

Carolina Justice Policy Center

Legislative Update

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Update Topics:

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Criminal Justice Advocacy, Education, Services & Solutions

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Racial Justice Act Still Alive

The push for death penalty reform in the form of the NC House Bill 1291: The Racial Justice Act continues in the halls of the General Assembly. Senate leaders have agreed to bring the bill up for a vote in Democratic Caucus. However, when or if the bill will be heard is still not known. Fortunately, groups including CJPC, the NAACP, People of Faith, the ACLU and Murder Victims Families for Reconciliation amongst others are fighting for the bill to be heard. Recent exonerees (Glen Edward Chapman, Jonathon Hoffman, Levon “Bo” Jones and Darryl Hunt) have also joined the fight.

The Racial Justice Act’s key element is the ability to introduce statistical evidence into pretrial proceedings or during appeal to prove claims of racism that may have encouraged a death sentence over a lesser sentence. Kentucky is the only other state that has similar laws regarding race and the death penalty. This bill originated from the historic US Supreme Court case of McCleskey v. Kemp, which was argued at the US Supreme Court level by Jack Boger, the current Dean of the UNC Chapel Hill Law School.

McCleskey, a Black male sentenced to death in Georgia for murder and armed robbery in 1978, filed a petition for a writ of habeas corpus in the Federal District Court for the Northern District of Georgia. One of his claims was that Georgia’s capital sentencing process is administered in a racially discriminatory manner in violation of the Eighth (Prohibition of Cruel & Unusual Punishment) and Fourteenth Amendments (the Equal Protection Clause) to the United States Constitution. In support of his claim, McCleskey introduced a statistical study known as the Baldus study to show a disparity in the imposition of the death sentence in Georgia based on the race of the murder victim and the race of the defendant. The study examined over 2,000 Georgia murder cases that occurred during the 1970s. After considering numerous variables, the study concluded that defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks in Georgia. Five of the nine US Supreme Court Justices ruled against McCleskey and he was executed by the state of Georgia in 1991. The Justices stated in their written opinion that McCleskey’s claims are best presented to legislative bodies. Also, Justice Lewis Powell, who wrote the original majority opinion against McCleskey, stated that his greatest regret was upholding the death penalty in McCleskey’s case.

House Places Budget on Fast Track

The House of Representatives is expected to finalize its budget by the end of the week and changes can be made until then. The short session is a time for “tweaking” the budget rather than an opportunity for major alterations. For the most part, the Justice and Public Safety section of the budget is an improvement over previous years. This is the case in spite of the fact that the economic news is not good overall and that the state is, once again, looking for places to cut a budget that has seen cuts every year since 2001.

One of the ways Justice and Public Safety budget cuts were achieved by last year's budget drafters was by deleting funds in the coming year for two major community-based programs (the Criminal Justice Partnership Program and the Juvenile Crime Prevention Councils). The funds for both programs comprised approximately \$30 million and were cut from the 08-09 budget pending a "continuation review."

While it's always a good idea to review program effectiveness, reviews are typically done with a budget in place. That was not the case for the Criminal Justice Partnership Program or the Juvenile Crime Prevention Councils. The fact that both programs were not even included in the budget for 2008-2009 has caused significant instability across the state for these programs. Fortunately, both programs have been restored in the House budget.

Community Corrections Programs - Adults

Criminal Justice Partnership Program

After an extensive continuation review of both the Criminal Justice Partnership Programs and the Juvenile Crime Prevention Councils, the House has returned both programs to their full 08-09 budget levels and added expansion funding to each.

The Criminal Justice Partnership Program has been expanded by \$500,000. This is a big improvement from last year's budget and House budget writers are to be commended for providing a needed increase to this program.

Dispute Mediation – The Administrative Office of the Courts also recommended \$103,808 in cuts to the Dispute Resolution Centers. Sen. Kinnaird has introduced a bill to replace those funds in the amount of \$170,000.

Drug Treatment Court - The Administrative Office of the Courts (along with other state agencies) will be required to reduce its overall increase. In order to do so, the Administrative Office of the Courts rejected the cuts recommended by the Governor and proposed different cuts. Since the AOC is a separate branch of government, they have asked to be allowed to determine their own cuts rather than taking those proposed by the Governor.

One guiding principle for the AOC's proposed cuts was to eliminate items they had never requested in the first place. As a result, they requested a cut of \$294,000 for Drug Treatment Courts. These funds, appropriated last year, would have replaced federal and county grant funds which will expire in 08-09. 2.75 positions will be eliminated.

Probation – After the deep-seated problems in probation that have been widely publicized as a result of the Eve Carson case, legislators have moved to place \$3 million in a reserve fund to address critical staffing needs. These funds will not be appropriated until a National Institute of Corrections review is complete. That review has now been expanded beyond Durham and Wake to several other urban counties in the state. Certainly every North Carolinian deserves to know that probationers are actually

being seen by their probation officers and we hope the NIC study will help make that basic expectation a reality.

Reentry – Re-entry funds in North Carolina have been appropriated as part of major federal grants in recent years. We hope those federal grants will be renewed in the coming year, but local experts tell us the funds are currently caught up in disputes over defense spending.

Sentencing Services – \$200,000 in non-recurring funds for Sentencing Services have been included in the most recent draft of the House budget. These funds are essential to program operations and options presented to judges for community-based placements will need to be reduced if these funds are not included in the final budget.

Womens' Programs

Substance Abuse Treatment – While Dart-Cherry has served as inpatient substance abuse treatment facility for male probationers and parolees, there has been no similar facility for women. Approximately \$1.9 million has been included by the House to provide 28 and 90 day treatment options in a 50 bed unit at the Black Mountain Correctional Center for Women.

Summit House - \$100,000 in non-recurring funds allocated to Summit House, a residential facility for female probationers and their children, will be continued in 08-09. The current budget is \$1.231 million.

Women at Risk – A \$100,000 in non-recurring funds has been included for Women At Risk, a program focusing on female offenders in 10 Western counties. The current budget is \$350,000.

Indigent Defense Services – (IDS)

The Governor's budget included an additional \$3 million to allow Indigent Defense Services to meet the bills for services rendered by attorneys in the current fiscal year. The House has reduced that increase to \$1 million. The House has also cut IDS inflationary increases by \$200,000.

Juveniles

Juvenile Crime Prevention Councils - The Juvenile Crime Prevention Councils survived an extensive continuation review and full funding of \$22.6 million has been restored to the program along with a \$1 million dollar increase. Programs funded through the JCPCs did an excellent job of informing legislators of the need for these programs. (For a full description of the continuation review process at the beginning of the Community Corrections section.)

Eckerd Project - \$2.69 million was eliminated from the Eckerd project due to administrative barriers in accomplishing the project. Significant funding for Eckerd wilderness programs still exists.

Judges

The AOC has offered 3 special superior court judges as part of its package for budget cuts since these judges were not included in the AOC's earlier budget request. This comprises a \$478,000 cut.

At the same time the Administrative Office of the Courts is recommending cuts in Superior Court judges, Durham Senator Bob Atwater introduced Senate Bill 2085 this week requesting an additional district court judge position in Durham's District Court District 14, five additional assistant district attorneys and three victim witness assistants in Prosecutorial District 14, and six deputy clerks and four magistrates in Durham County. This request has been forwarded to the Appropriations Committee for consideration.

Bang Bang: NC District Attorneys want to Pack more Power

As if North Carolina's district attorneys don't have enough power, House Joint Resolution 2677 was introduced in the NC House of Representatives this week requesting that a bill be considered to allow North Carolina's district attorneys and assistant district attorneys to carry or possess a handgun while in the courtroom. The resolution, sponsored by Representative Pryor Gibson of Anson and Union counties, has been referred to the House Rules Committee for consideration.

Gangs: McCrory and Perdue Talk Tough

The Senate raced to pass gang legislation this session when it became apparent that Republican GOP nominee, Pat McCrory, was coming to town to join the Mayors' request for gang legislation. At the same time, Perdue rushed to voice her support for gang legislation and the amended bill passed the Senate 47 – 0.

The bill now goes to a conference committee where advocates have some hope that rational heads will prevail as the conferees work out the differences between the House and Senate versions of the two gang bills. Provisions which still need consideration include: language to exempt juveniles from the harsher penalty enhancements and a provision for expunging a juvenile's record. The penalties included in the bill are not as draconian as when the bill was first introduced six years ago and Rep. Michaux appears to have some hope of allocating \$10 million in prevention dollars.

Significant funding for gang prevention is expected to be forthcoming in the House budget as a prevention piece to accompany the incarceration piece that is expected to cost over \$37 million in new prison beds and operating costs. While no figure has been released, Rep. Michaux, primary sponsor of the gang bill and Chair of full appropriations, has repeatedly stated that he would like to see \$10 million new dollars in gang prevention funds.

If so, the prison vs. prevention balance will be approximately \$37 million for prison construction and operations and \$10 million for prevention. We'd still like to see the balance tipped further towards prevention.

No Roof for Sex Offenders

The Department of Correction is having trouble “operationalizing” the requirements that have been placed on sex offenders in recent legislative sessions. It appears that there are now few, if any, places that sex offenders can return to in the community. As a result, the DOC requested the authority to pay – on a very limited basis – for a returning offender’s first few nights in any facility that was willing to house them upon their return.

Many legislators were livid at the idea that the state should provide any funds at all to make sure an offender had a place to live upon release. The DOC pointed out – to no avail – that it is not in the interest of public safety for a returning offender to be homeless. Probation can’t even monitor an individual who has no residence. Some legislators advocated for a vacant state building with a cot, but no one suggested revisiting the laws that have made it virtually impossible for some sex offenders to have a roof over their head.

Prisons: More on the Way

New Construction - Legislators continue to move ahead with plans to build approximately 1,000 new prison beds a year with no indication that a majority of lawmakers are yet willing to consider reasonable adjustments in the sentencing structure. Without a strong push from House leaders, no sentencing adjustments are likely to be made. Sen. Ellie Kinnaird has once again introduced sentencing options recommended by the Sentencing Commission and supported by the Department of Corrections.

The Governor and the General Assembly are poised to appropriate \$108 million for new construction again this year which will translate into an additional \$39 million annually in operating costs once the units are constructed.

Our Children’s Place, a facility that allows incarcerated mothers to stay with their infants for a brief period will receive an additional \$50,000 to oversee services to incarcerated mothers and their children.

Other Criminal Justice Bills being Considered in the Upcoming Week:

House Bill 946 – Vandalism Damages More than \$5,000/Felony

The Senate Judiciary II Committee will consider a measure next week that was passed last year in the NC House. HB 946 will make vandalism of houses, buildings, churches and other structures that result in \$5,000 in damage a Class I felony. Vandalism is currently punishable as a Class 2 misdemeanor.

House Bill 1003 – Aggravating Factor/ No Probation Compliance

The Senate Judiciary II Committee will also consider HB 1003 next week that will allow courts to consider prior probation compliance failures within a ten year time period as an aggravating factor. This bill passed the NC House last year.

House Bill 2492 – Amend Release of Juvenile Escape Info

The NC House Judiciary III Committee will consider HB 2492 to disclose the name and photograph of juveniles who escape from detention centers or other forms of custody to the public within 24 hours.

House Bill 933 – Jessica’s Law – This is still another effort to ratchet up the punishment on sex offenders. One of the provisions would require require life imprisonment for offenders convicted of rape or first-degree sexual offense. It would also require life time electric monitoring on these offenders. There is no end in sight for the appetite to increase punishments on sex offenders at a time when the laws are already severe.