

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
December 11, 2009

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 11, 2009, in the Conference of District Attorneys' Conference Room at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Tom Bennett, Honorable Stan Bingham, Honorable Alice Bordsen, Honorable Charlie Brown, Locke Clifford, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Garry Frank, Bill Hart, Secretary Linda Hayes, Larry Hines, Honorable Robert Johnson, Secretary Alvin Keller, Jr., Honorable Eleanor Kinnaird, Charles Mann, Honorable Floyd McKissick, Jr., Dr. Harvey McMurray, Luther Moore, Honorable Fred Morrison, Rhonda Raney, June Ray, Billy Sanders, and Honorable Tim Spear.

Guests: Todd Allen (Administrative Office of the Courts), Susan Brooks (Indigent Defense Services), Carol Burroughs (Office of State Controller), Eddie Caldwell (NC Sheriffs' Association), Luther Clay (Office of State Controller), Cindy Cousins (Department of Correction), Lorrin Freeman (Wake County Clerk of Court), Beth Froehling (NC Coalition Against Domestic Violence), Janet Green (Administrative Office of the Courts), Cliff Layman (Administrative Office of the Courts), Richard Little (Administrative Office of the Courts), Kay Meyer (Office of State Controller), Jamie Markham (UNC School of Government), Tim Moose (Department of Correction), Mildred Spearman (Department of Correction), Gregg Stahl (Administrative Office of the Courts), Nicole Sullivan (Department of Correction), Wanda Thomas (Administrative Office of the Courts), and Jon Williams (ABC Commission).

Staff: Susan Katzenelson, John Madler, Ginny Hevener, Karen Calhoun, Vicky Etheridge, Tamara Flinchum, Ashleigh Gallagher, David Lagos, Marlee Moore, and Sara Perdue.

INTRODUCTION

Judge Spainhour called the meeting to order at 10:00 a.m. After welcoming everyone, Judge Spainhour asked those in attendance to introduce themselves. Judge Spainhour recognized the three departing Commissioners: Jon Williams, Sheriff Hayden Bentley, and the Honorable Rob Johnson (the last two were not in attendance). Judge Spainhour presented resolutions recognizing each departing Commissioner and the Commission adopted the resolutions. Judge Spainhour introduced new Commissioners Garry Frank, representing the Conference of District Attorneys, and Rhonda Raney, representing the Department of Crime Control and Public Safety. Locke Clifford moved to adopt the minutes from the September 26, 2009, Sentencing Commission meeting; the motion was seconded and carried. Judge Spainhour then reviewed the agenda.

CRIMINAL JUSTICE INFORMATION ENHANCEMENTS

NCAWARE

Cliff Layman, Chief Information Officer of the Administrative Office of the Courts, reported on NCAWARE, the new statewide warrant repository system. Mr. Layman stated that, currently, this system has over 8,000 users and by the end of 2010, there should be 35,000 users, including law enforcement, court officials, and probation and parole officers. It will provide real-time web-based access to current and historical criminal processes and defendant information across all 100 counties while enhancing system security to protect information assets.

Senator Kinnaird asked Mr. Layman what he meant by partners. He explained that partners included the Department of Correction, the Department of Motor Vehicles, the Governor's Crime Commission, the State Bureau of Investigation, the State Highway Patrol, and banks (for e-payments).

Judge Ervin asked if the punishment charts could be entered into NCAWARE to avoid erroneous judgments. Gregg Stahl, Senior Deputy Director for the Administrative Office of the Courts, answered by pointing out that AOC created a system for edit checks on judgments but the Superior Court judges wanted to exercise their own discretion in imposing sentences. The AOC has checked with the Department of Correction and found that 40% of the judgments that impose prison each month are erroneous. Judge Spainhour disagreed with this percentage.

Senator McKissick asked if there was a fee for e-payments. Mr. Layman explained that e-payments have not yet started, but Wilson and Cumberland Counties will begin a pilot of this program in early February and there will be a convenience fee for using credit cards. Court houses do not take credit cards.

Locke Clifford asked what would happen, because of issue relating to the internet, if a warrant is dismissed or expunged. Mr. Layman explained that the record would be expunged, but there would be nothing they could do if someone had already printed a hard copy. Secretary Linda Hayes commended Mr. Layman and his staff on their efforts and commented on the many compliments that she has heard on this system. He thanked her but said it had been a collaborative effort by those who would be using NCAWARE.

CJLeads

Lorin Freeman, Wake County Clerk of Court, introduced CJLeads. Ms. Freeman explained that CJLeads is a data warehouse created for the criminal justice system, mandated by the North Carolina General Assembly to improve public safety. This system will have the ability to better identify an offender through a vast array of information, and Wake County has been chosen for the pilot beginning in June of 2010. Ms. Freeman introduced Kay Meyer and Carol Burroughs from the Office of State Controller to provide a live demonstration of CJLeads. They

reiterated that the General Assembly had mandated this data integration project as a result of the deaths of the students murdered at UNC and Duke. CJLeads is a criminal justice system and is not meant to ever be a public system. Each criminal justice user will have a secure ID and password and will be limited to the area pertaining to his/her role, *e.g.*, judge, prosecutor, law enforcement officer, etc. CJLeads partners included many state government agencies, 100 state project leaders, and SAS as the vendor partner. Every piece of information known on an offender will be entered into this system, including photos showing how a person has changed over time, tattoos, scars, domestic violence offenses, aliases, community corrections supervision, length of jail and prison incarceration, violent offender status, etc. It can be customized by utilizing a watch button which will send e-mail alerts to a law enforcement officer regarding a certain individual.

Judge Charlie Brown asked if a filter could bring up all domestic violence assaults pending or disposed. Lorrin Freeman said that it should; however, they were finding that they had some data quality issues where data is lacking or data is suspect. Judge Robert Ervin wanted to know if a judge would have access to this system from the bench and the answer was yes. It would allow the judge to see sanctions used on the offender. Joe Cheshire asked what protection there was for a defendant. If the judge is looking at data, how can the defendant dispute any erroneous information. Judge Ervin said that, if he printed information one day, the information could be changed by the time the defendant went to court. Ms. Freeman indicated that the prosecutor would be responsible for printing the most current information and giving it to the defense attorney.

Senator McKissick stated that it was mentioned that there were still computers in the field that were incompatible with this system. He asked about the costs. The first phase cost \$2 million. It will cost \$9 million to roll out the program for Wake County for 3000 users. This cost includes the technical issues, license and usage fees, and the completion of design and development. Senator Stan Bingham asked if victims would have access to this system. He was told that victim notification was separate from CJLeads as it is the responsibility of the District Attorney's office to notify victims. Senator Kinnaird wanted to know if there would be a licensing and usage fee each year and the answer was yes although it would be comparable to a software licensing fee each year. Eventually, this cost would shift to the state agencies.

Senator McKissick asked if juvenile records would be on CJLeads. Mr. Freeman said that they were working with the Administrative Office of the Courts and the Department of Juvenile Justice and Delinquency Prevention on that. Dr. Harvey McMurray asked if this program included mental health or substance abuse issues. Ms. Freeman stated that as they test the program, more things will come out, but right now this was outside of their scope. Susan Katzenelson commented that this program would be very useful for researchers.

Probation Dashboard

Cindy Cousins, Applications Systems Manager, Management Information Systems, Department of Correction, presented the Probation Dashboard program. Ms. Cousins stated that

this database was developed as a result of the murders of the UNC and Duke students by individuals who were on probation at the time. Law enforcement, Courts, Juvenile Justice, and adult Corrections all had pieces of the puzzle relating to the offenders, but none had the entire picture. It became apparent that improved sharing of this knowledge was necessary. If probation officers could have prompt knowledge of new interactions between their probationers, law enforcement, and/or Courts, they could assemble a better picture of behavior and take rapid, appropriate action. The Probation Dashboard program makes this connection between the Courts and Corrections. The Dashboard accomplishes this by employing an innovative, cost-effective link between web applications and existing legacy mainframe applications, and in so doing, improves public safety. The North Carolina General Assembly appropriated \$140,000 and directed Courts and Corrections to work together to build a link to provide probation officers with improved information that would allow officers to immediately identify individuals who were violating the terms of their probation.

Judge Spainhour asked if this was statewide. Ms. Cousins responded that it is and it has been since October of 2008. Ms. Katzenelson asked if the risk and needs assessment was pulled in for officers. Ms. Cousins answered that it was when the probationer goes to meet with the officer. She also asked about any evaluation plans but was informed that there are none at this time. Senator Bingham asked how long it would take to install this program in a county, and Ms. Cousins informed him that it would take one week. Judge Brown asked if DCC was addressing the gap between action and automation. Ms. Cousins said they were looking for a better way to address it. Judge Brown also asked how many counties didn't have court officers. Tim Moose stated that there is a Judicial Services Coordinator in every county. Dr. McMurray noted that universities are an under-utilized resource for connecting data and theory, they could help develop evidence-based practices. Ms. Cousins stated that there are some restrictions on data sharing that limit the involvement of outside entities. Nicole Sullivan said that they are utilizing universities on some programs.

Before beginning the afternoon session, Judge Spainhour announced the dates for the 2010 Commission meetings: March 26, June 4, September 17, and December 3.

OFFENDER RISK ASSESSMENT – STUDY UPDATE

David Lagos and Ashleigh Gallagher updated the Commission on staff's work in the area of pretrial risk assessments. At its meeting on February 27, 2009, the Commission directed staff to develop risk assessment tools that could be used on a voluntary basis at various pre-sentencing decision points – specifically, the bail decision and prosecutorial decisions about charging and plea negotiation.

Mr. Lagos reviewed the stages of a criminal prosecution prior to indictment, focusing on the bail decision (*see attached handout*). The bail decision is made by a magistrate at the defendant's initial appearance, which is conducted "without unreasonable delay" after an arrest. A district court judge conducts a first appearance and reviews the defendant's release conditions within 96 hours of detention. Misdemeanor cases are then scheduled for trial. In felony cases,

the defendant has a probable cause hearing within 15 days of the first appearance. If probable cause is found, the district court again reviews the conditions of release and binds the defendant over to superior court for indictment. Conditions of release may also be reviewed on motion by a party.

Staff had not yet investigated the timing of the prosecutor's charging and plea negotiation decisions.

Mr. Lagos next surveyed the literature on pretrial risk assessments. He noted a national trend toward the incorporation of evidence-based practices such as risk assessments into the pretrial process, specifically the bail decision. Although Staff had yet to identify any risk assessment tools designed for charging and plea negotiation decisions, it had found two states, Missouri and Virginia, which used a risk score at sentencing. Mr. Lagos suggested that these sentencing risk assessments could be used by the parties at the earlier charging and plea negotiation stages, if computing the defendant's risk score would provide a forecast of the sentence the court would impose for a particular offense.

Mr. Lagos pointed out that the meaning of "risk" will vary at different pretrial decision points. While a magistrate making a bail decision is interested in a defendant's risk of failing to appear, a prosecutor considering a plea arrangement may be concerned with the defendant's longer-term risk of recidivism. Mr. Lagos noted that additional information about a defendant may become available at later stages of the pretrial process. Even if two decision-makers are assessing the same risk, it may be possible to make a more detailed risk assessment at the later stage.

Dr. Gallagher presented a summary of the interviews and site visits conducted by staff to determine the feasibility and usefulness of a risk assessment tool.

Sentencing Commission staff met with persons involved in various aspects of the pretrial process including Administrative Office of the Courts (AOC) staff, a Wake County Pretrial Services specialist, the Wake County Chief District Court Judge, the Wake County Chief Magistrate, a Person County Magistrate, the Person County Chief District Court Judge, and the New Bern Chief of Police. Sentencing Commission staff received tutorials from the UNC School of Government, AOC, and the Office of the State Controller (OSC), observed first appearances in Wake County and Person County, and observed initial appearances in Wake County.

Next, information available for use in a risk tool was reviewed for the following points of the pretrial process: Law Enforcement, Initial Appearances, and First Appearances (*see attached handout*). It was concluded that pretrial decision makers would need a tool that is easy to use and that could be calculated quickly. Further, the tool would be limited to the information that is available to the decision maker at that point in the pretrial process. In addition, staff found that law enforcement, magistrates and district court judges have varying degrees of information available and varying time constraints on their ability to evaluate the information. It was concluded that any of these stages of the pretrial process would support the testing of a risk assessment tool.

Dr. Gallagher stated that staff will continue to monitor the initiatives of the Department of Correction, AOC, and OSC to improve the accessibility of information. Staff will assess the implications of these initiatives for the development of an effective pretrial risk assessment tool.

Senator Kinnaird asked about the difference between LINKS and NCAWARE. LINKS is a local, police-based database found only in the eastern part of the state. ACIS and NCAWARE are tied together. Senator Kinnaird asked if LINKS and NCAWARE would ever merge and the answer was no. Ms. Katzenelson indicated that the intent is for the larger databases to pull in information from other databases.

REPORTS ON SPECIAL STUDY INITIATIVES

StreetSafe Task Force and Justice Reinvestment

Nicole Sullivan, Research and Planning Manager of the Department of Correction, presented reports on the StreetSafe Task Force and Justice Reinvestment. The StreetSafe Task Force to Stop Repeat Offenders is looking at reentry into the community of offenders being released from prison or under supervised probation. This task force has established six work groups dealing with health and addiction challenges; securing stable housing and transportation; finding jobs for the ex-offenders; strengthening the support systems for these ex-offenders; finding solutions within the justice system; and finding solutions in state and local governments. Luther Moore asked about their timeline. The task force plans to have a draft plan for the Governor by October 10, 2010.

Ms. Sullivan also explained that Justice Reinvestment: A Framework for Reducing Spending on Corrections and Increasing Public Safety, is a data driven program that helps to explain what is driving the increase in the prison population. In this program, the goal is for the State to be able to reallocate some public safety money into vocational/educational programs and substance abuse treatment programs for offenders prior to their release back into the community. It also recommends reinvesting savings into transition programs and services in the communities where high concentrations of released offenders live. Other states that have used Justice Reinvestment include Kansas, Rhode Island, and Michigan. North Carolina has submitted an application and is awaiting an answer.

Dr. McMurray asked if this plan included juveniles and Ms. Sullivan explained that it was an adult initiative only. Secretary Hayes commented that if substance abuse is going on in a family, then it can be learned behavior for a juvenile. So, if the State starts with the adult system, then it can hopefully impact the juvenile justice system as well. Representative Bordsen said that it was an interesting situation since youthful offenders in North Carolina are considered juveniles in other states. Secretary Alvin Keller said that the Justice Reinvestment Task Force was impressed by the research the Sentencing Commission and the Department of Correction had already done.

Youth Accountability Planning Task Force

Karen Calhoun gave an update on the Youth Accountability Planning Task Force that was established from a legislative mandate during the 2009 Session of the General Assembly. It is the responsibility of this task force to develop an implementation plan that could be used to change the age of juvenile jurisdiction from 16 to 18 years old. In 2005, the Sentencing Commission was given a legislative mandate to study the issue of expanding the juvenile jurisdictional age. It submitted a report to the General Assembly in 2007 which included its support of raising the juvenile age to 18.

The Task Force is comprised of 21 members and has had two meetings. Three work groups have been established which not only include the Task Force members, but many additional members from a wide array of agencies who have expertise in juvenile-related issues. The Legal Issues Work Group will determine which state laws should be amended as a result of including 16 and 17 year old offenders in the definition of delinquent juveniles. The System Costs Work Group will determine the costs to the affected systems, agencies, and entities (e.g., court, DJJDP, law enforcement, counties) if the age of juvenile jurisdiction is changed to include 16 and 17 year olds. The Programs and Benefits Work Group will determine the best environment and practices to treat and rehabilitate juveniles in a cost-effective way, and with a focus on eliminating racial disparity in the processing of juveniles, if the juvenile age is raised to include 16 and 17 year olds.

Future Task Force meetings have been scheduled for February 11, 2010, and April 22, 2010, and the Work Groups have also set dates for some of their individual meetings. Meeting schedules and presentation materials are available on DJJDP's website. An interim report is due to the General Assembly during the 2010 Session, with a final report due to the Legislature by January 15, 2011.

John Madler informed the Commissioners that they had been given a revised Felony Punishment Chart and that the Commission had provided these charts to the members of the criminal justice system.

Judge Spainhour reminded the members of the meeting dates for 2010 and adjourned the meeting at 2:25 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant