

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

December 4, 2015

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 4, 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, Lisa Costner, Honorable Warren Daniel, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, Chris Fialko, David Guice, Honorable Darren Jackson, Honorable Maureen Krueger, Ilona Kusa, Dr. Harvey McMurray, Robert Montgomery, Luther Moore, Honorable Fred Morrison, Honorable Shirley Randleman, Honorable June Ray, Keith Shannon, and Honorable Thomas Thompson.

Guests: Michael Gagner (DPS-GCC), Doug Holbrook (private citizen), Jamie Markham (UNC SOG), and Susan Sitze (NCGA).

Staff: Susan Katzenelson, John Madler, Ginny Hevener, Tamara Flinchum, Michelle Hall, Sara Perdue, 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 reviewed the agenda for the meeting and briefly explained the process for interviewing the candidates for the executive director position.

Thomas Thompson asked if the Commission was selecting the candidate or making a recommendation to another hiring authority. Chairman Spainhour explained that the Commission was the hiring authority and that it would be making the decision.

Paul Butler asked if the executive director's position was exempt from the North Carolina Human Resources Act or not. Chairman Spainhour stated the position was exempt, all employees of the Judicial Department serve at the will of their employer.

Art Beeler moved to adopt the minutes from the September 11, 2015, Sentencing Commission meeting; the motion was seconded and carried.

Chairman Spainhour introduced and welcomed the newest member of the Commission, Senator Shirley Randleman, who is representing the N.C. Senate. He then read a Resolution honoring Susan Katzenelson, the Executive Director of the Sentencing Commission who was retiring (*see* attached). Luther Moore made a motion to adopt the Resolution; the motion was seconded and carried.

Mr. Moore moved to enter closed session to consider candidates for the executive director

position. The motion was seconded and carried.

PRESENTATION BY CANDIDATES FOR EXECUTIVE DIRECTOR

Chairman Spainhour informed the members that, pursuant to statute, he and Judge Marion Warren, the Director of the Administrative Office of the Courts, had interviewed the applicants for the executive director's position and were presenting the three finalists to the full Commission. He had asked each of them to prepare a 10 to 15 minute presentation setting out his or her vision for the direction of the Sentencing Commission for the next 5 to 10 years and what, if any, adjustments it would require in the staffing and workload of the Commission. He then summoned each of the candidates for their presentations in the following order: (1) Michelle Hall, (2) Michael Gagner, and (3) Doug Holbrook. The presentations began at 10:30 A.M. and concluded at 12:00 P.M. The Commissioners questioned each of the candidates following his or her presentation.

DISCUSSION AND SELECTION OF EXECUTIVE DIRECTOR

Following a motion for discussion, the members of the Commission discussed the candidates' presentations and qualifications. They then voted by secret ballot for a candidate. Having reached a consensus on the initial choice for the position, the Commission authorized Chairman Spainhour to make an offer to that candidate. Declaring the end of the closed session, Chairman Spainhour called for a lunch break and a continuation of the open Commission meeting.

SUBCOMMITTEE STATUS REPORT

Chairman Spainhour recognized Judge Brown for an update from the Justice Reinvestment Implementation Report Subcommittee (Subcommittee). Judge Brown began by reviewing the Sentencing Commission's mandate to the Subcommittee. He stated that the most recent report was submitted to the General Assembly April 15, 2015, and he summarized the highlights of the report.

Turning to recent activities, Judge Brown informed the members that the Subcommittee met on November 6, 2015. At that meeting, staff presented a legislative update on Justice Reinvestment-related legislation, the Subcommittee members discussed their observations from the recent CRV Center tours, staff from the Department of Public Safety (DPS), Division of Adult Correction and Juvenile Justice, provide an update on recent initiatives, and staff from DPS and the Sheriffs' Association provided an update on driving while impaired (DWI) misdemeanants being sentenced to the Statewide Misdemeanant Confinement Program (SMCP). Judge Brown provided details from each of the segments.

Commissioner Guice stated that he would be sending a request to the Sentencing Commission and the School of Government in which he would be asking for assistance in analyzing the Department's good time credit policy as it applies to DWI offenders. The policy has been in effect since the 1980's and previous Department of Correction Secretaries have signed on to it. However, since Correction has been joined with law enforcement under the DPS, law enforcement has raised concerns about awarding so much credit to DWI offenders. Legal counsel has suggested eliminating the good time policy but that would require DWI offenders to serve longer sentences which would have an impact on the beds available in the local jails and on the

funds available to house them. Commissioner Guice explained that the Department has always looked to the Sentencing Commission and the School of Government for assistance with policy issues that affect sentencing laws and so the Secretary of DPS has agreed to do so with this issue.

Upon the request of Chairman Spainhour, Commissioner Guice reviewed the good time policies. He explained that it was day-for-day credit for good behavior and it could cut a sentence in half. It does not apply to offenders sentenced under Structured Sentencing. He referenced a recent case in which good time credit created the perception that the offender was getting special treatment. Commissioner Guice added that recent legislative changes moved those offenders from the state prison system to the SMCP so changing the policy would either have an impact on the SMCP or require the DPS to open a closed prison facility to house those offenders.

Susan Katzenelson informed the members that General Assembly Fiscal Research staff had shared that some legislative members were interested in looking at DWI laws in general. She added that a legislative request could prompt the Commission to look at a number of related issues. Commissioner Guice stated that DWI laws are not part of Structured Sentencing and that would be something that a legislative oversight committee could consider, but that his goal was to make sure the Department did not change the good time policies without understanding the impact of doing so. Judge Brown explained that the Subcommittee was interested in taking a broader look at the DWI laws, not just bed impact but also access to treatment. Commissioner Guice stated that he would welcome that discussion.

Chairman Spainhour asked why DWI offenses have always been excluded from Structured Sentencing. Susan Sitze explained that it was her understanding that the DWI offenses were under a relatively new punishment structure and that the Commission chose not to try and meld that structure into Structured Sentencing, they were concerned it would take too much time. Luther Moore, who was a member of the Commission at that time, concurred. He stated that the Commission was under a time constraint to develop Structured Sentencing and they felt that they could not get all of their work done and incorporate DWI offenses in the allotted time. Susan Katzenelson added that there has always been a parity issue; the Commission would need a clear directive as to what it was to do and enough time to do it.

Returning to the recent meeting, Judge Brown stated that Michelle Hall provided a “State of the States” presentation on states participating in the Justice Reinvestment initiative; he recommended that the full Commission receive that presentation at a future meeting. Judge Brown concluded by informing the members that the Subcommittee has meetings scheduled for February 12 and March 18 of 2016 and next report is due April 15, 2016.

REVIEW OF THE 2015 LEGISLATIVE SESSION

Chairman Spainhour recognized John Madler, staff, to provide a summary of the 2015 legislative session. Mr. Madler informed the members that staff had produced a report that summarized all of the criminal and juvenile justice bills ratified during the session; he acknowledged Sara Perdue, staff, for her assistance in identifying and drafting the summaries (*see* handout). Mr. Madler then summarized the changes in felony offense classes A through E and F through I. He pointed out that there were few new felony provisions, the majority of them were in

Classes H and I, and that they focused on specific categories of people. As a result, the changes were not expected to have a major impact on the criminal justice system.

Mr. Madler reminded the Commissioners of their statutory duty to review bills that create new offenses, reclassify existing offenses, or change punishments. During the 2015 Session, the General Assembly passed 19 criminal provisions and the Commission was able to review nine of those provisions in their final form. Of the nine provisions reviewed, six of them passed as consistent with the offense classification criteria or Structured Sentencing. The Commission found three of the provisions to be inconsistent with the offense classification criteria or Structured Sentencing; the Commission recommended changes but the General Assembly did not make the changes. Mr. Madler explained that these numbers were consistent with recent sessions.

Mr. Madler then presented the misdemeanor provisions that passed during the session. He pointed out that they were primarily in Classes A1 and 1 and, unlike previous years, any impact they would have would be on local jails since misdemeanants with longer sentences were moved from the state prison system to the Statewide Misdemeanant Confinement Program in 2015.

Mr. Madler concluded by pointing out the major provisions in the budget that relate to the area of Justice and Public Safety.

Chairman Spainhour informed the members that the next full Commission meeting is scheduled for March 4, 2016.

The meeting adjourned at 2:00 p.m.

Respectfully submitted,

Susan Katzenelson
Executive Director



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JUDGE W. ERWIN SPAINHOUR
CHAIRMAN

SUSAN KATZENELSON
EXECUTIVE DIRECTOR

**A RESOLUTION HONORING THE SERVICE OF
SUSAN KATZENELSON**

WHEREAS Susan Katzenelson began her service as the Executive Director of the North Carolina Sentencing and Policy Advisory Commission on September 1, 1997, having come to the position after serving as the founding Director of the Office of Policy Analysis for the United States Sentencing Commission; and

WHEREAS Susan Katzenelson has performed the duties of Executive Director for more than eighteen years in an exceptionally competent manner and the effect of her leadership and guidance is evident in many of the significant accomplishments of the Commission; and

WHEREAS the Commission owes Susan Katzenelson its gratitude and appreciation for her vital role in maintaining rationality and fiscal responsibility in the criminal justice, correctional, and juvenile justice systems in North Carolina;

NOW THEREFORE BE IT RESOLVED by the North Carolina Sentencing and Policy Advisory Commission, meeting this 4th day of December, 2015, that the Commission recognizes the dedicated service rendered by and expresses its appreciation to Susan Katzenelson; and

BE IT FURTHER RESOLVED that the members of the North Carolina Sentencing and Policy Advisory Commission wish her well in all of her future endeavors and welcome her to any convening of the North Carolina Sentencing and Policy Advisory Commission; and

BE IT FURTHER RESOLVED that a copy of the Resolution be spread upon the minutes of this meeting to preserve for future remembrances the contribution she made to the North Carolina Sentencing and Policy Advisory Commission and to the State of North Carolina.

Adopted this 4th day of December, 2015.

W. Erwin Spainhour
Chairman