

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

March 4, 2016

The North Carolina Sentencing and Policy Advisory Commission met on Friday, March 4, 2016, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Art Beeler, Louise Davis, Honorable Richard Elmore, Honorable John Faircloth, Honorable Robert Ervin, David Guice, Honorable Maureen Krueger, Dr. Harvey McMurray, Robert Montgomery, Luther Moore, Honorable Fred Morrison, Honorable Shirley Randleman, Honorable Floyd McKissick, Keith Shannon, and Billy Sanders.

Guests: Felicia Hyde (NCOAH), Lynn Jones (DHHS), Donna Brown (DHHS), Eddie Caldwell (NCSA), Lauren Norman (NCSA), Jan Paul (NCGA), Will Robinson (NCCALJ), Director Marion Warren (AOC), William Lassiter (DPS-DACJJ, JJ), and David Edwards (DPS-DACJJ, RPS).

Staff: Michelle Hall, John Madler, Ginny Hevener, 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. Chairman Spainhour reviewed the agenda for the meeting. Art Beeler moved to adopt the meeting minutes from December 4, 2015. Billy Sanders seconded the motion and the motion carried. Chairman Spainhour introduced Michelle Hall, staff, to present court statistics for Fiscal Year 2015.

COURT STATISTICS – FY 2015

Ms. Hall briefly described the data source and purpose of the Structured Sentencing Statistical Report for Felonies and Misdemeanors, published annually, noting that the 2016 report covers convictions from July 1, 2014 to June 30, 2015 (FY 2014/15). She reviewed ten-year conviction trends (see Handout) and noted that misdemeanors have experienced a 40% decrease. A number of legislative changes were made, which contributed to the decline, including the reclassification of a number of misdemeanor offenses to infractions, and changes made to the offense of Driving While License Revoked (DWLR). Ms. Hall reviewed the breakdown of felony convictions by mode of disposition, offense class, and crime type for FY 2015. She then reviewed the top five felony convictions and the most frequent felony convictions by crime type.

Ms. Hall then discussed the type of punishment imposed for felons in FY 2015 as well as ten-year trends in punishment type. She provided the average minimum sentence lengths imposed for active sentences by class and crime type. She attributed shifts in non-active punishments over the past several fiscal years to changes under Justice Reinvestment Implementation Act (JRA) and the lack of distinction between Community and Intermediate punishment under JRA. Regarding active sentences, she stated that there were 10,889 convictions with active sentences, of which 87% received some pre-trial credit. Ms. Hall then reviewed ten year trend data for drug trafficking convictions and habitual felon convictions.

Shifting to misdemeanor convictions, Ms. Hall provided a breakdown class and crime type, and provided the top five and most frequent convictions by crime type. She outlined the 10-year trends for imposed punishments for misdemeanants noting that in that timeframe, active sentences have increased 11.5% which can most likely be attributed to the statutory provision that allows the court to impose an active punishment if the term of imprisonment is equal to or less than the total time the offender has already spent in pretrial confinement. She then reviewed the type of probation ordered for misdemeanants sentenced to non-active punishment and noted an increase from the previous year in the number of convictions sentenced to no probation ordered. She concluded by summarizing broad trends in convictions over the past ten fiscal years.

CURRENT POPULATION PROJECTIONS – FY 2016 TO FY 2025

Chairman Spainhour then introduced Ginny Hevener, staff, to provide current prison population projections and Youth Development Center (YDC) population projections. Ms. Hevener first reviewed the Adult Prison Population Projections for the next 10 years. She noted the projections are used to determine how many prison beds are needed (capacity) and what type of beds are needed (closed, medium custody, etc.). She stated that, pursuant to statute, the projections are prepared annually in conjunction with Department of Public Safety Division of Adult Correction and Juvenile Justice (DPS-DACJJ).

Ms. Hevener reminded the Commission that the Justice Reinvestment Act (JRA), passed by the 2011 General Assembly implemented substantial changes to the state's sentencing practices and correctional policies. The data used for the projections represent the third full fiscal year of information under the JRA. She reminded the Commission that it will be some time before data on PRS are fully representative of the changes under JRA. Judge Ervin asked whether the CRV numbers were removed from this data and if there might need to be a separate projection for CRVs. Ms. Hevener replied that staff can work with DPS on that. Commissioner Guice commented that there should be no problem doing that, adding that in the initial year of the CRV center pilot, it was decided to count CRV beds as regular beds, however, in the second year and going forward, they are being counted as treatment beds. Chairman Spainhour asked about what might account for the decline in the crime rate. Luther Moore added that it would be interesting to overlay the population curve and unemployment curve. Ms. Hevener answered that the results are mixed on the reason for the declines in the crime rate but noted that filings are down compared to last year.

Senator McKissick asked Ms. Hevener to put North Carolina's prison population decline into context with other similar trends, maybe by comparing data to other states which could statistically show the big picture. Ms. Hevener replied that there has been a national decline in the prison population. Staff has looked at other states for possible explanations but found nothing conclusive; some of the declines could be a result of policy changes or criminal justice trends. Senator McKissick noted that in Figure 4 (see Handout) it appears as though the decline is grounded in property crimes and he inquired whether there were any targeted programs to get the crime rate down. Commissioner Guice replied that DPS does not target programming toward any particular crime; through Cognitive Behavioral Intervention (CBI) programming offenders explore how a person makes decisions and, with tools such as journaling and motivational interviewing, they have met with success.

Representative John Faircloth commented on the rapid progress of technology, suggesting that criminals' decisions are already impacted by the presence of street cameras. Mr. Moore responded that despite technological advancements, there are still break-ins and shoplifting in Belk stores. Discussion ensued related to technology and crime.

Judge Ervin inquired whether recidivism rates can be compared among offenders on CRV, offenders with revoked probation, and offenders who remained on probation. Ms. Hevener responded that this year's adult recidivism report will have data on rearrest, conviction, and incarceration rates affected by JRA. Chairman Spainhour asked about the 61 inmates with death sentences under the Fair Sentencing Act (FSA). Ms. Hevener affirmed their status and added that death sentences have been declining. Mr. Moore followed up with a question about the 2,302 offenders in prison who were sentenced under the FSA – what is the annual decline (if any) in their numbers. Ms. Hevener stated they represented about 6% of the prison population last year and 7% the year before.

Chairman Spainhour asked about the cost associated with keeping an offender on death row. Mr. Beeler responded by sharing a Duke University study on the cost of an inmate on life without parole, including prison and court costs, medical bills, etc.; the cost was estimated to be about \$2 million. Senator McKissick added that, including all the appeals, it is about \$30,000 per year to house one inmate, and if that inmate stays long enough, medical bills begin to increase this amount. Mr. Beeler remarked that one factor not included in these numbers is the fact that the average age of prisoners is going up, causing medical costs to increase and the increase in the number of inmates who die in custody. Commissioner Guice remarked that DPS has been looking at the aging prison population in general, not just death row inmates, and asked the Legislature for permission to shift funds to begin addressing the long term care needs for some of those inmates. Further, he added, there is a plan to renovate an old hospital wing to create beds where DPS can house this population. Mr. Beeler added that prisons all over the country are building nursing homes within their walls. Senator McKissick recalled the Legislature passing a bill that would allow certain prisoners, those who were terminally ill and no longer a threat to the community, to be released in an effort to help alleviate costs associated with their continued confinement. Commissioner Guice replied that the number of inmates who qualify for that release are very low and there are other issues that make it difficult to release someone with a serious criminal history even if no threat to society remains.

Ms. Hevener then turned to population projections for YDCs. Ms. Hevener commented that YDC admissions have had a significant and consistent decline over the past few years (*see Handout*). She also noted that all juvenile crime indicators are down. North Carolina's population as a whole is not growing in terms of the younger age groups, but rather in the 50+ age groups. Representative Faircloth asked whether there have been projections on impact to YDCs and to prisons if the juvenile age is raised to 18. Ms. Hevener responded that the primary impact would be on the juvenile justice system; the impact on the adult system would be minimal and would not result in substantial savings.

DRIVING WHILE IMPAIRED SENTENCE CREDIT STUDY REQUEST

Chairman Spainhour introduced John Madler, staff, to review a request from Commissioner Guice and the Secretary of the Department of Public Safety. Mr. Madler explained that the Department asked the Sentencing Commission to study the Department's sentence credit policies for offenders convicted of impaired driving offenses (*see handout*). Mr. Madler then presented an overview of the policies and issues related to the request. Mr. Madler stated that in the last 25 years, many changes have been made to sentencing laws (e.g., FSA, SSA, JRA), while Driving While Impaired (DWI) sentencing and credit policies have not been modified. As a result, there is some confusion over the eligibility and application of sentence credits to DWI offenders. Some of the confusion has increased as the DWI offenders have moved from the state prison system to local jails in the Statewide Misdemeanant Confinement Program. Mr. Madler reviewed applicable statutes, definitions of sentence credits and their eligibility requirements, and

reviewed the current DPS Policy and Procedures for sentence credits (*see Handout*). Mr. Madler described the levels of DWI sentencing and highlighted the different factors that distinguish the levels.

Judge Ervin noted that Aggravated Level One punishment for DWIs appears to be more severe than the punishment for Habitual DWI. He added that if an offender cannot receive any sentenced credit for an Aggravated Level One DWI sentence, it is definitely a longer sentence than one for an Habitual DWI.

Commissioner Guice remarked that prior to the establishment of the DPS, the Secretary of Corrections signed off on sentence credit policies as they related to DWI inmates. The current Secretary, before considering any changes, has requested the study before the Commission to help inform any changes to the policies.

Mr. Beeler moved that the Commission accept the study request, Judge Ervin seconded the motion; the motion carried. Judge Ervin then asked Eddie Caldwell from the North Carolina Sheriff's Association (NCSA) whether he had concerns regarding this issue. Mr. Caldwell stated that he was not concerned, but rather had an interest in it, and said that the NCSA is available to work with Legislature in implementing whatever policies are decided. Judge Ervin commented that the SMCP capacity would be significantly affected by a change to DWI sentence credit policies. Mr. Sanders stated that he believed, that of an equal or greater concern is how the parole system looks at DWI cases. Commissioner Guice stated that he hoped this study will consider that issue as well.

In response to the request, Chairman Spainhour announced the formation of the DWI Sentence Credit Policy Review Subcommittee; he appointed members and announced the first meeting date as May 6.

DEPARTMENT OF PUBLIC SAFETY RESPONSE TO SENTENCING COMMISSION PROPOSALS ON JUVENILE JUSTICE SYSTEM

Chairman Spainhour introduced William Lassiter and David Edwards, DPS-DACJJ to provide DPS's response to the Sentencing Commission's proposals on juvenile justice. Mr. Lassiter discussed the updates to the risk assessment tool used by the Department, the *Assessment of Juvenile Risk of Future Offending*, which will be implemented in the near future. Mr. Lassiter detailed the realignment of risk levels – instead of three levels, there will be five risk level categories (*see Handout*). This will help the Department prioritize higher-risk youth based on their risk assessment at intake. Mr. Lassiter stated that the risk assessment intake form had not been re-normed since 2005.

Mr. Edwards then reviewed each of the five proposals from the Commission. The policy framework, based on the Commission's proposals to the Department, was based on critical and reliable assessments, targeting resources more effectively, and matching juvenile risk/needs with appropriate programming for optimal decisions. Focusing on the risk assessment tool, Mr. Edwards reviewed recidivism rates by risk score, noting scores were clustered in the low risk category. This meant that some medium and high risk youth were potentially being served in low risk programs. Mr. Edwards then reviewed the methodology the Department used in determining new cutoff points and new levels for the risk assessment scores. They worked in partnership with Sentencing Commission staff to analyze past and current recidivism data from the Sentencing Commission. He reiterated that the Department will shift from three risk levels to five risk levels, which will result in a more accurate assessment of risk and therefore prediction of the future reoffending. Mr. Edwards reviewed an example of the how the new risk

levels would change the assessed risk of youth in one county. Based on the scores within the new levels (compared to the old levels), the county would need more programming for higher risk youth.

Mr. Lassiter resumed the presentation noting that the more accurate risk assessments may change how communities determine and fund programs for JCPCs. Programs for high risk youth are more expensive than those for low risk youth; there may be more funding needed for programs. Art Beeler stated that putting high risk youth in low risk programs has the potential to lead to worse outcomes. He added JCPC programs keep youth out of the system - if the JCPC interventions are not targeting the right youth with the right intervention, there is no chance to help them. Mr. Lassiter noted that the Department will implement the new levels on April 1. The Department will review the data and risk levels annually, and require annual refresher training and a bi-annual certification exam on administering the risk assessment. The Department will also provide quality assurance tracking to ensure accurate risk profiles are captured in the data.

Turning to the other proposals, he highlighted the proposal that the Department assess existing programs. He noted that in 2015 all JCPC programs were evaluated using the Standardized Program Evaluation Protocol (SPEP). All programs received their scores between October and December, as well as information about how the scores are calculated and about program improvement plans where needed. From the SPEP data, the Department will be able to better understand what youth are going to what programs. Mr. Lassiter indicated that programs that meet the threshold of a total SPEP score of 50 can expect to impact recidivism. Keith Shannon asked if the school systems use the data. Mr. Lassiter responded that there are education leaders that sit on the JCPC and get all the information available and provide feedback to the Department on what resources the schools have to build best programming. Mr. Beeler commented that, however, what is carried to the schools depends on the power of the superintendent and the principals, and if they are not willing then the synergy and collaboration does not work. Mr. Lassiter concluded his presentation, thanking the Commission and its staff for the collaborative work on the proposals.

INTERSECTIONS OF MENTAL HEALTH SYSTEM AND LOCAL JAILS

Chairman Spainhour then recognized Rebeca Murdock, staff, for her presentation on the intersections of mental health system and local jails. Ms. Murdock provided background on the topic reminding the Commission that the Research and Policy Study Group was formed to review existing research to develop policy recommendations to reduce recidivism. After several initial meetings of brainstorming, three broad topics were selected for study, one of which, one was mental health. The topic of mental health was narrowed to the intersection between the criminal justice and mental health treatment systems and more specifically, the local jail. Ms. Murdock reviewed the site visit project developed to help staff and the Study Group gain a better understanding of current practices related to mentally ill patients incarcerated in local jails. Senator Randleman asked if the Study Group had looked at issues related to incapacity to proceed, to which Ms. Murdock stated they had chosen not to focus on patients "in crisis" because the mental health issues in those situations were too acute to be well-served by criminal justice solutions.

After reviewing information gathered from the four site visits, Ms. Murdock explained that there were five common topics, summarized as Refined Observations (*see Handout*). She informed members that although the five were listed, only the first three have been reviewed by the Study Group. The first topic the Study Group examined was the process for the identification of the mental health population in jails. She noted that one method used by all of the areas staff visited was a mental health screener as part

of their booking process. Ms. Murdock stated that the screener's purpose is to help identify people with a potential mental health issue, and flag them for further review and action if needed. She reviewed other approaches to identifying the population, including reviewing jail logs and training detention officers to identify the population. She noted that despite efforts in place to identify the population, most interviewees reported that they did not feel their procedures captured the entire mental health population. There were a number of reported problems with identifying the population: no requirement the mental health population be tracked; limited access to mental health professionals; and limitations of the screener.

The next observation from the site visit project related to the presence of a dedicated position within the jail to focus on the mental health population. Ms. Murdock reviewed the different iterations of the dedicated position that staff had observed during their site visits, and how those iterations were reflected in their job duties and the variation between localities. The third observation focused on the continuity of care for offenders as they exit jail and return to the community. Ms. Murdock reviewed factors that could contribute to a gap in continuity of care including proper identification of the population, lack of enhanced resources, predictability of release, lack of discharge plan, connection to services post-release, and communication between affected entities. She noted that the Study Group discussed the various approaches to addressing a gap in continuity of care – forming advisory or work groups with stakeholders from different fields and focusing on Supplemental Security Income/Social Security Disability Outreach, Access and Recovery (SOAR) worker training. Ms. Murdock concluded by briefly reviewing the remaining observations the Study Group would discuss at its next meeting which included collaboration and the role of the Local Management Entity-Managed Care Organization (LME-MCO) while a client is incarcerated. Mr. Shannon asked if the larger police departments such as Mecklenburg were addressing issues related to mental health and jails. Ms. Murdock replied the LME that staff met with in Mecklenburg had only been in place for one year and did not appear to be working with the county police department.

OVERVIEW OF THE NORTH CAROLINA COMMISSION ON THE ADMINISTRATION OF LAW AND JUSTICE

Chairman Spainhour recognized Will Robinson, Executive Director of the North Carolina Commission on the Administration of Law and Justice (NCCALJ), to provide an overview of the NCCALJ Commission. Mr. Robinson began by noting that the court system was last reviewed over 20 years ago. In September 2015, Chief Justice Mark Martin established the NCCALJ Commission to perform a comprehensive evaluation of the state judicial system and make actionable, real-world recommendations for strengthening North Carolina's courts. The Commission's timeframe for studying court system issues and making recommendations is 16 months. The new Commission is comprised of 65 members and ex-officio members and has five subcommittees: Civil Justice, Technology, Criminal Investigation and Adjudication, Legal Professionalism, and Public Trust and Confidence (see Handout). The Commission anticipates its recommendations will be ready for the 2017 Legislative Session of the North Carolina General Assembly and is specifically targeting January and February 2017 for its final report. He noted there have been 25 meetings to date with 75 presenters from all over the country and from North Carolina, including multi-disciplinary and collaborative stakeholders such as the NCSA, the Bar Association, district court judges, and many others. Mr. Robinson then provided the upcoming committee and public hearings schedule.

Mr. Moore asked if structural changes to the judicial districts were possible, to which Mr. Robinson responded that the Chief Justice asked the Commission to work within the existing administrative framework. Mr. Robinson concluded noting that the attendance rate of 85-90%

participation at all meetings to date indicates the investment of members and stakeholders which has led to constructive conversations that are expected to result in many positive recommendations.

Chairman Spainhour informed the members that the JRA Subcommittee will meet on March 18; the DWI Subcommittee will meet on May 6; and the Commission will meet for its next meeting on June 17.

The meeting adjourned at 2:52 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary