

# NCPLS



# ACCESS

## PRISON OVERCROWDING: HOW WILL NORTH CAROLINA RESPOND? A REPORT FROM THE NORTH CAROLINA SENTENCING & POLICY ADVISORY COMMISSION

by Commissioner Billy Sanders, CLAS  
 Prison overcrowding is back in the news. There are reports from multiple media outlets that the North Carolina General Assembly is looking for ways to reduce the prison population. As always, these reports fuel prison rumors that sentences are going to be slashed, or that parole is going to be re-instituted. Hopefully, more accurate information will help inmates understand the current situation and how North Carolina will likely respond.

Late last year, the General Assembly asked the North Carolina Sentencing and Policy Advisory Commission to “study and review the State’s sentencing laws in view of the projected growth in the prison population by 2010,” and to “develop alternatives for consideration by the General Assembly.”

On January 11, 2002, the Commission met and discussed several alternatives which had been under consideration by the Commission in a study which lasted most of 2001. The General Assembly is not bound by any of the alternatives developed by the Sentencing Commission, and final approval of any new measures

will go through the normal legislative process. Those specific proposals will be discussed later in this article.

First, exactly what is the current situation regarding prison overcrowding? One of the functions of the North Carolina Sentencing and Policy Advisory Commission is to project prison growth. Over the course of its existence, the Commission has been remarkably accurate in projecting prison population growth.

Without any changes in current law, the Commission projects that the prison population will grow from about 33,188 this year, to 41,052 by 2011. That projected increase in the prison population may underlie the General Assembly’s request that the Commission examine alternatives to current law.

The projected prison population will exceed the State’s operating capacity in 2003 by 2,042 inmates. The last session of the General Assembly approved construction of three new prisons, which will increase prison capacity by 2,592 beds when they come on line in 2004. Without changes to current sentencing law, and in light of



planned construction, the operating capacity of North Carolina’s prisons will exceed the Commission’s projections in 2005 by only 800 beds. Although there will be some overcrowding in the mid-term while new prison construction takes place, the real crisis may occur later in this decade.

The prison population is projected to dramatically exceed operating capacity by 2006, and by 2011, the population will exceed capacity by 6,205 inmates. It is the projected growth of the prison population

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NCPLS serves a population of more than 32,500 prisoners and 10,000 pre-trial detainees, providing information and advice concerning legal rights and responsibilities, discouraging frivolous litigation, working toward administrative resolutions of legitimate problems, and providing representation in all State and federal courts to ensure humane conditions of confinement and to challenge illegal convictions and sentences.

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## HAMILTON V. NC DEPT. OF CORRECTION

### NC COURT OF APPEALS UPHOLDS TRIAL COURT DECISION

According to the North Carolina Court of Appeals, employees of the Department of Correction who are responsible for processing judgments received from the courts do not have the authority to change the sentences which have been imposed by those courts. In a decision handed down on November 20, 2001, the Court concluded that the sole authority to correct illegal sentences rests with the courts. Therefore, even when a judgment reflects an illegal sentence, Department of Correction employees must enter the sentence in Department records as the court has ordered. Under such circumstances, Department employees must notify the sentencing court and the parties that the sentence is illegal, but it is up to the court - not DOC employees - to correct the problem.

The case is *Hamilton v. Freeman*, which was first profiled in an article in these pages in the Spring of 2000. The case is a class action lawsuit filed by North Carolina Prisoner Legal Services on behalf of all inmates in the custody of the Department of Correction whose sentences have been changed by the Combined Records Office of the Department of Correction. As a result of those actions, NCPLS alleged that plaintiffs and members of the class were serving longer sentences than those imposed on them by the sentencing courts. Specifically, these inmates had received concurrent sentences for crimes for which consecutive sentences are required by statute,

or had received CYO status from the sentencing court although they were statutorily ineligible for it. When Department of Correction employees received these judgments for concurrent sentences, they entered the sentences in their records as consecutive sentences. To compound the problem, DOC failed to keep records or notify anyone that the sentence had been changed. North Carolina Prisoner Legal Services alleged that practice is illegal under both State and Federal law and sought an injunction ordering a halt to the practice.

After four years in litigation, the case was decided favorably for the plaintiff inmates in the trial court. On July 3, 2000, Judge Howard Manning of the Wake County Superior Court ruled that the Department's practice of changing judgments violates State law and required that judgments be honored, even if they may be illegal. Judge Manning specifically ordered the Department to enter judgments for concurrent sentences as concurrent sentences, and to notify the sentencing court that the sentence may be illegal and in need of correction. The Department of Correction appealed the decision of the trial court to the North Carolina Court of Appeals, and obtained a stay of the trial court's Order, pending the outcome of the appeal.

In its recent decision, the Court of Appeals upheld the order of Judge

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# Sentencing Commission

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over the next decade, rather than an immediate need for new prison space, that may have the General Assembly searching for answers. One possible alternative is simply to build new prisons to accommodate the increase in population. However, that would be an expensive approach which seems unlikely to gain support, especially given recent budget constraints.

## Reasons for Growth

The crime rate has declined by 14.7% since 1995. Even though the crime rate has decreased since the introduction of Structured Sentencing, the prison population has grown. What are the reasons for that growth? The answer is more complicated than one might think.

## Crime Rate per 100,000 Population [Source: North Carolina State Bureau of Investigation]

1995 - 5,766.7  
 1996 - 5,649.8  
 1997 - 5,593.7  
 1998 - 5,427.8  
 1999 - 5,269.2  
 2000 - 4,921.5

Between 1950 and 1990, North Carolina's population increased by about 12 to 13 percent each decade. However, in the 1990's, the State grew by 21.4 percent, ballooning to over 8 million residents and becoming the nation's ninth-fastest-growing state. During the

1990's, North Carolina added about 389 people each day. Therefore, even though the crime rate has decreased, this decrease was offset by the growth in the overall population.

## Number of Prison Entries [Source - N.C. Department of Corrections]

1995 - 24,625  
 1996 - 23,541  
 1997 - 24,972  
 1998 - 26,156  
 1999 - 25,180  
 2000 - 23,486  
 2001 - 23,437

Despite the rapid growth in the State's population, the number of persons entering the Department of Correction has remained fairly constant since the implementation of Structured Sentencing. There was an increase from 24,625 in 1995 to 26,156 in 1998, but since that time, the number of persons entering prison has declined to below the 1995 level.

However, criminal defendants who commit serious felonies under Structured Sentencing are spending longer periods of time in prison. Offenders released in 1993 - the last year of the old system - had, on average, served less than 20 percent of their sentenced time. Those incarcerated under the Structured Sentencing Act serve 100 percent of their minimum sentence. As a result, during the years from 1995

to the present, there were 5,706 more prison entries than prison exits, as there are more convicted people entering the prison system than are being released on an annual basis.

## Number of Prison Exits [Source - N.C. Department of Corrections]

1995 - 19,074  
 1996 - 22,083  
 1997 - 24,025  
 1998 - 25,805  
 1999 - 26,083  
 2000 - 25,859  
 2001 - 22,762

A phenomenon of Structured Sentencing and one of the primary reasons for the growth in the prison population is the "stacking effect." Persons convicted of less serious felonies are either diverted to probation, or are given relatively short sentences. Persons convicted of more serious felonies are serving longer periods of time in prison. In general, this means an increase in the number of people convicted of the most serious crimes and sentenced to the longest prison terms. That trend is expected to continue.

As time marches on, those in North Carolina prisons serving relatively short sentences will decline as a percentage of the total population. This not only results in fewer prison exits per year, but in a need

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## Hamilton vs. N. C. Department of Correction

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Manning, agreeing with the trial court that the Department's practice violates State law. The Court further noted that the trial court's order (requiring the Department to enter judgments for concurrent sentences as concurrent sentences, and to notify the sentencing court that the sentence may need to be corrected) applies to all inmates currently in custody of the Department, as well as to inmates who will come into custody of the Department in the future.

However, the decision of the trial court is still not final. The Department of Correction has asked the North Carolina Supreme Court to review the Court of Appeals decision, and has again asked for a stay of the trial court's order. As of this writing, the North Carolina Supreme Court has granted the Department's request for a stay, but has yet to decide whether it will review the case.

## INFORMATION ABOUT INMATE DIVORCE PROCEEDINGS

by Eleanor G. Kinnaird, Staff Attorney

People who are incarcerated deal with similar circumstances and sometimes experience similar problems. Last year, more than 10,000 North Carolina inmates turned to NCPLS for information and legal advice. For some of the most common problems people experience, we have found that

we can most efficiently serve our clients by providing information through forms, letters, pamphlets and booklets.

Divorce is a subject of interest to many inmates, and the NCPLS Divorce Packet is one of our most frequently requested publications. Although we do not offer legal representation to inmates involved in divorce proceedings, filing for an absolute divorce is a fairly simple legal procedure, and almost all of our clients have been successful using the forms and instructions contained in the Packet.

Under North Carolina law, there is only one requirement for an absolute divorce: the married couple must have lived separately for one year. That means the parties do not have to prove anything else, such as adultery or incompatibility. Therefore, little paperwork is usually required, and the only issue to be proved at the hearing is how long the couple has been separated.

If an inmate has been in prison for one year or more, there is no question that the parties have been separated for one year. But, if the separation began before incarceration, the date on the Complaint and the testimony at the hearing will be considered evidence bearing upon the one-year requirement. Most spouse/defendants don't bother to contest the divorce or even appear at the hearing. If the spouse doesn't dispute that the parties have lived apart for one year, the divorce will ordinarily be granted. But if the spouse does object by filing an Answer to the Complaint, the

inmate may have to prove the separation occurred and continued for one year. An example of persuasive evidence tending to establish the period of separation would be a home or mailing address that was different from the spouse's address, established more than one year before the Complaint was filed, such as a driver's license showing your residence at the time of separation.

After the Complaint has been filed and the time for filing an Answer has passed, the inmate should write to the clerk of court to ask the clerk to issue an order requiring prison officials to transport the inmate to the hearing. Such an order is called a writ of *habeas corpus ad testificandum*. (It is almost always best to file the Complaint in the county where you are incarcerated. One reason is that it is easier and less expensive for officials to arrange for your attendance at the hearing.)

A few inmates have written our office saying the judge refused to writ the inmate to a hearing. Instead, the judge required the inmate to file a motion for Summary Judgment. Summary Judgment is an appropriate procedure when there is no dispute over the facts and the matter can be decided by the judge without a hearing. While this is easier and cheaper for the courts and correctional professionals, it can be a little

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## Sentencing Commission

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for more prison space devoted to higher custody classifications. It is more expensive to build prison space for higher custody levels, and more expensive to operate those prisons.

### **Sentencing and Policy Advisory Commission Report**

From the perspective of an inmate presently serving a term of imprisonment, it is important to understand that none of the alternatives recommended by the Sentencing Commission to the General Assembly affect those sentences.

Regardless of rumors or media reports, there are no plans under discussion to shorten the sentences of people who are now serving prison terms, or to re-institute parole. One of the reasons this topic is not under discussion is because it is inconsistent with one of the basic tenets of Structured Sentencing.

The most severe critics of former sentencing laws deplored the large discrepancy in the sentences handed down from the bench and the length of time actually served on those sentences. Victims rights groups, prosecutors, judges, and other segments of society argued strongly that everyone in the criminal justice process, and those affected by it, should know exactly how long a criminal defendant would have to serve on a sentence. Thus, "Truth in Sentencing" became a cornerstone of Structured Sentencing.

In developing alternative proposals, the Sentencing Commission was constrained by the principle of "Truth in Sentencing." It would undermine this principle to retroactively modify sentences that have already been imposed, and any such initiative would face strong opposition.

The most significant alternatives the Sentencing Commission presented to the General Assembly focus on changes in the Structured Sentencing "grid" - the chart that reflects the time to be served upon conviction for each class of felony, in light of the seriousness of the offense and the offender's prior record level. The "grid" currently contains some inconsistencies which were addressed by the Commission.

For example, there is a lack of consistency from one prior record level to another, in terms of the number of months each increase in prior record level produces. Simply by making the percentage increase between prior record levels consistent (in terms of months to be served), the prison population projections over ten years decrease by 1,084. The Sentencing Commission recommended that change.

There is also a lack of consistency among prior record levels. "The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's

prior convictions . . . ." G.S. §15A-1340.14(a). The higher the prior record level, the longer the prison sentence. Currently, to be sentenced under the lowest prior record level, Level I, a defendant can have no prior convictions, or 0 points. A defendant moves from Prior Record Level I into a higher prior record level if that defendant has had any prior convictions. The prior record levels for felony sentencing are:

- (1) Level I - 0 points.
- (2) Level II - At least 1, but not more than 4 points.
- (3) Level III - At least 5, but not more than 8 points.
- (4) Level IV - At least 9, but not more than 14 points.
- (5) Level V - At least 15, but not more than 18 points.
- (6) Level VI - At least 19 points.

The Sentencing Commission has recommended that Level I should allow as many as two points. If adopted, that change alone will have the effect of reducing the prison population by 1,455 in ten years.

The Commission also recommended extending the period of post-release supervision from nine months to one year. In effect, the term of imprisonment would be reduced by three months, and the period of post-release supervision would be increased by three

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## PAROLE ELIGIBILITY: CLASS C FELONIES UNDER THE FAIR SENTENCING ACT

by Linda Weisel, Senior Attorney, and Kari Hamel Manging Attorney

On December 7, 2001, NCPLS Staff Attorneys Susan Pollitt and Kari Hamel filed a Complaint in Wake County Superior Court, asserting that five plaintiffs, all sentenced to life in prison under the Fair Sentencing Act, must receive sentence reduction credits toward calculation of their parole eligibility dates. Sentence reduction credits include good time, gain time, and meritorious time earned while incarcerated.

Plaintiffs brought their action for declaratory relief against the Secretary of the Department of Correction (DOC) and the three members of the Parole Commission. *Vereen et al. v. Beck, et al.*, No. 01 CVS 15053 (Wake Co. Superior Ct., Dec. 7, 2001).

Plaintiffs complain that their eligibility for parole would be earlier if sentence reduction credits they have earned were applied toward the reduction of their sentences. A related concern also surfaced. Consideration for custody promotions is linked to those same parole eligibility dates. For people serving Class C life sentences, because sentence reduction credits are not applied in calculating the parole eligibility date, custody promotions are consequently deferred.

Plaintiffs based their claim upon regulations issued by the Secretary of Correction, pursuant to his discretionary authority under N.C.G.S.

§§ 15A-1340.7(a) and 148-13(b), mandating sentence reduction credits for good time, gain time, and meritorious time earned by inmates who are serving life sentences for Class C felonies. Pursuant to these regulations, which are codified in administrative code provisions 5 N.C.A.C. 2B.0111(d), 2B.0112(c), 2B.0114(a), inmates who are sentenced to a term of life imprisonment for a Class C felony must be given sentence reduction credits earned while incarcerated. Although N.C.G.S. §§ 15A-1340.7(a) and 148-13(b) were repealed as a result of the enactment of the Structured Sentencing Act, these prior statutory provisions are still applicable to Plaintiffs, who were sentenced under the Fair Sentencing Act.

The issues raised by Plaintiffs have previously been addressed by the courts in *Teasley v. Beck and Bates v. Beck*, Nos. 99 CVS 11631 and 01 CV 8809 (Wake Co. Superior Ct., Sept. 18, 2001). The defendants in *Teasley* and *Bates* were ordered to recalculate the parole eligibility dates of the two plaintiffs. The defendants obtained a stay of the Superior Court's order to make sure the order does not affect any additional inmates similarly situated. In each case, the defendants also appealed the Superior Court's orders granting the plaintiffs relief. NCPLS hopes the Court of Appeals will issue a favorable decision in *Teasley* and *Bates* that will benefit all inmates who have Class C life sentences and are similarly situated.

It can take as long as a year for the Court of Appeals to review a decision on appeal.

The litigation surrounding how the Department of Correction implements its own regulations regarding parole eligibility has garnered media attention. On January 23, 2002, The News & Observer, North Carolina's state-wide newspaper, published an article about this pending litigation entitled, "*Inmates not getting good-behavior credit, suits say.*"

If you were convicted of a Class C life sentence under the Fair Sentencing Act (that is, before 1 October 1994), you have not yet been considered for parole, and you believe you are eligible for relief under DOC regulations, please feel free to write to NCPLS for more information.



Susan H. Pollitt, Senior Attorney

# Sentencing Commission

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## *North Carolina faces prison overcrowding in the long term*

months. This change would result in a reduction in prison population of 591 inmates in ten years.

With regard to specific sentences, the Commission forwarded two recommendations. The Commission recommended reducing from a Class C felony to a Class F felony the crime of committing a sexual offense against a person between 13 and 15 years of age by a defendant who is more than four years, but less than six years older. Although such a change would not result in a significant change in prison population, the Commission felt that the offense should be reclassified.

Perhaps the most controversial change recommended, and the one likely to face the most serious opposition in the General Assembly, is the proposed change to the Habitual Felon Statute. Currently, all those who are convicted of Habitual Felon status are sentenced as Class C felons, regardless of the underlying offense for which they are convicted. The Sentencing Commission forwarded a proposal that people convicted of Habitual Felon status be sentenced at three class-levels higher than the underlying offense. For example, someone convicted of breaking and entering (a Class H felony), and convicted as an habitual felon, would be sentenced at three class levels higher, as a Class E felon

(rather than as a Class C felon, as would be the case under current law). The adoption of this proposal would result in a projected reduction of 1,879 of the prison population in ten years.

One should note that the changes in prison population that these recommendations are expected to produce may be affected by other changes in Structured Sentencing law. Each projection is accurate only with respect to the particular change it accompanies. Other changes in the law could impact the projected decrease of any individual measure. However, if the projections were equal to the

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## ELLIE KINNAIRD: NCPLS STAFF ATTORNEY & STATE SENATOR

Since 1993, Ellie Kinnaird has devoted her career in the law to advocating on behalf of prisoners. As a Staff Attorney with North Carolina Prisoner Legal Services, Ellie has overcome numerous obstacles and challenges in convincing often unsympathetic audiences that the inmates she represents have the potential to live productive lives. Most of her work has focused on helping inmates to maintain or to re-establish family ties, especially for incarcerated mothers. In this connection, Ellie, working with Paralegal Kady McDonald, CLA, has developed self-help materials for inmates who are seeking visitation with their children, as well as informational packets to assist people who are embroiled in child support controversies, divorce actions, and proceedings to terminate parental rights.

Ellie also provides direct representation to many prisoners. For example, in a recent case, Ellie's client needed help to arrange visitation with her daughter, a minor in custody of our client's ex-husband. Even though there was a consent order in force that allowed visitation every other weekend, the ex-husband refused to bring the child to visit or let anyone else do so. He also refused to allow our client to speak with her daughter by telephone. Ellie learned that our client's parental rights had been terminated without notice to her, and based upon a false accusation of abandonment. With the able support of Paralegal Kady McDon-

ald, Ellie appeared in court on our client's behalf and successfully argued that parental rights should be restored. But the ex-husband filed a new motion to terminate parental rights based on our client's alleged abandonment and neglect of the child. In response, Ellie presented overwhelming evidence that her client had not abandoned or neglected her child; in fact, she had tried to provide child support,



*Senator & Staff Attorney  
Eleanor Kinnaird*

she sent cards and letters, made phone calls, and even put an ad in the local newspaper in the hope that her child would see it. In light of the evidence, the court declined to terminate parental rights and ordered supervised visitation every other weekend. That order seemed to end four years of advocacy on behalf of our client by NCPLS Staff Attorney Ellie Kinnaird. Recently, however, it came to light that the ex-husband had flagrantly disobeyed the court order, refusing to allow any contact between the child and Ellie's client. In subsequent mediation between

the parties, the defendant/ex-husband agreed to facilitate visitation between our client and her daughter.

Ellie has also been the moving force behind the creation of a ground-breaking program which will allow incarcerated mothers to spend time with their children within the confines of a correctional setting. [See "Mothers in Prison," an article in this edition of *ACCESS*.] The Prison Nursery Project will afford mothers and children an opportunity to build and maintain bonds that are essential to child development. Through the Project, imprisoned mothers will participate in education designed to enhance parenting skills and social responsibility.

Ellie's advocacy and leadership extend far beyond her work at NCPLS. She has been active for many years in a number of civic organizations, but Ellie's service in elective office began in 1987 when she successfully ran for Mayor of Carrboro, North Carolina. After four terms in office, Ellie was elected to the North Carolina Senate in 1996 as a representative of the 16<sup>th</sup> District (covering Orange, Chatham, Moore, and parts of Lee and Randolph Counties). Now in her third term, Ellie has been a champion and strong advocate for education, environmental protection, campaign finance reform, and safeguarding the rights of seniors, the disabled, children, and prisoners.

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## Ellie Kinnaird: NCPLS Staff Attorney & State Senator

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In the Legislature, Ellie has been elected Chair of the General Assembly Women's Caucus for the 2001-2002 legislative session. Last year, she led a successful effort to ban the death penalty for mentally retarded defendants, and she sponsored legislation calling for a moratorium on the death penalty. (Studies show that African-Americans and poor defendants disproportionately receive death sentences.) In presenting her its "Outstanding Public Service Award," the National Coalition to Abolish the Death Penalty cited Ellie for inspirational legislative work "in opposition to the death penalty and in support of a moratorium."

Ellie Kinnaird has also been honored by a host of other organizations for her service to the citizens of this State. For example, in 2001, Ellie was presented the "Defenders of Justice Award" by the North Carolina Justice & Community Development Center.

More recently, the North Carolina Academy of Trial Lawyers presented Senator Kinnaird with the Outstanding Legislator Award and recognized her as "the best in the legal profession as related to public service." In January 2002, the Chapel Hill/Carrboro Association of Educators presented Ellie this year's "Friend of Education Award." Ellie was cited for her tireless work "for all educators, both local[] and statewide," and especially for her "longtime commitment to the welfare of teachers in the local area . . ." Additionally, Child Care Services of Orange and Durham Counties recently presented Ellie its Public Service Award. Senator Kinnaird chairs the Senate Children and Human Resources Committee.

An accomplished classical musician, Ellie played professionally for a number of years. She is the mother of three sons and the grandmother of two lovely granddaughters.

Ellie Kinnaird is an exceptional person who has demonstrated a profound commitment to public service and the citizens of North Carolina. We at NCPLS are especially proud of our friend and colleague.

### **MOTHERS IN PRISON: THE PRISON NURSERY PROJECT**

One of the harshest consequences of incarceration is the effect on the children left behind. 80% of women coming into prison have children. Care for those children while the mother is incarcerated places a burden on family members and foster parents. But the greatest burden is on the children who often suffer deep cognitive, social and psychological wounds from which they never recover.

Many women are pregnant when they come into the prison system. Under the present system, the child is taken away from the mother immediately after the birth and given to her designee; sometimes a relative, often a foster parent. The crucial time for developing a bond between mother and child is lost and seldom regained. Making the problem worse, the care for the child may be deficient or inadequate. We know that the earliest years of a child's life are the most important for brain development and learning, including the foundations for ethical and social maturation.

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## Mothers in Prison

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To address this important issue for women and their infants, an exploratory committee is planning the establishment of a prison nursery. The nursery would provide intense pre-natal services in health care, nutrition, drug addiction treatment, personal dysfunction therapy, and parenting skills for the pregnant incarcerated women. After the child is born, the best available child care would be provided through Early Head Start and Smart Start. The mothers would learn how their infants develop and how to interact appropriately with them. Mothers and infants would bond in the healthiest relationship possible, and the mothers would be provided support through instruction in important parenting and life skills. Two years of after-care, including the best available child care and housing, employment, education and addiction treatment, would be part of the continuum of services.

Four states have prison nurseries, but none of them have researched

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## Sentencing Commission

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sum of their individual impacts, the total reduction would amount to 5,009 prison inmates in ten years. Based on the Commission's current projections, even if all of its recommendations are adopted, the Department of Correction will still be 1,100 inmates over operating capacity at that time.

### Mixed Response

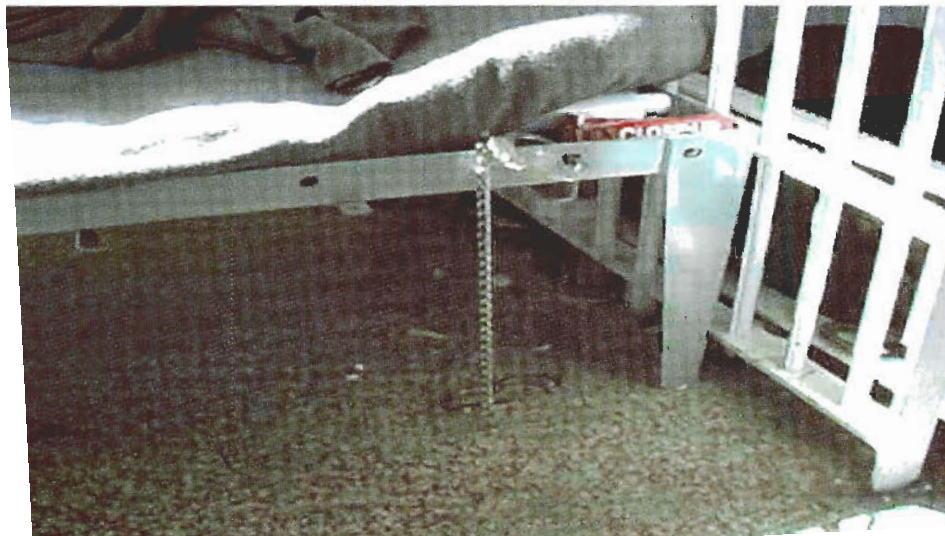
The General Assembly may decide to pass into law all, some, or none of the proposals forwarded by the Sentencing Commission. The Legislature could also modify some or all of those proposals, or come up with completely different approaches. For example, it is possible that the General Assembly could direct the North Carolina Post-Release and Parole Commission to focus more on those who are eligible for parole under former law. Currently, there are 8,009 inmates serving sentences under pre-Structured Sentencing laws, many of whom may currently be eligible for parole.

The Governor's Crime Commission has undertaken a study of how to deal more effectively with those who are on probation, and to help them prevent revocation of their probation. Currently, 46% of new admissions to the prison system each year come from revocations of probation for technical reasons – that is, reasons other than the commission of a new offense. Those in prison for technical violations of probation account for 36% of the total prison population.

Thanks to the work of the North Carolina Sentencing and Policy Advisory Commission, the State of North Carolina now has accurate and timely projections of the prison population which provide it the foreknowledge needed to deal with prison overcrowding.

It is, of course, difficult to predict what course of action the General Assembly may take to deal with this problem, but it is a good bet that, even if all of the Sentencing Commission's recommendations are adopted, some new prison construction will be undertaken over the next ten years to prepare for the projected increases in prison population.

\*[Editorial Note: Billy Sanders, serves as a Commissioner on the North Carolina Sentencing and Policy Advisory Commission. Sanders is employed by NCPLS as a Certified Legal Assistant Specialist.]



## Divorce Proceedings

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more work for the inmate.

First, a Summary Judgment Motion has to be filed with the clerk. And, like all documents filed with the court, a copy of the Motion has to be served on the opposing party (or that party's attorney) by regular first-class mail. After 60 days, if no response has been filed, the inmate can ask the court to decide the matter without a hearing. That request could be called a "Waiver of Hearing and Request for a Decision Based Upon the Pleadings," for example. In that document, it should be noted that a Motion for Summary Judgment was filed in the case (on a certain date), that no response to the motion was received within the allowed time, that there is "no dispute as to any material fact," and that the matter is now ready to be decided. It may also be useful to attach a proposed Order for the judge's signature, should he decide to grant the motion. (The proposed order should look like any other pleading in the case, reflecting the case name, the docket number, the court in which the matter is pending, and so forth. It should also briefly recite that the action is one for absolute divorce, that the parties have lived apart for one-year, that a motion for summary judgment has been filed without response, and it should conclude that an absolute divorce is granted by the court.) If the judge approves, the proposed order can be signed, dated, and filed as a final judgment in the case. Because courts infrequently deal with divorce actions involving

inmates, some of these procedures are not well settled and may vary from one county to another. If you encounter difficulty in the process that is not addressed in the NCPLS Divorce Packet, please write to us and let us know. We may be able to help you resolve your particular problem, and we are working with judges and the courts to develop a standardized approach to divorce proceedings that involve inmates.

[Editor's note: Senator Kinnaird, now in her third term, has been invited to appear several times as a guest speaker at the Annual Judges Conference to discuss issues affecting inmates in their dealings with the courts.]

### NCPLS Updates Client File System

NCPLS is in the process of updating its system for storing client files. This project involved the installation of a new filing system in our office, as well as the retrieval of files from an off-site storage facility. We hope that this project will enable us to improve the speed at which we can evaluate and respond to requests for assistance from our clients.

An important part of this project is the disposal of older closed files. NCPLS has thousands of files, some dating more than 20 years. In most cases, the matters that these files involved no longer have any legal significance. Most of those files serve no purpose other than sitting in filing cabinets,

filling space. In most cases, the problem about which our client wrote has long since been resolved or forgotten, and/or our client has been released from custody. Maintaining such files costs money that could be better spent.

For these reasons, we plan to dispose of all NCPLS files opened in, or before 1990. We will continue to maintain files opened after that date until further notice.

If you asked our office for assistance before 1 January 1991 and you want the materials in your file returned to you, please let us know by letter before 30 April 2002. We plan to destroy all files that have not been requested by that date.

### Mothers in Prison

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what happens to the children born into the nursery. We know that children of incarcerated parents have a high risk of entering the criminal justice system themselves. Researchers on the exploratory committee are eager to find out if the prison nursery lowers the recidivism rate of mothers and leads to successful lives for the children. The goal is to foster healthy mothers and children who are contributing members of our community. The exploratory committee is hoping to establish a prison nursery program that will realize that goal.

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