

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

June 5, 2015

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 5, 2015, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Art Beeler, Honorable Charlie Brown, Paul Butler, Sheriff James Clemmons, Honorable Warren Daniel, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, Honorable Maureen Krueger, Ilona Kusa, Honorable Floyd McKissick, Dr. Harvey McMurray, Robert Montgomery, Luther Moore, Honorable Fred Morrison, Honorable June Ray, and Billy Sanders.

Guests: Eddie Caldwell (Sheriff's Association), Lauren Norman (Sheriff's Association), James Markham (UNC-School of Government), William Lassiter (Department of Public Safety), Elliot Abrams (NC Advocates for Justice), Yolanda Woodhouse (Administrative Office of the Courts), and Anne Precythe (Department of Public Safety).

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

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:00 a.m. Members, staff, and visitors introduced themselves. Chairman Spainhour reminded members that their terms expire June 30th and that staff have sent letters to the appointing authorities. He then reviewed the agenda for the meeting. Mr. Moore moved to adopt the minutes from the March 6, 2015, meeting; the motion was seconded and carried.

JUVENILE RECIDIVISM IN NORTH CAROLINA

Chairman Spainhour recognized Tamara Flinchum, staff, to present the Juvenile Recidivism Study: FY 2010/11 Juvenile Sample (*see* handout). Ms. Flinchum informed the members that this is the fifth 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, 2015. She 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 2011. Information was presented on the juvenile sample's profile – including the personal characteristics, the delinquency history, the sample complaint/offense, and overall results for the risk and needs assessments completed during the intake process by court counselors for delinquent complaints.

Ms. Flinchum then provided the recidivism rates for the juvenile sample. Art Beeler commented that the decrease in recidivism rates as juveniles age into the adult system could be

an effect of transfers to the adult system. Susan Katzenelson reported that the actual number of juveniles who are transferred into the adult system is very low. Judge Morrison asked Ms. Flinchum if she had the recidivism rate for the population that was on probation as well as the population that was committed to a Youth Development Center (YDC). Ms. Flinchum answered that the information could be found in Appendix D of the Juvenile Recidivism Report. Ginny Hevener explained that the recidivism rates for those on probation were actually slightly higher than those committed to a YDC. The lower recidivism rate for those juveniles committed to a YDC is more likely due to the juveniles having less time on the street to commit a new crime. Mr. Beeler asked if the sample included juveniles with petitions filed for court. Ms. Flinchum responded that the closed and diverted groups in the sample would not have a petition filed for juvenile court, and Mr. Beeler stated that the ideal is to divert juveniles without a petition filed so that the juveniles are not criminalized.

After Ms. Flinchum presented recidivism rates by risk assessment levels, Billy Lassiter commented that the Department of Adult Correction and Juvenile Justice (DACJJ) is reassessing and revalidating the risk and needs assessment tools. He also mentioned that the recidivism rates for juveniles assessed as low risk are too high and that additional categories may be needed. Ms. Katzenelson pointed out that the data are available to examine the cut-off points for the different levels. According to Mr. Lassiter, DACJJs court counselors completed training on administering the risk and needs assessments last year and will complete another training this year in an effort to obtain reliability in scoring across the state. Judge Brown asked Mr. Lassiter what he thought the acceptable recidivism rate is for juveniles assessed as low risk, if 37% recidivism is too high. Mr. Lassiter stated that he does not have a definitive answer; however, 12% would be an acceptable range since juveniles who have participated in Teen Court have a recidivism rate of 12% and those juveniles are assessed as low risk. He went on to state that juveniles who are assessed with an actual score of 3 for risk are very different from juveniles who are assessed with a score of 7 – both of which would be considered low risk.

Continuing the discussion about the risk and needs assessments, Mr. Beeler wondered if the ethnicity/race of the population in the community had been factored into the recidivism rates and assessment scores. Ms. Flinchum stated that only those juveniles who had contact with the juvenile justice system in FY 2011 were analyzed. Ms. Katzenelson reported that the Governor's Crime Commission has examined the Disproportionate Minority Contact (DMC) in the juvenile justice system. She stated that one problem in using data from the Juvenile Recidivism Study is that it would not give a complete picture of the potential racial disparity problem within the juvenile justice system, since the data report information at the end of the process. Earlier encounters in the process would be needed to truly understand DMC. Mr. Lassiter offered that the DACJJs website has a report of DMC numbers by county and at each stage of the process. Although there is disproportionate racial contact at all stages, he stated that it does not get more disproportionate the further a juvenile goes into the system.

Ms. Flinchum also presented the findings from the third submission to the General Assembly on May 1, 2015 of the mandated juvenile report titled the Effectiveness of Programs Funded by Juvenile Crime Prevention Councils (JCPC). (See attached handout.) Prior to the report presentation, Ms. Katzenelson explained that staff had found a data coding error in the JCPC program selection that affected a small number of programs chosen; therefore, copies of

the report were not available for the Commissioners at the meeting, but they will be mailed to the Commissioners shortly. She provided an overview of the JCPCs – their history, responsibilities and duties, mandated population to be served, and programs available by six major categories.

The FY 2011 juvenile recidivism sample was used to identify any subsequent JCPC program admission during the three-year follow-up. By using the juvenile recidivism sample, juveniles without a subsequent JCPC admission were used as a comparison group. Ms. Flinchum provided a general description of the FY 2011 sample by subsequent JCPC status and by JCPC programs along with adult arrest rates for each. Louise Davis pointed out that restorative programs are required to only admit juveniles with no prior delinquent offenses while the other JCPC programs are enhancements to probation; therefore, those programs (e.g., non-restorative programs) are by nature for the worst juveniles. Mr. Lassiter reminded the Commissioners that the report only looked at juveniles that had a delinquent complaint and did not examine at-risk youth. Ms. Katzenelson commented that the placement of low risk juveniles in JCPCs should be reexamined, given their higher arrest rates than those of medium and high risk juveniles. She also cited some evidence (already a component of Justice Reinvestment in the adult criminal justice system), that less supervision/intervention would actually reduce the recidivism of low risk offenders. Mr. Beeler reported that he is not surprised by these numbers since juveniles assessed as high risk also have more programs and more involvement with a court counselor. He also stated that schools not making referrals to JCPCs is a bit of a misnomer, since more school resource officers are making referrals to court counselors. Mr. Beeler then commented that it is difficult to find treatment providers willing to serve juveniles assessed as medium or high risk in local communities. Ms. Davis concurred with his opinion stating that treatment providers find the low risk juvenile easier to deal with.

Ms. Katzenelson provided the concluding comments and policy recommendations based upon the findings from both reports. One recommendation is to administer risk and needs assessments to all JCPC admissions – both at-risk and court-involved youth. Mr. Beeler responded that many of the JCPC programs are “mom and pop” run programs that simply do not have the time needed to administer the assessments. Mr. Lassiter mentioned that the court involvement questions on the risk assessment tool are not asked of the JCPC at-risk youth who are administered the modified version of risk assessment. Dr. McMurray wondered if there is any value in the JCPC programs and would like to see some baseline data at the regional level; however, he felt that JCPC programs do have value. Ms. Katzenelson responded that there are fiscal and other constraints on the local JCPC programs. Availability, accessibility, and affordability are all factors affecting the ability to match programs and juveniles served. Elliot Abrams (Chris Fialko’s designee for the meeting) stated that one cannot compare JCPC juveniles to non-JCPC juveniles to determine whether the JCPC programs are effective or not since juveniles are placed in a JCPC program for a reason. He also commented that a better comparison would be examination of data from last year to this year. Ms. Katzenelson responded to Mr. Abrams that his comparison suggestion is not statistically sound.

JUSTICE REINVESTMENT IMPLEMENTATION SUBCOMMITTEE – 2015 REPORT

Chairman Spainhour recognized Judge Brown for a summary of the 2015 Justice Reinvestment Implementation Evaluation Report (see Report). Judge Brown reminded

Commissioners that the Justice Reinvestment Act (JRA) contained an ongoing Commission mandate to submit annual reports to the Legislature evaluating the implementation of the JRA. In response to the mandate, the Sentencing Commission created the Justice Reinvestment Implementation Report Subcommittee to gather information, review available data, and report to the Commission any recommendations regarding the implementation of the JRA. He noted that the report was submitted to the Legislature on April 15, 2015 and he would briefly review the highlights.

Judge Brown explained the report contained a summary of agency initiatives undertaken in calendar year (CY) 2014. He noted that two highlights from the agency section of the report (Section III) include the opening of Confinement in Response to Probation Violations (CRV) centers and the addition of new populations into the Statewide Misdemeanant Confinement Program (SMCP). He provided information about the CRV centers opened by the Department of Public Safety (DPS) in December 2014 including staffing levels, programming, and eligibility criteria. Michelle Hall stated that she is arranging tours for each facility at a future date and will be passing around sign-up sheets for each of the centers. She noted that she is working with Commissioner Guice and once the dates are confirmed, she will contact those on the sign-up sheets with details. Susan Katzenelson noted that there were funds available to pay for the Commissioners' trip expenses. Judge Brown inquired as to offender ineligibility for a CRV center. Ms. Precythe stated that grounds for ineligibility were medical or mental health issues and those offenders who were released from a maximum prison in less than a year. She further commented that there were approximately 50-60 offenders in the system who were unable to be at the CRV centers. Ms. Precythe added that the Department is continuing to work on setting up a center for females.

Next, Judge Brown reported on recent changes the Legislature made to the SMCP. Those changes expanded the participation of misdemeanants sentenced to the program to include Structured Sentencing misdemeanants with sentences greater than 90 days and all misdemeanants convicted of impaired driving offenses, regardless of sentence length. Judge Brown then provided information about the capacity of the SMCP, and the average inmates per day sentenced to the program for CY 2014. He noted that Lauren Norman of the North Carolina Sheriffs' Association (NCSA) would be providing an update on the SMCP, including population.

Judge Brown highlighted one key data finding contained in the report – the number of offenders on PRS, as expected, is increasing. He noted that the expansion of PRS to all felons who serve an active prison term has had a significant impact on community corrections resources. Data indicate that the Post-Release Supervision (PRS) population is now primarily comprised of offenders sentenced under the JRA terms. He also noted that the increase in the PRS population has led to an increase in entries to prison as a result of violations of supervision, with much of the increase attributable to revocations for Class F-I felons with PRS.

Mr. Butler commented that the increasing number of felons exiting prison onto PRS was having a substantial impact on the workload of the Post-Release Supervision and Parole (PRSP) Commission. He explained some of the problems the PRSP Commission was having with its videoconferencing equipment, which were only going to get worse as more cases need review and decisions.

Judge Brown continued, noting two issues that the Subcommittee had studied that were included in the report: the application of CRV credit to consecutive sentences and terminal CRVs. He reviewed the recommendations the Subcommittee made as part of those studies and the resulting action of the Commission. Regarding application of CRV credit towards consecutive sentences, the Subcommittee recommended it be changed so that the credit for CRVs that are served concurrently is equal to the time actually served rather than multiplied by the number of CRVs imposed. At the time of the study, DACJJ reported that it was working on a proposal to amend the statutes in such a manner. The Commission adopted the recommendation. The DACJJs proposal was introduced as legislation in the 2015 Session of the General Assembly; House Bill 253, Justice Reinvestment Act Changes, passed the House and was referred to Senate Rules. Regarding terminal CRVs, the Subcommittee recommended that CRVs be eliminated for misdemeanants; the Commission adopted the recommendation. This recommendation was introduced in the Legislature as Senate Bill 183, Eliminate CRVs for Misdemeanants, and it passed the Senate and was referred to House Judiciary II.

Judge Brown concluded his presentation by stating that, as noted in the report, the past year can be defined by some new agency initiatives and enhancements designed to further JRA goals. The next outcomes to observe will include recidivism rates, prison population trends, and reinvestment. The Subcommittee will continue to meet and monitor the progress of the implementation, review data where available, and submit future annual reports, interim findings, and recommendations for clarifications or revisions to the JRA as needed.

STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM UPDATE

Chairman Spainhour recognized Lauren Norman, NCSA, for an update on the SMCP (*see* handout). Ms. Norman reviewed figures regarding the average daily population of inmates sentenced to the Program, the number of DWI inmates, the number of CRV inmates, and the high and low population figures for May 2015. She pointed out that the population has exceeded 1,100 inmates, which is nearly double what it was in May of 2014. She reviewed the number of counties participating in the Program as “receiving” counties and the total bed capacity for the Program (1,866 available beds). She noted that inmates are receiving longer sentences as part of the Program’s expansion to include misdemeanants with sentences greater than 180 days and DWI misdemeanants, which means that there is the potential for more funds to be expended not just for housing these inmates, but for their medical care as well. Ms. Norman then provided an analysis of the SMC Fund. She noted that the current House Budget includes a \$22.5 million appropriation for the SMCP. She then reviewed projections for the overall health of the fund through June 2018, if the \$22.5 million appropriation were to be included in the state budget going forward and if there were no additional beds needed for the Program beyond its current capacity. The projections indicate there would be a deficit by June of 2018.

Mr. Butler referenced the pending lawsuit challenging the constitutionality of one of the fees that funds the SMC Fund; he asked if there was a contingency plan for funding if the Court of Appeals rules the fee is unconstitutional. Eddie Caldwell, NCSA, responded that the organization was making plans for different scenarios, depending on the outcome of the lawsuit. Mr. Caldwell referenced the \$22.5 million appropriation included in the House Budget,

explaining that the appropriation comes from the General Fund of the State Budget; if the Court rules that the fee is constitutional, that appropriation would revert back to the General Fund. He added that one of the questions is whether the Court will rule that the funds generated by the court fee that have already been collected need to be reimbursed to the State, plus interest. Representative Faircloth stated that the Legislature has made a commitment to the Program and will make sure that it is funded.

Commissioners then discussed some of the current issues and questions regarding the SMCP, including who pays for certain medical expenses, medical and psychiatric assessments and treatment for inmates, the awarding of good time and gain time, and whether policies and procedures exist to resolve or address some of those issues. Representative Faircloth stated that he did not know of any legislative change with a scope as large as the JRA that had not experienced some bumps along the way in its implementation; however, the State has a responsibility to make it work.

RESEARCH AND POLICY STUDY GROUP – STATUS REPORT

Louise Davis provided a status update on the workings of the Study Group. Ms. Davis informed the Commission that the Study Group met on April 17, 2015, with a bifurcated meeting to allow for examination of two of the issues the Study Group had identified as areas of interest: mental health and juvenile jurisdiction. The morning session focused on mental health. The Study Group heard from Mark Botts, an Associate Professor of Public Law and Government at the UNC School of Government, who focused on three overarching questions: 1) How are Local Management Entity (LMEs) organized, 2) Who pays for services, and 3) What do LMEs do? Next, Ms. Davis stated that Rebecca Murdock gave a brief overview of one of the local service systems that the LME collaborates with: Treatment Alternative for Safer Communities (TASC). Ms. Murdock reviewed the eligibility criteria for TASC offenders and the process offenders undergo to enroll in services. Ms. Davis noted that staff is still working to better understand coordination of services between the Local Management Entity-Managed Care Organization (LME-MCO) system and TASC, and will report back their findings to the Study group. Ms. Davis also reported that the next Mental Health subtopic the Study Group has selected for study is Mental Health Services in local jails.

Ms. Davis stated that the afternoon session focused on introducing the issue of juvenile jurisdiction in North Carolina. Susan Katzenelson reviewed the Commission's juvenile mandate and Michelle Hall presented on the comparison of the juvenile and adult criminal justice processes for youthful offenders in North Carolina. The Study Group then reviewed the 2007 Sentencing Commission Report on the Study of Youthful Offenders and the Commission's recommendations from the report, which included: increase the age of juvenile jurisdiction to 18; delay implementation to allow a task force to create a plan of implementation; retain the current transfer process for juveniles; adopt a reverse waiver process; and adopt a youthful offender status. The Study Group's discussion of these issues included concerns regarding service delivery for juveniles and the "gap of services" that currently exists for those already under the jurisdiction of the juvenile court. The "gap of services" refers to community programs and/or treatment that juveniles need but are not receiving for a variety of reasons (for example, lack of availability). Ms. Davis informed the Commission that staff is exploring a method to assess the

current level of services in the juvenile justice system and their effectiveness, and that Commissioner Beeler volunteered to work with staff on ways to approach this topic. Ms. Davis concluded by saying that while the next meeting of the Study Group has not been scheduled, she anticipates it will mostly likely be at the end of the summer or early fall.

LEGISLATIVE UPDATE AND REVIEW

Chairman Spainhour recognized John Madler, staff, to provide an update on the legislative session. Mr. Madler began by informing the members that the Legislative Review Subcommittee met to review proposed legislation on April 24. At that meeting, the Subcommittee also identified three bills that contained inconsistent misdemeanor sentencing provisions; the Subcommittee requested that the Chairman point out these inconsistencies in a letter to the appropriate members of the General Assembly. Staff compiled the report and submitted it and the letter to the General Assembly; electronic versions of the report and letter were sent to Commission members and paper copies were included in their materials for this meeting. There being no questions about any of the reviews, Luther Moore moved to adopt the report; the motion was seconded and carried.

Mr. Madler then addressed two questions that Commissioners had raised in previous meetings. The first question was about how much the State had saved because of the Justice Reinvestment Act (JRA), and how much it had reinvested in the criminal justice system. Mr. Madler explained that it is difficult to determine the specific impact of the JRA separate from other factors, such as the declining crime rate or changes to the felony punishment chart. In order to begin to get an idea, staff reviewed the budget bills and money reports the General Assembly passed since 2011, the year it enacted the JRA, and listed the relevant reductions and appropriations (*see* handout). Mr. Madler reviewed the list. He added that staff would continue to work on the list and would meet with the Department of Public Safety (DPS) and the Fiscal Research Division of the General Assembly after the session to refine it.

The second question was about how often the General Assembly listens to the Commission's review of bills. Mr. Madler explained that since 2006 staff has kept statistics on the number of criminal and juvenile justice bills that passed each year and the number the Commission reviewed and found either consistent or inconsistent with the offense classification criteria or Structured Sentencing. Staff provides this information to the Commission at its first meeting following the conclusion of each legislative session. Mr. Madler reviewed the nine-year compilation of the statistics (*see* handout). He pointed out that, due to the timing of some of the bills, the Commission only reviewed about half of the provisions that passed but that over 70% of those provisions finished consistent with the offense classification criteria or Structured Sentencing.

Representative Faircloth stated that the speed of operations in the General Assembly varies from day to day depending on the pressures of that day; however, he is concerned about legislation that addresses issues that should be considered by the Commission but that moves too rapidly and misses that consideration. Many of the newer members do not understand the history of the Sentencing Commission and do not realize that a new offense or punishment needs input from the Commission to make sure it fits properly in the structure. Representative Faircloth

stated his intent to propose for the next session a requirement that every bill that should have a recommendation from the Sentencing Commission have that report attached to it before it goes to the floor. Chairman Spainhour agreed that the proposal would be helpful. Mr. Beeler moved that the Commission support Representative Faircloth's proposal in any way that it can; the motion was seconded and carried.

Elliot Abrams, conveying a request from Chris Fialko, asked if the Commission could give a presentation to the members of the General Assembly at the beginning of the session explaining who the Commission is and what it does. Chairman Spainhour responded that staff already provides such a presentation when requested by the General Assembly.

Turning to the current legislative session, Mr. Madler informed the members that the General Assembly had not made substantive changes to any criminal or juvenile justice bills since the Subcommittee meeting in April and, as a result, there were no bills for the Commission to review. He provided an update on the status of the bills the Subcommittee reviewed in April, pointing out that only about one-half of the 33 bills were still eligible for consideration. Regarding the three bills that contained inconsistent misdemeanor sentencing provisions, all three were still eligible for consideration but one of them, House Bill 847, had been amended to remove the misdemeanor provision.

Mr. Madler reviewed ten bills that contained criminal or juvenile justice provisions which the General Assembly had passed during this session (*see* handout). He also informed the members that the two bills recommended by the Sentencing Commission, Senate Bill 183 – Eliminate Confinement in Response to Probation Violations (CRVs) for Misdemeanants and Senate Bill 185 – Clarify Credit for Time Served, had passed the Senate and were in committees in the House. Finally, Mr. Madler reviewed the relevant appropriations and special provisions of the Governor's proposed budget and the House's proposed budget (*see* handout). He informed the members that the Senate had announced its intention to release a budget in the following week.

Chairman Spainhour informed the members that the next full Commission meeting is scheduled for September 11, 2015. He also reminded members that Commissioner reappointments are due by June 30, 2015, and to notify their appointing authorities about their willingness to serve.

The meeting adjourned at 2:20 p.m.

Respectfully submitted,

Susan Katzenelson
Executive Director