

North Carolina Sheriffs' Association

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Special Legislative Report

February 23, 2011

Justice Reinvestment in North Carolina

In 2009, The Council of State Governments Justice Center was asked by North Carolina leaders to analyze North Carolina data and develop: (1) recommendations to reduce state spending on corrections; and (2) strategies that would increase public safety in our state.

The “Justice Reinvestment in North Carolina” report was released earlier this week to the North Carolina General Assembly and others. The report is based on North Carolina data from multiple sources and meetings and interviews with superior and district court judges, district attorneys, defense attorneys, behavioral health treatment providers, family members, consumers, law enforcement officials, victim advocates and probation officers.

In the meetings and interviews with the criminal justice practitioners and stakeholders, three priorities of the state emerged:

- Strengthen probation supervision
— because many people sentenced to probation fail.
- Hold offenders accountable in more meaningful ways
— because people convicted of lower-level felony offenses are not held accountable in meaningful ways.
- Reduce the risk of reoffending
— because community-based treatment is allocated ineffectively. These resources are not focused on individuals whose treatment needs are most acute and whose risk of re-offense is highest.

Improve Public Safety

The Justice Reinvestment in North Carolina report contains some very good recommendations that will improve public safety in North Carolina, such as:

— Objective 1(A): a portion of this objective will enable probation officers without seeking a court hearing to put felony probationers in the county jail for a “quick dip” of up to three days at one time, with a maximum of six days per month per felony probationer. This proposal needs further analysis, but it shows promise if the experience of Georgia can be replicated in North Carolina such that there is a 70% reduction in the number of days that people on probation spend in jail because of a violation of a condition of release or because they were awaiting a court hearing.

— Objective 1(B): “Focus probation supervision resources on those people most likely to commit crime” by allocating supervision and treatment resources according to who poses the greatest risk of reoffending.

— Objective 2(A): “Ensure that every person convicted of a felony serves a period of mandatory community supervision upon release from prison” by requiring persons convicted of Class F-I felony offenses to serve nine months of post-release supervision immediately following their release from prison, and requiring those Class F-I felons required to register as a sex offender to serve five years of post-release supervision immediately following their release from prison.

— Objective 2(B): the portion of this objective that will “Accelerate incarceration of people convicted on multiple occasions of breaking and entering” by creating a new Habitual Breaking and Entering (B & E) Class E sentencing option for people convicted two or more times of felony B & E or second degree burglary.

— Objective 2(B): The Justice Center has previously said: “Research also shows that the swiftness and certainty of a punishment is a more effective deterrent of criminal activity than the severity of punishment.” This statement supports creation of the new Habitual Felony B & E after the second conviction. This same rationale requires the conclusion (that is omitted from the report) that all persons who commit any two felonies should be sentenced as habitual felons. There is no rationale given in the report for applying the research only to B & E felonies and not to all felonies.

— Objective 2(C): the portion of this objective that will establish procedures to “increase time served for people who misbehave while incarcerated” would be an improvement in the current law. While it will reduce time actually served in prison by felons who do not misbehave while they are in prison from “on average” 102% to 113% of their minimum sentences down to 100% of their minimum sentence, the Department of Correction will be able to increase the time served for prisoners who do misbehave while in prison.

— Objective 3(A): Allow all people charged with a Class I felony drug possession offense (excluding possession with intent to sell or deliver) and who have no prior felony conviction to participate in the drug diversion program, and upon successful completion to have their Class I felony drug possession criminal charge dismissed.

— Additional Option 2: Increase length of post-release supervision for serious offenders by increasing the length of post-release supervision from 9 months to 18 months for persons convicted of felony Class B1-E offenses.

Jeopardize Public Safety

The report contains some recommendations that will jeopardize public safety in North Carolina, such as:

— Objective 2(B): the portion of this objective that will reduce the prison sentences of most habitual felons (who have been convicted of four or more felonies) from punishment as a Class C

felon down to punishment “at no more than” two offense classes above their current underlying conviction. This recommendation will also allow a judge to actually sentence a habitual felon without applying any increase at all in the standard sentence applicable to the “current underlying conviction,” which would result in no additional punishment for the defendant’s status as a habitual felon.

— Objective 2(B): the portion of this objective that will reduce the prison sentences of most habitual felons (who have been convicted of four or more felonies) from punishment as a Class C felon down to punishment at no more than two offense classes above their current underlying conviction. Because this proposal does not punish the defendant at two offense classes above the defendant’s most severe felony conviction, or in the alternative two offense classes above the defendant’s least severe felony conviction, this proposal creates an “equal protection” constitutional argument because two defendants who have committed the exact same type of prior felonies, but in a different sequence, will get prison sentences of significantly differing lengths for no reason whatsoever.

In other words, there could be two defendants who have inflicted the exact same crimes on society, and in this proposal they are exposed to substantially different punishments. This inherent “unequal protection of the law” constitutional violation contained in this proposal will ultimately be likely to result in some habitual felony convictions being overturned by North Carolina’s appellate courts.

— Additional Option 3: recommends diverting misdemeanants with sentences of 90 days or longer from prison and instead recommends that they be sentenced to jail or probation supervision. While there is some minimal information elsewhere in the report about the current lack of capacity for additional prisoners in county jails, the report does not point out in Additional Option 3 that very few jails have any additional capacity to accept additional prisoners.

Already overcrowded county jails, if forced to house more misdemeanor prisoners, will in many cases no longer be able to keep felons who have been sentenced to prison and who are awaiting transport to the Department of Correction [commonly referred to as “jail backlog” prisoners.] This will require additional bed space in the state’s prisons so they will immediately be able to receive these sentenced felony state prisoners who can no longer be held in county jails on “jail backlog.”

In addition, the report does not mention the additional costs to counties in building and operating additional jails to accommodate these extra prisoners. All state and county money is received from the same taxpayers, so shifting this financial burden from the state to the counties does not save any taxpayer money and merely shifts it from one taxing authority to another, without any rationale in the report that identifies any benefit of such a shift in this tax burden.

If the decision is made to shift misdemeanants serving 90 days or more out of prison to probation supervision, the adverse impact on the county jails would be avoided. It would raise the issue of why misdemeanants sentenced to less than 90 days in jail must be imprisoned in the county jail, but misdemeanants who under current law would be sentenced to 90 days or more imprisonment will under the new law avoid incarceration completely and be sentenced only to probation supervision.

What Happens Next?

The North Carolina General Assembly has begun reviewing the details of the “Justice Reinvestment in North Carolina” report and evaluating what changes in the law, if any, should be made during this session of the legislature. It is likely that the legislature will enact some of the report’s recommendations and decline to enact some of them.

The North Carolina Sheriffs’ Association supports most of the recommendations in the “Justice Reinvestment in North Carolina” report, but **OPPOSES** the recommendations to: (1) weaken the current Habitual Felon law that is used to protect our citizens from career criminals; and (2) shift sentenced misdemeanor prisoners from the state prison system to the already overcrowded county jails.

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