MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
RALEIGH, NC
March 18, 2011

The North Carolina Sentencing and Policy Advisory Commission met on Friday, March 18, 2011, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Tom Bennett, Honorable Alice Bordsen, Honorable Charlie Brown, Joe Cheshire, Locke Clifford, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Garry Frank, Paul Gibson, Honorable David Guice, Bill Hart, Secretary Linda Hayes, Larry Hines, Secretary Alvin Keller, Honorable Eleanor Kinnaird, Honorable Floyd McKissick, Jr., Moe McKnight, Honorable Fred Morrison, Chief Frank Palombo, Tony Rand, June Ray, and Billy Sanders.

Guests: Amy Bason (North Carolina Association of County Commissioners), Eddie Caldwell (North Carolina Sheriffs' Association), Marshall Clement (Council of State Governments Justice Center), Maggie Davis (Office of Administrative Hearings), Brad Fowler (North Carolina Administrative Office of the Courts), Michelle Hall (Youth Accountability Task Force), Douglas Holbrook (North Carolina General Assembly – Fiscal Research Division), Tracy Little (North Carolina Department of Correction), Jamie Markham (UNC School of Government), Troy Page (North Carolina Administrative Office of the Courts), Susan Sitze (North Carolina General Assembly – Research Division), Mildred Spearman (North Carolina Administrative Office of the Courts), Gregg Stahl (North Carolina Administrative Office of the Courts), Nicole Sullivan (North Carolina Department of Correction), Eric Zogry (North Carolina Office of Juvenile Defenders).

Introduction

Judge Spainhour called the meeting to order at 10:05 a.m. He recognized Chief Frank Palombo who was retiring. Judge Spainhour read a resolution recognizing Chief Palombo's service to the Commission. Bill Hart moved to adopt the resolution; Locke Clifford seconded the motion and the motion carried. Judge Spainhour also recognized former Commissioner Representative Jimmy Love, who was not present. Mr. Hart moved to adopt the resolution; Larry Hines seconded the motion and the motion carried. Judge Spainhour then introduced and welcomed Representative David Guice to the Commission.

The minutes from the December 3, 2010, meeting were presented. Billy Sanders moved that they be approved; Chief Palombo seconded the motion and the motion carried. Judge Spainhour then reviewed the agenda.

Current Convictions and Correctional Population Projections

Judge Spainhour called upon Ginny Hevener for the Adult Prison Population Projections. She started with the Statistical Report that was handed out to all Commissioners. This report

details all felony and misdemeanor convictions for FY 2009/10. Ms. Hevener did not review the Statistical Report in detail but she did point out data findings that were used in projecting the adult prison population, referring to the handout.

Ms. Hevener reviewed the Commission's recently completed prison population projections (referring to the handout, "Current Population Projections Fiscal Year 2010/11 to Fiscal Year 2019/2020"). Ms. Hevener explained that the prison population projections were completed in two parts, with the Commission preparing projections for the new prison population and the Department of Correction (DOC) preparing projections for the resident prison population. She described the data received from the Administrative Office of the Courts (convictions and sentences imposed) and from the DOC (current inmate data) that is used to complete the projections using a computerized simulation model.

Ms. Hevener noted that empirical data from the past year (FY 2009/10) formed the basis of the projections. With the crime rate down 9%, the Forecasting Technical Advisory Group adjusted the growth rates downward for felony and misdemeanor convictions. Significant factors relating to lower prison population projections included a lower empirical base, an assumption of lower future growth, and the enactment of significant changes to sentencing laws. Last year's projections were about 4½% higher than the actual prison population (still within the acceptable accuracy range for projections, but greater than the 2% over the past decade). Ms. Hevener discussed the ten-year projections, adjusted lower to reflect recent trends, and described some of the dynamics in convictions, sentencing and prison populations for the same time period.

Senator Kinnaird asked if any studies had been done in other states on the decrease in prison population correlating with the great increase in community punishment that North Carolina has undertaken. Ms. Hevener said that she was not certain as she had not seen anything recently. Louise Davis asked if the H-I revocations got added back into the figure. Ms. Hevener stated that they would be represented in Figure 5 but not in Figure 4. Figure 4 is initial sentence at conviction. Judge Ervin asked if there were any indications as to why there was a drop in drug trafficking and habitual felons. Ms. Hevener said that it could be resources. Susan Katzenelson answered that, according to AOC data, the filings were down. In drug trafficking, many of the cases are taken over by the Federal Government. Chief Palombo agreed with Ms. Katzenelson. As Chief of Police in New Bern, he said that his department looks to the Federal Government for drug trafficking cases because of the punishment imposed. They approach the Feds if they have a case that meets the threshold. The offenders disappear from the community and they disappear for a much longer time.

Representative Guice said that although the crime rate has gone down, one should look at the number of filings in the DA's office. He asked whether this was due to the economy or something else. Secretary Keller wanted to know if there had been any studies nationally on the fact that the country has been in a war for basically the last ten years. The fact that those folks now have jobs in the military could lead to a reduction in the number of people who might otherwise choose crime as an occupation. The military has always tied education to promotions, so if the individual does well, he/she has a tendency to stay in the military. Ms. Hevener said that although she knows of no studies on that, they do talk about it in the Forecasting Group in

the determination of the growth rate. Senator Kinnaird commented that they are the high-crime committing age group. By the time they get out of the military, they're disciplined and educated and past that age. Chief Palombo wanted to clarify that the crime rate that Ms. Hevener was referring to was crimes committed and not arrests. The crime rate is based on offenses reported to law enforcement per 100,000 population.

REVIEW OF JUSTICE REINVESTMENT – ANALYSIS AND POLICY FRAMEWORK

Judge Spainhour prefaced the next topic by stating that there was no official bill to vote on as to its consistency or inconsistency with Structured Sentencing. This was strictly a time to present the individual items in the Justice Reinvestment package and discuss any concerns or ramifications, whether legal or fiscal.

John Madler began by explaining that this initiative began in 2009 with an invitation by the Governor and a bipartisan group of policy-makers to the Council of State Governments for assistance to implement the Justice Reinvestment Framework in the state. The Council has published a report and a draft of a bill. Staff prepared a summary of the concepts and recommendations contained in the report and draft bill in order for Commissioners to discuss the policy and resource aspects of the package.

Ms. Hevener explained that no impact projections have been prepared yet as a bill has not been introduced. Since an impact projection is anticipated, she explained the process by stating that data from the most recent year (FY 2009/10) would be used as well as the current felony punishment chart which went into effect for offenses committed on or after December 1, 2009. Because of the expectation that policies and practices in the field will change significantly, some of the proposed changes in the Justice Reinvestment package will be difficult to model. She explained that she would only present a preliminary assessment of the impact of each policy option on the prison population in terms of anticipated prison bed costs or savings.

Mr. Madler gave an overview of the Justice Reinvestment goals before going over each one with its individual recommendations. Goal 1 is to strengthen probation supervision; Recommendation 1(A) is to authorize probation officers to employ swift and certain responses to violations. Probation officers would be given the authority to put a probationer who violates his conditions of probation in jail for up to three days at a time without a court hearing, and limited to six days per month. The probationer must waive his right to a court hearing when a violation occurs in order to receive the sanction.

Locke Clifford asked if anybody had undertaken a careful review of this as a separation of powers issue. He said that this recommendation had the probation officer wearing two hats – a judicial hat and a corrections hat. Chief Frank Palombo said that, in his opinion, that issue could be solved by having the probation officer speak to a magistrate or judge and let the judge put the offender in jail for three days. Mr. Madler explained that the issue had been raised but that it had been decided that the probation officer could have the authority. Paul Gibson asked whether the offender would go to the county jail. Tony Rand answered that he assumed so. Representative Guice, who is a Co-Chair of the House Appropriations Subcommittee for Justice and Public Safety and a sponsor of the bill, said that the proposal needed reviewing. The writers

of the bill were going to do things to assist the counties. He explained that the offender either signs a waiver agreeing to this provision, or he/she refuses and is arrested and taken back before the judge. The purpose of this provision is two-fold: it corrects behavior immediately and it saves an enormous amount of court time and frees up staff that need to be in the field supervising those with high risks and high needs.

Mr. Clifford stated he was concerned that if the offender elects to take the two to three days, he is in fact admitting to a probation violation and can he be taken back to court because he has violated his probation. In his mind, this provision raised enormous separation of powers and due process issues. Judge Charlie Brown said he was all for strengthening probation, but he was against weakening the constitution. He was also concerned about the whole idea of quick dips. He was afraid that inmates popping in and out of jail exposes the jail to a heightened risk of contraband and an increased difficulty in maintaining security.

Secretary Keller requested that Marshall Clement from the Council of State Governments Justice Center speak to the Commissioners. Judge Spainhour explained to him that the Justice Reinvestment group had already given a presentation to the Commissioners and that Sentencing Commission staff had prepared much for the Commission to discuss. He had to let staff proceed, but would leave time at the end for Mr. Clement to speak to the Commission.

Ms. Hevener said that this first option would save jail beds if the days spent in jail as part of this sanction were lower than days spent in jail awaiting a violation hearing, but additional jail beds would be needed if this option was used more frequently than the violation process. If probation revocations were reduced, this policy option would save prison beds. The impact of this change would occur soon after it takes effect.

Mr. Madler continued with Recommendation 1(B): Focus probation supervision resources on those most likely to commit crime. Intermediate punishment would be re-defined as supervised probation with the option of at least one of three conditions (currently, there are six): special probation (split sentence), house arrest with electronic monitoring, or drug treatment court. The court can impose supervised probation without any of these options and it would still qualify as an intermediate punishment. The Department of Correction (DOC) would target supervision based on a risk assessment. Low risk Class 1, 2, and 3 misdemeanants would be moved to the lowest level of supervision. Low risk felons and Class A1 misdemeanant probationers would be moved to the lowest supervision level after complying with the conditions of supervision for nine months.

Ms. Hevener reiterated that probation resources would be shifted to focus on high risk offenders. Prison and jail bed savings would occur if there was a reduction in probation revocations. The impact of this change would take about a year to take effect. Factors that need to be considered in estimating the impact are how much the revocation rates would decrease by focusing resources on high risk offenders and shifting resources away from low risk offenders.

Judge Brown expressed concern over the fact that the risk assessment was going to be administered by the probation officer instead of at the time of sentencing. He believes that a post-adjudication risk assessment will be unwieldy and problematic. Representative Guice

expressed the DOC's need to identify a person's needs and risk of reoffending to match the resources and management tools available and be more effective and efficient in the supervision of the defendant. The goal is to save staff time and resources and focus the resources on those people who need them the most. He said that the DOC cannot allow a grid to tell it how to monitor and supervise folks. Senator McKissick asked if there were other states similar to North Carolina in its sentencing structure that were using this post-trial evaluation with probation officers having this level of discretion. He voiced his concern about this substantial change to the way North Carolina operates traditionally. Mr. Madler stated that he did not know of any states similar to North Carolina as each state varies in its sentencing structure.

Mr. Hart thought that a risk assessment was warranted to determine who needed more supervision. He did not believe that probation officers were out there determining who needs supervision and who does not. A risk assessment tool can be a good thing. Judge Ervin pointed out that only two boxes on the grid deal with a community or intermediate punishment, so only a small number of cases are being discussed. Mr. Sanders agreed with Judge Ervin that maybe a pre-sentencing assessment tool needed to be developed for those two grid boxes. Mr. Rand disagreed. He said that if money was used to produce a pre-sentencing assessment tool, there would not be money to do the other things they wanted to do. He reminded the group that this is a package deal, and if most of the package is not done, time will be wasted.

Representative Guice noted that the House JPS Subcommittee has been asked to cut $230 million. With DOC making up 62% of the JPS budget, and the Division of Prisons 82% of the DOC budget, Representative Guice is seeking input and good ideas, but the bill will move as a package – one bill, the result of a bi-partisan effort. Ms. Davis explained to the group that Sentencing Services is one of the groups targeted for elimination although it has been a success in its pre-sentencing assessments. She has been told by judges in Wake County that it is a valuable tool at the sentencing phase, although it can only be administered with the permission of the defense attorney.

Representative Bordsen prefaced her comments by saying that she believes that everyone in the room was moving in the same direction. She said that she and Senator Kinnaird were largely responsible for the Council of State Governments coming to North Carolina. Although she firmly believes in this package, this is meant to be a balanced program and, right now, there are an inadequate number of services in this state. In these hard economic times, she does not understand how the program can deal in a stricter manner with high risk offenders by offering them more resources. Mr. Cheshire stated that he has concerns about the due process in the first recommendation, but this particular risk assessment could benefit his clients. He has never understood how people can be sentenced to ten years in prison and then expected to come out as model citizens. Felons need more resources.

Mr. Gibson said that he agrees with most of what he has heard, but he is extremely concerned that the counties are going to suffer as a result of these recommendations. The reality is that this package is going to hurt county jails, and that has to be looked at, not just saving the state money. Secretary Keller said that the bottom line is public safety. The cost is not going to change. Either an inmate stays in a costly prison or goes under close supervision with programs that will make them better citizens in the community. Since DOC has a limited number of

probation officers, the idea is to put the officers in contact with those individuals who would create the greatest danger to the public. He believes that are low risk individuals who do not need that strict daily supervision. Senator Kinnaird said that they did look at the impact to the counties, but that Secretary Keller was right when he said that if the probationer who is revoked has to wait to go before the judge, he will be in jail a lot longer than the 2-3 day weekend. She thinks it might actually save the jails money. Mr. Gibson said his biggest concern was not the quick dip aspect, but a subsequent recommendation that all misdemeanants serve their time in local jails instead of prisons. This will add people to the jails, and that will cost more money.

Representative Guice responded that everything they are doing is data driven. On any given day, there are approximately 1,900 misdemeanants in prison; however, they serve an average of 73 days. It is very costly to process them into the state system. North Carolina is one of only a few states still housing misdemeanants in prison. The Legislature is aware of the cost they are adding to the counties to house these offenders in jail, and they plan to do something about it. They are even thinking about doing an alternative to pre-trial stays in jail – house monitoring with electronic monitoring. At this stage, the bill is still fluid. The Justice Reinvestment team is looking at how other states handle pre-trial offenders.

Senator McKissick voiced his concern that the post-trial assessment may be a bit after the fact, and believes that it may not have as much merit. He thinks pre-trial is better. He agreed that everyone wants to get people out of the system faster, but hopes that there will be some opportunity for discussion and debate. There may be some money saved in the long run, but he believes it will be three to five years down the road. He thinks, initially, more money will be transferred from Prisons to Probation and Parole as opposed to any real savings. He asked if there would be a delegation of power to the probation officer from the judge to perhaps change what has occurred in court if they determine it places the offender in the wrong supervision level. Mr. Madler answered that it is not addressed in the recommendations; he pointed out that the bill is still in the development stage and the details will be fleshed out.

Secretary Keller clarified that if the judge placed restrictions on the probationer, DOC is going to follow the judge's orders. Currently, the judge does not decide minimum, medium or closed custody for prisoners, DOC does that and, basically, they're doing the same thing for a person placed on probation. The risk assessment will determine how the probationer is supervised. They are just trying to get that individual through the program. Money will be saved if less prisons will have to be built. Maybe some of that money can be reinvested in education, and an individual who might otherwise come back to prison can be stopped. Representative Guice agreed with Secretary Keller. This package not only gets tougher on crime, but it gets smarter in the spending of tax dollars. The estimate from the Pew Center is that if this package is passed and implemented, North Carolina's prison population will drop down to the 2005 level – 36,000 instead of 44,000. Even after reinvesting the money in extremely important substance abuse and mental health treatment programs, millions of dollars can be saved.

Mr. Madler explained Recommendation 2(A): Ensure that every person convicted of a felony serves a period of mandatory community supervision upon release from prison. Nine months of post-release supervision would be required for Class F through I felons and five years

for Class F through I sex offenders. The revocation period for technical violations would be nine months separated into three 90-day periods. Ms. Hevener explained that currently the majority of felons who are Class F-I are not supervised upon release from prison, resulting in additional beds needed for offenders revoked from post-release supervision. Additional probation resources would also be required. The impact on the prison population would be substantial since the post-release supervision population would expand significantly under this proposal.

Mr. Rand asked if the sentence would be increased by nine months for the lower level felons since their post-release supervision would be nine months. Mr. Madler answered that the maximum sentence would have to be increased for the incarceration period. Mr. Rand said that he felt that three months should be taken off the minimum sentence since nine months were being added at the end. Judge Spainhour told Mr. Rand that the Commission had recommended that a long time ago. Mr. Rand answered that he had probably 'killed' it a number of times himself when he was a Senator.

Mr. Madler continued on to Recommendation 2(B): Accelerate incarceration of people convicted on multiple occasions of breaking and entering. A new sentencing option would be created for Habitual Breaking and Entering. Offenders who commit their second B&E offense (Class H) or 2nd degree burglary (Class G) would be sentenced as a Class E felon. Ms. Hevener explained that the impact of this option on the prison population would be substantial, depending on the number of offenders sentenced as Habitual B&E felons. Since post-release supervision follows their release from prison, this option would also impact PRS caseloads and prison beds due to revocation. Mr. Madler stated that Recommendation 2(B) included punishing habitual felons up to two classes higher than the underlying offense, up to Class C. He added that the draft bill increased the punishment to up to four classes. Ms. Hevener explained that this change would have the potential to result in prison bed savings beginning about six to nine months after the change takes effect. If habitual felons were punished four classes higher, there would be less prison bed savings.

Mr. Frank said that he heard from the Justice Reinvestment team that they were going to request that habitual felons be sentenced at four levels higher than their current offense. Representative Guice confirmed this and stated that this group is working with the Conference of District Attorneys and the Sheriffs' Association and they are all very concerned about habitual breaking and entering. Chief Palombo agreed that breaking and entering offenders are the biggest concern in this state if not in the country. Although it takes three convictions to be labeled a habitual felon, often these offenders commit an average of 150 crimes before becoming a habitual felon. If this person is sentenced at 2 or 3 levels higher, the resources are simply being shifted from being in prison to investigating his crimes, his victimization on the streets, the insurance issues, to putting him in jail, to prosecuting him (if he can be found) – all of this is a tremendous cost in having a habitual felon on the street. The State can reduce the number of years a habitual felon spends in prison, but the reality is actually a huge miscalculation. Mr. Bennett stated that if one considered the rapes and murders that started out as B&Es, this just may be the most important recommendation in the report. Mr. Rand reminded the Commission that a habitual felon who has ten B&Es doesn't have to just pull four years. The judge has the judicial discretion to impose consecutive sentences. Judge Spainhour commented that sometimes the ten get plea bargained down to two.

Mr. Sanders said that when the Commission considered the change in the habitual felon law, there was much controversy among the Commissioners themselves. It was by the slimmest majority that the Commission passed that alternative. There were several alternatives passed by the Commission to lower the prison population. None of them were passed the first time by the Legislature. Since then, many have been reintroduced, and some have even passed. He does not believe the Legislature has the political willpower to enact the change to the habitual felon law. He thinks the Legislature will go for the habitual felon B&E offender, but not the other habitual felons. Representative Guice disagreed and said that the Conference of District Attorneys were supportive of the four level higher sentence. He reiterated that this will be one bill and believes it will pass quickly and that it will all balance itself out. Mr. Sanders said that if the predicate offense is a Class H and it goes up to a Class D, the offender will spend twice the time in prison and more prisons will need to be built instead of having less prisons. Judge Ervin was also concerned that if habitual felons are charged four levels up, there will be more habitual inmates in the prison system than there are currently.

Mr. Madler explained that Recommendation 2(C) is to increase time served for people who misbehave while incarcerated. This would automatically give felony inmates credit for the time between their minimum sentence and their maximum sentence upon entering prison. That time would be taken away if they do not comply with prison rules and regulations. Ms. Hevener explained that this option was designed to reduce the percentage of sentence served so that it is closer to the minimum sentence for all felons and has the potential to reduce the need for prison beds within one year of implementation. How many beds saved would depend on the policies implemented by DOC. The percentage of sentence served varies by offense class with prisoners in the more serious offense classes serving a lower percentage of their maximum sentence since they have the potential to accrue more earned time due to their longer sentence lengths.

Secretary Hayes commented that although the Department of Juvenile Justice and Delinquency Prevention (DJJDP) was not a stakeholder in this process, it supports the endeavor. She believes that DJJDP has been doing Justice Reinvestment for a while now by investing their dollars in treatment and education. By doing this, they have seen their numbers come down. Their system has truly worked. Senator Kinnaird voiced her concern about the mentally ill inmates – those who can't make the connection that misbehavior equates to more time served. She is afraid that this increase in time served might exacerbate their illness. Judge Brown stated that he believes that this option strikes at the integrity of the principles of Structured Sentencing when behavior determines the length of time served instead of the prior criminal acts committed. Mr. Sanders asked Secretary Keller how increasing the time served affected the ability to manage the prison population. Secretary Keller said this option is aimed at the high-risk offender with the longer prison sentences. If he or she behaves and can get into the education programs that DOC has and will set up, he or she will serve a shorter sentence, but everyone serves their minimum time. The resources should be spent on those who will serve the greater harm when they are let out into society.

Mr. Madler went on to the last goal, which is to reduce the risk of reoffending. Recommendation 3(A) provides incentives for people charged with low-level felony drug possession to complete probation. The existing drug diversion program would be expanded to

include all Class I felony drug possession offenses. First-time offenders convicted of Class I felony drug possession offenses would be required to participate in the program. High-risk offenders who need drug treatment would be ensured of participating in state-funded treatment programs.

Ms. Hevener explained that prison bed savings would be limited as most Class I drug possession offenses rarely result in active time. According to the 2009/10 data, only 11% of those convicted received prison time and the average length was 7.3 months.

There was no discussion from the Commissioners.

Mr. Madler continued with Recommendation 3(B), which provides incentives for people incarcerated to complete programs that would reduce the likelihood of that person reoffending. This option authorized the judge to decide at sentencing if an offender is eligible to reduce his sentence to the mitigated range by completing DOC recommended programming while incarcerated. Victims would be notified if the offender is eligible for reduced sentencing.

Ms. Hevener explained that there could be bed savings, but the amount of the savings would depend on how many offenders were eligible for this reduction. The primary impact would be a long-term and would come from offenders with long sentences where there is more of a difference in sentence length between the presumptive and mitigated ranges. There would be less of an impact in the short-term for offenders convicted of low level felonies, where there may only be a month or two difference between a presumptive sentence and a mitigated sentence. Also, the short sentences of low-level felons typically aren't conducive to participating in programs.

Chief Palombo commented that this option presumes that DOC will have the money to not only have these programs for inmates but also programs for probationers. He questioned how the DOC would judge the long-term impact of these programs. Ms. Davis was concerned that unless the offender has a good lawyer, the judge will not know to put this stipulation in his sentence. Mr. Hart was more concerned with this provision than the provision that concerned Judge Brown (2(C)), and felt it would go against the integrity of Structured Sentencing and the whole principle of Truth in Sentencing. He believes it takes the sentence out of the minimum/maximum range and allows for something that wasn't the actual sentence. Mr. Cheshire interjected that the judge makes the finding, so it would be on the record what the sentence was and could be. Nothing is being hidden from anybody. Mr. Sanders agreed with Judge Brown and Mr. Hart that all of this goes against the principles of Structured Sentencing. It's difficult for him to comprehend going from a presumptive to a mitigated range and the victim not really knowing which of those two will actually be the sentence.

Representative Guice stated that the intent was not to deceive the victim but to come up with programs that will help felony offenders. At the time of sentencing, everyone will know if this person is eligible for this program and what it means to his sentence. If the State does not reward these people in some way, there is no incentive for them to participate in the program. The bottom line is that 90% of these offenders will be coming back to North Carolina communities and they may be living next door. Mr. Hart asked if an offender can come down

from a presumptive- or aggravated- to a mitigated sentence. Mr. Madler said that the last version of the draft bill did provide this. Mr. Rand said that anything the State can do to reduce the risk of reoffending benefits society significantly. There are people in prison who need some sort of help in relating to society's rules. Judge Morrison did not think that the judge would even consider mitigating an aggravated sentence.

Mr. Frank had a problem with this provision. The victim's families would want to know with some degree of certainty what sentence the offender will serve. Mr. Bennett thought that this part has been resolved because, he, too, was concerned about victim rights. He was on a working group as part of the Justice Reinvestment project and thought the language was revised. Chief Palombo did not care for this provision because it gives somebody the authority to reduce the sentence in half just to control the prison population. Judge Brown suggested that in the interest of Structured Sentencing, that the numbers in the cell become larger. Instead of 28 – 34, for example, it could be expanded to 28 – 40. Secretary Keller said that the last version indicated that the sentence served must not be less than 80% of the minimum sentence. Chief Palombo agreed that if an offender was sentenced at the presumptive range, he could work himself down to the mitigated range, but not from the aggravated range to the mitigated range. Secretary Keller thought that the option only deals with people sentenced at the presumptive range.

Mr. Madler explained Recommendation 3(C), which is to focus Criminal Justice Partnership Program (CJPP) resources on programs that have the biggest impact on reducing crime. This option would move management of CJPP to the Division of Community Corrections, and focus on offenders who are on probation for felony offenses, participating in the felony drug diversion program, or on post-release supervision and who are at high risk of reoffending and have a moderate to high need for treatment. Ms. Hevener explained that it was not possible to project the impact of this proposal on the prison population. There will be prison bed savings if this option produces reductions in probation revocations and recidivism. Resources and the success of the programs to affect recidivism and revocations will need consideration.

Judge Brown explained that he served on the CJPP Board in Rowan County and that their substance abuse program was recognized with an award from the State last year. He believes that if the program is maintained at the State level, it will no longer be a partnership. The counties know the programs they need and the providers for whom they can solicit funding. This relationship will go away. Ms. Davis said that she has chaired CJPP in Wake County and that if the State takes out the community tie-in, this program would no longer serve the purpose it was designed to do. Secretary Keller said that, State-wide, there were programs not meeting the needs of those creating the greatest risk to society. He believes the idea is to insure that the programs along with the county tie-in address the offenders who are at the greatest risk of reoffending.

Representative Guice also chaired the CJPP program in Transylvania County. His county spends 96% of their funds on treatment programs; however, in some counties 80% of the funds are used on salaries. The State has to look at the best way to use its resources, especially since the Governor has cut 20% of the CJPP budget and DOC is adding about 15,000 inmates to these

programs. For those doing a great job in their counties, they will probably not see a change, but the State has to insure that they are targeting the right population.

Mr. Madler said they had concluded the framework of the Justice Reinvestment proposals, but there were three additional options. Option 1 is to limit the length of time a person can be incarcerated when he or she has violated a condition of probation supervision. The court would be limited to imposing a period of up to 90 days incarceration for technical violations of probation, excluding new crimes and absconding. Offenders who serve their entire suspended sentence through these periods of incarceration are required to serve nine months of post-release supervision. Ms. Hevener explained that this option has the potential to result in jail and prison bed savings. The impact would depend upon how many offenders would serve less than their full suspended sentence when revoked to prison and the difference in length between the full suspended sentence and the total time served through the revocation periods. This option also has the potential to result in the need for additional probation resources and additional prison beds based on the requirement that felony offenders who serve their entire suspended sentence through these periods of incarceration be placed on post-release supervision. Additional prison beds would be needed for offenders revoked from post-release supervision. The impact of this change would occur soon after it takes effect.

Mr. Sanders thought that this option would not produce any real savings but that it might mitigate the increase the State might otherwise see in probation revocations. Ms. Hevener answered that, considering the whole package, options such as this one have potential savings. The question is whether all options balance each other out. Ms. Katzenelson said that before they can look at this as a package, they have to look at each item separately to see if it balances by itself or with something else. Secretary Keller explained that the reason this option was suggested is that there are those inmates who prefer to take up an expensive prison bed, do their time and get out without having to be on probation. They are trying to keep the inmate from controlling the situation.

Representative Guice supported what Secretary Keller said. The purpose is to not let the offender play his games by serving his time and walking out the door just to reoffend and come back again. If he/she is forced to go on probation, they will spend less time in prison. Chief Palombo asked Representative Guice what would prevent a gamer from going in for 90 days, coming out and going back in for 90 days. Senator Kinnaird said that not everyone is a gamer. Representative Guice said that the person coming out would be under some kind of supervision. Mr. Sanders commented that this has some chance of keeping them from reoffending, and Ms. Davis agreed. Representative Guice said that they were trying to figure out a way to protect the public. As it stands now, they are not protected when an offender can come out without any form of supervision, and they game the system all along. Judge Brown did not like the fact that a judge could not activate an offender's sentence under this option even if he came before him three times for a technical violation. Chairman Rand says they see it all the time. Word has gotten out that if they do their entire sentence, they do not have to go on probation. This option ensures they go out under some supervision.

Mr. Madler went over Option 2, to increase the length of post-release supervision for serious offenders. Eighteen months of post-release supervision would be required for Class B1 through

E felon convictions. Five years of post-release supervision would be retained for offenders convicted of Class B1 through E sex felonies. The period of revocation would be set at 90 days each time up to a cumulative nine months. Ms. Hevener explained that this option has potential to both increase and decrease the need for prison beds. Since this option would extend the post-release supervision period, it may result in the need for additional prison beds for offenders revoked from post-release supervision. Limiting the maximum term of incarceration for revocation to 9 months and setting the period of revocation at up to 3 periods of 90 days each would potentially counter-balance some of the additional prison bed needs.

Mr. Sanders added that everyone should have twelve months of post-release supervision as the studies done by the Sentencing Commission staff prove that most offenders are going to reoffend within the first twelve months they are out. Representative Guice said that the offenders who have spent the longest time in prison are low risk, but high needs. They are trying to find a balance realizing that they cannot get a lot done in nine months. He said they were taking notes and the twelve months might work better.

Mr. Madler moved to the last option, Option 3 which is to divert misdemeanors from prison. All misdemeanors offenders with active sentences will serve their sentence in the county jail. They can, however, be revoked to prison for violations of probation. Ms. Hevener explained that this option would result in reductions in prison population, but may result in the need for additional jail beds. The impact of this change would occur soon after it takes effect. Although misdemeanors accounts for a small percentage of the prison population, they account for over one-third of prison entries.

Chairman Rand stated that impaired driving offenders are eligible for parole if they have had some kind of treatment; however, the county jail will not be able to offer these treatment options. He was wondering if the DART program will accommodate all DWI cases or if parole would be done away with for these offenders. Mr. Madler's understanding was that this issue is still being discussed. He and Ms. Hevener have only been dealing with matters that pertain to Structured Sentencing. Chairman Rand said that if beds were increased in the DART program, all the substance abuse programs in the DOC could be abolished.

Judge Spainhour asked Representative Guice if DWI was being excluded from this option and Representative Guice answered yes. Mr. Gibson was very concerned that misdemeanants are being shifted to the county jails. Senator Kinnaird assured Mr. Gibson that the Appropriations Committee knew what the State and county needs were and would take care of them. Mr. Gibson said that he was not privy to any talk of Appropriations. Senator Kinnaird said she was bringing it up and that they had to look at the big picture and long-term.

Judge Spainhour said that he thought that was the end of the Commission's discussion and recognized Marshall Clement from the Council of State Governments. Mr. Clement complimented the Sentencing Commission staff and AOC for the excellent data they keep. He noted that the Department of Correction has been trying to move away from one-size fits all supervision, treating those who are a very low risk of recidivism and not having much of an impact on anyone to differentiated quality supervision where they are focusing on the high risk offenders. He said that the reason there has been a greater focus on probation is that the prison

population has grown, with probation revocations constituting more than 50% of prison admissions. Justice Reinvestment focuses on the reallocation of resources that still uphold the integrity of the sentence and being tough on crime. The committee has laid out the plan for reinvestment, about $10 million a year. $2.5 million will be invested in staff, $1 million for the expansion of in-prison programs and $6.5 million in treatment. Budget discussions are going on right now. The assumption was to increase treatment by 60-70%.

Ms. Davis wanted to know if any states he had worked with had identified resources and then found out that there were obstacles that got in the way of the treatment opportunities. Mr. Clement said that they could not solve that problem, but are trying to reduce the gaps. The plan is to reinvest the resources for the high-risk offenders and if money is left over, then serve the medium-high risk offenders. Ms. Davis asked if these treatments would be free and Mr. Clement said that they would. Representative Guice asked Mr. Clement to touch on the subject of the habitual felon. Mr. Clement explained that habitual felons have probably committed more crimes and were not caught. They are hoping that by punishing these habitual felons four classes above the current offense will put most offenders at a C level. In about five to seven years, the punishment class will balance out.

LEGISLATIVE UPDATE AND REVIEW

Judge Spainhour suggested that the meeting move on so that it could be over by 3:00 PM. In the interest of time, Bill Hart suggested that a subcommittee be formed to review the bills and he volunteered to be on it. Judge Spainhour told him and the rest of the Commissioners that a subcommittee had been created and he read out the names of the members. In addition to those already chosen, Secretary Keller volunteered to be on the subcommittee. Sara Perdue reviewed the mandate and the Felony Offense Classification Criteria. The first handout to members concerned bills for which the Commission has found the offense classification criteria and G.S. 164-41 inapplicable; *e.g.*, homicide, capital punishment, drugs, and impaired driving. Another handout listed provisions identical to bills which the Commission has previously reviewed. Bill Hart moved that the Commission, in a 'block vote,' find these bills inapplicable; Judge Elmore seconded the motion. Mr. Clifford, referencing House Bill 324, said this was well and good but that if someone is found guilty of possession of less than an ounce marijuana, it cannot be expunged from their record because it is an infraction. Senator Kinnaird asked if infractions came up when someone was doing a background check and Mr. Clifford answered yes. Judge Brown said that a person could answer truthfully that they had never been convicted since one cannot be convicted of an infraction. It would hurt them when applying to college. Secretary Hayes confirmed this. She said that the Department of Juvenile Justice and Delinquency Prevention sees a lot of this, and it does hurt the person found guilty of this infraction. Judge Spainhour reminded the Commissioners that they were voting whether or not the bill was consistent, inconsistent, or inapplicable to Structured Sentencing and not the merits of the bill itself. The motion was voted on and carried.

Ms. Perdue said there were three bills identical to provisions in bills that the Commission had previously reviewed. Mr. Hart moved to accept the findings and comments that the Commission made when the bills were reviewed; Moe McKnight seconded the motion and the motion carried. Mr. Hart made a motion that in the interest of the time left and the technical

difficulties in getting the computer and screen in sync, the bills be left to the Legislative Review Subcommittee and move on to the Juvenile Projections. Senator Kinnaird seconded the motion. Judge Spainhour said there could be no motion, but he would consider the consensus of the group. The group agreed to move on and leave the laws to the Subcommittee.

JUVENILE DELINQUENT POPULATION PROJECTIONS

Tamara Flinchum presented the Juvenile Delinquent Population Projections. She began by providing a statistical summary of the 6,707 delinquent dispositions in FY 2009/10 and the juveniles committed to the Department's Youth Development Centers (YDC) as of July 1, 2010. She further discussed this population – the empirical base for the five-year projections – in terms of offense classification, delinquency history, disposition level, length of YDC stay, and revocation rates.

Ms. Flinchum pointed out that juvenile projections are not quite as accurate as adult projections because the juvenile disposition chart is more flexible, the YDC population is much smaller, and the juvenile system is more sensitive to changes in policy and/or practice. Looking at trends, the YDC population has generally declined since July 2000, as intended by the Juvenile Justice Reform Act of 1998. The YDC resource needs were projected to increase slightly over the projection period from 404 YDC beds by June 2011 to 413 YDC beds by June 2015.

Chief Palombo asked what the impact would be on the YDC beds needed if the age of juveniles was changed to 17. Ms. Katzenelson answered that the population would probably double if the age changed. The last report of the Task Force indicated that juveniles would start off in the juvenile system, but those 16 and older charged with a violent felony would be transferred to the adult system, decreasing the number of juveniles a great deal. The Vera Institute has done a cost-benefit analysis, and Ms. Katzenelson said the staff would be glad to send it to all the Commissioners. Secretary Hayes explained to the group that the juvenile population is fluid. Just that morning four teenagers were sent back to them for bad behavior at the Wilderness Camp, thus increasing their population by four. If a judge holds court on a Friday, the juvenile population can increase by 9 by Monday morning. She commended the Sentencing Commission on the job they had done, because of the difficulty to predict the population on any given day.

Judge Spainhour asked for any further comments. He reminded the Commissioners that the next full meeting would be June 3rd, and that there would be a Legislative Review Subcommittee meeting on April 8. All members are welcome to attend. The meeting adjourned at 2:39 P.M.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant