



MINUTES
NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION MEETING
September 13, 2024

The North Carolina Sentencing and Policy Advisory Commission met on Friday, September 13, 2024, at the North Carolina Judicial Center in Raleigh, North Carolina.

Members Present: Chairman Charlie Brown, Natalia Botella, Lindsey Granados, Representative Dudley Greene, Jodi Harrison, Honorable Tracey Johnson, William Lassiter, Honorable Jim Mixson III, Luther Moore, Judge Fred Morrison, Jr., Calvin Suber, Patrick Weede, Chief A.Z. Williams, and Judge Valerie Zachary.

Guests: Ryan Boyce (AOC Director), Ann Zemba (AOC Training and Services), Kaylin Spivey-Bennett (AOC Training and Services), Emily Mehta (AOC RPP), Julianna Kirschner (AOC RPP), Meagan Pittman (AOC RPP), Amber Lueken Barwick (NCCDA), Becky Whitaker (IDS), Senay AcikgozArikatla (DPS DJJDP), George Pettigrew (DAC), Marie Evitt (NCSA), and Gabrielle Atkinson (NCSA).

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

INTRODUCTIONS AND RECOGNITION OF OUTGOING COMMISSIONERS

Chairman Brown called the meeting to order at 10:05 a.m. and began by announcing that Structured Sentencing became effective for offenses committed on or after October 1, 1994, so this October 1st will be the 30th anniversary of Structured Sentencing. Michelle Hall, staff, stated that there will be a celebratory cake available during lunch.

Chairman Brown next introduced a resolution recognizing outgoing Commissioner Tawanda Foster Artis' service to the Commission. Luther Moore moved to adopt the resolution; Calvin Suber seconded the motion and it carried. Chairman Brown introduced new Commission member Jodi Harrison, General Counsel for the Department of Adult Correction (DAC), and read her biography, and new staff member Dylan Saunders, and read his biography; both were welcomed to the Commission. Chairman Brown then asked members and guests to introduce themselves.

Chairman Brown presented the minutes from the June 7, 2024, meeting and called for a motion. Mr. Moore moved to adopt the minutes as written; James Mixson seconded the motion and it carried. Chairman Brown reminded Commissioners of the remaining 2024 Commission meeting date of December 13, and presented the 2025 meeting dates: March 7, June 6, September 12, and December 12. Finally, he reviewed the agenda.

LEGISLATIVE SESSION SUMMARY AND IMPACT

Chairman Brown recognized John Madler, John King, and Julio Cazares, staff, to provide a summary of the 2024 Session of the General Assembly and the impact of the enacted bills on correctional resources. Mr. Madler began by stating that the 2024 legislative short session convened on April 24 and ended on June 28. The General Assembly was scheduled to reconvene monthly but with limited subjects. Mr. Madler stated that staff compiled summaries of the new provisions related to criminal and juvenile justice into a report. That report also included the Commission's findings on the consistency of each felony provision with the Offense Classification Criteria and with Structured Sentencing. Mr. Madler pointed out the second handout that contained the new offense and punishment provisions by offense class (*see Handouts*).

Turning to felony criminal provisions, Mr. Madler reviewed a chart showing the number of new provisions by offense class, pointing out that Classes H and C contained the most changes this session. He then reviewed a chart showing the number of new provisions by offense class groupings: Classes A-D, E-G, H-I. The groupings combine offenses that would be subject to similar sentencing provisions according to the felony punishment chart. Beginning with Classes A-D, Mr. Madler stated that the provisions were only in Classes C and D. He provided an overview of some of the provisions, including a new offense of money laundering (HB 495), expanded existing offenses of organized retail theft (HB 495), first degree sexual exploitation of a minor (HB 591), and the reclassified offense of willful injury to property of a public utility (from a Class 1 misdemeanor to a Class C felony) (SB 607).

Chairman Brown asked if willful injury to property of a public utility had a monetary threshold for the value of the damage, to which Mr. Madler responded that it did not.

Mr. King stated that the Commission is required to provide impact projections for each bill that affects criminal penalties or juvenile justice in addition to the broader mandate to project correctional and delinquent populations. The impact projections estimate the number of prison beds, or Youth Development Center (YDC) beds, that will be affected by any proposed changes. The potential impact depends on the number of convictions involved, offense class, type of punishment imposed, and sentence length.

Speaking specifically about the new Class C and D felonies, Mr. King pointed out that any convictions for these offenses will impact the prison population since, with few exceptions, all Class A-D felony convictions require an active sentence. The prison bed impact will depend on the actual number of convictions. Mr. King added that the reclassification of the Class 1 misdemeanor for willful injury to property of a public utility to a Class C felony will also have prison bed impact since misdemeanants serve active sentences in county jails, but felons serve their active sentences in prisons.

Chairman Brown asked Lindsey Granados if she had seen any cases of willful injury to property of a public utility. Ms. Granados replied she had not. Chairman Brown stated he has presided over at least 5 offenses in Rowan County. Chief A.Z. Williams added he had not experienced many instances of this offense. Ms. Granados asked if the Class 1 misdemeanor offense was repealed by SB 607. Mr. Madler stated that the existing offense was reclassified, so the misdemeanor version of the offense no longer existed.

Regarding Classes E-G, Mr. Madler stated that there was a similar number of provisions in each class. He reviewed several new and expanded sex offenses (HB 591), and the expanded existing offense of organized retail theft (HB 495).

Mr. King noted that convictions in this offense class range do not have the same 1 conviction to 1 prison bed impact that Class A-D felonies do since offenders in this range could receive probation rather than an active sentence. Prison bed impact will depend on the number of convictions that occur, and the prior record level of the offenders convicted of these new crimes.

Regarding Classes H-I, Mr. Madler explained that the new offenses were in Class H while Class I contained one reclassified offense. The new provisions included expanding the offense of standing, sitting, or lying on a street (HB 237), as well as certain property (HB 495) and sex offenses (HB 591). Solicitation of prostitution (first offense) was reclassified from a Class 1 misdemeanor to a Class I felony (HB 971).

Similar to new Class E-G felony convictions, Mr. King noted that prison bed impact for the new Class H felonies will depend on the number of convictions that occur, and the prior record level of the offenders convicted of these new crimes. The reclassification of solicitation of prostitution (first offense) from a Class 1 misdemeanor to a Class I felony is expected to have prison bed impact. In FY 2023, there were 23 Class 1 misdemeanor convictions for solicitation of prostitution; as a Class I felony, it is estimated that the reclassification will result in the need for 3 additional beds in the first year and 6 additional beds for each following year.

Chairman Brown asked about the impact of expanding standing, sitting, or lying on a street. Mr. Madler explained that the bill added elements and the data would not indicate the presence of those elements. Chairman Brown asked about the charges used during the Moral Monday protests. Ms. Granados stated that, as she recalled, most of the protestors were charged with disorderly conduct and the Wake County District Attorney had an informal policy of requiring 25 hours of community service to receive a dismissal.

Finally, Mr. Madler reviewed the new punishment enhancement for wearing a mask or other clothing or device to conceal or attempt to conceal the offender's identity while committing a criminal offense. If found, the offender is guilty of an offense that is one class higher than the underlying offense and the court must impose an active sentence if an active sentence is permitted for the new offense class and prior record level (HB 237).

Mr. King noted that the prison bed impact of this punishment change could be substantial since it could apply to any felony conviction. He pointed out that estimating the impact was difficult because it is not known how many convictions involved face coverings in the past. Regardless, this punishment change is expected to have prison bed impact because it increases the punishment 1 class higher than the underlying offense and requires an active sentence in cells where active is authorized.

Turning to misdemeanor criminal provisions, Mr. Cazares returned to presenting by reviewing a chart showing the number of new provisions by offense class, pointing out that Classes 1 contained the most changes this session and there were no reclassified misdemeanor offenses. He provided an overview of the misdemeanor punishment enhancement for wearing a mask while committing a crime (HB 237), and increased fines and community service hours for certain littering offenses (HB 199).

Mr. King then informed the Commission that the new misdemeanor offenses are not expected to have prison bed impact since misdemeanants serve their active sentences in county jails.

Mr. Cazares next provided an overview of the sentencing-related juvenile justice changes (HB 834). These changes include allowing 13–15-year-olds transferred to adult court to be remanded to juvenile court upon a joint motion of the prosecutor and defense attorney and excluding 16–17-year-olds who commit

Class A – E felonies from the jurisdiction of juvenile court. These offenders may be removed from adult court to juvenile court upon a similar joint motion. In both circumstances, HB 834 requires the court to expunge the record, and authorizes the court to issue a secure custody order at the request of the prosecutor. HB 834 also amended the solicitation statute (G.S. 14-2.6) to make an adult who solicits a minor to commit a crime guilty of the same class offense as the offense the adult solicited the minor to commit. He informed the Commission that Sierra Satterfield, staff, would provide information on the impact of HB 834 when she provides an update on the YDC population projections.

Mr. Cazares concluded with two bills of interest. House Bill 591 added the new offense of obscene visual representation of sexual exploitation of a minor to the list of offenses for which an offender must register as a sex offender and to the list of offenses for which a registered sex offender cannot be on certain premises. Senate Bill 565 restarted automatic expunctions for dismissals and findings of not guilty or not responsible and imposed a time limit of not less 180, and not more than 210 days, from dismissal to expungement.

William Lassiter asked whether the change to the solicitation statute was calculated into the prison population projections. Mr. King explained that it was not included in the current projection because of the effective date, but it will be considered in future projects. Mr. Madler added that current data does not identify whether the parties are adults or minors so it will be difficult to project which violations will fit the new statute.

Ms. Granados asked if obscene visual representation of sexual exploitation of a minor was the only new sex offense added to the sex offender registry requirements. Mr. Madler explained that many of the felony sex offenses reviewed earlier are expansions of existing offenses and those offenses already require sex offender registration.

PROJECTION UPDATES

Chairman Brown explained the next agenda item would be provided by several staff members as noted on the agenda. Mr. King will provide an update to the Prison Population Projections; Meghan Boyd Ward, staff, will provide an update to the Statewide Misdemeanant Confinement Program (SMCP) Capacity Projections; and Ms. Satterfield will provide an update to the Juvenile Resource Projections.

PRISON POPULATION UPDATE

Chairman Brown recognized John King to provide an update on the prison population projections (*see Handout*). Mr. King stated that the handout provides information on the accuracy of the current prison population projection and a look at prison population trends. In terms of the accuracy of the projections, he highlighted that the average prison population for June 2024 was 31,686 compared to the projected population of 31,672, a difference of 14. The August 2024 average prison population (31,679) was lower than the projection for June 2025 (31,950), indicating that the current projection is still on track in its second year.

Mr. King pointed out that the actual and projected prison populations were within prison capacity. He noted that the average June 2024 population was about 400 beds above Standard Operating Capacity (SOC), but about 4,000 beds below the Expanded Operating Capacity (EOC). Mr. King added, however, that the prison population is projected to increase each year and, by FY 2033, be within 115 beds of EOC.

Mr. King also reviewed historical trends for the prison population. He pointed out that the prison population was fairly stable between July 2015 and March 2020, decreasing just 6% over nearly 5 years. He contrasted this stability with the pandemic period where the prison population decreased 17% over 15 months between March 2020 and June 2021. Mr. King mentioned that the prison population has increased 9% over the past 3 fiscal years and is nearly half-way to returning to pre-pandemic levels.

In closing, Mr. King stated that staff have started working on conviction data from Administrative Office of the Courts (AOC) in preparation for producing new projections and will be receiving data from the Department of Adult Correction (DAC) soon. The new projections are typically finalized in January or early February.

STATEWIDE MISDEMEANANT CONFINEMENT PROGRAM PROJECTION UPDATE

Chairman Brown recognized Meghan Boyd Ward to present on the SMCP projections (*see Handout*). Ms. Boyd Ward first thanked the NC Sheriffs' Association (NCSA) staff for their assistance with the projections. She reminded the Commission that the SMCP is a voluntary program that counties can participate in and house misdemeanants who are serving sentences of at least 90 days and all Driving While Intoxicated (DWI) misdemeanants. The projection is required by statute for publication in February each year.

Ms. Boyd Ward noted that SMCP capacity was 963 beds on June 30th, while the projected capacity for the same period was 954, only a 1% difference. She shared that this was the most accurate the projection had been since the Commission began producing these projections. During the fiscal year, the lowest capacity was 877 and highest was 972 beds.

Ms. Boyd Ward explained that the projection itself is a five-year projection and in this year's projection, the starting and ending year are the same at 954 beds (the result of indications of stability in capacity). She noted that despite declines in capacity over time, capacity has remained able to meet demand. Finally, she shared that the projected capacity has primarily remained within the highest and lowest recorded capacity for each fiscal year.

JUVENILE RESOURCE PROJECTION UPDATE

Chairman Brown then recognized Sierra Satterfield to present an update on the YDC Population Projection (*see Handout*). Ms. Satterfield began by acknowledging that the mandate and the process for producing the YDC projections were similar to the adult prison projections presented earlier. The original projections were developed using FY 2023 court or disposition data and YDC population or "stock" as of June 30, 2023, and were presented to the Commission in December 2023. Ms. Satterfield reminded Commissioners that the projections included the third full year of Raise the Age (RtA) juveniles (16- and 17-year-olds).

Ms. Satterfield noted that in FY 2024, the projection was 180 and the average June population was 212. Ms. Granados asked what the reason was for the increase in FY 2024. Ms. Hall responded that it could be a combination of factors including the small YDC population, where any changes can look substantial, the result of pandemic recovery, and/or the result of policy changes stabilizing. Ms. Satterfield added the population is projected using the previous year's data; the YDC population from the year before was lower likely due to the pandemic. Ginny Hevener added there is more flexibility with YDC dispositions; there is only a minimum length, not a maximum. Deputy Secretary Lassiter added that Juvenile Justice saw an increase in 2022, 2023 and into 2024 in serious violent crimes that could be pandemic-related as juveniles did not get needed services when they were not in school. Ms. Satterfield stated for FY 2025, the projection

was 195 and the average August population was 202. The population as of September 13, 2024, was 198. She noted that the accuracy of the projection is assessed by examining the projection within context of the actual minimum and maximum YDC populations. The FY 2024 projection was 180, the highest population was 220 and the lowest was 166 in FY 2024, which was within the acceptable accuracy range.

Ms. Satterfield concluded by pointing to the average monthly YDC population by month and by fiscal year. She mentioned that FY 2019 was pre-RtA and pre-pandemic and compared the remaining FYs to FY 2019, noting a steady, gradual increase in the YDC population since July 2020. The two largest fluctuations in the past five fiscal years she continued, were in FY 2020, with a decrease of 50 juveniles throughout the fiscal year and in FY 2024 with an increase of 43 juveniles throughout the fiscal year. Ms. Satterfield commented that staff have already received data for the upcoming YDC projections from Juvenile Justice and plan to have them completed by the end of the year. Ms. Satterfield noted the upcoming projections will include the legislative changes in HB 834, which changes the jurisdiction of 16-and-17-year-olds who commit A-E felonies. Mr. Lassiter added the new legislation formalizes current practice; the YDC population is not expected to change significantly under the new legislation. Mr. Lassiter added the juveniles must be held in detention even if their case will not be processed in juvenile court. The big difference is that Juvenile Justice won't have any information on the juveniles (i.e., medical reports, patient information) who will be held in detention because they will not be assigned a juvenile court counselor.

HIGHLIGHTS FROM THE 2024 NASC CONFERENCE

Chairman Brown recognized Michelle Hall to share highlights from the National Association of Sentencing Commissions (NASC) Conference. Ms. Hall first thanked the Administrative Office of the Courts (AOC) Team who supported the Conference: Ann Zemba, Kaylin Spivey-Bennett, Mike Silver, Nicole Welsh, Bert Barber, Jason Dallin, Ray Winters, and Kyree Tittle. She then thanked the AOC Director Ryan Boyce for his support of the Conference and welcoming remarks. She shared a summary of the Conference materials with the Commission, including an overview of the conference app.

After lunch break, Ms. Hall continued by providing a summary of the Juvenile Justice panel that LaToya Powell (moderator), Deputy General Counsel, Department of Public Safety (DPS); and William Lassiter (panelist), Deputy Secretary, Juvenile Justice and Delinquency Prevention Division (JJDPD) participated on.

Chairman Brown asked Mr. Lassiter for his thoughts on the partnership between the Sentencing Commission and juvenile justice in comparison to other states. Mr. Lassiter stated the North Carolina Sentencing Commission undertakes more work in Juvenile Justice compared to other states, including the JCPC and recidivism studies, and YDC projections that assist the state in making informed decisions regarding programing, capacity, and Juvenile Justice initiatives. Mr. Lassiter noted there was agreement among panelists across the country about the difference in the needs of younger juveniles and the 16- and 17-year-olds.

Chairman Brown shared feedback from Clerk Mixson about the conference technology and the ability to connect with other attendees and panelists. Judge Zachary stated the opening reception was a wonderful event and staff did an excellent job in representing the Sentencing Commission and state. Ms. Granados noted that she enjoyed speaking with members of the D.C. Sentencing Commission at the opening reception. Tracey Johnson also stated she enjoyed the NASC reception and heard conference attendees stating they wanted next year's conference event to occur in Raleigh.

Chairman Brown asked Ms. Hevener to speak about her participation in the sentencing practices conference panel. He commented that he enjoyed learning more about other states' studies of possible sentencing disparity. Ms. Hevener shared the panelists agreed more data was needed on the earlier stages of decision-making prior to sentencing (e.g., plea bargaining) to improve understanding. The Commissions' study was unique as it showed an opposite correlation between race, sentencing, and other factors compared with previously established research. She noted the findings were in line with some emerging research.

Judge Zachary asked if there were data available on data on the reasoning behind why a judge may choose to reject plea arrangements or instead choose to impose a higher sentence. Ms. Hevener stated data on the details of the decision-making process are not available at this time. Ms. Johnson asked if there was data on judge's acceptance and rejection rates, in terms of plea agreements. Chairman Brown stated that information was not available and may not be available in future studies. Ms. Granados stated there are factors outside of the defense attorney's control, including calendar settings and judge selection, that have also affected sentencing outcomes.

Chairman Brown commented that there was a workshop presentation by Professor James Markham, University of North Carolina School of Government, on Criminal History that, in panel discussions, demonstrated other states like Pennsylvania, are beginning to conduct similar research to North Carolina studies.

Chairman Brown shared his impressions from his participation on a panel with other long-serving Commission members. Ms. Hall stated one of her takeaways was the value of long service, as high turnover in membership can make projects more difficult.

OVERVIEW OF REENTRY 2030

Chairman Brown recognized George Pettigrew, Deputy Secretary for the Division of Rehabilitation and Reentry for DAC, to present the Strategic Plan for Reentry 2030 (*see* Presentation). Mr. Pettigrew shared that the Reentry 2030 initiative began when Governor Roy Cooper signed Executive Order 303 on January 29, 2024. He explained this ordered a whole-of-government approach to achieve four goals: (1) improve economic mobility of formerly incarcerated people by increasing the number of local reentry councils and providing access to educational, technical training, apprenticeship, work-based learning, and employment opportunities pre-and post-release; (2) improve mental and physical health by expanding access to behavioral health and substance use disorder services pre-and post-release and ensuring that all eligible incarcerated people obtain Medicaid upon release; (3) expand housing opportunities for formerly incarcerated people; and (4) remove barriers to successful community reintegration, especially for those returning to historically underserved communities.

Mr. Pettigrew detailed the successes already achieved since the signing of the executive order, including adding 11 new local reentry councils (LRCs), expanding reentry facilities (R-Step), launching a Commercial Driver's License school, and receiving grants from the Department of Commerce and Department of Health and Human Services. Additionally, he shared that the Joint Reentry Council (JRC) has published a strategic plan to achieve the Governor's four broad goals using 26 objectives, 133 strategies, and 95 metrics. Some examples that he noted from the plan were expanding LRCs, educational offerings, and housing opportunities.

Ms. Granados asked about vocational training offerings, and he responded that these are to be increased with the community colleges. Next, Patrick Weede asked about the opportunity for work release for those who have committed violent offenses. Mr. Pettigrew responded that if those individuals work their way to minimum custody, then an assessment is completed for eligibility for work release. Ms. Granados asked about including family reunification in Reentry 2030 planning and Mr. Pettigrew shared that would be a goal of the restorative part of reentry. Finally, Mr. Pettigrew explained the next steps for the project including continued meetings of the JRC, publication of an annual report on December 1, 2024, and establishing baseline metrics.

OVERVIEW OF JUDICIAL BRANCH WORKING GROUP ON DATA GOVERNANCE

Chairman Brown then recognized Emily Mehta, Manager, Research, Policy, and Planning (RPP) Division of the AOC, to present on the overview of the Judicial Branch Working Group on Data Governance (see Presentation). Ms. Mehta stated that the expansion of e-Courts has presented new opportunities to intentionally collect data and think about how it is presented to the public. As such, AOC decided to create a working group on data governance to guide decision-making.

Ms. Mehta stated current legacy data applications only present the existing status of a case but exclude data between initiation and final disposition. However, e-court makes intermediate events available, closing an existing gap between AOC metrics and the clerk's first-hand data entry. Ms. Mehta further stated the goals of the working group and AOC are to leverage e-courts to the furthest extent possible. The hope is to create better-informed metrics and for AOC data to be more consumable for the public through advanced visualization programs and other easy-to-understand platforms. The working group will also address completing future adult statistical reports which will include new metrics from e-courts and creating a statistical report for juvenile delinquency focusing on the court's role within juvenile justice.

Chairman Brown asked Ms. Mehta what new metrics the working group is seeking to add to the new research application. She replied that they will add metrics for how many hearings and continuances there are by case type as well as how many requests for incompetency hearings are filed by case type. Ms. Mehta also stated there are other conversations taking place addressing data definitions as well as, how the working group will/when does the working group want, to count probation violations and other post-conviction activities that have the potential to re-open an existing case.

Chairman Brown asked if the new metrics would also create new data entry fields or queries in Odyssey. Ms. Mehta stated the new metrics would create new variables on publicly provided statistic reports including time measures for incidents like probation violations and other post-conviction activities.

FY 2025 COMMISSION WORKPLAN

Chairman Brown recognized Ms. Hall to review the Commission's upcoming workplan for 2025 (see handout). Ms. Hall stated that the workplan was an overview of the upcoming fiscal year, including Commission meeting dates, planned subcommittees, and Commission and staff tasks. The workplan can be amended if the Commission receives a request from the General Assembly, an agency, or other entity.

Ms. Hall also announced that Guiding Eyes for the Blind dog named Dash, raised by staff member Tamara Flinchum, completed his training, graduated, and has been placed with a person to serve as their guide dog. Ms. Flinchum informed the Commission that Dash was the 12th puppy she raised.

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, December 13, 2024.

ADJOURNMENT

Chairman Brown adjourned the meeting at 2:26 p.m.

Respectfully submitted,

Shelley Kirk
Administrative Secretary