MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
JUNE 13, 2014

Members Present: Chairman W. Erwin Spainhour, Honorable Charles Brown, Honorable Floyd McKissick, Honorable Maureen Krueger, Chief Scott Cunningham, Chris Fialko, Billy Sanders, Judge Fred Morrison, Art Beeler, Dr. Harvey McMurray, Ilona Kusa, Honorable Thomas Thompson, Honorable Richard Elmore, Louise Davis, David Guice.

Guests: Rita Beard (Intern to Senator Daniel), Peg Dorer (Conference of District Attorneys), David Edwards (Department of Public Safety), Brendan Burns (Intern to Senator McKissick), Graison McKissick (Intern to Senator McKissick), Lao Rubert (Carolina Justice Policy Center/former Commissioner), Susan Sitze (Research Division, General Assembly), James Markham (UNC School of Government), George Pettigrew (Department of Public Safety), Joyce Kuhn (Pretrial Services), Yolanda Woodhouse (Administrative Office of the Courts).

Staff: Susan Katzenelson, Ginny Hevener, John Madler, Tamara Flinchum, Michelle Hall, Sara Perdue, Jennifer Wesoloski, Rebecca Wood, Jenayalynn Riojas.

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:00 am. He reviewed the agenda for the meeting. Judge Fred Morrison moved to adopt the minutes from the March 7, 2014 meeting; Art Beeler seconded the motion and the motion carried. After the Recidivism presentation delivered by Ginny Hevener and Tamara Flinchum, the members and visitors introduced themselves.

RECIDIVISM IN NORTH CAROLINA

Chairman Spainhour recognized Ginny Hevener and Tamara Flinchum to present the 2014 Report on Recidivism. Ms. Hevener began by noting that the legislative mandate to prepare biennial reports on recidivism directs the Commission to evaluate the state-wide effectiveness of community corrections and in-prison programs, measured primarily by recidivism rates (*see* handout). Over the course of these eight reports, staff have examined recidivism of over 400,000 offenders, with 50,000-60,000 offenders in each sample. The current report was comprised of convicted offenders placed on probation or released from prison in FY 2010/11, with information about their personal and criminal background, current offense, and correctional program participation. The sample was followed for a fixed two-year period to measure various outcomes. The primary measure of recidivism was fingerprinted arrests supplemented by information on convictions and incarcerations during the two-year follow-up. Interim outcome measures, such as violations and revocations for probationers and infractions committed during incarceration for prisoners, were also examined.

Ms. Hevener explained that the sample selection occurred prior to the implementation of the Justice Reinvestment Act; however, probationers may have been subject to changes in supervision under JRA during the follow-up period. Prisoners in the sample were not subject to any of the changes under JRA. With a look to future reports, the current sample will serve as a baseline recidivism comparison for future samples that include offenders convicted and sentenced after the implementation of JRA. Ms. Hevener turned the discussion over to Tamara Flinchum to present the findings from the report.

Ms. Flinchum presented the results from the 2014 Correctional Program Evaluation Report, based on 57,535 offenders, including 38,165 probation entries and 19,370 prison releases during FY 2010/11.

The majority of the sample population was male (78%), primarily nonwhite (56%), few married (12%), almost half without a high school diploma (47%), under half employed (44%), half with a drug addiction problem (51%), and with an average age of 32. Most had extensive criminal history – 79% had at least one prior arrest, 64% had at least one prior probation admission, 40% had at least one prior probation revocation, and 35% had at least one prior incarceration. Of the 57,535 offenders studied, 5% had a B1-E felony as their most serious current conviction, 44% had an F-I felony, and 51% had misdemeanors as their most serious current conviction. Property offenses comprised the highest volume of offenses followed by drug offenses.

Ms. Flinchum reported the recidivist arrests rate for the two-year follow-up period with 28% rearrested during the first year and 41% rearrested during the second year. The first rearrest occurred, on average, 8.4 months after release from prison or start of the probationary supervision period. Offenders with a current conviction of a Class F through Class I felony had the highest rearrest rate (46%) when compared to Class B1-E felons and misdemeanants (41% and 38% respectively).

Prisoners released with no post-release supervision (PRS) were compared to prisoners released into the community on PRS. Prisoners with PRS were more likely than prisoners without PRS to be male, nonwhite, employed, and older. Prisoners without PRS tended to have more prior contacts with the criminal justice system than prisoners with PRS. Regarding rearrest rates, prisoners with no PRS had higher rates at 49% compared to prisoners with PRS at 43%. Infractions while incarcerated were examined as an interim outcome measure. Ms. Flinchum reported that 48% of the prisoners had an infraction; when controlling for time served, prisoners with longer sentences had accrued more infractions.

For probation entries, Ms. Flinchum reported findings by type of punishment: community or intermediate. Most received a community punishment (68%). Intermediate punishment probationers were more likely than community punishment probationers to be male, nonwhite, to have dropped out of school, to be unemployed, and to have a drug addiction problem. In addition, intermediate punishment probationers tended to have more prior contacts with the criminal justice system than probationers with a community

punishment. Finally, intermediate punishment probationers had higher rearrest rates than community punishment probationers (41% and 35% respectively).

Ms. Flinchum explained that with community and intermediate punishment redefined under JRA, probationers also were examined as felons or misdemeanants based on their most serious current conviction. Using the felony/misdemeanor comparison, probationers were examined using two interim outcome measures, violations of probation and revocations of probation. Sixty-six percent of probationers had at least one violation during the two-year follow-up period. Of those probationers with a violation, the majority (58%) had a most serious violation that was a technical violation. Thirty-one percent of the probation entries had their probation revoked during the two-year follow-up period. Of those probationers with a revocation, the majority (49%) were revoked for a technical violation.

Ms. Flinchum reviewed the components of the risk score (the "old" OTI) used for the recidivism study. Overall, 12% of probationers were categorized as minimal risk, 29% as low risk, 34% as moderate risk, and 25% as high risk. She also reviewed the components of the need assessment tools, the Offender Self-Report and the Officer Interview and Impressions instruments. Overall, 3% of probationers were minimal need, 18% were low need, 35% were moderate need, 19% were high need, and 25% were extreme need. The risk level and the need level are combined to determine the appropriate supervision level for each probationer. There are five levels of supervision with Level 1 being the most restrictive and Level 5 being the least restrictive. Overall, 9% of the probationers were supervised at Level 1, 31% at Level 2, 31% at Level 3, 23% at Level 4, and 6% at Level 5.

Examination of the outcome measures by probationers' supervision level revealed a stair-step pattern. Probationers assessed as a Level 1 (the most restrictive) had higher rates of probation violations, revocations, and recidivist arrests during the two-year follow-up compared to the remaining four groups. Level 5 probationers (the least restrictive) had the lowest probation violation rates, revocation rates, and recidivist arrest rates.

Finally, Ms. Flinchum noted the arrest, conviction, and incarceration rates for the sample during the two-year follow-up period – 41%, 21%, and 22%, respectively – and discussed differences in recidivism rates among the subgroups of prison releases and probation entries.

In summary, Ms. Hevener discussed the trends in recidivism rates in North Carolina for the past 20 years. Historically, statewide recidivism rates have been consistent across samples of offenders and across changes in sentencing laws; however, there has been a measurable increase in the rates of the two most recent samples, FY 2008/09 and FY 2010/11. The primary explanation for the increase from FY 2005/06 to FY 2008/09 points to changes in reporting practices. Historically, fingerprinted arrests included all felonies and only serious misdemeanors. In recent years, the use of automated fingerprint technology has led to a greater number of misdemeanor arrests being fingerprinted. Data from the Department of Justice support this theory. This change may contribute somewhat to the increase from FY

2008/09 to FY 2010/11, but to a lesser degree. A change in offender behavior may account for a larger portion of this increase.

Several conclusions have consistently been reported in the eight recidivism reports published. They have confirmed the value of offender risk assessments, efficient targeting of correctional resources, and timely, efficient, and graduated responses to violations of conditions of supervision. Many of the provisions of the JRA are consistent with these findings and conclusions with changes made to community corrections and the supervision of offenders in order to target correctional resources. Supervising offenders based on the results of risk and need assessments by providing more supervision for high risk/high need offenders is one example. Preliminary results are encouraging, with incarceration rates for the FY 2010/11 sample lower than those found for the FY 2008/09 sample, even with only a portion of the follow-up period post-JRA implementation. In closing, she noted that for the Commission's next (2016) recidivism report the entire probation sample would be convicted and sentenced under the JRA with supervision subject to the provisions of the JRA. Additional outcome measures will be included, such as confinement in response to violation (CRV) and quick dip confinement. Staff plans also include site visits in the field similar to those conducted in 2013 to see whether and how practices have changed as the JRA implementation has progressed, and field practitioners have developed a more comprehensive understanding of the JRA.

Senator McKissick raised the question of using two-year versus three-year follow-up periods for recidivism. Ms. Hevener responded that it varies; however, the three-year follow-up is generally the more common interval. She explained that the recidivism reports provide recidivism rates at one-, two-, and three-year intervals. The two-year follow-up is beneficial as a baseline to compare to future JRA samples. Senator McKissick then asked if this particular period being looked at has mixed results due to JRA. Ms. Hevener responded that the current sample is not a true evaluation of JRA because not enough of the follow-up period for many of the offenders was under the JRA. Ms. Katzenelson added that with JRA still not fully implemented, the current sample is a comparative baseline as the state transitions. Senator McKissick then asked if the state is really two years away from seeing the true impact of JRA. Ms. Katzenelson responded that as far as probation is concerned, definitely; as far as low level felons are concerned, probably; but it will probably take two more cycles before the impact on prisoners is available.

Mr. Fialko asked if there was any distinguishing between people who went to prison compared to those with an intensive intermediate punishment (e.g., split sentences). Ms. Hevener answered that staff did not focus on that for this particular study, but it could be a focus in future reports. Senator McKissick asked if it was possible to know the type of recidivist offense committed by the offenders with a conviction that requires registering as a sex offender – if the recidivist offense was a sex offense as well. Ms. Flinchum responded that only the type of recidivist offense (i.e., violent, property, drug, other) is known. Mr. Beeler responded to Senator McKissick by stating that nationwide data, which is limited, demonstrates that when sex offenders are rearrested they typically are not rearrested for a sex offense but for a property offense or something similar. Mr. Beeler mentioned that it would be interesting

to further study the recidivism of sex offenders by examining the type of recidivist offenses they commit. Ms. Katzenelson added that sex offenders are also supervised more than other offenders.

Mr. Beeler acknowledged the hard work of staff and summarized his conclusions from the report that education, especially for offenders, is extremely important. The RAND Study in 2012 demonstrates that education, vocational and academic, has an impact of up to 40% on the rates of recidivism. He mentioned the continued challenges faced by maintaining prison education programs, especially due to the fiscal issues that the state faces. If prisoners have some education, it increases their chances of becoming law abiding citizens. Mr. Beeler also mentioned the importance of the needs part of the risk and need assessments.

Senator McKissick followed Mr. Beeler's comments by asking for staff to compile a laundry list of what has been done in other jurisdictions that could help with this need. He asked at what point is intervention needed to bring about change. Louise Davis reported that she heard on NPR that of all the industrialized nations in the world, the US financial support of education is the lowest for poor neighborhoods. Chairman Spainhour commented that it is very unusual to have offenders with high school diplomas appear before him and almost non-existent for those with a year or so of technical school. Senator McKissick referenced a study that reported that if a child is not reading by the 3rd grade, then he/she will drop out of high school, implying the time to intervene is earlier. Mr. Sanders commented on previous Sentencing Commission studies that reported a higher incidence of recidivism among younger prisoners who obtained their GED while in prison. One program that demonstrated lower recidivism rates was work release during imprisonment. Overall, Mr. Sanders pointed out that the cause and effect part of the situation is what makes it difficult to effect impactful changes in the area of recidivism. Senator McKissick commented that when prisoners are released, they have a record which disqualifies them from employment.

Ilona Kusa raised the issue of the availability of substance abuse treatment. Chairman Spainhour commented that most of the probationers have to attend some type of drug treatment. Dr. McMurray added that the academic community should become more involved to help identify these issues. Ms. Katzenelson offered for the Commission staff to compile a list of the most common themes from Commission reports to provide to the Commissioners.

LEGISLATIVE REVIEW

Chairman Spainhour recognized John Madler to present the 2014 Legislative Session Update (*see* handout).

Mr. Madler began by presenting ratified bills that contained criminal provisions (House Bill (HB) 1050, Omnibus Tax Law Changes, Senate Bill (SB) 786, Energy Modernizing Act) and a bill of interest to the Commission that was still being considered (HB 725, Young Offenders Rehabilitation Act). He then turned to the proposed budget bills. Mr. Madler explained that the General Assembly had not passed a budget yet but that the Governor, the Senate, and the

House had each presented their version of the budget (SB 842/HB 1208, Governors Budget; SB 744 3rd Ed., Senate Budget; SB 744 5th Ed., House Budget). The House and the Senate would work out a compromise in a conference committee. Mr. Madler reviewed the proposed appropriations and relevant special provisions for the Judicial Branch, Indigent Defense Services, the Department of Justice, and the Department of Public Safety. He highlighted three special provisions that were in all three proposed budgets: the first would place all misdemeanants, including those convicted of driving while impaired (DWI), in county jails rather than the Division of Adult Correction; the second would establish two stand-alone Confinement in Response to Violation (CRV) facilities; and the third would amend the CRV statute to apply all credit for time served to the suspended sentence and not to the CRV period.

Mr. Madler then presented a letter the Commission received from the Conference of District Attorneys (*see* handout). The Conference expressed their concern over the manner in which CRV periods are credited to consecutive sentences upon revocation of probation. They were aware that the Commission was studying this issue and others related to CRVs and expressed their support for the Commission's efforts and any recommendations it might develop. The Conference also mentioned Advanced Supervised Release (ASR) and their recommendation that it be eliminated as an option within the sentencing structure. Mr. Madler explained that the Justice Reinvestment Subcommittee will consider these issues as part of its ongoing mandate.

Chris Fialko asked if anyone was receiving Advanced Supervised Release as part of their sentence. Ginny Hevener responded that there were approximately 80 or 90 offenders in prison in calendar year 2013 who received an ASR sentence. Mr. Madler added that ASR is contingent upon the approval of the District Attorney (DA) and that when staff conducted field visits, they found that some DA offices had a policy of never approving it.

Regarding sentencing all misdemeanants to the county jails, Tommy Thompson asked how staff would be able to collect the data that is necessary for the recidivism report and other reports on these offenders since each sheriff has a different way of keeping information. He also questioned how some counties would afford housing the additional misdemeanants. John Madler explained that the additional misdemeanants would be sentenced to the Statewide Misdemeanant Confinement Program (SMCP). The SMCP would place misdemeanants in participating counties that have agreed to provide beds and would reimburse the counties for the costs. Ginny Hevener told the Commissioners that there is no statewide automated jail data system and that is a serious problem in terms of capturing information on incarceration or confinement during follow-up periods. Staff received a data extract from CJLEADS and is looking to see whether that will provide the information needed. Susan Katzenelson pointed out that the Recidivism Study looks at offenders who are released from prison and, if the bill passes, there will not be any misdemeanants in prison. As a result, those misdemeanants would no longer be in the recidivism sample. Staff will have to explore what is available for jail data and how to use that information. Mr. Thompson asked what the effective date was for this proposal. Mr. Madler responded that it would apply to misdemeanor offenders beginning on October 1, 2014, and DWI offenders beginning on January 1, 2015. Mr. Thompson pointed out

that most of the counties will have already passed their budget and the Sheriffs' budget by the time this issue is settled. Mr. Beeler added that this change may bring the county jails under review by the Prison Rape Elimination Act as well, something the sheriffs have resisted so far.

George Pettigrew explained that the proposal is to move the misdemeanants from the Division of Adult Correction (DAC) to the SMCP. The SMCP has approximately 1,000 beds available across the state and has excess funding. The DAC has also been meeting with the Sheriffs' Association regarding DWI offenders getting assessments and treatment in the county jails. The Sheriffs' Association is looking at 10 or 12 locations where they already have treatment available and whether these new offenders could be housed there.

Rebecca Wood reminded the Commissioners that the Credit for Time Served Subcommittee was looking at jail data collection system issues.

Turning to the legislative review, Mr. Madler told the Commission members of their statutory duty to review bills that have been introduced that either create a criminal offense, change the class of an existing offense, or change a punishment, and to make recommendations back to the General Assembly. He further explained that when dealing with a new criminal offense or a change of classification, the question is whether the proposal is either consistent or inconsistent with the offense classification criteria. When dealing with a punishment change, the question is whether the proposal is consistent or inconsistent with structured sentencing and with the elements of the structure itself. Mr. Madler then reviewed the policies previously established by the Commission. He introduced Sara Perdue for presentation of the Senate bills and Rebecca Wood who would subsequently present the House bills.

Sara Perdue presented the Senate bills for review.

SB 744 – Appropriations Act of 2014 [Ed. 3] (G.S. § 14-269). Proposed Class H felony (second or subsequent offense). Sara Perdue reviewed the proposal to make second and subsequent violations a Class H Felony and reminded the Commission that, pursuant to the Legislative Review policies they previously established, the provision is inconsistent with the Offense Classification Criteria because the Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

SB 819/HB 1169 – Update/Midwifery Practice Act [Ed.1]

(G.S. § 90-18.7 (a)). Judge Elmore moved to find the proposed Class I felony provision consistent with the Offense Classification Criteria and Senator McKissick seconded the motion; motion carried.

(G.S. § 90-18.7 (a)(cont'd)). Senator McKissick moved to find the proposed Class I felony provision consistent with the Offense Classification Criteria and Judge Elmore seconded the motion; motion carried.

(G.S. § 90-178.7(b)). Senator McKissick moved to find the proposed Class I felony provision consistent with the Offense Classification Criteria and Mr. Thompson seconded the motion; motion carried.

SB 842 – Governor's Budget [Ed.1]

(G.S. § 14-258.1 (d)). Mr. Beeler moved to find the proposed Class F felony provision consistent with the Offense Classification Criteria and Ms. Krueger seconded the motion; motion carried.

(G.S. § 14-258.1 (e)). Mr. Beeler moved to find the proposed Class F felony provision consistent with the Offense Classification Criteria and Senator McKissick seconded the motion; motion carried.

(G.S. § 14-16.6 (a)). Mr. Fialko moved to find the proposed Class E felony provision inconsistent with the Offense Classification Criteria and Mr. Sanders seconded the motion; motion carried. Senator McKissick moved to recommend it would be consistent with the Offense Classification Criteria for a Class F felony or a Class H felony and Chief Cunningham seconded the motion; motion carried.

(G.S. § 14-16.6 (a) (cont'd)). Mr. Sanders moved to find the proposed Class E felony provision inconsistent with the Offense Classification Criteria and Mr. Fialko seconded the motion; motion carried. Senator McKissick moved to recommend it would be consistent with the Offense Classification Criteria for a Class F felony or a Class H felony and Mr. Thompson seconded the motion; motion carried.

(G.S. § 14-16.6 (b). Senator McKissick moved to find the proposed Class D felony provision consistent with the Offense Classification Criteria and Ms. Krueger seconded the motion; motion carried.

(G.S. § 14-16.6 (b) (cont'd)). Senator McKissick moved to find the proposed Class D felony provision consistent with the Offense Classification Criteria and Ms. Krueger seconded the motion; motion carried.

(G.S. § 14-16.6 (c). Mr. Sanders moved to find the proposed Class C felony provision inconsistent with the Offense Classification Criteria, and recommended that it would be consistent with the Offense Classification Criteria for a Class E felony; Judge Morrison seconded the motion and the motion carried.

(G.S. § 14-16.6 (c) (cont'd)). Mr. Sanders moved to find the proposed Class C felony provision inconsistent with the Offense Classification Criteria. Judge Morrison seconded the motion and the motion carried. Mr. Sanders moved to recommend it would be consistent with the Offense Classification Criteria for a Class E felony. Senator McKissick seconded the motion and the motion carried.

(G.S. § 14-16.7 (a)). Mr. Sanders moved to find the proposed Class F felony provision inconsistent with the Classification Criteria. Judge Morrison seconded the motion and the motion carried. Mr. Sanders moved to recommend that it would be consistent with the Offense Classification Criteria for a Class H felony. Judge Morrison seconded the motion and the motion carried.

(G.S. § 14-16.7 (a)). Judge Brown moved to find the proposed Class F felony provision inconsistent with the Offense Classification Criteria and recommended that it would be consistent with the Offense Classification Criteria for a Class H felony. Senator McKissick seconded the motion and the motion carried.

(G.S. § 14-16.7 (b)). Mr. Sanders moved to find the proposed Class F felony provision inconsistent with the Classification Criteria and recommended that it would be consistent with the Offense Classification Criteria for a Class H felony. Judge Brown seconded the motion and the motion carried.

(G.S. § 14-16.7 (b)). Judge Brown moved to find the proposed Class F felony provision inconsistent with the Offense Classification Criteria and recommended that it would be consistent with the Offense Classification Criteria for a Class H felony. Senator McKissick seconded the motion and the motion carried.

Sara Perdue then instructed the Commissioners to remove page 15 of the handout and replace that with page 1 and 2 of the insert provided which contained the following two provisions for review.

(G.S. § 14-16.7 (b)). Mr. Sanders moved to find the proposed Class F felony provision inconsistent with the Offense Classification Criteria for a Class F felony and recommended that it would be consistent with the Offense Classification Criteria for a Class H felony. Judge Brown seconded the motion and the motion carried.

(G.S. § 14-16.7 (b)). Mr. Sanders moved to find the proposed offense inconsistent with the Offense Classification Criteria for a Class F felony and recommended that it would be consistent with the Offense Classification Criteria for a Class H felony. Judge Brown seconded the motion and the motion carried.

Rebecca Wood presented the following House Bills.

HB 1059 – Venus Flytrap Taking Penalty/Occup. Tax Use.

Judge Elmore moved to find the proposed Class H provision consistent with the Offense Classification Criteria but the motion died for lack of a second. Senator McKissick moved to find the provision inconsistent with the Offense Classification Criteria and Mr. Sanders seconded the motion; motion carried.

Maureen Kruger pointed out that the Venus Flytrap is an endangered species that only grows in certain parts of the country. She suggested that, in the future, the Commission may

need to consider how the Offense Classification Criteria can address sensitive environmental issues.

HB 1099 – Unmanned Aircraft Regulation.

(G.S. § 14-280.3) Mr. Sanders moved to find the proposed Class H felony provision consistent with the Offense Classification Criteria and Senator McKissick seconded the motion; motion carried.

(G.S. § 14-401.24) Senator McKissick moved to find the proposed Class I felony provision consistent with the Offense Classification Criteria and Mr. Sanders seconded the motion; motion carried.

CONFINEMENT IN RESPONSE TO VIOLATION (CRV) PILOT PROJECT UPDATE

Chairman Spainhour recognized George Pettigrew, the Justice Reinvestment Administrator with the Department of Public Safety, to provide an update on the CRV pilot project. Mr. Pettigrew began by explaining that the CRV was a part of the Justice Reinvestment Act, intended to reduce the number of technical probation revocations. This program allows the State to respond to technical violations with shorter periods of confinement: up to 90 days for misdemeanants and 90 days for felons.

Offenders with CRVs are currently housed in designated prison units after a condensed diagnostic intake process. The limited programming that is available includes brief intervention tools, substance abuse education, job readiness (workshops/sessions), interactive journaling, and GED registration. The DAC has learned that the current process works well for youth males and females because they stay at the same facility as the diagnostic intake, but not quite as well for adult males because they are housed at various facilities. This prevents units from filling full-time program and job assignments and affects programming availability and effectiveness.

Mr. Pettigrew then presented the DAC proposal to designate a single facility for adult male CRVs, where they could stay after diagnosis intake. The DAC had considered developing a CRV Center pilot program in Johnston Correctional Institution. All adult male CRV offenders would have been housed at one facility as opposed to being mixed with regular inmate populations, with programming to include alcoholism and chemical dependency programs, as well as classes through Johnston County Community College. However, the DAC identified several barriers to the project including continued (though minimized) contact with regular inmates, inadequate classroom space for CRV population, and the requirement for a large investment of funds to correct these barriers. In light of these issues, the DAC decided not to continue with this pilot program.

Mr. Pettigrew then explained the current proposal for two stand-alone CRV centers, one in Burke County and one in Robeson County. Additional funding would be required to reopen the two closed prison facilities and convert them to CRV centers, but the proposal is included in

the Governor's budget as well as the House and Senate budgets. The next steps for the DAC include site visits and a review of other states' facilities.

Mr. Pettigrew then addressed issues related to applying credit to CRV periods. He reviewed the current statute and explained that it results in a majority of CRV periods being less than 90 days, limiting the opportunity for programming. The DAC has submitted a legislative proposal to change the statute and not allow CRV periods to be reduced by time served awaiting violation hearings. This legislation would apply to all probation violations occurring on or after October 1, 2014.

Chairman Spainhour asked if there is no appeal from the imposition of a CRV. Jamie Markham stated that the Court of Appeals has said that is correct but that they did not rule on whether that would be the case if it were a terminal CRV.

Art Beeler mentioned how important the staff training aspect was for this change. He referenced the Community Reintegration Centers in Ohio and how their biggest issue has been the cultural shift for the officers to deal with the dichotomy between custody and treatment. Mr. Pettigrew credited George Solomon, the Director of Prisons, with emphasizing the need for staff to understand what the mission is and that they are on board with that mission.

Mr. Pettigrew stated how excited they were about the involvement of probation staff in the CRV centers. They hope to have the referral process in place to match offenders to community resources two weeks before they leave the facility. Mr. Beeler asked if they were going to link offenders back to substance abuse treatment in the community. He expressed concern about there not being enough time in the CRV center for treatment to stick. Mr. Pettigrew responded that they see the CRV as a time to take the offender out of their environment to try to get their mindset and attitude straight, and to give them some skills. He agreed that to continue that with the resources out in the field is important. He added that DAC will have officers on site with one-on-one interactions using the same tools the officers are using in the field, so there will be continuity there as well.

Mr. Beeler asked what the DAC was planning to do with misdemeanants who receive CRVs, especially if they will all be going to the county jail. Mr. Pettigrew responded that the Division has had discussions with the Statewide Misdemeanant Confinement Program (SMCP) staff regarding different treatment options. He pointed out that there are vendors working in the counties now through the Treatment for Effective Community Supervision (TECS) program that conduct programming; counties could tap into these resources. In addition, the DAC has been talking with SMCP staff regarding the DWI population. The SMCP staff identified 10 or 12 jails that already have treatment options for DWI offenders; they are considering whether the additional population could be sent to these facilities. Mr. Beeler reiterated his concern that county jails do not always have programming and that they have a different mindset regarding programming. He questioned how it was going to work for misdemeanants.

Mr. Guice responded to the Commission's concerns. Regarding shifting misdemeanants to the county jails, he reminded the Commissioners that the DAC had originally projected a

need for 1,400 beds in the SMCP but that the actual population has only been around 650 offenders, including about 15 serving CRVs; there is space available for the additional misdemeanants. Regarding DWI offenders, Mr. Guice explained that the SMCP funds are not only for housing but also for transportation, medical costs, and treatment. It is not clear yet what that treatment will look like but he admitted that the State is not doing much for those offenders currently. He stated that, overall, freeing up those beds in the state system allows the DAC to close two facilities and redo a third facility, saving an enormous amount of money. In turn, the House and the Senate have proposed appropriating money to the DAC for innovations like the CRV centers.

Mr. Guice told the members that getting the treatment period to 90 days is something that the DAC has worked hard on and, while it is probably not enough, it is better than an average of 64 days offenders are currently serving on CRVs. The proposal does not deal with misdemeanants on CRVs because the population is smaller and the sentences are shorter, but the DAC is prepared to address that as they move forward. He reminded the members that if the SMCP is full or does not have sufficient funding, the statutes provide that the misdemeanants will go back to the state system.

JUSTICE REINVESTMENT IMPLEMENTATION REPORT SUBCOMMITTEE – 2014 REPORT

Chairman Spainhour recognized Judge Brown to provide an update from the Justice Reinvestment Implementation Report Subcommittee. Judge Brown thanked Commissioners and staff for their work on behalf of the Subcommittee. He then provided background on the JRA. The JRA passed in June of 2011 and included a mandate to the Sentencing Commission and the Division of Adult Corrections to jointly conduct ongoing evaluations of the implementation of JRA. The Commission created the Justice Reinvestment Implementation Report Subcommittee in response to the mandate with the purpose of gathering information, reviewing data where available, and reporting to the Commission any recommendations regarding implementation of the JRA. The third annual report was submitted to the Legislature in April, 2014.

Judge Brown described the contents of the 2014 report which included details on policy refinements made by agencies; emerging practices based on interviews conducted by staff with field practitioners; and implementation data. Judge Brown noted implementation data is still very much lacking but the report includes a full calendar year of data.

Judge Brown noted the overarching goals of JRA were to increase public safety through offender behavioral change induced by quick reactions to technical violations, and to improve rehabilitation through targeted services and programming for offenders. He explained that while it is too early to evaluate long term JRA outcomes such as reduced recidivism, the interviews staff conducted provided a snapshot of current implementation efforts. Information obtained from the interviews provided context for the current report and future reports and will also help with the interpretation of data. Results from the interviews across the state suggest the current stage of implementation can be defined by the creative use of some JRA provisions and modification of practices in light of new JRA tools.

Judge Brown explained that some emerging practices may result in unanticipated savings that conflict with some of the primary goals of JRA. He gave the example of the terminal CRV, which may reduce the probation population but conflict with the rehabilitative mission of the JRA. He also noted some JRA provisions are not having much impact at this stage, including ASR and delegated authority.

Mr. Pettigrew responded that the use of delegated authority, particularly quick dips, has continued to grow. He noted that some of the delegated authorities that officers have always had are starting to see more use as well, though the Department has more work to do with staff in terms of training and emphasis. Judge Brown iterated the importance of saturation of information to those in the field to ensure they are fully informed of how to utilize delegated authority.

Mr. Pettigrew noted that in some districts, judges were indicating they were not allowing delegated authority. Judge Brown inquired how the Department was dealing with those types of situations. Mr. Pettigrew responded that they continue to work with officers and stakeholders to provide information.

Judge Brown noted that delegated authority included more than just quick dips and said that in his district, the utilization of TECS has been increasing.

Mr. Guice commented that the Department continues to work with judges around the state. He referenced some information the Department has been working on regarding quick dips and noted they can now drill down to figure out when the quick dips are most effective and how they impact the completion of supervision.

Judge Brown turned to discuss the prospect of misdemeanants moving to local jails. He noted that this issue overlaps with discussions the JRA Subcommittee and the Commission has had at prior meetings about using the SMCP to fund rehabilitative programs for misdemeanants sentenced to the program. If the program was to be responsible for all misdemeanants (including DWI offenders), this would potentially strain available funding for rehabilitation. Mr. Guice responded that when the funding stream was created, everyone knew there might be a need for future adjustments. He noted that in his conversations with legislative members, they are prepared for making adjustments to the funding. He added that North Carolina was one of two or three states that still houses misdemeanants in prison. Shifting that population to the local jails allows the Department to do better business. He noted that beds to house all misdemeanants are available through the SMCP; however, the key is making sure the treatment needs are also addressed. He noted the Department is in regular contact with the Sheriffs' Association on these issues. Discussion ensued about bed availability.

Judge Brown then turned to the data portion of the report. The data included offers the first look at changes in the system. He explained that some anticipated effects of the JRA have been realized at this stage, most notably the decline in revocations of probation. Other effects will continue to be monitored over time including the effects of the JRA on certain outcomes (chiefly recidivism), effectiveness of new tools in rehabilitating offenders, and the impact of the JRA on the prison and community supervision population. He noted it is important to recognize that these data only reflect evolving JRA practices during the early stages of implementation;

that is significant. The first wave of new cases under a new sentencing scheme is not necessarily representative of practices that will occur in the future. It is very much a work in progress.

He explained it is also important to recognize that during the time period being examined, field practitioners were still learning to use the new tools as well as how to capture the information in the automated systems. Changes in the community corrections population and prison population will continue to be monitored; particularly the impact of the PRS population on caseloads and the community supervision and prison population.

Judge Brown noted that to fully measure the impact of JRA on the emerging sentencing and correctional practices, the collection of empirical data is critical. Data will allow for the continued examination of the use of new tools available under JRA, as well as an analysis of the impact of those tools on outcome measures such as prison utilization and recidivism. The development of a statewide automated database for jails is another critical component in measuring the impact of the JRA, which was also highlighted earlier in the meeting. Without both agency data and statewide jail data the examination of the full impact of the JRA on the criminal justice system of North Carolina will be incomplete.

He continued, noting that one of the more difficult aspects of JRA is to monitor its savings being reinvested due to the changes under the law. The JRA's purpose was to save correctional resources by limiting the use of prisons in certain circumstances and reduce recidivism while continually reinvesting those savings into programming. The Subcommittee expressed concerns about effective ways to track the money saved by JRA provisions and the way those savings are being reinvested. The Subcommittee sees it as part of its duty when giving reports on implementation to include savings and expenditures that were reinvested. An effective way to monitor savings and investment of funds into programming is a critical component of measuring JRA's success.

Judge Brown concluded his update by noting that the report was submitted to the Legislature on time in April. The Commission has the ability to make recommendations to the Legislature regarding the JRA at any time, and the Subcommittee will continue its work, including the study of issues that were raised earlier in the meeting, and as called upon by the Commission.

Chairman Spainhour informed the members that the next full Commission meeting is September 5.

The meeting adjourned at 2:04 p.m.

Respectfully submitted,

Susan Katzenelson
Executive Director