Minutes
Juvenile Age Subcommittee Meeting
March 28, 2016

Present: Adams, Buck, Hall, Holcombe, Lassiter, Powell, Smith (Reporter), Woodall, Howes (standing in for Zogry); Kemp, McLaurin, Webb.

After Chair Webb opened the meeting and the minutes from the prior subcommittee meeting were approved, Michelle Hall, Executive Dir. of the North Carolina Sentencing and Policy Advisory Commission provided information regarding the data and assumptions underlying the Vera cost benefit analysis.

Hall began by noting that the Vera analysis was done on a proposal similar to that being considered by the Committee, except that the Committee's current recommendation includes common law robbery in the class of violent crimes subject to statutory exclusion. Hall reviewed the work of the Youth Accountability Task Force and the development of the Vera cost benefit analysis. This was a rigorous process involving a tremendous amount of data that looked at the flow of cases through the court system (juvenile and adult), from arrest onward, and captured all costs. She noted that a cost-benefit analysis differs from a fiscal note; a fiscal note does not include future benefits and savings. After reviewing the primary findings of the study, which are set forth in that report, she discussed some of the key assumptions underlying the study. Among other things these included: that the number of arrests each year would be the same as in year 1, with a small recidivism reduction over time; no change to the population of persons under 16 years of age; and that 16 and 17-year-olds moving into the system would be treated the same as those already in the system. An additional key assumption was a 10% reduction in recidivism as a result of the change. The cost-benefit analysis notes that reduction is conservative, and includes a sensitivity analysis, showing what the cost-benefit analysis would look like if there was a lower reduction in recidivism.

Chair Webb asked about the confidence level of this assumption. Hall noted that the workgroup looked at reductions in recidivism in jurisdictions that already had raised the juvenile age. The average figures were substantially greater than the conservative number used in the Vera study.

Hall discussed what may have changed since the Vera study was done. Importantly, crime rates have been trending downward and thus it stands to reason that we currently are dealing with a smaller cohort of 16 and 17-year-olds. This would reduce costs, as well as future benefits. She also noted that there now may be enhanced ways to calculate benefits. Also, the dramatic drop in the use of Youth Development Centers would reduce costs as well.

She concluded by noting that the Vera study calculates costs on an annual basis--the cost to the system of handling a cohort of 16 and 17-year-olds in a single year. Benefits are calculated over a 35-year period for that cohort. This takes into account lifetime earnings. The calculation is quite sophisticated, taking into account, for a single cohort, expected number of convictions, expected number of recidivists, expected number of individuals who would totally avoid a criminal conviction, expected number of individuals who would be employed, and how earnings would be increased, among other factors.

Next, Deputy Commissioner Lassiter presented the Department's Impact Analysis and Fiscal Note for House Bill 339, from September 2015. Overall, based on that particular proposal, the Department anticipated costs that were approximately $9 million less than those calculated in

the Vera analysis. He cautioned however that a new impact analysis would have to be done with respect to the specific proposal made by the Committee.

Lassiter also provided a March 22, 2016 memorandum regarding changes to the Department's "Risk Assessment." The memo reports that the Department has adjusted risk levels to more accurately reflect the risk of juvenile recidivism. The new risk levels are presented in the memorandum distributed at the meeting. This new policy goes into effect April 1st.

Buck noted that the fact that parents have drug issues or an inability to deal with the juvenile is an important factor in assessing risk and that law enforcement officers should be encouraged to share this information with the Juvenile Court Counselor, when it is known. Lassiter agreed that this is important information that should be provided, and often is when the Counselor speaks with an officer about a complaint. Buck noted that while law enforcement was asking for additional information from the Department, law enforcement has an obligation to do the reverse: provide more information to the Department.

Next, Reporter Smith reviewed resolution of other issues left open after the last Subcommittee meeting as follows:

1. *Law enforcement access to information about a juvenile's record to assist the officer in determining whether to, for example, release a juvenile to parents or seek a complaint.* Smith noted that this is addressed in contingencies 2 and 3 on page 2 of the revised draft report.
2. *Access to the juvenile record by the prosecution.* Smith noted that this is addressed in contingency 5 on page 2 of the revised draft report. Powell questioned whether the existing limitation on the prosecutor's ability to provide hard copies of the juvenile's record would be maintained. It was agreed that this limitation should be maintained with respect to the new access.
3. *Victim's lack of right to appeal a juvenile court counselor's decision to dismiss or divert a complaint.* Smith noted that this is addressed in contingency 4 on page 2 of the revised draft report. Lassiter confirmed that the Department already plans to pursue a bill to this effect in the short session.
4. *Concerns by law enforcement that Juvenile Court Counselors are not tracking all consultations by law enforcement.* Smith noted that this issue is addressed in contingency 3 on page 2 of the revised draft report. Lassiter noted the Department is already working on this issue. Specifically, starting May 1st, the Department will begin a pilot study involving a consultation log that would track: the juvenile's name; the reason for the consultation; what the officer wanted; what the Counselor recommended; and why and how it was different from what the officer requested. The Department will do this pilot study for 3 to 4 months to evaluate whether this information can and should be included in the NCJoin system.
5. *More information to the victim and complainant regarding the services provided in deferred cases.* Smith noted that this was addressed in contingency 3 on page 2 of the revised draft report. Lassiter reported that the Department is already at work on this issue, and distributed a revised decision letter to the Committee for review and comment. It was suggested that the Department should remove bureaucratic language such as "it was determined" and replace it with more informative information, such as "the Juvenile Court Counselor determined." Questions also were raised about the checkbox indicating that the juvenile has moved out of the county/district and whether this in fact could defeat a complaint. Lassiter indicated that this box should be removed. Chair Webb asked Subcommittee members to send any additional comments regarding the letter to Reporter Smith by April 8th.

6. *Education and resources for law enforcement officers about juvenile proceedings.* Smith noted that this issue was addressed in the training recommendation on page 3 of the revised draft report.

When no other problems were raised with respect to these issues, the Committee discussed the remaining open issue: How to deal with violent felonies. There was discussion both as to offenses that should fall within this category as well as the appropriate procedure (statutory exclusion versus prosecutorial discretion; as outlined in Smith's email to the Subcommittee prior to the meeting). With respect to the offenses that should fall within this category, Woodall noted that some prosecutors had asserted that common law robbery as well as assault by strangulation and assault inflicting serious bodily injury should be included. However, he favors, and he thinks the prosecutors would endorse, an approach that limited this category of offenses to Class A through E felonies. Holcombe emphasized that limiting the category of violent felonies to Class A through E felonies is consistent with treating this limited class of felonies as violent ones in other aspects of North Carolina law. He argued against including common law robbery in this category of offenses. Buck agreed that the relevant category should be Class A through E felonies.

Turning to the procedural issue, Smith noted that the issue was an important one but did not jeopardize a consensus on the proposal because even those who advocated for a judicial review procedure for these offenses would be willing to sign on to a report that employed the statutory exclusion method. Woodall made the case for the prosecutorial discretion option, arguing that the prosecutor knows the most about the cases and should have discretion to move them to Superior Court. He also emphasized the importance of reverse transfer for cases that develop in a way such that they need to be returned to the juvenile system. He noted that if we go to a statutory exclusion model, it will be hard to reverse transfer cases.

Holcombe spoke in favor of the statutory exclusion model, emphasizing the importance of presenting a proposal that will have as much support as possible. He asserted that it is very easy to explain the statutory exclusion model: You don't have to worry about truly violent kids because they will go straight to adult court. He noted that he personally didn't have an issue with prosecutorial discretion but expected it to draw significant opposition from the district court bench. This opposition, he argued, can be avoided with the statutory exclusion model. He also thought there might be objections from the defense bar to the prosecutorial discretion model, noting the concerns that recently had been raised about the district attorney's calendaring authority. With respect to reverse transfer, he suggested that the answer to handling a case that falls apart in Superior Court is that the prosecutor dismisses the charges and re-files in juvenile court. He also expressed concerns about a reverse transfer procedure, which is unknown in North Carolina.

Howes argued for transfer decisions to be made by the district court judge. She noted that including common law robbery in the "violent crimes" category will lead to a situation where a kid who pushes another kid at school and takes his cell phone could end up in Superior Court.

Reporter Smith noted that the prosecutors have repeatedly indicated that giving discretion to the district court judge with respect to violent crimes was a dealbreaker on the proposal. Woodall confirmed that.

Upon inquiry from Chair Webb, Buck indicated that he was worried that if we moved away from a statutory exclusion model, it would give those who oppose the proposal something to hang their hats on.

In the course of discussion it was noted that one problem with the statutory exclusion model is the issue of custody of juveniles charged with violent crimes after arrest. Many if not most jails are unable to provide the required sight and sound segregation for 16- and 17-year-olds charged with violent crimes.

Lassiter offered an alternative solution that might meet all interests: Having all cases against juveniles begin in juvenile court, with an automatic bind over for Class A through E felonies after the probable cause hearing. It was noted that this would take care of the custody issue for local law enforcement and jails; because the cases would originate in the juvenile system the Department of Juvenile Justice would be responsible for custody. Lassiter also noted that the Department would be willing to guarantee transportation of arrested juveniles to juvenile facilities; currently local law enforcement is responsible for this transportation. This change would have an additional significant benefit: It would bring North Carolina's jails in compliance with the federal Juvenile Justice Delinquency Prevention Act and would allow North Carolina to receive funds distributed under that act that are currently being lost because of jail noncompliance with the site and sound requirements. [Reporter's note: After the meeting Smith asked Lassiter to provide information on the funds currently being lost because of noncompliance; capturing these funds would mitigate costs.]

Smith offered a slight variation on this approach, to meet a previously articulated interest by the prosecutors to avoid requiring fragile victims to testify at probable cause hearings shortly after the incident in question: Having all cases against juveniles begin in juvenile court, with an automatic bind over for Class A through E felonies after the probable cause hearing *or by indictment*.

Significant discussion ensued about this new alternative proposal, which seemed a good compromise in that it (1) ensures that violent felonies will automatically go to Superior Court and (2) alleviates the custody issue for law enforcement.

Judge Morey noted that she prefers transfer after approval by the district court judge but that the new alternative proposal was a good compromise. She noted that another advantage of the alternative proposal was that it maintained confidentiality.

James Williams echoed Judge Morey's comments, noting that it was important to have a consensus because we may not have another opportunity to move forward on this issue.

Powell emphasized that the new alternative proposal was the only option that allows 16- and 17-year-olds to be treated as juveniles until a determination has been made that the charge is proper. They will be detained in a juvenile facility and get all of the protections and services that other juveniles in the juvenile justice system receive. In this respect she noted a recent Court of Appeals case where the juvenile was wrongly charged as an adult when he was in fact 15 years old; she noted that a dissenting opinion in that case noted all the negative consequences that attach to treating a juvenile as an adult. She noted that the new alternative proposal seems to alleviate all of the concerns that have been raised.

Chair Webb emphasized the need for a position that was supported by the majority of stakeholders.

Kemp mentioned that a Bar Association task force was being formed that could take over work on this issue once the Committee disbanded. Members urged caution with respect to the work

of that task force, specifically urging that its work be limited to supporting the Committee's recommendation and urging that it not put forth proposals that at odds in with the carefully crafted Committee report, which hopefully will receive unanimous support.