time it took agencies to develop and implement new policies and procedures, delays in the implementation of certain aspects of the JRA, and the use of new and/or modified data systems.

Dr. McMurray asked for a copy of the Annual Statewide Misdemeanant Confinement Program Report. The Sentencing Commission staff will provide that to the full Commission.

After lunch, Ms. Hevener reported that there were over 18,000 sex offenders on the Sex Registry. At the end of January, there were 4,800 sex offenders in prison and 2,000 sex offenders on probation. At the end of January, there were 37,243 total prisoners.

Mr. Moore asked if it would be appropriate in a future meeting to do a section on what

constitutes a sex offender as a learning session for all of the Commissioners. Judge Spainhour said that was possible.

LEGISLATIVE UPDATE AND REVIEW – FELONY BILLS INTRODUCED DURING THE 2013 SESSION

John Madler presented an overview of the 2013 Legislative Session to date. On January 9, the General Assembly met to organize. They adjourned and reconvened on January 30 and have been in session since that time. The staff had several opportunities to present to the Joint Appropriations Committee on Justice and Public Safety. First, the staff presented an overview of Structured Sentencing, then Jamie Markham of the UNC School of Government gave a brief overview of the Justice Reinvestment Act, and lastly, staff presented the population projections.

So far, 268 House bills have been introduced and 243 Senate bills have been introduced. During the 2011 Long Session, 938 House bills and 791 Senate bills were introduced. One bill, HB 19 – Respect Our Fallen Heroes, has been ratified.

Other bills of interest that have been introduced included the Technical Corrections Bill which would amend the felony punishment chart to include life with parole for Class A offenses; sex trafficking, sex registration, and human trafficking bills which could potentially increase the sex offender registry; a bill dealing with the Parole Commission (which added 4th member on February 1st) in which appeals would be heard in three-member panels; bills on court efficiency (HB 217) which would give District Courts exclusive jurisdiction to preside over supervision of a probation judgment that was entered in Superior Court; the appeal of a revocation or a split sentence would go directly to the Court of Appeals. The District Court would be the court of record. HB 12 would increase the retirement age for judges from 72 to 75.

Mr. Madler reviewed the mandate and process for reviewing proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification. He reminded the Commission that they voted to suspend the review of misdemeanor offenses. The Commission adopted criteria for reviewing homicide offenses, but not drug offenses.

Mr. Madler began with the Senate bills.

SB 117 – Lily’s Law [Ed. 2]

(G.S. 14-17, Subsection (c)). Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. 14-17, Subsection (c)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

SB 124 – Shoot Gun From Inside/To Harm or Incite Fear [Ed. 1]. (G.S. 14-34.10). Judge Brown moved to find the provision consistent with the Offense Classification Criteria. Judge

Morrison seconded the motion, and the motion carried.

SB 135 – Modify Habitual Impaired Driving Statute [Ed. 1]. (G.S. 20-138.5). Judge Brown moved to find the Offense Classification Criteria to be not applicable. Mr. Hart seconded the motion, and the motion carried.

SB 137 – Prohibit Co-pay Waiver/Medicaid Providers [Ed. 1]

(G.S. 108A-63, Subdivision (e)(3)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. 108A-63, Subsection (g)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

(G.S. 108A-63, Subsection (h)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

SB 140 – Financial Exploitation of Older Adults [Ed. 1].

(G.S. 14-112.2, Subsection (c)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

(G.S. 14-112.2, Subsection (c)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

(G.S. 14-112.2, Subsection (c)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

SB 187 – PM2.5 Studies on Humans Unlawful [Ed. 1]. (G.S. 14-34.4A). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

Sara Perdue introduced the House Bills.

HB 25 – Amend Felony Breaking or Entering [Ed. 1]. (G.S. 14-54, Subsection (a1)). Judge Brown moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

HB 26 – Strengthen Laws/Vehicle Theft [Ed. 1].

(G.S. 14-72.7). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. 20-62.1, Subsection (c)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

HB 29 – Methamphetamine/Offense/Penalties [Ed. 1].

(G.S. 80-95, Subpart (d1)(1)c). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion. After some discussion, the motion was withdrawn. Mr. Hart moved to find the Offense Classification Criteria to be not applicable. Judge Morrison seconded the motion, and the motion carried.

(G.S. 15A-1340.16D, Subdivision (a1)(1)). Mr. Hart moved to find the Offense Classification Criteria to be not applicable. Mr. Moore seconded the motion, and the motion carried.

(G.S. 15A-1340.16D, Subdivision (a1)(2)). Mr. Hart moved to find the Offense Classification Criteria to be not applicable. Judge Elmore seconded the motion, and the motion carried.

(G.S. 15A-1340.16D, Subdivision (a1)(3)). Mr. Moore moved to find the Offense Classification Criteria to be not applicable. Mr. Hart seconded the motion, and the motion carried.

HB 31 – Amend Habitual DWI [Ed. 1].

(G.S. 20-138.5). Mr. Hart moved to find the Offense Classification Criteria to be not applicable. Judge Brown seconded the motion, and the motion carried.

HB 40 – Amend Habitual DWI [Ed. 1].

(G.S. 20-138.5). Mr. Hart moved to find the Offense Classification Criteria to be not applicable. Judge Brown seconded the motion, and the motion carried.

HB 75/SB 70 – Kilah’s law/Increase Child Abuse Penalties [Ed. 1].

(G.S. 14-318.4, Subsection (a)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. 14-318.4, Subsection (a1)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. 14-318.4, Subsection (a2)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. 14-318.4, Subsection (a3)). Sheriff Clemmons moved to find the provision consistent with the Offense Classification Criteria. Judge Brown seconded the motion, and the motion carried.

(G.S. 14-318.4, Subsection (a5)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

HB 149 – Caylee’s Law/Report Missing Children [Ed. 2].

(G.S. 14-318.5). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. 14-401.22, Subsection (a1)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 14-401.22, Subsection (e)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. 14-401.22, Subsection (e)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. 14.225, Subsection (b)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

HB 160 – Public Contracts/Illegal Immigrants [Ed. 1]. (G.S. 143-133.1). Judge Brown moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

HB 221 – Increase Penalties for Human Trafficking [Ed. 1].

(G.S. 14-43.11). Chief Cunningham moved to find the provision consistent with the Offense Classification Criteria. Judge Brown seconded the motion, and the motion carried.

(G.S. 14-43.12). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Brown seconded the motion, and the motion carried.

(G.S. 14-43.13). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Dr. McMurray seconded the motion, and the motion carried.

(G.S. 14-43.14). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

HB 253/SB 235 – Voter Protection and Integrity Act [Ed. 1]. (G.S. 163-166.13, Subsection (b)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

At this point, the bills were complete. Judge Spainhour announced that there would be a Legislative Review Subcommittee Meeting on April 19th and asked for volunteers. He reminded the members that the next full Commission meeting would be on June 14th.

The meeting was adjourned at 1:40 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant