

**MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
December 6, 2013**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 6, 2013, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Art Beeler, Daryl Black (representing Honorable Harry Brown), Honorable Charles Brown, Paul Butler, Robert Campbell, Chief Scott Cunningham, Honorable Warren Daniel, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Honorable John Faircloth, Chris Fialko, David Guice, Honorable Darren Jackson, Honorable Maureen Krueger, Ilona Kusa, Honorable Floyd McKissick, Dr. Harvey McMurray, Luther Moore, Honorable Fred Morrison, Honorable June Ray, Billy Sanders, and Honorable Tommy Thompson.

Guests: Susan Brooks (Indigent Defense Services), Lisa Fox (Fiscal Research, General Assembly), Bill Hart (departing Commissioner), Jamie Markham (University of North Carolina School of Government), Kay Meyer (North Carolina Office of the State Controller), Sandy Pearce (former Commissioner), Mary Pollard (North Carolina Prisoner Legal Services), Nicole Sullivan (North Carolina Department of Public Safety), Yolanda Woodhouse (AOC Court Programs), and Eric Zogry (Office of the Juvenile Defender).

Staff: Susan Katzenelson, Ginny Hevener, John Madler, Vicky Etheridge, Tamara Flinchum, Michelle Hall, Sara Perdue, Jennifer Wesoloski and Rebecca Wood.

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:00 a.m. He recognized departing Commissioner Bill Hart and introduced new Commissioner Robert Campbell. Members and visitors introduced themselves. After Judge Spainhour reviewed the agenda for the meeting, Luther Moore moved to adopt the minutes from the September 6, 2013, meeting; the motion was seconded and carried. Judge Spainhour announced the 2014 Commission meeting dates: March 7, June 13, September 5, and December 5. He also announced the first quarter Subcommittee meeting dates. The Credit for Time Served Subcommittee will meet January 31 and February 14. The Justice Reinvestment Subcommittee will meet February 21 and March 28.

JUVENILE DELINQUENT POPULATION PROJECTIONS

Chairman Spainhour recognized Jennifer Wesoloski to present the Juvenile Resource Projections (*see* handout). The Commission was shown the Juvenile Dispositional Chart, which 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, medium and high; and

three types of dispositions imposed: Level I (community punishment), Level II (intermediate punishment), and Level III (Youth Development Center commitment). In 2012/13, there were 5,711 juvenile delinquent dispositions. The majority of juveniles (73%) committed a minor offense, 72% had a low delinquency history, and 82% were disposed for a misdemeanor offense. These numbers have remained stable for the last five years. Of those adjudicated, 64% received community punishment, 34% received an intermediate punishment, and 2% were committed to a Youth Development Center (YDC). The average overall length of stay in a YDC was 14.1 months. Over the past five years, length of stay has averaged between 12 and 13 months. Ms. Wesoloski pointed out that juvenile projections are not quite as accurate as adult projections because the juvenile disposition chart is by design more flexible than the adult felony punishment chart, the YDC population is much smaller than the adult prison population, and the juvenile system is more sensitive to changes in policies and/or practices (e.g., budgetary issues, consolidation of the Division of Adult Correction and the Division of Juvenile Justice into the Division of Adult Corrections and Juvenile Justice). Reviewing YDC population trends, the YDC population has generally declined over the past 10 years and has remained relatively stable in CY 2013. The YDC population on July 1, 2013, was 249. The YDC resource needs are projected to remain stable over the projection period with a projected need for 251 YDC beds for June 2014 to 257 YDC beds for June 2018.

Dr. McMurray asked if the staff considered including juveniles transferred to adult court. Ms. Hevener stated that approximately 40 juveniles a year were transferred to adult court. Since juveniles entering into the adult prison population are counted in the adult projections, they are not included in the juvenile resource projections. Eric Zogry asked why YDC length of stay increased 20% from 2009 to 2012. Ms. Flinchum said that Sentencing Commission staff had discussed this with DACJJ staff and that the reason was not known at this time. Ms. Sullivan from the Department of Public Safety added that they were researching potential causes for the increase. Ms. Wesoloski also pointed out that while average length of stay had increased 20% over the previous 5 years, this 20% increase only accounted for two additional months served in a YDC. Mr. Zogry then asked if extensions of juvenile length of stay were tracked. Ms. Hevener said specific numbers were not tracked, but extensions were included in the juvenile length of stay information. Mr. Black asked if there was an age breakdown for the juveniles in the sample. Ms. Wesoloski said that she could get that information to the Commission.

Senator McKissick asked if there was an increase in the percentage of juveniles adjudicated for violent and serious offenses over the past five years and, if so, to what extent? Senator McKissick also asked whether a correlation existed between the adult and juvenile models. Ms. Hevener answered that the percentages of juveniles adjudicated for violent, serious and minor offenses have remained stable over the years, although the specific numbers have decreased. The juvenile system has more flexibility by design. The model is much more sensitive to policy changes, which can affect time served. Judge Ervin asked about state demographic trends for juveniles in the age range to be in court. Ms. Hevener stated the juvenile population is increasing, but it is increasing at a decreasing rate over previous years. Population growth in NC is largely attributed to older adults rather than juveniles. Dr.

McMurray added that age, gender and ethnicity would help to provide a more complete demographic picture of the juveniles in the sample. Ms. Wesoloski replied that gender distributions have also remained stable over the past five years. Ms. Flinchum added that information on race was not included in this data.

Mr. Beeler asked if the staff had ever projected the impact of moving 16 and 17 year olds to the juvenile system. Ms. Hevener answered that the Sentencing Commission provided impact projections when that was introduced as a bill in previous legislative sessions. He also asked if the ages were known for the juveniles transferred into the adult system and, if so, what their ages were. Ms. Hevener answered that she could get him that information. Ms. Flinchum said the number of juveniles transferred into the adult system was quite small, and the majority were 15 year-olds, although juveniles as young as 13 can be bound over. Mr. Guice added that the impact projections mentioned by Ms. Hevener were prepared prior to the merge of DAC and DJJ into DACJJ.

Senator McKissick asked Judge Brown if the judges at the Conference of District Court Judges ever discussed the juvenile sentencing policies. He asked for anecdotal evidence of a strong message being sent to keep juveniles out of the system now, which could potentially decrease future recidivism. Judge Brown said that court counselors are now trying to find alternatives to detention (not YDCs) to deter recidivism since they know incarceration is not the answer. They are also trying to keep juveniles from being incarcerated before going to juvenile court, which could affect the disposition given by the judge. While Youth Development Centers are useful in some ways, they are not providing the resources juveniles need. Dr. McMurray wanted to know the role of the Commission in educating the public about juveniles. Ms. Katzenelson commented that the Commission provides this, and additional information, in its juvenile recidivism studies and JCPC reports. The Commission was active in the group that tried to raise the juvenile age. Mr. Butler asked Judge Brown if the use of alternatives such as the Wilderness Camps and other places indicated that the trend for using YDCs is going down. Judge Brown said those were some possible alternatives, but that they were always looking for other alternatives such as electronic house arrest, GPS monitoring, etc. He said that the JCPCs had great resources, but more resources were needed for juveniles.

OVERVIEW OF CJLEADS

Kay Meyer, Program Director of the North Carolina Office of the State Controller (OSC) presented an overview of CJLEADS (Criminal Justice Law Enforcement Automated Data Services) and the Government Data Analytics Center. CJLEADS was developed after a high profile murder case in 2008 revealed limited data sharing across criminal justice agencies. CJLEADS gives an up-to-date summary of an offender's statewide criminal information to be shared across criminal justice agencies, including law enforcement officials, court personnel, and attorneys. Currently 27,000 courts, corrections, and law enforcement employees are using CJLEADS statewide. Recent updates to CJLEADS include mobile access, real-time warrant verification, group watchlist alert reports, links to NC Statutes, pending DWI reports, and advanced vehicle searches. Ms. Meyer explained that the purpose of the Government Data Analytics Center

(GDAC) is to support coordinated, effective, and efficient development of North Carolina Business Intelligence (BI) capability to generate greater efficiencies in, and improved services by, State agencies. Current areas of focus include fraud analysis, program analysis, and relationship analysis with various state-wide organizations. Ms. Meyer noted that OSC and Commission staff had been working together to obtain jail data available through the GDAC for use in the Correctional Program Evaluation (i.e., the adult recidivism study).

Judge Spainhour asked who had access to this program. Ms. Meyer explained that 27,000 criminal justice professionals have access. Senator McKissick said that he had heard that judges were not accessing CJLEADS. Judges Spainhour, Brown and Ervin all agreed that they did not want to be prejudiced by this information before hearing the evidence. Judge Brown spoke about Judicial Standards and the fact that judges do not collect their own evidence and can be disciplined for using social media; he considers this to be a similar situation. Mr. Butler wanted to know if the system captured the date and time someone accessed a case. Ms. Meyer answered that it did. Senator McKissick said that he had heard a lot of success stories about Probation Officers who had found absconders by being able to instantly access information in CJLEADS. Mr. Guice said that the rollout of smart phones to all probation officers (and soon to juvenile officers as well) has made CJLEADS a life line to these officers as they know what to expect before they enter the homes of these probationers.

Mr. Moore asked if CJLEADS was subject to public information laws. Ms. Meyer responded that it was not. He also asked if attorneys could access it. She explained that they cannot unless they are prosecutors. Mr. Beeler asked if police officers had access. Ms. Meyer responded that they do. Judge Spainhour asked if conceal and carry permits were part of the system. She stated that they are. However, DMV records have not been incorporated into the system. Representative Faircloth asked if a standard should be established regarding access to CJLEADS by judges. Judge Spainhour answered that there was no need to do so as judges have access to a tremendous amount of information, including verbal information. Judge Ervin agreed, but did say that he could see a problem with everybody having access to it with the exception of defense lawyers. When Ms. Meyer talked about a group watchlist, Judge Spainhour asked how one got on a watchlist. She explained that the person had to have a conviction to be in CJLEADS, but once in the database, the user just selected the name requesting that the person be on the watchlist. Mr. Thompson asked who was authorized to put the data in and on what levels. He questioned the accuracy of the information in the database. Ms. Meyer explained to him that there is no data entry in CJLEADS. This information comes directly from AOC's court records. All source records belong to the source. The only change that can be made to the database is the select button to put someone on a watchlist. Judge Spainhour asked how far back this system extended. She answered that AOC records went back to 1985, and the Department of Public Safety records go back to 1975. There may be issues with clustering by identifiers due to errors in the entries. Mr. Campbell asked who had access to the watchlist. Ms. Meyer said only the creator(s) of the watchlist, but you can flag a person so that others can view the watchlist.

Mr. Fialko asked if expunctions take effect in CJLEADS and Ms. Meyer answered that the

information was updated nightly including expunctions. Mr. Fialko also asked if Federal law enforcement officers have access to CJLEADS. Ms. Meyer said that there are about 700 Federal users. He asked if the person had to be under a current sentence to be watched. Ms. Meyer said as long as the person had a record (meaning a prior conviction), he/she could be on a watchlist. Representative Faircloth asked if driver license suspensions and limited driving privileges were available. Ms. Meyer said that they were and explained that the information in CJLEADS regarding DMV records is similar to the old DCI database.

Ms. Katzenelson thanked Ms. Meyer for the jail data they are providing and how helpful it was going to be for the Recidivism Study. Senator McKissick also thanked Ms. Meyer for the growth of this database and that it has gone beyond the vision. Senator McKissick was wondering about the return on investment. Ms. Meyer said that in the first three years, the budgeted amount was \$27M. They came in at \$25.5M. They now have an annual budget of \$7.5M, but the return of investment is \$23M. Mr. Beeler asked Mr. Guice if they had thought about tracking gangs through this system. Mr. Guice said that he had thought about a lot of things, but that was a good possibility.

CREDIT FOR TIME SERVED STUDY

Chairman Spainhour recognized John Madler to provide an introduction to the Credit for Time Served Study. Mr. Madler stated that the Commission, in response to a request from Commissioner Guice, had voted at its September 6th meeting to study credit for time served issues. Since then, Chairman Spainhour had appointed members to a subcommittee and had set meeting dates of January 31st and February 14th, 2014. Mr. Madler then reviewed the relevant statutes (see handout).

Chairman Spainhour recognized Commissioner Guice to explain his request. Commissioner Guice stated that the Division of Adult Correction and Juvenile Justice had encountered several issues related to probationers who receive periods of confinement in response to violation (CRV): Felons are supposed to serve 90 days on CRVs but they are receiving large amounts of credit and serving less than the intended time; misdemeanants, and in some cases felons, are receiving a CRV and then having probation terminated rather than returning to supervision. He then proposed five questions for study:

1. Are credits for time served being awarded consistently according to the statutes when a CRV is being imposed?
2. Are the majority of CRVs imposed on Misdemeanor cases in fact terminal CRVs?
3. If the majority of CRVs imposed on Misdemeanor cases are terminal, then what are the reasons the courts are not imposing shorter CRV time periods to ensure the offender returns to community supervision?
4. Are there a significant number of instances in which the court has imposed a CRV then terminated community supervision upon completion of the CRV?
5. Based on these findings, are there any recommendations to change the statutes in order to enhance the intent of the Justice Reinvestment Act?

Jamie Markham presented on various legal issues regarding credit for time served. His presentation focused on what counts for credit, credit against multiple sentencing, and CRV credit issues.

Addressing what counts for credit, Professor Markham divided the relevant statute into three portions—1) what counts as confinement, 2) what counts as an institution and 3) the cause for which the defendant was confined. He discussed how each of these pieces had been construed by the courts and presented examples of each. He concluded this portion with hypothetical situations to show which causes for confinement would allow a defendant to receive credit, or where practices may vary.

Next, Professor Markham turned to the issue of multiple charges and how credit is applied to them. First, he defined the difference in consecutive and concurrent sentences. Then, for each type of sentence he provided a diagram of how credit would be applied in that particular situation. Next, he specifically addressed the issue of “using up jail credit” and highlighted examples when a defendant would not receive credit on a second charge based on the construction of the relevant statute.

In order to offer a comparison regarding CRV credit issues, Professor Markham did an overview of how credit is applied for special probation, also known as split sentences. He then spoke on areas of the law regarding CRVs, including the statute requiring application of pre-hearing credit to the subsequent confinement. He highlighted some issues regarding the application of credit when the violation is for multiple sentences, and how the ordering of those sentences can affect application of credit. He concluded by noting that credit is officially determined by the judge presiding.

Judge Spainhour asked if a person received credit if he was held over in a South Carolina State facility on charges from North Carolina. Professor Markham stated that the person should receive credit if he is being confined until North Carolina can come and get him. Judge Elmore asked if a person had Charge A and later was convicted of Charge B, would not the two have to be related. Professor Markham had used an example where the two charges were not related, but told Judge Elmore that perhaps he had used a bad example in that Charge B was more serious than Charge A. Usually, if a person is convicted of Charge B, the conviction is a lesser charge than the original. Mr. Guice asked if a person was arrested for murder, but was released three weeks later, and then fifteen years later was charged again for that same murder, would he get credit for the time served in the beginning. Professor Markham answered that he would. Judge Ervin added that if a person was charged with a felony in District Court, had a probable cause hearing, was held over for three weeks, and then went before the Grand Jury, he would get time for the three weeks served after his appearance in District Court.

Mr. Fialko asked if there was a form that could be submitted for credit for time served. Ms. Ray said that they used the jail release form to determine time served. Mr. Fialko asked if a request could be made to the AOC to create such a form. All agreed that figuring credit for

time served was a problem. Some counties have their own methods; others have nothing.

Mary Pollard presented observations from North Carolina Prisoner Legal Services on the problems in the application of jail credit. She stated that unapplied jail credit is a problem in North Carolina; by the time the jail credit issue is identified and resolved, many inmates have already served more time than their original sentence. The most common reason jail credit is not applied is because it is simply not recorded on the original judgment or the clerk gets incorrect information on confinement dates. Unapplied jail credit is also an issue on probation revocations; credit from the original judgment is not recorded on the revoking judgment, no credit is given for time the probationer is held on violation, no credit is given on revocation if the probationer was held on violation and probation was continued or modified, and credit from the original county is not recorded on the revoking judgment if it's an out-of-county revocation. Finally, no credit is given for time defendants are held out-of-state on fugitive warrants (Ms. Pollard added that time spent traveling home should count as jail credit), and eligible confinement is not given on all concurrent sentences. Ms. Pollard presented a few possible solutions for the jail credit issues, including state-wide training for defense counsel, prosecutors, clerks of court and judges as protocols and procedures vary from county to county and there is confusion surrounding the application of G.S. 15-196.2 to concurrent sentences; and employing technology such as CJLEADS to improve access to information about custody.

Mr. Moore asked if anyone was going to be helping to resolve pretrial credit issues since Prisoner Legal Services' budget had been cut. Ms. Pollard answered that when prisoners wrote to them about jail credit, they referred them back to their trial counsel. If there is a legal issue, the Prisoner Legal Services will litigate the case. Counsel takes reasonable steps to correct clerical or other errors in court documents, including jail credits.

CORRECTIONAL PROGRAM EVALUATION AND JUSTICE REINVESTMENT IMPLEMENTATION REPORTS – SITE VISITS

Chairman Spainhour recognized Michelle Hall for an update on site visits Commission staff completed related to the Commission's 2014 Correctional Program Evaluation and Justice Reinvestment Implementation Evaluation Reports. Ms. Hall provided background on the site visit project, explaining that the purpose of the project was to gather information from select courts and probation offices in judicial districts across the state to provide context for a number of legislatively mandated Commission reports. She listed other site visits Commission staff had conducted for previous reports, and noted the current project is especially timely due to the implementation of the Justice Reinvestment Act (JRA). Ms. Hall then explained the methodology used in selecting the sites and interviewees. She concluded by informing Commissioners that staff had interviewed a total of 69 attorneys, judges, probation officers and chief probation officers and are in the process of compiling all of the information for summary profiles of each district. The information will be presented at the next JRA Subcommittee meeting in February.

Judge Spainhour asked Ms. Hall to list the counties that were visited. She responded that staff visited Wake, Chatham, Transylvania, Buncombe, New Hanover, and Carteret counties.

Judge Spainhour reminded the Commissioners of the 2014 meeting dates: March 7, June 13, September 5, and December 5.

The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant