

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
September 16, 2011

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 16, 2011, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Honorable Alice Bordsen, Honorable Charlie Brown, Christopher Clifton, Chief Scott Cunningham, Louise Davis, Honorable Richard Elmore, Honorable Clark Everett, Chris Fialko, Paul Gibson, Honorable David Guice, Bill Hart, Dr. Robin Jenkins (for Secretary Linda Hayes), Secretary Alvin Keller, Honorable Eleanor Kinnaird, Honorable Floyd McKissick, Jr., Moe McKnight, Dr. Harvey McMurray, Honorable Fred Morrison, Sandy Pearce, Tony Rand, June Ray, and Billy Sanders.

Guests: Billy Lassiter (Department of Juvenile Justice and Delinquency Prevention), Kristine Leggett (Fiscal Research, North Carolina General Assembly), Jamie Markham (UNC School of Government), Virginia Nichaus (UNC Law Student and Office of Administrative Hearings Extern), John Poteat (Fiscal Research, North Carolina General Assembly), Teresa Price (Department of Juvenile Justice and Delinquency Prevention), and Yolanda Woodhouse (Drug Court, Administrative Office of the Courts).

Staff: Susan Katzenelson, Ginny Hevener, John Madler, Amy Craddock, 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. After reviewing the day's agenda, he introduced the new members of the Sentencing and Policy Advisory Commission: Christopher Clifton, representing the North Carolina Bar Association, Chief Scott Cunningham, representing the Association of Chiefs of Police, Honorable Clark Everett, representing the Conference of District Attorneys, Chris Fialko, representing the Advocates for Justice, and Sandy Pearce as the Governor's appointee. Chairman Spainhour also introduced new staff member Michelle Hall, and asked everyone in attendance to introduce themselves. Chairman Spainhour then asked if anyone had any comments or questions on the June 3rd minutes; hearing none, Bill Hart made a motion to accept the minutes as written, Moe McKnight seconded the motion, and the motion carried.

REPORT OF THE 2011 LEGISLATIVE SESSION

Sara Perdue reviewed the Criminal and Juvenile Justice Bills ratified during the 2011 Legislative Session. (*See* Criminal and Juvenile Justice Bills Ratified during the 2011 Session of the 2011 North Carolina General Assembly handout.) Recapping the session, Mrs. Perdue announced that 31 bills passed which created a new offense, changed the classification of an existing offense, or changed the range of punishment or dispositional level for a classification.

Fifty-seven felony provisions passed; 25 were not reviewed by the Commission while 32 were reviewed by the Commission. Of the 32 reviewed, 18 did not meet the criteria, nine were consistent, and five were found inconsistent. Forty-two misdemeanor provisions passed this legislative session; sixteen were not reviewed by the Commission for various reasons and 26 were reviewed. Of the 26 misdemeanor provisions reviewed by the Commission, one was found inapplicable, 13 were found consistent, and 12 were found inconsistent. The General Assembly did not make any changes to legislation based on the Commission's recommendations for consistency with the Offense Classification Criteria.

David Lagos reviewed the Operations and Capital Improvements Appropriations Act of 2011 (*see* the same handout). Judge Spainhour asked Mr. Lagos for clarification on the Office of Prosecutorial Services. Mr. Lagos stated that the Office would be the prosecutors' equivalent of the Office of Indigent Defense Services. Mr. Hart explained that a committee was studying the idea of moving the District Attorneys' Conference out of the Administrative Office of the Courts and into an independent agency. Mr. Everett added that such a body could provide resources and assistance to local district attorneys' offices. Senator Kinnaird asked if Victim Assistance would be included in that and the answer was no.

Among other items in the budget, Mr. Lagos pointed out that the Sentencing Commission would be losing two Commissioners as a result of the consolidation of the Department of Correction, the Department of Crime Control and Public Safety, and the Department of Juvenile Justice and Delinquency Prevention. He also noted that funding was eliminated for Sentencing Services. He explained that the large budget increase in the Department of Crime Control and Public Safety (DCCPS) was deceiving as the budget of the Highway Patrol has been moved from the Department of Transportation to the DCCPS. Mr. Rand asked what impact the parole review provision would have on the current 3-year cycle of murder parole hearings. The provision directs the Post-Release Supervision and Parole Commission, with the assistance of the Sentencing Commission, to identify and reinstate the parole process for each inmate eligible for parole as of July 1, 2012, that has served more time than he/she would have served under Structured Sentencing. John Poteat and Kristine Leggett said that if the inmate had served more time than he/she would have under Structured Sentencing, the case would have to be reviewed before the next 3-year cycle.

Billy Sanders asked for clarification on the provision that established two release dates per month for inmates leaving prison. Several people including Mr. Hart and Ms. Hevener stated that two release dates per month would create a bed savings and, thus, save money. Representative Guice explained that the Sheriffs' Association would be overseeing the misdemeanor inmates serving their time in local jails under the Misdemeanor Confinement Program and that funding would flow through the Department of Correction. Dr. Jenkins commented that "Delinquency Prevention" had been removed from the Department of Juvenile Justice's name in the budget bill and was wondering if there was a reason for it. No one knew of any specific reason.

OVERVIEW OF THE DEPARTMENT OF PUBLIC SAFETY

Kristine Leggett from the Fiscal Research Division of the General Assembly gave a

presentation on the creation of the North Carolina Department of Public Safety (*see* the handout attached). Three departments will be consolidated into the Department of Public Safety – Crime Control and Public Safety, Correction, and Juvenile Justice and Delinquency Prevention. Mr. Hart asked Ms. Leggett if the General Counsels of each of the individual departments would be merged into one and she answered that they would. Senator McKissick asked if any benchmarks had been set to gauge whether or not any actual savings were occurring. Ms. Leggett said that the savings were projected to be \$1.4 million dollars in the second year. She added that no benchmarks had been set but that the Secretary has been given as much flexibility as possible to make this consolidation work. She also reminded Senator McKissick that the Justice and Public Safety Committee of the General Assembly has oversight of this consolidation. Senator McKissick said that it seemed that this was a challenging task for the human resources section to deal with the elimination of jobs, rehiring or searching for new people for new positions by January 1. Ms. Leggett told him that Secretary Young, who has been named the Secretary of the new agency, has been meeting weekly with a transition team to guarantee a smooth transition.

Dr. Jenkins said that there is no entity large enough in the system to handle this budget. There is an oversight committee that has broken it down into eight or nine groups. Secretary Young has named Chris Peterson and a transition team to handle the budget. There is a senior management team, and they have been meeting several times within the last week, with a very aggressive schedule in place. Senator McKissick, again, emphasized the enormity of the task at hand and wondered if compatible technology existed between the three departments. Representative Guice, co-chair of the JPS Oversight Committee, said they have given Mr. Young a short list of things that need to be done by January 1, but the committee realizes that everything cannot be done by then. Secretary Keller stated that it must be done by the effective date and that the main concern for all these agencies is public safety.

Representative Bordsen pointed out that a small agency like Juvenile Justice is going to have a hard time maintaining its mission in this consolidation. Senator Kinnaird wanted to know who was funding the IT plan. Ms. Leggett reiterated that the new department has been given as much flexibility as possible to achieve these goals. On January 1, the Department will be there, but not all of the parts. Dr. Jenkins stated that the Department of Juvenile Justice is the only department of the three that has a consolidated IT system. The question is whether they de-consolidate Juvenile Justice and start over for an IT system that works for all three agencies, or try to consolidate the other two agencies with the IT system in Juvenile Justice. Senator Kinnaird said that she knew that OPUS had been updated and that it was used in the adult system, but she did not know what was used in the juvenile system. Dr. Jenkins told her that they used NC JOIN. Senator McKissick expressed his concern that benchmarks should have been set to determine the success of each task and, thus, have a positive outcome.

Ms. Katzenelson added that the Commission staff was also tracking the progress of this consolidation and has concerns about a consolidated IT system. Currently, the Research Team acquires information from both OPUS and NC JOIN and deal with the technical experts at each agency. Mr. Rand said that he was thankful that none of this was affecting the Post-Release Supervision and Parole Commission, but that as a concerned citizen, he was wondering about the rising cost of medical care for inmates, and the budget cuts to the Department of Correction. Representative Guice said that with executive orders, they will manage. There is a lot of work to

be done, but not all of it has to be addressed at this time. Representative Bordsen mentioned that there are two philosophies in the General Assembly – one that comes up with the concept and plans and puts it into place three or four years later, the other that comes up with the idea and puts it out there. Down the road, they will see which one works. Secretary Keller reiterated that there is a date and the primary purpose will always be public safety. Senator McKissick ended the discussion by saying that there is an intrinsic merit and synergy to be had by bringing these three agencies together, but that if the primary goal is to reduce the budget, he is afraid that it will definitely infringe on that synergy and the consolidation will fail.

UPDATE ON CORRECTIONAL AND DELINQUENT POPULATIONS

Ginny Hevener presented a summary of the impact projected for the bills ratified during the 2011 General Assembly session, as well as an update on the adult prison population. Sentencing Commission staff prepared 87 impact projections during the session including projections for 17 of the 31 ratified bills. A total of 57 new felony offenses and 42 new misdemeanor offenses were created, and two felony offenses were reclassified. The majority of the new felony offenses are a result of the addition of various substances to the drug schedules. Ten of the new felony offenses were for Class A-E offenses (primarily from Ethan's Law). There were about 15 new Class H offenses, 25 new Class I offenses, and 26 new Class 1 misdemeanor offenses. Individually, most of these new offenses are not expected to have a substantial impact on the prison population. The most significant law passed this session in terms of potential prison impact was the Justice Reinvestment Act. While certain parts of the Justice Reinvestment Act will result in the need for additional prison beds, the Council of State Governments projects that overall there will be prison bed savings.

Ms. Hevener continued with an update on the prison population (*see* attached handout). The prison population for June 2011 was very close to the projected prison population for that month. It was noted that the new prison population projections will likely be adjusted downward as a result of current criminal justice trends and to account for potential prison bed savings from the Justice Reinvestment Act. Ms. Hevener reviewed two graphs depicting prison population trends. A disruption in the seasonal trends of the prison population occurred beginning in the fall of 2009. As a result, the population for June 2010 was lower than the population for June 2009. Also, the prison population was mostly lower in FY 2011 than it was in FY 2010 and the prison population has been very close for June and July for the past three years. Ms. Hevener mentioned that the factors contributing to this decrease include North Carolina's population trends, criminal justice trends, and changes in criminal justice policies (including changes to the felony punishment chart in 2009 and to the Department of Correction's earned time policies).

Mr. Sanders noted that in the past, there had always been a rise from July to September, but this year it is not so. Ms. Hevener answered that the new earned time policies are contributing to this decrease. Representative Guice said that in 2009, 56% of new admissions were for probation revocations. In 2010, he thought that number had dropped below 50%. He attributes that to the use of evidence based practices, to the use of an assessment that helps determine how closely each probationer should be supervised, and to addressing the underlying issues that brought the offender back before the judge. Although Justice Reinvestment Act addresses this too, these changes actually began earlier and he believed they are the reason for

the impact on the prison population. Community Corrections is doing something different in the field and it is working.

Secretary Keller agreed with Representative Guice, but added that those inmates with long-term sentences could accumulate more earned time off their sentences than those with short-term sentences. They are trying to equalize this situation by making more programs available to those who have been compliant with the rules. Also, he wanted to know if anyone had considered the factor that the military has provided employment for the last ten years because of the war and whether or not it had an impact nationwide on prison population. Ms. Hevener said that the Pew Center Report, *Prison Count 2010*, does not list that as a factor contributing to the decreases in the prison population reported for other states, but that this issue is discussed in the Forecasting meeting held every year as part of the projection process. Senator Kinnaird stated that many of the mental health programs were being eliminated, and she would like to see the impact of that on future population growth. Ms. Davis mentioned the 287 Law – the federal deportation law – has reduced their pre-trial release population from 1,000 to 650.

Tamara Flinchum presented an update on the youth development center population (*see* attached handout). This population contains all adjudicated juveniles with a level 3 disposition – whether in a youth development center (YDC), awaiting placement in an YDC, or a community-based placement. The juvenile disposition chart is much more flexible, and the population is much smaller, making the juvenile projections slightly less accurate than the adult prison projections. The population has declined over the last couple of years. Representative Bordsen asked how much the Commission currently studies and will study delinquency prevention. Ms. Katzenelson explained that the Commission is mandated to study this and there are two reports that will be presented in the afternoon on that subject. They will not fully explain the scope, but will show juveniles who have gone through JCPC programs. Representative Bordsen would like to see the effectiveness of these programs and see some alternatives to detention. Senator Kinnaird wanted to know if the growth rate of the juvenile population in the state was taken into account. Both Ms. Flinchum and Ms. Hevener answered that they do. Ms. Katzenelson said the staff looks at real people and real beds, and they also compute growth population rates.

HIGHLIGHTS FROM COMMISSION REPORTS ON JUVENILE RECIDIVISM – DELINQUENT AND AT-RISK JUVENILES

Tamara Flinchum presented the Juvenile Recidivism Study: FY 2006/07 Juvenile Sample (*see* attached handout). This is the third of the Commission's legislatively mandated biennial reports on juvenile recidivism in North Carolina. The report being presented was submitted to the General Assembly on May 1, 2011. Ms. Flinchum described the four groups of juveniles in the sample: closed, diverted, dismissed, and adjudicated. Their inclusion in the study was based on their first encounter with the juvenile justice system during FY 2006/07. Sandy Pearce asked what constituted a closed case. Billy Lassiter of DJJDP said that it could be a case that had no foundation, or no evidence, or where there were multiple charges, one or two could have been dropped. Mr. Rand asked to clarify the percentages. He wanted to know if the percentage reported equated to juveniles or to charges. Ms. Flinchum explained that the percentages represented juveniles. Senator McKissick said that he would like to see a breakdown by all ethnicities, and Ms. Flinchum provided him that the information and reported that it was

also available in the full report.

Clark Everett asked if closed meant that the juvenile never made it to court because either there was no probable cause, he/she was innocent, or it just couldn't be proved. Ms. Flinchum answered that any of those were possible reasons. Senator McKissick asked if there was some way to correlate these rates to the educational attainment level or to families who live below the poverty line. Ms. Katzenelson said that several years ago, they tried to coordinate with the Department of Public Instruction (DPI) to get data, but were unsuccessful. Ms. Hevener stated that within the past few years DJJDP had started doing risk/needs assessments on all juveniles at intake and that this information should be available for future juvenile recidivism reports. Senator Kinnaird said that when she was working with mental health, DPI had one identifier system and it did not correlate with the mental health system. Senator Kinnaird went on to say that if IT was one system, all issues could be addressed. Representative Guice pointed out that communication, whether between software or people, is not effective. People are very closed about what they want to share. It would be great if a judge had all the pieces that he needed to make a decision instead of just having a limited snapshot. Representative Bordsen said that the General Assembly is aware of this need for one identifier, but they have not been successful when trying to deal with all agencies.

During the presentation of the demographic information about the juvenile sample, Senator Kinnaird wanted to know if there really were six-year olds in the juvenile system. Ms. Flinchum answered that it was true. Senator Kinnaird wanted to know why they were not in mental health. Ms. Flinchum said that the six-year-olds had a delinquent complaint. Dr. Jenkins said that some parents just do not know where to turn, so they go to the judicial system. The system needs to focus on how to deal with these difficult family situations. Dr. McMurray asked for recidivism rates by race and gender. Ms. Katzenelson said that the report included demographic breakdowns, but not by outcome measures. Ms. Flinchum said that staff would provide that information to him and the other Commissioners. Ms. Pearce asked if admission to a detention center was pre-adjudication, or as a sanction. Ms. Flinchum said that detention center admissions could be either, as long as it occurred during the follow-up period.

Ms. Pearce asked how the rate of recidivism for this study compared to rates in the other two reports. Ms. Flinchum said that she thought the rate for subsequent adult arrests was higher in this report, but she needed to check on that and would get the information to Ms. Pearce. Dr. Jenkins stated that while it is true that those juveniles who go deeper into the system are more criminal, it is not the system that is harming these kids. He also emphasized that the majority of the work with these juveniles is done on the front end. They deal with about 19,000 kids every year and over two thirds of them never go to court. It is wise to spend money on the front end and to do it well. Mr. Sanders asked what kind of follow-up juveniles receive when they leave the system. Dr. Jenkins answered that there was a 90-day post-release supervision for all committed juveniles. Mr. Sanders said that they need to look at it from the back end as well. If they're going to re-offend, it will probably be within the first year. Susan Katzenelson pointed out that aging out of the juvenile status becomes an issue when dealing with this data. Representative Bordsen said that Alamance County is spending a lot of time coordinating programs for juveniles, and they are seeing a significant difference in the crime rate among juveniles. Senator Kinnaird asked if it was a wrap-around that included mental health, and

Representative Bordsen answered yes. Mr. Rand asked why there was a higher rate of dismissed cases than diverted. Judge Brown answered that in many cases there is not enough evidence and witnesses don't always show up for court.

Amy Craddock presented the Commission first mandated report on Effectiveness of Programs Funded by Juvenile Crime Prevention Councils (*see* attached handout). There were about 600 programs studied, serving 30,000 juveniles, and the study explored their program participation and subsequent involvement with the juvenile justice and criminal justice systems. Dr. McMurray asked what percentage of the 18,807 sample could not be matched in NC-JOIN. Dr. Craddock answered that about 30% of the court-involved juveniles could not be match in NC-JOIN; however, due to the efforts of DJJDP, about 86% were finally matched. Louise Davis asked if those juveniles who did not complete the programs were excluded. Dr. Craddock said that they are still counted at this point of her presentation. Dr. Jenkins said that youth in psychological assessment programs are usually exposed to a one-shot deal. They come in for a 2-3 hour assessment and that is it. There are many factors that need to be studied before making too many conclusions about the meaning of program completion and before comparing information across program types. Ms. Katzenelson explained that non-completion is a factor and that they have to look at all the kids who started the programs. Dr. Jenkins clarified that juveniles are not arrested; they are petitioned. Anybody can file a petition. It is very different from the adult system. Senator Kinnaird pointed out that upper class kids have all kinds of programs; those in poverty have nothing without JCPC. Dr. Jenkins clarified that these programs are required to be primarily designed as court-sanctioned programs, not prevention programs.

CHILDREN OF INCARCERTATED PARENTS: AN INTRODUCTION

Michelle Hall and David Lagos presented an update on Children of Incarcerated Parents: Study Request (*see* attached PowerPoint handout). Representative Bordsen sent a letter to Chairman Spainhour requesting a study on the children of incarcerated parents emphasizing three areas: immediate and long-term effects, what is currently being done in North Carolina to assist children of incarcerated parents, and what else could or should be done. At the June meeting, the Commission voted to accept the request and directed staff to explore the available information and data to conduct this study.

Senator Kinnaird asked if children were reported to the Department of Social Services at the intake process. Representative Bordsen said that she talked to her county, and that there is no formal process for reporting children. The reporting process is voluntary; inmates can reveal they have children or not. If a child is reported, the intake officer does not notify the Department of Social Services (DSS). Often times, it's a teacher or school counselor who recommends a child to DSS. Secretary Keller confirmed that this information was factually right. The Department of Correction is not provided with personnel to explore that information. Mr. Sanders reported that those inmates on work release are responsible for having some of the funds taken out of their checks for children who are being cared for on federal funds. Representative Bordsen said that if they are not identified, these children likely become at-risk youth. There is no plan to know how they are faring. It's not necessarily the parent being in prison that causes negative life outcomes for children; there are other contributing factors as well. Secretary Keller hoped that, down the road, the intake counselor can gather the information regarding children so

that their needs could be considered. Representative Guice said that at some point, somebody has to address the underlying issues and take responsibility for this. These issues are going to have to be address either at the General Assembly or Commission level, but they need to be addressed. The same offenders show up in front of the judge time and time again.

After Ms. Hall gave a synopsis of the research explored, Mr. Lagos reviewed the multiple points of contact for children of incarcerated parents throughout the criminal justice process, beginning with the parent's arrest and continuing through re-entry. He asked the Commission to identify or prioritize specific areas of interest for further study. Although there are many possible interventions for children of incarcerated parents – before, during, or after the parent's incarceration – Mr. Lagos asked the Commission to focus on options that could be adopted through legislation or agency policy, as well as those targeted at one or more measurable outcomes for these children. Ms. Davis said that transportation funds are needed so that the children can visit their parents – perhaps such as a voucher system. Dr. McMurray made a motion in the interest of time to table any further discussion until the next meeting. It was seconded, and the motion carried.

FY 2011/12 STAFF WORK PLAN AND STAFF UPDATES

Susan Katzenelson presented the Commission staff plan for 2011/12 (*see* work plan handout). She pointed out that, in addition to the regular mandated and recurring tasks, some of the assignments will undergo definite changes as a result of the Justice Reinvestment Act. The Chairman has also discussed with the staff some possible subcommittees that he might form in December. Mr. Sanders made a motion to accept the work plan; Dr. McMurray seconded the motion, and the motion carried. Dr. McMurray asked if there was a better way to disseminate the Commission reports and studies prepared by staff. Ms. Katzenelson reminded him that they are on the web. Senator Kinnaird wanted to know if the educational institutions received the reports. Judge Spainhour said that was a good question and it would be looked into.

Senator Kinnaird reported to the Commission that there was a Restorative Justice Conference that was going to be held in the mountains the last week of September. Ms. Katzenelson said that staff would send out an email to the Commissioners with the details.

Chairman Spainhour reminded the Commissioners that the next meeting would be December 2nd. The meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant