



JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY

November 16, 2017

Room 643 of the Legislative Office Building

The Joint Legislative Oversight Committee on Justice and Public Safety met on Thursday, November 16, 2017 at 1:00 PM. The meeting was held in Room 643 of the Legislative Office Building. Members present were: Representatives Davis, Boles, Burr, Faircloth, Floyd, Jackson, McNeill, Rogers, Stevens, Turner, Jordan, Speciale, and Steinburg. There were six Senators present.

Representative Ted Davis, Jr. presided.

Representative Davis called the meeting to order, welcomed all in attendance, and introduced the House Sergeant at Arms Jonas Cherry, Rex Foster, and Russell Salisbury and the Senate Sergeant at Arms Terry Barnhardt and Becky Myrick. He thanked them for being there and for all they do for the legislature.

The minutes from the October 12, 2017 Committee meeting were approved as written on a motion from Representative Elmer Floyd and seconded by Representative Sarah Stevens.

Opening Remarks by Chairs

There were no remarks from Co-Chairs Representative Jamie Boles or Senator Shirley Randleman. Representative Davis gave his opening comments, as follows: "After the terrible attack and escape attempt at Pasquotank Correctional Facility, the members and staff of the General Assembly join all North Carolinians in keeping the victims of this tragedy, their friends, families and coworkers in our prayers

For the officers and employees who were injured and to Geoffrey Howe, Veronica Darden, Justin Smith, and Wendy Shannon—who were killed in the attack—our state can never repay their families for the cost of this terrible violence done to them at their place of work.

These North Carolinians were trying to earn a living like the rest of us—just like Stg. Meggan Callahan, who was killed by an inmate at Bertie Correctional Institution in April of this year.

As we remember the sacrifice of those who were senselessly killed, and keep the service of all the brave correctional officers who protect North Carolinians close to our hearts, on behalf of the



people of this state, I extend our deepest gratitude to those officers and employees working in such a dangerous line of duty so that we may be safe.

I'd like to provide several important updates for this committee on the legislature's ongoing commitment to improve salaries, staffing levels and safety of those working in our state prisons in the wake of the attack at Pasquotank:

There are multiple, concurrent investigations taking place into the escape attempt and fatal attacks at Pasquotank. We are waiting for the officials conducting that investigation to share what they can, when they can, with us. Until then, it's important we allow those investigations to move forward unimpeded so investigators and prosecutors can serve justice to the perpetrators.

After meeting with Department of Public Safety Secretary Eric Hooks and discussing the need for a comprehensive review of state prison policy with our fellow General Assembly members, it is apparent that this committee—the Joint Legislative Oversight Committee on Justice and Public Safety—is the appropriate forum for that mission, and there are several reasons for that:

1. This committee allows both the House and Senate to collaborate on a comprehensive review of state prison policy
2. This committee has a large, expert central staff team accustomed to working together on member and administrative requests on corrections issues
3. This committee has overseen the restructuring and consolidation of the Department of Public Safety and is well-prepared to receive information and consider potential reforms and needs to serve our state prison officers.

Our committee is working with the administration to prepare a comprehensive review of state prison staffing and policies throughout this legislative interim. To assist in that effort, I ask the members of this committee to submit to the chairs, clerks and central staff any questions or information requests you have for the Department of Public Safety or our legislative divisions.

We have already started to work on those inquiries and appreciate your help providing them in advance so staff can consolidate and collaborate on those efforts to help us learn as much as possible and develop potential proposals for reform from our review of state prisons through this committee.

Finally, I want to emphasize that this is an ongoing commitment to improving salaries and staffing levels to help protect the brave correctional officers who are counting on us to respond to the tragedies at Bertie and Pasquotank Correctional facilities.

There is much more to be done and I appreciate the willingness of so many members and staff who have reached out to me and are ready to continue taking action and committing further to policies and budgets that will benefit North Carolinians working in our state prisons.”



There will be updates on this to the Committee.

NC Justice Academy

Representative Davis introduced Mr. Trevor Allen, Director of the NC Justice Academy. Mr. Allen thanked the committee for the opportunity to present the role of the Academy. The outline of his presentation is attached. His overview included the history, research, training, capabilities, support and course accreditation. The mission is to serve the citizens of North Carolina by providing relevant, innovative, timely, and engaging training for criminal justice professionals. The outline of his presentation is attached. He stated that the Salem Academy was founded in 1875 involving into Pineland School for Girls, Edwards Military Institute and Southwood College. In 1973 the Justice Academy was established as part of NCDOJ. In 1998 a West Campus was opened in Edneyville. The Academy is internationally accredited and is the first training academy in North Carolina to be accredited. It received the 4th accreditation in March, 2017. It continues to serve in an advisory capacity for other local and state agencies. The professionals served include 453 Police Agencies, 100 Sheriffs and the Department of Public Safety. The mission is achieved in three ways; research, training and support. Under research, all lessons plans are required to be revised every two years. This includes an annual survey of criminal justice personnel, a partnership with Chiefs and Sheriffs and a nearly 20,000 volume library. There are three training categories developed and delivered to the 45,000 North Carolina Officers: Commission-Mandated, Advanced and Certificate Programs. The Commission-Mandated training includes basic law enforcement training (BLET), detention officer, telecommunicator, speed measuring instrument and specialized instructor certification training and mandated in-service training. The Justice Academy is the sole provider of these courses to maintain their integrity. While most of the training is offered at the two facilities, the Justice Academy responds to individual agencies when needed. The second category of training is advanced training. It provides training for criminal justice officers beyond the requirements for the basic training. Included in the advanced training is criminal investigation, school resource officer, narcotics training, use of force decision making, crime scene processing, community policing, tactical and leadership and supervision training. Each of these categories is comprised of numerous individual training courses. Professional certificate programs make up the third category of training. The Academy offers several certificate programs which allow officers to concentrate their training in specific areas such as criminal investigations, traffic enforcement and investigation, and community policing which are similar to college majors. These provide an avenue for officers to receive advance training in these areas adding to their expertise which they can then take back to their agencies and serve their communities at a higher level. Officers have told the Justice Academy staff that completing these programs has allowed them to focus their careers in specific directions. This has had the result of improving the retention of qualified and experienced officers.

Mr. Allen continued with the capabilities of the Justice Academy. In pursuing the mission, the Academy's two campuses, offer 22 classrooms, four fire arms ranges, one being indoor, one



driving track, three multipurpose rooms, two gymnasiums and weight rooms, 370 residence hall beds, a team building challenge course and two use-of-force simulators. The brand new regional Western Regional Crime Lab completed in September, 2017 and situated in the Edneyville Campus and services a variety of agencies in the western part of the state. Although the facilities are effective in providing relevant training, renovation of the existing facilities as well as additional facilities is necessary in order to keep pace with other states.

In the 2016-2017 years the Justice Academy trained 6,629 students on their campuses. They trained an additional 5,328 officers off-campus at Community Colleges and individual police and sheriff's agencies. During the past fiscal year the Academy hosted nearly 7,000 officers from outside agencies. These agencies include the State Bureau of Investigation, the North Carolina Wildlife Resources Commission, the Division of Motor Vehicles and the Department of Public Safety divisions. Nearly 600 courses were delivered by Justice Academy staff during fiscal years 2016 and 2017 which is an average of 49 courses per month.

The Academy frequently receives positive feedback for the on-line training platform which makes available scores of courses including the annual mandatory in-service training topics. The on-line training course completions during 2016-2017 totaled nearly 75,000. The Justice Academy operates four residence halls; three on the Salemburg campus and one at Edneyville with a total of 370 beds. In fiscal 2016-17 over 52,000 bed nights were spent on the campuses. The fact that the officers were able to stay on the campuses and avoid hotel costs while attending training is a tangible savings to their agencies' already challenged budgets. The 52,000 bed night's costs' spent on the campuses equates to a savings of \$3,718,634 to the partner agencies.

Mr. Allen, on behalf of the Justice Academy, thanked the members for appropriating the necessary funds this year to renovate the Residence Hall C on the Salemburg Campus. In September 2018 renovation will begin on that project which will result in an improved training experience for the student officers. This would not have happened without the members' leadership and it is very much appreciated.

The third way the Academy pursues their mission is in their support provided to their partner agencies. This is provided in a number of ways. First, the library is available not only to Academy staff but to all students visiting the campus and requesting information online from the library staff. Second, the Academy operates a video production unit. This group assists in video production for both training and informational purposes. In addition, Mr. Allen stated that he had agreed to assist the Division of Motor Vehicles in producing a companion video with a new driver's license handbook as well as producing an informational video in support of the Victim Services Unit of the Department of Public Safety. Beginning in the winter of 2018 the Academy will produce a podcast series providing timely and relevant industry information that might not be suited for a formal training course. Topics include law enforcement use of drones, and showcasing positive efforts in the area of community policing. The Academy also supports agencies and police officers in providing legal guidance on issues such as canine police activities and the drafting of search warrants, etc. They coordinate training for partner



organizations and coordinate agency lesson plans into an online format, most recently for the Division of Motor Vehicles.

Mr. Allen then stated that he wanted to discuss the Academy's work in honoring the officers who have died in the line of duty. Because they train and partner with hundreds of agencies, they inevitably come into contact with the majority of North Carolina officers at some point. Along with the other sections of the Department of Justice, the Academy helps coordinate the Annual Police Memorial Service which is held at different locations across the State. The service not only honors the officers who have made the ultimate sacrifice but also their families and colleagues. The Justice Academy also lends support to the concerns of police survivors (C.O.P.S.)

Mr. Allen then moved to the process of obtaining accreditation for the Criminal Justice Training Courses. Community Colleges and individual agencies must first apply for accreditation through either the NC Justice Education and Training Standards Commission or the NC Sheriffs' Education and Training Standards Commission. Once the application is received by either Commission, the respective Division staff will inspect the facilities which can include classrooms, firearms ranges, driving tracts, and others as well as mat rooms. After the inspection is complete, Division staff will make their recommendation to the respective Standards Commission to accredit the school or agency to deliver the training programs for which they have applied. Once accredited the school or agency must comply with all administrative and code rules and achieve re-accreditation every five years. It is necessary that the training to criminal professionals is current and relevant.

Mr. Allen again thanked the members for the honor and privilege of presenting an overview of the NC Justice Academy and indicated he was happy to answer any questions.

The Chairman recognized Representative Faircloth who in referring to course accreditation, asked if an agency applied, have their own training school and they meet all the requirements of the Commission and the Commission grant them the accreditation, would it be reasonable to assume that that agency and the Justice Academy would work together on some issues. Mr. Allen responded in the affirmative and added that the Academy delivers their courses on the road on a frequent basis. Representative Faircloth then noted that a newer Academy, Samarcand, that was intended to work with the correctional officers and had done a great job, but he was concerned about some friction that seemed to develop between the Justice Academy and Samarcand over some training that was proposed and could not be carried out and resulted in students having to be bussed from Samarkand to the Academy at a pretty big cost; it seemed like a lack of cooperation or intent to work together. Mr. Allen responded that he was not aware of friction between the agencies or of being bussed to be trained. He thought what Representative Faircloth might be referring to was the request for Samarcand to do some specialized training courses or instruction courses that currently only the Academy is accredited to deliver. The Academy believes it is important to maintain that because of the sensitivity of the training curriculum. In terms of friction, Mr. Allen stated he knew the director of Samarcand and they get along fine. Mr. Allen's understanding was that Samarcand had requested through the



legislature to be able to deliver all specialized training courses, not just firearms. The Academy has been able to meet any demand that anyone has had for any specialized instructor course. He thought that the special request was for Samarcand to be able to deliver the course at their facility. Mr. Allen reiterated that specialized instructor courses are far different from basic law training or radar training. They are high liability issues and the Academy's instructional staff research, develop and update those courses on a frequent basis. It is important to maintain the integrity of the curriculum because it is so high liability related. Representative Faircloth stated he was concerned about any time there is an appearance of a lack of cooperation between state agencies, particularly those whose final goal is to serve the public. He would like to have further discussions along with some colleagues and the two directors to see if they can't reach an understanding and work something out. Mr. Allen was in agreement and was willing to go to that facility and deliver those courses for them.

Next, Representative Boles was recognized and asked Mr. Allen if the Academy was willing to go to Charlotte, for example, for special classes and Mr. Allen responded that they were more than willing to go. He also stated that Charlotte had not made a request to do that and they already had a number of certified instructors there. The Academy is the only institution accredited to do the training but they can deliver training by request. Representative Boles then asked, as far as the use of the facilities, what percentage is used by DPS and what percentage is used by other agencies. Mr. Allen stated he didn't have the number of percentages in front of him today but he could provide them to the members. Representative Boles noted that Mr. Allen had mentioned the renovation of a residence hall, and his question was how much of it would be down during the renovation, how long would it take and would it be done by inmate construction or would it be private. Mr. Allen introduced his Deputy Director, Dana Phillips, who responded that construction of Residence Hall C would begin around September. It is now in the design phase and once the renovation starts, it would probably be around 12-14 months, so closing October, 2018 and reopening in January, 2020. Inmate labor will not be used on this project. As to a question from Representative Boles about the driving tract, Mr. Allen explained that it was more of a precision driving course as opposed to a pursuit driving course. A pursuit driving course would be taught solely by the Highway Patrol. Chairman Davis requested that any further information be sent to his legislative assistant for disbursement to the committee members.

In response to a question from Representative McNeill regarding training at Samarcand, Mr. Allen stated that Samarcand has requested to do all the specialized instructor training courses of which there are five. The Highway Patrol is currently accredited through the Commission to deliver specialized driver instructor training mainly because of what they do and the need to have driver training as part of their mission. The Commission has granted that permission in the past for that purpose alone.

Representative Jordan asked Mr. Allen if the Academy had any individuals who are not from any agency being trained. Mr. Allen stated that if an individual was interested in taking basic law enforcement training, typically an agency would sponsor the person. Otherwise, the person would probably go to one of the 50 or so community colleges who are also accredited to deliver the training.



Representative Burr asked Mr. Allen what the five difference training programs at Samarcand are. The response was they would include specialized firearms instructor, driver instructor, hazardous materials instructor, physical fitness instructor and SCAT, a sort of defensive training. The Academy could go out and do that training but it would have to be Academy instructors. He further stated there was no waiting for the courses with the exception of specialized firearm instructor on occasion because so many have requested it but there is a process for pre-qualifying those people that take that course. Another reason the Academy is the sole provider of that course, is that by Commission rule, there has to be one dedicated school director whom the Academy employs. There has not been a demand that the Academy cannot meet.

Representative Boles stated that he wanted to clarify that he did not think Samarcand was asking to hire the staff and host the staff and teach it but he understands that Mr. Allen is saying that the NC Justice Academy is willing to go to Samarcand and instruct and give specialized training at that facility. Mr. Allen stated that the Academy is willing and able to do that.

Chairman Davis thanked Mr. Allen for his very informative presentation.

Statewide Misdemeanant Confinement Program

The next speaker, Mr. Garry Fife, Senior SMCP Coordinator of North Carolina Sheriffs' Association was introduced by Chairman Davis to speak on the Statewide Misdemeanant Confinement Program (SMCP). Mr. Fife began by thanking the committee for having him. His presentation is attached. He stated that since the creation of the actual program, before and now, sentences of 90 days or less were served at the local jail at the county expense and before SMCP, misdemeanor sentences in excess of 90 days were served in the DACJJ. Beginning in January 2012, the program, applied to misdemeanants' sentence to 90 days and no more than 180 days, excluding defendants convicted of DWI. He continued by explaining how the program is managed and funded, the administrative functions, the statewide help desk, training and support, participation, receiving counties as of fiscal year 2012 through the current date, housing inmates, reimbursement rates, medical cost management, fund analysis for FY 2016-17, collection of delinquent safekeeper reimbursements, capacity, inmates processed, inmate cost comparison, and the impact of SMCP.

Following the conclusion of Mr. Fife's presentation, the Chairman asked for comments or questions from the members. Representative Speciale asked how the Sheriffs' Association was set up and if it was a private organization. Mr. Fife replied that it is a non-profit association that supports the 100 sheriffs throughout the state.

Senator Randleman was recognized and informed Mr. Fife that his presentation was very good but he left out the most important part; justice reinvestment. She requested that Mr. Eddie Caldwell from the North Carolina Sheriffs' Association explain how the system was set up, how it is a part of justice reinvestment and other things the committee members need to know so they will understand how the program was developed and how it operates. Mr. Caldwell stated that



around 2010 legislation was passed following an effort across the county to better manage the incarceration of prisoners in a variety of respects and to get our criminal justice system and where only those people in our systems were those who can't be served anywhere else. The legislative leadership worked with the Pew Charitable Trust who sent personnel here to figure out how to remake the system. One of the key components was to get as many as possible out of the prison system and dealt with in another way. As the legislative leadership was trying to figure out how to implement the Justice Reinvestment Act, one of the key components was to get the misdemeanants out of the prison system. A plan evolved to use the vacant beds that were available across the state and keep from opening more facilities. The County Commissioners thought the Sheriffs Association was the best equipped to manage the program since they were already equipped to manage the county jails so at the request of the legislative leadership, the Sheriffs Association agreed to do that. It was determined that it would take about 18 months to design the program and get it ready to launch to accept the inmates but they were only given six months. Prior to the Justice Reinvestment Act and since then, many inmates sentenced to 90 days or less serves that in the county jail at county expense. Other changes occurred in the program but that is how it got started. Mr. Caldwell stated it would take two or three hours to add more detail to how it all got started. He further stated that he thought the program was working well and referred to the millions of dollars it has saved the state.

Chairman Davis thanked Mr. Caldwell and recognized Representative Stevens who asked how the Misdemeanant Confinement Program is funded. Mr. Caldwell responded that the original funding source was an additional amount on court costs and also an additional fine for people who got a speeding ticket. After a couple of changes, the General Assembly reworded the statute so instead of fines going into the misdemeanor fund, they now go into the state's general fund and each biennium, the Legislature makes an annual appropriation. The fund itself is managed by the Department of Public Safety. Representative Stevens stated that she was very impressed with the way the NC Sheriffs' Association has controlled the medical costs. She asked if the bill was negotiated or was it an insurance provider. It is not an insurance provider. He stated that somebody goes through and "scrubs" the bill. When an inmates goes to a hospital they show the prime health card, doctor outside the jail sends the bill directly to Prime Health Services and they go through and if there is something on there that shouldn't be, they kick it out. Through this procedure they have been able to reduce the bills by 44%. Once the bills are scrubbed down, the payment comes from the Statewide Misdemeanant Confinement Fund which is managed by DPS.

Chairman Davis next recognized Representative Rogers who asked what programs are available within the misdemeanor program. Mr. Caldwell stated that any medical care that the inmate needs that can be administered by the health care staff in the jail and jails have varying levels of health care available. If it is something that the jail can't provide, and the inmate has to be sent out to the hospital or specialty doctor that is what is paid through the medical part of the program. There is limited treatment for drug and alcohol issues and part of that is because the treatment programs take a period of time and most of the inmates that are in are "in and out" for shorter periods of time. He stated further that it is not a population that is conducive to the program. Representative Rogers then asked if a person who might be required to be locked up



for 36 months for aggravated level 1 DWI might get zero treatment. Mr. Caldwell responded that he could not confirm that statement because he did not know that that is correct. Representative Rogers stated that he believed it would be a problem if alcoholics would get no treatment for a 36 month period. Mr. Caldwell stated he would be glad to talk to with the Sentencing Advisory Commission and the legislature about how to address that concern.

Representative Speciale was recognized and stated Mr. Caldwell explained the situation very well and realized it was a good program. He asked what the Sheriffs' Association gets out of doing all this. Mr. Caldwell referred to one of the slides Mr. Fife had showed an administrative fee to the Association and there was also an administrative fee Adult Correction and Juvenile Justice. The major thing the Association gets out of it is good public policy and that is what the legislative leaders said when they asked the Association to find some way to do it.

Mr. Caldwell then responded to Senator Bryant's question about how the Sheriffs' Association got involved. He stated that it was the position of the Department of Corrections at that time that they wanted to get the misdemeanors out of the prison systems for various public safety and criminal justice reasons. The legislative leaders were working on the Justice Reinvestment, the bigger program, and what prompted them to come to the Sheriffs' Association he could not say because he wasn't at the meetings. When they came to the Sheriffs' Association and asked them to do it, it was probably the only group that had jails. He stated that it is a unique program, the only one like it in the country, and it has been very successful for the last five years by all accounts and all reports. He stated that he did not believe the program would have been effective had anybody other than the Sheriffs' Association had done it.

Senator Randleman stated that some of the decision making at that time resulted from the fact that the sheriffs were being put in a position where they were being responsible for housing the inmates that had customarily had been housed in the state prisons and they were being shifted back to the county, to the sheriffs who were the sole proprietor of those jails. Senator Randleman asked how many people work for the Misdemeanant Confinement Program now and Mr. Caldwell responded that there were ten members of their staff that do the various functions related to the program.

Chairman Davis thanked Mr. Caldwell for sharing his insight.

Representative Jackson was recognized and indicated he no longer served on the regular appropriations sub-committee this last term but when he left the committee, it was his understanding that part of picking up the DWI into this program would be that there would be treatment options in that the prisoners were at least getting 90 day short program through the Department of Corrections and that they would get some alcohol abuse treatment. He asked if there was planning being done for that. Mr. Caldwell indicated that it was a small percentage of inmates who were qualified for and would be going through that program. It wasn't every DWI that was given that program; only a small percentage. It has been discussed and when the Sheriffs' Association was asked about it, they said it would require legislation to change that and



also it would require additional funding. He stated that the Association is ready to work on it whenever the legislature is ready. He was not aware of any commitment that it would be done.

The Chairman moved back to Mr. Fife, the presenter, and recognized Representative McNeill who stated he thought it was a wonderful program and it was very ingenious that we took up these jail beds and decided to fill them with prisoners instead of building more state prisons and hiring more prison guards on the already burdened system. His concern is that we can maintain capacity. He stated that the legislature receives every year, from the Sentencing Policy Advisory Committee, a five-year projection on prison beds which is very helpful to know if there will be enough prison beds five years out. He asked if the Sheriffs' Association could work with either their self or the Sentencing Policy Advisory Committee to get a five-year projection on how many of these misdemeanor confinement beds might be available so as not to come up five years from now with not enough confinement beds and then maybe have to look at building more prisons or do something. He stated he wanted to maintain this capacity. He asked how many of the confinement beds are now filled. Mr. Fife responded that the majority of the time, they are operating at 63-65% of capacity with new counties coming on every month volunteering beds to the program. Mr. Caldwell added that the Sheriffs' Association could develop the capacity to do a five-projection but he thought it was one of the things the Sentencing Policy Advisory Commission probably do the best job of anyone in the country. He indicated the Sheriffs' Association could work very closely with them and let them develop the projections on the misdemeanants and work with the sheriffs on their building and expansion plans to evaluate the anticipated capacity and develop the projections for the misdemeanor confinement program just as they do for the prisons.

The Chairman recognized Representative Rogers who asked Mr. Caldwell if we should consider something to allow H and I felonies to be housed locally because they are usually a five to six month sentence. Mr. Caldwell responded that whether that should be considered or not would be a public policy question for the legislature. The Sheriffs' Association would be glad to discuss it and work with the projections, security risk, etc.

Senator Randleman asked if the program runs out of bed space, does the inmate not revert back to the DOC or to Juvenile Corrections. Mr. Caldwell responded that the statute provides that if the confinement program does not have adequate bed space, any misdemeanor sentenced in a county for which there is no bed space, would serve the sentence in the Division of Adult Correction and the Division strives mightily to make sure that provision doesn't get activated.

Representative Jackson asked Mr. Caldwell how much the state reimburses the program for each night. The current reimbursement rate, which has not been changed since the program began, is \$40.00 per day plus \$25 an hour for personnel costs such as transporting a prisoner from one county to another or taking them to the hospital (and guarding them if they have to be overnight) plus whatever the current IRS mileage rate is. The rate for holding prisoners for the federal system varies way more than \$40.00 a day way up to \$100 a day. It is a complicated formula and they work with each jail based on the cost of operating that jail. From a financial



perspective, jails would rather take federal prisoners but there are other factors that play into that decision.

Senator Bryant was recognized and asked if there was anything special for the youth. Mr. Fife responded that there was.

Chairman Davis again thanked Mr. Fife and Mr. Caldwell for being there and stated their presentation and comments were very much appreciated.

ABC Permit Revocation

He introduced and welcomed Ms. Renee C. Metz, Chief Counsel of the NC Alcoholic Beverage Control Commission and noted the committee was looking forward to hearing her comments. Her presentation "ABC Permit Revocation: Process and Statistics" is attached. She began by stating that before she began with statistics she would put the revocation process in context. Revocation, as the ABC Commission is required to think of that term, is the most serious penalty that the Commission can impose on a permit holder and it is used as a last resort. Revocation means that particular business or person can hold absolutely no ABC permit anywhere in the State of North Carolina for three years. Many persons have more than one business and may be law abiding citizens that happen to have a store in a location that happens to attract problems. If the Commission removes their permit at that one location, they lose their permit at all other locations. There are other penalties available to the Commission. A suspension is unlike a revocation in that there is still an active permit at the location, but the holder cannot exercise the permission granted under that permit for a specified period of time. A revocation is devastating to a business. One of the tools available to the ABC Commission is the administrative penalties provided by 18B-104. Under that statute the Commission may impose up to a three-year suspension or a fine may be levied up to \$1000 or a combination of both. If a settlement agreement is reached with the permit holder, a fine can be levied up to \$5000 and/or a combination of active suspension. If the parties cannot reach an agreement, the matter goes before the Office of Administrative Hearings for them to determine the penalty. Ms. Metz then moved into numbers and unless otherwise indicated, are from the period of January, 2007 to early November, 2017. Before the ABC Commission can begin any process against a permit, it must receive a violation report from a local law enforcement agency or the State Agency Alcohol Law Enforcement. In that report they designate what the facts are that happened at that location to determine what law had been violated. In the last 14 years, the Commission has consistently received well over 1000 violation reports every year. There are 18,000 businesses in the State that hold permits, many of whom hold multiple permits such as a restaurant. In total there are 60,000-plus permits in North Carolina that the Commission monitors. The majority of the 1000 or so violation reports that are submitted end up settling. The Commission negotiates with the permit holder to determine what the penalty shall be. On average, once the offer is signed it goes on to the next Commission meeting where the members will ratify or choose not to ratify the signed offer. Some offenders will choose not to take the penalty; they just prefer to take the suspension. If they do pay, all of the monies go to the school board in the jurisdiction where the violation occurred. Sometimes, depending on the size of the penalties, if the location gets in



trouble several times and they can't afford to pay the penalties, they will turn in their permits for cancellation. In a period of ten years, the Commission has had over 30,000 permits voluntarily or involuntarily turned in for cancellation. There are numerous reasons why a permit can be cancelled, such as the permit holder dies, retires, or loses their lease. Whether the Commission is going to openly ask for suspension or revocation the process is the same. The reasons a judge would ask for a revocation include interfering with law enforcement, violence, prolific sales to underage persons, drugs (more than simple possession) and no longer suitable. The no longer suitable revocation can be against the permit holder him or herself or against the location. When a summary suspension is done, that authority comes not from ABC law but from the Administrative Proceedings Act. Over the past 10 years, the Commission has issued an average of 5 summary suspension per year. Ms. Metz thanked the committee for the opportunity to share this information.

Representative Faircloth was recognized and stated that this was a great report and gave the members a picture they didn't have before. He referred to revocation where Ms. Metz mentioned that if a person has 2 nightspots that he owns, and he messes up in one site and gets revoked, the Commission also takes his other site. If one spot is owned by the person alone and the other spot is an LLC, where he own 25 % and he is the member manager is that site revoked as well. Ms. Metz responded that as a 25% owner in the LLC, he would have to qualify to hold a permit so his name would be on that second permit and he could not hold it.

Senator Sanderson asked for Ms. Metz to define "prolific sales to underage". Ms. Metz described a case where a permit holder had security cameras. An underage person came in, told him what product he wanted, was told to go back to the cooler and get it, he would put it in a black bag to the side of the counter and make sure everything was clear before the transaction occurred. All of this was caught on the security camera.

Senator Wells stated that he understands revocation of a license is devastating but the license to sell alcohol is a privilege not a right. He indicated he had some tough questions one of which was asking if a licensee was running three bars and two of them had perfect track records and one of them just doesn't work, why would the Commission revoke a license for all three? Ms. Metz responded of that if they revoke the license of the bad actor, the Commission does not necessarily take away the licenses of the two that are working, they might just have a cancellation. If the permit holder is doing fine at two locations, then it is not him that is the problem; it is just the location where he has the third permit. The Commission wants to take care of that third location and let him focus on the two that are working. Senator Wells asked if instead of a revocation, the Commission would arrange for them to surrender the license for that location. She replied that that is a possibility depending on the situation. The Commission may ask for revocation and if they choose to go to a hearing, and the judge may not agree to a revocation. The licensee has to go through the administrative hearing process. Senator Wells then asked what happens to that location and can another operator come in. Ms. Metz stated generally not. There is a watch list where if there is a location that seems to cause a problem for every permit holder on that list, and the Commission won't touch it until they contact local law enforcement, ALE, the town manager and whoever is on the list to be contacted. Ms. Metz added



that the statute does not allow for the Commission to put conditions on permits. Following further discussion regarding the permitting process, Senator Wells asked Ms. Metz if she had suggestions about what might be done differently to improve the process even if statutory changes are required. Ms. Metz responded that one thing the Commission has discussed is asking for a higher penalty cap. Currently, a penalty of more than \$5000 cannot be negotiated. There was a statute, based on Representative Boles' experience, which was introduced that is now being challenged constitutionally for no due process for a location being suspended immediately without a hearing.

Representative Boles was recognized and stated that there were a couple people in the audience that need to be introduced that have helped with some of the laws that have been passed. One was Mr. Bob Hamilton from the NC ABC Commission and Mr. Bob Schurmeier, the NCSBI ALE Director. He referred to a law that has been passed and the reason the law was passed was because he did attend a raid with ALE. He explained some of the details of the raid and asked if the ALE was going to padlock the establishment and was told that they could not do that. The referenced law was passed on the basis of the DUI law. Representative Boles asked Ms. Metz if they notify the ALE that they have a PPI issued. Ms. Metz deferred to Mr. Bob Hamilton.

Mr. Robert Hamilton was introduced and he stated that the contact that is made with the investigators when the PPI occurs is if there was information they need from the ALE. He did not think the ABC Commission actively tells ALE that they are doing a PPI on a particular location.

Representative Stevens referred to a slide where 50% of summary suspensions, application rejections, and no longer suitable cases are overturned and asked Ms. Metz if they get an opinion or explanation back. Ms. Metz stated that they do get a decision from the administrative law judge. Representative Stevens thought it might be very helpful to look at those to see if there is a need to tighten up the statutes. She further stated that she would be happy to work with Representative Boles to see why they are saying it is unconstitutional to take away a license on a temporary basis.

Chairman Davis thanked Ms. Metz for being there and noted her presentation was appreciated.

Senator Randleman was recognized for a motion. She moved that a sub-committee be formed who will review and report back to the JPS Oversight Committee on the ABC permit revocation process and provide any proposed recommended changes for consideration by the Oversight Committee. She recommended that Senator Andy Wells who has done extensive work on this be Chair and members Representatives Rena Turner and Representative Darren Jackson who have both agreed. Chairman Davis ruled the motion in order. He asked if there were any questions or if there was a second to the motion. The motion was seconded by Representative Floyd. The motion passed unanimously and the sub-committee will be formed.

Chairman Davis thanked all of the committee members for being present today and thought it was an excellent meeting and he commended the presenters.



There being no further business to come before the committee, the meeting was adjourned at 3:30 P.M.

Representative Ted Davis, Jr.
Presiding

Judy Lowe, Committee Clerk