

**Report  
of the  
Special Council on  
Criminal Justice Reform for Georgians**

December 2012

## **I. EXECUTIVE SUMMARY**

Seeking new ways to protect public safety and hold offenders accountable while controlling state costs, the 2011 Georgia General Assembly passed HB 265 to establish the inter-branch Special Council on Criminal Justice Reform for Georgians (Council). As a result of the work of the Council, significant adult corrections reforms were enacted through HB 1176 (2012), which passed the General Assembly unanimously and was signed into law by Governor Nathan Deal on May 2, 2012.

On May 24, 2012, Governor Deal signed an executive order extending the term of the Council and expanding its membership. This year, the Council was tasked with continuing its work on adult sentencing and corrections, by overseeing the implementation of HB 1176 and analyzing additional policy options for the state's adult corrections system. In addition, the Governor expanded the Council's focus to include the juvenile justice system.<sup>1</sup> The Council began its work in the summer of 2012 by examining potential adult sentencing and corrections reforms, conducting a detailed analysis of Georgia's juvenile justice system and soliciting input from a wide variety of stakeholders. The Council then developed policy options that will hold offenders accountable, increase public safety and reduce adult corrections and juvenile justice costs.

### **Georgia's Key Juvenile Justice Challenge**

In recent years, the number of youth in Georgia's juvenile justice system has declined; however, the cost of this system remains substantial and the Georgia taxpayers have not received a sufficient return on their investment. In FY 2013, the state's Department of Juvenile Justice (DJJ) was appropriated \$300 million. Nearly two-thirds of that budget is used to operate out-of-home facilities, which can cost more than \$90,000 per bed per year. Despite these expenditures, more than half of the youth in the juvenile justice system are re-adjudicated delinquent or convicted of a criminal offense within three years of release, a rate that has held steady since 2003.

With such high costs and low public safety returns, this so-called "deep end" of the system became the focus of the Council's analysis. The data show the majority of juveniles in out-of-home placements are felony offenders and designated felons, and some are assessed as a high-risk of recidivism. However, a substantial portion of out-of-home youth are adjudicated for misdemeanor or status offenses or are assessed as low-risk to reoffend.

### **Juvenile Justice Policy Options and Impact**

The Council adopted recommendations for referral to the Governor and the General Assembly that create cost avoidance savings in future state appropriations. This will allow any additional state appropriations available to focus on the state's highest public safety needs. The policy

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<sup>1</sup> See Appendix A for a glossary of terms used in this report.

recommendations will further focus the state's use of expensive out-of-home facilities on serious, higher-risk youth. By doing this, the state will generate savings that can be used to increase the availability and effectiveness of community-based options.

The net result would be less crime at lower cost to taxpayers. The recommendations detailed in this report are projected to decrease the out-of-home adjudicated population by 639 offenders by 2018 (from 1,908 offenders to 1,269 offenders), allowing for significant opportunities for savings and reallocation of resources. In fact, projections estimate that these recommendations would save the state more than \$88 million in averted and reduced state expenditures through 2018. The Council recommends that a substantial amount be invested in new appropriations through a voluntary grant program to support local, evidence-based programs that are proven to reduce recidivism. This investment is projected to avoid a significant increase in state appropriations to the Department of Juvenile Justice by diverting low-risk offenders to treatment programs in the community as opposed to increasing the out-of-home juvenile offender population committed to DJJ.

#### **Adult Sentencing and Corrections Oversight and Additional Recommendations**

In addition to the juvenile justice reforms described above, this Council also discussed and adopted several recommendations that expand upon its work in adult sentencing and corrections. During the last legislative session, the General Assembly unanimously passed HB 1176, which enacted many of the policy recommendations included in this Council's report of November 2011. In addition, as the Council had suggested, the General Assembly reinvested more than \$17 million of the prison savings generated by the new policies into measures designed to reduce reoffending.

In the first five months following enactment, the state has already seen a positive impact. The state prison population has held steady, and the number of inmates in local jails awaiting beds at a Probation Detention Center (PDC) has dropped significantly.

This year, the governor asked the Council to continue its work on adult sentencing and corrections reform in tandem with new work on juvenile justice. A work group was assigned to oversee the implementation of HB 1176 and determine whether any additional reforms are necessary. The work group developed specific recommendations and the full Council reviewed and adopted the recommendations contained in this report for referral to the governor and the General Assembly.

## **II. OVERVIEW OF THE WORK OF THE SPECIAL COUNCIL**

Seeking new ways to improve the state's criminal justice system, the Georgia General Assembly passed HB 265 in 2011 to establish the inter-branch Special Council on Criminal Justice Reform for Georgians (Council). Beginning in the summer of 2011, the Council conducted a comprehensive analysis of the state's adult sentencing and corrections data and developed tailored policy options which were reported to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and Chief Justice of the Supreme Court for consideration. Most of the recommendations of the Council were included in HB 1176 which passed the General Assembly unanimously and was signed into law by Governor Nathan Deal on May 2, 2012.

On May 24, 2012, Gov. Deal signed an executive order extending the Council and expanding its membership.<sup>2</sup> This year, the Council was tasked with continuing its work on adult sentencing and corrections. In addition, the governor expanded its focus to examine policies impacting the juvenile justice system. Specifically, the Council was asked to identify ways to improve outcomes; develop fiscally sound, data-driven juvenile justice policies; and ensure Georgia's tax dollars are used effectively and efficiently. State leaders requested technical assistance from the Public Safety Performance Project of the Pew Center on the States (Pew), which provided assistance to the Council the previous year, and the Annie E. Casey Foundation (Casey).

Over the past six months, the Council conducted extensive analysis of the state's juvenile justice data and solicited input from a wide range of stakeholders. The Council formed two working groups focused on adjudicated youth: the Community Supervision and Community-Based Options Working Group and the Juvenile Dispositions and Out-of-Home Placements Working Group. The working groups assessed existing policies and explored policy options before presenting their findings and recommendations to the Council. The Council then reviewed, discussed and adopted the policy recommendations contained in Section III of this report.

In addition, the Council continued its efforts to examine the adult sentencing and corrections system. The Council created a working group focused on overseeing the implementation of HB 1176 and analyzing additional policy options for the state. The working group reported its findings and recommendations to the Council, which reviewed and adopted the policy recommendations contained in Section IV of this report.

The Council submits this final report to the Governor, Lieutenant Governor, Speaker of the House of Representatives, Chief Justice of the Supreme Court, and Chief Judge of the Georgia Court of Appeals for full consideration during the 2013 legislative session.

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<sup>2</sup> Executive Order extending the Governor's Special Council on Criminal Justice Reform signed by Gov. Nathan Deal on May 24, 2012.  
[http://gov.georgia.gov/sites/gov.georgia.gov/files/imported/vgn/images/portal/cit\\_1210/42/0/18549517305\\_24\\_12\\_02.pdf](http://gov.georgia.gov/sites/gov.georgia.gov/files/imported/vgn/images/portal/cit_1210/42/0/18549517305_24_12_02.pdf).

## **Members of the Special Council on Criminal Justice Reform for Georgians**

Hon. Michael P. Boggs (Co-Chair)	Judge, Court of Appeals of Georgia
David Werner (Co-Chair)	Deputy Chief of Staff, Governor's Office
Rep. Stacey Abrams	District 84, Atlanta
Scott Berry	Sheriff, Oconee County
Justo Cabral	Solicitor-General, Lowndes County
Sen. John Crosby	District 13, Tifton
Hon. Jason Deal	Superior Court Judge, Northeastern Judicial Circuit
Linda Evans	Member, Judicial Qualifications Commission
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Daniel J. Porter	District Attorney, Gwinnett County
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Ken Shigley	Past President, State Bar of Georgia
Rep. Willie Talton	District 145, Warner Robins
Hon. Steven Teske	Juvenile Court Judge, Clayton County
Rep. Wendell Willard	District 49, Sandy Springs

## **Acknowledgements**

The Council would like to thank the following individuals for their assistance throughout the Council's work:

### Office of Governor Nathan Deal

Thomas Worthy, Deputy Executive Counsel  
Lindsay Perdue, Public Safety Advisor

### Department of Juvenile Justice

Avery Niles, Commissioner  
Richard Harrison, Assistant Commissioner  
Carl Brown, Deputy Commissioner  
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Georgia General Assembly, Office of Legislative Counsel

Jill A. Travis, Deputy Legislative Counsel

The Council would also like to acknowledge the technical assistance provided by the Pew Center on the States, The Annie E. Casey Foundation (Casey), and the Crime and Justice Institute (CJI). Pew has provided assistance to more than a dozen states by analyzing data to identify the drivers of prison growth and developing research-based, fiscally sound policy options to protect public safety, hold offenders accountable, and contain corrections costs. Casey has advanced the reform of juvenile justice systems across the country for more than 20 years through its Juvenile Detention Alternatives Initiative (JDAI), which has helped to safely reduce reliance on secure detention by promoting cost-saving approaches that produce better outcomes and ultimately prevent unnecessary juvenile incarceration. CJI provides technical assistance in order to make criminal and juvenile justice systems more efficient and cost effective to promote accountability for achieving better outcomes.

### III. JUVENILE JUSTICE REPORT

#### GEORGIA'S JUVENILE JUSTICE SYSTEM: HIGH COST, LOW RETURNS

Despite a recent decline in the number of youth in the juvenile justice system, the cost to Georgia taxpayers remains substantial and the state has not received a sufficient return on its investment.

The decline in Georgia's juvenile justice population, whether supervised in the community or held in an out-of-home placement, mirrors national trends.<sup>3</sup> The out-of-home adjudicated population decreased from 2,973 in 2002 to 1,917 in 2011.<sup>4</sup> This is partially due to a recent decline in juvenile arrests. According to the Georgia Bureau of Investigation, there was a 24 percent decrease in arrests for youth up to age 16 from 2008 to 2011.

In FY 2013, the DJJ appropriation exceeded \$300 million.<sup>5</sup> Nearly two-thirds of that budget is used to operate out-of-home facilities (See *Juvenile Residential Facilities* sidebar for description of state operated residential facilities).<sup>6</sup> The Youth Development Campuses (YDCs) cost \$91,126 per bed per year and the Regional Youth Detention Centers (RYDCs) cost \$88,155 per bed per year.<sup>7</sup>

#### ***Juvenile Residential Facilities***

*DJJ operates three types of out-of-home placement facilities:*

#### ***Secure Facilities*** ***Juvenile Residential Facilities***

*1) Youth Development Campus (YDC). There are seven YDCs, secure, home placement facilities:*

#### ***Secure Facilities***

*1) Youth Development Campus (YDC). There are seven YDCs, secure, residential institutions for juveniles adjudicated delinquent and committed to the state.*

*2) Residential Youth Detention Center (RYDC). There are 22 RYDCs, secure facilities intended as short-term placements for youth who have been charged with crimes. However, some juveniles are held at RYDCs after being found delinquent while they await placement at a YDC or other facility.*

#### ***Non-Secure Facilities***

*3) Non-Secure Residential Facilities.*

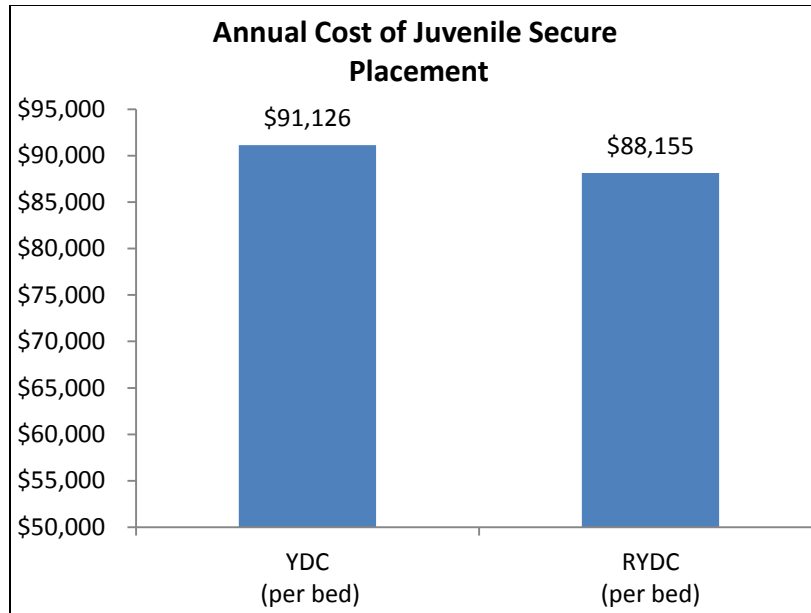
<sup>3</sup> According to the Office of Juvenile Justice and Delinquency Prevention the population of committed juveniles declined 25% nationally between 2006 and 2010. <http://www.ojjdp.gov/ojstatbb/ezacjrp/>.

<sup>4</sup> Unless otherwise noted, all analyses in this report were conducted by the Pew Center on the States, based on data provided by the DJJ, and analyses were reviewed by the DJJ and the Council of Juvenile Court Judges. The total out of home population includes all adjudicated youth who are in an out of home placement, with the exception of superior court youth.

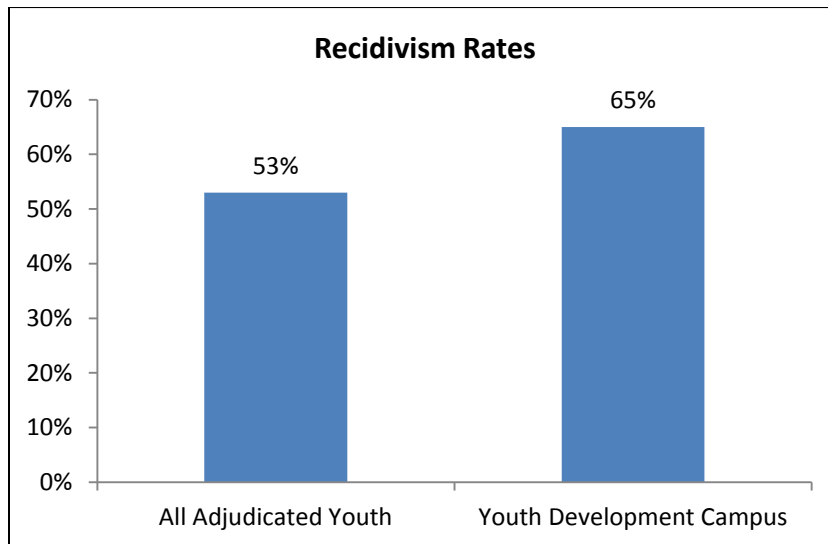
<sup>5</sup> Georgia HB 742, FY 2013 Appropriations Bill. Appropriations for DJJ have varied throughout the past several years ranging from \$265 million in FY 2005 to \$343 million in FY 2009. In FY 2012 the appropriation was reduced to \$286 million. <http://www.djj.state.ga.us/ResourceLibrary/resStatistics.shtml#BUDGET>.

<sup>6</sup> Georgia Department of Juvenile Justice.

<sup>7</sup> *Ibid.*



Despite these costs, the recidivism rate remains high, with more than half of the youth in the juvenile justice system committing an offense leading to re-adjudication of delinquency or an adult conviction of a crime within three years. This rate has not improved, holding steady since 2003.<sup>8</sup> For youth released from YDCs, the rate of recidivism is 65 percent. This rate has increased by six percentage points since 2003.<sup>9</sup>



<sup>8</sup> Georgia Department of Juvenile Justice. For all youth who were released in 2007, as per the recidivism definition contained in the Glossary (Appendix A), 52.5 percent recidivated within 3 years.

<sup>9</sup> Georgia Department of Juvenile Justice.

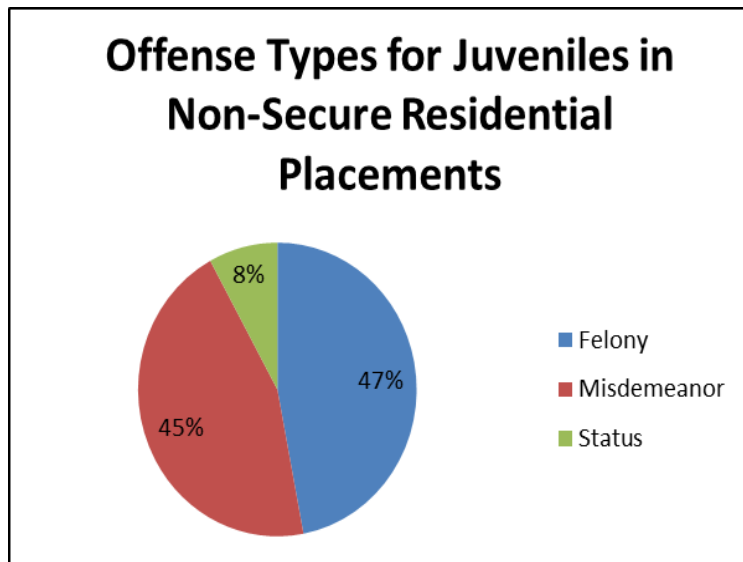


The Council believes that these rates of recidivism are unacceptable, especially given the high costs to taxpayers. In order to identify improvements, the Council conducted an extensive review of Georgia’s juvenile justice system by analyzing data and reviewing state policies and practices. The Council identified five opportunities for reform in the out-of-home youth population in Georgia.

**Misdemeanor and status offenders, many of whom are low-risk, remain a significant portion of out-of-home placements.** Overall, 76 percent of juveniles in an out-of-home placement in 2011 were adjudicated for a felony offense, compared to 57 percent in 2002. In the YDCs, 99 percent of juveniles in 2011 were adjudicated for a felony offense, up from 68 percent in 2002. This indicates that the state is doing a better job focusing out-of-home placements on felony offenders.

However, a large portion of out-of-home placements continue to be misdemeanor or status offenders. In 2011, nearly 25 percent of juveniles in out-of-home placements were adjudicated delinquent for a misdemeanor or status offense.

When looking more closely at juveniles in non-secure residential facilities, the data show that more than half were adjudicated for a misdemeanor or status offense, and half of those were assessed as low-risk.<sup>10</sup> In 2011, 53 percent of juveniles in a non-secure residential facility, such as a group home, were adjudicated for a misdemeanor (45 percent) or status offense (8 percent). Of those offenders, 56 percent were assessed as low-risk.<sup>11</sup> In addition,



the state currently holds some misdemeanor and status offenders following disposition in RYDC facilities. Among adjudicated youth who are in a RYDC facility, 20 percent were adjudicated

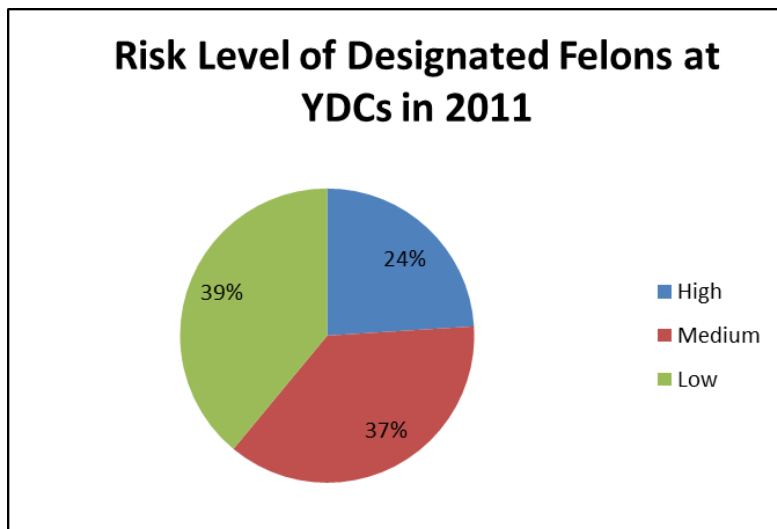
<sup>10</sup> The adjudicated youth who are in non-secure residential placement include youth placed in those facilities as a result of their disposition, as well as youth placed in those facilities for reasons not related to their commitment to DJJ such as a referral from the Georgia Division of Family and Children Services. Those youth who are in non-secure residential placement due to reasons not related to their commitment to DJJ would not be impacted by the recommendations in this report and were therefore removed prior to determining impacts.

<sup>11</sup> Risk percentages are for offenders in 2011 based on the state’s Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool.

for a misdemeanor (18 percent) or status offense (2 percent), of whom 39 percent were assessed as low-risk.<sup>12</sup>

**Low-risk designated felons remain a significant portion of YDC placements.** In 1980, Georgia passed the Designated Felony Act<sup>13</sup> to require at least one year of incarceration in a YDC for youth adjudicated for any of 11 serious offenses, including murder, rape and kidnapping. Since 1980, the General Assembly added offenses to the list of designated felonies, and today the Designated Felony Act includes nearly 30 offenses ranging from murder to smash-and-grab burglary. Youth adjudicated as “designated felons” are the only segment of the out-of-home population that consistently increased during the last decade. The data revealed that the number of designated felons in an out-of-home placement increased by 76 percent from 541 in 2002 to 950 in 2011, and designated felons constitute 98 percent of youth in the YDCs in 2011. One of the causes of this increase is that the length-of-stay for designated felons in out-of-home placements rose by 13 percent since 2002 to 23.3 months.

While there is a greater concentration of designated felons in the YDCs, the risk level of these youth has not changed significantly. In fact, the percentage of designated felons in the YDCs identified as high risk has stayed essentially flat at approximately 24 percent, while the percentage of offenders identified as low-risk has increased slightly from 36 percent in 2004 to 39 percent 2011.<sup>14</sup>



**Risk and needs assessment tools are not being used effectively to inform decision-making.** Risk and needs assessment and detention assessment instruments are objective decision-making tools that are designed to inform detention, commitment, and placement decisions. Currently, Georgia uses a detention assessment instrument – the Detention Assessment Instrument (DAI) –

<sup>12</sup> Risk percentages are for offenders in 2011 based on the state’s Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool.

<sup>13</sup> Currently codified as O.C.G.A. § 15-11-63. *See also* <http://www.georgiacourts.org/councils/cjcf/PDF/Benchbook%20Chapters/ch08.PDF>.

<sup>14</sup> Risk percentages are for offenders in 2011 based on the state’s Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool. The recidivism rate for designated felony offenders in a YDC in the low-risk category was 36 percent (aggregates of releases from 2003-2008), compared to 61 percent for the medium-risk and 70 percent for the high-risk category.

prior to detention to determine the need for secure confinement pending court proceedings. In addition, the state uses a risk and needs assessment – the Comprehensive Risk and Needs Assessment (CRN) – to determine the likelihood that the juvenile is going to be adjudicated for another crime, inform placement and supervision levels, and identify needs.

The Council identified two challenges with the current assessment instruments. First, both tools could be used more effectively to inform decision-making. Currently, the DAI is not always conducted prior to a juvenile being committed to a detention facility. In addition, the CRN is not conducted until after a juvenile is adjudicated and disposed, so key decision-makers are unaware of a juvenile's risk level. The Council believes that this is contributing to a high percentage of low-risk juveniles being committed to state facilities. Second, in order to be effective, assessment instruments should be regularly validated and re-normed on the state's population to ensure that they are accurately predicting and effectively categorizing risk. The DAI has never been validated and the CRN has not been validated since 2006.<sup>15</sup>

**Many areas of the state have limited or no community-based program services, leaving juvenile judges with few dispositional options short of commitment to state facilities.** The Council found there is a widespread perception that many areas of the state, particularly rural and less populated areas, have limited or no programs for juvenile justice youth – evidence-based or otherwise. The Council determined that a limited number of community-based programs exist including life skills, substance abuse, wraparound services, anger management, individual and family therapy, and others. However, it is unknown whether the programs offered are using proven methods. Additionally, access to these services is dependent upon location and funding. The Council found that this lack of evidence-based local resources was a contributing factor to the commitment of status offenders, misdemeanants, and low-risk youth to state-run facilities. Community-based options are significantly less expensive than out-of-home placements and many are proven to effectively reduce recidivism.

**The state struggles to collect uniform data on juvenile offenders.** With 159 counties that operate independent, dependent or shared juvenile courts, Georgia has a complex patchwork of court management and data collection systems.<sup>16</sup> A consequence of the variance in court operations and data management is the inability to uniformly collect data, which hinders the ability to analyze outcomes and the impacts of existing policies.

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<sup>15</sup> The CRN is currently part of a multi-state validation study being conducted by the National Council on Crime and Delinquency (NCCD), with findings due for publication. While the NCCD validation is an important step, such analysis should be conducted on a more regular basis.

<sup>16</sup> There are 134 dependent courts in which the DJJ handles intake services and case management and oversees probation services. Eight courts share operations between DJJ and the county. There are 17 independent courts in which court employees handle the intake, case management and probation services. Independent courts also manage their own information systems, many of which are separate from the system used by the dependent counties.

In Georgia, the Governor’s Office for Children and Families collects and reports juvenile crime data to the U.S. Department of Justice and the Georgia General Assembly. In an effort to improve the accuracy of juvenile justice data, the Governor’s Office for Children and Families, in collaboration with several agencies, formed the Juvenile Data Integrity Stakeholders Group and contracted with the Carl Vinson Institute of Government for assistance in formalizing the juvenile data collection system. Though progress was made to improve data collection and sharing, there remain some impediments to the ability to collect and track outcome measures, including a lack of comparable measurements for all youth in the juvenile justice system as well as the use of different data collection systems across the state.

## **POLICY RECOMMENDATIONS TO PROTECT PUBLIC SAFETY, HOLD OFFENDERS ACCOUNTABLE, AND CONTROL JUVENILE JUSTICE COSTS**

The Council’s policy recommendations are presented in two sections:

- Focus the state’s out-of-home facilities on higher-risk, serious offenders; and
- Reduce recidivism by strengthening evidence-based community supervision and programs.

These recommendations are projected to decrease the average daily out-of-home adjudicated population by 639 offenders by 2018 (from 1,908 offenders to 1,269 offenders)<sup>17</sup>, allowing for significant opportunities for savings and reallocation of resources. In fact, projections estimate that these recommendations would save the state more than \$88 million in averted state expenditures and actual savings through 2018. The Council recommends that a substantial amount be invested in new appropriations through a voluntary grant program to support local, evidence-based programs that are proven to reduce recidivism in other jurisdictions where they have been applied.<sup>18</sup> This investment is projected to avoid a significant increase in state appropriations to the Department of Juvenile Justice by diverting low-risk offenders to treatment programs in the community as opposed to increasing the out-of-home juvenile offender population committed to DJJ.

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<sup>17</sup> These policy impacts exclude any adjudicated youth who are in non-secure residential placement due to reasons not related to their commitment to DJJ such as a referral from the Georgia Division of Family and Children Service.

<sup>18</sup> Meta-analyses by Lipsey and colleagues have found that programs oriented towards discipline and deterrence on average increased recidivism while those emphasizing surveillance decreased recidivism modestly. Interventions emphasizing a treatment philosophy were by far the most effective at reducing recidivism regardless of the level of juvenile justice supervision. *See* Howell and Lipsey, 2012; Lipsey, 2009; Lipsey et al., 2010.

Programs that could be categorized as counseling (e.g., group, family, and mentoring) and skill building (e.g., behavioral and cognitive behavioral) demonstrated the largest average recidivism reductions. Among these intervention types, cognitive behavioral programs were associated with a 26 percent recidivism reduction and group counseling was associated with a 22 percent reduction.

Howell, J.C. and Lipsey, M. W. (2012). Research-based guidelines for juvenile justice programs. *Justice Research and Policy*, 14(1), 17–34.

**Summary of Recommendations**

Category	Policy Recommendation
<p><b>Focus the state’s out-of-home facilities on higher-risk, serious offenders</b></p>	1. Create two-class Designated Felony Act
	2. Prohibit status and certain misdemeanants from residential commitment
	3. Performance incentive structure
<p><b>Reduce Recidivism by Strengthening Evidence-based Community Supervision and Programs</b></p>	4. Risk and need assessment and detention assessment instruments
	5. Structured decision-making tool
	6. Administrative caseloads
	7. Reinvest portion of savings in community
	8. Focus resources on proven programs
	9. Performance-based contracting
	10. Performance auditing system
	11. Uniform data collection and measurement
	12. Court tracking of referral data
	13. Implementation oversight entity
	14. Cost of transportation to DAI requesting agency
	15. DJJ to consider Title IV-E funding

**Focus the State’s Out-of-Home Facilities on Higher-Risk, Serious Offenders**

The Council’s recommendations seek to ensure that state dollars are making the greatest impact on public safety. Analysis found that a significant portion of state resources are spent on juveniles who are misdemeanor or status offenders and youth who were assessed as low-risk, yet public safety outcomes were not improving.

In addition, the Council reviewed research demonstrating that placement in out-of-home facilities does not lower the likelihood of juvenile reoffending and may in fact increase the likelihood of committing a new crime for some offenders.<sup>19</sup> A recent study suggests that longer lengths of stay in secure facilities do not reduce recidivism for certain juvenile offenders.<sup>20</sup>

<sup>19</sup> Nagin, D. S., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. In M. Tonry (Ed.), *Crime and justice: A review of research* (Vol. 38, pp. 115-200). Chicago: University of Chicago Press.; Smith, P., Goggin, C., & Gendreau, P. (2002). The effects of prison sentences and intermediate sanctions on recidivism: General effects and individual differences. Ottawa, Ontario, Canada: Solicitor General of Canada.; Villettaz, P., Killias, M., & Zoder, I. (2006). The effects of custodial vs. noncustodial sentences on re-offending: A systematic review of the state of knowledge. Oslo, Norway: The Campbell Collaboration.; *see also* Mulvey E.P., Steinberg L., Piquero A.R., Besana M., Fagan J., Schubert C., & Cauffman E. (2010). Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders. *Development and Psychopathology*, 22(4), 453–475.

<sup>20</sup> Loughran, T. A., Mulvey, E. P., Schubert, C. A., Fagan, J. Piquero, A. R., & Losoya, S. H. (2009). Estimating a dose-response relationship between length of stay and future recidivism in serious juvenile offenders. *Criminology*, 47(3), 669-740.

Finally, results from several studies conclude that targeting high-risk juvenile offenders for correctional interventions maximizes recidivism reduction.<sup>21</sup>

The Council's recommendations take this research into account by focusing out-of-home placements on serious, higher-risk offenders and providing the opportunity to reinvest a portion of the savings into effective community-based programs and practices which are more likely to reduce recidivism.

***Recommendation 1: Create a two-class system within the Designated Felony Act.*** Currently, non-violent offenders and low-risk offenders consume a substantial portion of expensive state correctional resources. In 2011, 39 percent of designated felons in YDCs were assessed as low-risk and 38 percent were in YDCs for non-violent offenses.<sup>22</sup> Georgia pays \$91,126 per bed per year at a YDC.<sup>23</sup> Despite these high costs, 65 percent of juveniles released from a YDC are re-adjudicated delinquent within three years.<sup>24</sup>

Currently, the Designated Felony Act<sup>25</sup> contains a single dispositional structure for nearly 30 offenses spanning a wide range of severity from murder to smash-and-grab burglary. The Council recommends revising the Designated Felony Act to create a two-class system that continues to allow for restrictive custody in all designated felony (DF) cases while adjusting the dispositional sanctions to take into account both offense severity and risk level. The two-class system is outlined in detail in Appendix B of this report. The system was designed by the Council with the assistance of key stakeholders including judges, prosecutors and defense counsel.

In addition, during these discussions, the Council determined that as a result of changes made by the legislature in recent years for cases arising out of what are referred to as Romeo and Juliet cases in Superior Court, it now is possible for an offender to receive a higher penalty in juvenile court than he or she could potentially receive in Superior Court. Therefore, the Council recommends that the General Assembly address this issue to ensure proportionality.

***Recommendation 2: Prohibit status offenders and certain misdemeanants from being disposed to residential facilities.*** In 2011, 53 percent of juveniles in non-secure residential facilities were

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<sup>21</sup> Andrews, D. A., Zinger, I., Hoge, R. D., Bonta, J., Gendreau, P., and Cullen, F. T. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. *Criminology*, 28 (3) 369-404; Dowden, C., & Andrews, D. A. (1999). What works in young offender treatment: A meta-analysis. *Forum on Corrections Research*, 11(2), 21-24.

<sup>22</sup> Risk percentages are for offenders in 2011 based on the state's Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool. The recidivism rate for designated felony offenders in a YDC in the low-risk category was 36 percent (aggregates of releases from 2003-2008), compared to 61 percent for the medium-risk and 70 percent for the high-risk category.

<sup>23</sup> Georgia Department of Juvenile Justice.

<sup>24</sup> *Ibid.*

<sup>25</sup> Currently codified as O.C.G.A. § 15-11-63. *See also*

<http://www.georgiacourts.org/councils/cjcf/PDF/Benchbook%20Chapters/ch08.PDF>.

adjudicated for misdemeanors (45 percent) or status offenses (8 percent). Of those offenders, 56 percent were assessed as low-risk.<sup>26</sup> In addition, the state currently holds some misdemeanor and status offenders following disposition in RYDC facilities pending placement in other facilities or programs. Among adjudicated youth who are in a RYDC facility, 18 percent were adjudicated for a misdemeanor and 2 percent were adjudicated for a status offense, for a total of 20 percent of the adjudicated youth. In addition, 39 percent of these youth were assessed as low-risk.<sup>27</sup>

Several states recently restricted the placement of misdemeanor and/or status offenders in out-of-home facilities, including Texas<sup>28</sup>, Florida<sup>29</sup>, Virginia<sup>30</sup>, and Alabama.<sup>31</sup> In line with these policies, the Council recommends that status offenders be barred entirely from being disposed to out-of-home placements. In addition, this recommendation would limit disposition to state facilities to: (1) juveniles who were adjudicated delinquent for a felony offense; or (2) juveniles whose current offense is a misdemeanor but who had at least four prior adjudications of delinquency (excluding status offenses) including at least one prior felony adjudication.

***Recommendation 3: Implement a performance incentive structure.*** Community-based options can reduce recidivism, but adequate funding for them is a perennial challenge. Meanwhile, courts often commit youth to more expensive state facilities due to a lack of less expensive community-based options. Several states and localities have sought to address these challenges by aligning their fiscal relationship to reward performance. If localities are successful in reducing the number of offenders that are sent to state facilities, states achieve cost savings and can share a portion of the savings with localities to build stronger community-based options. Some states have incentivized counties to expand community-based alternatives for juvenile offenders and avoid sending them to state facilities. The Council recommends that Georgia develop and implement a voluntary grant program that is initially targeted at the counties that commit the most youth to DJJ and provides fiscal incentives to create and utilize community-based options that can effectively reduce recidivism.

### **Reduce Recidivism by Strengthening Evidence-Based Community Supervision and Programs**

The Council's analysis found that Georgia has undertaken efforts to institute effective community-based supervision practices and programs; however, the Council identified several areas in which policy changes would improve outcomes. Particularly, the Council found that many areas of the state, especially rural and less populated areas, have little or no local program

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<sup>26</sup> Risk percentages are for offenders in 2011 based on the state's Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool.

<sup>27</sup> *Ibid.*

<sup>28</sup> Texas SB 103 (2007).

<sup>29</sup> Florida Senate Bill 2114 (2011).

<sup>30</sup> Virginia Legislative Code §16.1-278.8.

<sup>31</sup> Ala. Code § 12-15-208 (a)(1).

options, leaving juvenile judges with limited choices. The Council identified specific recommendations to address these challenges.

#### Decision-Making Instruments

***Recommendation 4: Mandate use of validated risk and needs assessment and detention assessment instruments prior to detention and disposition decisions.*** The Council recommends a statutory requirement that an effective, validated detention assessment instrument be administered for all youth prior to intake into detention to ensure that the appropriate decision-makers have information that is central to their detention decisions. In addition, the Council recommends requiring that the risk portion of a validated risk and needs assessment be administered pre-disposition to youth prior to being committed to the state to inform judges and other decision-makers at disposition. DJJ will need to work with juvenile courts to implement the pre-disposition assessment tool and identify the juveniles for whom the risk assessment tool shall be administered, since some juveniles are unlikely to be committed and therefore this type of assessment would not be necessary.

Finally, the Council recommends that any assessment tools used in the state be re-normed and validated immediately, and at regular intervals thereafter, by the Department of Juvenile Justice to ensure the tools are accurately measuring risk among Georgia's juvenile population. Additional discretionary override factors should be considered for the DAI, including acts of self-defense or defense of others, lack of criminal intent, seriousness of behavior, mitigating circumstances, or situational context.

***Recommendation 5: Mandate that the Department of Juvenile Justice and local probation agencies develop and adopt a structured decision-making (SDM) tool to guide placement recommendations.*** The administration of risk and needs assessments is necessary prior to placement decisions, but the results of the assessments alone are not sufficient to guide those decisions. SDM tools incorporate the risk/needs information along with other important considerations, particularly the severity of the offense involved, to generate a recommended course of action. SDM tools are used by executive and probation agencies when (1) making recommendations to courts regarding placement or (2) making placement decisions for committed youth. SDM tools help agencies set priorities for which youth ought to be recommended for residential placements, and boost the consistency of the recommendations across caseworkers and regions. The Council recommends that DJJ and local probation agencies work with key stakeholders to develop a structured decision-making tool and develop a plan to implement the tool throughout the state.

#### Effective Community-Based Options

***Recommendation 6: Authorize the Department of Juvenile Justice and local probation agencies to establish administrative caseloads for youth who abide by the conditions of their***



**supervision.** In 2011, 76 percent of juveniles on community supervision were assessed as low-risk.<sup>32</sup> Permitting a lower-level of supervision for juveniles who have shown they can abide by the conditions of their supervision allows probation officers to concentrate their efforts on the youth who require more intensive supervision. The Council recommends that DJJ and local probation agencies be authorized to establish an administrative or unsupervised caseload and, unless otherwise ordered by the court, place youth who abide by the conditions of supervision on this administrative caseload.

***Recommendation 7: Reinvest a portion of the generated savings to create evidence-based programming options in communities around the state.*** The Council recommends using a portion of the averted expenditures identified in this report through the reduction of expensive out-of-home facilities to expand access to effective community-based programs and practices that research demonstrates can reduce recidivism. In distributing these resources, DJJ should consider areas of the state where such programs are unavailable or limited.

***Recommendation 8: Require that the state focus its resources on evidence-based and promising practices.*** Georgia has not established specific performance outcome measures to determine the effectiveness of existing programs. Research over the past 25 years has identified effective strategies that can achieve significant reductions in recidivism. Ensuring that evidence-based and promising practices are used, and that state funds are spent on these practices, will improve public safety outcomes and maximize return on investment.

The Council recommends that youth in the community be supervised in accordance with practices proven to reduce recidivism, and that “evidence-based and proven practices” be defined in legislation. In addition, the Council recommends that a majority of appropriated state funding be used for evidenced-based or promising practices. The Council recommends that the percentage of state funds required to be used for such programming be phased in over time until a 75 percent threshold is attained.

***Recommendation 9: Require that any state agency utilizing state funding to acquire juvenile justice services establish performance-based contracts with private providers.*** Performance-based contracts use positive and negative incentives to motivate program providers to achieve desired results. Performance-based contracting requires providers to monitor outcomes of youth in their programs and report performance indicators such as recidivism. The availability of robust performance data also increases accountability and transparency.

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<sup>32</sup> Risk percentages are for offenders in 2011 based on the state’s Comprehensive Risk and Needs (CRN) Assessment tool. These percentages may change in future years for a variety of reasons, including revalidating and renorming the assessment tool. The recidivism rate for offenders on community supervision in the low-risk category was 43 percent (aggregates of releases from 2003-2008), compared to 69 percent for the medium-risk and 80 percent for the high-risk category.

Generally, performance-based contracts focus on outputs, quality, and outcomes of the service provision and typically include the following elements: 1) emphasizes results related to output, quality, and outcomes rather than how the work is performed; 2) has an outcome orientation and clearly defined objectives and timeframes; 3) uses measurable performance standards and quality assurance plans; and 4) provides performance incentives and ties payment to outcome.<sup>33</sup> The Council recommends requiring that any agency or county utilizing state funding to acquire juvenile justice services utilize performance-based contracting with service providers. The Council further recommends that the entity identified under Recommendation 13 be responsible for developing minimum data collection and outcome measures for contracts.

***Recommendation 10: Implement a performance auditing system.*** Regular and consistent auditing provides a measure of confidence in system performance. The Council recommends the General Assembly develop a system to regularly conduct independent audits of juvenile justice programs, practices and facilities. The system should include the collection of uniform data and require an annual report to the General Assembly. The annual report should include the audit results as well as detail on how agencies are using, or plan to use, the audits to improve outcomes and meet the evidence-based practices requirement.

#### Data Collection, Performance Measurement, and Oversight

***Recommendation 11: Require consistent and uniform data collection and reporting across the state and implement a performance measurement system.*** Collecting and tracking key outcome measures allows policy-makers and system leaders to assess the overall performance of the system, including agencies, policies, and programs. This recommendation would require that, no later than December 1, 2013, counties and clerks collect, share, and report juvenile data to the state. The Department of Juvenile Justice and the Governor's Office of Children and Families should work together with key stakeholders to implement standardized reporting requirements for DJJ, all juvenile courts, and local probation agencies.

In addition, the Council recommends the creation of a performance measurement system. The entity identified under Recommendation 13 should determine the key performance measures that all agencies and counties should track, such as recidivism, education, employment, substance use, and payment of victim restitution. The entity also should be authorized to determine the deadline by which the data must be reported, as well as any other relevant implementation issues. Further, the Council recommends that reinvestment strategies resulting from these recommendations be tied to compliance with the performance measurement system.

***Recommendation 12: Require juvenile courts to collect and track data about referrals to the juvenile justice system.*** Currently, there is no uniform mechanism for collecting and tracking

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<sup>33</sup> Casey Family Programs, *Review of Performance Based Contracting Models in Child Welfare*, March 2008. <http://www.dshs.wa.gov/pdf/ca/CaseyFamilyPBCreview.pdf>.

referrals to the juvenile justice system. As a result, the state is not able to identify with precision which cases result from school-related offenses or assess the degree to which school-based incidents and referrals are key drivers into the system. The Council thoroughly discussed the effect that school-related offenses and zero-tolerance laws have on the juvenile justice system and recommends that the General Assembly study this important issue and consider ways to revise zero-tolerance laws. This recommendation would allow the state to develop the capacity to make more informed, data-driven decisions that can improve public safety and the educational environment in schools.

***Recommendation 13: Designate an entity responsible for oversight during implementation of reforms.*** The Council recommends the Governor extend the term of the Council by Executive Order to be the entity that provides oversight during implementation of the recommended reforms. The Council should:

- a. Oversee the reinvestment strategies outlined in this report, including the performance incentive structure created under Recommendation 3;
- b. Oversee the implementation of evidence-based and promising practices, including establishing standards for what are evidenced-based and promising practices; formulating policies and procedures for potential service providers interested in providing community-based services in the juvenile justice system; and establishing criteria and procedures for evaluating service providers;
- c. Oversee the data collection, performance measurement and auditing systems, including determining the data that shall be reported, and developing the procedures and policies for the performance measurement system and independent audits as required under Recommendations 10 and 11;
- d. Establish the minimum data collection and performance requirements for all performance contracts as required under Recommendation 9;
- e. Monitor and report back to the Governor and General Assembly on the implementation of the Council's recommendations and any legislation resulting from the recommendations; and
- f. Develop additional policy recommendations to the Governor and General Assembly.

#### Transportation

***Recommendation 14: Require that the agency that requests the Detention Assessment Instrument also transports juveniles to the detention center or be responsible for the cost of transporting juveniles to the detention center.*** In most counties, the local sheriff is required to transport juveniles to the detention facility following a detention referral. The sheriff must then complete a series of checks, including finding a parent or guardian before transporting the youth. This recommendation would require that the agency that requests the DAI also provide transportation for the juvenile to the detention center or be responsible for the cost of transporting the juvenile to the detention center. The sheriff would remain responsible for

transporting the juvenile to and from any court proceedings. This recommendation does not apply to referrals from probation.

#### Title IV-E Funding

***Recommendation 15: Require that the Department of Juvenile Justice investigate the cost effectiveness of utilizing Title IV-E federal funding.*** Title IV-E of the Social Security Act provides federal matching funds to help states pay for youth involved in the child welfare system who are out-of-home, or are at-risk of being placed out-of-home, and who meet eligibility requirements.<sup>34</sup> The federal assistance pays part of the cost of maintenance for the youth out-of-home as well as administration and training costs. In 2005, 32 states reported that they utilized Title IV-E funds to support out-of-home placements for eligible youth in the juvenile justice system.<sup>35</sup> This recommendation would require that DJJ investigate the use of Title IV-E federal funding, including its cost effectiveness, and report back to state leaders and the entity responsible for oversight by November 4, 2013.

#### **IV. ADULT REPORT**

In 2011, the Council conducted a detailed analysis of Georgia's sentencing and corrections data to identify the factors driving prison growth. It also audited state policies and practices and solicited input from a wide range of stakeholders, including prosecutors, sheriffs, crime victim advocates, and county officials.

In November 2011, the Council issued a report detailing a broad spectrum of research-based, fiscally sound policy options to protect public safety, hold offenders accountable, and control costs.<sup>36</sup> At the request of Governor Deal, many of the policy options in the Council report were included in legislation and introduced as House Bill 1176.<sup>37</sup> The Georgia General Assembly unanimously passed HB 1176, with votes of 162-0 in the House and 51-0 in the Senate. The law is expected to avert the previously projected 8 percent increase in the prison population and the associated cumulative cost of \$264 million. Through accompanying budget initiatives, the General Assembly also reinvested more than \$17 million of the prison savings into measures designed to reduce reoffending.<sup>38</sup>

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<sup>34</sup> 42 U.S.C § 670, *et.seq.*

<sup>35</sup> Petro, John, Juvenile Justice and Child Welfare Agencies: Collaborating to Serve Dual Jurisdiction Youth Survey Report, Child Welfare League of America (2006) at 8.

<sup>36</sup> Report of the Special Council on Criminal Justice Reform for Georgians, November 2011, <http://www.legis.ga.gov/Documents/GACouncilReport-FINALDRAFT.pdf>.

<sup>37</sup> Full text of HB 1176 can be found at <http://www.legis.ga.gov/Legislation/en-US/display/20112012/HB/1176>.

<sup>38</sup> HB 742 (2012):

[http://opb.georgia.gov/sites/opb.georgia.gov/files/imported/vgn/images/portal/cit\\_1210/25/2/184887319HB%20742%20Signed%20Bill.pdf](http://opb.georgia.gov/sites/opb.georgia.gov/files/imported/vgn/images/portal/cit_1210/25/2/184887319HB%20742%20Signed%20Bill.pdf).

In the first five months following the July 2012 effective date, the state has already seen an impact. For example, as a result of the cap on probation detention center (PDC) stays, the number of offenders waiting in local jails for a bed at a PDC has dropped from 722 in June 2012 to 371 at the end of November 2012.<sup>39</sup> Finally, rather than continuing its upward trajectory, as has been projected, the total state prison population has held fairly steady since June.<sup>40</sup>

This year, Governor Deal asked the Council to continue its work on adult sentencing and corrections reform by overseeing the implementation of HB 1176 and determining whether any additional reforms are necessary. The Adult Sentencing and Corrections Work Group met throughout the summer and fall. At these meetings, the group heard from agencies involved in implementing various sections of HB 1176 as well as stakeholders involved in the criminal justice system.

The work group discussed several ideas that were included in the 2011 report but were not contained in HB 1176. Additionally, the Council conducted further analysis, addressed concerns and challenges, and agreed to again recommend some of those options for consideration by the General Assembly. Furthermore, the Council developed several more options designed to improve public safety, hold offenders accountable and control costs. The work group reported these options back to the full Council, which reviewed and adopted the following recommendations to be included in this report.

***Recommendation 1: Clarify law regarding subjective knowledge of weight of drugs.*** Last year, the Council recommended revising penalties for simple possession of drugs by creating degrees of drug possession based on the weight of drugs. HB 1176 enacted this recommendation, which is to be phased in over a three-year period.

Following enactment of HB 1176, the Supreme Court of Georgia, in *Wilson v. State*, 291 Ga. 458 (2012), addressed the question of whether the state, in drug trafficking cases, was required to prove as an essential element of the drug trafficking offense that the defendant subjectively knew the amount of drugs possessed. The court, in finding that the issue was subject to reasonable dispute, suggested that the “General Assembly clarify the essential elements of trafficking in illegal substances” to explain whether the State needs to prove the defendant actually knew the quantity of the drug in question in order to be convicted of trafficking.

Prior to HB 1176, the trafficking statute was the only controlled substances statute that established a weight threshold. However, once HB 1176 is fully enacted, Georgia’s drug possession statutes will also include an element regarding weight. Therefore, the Council recommends that the General Assembly clarify that the statute, and any other law based on

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<sup>39</sup> Georgia Department of Corrections.

<sup>40</sup> *Ibid.*

weight of drugs, does not require proof of the defendant’s actual knowledge of the precise weight of the drugs.

***Recommendation 2: Revise the definition of administrative probation to allow the Department of Corrections to focus its resources on higher-risk offenders.*** As this Council stated last year, the number of people on probation has grown 29 percent since 2002.<sup>41</sup> This growth is partially due to the length of probation sentences, which at almost 7 years is twice as long as the national average.<sup>42</sup> This growth has overburdened probation’s efforts to conduct effective supervision. The Council recognizes research that shows supervision agencies are more effective if they focus their time and limited resources on higher-risk offenders.<sup>43</sup>

Under current law, probationers are placed on an administrative caseload after two years of probation.<sup>44</sup> Today, there are nearly 63,000 offenders in unsupervised or administrative statuses<sup>45</sup> and, on average, only 18 percent of these unsupervised probationers are subsequently re-arrested as compared to 60 percent of active probationers.<sup>46</sup> However, probation officers must still spend considerable time on these administrative caseloads. Therefore, the Council recommends that the General Assembly clarify the status of administrative probation supervision to more clearly delineate the responsibility of Georgia Department of Corrections (GDC) and probationers during the period of time that follows active probation supervision, and that GDC make commensurate rule changes.

***Recommendation 3: Continue efforts to increase public safety and reduce recidivism by implementing a method of supervision for those offenders who exit prison with no probation or parole supervision to follow (“max outs”).*** The Council found that it is critical to provide transitional supervision and services to offenders maxing out of prison that focus on addressing offenders’ criminal risk and need factors. This programming provides assistance in establishing access to mental health and substance abuse services, stable housing, and employment prior to release, thereby increasing successful reintegration, reducing recidivism and increasing public safety.

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<sup>41</sup> Georgia Department of Corrections, Active Probationers.

<sup>42</sup> Average probation sentence in Georgia is 6.83 years according to the Georgia Department of Corrections. Nationally the average sentence is three years and two months. Source: “Felony Sentences in State Courts.” 2006, Bureau of Justice Statistics, December 2009. <http://bjs.ojp.usdoj.gov/content/pub/pdf/fssc06st.pdf>.

<sup>43</sup> Edward J. Latessa, Lori B. Lovins, and Paula Smith, Final Report: Follow-up Evaluation of Ohio’s Community Based Correctional Facility and Halfway House Programs—Outcome Study, (University of Cincinnati, February 2010), <http://www.drc.ohio.gov/public/UC%20Report.pdf>.

<sup>44</sup> O.C.G.A. § 17-10-1. Supervision lengths were last addressed in HB 1607 of 1992.

<sup>45</sup> Georgia Department of Corrections.

<sup>46</sup> Average time to re-arrest for unsupervised probationers is 52 months as compared to 15 months for high risk offenders, 16 months for actively supervised offenders, and 20 months for standard risk offenders. Source: Georgia Department of Corrections “Data Analysis and Recommendations” presentation to the Criminal Justice Reform Council, November 13, 2012.

Currently it is common for offenders to complete long periods of incarceration, especially for offenses requiring mandatory minimum sentences, and to then be released from prison with no supervision during transition to life outside prison.<sup>47</sup> This poses unnecessary risks for public safety. Max outs also leave crime victims without a source of information about the status of offenders in their cases.

As a result of the recommendation of this Council last year, the Parole Board and GDC are in the process of instituting a new transitional program to be effective in January 2013. Specifically, the agencies have agreed to implement a method of supervision for all "statutory" and "parole" max outs by mandating that all max outs be sent to a Transitional Services Program (half-way house), for a minimum of 3-6 months depending on their release type (parole board mandated max-outs or statutory max-outs). Parole has identified approximately 1,000 offenders who will be entering the program.<sup>48</sup> Each of the state's 13 Transitional Centers has a specialized parole officer<sup>49</sup> to ensure appropriate supervision and assist in developing and providing reentry services within the centers and in the community. Pursuant to the agreement between probation and parole, the specialized parole officers will have the obligation and authority to supervise both classes of targeted offenders at the Transition Centers. The Council recommends that this program continue and that the Parole Board and GDC report back to the Deputy Executive Counsel in the Office of the Governor by November 4, 2013, on the progress of this work.

***Recommendation 4: Continue efforts to eliminate dual supervision by probation and parole in order to promote economy and efficiency.*** Last year, this Council identified the challenge that many offenders were being dually supervised by both probation and parole, resulting in duplication of services and expense.<sup>50</sup> As a result, the Parole Board and GDC formed a special focus group to discuss alternatives and how to utilize resources to best manage offenders who have concurrent probation and parole terms.

The agencies have taken three steps to streamline supervision of dual supervision cases. First, the specialized focus group identified all dual supervision cases and considered the commutation of eligible cases, which would allow probation to supervise the remaining probated sentence. Second, the group also considered the concept of "consolidated banking." Offenders under dual supervision or with probation to follow prison release are now paying fines, fees and restitution towards the court-ordered balance. In some cases, this has allowed probation to place offenders on administrative status, deferring probation conditions and fee payment monitoring to parole.

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<sup>47</sup> In 2012, approximately 1,769 offenders were projected to be released having completed their statutory sentence or parole with no supervision to follow. The total max-out population continues to decrease in Georgia as the state continues to benefit from an increase in the percentage of inmate admissions with probation to follow (split sentences ) from 51 percent in 2000 to 81.3 percent in 2012. Source: Georgia Department of Corrections "Data Analysis and Recommendations" presentation to the Criminal Justice Reform Council, November 13, 2012.

<sup>48</sup> Board of Pardons and Paroles.

<sup>49</sup> The FY 2013 budget (HB 742) included \$1 million to provide for these specialized parole officers.

<sup>50</sup> The Council likewise recognized the inherent challenges presented legally in addressing this issue by virtue of the constitutional authority of the Parole board and applicable constitutional separation of powers issues.

This reduces the redundant supervision efforts, prevents dual payment responsibility, and expedites collections of court-ordered fees regardless of the supervision entity. A third initiative to increase efficiency is dual certification. The Peace Officers Standard and Training Council has recently agreed to award parole and probation officers with dual certification and new officers now graduate with this dual certification. Existing officers are expected to obtain this dual certification in the near future.

The Council recommends that the Parole Board and GDC continue their joint efforts to reduce and eventually eliminate dual supervision. The Council recommends that the Parole Board and GDC report back to the Deputy Executive Counsel in the Office of the Governor by November 4, 2013, on the progress of this work.

***Recommendation 5: Establish mandatory minimum safety valves.*** Last year, the Council suggested allowing judges to depart from mandatory minimum sentences for drug trafficking under specific circumstances. This year, the Council again discussed the role that mandatory minimums play in the growth of the prison population and the restriction of judicial discretion.

The Council again recommends that the General Assembly consider implementing a mandatory minimum safety valve for drug trafficking offenses that would allow judges to depart from the mandatory minimum sentence under specific circumstances. The Council also recommends implementing a safety valve that authorizes courts to deviate from the mandatory minimum when the prosecutor and defense counsel agree to the deviation for serious violent offenders and sexual offenders under O.C.G.A. §§ 17-10-6.1 and 17-10-6.2. This concept would promote “truth in pleading” by permitting the judge to sentence the defendant in accordance with the plea agreement which may deviate from the statutory minimum sentence. The Council recommends that any legislative action initiated in response to this recommendation afford due and appropriate consideration to ensuring compliance with the Victims Bill of Rights pursuant to Chapter 15 of Title 17.

***Recommendation 6: Develop and implement a front-end risk assessment tool.*** Last year, the Council made a recommendation to authorize the Administrative Office of the Courts (AOC) and GDC to establish a pilot program that would implement a risk assessment tool to identify prison-bound, non-violent drug and property offenders (without a prior violent, sex, drug sale, or trafficking conviction) who could be safely diverted from prison. As a result, the FY 2013 budget included \$175,000 for GDC to begin implementing a pilot program.<sup>51</sup>

GDC is currently working with Applied Research Services, Inc. to develop a risk tool and the pilot program, which should begin in 2013. The Council reasserts its interest in developing this

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<sup>51</sup> HB 742 (2012):

[http://opb.georgia.gov/sites/opb.georgia.gov/files/imported/vgn/images/portal/cit\\_1210/25/2/184887319HB%20742%20Signed%20Bill.pdf](http://opb.georgia.gov/sites/opb.georgia.gov/files/imported/vgn/images/portal/cit_1210/25/2/184887319HB%20742%20Signed%20Bill.pdf).



tool and recommends that the GDC report back to the Deputy Executive Counsel in the Office of the Governor by November 4, 2013 on the progress of the pilot programs and, if applicable, any necessary reforms or resources that may be necessary to implement the tool statewide.

***Recommendation 7: Require offenders to pay the cost of drug screens.*** The Council proposes requiring all offenders on probation or parole to pay the costs of drug screens. In the aggregate, recapturing this cost would help free resources for justice reinvestment. The GDC and the Parole Board should develop the parameters and rules governing drug screens, including a sliding fee schedule that permits waivers for indigency.

***Recommendation 8: Award conditional driver's licenses for accountability court participants.*** On September 21, 2012, the Judicial Council of Georgia promulgated standards for Georgia Accountability Courts.<sup>52</sup> Included among the adult drug court standards is the obligation that participants regularly attend drug court hearings, participate in substance abuse treatment, submit to random drug screens, and maintain employment.<sup>53</sup>

In compliance with these standards, accountability courts are required to implement a system of sanctions and rewards as a coordinated strategy to govern drug court participant compliance. Compliance with these rules is more difficult for offenders who have a suspended driver's license.<sup>54</sup>

The Council recommends that the General Assembly consider legislation authorizing, with attendant due process rights, accountability court judges to direct the Department of Driver Services to conditionally reinstate or suspend driving privileges for accountability court participants as a reward or sanction based upon their progress and behavior while in the court program. Reinstatement should be upon conditions consistent with those currently set forth in Georgia law for DUI cases to reflect that the inability to drive would cause extreme hardship to the participant and that the participant could not reasonably obtain other transportation and would be prohibited from completing his/her accountability court requirements absent reinstatement. The participant's limited driving privileges should be upon such conditions as the judge deems necessary to ensure compliance with the conditions of the accountability court.

***Recommendation 9: Ensure ongoing oversight of criminal justice reforms.*** GDC and the Parole Board have begun to implement many of the reforms outlined in the Council's 2011 report and resulting legislation (HB 1176). To assist with this implementation, the state requested Phase II technical assistance under the Justice Reinvestment Initiative of the Bureau of Justice Assistance of the U.S. Department of Justice. Georgia's application was accepted in the fall of

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<sup>52</sup> See: [http://georgiacourts.gov/files/JC\\_Standards%for%20Accountability%20Court.pdf](http://georgiacourts.gov/files/JC_Standards%for%20Accountability%20Court.pdf).

<sup>53</sup> These standards are based on the National Association of Drug Court Professionals' Ten Key Components.

<sup>54</sup> In many instances the driver's licenses of these accountability court participants are suspended as a result of a prior conviction for a violation of the Georgia Controlled Substances Act. See, e.g., O.C.G.A. § 40-5-75.

2012, and the Vera Institute of Justice (Vera) has been identified as the technical assistance provider for the state. This assistance has begun, and will focus on several reforms from last year, including but not limited to: developing and tracking key performance measures, instituting electronic sentencing packets, and implementing pre-sentence risk assessment pilot programs.

The Council has received testimony from the Department of Corrections and Vera. The Council recommends that there be ongoing oversight of the implementation of all sentencing and corrections reforms to ensure that the state is achieving the outcomes intended by the Council, the governor, the legislature, and the judiciary. The Council suggests that an ongoing oversight council be created and composed of legislative, executive, and judicial branch members, as well as representatives from the various sectors of the criminal justice system at the state and local level. The oversight council would be charged with monitoring the implementation work being conducted by GDC with the assistance of Vera, considering any further recommendations from GDC and Vera, and reporting back to the General Assembly on any additional recommendations for future legislation and policy options.

As Georgia already has several criminal justice boards and coordinating entities, the Council's duties should be limited to overseeing implementation of HB 1176 and any legislation that is created by this report.

## APPENDIX A

### Glossary

\* Definitions based on O.C.G.A. §15-11-2

\*\* Definitions derived from the Georgia Department of Juvenile Justice definitions:  
<http://www.djj.state.ga.us/ResourceLibrary/resFactSheetsGlossary.shtml>

\*\*\* Definitions developed in consultation with the Georgia Department of Juvenile Justice

\*\* \*\*Definitions derived from the United States Office of Juvenile Justice and Delinquency Prevention Glossary:  
<http://www.ojjdp.gov/grantees/pm/glossary.html#E>

**Adjudication\*\*:** The process for determining if allegations brought forth in the juvenile court petition are true. An adjudicatory hearing is held to determine the facts of the case and an appropriate course of action.

**Assessment Tool\*\*:** An assessment instrument used to objectively calculate specific factors. Examples of juvenile justice assessment tools include risk, detention, needs, and classification instruments. Agencies and researchers frequently combine these types of tools into singular instruments, as is the case with Georgia's Comprehensive Risk and Needs Assessment, and there may be other various relevant youth measurements that may also fall under this heading. To ensure accuracy of the tool, the instrument must be re-normed and validated. A norming of such a tool is a comparison to a standard, or recognition of patterns that result from the use of the tools, so as to initially calculate or to later reconsider the scoring and the usage of such an instrument. Validation is any combination of statistical processes used to determine how accurate the representation created by the tool is of that which it intends to measure.

**Commitment\*\*:** A juvenile court disposition which places a youth in the custody of the DJJ for supervision, treatment, and rehabilitation. Under operation of law, the commitment order is valid for 2 years. DJJ makes the placement determination of whether the youth should be placed in the YDC or on an alternate placement. Most often, a youth is committed when probation and/or other services available to the court have failed to prevent a youth from returning to the court on either a new offense(s) or violation of probation.

**Delinquent\*:** A juvenile who has committed a delinquent act and is in need of treatment or rehabilitation.

#### **Delinquent Act\*:**

A) An act designated a crime by the laws of Georgia, or by the laws of another state if the act occurred in that state, under federal laws, or by local ordinance, and the crime is not

an offense that is one applicable only to a child<sup>55</sup> and is not a juvenile traffic offense as defined in O.C.G.A. § 15-11-73;

(B) The act of disobeying the terms of supervision contained in a court order which has been directed to a child who has been adjudged to have committed a delinquent act; or

(C) Failing to appear as required by a citation issued with regard to a violation of O.C.G.A. § 3-3-23.

**Designated Felony Commitment\*\*:** A juvenile court adjudication that a youth has committed certain felony acts and is a disposition in which a youth has met certain criteria, which indicates the youth requires restrictive custody. The juvenile court judge determines whether or not a youth requires restrictive custody as well as the length of time (from 12 to 60 months) a youth must be placed in a Youth Development Campus facility. Commitments with restrictive custody have restrictions on terminations and reduce the intensive level of aftercare supervision. Under operation of law, the commitment orders with restrictive custody are valid for 5 years or until a youth is 21 years old.

**Disposition\*\*\*\*:** Sanction ordered or treatment plan decided upon or initiated in a particular case by a juvenile court. The range of options available to a court typically includes commitment to an institution; placement in a group or foster home or other residential facility; probation (either regular or intensive supervision); referral to an outside agency, day treatment, or mental health program; or imposition of a fine, community service, or restitution.

**Evidence-Based Program and/or Practice\*\*\*\*:** Programs and practices that have been shown, through rigorous evaluation and replication, to be effective at preventing or reducing juvenile delinquency or victimization, or related risk factors. Evidence-based programs or practices can come from many valid sources (e.g., Blueprints for Violence Prevention, OJJDP's Model Programs Guide). Evidence-based practices may also include practices adopted by agencies, organizations or staff which are generally recognized as "best practice" based on research literature and/or the degree to which the practice is based on a clear, well-articulated theory or conceptual framework for delinquency or victimization prevention and/or intervention.

**Group Homes\*\*:** Group home placement is a placement for unruly or delinquent youth that come from unstable home situations. Group counseling is an integral part of all group home programs even though each home has a unique program.

**Intake\*\*:** The process for determining whether the interests of the public or the juvenile require the filing of a petition with the juvenile court. Generally, a Juvenile Probation Parole Specialist

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<sup>55</sup> O.C.G.A. § 15-11-2(12)(C).

receives, reviews, and processes complaints, recommends detention or release where necessary, and provides services for juveniles and their families, including diversion and referral to other community agencies.

**Juvenile<sup>56\*</sup>**: Any individual who is:

(A) Under the age of 17 years;

(B) Under the age of 21 years, who committed an act of delinquency before reaching the age of 17 years, and who has been placed under the supervision of the court or on probation to the court; or

(C) Under the age of 18 years, if alleged to be a "deprived child" or a "status offender" as defined by O.C.G.A. §15-11-2.

**Non-Secure Residential Facility\*\*\***: Community residential programs that include group homes, emergency shelters, wilderness/outdoor therapeutic programs, and other placements that provide 24-hour care in a residential setting.

**Probation\*\*\*\***: Cases in which youth are placed on court-ordered supervision. A violation occurs when a youth violates the terms of the probation.

**Recidivism\*\*\***: An adjudication of delinquency in juvenile court or a finding of guilt in adult court for an offense committed within 3 years of release from an out-of-home facility or placement on community supervision.

**Regional Youth Detention Centers (RYDC)\*\*\***: DJJ secure facilities that provide temporary, secure care and supervision of youth who are charged with status offenses, delinquent offenses, or crimes or delinquent offense or who have been found guilty of status offenses, delinquent offenses, or crimes and are awaiting disposition of their cases by a juvenile or superior court. Additionally, some youth are held in RYDCs while awaiting a YDC or community-based placement more suitable to his/her assessed needs.

**Secure Residential Facility\*\*\***: A secure YDC or RYDC.<sup>57</sup>

**Status offender\***: A juvenile who is charged with or adjudicated of an offense which would not be a crime if it were committed by an adult, in other words, an act which is only an offense

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<sup>56</sup> Juvenile as used in this report has the substantially the same definition as "child" in O.C.G.A. §15-11-2.

<sup>57</sup> Psychiatric Residential Treatment Facilities (PRTF) are secure facilities. However, for purposes of this report they are not included in this definition because DJJ youth in PRTFs are actually paid for through DJJ's non-secure residential placement budget, and are included in the non-secure residential population data.

because of the perpetrator's status as a child. Such offenses include, but are not limited to, truancy, running away from home, incorrigibility, and unruly behavior.

**Youth Development Campuses (YDC)\*\*:** YDCs are secure residential institutions providing academic, recreational, vocational, medical, mental health, counseling and religious services for those youth committed to the Department of Juvenile Justice, or convicted by a Superior Court for an offense not included in O.C.G.A. § 15-11-28 (murder, voluntary manslaughter, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery, armed robbery with a firearm).

## APPENDIX B

### Policy Recommendation 1: Two-Class System within the Designated Felony Act

The following provides details of the two-class system for the Designated Felony Act that the Council designed with the assistance of key stakeholders including judges, prosecutors and defense counsel. The Council submits these details for consideration by the governor and the General Assembly.

#### Designated Felony Act: Dispositional Sanctions

	Class A	Class B
<b>Disposition</b>	Confinement Terms: no minimum, maximum of 60 months. <sup>58</sup>  Total Commitment to DJJ: up to 60 months.	Confinement Terms: no minimum, maximum 18 months. <sup>59</sup>  Total Commitment to DJJ: up to 36 months.
<b>Intensive Supervision</b>	12 months following confinement (no change).	6 months (either following confinement or initial 6 months of supervision).
<b>Placement</b>	Juveniles must serve their time in a YDC unless there is a diagnosis of developmental disability and they are not amenable to treatment within a YDC (in which case they may be placed in an appropriate staff secure or non-secure residential facility). DJJ must give notice to the court and the prosecution when a juvenile is moved to a non-YDC facility as a result of a diagnosis of developmental disability. The prosecutor is authorized to notify the victim.	Medium and High Risk – Must serve ½ of their disposition in a YDC, unless there is a diagnosis of developmental disability and they are not amenable to treatment within a YDC (in which case they could be placed in an appropriate staff secure or non-secure residential facility). During the second half of their disposition, any medium or high risk youth may be transitioned to a staff secure or non-secure residential facility.  Low-risk – Rebuttable presumption that they would not require restrictive custody; if ordered by the judge, however, the judge must make a finding of fact, in addition to the offense, as to why restrictive custody is required. In addition, juvenile would serve their time in a staff secure or non-secure residential facility if available.
<b>Risk Level</b>	Require that the judge include risk level as a finding of fact at disposition, and if the offender is low risk, make a finding of fact as to why restrictive custody is required.	Require that the judge include risk level as a finding of fact at disposition, and if the offender is low risk, make a finding of fact as to why restrictive custody is required.

<sup>58</sup> Restrictive custody is still required in any case where the child is found to have committed a Designated Felony Act in which the child inflicted serious physical injury upon another person who is 62 years of age or more as currently provided for in O.C.G.A. § 15-11-63(d).

<sup>59</sup> *Ibid.*

## Designated Felony Act: Offense Breakdown

Class A	Class B
Murder (SB 440) <sup>60</sup>	
Attempted murder	
Voluntary manslaughter (SB 440) <sup>61</sup>	
Rape (SB 440) <sup>62</sup>	
Aggravated sodomy (SB 440) <sup>63</sup>	
Aggravated child molestation (SB 440) <sup>64</sup>	
Aggravated sexual battery (SB 440) <sup>65</sup>	
Aggravated battery	
Escape, if by a juvenile previously adjudicated to have committed a designated felony	
Armed robbery with a firearm (SB 440) <sup>66</sup>	
Armed robbery not involving a firearm	
Kidnapping	Attempted kidnapping
Arson in the first degree	Arson in the second degree
Aggravated assault when the person commits the assault: (1) with intent to murder, to rape, or to rob; (2) with a deadly weapon or with any object, device, or instrument, which when used offensively against a person, is likely to and actually does result in serious bodily injury; (3) without legal justification by discharging a firearm from within a motor vehicle toward a person or persons; (4) on a peace officer, a person who is 65 years of age or older, a correctional officer, or an officer of the court; or (5) involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone	Aggravated assault with a deadly weapon or with any object, device, or instrument, which when used offensively against a person, is likely to result in serious bodily injury but which does NOT result in serious bodily injury  Aggravated assault (all others)
Hijacking a motor vehicle	Theft of a motor vehicle (2 <sup>nd</sup> or subsequent adjudication)
4 <sup>th</sup> or subsequent where the current or at least one of those previous includes a felony crime against person or a felony sexual offense	4 <sup>th</sup> or subsequent where the current and none of the previous include a felony crime against person or a felony sexual offense
Trafficking in cocaine, illegal drugs, marijuana or methamphetamine	Trafficking in cocaine, illegal drugs, marijuana or methamphetamine (at disposition the court shall find the offense is a class B offense if the circumstances do not involve sale, manufacture, or delivery of the illegal drug and only involves possession)
Street gang activity that involves one of the following: Racketeering; stalking; aggravated sodomy, statutory rape, aggravated sexual battery; escape; aiding or encouraging escape; offenses relating to dangerous instrumentalities;	Street gang activity involving any offense of criminal trespass or criminal damage to property

<sup>60</sup> SB 440 refers to offenses under O.C.G.A. § 15-11-28(b) that are in the exclusive jurisdiction of the superior court. These offenses currently are Designated Felony offenses if transferred back to juvenile court under O.C.G.A. § 15-11-63(a)(2)(D). Under this proposal these offenses would remain under the exclusive jurisdiction of the superior court and would be treated as Class A Designated Felony offenses if transferred back to juvenile court.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*



<p>offenses related to security of a correctional facility; and any offense that involves violence, possession of a weapon or use of a weapon</p>	
	<p>Possession of a handgun by a person under the age of 18 (2<sup>nd</sup> or subsequent adjudication)</p>
	<p>Carrying weapons within school safety zones, at school functions, or on school property (2<sup>nd</sup> or subsequent adjudication or 1<sup>st</sup> adjudication involving (i) any weapon together with an assault, (ii) a firearm, (iii) a dangerous weapon or machine gun)</p>
	<p>Offenses relating to explosive devices</p>
	<p>Hoax devices or interference with officers (2<sup>nd</sup> or subsequent adjudication)</p>
	<p>Battery of a teacher or other school personnel</p>
	<p>Racketeering</p>
	<p>Smash-and-grab burglary</p>