MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING

December 2, 2016

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 2, 2016, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, Art Beeler, Honorable Charlie Brown, Lisa Costner, Honorable Warren Daniel, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Honorable John Faircloth, Christopher Fialko, David Guice, Honorable Maureen Krueger, Ilona Kusa, Robert Montgomery, Luther Moore, Honorable Fred Morrison, Honorable Shirley Randleman, Honorable June Ray, and Billy Sanders.

Guests: Yolanda Woodhouse (NCAOC), Jennifer Bedford (NCGA), Nicole DuPre (NCGA), John Poteat (NCGA), Mark White (NCGA), Bly Hall (NCGSC), Ms. Lynn Jones (DHHS), Eddie Caldwell (NCSA), Garry Fife (NCSA), Jamie Markham (UNCSOG), and Susan Pollitt (Disability Rights NC).

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

INTRODUCTION

Chairman Spainhour called the meeting to order at 10:00 a.m. He informed the members of Commissioner Keith Shannon's retirement from the Commission and read a Resolution recognizing his service. Representative John Faircloth moved to adopt the Resolution; the motion was seconded and carried. Chairman Spainhour reviewed the agenda for the meeting.

Art Beeler moved to adopt the minutes from the September 9, 2016, meeting. The motion was seconded and carried. Chairman Spainhour asked that the Commission members, staff, and visitors introduce themselves.

DWI SUBCOMMITTEE UPDATE

Chairman Spainhour recognized Sara Perdue and Ginny Hevener, staff, to present an update on the DWI Subcommittee (*see* Handout). Ms. Perdue gave the members a brief refresher on the history of the Subcommittee, beginning with the original request from Commissioner David Guice and the Secretary of Department of Public Safety (DPS). She stated the members that the Subcommittee met originally to address DWI sentence credit policies. At that meeting, the members engaged in a robust discussion and ultimately determined that they had a number of concerns regarding DWI laws and sentencing policies and practices that went well beyond their mandate.

At the June Commission meeting, the Commission expanded the mandate of the Subcommittee in response to a letter from Senator Randleman and Representatives Hurley and Boles. That letter asked the Commission to study the state's sentencing and correctional policies and practices for impaired driving offenses. Specifically, the letter asked that the Commission consider the availability of treatment and programming, the awarding of sentence credits, and the amount of time offenders actually serve. Finally, the Commission was asked to provide the requesters with any changes it might recommend as well as the projected impact of those changes. The Subcommittee met on October 21, 2016 to begin addressing its new, expanded, mandate.

At the October meeting, John Madler presented a history of DWI laws to the members. Before the passage of the Safe Roads Act in 1983, North Carolina had three driving under the influence offenses: DUI, DUI with a BAC of .10 or more, and reckless driving after consuming alcohol. The biggest issue at the time was that impaired drivers were receiving plea bargains and dismissals. The Safe Roads Act of 1983 combined the DUI offenses and eliminated the lesser offense of reckless driving after drinking, provided for mandatory jail terms for serious cases and strict guidelines for less serious cases, and mirrored the good time/gain time policies of the Fair Sentencing Act. DWI laws have remained largely unchanged since 1983, with a few legislative changes and some other subsequent changes via Governors' Task Forces. By 1990, the General Assembly had created the Sentencing Commission and asked it, among other things, to consider including DWI laws in Structured Sentencing. At the time, the Sentencing Commission recommended that study of DWI laws be assigned as a future task to the Sentencing Commission or to another body as designated by the General Assembly because of the complexity and importance of the DWI issue and because of time constraints on the Commission.

Also at the October meeting, Jamie Markham presented an overview of the current DWI sentencing laws; Ms. Perdue presented a brief review of that presentation for the Commission. DWI offenses are sentenced pursuant to G.S. 20-179 and are thusly not under Structured Sentencing. DWI offenders are sentenced to one of six punishment levels, based on the presence of grossly aggravating factors, aggravating and mitigating factors. Judges determine the presence of the factors at sentencing; if any grossly aggravating factors exist, the offender will be punished in Aggravated Level One, Level One or Level Two, depending on the number. If no grossly aggravating factors exist, the judge weighs the aggravating and mitigating factors to determine whether the offender should be sentenced in Level Three (aggravating outweighs mitigating), Four (aggravating and mitigating are equal or nonexistent), or Five (mitigating outweigh aggravating). Offenders sentenced in Levels One through Five are eligible for sentence credits and parole such that a Level One offender sentenced to 24 months will serve his full sentence at 12 months after the automatic application of day-for-day Good Time credit, and will be parole eligible after 30 days. Aggravated Level One offenders are not eligible for sentence credits or parole; such an offender serves his maximum sentence less four months of Post Release Supervision. Effective January 1, 2015, all DWI offenders serve their sentence in the Statewide Misdemeanant Confinement Program.

Ginny Hevener then gave the members an abbreviated version of her October presentation on DWI Sentencing and Correctional Data. In order to examine sentencing practices for DWI convictions, staff requested data from the Administrative Office of the Courts and DPS.

In FY 2015, there were 34,278 DWI convictions. The majority of convictions were for Level 5 DWIs (58%). Aggravated Level 1 accounted for the smallest number of convictions (2%). In terms of punishment imposed, 7% of convictions resulted in an active sentence, 33% resulted in supervised probation, and 60% resulted in unsupervised probation. With the exception of Level 2, a stair-step decrease in active sentences was found from Aggravated Level 1 to Level 5. Supervised probation was most frequently imposed for Level 1 and Level 2 DWIs, while unsupervised probation was most frequently imposed for Level 4 and Level 5.

As expected, sentence length for active sentences and for probation sentences were longest for Aggravated Level 1 and shortest for Level 5. For each DWI punishment level, the average minimum sentences imposed for suspended sentences were longer than those imposed for active sentences.

Probation sentences for DWIs have certain requirements (e.g, special probation, Continuous Alcohol Monitoring, community service) that vary by DWI punishment level. The data indicate varying compliance with these requirements. However, it is not clear whether this is due to actual practices or due to how these data were captured in FY 2015 as AOC was transitioning from ACIS to CCIS-CC for its automated database.

Judge Ervin asked about the volume of habitual DWI convictions. Ms. Hevener responded that there were 254 in FY 2015. In response to a question by Chris Fialko, Ms. Hevener clarified that split sentences are counted as probationary sentences and are not included in the rate of active punishments imposed. Art Beeler questioned why the data indicate that substance abuse assessments are not ordered 100% of the time when it is a mandatory requirement. Ms. Hevener stated that it is not required to enter a value in that field so it may be related to data entry. Judge Ervin added that the defendant may have received a substance abuse assessment in advance of going to court. Maureen Krueger further stated that a substance abuse assessment is required for getting a limited driving privilege.

Ms. Hevener also reviewed FY 2015 data on 1,619 DWI exits either from prison or the Statewide Misdemeanant Confinement Program (SMCP). The majority entered prison as a result of a revocation, ranging from 61% to 84% for Level 1 through Level 5 DWIs. Aggravated Level 1 DWI exits were the exception with 85% having entered prison or the SMCP following an active sentence at initial judgment. Most DWIs exited prison at the expiration of their sentence (82%). Aggravated Level 1 was again the exception with 63% exiting onto post-release supervision. On average, Aggravated Level 1 DWI exits, which are not eligible for good time, served 84% of their maximum term imposed. Level 1 through Level 5 DWI exits, which are eligible for day-for-day good time, served an average of 50% (or lower) of their maximum term imposed.

Ms. Perdue then gave the members an overview of the Subcommittee's October 21 discussion. Members were asked to share what concerned them about the current impaired driving sentencing structure or correctional policies in North Carolina. After all the members had an opportunity to share all of their concerns, the members voted on their top five concerns as a group. Those were: availability/adequacy of treatment, swift resolution, sentence structure and administration, complexity of DWI laws, and no access to existing tools (treatment & beyond). The Subcommittee will use these concerns to guide their work. At the next meeting of the DWI

Subcommittee, the members will review information on what other states are doing with DWI offenses and will refine their concerns and explore options for addressing them.

Mr. Beeler asked for some clarification on whether DWI offenders on probation are getting quick dips before revocation; Commissioner Guice responded that they are not, and that delegated authority is not a tool available for DWI probationers. Chairman Spainhour responded that the court may order a split sentence, and Commissioner Guice responded that the tools for a quick response to offender behavior are still not available. Mr. Beeler then commented that although he is a firm believer in treatment over punishment, he thinks that treatment in jails must necessarily be different because of space limitations.

JUVENILE DISPOSITION DATE

Chairman Spainhour recognized Jennifer Wesoloski, staff, to present the Quick Facts: Juvenile Disposition Data (*see* Handout). Ms. Wesoloski explained that the front of the handout provided information on offense classification, offense type, juvenile characteristics, delinquency history level, dispositions imposed, and adjudicated offenses for the 4,614 juveniles adjudicated delinquent in FY 2016.

The majority of juveniles (72%) were adjudicated delinquent for a minor offense (Class 1-3 misdemeanor), 71% had a low delinquency history level, and 61% had a Level 1 disposition. Three-fourths of dispositions were for either a property or person offense (39% and 36% respectively). The majority of juveniles were male (79%); 52% were Black and 34% were White. The average age at disposition was 14. Of the 4,481 juveniles receiving a Level 1 or Level 2 disposition, 60% received 12 months of probation. Of the top five adjudicated offenses, 4 were for minor offenses.

The back of the handout provided ten-year trend data for delinquent dispositions, offense classification, dispositions imposed, and Level 3 dispositions imposed. Over the past ten years, the number of delinquent dispositions decreased 42%, with an 8% decrease noted from FY 2015 to FY 2016. The distribution of dispositions by offense classification remained remarkably stable, with minor and serious offenses accounting for 97% to 98% of dispositions and violent offenses accounting for 2% to 3% of dispositions over the ten-year period.

Overall, the distribution of dispositions imposed (e.g., Level 1, Level 2, Level 3) also remained stable during the ten-year period. Shifts in Level 1 and Level 2 dispositions from FY 2008 to FY 2009 are most likely attributed to a methodological change in the way juvenile dispositions were captured. Historically, Level 3 dispositions account for a very small number of overall dispositions. Level 3 dispositions decreased from 256 in FY 2007 to 133 in FY 2016, with an increase noted from FY 2015 to FY 2016.

Chairman Spainhour asked what accounted for the decrease in juvenile dispositions from FY 2007 to FY 2016. Ms. Wesoloski responded that an overall decrease in juvenile crime trends resulted in fewer dispositions. Louise Davis added that in the Wake County Teen Court, more juveniles were being diverted. Commissioner Guice agreed, stating more juveniles were being diverted and that DPS's Division of Adult Correction and Juvenile Justice (DACJJ) was working

with families to keep juveniles out of the criminal justice system. Mr. Beeler added that the decrease in juvenile dispositions could also be attributed to a change in the risk analysis tool, with a renewed focus on juveniles designated as medium and high risk. Mr. Beeler also mentioned that Juvenile Crime Prevention Councils (JCPC) funding has remained the same during this time period, adding that wrap-around programming for juveniles is costly.

YOUTH DEVELOPMENT CENTER POPULATION PROJECTIONS

Ms. Wesoloski also presented the Youth Development Center (YDC) Population Projections for Fiscal Year 2017 to Fiscal Year 2021 (*see* Handout), which are prepared annually in conjunction with DPS's DACJJ. Resource needs are projected by accounting for the decline in the stock population (juveniles committed to a YDC as of June, 30, 2016) and the build-up of the new YDC population (new YDC commitments that occur through the imposition of a Level 3 disposition or as a result of revocations of probation or post-release supervision).

Using a computerized simulation model, resource needs are expected to increase over the period with a projected need for 249 YDC beds by June 2017 and 266 YDC beds by June 2021. The YDC population at the beginning of the projection period was 251. A comparison of the projections with YDC capacity indicates that the projected YDC population will be above available YDC capacity for all five years of the projection period.

Ms. Wesoloski summarized the assumptions used to develop the projections, including trend data (i.e., growth rates based on criminal justice trends, delinquent complaint trends, and population trends) and empirical data from the previous fiscal year (e.g., the percentage of juveniles receiving a Level 3 disposition, the average YDC length of stay (LOS), and the percentage of juveniles entering YDC by admission type). The projections do not account for potential shifts in policy and/or changes in court practices.

Ms. Wesoloski reviewed data on the 4,614 juveniles with a delinquent disposition in FY 2016, including their offense classification, delinquency history level, and disposition level. The majority of juveniles had a minor offense classification (72%), 71% had a low delinquency history level, and 61% had a Level 1 disposition. As delinquency history level or offense classification increased in seriousness, the likelihood of the imposition of a Level 3 disposition increased.

A review of YDC population trends from FY 2011 to FY 2015 indicate overall decreases in the number of YDC admissions and exits, although the average number of entries per month outweighed the average number of exits per month in FY 2015. The overall LOS from FY 2011 to FY 2015 remained remarkably stable with small shifts occurring by offense classification from year-to-year. The YDC population has decreased 50% over the past ten years, but has leveled off over the last four years.

RESEARCH AND POLICY STUDY GROUP: UPDATE AND REVIEW OF MENTAL HEALTH PUBLICATION

Chairman Spainhour recognized Rebecca Murdock, staff, for her update from the Research and Policy Study Group. Ms. Murdock began with an update on the policy proposals the Commission voted on at their June 2016 meeting. Staff is working with the North Carolina

Sheriffs' Association (NCSA) on the policy proposals related to jail logs and screenings as to how the proposals could best be disseminated to the members and how they may be implemented. Another proposal presented to the Commission in June was to create a publication that compiled the observations from the site visits staff conducted and accompanying best-practices research. Ms. Murdock stated that the publication, the *Study of the Intersection of Mental Health and Jails: Select Practice from Across the State*, was completed and was ready for the Commission's review.

Ms. Murdock began the review of the publication by stating the purpose of the publication is to share information about practices implemented in the areas visited, with the goal that the publication could be used to facilitate discussion for stakeholders considering how to best enhance or augment their own practices. The publication is structured by the three main topics of the observations collected through the site visit project: identification of the mentally ill population in local jails, having a dedicated point of contact for this population, and their continuity of care. Within each topic, the publication highlights the different methods used across the counties, the benefits of the included methods, the challenges arising with each method and approaches for addressing those methods, if there were any such methods. Each topic concludes with questions for local jurisdictions to consider, aimed at helping areas facilitate discussion about the information presented in the preceding section. In that vein, the publication includes a section in the beginning focused on helping areas that are preparing to study the jail and mental health intersection with some "set up questions" that are overarching to all the topics included.

For each topic, Ms. Murdock addressed why the topic was an important area of focus and then reviewed the Quick Reference chart included at the end of that particular section, which summarized the methods used, their benefits, and the challenges and approaches (*see* Handout). For the first topic, Ms. Murdock reported that identifying the mentally ill population in custody was important to the stakeholders interviewed because it protects the safety of officers and the safety of the inmates. Additionally, it allows for a tailored response to the inmates' specific needs and the most efficient use of resources when there is an understanding of the scope of the mentally ill population for an area's specific location, e.g. the distribution of diagnoses and inmates connection to services in the community upon entry. Knowing how many mentally ill are in a local jail as well as their particular needs helps areas anticipate their future resource needs, which can help when assessing funding capacity.

After reviewing the content in the Quick Reference: Identification chart (*see* Handout), the Commission reviewed the practice of having a dedicated point of contact. Ms. Murdock stated that areas that were using a dedicated point of contact saw the benefits of having a specific resource for inmates with mental illness. Having a dedicated point of contact created a tangible contact for officers to refer inmate issues to, where officers could rely on that person's expertise. Additionally, a dedicated point of contact is in a position to facilitate the provision of care for the inmate when they return to the community. Areas visited during the study had various structures of the position, which Ms. Murdock reviewed via the Quick Reference Chart (*see* Handout).

Lastly, the Commission reviewed the third topic, continuity of care, which Ms. Murdock explained is maintaining a consistent level of care as inmates transition into and out of the jail. Some of the practices addressed in the first two topics also applied to establishing care while

inmates transition into the facility, so this third topic focused more on connecting the inmate to care in the community upon release. Areas visited had three different types of positions used to connect the inmates to services in the community upon release; some areas were utilizing more than one type of position. Ms. Murdock reviewed each of the positions, their accompanying benefits, and then the challenges areas were facing while trying to connect inmates into services upon release. Ms. Murdock then informed the Commission that to wrap up the work of the Study Group as to the mental health topic, staff was working to disseminate the publication to those interviewed and to interested parties and would remain a resource for areas undertaking similar efforts. Additionally, staff would continue conversations with the NCSA regarding the aforementioned policy proposals and continue to follow state and national trends regarding these issues, supporting the research when appropriate.

Commissioner Guice commented on the benefits of Crisis Intervention Training (CIT) and the efforts areas were undertaking nationally. He encouraged Commissioners to learn about the program Judge Liefman is working on in Miami-Dade FL, stating that the diversion program boasts a recidivism rate at only 6% for its participants.

Judge Ervin inquired of Commissioner Guice if there was a way DPS could search for inmates who may have had a competency evaluation in the past. Commissioner Guice responded that while they were not able to do just that, the work the Department has been doing with Pre-Sentencing Investigations and Judge Baddour in Orange and Chatham County addresses some similar ideas. The Commissioners discussed the complications HIPPA laws have created for sharing information related to offenders' mental health and medical history. Mr. Beeler stated that HIPPA laws were never intended to apply to the criminal justice system and even though there is an exemption for correctional law enforcement officers, it is rarely used and not well known. Judge Ervin stated that in his court, if a defendant does not show up for his court date and there is an indication he might be in the hospital, the judge cannot get confirmation of his admission because of HIPPA. Chairman Spainhour asked Judge Ervin if that was the case even with a court order; Mr. Beeler responded that while a judge may be able to get it in those circumstances, a law enforcement officer still could not. Representative Faircloth discussed the importance of information sharing with law enforcement to help keep them safe, and how that can be incorporated into officer training. Commissioner Guice echoed these sentiments, pointing again to the importance of CIT training in preparing officers for the unknown. The discussion reflected the recent officer involved shooting in Charlotte, and how training may have played a part in that. Commissioner Guice urged the legislative members to consider investments up front for training of officers to keep them safe, otherwise, they will pay much more later on.

Ms. Murdock then provided an update to the Commission on the Study Group's new topic, collateral consequences. Collateral consequences are not sanctions ordered as part of the sentence, but instead are civil penalties that arise as a result of conviction, e.g. limitations on the right to vote or professional licensure. Mr. Beeler requested at the September Commission meeting that the Commission look at the impact of collateral consequences and the Commission referred the topic to the Research and Policy Study Group because of their focus on exploring criminal justice trends that could lend themselves to policy recommendations with the ultimate goal of reducing

recidivism. Judge Ervin asked Ms. Murdock if staff had consulted with John Rubin at the School of Government, to which Ms. Murdock replied that he presented at the November 4th meeting of the Study Group. Professor Rubin provided an overview of collateral consequences using the tool he helped develop, the Collateral Consequences Assessment Tool, known as C-CAT. The tool captures state law consequences, organized by category of consequences, e.g. civil, employment, etc., and specifies whether the consequences are mandatory or discretionary. The Study Group discussed the different categories of consequences and selected employment and professional licensure, education rights, housing, and public benefits as their areas of focus, prioritizing employment. Chairman Spainhour asked Ms. Murdock to elaborate on what she meant by "education rights." Ms. Murdock responded with some examples, such as federal funding for loans and scholarships for college. Mr. Beeler added that misdemeanant and felony drug offenders cannot get funding, loans, scholarships, or grants. Ms. Murdock mentioned that the Study Group discussed possible complications from the interplay with federal benefits and regulations, and that the Study Group wanted to make sure to avoid such issues. Michelle Hall, staff, added that the Research and Policy Study Group is a volunteer group, and any members that wished to join the Study Group to work on the issue of collateral consequences were more than welcome.

JUSTICE REINVESTMENT IMPLEMENATION REPORT SUBCOMMITTEE UPDATE

Chairman Spainhour recognized Judge Charlie Brown, Chair of the Justice Reinvestment Implementation Report Subcommittee, to provide an update on the Subcommittee. Judge Brown began by informing the members that the Subcommittee met on November 18, 2016, to hear presentations from the stakeholders. He listed the presenters from that meeting. Turning to the highlights from each presentation, he reiterated the need the members discussed earlier for data on DWI offenders and the difficulty in collecting that data, especially for those on unsupervised probation. He then referenced some of the information the presenters provided regarding probation, prisons, and jails. Staff will assemble the information provided, collect and analyze the date, and provide a draft of the report to the members of the Subcommittee. The members will meet in March to provide feedback and staff will submit the final report by April 15, 2017.

Chris Fialko mentioned that the Mecklenburg County Jail was trying video visitation for inmates. From what he heard, the inmates did not appreciate it, they missed face-to-face contact with family members. Art Beeler stated that the literature on video visitation came down on both sides, jailers liked the convenience but inmates did not like the lack of interaction. Commissioner Guice explained that states were experimenting with different things, such as video visitation and email access, in addition to in-person visits. The issue was how to incentivize inmate behavior to produce positive outcomes.

Chairman Spainhour asked how many other states were involved in the Justice Reinvestment Initiative. Commissioner Guice responded that most states were moving in the direction of some sort of criminal justice reform, some were ahead of North Carolina and some were behind. He referred to the Council of State Governments website for a complete list. Commissioner Guice emphasized that North Carolina would not be able to do many of the things it was doing without the savings it had realized from the Justice Reinvestment Act.

REQUESTS TO REVIEW PROPOSED LEGISLATION

Chairman Spainhour recognized John Madler, staff, to present two requests for the Sentencing Commission to review proposed legislation. Mr. Madler explained that in the previous two weeks, two different organizations concluded studies and developed draft legislation. Each of the organizations contacted staff and asked if the Sentencing Commission could review the proposed offense and punishment changes prior to the beginning of the 2017 legislative session. Mr. Madler then reviewed the Sentencing Commission's statutory mandate to review proposed legislation and the felony and misdemeanor Offense Classification Criteria (*see* Handout).

The first request was from the Joint Legislative Oversight Committee on Justice & Public Safety's (Oversight Committee) Subcommittee on Gang Laws and asked the Commission to review proposed changes to the Criminal Street Gang Act (Article 13A of Chapter 14 of the General Statutes). Mr. Madler began by reviewing the history of the Act. He informed the members that in 2016, the Oversight Committee heard presentations from various groups proposing revisions to those gang laws. The Oversight Committee formed a subcommittee to study the issue and that subcommittee produced draft legislation that would establish new definitions, create a sentencing enhancement, and increase the penalties for certain offenses. The subcommittee asked the Sentencing Commission to review the proposed changes and provide its findings prior to the December 15 meeting of the Oversight Committee. The Sentencing Commission made the following findings (*see* Handout):

Draft Bill – Revise Gang Laws [v. 10]
G.S. 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.
Subsection (a):

Judge Ervin moved to find the provision inconsistent with G.S. 164-41. The motion was seconded and carried.

Chris Fialko pointed out that the enhancement would not always work as intended. There is an aggravating factor that applies to offenses committed for the benefit of, or at the direction of, any criminal street gang (G.S. 15A-1340.16((d)(2a)). If that factor is found, the judge may sentence from the aggravated range in the offense class for the offense of conviction. If the court used the proposed sentence enhancement to increase the offense, it is not clear that the aggravating factor would be available and, absent any other aggravating factors, the judge would sentence from the presumptive range one offense class higher. Mr. Fialko indicated that in some areas of the felony punishment chart, the longest minimum sentence in the aggravated range is longer than the longest minimum sentence in the presumptive range in the class above it (e.g., Class D, Prior Record Level II, has a minimum sentence of 92 months in the aggravated range while Class C, Prior Record Level II, has a minimum sentence of 83 months in the presumptive range). Mr. Fialko asked that this be pointed out to the bill sponsor and the Commission agreed.

G.S. 15A-1340.16E. Enhanced sentence for offenses committed by criminal gang members as a part of criminal gang activity.
Subsection (b):

Judge Elmore moved to find the provision inconsistent with G.S. 164-41. The motion was seconded and carried.

G.S. 14-50.19. Threats to deter from gang withdrawal.

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

G.S. 14-50.20. Threats of punishment or retaliation.

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

The second request was from the North Carolina General Statutes Commission and asked the Commission to review proposed changes to the Uniform Athlete Agents Act in North Carolina (Article 9 of Chapter 78C of the General Statutes). Mr. Madler began by reviewing the history of the Act. He informed the members that in 2015 the Uniform Laws Commission proposed several revisions to the model act. In 2016, the North Carolina General Statutes Commission reviewed those proposed revisions for possible introduction in North Carolina. The General Statutes Commission asked the Sentencing Commission to review the proposed offenses and provide assistance in determining the appropriate classifications. The Sentencing Commission made the following findings (*see* Handout):

Draft Bill – Revise Uniform Athlete Agents Act
G.S. 78C-98. Prohibited conduct.
Subsection (a):

Mr. Madler reviewed the provision and explained that it would be a Class I felony pursuant to current statutes but that the General Statutes Commission asked whether it would be appropriate to increase the offense class to a Class H felony or higher; he reviewed the classes for similar offenses. Mr. Madler also related the General Statutes Commission's concern that broader collateral consequences could make the offense more serious. The Commission pointed to the impact on the educational institution in terms of sanctions, expenses in handling the matter, loss of concessions and ticket sales, loss of reputation, on innocent student athletes who are affected by the sanctions, and on people whose business depends in whole or in part on the games.

The members of the Commission reviewed the Offense Classification Criteria and discussed the significance of the harm that results from the conduct. Judge Elmore moved to find the provision consistent with the Offense Classification Criteria for a Class H felony. Judge Ervin offered an amendment to the motion to provide that it would be consistent with the Offense Classification Criteria for a Class H felony if the societal harm from the conduct was deemed to be significant; he felt that the Commission was not in a position to determine the significance of the harm. Judge Elmore accepted the amendment. The motion was seconded and carried.

The General Statutes Commission also asked whether it would be appropriate to provide for a Class C felony offense if a violation of subsection (a) resulted in $100,000 or more in losses or injuries or other damages. Mr. Madler reviewed the classes of similar offenses and some additional considerations. The General Statutes Commission stated that this offense could be similar to the Securities Act (Chapter 78A of the General Statutes) and the Commodities Act (Chapter 78D of the General Statutes), which have Class C felony offenses if the losses caused are $100,000 or more, because it could result in broader collateral damage. Chairman Spainhour recognized Bly Hall, staff to the General Statutes Commission. Ms. Hall reiterated the Commission's concern over the impact on the educational institution in terms of sanctions, expenses in handling the matter, loss of concessions and ticket sales, loss of reputation, on innocent student athletes who are affected by the sanctions, and on people whose business depends in whole or in part on the games.

Sentencing Commission members discussed whether the court could actually estimate the value of damages like those mentioned and, even if it could, whether those collateral damages would fit within the scope of those types of Class C felony offenses. Judge Ervin pointed to restitution principles that limit restitution to the victim of the offense and define "victim" as a person directly and proximately harmed as a result of the defendant's commission of the criminal offense (G.S. 15A-1340.34(a)). Following those principles, the court would consider the student athlete to be the victim in the proposed offense; however, he expressed concern that including damages to the educational institution would broaden the scope of the offense beyond its normal application. Luther Moore moved to find the provision inconsistent with a Class C felony. The motion was seconded and carried.

Subsection (a1):

Mr. Madler reviewed the provision and explained that the conduct was currently subject to a civil penalty but that the General Statutes Commission believed it should be a felony offense. They asked whether it would be appropriate to classify it as the same offense class as the offense in Subsection (a). The members discussed the harm that would result from the offense. Judge Ervin moved to find the provision consistent with the Offense Classification Criteria for a Class H felony. The motion was seconded and carried.

Mr. Madler stated that the General Statutes Commission also asked whether it would be appropriate to provide for a Class C felony offense if a violation of subsection (a1) resulted in $100,000 or more in losses or injuries or other damages. Mr. Moore moved to find the provision inconsistent with a Class C felony for the reasons previously stated. The motion was seconded and carried.

Subsection (b):

Mr. Madler reviewed the provision and explained that the conduct was currently subject to a civil penalty. The General Statutes Commission wanted to classify these acts as misdemeanor offenses but asked what would be the appropriate offense class. Mr. Madler reviewed the classes

of similar misdemeanor offenses as well as the Misdemeanor Offense Classification Criteria. He reminded the members that the Commission generally does not review misdemeanor offenses because the current offenses are not classified according to the Misdemeanor Offense Classification Criteria but that this offense did not have a proposed class. Mr. Beeler stated that the offense appeared to be most similar to existing Class 1 misdemeanors and moved to find the provision consistent with a Class 1 misdemeanor. The motion was seconded and carried.

Mr. Madler informed the members that staff would compile the findings and provide them to the appropriate organizations.

OTHER BUSINESS

Chairman Spainhour informed the members that the next Sentencing Commission meeting was scheduled for February 24, 2017, and that the DWI Subcommittee meeting was scheduled for January 20, 2017.

The meeting adjourned at 2:20 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary