



# North Carolina

## *CASE STUDY*

Updated February 2007

North Carolina once had the highest incarceration rate of any state in the country. Prison sentences were the favored response to most criminal conduct, regardless of the violence or severity of the crime. This strong preference for incarceration, however, put enormous pressure on the state's budget and its available prison space. Although North Carolina incarcerated more of its citizens than any other state, its space limitations meant that many serious offenders were being released after serving an extraordinarily short percentage of their sentences.

Although North Carolina's approach to this problem had numerous twists, turns and complications, its ultimate solution was simple: increase sentences for serious offenders, prioritize prison space to ensure these offenders served their full sentences, and provide safe and effective community punishments for those offenders who did not need to be incarcerated. Under the new system North Carolina created in the 1990s, both crime and incarceration rates fell and the state saved hundreds of millions of dollars, according to experts. North Carolina continues to serve as a valuable case study for other states exploring how to improve the effectiveness of their sentencing and corrections systems.

### **The Challenge**

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*"I think our system selectively chooses who should be incapacitated. Those are the violent and repeat offenders who seem to have committed themselves to a criminal career."*

*—Susan Katzenelson, executive director,  
North Carolina Sentencing and Policy Advisory Commission<sup>1</sup>*

By the early 1990s, North Carolina faced an overcrowded prison system. Under pressure from prisoner lawsuits, the legislature created a prison population cap in 1987 and gave the Parole Commission the authority to release the number of offenders necessary to remain under the cap.<sup>2</sup> As a result, the percentage of a sentence handed down that was actually served dropped dramatically, falling below 20 percent for some classes of felons and to 6 percent among those convicted of misdemeanors.<sup>3</sup> North Carolina prisoners served only 35 percent of their assigned sentence for even the most serious violent felonies.<sup>4</sup> The meaninglessness of announced prison sentences became so pronounced that offenders began regularly to decline alternative sanctions.<sup>5</sup> With limited financial resources to mount the sort of prison building boom required to ensure that offenders served a greater portion of their sentences, North Carolina chose a different path.

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<sup>1</sup> Gary L. Wright, "As Prison Population Snowballs, N.C. Debates Building Program," *Charlotte Observer*, July 7, 2001.

<sup>2</sup> Ronald Wright, "Counting the Cost of Sentencing in North Carolina, 1980-2000" (September 14, 2001), pp. 16-17. Available at SSRN <http://ssrn.com/abstract=287356>.

<sup>3</sup> *Id.* at 17.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.* at 18.

# The Approach

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## Legislature Creates North Carolina Sentencing Commission

North Carolina's leaders considered starkly contrasting ways to address overcrowding. Then-Governor Jim Martin advocated seeking \$400 million in bond funds to build more prisons and increase capacity by more than 60 percent. But lawmakers, concerned about a growing state deficit, a declining credit rating and a public education system woefully in need of more funding, instead formed an independent sentencing commission in 1990 to overhaul how the state dealt with criminals. The Sentencing and Policy Advisory Commission Act of 1990 directed the new Commission to:

- construct a correctional simulation model
- classify criminal offenses
- recommend structures for use by sentencing courts
- develop a comprehensive community corrections plan
- determine what percentage of their sentences offenders would be obligated to serve before becoming eligible for parole

Beyond its statutory requirements, the Commission wanted any new sentencing structure to achieve several important goals:

- set priorities for prison space
- restore "truth-in-sentencing"
- provide an underlying rationale for sentencing
- improve consistency and certainty in sentencing
- make efficient use of criminal justice resources
- balance sentencing policies with resources<sup>6</sup>

The Commission had 23 members, including political and judicial leaders and members of state criminal justice agencies and advocacy organizations. It divided its work into subcommittees, each of which contained members with diverse views. One subcommittee analyzed how to classify various aspects of the conduct involved in an offense, while another considered what aspects of offenders' backgrounds should be relevant when sentencing them. One subcommittee considered whether prison or other forms of punishment were appropriate for various levels of offenses, while a different group, focused on community corrections, determined what punishments would be available for offenses that did not result in incarceration. Yet another subcommittee reviewed the desirable length of sentence for those offenses where incarceration was recommended.<sup>7</sup>

## Sentencing Commission Proposes Major Reforms

The Commission recommended a grid-based sentencing system for North Carolina, dividing crimes into nine felony categories and three misdemeanor categories. These categories became the vertical axis of the grid. The Commission's decision to regulate misdemeanor sentences was an important strategic choice, according to experts who have studied North Carolina's history in sentencing and corrections. If it had decided to regulate only felonies, courts may have sought to avoid the grid by sentencing many

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<sup>6</sup> Thomas W. Ross, "Sentencing Reform in North Carolina," Presentation to the Little Hoover Commission, August 2006.

<sup>7</sup> Ronald Wright, pp. 30-31, 38. Available at SSRN <http://ssrn.com/abstract=287356>.

offenders for misdemeanors instead of felonies. As a result, local governments—which are responsible for housing misdemeanor offenders—would have seen their costs rise dramatically. By including misdemeanors on the grid, the Commission was able to ensure that the new sentencing system would not disproportionately harm local governments.<sup>8</sup>

The Commission also sought to simplify the way defendants were categorized. Instead of requiring judges to consider various factors about the offender at sentencing, it recommended that a defendant’s criminal history be the only mandatory factor. The severity of defendants’ criminal histories would place them in one of six different categories, making up the horizontal axis of the grid. (Judges would retain the option of considering additional characteristics as aggravating or mitigating factors.<sup>9</sup>)

At the time, North Carolina law gave judges complete discretion over whether to incarcerate an offender. Members of the Commission believed this was inconsistent with the state’s need to plan for the use of its prison resources, and adopted a framework that bound judges in most cases. The Commission mandated that certain boxes on the grid—more serious offenses committed by those with significant criminal histories—would always require prison time, while less serious offenses committed by those with minimal criminal histories could not lead to prison terms. Some areas in the middle of the grid—“border boxes”—allowed judges discretion to choose prison or non-prison sanctions.<sup>10</sup>

The Commission created a presumptive sentencing range for offenders within each grid box, allowing for aggravated sentences of 25 percent more and mitigated sentences of 25 percent less than the presumptive range. Judges would thus sentence offenders not to a specific sentence, but to a sentencing range; for example, an offender might be sentenced to serve five to six years in prison. All offenders would serve at least the minimum term of the range imposed by the judge. To encourage inmates to behave well while incarcerated, however, offenders who violated prison rules could be required to serve up to the maximum term of the range. This structure abolished parole in North Carolina.<sup>11</sup>

### **Legislature Demands a Plan Requiring No Additional Prison Space**

The Commission initially estimated the new sentencing system would cost the state \$1 billion in prison construction costs and an annual operating budget of \$1.5 billion. Seeking to reduce the amount of costly new prison space that would be required, the Commission cut its initial recommended sentences by 20 percent at the top and bottom of the grid, and by 30 percent in the middle levels.<sup>12</sup>

The legislature, however, demanded that the Commission go even further – that is, come up with a proposal that required no additional prison space beyond the state’s existing capacity. In response, the Commission added more “border boxes” and reduced sentence ranges, among other changes.<sup>13</sup> To ensure the predictability of the system, it also voted to restrict judges from departing from the sentencing ranges permitted by the guidelines.<sup>14</sup> In 1993, the North Carolina legislature overwhelmingly approved this plan.

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<sup>8</sup> Interview with Ronald Wright, January 30, 2007.

<sup>9</sup> Ronald Wright, p. 36.

<sup>10</sup> Id. at 38-40.

<sup>11</sup> Id. at 42-43.

<sup>12</sup> Id. at 46.

<sup>13</sup> Id. at 48-49.

<sup>14</sup> Id. at 49-50.

## State Revamps and Strengthens Community Corrections

*"[The revised system] reserves increasingly expensive prison space for violent and repeat offenders, and provides for nonviolent and nonrepeat offenders less expensive and just as effective forms of punishment."*

*—Former Department of Correction Secretary Franklin Freeman<sup>15</sup>*

North Carolina's new guidelines called for greater numbers of lower-risk offenders to be sentenced to community punishments—so it was critical for the state to expand and strengthen its community corrections programs. State leaders, with strong support from then-Governor James Hunt, responded decisively, and as a result, the number of lower-risk felons punished through community sanctions increased from 11,000 in 1993-1994 to 16,000 five years later.

The state's 1993 legislation limited the caseloads of probation officers to 90 regular cases or 25 intensive cases, and included funding to hire 500 new probation officers.<sup>16</sup> And it spurred new types of community sanctions, such as day reporting centers.

The law also created a strong partnership between the state and local corrections agencies by requiring them to cooperate in developing and funding effective community corrections programs.<sup>17</sup> Where each program once had submitted its own budget, the Sentencing Commission, working with the Department of Correction, brought various local community corrections agencies together to agree on a unified budget.<sup>18</sup>

The state continued to fund and run most large programs, such as intensive probation, while local governments continued to fund and run smaller programs that they developed or that already existed. The state appropriated \$12 million annually for grants to local governments to support their efforts, and by 2000, 93 of the state's 100 counties were receiving state funds to operate community corrections programs. The \$12 million annual budget was modest compared to \$200 million for the state's probation and parole division and \$660 million for the prison system—but these programs were invaluable in enabling judges to divert lower-risk offenders from more expensive prison beds.<sup>19</sup>

It was a win-win outcome for state and local officials. The state profited because North Carolina's communities served as proving grounds for a variety of community corrections approaches. Localities received not only funding from the state, but also annual lists of community corrections programs in North Carolina—which gave judges regularly updated information to determine appropriate punishments for offenders.<sup>20</sup>

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<sup>15</sup> Amanda Bennett, "State Tailors Sentences to Cost of Prison Space with Computer's Help," *The Wall Street Journal*, August 5, 1994.

<sup>16</sup> N.C. Gen. Stat. 15A-1343.2 (1993).

<sup>17</sup> Ronald Wright, pp. 74-75.

<sup>18</sup> *Id.* at 66.

<sup>19</sup> *Id.* at 67.

<sup>20</sup> Ronald Wright interview, January 30, 2007.

## The Results

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### Serious Felons Serve Longer Sentences; Crime Rates Fall Dramatically

By nearly all accounts, the Commission achieved its mandated goals. The average prison term served by felony offenders more than doubled, from 16 months in 1993 to 39 months in 2005. This increase, along with the adjusted sentencing ranges, meant that the percentage of felony sentences served skyrocketed from 19 percent to upwards of 100 percent over the same period.<sup>21</sup> Sentences pronounced in open court became the sentences that actually would be served, giving victims, prosecutors and the public greater truth and certainty in the criminal justice system.

Simultaneously, the percentage of felons who were sentenced to prison terms fell from 47 to 37 percent between 1993 and 2005—preserving prison space, and the possibility of longer sentences, for the most serious offenders.<sup>22</sup> The proportion of nonviolent felony offenders sentenced to prison during that period dropped from 42 percent to 23 percent.<sup>23</sup>

A number of stakeholders feared that the increased use of community sanctions would result in more crime, but that did not happen. Crime rates fell nearly 21 percent between 1995 and 2004 (nationally, crime rates dropped nearly 25 percent during that time). Violent crime fell at the even faster rate of about 31 percent, similar to a 32 percent drop nationally.<sup>24</sup> North Carolina's new sentencing regime also achieved the fiscal stability the state needed. Today, North Carolina incarcerates about 38,000 inmates at a per-prisoner cost of more than \$68 per day, or about \$25,000 per year. Officials have estimated that if policy makers had not enacted reforms, North Carolina's prison population would now be at least 54,000 – a difference worth hundreds of millions of dollars for the state budget.

### Sentencing Commission Continues to Play Important Role

*“We are getting smarter. We are not just talking tough.*

*We're being smart while we talk tough.”*

*—Former Speaker of the House Dan Blue<sup>25</sup>*

North Carolina's Sentencing Commission continues to play an important role in ensuring the effectiveness of the state's sentencing system. Among other functions, the Commission analyzes the projected impact of proposed criminal legislation on the state's prison capacity and corrections budget. Under the 1993 law, any new sentencing bill introduced in the General Assembly requires a “fiscal note,” which is produced by the Commission and the legislature's research arm. These projections estimate the number and cost of new prison beds that would ultimately be required if the legislation being considered was enacted. These estimates help policy makers and the public make informed choices about sentencing and corrections reforms.

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<sup>21</sup> North Carolina Sentencing and Policy Advisory Commission and N.C. Department of Correction, “Current Population Projections, Fiscal Year 2005/06 to Fiscal Year 2014/15,” January 2006, p. 1.

<sup>22</sup> North Carolina Sentencing and Policy Advisory Commission, “Structured Sentencing Statistical Report for Felonies and Misdemeanors,” February 2006, p. 11.

<sup>23</sup> Judith Greene, “North Carolina sentencing and a call for reform,” 2003, p. 6.

<sup>24</sup> North Carolina State Bureau of Investigation, “Crime in North Carolina – 2004,” August 2005, p.8.

<sup>25</sup> Bennett, August 5, 1994.

## The Next Steps

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### North Carolina Once Again Grapples with Growth

Despite the extraordinary changes North Carolina made to its sentencing and corrections systems to ensure the most cost-effective use of prison space, the state is again facing challenging prison population growth, in large part due to a growing residential population and the long-term impact of lengthening sentences for violent criminals.

North Carolina's general population has grown by 33.5 percent since the 1990 Census, rising from 6.63 million to 8.85 million people. North Carolina's prison population has also increased considerably, from slightly more than 20,000 prisoners in 1993, when reforms were adopted, to about 38,000 today. (However, North Carolina's incarceration rate, once the nation's highest, ranked only 31<sup>st</sup> in 2003.<sup>26</sup>) The system is projected to reach nearly 45,000 prisoners by 2015.<sup>27</sup> These developments have caused concerns about overcrowding and are presenting state policy makers with tough choices. In 2001, as the prison population swelled, the legislature voted to spend \$210 million to build three new prisons, and in 2003, it approved \$225 million for three more. Even when this expansion effort is completed in 2008, however, the state projects it will still be 400 inmates over capacity. By 2016, there will be 6,400 more inmates than beds.<sup>28</sup>

In May 2006, Governor Mike Easley's administration proposed a 10-year plan to expand existing prisons and add two new prisons at a cost of about \$260 million.<sup>29</sup> The Sentencing Commission has recommended measures to lower the prison population and avert significant additional costs, including ending the practice of automatically trying 16- and 17-year olds as adults and reducing some criminal sentences.<sup>30</sup> The legislature has not yet decided on a path. As in the 1990s, North Carolina policy makers today will need careful, thoughtful and data-driven analysis to understand why the system is growing at such a rate, what their policy options are, and what the implications of each option might be on public safety and public spending.

The North Carolina experience reveals the enormous complexity of policy making in the areas of state sentencing and corrections. It also illustrates the benefits that accrue to a state when its leaders work together and rely on sound research and analysis to examine and formulate their policy choices. North Carolina lawmakers have a long history of using good data and systemic tools to try to protect public safety while controlling corrections costs, and those assets will help them navigate the challenges they face today.

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<sup>26</sup> North Carolina Department of Correction, Research Bulletin, March 30, 2006.

<sup>27</sup> North Carolina Sentencing and Policy Advisory Commission and N.C. Department of Correction, "Current Population Projections, Fiscal Year 2005/06 to Fiscal Year 2014/15," January 2006, p. 5.

<sup>28</sup> Dan Kane, "Lawmakers fight prison crowding; Population growth exceeds building, estimates conclude," *The Sun News*, December 27, 2006.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; "Juvenile or adult at 16?," *Greensboro News & Record*, December 20, 2006.

## **PUBLIC SAFETY PERFORMANCE PROJECT**

An operating project of The Pew Charitable Trusts, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

The project helps states diagnose the factors driving prison growth and provides policy audits to identify options for reform, drawing on solid research, promising approaches and best practices in other states. The initiative also helps state officials, practitioners and others share state-of-the-art knowledge and ideas through policy forums, public opinion surveys, multi-state meetings, national, regional and state-level convenings, and online information about what works.

The project works with the Pew Center on the States and a number of highly respected external partners, including the Council of State Governments (CSG) Justice Center and the Vera Institute of Justice, to provide expert, nonpartisan information and assistance to states.

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