MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
June 7, 2024

The North Carolina Sentencing and Policy Advisory Commission met on Friday, June 7, 2024, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Lindsey Granados, Representative Dudley Greene, Judge R. Greg Horne, Honorable Tracey Johnson, Sheriff Garry McFadden, Dr. Harvey McMurray, Honorable Jim Mixson, Calvin Suber, Honorable Mike Waters, Elizabeth Watson, Patrick Weede, Chief A.Z. Williams, and Judge Valerie Zachary.

Guests: David Clayton (Governor's Office, Policy Team), Julianna Kirschner (RPP, AOC), Meagan Pittman (RPP, AOC), Amber Lueken Barwick (NCCDA), William Crozier (DJJDP, DPS), Lisbeth Rivera (DJJPP, DPS), Marie Evitt (NCSA), Cortney Goodwin (NCSA), and Theresa Foley (COA intern).

Staff: Michelle Hall, Ginny Hevener, John Madler, John King, Meghan Boyd Ward, Julio Cazares, Melissa Lugo, Sierra Satterfield, and Shelley Kirk.

INTRODUCTIONS AND RECOGNITION OF OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:01 a.m. and asked members and guests to introduce themselves. Chairman Brown introduced a resolution recognizing outgoing Commissioner Pamela Walker's service to the Commission. Lindsey Granados moved to adopt the resolution; Patrick Weede seconded the motion and it carried.

Chairman Brown presented the minutes from the March 1, 2024 meeting and called for a motion. Ms. Granados moved to adopt the minutes as written; Calvin Suber seconded the motion and it carried. Chairman Brown reminded Commissioners of the remaining 2024 Commission meeting dates: September 13 and December 13, then he reviewed the agenda.

SESSION UPDATE AND LEGISLATIVE REVIEW

Chairman Brown recognized John Madler, staff, and Julio Cazares, staff, to provide an update on the 2024 legislative session and to facilitate the legislative review. Mr. Madler began the session update by explaining that the General Assembly convened on April 24 and was in the second year of the biennium, the short session. He provided an overview of the criminal bills that had been introduced that related to the work of the Commission and added that the Governor was the only one who had introduced a budget bill so far.

Turning to the Legislative Review, Mr. Madler reviewed the duty the General Assembly assigned to the Commission to review proposed legislation that either created a new offense, reclassified an existing offense, or changed a punishment. He then reviewed the Offense Classification Criteria that the

Commission used to perform this duty, and the policies the Commission established for guidance (*see* Handouts).

Mr. Cazares presented the bills for review (*see* Handout) and the Commission made the following findings:

HB 237 – Unmasking Mobs and Criminals [Ed. 4]
(G.S. 15A-1340.16G) Ms. Granados moved to find the proposed sentencing enhancement inconsistent with Structured Sentencing with a note that it would be consistent if it was an aggravating factor. Judge Greg Horne seconded the motion and it carried.
(G.S. 20-174.1(c)) Ms. Granados moved to find the proposed Class H felony for second and subsequent offenses inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class I felony for all offenses. Judge Horne seconded the motion and it carried.
(G.S. 14-18.5(b)) Ms. Granados moved to find the proposed Class C felony inconsistent with the Offense Classification Criteria with a note it would be consistent with the Offense Classification Criteria for a Class E felony. Mike Waters seconded the motion and it carried.
(G.S. 14-18.5(c)) Mr. Weede moved to find the proposed Class B2 felony consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.
(G.S. 14-18.5(d)) Mr. Weede moved to adopt the previous findings the Sentencing Commission made when it reviewed the same provision in March 2023 (inconsistent). Ms. Granados seconded the motion and it carried.
(G.S. 14-18.5(e)) Ms. Granados moved to find the proposed Class B1 felony inconsistent with the Offense Classification Criteria. Mr. Weede seconded the motion and it carried.

HB 495 – Revise Money Laundering/Retail Crime [Ed. 2]
(G.S. 14-118.8) Ms. Granados moved to find the proposed Class H felony if the value of the funds alone or aggregated exceeded $10,000 but were less than $100,000 consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and it carried.
(G.S. 14-118.8) Ms. Granados moved to find the proposed Class C felony if the value of the funds alone or aggregated was $100,000 or more consistent with the Offense Classification Criteria. Mr. Weede seconded the motion and it carried.
(G.S. 14-86(a)(1)) Ms. Granados moved to find the proposed Class H felony if the value of the retail property exceeded $1,500 aggregated over a 90-day period inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class I felony. Mr. Weede seconded the motion and it carried.
(G.S. 14-86(a)(1)) Ms. Granados moved to find the proposed Class G felony if the value of the retail property exceeded $20,000 aggregated over a 90-day period inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class H felony. Mr. Weede seconded the motion and it carried.
(G.S. 14-86(a)(1)) Mr. Weede moved to find the proposed Class F felony if the value of the retail property exceeded $50,000 aggregated over a 90-day period consistent with the Offense Classification Criteria. Judge Horne seconded the motion and it carried.
(G.S. 14-86(a)(1)) Mr. Weede moved to find the proposed Class C felony if the value of the retail property exceeded $100,000 aggregated over a 90-day period consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.
(G.S. 14-72.1(d2)) Mr. Weede moved to find the proposed Class H felony consistent with the Offense Classification Criteria but, after discussion, withdrew his motion. Ms. Granados moved to find the

proposed Class H felony inconsistent with the Offense Classification Criteria with a note that it would be consistent as a misdemeanor offense. Tracey Johnson seconded the motion and it carried.

(G.S. 14-72.11(6)) Judge Horne moved to find the proposed Class H felony inconsistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.

(G.S. 14-72.11(7)) Mr. Waters moved to find the proposed Class H felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class I felony. After discussion, Mr. Waters amended his motion to find the proposed Class H felony consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.

(G.S. 14-72.11(8)) Mr. Weede moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried.

HB 591 – Modernize Sex Crimes [Ed. 3]

(G.S. 14-202.7(b)(1)) Ms. Granados moved to find the proposed Class F felony consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and it carried.

(G.S. 14-202.7(b)(3)) Mr. Waters moved to find the proposed Class F felony for a minor who commits a second and subsequent offense inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class F felony for all offenses. Ms. Granados seconded the motion and it carried.

(G.S. 14-202.7(c)) Mr. Waters moved to find the proposed Class E felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class C felony. Mr. Weede seconded the motion and it carried.

(G.S. 14-190.16)(a)(5)) Ms. Granados moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class C felony. Mr. Waters seconded the motion and it carried.

(G.S. 14-190.16(a)(6)) Ms. Granados moved to find the proposed Class D felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class C felony. Mr. Waters seconded the motion and it carried.

(G.S. 14-190.17(a)(2)) Ms. Granados moved to find the proposed Class E felony consistent with the Offense Classification Criteria with a note that it would also be consistent with the Offense Classification Criteria for a Class C felony. Mr. Waters seconded the motion and it carried.

(G.S. 14-190.17(a)(3)) Ms. Johnson moved to find the proposed Class E felony consistent with the Offense Classification Criteria. Ms. Granados seconded the motion and it carried. After the Commission reviewed the next two provisions in this bill, Mr. Waters asked the Commission to reconsider its finding on this section; the Commission agreed. Mr. Waters then moved to find the proposed Class E felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class C or F felony. Ms. Granados seconded the motion and it carried.

(G.S. 14-190.17A(a)) Ms. Granados moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and it carried.

(G.S. 14-190.17C(a)) Mr. Weede moved to find the proposed Class E felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class C or F felony. Ms. Granados seconded the motion and it carried.

(G.S. 14-190.17C(b)) Ms. Granados moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Mr. Weede seconded the motion and it carried.

(G.S. 14-202.3(a)(3)) Mr. Waters moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Judge Horne seconded the motion and it carried.

(G.S. 14-202.3(a)(3)) Mr. Weede moved to find the proposed Class G felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the consistent with the Offense

Classification Criteria of a Class F felony and that the General Assembly should look at the classification of similar offenses. Ms. Granados seconded the motion and it carried.

(G.S. 14-190.5A(b), (c)(1)) Ms. Granados moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Judge Valerie Zachary seconded the motion and it carried.

(G.S. 14-190.5A(b), (c)(3)) Mr. Waters moved to find the proposed Class H felony for second or subsequent offenses by a person under the age of 18 at the time of the offense inconsistent with The Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class H felony for all offenses. Ms. Granados seconded the motion and it carried.

HB 1070 – Property Rights and Protections [Ed. 1]

(G.S. 14-127) Mr. Weede moved to adopt the previous findings the Sentencing Commission made when it reviewed a substantially similar provision in May 2024 (inconsistent). Ms. Granados seconded the motion and the motion carried.

(G.S. 14-117.8(a)) Ms. Granados moved to find the proposed Class H felony consistent with the Offense Classification Criteria. Mr. Waters seconded the motion and it carried.

(G.S. 14-117.8(b)) Mr. Waters moved to find the proposed Class I felony inconsistent with the Offense Classification Criteria with a note that it would be consistent with the Offense Classification Criteria for a Class H felony. Ms. Granados seconded the motion and it carried.

2024 JUSTICE REINVESTMENT IMPLEMENTATION EVALUATION REPORT: REVIEW OF KEY FINDINGS

Chairman Brown recognized Meghan Boyd Ward, staff, to review key findings from the 2024 Justice Reinvestment Implementation Evaluation Report. Ms. Boyd Ward began by thanking the Department of Adult Correction (DAC), North Carolina Sheriff's Association (NCSA), and Post Release Supervision and Parole Commission for their assistance with the report. She reviewed the reasons for monitoring the Justice Reinvestment Act or JRA (fidelity, outcomes, and enhancements) and the major areas of the criminal justice system that were changed or created by the JRA (*see* Presentation). Beginning with provisions changed under the JRA, comparing pre-JRA to post-JRA years (CY 2009 to CY 2023), the volume of habitual felons has decreased but the percentage of habitual felons in the prison population has remained stable. Furthermore, looking at the past five years, most habitual felons were sentenced in Class E (CY 2020 – CY 2022), but were evenly split (at 36%) between Class C and Class E in CY 2023. Under the JRA, the use of other sentencing tools has been limited. There were 69 prison entries for habitual felon breaking and entering and 172 Advanced Supervised Release (ASR) prison entries. In the past two calendar years (2022 and 2023), the number of ASR sentences was the highest it has ever been. However, 39% of ASR sentences in CY 2023 were driven by 7 counties, with a total of 44 counties using ASR. Ms. Granados asked which counties were the 7 counties that accounted for the majority of ASR Sentences. Ginny Hevener responded that typical counties seen in the data from year to year were Columbus, Johnston, and New Hanover, and she would have to look up the rest. Mr. Waters added that ASR is being used less due to the requirements under Marsy's Law.

Ms. Boyd Ward stated that the Treatment for Effective Community Supervision (TECS) completion rates have increased since CY 2020 (29%) (*see* Presentation). In CY 2023, the overall completion rate was 33% for all TECS participants. The number of entries increased from CY 2022 to CY 2023 (9,791 to 10,104). Turning to the use of delegated authority, she noted that since CY 2017 high risk delegated authority continues to be used more frequently than delegated authority. Looking at confinement in response to violation (CRV), she said that CRV dispositions remain below pre-pandemic levels, but have increased over the past year by 9%. Additionally, for those serving a CRV, they continue to primarily serve them in prison facilities rather than CRV Centers.

Moving to evaluating correctional practices under JRA, Ms. Boyd Ward noted that when comparing the community corrections populations, the post release supervision (PRS) population was more likely to be supervised in the more restrictive supervision levels (i.e., Levels 1 and 2) than the probation population. Most of the community corrections population was in Supervision Level 2 (39%), while the smallest proportion of the population was in Supervision Level 5 (2%). The report also evaluated the effectiveness of quick dips using one-year follow-up period and found that over three-quarters of probationers with quick dips ordered in CY 2022 had a subsequent probation violation. In CY 2022, about half (51%) of probationers remained on supervision following a quick dip with the remainder either completing probation (33%) or being revoked (16%). She then discussed the other confinement option of CRVs, noting that less than half of probationers remained on supervision in the year following a CRV disposition in CY 2022.

Ms. Boyd Ward then outlined the findings relating to incarceration and reentry, stating that the Statewide Misdemeanant and Confinement Program's (SMCP) capacity and population has been declining since CY 2021. She explained the decline by noting that SMCP entries have remained below pre-pandemic levels. Regarding reentry populations, PRS entries have declined while the population has increased over the past five years (CY 2019 to CY 2023). Looking at the PRS population by supervision level, revocation rates were highest for post-release supervisees in Supervision Level 1 (21% for Class B1-E and 20% for Class F-I), with a decreasing rate of PRS revocations for Supervision Levels 2, 3, and 4. Compared to pre-JRA, the proportion of PRS revocations as the entry reason to prison has grown from 2% in CY 2012 to 22% in CY 2023 (*see* Presentation).

In concluding, Ms. Boyd Ward remarked that in this year's report, long term population trends were examined for the community corrections and prison populations. Over time, the percentage of probationers and post release supervisees in the most restrictive supervision levels has increased (Levels 1 and 2). Overall, the community corrections population declined 29% since JRA implementation in CY 2011, and in recent years, declines are largely due to the pandemic. Chairman Brown asked about the decline in the community corrections population since the JRA's emphasis was to supervise more in the community. Ms. Boyd Ward responded that much of the decline recently occurred during the pandemic. Ms. Hevener also noted that there has been an overall trend downwards in misdemeanor convictions. Ms. Boyd Ward went on to say that the prison population declined from 39,954 in December 2011 to 31,188 in December 2023 (a decrease of 8,766 or 22%), with much of this decrease attributable to the pandemic (a total of 69%). Chairman Brown then asked Ms. Boyd Ward for her overall takeaway from the report, and she noted that measuring outcomes moving forward is key to understanding the impact of the JRA.

FY 2024–FY 2033 PRISON POPULATION PROJECTIONS

Chairman Brown recognized John King, staff, to review the current prison population projections (*see* Handout). Mr. King stated that producing prison projections is part of the Commission's original mandate that it develop a tool to be used for accurate long-term correctional resource planning. The projections are prepared annually in conjunction with the DAC and are used for multiple purposes including determining whether existing capacity is adequate for the current and future population, assisting with the determination of future staffing needs and inmate housing needs, and allowing for consideration of correctional policies within the context of available resources.

Mr. King noted that FY 2023 felony convictions and sentences imposed provide the foundation for the projections and are used to project new admissions across the projection period. The projections also take

into account the release of the prison population at the beginning of the projection period. The projections include all offenders in prison and those awaiting transfer from local jails (i.e., jail backlog).

Mr. King reviewed the prison projections and capacity, indicating that the prison population is projected to increase from 31,672 to 35,745 (13%) across the ten-year projection period. He noted the current projection is higher than the previous projection primarily because Class A-D felony convictions increased 13% and Class E-G felony convictions increased 7% in FY 2023 compared to FY 2022. Standard Operating Capacity (SOC) is projected to be 31,284 and Expanded Operating Capacity (EOC) is projected to be 35,860. The prison population is projected to be below EOC, but above SOC, for all ten years.

Mr. King noted the monthly average prison population has steadily increased 8% (or 2,155 beds) between the lowest population during the pandemic (29,033 in July 2021) and December 2023 (31,188). Nevertheless, the monthly average prison population is still below pre-pandemic levels (35,106 in March 2020). He also reminded the Commission that, as reviewed at the September 2023 meeting, the previous projection was within the historical accuracy range of 2% for the first year.

Mr. King summarized the key assumptions used to develop the projections. He noted that the accuracy of the projections largely depends on how well FY 2023 data on felony convictions, prison admissions, and prison releases represent future years. He shared information regarding the sentences imposed for felony convictions in FY 2023, as well as data on prison admissions in FY 2023, noting that the projections assume that what was observed in FY 2023 will approximate what occurs in each year of the projection period.

Mr. King concluded with a discussion of how the prioritization of resources for violent and repeat offenders under Structured Sentencing is reflected in the prison population. Class A-D convictions account for the smallest proportion of convictions per year but comprise over half of the projected population as a result of their mandatory active sentences and long sentence lengths. Most low-level felons (Class H-I) who receive active sentences are repeat offenders and impact the prison population through their high volume; however, they comprise only 17% of the prison population due to their shorter sentence lengths.

Chairman Brown noted the projections assume no changes in criminal justice laws and yet there have been changes to the Raise the Age legislation that might need to be taken into consideration at the Commission's next Forecasting Meeting. Mr. Waters added that most of the cases that are moving from juvenile to adult jurisdiction usually end up in adult court anyway and, as a result, he does not foresee the changes in the Raise the Age legislation having a huge impact on the prison population.

2024 ADULT RECIDIVISM STUDY: REVIEW OF KEY FINDINGS

Chairman Brown recognized Michelle Hall, staff, to present key findings from the 2024 Adult Recidivism Study (*see* Presentation). Ms. Hall first shared some key definitions for the study, including the outcome measures of interest (fingerprinted arrests) and the time periods examined. She noted the breakdown of the sample, which included probationers who exited supervision (66%) and prisoners who exited prison (34%) in FY 2021. Next, she shared the most significant finding from the study: declines in both the sample size and the recidivist arrest rates were primarily attributable to the COVID-19 pandemic.

Ms. Hall then reviewed two findings that have been consistent over the Commission's body of research into adult recidivism: prisoners have higher rates of recidivism compared to probationers, and those who tend to fail, tend to do so early (within the first year of follow-up). She noted some new analysis included in the report, which examined employment status pre- and post- interaction with the criminal justice

system as well as the top industries for offender employment during the follow up period. She reviewed offender risk levels, noting that prisoners were assessed as higher risk compared to probationers; recidivist arrest rates followed the expected pattern with the highest rates for those assessed at the highest levels of risk and decreasing as risk level decreased.

Next, Ms. Hall turned more new analysis from the report which examined the sample by grid cell on the felony punishment chart, both the distribution and by outcomes. Most felons were convicted in Class H and Class I and were in low prior record levels (PRLs), however felons with more PRL points had higher recidivism. No obvious pattern of recidivism was observed looking at offense class seriousness, but as PRL increased, recidivist arrest rates also increased. Lindsey Granados asked if that was not the expected pattern, that recidivism would increase as PRL increased. Ms. Hall responded that previous studies had observed that past is a strong predictor of future, supportive of the finding related to PRL; what was surprising was the lack of pattern for offense class seriousness. Lastly, Ms. Hall reviewed findings from multivariate analysis examining recidivism for the entire sample which revealed age, offender type (i.e., probationer or prisoner), and risk level were the strongest predictors recidivist arrest.

Chairman Brown recognized Ginny Hevener, staff, to share findings for the prison release sample. She pointed out that the majority of prisoners entered due to a new crime (62%) followed by post-release (PRS) revocation (26%) and probation revocation (12%) (*see* Handout). This distribution shifted following the expansion of PRS to Class F-I felons under the JRA, with a much higher percentage of prisoners entering due to a PRS revocation (26% in FY 2021 compared to 3% in FY 2013). Prisoners with a new crime had the lowest recidivist arrest rates at 40%, while PRS revocation entries had the highest at 56%).

In terms of risk level, Ms. Hevener reported that there was a stairstep pattern in recidivist arrest rates, with those assessed as extreme risk having the highest rates (52%) and those assessed as low risk having the lowest rates (10%). Recidivism rates for extreme and high risk prisoners were 6 percentage-points apart, while the drops from high risk to moderate risk and then from moderate risk to low risk were much higher (16 percentage-points and 20 percentage-points respectively). She pointed out that very few prisoners were in the low or minimal risk levels; nearly all prisoners (98%) were in the extreme, high, or moderate risk levels. Given the lack of variation in the distribution and the pattern in recidivism rates, Ms. Hevener noted that these findings may indicate that the risk instrument, which has been validated on the probation population but not on the prison population, should be reexamined in terms of how it is working for this population of offenders.

Ms. Hevener shared some of the characteristics of prisoners who had the highest recidivist arrest rates – offenders who were in close custody at release, entered prison due to PRS revocation, or had 5 or more disciplinary infractions. She also presented some of the strongest predictors of an increased probability of recidivist arrest among prisoners, which included risk level (although not all categories could be included) and being male. Offender age was the strongest predictor associated with a decreased probability of recidivist arrest, with prisoners aged 50 or older having the lowest probability. Ms. Granados asked if there was data on marriage and family. Ms. Hevener responded that the data indicates whether a prisoner is married or not married, but there are no data on children. Ms. Hall added that the data is self-reported and therefore not very reliable.

Ms. Hevener also reviewed outcomes for prisoners who were released early (through June 30, 2021) under the February 2021 settlement agreement in NC NAACP; ACLU v. Cooper. Overall, 9% of prisoners (1,180) were released early under the settlement, primarily through the awarding of discretionary sentence credits (61%). An additional 22% were released early following review by the Post-Release

Supervision and Parole Commission and 17% were transitioned to serve the remainder of their prison sentences in the community through Extended Limits of Confinement (ELC). Class B1 – D settlement releases had substantially higher recidivist rates than Class B1 – D regular releases (i.e., those released at their projected release date); recidivist arrest rates for Class E – G and Class H – I settlement releases were very similar to those for regular releases. Outcomes were also examined for a combined group of 884 ELC prisoners, with 77% transitioned to ELC pre-settlement and 23% under the settlement. Settlement ELC prisoners – who served less time in the community under supervision and had a higher percentage with Class H – I felonies – had higher recidivist arrest rates during the two-year follow-up (39%) compared to pre-settlement ELC prisoners (28%).

The FY 2021 prison sample offered a first look at outcomes for prisoners who received services through a Local Reentry Council (LRC). Ms. Hevener noted that 5% of prisoners (655) received services from an LRC. The most frequently provided services were to address basic needs, employment, housing, and transportation. Recidivist arrest rates for prisoners receiving LRC services were slightly lower than for all prisoners (42% and 44% respectively). Chairman Brown asked if LRCs were assisting released inmates in getting drivers' licenses. Ms. Hevener responded that the DAC had assisted with these efforts in the past through mobile units. Ms. Boyd Ward confirmed that DMV mobile units are no longer being used and indicated that inmates are now getting assistance in obtaining drivers licenses at prisons that are designated as reentry units, as reported in the JRA Report.

Next, Ms. Hevener summarized key findings for the probation release sample, noting that by capturing events that occur during probation (e.g., programs, sanctions, arrests), a probation release sample enables a more comprehensive analysis of how these factors affect outcomes after probation. Over half of probationers (54%) exited for positive reasons (such as satisfactory completion), 30% for negative reasons (such as unsatisfactory termination), and 16% due to revocation (over half due to absconding). Probationers had higher recidivist arrest rates during supervision (29%) than during the two-year follow-up period (22%); for each time period examined, the positive group had the lowest recidivist arrest rate and the revocation group had the highest (*see* Presentation).

Outcomes examined during the supervision period included violations and responses to violations. Ms. Hevener reported that 78% of probationers had at least one violation during supervision. The positive group had the lowest percentage with a violation (63%), while nearly all offenders in the negative group (92%) and, by definition, all offenders in the revocation group had a violation. The positive and negative groups were most likely to have a technical violation as their most serious violation; the revocation group was most likely to have a criminal violation. Chairman Brown confirmed that criminal violations resulted from having a new conviction.

Ms. Hevener indicated that there were four nonconfinement responses for noncompliance (delegated authority, additional probation conditions, modified probation conditions, and continued probation supervision) and two confinement responses for noncompliance (quick dip for all offenders and CRV for felons only) that were examined during supervision. Probationers who received a delegated authority condition or additional probation conditions had higher recidivist arrest rates during the two-year follow-up period (27% and 26%) compared to probationers who did not receive those responses (22% each). Probationers with a quick dip had higher recidivist arrest rates compared to probationers without a quick dip (26% and 22%). Felony probationers with a CRV had higher recidivist arrest rates than felony probationers who did not receive a CRV (32% and 21%). Chairman Brown asked whether those without a nonconfinement or confinement response include those without violations. Ms. Hevener confirmed that it did and that there are plans for future analyses to focus only on probationers who have violations.

Ms. Hevener shared some of the characteristics of probationers who had the highest recidivist arrest rates, which included probationers who were in the revocation group, who were in the most restrictive supervision level, and/or who were extreme risk. The strongest predictors of an increased probability of recidivist arrest among probationers were having an arrest during supervision or having higher risk or need levels. The top factors predictive of a decreased probability of recidivism were being older and being employed during probation supervision. None of the nonconfinement and confinement responses were significant predictors of recidivist arrest.

Ms. Hall concluded the presentation by restating some of the key findings from the study:
- The pandemic impacted the sample and the follow-up period resulting in the lowest recidivism rate in 20 years.
- Most recidivist arrests occurred within the first year.
- Further exploration is needed to reevaluate the risk/need assessments for both probationers and prisoners.
- Probationers fared better across all recidivism measures compared to probationers.

She noted that staff was partnering with DAC to further explore prisoners and recidivism and the potential mitigating effect of prison programs and jobs. Staff also plans to continue monitoring employment trends for NC offenders, reentry services and strategies, and any possible effects of sentence credit reductions on recidivism.

FY 2023 MISDEMEANOR AND DWI CONVICTIONS

Chairman Brown recognized Sierra Satterfield, staff, to present preliminary data from the misdemeanor section of the FY 2023 Structured Sentencing Statistical Report (*see* Presentation). Ms. Satterfield reviewed the purpose of the Statistical Report and shared the unit of analysis, a sentencing episode, referred to as "conviction," which is based on the most serious conviction on a given day of court. She noted that misdemeanor convictions covered in this section include only those sentenced under the Structured Sentencing Act (SSA); driving while impaired (DWI) convictions would be covered later in the presentation. She reminded Commissioners that the Administrative Office of the Courts (AOC) is transitioning to Enterprise Justice (Odyssey) and FY 2023 data includes Odyssey data from four pilot counties. She also reminded Commissioners of a methodological change made in FY 2020 that expanded misdemeanor convictions to include those for Class 2 and Class 3 traffic offenses, which is important to consider when examining misdemeanor trends. Ms. Satterfield noted the Commission would be receiving the Statistical Report and the corresponding Quick Facts in the near future.

In FY 2023, there were 103,010 misdemeanor convictions, including 40,887 for Class 2 and Class 3 traffic offenses. Misdemeanor convictions increased slightly from FY 2022 to FY 2023 (102,709 to 103,010). The median time to sentencing for misdemeanor convictions in FY 2023 was 1 month longer than in FY 2020. Ms. Granados asked if the Commission staff investigated the difference in the length of time to dispose of a case for Odyssey counties versus non-Odyssey counties. Ms. Satterfield replied the average time to sentencing is 1 month longer for Odyssey counties; the median time is the same. Ms. Hevener stated that Commission staff have been tracking Odyssey counties for a variety of sentencing information.

Ms. Satterfield then shared some information on the personal characteristics of misdemeanants. The distribution of convictions by sex has remained stable from FY 2020 to FY 2023, while distributions by age and race have shifted. There is a higher percentage of offenders in older age groups and a lower percentage of Black offenders. She noted that 73% of misdemeanor convictions were in Class 1 or Class 3, 39% of

misdemeanor convictions involved offenders in Prior Conviction Level I (i.e., no prior convictions), and most were for traffic offenses (44%). In FY 2023, 3 of the top 5 misdemeanor convictions have remained the same since FY 2020 (non-DWI driving with license revoked, misdemeanor larceny, and possess drug paraphernalia).

Ms. Satterfield stated that 72% of misdemeanor convictions resulted in a Community punishment. Among misdemeanants who received a nonactive sentence, 51% received no probation, 25% received unsupervised probation, and 24% received supervised probation. Offenders in Prior Conviction Level III were most likely to receive Active punishment (43%). Class A1 and Class 1 misdemeanor offenses had the highest Active punishment rates (36% each). Ms. Satterfield noted that in 74% of active sentences, the active sentence imposed was equal to the credit for time served (CTS) pre-trial. She continued by showing that the average active sentence imposed factor in both the seriousness of the offense and prior criminal history. She noted the average active sentence for misdemeanants overall was 33 days. Turning to nonactive sentences, Ms. Satterfield stated supervised probation was imposed in 76% of Class A1 convictions and that percentage decreased substantially as offense class seriousness decreased. Convictions with no probation moved in the opposite direction, with just 2% of Class A1 misdemeanor convictions resulting in no probation. She also noted the difference in average probation lengths compared to the average suspended sentence.

Ms. Satterfield concluded by sharing some overall key points regarding FY 2023 misdemeanor convictions, some of which include: Active punishment was imposed at a higher rate for more serious offenses and for repeat offenders, and nonactive sentences were imposed more frequently than active sentences, with the majority receiving no probation.

After Ms. Satterfield finished presenting on the SSA misdemeanors, Chairman Brown recognized Ms. Boyd Ward, staff, to present on FY 2023 DWI convictions (*see* Presentation). Ms. Boyd Ward provided an overview of DWI offenses, explaining that they are not sentenced under Structure Sentencing (*see* G.S. 20-179). She went on to explain that there are six punishment levels (Aggravated Level 1 and Levels 1-5) determined through findings of grossly aggravating, aggravating, and mitigating factors. For sentencing the options are an active term of imprisonment, supervised probation, and unsupervised probation; the place of confinement is the SMCP.
Ms. Boyd Ward stated that DWI convictions have increased since FY 2020 but remain lower than historic levels. Comparing FY 2023 to FY 2015, there was a 20% decrease in convictions, largely attributable to the pandemic. Among all convictions in FY 2023 (N=27,369), a majority (57%) of DWI sentences were in Level 5, the lowest punishment level. Next, she shared some personal characteristics of offenders convicted of DWI in FY 2023. Nearly three-quarters were male (74%) and over half were white (51%). A majority (67%) of DWI offenders were between 21 and 40 years old at the time of their DWI offense. She noted that SSA misdemeanants were generally similar to DWI offenders in terms of sex and age but differed in the percentage of DWI offenders who were White compared to SSA misdemeanants.

Ms. Boyd Ward then shared analyses relating to the type of punishment and sentences imposed for DWI convictions in FY 2023. She noted that almost all DWI convictions (90%) are disposed of through a guilty plea and most offenders (64%) received unsupervised probation. Only 6% of offenders received an active sentence, with a range of active sentences between 12% in Level 1 and 3% in Level 5. However, less than half (41%) of offenders sentenced in Aggravated Level 1 received an active sentence. Supervised probation was the typical sentence imposed for Levels 1, 2, and 3, while unsupervised probation was most frequently imposed for Levels 4 and 5. When active sentences were imposed, they were usually set at half the statutory maximum; however, on average, sentence lengths were longer for suspended sentences than

for active sentences. For those suspended sentences, lengths of supervised probation were longer than unsupervised probation.

Ms. Boyd Ward moved on to trend information for DWI convictions. She explained that the percentage of convictions with BAC of .15 and greater has increased since FY 2017. In FY 2023, 49% of DWI convictions had a BAC recorded that was greater than .15. and this was 6% greater than FY 2017 and 2% greater than FY 2021. Turning to an analysis of time to sentencing, she noted that 46% of convictions in FY 2023 took one year or more to sentence. In contrast, looking to pre-pandemic case processing of a year or more, there were smaller proportions at only about one-third of cases (FY 2019 at 34% and FY 2017 at 37%). The median time to sentencing for DWI convictions was 12 months; for SSA misdemeanor convictions the median time to sentencing is 6 months. Next, she explained that active sentences were on a spot (a sentence falling on either the statutory minimum or statutory maximum) less frequently than suspended sentences and these sentencing practices have remained stable throughout the years. Lastly, she said that over the periods examined, nearly all sentences imposed had a minimum term that was equal to the maximum term.

Finally, Ms. Boyd Ward closed her remarks with four key points regarding DWI convictions. First, the volume of DWI convictions increased slightly from last fiscal year, but convictions have declined compared to historic levels and, overall, most convictions have been in Level 5. Second, active sentences remain a small portion of overall DWI convictions. The majority receive unsupervised probation, while most SSA misdemeanants serving community sentences receive no probation. Third, the average length of active time that DWI offenders receive is significantly longer than SSA misdemeanants. Fourth, median time to sentencing for DWI convictions is longer in months when compared to pre-COVID DWI convictions and SSA misdemeanants.

NASC UPDATE AND CONFERENCE PLANNING

Chairman Brown recognized Ms. Hall for an update on the 2024 National Association of Sentencing Commissions (NASC) Conference. Ms. Hall reminded members that the North Carolina Sentencing Commission was hosting the conference this year in Raleigh from the afternoon of Tuesday, August 6, to the afternoon of Thursday, August 8. Ms. Hall asked members to let her know if they were planning on attending and directed Commissioners to the NASC website for the agenda, once finalized.

INSTRUCTIONS TO STAFF AND OTHER BUSINESS

Chairman Brown thanked the guests and the staff for their presentations and reminded the members that the next full Commission meeting will be Friday, September 13, 2024.

ADJOURNMENT

Chairman Brown adjourned the meeting at 3:03 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary