

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

September 8, 2017

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 8, 2017, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Art Beeler, Lisa Costner, Senator Warren Daniel, Louise Davis, Judge Robert Ervin, Chris Fialko, Susan Katzenelson, Senator Floyd McKissick, Dr. Harvey McMurray, Representative Allen McNeill, Robert Montgomery, Luther Moore, Judge Fred Morrison, the Honorable Thomas Thompson, Jim Toms, and Judge Valerie Zachary.

Guests: Yolanda Woodhouse (AOC-Court Programs), Kristine Leggett (NCGA), John Poteat (NCGA), William Lassiter (DPS), Tracy Lee (DPS), Tim Moose (DPS), Gwen Norville (DPS), Joe Prater (DPS), Nicole Sullivan (DPS), David Jones (GCC), Ann Anderson (OSBM), Haley McCloud (OAH), Melinda Stevens (NCSA), Amanda Witwer (SPAC Intern), Rebecca Whitaker (private attorney).

Staff: Michelle Hall, John Madler, Ginny Hevener, Tamara Flinchum, Rebecca Dial, John King, Jennifer Wesoloski, and Shelley Kirk.

**INTRODUCTION AND RECOGNITION OF NEW AND OUTGOING
COMMISSIONERS**

Chairman Brown called the meeting to order at 10:00 a.m. He read a Resolution honoring outgoing Commissioner Judge Rick Elmore and called for a motion to adopt. Luther Moore moved to adopt the Resolution; the motion was seconded and carried. Judge Elmore expressed his appreciation for the Commissioners and staff and commended his replacement to them. Chairman Brown then called for a motion to adopt a Resolution honoring outgoing Commissioner Senator Shirley Randleman. Mr. Moore moved to adopt the Resolution; the motion was seconded and carried.

Art Beeler moved to adopt the minutes from the June 2, 2017, Sentencing Commission meeting. The motion was seconded and adopted.

Chairman Brown introduced two new Commissioners, Jim Toms, appointed by the Chairman, and Judge Valerie Zachary, appointed by the Chief Judge of the Court of Appeals. Finally he introduced Rebecca Dial, a new staff member.

Members and guests introduced themselves. Chairman Brown reviewed the agenda for the meeting. Michelle Hall briefly updated the members on the status of the appointments.

REVIEW AND DISCUSSION OF SPAC MANDATE

Chairman Brown recognized John Madler, staff, to provide a review of the Sentencing Commission mandate. Mr. Madler stated that the Sentencing Commission mandate is set out in Chapter 164 of the General Statutes. Staff reviews the mandate on a regular basis to guide the work of the Commission and Commissioners receive an overview of the mandate during their orientation; however, the Commission itself has not reviewed the mandate as a whole since 2000. He suggested that this would give the Commission the opportunity to review the specific tasks assigned to it as well as to consider its role in the criminal justice system.

Mr. Madler began the review by covering the development of the Sentencing Commission with its creation in 1990, its development of Structured Sentencing between 1990 and 1993, its being made permanent in 1997, and the expansion of its mandate in 1998 to include juvenile justice. He then discussed the structure of the Commission, including membership and appointing authorities.

Following the discussion of the structure of the Commission, Mr. Madler reviewed the Commission's primary mandate and its original duties. He explained that the Commission has a broad mandate to evaluate sentencing laws and policies in relationship to the state purposes and the availability of sentencing options. The Commission is authorized to make a report of its recommendations, including any recommended legislation, to the General Assembly annually. Mr. Madler stated that, originally, the General Assembly assigned five tasks to the Commission: classify criminal offenses, recommend sentencing structures, develop policy recommendations, recommend a comprehensive community corrections strategy, and develop a correctional population simulation model. Once the Commission completed those tasks and Structured Sentencing was enacted, the Commission turned to a list of continuing duties in its mandate. Those duties include reviewing proposed legislation for consistency with Structured Sentencing, collecting, developing, and maintaining statistical data, and conducting juvenile and adult recidivism studies. Mr. Madler reiterated that the mandate is broad and allows the Commission to study a number of issues; he gave examples of some of the studies and report the Commission has produced.

Regarding the Justice Reinvestment Act Implementation Evaluation Report, Mr. Beeler asked whether there was any indication that the General Assembly would reduce the frequency of the report since Justice Reinvestment has been the law for nearly seven years. Mr. Madler responded that there is no indication of that at this time. Michelle Hall stated that there are several legislative changes that have only recently gone into effect and, therefore, there is no data yet on their impact. Chairman Brown added that he agreed that the Act has been in place for some time but that perhaps the focus has moved from implementation to data. Mr. Beeler explained that he was just considering the workload for staff. Susan Katzenelson commented that she agreed that the changes will slow down and pointed out that the data should merge into Structured Sentencing data eventually.

Mr. Madler shared several observations from the staff on the unique features of the Sentencing Commission: it is a permanent body, nonpartisan, advisory in nature, a source for

information, and designed to bring multiple perspectives to bear on an issue. He concluded with some questions for the Commission to consider, including ways that staff can assist Commissioners in fulfilling the mandate.

Chairman Brown stated that he appreciated Mr. Beeler's concern about the workload on staff and that the presentation was not to convey the idea that staff was looking for more work, but that he wanted the Commission to keep in mind that its mandate is broad and that it has access to a great deal of data. The Commission has the opportunity to do important work and it should consider how far-reaching its impact can be.

LEGISLATIVE SESSION SUMMARY AND IMPACT

Chairman Brown recognized John Madler and Ginny Hevener, staff, to review the 2017 legislative session and its impact on the prison population (*see* Handout). Mr. Madler began by informing the members that the General Assembly had adjourned June 30, 2017, but had reconvened in August. Staff compiled the report on the criminal and juvenile justice bills that were ratified during the 2017 Session, including the subsequent session. Staff also created a table showing the new offenses, reclassified offenses, and punishment changes that occurred during the Session by offense class (*see* Handout). Staff thought this table would provide a better picture of the overall impact of the Session than looking at individual offenses in isolation. Mr. Madler then reviewed the changes in felony Classes A through E. He pointed out that, as is usually the case, there were very few changes in those classes and the changes primarily involved adding a new element to an existing offense.

Mr. Madler stated that there were two punishment changes and they applied to felony Classes D through I. Previously, criminal gang activity was punished by two offenses, participating in a pattern of criminal gang activity, a Class H felony, and participating in a pattern of criminal gang activity as an organizer or supervisor, a Class F felony. Pursuant to House Bill 138, those offenses were repealed and there would be instead a one-class enhancement for offenses committed by criminal gang members as a part of criminal gang activity and a two-class enhancement for offenses committed by criminal gang members as part of criminal gang activity where the offender acted as a leader or organizer; in either case the enhancement would not go beyond Class C.

Mr. Beeler asked whether the change enhanced the punishment for gang activity inside institutions because getting convictions for that behavior over the years has been difficult. Mr. Madler responded that the enhancement would apply to any offense, including assault on a correctional officer or on another inmate, if it was part of criminal gang activity.

Ms. Hevener informed the Commissioners that impact on the prison population occurs for Class A through E felony offenses with a single conviction due to the active sentence requirement in almost every cell and that convictions stack up over time due to the length of the sentences imposed. The impact from these bills will depend on the volume of convictions affected; however, it is not known how many convictions will occur as a result of the expansions in scope due to the new elements.

Turning to felony Classes F through I, Mr. Madler pointed out that there were more changes than in the higher classes but that they also primarily involved adding a new element to an existing offense; he reviewed some of the changes. Mr. Madler reiterated that the new gang enhancement would apply to Class F through I felonies as well.

Ms. Hevener noted that Class F through I felony offenses impact the prison population through the high volume of convictions. These offenses are less likely to receive an active sentence and have shorter sentence lengths; however, they can also affect the prison population through revocations of probation for a new crime or absconding. No historical data are available to estimate the impact of the new offenses created. Again, the impact will depend on the volume of convictions affected. The largest impact could come from revisions to the gang laws (nearly all felony convictions are in the potential pool of convictions for the new sentence enhancement); however, historically there have been very few convictions under the criminal street gang offenses.

For misdemeanor offenses, Mr. Madler reminded the members that Class A1 was originally established for assaultive misdemeanors but that the General Assembly had subsequently added some offenses related to the fishing industry; this Session they added the protection of private marine aquaculture rights. Ms. Hevener informed the members that legislative changes to misdemeanor offenses no longer impact the prison population because all misdemeanants serve any active sentences in the local jails directly or through the Statewide Misdemeanant Confinement Program.

Finally, Mr. Madler highlighted one bill related to juvenile justice, the Juvenile Justice Reinvestment Act in Senate Bill 257. He explained that this will raise the age of juvenile jurisdiction to include 16 and 17 year olds who commit non-traffic misdemeanors and Class H and I felonies. This Act includes a provision that requires the court to increase the disposition by one level if it finds that the offense was committed as part of criminal gang activity. The Act will take effect December 1, 2019, and applies to offenses committed on or after that date and it retains the current statute that requires a juvenile transferred to adult court to be prosecuted as an adult for subsequent offenses.

Ms. Hevener stated that the Juvenile Justice Reinvestment Act is the bill with the most significant impact from the legislative session. Any savings on the adult-side are expected to be minimal. The bill is expected to have a substantial impact on juvenile justice system resources, although the impact will be moderated by limitations on offenses eligible to remain in the juvenile justice system. With misdemeanors accounting for the majority of offenses for this age group, the impact will primarily be on community-based resources as opposed to Youth Development Center (YDC) resources. Ms. Hevener noted that staff are collaborating with the Division of Adult Correction and Juvenile Justice to estimate the impact of this change on the YDC population.

CORRECTIONAL POPULATION PROJECTION UPDATES

Chairman Brown recognized Ginny Hevener to provide an update on the long-term projections for correctional (i.e., prison) and delinquent (i.e., youth development center) populations (*see* Handout). Ms. Hevener stated that the projections are produced on an annual basis with the Department of Public Safety.

Ms. Hevener began with an update on the prison population, with a focus on the short-term and long-term accuracy of the projections. The current projection is on target in terms of short-term accuracy (i.e., the first projection year) – the average prison population for June 2017 was 36,448 compared to the projected population of 36,774 (within 1%). A conservative accuracy range of plus or minus 2% is used when assessing the accuracy of projections within the short-term. Looking at the projections historically, all but one of the past ten projections have been within the 2% accuracy range. The projection for FY 2010 over-projected by 4.5%, with the data representing the peak of felony convictions that preceded declines in criminal justice trends.

An examination of the long-term accuracy of the projections – focusing on all ten years of the individual projections – was also provided. An accuracy range of plus or minus 5% is used when examining the long-term accuracy of the projections. The FY 2004 to FY 2008 projections were all within the 5% accuracy range until the substantial policy changes, and corresponding declines in the prison population, went into effect with the JRA. The projections immediately preceding and initially following the JRA (FY 2009 to FY 2012) were accurate in the short-term, but were not accurate in the long-term, as intended with the policy changes. With the FY 2013 to FY 2017 projections, the trend with the data available to date is indicative of a return to the pattern of long-term accuracy across the ten-year projection period.

Chris Fialko asked for the current population in prison, in Confinement in Response to Violation (CRV), and in the Statewide Misdemeanant Confinement Program (SMCP). Ms. Hevener responded that the current prison population was just over 36,000; the CRV population as of July was around 475 with 355 in CRV Centers; and the current SMCP population was around 1,200.

Ms. Hevener then turned to the update on the YDC population projections. She noted that the YDC projection includes all adjudicated juveniles with a Level 3 disposition and that the current projection does not take into account any changes under the Juvenile Justice Reinvestment Act. Given the small population in YDCs (183 as of August 31) and that the numbers can fluctuate substantially over the course of the year, the accuracy of the juvenile projections is assessed by examining the projected population within the context of the lowest and highest YDC populations over the fiscal year. A projection is considered to be accurate if it is between those two numbers and, ideally, the projection should be closer to the highest population of the fiscal year.

In examining the projections since FY 2011, the projected YDC population was typically within the range of the lowest and highest YDC populations for any given fiscal year and, with the exception of FY 2016, was typically closest to the highest population. The projection for FY 2017 (249) was just outside the range (with the lowest population of 179 and the highest population of 247). For most years, the YDC population has been highest at the beginning of the fiscal year and lowest at the end of the fiscal year. FY 2016 was the exception (the population was highest at the end of the fiscal year), which factored into the higher projection for FY 2017. Chairman Brown asked what factors contributed to the change between FY 2016 and FY 2017. Ms. Hevener responded that the FY 2017 data that will be provided by DACJJ for the projections should offer insight into specific factors that contributed to the change.

Ms. Hevener stated that the 2018 projections would include the projected impact of raising the age of juvenile jurisdiction. Similar to the early prison population projections that estimated the impact of changes under the JRA, the initial YDC projections that take into account changes under the Juvenile Justice Reinvestment Act will be based on assumptions about how 16- to 17-year olds will be processed in the juvenile justice system until data on actual practices become available. Chairman Brown asked about the difficulty of accurately projecting this change. Ms. Hevener responded that it would be challenging but would be aided by collaboration with DACJJ. Art Beeler noted the difficulties faced by youth in YDCs, that many of them have mental health issues. Chairman Brown noted that while the population is small relative to the adult system, the cost is not insignificant or inexpensive. Billy Lassiter, DACJJ, responded that the per bed YDC cost was \$117,000 last year compared to \$28,000 per prison bed.

JUSTICE AND PUBLIC SAFETY AGENCY INITIATIVES – 2017-2019

Chairman Brown recognized Judge Marion Warren, the Director of the Administrative Office of the Courts, to present the Judicial Branch initiatives for the next two years. Judge Warren told the members that the Administrative Office of the Courts (AOC) and the Judicial Branch are in the process of implementing the recommendations of the North Carolina Commission on the Administration of Law and Justice. He reviewed changes to the AOC administrative structure and plans for technology improvement in the court system. Finally, he discussed implementing the change to the age of juvenile jurisdiction. He pointed out that some district court judges would begin diversion programs for 16 and 17 year olds prior to the effective date of the Juvenile Justice Reinvestment Act.

Chairman Brown recognized Nicole Sullivan, the Executive Officer with the Department of Public Safety – Division of Adult Correction and Juvenile Justice, to present the Division's initiatives for the next two years.

Due to a medical situation that arose at this point, Chairman Brown adjourned the meeting at 1:50 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary