

CUMBERLAND COUNTY POLICY COMMITTEE
COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
SEPTEMBER 1, 2016 – 10:30 A.M.
MINUTES

MEMBERS PRESENT: Commissioner Jeannette Council
Commissioner Glenn Adams
Commissioner Larry Lancaster

MEMBERS ABSENT: Commissioner Charles Evans

OTHER COMMISSIONERS
PRESENT: Commissioner Jimmy Keefe
Commissioner Marshall Faircloth
Commissioner Kenneth Edge

OTHERS PRESENT: Amy Cannon, County Manager
James Lawson, Deputy County Manager
Tracy Jackson, Assistant County Manager
Melissa Cardinali, Assistant County Manager for Finance/
Administrative Services
Sally Shutt, Governmental Affairs and Public Information
Officer
Rick Moorefield, County Attorney
Phyllis Jones, Assistant County Attorney
Deborah Shaw, Budget Analyst
Kim Cribb, Budget Analyst
Candice White, Clerk to the Board
Kellie Beam, Deputy Clerk to the Board
Press

Commissioner Council called the meeting to order.

1. APPROVAL OF MINUTES – AUGUST 4, 2016 POLICY COMMITTEE
REGULAR MEETING

MOTION: Commissioner Adams moved to approve the minutes.
SECOND: Commissioner Council
VOTE: UNANIMOUS (3-0)

2. CONSIDERATION OF APPROVAL OF NCACC LEGISLATIVE GOALS
RECOMMENDATIONS

BACKGROUND

The N. C. Association of County Commissioners (NCACC) has outlined its state legislative goals development process for 2017-2018. September 23, 2016 is the deadline for counties to submit their legislative proposals to the association for consideration.

As part of Cumberland County's process, we asked the Leadership Team to submit their recommendations and have compiled the list recorded below for your consideration. Your recommended goals will go to the full board of Commissioners for approval at the September 19, 2016 meeting.

RECOMMENDATION/PROPOSED ACTION

Consider the goals recorded below and make a recommendation to the full Board of Commissioners for approval of the County's state legislative goals to be forwarded to the NCACC by the September 23, 2016 deadline.

Environment/ General Government

Solid Waste Management Department Goal – *(submitted by interim Solid Waste Management Director Jeffery Brown)*

Repeal the electronics recycling program and the ban on disposing computers, televisions and other electronics in the landfill.

Cumberland County Solid Waste Management supports efforts to end the state's electronics recycling program and a related ban on disposing computers, televisions and other electronics in landfills. Televisions in particular are a drain on the Solid Waste Management budget.

North Carolina banned electronics from going into landfills effective July 1, 2011. In April 2016, the N.C. Department of Environmental Quality released a study of electronics recycling, which stated, "The intention of North Carolina's electronics recycling legislation was to create recycling opportunities for citizens largely through the existing infrastructure of local recycling programs supported through producer responsibility obligations. This study finds that producer support is inadequate to the needs of the system. As a result, local governments are directly bearing a high level of electronics recycling costs."

The report made the following legislative recommendation:

"The General Assembly should consider legislation to repeal Part 2H Discarded Computer Equipment and Television Management of GS Article 9 and to repeal GS 130A-309.10 (14) and (15) based on EPA's acknowledgement that electronics can be safely disposed of in municipal solid waste landfills, the fact that electronics recycling is currently not cost effective, and the fact that electronic wastes constitute such a small percentage (0.2%) of the annual solid waste stream."

Health & Human Services

Department of Social Services Goal – *(submitted by Social Services Director Brenda Jackson)*

Oppose unfunded mandates and shifts of state responsibilities to counties:
Prevent the *Temporary Financial Assistance for Facilities Licensed to Accept State-County Special Assistance Payments* from becoming a permanent mandate.

Effective October 1, 2016, through June 30, 2017, the State-County Special Assistance rate will increase to \$1,216 for adult care homes. This is a \$34 increase per month per resident, with 50 percent of the \$34 increase coming from the county.

To be eligible for special assistance, individuals must be age 65 or older, or disabled and live in a residential facility approved for special assistance. The facility must agree to accept the state rate for special assistance residents. Individuals who are eligible for special assistance are automatically eligible for Medicaid.

The North Carolina Association of County Directors of Social Services and the North Carolina Association of County Commissioners lobbied against this unfunded mandate; however, the legislation was included in the budget bill.

Based on the point-in-time number of 656 Special Assistance cases, Cumberland County DSS projects the County will pay \$100,368 during the nine-month period (\$17 per person per month.)

Counties can try to prevent this from becoming a permanent assistance payment with a 50 percent county match after the nine-month period expires.

Public Education

School System Goals

- Increase capital funding by allocating 40 percent of the lottery proceeds to counties for school capital needs.
- Oppose any shifting of the state's responsibility for replacing school buses.
- Seek legislation that would place any program administered by the local school system under the Department of Public Instruction's facilities guidance and requirements.

Some school system facilities must meet a different set of standards based on the programs housed in them. For example, pre-K programs fall under the North Carolina Department of Health and Human Services Division of Child Development and Early Education.

Library Goal – *(submitted by Library Director Jody Risacher)*

Support legislation to restore state aid funding of public libraries to the pre-2011 level of \$15.7 million.

Impact: State Aid for Public Libraries for Cumberland County Public Library is budgeted at \$311,976. These funds are critical for the purchase of materials for residents, including books, audio-visual and electronic resources.

Library Director Jody Risacher noted that the Cumberland County Public Library and Information Center is a member of the N.C. Cardinal Consortium, which means most library materials are now shared across 30 plus counties. The citizens of each participating county are able to access a wider variety of materials and there are efficiencies inherent in the system.

Tax & Finance

Continue to seek legislation to authorize local option revenue sources already given to other jurisdictions.

Work to expand the use of the Article 43 transit tax to all counties for education purposes and provide counties the option to seek up to ½ cent through Article 46, which is currently limited to ¼ cent.

Support legislation that would create a loan fund to assist local economic development organizations and communities with the development of industrial sites and buildings. *(submitted by Russ Rogerson, president of the Fayetteville-Cumberland County Economic Development Corporation)*

HB108 (Site and Building Development Fund) did not pass during the 2016 session. The legislation would create a loan fund to assist local economic development organizations and communities with developing buildings and shovel-ready industrial sites.

Sally Shutt, Governmental Affairs and Public Information Officer, reviewed the background information, recommendation and draft NCACC Legislative Goals Recommendations as recorded above. Ms. Shutt stated the deadline to submit the legislative goals to the NCACC is September 23, 2016.

Ms. Shutt stated Commissioner Adams requested to add a Justice and Public Safety goal to support legislation to raise the age at which first time misdemeanor offenders are treated in the adult criminal justice system from 16 years old to 18 years old.

Ms. Shutt stated the draft legislative goals recorded above and Commissioner Adams request to add the Justice and Public Safety goal will be on the September 19, 2016 Board of Commissioners agenda for approval in order to submit to the NCACC before the September 23, 2016 deadline.

3. CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING FOR THE MISDEMEANOR DIVERSION PROGRAM

MOTION: Commissioner Adams moved to add “Consideration of a Memorandum of Understanding for the Misdemeanor Diversion Program” to the Policy Committee agenda.
SECOND: Commissioner Lancaster
VOTE: UNANIMOUS (3-0)

Commissioner Adams provided the following draft Memorandum of Understanding (MOU) for the Misdemeanor Diversion Program.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

MEMORANDUM OF UNDERSTANDING
Cumberland County Precharge Misdemeanor Diversion Program

THIS MEMORANDUM OF UNDERSTANDING entered into this 1st day of September, 2016, by and between or among the CHIEF JUDGE OF THE DISTRICT COURT, TWELFTH JUDICIAL DISTRICT, AND THE JUDGES ASSIGNED TO CRIMINAL MISDEMEANOR CASES (“Judges”), THE OFFICE OF THE DISTRICT ATTORNEY, TWELFTH JUDICIAL DISTRICT (“District Attorney), the OFFICE OF THE PUBLIC DEFENDER FOR THE TWELFTH DISTRICT (“Public Defender”), the COUNTY OF CUMBERLAND, the SHERIFF OF CUMBERLAND COUNTY (“Sheriff”), the CITY OF FAYETTEVILLE by and through its POLICE DEPARTMENT (“Fayetteville Police”), the TOWN OF HOPE MILLS by and through its POLICE DEPARTMENT (“Hope Mills Police”), and the TOWN OF SPRING LAKE by and through its POLICE DEPARTMENT (“Spring Lake Police”), hereinafter “The Parties.”

WHEREAS, the State of North Carolina is only one of two states that ordinarily prosecutes all sixteen and seventeen year-olds charged with criminal offenses as adults; and

WHEREAS, the record of arrest follows the youth into adulthood and may create significant impediments to and involve collateral consequences in employment, education, licensing, and rights even in the event that such charges are dismissed; and

WHEREAS, the Parties seek to implement a program designed to reduce the direct and indirect negative consequences of such an arrest; and

WHEREAS, the Parties agree a Misdemeanor Diversion Program pursuant to which sixteen and seventeen year-olds with no adult criminal record may be diverted from the criminal justice system for eligible misdemeanor charges will serve this goal;

NOW THEREFORE; the Judges, District Attorney, Public Defender, County of Cumberland, Sheriff, Fayetteville Police, Hope Mills Police, and Spring Lake Police agree as follows:

1. **Creation and Establishment of Program.** The Parties in this venture agree to establish the Cumberland County Precharge Diversion Program (“MDP”) subject to the terms and conditions which the Parties may establish and subject to and under the terms of this memorandum of understanding.
2. **Administration.** The County of Cumberland, through its Pretrial Services Department, shall fund to the extent approved by the Board of Commissioners in the annual budget, operate and administer the Cumberland County Precharge Misdemeanor Diversion Program (“MDP”).
3. **Purpose and Overview of the Program.** The purpose of the MDP is to divert first-time arrests or citations of sixteen and seventeen year-olds with no adult criminal record for misdemeanor charges except Class B misdemeanors, and any misdemeanor offenses involving sexual offenses, firearms violations, and traffic offenses.

Where probable cause exists, law enforcement officers may instead of effecting an arrest or issuing criminal process as contemplated under N.C. Gen. Stat. §15A-301 *et seq.* for a person who is 16 or 17 years old at the time of the offense and who is a first-time offender, may issue a referral which will initiate the misdemeanor youth diversionary process by directing the youth to contact the MDP Representative through the contemporaneous completion of an Incident Report and an MDP Referral Form. After the officer confirms that the youth is eligible for MDP, the officer will then submit the information to the MDP Representative within 48 hours. The youth must contact the MDP Representative within 48 hours.

The MDP Representative shall be an employee of Pretrial Services with the responsibility of administration of the MDP program.

The MDP Representative will meet with the youth and prepare a diversion plan and require, among other things, that the youth attend a mandatory Diversion Court session with an assigned Judge, Assistant District Attorney, Public Defender or retained defense counsel. These diversion plans will include programming tailored for the individual youth, such as community service hours, leadership classes, and

mentoring. After a period of no more than 90 days, the MDP Representative will determine if there has been successful compliance with the diversion plan terms. If the youth referred to the MDP fully complies, no criminal process will be served. In the event, however, the referred youth fails to comply, the MDP Representative will notify the Law Enforcement Officer so that prosecution may be pursued.

4. **Law Enforcement Discretion.** While the law enforcement agencies executing this agreement acknowledge their participation in the MDP, Sheriff's deputies and officers of the Fayetteville, Hope Mills and Spring Lake Police Departments shall have discretion to issue a "youth citation" to a sixteen or seventeen year-old when the deputy or police officer determines there is probable cause to arrest or issue a citation for misdemeanor offenses other than class B misdemeanors or offenses involving sexual offenses, firearms, or traffic offenses. Additionally, as stated in this agreement, if a referred youth fails to comply with the terms of the MDP program, the law enforcement officer may exercise his or her discretion to issue criminal process as that term is contemplated pursuant to N.C. Gen. Stat. §15A-301 *et seq.* Moreover, nothing in this agreement shall limit the authority or the discretion of the head of any law enforcement agency to cause or direct any criminal process to be issued or maintained; nor shall anything in this agreement limit the discretion of a law enforcement officer to cause criminal process to issue against any person, whether before or after referral to the MDP.

5. **Obligations of MDP Administrators.** Cumberland County Pretrial Services shall have the duty and responsibility to establish develop and maintain the misdemeanor precharge diversion program, to maintain all records of or related to such precharge diversion, develop individual diversion plans for MDP participants, provided, however, that consistent with the purposes of the program contemplated under this agreement, each plan must include at least one court appearance before an assigned judge and must be completed successfully within 90 days of referral to the program, and may include a community service requirement, education, training, as well as other diversionary programming based on the participant's needs. The requisites and criteria to be applied by the program include at least the following:
 - a. Eligibility
 - A referred youth in order to be eligible for referral must:
 - (1) Be 16 or 17 years old at time of offense
 - (2) Have no adult criminal record (even if the referred youth may have a juvenile record)
 - (a) Must be potentially subject to a criminal charge for a misdemeanor offense other than a class B offense, or other than sex offenses, firearms offenses, and traffic offenses

b. Referral Process

Referrals may be made in the following manner when:

- (1) A law enforcement officer determines there is probable cause to arrest or issue criminal process and that an arrest or citation would otherwise occur
- (2) The law enforcement officer believes the youth to be eligible for precharge referral
- (3) The officer gives youth an MDP postcard and explains MDP, particularly including the requirement that the youth contact the MDP Representative within 48 hours
 - (a) The Officer completes an MDP Referral Form and Incident Report (IR) and submits the form within 48 working hours

c. MDP Intake Process

The MDP intake process shall include the following events and conditions:

- (1) MDP Representative receives Referral Forms and IR
- (2) MDP Representative sets up appointment with youth and parent or guardian within 5 days
- (3) At the appointed meeting:
 - (a) the intake interview is completed
 - (b) the Release to Opt-in is signed
 - (c) a general release is signed
 - (d) the Diversion Plan is formulated and entered and
 - (e) the mandatory court date is assigned

d. Elements of the Diversion Plan

The Diversion Plan must:

- (1) include 10 hours of community service, classes or programming based on the individual needs of the youth
- (2) include at least one MDP court session
- (3) be fully and successfully completed within 90 days of being entered
- (4) not permit any repetition of program participation for the same or a substantially similar offense

e. Mandatory MDP Court Session

Every MDP participant will be referred to one Diversion Court session, with an assigned Judge, Assistant District Attorney and Assistant Public Defender or retained defense counsel which shall:

- (1) educate the MDP youth about the direct and collateral consequences of criminal activity

- (2) be held on a date and at a time which the Cumberland County Pretrial Services will coordinate and arrange with the requisite court officials
- (3) enable law enforcement officers who shall be invited to each session to talk directly with the youth participants

f. MDP Youth Programming

- (1) All MDP programs and diversion requirements are provided to MDP participants without charge to the youth participants
- (2) The MDP Representative will recruit and maintain a list of agencies and entities providing appropriate youth classes or programs for MDP participants
- (3) Programming options will include, but are not limited to:
 - (a) community service
 - (b) teen court
 - (c) leadership and skill-building classes
 - (d) information on collateral consequences and community resources will be provided to every MDP participant and his or her parent or guardian.

g. MDP Compliance

- (1) MDP Diversion Plan compliance will be monitored by the MDP Representative
- (2) Plan requirements and court attendance must be completed by the youth participant within 90 days
- (3) Upon confirmation of compliance, the MDP Representative will release the youth from MDP and notify the referring MDP Law Enforcement Officer
- (4) In the case of non-compliance or new charges for the youth, the Law Enforcement Officer will be notified so that the issuance of criminal process can be considered
- (5) Records of MDP participation and of the participant's compliance or noncompliance will be maintained by the MDP
- (6) No youth previously referred to MDP will be permitted to again participate in the MDP for the same offense or for related or substantially similar offense conduct.

6. Term - Renewal of the Agreement.

This memorandum of agreement is intended to be temporary in nature, and shall initially be valid for a period of two hundred seventy (270) days from the date of its inception, during which the Parties will evaluate the program and make determination concerning its viability, propriety, and effectiveness and may during such period

modify or adjust the MDP and its rules, conditions, operating procedures or the like.

a. **Term.** Although subject to renewal, either expressly or as provided and contemplated under this agreement, the express term of this agreement shall be as follows:

(1) **Effective Dates.** This agreement shall be effective from September 1, 2016, through May 29, 2017, but any subsequent terms is intended to and shall be for the period from June 30, 2017 until June 30, 2018 (the fiscal year of each party being defined as the period from July 1 of the current calendar year and June 30 of the next succeeding calendar year), unless renewed, extended or terminated as provided in this agreement. In the event that this agreement is amended or modified during the term of the effective dates, unless otherwise provided, such amendment or modification of this agreement shall be deemed to relate back to the initial effective date of this agreement.

(2) **Renewal.** This agreement may be renewed by an express writing for that purpose executed on or before June 30, 2017, to be effective for the next fiscal year, unless terminated during the contemplated period of the contract as provided in this agreement. Unless and until terminated as provided under the terms of this writing, this agreement shall be deemed to be renewed automatically at the end of the effective expiration date and shall be deemed to continue for the next succeeding fiscal year.

b. **Amendment or Modification.** This Agreement may be modified or amended by mutual consent of the parties as long as the amendment is executed in the same fashion as this Agreement. Modifications to the operations, regulations or procedures substantially affecting the operation or effect of the MDP shall be presented to the representatives designated by the Parties for consideration of modification or amendment to this agreement. Failure to present such changes in substance or procedure to the Parties and the Parties' inability or unwillingness to agree to such change shall render such change ineffective unless and until this memorandum of understanding shall be formally modified or amended, and any acts taken without such formal alteration or modification shall be *ultra vires*.

c. **Termination or Withdrawal.** Notwithstanding any other provision of this agreement, any party to this agreement, either with or without cause, upon notice being served in writing to the other parties of not less than 30 days prior to the effective date of such termination, may withdraw from or the parties may agree to terminate this agreement either with or without announcing the cause for such withdrawal or termination. In the event of such withdrawal, then the obligations

of the withdrawing Parties party under the terms of this agreement shall cease and become unenforceable as to the withdrawing Parties as of the effective date of the termination. In the event of an agreed termination, then the obligations of the Parties party under the terms of this agreement shall cease and become unenforceable as of the effective date of the termination. Unless otherwise expressly provided, an amendment, modification, or agreed alteration of this agreement shall not operate as or shall not be interpreted as a termination of this agreement.

7. **Compliance with Law, Regulations, Policies, Standards, and Directives.** The Parties acknowledge there is no intent to engage the services of any contractor during the initial term of this agreement in the current fiscal year; however; in the event that the MDP shall engage the services of any contractor not a governmental unit, then the MDP shall require such contractor to comply with all applicable laws, rules, ordinances, executive orders or other requirements of any government or subdivision of government which may govern performance of this agreement or the MDP, including , but not limited to, The Fair Labor Standards Act, and the Equal Employment Opportunity Act. The Contractor shall comply with, and insure its subcontractors comply with, all local, state, and federal laws, regulations and policies relating to safety and health and employment. Having due regard to the foregoing, parties to this agreement shall comply with all laws, regulations, and ordinances, directives, executive orders, or other requirements of any governments or agencies thereof which may govern its performance under this Agreement, including, but not limited to, the provisions of Chapters 1, 1A, 14, 15A, 122C , 153A, and 162 of the North Carolina General Statutes, equal employment laws, and other applicable law, all applicable State and Federal laws and regulations as well as applicable ordinances of local government entities who are partners or parties to this memorandum of understanding, and including, but not limited to:
 - a. **ADA Compliance/Non-Discrimination/Anti-Retaliation.** Without limiting the generality of the foregoing, the parties shall comply with Title VI and VII of the Civil Rights Act of 1964, Section 504, of the Rehabilitation Act of 1973, and the Americans With Disabilities Act of 1990 (ADA), Chapter 168 of the North Carolina General Statutes and all requirements imposed by the requisite Federal regulations, rules and guidelines issued pursuant to these Titles with respect to such contractor.
 - b. **E-verify Compliance.** The contractor shall comply with the provisions of Article 2 of Chapter 64 of the North Carolina General Statutes and the terms of N.C. Gen. Stat. § 143-133.3. Without limiting the generality of the foregoing, the contractor as an employer shall comply with and certify that continued compliance with the

provisions of N.C. Gen. Stat. § 64-26, and verify the work authorization of the contractor's employee through E-Verify. Further, such contractor-employer shall retain the record of the verification of work authorization required by such provision of law while the employee is employed and for one year thereafter, and shall make such certification and offer such proof of compliance as may reasonably be required by the other party to this agreement.

c. **Iran Divestment Act Certification.** N.C. Gen. Stat. § 143C-6A-5(a) requires that a vendor, contractor, or bidder provide a certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina establishing that the party to the contract, the vendor or bidder is not listed on the Final Divestment List created or maintained by the State Treasurer pursuant to N.C. Gen. Stat. § 143C-6A-4. The certification is required at the following times: (1) when a bid is submitted; (2) when a contract is entered (if the certification was not already made when the vendor made its bid); and (3) when a contract is renewed. Additionally, N.C. Gen. Stat. § 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List, and must so certify. Accordingly, any such contractor shall be obligated to make the required certification, and, in particular, but without limitation, hereby certifies that it is not listed on the Final Divestment List created or maintained by the State Treasurer pursuant to N.C. Gen. Stat. § 143C-6A-4, and has not, does not, will not and must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

8. **Agency and Authority.** The parties represent that they have the authority to enter this agreement.
9. **Severability.** Should any term, duty, obligation or provision of this Agreement be found invalid or unenforceable, such finding shall in no way affect the validity of other terms, duties, obligations, provisions, which shall remain valid and enforceable and in full force and effect.
10. **Applicable Law - Situs.** This Agreement shall be governed by the internal laws of the State of North Carolina without regard to the conflicts of law provisions thereof.
11. **Other and Further Assurances.** In order to give effect to the purposes and terms of this agreement, the parties agree to promulgate and execute such other document or other and further assurances, certificates, agreements, memoranda or the like which may reasonably be required to give effect to this agreement, its terms, conditions,

covenants, and purposes upon request and within a reasonable time following such request.

In Witness Whereof, the parties hereto have executed this Memorandum of Agreement.

Commissioner Council thanked Commissioner Adams for his work on the draft Memorandum of Understanding for the Misdemeanor Diversion Program. Commissioner Adams and Rick Moorefield, County Attorney, stated there were a few changes that needed to be made to the draft memorandum of understanding but the program components described in the document were final. Ms. Cannon stated she would like to thank Mr. Moorefield and Phyllis Jones, Assistant County Attorney, for the last minute work involved in getting the draft MOU on the Policy Committee agenda today.

The consensus of the Policy Committee was to add the Memorandum of Understanding for the Misdemeanor Diversion Program to the September 6, 2016 Board of Commissioners agenda subject to a few changes. Mr. Moorefield stated he would make the changes and send out the revised MOU to the Board of Commissioners prior to the September 6, 2016 meeting for review.

4. OTHER ITEMS OF BUSINESS

There were no other items of business.

MEETING ADJOURNED AT 11:48 AM