

MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY
COMMISSION MEETING
RALEIGH, NC
June 12, 2009

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 12, 2009, in the Board Room at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman W. Erwin Spainhour, David Barlow, Honorable Charlie Brown, Joseph B. Cheshire V, Louise Davis, Honorable Richard Elmore, Honorable Robert Ervin, Paul Gibson, Bill Hart, Secretary Linda Hayes, Honorable Robert Johnson, Secretary Alvin Keller, Jr., Honorable Eleanor Kinnaird, Charles Mann, Moe McKnight, Luther Moore, Honorable Fred Morrison, Chief Frank Palombo, June Ray, Billy Sanders, and Jonathan Williams.

Guests: Jansen Averett (UNC law student), Susan Brooks (Sentencing Services), Dr. Rod Engen (NCSU Professor who brought 9-10 of his students), Adam Hopley (Indigent Defense Services/Juvenile Defenders Office), Irwin O'Donnell (UNC law student), Juwan Smith (Detroit law student), Eric Zogry (Indigent Defense Services/Juvenile Defenders Office)

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 asked those in attendance to introduce themselves. Luther Moore moved to adopt the minutes from the February 27, 2009 Sentencing Commission meeting; June Ray seconded the motion and the motion carried.

STRUCTURED SENTENCING STATISTICAL REPORT FOR FELONIES AND MISDEMEANORS – FISCAL YEAR 2007/08

Ashleigh Gallagher presented data from the Statistical Report for FY 2007/08, a hard copy of which was given to Commissioners at the February 27, 2009 meeting. Ms. Gallagher defined a sentencing episode as the sentence imposed for the most serious conviction for a given day of court. In FY 2007/08, there were 31,603 felony convictions (excluding drug trafficking and violent habitual felon convictions) and 164,442 misdemeanor convictions (excluding DWI convictions, cases disposed by magistrates, Class 2 and 3 criminal traffic offenses, and local ordinance offenses) under structured sentencing. Felony convictions have increased by 2% in the last fiscal year while misdemeanor convictions have decreased by less than ½% in the last fiscal year. Ms. Gallagher presented information on the number of convictions by crime type (felons and misdemeanants), punishments imposed (felons and misdemeanants), distribution by

offense class (felons and misdemeanants), distribution by prior record level (felons), distribution by prior conviction level (misdemeanants), active sentences by offense class (felons), sentence location by range (felons), types of intermediate sanctions imposed (felons), and types of community punishments imposed (misdemeanants). Ms. Gallagher also presented information on several special issues including life and death sentences, habitual felon convictions, and drug trafficking convictions.

Susan Katzenelson added a few comments to Dr. Gallagher's presentation. The number of active sentences were up 2% from last fiscal year which equates to about 600 inmates; therefore adding to the prison impact. She also explained that resources are lacking in many areas across the state. As a result, judges cannot hand down an intermediate sentence by giving Drug Treatment Court, Residential Facilities, or Day Reporting Centers. Senator Kinnaird asked how many misdemeanants go to prison. Ginny Hevener responded with 12%. Rob Johnson asked how many felony arrests had been pled down to misdemeanor convictions. According to the Sentencing Practices Study of 2002, Ms. Katzenelson said that 50% of felonies were pled down to misdemeanors.

Judge Brown explained that Electronic Home Arrest is rarely used due to the lack of digital phones in offenders' homes. Most of the offenders have cell phones so that the monitoring system cannot be installed. Chief Palombo asked if it was known how many felony and misdemeanor convictions were a result of new legislation. Ms. Hevener explained that it was hard to say because not all new offenses are assigned an AOC offense code. Senator Kinnaird said that two legislative crime bills would cause an increase in convictions – sex offenses and methamphetamines.

Senator Kinnaird inquired if Record Levels I and II were likely to be younger offenders. Ms. Katzenelson explained that accumulation occurs by those who repeat offenses; therefore, PRL I and II are the younger offenders. Senator Kinnaird then asked if there was a relationship between intermediate punishments and recidivism. Answering yes, Ms. Hevener explained that there was a stair step effect between type of punishment and recidivism. Those with community punishments had lower recidivism rates than those with intermediate punishments and those with intermediate punishments had lower recidivism rates than prison releases. Risk also factors into this relationship. Mr. Johnson wanted to know if the staff studied deferred disposition. Although it is included in AOC data, Ms. Hevener explained that the Sentencing Commission does not maintain data on deferred dispositions.

Secretary Keller commented on risk assessment. If juvenile records could be made available to DOC staff, it would be known whether or not those in the adult system are truly first offenders and would help the prediction ability of an offender's success on probation. When supervising probationers, DOC needs to look at the whole person including juvenile offenses. It is DOC's goal to get a person through successful probation.

LEGISLATIVE REVIEW AND UPDATE

Judge Spainhour informed the Commission that the Legislative Review Subcommittee had met twice since the last Commission meeting in February. The findings of this Subcommittee had been published in two reports which were provided to the Commission members by email. Bill Hart made a motion to adopt the two reports; Judge Elmore seconded the motion and the motion carried.

Sara Thomas and David Lagos reviewed the bills introduced or amended since the last Subcommittee meeting. Ms. Thomas presented a handout of bills that were identical to provisions in bills which the commission had previously reviewed. Luther Moore made a motion to accept the prior recommendations; Rob Johnson seconded the motion, and the motion carried.

Ms. Thomas and Mr. Lagos presented each provision, and the Commission made the following recommendations:

Proposed Felony Bills

HB 323 – Prevent Theft of Scrap Metals [Ed. 3]

(G.S. 66-11, Subsection (d)(3) (first offense)). Judge Ervin moved to find the provision consistent with the Offense Classification Criteria. Bill Hart seconded the motion, and the motion carried.

(G.S. 66-11, Subsection (d)(3) (second and subsequent offense)). Bill Hart moved to find the provision inconsistent with the Offense Classification Criteria. Luther 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. 66-11, Subsection (d)(4) (first offense)). Judge Elmore moved to find the provision consistent with the Offense Classification Criteria. Bill Hart seconded the motion, and the motion carried.

(G.S. 66-11, Subsection (d)(4) (second and subsequent offense)). Bill Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore 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. 66-11, Subsection (d)(5) (first offense)). Bill Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Elmore seconded the motion,

and the motion carried.

(G.S. 66-11, Subsection (d)(5) (second and subsequent offense)). Luther Moore moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore 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.

HB 440 – The Nicholas Adkins School Bus Safety Act [Ed. 3] (G.S. 20-217, Subsection (g)).

Bill Hart moved that the Offense Classification Criteria are not applicable because this offense involves a homicide. Judge Elmore seconded the motion. Senator Kinnaird questioned what would happen when this was sent back to the legislature as they would have no one to advise them. Billy Sanders and Rob Johnson argued that this was not a homicide and that it appeared that the legislature was trying to punish the activity leading up to the death. Judge Morrison asked Ms. Thomas how this was classified if someone passed a stopped school bus and hit a child not resulting in death. Ms. Thomas said that it was a Class I. Mr. Hart and Chief Palombo reiterated that the original criteria do not include death. The question was called, and the motion carried.

HB 608 – Require Title for Scrapped Vehicles [Ed. 2]

(G.S. 20-62.1, Subsection (a)(1)(h) (first offense)). Judge Ervin moved to find the provision consistent with the Offense Classification Criteria. There was a second by Mr. Hart, and the motion carried.

(G.S. 20-62.1, Subsection (a)(1)(h) (second and subsequent offenses)). Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Hart 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. 20-62.1, Subsection (a)(1)(j) (first offense)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. 20-62.1, Subsection (a)(1)(j) (second and subsequent offenses)). Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Johnson 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. 20-62.1, Subsection (a)(1)(k) (first offense)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. 20-62.1, Subsection (a)(1)(k) (second and subsequent offenses)). Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Johnson 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.

Chief Palombo then moved to find any second and subsequent offenses inconsistent with the Offense Classification Criteria with a note attached indicating this action. There were many seconds, and the motion carried.

Senator Kinnaird voiced her concern that the findings of consistency or inconsistency with Structured Sentencing of these proposed bills were not being forwarded to the subcommittees at the General Assembly. In response, Secretary Hayes felt the disconnect seemed to be between the Sentencing and Policy Advisory Commission staff sending the report to General Assembly staff and the staff not disseminating the reports to the subcommittee members at the General Assembly.

Ms. Katzenelson noted that the Sentencing and Policy Advisory Commission staff offered training in Structured Sentencing to the General Assembly staff every session. All the staff can do is offer.

Senator Kinnaird further raised the subject of habitual felons. She noted that she doesn't believe that the habitual felon law fit in with structured sentencing. Chief Palombo and Mr. Johnson disagreed.

HB 1218 – No Sludge Applied on Certain Public Space [Ed. 1]

(G.S. 143-215.1) Mr. Hart moved to find the Class I felony provision under G.S. 143-215.6B(g) consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. 143-215.1) Mr. Sanders moved to find the Class C felony provision under G.S. 143-215.6B(h) inconsistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried. It was suggested that a note be attached stating that it was inconsistent with a C Felony, but consistent with an E Felony.

HB 1242 – Youthful Offender Sentence Review [Ed. 2] (G.S. 15A-1480). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Judge Brown seconded

the motion, and the motion carried.

HB 1317 – Sex Offender Registry Changes [Ed. 2]

(G.S. 14-208.11). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

(G.S. 14-208.11B) (first offense). Senator Kinnaird moved to find the provision inconsistent with the Offense Classification Criteria. Mr. McKnight seconded the motion, and the motion carried.

(G.S. 14-208.11B) (second and subsequent offenses). Chief Palombo’s earlier motion to find second and subsequent offenses inconsistent applies in this case. 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. 14-208.16). Mr. Johnson moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 14-208.18). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Morrison seconded the motion, but the motion failed. Judge Morrison moved to find the provision inconsistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

HB 1332 – Create Criminal Offense of Felony Affray [Ed. 2]

(G.S. 14-34.10, Subsection (a)). Judge Ervin moved that the Offense Classification Criteria are not applicable for this provision, because it involves a homicide. Mr. Hart seconded the motion, and the motion carried.

(G.S. 14-34.10, Subsection (b)). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

HB 1444 – Limited Hunting Privilege/Nonviolent Felons [Ed. 2] (G.S. 14-415.51, Subsection (b)). Judge Ervin moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Cheshire seconded the motion, and the motion carried.

SB 990 – Increase Penalty/Timber Theft [Ed. 3] (G.S. 14-135). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

Proposed Misdemeanor Bills

HB 471 – Selling Motor Vehicle Registration Unlawful [Ed. 2] (G.S. 20-79.1, Subsection (1)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

HB 722 – Paraphernalia Control Act [Ed. 4]

(G.S. 90-113.82, Subsection (a)). Judge Elmore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 90-113.82, Subsection (b)). Mr. Moore moved to find the provision creating a Class 2 misdemeanor under G.S. 90-113.93(a) to be consistent with the Offense Classification Criteria. Judge Elmore seconded the motion, and the motion carried.

(G.S. 90-113.82, Subsection (b)). Mr. Hart moved to find the provision creating a Class 1 misdemeanor under G.S. 90-113.83(b) to be consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

(G.S. 90-113.82, Subsection (c)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 90-113.82, Subsection (d)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 90-113.82, Subsection (e)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

HB 855 – Targeted Picketing [Ed. 3] (G.S. 14-274.4, Subsection (c)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Mr. McKnight seconded the motion, and the motion carried.

HB 1218 – No Sludge Applied on Certain Public Spaces [Ed. 1]

(G.S. 130A-291.1). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 143-215.1). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Chief Palombo seconded the motion, and the motion carried.

HB 1255 – Sex Offenders/Permanent No Contact Order [Ed. 2] (G.S. 15A-1340.50). Mr. Hart moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

HB 1256 – Larceny of a Motor Vehicle Part [Ed. 3]

(G.S. 14-72.8 (first offense)). Mr. Hart moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

Mr. Hart asked that this note be added: The use of the permissive term “may” makes the classification of the offense ambiguous and, therefore, inconsistent with Structured Sentencing.

(G.S. 14-72.8 (second or subsequent offense)). Mr. Williams moved that as this was a second offense, it is inconsistent according to Chief Palombo’s former motion regarding second and subsequent offenses. The following notes were added: The use of the permissive term “may” makes the classification of the offense ambiguous and, therefore, inconsistent with Structured Sentencing. 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.

HB 1287 – Recycle Products Containing Mercury [Ed. 4]

(G.S. 130A-309.10, Subsection (m)). Mr. Moore moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion. Mr. Johnson made a motion to reconsider. Mr. Moore moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Johnson seconded the motion, and the motion carried.

(G.S. 130A-310.61). Mr. Sanders moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion; however, Mr. Moore asked that the motion be reconsidered. Secretary Hayes moved to find the provision inconsistent with the Offense Classification Criteria. Chief Palombo seconded the motion, and the motion carried.

HB 1378 – Clean Marinas/Pumpout Stations [Ed. 3]

(G.S. 77-128). Senator Kinnaird moved to find the provision consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

(G.S. 77-129). Mr. Sanders moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

HB 1444 – Limited Hunting Privilege/Nonviolent Felons [Ed. 2] (G.S. 14-415.51, Subsection (a) (second or subsequent offense)). Judge Ervin moved to find the provision inconsistent with

the Offense Classification Criteria. Mr. Hart 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.

SB 167 – No Smoking/Cell Phones on Prison Grounds [Ed. 2]

(G.S. 14-258.1, Subsection (c)). Judge Ervin moved to find the provision consistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 14-258.1, Subsection (d)). Mr. Sanderson moved to find the provision consistent with the Offense Classification Criteria. Judge Ervin seconded the motion, and the motion carried.

HB 836 – Removal of Electronic Monitoring Device [Ed. 2]/SB 713 – Removal of Electronic Monitoring Device [Ed. 3]

(G.S. 14-226.3). Mr. Williams moved to find the provision inconsistent with the Offense Classification Criteria. Mr. Hart seconded the motion, and the motion carried.

(G.S. 14-226.3). Mr. Sanders moved to find the provision creating a Class 1 misdemeanor consistent with the Offense Classification Criteria. Mr. Williams seconded the motion, and the motion carried.

(G.S. 14-226.3). Mr. Sanders moved to find the provision creating a Class 2 misdemeanor consistent with the Offense Classification Criteria. Mr. Moore seconded the motion, and the motion carried.

LEGISLATIVE REVIEW AND UPDATE (continued)

After lunch, John Madler presented an update on criminal and juvenile law issues being considered in the General Assembly. He began with criminal law bills that have been ratified. HB 440 – The Nicholas Adkins School Bus Safety Act, creates a Class H felony offense. The bill was not reviewed by the Commission until this meeting. HB 9 – No Texting While Driving, creates a Class 2 misdemeanor offense but only for school bus drivers. The Commission found this to be consistent with the Offense Classification Criteria. HB 616 – Offense for Portable Toilets/Pumper Trucks, creates a Class 1 misdemeanor offense. The Commission found this to be inconsistent with the Offense Classification Criteria.

There are two bills being considered that deal with punishing juvenile offenders. SB 1048 – Juvenile Jurisdiction to 18 Years, would raise the juvenile age from 16 to 18 years of age in one step, while HB 1414 – Youth Accountability Act, would raise the juvenile age in six-month increments over four years. Both bills would create a task force to prepare for the

transition.

The General Assembly is considering expanding access to juvenile records. SB 984 – Access to Juvenile Records/Violent Offenders; SB 1082 – Juvenile Records/Probation Risk Assessment; and HB 875/SB920 – Probation Reform, all contain provisions that would allow various adult criminal justice officials access to juvenile records without a court order. Mr. Madler reminded the members that the Sentencing Commission’s Youthful Offender Subcommittee had discussed that issue.

There are six bills that deal with expunction. The first three address issues that the Sentencing Commission’s Expunction Subcommittee addressed. HB 1329 – Consolidate Expunction Statutes, would consolidate the expunction statutes into Article 5 of Chapter 15A of the General Statutes, expand the statute to include offenders who were less than 18/21 at the time of the offense, and would require State and national criminal record checks. HB 726 – Clarify Expunctions and SB 262 – Expunctions/Purge Online Databases, would require the clerk of superior court to notify applicable State and local agencies, require State agencies to notify private entities with whom they have a contract, and require private entities to destroy and not disseminate records that have been expunged or face civil liability. SB 788 – Expunge Nonviolent Felonies/Young Offenders, would make expunction available to those under the age of 18 who are first time offenders convicted of Class H and I felonies (with certain exclusions). HB 1064 and SB 491 – Expunge Nonviolent Crimes, as well as HB 1445 – Reform Bill of 2009, would make expunction available to any first time offender convicted of a Class H or I felony (with certain exclusions).

There are six bills that make changes to the probation laws: SB 1089 – Low-Risk Probationers May Be Unsupervised, SB 1076 – Modify Criminal Justice Partnership Program, HB 859 – Amend Conditions of Probation, SB 123 – Warrantless Searches/Probationers and parolees, HB 875/SB 920 – Probation Reform, and SB 1077 – Expand Parole Officers’ Delegated Authority. Among other things, these bills would allow the probation officer to transfer a misdemeanor from supervised to unsupervised probation under certain circumstances, amend the Criminal Justice Partnership Program to make an offender who receives a community punishment eligible for services under the Program, move some conditions of probation from special conditions (which are discretionary with the judge) to regular conditions (which are mandatory), expand the authority to conduct warrantless searches of probationers, create regular conditions of probation for offenders who receive intermediate punishments, and amend the delegation of authority to the probation officer to allow the officer to require an offender sentenced to community punishment to submit to any of the conditions listed as intermediate punishments.

Mr. Madler then presented bills that proposed changes to the structured sentencing laws. Under HB 1360 – Amend Habitual Offender Law, an habitual felon would be redefined as a person convicted of three prior felonies that were Class G or higher and a current felony that is Class G or higher, and the punishment would be one class higher than the underlying felony. According to Ginny Hevener, this would result in a savings of approximately 4,000 beds. HB 1445 – Reform Bill of 2009, contains a section that would reclassify Statutory Rape or Sex

Offense of a Person Who is 13, 14, or 15 Years Old from a Class C felony to a Class F felony. Several bills contain provisions that the Sentencing Commission proposed in response to a legislative mandate to study the projected increase in the prison population. HB 1606/SB 489 and HB 1445 would expand the points in Prior Record Level I to cover zero to one point and even out the remaining ranges. HB 1607/SB 490 and HB 1445 would reallocate three months from the minimum sentence of Classes B1 through E to the maximum sentence. SB 488 and HB 1445 would make the increase in sentence lengths between prior record levels more proportionate using a set percentage. These last three provisions have the support of the Conference of District Attorneys and the Sheriff's Association.

Mr. Madler also mentioned several bills containing proposals for studying sentencing issues. SB 202 – Appropriations Act of 2009, would require the Department of Correction and the Administrative Office of the Courts to conduct a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. HB 876/SB 796 – Probation Study, would require the Department of Correction to study comprehensive reform of the State's approach to community corrections. SB 589 – Plan to Eliminate Mandatory Sentences, would require the Sentencing Commission to review and evaluate the current sentencing structure in North Carolina for the purpose of eliminating the requirement that a mandatory minimum sentence be imposed for any crime. HB 527/SB 496 – Ex-Offender Reentry Study, would create a joint legislative study committee to study how North Carolina and other states address barriers facing ex-offenders in accessing jobs, housing, education, training, and services and determine best practices that reduce recidivism. SB 972 – Study Prison Overcrowding/Nonviolent Felonies, and HB 1092/SB 1046, SB 202 – Study Sentencing and Prison Overcrowding, would create a joint legislative study committee to study issues related to prison overcrowding, the State's policies and laws regarding incarceration of nonviolent felons, and the feasibility of modifying sentences for nonviolent offenses.

Lastly, Mr. Madler discussed the proposed budget in SB 202 – Appropriations Act of 2009. He explained that the Governor, the Senate, and the House have each presented their version of the budget. The Justice and Public Safety budget, which includes the courts, corrections, and juvenile justice, has been reduced in each subsequent version as revenue figures were updated. The reductions include eliminating positions, vacant and filled; closing some units, expanding others; increasing probation officers (using some federal funds); and reducing funding for programs. Senator Kinnaird reiterated how serious the situation is with funding.

Ms. Hevener reported that the average prison population for June to date is 41,300, with an average jail backlog of 375. The Sentencing Commission's projected prison population for June is 40,994 -- a difference of less than 1% compared to the current population. Ms. Hevener noted that the same simulation model used to produce the overall prison population is also used to prepare impact projections for proposed changes in criminal penalties during the legislative session. She said that the staff has used the simulation models 10-15 times this session for impact projections.

JUVENILE RECIDIVISM REPORT

Susan Katzenelson reported on the 2009 Juvenile Recidivism Study, the second of the Commission's legislatively mandated biennial reports. The FY 2004/05 sample of 20,236 juvenile delinquents was followed for three years to measure the juveniles' recidivism rate, defined as one or more subsequent complaints in the juvenile system, arrests in the adult system, or both. The sample had an overall recidivism rate of 45%, with a rate increasing from a low of 36% for juveniles with cases closed, to 39% for juveniles with cases diverted, 48% for juveniles with cases dismissed, and 56% for juveniles adjudicated. In addition to level of involvement, recidivism rates were also found to vary by demographic factors, especially the juvenile's age, by the seriousness of the offense and, for adjudicated and disposed juveniles, by the nature of the punishment (*e.g.*, commitment to Youth Development or Detention Center).

Some of the policy implications from the findings seemed to point to less invasive system response and less restrictive punishment for delinquent juveniles; the availability of more front-end resources to deal with behavioral problems (especially of the 10-13 age group), and a focus on treatment and services to the juveniles and their families for individual risk factors.

In discussing the report, Judge Brown asked for clarification of the definition of closed and diverted cases. As Karen Calhoun explained, in closed cases a complaint is brought against a juvenile, but the court counselor, after reviewing the charges and all relevant circumstances, closes the case without further action. In diverted cases, an intake counselor may decide that some form of follow-up with a juvenile via a plan or contract might be more beneficial than referring the case to court.

Supporting the findings regarding age, Secretary Hayes interjected that the Department of Juvenile Justice and Delinquency Prevention has found age 12 and 13 juveniles to be the most problematic. This group is the one that needs to be focused on, and is the easiest to influence if they can be reached early. These juveniles do want to learn, but are frustrated at that age.

Louise Davis commented on the utilization of Youth Development Centers (YDCs) and explained that most of the juveniles that ended up in a YDC were committed because there was no other option for them. Furthermore, there was usually no parental involvement. Ms. Katzenelson agreed that while being sent to a YDC or Detention Center may not necessarily be a cause for recidivating, it served as a reliable predictor for future recidivism.

Senator Kinnaird said that there is no control for the effects of possible bias in the schools, law enforcement, courts, etc. She believed that this issue will need some serious study in the future.

Susan Brooks wanted to know what the implications were for these recidivistic findings in view of the therapeutic models for juveniles. Senator Kinnaird noted that the therapeutic model has just started, and it will be 2-4 years before that information is known. Secretary

Hayes explained that the Methodist Children's Home is already using a therapeutic model, with promising results. She noted that DJJDP is looking forward to implement a true detention reform in North Carolina depending on the budget.

In the next Juvenile Recidivism Study (in 2011), data from FY 06/07 will be used. However, it will be two more study cycles before any results from changes by the new DJJDP administration can be seen.

Secretary Keller said DOC staff have found through probation information that the average age that probationers are still committing offenses was age 26. That is why DOC wants to look backward and see if these offenders had a juvenile record in order to learn more about them and have a better chance at success.

STAFF UPDATES

Compendium

David Lagos described the Compendium of Community Corrections Programs in North Carolina (Compendium) for Fiscal Year 2007/08, which was distributed to members at the Commission's February, 2009 meeting. At its inception in 1990, the Sentencing Commission was tasked to develop a comprehensive strategy for community-based corrections programs. The Commission published its first Compendium in 1991, and used it to develop recommendations for the community corrections strategy that was ultimately adopted by the General Assembly. The Commission has continued to publish and update the Compendium annually.

The Compendium includes information on pretrial release, sentencing services, community corrections, and residential treatment programs in North Carolina. It provides a narrative description and data sheet for each program for the most recent fiscal year, in this case FY 2007/08. The data sheet provides contact information for the program and includes information on program capacity, the eligible population, the number of persons actually served, success and failure rates, and the costs per day to the program and, where applicable, to the offender. The data sheet also lists specific activities offered by the program. Both the narrative description and the data sheet are provided by the program. The Compendium is distributed in hard copy to the program providers, officials within the affected agencies, and to Legislative Staff. It is also posted on the Sentencing Commission's website.

Mr. Lagos encouraged the Commission members to offer their suggestions to improve the Compendium or to increase its utility.

Update On The Juvenile Crime Prevention Council Feasibility Study

Marlee Gurrera reported on the Juvenile Crime Prevention Council Feasibility. In the 2007 Session of the General Assembly, House Bill 2436 directed the North Carolina Sentencing and Policy Advisory Commission to conduct a feasibility study for measuring the effectiveness of Juvenile Crime Prevention Council (JCPC) programs with a final report due May 1, 2009. (Session Law 2008-107, Section 14.8(a))

Sentencing Commission staff met with DJJDP and the Fiscal Research Division of the General Assembly to plan the research process. Two relevant databases were identified – the JCPC Client Tracking database and the North Carolina Juvenile Online Information Network (NC-JOIN). In addition to these data, interviews were conducted with JCPC area consultants and DJJDP staff to add context to the study.

The population examined for the feasibility study included all juveniles with a JCPC admission from July 1, 2006 through June 30, 2007 (Fiscal Year 2006/07). Youths eligible for a JCPC program are those aged 6 to 17 who are at risk of becoming involved in undisciplined or delinquent behavior or who have had formal contact with the juvenile justice system through a diversion from or a referral to court. Information was collected on 23,878 JCPC admissions representing 18,415 youth of whom 7,829 (42½%) were identified as at-risk and 10,586 (57½%) were identified as court involved.

If mandated by the General Assembly to conduct an evaluation of JCPC programs, the following methodological steps are recommended. First, it is recommended that the sample used in the feasibility study be used as the basis for the outcome evaluation. Second, the primary outcome measures recommended are juvenile and adult recidivism; however, additional outcome measures should be explored. Last, a three year follow-up period is recommended and would be consistent with the Sentencing Commission's next cycle of juvenile recidivism and would allow the two studies to be done in conjunction with one another.

Judge Spainhour asked if there was any other business. He reminded the members that the next Commission meeting is scheduled for September 25. He adjourned the meeting at 3:00 p.m.

Respectfully submitted,

Vicky Etheridge
Administrative Assistant