

Criminal Investigation & Adjudication Committee
May 13, 2016 Meeting
Minutes

Present: Adams, Buck, Byrd, Coleman, Davis, Huffman, Jordan, McLaurin, Murray, Seigle, Smith, Wagoner, Webb.

Chair Webb opened the meeting. Minutes from the last meeting were approved, with one change. Minutes will be posted on the Commission website.

The meeting turned to the main topic, a presentation of the report from the Subcommittee on Juvenile Age. Members of the Subcommittee included:

- Deputy Commissioner Lassiter;
- District Attorney Jim Woodall;
- Sheriff Asa Buck;
- Eric Zogry, North Carolina's Juvenile Defender;
- Dick Adams;
- District Court Judge Paul Holcombe;
- Michelle Hall, Executive Director, NC Sentencing & Policy Advisory Commission; and
- LaToya, Powell, faculty member at the UNC School of Government, specializing in juvenile law.

Reporter Smith noted that although not officially a member of the Subcommittee, Eddie Caldwell from the Sheriffs Association was an active participant and raised important issues that law enforcement had regarding prior proposals by other groups to raise the juvenile age. He had a major role in shaping many of the recommendations in the report that respond to law enforcement concerns. Smith staffed the Subcommittee's meetings and prepared the draft report, which was distributed to Committee members prior to the meeting. Smith gave an overview of the draft report, discussing the reasons for the Subcommittee's recommendations and the details of them. The PowerPoint slides used by Smith during her comments will be posted with these minutes on the Commission website.

Discussion ensued about various aspects of the report including:

The report recommends that the existing transfer statute (allowing for transfer of 13 to 15-year-olds charged with felonies to adult court upon approval of a district court judge) be maintained but that 16 and 17-year-olds charged with Class A-E felonies be automatically transferred to adult court after probable cause or by indictment. Murray asked whether transfer could be made solely by indictment, without a probable cause hearing. Smith answered yes; she explained that Woodall had raised a concern by prosecutors that they need a procedural option to avoid requiring fragile victims, such as rape or sexual assault victims, to testify at a probable cause hearing shortly after the incident. By drafting the recommendations to allow transfer by indictment, this prosecution concern was fully accommodated.

Murray indicated that he and several other district attorneys picked up on something in the report that they hadn't noticed before: That no changes were made to the existing transfer statute for 13 to 15-year-olds. He expressed concern that currently prosecutors are not able to get district court judges to transfer serious crimes committed by 13 to 15-year-olds. He added that because of the low success rate on transfer motions, some prosecutors stopped making them. He indicated that he wanted the prosecutors to have sole discretion to transfer 13 to 15-year-olds charged with violent crimes to adult court, without approval of the district court judge. He noted that because of the concerns with sole prosecutor discretion, an

alternative would be to make 13 to 15-year-olds charged with such crimes subject to the new automatic bind over provision for 16 and 17-year-olds charged with Class A-E felonies.

Smith explained the lengthy discussions in- and outside of Subcommittee meetings regarding the procedural mechanisms for transfer of juveniles charged with violent crimes:

- (1) The “prosecutor discretion” mechanism, where the prosecutor is given sole authority to transfer such juveniles, without approval of the district court judge;
- (2) Transfer on motion by the prosecutor, but subject to district court judge approval; and
- (3) Statutory exemption, requiring that a certain class of offenses committed by juveniles of a certain age automatically be bound over for superior court.

Smith explained that the report includes both options (2) (by maintaining the existing transfer provision for 13 to 15-year-olds) and (3) (by including an automatic bind over provision for 16 and 17-year-olds charged with Class A-E felonies). She explained that option (1) was unacceptable to two key stakeholder groups: those who defend juveniles and district court judges. Although prosecutors had expressed a preference for the “prosecutor discretion” mechanism, the statutory exemption mechanism was acceptable to the prosecutors. Thus a compromise was reached. She noted that an additional benefit of having all offenses originate in juvenile court with an automatic bind over for violent crimes charged against older juveniles was that it ameliorated an existing problem for North Carolina’s sheriffs: Juveniles in the local jails. She explained that a number of North Carolina jails are not in compliance with federal law requiring sight and sound segregation of juveniles held in detention. Because the recommendations provide that all cases originate in juvenile court, the Division of Juvenile Justice would be responsible for custody of juvenile pretrial detainees. In fact as part of Subcommittee discussions, the Division agreed to provide transportation for juvenile pretrial detainees to juvenile detention facilities.

Murray acknowledged that when he raised this issue with Reporter Smith prior to the meeting, he learned that such a provision with respect to 13-year-olds would put North Carolina in the distinct minority in the nation. He noted however that a number of other states allow for transfer of 14 and 15-year-olds. When asked by Chair Webb which age group he was most focused on, 14-year-olds or 15-year-olds, Murray deferred to his assistant who supervises Mecklenburg’s juvenile cases and who was present at the meeting. She indicated that 13-year-olds could come off the table, that they were firm on 15-year-olds, and that they took a more moderate view with respect to 14-year-olds.

Smith shared some statistics responsive to the prosecutors’ concern that they were unable to transfer juveniles to superior court. Based on data provided by the Division of Juvenile Justice, Smith noted that from 2005 to 2016:

- The prosecution made 920 transfer motions and that 400 of them were successful, a 43% success rate.
- For that same period with respect to Class A-E felonies against 13 to 15-year-olds, 441 transfer motions were made by the prosecution and 291 were successful, a 65% success rate.
- Pulling out Class A charges (for which transfer is mandatory) the prosecution was still successful on a majority of its transfer motions (55%).

Smith noted that notwithstanding this data suggesting that prosecutors are having success on their transfer motions statewide, prosecutors in select jurisdictions may be having problems obtaining transfers.

Smith also noted that Murray’s experience with juveniles in Mecklenburg was not representative of the rest of the state. Specifically, she noted that the Division of Juvenile Justice had provided a data indicating that in one year, Mecklenburg had a total of 152 charges of Class A-E felonies against

juveniles. By contrast, Wake County, which has a higher population of 10 to 17-year-olds, had only 54 such charges. Smith further noted that no other North Carolina county approached Mecklenburg with respect to the number of violent crimes charged against juveniles. Murray acknowledged that his experience may be different from other jurisdictions.

Smith also noted that she obtained some preliminary data indicating that when juveniles are processed in the juvenile system for Class A-E felonies, they experience a 22% recidivism rate. The comparable rate for adults is 43% (for B1-E felonies; Class A were removed because they result in, at a minimum, life in prison and thus have no opportunity for recidivism). Noting that this data was preliminary and that she planned to drill down on it in the coming weeks, Smith indicated that this information suggests that community safety is enhanced (as measured by recidivism) when violent crimes are handled in the juvenile system as opposed to the adult system.

Smith noted that given the statistics and the fact that any problems with transfers may be isolated, one solution would be to amend the statute to provide the prosecutor with a right of review of a district court judge's denial of a transfer motion. She noted that under the current statute only the juvenile has a right of review when transfer is granted. Providing the prosecutors with a right of review may be a good vehicle--and a compromise solution--to address any jurisdiction specific issues that currently exist regarding transfer of 13 to 15-year-olds. Discussion continued about the appropriate standard of that review for such a procedure, abuse of discretion versus a de novo review, with Murray expressing a preference for de novo review. It was noted that to ensure fairness, the standard of review would have to be the same for both juveniles and the State. There was also some discussion about whether this issue should be resolved at the meeting. In the end, it was tabled for additional discussion within a smaller group with the goal of developing a consensus solution that would promote unanimous stakeholder support.

Chair Webb asked Deputy Commissioner Lassiter to update the Committee on work that the Division of Juvenile Justice already was doing to capture more information about juveniles so that it would be available to law enforcement officers, under the recommendations in the report. Lassiter discussed a pilot project underway to do just that. He also noted that the Division continues to work on other issues, including completing an update of the complaint decision letter which is provided to officers; significant changes were made to provide more information to help officers understand what happens to a complaint in the juvenile justice system.

Adams asked about federal funding for the project. Webb indicated that while federal funding may be possible, receiving such funding is not a contingency of the recommendations. Some discussion ensued about whether the recommendations would help bring North Carolina's jails into compliance with federal law pertaining to sight and sound segregation of juveniles such that North Carolina might be able to recapture federal funds currently held back because of noncompliance with these custody requirements for juveniles. Sheriff Huffman explained that every year the federal government holds back a significant portion of funds due to noncompliance and it would be a significant benefit to avoid this regular holdback of resources. Smith explained that while juvenile pretrial detainees would be removed from the jails under the proposal, because traffic offenses are excluded from it, jails may still have custody of juveniles serving sentences for those offenses.

Sheriff Huffman noted that the report discusses successful experiences in Illinois and Connecticut after those states raised the age. However, he described his own communications with law enforcement officers in Chicago, suggesting that system was dealing with a large number of homicide charges against juveniles and that the costs associated with the change were significant. He urged caution in doing our due diligence to make sure North Carolina's experience would be a positive one.

Adams asked about public feedback on the proposal. Smith asked Commission Executive Director Robinson to explain the Commission's plan for public comments. Robinson noted that the Commission would be holding public hearings throughout the state this Summer to solicit feedback on the Commission's work. He noted that the Commission hopes to have at least 2 Committee members present at each public comment session and that he would be in touch with Committee members about that.

Police Chief Robert Hassell and Police Chief Jeff Prichard, who were present and representing the leadership of the North Carolina Police Chiefs Association, spoke in favor of the proposal. They noted that although police chiefs had raised concerns, most of them seem to be addressed in the report. As with other groups, a big concern was funding. They also noted that Smith and others would be presenting the proposal to the Police Chief at their Summer meeting.

Davis spoke about the importance of trying to resolve all issues in a way that promoted unanimous stakeholder support.

Webb asked Smith to provide a quick update regarding the status of the Committee's other projects. Smith reported that the Subcommittee on Indigent Defense has made substantial progress on a draft report. She noted that the Subcommittee has focused its work on 3 primary tasks: (1) Defining characteristics of an effective indigent defense system; (2) Making recommendations to bring North Carolina's system in line with those characteristics; and (3) Developing strategies to reduce indigent defense costs to free up resources for needed reforms.

With respect to criminal case management, Smith noted that the Commission had retained an outside expert, Nial Raaen, from the National Center for State Courts to prepare a report for the Committee addressing 5 issues:

- (1) Identification of indicators suggesting that North Carolina should undertake an effort to improve the management of criminal cases through better caseflow management;
- (2) Potential benefits to the state for addressing criminal caseflow management, including cost savings, improvements in public trust and confidence, and improved user perception of, satisfaction with, and fairness of criminal proceedings;
- (3) A review of the fundamental principles of criminal caseflow management and their application to the North Carolina courts;
- (4) Identification of key components of effective criminal caseflow management that could be employed in North Carolina, such as differentiated case management, performance metrics, evaluation, and feedback; and
- (5) A proposed step-by-step plan to guide statewide planning to improve criminal case management, including major activities, key players, and a planned timeline.

Smith noted that the Commission already had provided a significant amount of information and data to Raaen and that he would be coming to North Carolina in June to meet with key stakeholders. A small subcommittee has been formed to help facilitate his work and provide input on his report. Smith indicated that the report would be ready for the full Committee in the Fall.

With respect to pretrial release, Smith indicated that the Commission had put out a request for proposals through the National Center for State Courts for an outside expert with specified qualifications to prepare a report for North Carolina that would, among other things, make recommendations regarding how North Carolina can improve the way it measures pretrial risk and manages pretrial risk.

The meeting was adjourned.