

The North Carolina Sentencing and Policy Advisory Commission

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The Commission was asked to classify offenses based on severity; recommend sentencing structures; formulate a community corrections strategy; and develop a correctional population simulation model to project the impact of its recommendations.

The Creation of the Commission. Between 1985 and 1990, as members of the Special Committee on Prisons examined the correctional system, they came to the conclusion that stabilization of the system would require anticipation and control of the population at the front end in a reasonable and logical way. They envisioned a system in which criminal justice policies and resource considerations were tied together. Fully aware of the cost of placing offenders behind bars, the Committee questioned what was being accomplished by the widespread use of imprisonment as a sanction. The Committee recommended a significant increase in the funding and use of alternative sanctions. They were also concerned about the lack of uniformity across the state regarding who was sent to prison and who was placed on probation. Ultimately, they came to a consensus that the sentencing policy of the state needed to be reworked to include guidelines. Having come to this conclusion, the Committee felt that a new and independent body was better suited to evaluate and rewrite the sentencing laws. In order to develop the best policy, it was important to the Committee that this body contain representatives from each of the components of the criminal justice system. In this way, any proposed sentencing scheme would be a result of detailed analysis and widespread consensus.

In July, 1990, upon recommendation of the Special Committee on Prisons, the North Carolina Sentencing and Policy Advisory Commission was created by the General Assembly. According to its enabling legislation, the Commission was to have twenty three members (since increased to thirty). Members were to be appointed to represent different components of the criminal justice system, the private sector and the public. The Governor, Lieutenant Governor, Speaker of the House, President Pro Tempore of the Senate and the Chief Justice all were given the responsibility of appointing select members. (See Appendix A for a list of the original members.)

The Work of the Commission. The enabling legislation clearly defined what the Commission's initial duties were. The Commission was mandated to: 1) classify offenses based on severity; 2) recommend sentencing structures for judges; 3) recommend a comprehensive community corrections plan; and, 4) develop a correctional population simulation model to project the impact of its recommendations. In fulfilling these responsibilities, the Commission relied heavily upon the experience of other states which had developed and implemented sentencing structures. With knowledge of the pros and cons of these systems, the Commission set about designing structured sentencing for North Carolina's criminal justice system.

Once administrative tasks, such as the hiring of the first Executive Director, were completed, the Commission turned its attention to the work at hand.

The Commission began by reviewing the state of the current system. When the Commission met in January, 1991, Commission members were asked to identify the major problems in the criminal justice system. Concerns identified included: a lack of meaningful alternatives; prison capacity; de facto legalization of misdemeanors due to quick parole release for these offenders; a lack of linkage between resources and policies; no truth in sentencing; no clear philosophy of sentencing; a lack of coordination in the criminal justice system and communication between the different systems; disparity in sentencing; and, finally, a lack of public confidence in the system.

Commission members began by addressing the elementary question of “What purpose does sentencing serve?”

The Commission centered its efforts on protecting the public from violent and recidivist offenders by incarcerating them for definite and lengthy terms.

The Commission identified a process by which to develop structured sentencing: 1) establish offense structures; 2) establish defendant structures; 3) propose dispositional recommendations; and, 4) propose durational recommendations. A subcommittee was set up to accomplish each task.

Having identified the reasons for the current crisis, the Commission turned its attention towards the most basic of questions: “What purpose does sentencing serve?” Members of the Commission differed over what the goal of the criminal justice system should be. Some Commission members believed ardently that more prisons should be built. They argued that imprisoning more offenders for longer, definite periods would create a deterrence to others. Other members of the Commission argued against building more prisons and in favor of community sanctions. Community-based punishments were to provide opportunities for offenders to pay restitution, perform community service, support their families and pay taxes, and receive rehabilitative services such as substance abuse and mental health treatment. The operational costs of supervising and controlling offenders in the community would be less than the costs of constructing and operating jails and prisons. As the sentencing structures evolved, protecting the public from violent and recidivist offenders by incarcerating them for definite and lengthy terms became the focus of the Commission’s work. Ultimately, the Commission attempted to balance several purposes (retribution, incapacitation, deterrence, rehabilitation, etc.) within the sentencing structure based on the type of offense and the defendant’s history.

The Commission’s enabling legislation spelled out that it was to “recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case.” (N.C.G.S. 164-42) The Commission embarked on developing structured sentencing by looking at what other states had done. They identified four elements common to all of the sentencing structures: offense severity; prior criminal history; prescribed incarceration or nonincarceration; and sentence length duration. Using these components, they developed a process by which to develop structured sentencing: 1) establish offense structures, 2) establish defendant structures, 3) propose dispositional recommendations, 4) propose durational recommendations. A subcommittee was set up for each stage of this process: Offense Structures Subcommittee, Defendant Structures Subcommittee, Dispositional Subcommittee, and Durational Subcommittee. A Community Corrections subcommittee was also established to develop a

comprehensive community corrections strategy as mandated by statute. The Commission's original work plan allowed eighteen months to complete the process.

Classifying offenses. The Offense Structure Subcommittee met five times between February and June, 1991. Their responsibilities included developing an offense classification system and classifying existing crimes. The subcommittee members discussed the merits of maintaining the offense classifications that existed under the Fair Sentencing Act. Recognizing that these classifications had not been assigned systematically, they opted to reclassify all offenses based on an underlying rationale which they would develop.

The Offense Structure Subcommittee developed offense classification criteria based on the harm caused by, or reasonably resulting from, the criminal conduct. These criteria were to provide a clear rationale as to why certain offenses were punished more severely than others.

The subcommittee began by establishing an underlying set of principles to guide the classification process. These principles, or criteria, were to provide the General Assembly and the public with a clear rationale as to why individual offenses were assigned to various classification levels. In developing these criteria, they first looked at classification ranking systems from other states. Next they considered a list of approximately 25 types of harms caused by criminal conduct. These identified harms represented varying degrees (from serious to minor) of personal injury, personal property loss, violations of public order and affronts to public morality. Following in-depth discussions, they grouped these harms based on their type and degree and ranked them in ten categories on a scale from 1 (least serious) to 10 (most serious). Despite the fact that subcommittee members brought to the table their own ideologies about crime, they were able to agree on which types of crimes they thought were the most serious. Subcommittee members were particularly concerned with addressing crimes that involved physical or mental injury. Property offenses traditionally had been punished severely in the South. The classification criteria developed by the subcommittee changed this by ranking offenses against people as more serious than property offenses.

When choosing how to classify specific offenses, the subcommittee primarily focused on harm that arose as a result of defendant's actions. This mirrored numerous other states that had ranked offense severity based on the harm suffered by the victim as opposed to the intent of the offender. Subcommittee members later decided that the intent of the defendant should also be considered when determining the severity of the offense. Therefore the language, "harm which might reasonably be expected to result", was incorporated into the criteria. This emphasis on the defendant's intent caused the subcommittee and later the Commission to classify an attempt to commit a felony the same as the felony itself. (The General Assembly amended this part of the Commission's proposals to make attempts punishable as one class lower.)

Using the offense classification criteria they had developed, the subcommittee assigned felony offenses to one of nine categories labeled A through I, reserving a tenth category for misdemeanors

The subcommittee originally chose to have ten offense categories based on the facts that there were ten offense categories under FSA and that other states primarily had ten offense categories. The categories numbered 1 through 9 were renamed A through I, and the tenth category was reserved for misdemeanors. (See Appendix B: Offense Classification Criteria)

Once the classification system was in place, the subcommittee next reviewed a list of the most frequently charged felony offenses. They compared the statutory elements of each offense to the classification criteria. Concentrating on what the typical offense conduct entailed (and not on specific cases), they assigned each offense to one of the nine felony categories. Once the offenses were assigned, the subcommittee voted to adopt the classifications. Under the supervision of the subcommittee Chairman, staff worked with members of the Attorney General's office to propose classifications for the more remote felony offenses. The subcommittee then reviewed and voted on these proposed classifications. Before completing this process, the subcommittee also reviewed misdemeanor offenses. They proposed raising twenty misdemeanor offenses to felonies, including assault causing serious injury. They felt that the elements of these offenses involved harm or risk of harm which, based on the classification criteria, aligned them within the felony categories.

Two categories of offenses were not classified by comparing them to the classification criteria: homicide offenses and drug offenses. In classifying homicide offenses, the subcommittee considered the offenses which they had assigned to each class and compared them to the homicide offenses. Using their collective judgment the subcommittee assigned the homicide offenses based on their comparable severity to other offenses already assigned to a class. The subcommittee decided not to reclassify the drug offenses, instead acknowledging the current classes under the Fair Sentencing Act. The subcommittee felt that drug offenses were substantially different from other offenses and perhaps should be treated separately. The subcommittee agreed they could not properly classify drug offenses until they had a clearer picture of what the classes would mean in terms of sentence dispositions and sentence lengths.

The Defendant Structure Subcommittee developed a system of prior record levels which was designed to take into account a defendant's level of culpability in light of his past criminal behavior.

Development of Prior Record Level. The mandate of the Defendant Structure Subcommittee was to decide what information about a defendant should be considered at the time of sentencing. The subcommittee met four times between February and May, 1991. The subcommittee considered both the defendant's culpability and the defendant's risk of future criminality in crafting a sentence. The subcommittee reviewed a list of twenty-three factors used in other states' defendant structures. They individually ranked these factors according to how important they felt each was. Prior convictions and criminal justice status at time of arrest were ranked most important. Both of these factors contributed to the defendant's

level of culpability, subcommittee members decided. If a defendant had failed to correct his behavior after involvement with the system, then his or her punishment should be more severe the next time around. Using these factors, the subcommittee determined that a prior criminal record level should be established for each defendant. The stated primary purpose of this prior record level was to indicate a level of culpability or blameworthiness for past behavior. The prior record level was to consist of not only the number of prior convictions, but also the severity of the convictions. The prior record level would also account for the defendant's criminal justice status at the time the new offense was committed and whether the defendant had previously been convicted for the same offense.

The subcommittee discussed a variety of other defendant factors. Inclusion of prior juvenile delinquency was debated extensively. Some committee members felt that a history of juvenile delinquency indicated a more serious offender who was likely to recidivate. Other members argued that because juvenile court was based more on a theory of rehabilitation instead of punishment, was closed and its proceedings confidential, and did not ensure the same constitutional protections as the adult system (for example, no right to a jury trial), adjudications of delinquency should not be used to increase a defendant's sentence. Ultimately, it was determined that reliable information about juvenile proceedings was not available. The subcommittee also considered whether substance abuse addiction could be included in the structure. Committee members agreed this was an important factor to consider but realized that accurate, reliable information about a defendant's substance abuse may not be available to the sentencing judge. In the end, it was determined that the only factor relevant in all cases was prior record. All other factors could be examined on a case-by-case basis to aggravate or mitigate a sentence.

In an attempt to capture the extent and gravity of the defendant's prior record, the Defendant Structure Subcommittee proposed calculating the prior record level using a weighted point format. The more serious the prior conviction, the higher the points assigned.

Once the subcommittee decided which defendant factors it wanted to include, members studied defendant structure schemes from other states that had enacted guidelines. Three different formats were considered: 1) assigning weighted points for various defendant characteristics and placing defendants into a numerical or alphabetical prior history category; 2) assigning the defendant to a prior history category based on a narrative description of defendant characteristics (no points); or, 3) assigning the defendant to a prior history defined by the type and number of prior offenses (no points). The subcommittee voted to use the weighted point format. They wanted to capture the extent and gravity of the defendant's prior record. The subcommittee assigned points to groupings of offense classes. The more serious the prior conviction, the higher the points assigned to the defendant. Additional points were assigned if the defendant was under correctional supervision at the time of arrest or if he or she had committed the same offense previously. The points were to be added together. The total number of points placed each offender in one of six

prior record levels. Offenders with no prior convictions were assigned to prior record level one. Members felt that six different levels would sufficiently differentiate among defendants' levels of culpability. In determining where to set the parameters of each prior record level, the subcommittee reviewed prior record information about offenders currently in the system.

This subcommittee also was responsible for addressing the collateral issues of how to define a prior conviction, how to prove prior convictions, how to deal with multiple convictions, and how to count prior convictions from other jurisdictions. Subcommittee members actively debated how to deal with multiple convictions arising out of one course of action. Some members thought that each conviction that arose from a crime spree should be counted separately. Other members were concerned that a single crime spree could place a defendant at the top of the prior record levels if the defendant received points for each offense. In resolving these issues, the subcommittee relied on other states' practices and current North Carolina law.

The work of the Offense Structure Subcommittee and the Defendant Structure Subcommittee culminated in the formation of the axes of a two dimensional grid with the current offense class on the vertical axis and the prior record level on the horizontal axis. Filling in the cells on the grid was the responsibility of the Dispositional and Durational Subcommittees.

The Dispositional Subcommittee identified three types of sentence dispositions: 1) active; 2) intermediate; and 3) community.

Assigning a Disposition. The work of the Offense Structure Subcommittee and the Defendant Structure Subcommittee culminated in the formation of the axes of a two dimensional grid with the current offense class on the vertical axis and the prior record level on the horizontal axis. Once the two axes of the grid were developed, the next task was to fill in the grid's cells. Both the Dispositional and Community Corrections Subcommittees worked on developing a full range of sentencing alternatives. The primary purpose of the Dispositional Subcommittee was to recommend which type of sentence an offender should receive based on the current offense and the prior record level. The Community Corrections Subcommittee was charged with developing a comprehensive community corrections strategy.

The Dispositional Subcommittee began by identifying three different types of dispositions: 1) sentences to active prison; 2) sentences to intermediate punishment; 3) sentences to community punishment. The subcommittee defined intermediate punishments as intensive sanctions, including a period of supervised probation and at least one specific condition. These sanctions were to be used for offenders who otherwise would be bound for prison or jail. Community punishment was defined to include those traditional sanctions served in the community, such as supervised or unsupervised probation, community service, restitution or fines. Members were asked to rank in order of importance the sentencing rationale for various dispositions. Sentencing rationales included retribution, general deterrence, specific deterrence, incapacitation, rehabilitation and restitution. The results of these rankings were tabulated and discussed. The primary purpose of active prison sentences was identified as being retribution. The subcommittee identified multiple underlying rationales for both

intermediate and community punishments including rehabilitation and restitution.

In filling in dispositional options for each cell, subcommittee members considered: the types of offenses in the offense class corresponding with the cell; the type of prior record level in that cell; current sentencing practices for that combination of offense class and Prior Record Level; and, the purposes to be achieved with that disposition.

Next the committee assigned dispositions to the cells on the grid. In filling in dispositional recommendations for each of the cells on the sentencing grid, committee members considered four elements: 1) the types of offenses in the offense class corresponding; 2) the type of prior record level in that cell; 3) current sentencing practices for that combination of offense class and prior record level; and 4) the purposes to be achieved with that disposition. They reviewed current sentencing patterns by fitting offenders under the FSA into the grid. The subcommittee first assigned active prison sentences for the cells in the top right corner (most serious offense and prior record level) and community punishment for the cell in the left bottom corner (most minor offense and prior record level). From there, they worked inward, assigning more than one dispositional alternative to some of the interior cells. Once preliminary dispositional recommendations were completed, the subcommittee made adjustments.

Forming a Community Corrections Strategy. While the Dispositional Subcommittee's responsibility was to assign disposition types in the sentencing structure, it was the task of the Community Corrections subcommittee to specify which community punishments and intermediate punishments were appropriate for certain categories of offenders. Recognizing the importance of a community corrections strategy to the success of a sentencing system that would prioritize correctional resources, the General Assembly spelled out in statute the responsibilities of the Commission in this area. The five major tasks of the Community Corrections Subcommittee included: 1) recommending a state organizational structure for community corrections programs; 2) identifying programs that should be in a continuum of community sanctions; 3) developing a state-local funding mechanism for community corrections programs; 4) identifying categories of offenders eligible for community corrections programs; and, 5) analyzing the rate of recidivism for offenders in these programs.

The Community Corrections Subcommittee reviewed existing community correction programs; developed a continuum of community sanctions; and, recommended a major expansion of probation and additional resources for other community-based sanctions.

The subcommittee began by reviewing community corrections programs that were in existence and discussing the underlying sentencing rationale for these sanctions. In order to assist with this process, the staff prepared the first Compendium of Community Correction Sanctions in North Carolina, which gave brief descriptions of each program. The subcommittee also heard reports from various program administrators over a period of several meetings. The subcommittee then focused its attention on placing these existing programs into a community corrections continuum, with the degree of structure and supervision increasing as the offender's criminal behavior intensified. Members originally defined three categories of community corrections: 1) standard community sanctions: traditional sanctions for non-

jail bound and non-prison bound offenders (including unsupervised probation, fines, community service, restitution and regular probation); 2) intermediate sanctions: intensive sanctions for jail-bound or prison-bound offenders (including intensive probation, electronic house arrest, residential programs, special probation and boot camp); and, 3) active sentence in the community: a sentence to be served in the county jail. A chart depicting the continuum of community corrections and listing existing programs at each level was developed. Recognizing that structured sentencing was designed to shift non-violent, non-repeat offenders away from the expensive resource of prison and towards punishment within the community, the subcommittee recommended a major expansion of probation and additional resources for other community sanctions. The only new sanction that the subcommittee contemplated and ultimately recommended was Day Reporting Centers. In determining which sanction was best for which type of offender, the subcommittee considered the type of offender currently being served by each existing sanction. Over 900 criminal justice professionals were surveyed to determine which sanctions were being used and which types of offenders were being assigned to them.

Having identified the purpose of community corrections, the target population, and a continuum of community corrections, the subcommittee turned its attention towards defining the state-local partnership and the mechanism by which programs could be funded. In order to do this, the subcommittee reviewed community corrections acts from other states and studied funding mechanisms between state and local entities within North Carolina. The challenge before the subcommittee was to develop a mechanism by which community programs could be held accountable at the state level while still allowing for sufficient local control and flexibility to meet needs within each distinct community. The subcommittee's work culminated in the creation of the State-County Criminal Justice Partnership Act (Chapter 534 of the 1993 Session Laws) which was adopted by the full Commission and presented to the General Assembly. This legislation set up a procedure and financial incentives for counties to implement new and innovative correctional programs, particularly those that could be used as intermediate punishments, at the local level.

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The Community Corrections subcommittee also addressed the issue of how to handle misdemeanants. Structured sentencing envisioned reducing the number of misdemeanants who were sent to prison in order to save bed space for more serious offenders. By the 1980's county jails were overflowing. A crisis existed at the county level that mirrored the overcrowding problems of the prison system. With these things in mind, the subcommittee created a misdemeanor sentencing grid which incorporated many of the same principles as the felony sentencing grid. Only those offenders with extensive prior records who were convicted of the more serious misdemeanors could be given an active sentence.

Proposed sentences were short but were to be served in full. The subcommittee recommended several options for distributing the misdemeanor population between the state's prisons and locally operated jails based on the length of sentence to be served. (Due to the complexity and sensitivity of the issue, the full Commission did not recommend that the driving while impaired offenses be incorporated into structured sentencing, but instead proposed that the General Assembly assign these offenses to a commission for specific study and recommendation.)

Members of the Durational Subcommittee agreed that in order to establish truth and certainty in sentencing, an offender should be required to serve a term that bore a close and consistent relationship to the sentence which was imposed.

In determining sentence lengths, Durational Subcommittee members reviewed current and past sentencing practices in North Carolina and looked at average sentence lengths in other states. Members also relied upon the Commission's computer simulation model, which calculated the number of additional prison beds that would be required, to develop a proposal that would be reasonable in light of resource limitations.

Establishing Sentence Durations. The final step in the development of the felony sentencing grid was the determination of sentence lengths for each cell. The Durational Subcommittee was charged with recommending the appropriate length of imprisonment for each cell and recommending the percentage of the sentence to be served. Members agreed that in order to establish truth and certainty in sentencing, an offender should be required to serve the sentence which was imposed. Committee members wanted to eliminate existing day for day good time, but wanted to leave the Department of Correction with some leverage to help control inmate behavior. As a result, they recommended that inmates be given both a maximum and minimum sentence. Inmates would be allowed to earn time off of the maximum sentence but would never serve less than the minimum sentence. Subcommittee members concluded that the difference between the minimum and maximum sentence should be small enough to ensure certainty and predictability but wide enough to allow for some administrative incentives to control inmate behavior. Finally the subcommittee felt that judges should have a range of possible sentence lengths prescribed within each cell. This would preserve some judicial discretion, and allow sentences to be individualized taking into account factors not built into the sentencing structure. The subcommittee set the longest presumptive minimum sentence at 25% above the shortest presumptive minimum sentence.

With these principles as their guide, committee members began to discuss specific sentence durations. They reviewed current and historical sentencing practices and time served in North Carolina and looked at average sentence lengths in other states. There was much disagreement over how long sentences should be. The subcommittee initially proposed significantly longer sentences than what were currently being ordered. Their first proposal would have required \$1 billion in new prison construction and an operating budget for the Department of Corrections of \$1.5 billion per year. Using the computer simulation model, the subcommittee was able to revise its proposed sentence lengths to create a plan that would result in a reasonable increase in prison bed space. During this process of amending the grid based on impact projections, the subcommittee actively debated the extent to which resource considerations should influence sentencing policy.

The Durational Subcommittee was also mandated to consider aggravating and mitigating factors, post-release supervision, and drug trafficking offenses.

- *Aggravating and Mitigating Factors:* The sentencing grid had been developed to handle the normal or typical case. Subcommittee members felt that additional flexibility should be built into the structure to allow for the aggravation or mitigation of sentences in exceptional cases. The aggravated sentence range would extend 25% above the longest possible minimum sentence in the presumptive range while the mitigated range would extend 25% below the shortest possible minimum sentence in the presumptive sentence range. The subcommittee did not want to place any additional burdens on the judge to consider or weigh aggravating or mitigating circumstances beyond that which was already required under the Fair Sentencing Act. The subcommittee proposal was intended to continue current procedure and case law related to aggravation and mitigation. The statutory list of aggravating factors was amended to exclude any factors that dealt with the defendant's prior criminal record since these factors had been built into the structure. Several factors were added to the list of aggravating factors, including consideration of a defendant's adjudication as a juvenile delinquent. (This factor was ultimately restricted to allow consideration of an adjudication of delinquency for only an A through E felony.)
- *Post-Release Supervision:* The subcommittee, having identified the purposes of post-release supervision, felt that the Department of Correction should have the administrative responsibility of setting the conditions and length of supervision (within a range of six months to three years). The subcommittee also thought that the Department of Correction was in the best position to determine if an inmate needed post-release supervision. As a result, the subcommittee recommended a discretionary period of post-release supervision with all administrative decisions being left to the Department of Correction. (The Commission chose not to recommend a period of post-release supervision in its proposal to the General Assembly. Commission members expressed concern with the inclusion of a period of supervision beyond the maximum sentence shown on the grid. They believed that a period of post-release supervision would violate "truth in sentencing" principles. Costs of such a program were also thought to be prohibitive. The Commission did discuss the provision of voluntary aftercare programs. Once the Commission's proposal reached the General Assembly, however, post-release supervision was added to the final legislation, without input from the Commission.)

Throughout the work of the subcommittees, the full Commission continued to meet and review the progress of, and make recommendations about, the subcommittees' work.

The sentencing structure adopted by the Commission and recommended to the General Assembly was the product of a consensus between the members.

The Commission's recommendations were based on the following underlying principles: sentencing policies should be consistent and certain; sentencing policies should be truthful; sentencing policies should set resource priorities; and, sentencing policies should be supported by sufficient resources.

- *Drug Offenses:* Under FSA drug trafficking offenses had presumptive mandatory sentences. To eliminate these sentences and to place drug trafficking offenses into the grid would have resulted in less punitive sentences for these offenses. The General Assembly had already treated these offenses separately from other offenses and it was perceived that incorporating them back into the overall scheme would not be satisfactory to the General Assembly. The perception was that mandatory minimums that were in place had significantly helped decrease the number of drug trafficking offenses occurring within the state. The subcommittee recommended not to incorporate these offenses into the grid and to preserve the mandated minimum length of time which drug offenders were currently serving. They translated the current mandatory minimums into language consistent with the Commission's minimum and maximum sentencing proposals. The subcommittee recommended that non-trafficking drug offenses be punished according to the grid and that they maintain their classification as under the FSA, except that sale of controlled substances be moved up one class level.

The Commission's Proposal to the General Assembly. Throughout the work of the subcommittees, the full Commission continued to meet and review the progress of, and make recommendations about, the subcommittees' work. Out of this process was born the Commission's recommendation for the General Assembly. Whereas the original work plan had set aside eighteen months for the completion of the Commission's work, the Commission labored for nearly three years. The sentencing structure adopted by the Commission and recommended to the General Assembly was the product of a consensus between the members. The Commission based its recommendations on these underlying principles:

- *Sentencing policies should be consistent and certain:* Offenders convicted of similar offenses, who have similar prior records, should generally receive similar sentences.
- *Sentencing policies should be truthful:* The sentence length imposed by the judge should bear a close and consistent relationship to the sentence length actually served.
- *Sentencing policies should set resource priorities:* Prison and jails should be used primarily for violent and repeat offenders, and community-based punishments should be used primarily for non-violent offenders with little or no prior record.
- *Sentencing policies should be supported by sufficient resources:* Adequate correctional resources must be provided so there is jail and

prison space for offenders who receive active punishments and there are community corrections programs for offenders who receive community-based punishments.

Resource considerations played a large role in the Commission's work. The General Assembly had appropriated \$550 million between 1985 and 1991 for corrections and had not managed to ebb the tide of prison overcrowding. The small margin by which the prison bond passed in 1990 gave rise to concerns that the public did not support an additional expansion of money being spent on building prisons. Initially, the Commission was determined to develop the best recommendations possible without worrying about the cost. But multiple members of the Commission, including General Assembly appointees, stressed that the legislature would not want to adopt anything that would require major additional appropriations. They urged the Commission not to develop a "pie in the sky piece of legislation."

The Commission presented its final recommendation to the General Assembly in 1993. Implementation of the Commission's proposal would have required \$300 million in prison construction over a five-year period.

Mindful of resource limitations, the Commission set out to prioritize the allocation of correctional resources. Members agreed that the most expensive correctional resource, prison space, should be reserved for violent and habitual offenders. Less expensive alternatives to prison should be utilized for non-violent and first time offenders. Still, the Commission concluded that more prison space would be needed to meet public safety concerns. In its final report submitted to the 1993 Session, the Commission recommended a plan requiring an estimated \$300 million in prison construction over a five-year period, and a major expansion of community correction programs.

In accordance with a 1992 statutory amendment to its enabling legislation, the Commission also presented a proposal, without recommendation, to the General Assembly that would require no additional construction beyond that for which appropriations had previously been made. This Standard Operating Capacity proposal reduced the Commission's

The Commission also was required to submit a plan in its final report that would not require any additional capital expenditures. Following the Commission's preliminary report in 1992, the General Assembly amended the Commission's enabling legislation to require the submission of an alternative sentencing plan which would not exceed the current standard operating capacity of the prison and jail system. In order to comply with this part of their mandate, the Commission formed the Standard Operating Capacity (SOC) Subcommittee.

The SOC Subcommittee's mandate was to revise the sentencing policies developed by the Commission so that the resulting number of offenders sent to prison would match the current bed space available. Using a future date of July 1, 1994, the Department of Correction defined the standard operating capacity of the state prison system for the subcommittee to be 23,500, while the standard operating capacity of the local confinement centers or jails was set at 2,500. The subcommittee tried to keep the standard operating capacity structure similar to the structure adopted by the Commission. Through a combination of changes, the subcommittee achieved an impact that matched the standard operating capacity. Changes

recommended sentences for all felons by 17.3% and for Class B through D felons an additional 10%.

to the felony grid included adding non-prison alternatives to cells where previously there had only been an active sentence option, and reducing all sentence lengths by 17.3% and by an additional 10% for B through D felonies. The subcommittee also significantly decreased the sentence lengths in the misdemeanor chart. The Commission also presented this proposal to the General Assembly in 1993 but without recommendation.

For a few members of the Commission, the emphasis on capacity and resource allocation was unpalatable. These members authored a Minority Report arguing that Fair Sentencing be retained until there was adequate DOC capacity to implement the recommendations of the Sentencing Commission. The Minority Report was included in what the Commission ultimately presented to the General Assembly.

Unwilling to commit to major additional appropriations for prison construction, the General Assembly focused its attention on those bills which included the Standard Operating Capacity proposal.

Legislative Action and Adoption of the Structured Sentencing Act. Structured Sentencing legislation was introduced in the General Assembly in January, 1993 at the beginning of the 1993-1994 session. Two different proposals were introduced in the form of bills 1) SB 401/HB 280 (Structured Sentencing); and 2) SB 402/HB 277 (Structured Sentencing-2), which was the Standard Operating Capacity (SOC) proposal. These bills, along with three others (SB 403/HB 279 Reclassify some felonies; SB 404/HB 278 Classify misdemeanors; and SB 405/HB 281 Criminal Justice Partnership Act), were reviewed by the Senate Judiciary I Committee and the House Judiciary III Committee. The General Assembly, acutely aware of the resource issue, concentrated its attention on the Standard Operating Capacity proposal.

There was little opposition to Structured Sentencing within either the House or the Senate. The proposed bills enjoyed support from a wide base of supporters including the North Carolina Bar Association, the Conference of District Attorneys, and the Association of County Commissioners. Smaller subcommittees of the legislative committees to which these bills had been assigned spent hours, meeting several times per week over a period of six weeks, reviewing each part of the SOC bill and receiving testimony from various groups. The grid as presented in the SOC proposal was left primarily intact with a few technical changes to offense classifications.

Areas where substantive changes were made included post-release supervision, life without parole, habitual felon status, and extraordinary mitigation. The Commission had not recommended a period of post-release supervision due to resource concerns. Both the House and the Senate added to their versions of the bill a mandatory period of post-release supervision following release from prison. The Commission had recommended that parole eligibility for an offender serving a life sentence be eliminated. Under the Fair Sentencing Act, an offender sentenced to life was eligible for parole after serving twenty years. The House of Representatives did not

The General Assembly adopted the Structured Sentencing grid as presented in the Standard Operating Capacity proposal with only minor changes. Areas of substantive changes included post-release supervision, life without parole, habitual felon status, and extraordinary mitigation.

want to eliminate parole eligibility for these offenders. In a compromise measure, the House accepted the Senate's proposal on post-release supervision in exchange for a judicial review of a life sentence and a possible recommendation to the Governor that the sentence be commuted at the end of 25 years. The Commission had recommended maintaining the habitual felon laws as they were under the Fair Sentencing Act except for changing the punishment of an habitual felon from that of a Class C felon under the FSA to that of a Class D felon under structured sentencing. Under the FSA, any felony conviction could be used to establish habitual felon status. The General Assembly added the provision to the Structured Sentencing Act (SSA) that only one of the three felony convictions relied upon to establish habitual felon status could be a Class H or I felony. (This provision was repealed and habitual felon status made punishable as a Class C felony in the 1994 Special Crime Session.) At the request of the North Carolina Academy of Trial Lawyers, the final bill included an extraordinary mitigation provision, allowing judges to depart from a required active sentence and impose an intermediate punishment under certain circumstances. The Commission had not recommended such a provision.

During this same legislative session another bill developed by the North Carolina Justice Fellowship Task Force and entitled "The Justice Partnership Act" was pending. This bill primarily dealt with community and intermediate punishments, not with sentencing guidelines, but did recommend that parole be retained. Although this bill was ultimately defeated, certain proposals were incorporated into the Structured Sentencing Act in a compromise measure. These proposals included presumptive probation sentence lengths, recommended probation caseloads, and a provision allowing judges to find an offender in contempt of court for a violation of probation.

On the last day of the 1993 Session, the General Assembly passed the Structured Sentencing package, including the Structured Sentencing Act (Ch. 538), offense reclassifications (Ch. 539), and the State County Criminal Justice Partnership Act (Ch. 534).

On the last day of the 1993 Session, the General Assembly passed the Structured Sentencing package, including the Structured Sentencing Act (Ch. 538), the offense reclassification (Ch. 539), and the State County Criminal Justice Partnership Act (Ch. 534). The Commission estimated that the cost over five years for implementation of the proposals in the package including the Standard Operating Procedure bill would be \$314.2 million. This included continued prison and jail construction and operation, and full funding of the community corrections strategy. In order to provide adequate appropriations, the legislature set an effective date of January 1, 1995. (This date was later changed to October 1, 1994 in the 1994 Special Crime Session.) The final version of the Structured Sentencing Act passed the House of Representatives by a vote of 91 to 2. The Senate approved the package unanimously (38-0).

The early 1990's witnessed a sharp increase in violent crime in North Carolina. In January, 1994, Governor Jim Hunt reacted by convening an extra session of the General Assembly. During this Special Crime Session, over 400 bills were introduced.

Under a new law, the General Assembly was required to consider fiscal notes based on impact projections generated by the Commission's computer simulation model for each criminal justice bill proposed. In the end, twenty-eight bills were enacted, the policies of the Structured Sentencing Act and the grid were left primarily intact, and the General Assembly had begun to accept the idea that sentencing policies must remain in balance with correctional resources.

Special Crime Session of 1994. The early 1990's witnessed a sharp increase in violent crime in North Carolina, as in other states across the country. By 1992, North Carolina ranked 16th in the nation in crime. It had ranked 32nd just ten years earlier. Violent crime had increased 50% during the same decade. In 1993, several sensational violent crimes were heavily publicized, including the murder of NBA star Michael Jordan's father. In January, 1994, Governor Jim Hunt reacted by convening an extra session of the General Assembly for the express purposes of considering legislation to: 1) adjust the state's prison cap to prevent the release of 3,000 dangerous criminals by March 15th, 1994; 2) increase sentences for criminals; 3) toughen punishment of youthful offenders; 4) expand prevention programs for juveniles; and, 5) ensure the rights of victims.

The Extra Session convened on February 8, 1994 and spanned thirty-one legislative days in the House and thirty legislative days in the Senate. Over four hundred bills were introduced. Of specific interest were bills relating to sexual assault, use of weapons and habitual felons. Collectively, the bills introduced would have significantly increased the prison population, creating a need for over 20,000 beds within 10 years. However, under a statute passed in 1993 with the Structured Sentencing Act, legislators were required to consider fiscal notes based on impact projections generated by the Commission's computer simulation model. In the end, twenty-eight bills were enacted during the session requiring 2,000 new prison beds over the next ten years.

Several changes were made to the structured sentencing laws. Perhaps most significant of these was the advancement of the effective date for structured sentencing from January 1, 1995 to October 1, 1994. Funds were appropriated to increase the prison capacity by an additional 1,040 beds and to hire additional probation officers. Changes to the sentencing laws included the creation of a felony class B1 to include first-degree rape and first-degree sex offense and raised duration in prison for these offenses (including providing for life without parole if defendant falls within Prior Record Level V or VI and is sentenced within the aggravated range), the adjustment of prior record calculation to exclude Class 2, Class 3 and traffic misdemeanors, the raising of habitual felon from a Class D felony to a Class C felony, the establishment of life without parole for first-degree murder (eliminating the provision in the SSA providing for review by a Superior Court Judge at the end of 25 years), and the addition of the firearm enhancement provision. At the end of the session, the policies adopted in the Structured Sentencing Act and the sentencing grid remained primarily intact. The Legislature had begun to accept the idea that sentencing policies must be balanced with sufficient resources.

Legislative Session of 1995. The 1994 General Election dramatically changed the landscape of the General Assembly. For the first time since

Reconstruction, Republicans took control of the North Carolina House of Representatives. Democrats controlled the Senate by only two votes. Despite the fact that many of the Republican legislators had voted in favor of Structured Sentencing in 1993, their new colleagues argued that structured sentencing laws were too lenient. They aimed to increase the length of prison sentences.

Two significant changes arose out of the 1995 Legislative Session: 1) sentence lengths for B2 through D felonies were increased by 16%; and, 2) a new A1 misdemeanor class with the possibility of active prison time was created. Combined, these changes resulted in a significant increase in the need for additional prison beds.

Two significant changes arose out of the 1995 session, both resulting in a significant increase in the need for additional prison beds. The first of these changes was an increase in sentence duration for the B2 through D felony offenses. Governor Jim Hunt requested that the legislature increase those sentence lengths by 33%. The General Assembly lengthened sentences for these felonies by 16%. The second was the creation of a new misdemeanor class, Class A1, for the handling of the more serious misdemeanor assaults. The Sentencing Commission recommended this change in response to concerns raised by people in the criminal justice field. Offenders convicted of a Class A1 misdemeanor were eligible for an active prison sentence. An additional change was the inclusion of an active sentence as a dispositional alternative for Class H felons in Prior Record Level I & II. The projected increase of population as a result of these changes was about 2,100 prison beds over 5 years and about 3,200 beds over 10 years. Interestingly, the growth in prison population that was projected as a result of these changes combined with those from the 1994 Extra Crime Session equaled the proposal recommended by the Sentencing Commission in 1993 to increase prison capacity to 40,000 by 2004.

In 1996, the Sentencing Commission was made a permanent body for the purposes of monitoring the criminal justice system and reporting to the General Assembly.

Recent History. In 1996 the Sentencing Commission was made a permanent body for the purposes of monitoring the criminal and juvenile justice systems and reporting to the General Assembly. The Commission's continuing statutory duties include: 1) analyzing the resource impact of any proposed legislation which creates a new offense, changes the classification of an existing offense, or changes the punishment or disposition for a particular classification, 2) making recommendations to the General Assembly regarding the proposed legislation's consistency with Structured Sentencing, 3) maintaining statistical data related to sentencing, corrections, and juvenile justice, 4) reporting on the effectiveness of community corrections and prison treatment programs, based on recidivism rates, other outcome measures, and program costs, and 5) reporting on juvenile recidivism and on the effectiveness of programs that receive grant funding from the state's Juvenile Crime Prevention Councils.

In 2001 the General Assembly directed the Sentencing Commission to develop alternatives to prison construction which would address the projected growth in the state's prison population by 2010. The Commission responded by forming the Offense and Offender Subcommittee and the Sentence Disposition and Duration Subcommittee. The subcommittees

produced six “Alternatives” which were adopted by the full Commission in 2002 and introduced as legislation in the General Assembly. One Alternative, which changed the length of the period of confinement for special probation, was enacted that year. The remaining Alternatives were introduced and debated in subsequent years.

In 2009, the General Assembly enacted two “Alternatives” developed by the Commission in 2002 in response to a legislative mandate. The Alternatives 1) expanded Prior Record Level I to include offenders with one prior record point and established uniform four-point ranges for Prior Record Levels II through V, and 2) amended the range of presumptive sentences for Class B1 through G felonies so that they increase by a uniform rate of 15% for each one-step increase in Prior Record Level.

By 2009 the population met the capacity of the prison system and it was projected to exceed the capacity for the next ten years. The General Assembly responded by enacting two more of the Alternatives into law. This time, the bills passed by a slim majority in each house. These changes represented the first amendments to the felony punishment chart since the Legislative Session of 1995. The first amendment adjusts the number of prior record points within each Prior Record Level to include offenders with zero or one point in Prior Record Level I and to establish uniform, four-point ranges for Prior Record Levels II through V. This allows a Level I offender to have one prior misdemeanor conviction and makes the remaining ranges consistent. The second amendment changes the minimum presumptive sentences for Class B1 through G felonies so that they increase at a consistent 15% rate at each subsequent Prior Record Level. The Commission recommended not changing the minimum presumptive sentences in Classes H and I due to the short sentence lengths. The Commission’s computer simulation model projected a combined savings of more than 2,000 prison beds over ten years based on these changes.

After a decade of steady growth, North Carolina’s prison population leveled off unexpectedly in the Spring of 2010, stabilizing at about 41,000. The year 2010 also saw North Carolina’s crime rate fall to its lowest level in 33 years, further easing the projected need for additional prison beds. By the beginning of the 2011/13 biennium, however, the legislature faced an annual budget shortfall that exceeded \$2 billion. The state’s ongoing economic crisis offered a strong incentive for lawmakers to replace incarceration with less expensive sentencing alternatives, so long as they did not undermine public safety.

The Justice Reinvestment Act

During the 2011 Legislative Session, the General Assembly made significant changes to Structured Sentencing by enacting the Justice Reinvestment Act (HB 642). This legislation was a product of North Carolina’s participation in the Justice Reinvestment Initiative, a reform effort undertaken by the Council of State Governments Justice Center and the Pew Center on the States. Beginning in April 2010, representatives from the Justice Center met with North Carolina’s political leaders and agency officials to gather information about the state’s criminal justice system. Using data provided by the Sentencing Commission and others, the Justice Center developed a package of proposals designed to reduce the state’s

prison population and free up resources for programs aimed at reducing recidivism. The resulting bill was passed by the House of Representatives by a margin of 111 to 6. The Senate followed suit, voting unanimously in favor of its version of the bill. After the House concurred with the Senate's modifications, Governor Beverly Perdue signed the Justice Reinvestment Act into law on June 23, 2011.

Among its many features, the Justice Reinvestment Act had the following impact on Structured Sentencing:

- provided greater flexibility in sanctions for community and intermediate punishments, thereby eliminating much of the distinction between them.
- expanded the authority of probation officers so that they may impose most community and intermediate probation conditions based on a probationer's assessed risk level.
- limited the grounds for revocation of probation and post-release supervision.
- created Advanced Supervised Release, which allows certain felony offenders who complete court-ordered risk reduction incentives to be released from prison after serving a shorter, conditional minimum sentence.
- increased the maximum sentence for Class F through I felony offenses by nine months, and added a nine-month period of post-release supervision.
- added three months to the maximum sentence for Class B1 through E felonies, and increased the period of post-release supervision for these offenses from nine months to twelve months.
- replaced the state-county Criminal Justice Partnership Program (CJPP) with a statewide Treatment for Effective Community Supervision (TECS) Program run by the Department of Correction.

Most of these provisions became effective on December 1, 2011. The transition from CJPP to TECS was effective July 1, 2011. Advanced Supervised Release was made available to offenders convicted on or after January 1, 2012.

The Counsel of State Governments Justice Center forecast a reduction in North Carolina's projected prison population by almost 5,000 for FY 2017 as a result of the Justice Reinvestment reforms. In addition to returning the

state's inmate population to FY 2007 levels by FY 2017, the Center estimated that North Carolina would avoid \$267 million in expenditures to construct and operate additional prisons during this period.

APPENDIX A:
ORIGINAL COMMISSION MEMBERS

Thomas W. Ross, Chairman
Superior Court Judge

A. A. (Dick) Adams
Victim Assistance Network Representative

Luther T. Moore
Business Community Representative

Louis R. Colombo
Chairman of the Parole Commission

William L. Osteen, Sr.
Bar Association Representative

James J. Coman
Senior Deputy Attorney General

David R. Parnell
State Senator

Wayne V. Gay
Wilson County Sheriff

Joseph J. Puett
Mooresville Police Chief

Rodney R. Goodman
District Court Judge

Lao S. Rubert
Alternative Sentencing Assn. Representative

Kent H. Graham
Private Citizen Appointed by the Governor

Frank J. “Trip” Sizemore, III
Private Citizen Appointed by Lt. Governor

Stephen Halkiotis
Orange County Commissioner

Herbert Small
Senior Resident Superior Court Judge

E. Pat Hall
Private Citizen Appointed by the Chairman

Roger W. Smith
Academy of Trial Lawyers Representative

Doris R. Huffman
State Representative

Gregg C Stahl
Asst. Sec., Dept. of Correction

John B. Lewis
Court of Appeals Judge

William A. Webb
Asst. Sec., Dept. Crime Control/Public Safety

W. David McFadyen, Jr.
District Attorney

George P. Wilson
Professor, North Carolina Central University

APPENDIX B:

FELONY OFFENSE CLASSIFICATION CRITERIA*

CLASS CRITERIA

- A** • Reserved for First Degree Murder

[Reasonably tends to result or does result in:]

- B** • Serious debilitating long-term personal injury

- C** • Serious long-term personal injury
• Serious long-term or widespread societal injury

- D** • Serious infringements on property interest which also implicate physical safety concerns by use of a deadly weapon or an offense involving an occupied dwelling

- E** • Serious personal injury

- F** • Significant personal injury
• Serious societal injury

- G** • Serious property loss
Loss from the person or the person's dwelling

- H** • Serious property loss:
Loss from any structure designed to house or secure any activity or property
Loss occasioned by the taking or removing of property
Loss occasioned by breach of trust, formal or informal
- Personal injury
 - Significant societal injury

- I** • Serious property loss:
All other felonious property loss
- Societal injury

- M** • All other misdemeanors

* Personal injury includes both physical and mental injury.
Societal injury includes violations of public morality, judicial or government operations, and/or public order and welfare.

Note: The criteria were not used in the classification of the homicide offenses or drug offenses.

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