

**MINUTES  
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION  
MEETING**

**December 5, 2014**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 5, 2014, at the North Carolina Judicial Center in Raleigh, North Carolina.

**Members Present:** Designated Chairman Luther Moore, Art Beeler, Honorable Charlie Brown, Paul Butler, Robert Campbell, Honorable Warren Daniel, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, David Guice, Ilona Kusa, Honorable Floyd McKissick, Dr. Harvey McMurray, Robert Montgomery, Honorable Fred Morrison, Billy Sanders, Keith Shannon, and Honorable Thomas Thompson.

**Guests:** Elliott Abrams (representing Chris Fialko), Karen Brown (Department of Public Safety, Correction Enterprises), William Lassiter (Department of Public Safety, Juvenile Justice), Joe Prater (Department of Public Safety, Administration), Anne Precythe (Department of Public Safety, Community Corrections), Nicole Sullivan (Department of Public Safety, Rehabilitative Programs and Services), Keenon James (North Carolina Sheriff's Association), Susan Sitze (General Assembly, Research Division), Yolanda Woodhouse (Administrative Office of the Courts), Susan Doyle (District Attorney-11B), and Ben David (District Attorney-5).

**Staff:** Susan Katzenelson, Ginny Hevener, John Madler, Tamara Flinchum, Sara Perdue, Mark Bodkin, Rebecca Murdock, Jennifer Wesoloski, and Shelley Kirk.

**INTRODUCTION**

Luther Moore called the meeting to order at 10:00 a.m. He explained that Chairman Spainhour was unable to attend the meeting and designated Mr. Moore to chair the meeting in his place. Chairman Moore announced the 2015 Commission meeting dates will be March 6<sup>th</sup>, June 3<sup>rd</sup>, September 11<sup>th</sup>, and December 4<sup>th</sup>. He then introduced a new commissioner, the Attorney General's designee, Robert Montgomery. Members and visitors introduced themselves. After reviewing the agenda for the meeting, Chairman Moore presented the minutes from the previous meeting. Billy Sanders moved to adopt the minutes from the September 5, 2014, meeting; the motion was seconded and carried.

**CREDIT FOR TIME SERVED SUBCOMMITTEE: STATUS REPORT**

John Madler presented the status report for the Credit for Time Served Subcommittee. The Sentencing Commission created the Subcommittee at its December 2013 meeting and assigned it to study various issues that related to the awarding of time credits against sentences of imprisonment and confinement, as well as issues related to the period of confinement in response to probation violations (CRV). The Subcommittee met in the first quarter of 2014 and developed several recommendations. The Commission adopted the Subcommittee's Report at its March 2014 meeting.

Mr. Madler then reviewed the issues assigned to the Subcommittee and the recommendations. The first issue related to the confusion in the collection and calculation of jail credit. The Subcommittee recognized the need for a centralized jail data collection system but did not make any recommendations. The second topic was that the jail credit statutes do not address issues created by recent changes in the laws, specifically the Justice Reinvestment Act. The Subcommittee studied the application of jail credit to the CRV. It recognized that an offender was entitled to credit for time spent in confinement but found that jail credit was reducing the period of confinement; there was not enough data to determine the extent. In addition, the Division of Adult Correction and Juvenile Justice (DACJJ) reported that it was revisiting its approach to the CRV. The Subcommittee decided not to make any recommendation at that time. The final issue was that the jail credit statutes are not clear regarding the awarding of credits. The Subcommittee developed two recommendations that might help clarify the statutes. (*See* handout.)

Following that review, Mr. Madler informed the Commission that since the Commission's adoption of the Report in March, the General Assembly had enacted several provisions that affected those issues. The General Assembly amended the CRV statute to prohibit the crediting of time already served to a 90 day CRV for a felony offense; any such credit shall instead be applied to the suspended sentence. The General Assembly also appropriated funds for two CRV centers. The DACJJ is developing a plan for working with offenders in the new centers. Finally, the General Assembly amended the confinement statutes to place all misdemeanor offenders in the local jails, either directly or through the Statewide Misdemeanant Confinement Program. Mr. Madler indicated that this might increase the demand for a centralized jail data collection system.

Mr. Madler concluded by pointing out that no action had been taken on the two recommendations to clarify the statutes. Billy Sanders moved to authorize the staff to work with the legislative members of the Commission to seek sponsors to introduce the two recommendations in the 2015 Session. The motion was seconded and carried. This concluded the work of the Credit for Time Served Subcommittee.

### **JUSTICE REINVESTMENT IMPLEMENTATION SUBCOMMITTEE: STATUS REPORT**

Judge Brown presented the status report from the Justice Reinvestment Implementation Report Subcommittee. (*See* handout.) He informed the Commission that the JR Subcommittee met October 24, 2014, to study three issues the Commission had assigned to the Subcommittee. The first two issues came at the request of the Conference of District Attorneys (Conference): the existence of Advanced Supervised Release (ASR) and the application of credit for time served for CRVs to consecutive sentences. The third issue was the use of terminal CRVs.

Judge Brown began by reviewing the legislative changes arising from the 2014 Session that were relevant to the issues referred to the Subcommittee. He highlighted the shifting of misdemeanants and all DWI offenders to local jails, the prohibition of the application of credit for time served toward a CRV period, and the creation of felony CRV centers.

Judge Brown then reported on the study of the issues referred to the Subcommittee, beginning with those requested by the Conference of District Attorneys. The Subcommittee discussed ASR and the Commission's initial review of it in 2011 as part of the Commission's study of the Justice Reinvestment Act (JRA). The Subcommittee heard comments from Maureen Krueger, representing the Conference, as to why the Conference had asked the Subcommittee to study ASR. Staff informed the Subcommittee about the site visit research they conducted in the fall of 2013 as it pertained to ASR. Staff also reported that court data showed about a 1% usage among eligible offenders.

Next, Judge Brown reported that the Subcommittee looked at the issue of CRV credit in the context of consecutive sentences. After staff illustrated the issues that arise from the application of credit for multiple CRVs when sentences are activated, Maureen Krueger stated the Conference's position against the multiplication of credit. Anne Precythe, the Director of Community Corrections from the Department of Public Safety (DPS), stated that the DPS had recognized the problem and their legal staff was working on a legislative proposal to correct the issue.

Finally, Judge Brown reported on the issues regarding terminal CRVs, particularly how they applied in the misdemeanor context. The Subcommittee reviewed the definition, purpose and process for misdemeanor CRVs, as well as the information garnered in the field visits. Staff also reported to the Subcommittee the information collected during follow-up interviews. The Subcommittee heard a brief update from various agencies on their plans for misdemeanor CRV offenders and from staff regarding current data on the usage and average length of a CRV.

Pursuant to these discussions, the Subcommittee developed a set of recommendations. Judge Brown presented each recommendation individually for discussion.

In regard to the ASR issue, the Subcommittee recommended the elimination of ASR. Judge Brown moved the adoption of the recommendation.

Art Beeler, a member of the Subcommittee, stated that after further reflection he was unsure ASR should be eliminated completely. Instead, he offered a substitute motion to send the issue back to the JRA Subcommittee for further study.

Chairman Moore recognized Commissioner Guice to speak on the motion. Commissioner Guice distributed information regarding a follow-up study the Council of State Governments recently completed (*see* Handout). He explained that, as a part of developing the JRA and this provision specifically, all the stakeholders were brought to the table, including the Conference of District Attorneys. The objections the Conference raised were not new objections and, in response to their concerns, the agreement was for prosecutors to have full control over which inmates could be accepted into the ASR program by requiring the prosecutor's approval. Commissioner Guice disagreed that ASR violated the truth-in-sentencing principle, stating that all parties would know at sentencing that this was a part of the sentence that the defendant was receiving and that it would be up to them to earn the early release date. While the number of inmates currently participating in the ASR program is low, he felt that the program was still in the beginning stages of the process; while it might need some adjustments or tweaking, he asked

the Subcommittee not to eliminate the program at this time. Commissioner Guice also mentioned that no ASR inmate who completed the program has been released yet.

Commissioner Guice told the Commission about a pilot program the Department was working on to develop pre-sentence investigation reports and how that might help the courts better utilize ASR. He also expressed an interest in exploring the idea of building an independent facility to house ASR inmates.

Commissioner Guice reported on the outreach the Department of Public Safety was doing to help district attorneys understand ASR and to see how it could work in their practice. He asked the Chair to recognize two guests he brought — Ben David, District Attorney for District 5, which includes New Hanover and Pender County, and Susan Doyle, District Attorney for District 11B, which is Johnston County.

Mr. David thanked the Commission for allowing him to speak on the issue. He stated that he was not speaking on behalf of the Conference of District Attorneys, and that the position of the Conference had not changed. He believed that the Conference is in somewhat of a flux with several new district attorneys taking office this January. Mr. David noted that he is not currently using ASR in his district, but that after hearing what Ms. Doyle has done in her district with it, he was interested in learning more about the program before making a decision whether to use it.

Ms. Doyle stated that in her opinion, most DAs do not know what ASR is. She admitted that she did not know until Anne Precythe visited her district and talked with her. Since then, she has developed a policy for ASR and has worked with her ADAs on implementing that policy. For example, Ms. Doyle has a policy that if a defendant qualifies for a habitual felon indictment, the office will pursue it. However, many times the underlying offense is weak and the office is unsure about whether to proceed with the habitual felon indictment; offering the incentive of ASR to the defendant allows them to proceed with more of those cases and reach a plea agreement. She has also been able to use ASR as part of a habitual felon plea bargain to reduce the sentence length if the ADA sees reason for mitigation while still adhering to the habitual felon policy. Finally, they can use ASR in non-habitual felon cases to get a plea agreement on the original charge rather than reducing it; it allows the office to maintain a “tough on crime” policy while still being able to strike a deal with the defendant.

Commissioner Guice stated that this practice showed ASR could be a useful tool and asked the Subcommittee to not remove an option that could eventually be used, and used effectively. Senator McKissick agreed with Commissioner Guice that ASR should be given more time to work itself out in practice.

Judge Morrison pointed out that the Subcommittee had compelling reasons for eliminating ASR and that he was unsure if asking them to reexamine the issue would be useful.

Mr. Sanders felt that the DA’s discretion to use the policy was an important component— if a DA was uncomfortable with the policy, they could elect not to use it. He also was unsure ASR violated truth-in-sentencing because everyone knew what the plea was from the outset.

Ms. Kusa stated that while truth-in-sentencing is important for victims, programming is critical for offenders. She also recognized that it would take some time before they could look at the recidivism rates and determine whether this program has a positive effect.

After further discussion, Chairman Moore returned to Mr. Beeler's substitute motion to re-refer the issue to the JRA Subcommittee for further study. The motion was seconded and carried.

With respect to the CRV credit issue in the context of consecutive sentences, the Subcommittee recommended that the application of CRV credit towards consecutive sentences be changed so that the credit to CRVs that are served concurrently is equal to one CRV period rather than multiplied by the number of CRVs. The Subcommittee suggested that the Commission review any proposal from the DPS; however, the DPS did not present a proposal. Judge Brown moved to adopt the recommendation. With no discussion, the motion carried.

In regard to the issue concerning the misdemeanor CRVs, the Subcommittee recommended eliminating CRVs for misdemeanor offenders. The Subcommittee further recommended creating a substitute path to revocation for misdemeanor offenders: allow the court to revoke probation if the probationer violates a condition of probation after the probationer has previously served two separate periods of confinement in a local confinement facility on that case. The second period of confinement must have been imposed for a violation that occurred after the probationer served the first period of confinement. The periods of confinement may have been imposed either by the court or by the probation officer pursuant to delegated authority. Judge Brown moved the adoption of the recommendation.

Commissioner Guice asked whether the recommendation was to require the use of quick dips in response to technical violations. Judge Brown responded that it would allow for the use of quick dips but that it would not require it. Commissioner Guice expressed concern over the utilization of quick dips and its impact on local jails. He recommended that the Commission be very specific when submitting that recommendation. The motion carried. Chairman Moore thanked Judge Brown for the Subcommittee's report.

Chairman Moore reminded the Commission members that the Sentencing Commission has a statutory duty to review proposed legislation for consistency with Structured Sentencing. He informed them that the General Assembly would begin its 2015 Session on January 14. In order for the Commission to perform its duty in a timely manner, the Chairman will create a subcommittee to review legislation between Commission meetings. Dr. McMurray moved to authorize the Chairman to form a Legislative Review Subcommittee during the 2015 Session if necessary. The motion was seconded and carried. Chairman Moore added that Chairman Spainhour will ask for volunteers, but will appoint members if more are needed.

### **CRV CENTERS UPDATE**

Anne Precythe, DPS, updated the Commission on the status of the new CRV centers in Burke and Robeson Counties. She stated that the mission of the centers is "[t]o provide a highly

structured confinement program for technical violators which will allow opportunity to modify behavior and learn new skill sets to succeed in the community upon release.” She listed the elements of the stand-alone centers and indicated that the primary difference between the centers and imprisonment is that at the CRV centers programming will be mandatory for the residents.

Ms. Precythe explained that CRV center staff has been trained on the behavior modification model; they will take a team approach and focus on ‘the three R’s’: Role Model, Reinforce, and Redirect. Staff will provide swift responses to minor infractions and issue incentives for positive behavior. Each offender’s progress will be monitored through weekly joint staff meetings. Furthermore, there will be probation officers on-site at the centers.

Program vendors will provide open-ended programs, including weekly individual cognitive sessions for everyone. Other programs include academic services by local community colleges, on-site computer labs, and substance abuse intervention classes. There will be community volunteers coming into the centers as well. Ms. Precythe thanked Mr. Campbell and the NC Bar Association for coordinating efforts to bring in legal volunteers.

Ms. Precythe reiterated that the CRV centers will be a totally different environment for offenders; they will be showing offenders new ways to make decisions and to spend their free time. Offenders will be given an opportunity to learn time management skills so that they don’t get “bored” and thusly into trouble when released.

The DPS is in the process of hiring and training staff. It plans on beginning operations in December 2014 and expects to be at full capacity by February 2015.

Ms. Precythe also explained that the DPS has identified certain types of offenders for whom it will not recommend a CRV: Level IV and V offenders – lowest risk offenders who do not need a 90 day program, and people with serious medical, mental health or substance abuse problems. For them, the DPS will recommend other options such as a curfew, Electronic House Arrest, a split sentence, or a residential treatment program. Of those offenders who receive a CRV, not all will be eligible for a CRV center. The DPS will exclude offenders who have a certain acuity level (require psychotropic drugs), have pending charges for Class A through D felony offenses, have a prior incarceration at the highest control status in the past year, or who have concurrent active sentences. Those offenders will serve CRVs in prisons.

Ms. Precythe stated that the DPS is still working on the issue of transportation. Offenders could be transported to the centers using the prison bus system, which operates on Wednesdays and Fridays, or they could be transported by the local Sheriff’s department.

Mr. Campbell asked about the process for determining whether an offender has mental health issues and thusly whether he should go to a CRV center or to Central Prison for treatment. Ms. Precythe responded that the probation officer should know; Mr. Campbell followed up by asking whether there will be a box to check on the judgment form. Nicole Sullivan answered that there is not a box on the judgment form, but that an offender will be screened before even boarding a bus to the CRV center.

Louise Davis asked whether there is a minimum IQ for offenders to be eligible for the centers. Ms. Sullivan responded that there was not, that vendors are required to provide services for the offenders at the level of the offender's need.

Mr. Beeler stated that there must be a mechanism in place to remove staff that does not follow the program; Ms. Precythe responded that there was a mechanism. Further, he advised that sanctions must be linked to treatment rather than discipline and structured leisure time for the offenders is very important. Ms. Precythe responded that the system is based on consequences and incentives. Regarding the transportation issue, Mr. Beeler remarked that it might be a good idea to allow lower level CRV offenders to be responsible for getting themselves to the CRV centers; not only would it save costs, but it would be a good way to measure compliance from the start. Mr. Beeler asked whether all offenders on psychotropic drugs will be excluded from the centers. Ms. Sullivan replied that it will depend on the offender's acuity level but added that there are issues with storing and securing the drugs.

Susan Katzenelson noted that, in order to evaluate the effectiveness of the CRV centers accurately, data will be needed to capture whether an offender who received a CRV went to a center or to a prison. She also mentioned the future difficulty in evaluating the CRV centers when so many of the more problematic offenders are being excluded for their populations. Nicole Sullivan responded that the OPUS system will identify where each offender served their CRV. Mr. Sanders asked whether low-level offenders will be excluded from the CRV centers. Ms. Precythe responded that the DPS is encouraging probation officers not to recommend a CRV for low-level offenders if the court asks for a recommendation. The exception would be if the offender's behavior indicates a higher risk level than previously assessed.

Iiona Kusa asked whether DPS has plans for a CRV center for female offenders. Ms. Sullivan responded that currently female CRV offenders are going to Fountain Correctional Institution, but there are plans to create a CRV center for females at Eastern Correctional Institution. Females tend to have more medical and mental health issues, so their programming will need to be different, but those who are able to participate will, in the future, go to Eastern. Commissioner Guice added that DPS is authorized to use funds available for other sites and they are looking for funding but that they also have to identify supporting facilities for a female CRV center.

Mr. Beeler closed the discussion by commenting that research shows putting low-risk offenders in confinement increases their risk of recidivism; low-risk offenders should be kept and treated in the community.

### **RESEARCH AND POLICY STUDY GROUP: STATUS REPORT**

Ms. Louise Davis, Chair of the Research and Policy Study Group, reported on the group's first meeting on October 14, 2014.

The Study Group had first reviewed some of the Commission's earlier work on policy related topics, including its recidivism studies; recommendations on sentencing alternatives and juvenile age; and continuous input into the development and implementation of the JRA.

Members had then raised and discussed a wide range of relevant issues involving juveniles and youth; effective programming in prisons and communities for prisoners, probationers and post-release supervisees; and 'tipping points' that might impede and offender's chances to desist further criminal activity.

After further discussion of the various options for study, the group reached the decision to review Commission-, State-, and national information regarding the prevention of crime and recidivism. Within this broad definition, the Study Group agreed to focus on three major criminal justice issues that members found relevant and applicable to formulating policy: juveniles and youth 16-21; tipping points and recidivism prevention; and mental health.

Ms. Davis concluded the status report by noting that the Study Group's next meeting is scheduled for January 23, 2015, in the Judicial Center.

### **JUVENILE DELINQUENT POPULATION PROJECTIONS**

Jennifer Wesoloski presented the Youth Development Center (YDC) Population Projections for Fiscal Year 2015 to Fiscal Year 2019 (*see handout*). The projections are prepared annually in conjunction with the Department of Public Safety's Division of Adult Correction and Juvenile Justice (DACJJ) using data extracted from the North Carolina Juvenile Online Information Network.

Using a computerized simulation model, the YDC resource needs are projected to remain stable over the projection period, with a projected need for 237 YDC beds at the beginning and end of the five-year projection period. The YDC population at the beginning of the projection period was 241. A comparison of the projections to YDC capacity indicates that the projected YDC population will be below YDC capacity for the five-year projection period.

Ms. Wesoloski summarized the assumptions that were used to develop the projections. The projections take into account trend data, including criminal justice trends, delinquent complaint trends, and population trends, as well as empirical data from the previous fiscal year, such as the number of YDC dispositions, the average YDC length of stay, and the reason for entry into a YDC. The projections do not take into account potential shifts in policy and/or changes in court practices.

Ms. Wesoloski reviewed the Juvenile Dispositional Chart and the empirical data from the latest available fiscal year, which in conjunction with the stock population form the basis of the five-year resource projections. The Juvenile Disposition Chart includes three offense classifications: violent (Class A-E felony), serious (Class F-I felony), and minor (Class 1-3 misdemeanor); three delinquency history levels: low (0-1 points), medium (2-3 points) and high (4 or more points); and three types of dispositions imposed: Level I (community punishment), Level II (intermediate punishment), and Level III (YDC commitment).



Of the 5,240 juvenile delinquent dispositions in FY 2013/14, the majority of juveniles (75%) committed a minor offense, 72% had a low delinquency history, and 83% were disposed for a misdemeanor offense. Of those adjudicated, 63% received a community punishment, 35% received an intermediate punishment, and 2% were committed to a YDC. Distributions for these data have remained stable for the last five years.

Ms. Wesoloski highlighted YDC population trends from FY 2010 to FY 2014, which show the year-to-year variations in several key components used to produce the projections. From FY 2010 to FY 2014, admissions to YDCs, and correspondingly, releases from YDCs have generally decreased (45% and 40% respectively). The average overall length of stay in a YDC was 13.4 months. Over the past five years, the average overall length of stay has been fairly stable although it has been rising slightly. North Carolina's YDC population has long been in decline – 51% over the past ten years and 45% over the past five years – but has leveled off over the past two years.

Mr. Beeler mentioned the importance of continued funding for Juvenile Crime Prevention Councils (JCPCs). Senator Daniels asked if anyone had studied what effect raising the juvenile age would have on the YDC population. Ms. Katzenelson responded that the VERA study indicated there would be up-front costs, but the long-term savings would be sizeable. Judge Morrison inquired about the gender distribution of the YDC population. Ms. Wesoloski responded that the information was available, and that 92% of YDC beds needed for each year of the projection period were for males.

### **CORRECTION ENTERPRISES**

Chairman Moore recognized Joe Prater, Department of Public Safety, to provide a presentation on the Department's Correction Enterprises (*see* handouts). Mr. Prater gave an overview of Correction Enterprises and its role in the Department. Mr. Prater then introduced Karen Brown, the Director of Correction Enterprises. Ms. Brown explained that Correction Enterprises employs the state's inmates to produce goods that can be used and purchased by North Carolina state agencies, while teaching them valuable job skills that are transferable to the private sector upon their release from prison. She reviewed the job opportunities that they provide and the products they produce. Ms. Brown concluded by showing a video that contained several stories of inmates who had successfully transitioned into the work force upon release.

### **ADJOURN**

Chairman Moore informed the members that the next full Commission meeting is scheduled for March 6, 2015.

The meeting adjourned at 2:51 p.m.

Respectfully submitted,

Shelley Kirk  
Administrative Secretary