

**MINUTES**  
**NORTH CAROLINA SENTENCING AND POLICY ADVISORY**  
**COMMISSION MEETING**  
**RALEIGH, NC**  
**FEBRUARY 27, 2009**

The North Carolina Sentencing and Policy Advisory Commission met on Friday, February 27, 2009, in the Board Room at the North Carolina Judicial Center in Raleigh, North Carolina.

**Members Present:** Chairman W. Erwin Spainhour, David Barlow, Sheriff Hayden Bentley, Honorable Charles Brown, Locke Clifford, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Paul Gibson, Bill Hart, Secretary Linda Hayes, Larry Hines, Honorable Robert Johnson, Secretary Alvin Keller, Jr., Honorable Eleanor Kinnaird, Charles Mann, Moe McKnight, Luther Moore, Honorable Fred Morrison, Chief Frank Palombo, Billy Sanders, and Jonathan Williams.

**Guests:** Anthony Allen (Association of County Commissioners), Eddie Caldwell (NC Sheriffs' Association), Meghan Carmody (Extern, Office of Administrative Hearings), Hal Pell (General Assembly – Research Division), Danielle Seale (General Assembly – Fiscal Research Division), Susan Sitze (General Assembly – Research Division), and Mildred Spearman (Department of Correction).

**Staff:** Susan Katzenelson, John Madler, Ginny Hevener, Vicky Etheridge, Karen Calhoun, Tamara Flinchum, Ashleigh Gallagher, David Lagos, Marlee Moore-Gurrera, and Sara Thomas.

**INTRODUCTION**

Judge Spainhour called the meeting to order at 10:00 a.m. After reviewing the agenda, Judge Spainhour introduced the three new Commissioners: Secretary Linda Hayes representing the Department of Juvenile Justice and Delinquency Prevention (DJJDP), Secretary Alvin W. Keller, Jr., representing the Department of Correction (DOC), and Judge Robert Ervin, representing the Conference of Superior Court Judges. Sara Thomas, who joined the staff in January, was also introduced. The remainder of those attending introduced themselves. Luther Moore moved to adopt the minutes from the December 12, 2008 Sentencing Commission meeting; Locke Clifford seconded the motion and the motion carried.

**RESEARCH AND POLICY SUBCOMMITTEE REPORT**

Bill Hart, Chair of the Research and Policy Subcommittee, began the report by reminding members of the Subcommittee's mission. The primary task assigned to the Subcommittee was to review findings from the Commission's five previous recidivism studies and develop policy recommendations based on these findings that could be brought before the Commission for consideration.

The Subcommittee met a total of six times: May 16, June 20, August 22, October 10, November 21, 2008, and January 23, 2009. In order to ensure that members were equipped with the same base of information, the Subcommittee initially heard presentations by staff on the major findings and recurring themes from the last five recidivism reports. Members identified three major points that emerged from the recidivism studies for their policy implications: the use of offender risk assessments, the sharing of juvenile records, and the effectiveness of Post-Release Supervision (PRS). These topics became the focus of the Subcommittee's work for the subsequent meetings.

Marlee Gurrera reviewed the major findings from the Commission's five recidivism reports, which examined the recidivism of almost 300,000 offenders (with approximately 60,000 offenders in each study sample) sentenced prior to the Fair Sentencing Act (FSA), under the FSA, or under the Structured Sentencing Act (SSA). The Commission's recidivism reports identified a number of variables or "risk factors" as statistically significant predictors of an offender's likelihood to engage in future criminal activity. These include social factors such as the offender's age and marital status and criminal record factors such as the offender's current offense and number of prior incarcerations. Through the use of multivariate analysis, each risk factor was weighted based on its relative contribution to recidivism and a risk score was generated for each offender in the sample. Risk scores ranged from 0.01 to 0.99, representing each offender's probability of rearrest during the study's follow-up period. In order to differentiate the scores into low-, medium-, and high-risk categories, risk scores were divided into terciles. "Low Risk" offenders had a risk score between 0.01 and 0.33; "Medium Risk" offenders had a score between 0.34 and 0.66, and "High Risk" offenders had a score between 0.67 and 0.99.

Three consistent themes emerged across the five recidivism reports, based on ten years of data: (1) the stability of recidivism rates over time, (2) the value of the highly predictive offender risk score, and (3) variations by populations of offenders and correctional programs. Dr. Gurrera noted that punishment type was not as important as offender risk level in predicting recidivism.

The Subcommittee found no apparent legal impediment to the court's consideration of an offender risk assessment at sentencing. However, certain risk factors included in the Commission's risk score – specifically, race, gender, and prior arrests – would be subject to challenge on constitutional grounds. Several members objected in principle to treating race as a risk factor, believing that race was standing in for other, socio-economic variables not tracked in the data. To address these legal concerns, a variation to the risk score used in the Commission's recidivism reports was examined, omitting both offender race and gender and substituting conviction data for arrest data. Overall, when comparing the new risk score to the original risk score, the same social factors and most of the criminal history factors remained significantly related to rearrest. Further, overlaying the offender risk score distributions for the new and the original risk score created very similar distributions of the sample population by offender. More importantly, the final comparison of the new and original risk score showed similar rearrest rates by offender risk, 23% v. 21% rearrest for low risk offenders; 49% rearrest in both models for medium risk offenders; 74% v. 75% rearrest for high risk offenders, respectively. In general,

these findings confirmed the predictive validity of the revised risk score, even when deleting legally suspect factors such as offender race, gender, and prior arrests.

Dr. Gurrera explained that the Commission staff undertook a feasibility study to determine whether a valid recidivism risk score could be prepared for a defendant based solely on information found in the district attorney's case file. In site visits to four prosecutorial districts, felony case files were reviewed to ascertain the types of documents routinely included in each file and the level of pertinent information contained in them.

The results of the feasibility study suggested that prosecutors' files consistently contain information about many of the risk factors included in the Commission's risk score, specifically the factors related to a defendant's demographic characteristics, current offense seriousness, and criminal history. The files tend to lack information about other factors often used in risk instruments, such as the defendant's education level, employment, and substance abuse history. Overall, there appeared to be sufficient data in the case files to produce a valid risk score for the defendant. Furthermore, district attorneys might adjust their data collection and record keeping protocols if the use of a risk assessment tool became standard practice.

At this point of the presentation, Karen Calhoun reviewed the use of risk assessment tools in North Carolina and other jurisdictions. Sentencing Services utilizes a risk and needs assessment called the Level of Services Inventory-Revised (LSI-R) to develop sentencing plans for approximately 2,000 felony offenders each year at the request of the court or defense counsel. The Division of Community Corrections (DCC) performs a risk assessment of all offenders placed on supervision in order to determine their risk of revocation, and is in the process of implementing an expanded risk and needs assessment (RNA) with four components: (1) the Offender Traits Inventory (OTI), which assesses the offender's risk of revocation; (2) the Offender Self-Report, which measures the offender's motivation; (3) the Officer Interview and Impressions, which provides a structure for dialogue between the offender and the probation officer; and (4) the trial court's judgment, which includes any special conditions of probation. The Division of Prisons administers a Diagnostic Risk Assessment to all felons admitted to prison. This assessment is the same as the OTI used by DCC. Data from the Diagnostic Risk Assessment are entered into the DOC's Offender Population Unified System (OPUS) database. DOP has a separate risk assessment tool for use in custody classification and prison assignment. DJJDP administers an automated Assessment of Juvenile Risk of Future Offending and Assessment of Juvenile Needs to all juveniles at the intake stage of the delinquency process. The Subcommittee also reviewed the use of risk assessment instruments in Virginia, Missouri and by the United States Parole Commission.

The Subcommittee decided against recommending the adoption of a risk assessment instrument for sentencing decisions. However, the Subcommittee believed that empirically validated risk assessments could improve the quality of decision-making at pre-sentencing decision points, such as bail hearings and plea negotiations. The Subcommittee further believed that the use of pre-sentencing risk assessments should be voluntary, in order to avoid any potential burden to the criminal justice system.

Mr. Hart moved to adopt Recommendation #1: **The Subcommittee recommends that the Sentencing Commission direct the staff to develop risk assessment tools for discretionary use statewide by magistrates, judges, prosecutors, and defense attorneys at the decision points prior to sentencing.** The motion was seconded.

Senator Kinnaird asked if the Commission staff planned to use Sentencing Services' instrument. Ms. Calhoun answered that the instrument that would be developed by the Commission staff would be simpler with fewer variables. Louise Davis, representing Sentencing Services, agreed that their instrument would not be appropriate at the pre-trial stage. Further, Senator Kinnaird asked why this tool would not be made mandatory instead of discretionary. Mr. Hart replied that making it mandatory would not be wise, as information is not always available. He also emphasized that the Sentencing Commission is not authorized to mandate anything. After this discussion, the Commission voted and the motion carried.

The next topic to be discussed was the availability of juvenile records. Ms. Calhoun explained that the Subcommittee weighed the idea of providing decision-makers in the criminal justice system with access to juvenile record information. Members agreed that the sharing of juvenile records was a relevant and timely topic with significant implications for law enforcement agencies, the court system, and the DOC. The Subcommittee further agreed that it was important for the judge, district attorney and defense counsel in the adult court system to have access to juvenile records, but there were currently legal barriers to obtaining the information. Some members stressed the importance of assigning juveniles an identifier that would preserve juvenile confidentiality but allow for the tracking of juveniles across districts and into the adult system. Others suggested that the Commission should address the ambiguities in the juvenile records statutes and recommend specific changes to the legislature. Several members of the Subcommittee expressed concern over the consequences of withholding juvenile records information from key decision makers in the criminal justice system. Despite these many concerns, the Subcommittee decided to delay any formal recommendations on the issue of juvenile records sharing pending the completion of two pending legislative mandates that may affect the use of juvenile records information in the criminal justice system. Both of these mandates, the Governor's Crime Commission (GCC) Study to Expand the Age of Juvenile Jurisdiction and the Criminal Justice Data Integration Pilot Program are due to the General Assembly later this spring.

Mr. Hart moved to approve Recommendation #2: **The Subcommittee recommends that the Commission support the efforts currently underway to provide greater access to juvenile records by key decision makers in the criminal justice system (e.g., Governor's Crime Commission Study to Expand the Age of Juvenile Jurisdiction and the Criminal Justice Data Integration Project). It further recommends that the Commission staff be directed to continue tracking these projects and report back to the Commission on their work.** Locke Clifford seconded the motion. Senator Kinnaird voiced that she was pleased that any further work by the Commission relative to accessibility to juvenile records was being delayed. Secretary Linda Hayes said that DJJDP would be glad to work with the Sentencing

Commission on any efforts in this realm. After this discussion, the motion carried.

Ms. Calhoun summarized the history of Post-Release Supervision (PRS). When the Structured Sentencing Act (SSA) became effective on October 1, 1994, a new sentencing structure was established and parole was abolished. However, the General Assembly believed that the most serious group of offenders should continue to have some form of supervision following their release from prison. To address that concern, PRS, a mandatory period of post-prison supervision for Class B1 through E felons, was incorporated into the SSA. The standard period of supervision for PRS supervisees is nine months; inmates who have been convicted of an offense that requires registration as a sex offender are placed on PRS for five years. PRS is administered by the Post-Release Supervision and Parole Commission (PRSPC). The DCC monitors offenders on PRS and is also responsible for reporting violations of PRS conditions to the PRSPC. If the PRSPC revokes an offender's PRS, the offender returns to prison for nine months (which is built into the maximum sentence). Upon completion of either the term of supervision in the community or the revocation period in prison, PRS is terminated.

Dr. Gurrera addressed two questions: (1) Is there evidence that PRS is effective; and (2) if so, should PRS be extended to offenders in additional felony classes? After reviewing the relevant data, the Subcommittee affirmed the importance of PRS in assisting offender reintegration, and voiced its support for some type of reentry effort for all released felons, not only those convicted of Classes B1 through E offenses. Preliminary estimates suggested that the extension of PRS to Classes F through I felonies could potentially prevent 2,901 rearrests for new crimes over a three-year period. However, the Subcommittee did not endorse an extension of PRS to include Class F felons, given their comparatively low recidivism rates; nor did the data justify a recommendation to extend PRS to all felons released from prison, due to the present scarcity of correctional resources.

Mr. Hart moved that the Commission approve Recommendation #3: **The Subcommittee studied the possibility of expanding post-release supervision and expressed its concern about the barriers to reentry faced by felony offenders who are released from incarceration. However, based on available data and the current economic climate in our State, the Subcommittee does not recommend an extension of post-release supervision to other felony classes in the absence of a cost-benefit analysis justifying such an expansion.** Luther Moore seconded the motion, and the motion carried.

Mr. Hart thanked the staff who worked on this subcommittee and to all groups who presented information to the subcommittee.

### **PRISON POPULATION PROJECTIONS**

Ginny Hevener reviewed the Commission's recently completed prison population projections (referring to the handout, "Current Population Projections Fiscal Year 2008/09 to Fiscal Year 2017/2018"). Ms. Hevener explained that the prison population projections were completed in two parts, with the Commission preparing projections for the new prison

population and the Department of Correction preparing projections for the resident prison population. She described the data received from the Administrative Office of the Courts (convictions and sentences imposed) and from the Department of Correction (current inmate data) that is used to complete the projections.

Ms. Hevener noted that certain assumptions were made in producing the projections, including that in the future: the distribution of prison admissions resulting from active sentences for a new conviction and resulting from technical revocations of probation will match the distribution from FY 2007/08; the percentage of the active sentences served by Structured Sentencing Act felons and misdemeanants will be what they were in FY 2007/08; rates of active sentences and probation revocations will match rates for FY 2007/08; and the percentage of time served for Fair Sentencing Act (FSA) and pre-FSA prisoners will be what they were in FY 2007/08. Ms. Hevener explained that the projections take into account increases resulting from the reclassification of sexual exploitation of minor offenses from the 2008 Session of the General Assembly, but do not account for several changes that have the potential for substantial impact (*e.g.*, Street Gang Suppression Act, Jessica Lunsford Act) since the legislative changes either created new offenses for which there are no historical data or amended penalties for existing offenses with elements that could not be modeled.

Ms. Hevener informed members that the current projections represent an increase from last year's projections. Ms. Hevener indicated that the projected increase could be attributed primarily to an increase in convictions in Classes A through D (with a 9% increase from FY 2006/07) and the resulting increases in the percentage of active punishments imposed (from 37% to 39%) and average estimated time served (from 36 months to 38 months) from FY 2006/07 to FY 2007/08. In addition, there was a 13% increase in habitual felon convictions (from 651 convictions to 736 convictions) and a 5% increase in drug trafficking convictions (from 867 convictions to 910 convictions) from last year.

Ms. Hevener stated that the prison population is projected to increase from 40,994 in June 2009 to 49,770 by June 2018. She indicated that the projected prison population exceeds the Department of Correction's expanded operating prison capacity for all ten years of the projection, with a projected deficit of 980 for 2009 and almost 7,500 for 2018. Ms. Hevener described the composition of the prison population, noting that the composition is now primarily determined by the empirical distribution of offenders convicted and sentenced under the Structured Sentencing Act. While Class A through Class D convictions account for the lowest percentage of convictions (8%) and active sentences (21%), they account for the largest percentage of the projected prison population (53% for 2009) as a result of their mandatory active sentences and the long sentences imposed. On the other end of the spectrum, Class H and I convictions account for the highest percentage of felony convictions (67%) and active sentences (47%), but account for only 19% of the projected prison population for 2009.

Ms. Hevener noted that members of the General Assembly's Joint Committee on Appropriations recently heard a presentation by fiscal research staff about the prison population projections and capacity shortage. The presentation included potential options for addressing the

prison bed shortage, such as utilizing more short-term beds (or jail backlog), building more prisons, and adjusting criminal justice policies. At the legislative meeting, it was noted that given the size of the deficit that some combination of these options will probably be necessary.

### **LEGISLATIVE UPDATE**

Judge Spainhour recognized John Madler and David Lagos for the legislative update and review. Before beginning a review of the bills, Mr. Madler reported on the recent briefing the General Assembly received on the prison population. He explained that the options presented included making changes to sentencing policies, adding correctional resources, or a combination of the two. Mr. Madler presented a handout which outlined the alternatives the Sentencing Commission had previously provided to the General Assembly (*see* attached handout). He explaining that in 2001, the General Assembly asked the Sentencing Commission to develop alternatives for adjusting sentencing policies to reduce the projected prison population growth by the year 2010. The Commission worked for one year and developed six alternatives. The Commission submitted these alternatives to the General Assembly in 2002; one passed that year, five did not. Two of the five were reintroduced several years ago but were not passed. The remaining three have been introduced each biennium.

Mr. Madler then began the review of legislation proposed in the current Legislative session. He pointed out that the General Statutes require the Sentencing Commission to review all proposed legislation which creates a new criminal offense, changes the classification of an existing offense, or changes the range of punishment or dispositional level for a classification. The statute requires the Commission to recommend to the General Assembly whether each proposal is consistent with either the Offense Classification Criteria or the punishment ranges assigned under structured sentencing. The Commission does not, however, provide input on homicides, drug offenses, or DWI offenses because they are not classified according to the Offense Classification Criteria. Mr. Madler added that the Commission developed Misdemeanor Offense Classification Criteria in 2006, but they were never approved by the General Assembly. In 2007, the Commission decided to review misdemeanor bills pursuant to the proposed criteria. The General Assembly has not been as attentive to the Commission's recommendations on misdemeanors as they have been for felonies. The Commission members received handouts containing the proposed legislation for felonies and misdemeanors. Mr. Madler and David Lagos reviewed each proposal, and the Commission made the following recommendations:

#### **Proposed Felony Bills**

**HB 8 – Prohibit Cell Phones in Prison [v.1] (G.S. 14-258.1, Subsection (c)).** Luther Moore moved to find the provision consistent with the Offense Classification Criteria. Bill Hart seconded the motion, and the motion carried. Locke Clifford recommended that a note to be added stating that this offense would be consistent with a Class 1 misdemeanor.

**HB 129 – Habitual Misdemeanor Larceny/Felony [v. 1] (G.S. 14-86.2).** Mr. Hart moved to

find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

**HB 137 – Capital Procedures/Severe Mental Disability [v. 1] (G.S. 15A-2007).** Billy Sanders moved to find that G.S. 164-41 is not applicable. Mr. Moore seconded the motion, and the motion carried.

**HB 194 – Create Crime of Smuggling Human Beings [v. 1] (G.S. 14-43.14).** Moe McKnight moved to find the provision inconsistent with the Offense Classification Criteria. Rob Johnson seconded the motion, and the motion carried.

**HB 207 – Safer Communities Act [v. 1] (G.S. 14-3, Subsection (c)).** Mr. Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

**SB 9 – Amend Peeping Tom Law [v. 1]**

**(G.S. 14-202, Subsection (a)).** Mr. Sanders moved to find the provision inconsistent with the Offense Classification Criteria. Chief Palombo seconded the motion. Chief Palombo further moved to make the same finding for all “Peeping Tom” provisions at the same time. Secretary Linda Hayes seconded the motion and the motion carried.

The following **SB 9** provisions were found inconsistent by the Commission.

**(G.S. 14-202, Subsection (a), (i)).**

**(G.S. 14-202, Subsection (c)).**

**(G.S. 14-202, Subsection (c), (i)).**

**(G.S. 14-202, Subsection (g)).**

**(G.S. 14-202, Subsection (g), (i)).**

**(G.S. 14-202, Subsection (h)).**

**(G.S. 14-202, Subsection (h), (i)).**

**SB 13 – Injury to Pregnant Woman/Penalty [v. 1]**

**(G.S. 14-18.2, Subsection (c)).** Bill Hart moved to find the provision inconsistent with the Offense Classification Criteria. Rob Johnson seconded the motion, and the motion carried.

**(G.S. 14-18.2, Subsection (c)).** Rob Johnson moved to find the provision inconsistent with the

Offense Classification Criteria. Bill Hart seconded the motion, and the motion carried.

**(G.S. 14-82.2, Subsection (b)).** Bill Hart moved to find the provision inconsistent with the Offense Classification Criteria. Luther Moore seconded the motion, and the motion carried.

**(G.S. 15A-1340.16).** Bill Hart moved to find that G.S. 164-41 is not applicable. Chief Palombo seconded the motion, and the motion carried.

**(G.S. 14-82.2, Subsection (c)).** Chief Palombo moved to find the provision inconsistent with the Offense Classification Criteria. Rob Johnson seconded the motion, and the motion carried.

**(G.S. 14-82.2, Subsection (c)).** Rob Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Billy Sanders seconded the motion, and the motion carried.

**(G.S. 14-82.2, Subsection (b)).** Rob Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Locke Clifford seconded the motion, and the motion carried.

**(G.S. 15A-1340.16).** Rob Johnson moved to find that G.S. 164-41 is not applicable. Locke Clifford seconded the motion, and the motion carried.

#### **SB 65 – Amend Computer Solicitation of Child [v. 1].**

**(G.S. 14-202.3, Subsection (c)(1).** Billy Sanders moved to find the provision consistent with the Offense Classification Criteria. Luther Moore seconded the motion, and the motion carried.

**(G.S. 14-202.3, Subsection (c)(2).** Luther Moore moved to find the provision inconsistent with the Offense Classification Criteria. Billy Sanders seconded the motion, and the motion carried.

**SB 74 – Increase Penalty/2<sup>nd</sup> Degree Murder [v. 1], (G.S. 14-17).** Bill Hart moved to find that G.S. 164-41 is not applicable. Billy Sanders seconded the motion, and the motion carried.

#### **SB 94 – Felony to Assault Probation/Parole Officer [v. 1].**

**(G.S. 14-16.6, Subsection (a)).** Luther Moore moved to find the provision consistent with the Offense Classification Criteria. Locke Clifford seconded the motion. Rob Johnson further moved to make the same finding for all “Felony to Assault Probation/Parole Officer” provisions at the same time. Judge Elmore seconded the motion and the motion carried.

The following **SB 94** provisions were found consistent by the Commission.

**(G.S. 14-16.6, Subsection (a)).**

**(G.S. 14-16.6, Subsection (a)).**

**(G.S. 14-16.7, Subsection (a)).**

**(G.S. 14-16.7, Subsection (b)).**

**SB 138 – Salvia Divinorum Schedule I [v. 1], (G.S. 90-89).** ). Bill Hart moved to find that G.S. 164-41 is not applicable. Luther Moore seconded the motion, and the motion carried.

**SB 140 – Amend Domestic Crim. Trespass [v. 1].**

**(G.S. 14-134.3).** Locke Clifford moved to find the provision consistent with the Offense Classification Criteria. Luther Moore seconded the motion, and the motion carried.

**(G.S. 15A-2000(e).** Bill Hart moved to find that G.S. 164-41 is not applicable. Judge Elmore seconded the motion, and the motion carried.

**SB 158 – Modify Felony Death by Vehicle Penalty [v. 1].**

**(G.S. 20-141.4, Subsection (a1).** Bill Hart moved to find that G.S. 164-41 is not applicable. Locke Clifford seconded the motion, and the motion carried.

**(G.S. 20-141.4, Subsection (a3).** Luther Moore moved to find the provision consistent with the Offense Classification Criteria. Rob Johnson seconded the motion, and the motion carried.

**SB 164 – Unauthorized Practice of Medicine/Felony [v. 1], (G.S. 90-18).** Billy Sanders moved to find the provision consistent with the Offense Classification Criteria. Rob Johnson seconded the motion, and the motion carried.

**SB 167 – No Smoking/Cell Phones on Prison Grounds [v. 1].**

**(G.S. 148.23.1).** Rob Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Senator Kinnaird seconded the motion, and the motion carried.

**(G.S. 148.23.1).** Judge Ervin moved to find the provision consistent with the Offense Classification Criteria. Luther Moore seconded the motion, and the motion carried.

### **Proposed Misdemeanor Bills**

**HB 14 – Chiropractic Services/Insurance [v.1], (G.S. 58-50-30, Subsection (a3).** Mr. Johnson moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

**HB 23 – Strengthen Child Labor Violation Penalties [v. 1].**

**(G.S. 95-139, Subsection (b)).** Mr. Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Moe McKnight seconded the motion, and the motion carried.

**(G.S. 95-139, Subsection (b)).** Mr. Sanders moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried. The following note was added: The Structured Sentencing punishment chart takes a defendant's prior record into account through the Prior Record Level. Increasing the offense class based on prior convictions is inconsistent with structured sentencing.

**(G.S. 95-139, Subsection (b)).** Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

**(G.S. 95-139, Subsection (b)).** Senator Kinnaird moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

**HB 43 – School Board Members/Failure to Discharge Duty [v. 1], (G.S. 14-230).** Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Paul Gibson seconded the motion, and the motion carried.

**HB 67 – License Plate Frame/State Name Visible [v. 1], (G.S. 20-63, Subsection (g)).** Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

**HB 238 – Require License for Moped [v. 1], (G.S. 20-10.1, Subsection (b)).** Mr. Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Clifford seconded the motion, and the motion carried. Mr. Johnson added that this offense would be consistent with the Offense Classification Criteria for a Class 3 misdemeanor.

**SB 45 – Off-Road Vehicle Trust Fund [v. 1], (G.S. 20-63.2).** Mr. Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Sanders seconded the motion, and the motion carried.

**SB 46 – Internet Libel/Civil and Crim. Offense [v. 1].**

**(G.S. 14-47.1).** Mr. Sanders moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

**(G.S. 99-10).** Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

**SB 131 – Penalty for DWI Conviction/BAC .20 or Higher [v. 1], (G.S. 20-179).** Chief Palombo moved to find that G.S. 164-41 is not applicable. Mr. Moore seconded the motion, and the motion carried.

Judge Spainhour announced the formation of a Legislative Review Subcommittee to review bills introduced between this meeting and the next Sentencing Commission meeting. He

volunteered to chair this subcommittee and circulated a sign-up sheet for members. He also stated that a request was forthcoming from Senator Hartsell for the Commission to review Senate Bill 94 as it relates to the other offenses involving assaults on special populations. The Subcommittee would perform this review at its next meeting.

Judge Spainhour asked if there was any other business. He reminded the members that the next Commission meeting is scheduled for June 12. He adjourned the meeting at 1:52 p.m.

Respectfully submitted,

Vicky Etheridge  
Administrative Assistant