

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
September 25, 2009

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 25, 2009, in the Board 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, Honorable Richard Elmore, Bill Hart, Secretary Linda Hayes, Larry Hines, Honorable Robert Johnson, Sheriff Shep Jones, Secretary Alvin Keller, Jr., Honorable Eleanor Kinnaird, Charles Mann, Honorable Floyd McKissick, Moe McKnight, Dr. Harvey McMurray, Honorable Fred Morrison, Chief Frank Palombo, and Jonathan Williams.

Guests: David Barlow (Fayetteville State University), Gwen Burrell (Governor's Crime Commission), Eddie Caldwell (NC Sheriffs' Association), Beth Froehling (NC Coalition Against Domestic Violence), Kathy Johnson (Sentencing Services), Megan Lambert (UNC School of Law Student), Jennie Lancaster (Department of Correction), Jamie Markham (UNC School of Government), Ronald Payne (Long, Parker, Warren & Jones Law Firm), Honorable John Smith (Administrative Office of the Courts), Mildred Spearman (Department of Correction), and Denise Thomas (North Carolina General Assembly, Fiscal Research Division).

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

INTRODUCTION

Judge Spainhour called the meeting to order at 10:00 a.m. After welcoming everyone and reviewing the agenda, Judge Spainhour asked those in attendance to introduce themselves. Judge Spainhour recognized the four departing Commissioners: Dr. David Barlow, Judge Ronald Payne, Senator John Snow (not in attendance), and Mildred Spearman. Resolutions were read for each departing Commissioner, motions to accept the resolutions were made, votes were cast, and all resolutions were adopted. New Commissioners were then introduced: Tom Bennett, representing the Victims' Assistance Network, Senator Floyd McKissick, representing the North Carolina Senate, Dr. Harvey McMurray, representing the Academic Community, and Sheriff Shep Jones, representing the North Carolina Sheriffs' Association. Secretary Linda Hayes moved to adopt the minutes from the June 12, 2009, Sentencing Commission meeting; the motion was seconded and carried.

REVIEW OF THE 2009 LEGISLATIVE SESSION

John Madler, David Lagos, and Ginny Hevener presented an overview of the 2009 Session of the General Assembly and the changes that would affect the Sentencing Commission's work.

Mr. Madler began by highlighting some of the felony provisions that created a new criminal offense, changed the elements of an existing offense, reclassified an existing offense, or changed a punishment. He pointed out Senate Bill 488, Establish Proportionate Sentence Lengths, and Senate Bill 489, Even Out Prior Criminal Record Points, and explained to the Commissioners that these were two of the "alternatives" the Commission had developed at the request of the General Assembly. Mr. Madler told the members that the majority of the twenty-eight felony provisions that passed were Class H and I felonies. He also told them that the Sentencing Commission, pursuant to its statutory duty, reviewed twenty of those provisions for consistency with structured sentencing. The Commission was not able to review eight of the provisions that passed either because they were added or amended after the last meeting of the Commission. Of the twenty provisions reviewed, twelve were found to be consistent and eight were found to be inconsistent. Mr. Madler added that the Commission recommended changes to five of the eight provisions that were found to be inconsistent, but the General Assembly did not make any of the recommended changes.

Mr. Madler also highlighted some of the misdemeanor provisions that created a new criminal offense, changed the elements of an existing offense, reclassified an existing offense, or changed a punishment. He told the members that the majority of the eighty-two misdemeanor provisions that passed were Class 1 misdemeanors. Mr. Madler also told them that the Sentencing Commission reviewed sixty of the misdemeanor provisions for consistency with structured sentencing. Forty-two of those provisions were found to be consistent and eighteen were found to be inconsistent. The Commission recommended changes to eleven of the eighteen provisions, but the General Assembly did not make any of the recommended changes. Senator Kinnaird asked if there was a mechanism in place to share the Commission's findings with the sponsor of each bill. Mr. Madler responded that the findings are shared with members of the Judiciary Committees, the Justice and Public Safety Appropriations Committee, General Assembly staff, and are posted on the Commission's website. Senator Kinnaird asked the staff consider methods for informing the individual sponsors.

Mr. Lagos continued the review with bills of interest to the Commission that were passed during the 2009 session. He briefly described House Bill 1329 and Senate Bill 262, which addressed several issues related to expunction of convictions, and Senate Bills 920, 1078, and 1089, which made a number of changes to probation. Mr. Lagos also brought attention to the Studies Act (S.L. 2009-574; HB 945) which authorizes the Department of Correction, in conjunction with the Sentencing Commission and other agencies, to study the comprehensive reform of the State's approach to community corrections. Other study topics included expanding the jurisdiction of the Department of Juvenile Justice and Delinquency Prevention to include 16- and 17-year-old offenders; reintegration into society of people with criminal records; and prison

overcrowding including the incarceration of nonviolent felons. Dr. Harvey McMurray asked if the Sentencing Commission has any input into these topics; especially to probation reform provisions. Mr. Madler explained that this was generally not in the Sentencing Commission's purview unless it was specifically asked to study a topic. Susan Katzenelson briefly discussed the staff's study on risk which may have some bearing on some of those study topics.

Ginny Hevener presented the impact of the ratified bills on the prison population. Sentencing Commission staff is responsible for preparing impact projections for each bill that affects criminal penalties or juvenile dispositions. There are two types of impact projections: 1) projections in which complete data are available for the proposed change and the computerized simulation model can be used and 2) projections in which there are no historical data and a threshold projection is provided based on offense class. During the long session, the staff prepared impact projections for 75 bills. While threshold projections were provided for the majority of the bills (61), the simulation model was used upwards of 15 times over the course of the legislative session.

With the ratified bills, Sentencing Commission staff calculations indicate that 18 new felony offenses and more than 40 new misdemeanor offenses were created. The breakdown of the new felony offenses is as follows: one Class F felony, six Class H felonies, and eight Class I felonies. With threshold estimates, it takes fewer convictions in the more serious offense classes and more convictions in the less serious offense classes to create the need for one additional prison bed. For Class F felonies, it takes two convictions; for Class H felonies, it takes three convictions; and for Class I felonies, it takes twelve convictions to result in the need for one additional prison bed in the first year. Unless large numbers are affected, misdemeanors typically do not have an impact on the prison population, but may have an impact on local jails.

The majority of ratified criminal penalties bills will not result in substantial impact on the prison system, although any new felony convictions will result in the need for additional prison beds given the projected prison bed shortages for each of the next 10 years. Ms. Hevener noted, however, that the passage of SB 488 (Establish Proportionate Sentence Lengths) and SB 489 (Even Out Prior Criminal Record Points) and the corresponding changes to the felony punishment chart were expected to have substantial impact on the prison population in the form of prison bed savings. Commissioners received a handout summarizing the impact of these two bills. Based on staff's projections using the computerized simulation model, SB 488 and SB 489 are projected to result in a savings of 244 beds in FY 2010/11, 759 beds in FY 2014/15, and 2,078 beds in FY 2019/20.

Commissioners also received handouts on the prison population projections and the youth development center population projections, including a comparison of the projected and actual populations for June 2009. The projected prison population for June 2009 was 40,944, while the average prison population was 41,318 – a difference of less than one percent. Ms. Hevener noted that the prison population is projected to be at nearly 50,000 by 2017/18, with a need for almost 7,500 prison beds. The passage of SB 488 and SB 489 will reduce, but not eliminate, this need.

The projected youth development center population for June 2009 was 447, while the

average population was 436 – a difference of two and one-half percent. Ms. Hevener noted that staff is in the process of preparing the annual prison and YDC population projections. The updated projections should be available January 2010.

Chief Palombo asked what the impact would be on the Prior Record Level change. Ms. Hevener answered that it would be noted in projections in the future. Senator Kinnaird commended the staff for passage of the alternative bills as staff testified before the Senate. Ms. Katzenelson explained that this is the biggest change since the Structured Sentencing Act was enacted. The assumption is made that no changes will be made to prosecutorial or judge behavior, but we will see how this plays out in the field in the future.

JUSTICE REINVESTMENT

Jennie Lancaster, Chief Operating Officer for the Department of Correction, described a new initiative to study North Carolina's Criminal Justice System: "Justice Reinvestment: A Framework for Reducing Spending on Corrections and Increasing Public Safety." Ms. Lancaster noted that in its first stage, the study provides information and recommendations – the final policy decisions regarding any changes are, as always, up to the state. This public policy initiative is sponsored by the Department of Justice and the Pew charitable foundation, and funding was requested by the Governor, Senate Pro Tempore, Speaker of the House, the Minority Leader, Chief Justice Parker, and Commission Chairman Judge Spainhour. Ms. Lancaster also stated that North Carolina should be highly considered for funding this project due to the reputation of the Sentencing and Policy Advisory Commission and the Research/Planning Division of the Department of Correction.

Representative Bordsen explained that there was a big push for this initiative due to a concern with high recidivism rates, and a need for better utilizing community corrections. Representative Bordsen also noted that the full Appropriations Committee gave bipartisan support to the notion by allowing time for a presentation by Michael Thompson, Director of the Justice Center and Representative Gerry Madden from Texas. She said that she would be very surprised if North Carolina does not receive funding for this initiative. Senator McKissick asked how much funding North Carolina could expect. Ms. Lancaster answered that \$100,000 was appropriated by the 2009 session of the General Assembly, to be supplemented by outside sources with up to \$1,000,000. If approved, Justice Reinvestment may produce some findings by the 2010 Short Session, but definitely by the 2011 Long Session.

Chief Palombo expressed the opinion that this group should meet with law enforcement. Secretary Linda Hayes noted that her Department looks forward to this venture and has heard good things about it from her Arizona counterpart. She also mentioned being a big supporter of the wonderful data provided by the Sentencing Commission and Department of Correction staff. Ms. Katzenelson thanked Secretary Hayes regarding her comment and further commented that this effort will bring together good information and good policy leaders.

COMMISSION STAFF WORK PLAN FOR FY 2009/10

Ms. Katzenelson reviewed the Commission staff workplan for FY 2009/10. She explained that much of the work listed is now mandated by the General Assembly. A motion was made to accept the workplan; it was seconded, and the motion carried.

AGENCY UPDATES

Department of Correction

Secretary Al Keller presented the update on the Department of Correction (DOC). He began with budget cuts which resulted in the closing of seven prisons, relocating 950 inmates and reassigning or letting go of more than 500 employees. To offset these budget cuts, DOC is converting some medium custody institutions to minimum custody, double-celling some medium custody institutions, and consolidating other facilities. A few expansion projects are ongoing, and there are plans for future expansion. Inmate labor is being used in prison construction projects, with as many as 800 inmates working on six facility additions.

Probation reform has begun and is moving in a positive direction. To deal with gangs and security issues in the prisons, policies have been put into place to increase ID and verification. All prisons are now tobacco-free. The North Carolina DOC has joined other states in the effort to promote Federal legislation to jam cell phone signals. In an effort to reduce recidivism, DOC is using evidence-based practices, and plans to work with the StreetSafe Task Force and Justice Reinvestment efforts.

Senator Bingham asked what problems cell phones had caused in the prisons. Secretary Keller explained that inmates could continue their criminal activities with the use of cell phones. Larry Hines asked if the tobacco-free policy applied to everyone. Secretary Keller answered that the policy included staff and visitors and that no smoking is allowed on the grounds at all. Senator McKissick inquired if the statistics predicted an increase in the female prison population and what impact it would have. Secretary Keller confirmed that the female population is up and will probably continue to increase. Most of the female crimes are tied to drugs, and DOC is creating new substance abuse services for female probationers. Chief Palombo asked how DOC was dealing with probationers who are not able to pay their fees. Is there a movement to reduce those fees? Secretary Keller answered no, but said that they are trying to help get employment for those offenders being released from prison. He noted that the State spends an average of \$27,000 per year to keep an inmate in prison.

Administrative Office of the Courts

Judge John Smith, Director of the Administrative Office of the Courts (AOC), presented an update on the AOC. Although budget cuts have affected the AOC along with all other state agencies, AOC managed to divert the loss of employees by raising fees in the court system.

AOC is in the process of implementing technology upgrades in the judicial system. Some of these include: eCitations, now handling over 70% of all citations in the state; eFiling – now being piloted in Chowan, Davidson and Wake Counties; ePay, a component of eFiling; DA Discovery and Case Management Systems; NCAWARE, a new statewide warrant repository; and Casenet, the new Wide Area Network (WAN).

Department of Juvenile Justice and Delinquency Prevention

Secretary Linda Hayes introduced Dr. Robin Jenkins, who presented the update on the Department of Juvenile Justice and Delinquency Prevention (DJJDP). Currently, 411 youth are committed either on campuses, camps, or through community programming; however, over 13,000 juveniles overall were supervised last year. Among programs lost because of the budget constraints are the Support Our Students, the Governor's One on One, the Center for the Prevention of School Violence, two Eckerd Wilderness Camps and one multipurpose group home. Through the American Recovery and Reinvestment Act of 2009, DJJDP has received federal funding for gang prevention and intervention programs, additional juvenile court counselors and supervisors, and vocational education programs in the Youth Development Centers.

Top priorities for DJJDP going forward include infrastructure stabilization and improvements, the expansion of community programs targeted at delinquency prevention, addressing the disproportionate minority contact in the juvenile system, and juvenile detention reform.

Dr. McMurray asked how the loss of funding would impact DJJDP's goals. Secretary Hayes answered that the loss of after school programs, mentoring programs, and school violence prevention programs could possibly increase juvenile crime, drop-outs, and juvenile pregnancies. She hoped that additional federal stimulus funds would be available to ameliorate the state's budget cuts.

Governor's Crime Commission

Gwendolyn Burrell, Executive Director of the Governor's Crime Commission (GCC), announced that the GCC will be able to fund twice as many programs as in the past year, as a result of federal stimulus funds. The GCC's criminal justice priorities for 2010 include law enforcement block grants, special emphasis law enforcement initiatives, statewide infrastructure and technology improvement, recidivism reduction initiatives, and VIPER System Compliant Radios. Juvenile justice priorities include providing services to address disproportionate minority contact, the prevention of delinquency through skills training and vocational programs, community-based intervention services for youth involved in gangs or substance abuse or in detention, and improved responses for child victims of maltreatment. The 2010 crime victims services priorities include programs and services targeted toward child abuse and neglect, violence against women, underserved crime victims, sexual assault, and domestic violence.

Currently the GCC is administering more than 550 grants totaling over \$155 million, impacting all 100 counties. Ms. Burrell expressed some concern that federal stimulus money will not be available next year, which might jeopardize recently-implemented programs that are still dependent on grant funding. Dr. McMurray asked if the GCC had considered eliminating the requirement that local governments provide matching funds to qualify for a grant. Ms. Burrell replied that such a policy would greatly reduce the number of programs that GCC could support.

Adjournment

Judge Spainhour noted that Jonathan Williams would be leaving the Sentencing Commission, having been appointed by the Governor to chair the ABC Commission. Members were reminded that the next meeting would be on December 11th at the Judicial Center. The meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant