

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

**June 17, 2016**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 17, 2016, at the North Carolina Judicial Center in Raleigh, North Carolina.

**Members Present:** Chairman W. Erwin Spainhour, Art Beeler, Honorable Charlie Brown, Lisa Costner, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, Christopher Fialko, Honorable Maureen Krueger, Ilona Kusa, Honorable Floyd McKissick, Dr. Harvey McMurray, Luther Moore, Honorable Fred Morrison, and Honorable Thomas Thompson.

**Guests:** William Fowler (NCDPS), Gwen Norville (NCDPS), David Edwards (NCDPS), Lauren Norman (NCSA), Emily Portner (NCCALJ), Robert King (DHHS), Ann Oshel (Alliance), Stephanie Barickman (UNC-CH Law Intern, OAH), and Susan Katzenelson (citizen).

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

**INTRODUCTION**

Chairman Spainhour called the meeting to order at 10:00 a.m. Commission members, staff, and visitors introduced themselves. Luther Moore moved to adopt the minutes from the March 4, 2016, Sentencing Commission meeting. Art Beeler seconded the motion and the motion carried. Chairman Spainhour noted the dates for the remaining meetings for the year as September 9 and December 2. He then reviewed the agenda for the meeting.

**RECIDIVISM IN NORTH CAROLINA**

Chairman Spainhour recognized Ginny Hevener, Tamara Flinchum, and Jennifer Wesoloski to present the 2016 Correctional Program Evaluation. Ms. Hevener referenced the Commission's legislative mandate to conduct recidivism studies on a biennial basis, with the 2016 report submitted in April. She stated that the recidivism report serves as a barometer of the effectiveness of North Carolina's criminal justice system – offering a measure of the effectiveness of the system overall, as well as for specific sanctions, programs, and policies and their impact on offender outcomes at the statewide level. In addition to reviewing the key findings of the recidivism report, Ms. Hevener mentioned that findings from a recently published research brief on CRV offenders would be discussed. She also noted that staff-identified policy considerations would be highlighted as part of the discussion of the report.

The current report was based on offenders placed on supervised probation or released from prison in FY 2013. Ms. Hevener stated that the FY 2013 sample offers a first look at the recidivism of offenders after implementation of the Justice Reinvestment Act (JRA). All probationers and

only 11% of prisoners in the sample were subject to the provisions of the JRA. The primary measure of recidivism was fingerprinted arrests supplemented by information on convictions and incarcerations during the two-year follow-up. Ms. Hevener explained that the recidivist incarceration measure is based on incarceration in the state's prison system and does not include confinement in response to violation (CRV), which is captured in a separate measure. Interim outcome measures included violations of supervision and several responses to violations such as quick dip confinement, CRV, and revocation.

Although the data show a reduction in the prison population and recidivism, Mr. Beeler was concerned there was no reduction in behavior, but rather, a definitional shift of which offenders are included in the prison population. Ms. Kusa mentioned that statewide automated jail data are needed to track misdemeanants. Chairman Spainhour asked if the Sheriffs report jail data. Ms. Hevener responded that CJLEADS compiles data from various automated jail data systems. While the jail data in CJLEADS are very useful for field practitioners in identifying information at the individual level, a previous analysis of the data by Sentencing Commission staff indicated the data were not yet appropriate for research and analysis at the aggregate level.

Ms. Wesoloski presented the results for the overall sample of 48,976 offenders, including 35,103 probation entries and 13,873 prison releases during FY 2013. By sample definition, all prisoners in the sample had a current conviction for a felony; the majority of probationers had a conviction for a misdemeanor offense. Prisoners were more likely than probationers to be high school dropouts, unemployed, and to have a substance abuse need and/or history of drug addiction. Offenders with these same characteristics were more likely than their counterparts to have recidivist arrests, convictions, and incarcerations. Historically, both of these findings have been consistent.

Prisoners had more extensive prior criminal histories than probationers – prisoners were more likely to have prior arrests, probation admissions, probation revocations, and incarcerations than probationers. Nearly all prisoners had a prior arrest (94%) with an average number of 7 prior arrests, while 77% of probationers had a prior arrest with an average of 4 prior arrests. Historically, these findings associated with prior criminal justice contacts have been consistent.

Prisoners had higher recidivism rates than probationers for all three recidivism measures – arrest, conviction, and incarceration. The recidivist arrest rate for the entire sample was 40%. While prisoners had a higher recidivist arrest rate than probationers (48% and 38% respectively), each group averaged the same number of arrests (2 each). Although higher than previous years, recidivist arrest rates have been stable over time. A notable change in the recidivist arrest rate occurred following FY 2006, but is associated with a change in field technology – from FY 2007 to FY 2010, more agencies began fingerprinting all misdemeanor arrests, resulting in a more accurate and higher number of arrests that are being captured.

Recidivist incarceration rates have decreased as a result of the JRA. Although recidivist incarceration rates for prisoners remained stable from FY 2009 to FY 2013, a fairly large decline in recidivist incarceration rates for probationers occurred from FY 2011 to FY 2013 (from 22% to 14%). Mr. Beeler asked if the decrease in the incarceration rate was attributable to the limits placed on violations of probation. Ms. Wesoloski responded that these decreases in recidivist

incarceration rates for probationers are largely the result of two provisions of the JRA – the limitations placed on revocations of probation for technical violations with the establishment of CRV and the shifting of misdemeanants out of the state prison system into local jails. Ms. Hall mentioned that the violation rate hasn't changed, with Chairman Spainhour adding that offenders are receiving CRVs rather than revocations.

Judge Brown inquired about additional decreases in recidivism rates in future reports with DWI offenders sentenced to the Statewide Misdemeanant Confinement Program (SMCP) under the JRA. Ms. Wesoloski responded that decreases are not expected since DWIs are excluded from the sample. Judge Brown mentioned the 1% increase in recidivist incarceration rates for prisoners from FY 2011 to FY 2013 and inquired about the margin of error for the recidivism results. Ms. Hevener responded that the margin of error was not calculated, but the increase could result from rounding recidivism rates to whole numbers or could be related to Class F through Class I felons being released onto PRS – offenders on PRS may have more incarcerations simply from being on supervision. Judge Brown asked if an offender, incarcerated for a violation of PRS, was included in the recidivist incarceration measure. Ms. Hevener responded affirmatively.

Ms. Hevener led a discussion of possible policy considerations based on the key findings for the sample as a whole. She discussed the importance of risk and need data in understanding recidivism outcomes. Risk and need data will be available for future recidivism studies, which will offer further insight into the differences in recidivism for prisoners and probationers. Ms. Hevener noted the importance of the availability of programs that are effective at reducing recidivism, and indicated that, as data become available, future studies will include an examination of the effect of changes to programs following the JRA on offender outcomes. Ms. Hevener also reiterated the need for statewide automated jail data for a comprehensive examination of recidivism. Without this information the measure of recidivist incarcerations is incomplete and, more importantly, recidivism is not being examined for a large group of offenders in NC – those who serve time in county jails.

Mr. Edwards mentioned that all offenders entering prison will have the probationer-validated RNA at intake by the end of September 2016. In addition, prisoners will be reassessed, with ongoing evaluations, similar to probationers. Ms. Hevener added that having a RNA for prisoners would allow for additional comparisons between probationers and prisoners by risk and need levels for program and recidivism outcomes.

Mr. Beeler stated evidence-based programs that provide education and substance abuse treatment should be provided in prison and that the criminogenic effect of prison and the recidivism of mental health offenders should be examined. Ms. Norville mentioned the DACJJ is in the middle of remissioning prisons with the goal of examining and identifying the needs of each offender and determining his/her pathway to receiving the appropriate, evidence-based programming. Ms. Hevener stated that the Sentencing Commission had previously included mental health as a variable used in multivariate analysis for prisoners, but it was not found to be a significant factor in predicting recidivism. Mr. Edwards provided preliminary findings on DACJJ's mental health pilot, indicating that although probationers with mental illness have greater criminogenic needs, providing extra care and services has led to reductions in violations and non-compliance.

Turning to FY 2013 prison releases, Ms. Wesoloski summarized the key findings for prisoners released with and without PRS. For offenses occurring on or after December 1, 2011, the JRA expanded PRS to include all felons. Eleven percent of the sample was subject to the provisions of the JRA. In FY 2013, 69% of prisoners were released without PRS and 31% of prisoners were released onto PRS. The percentage of prisoners released onto PRS has increased under the JRA – only 16% of prisoners in the FY 2011 recidivism sample were released onto PRS. In terms of personal characteristics, PRS releases were more likely to be black and single and more likely to have a substance abuse need and/or history of drug addiction than prisoners released without PRS.

Prisoners released without PRS had more extensive prior criminal histories than those with PRS. Offenders released without PRS were typically Class F through Class I offenders, a more recidivistic group of offenders than Class B1 through Class E offenders. Although prisoners released without PRS were more likely to have more prior criminal justice contacts than those with PRS, both groups had the same average number of priors.

From FY 2011 to FY 2013, the proportion of Class F through Class I prisoners released onto PRS increased. The majority of all prisoners had a conviction in Class F through Class I (77%). Most prisoners released onto PRS had a current conviction for a Class B1 through Class E felony (64%) and nearly all prisoners without PRS had a current conviction for a Class F through Class I felony (96%).

Regarding recidivism rates, prisoners with PRS had slightly lower recidivist arrest and conviction rates, but higher recidivist incarceration rates, than those without PRS. The higher recidivist incarceration rates may be attributed to an offender's supervision – offenders on PRS can be revoked and subsequently incarcerated for violations of the terms of their supervision. Mr. Fialko asked if there was a way to differentiate between a recidivist incarceration for a probation violation and a new crime. Ms. Hevener responded that it would be difficult to identify the data as such.

In terms of policy considerations resulting from the findings for FY 2013 prison releases, Ms. Hevener again noted the importance of risk and need assessments and highlighted their importance for the development of policies related to supervision for prisoners released onto PRS and in determining the effect of PRS on offender outcomes. Given the limited numbers of Class F through Class I felons with PRS in the current sample, Ms. Hevener noted that it is too soon to determine the effect of PRS for Class F through Class I felons on recidivist arrests. As data become available, future studies will provide a more in-depth examination of the effect of PRS on offender outcomes.

If PRS does not decrease Class F through Class I recidivism rates, Judge Brown mentioned that comparing the seriousness of the sample offense to the recidivist offense would be beneficial, adding he is aware that the data are not captured as such. Chairman Spainhour inquired as to whether all prison releases have the same conditions of PRS. Mr. Fowler responded that the conditions are set on a case-by-case basis by the Parole Commission.

Mr. Beeler stated that the positive or negative effects of PRS should be examined. Judge

Brown asked if there were alternative positive PRS outcomes outside of a decrease in recidivism rates, such as a decrease in offense seriousness of the recidivist crime or an increase in the time to violation since these outcomes also increase public safety. Ms. Hall responded that it depends on the intended goal of PRS and the definition of effectiveness. Mr. Fowler mentioned that PRS outcomes would be more successful if there was treatment for offenders upon entry to prison, including programs and treatment. Ms. Norville responded that the DACJJ is focused on the continuity of care from prison to PRS to ensure that, prior to and upon release, the probation officer understands and knows the offender's needs. Ms. Kusa asked if PRS can be tracked by class to determine program effectiveness. Ms. Hall responded that in the future, the Sentencing Commission hopes to undertake a more sophisticated class-based analysis, but for the current study, too few offenders had PRS in the lower offenses classes, limiting how meaningful any findings would be.

Tamara Flinchum reported on the key findings for the probationers in the sample. She noted that all of the FY 2013 probation entries were processed and supervised under the provisions and policies implemented under the JRA. Most probationers (62%) had a misdemeanor as their most serious current conviction. Felons were more likely than misdemeanants to be male, to have dropped out of school, and to have a substance abuse problem. In addition, probationers with a felony conviction tended to have more prior contacts with the criminal justice system than probationers with a misdemeanor. Finally, felons had higher rearrest rates than misdemeanants (39% and 35% respectively). These findings were consistent with the Commission's previous recidivism studies.

Ms. Flinchum reviewed the components of the DPS's risk and need assessments (RNA) used to place the offender in the appropriate supervision level based on that RNA. Both the risk assessment and the need assessment places probationers in one of five levels, minimal, low, moderate, high, and extreme. Once the RNA is administered, there are five levels of supervision with Level 1 being the most restrictive and Level 5 being the least restrictive. Examination of the recidivist arrest rates by probationers' supervision level revealed a stair-step pattern. Probationers assessed as a Level 1 (the most restrictive) had higher rates of recidivist arrests (60%) during the two-year follow-up compared to the remaining four groups. Level 5 probationers (the least restrictive) had the lowest recidivist arrest rates (13%).

Interim outcome measures that were examined for probationers included violations of probation and three responses to those violations (i.e., quick dip confinement (QDC), CRV, and revocation of probation). This is the first recidivism study to include information on QDCs and CRVs as outcome measures. Ms. Flinchum reported that 68% of probationers had at least one violation during the two-year follow-up. There were only 745 offenders with a QDC during the follow-up period due in part to the delay in its implementation; therefore, no meaningful conclusions could be made from the QDC findings. Fourteen percent of the probationers had at least one CRV during the two-year follow-up, while 19% of the probationers had a revocation of probation.

Examining data from the past three recidivism studies indicated that revocation rates and recidivist incarceration rates have decreased despite an increase in violation rates. These data demonstrate the impact of the JRA on revocations by limiting revocations to violations for new

crimes or absconding, or after the imposition of two CRVs for technical violations.

Consistent with the findings for arrest rates, a stair-step pattern in rates was also found when examining interim outcome measures by supervision level. Probationers assessed as a Level 1 (the most restrictive) had higher rates of probation violations, CRVs, and revocations during the two-year follow-up compared to the remaining four groups. Level 5 probationers (the least restrictive) had the lowest probation violation rates, CRV rates, and revocation rates. These findings suggest that the RNA is placing probationers in the appropriate supervision level.

Ms. Hevener led a discussion of the policy considerations relating to the recidivism finding for probationers. She noted that future studies will be able to examine the effectiveness of options available to respond to probationer noncompliance in reducing reoffending. The findings suggest that offenders are being supervised at appropriate supervision levels; however, it is too soon to determine what effect supervising offenders at appropriate supervision levels will have on offender behavior (e.g., recidivism rates). Judge Brown commented that a revocation due to absconding may not in fact be absconding, but due to a new crime.

As a companion document to the recidivism study, Ms. Flinchum summarized the findings of a research brief that examined preliminary findings of 1,381 probationers released from prison in FY 2013 after having served a CRV (hereafter referred to as CRV offenders). The CRV offenders were compared to a select group of 8,674 felony probation entries who were part of the FY 2013 recidivism sample described above. Both groups were similar in their personal characteristics, prior criminal history, and current conviction class and type; however, CRV offenders were younger and had more offenders with a substance abuse issue. The majority of CRV offenders were assessed in the extreme and high risk levels, while the majority of the felony probationers in the comparison group were assessed in the moderate risk level.

Overall, there were no differences between the two groups in their recidivist arrest rates. However, when controlling for risk, CRV offenders had lower recidivist arrest rates than felony probationers. This finding was surprising to staff given that the CRV offenders were younger, had a higher number identified with a substance abuse issue, were assessed at higher risk levels, and had limited programming available to them while they were confined. In addition, CRV Centers were not operational, and CRV offenders had already ‘failed’ at probation by definition (having served a CRV) compared to the felony probationers.

As part of the discussion of policy considerations relating to CRV offenders, Ms. Hevener stated that the results from the study of CRV offenders were promising, especially given that these offenders received CRVs during the initial implementation period when targeted programming was limited. She also noted that CRV centers would be examined in future reports and that further examination of the effectiveness of CRVs for moderate risk offenders was needed.

During the discussion, Ms. Kusa questioned if one could determine the effectiveness between the two CRV centers. Mr. Edwards responded that the same programming is available at both centers; however, outcomes by risk would be available for analysis. Chairman Spainhour asked Mr. Edwards how the DPS determined which CRV center an offender would attend, and Mr. Edwards’ response was by the offender’s geographic region. Ms. Hall reported that CRV

offenders are not being reassessed after leaving the CRV centers. Mr. Edwards responded that intervention affects different offenders based on their risk level at different rates explaining that higher risk offenders do better in the more restrictive environments. Representative Faircloth gave recognition to deferred prosecution programs in High Point and Durham that have shown some success. Ms. Hevener acknowledged that those programs could potentially affect the recidivism rates locally, but that a statewide program is needed to affect the recidivism rates at a statewide level. Ms. Hall explained that the success of those programs would affect the recidivism rates indirectly since its primary purpose is keeping offenders out of the system by reducing crime in those communities. Ms. Krueger shared her knowledge of a High Point program run by federal probation officers. Small groups of offenders, usually involving gun crimes, are brought to court prior to a formal court hearing. At that court appearance, local court officials, community leaders and activists, and former program participants provide frank discussions to the new participants of what to expect if their lives continue on its current criminal path. Senator McKissick mentioned the success in Durham with a program that targets similar types of youth. Mr. Beeler stated that Durham has the Criminal Justice Resource Center that houses all of its criminal justice programs under one umbrella and does a fantastic job. Representative Faircloth mentioned that these federal programs also handle domestic violence cases and suggested other Commissioners would appreciate visiting the program. Chairman Spainhour acknowledged Representative Faircloth's suggestion as a future site visit.

To conclude, Ms. Hevener provided a summary of some of the topics that are being considered for the 2018 study, including consideration of new sampling techniques; continued examination of the impact of the JRA or other criminal justice initiatives on outcome measures; the availability of risk and need assessment data for prisoners; the effect of programs, sanctions, and supervision on recidivism; and the impact of CRV centers and targeted programming on offender outcomes.

## **PROPOSALS FROM THE RESEARCH AND POLICY STUDY GROUP**

Chairman Spainhour recognized Rebecca Murdock, staff, to provide a presentation on the intersections between the criminal justice and mental health treatment systems (*see* handout). Ms. Murdock provided background on the topic, reminding the Commission why the Research and Policy Study Group decided to focus on mental health as well as the reason why the Study Group selected the jail as the area of focus – that jail provided a unique opportunity to identify inmates with potential mental health issues, to stabilize offenders that might be in crisis, and to re-engage inmates into treatment and services that could benefit them in the long term. She reviewed the Study Group's approach to developing proposals from the information the Study Group had collected over the course of the project. The Study Group reviewed areas of research by common topics and then developed proposals where possible and appropriate, taking into account resource impact. Ms. Murdock stated that the Study Group chose to leave some decisions for the Commission and she would point those areas out during the presentation.

The first topic the group reviewed related to the importance of identifying the population. Identifying the population allows areas to establish a baseline prevalence rate which helps stakeholders understand the problems facing their particular population. It will also allow them to track outcomes based on policies they put in place and make more informed decisions going

forward. The Study Group saw identifying the population as an important first step towards addressing the recidivism of the population and felt that by proposing policies related to identification, areas could build from there.

The first policy the Study Group proposed related to the use of screening instruments as part of the booking process. Ms. Murdock reviewed the use of screeners in the areas staff visited during the Study Group's site visits, as well as the previous requirement of the use of the screener. Ms. Murdock also pointed out what the Study Group did not include in the proposal. Because counties had different levels of resources and technologies, the Study Group did not propose specific administration practices. Similarly, because counties preferred different screening instruments, the Study Group did not propose a specific screener be used.

The Commission discussed how the area uses the information gathered by the screener and what happens to an inmate once they are identified. Dr. McMurray expressed concerns from a research perspective of not using standardized information. Luther Moore moved to adopt the proposal; the motion was seconded and carried.

Ms. Murdock stated that the Study Group left it to the Commission to determine where the recommendation should go and how it should be presented. The Commission discussed the benefits of submitting the proposal to an agency as a recommendation over seeking a legislative mandate, as well as who would be the appropriate agency. Representative Faircloth moved to recommend the use of a screening instrument as part of the booking process to both the NC Sheriff's Association and the NC Jail Administrator's Association. The motion was seconded and carried.

Ms. Murdock proceeded to the second proposal, which also related to methods of identifying the population. She explained the process of LME-MCOs reviewing jail booking logs for known and past consumers, and the different methods in which jail logs were provided in the areas staff visited. She pointed out that in some areas, the jail logs were not made available and therefore the LME-MCO or their designee was not able to review it. The Study Group proposed that jail logs should be made available, but noting the differences in resources and technologies among the counties visited, they did not propose how the logs should be provided. Additionally, because of the changing landscape of the mental health system and the structure of the LME-MCOs, the Study Group declined to reinstitute the requirement that the logs be reviewed by the LME-MCO or their designee.

Art Beeler reiterated that there were great variations statewide in counties maintained jail logs. Bob Kurtz pointed out that CJ LEADS will give LME-MCOs access to all jail logs, not just their local jail. Mr. Beeler moved to adopt the proposal; the motion was seconded and carried.

Ms. Murdock stated that the Study Group left it to the Commission to decide who would be the best body to receive the proposal. The Commission discussed submitting it to the Association of County Commissioners because the county commissioners fund the jails, but acknowledged that the sheriffs are independent elected officials. Mr. Moore moved to submit the proposal to the NC Sheriff's Association and the NC Jail Administrator's Association. The motion was seconded and carried.

Ms. Murdock then presented the final two proposals. The Study Group proposed that the Group's observations from the field and accompanying research be compiled into a publication and disseminated to interested parties. She pointed out that when staff were conducting the site visits, many interviewees reported that there was not an avenue for them to learn about what other areas were doing to combat similar problems and that learning from each other would be valuable. While there was a great breadth of information collected from the Study Group's work, much of it was not suitable for official recommendations given the limitations and boundaries the Study Group had imposed upon itself; a publication would be a vehicle for sharing the information. Dr. McMurray moved to adopt the proposal; the motion was seconded and carried. Finally, the Study Group proposed continuing to follow the efforts and progress of the work being done across the state and nationally as it related to mental health and jails. Mr. Moore moved to adopt the proposal; the motion was seconded and carried.

### **DWI SENTENCE CREDIT STUDY SUBCOMMITTEE - UPDATE**

Chairman Spainhour recognized John Madler, staff, to provide an update on the DWI Sentence Credit Study Subcommittee. Mr. Madler stated that at the March Sentencing Commission meeting, the Commission accepted a request from Commissioner Guice and Secretary Perry of the Department of Public Safety to review the Department's sentence credit policies for offenders convicted of impaired driving offenses. Chairman Spainhour established the DWI Sentence Credit Study Subcommittee to conduct the study.

Mr. Madler informed the members that the DWI Sentence Credit Study Subcommittee met on May 6. They reviewed the DWI sentencing laws, the data that is currently available on DWI offenders, and the sentence credit laws and policies. Based on this information, staff identified several issues relating to sentence credit policies, including certain DWI offenders being eligible for the credits while others are not and the DWI sentence credits being different from sentence credits for other misdemeanor offenses.

Following the presentations, the Subcommittee discussed a number of issues. Beginning with the sentence credits, the members discussed the potential results of eliminating them, the purpose of awarding the credits, and possible reasons for awarding different credits to DWI offenders. The members also discussed the availability and applicability of current treatment programs as well as the limitations of jail facilities on providing treatment programs and the potential need for dedicated facilities for DWI offenders. These issues ultimately led the Subcommittee to a discussion of the DWI laws. Members discussed whether the laws were intended to punish the offender or see that he gets treatment, or both. They pointed out that the DWI offenses were left out of sentencing reform initiatives like Structured Sentencing and questioned whether there was interest currently in changing the laws.

Mr. Madler explained that the Subcommittee was not able to reach any conclusions regarding the sentence credit policies but that it asked staff to collect additional information for the next meeting. The Subcommittee will examine the makeup of the current DWI population,

how other states punish DWI offenders, and the potential impact of eliminating certain sentence credits. The Subcommittee had not set the date for the next meeting.

Luther Moore asked if the DWI sentencing system was broken. Chairman Spainhour responded that it was very complicated and that sentences were not predictable or certain. Mr. Moore observed that DWI sentencing did not appear to meet the criteria set for Structured Sentencing. Chris Fialko added that if they changed the sentence credit policies under the current laws, offenders would serve longer sentences than what was intended when they were imposed.

Mr. Madler informed the Commission of a study request from Senator Randleman and Representatives Boles and Hurley, the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety. They asked the Sentencing Commission to study the State's sentencing and correctional policies and practices for impaired driving offenses, pointing to several questions including the availability of treatment and programming, the awarding of sentence credits, and the amount of time offenders actually serve. They asked the Commission to provide any recommended changes along with impact projections upon completion of the study.

Mr. Moore asked what the timetable was for developing recommendations. Mr. Madler responded that the Chairs did not set a deadline since it was not possible to estimate how long this study would take.

Chairman Spainhour asked Gwen Norville, representing Commissioner Guice, whether the Division of Adult Correction and Juvenile Justice had a position on the request. Ms. Norville responded that Commissioner Guice supported the request and felt that his original request could still be addressed as a part of that study.

Luther Moore moved to accept the request; the motion was seconded and carried. There being no objection, Chairman Spainhour referred the request to the DWI Sentence Credit Study Subcommittee.

### **LEGISLATIVE REVIEW/SESSION UPDATE**

Chairman Spainhour recognized Sara Perdue, staff, to facilitate the review of proposed legislation and to present an update on the legislative session. Ms. Perdue reviewed the mandate and the process for reviewing bills. She noted that, pursuant to G.S. 164 41, the Commission is required to review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and to make recommendations to the General Assembly. She reminded the Subcommittee that a finding of consistent or inconsistent did not mean support for or opposition to the bill itself. Mrs. Perdue then reviewed the policies adopted by the Commission for reviewing proposed legislation and the Felony Offense Classification Criteria.

Mrs. Perdue presented one new bill. She noted that the Commission had reviewed the bill in a previous version but that it had been changed two days before the meeting. The members

reviewed each proposal and made the following recommendations.

**House Bill 287 – Amend Insurance Laws –AB [Ed. 4]**

**(G.S. 58-50-40, Willful failure to pay group insurance premiums; willful termination of a group health plan; notice to persons insured; penalty; restitution; examination of insurance transactions)**

Chris Fialko pointed out that the Sentencing Commission reviewed this offense as a Class C felony in April 2015 and found it to be inconsistent with the Offense Classification Criteria for a Class C felony, but noted that it would be consistent with a Class H felony. Mr. Fialko moved to find the provision inconsistent with a Class F felony, stating that it would be consistent with a Class H felony. The motion was seconded and carried.

**(G.S. 58-2-164, Rate evasion fraud; prevention programs)**

Luther Moore moved to find the provision consistent with the Offense Classification Criteria. The motion was seconded and carried.

Mrs. Perdue then presented a brief update on the legislative session (see Handout). Two bills reviewed by the Legislative Review Subcommittee in June are enrolled and on their way to ratification by the General Assembly – HB 958, Felony Death by Impaired Boating/Sheyenne’s Law and HB 283, Prevent Squatting in Foreclosed Real Property (provision reviewed in SB 754). Mrs. Perdue highlighted a few bills of interest for the Commission: SB 756, Restoration of Funds to Richmond County; SB 858, Amend Deferred Prosecution Statute; and SB 859, Pilot Project: Tablets for Inmates. Mr. Thompson asked for background information on SB 756; Mrs. Perdue explained that the bill would appropriate \$284,500.00 from the Statewide Misdemeanant Confinement Fund to the Clerk of Superior Court in Richmond County pursuant to Richmond County Board of Education v. Cowell. There was also some discussion regarding the Tablets for Inmates pilot project, an idea previously discussed in the Justice Reinvestment Implementation Subcommittee.

Mrs. Perdue also gave the Commission a quick overview of the budget bill as proposed by the Governor, House and Senate; she highlighted the similarities and differences in the revised figures and substantive provisions affecting Justice and Public Safety. Mrs. Perdue pointed out that both the Governor’s and House budgets called for reserving \$30 million in funds to implement the recommendations of the Governor’s Mental Health and Substance Use Task Force. Finally, Mrs. Perdue reported on a few relevant special provisions found in different versions of the budget.

**2016 JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION REPORT-  
REVIEW OF KEY FINDINGS**

Chairman Spainhour recognized Judge Charlie Brown, Chair of the Justice Reinvestment Implementation Report Subcommittee, to provide introductory remarks regarding the 2016 Justice Reinvestment Implementation Evaluation Report. Judge Brown began by commending the Recidivism Report presented earlier and the work that went into it; he discussed how important that information was for developing policy recommendations. He then reminded the Commission members of the mandate to the Commission to provide an annual report on the implementation of the Justice Reinvestment Act (JRA) and of the role of the Subcommittee in preparing that report.

The Subcommittee met three times to hear presentations from the stakeholders and to review a draft of the Report, staff then completed the Report and submitted it to the General Assembly on April 15. Judge Brown pointed out that this was the fifth annual report and that it contained several changes and new features. He recognized John Madler, staff, to present key findings from the Report.

Mr. Madler stated that there was a great deal of information in the Report but that he would focus on key findings related to six of the topics and then provide a list of potential topics for the next report. (*See* handout.) Beginning with Advanced Supervised Release (ASR) and the habitual breaking and entering status offense, Mr. Madler pointed out that the courts have used each of the tools a limited number of times. The DPS is running a Pre-Sentence Investigation pilot program in Chatham and Orange Counties that will provide more information to the court and could help the judge decide whether and ASR sentence would be appropriate. Staff will continue to monitor the number of sentences imposed but the Recidivism Report will be the next measure of the effectiveness of these tools.

Turning to the Treatment for Effective Community Supervision (TECS) program, Mr. Madler stated that offender enrollment increased steadily during the first two years of implementation but dropped during Calendar Year 2015. The DPS reported that the first three-year contract cycle ended in 2015 and that some vendors were ending services while other vendors were starting during the year. In addition, the vendors reported difficulties in engaging the target population of high-risk offenders in the programs. During 2015, DPS also reported expanding the services to encompass a wider range of services, including transitional housing, temporary housing, intensive outpatient treatment, community intervention centers, and local reentry councils. It remains to be seen whether the level of funding for TECS will be sufficient to serve the number of offenders in need of programming.

Under the JRA, post-release supervision (PRS) was expanded to include Class F through I offenders. Mr. Madler reported that this expansion has resulted in a significant increase in the number of offenders supervised on PRS and in entries to prison as a result of violations of supervision. Staff will continue to monitor the supervision of this new population and its impact on the system.

Impaired driving (DWI) offenders were originally housed in the state prison system but, effective January 1, 2015, they were housed in the Statewide Misdemeanant Confinement Program (SMCP). This created a unique situation where the offenders were housed locally but their sentences were regulated at the state level. Mr. Madler explained how the DPS, along with the North Carolina Sheriffs' Association, the local jails, and other stakeholders addressed issues relating to maintaining offender records and providing treatment when recommended. While they were able to develop solutions, other issues regarding the processing and managing of DWI offenders and their sentence credits remain.

Mr. Madler reported that the last section of the Report contained an overview of the savings and reinvestment by the State under the JRA. During the last ten years, the population in North Carolina has continued to increase but the index crime rates have decreased. When the JRA was added in 2011, the community corrections and prison populations declined. As a result, the state has realized significant savings, particularly from closing eleven prisons statewide. At the same time, the General Assembly has reinvested in several ways: 175 new probation and parole officers, two CRV centers, additional Post-Release Supervision and Parole Commission members and staff, and substance abuse treatment for high risk offenders. At this point, the majority of savings have been achieved; the next measure will be whether the JRA provisions affect offender behavior and produce long-term population reductions and savings.

Finally, Mr. Madler highlighted potential topics for the 2017 Justice Reinvestment Implementation Evaluation Report. Topics included DWI offenders in the SMCP, the use of quick-dips for misdemeanants in place of CRVs, the impact of CRV centers, the TECS program, and the continued impact of the expansion of PRS.

At the conclusion of the presentation, staff distributed to the Commissioners two reports produced by the DPS. (*See* handouts.) Mr. Madler explained that the first report, Justice Reinvestment Performance Measures, provided a more in depth look at the savings and reinvestment under the JRA while the second report, Breaking the Cycle: Mental Health and the Justice System, contained testimony Commissioner Guice gave to the United States Senate Judiciary Committee. The DPS provided these reports to Commission members as additional information related to the Justice Reinvestment Implementation Evaluation Report and to the work of the Research and Policy Study Group.

Michelle Hall informed the Commissioners that staff had completed the Quick Facts sheets based on the data contained in the 2016 Statistical Report and that hard copies were available as well as electronic copies on the Sentencing Commission's website. Staff distributed copies to the Commission members.

Chairman Spainhour informed the members that the remaining Commission meetings in 2016 were scheduled for September 9 and December 2.

The meeting adjourned at 2:56 p.m.

Respectfully submitted,

Shelley Kirk  
Administrative Secretary