

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
June 15, 2012

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 15, 2012, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Honorable Charlie Brown, Sheriff James Clemmons, Christopher Clifton, Chief Scott Cunningham, Honorable Warren Daniel, Honorable Richard Elmore, Honorable Robert Ervin, Honorable Clark Everett, Honorable John Faircloth, Chris Fialko, Paul Gibson, Bill Hart, Chief Deputy Secretary Jennie Lancaster, Dr. Harvey McMurray, Luther Moore, Honorable Fred Morrison, Sandy Pearce, Tony Rand, and Billy Sanders.

Guests: Sid Fowler (UNC Law Student, Extern with Office of Administrative Hearings), Atabaa Goodman (NC Sheriffs' Association), Doug Holbrook (NC Department of Public Safety), Jamie Markham (UNC School of Government), Nicole Sullivan (NC Department of Public Safety), and Yolanda Woodhouse (AOC Court Programs).

Staff: Susan Katzenelson, Ginny Hevener, John Madler, Vicky Etheridge, Tamara Flinchum, Ashleigh Gallagher, Michelle Hall, David Lagos, and Sara Perdue.

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:02 a.m. Chairman Spainhour recognized departing Commissioner Senator Ellie Kinnaird by reading a resolution recognizing her service to the Commission. Bill Hart moved to adopt the resolution; Judge Morrison seconded the motion and the motion carried.

Chairman Spainhour introduced and welcomed the newest member of the Sentencing and Policy Advisory Commission, Senator Warren Daniel, representing the North Carolina Senate.

After reviewing the agenda, the Chairman presented the minutes from the February 24, 2012 Commission meeting. Judge Ervin made a motion to accept the minutes as written, Paul Gibson seconded the motion, and the motion carried. Introductions of all those in attendance were made.

RECIDIVISM IN NORTH CAROLINA

The legislative mandate to prepare biennial reports on recidivism, as noted by Susan Katzenelson, directs the Commission to evaluate the state-wide effectiveness of community corrections and in-prison programs, measured primarily by recidivism rates. The reports are based on a sample of convicted offenders placed on probation or released from prison, with information about their personal and criminal background, current offense, and correctional

program participation. The sample is followed for a fixed period to measure various outcomes, such as recidivist arrests and probation revocations. The current (seventh) recidivism report, while tracking a FY 2008/09 sample, will serve as a comparative baseline to evaluate changes to occur in the state's criminal justice system following the implementation of the 2011 Justice Reinvestment Act (JRA).

Tamara Flinchum presented the results from the 2012 Correctional Program Evaluation Report, based on 61,646 offenders, including 41,773 probation entries and 19,873 prison releases during FY 2008/09.

The majority of the sample population was male (78%), primarily nonwhite (56%), few married (13%), almost half without a high school diploma (47%), half employed (51%), almost half with a drug addiction problem (46%), and with an average age of 32. Most had extensive criminal history – 73% had at least one prior arrest, 62% had at least one prior probation admission, 38% had at least one prior probation revocation, and 35% had at least one prior incarceration. Property offenses comprised the highest volume of offenses followed by drug offenses, and 48% had felony convictions as the most serious current conviction. Of the 61,646 offenders studied, 5% had a B1-E felony as their most serious current conviction, 43% had an F-I felony, and 52% had misdemeanors as their most serious current conviction.

Ms. Flinchum reviewed the components of the risk score used for the recidivism study and explained that an offender's risk level was assigned based upon that score. Beginning with this report, the offender's risk was determined based on the Division of Adult Correction's risk assessment tool, the Offender Traits Inventory (OTI). Offenders were categorized into minimum, low, moderate, and high risk based on their risk scores. Overall, 16% of the sample were minimum risk, 24% of the sample were low risk, 33% were moderate risk, and 27% were high risk.

Ms. Flinchum reported the recidivist arrests rates for the two-year follow-up period with 24% rearrested during the first year and 36% rearrested during the second year. Ms. Flinchum continued with her report by stating that the first rearrest occurs, on average, 9 months after release from prison or start of the probationary supervision period. In addition, rearrest rates were examined by risk level and by offense class. Rearrest rates increased as the severity of the risk level increased. Offenders with a current conviction of a Class F through Class I felony had the highest rearrest rate (40%) when compared to Class B1-E felons and misdemeanants.

For probation entries, Ms. Flinchum provided information on two interim outcome measures, violations of probation and revocations of probation. Sixty-three percent of probationers had at least one violation during the two-year follow-up period. Of those probationers with a violation, the majority (57%) had a most serious violation that was a technical violation. Thirty-seven percent of the probation entries had their probation revoked during the two-year follow-up period. Of those probationers with a revocation, the majority (53%) were revoked for a technical violation. For prison releases, Ms. Flinchum reported that 45% of the prisoners had an infraction while incarcerated. When controlling for time served, prisoners with longer sentences had accrued more infractions.

Finally, Ms. Flinchum summarized the arrest, conviction, and incarceration rates for the sample during the two-year follow-up period – 36%, 18%, and 24%, respectively – and discussed differences in recidivism rates among the subgroups of prison releases and probation entries. In summary, Ms. Flinchum discussed the consistency in recidivism rates in North Carolina for the past 20 years – with the exception of an increase in this report’s recidivist arrests. One of the possible explanations for the higher recidivism rate in the FY 2008/09 sample is the increase in fingerprinted misdemeanor arrests reported in the Department of Justice’s computerized criminal history system.

Justice Reinvestment policies leading to new sentencing and correctional practices will be expected to change recidivism trends, such as rearrest-, incarceration-, and revocation rates. At the same time, recidivism will serve as a primary measure of the success of the JRA in increasing public safety and reducing correctional costs. Ms. Katzenelson enumerated some of the changes anticipated in community corrections, incarceration practices, and offender risk and needs assessments, and their predicted impact on recidivism. In closing, she noted that the Commission’s next (2014) recidivism report will be based on a probationers-only sample sentenced under the JRA, in order to provide an early evaluation of the new law’s effects.

With a variety of questions, Commissioners further explored the recidivism study and its findings. Dr. McMurray asked why this report only covered a two-year follow-up; Ms. Katzenelson explained that two-, three-, and four-year follow-ups have been conducted in earlier reports. The goal for this report was to choose a pre-JRA sample close in time to the passage of JRA, to serve as a comparison to the first post-JRA sample of the next report. Dr. McMurray commented that recidivism tends to go up in the third year to about 40%. Ginny Hevener explained that in moving forward, the 2014 and 2016 recidivism studies will look at a group of offenders with varying JRA implementation rates, and shorter follow-up periods.

Judge Spainhour asked Ms. Flinchum to explain what she meant that the report did not take into account the “window of opportunity” of the offender. Ms. Flinchum explained that in the report, offenders had two years to recidivate. If incarcerated at any point during those two years (prison, not jail), the offender would not have had the opportunity to recidivate. Ms. Katzenelson further explained that if an offender revoked to prison would appear to be ‘successful,’ having no opportunity to reoffend.

Judge Brown asked about the “Rearrest Rates by Risk Level” slide. He said that while this report had four levels, he thought the OTI had five levels and wanted to know where Level 1 would go on this slide. Ms. Flinchum said that the OTI only had four levels, but the needs and risk assessments had five levels. Ms. Hevener and Secretary Lancaster both verified that, and Ms. Hevener also said that probation supervision had five levels. Ms. Flinchum explained that the risk assessment and the needs assessment are used to develop the supervision level. Judge Brown thanked them for clarifying and said that he was mixing up the two assessment tools with the supervision level.

Chairman Rand asked about the “Rearrest Rates by Type of Punishment & Offense Class for Current Conviction” chart. He said that it would seem that the 12,500 prisoners in Class F-I felonies should have some kind of action taken. Ms. Flinchum noted that the sample in this

report was pre-JRA and that this group would have been released on post-release supervision if they had been under JRA. Mr. Rand also asked if “criminal violation,” as used in the study, means accused of a crime or convicted. Ms. Flinchum answered that it meant both, and that the policy of the Division of Community Corrections (DCC) was that it had to be a new conviction. Ms. Hevener added that the DCC often used, for expediency, a technical violation within a new offense. Judge Spainhour further explained that the law states that as long as a judge is satisfied that an offense was committed (in other words, it does not have to be proven), he/she can revoke the probationer. Judge Ervin said that the policy was not to push the violation before conviction, but that it could be done. Chairman Rand said that the Post-Release and Parole Commission looks at the offense for which the prisoner was released to see if a technical violation had been committed.

Clark Everett said that the “Interim Outcome Measures for Probationers: Probation Revocations during Two-Year Follow-Up” chart was misleading; that absconders almost always get revoked while those with technical violations are not always revoked due to the large number of probationers who have technical violations. It appears that many probationers with technical violations are revoked, but that’s not usually the case. Judge Ervin said that it is more likely to be multiple violations. Mr. Everett said that even the absconders get another chance; *i.e.*, the real absconders who pack up and leave. Ms. Lancaster said that he was exactly right. If they come back, the DAC gets them. Ms. Katzenelson reminded the Commissioners that under JRA, only probationers with a new criminal offense or absconders will be revoked. The technical violators will not.

Judge Ervin asked if the prisoner had a two-year window to commit infractions during incarceration or if it was the entire time he was incarcerated. Ms. Flinchum clarified that it was based on the entire time. Bill Hart added that one of the reasons conviction rates are lower than the incarceration rate after two years is that some of the cases are still pending. Ms. Katzenelson noted that while this is one reason, the other is that revocation to prison also counts as incarceration. By the third year, incarcerations due to a new convictions increase as well.

Questioning the finding that misdemeanor arrests were underrepresented in previous cycles, Chris Fialko asked if Ms. Flinchum was saying that the prior recidivism were, in fact, higher, but we just did not have the data for it. Ms. Flinchum said that it is probably true based on the new information presented. Judge Spainhour asked Sheriff Clemmons about the system that officers now have on the road. It was NCAWARE. Representative Faircloth wondered if the economic impact (recession) made a difference in the rearrest rates between FY 2006 and FY 2009 (32.5% jumped to 36%). Ms. Flinchum said she there is no specific data to test that explanation. Billy Sanders said that the crime rates are actually going down. Ms. Flinchum said that that was what puzzled the research team initially about the increase in the recidivism rates.

Mr. Everett asked if they had checked to see if new offenses were being committed after the prisoner’s release. NCAWARE identifies warrants that go back ten years, and there are a lot of them. Ms. Hevener said they could check into that. Ms. Katzenelson explained that the crime rate has been going down for the more serious crimes and agreed with Mr. Sanders that the 2006 recidivism rate probably was higher, but just had not been recorded. Due to all the fingerprinting that has been going on for a long time, officers have warrants to pick up the lower level

misdemeanants. Mr. Everett said that NCAWARE has been flooding them with older crimes; that would not necessarily mean that the prior recidivism rates are wrong. Sheriff Clemmons said that they serve the old cases, but due to lack of evidence, many are being dismissed.

Chairman Rand had a question regarding time served by revocation in relation to the original sentence. Does confinement count against the post-release supervision period? John Madler answered that it is not clear under JRA, but there is a bill before the Legislature that should help clarify this. Chairman Rand said they were just trying to figure out what to do.

Ms. Lancaster spoke to the goals of the Division of Adult Corrections (DAC), primarily increased effectiveness. There is no capital funding for building new prisons, but they do have a plan. The DAC plans to make Justice Reinvestment work and to improve the recidivism stats, and there is also a bill in the Legislature to tweak JRA.

Judge Brown said that the Sentencing Commission's involvement will make North Carolina's JRA experience unique. Under JRA, violation will not mean the same as revocation, demonstrating that these labels matter a lot. Evaluating the changes will also mean looking back historically for comparisons. Ms. Hevener explained that we will be getting data on quick dips, CRVs, etc., regardless of location. This information will come from the probation system. Dr. McMurray said that there is lots of data. From the academic side, they have not been very good at collaborating with other state agencies. The academic community is taking steps to try to improve this collaboration for long-term analysis and recently he had a meeting about it with academicians from local universities. Representative Faircloth noted that no matter what we accomplish with inmates, citizens in North Carolina have to feel safe. From a public policy standpoint, we must keep that in mind. Judge Spainhour said that the next couple of years will be interesting as we track JRA.

LEGISLATIVE REVIEW

Sara Perdue introduced the Legislative Review portion of the meeting. She reminded the Commission members of their statutory duties regarding legislative review and of the policy decisions regarding the review process made at the Commission's December 2011 meeting (including not reviewing Misdemeanor bills).

Mrs. Perdue presented the Senate Felony bills.

SB 828 – Unemployment Insurance Changes [Ed. 4] (G.S. §96-18, Subsection (a)(1)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

SB 854 – Prohibit Use of Tax-Zapper Software [Ed. 1] (G.S. §14-188.6). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

SB 910 – Sale of a Child/Felony Offense [Ed. 1] (G.S. §14-43.14). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria, but consistent with a Class F

felony offense. Mr. Moore seconded the motion, and the motion carried.

David Lagos presented the House Felony bills.

HB 54 – Habitual Misdemeanor Larceny [Ed. 5] (G.S. §14-72). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, but the motion failed. Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria as 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. Mr. Sanders seconded the motion, and the motion carried.

Mr. Lagos suggested that the five provisions in House Bill 111 be grouped together in a motion as the Sentencing Commission had reviewed similar provisions in HB 582 [Ed. 1] in April 2011, and identical provisions in HB 582 [Ed. 2] in June 2011, and found these provisions to be consistent with the Offense Classification Criteria.

HB 111 – Amend Firearms Laws [Ed. 5]. Mr. Moore moved to find the following five provisions consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. §14-415.1, Subpart ((a1)(1)).

(G.S. §14-415.1, Subpart ((a1)(1)).

(G.S. §14-415.1, Subpart ((a1)(2)).

(G.S. §14-415.1, Subpart ((a1)(3)).

(G.S. §14-415.1, Subpart ((a1)(4)).

HB 142 – Economic Development & Finance Changes [Ed. 3] (G.S. §1457C-1-22). Mr. Sanders moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion. After some discussion, the motion was withdrawn. Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria, but consistent with a Class I Felony. Judge Ervin seconded the motion, and the motion carried.

HB 199 – Metal Theft Prevention Act of 2012 [Ed. 4]

(G.S. §14-159.4, Subpart (c)(1)). Judge Ervin moved to find the provision consistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

(G.S. §14-159.4, Subpart (c)(1)). Mr. Sanders moved to find the provision inconsistent with the Offense Classification Criteria, but consistent with a Class G Felony. Mr. Moore seconded the motion, and the motion carried.

(G.S. §14-159.4, Subpart (c)(3)). Mr. Sanders moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

(G.S. §14-159.4, Subpart (c)(4)). Mr. Sanders moved to find the Offense Classification Criteria to be inapplicable. Mr. Moore seconded the motion, and the motion carried.

(G.S. §66-424, Subsection (a)). Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria as 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. Mr. Hart seconded the motion, and the motion carried.

HB 203 – Mortgage Satisfaction Forms/No False Liens [Ed. 2]

(G.S. §14-118.1). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. §14-401.9). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried. This provision could also be consistent with a Class F or Class H felony.

(G.S. §14-118.6). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried. This provision could also be consistent with a Class F or Class H felony.

(G.S. §14-118.12). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

(G.S. §14-118.12). Judge Ervin moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried. This provision would be consistent with a Class F felony.

HB 1021 – Justice Reinvestment Clarifications [Ed. 2] (G.S. §90-95). Mr. Hart moved to find the provision consistent with the Structured Sentencing Act. Ms. Pearce seconded the motion, and the motion carried.

HB 1021 – Justice Reinvestment Clarifications [Ed. 2] (G.S. §90-95). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Rand seconded the motion, and the motion carried.

HB 1180 – Video Sweepstakes Entertainment Tax [Ed. 1]

(G.S. Chapter 105, Article 2E). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. Chapter 105, Article 2E). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. Chapter 105, Article 2E). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

(G.S. Chapter 105, Article 2E). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. Chapter 105, Article 2E). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Morrison seconded the motion, and the motion carried.

HB 1188 – Casino Night for Nonprofits [Ed. 1]

(G.S. §14-309.16A). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. §14-309.16H). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

(G.S. §14-309.16H). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Sheriff Clemmons seconded the motion, and the motion carried.

CLASSIFICATION OF HOMICIDE AND DRUG OFFENSES SUBCOMMITTEE

Judge Ervin presented an interim report and recommendation from the Classification of Homicide and Drug Offenses Subcommittee (*see* Handout). The Commission established the Subcommittee in December of 2011 in order to develop a means to review the proposed classifications of homicide and drug offenses as part of the Commission's annual review of proposed legislation pursuant to G.S. 164-43. The Subcommittee had met three times and had developed a set of classification criteria for homicide offenses. The Subcommittee began by reviewing the history of offense classification under Structured Sentencing, including the development of the Commission's harm-based felony offense classification criteria. Staff's research revealed that no other guidelines state has developed the type of formal offense classification criteria that are utilized by the Commission. The Subcommittee next examined North Carolina's current homicide offense structure, including conviction data and the elements of each offense. The Subcommittee identified offender intent or *mens rea* as key to the ranking of homicide offenses. Though members looked at the sentencing of homicide offenses in other southeastern states and the federal system, members agreed that North Carolina's existing offense structure is sound. Therefore, the Subcommittee based the proposed classification criteria on current offense classifications.

Judge Ervin reviewed the proposed homicide offense classification criteria and moved their adoption by the Commission for future legislative reviews. Judge Morrison seconded the motion, which passed unanimously. Judge Ervin thanked the members of the Subcommittee for their hard work and noted that they would be turning next to the classification of drug offenses.

JUSTICE REINVESTMENT IMPLEMENTATION SUBCOMMITTEE **REPORT AND RECOMMENDATIONS**

Chairman Spainhour recognized Judge Brown, the chairman of the Justice Reinvestment Implementation Report Subcommittee, to present the Subcommittee's Report to the Commission. Judge Brown informed the Commissioners that the Justice Reinvestment Act (JRA) required the Sentencing Commission, along with the Division of Adult Correction of the Department of Public Safety, to conduct ongoing evaluations regarding the implementation of the Act. At its meeting on December 2, 2011, the Sentencing Commission established the Justice Reinvestment Implementation Report Subcommittee to assist with the preparation of the report and, at its meeting on February 24, 2012, the Commission also authorized the Subcommittee to develop and report back any recommendations regarding the implementation of the Justice Reinvestment Act. Judge Brown reported that the Subcommittee met three times to hear information about the major efforts undertaken, including agency training, policy and programmatic changes, and data collection and data system changes. The Subcommittee also heard observations from agencies, practitioners, trainers, and other field personnel regarding challenges experienced implementing the Act. At the April 13 meeting, the Subcommittee reviewed and accepted the final report. The Subcommittee also reviewed the issues identified in the report and developed a list of recommendations to the Commission. Judge Brown asked that staff review those recommendations.

The Chairman recognized John Madler, staff, to present Subcommittee recommendations 1 through 5 (*see* Handout).

- 1. The Subcommittee recommends that the General Assembly amend the maximum sentences for the drug trafficking offenses to include the correct length of time for the corresponding revocation period for post-release supervision.**

John Madler explained the inconsistency between the post-release supervision statutes and the drug-trafficking sentences as a result of the JRA changes. He pointed out that House Bill 1021, Justice Reinvestment Clarifications, was currently being considered in the General Assembly and that it contained a provision that would make the appropriate changes to the drug trafficking sentences.

Luther Moore moved to adopt recommendation #1. Judge Ervin seconded the motion, and the motion carried. Bill Hart noted that, even if House Bill 1021 passed, it would not address the sentences currently being imposed for drug trafficking offenses. The DAC and DOJ are trying to figure out how to reconcile the mandatory sentences with the release provisions of the post-release supervision statutes.

2. The Subcommittee recommends that the Sentencing Commission study whether an offender on probation should be able to appeal the imposition of a period of confinement in response to violation.

Mr. Madler pointed out that the current statute allows an offender on probation to appeal the imposition of special probation or an active sentence but not a period of confinement in response to violation. The Subcommittee felt that this was a policy issue that should be studied.

Judge Spainhour said that there was no right to appeal. Judge Ervin asked Judge Elmore how many cases the Court of Appeals sees where the offender appeals a split sentence as a result of a probation violation. Judge Elmore stated that he did not think there were any. Judge Ervin stated that, by the time the inmate got an appeal date, his confinement would be over. Judge Brown said that they could get out on bond until their appeal date. Judge Elmore asked if House Bill 1021 addressed this issue. Staff replied that it did not. Chairman Rand asked if the Commission should study this issue or just let the legislature resolve it. Judge Ervin pointed out that the statute is silent. Mr. Moore explained that it is not known whether the statute is intentionally silent. Judge Elmore said that, in that case, it should be decided by the Court of Appeals. Chief Cunningham asked if it was the Commission's job to ask whether an offender should be able to appeal or not, or to just get clarification from the General Assembly as to its intent. Judge Brown said that was why the recommendation was worded that way. Mr. Hart moved to adopt recommendation #2. Mr. Moore seconded the motion, and the motion carried.

3. The Subcommittee recommends that the Sentencing Commission study whether the General Assembly intended for the period of post-release supervision to be tolled when supervision is revoked for a period of imprisonment and whether it should be tolled.

Mr. Madler explained that the statute was not clear on this issue and that if the period of supervision is not tolled, it could reduce the time an offender is actually supervised in the community. He added that House Bill 1021, Justice Reinvestment Clarifications, contained a provision that would make it clear that the period of supervision was tolled.

Mr. Hart moved that, if the General Assembly does not pass House Bill 1021, the Subcommittee study this issue. Mr. Moore seconded the motion, and the motion carried. Senator Daniel moved that the Commission write a letter to the Senate leadership asking them to consider House Bill 1021. Mr. Moore seconded the motion, and the motion carried.

4. The Subcommittee recommends that the Chairman of the Sentencing Commission send a letter to the Director of the Administrative Office of the Courts detailing the importance of timely data collection.

Mr. Madler reviewed the efforts of the Administrative Office of the Courts, the Department of Public Safety, and the Sheriffs' Association to capture JRA data. He pointed out the importance of collecting that data as quickly as possible in order to properly implement and evaluate the JRA.

Mr. Hart moved to adopt recommendation #4. Mr. Moore seconded the motion, and the motion carried. The Chairman asked the staff to draft a letter for him.

5. The Subcommittee recommends that the Sentencing Commission support the Department of Public Safety's proposal to have the Commission study the tracking and crediting of jail time.

Mr. Madler told the members about the study proposal that the Department of Public Safety submitted to the Joint Legislative Oversight Committee on Justice and Public Safety in April. He also informed them that no one introduced that bill during the Session but that AOC was reportedly examining its policies and procedures internally to make improvements.

Mr. Hart moved to adopt recommendation #5. Sheriff Clemmons seconded the motion, and the motion carried. Chief Cunningham asked if the staff had sufficient time to study the issue by the proposed February 1 deadline. Judge Ervin asked Ms. Katzenelson if the Commission has the authority to ask the staff to undertake this study without a mandate. Ms. Katzenelson said that the Commission could ask the staff to study anything on its own initiative and pointed out that they would not be bound by the deadline in the proposed bill since it did not pass.

The Chairman recognized Michelle Hall, staff, to present Subcommittee recommendations 6 through 9 (*see Handout*).

6. The Subcommittee recommends that, as part of the evolution from the Criminal Justice Partnership Program to the Treatment for Effective Community Supervision Program, the Division of Adult Correction develop ways that existing programs might upgrade to meet the new requirements without being excluded from the program or diluting the intent of the Justice Reinvestment Act.

Ms. Hall presented Recommendation #6 and provided additional information regarding the canceled and re-issued Treatment for Effective Community Supervision Request for Proposals (TECS RFP). She noted the Commissioners had received a letter from the Department of Public Safety (DPS) regarding the cancellation of the first RFP (*see Handout*). The revised TECS RFP issued June 5, 2012; DPS will accept vendor proposals until June 29, 2012. Services will begin on or before October 3, 2012. Other changes to the RFP included technical changes to submission requirements, changes to vendor qualifications, and a new ratio of programming required for the target population (80% will receive cognitive behavioral intervention programming and 20% will receive substance abuse treatment programming).

Mr. Hart asked for clarification of the recommendation. Mr. Gibson answered that the Subcommittee was asking DAC for a period of time to let some of the good CJP programs evolve to meet the new TECS standards but that, from what he has heard, that has happened in the new RFP. Mr. Hart stated that he was still unsure what action the Subcommittee was asking the Commission to take. Judge Brown said that he would amend the recommendation to include an action. Mr. Hart moved to adopt that recommendation. Mr. Rand said that some of the language should be added in. Mr. Hart moved to adopt the additional language; Mr. Gibson seconded the motion, and the motion carried.

Jennie Lancaster updated the Commission on what had been done after this Subcommittee meeting occurred. The DAC canceled the RFP and tried to set realistic goals for the new RFP. They called everyone and answered all questions asked. The RFP has been well received. The DAC appreciated the support that was given.

7. The Subcommittee recommends that the Sentencing Commission continue to monitor program resources and capacity for sufficient funding.

Ms. Hall explained Recommendation #7. The Subcommittee discussed “reinvestment” under the JRA and noted the success of implementation depends to a large degree on the resources put into community programs for probationers and programs in prisons, specifically for offenders sentenced to Advanced Supervised Release. She noted the reports through which the Commission monitors the availability and use of resources (Correctional Population Projections, Statistical Report, Adult Recidivism Reports, the JRA Implementation Evaluation Report, and eventually the TECS monitoring report).

Mr. Hart moved to adopt recommendation #7. Sheriff Clemmons seconded the motion, and the motion carried.

8. The Subcommittee recommends that the Sentencing Commission support expansion budget items requested by the Division of Adult Correction and the Post-Release Supervision and Parole Commission that help implement the provisions of the Justice Reinvestment Act.

Ms. Hall then explained Recommendation #8 and provided information about budget items contained in the House and Senate versions of the budget related to the recommendation. The House version of the budget contains expansion money for the Post Release Supervision and Parole Commission to meet the increased caseloads resulting from the JRA by providing funding to establish one additional full-time Parole Commissioner, to convert a part-time Parole Commissioner to full time, and to create two new Parole Case Analyst positions. This expansion money is not currently included in the Senate version of the budget. The House version of the budget does not include expansion funding for additional probation officers. The Senate version allows the DPS to reclassify existing vacant positions to probation officer positions and judicial service coordinator positions, to help with managing increased caseloads.

Chairman Rand stated that he did not know what the PRS&P Commission was going to do. They are expecting 14,000 new cases (which will triple their existing caseloads). Mr. Moore asked Judge Brown how he proposed the Commission implement this – a letter from the chair to whom? Mr. Hart answered that it should go to the Legislators and soon. Mr. Hart moved to adopt recommendation #8 and implement it by the Chairman sending a letter to the Legislative leaders. Ms. Lancaster seconded the motion. Mr. Fialko questioned whether this recommendation should be made at all. He did not think the Sentencing Commission should get in the business of making budget recommendations. Ms. Lancaster stated that it is not an expansion budget item. This is an implementation of a law that was passed with lots of different parts and that in order to implement this law, all parts have to be sufficiently funded. This is a

matter of public policy. Mr. Fialko said that he is still reluctant to recommend a budget item. Judge Brown reminded him that this was a complete rewrite of sentencing law. Senator Daniel advised that “The squeaky wheel gets the grease” but that they do not want to “cry wolf” too often. When the Commission makes a recommendation about a budget item, they should really deem it significant. Sandy Pearce gave some historical background on the Commission’s early years when the Commission did weigh in on budget items. Chief Cunningham suggested that wording be changed to show concern that funding needs to be adequate system-wide if the JRA is to be a success instead of focusing on one area. Mr. Moore said that he believes the Commission has the authority in this circumstance to write a letter expressing their concerns for adequate funding for the implementation of the program. Mr. Hart agreed to amend his motion to that effect. Mr. Gibson thought this specific budget item needs attention or it may be lost in the shuffle. Mr. Moore said he was trying to avoid a fray over one budget item. Ms. Lancaster said that she believes Chairman Spainhour’s letter would be seriously received. Mr. Rand agreed. Doug Holbrook asked that the details in the Governor’s budget be highlighted in the letter to be written and sent to the Legislature. The motion on the floor carried.

9. The Subcommittee recommends that the Sentencing Commission support the Division of Adult Correction’s ongoing research into the use of revocation centers for offenders who receive a period of confinement in response to a violation.

Lastly, Ms. Hall explained Recommendation #9 and offered background information on the recommendation. For effective management of the prison population, the Division of Adult Correction (DAC) wants to house Confinement in Response to Violation offenders separately from the rest of the prison population. The Division is exploring the use of revocation centers to address this issue. These centers would function similarly to prisons but would be run by Community Corrections staff. The House version of the budget contains a technical provision directing the DAC to study the use of revocation centers, specifically the feasibility and cost-effectiveness of using these types of centers. The Senate version of the budget does not contain the special provision.

Judge Morrison moved to adopt recommendation #9. Mr. Gibson seconded the motion, and the motion carried.

Mr. Madler and Nicole Sullivan of the DPS spoke briefly about the Offender Traits Inventory (OTI). Ms. Sullivan reported that work on the revision and validation of the OTI is in its final stages, with plans to roll it out at the end of the summer.

The meeting was adjourned at 2:05 p.m., with a reminder that the dates for the remaining Commission meetings in 2012 are September 7 and December 14.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant