

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

**December 1, 2017**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, December 1, 2017, at the North Carolina Judicial Center in Raleigh, North Carolina.

**Members Present:** Chairman Charlie Brown, Frances Battle, Art Beeler, Sheriff James Clemmons, Lisa Costner, Representative John Faircloth, Judge Keith Gregory, Susan Katzenelson, Dr. Harvey McMurray, Representative Allen McNeill, Robert Montgomery, Luther Moore, Judge Fred Morrison, Jim Toms, and Judge Valerie Zachary.

**Guests:** Chuck Johnson (Community Sentencing Association), William Lassiter (DPS), Jim Speight (DPS-JJ), Jamie Markham (UNC SOG), Mark White (NCGA), Meagan Harrold (OSBM), Emily Portner (AOC-Communications), Amanda Witwer (SPAC Intern), Yolanda Woodhouse (AOC-Court Programs), Eric Zogry (Juvenile Defender), and Ilona Kusa (former Commissioner).

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

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

Chairman Brown called the meeting to order at 10:00 a.m. He presented the minutes from the September 8, 2017, Sentencing Commission meeting. Luther Moore moved to adopt the minutes as presented; the motion was seconded and carried.

Chairman Brown read a Resolution honoring outgoing Commissioner Ilona Kusa and called for a motion to adopt. Luther Moore moved to adopt the Resolution; the motion was seconded and carried.

Chairman Brown introduced two new Commissioners: Frances Battle, representing the Victim Assistance Network, and Judge Keith Gregory, representing the District Court Judges' Association. Finally, he introduced Rebecca (Becky) Whitaker, a new staff member.

Members and guests introduced themselves. The Commission paused for a moment of silence in honor of the four correctional officers recently killed in the line of duty. Chairman Brown reviewed the agenda for the meeting.

**YOUTH DEVELOPMENT CENTER POPULATION PROJECTIONS AND FY 2017  
JUVENILE DISPOSITIONS**

Chairman Brown recognized John King, staff, to present the Youth Development Center (YDC) Population Projections for Fiscal Year 2018 to Fiscal Year 2022 (*see* Handout). Mr. King

stated that the projections are prepared annually in conjunction with DPS's Department of Adult Correction and Juvenile Justice (DACJJ). To project future YDC populations, staff uses a computer simulation model that takes into account all juveniles who were adjudicated delinquent and received a disposition in FY 2017 (n=3,884) and all juveniles already committed to a YDC as of June 30, 2017 (n=182). Susan Katzenelson asked whether the model was modified this year to account for the future transition of 16 and 17 year olds into juvenile jurisdiction as a result of the Juvenile Justice Reinvestment Act (JJRA, also known as "Raise the Age" legislation, Senate Bill 257). Mr. King responded that projections for future YDC commitments for 16 and 17 year olds were developed outside the model and added on to the projections generated by the model for 10 to 15 year olds.

Mr. King explained the methodology behind projecting the addition of 16 to 17 year olds into the juvenile justice system as a result of the JJRA. Next, he shared the YDC population projections for FY 2018 through FY 2022 and noted the projection includes 16 and 17 year olds beginning in the third year of the projection (FY 2020). The projection for each year of the projection period is within available YDC capacity. The projections this year are much lower than last year, because fewer juveniles are currently committed to a YDC, fewer dispositions were imposed than last year, and fewer juveniles were committed to a YDC than last year.

Representative Allen McNeill asked whether the decline in dispositions is related to fewer prosecutions or increases in diversions. Deputy Secretary Lassiter (DPS) responded there has been a significant decline in the number of complaints filed. Mr. Beeler added that, in his role as a Juvenile Crime Prevention Councils (JCPC) chairman, he is seeing a lot more juveniles diverted before getting into the juvenile justice system. Chairman Brown shared that school-justice partnerships are being implemented that involve school boards examining student codes of conduct and determining which student behaviors are to be handled administratively rather than through the juvenile justice system.

Mr. King presented historical information regarding the accuracy of the Commission's YDC projections dating back to FY 2013. The projections have been fairly accurate in each of the last five years, with the first year of each projection falling within the population's actual minimum and maximum levels. Discussed ensued about the difficulties in projecting a small population, the incorporation of certain assumptions to account for JJRA changes over the projection period, and the need for the General Assembly to have an accurate resource planning tool.

Mr. King reviewed 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).

Ms. Katzenelson reiterated the trend that more juveniles are entering YDCs through probation violations and revocations of post-release supervision than from new offenses and asked whether anything is being done to address that. Deputy Secretary Lassiter mentioned that judges will often give juveniles one more chance to stay out of trouble and will enforce that last chance

if juveniles commit further violations. Immediate YDC commitments are rare and they typically come after many different programs have already been tried. Chairman Brown commented that the rise in YDC commitments from revocation could be due to juveniles being revoked because of pending violent offense charges.

Mr. King reviewed data on the 3,884 delinquent dispositions in FY 2017 by offense classification, delinquency history level, and disposition level. Next, he reviewed YDC population trends from FY 2013 to FY 2016 noting a sharp decline in FY 2017 in YDC admissions.

Chairman Brown asked Mr. Lassiter and Mr. Zogry for their thoughts related to the Commission's YDC projections. Mr. Lassiter noted that DACJJ worked closely with Commission staff on developing the projections. He cited the extreme decrease in the current YDC population and the number of dispositions in FY 2017. He related his concern about capacity for juveniles who are awaiting trial in adult court, i.e., the bound over population. Mr. Zogry agreed that the projections have been well thought out and that they are likely accurate given the consistent declines in the YDC population and dispositions.

Representative McNeill mentioned that JJRA legislation failed previously because the costs were unknown. One reason the bill passed this year is because the implementation is two years away, which provides an opportunity to look closely at costs. Given the number and complexity of the moving parts associated with the policy change, he indicated would like to review another year's worth of data to see what direction any trends are headed.

In conclusion, Ms. Hall mentioned that staff has completed another edition of Quick Facts: Juvenile Disposition Data (*see* Handout) and encouraged the Commission to review it.

### **JUVENILE RECIDIVISM – NEW PUBLICATIONS**

Chairman Brown recognized Rebecca Dial, Tamara Flinchum and later, Jennifer Wesoloski, staff, to review new publications related to juvenile recidivism. Ms. Dial presented the Quick Facts: Juvenile Recidivism for the FY 2013 Sample. She highlighted that the 14,120 juveniles with a delinquent complaint processed in the juvenile justice system were divided into groups based on their case outcome. Those with no petition filed for a court hearing included closed and diverted youth; those with a petition included dismissed and adjudicated youth. Key takeaways from the FY 2013 sample include: recidivism rates increased as risk level increased; recidivism rates increased by age, peaking at 12-14 years; most juveniles successfully completed their diversion plan or contract; and, YDC releases and juveniles adjudicated had similar rates of recidivism. The new YDC release sample, while a small sample size, indicates some promising findings, as youth committed to YDC have the deepest involvement with the juvenile justice system. Last, trends for FY 2005—FY 2013 were mentioned, including the decreasing sample size, stable juvenile recidivism, the correlation between further involvement in the juvenile justice system and higher rates of recidivism, and lower recidivism rates for juveniles with a misdemeanor offense compared to juveniles with a felony. Ms. Katzenelson asked if YDC releases had the same

window of opportunity to recidivate as other youth in the sample. Ms. Hall clarified that the YDC releases were a different sample and were not committed during the follow-up period.

Ms. Flinchum presented the findings from the FY 2013 Juvenile Recidivism Sample: Juveniles by Geographic Regions research brief (*see* Handout). The brief was the first Commission study to examine recidivism rates by geographic regions across the state with the regions defined primarily by four areas and 30 districts. Ms. Flinchum reported that the juvenile recidivism sample was similar to the overall population and to youth aged 6-15 years, the eligible age for complaints in the juvenile system that would be crimes if committed by an adult.

Comparing the four areas, a higher proportion of juveniles from the Piedmont had their delinquent complaints closed at intake, while juveniles in the Western area had a higher proportion adjudicated delinquent. Juveniles in the Western and Eastern areas were more likely to be diverted than juveniles in the Central and Piedmont areas. The distributions of risk were remarkably similar across the state and generally any differences in regions were diminished when examined by risk and regions. Juveniles in the Central area had the highest recidivism rates, while juveniles from the Western area had the lowest recidivism rates. The lower rates occurred despite the Western area adjudicating a higher proportion of its juveniles compared to the remaining areas. Further examination is needed into what appears to be more successful outcomes for juveniles in that region.

Dr. McMurray asked if the racial composition of the juvenile sample was analyzed by comparing it to the population in each county. Ms. Flinchum confirmed that the analyses for this brief did not include that comparison. Mr. Lassiter reported that DACJJ has that information through its Disproportionate Minority Contact initiative and can provide that to him at the county level. In response to the finding in the brief that the current cutoffs for the needs levels of the juveniles are not representative of the assessed needs, Mr. Lassiter commented that a different needs assessment tool will be used for juveniles in the future.

Ms. Wesoloski presented the findings from the Multivariate Analysis Research Brief, based on the data used in the *2017 Juvenile Recidivism Study*. Prior to reviewing the results, Ms. Wesoloski provided background information on multivariate models and how to interpret the findings in the three models developed in the research brief (i.e., all juveniles, adjudicated and disposed juveniles, diverted juveniles). She then focused on results that were consistent across the three models – the effect of age at offense, prior juvenile complaints, mental health needs, and risk level. Juveniles ages 12 to 13 at offense had the highest probability of recidivism when compared to the other age groups (i.e., 6-9 years, 10-11 years, 14-15 years). Prior juvenile complaints increased the probability of recidivism, as did mental health needs. Juveniles within risk level 5 had the highest probability of recidivism across all three models.

Ms. Wesoloski then reviewed findings that were unique to each of the individual models, which included level of involvement for all juveniles, disposition level for juveniles adjudicated and disposed, and diversion status for juveniles diverted. For all juveniles, level of involvement (i.e., petition/no petition) was a non-significant predictor of recidivism. Greater examination of the data revealed that the effect of level of involvement is accounted for by two other variables – prior number of complaints and risk level. For juveniles adjudicated and disposed, disposition level was a significant predictor of recidivism, but had the opposite effect than what was anticipated.

Compared to juveniles with a Level 1 disposition, juveniles with a Level 3 disposition (commitment to a YDC) had much lower probabilities of recidivism. This finding is most likely associated with time at risk; juveniles with less restrictive dispositions have more opportunity for recidivism than those who spend a large proportion of their follow-up committed to a YDC. Diversion status was a significant predictor of recidivism for juveniles diverted; juveniles without a successful diversion had higher levels of recidivism than those with a successful diversion. The higher probability of recidivism for this group is somewhat expected, given these juveniles were given an additional opportunity to succeed with a diversion plan/contract for their sample complaint, but subsequently had their case referred back to juvenile court due to noncompliance.

In response to Judge Zachary's question regarding the definition of negative family issues, Ms. Wesoloski responded that the variable was created using five questions in the juvenile needs assessment, which is located in the appendix of the *2017 Juvenile Recidivism Study*. Mr. Lassiter inquired about the use of the risk variable that captured a juvenile's first delinquent complaint at 12 years or less in the multivariate model. Ms. Wesoloski responded that this variable was not used due to the relationship between that variable and the risk level variable.

## **EMPLOYMENT COLLATERAL CONSEQUENCES: PROPOSALS FROM RESEARCH AND POLICY STUDY GROUP**

Chairman Brown recognized Michelle Hall and John Madler, staff, to present the proposals from the Research and Policy Study Group on employment collateral consequences. Ms. Hall began by reviewing the request from Commissioner Beeler asking the Commission to study collateral consequences. She explained that collateral consequences are sanctions and restrictions triggered by a conviction that are beyond those imposed by the sentencing court. Collateral consequences can be either formal, imposed by a law or regulation, or informal, a societal barrier, and can affect many areas including employment, education, housing, and public benefits.

Ms. Hall stated that the Sentencing Commission accepted the request at its September 2016 meeting and referred it to the Research and Policy Study Group. She reminded the members that the Commission established the Study Group in 2014 to explore existing criminal justice research findings that could lend themselves to policy recommendations, with the goal of improving public safety by reducing recidivism; the Study Group consists of volunteers who are current or former Commission members. Previously, it has studied the accuracy of assessing juvenile risk and needs and the intersection of mental health and jails. In looking at collateral consequences, the Study Group decided to focus on the effects of a criminal conviction on employment. It studied the effects from four different perspectives: the offender, the employer, the law, and society in general. The Study Group utilized a variety of sources of information including general statutes and administrative rules, literature, results from a survey of probation officers, and interviews with employer organizations and national experts. Based on the findings from the information collected, the Study Group developed a set of policy statements and proposals for the Commission's consideration.

To provide context, Ms. Hall reviewed data from the N.C. Department of Commerce on offender employment and findings from previous Sentencing Commission recidivism studies regarding the relationship between employment and recidivism. She also described the survey staff conducted of probation and parole officers' (PPOs) impressions regarding some of the issues.

Beginning with the offender perspective, Ms. Hall presented six key findings and their supporting research; she explained that key findings were those that were found across multiple sources. The key findings were as follows: the type of punishment imposed may impact the probability of being hired; logistical barriers affect the offender's ability to obtain employment; offenders with certain offenses may fare better; skills and training lead to a higher likelihood of employment; and results are mixed for employment if the offender does not disclose the conviction on an application. Based on those findings, the Study Group developed several proposals. The first proposal was the following policy statement: "Employment, transportation, and housing present barriers to offenders seeking successful reintegration into the community; each affecting the success of overcoming the other challenges. Efforts should be made at state and local levels to address these overlapping barriers in order to help offenders overcome them and potentially lower recidivism."

Commission members questioned the purpose of the policy statement, pointing out that it did not offer any suggested changes. Representative McNeill stated that the first sentence was more of a finding than a policy. Ms. Katzenelson suggested that the finding might serve as a preface to the more substantive recommendations. The Commission did not take any action on the proposed policy statement.

Ms. Hall presented the second proposed policy statement: "NCSPAC supports reentry efforts on the state and local level to help offenders reintegrate into the community." Art Beeler moved to adopt the proposed policy statement; the motion was seconded and carried.

Mr. Beeler asked to return to the first policy statement. He moved to strike the second sentence and adopt the amended policy statement. The motion was seconded and carried.

Ms. Hall then presented the Study Group's proposal that the General Assembly revisit its decision to eliminate community college tuition waivers for inmates. She added three points that the Study Group did not address but that the Commission may want to consider: What resources would this require? Are there specific courses the General Assembly should consider? What was the reason for eliminating the waiver in the first place?

Luther Moore asked what the literacy rate was among inmates. Mr. Beeler responded that it is about 30% nationwide. He added that inmates need literacy and vocational training to be successful. Jim Toms informed the members that he had seen the impact education has on the lives of offenders, especially those who are willing to give up criminal activity but who do not have education and family support. He cited the example of an offender at Butner Federal Correctional Institution.

Representative Faircloth expressed concern with a proposal to study an issue, he said that it would be better to study the General Assembly's decision first and then use the study to support whatever recommendation comes from it. Representative McNeill suggested refining the term "inmate" because he thought the original provision may have included probationers and offenders in local jails.

Mr. Beeler informed the members that there was a 2012 study by the Rand Corporation that supported education programs for inmates. The bigger issue was resources; he suggested utilizing the reinvestment from the Justice Reinvestment Act (JRA) to support the classes. The JRA was intended to reduce recidivism, avert costs, and reinvest in public safety. The State should be putting that money into the correctional institutions to pay for education for inmates. Absent a motion, Chairman Brown held that the Commission did not adopt the proposal.

Turning to employer considerations, Ms. Hall presented five key findings and their supporting research: employers are interested in maintaining workplace safety and the company's reputation; it is unclear the effect of federal guidelines in employment decisions related to offenders; truthful disclosure of a conviction may lead to a greater likelihood of being hired; certain industries are more likely to hire offenders; and employers are generally not aware of existing programs or options to mitigate risk associated with hiring an offender. Based on these findings, the Study Group proposed the following policy statement: "NCSPAC supports the collaborative efforts between Department of Public Safety, Department of Commerce, and community colleges to identify occupations in demand and tailor prison programs accordingly." She explained two points that the Study Group did not address but that the Commission may want to consider: whether the programs should focus on job market needs versus jobs where employers have demonstrated a willingness to hire offenders, and how often the agencies should review job market needs.

Mr. Beeler moved to amend the statement to include the Department of Labor because of the federal funds it has access to, and then to adopt the amended statement. The motion was seconded and carried.

Mr. Beeler asked the Commission to reconsider the proposal that the General Assembly revisit its decision to eliminate community college tuition waivers for inmates. He moved that the Commission endorse further study of the decision. The motion was seconded and carried. Mr. Toms cautioned the Commission that they will have to be ready to explain to the public why a person who is incarcerated for committing a crime can get his tuition waived while a law-abiding member of the public cannot.

John Madler presented the legal perspective. He presented six key findings and their supporting research: offenders in North Carolina are subject to many civil penalties; it is unclear the size of group affected by employment collateral consequences; it is unclear what the effect of employment collateral consequences is on recidivism and public safety; federal laws address some employment collateral consequences; North Carolina has taken a number of steps to address collateral consequences; and not all employment collateral consequences are reviewed once in place. Based on those findings, the Study Group made four proposals. First, the Study Group proposed that criminal history requirements should be periodically reviewed. Mr. Madler reviewed two additional points to consider: Who will conduct the review? What is the purpose of the review?

Mr. Beeler moved to adopt the proposal. The motion was seconded and carried.

Representative McNeill expressed concern about adopting proposals that contained unanswered questions. Ms. Hall explained that, like with the proposals from the study of mental health and the jails, the Study Group developed the proposals but that there were some issues that

they either were not aware of at the time or that they chose not to address because of their status as a study group. The Commission could make those decisions or leave them for the recipients to decide. Representative Faircloth asked if they would be voting on the final report. Ms. Hall stated that the final report would be separate from the proposals; it would be presented to the Commission at the next meeting. Staff agreed to provide a list of the adopted proposals, including any amendments, at the next meeting.

The second proposal was that the State exclude convictions for misdemeanor offenses from triggering offenses for employment collateral consequences. Mr. Madler pointed out the consideration that a blanket exclusion may affect restrictions that are related to the job. Judge Gregory asked if it would help if the Commission defined “misdemeanor.” Mr. Beeler moved to amend the proposal by adding “unless a nexus exists between the offense and the job requirements” and then to adopt the amended proposal. The motion was seconded and carried.

The third proposal was to develop a relief mechanism for offenders who receive an adult conviction while 16 or 17 years of age prior to the change in the juvenile jurisdiction age. Mr. Madler added that the Commission may want to consider who would develop this mechanism and what kind of mechanism would it be. Chairman Brown stated that this proposal seemed more appropriate for the Juvenile Jurisdiction Advisory Committee. Mr. Beeler moved that the proposal be referred to the Juvenile Jurisdiction Advisory Committee; the motion was seconded and carried.

The fourth proposal was to increase awareness of Certificates of Relief through Legal Aid of North Carolina, the N.C. Bar Association, the Administrative Office of the Courts, and the Department of Public Safety, particularly Probation and Parole Officers and Reentry Councils. Mr. Madler raised the question of how this might be accomplished. Representative McNeill moved the adoption of the proposal; the motion was seconded and carried.

Turning to the societal perspective, Mr. Madler explained that the Study Group did not make any proposals here but that there was one key finding: public policy seeks the appropriate balance between offender reintegration and public safety. He reviewed the history of collateral consequences versus attitudes toward punishment in general. Society feels that some collateral consequences are necessary to protect public safety but it is difficult to determine how much of a nexus there should be between the offense and the restriction.

Mr. Madler concluded by informing the Commissioners that the Study Group proposed that the Group’s findings and accompanying research be compiled into a publication suitable for dissemination to other parties as a resource regarding employment collateral consequences. Mr. Beeler moved to adopt the proposal; the motion was seconded and carried. Chairman Brown thanked the members of the Study Group for their work.

## **ADJOURNMENT**

Due to the time, Chairman Brown postponed the DWI Sentencing Subcommittee update to the March Commission meeting. He reminded the members that the DWI Sentencing Subcommittee would meet on Friday, February 9, 2018, the Sentencing Commission would meet on Friday, March 2, 2018, and the Justice Reinvestment Implementation Evaluation Report



Subcommittee would meet on Friday, March 23, 2018. Chairman Brown adjourned the meeting at 3:00 p.m.

Respectfully submitted,

Shelley Kirk  
Administrative Secretary