

## Judge Spainhour Stepping Down as Sentencing Commission Chair

**Author :** Jamie Markham

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After nearly 18 years at the helm, Judge Erwin Spainhour is stepping down as chairman of the North Carolina Sentencing and Policy Advisory Commission. Today's post takes a moment to recognize his service and the good work done by the Commission under his leadership.

A superior court judge from District 19A (Cabarrus County), Judge Spainhour has served on the Sentencing Commission since 1998. For his first year on the Commission he was the representative of the Conference of Superior Court Judges. He was then appointed chairman in 1999. He was the body's second chairman, succeeding Judge Tom Ross.

Judge Spainhour began his tenure during the relative infancy of Structured Sentencing, which came into effect in 1994 and was reaching full swing by 1998. He helped assemble an expert staff that issues the [statistical reports](#), [recidivism reports](#), [legislative reports](#), and [correctional population projections](#) that are all essential parts of staying true to Structured Sentencing's guiding principles of consistency, truthfulness, and predictable resource allocation.

The judge then led the Commission through what might be described as its adolescence: the response to *Blakely v. Washington* and the constitutional requirement that aggravating factors be proved to a jury beyond a reasonable doubt. Justice O'Connor wrote in her *Blakely* dissent that the Court's holding in the case would cause states to "trim or eliminate altogether their sentencing guidelines schemes . . ." 542 U.S. 296, 314 (2004) (O'Connor, J., dissenting). "What I have feared most," she wrote, "has now come to pass: Over 20 years of sentencing reform are all but lost." *Id.* at 327. She did not think states would be able to restructure their grid-based systems to accommodate the procedural demands of jury proof.

North Carolina found a way. Judge Spainhour chaired the Commission's *Blakely* subcommittee, which [reported to the General Assembly in 2005](#) on what changes would need to be made to Structured Sentencing to bring it into compliance with Sixth Amendment jury trial right as interpreted in *Blakely*. Those recommended changes became law later that year. And so our experiment in legislatively guided judicial discretion continues.

Judge Spainhour also shepherded the Commission into the Justice Reinvestment era. From 2009 until the Justice Reinvestment Act became law in 2011, the Commission was the hub of the JR conversation, bringing together the key stakeholders from the legislature, the courts, the correctional system, and the sheriffs' offices who would reshape portions of the state's approach to sentencing and probation. The Commission's annual [Justice Reinvestment Act implementation reports](#) provide an ongoing analysis of how sentencing practices have changed since then. I don't think we'll know for a few years what Justice Reinvestment really was for Structured Sentencing. A rebellious college period? A midlife crisis? Too soon to say, perhaps. Regardless, nerds like me know that much of what wound up in the Justice Reinvestment Act originated in a [report on sentencing alternatives](#) prepared by the Commission under Judge Spainhour's leadership—in 2002.

Wherever we turn out to be in the life cycle of Structured Sentencing, it's fair to say that much of what we know about it (and [many other sentencing-related topics](#)), we know better thanks to Judge Spainhour's Commission. He surely logged thousands of miles driving back and forth to Raleigh, but I never saw him lead a meeting—and there were lots of

them—with anything other than thoughtful diligence, good cheer, and gratitude for the hard work of the Commission staff.

At last week's Commission meeting, [Chief Justice Martin presented Judge Spainhour with the Friend of the Court award](#)—the highest award given by the judicial branch. It was also announced that Charlie Brown, chief district court judge for District 19C (Rowan County) and Commission member since 2008, will assume the chair next month.

Sincere best wishes and thanks to Judge Spainhour for a job well done.