

Report of the Georgia Council on Criminal Justice Reform



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Michael P. Boggs

Justice
Supreme Court of Georgia
Co-Chair

Carey A. Miller

Executive Counsel
Governor Nathan Deal
Co-Chair

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Executive Summary

In an American era marked by intense political partisanship, criminal justice reform is one policy area where the right and left have found some common ground. Across the country, legislators in statehouses large and small are uniting to rein in prison growth through initiatives that hold offenders accountable while reducing costs, crime, and recidivism. Texas pioneered the approach in 2007, and Louisiana – the nation’s most incarcerated state – passed a strong package of criminal justice reforms in mid-2017, capping a wave of change that has rolled through more than three dozen states. Against this backdrop, Georgia, under the leadership of Governor Nathan Deal, stands out as a national model. Working steadily since 2011, Georgia has profoundly reshaped its adult and juvenile correctional systems, earning widespread acclaim for its comprehensive approach and promising results.

The Governor and General Assembly embarked on reform at a time of great urgency for the state. After two decades of dramatic growth in the prison population, Georgia’s annual spending on adult corrections had doubled, from \$492 million to more than \$1 billion. Despite this substantial investment, the state’s 30 percent recidivism rate had remained virtually unchanged for 10 years. Meanwhile, projections called for another wave of prison growth over the next half-decade, along with \$264 million more in taxpayer costs. Rather than pour more money into prisons and experience more disappointing results, Governor Deal and legislators changed course.

Determined to improve the performance of the state’s correctional system to better protect public safety and control spending, the General Assembly passed and Governor Deal signed HB 265, a resolution that created the bipartisan, inter-branch Special Council on Criminal Justice Reform for Georgians (Special Council) in 2011. The Special Council was directed to:

- Address the growth of the state’s prison population, contain corrections costs, and adopt efficiencies and strategies that result in more effective offender management;
- Improve public safety by reinvesting a portion of the savings into strategies that reduce crime and recidivism; and
- Hold offenders accountable by strengthening community-based supervision, sanctions, and services.

The Special Council spent its first year scrutinizing state sentencing and corrections data to identify the dynamics driving prison growth. With technical assistance from the

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Public Safety Performance Project of The Pew Charitable Trusts (Pew), the Council also examined state correctional policies and practices and gathered input from prosecutors, sheriffs, crime victim advocates, judges, county officials, and other stakeholders. In November 2011, the Special Council released a report detailing its findings.

The report proposed a broad range of data-driven reforms that prioritized prison beds for violent, career criminals while strengthening probation, drug courts, and other sentencing alternatives for nonviolent individuals. At the request of Governor Deal, many of these policy proposals were included in HB 1176, which passed unanimously in both chambers of the General Assembly and was signed into law by the Governor on May 2, 2012.

“We studied this important issue for a year, met with all the stakeholders, weighed the pros and cons, and delivered a product that passed with total support from both sides of the aisle. That’s amazing, particularly on an issue that’s so often at the center of partisan divides.”

***Governor Nathan Deal
May 2, 2012***

With a strong framework for reform of the adult system in place after the 2012 legislative session, Governor Deal extended the term of the Special Council, expanded its membership, and broadened its focus to include Georgia’s poorly performing, high-cost juvenile justice system. Heavily reliant on expensive, out-of-home facilities, the \$300-million-a-year system was producing disappointing results. More than half the youth in the system were re-adjudicated delinquent or convicted of a criminal offense within three years of release, a rate that had held steady since 2003. For juveniles released from secure youth development campuses, the recidivism rate was even higher – 65 percent.

After an extensive analysis of the system and input from a broad spectrum of stakeholders, the Special Council developed a package of data-driven proposals to focus out-of-home placements on high-risk youth and divert lower level juveniles into community programs proven to reduce recidivism. Many of the recommendations were included as wide-ranging reforms in HB 242, which passed without a single no vote in the General Assembly and was signed by Governor Deal on May 2, 2013. Expressing hope that the legislation would help more of Georgia’s most troubled kids avoid a downward spiral into adult prison, the Governor declared the reform “a milestone” of his first term.

A Focus on Reentry

While continuing its vigilance over implementation of the juvenile and adult system improvements, the Special Council in 2013 expanded its efforts to a new phase of criminal justice reform, reentry. The foundation for this work was laid in March 2013, when the Special Council was recreated as the Georgia Council on Criminal Justice Reform (Council) through passage of HB 349. Soon after, Governor Deal issued an executive order appointing 15 members to the newly constituted Council and extending their terms to five years. In its new statutory and more permanent form, the Council was now poised to tackle more complex, multi-year initiatives.

Among such initiatives was the creation of a comprehensive approach to offender reentry, the critical junction between incarceration and the resumption of community life. Given research documenting the strong link between successful reentry and recidivism reduction, Governor Deal asked the Council to help Georgia ensure that every person released from prison received the tools and support needed to succeed in the community. After an assessment of Georgia's reentry services, the Council concluded that while there was much to applaud, the state's approach suffered from balkanization, the absence of a structure to guide efforts among myriad agencies, and other barriers to success. In response, the Council in late 2013 launched the Georgia Prisoner Reentry Initiative (GA-PRI), a five-year plan to transform the state's approach to recidivism. To coordinate the effort, the Governor created, by executive order, the Governor's Office of Transition, Support and Reentry.

The GA-PRI has two key objectives: to improve public safety by reducing crimes committed by former offenders, thereby reducing the number of crime victims, and to boost success rates of Georgians leaving prison by providing them with a seamless plan of services and supervision, from the time of incarceration through their reintegration in the community. The initiative was scheduled for phase-in over three years. It began with six Community Pilot Sites in 2015 and had expanded to 17 sites statewide by the end of 2016. To monitor the public safety effects of reforms, officials are tracking offenders' successful completion of community supervision as well as recidivism, defined as a new felony conviction within three years of release.

Supported by more than \$60 million in state and federal funds as well as significant ongoing grant support, Georgia's investment in reentry shines brightly among the states – and the investment is paying dividends. While official data on two-year recidivism rates will not be available until the end of 2018, early indications show that numbers are trending in the right direction.

Improving Felony Probation

In 2016, the Council turned its focus to Georgia's sprawling felony probation system. At the time, nearly 206,000 people were on felony probation in Georgia and the state had the highest felony probation rate in the country—twice that of Texas and four times the rate in North Carolina. Continuing the pattern set during earlier phases of reform, the Council spent months on an exhaustive study of Georgia's probation, prison, sentencing, and arrest data. The effort also included gathering input from a wide range of professionals in the criminal justice system. Experts from The Council of State Governments Justice Center, in partnership with Pew and the federal Bureau of Justice Assistance, provided technical help.

The Council identified two primary forces that were contributing to Georgia's high felony probation rate. First, probation was used widely as a sentence in lieu of incarceration and in combination with imprisonment as a split sentence, and secondly, Georgia had a history of imposing relatively lengthy felony probation terms. The Council also learned that people who fail on probation were a significant driver of admissions to prison. More than two out of three people admitted to prison were sent there for probation and parole revocations, either for new crimes or violations of supervision conditions.

To address the problems, the Council approved a package of recommendations to improve probation practices and, ultimately, reduce recidivism. Projections showed that if the recommendations were fully implemented, the state would reduce the forecasted prison population by up to 5 percent by FY2022, avoiding as much as \$245 million in spending. The recommendations formed the foundation for SB 174. Approved unanimously in the General Assembly during the 2017 legislative session, the bill concentrated intensive supervision on high-risk people while allowing certain low-risk people on probation to shift to unsupervised status after two years. The bill also limited the length of probation terms for people who demonstrate compliance with supervision. And, addressing the large number of people on probation who have trouble meeting their financial obligations, SB 174 required judges to waive fines, fees, and surcharges – or convert them into community service hours – for felony sentences if a person is found to be indigent or would otherwise incur a significant financial hardship.

Promising Results

As the Council concludes its seventh year of work, it is increasingly clear that the reforms enacted to date are improving the effectiveness and fairness of Georgia's criminal justice system and producing benefits for taxpayers as well as offenders and their families. With help from a growing team of dedicated partners across the state,

Georgia is creating a criminal justice system that keeps the public safe while ensuring people in prison who are motivated to change receive the support they need to rebuild their lives upon release. While some positive outcomes will take time to materialize, many benefits of Georgia’s reform initiative are visible today.

In the adult system, one key measure of progress is the size of Georgia’s prison population. At the end of 2017, the state prison population stood at 52,962 – down from a peak of 54,895 in July 2012 and well below the more than 60,000 inmates Georgia had been projected to incarcerate by 2018, absent reform. The jail backlog, meanwhile, dropped from a high of 5,338 people in March of 2009 to 925 people in December 2017. Finally, annual commitments to prison also have fallen substantially, from 21,650 in 2009 to 17,616 in 2017 – the lowest number of commitments since 2002.

“From a national vantage point, Georgia continues to set a very high bar for other states in both the approach it’s taken and the results it’s getting. What’s happening here resonates loudly in capitals across the country where people understand the significance of a large, conservative Southern state making such aggressive and comprehensive reforms.”

Adam Gelb

Director, The Pew Charitable Trust’s Public Safety Performance Project

Georgia also continues to report a substantial decline in the number of African-Americans behind bars. In 2009, two out of three men in state prison were African-American; by 2017 that proportion, while still substantial, had dipped to 60 percent. Additional declines in that proportion are expected as the number of black men committed to prison continues to drop. While overall prison commitments decreased 18.6 percent between 2009 and 2017, commitments of black men dropped 29.7 percent over the same timeframe. The number of black women committed to prison fell 38.2 percent during that period, while the number of white women committed to prison increased 8 percent. Overall, the number of African-Americans committed to prison in 2017 – 9,298 – was at its lowest level since 1987.

Another mark of progress is that Georgia is increasingly using its most expensive correctional sanction – prison – for its most serious offenders. In 2009, 58 percent of the state’s prison beds were occupied by Georgia’s most serious offenders; now that proportion stands at 68 percent. This shift is an important goal of criminal justice reform, and it reflects policy changes put in place since reform efforts began in 2011. Georgia is now focusing incarceration on those who represent a threat to public safety while

diverting many nonviolent individuals to proven alternative programs, including accountability courts.

Such courts have flourished under criminal justice reform. At the start of 2018, Georgia had 149 accountability courts operating in all 49 judicial circuits. In FY2017, the number of new participants entering such courts increased by 24 percent statewide, and approximately 9,100 individuals were served. Managing such cases through the special courts – including adult drug, DUI, and mental health courts as well as family treatment courts, veterans treatment courts, and juvenile accountability courts – enabled Georgia to avert about \$75 million in incarceration costs. And if Georgia had not offered an accountability court alternative, individuals with demonstrated substance abuse issues likely would have landed in state prison and county jails.

Along with creating a more effective and equitable justice system, Georgia's reforms are producing significant savings for taxpayers. Prior to the adoption of reforms in 2011, Georgia's prison population was expected to increase by 8 percent over five years, growth that would have required the state to spend \$264 million to expand capacity. Instead, the inmate population declined, and Georgia has used savings from these averted costs to reinvest more than \$68 million in the adult system through accountability courts, vocational and on-the-job training, the reentry initiative, and Residential Substance Abuse Treatment facilities and programs. Such reinvestment has been critical to producing and sustaining the progress experienced in Georgia thus far, a pattern that will continue with the Council's 2018 recommendations.

On the juvenile side, Georgia continues to reduce the number of youth removed from their homes and placed in secure confinement. Since the state's new framework for juvenile justice took effect in January 2014, the number of youth in secure confinement has dropped 36 percent and total commitments to the Department of Juvenile Justice are down by 46 percent. More youths are managed in the community today, as every judicial circuit in Georgia now has access to cognitive behavior intervention programs proven to reduce juvenile recidivism.

Driving such change are two important sources of funding, the Juvenile Justice Incentive Grant and Community Services Grant programs. Each year, \$6 million in grants pour into evidence-based sentencing options throughout the state. As of January 2018, nearly all of Georgia's at-risk juvenile population – 98 percent – lived in a county served by one of the grant programs. Since 2014, more than 8,000 youth have received grant-funded individual and/or group therapy, all of it delivered through models proven to reduce juvenile recidivism.

Overall, the shrinking juvenile commitment population has enabled the state to take two detention centers and one Youth Development Campus off-line, representing 269 beds.

The 2017-2018 Focus: Misdemeanor Bail Reform

In 2017, the Council's principal focus was on improving pretrial justice in Georgia, particularly misdemeanor bail practices. Across the country, a growing number of researchers, justice system stakeholders, and advocacy groups have highlighted troubling consequences of money-based bail and have recommended changes. For those who cannot afford bail, the human costs can be significant. People held in jail pretrial often lose their jobs, leaving them unable to support their families and ultimately unable to meet their court-imposed financial obligations. Conversely, studies show that people released on bail who are employed, connected with their families, and are not abusing drugs or alcohol are more likely to make their court appearance.

Studies also show that pretrial detention leads to harsher criminal justice outcomes, and that the use of money-based bail exacerbates racial disparities in the justice system. In addition, multiple studies have highlighted the impact of current bail practices on public safety. People held in jail for two to three days after arrest are more likely to be arrested on a new charge while the first case is pending than people who are released within the first day. Two-year recidivism rates are also higher for those jailed longer pretrial.

The fiscal consequences of money bail are another factor driving calls for reform. Given the size of the incarcerated pretrial population, costs of holding those unable to post bail – especially for local governments – can be considerable. Roughly 60 percent of jail inmates nationwide are pretrial, and three out of four of those being held in custody pretrial are people accused of property, drug, or other nonviolent offenses. In Georgia, as of early January 2018, 64 percent of all jail inmates were awaiting trial. While many people held pretrial are neither a danger to public safety nor a flight risk, their detention contributes significantly to the \$9-billion jail bill paid annually by local governments across the United States. Importantly, these considerations are even more consequential for misdemeanants in Georgia. In Georgia, while bail may be denied under certain circumstances to those charged with felony offenses, judges are statutorily *prohibited* from denying pretrial bail to any person charged with a misdemeanor. Consequently, the crucial question for misdemeanants in Georgia is not whether they will get bail, but the amount at which it will be set.

In recent years, a wave of litigation has challenged money bail and forced some jurisdictions to make changes resulting in the prompt release of people charged with

misdemeanors. Courts that have considered the constitutionality of money bail practices have typically held that it is a violation of the Fourteenth Amendment’s Equal Protection and Due Process clauses to impose money bail without individualized consideration of a person’s ability to pay, and, secondly, to incarcerate defendants solely because they are unable to post monetary bail. Reflecting the rulings and the calls for reform, many states have begun rewriting their bail laws to bring them in line with legal and evidence-based pretrial justice practices.

The Council’s focus on bail was driven in part by a nationally prominent case involving the Georgia City of Calhoun - *Maurice Walker v. City of Calhoun*, United States District Court for the Northern District of Georgia, Rome Division, Civil Action No. 4:15-CV-170HLM. In 2016, the U.S. District Court for the Northern District of Georgia issued a preliminary injunction ordering the city to implement post-arrest procedures that comply with the Constitution, and specifying that, until then, it had to release any misdemeanor arrestees on their own recognizance or on an unsecured bond. The court also said the city could not keep people accused of misdemeanors in custody for any amount of time solely because they could not afford a monetary bond. The case remained tangled in appeals at the start of 2018.

In examining the issue during the past year, the Council was assisted by the Ad Hoc Committee on Misdemeanor Bail Reform established by the Judicial Council of Georgia. After lengthy discussions about the Committee’s findings and proposals, the Council adopted a package of recommendations that, among other things, call for quicker review of a misdemeanor defendant’s ability to pay bail and expand opportunities for non-monetary release of people accused of low-level, nonviolent misdemeanors.

More details on the Council’s findings and its specific bail reform recommendations can be found in the body of this report.

2018 Adult System Recommendations

While the Council’s key goal for 2017-2018 was improving Georgia’s policies and procedures governing misdemeanor bail, members also took on other challenges. Highlights of that work are provided here, with details located in the body of the report.

Parole

In recognition of a recent policy change by the Centers for Medicare and Medicaid (CMS), the Council recommends expanding opportunities for Medicaid-eligible, paroled individuals to be housed in nursing home facilities as a condition of their parole. In the past, CMS denied reimbursement of nursing home services if a person was restricted to the home as a condition of parole, but that barrier no longer exists. Adopting this new

policy shift could save the state millions in incarceration and medical expenses for certain inmates.

Felony probation

To further advance the goals of SB 174, the Council continues to examine how effectively the bill's directives have been translated into practice. Toward that end, the Council recommends requiring a timely hearing for petitions to terminate probation pursuant to OCGA 42-8-37(c).

Accountability Courts

A key element in Georgia's criminal justice reform initiative, accountability courts can effectively reduce recidivism among offenders diagnosed with a substance use disorder and/or mental illness. To strengthen court programs, the Council recommends that operational costs incurred by local law enforcement agencies and county governments that facilitate accountability court participation be supported by supplemental grants.

Background Checks for Long-Term Care Home Employees

Most surrounding states use the FBI's fingerprint-based national background check to screen prospective employees seeking work at nursing homes. This ensures that applicants who are convicted of crimes that make them ineligible to work in nursing homes do not move to an adjoining state and obtain employment in a facility. Georgia, however, uses a more limited background check system, a name-based query that reviews applicants only for crimes that occur in the state.

In 2017, the Council learned that there are approximately 25,000 employees in more than 10 different facility categories that provide care for the elderly and are subject only to the name-based background check. To strengthen protections for residents of such facilities, the Council recommends that Georgia adopt the FBI's fingerprint-based national background check for employees and employee applicants with direct access to the elderly. The Department of Community Health has funds from a federal grant to accomplish this change.

Reentry

The Council adopted multiple recommendations to strengthen Georgia's reentry initiative, most of them addressing the critical challenge returning citizens face in obtaining housing. Among other things, the Council suggested that Georgia explore the feasibility of a long-term rent subsidy program for returning citizens with permanent physical, developmental, intellectual, or brain trauma disabilities. Another recommendation focused on creating a privately funded risk-mitigation fund for landlords, allowing them to seek reimbursement for costs associated with eviction or property damage in the event of a failed tenancy. Recognizing the need for widespread

collaboration to assist former offenders with reintegration, the Council also called for formation of a statewide public-private partnership to serve as a clearinghouse for best practices, information, and resources that support people leaving prisons and jails.

Firearm-related Offenses

The Council adopted several recommendations enhancing penalties for offenses involving firearms. Among the crimes targeted for increased punishment are possession of a firearm by a convicted felon, first offender, or conditional discharge probationer and possession of a firearm with an altered serial number.

2018 Juvenile Justice Recommendations

On the juvenile side, the Council focused its 2018 recommendations on strengthening the Juvenile Data Exchange (JDEX). JDEX is a repository of criminal history and legal data that juvenile courts use to administer risk and needs assessments to youth, a key step in detention and dispositional decision-making. But the validity of such assessments is compromised when data are incomplete. Specifically, missing or unknown information can lead to an inaccurate scoring that does not reflect a youth's actual risk level. As such, the subsequent detention or disposition decision based upon the inaccurate score may not adequately protect the public or serve the rehabilitation needs of the youth.

To remedy the problem, the Council recommends that counties be required to report needed juvenile data to JDEX.

The Path Ahead

In 2011, few members of the Council envisioned the profound change that would sweep across the adult and juvenile corrections landscape in the years to come – or the tremendous contributions that would pour in from across the state to get the job done. Led by Governor Deal, Council members sought to improve the fairness and effectiveness of our justice system while ensuring taxpayers received the best possible public safety return on their investment. Along the way, we anchored our recommendations in data, research, and evidence about what works to reduce criminal offending. And we constantly sought input from those on the front lines of criminal justice, whose experience and contributions were invaluable.

Thanks to the support of the Georgia General Assembly and countless criminal justice stakeholders and community partners, we believe Georgia now has a sentencing and corrections framework capable of delivering sustained, positive outcomes over time. Prison growth and related costs are under control, and our landmark reentry initiative is

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increasing the odds that formerly incarcerated Georgians will succeed when they return home. Perhaps most importantly, a much-needed overhaul of our approach to handling delinquent youth will ensure that troubled young Georgians get the guidance they need to steer a productive path into the future.

Much work remains to be done, but after seven years in business, the Georgia Council on Criminal Justice Reform is scheduled to sunset in July 2018. Before we put down our pencils, we will encourage the adoption of our most recent recommendations, outlined in the pages that follow, and we will urge the creation of new committees to carry on work in several areas. In particular, there is more ground to cover and improvements to be made with our cash bail system, and we hope to have continued dialogue on possible future reforms. In addition, we believe more attention must be paid to the intersection of mental illness and incarceration. The research is clear: when people with mental health challenges are diverted to effective treatment, recidivism rates decrease. We believe this area deserves a hard look and that evidence-based reforms are needed to reduce the number of people with mental illness behind bars, conserving taxpayer dollars.

Finally, we are convinced that oversight in some form is necessary to ensure that cost savings from reforms are reinvested wisely and that those administering justice in Georgia are fully aware of the new policies and practices that have transformed the state's approach to crime and punishment so quickly. For now, we offer our sincere thanks to those who have assisted this Council in creating a criminal justice system capable of keeping communities safe while ensuring offenders who are motivated to change receive the tools they need to lead productive, law-abiding lives.

The Council respectfully submits this 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 2018 legislative session.

The Georgia Council on Criminal Justice Reform

In 2011, the Georgia General Assembly passed, and Governor Deal signed, HB 265 to create the bipartisan, inter-branch Special Council on Criminal Justice Reform for Georgians. The Special Council's mandate was to:

- Address the growth of the state's prison population, contain corrections costs, and increase efficiencies and effectiveness that result in better offender management;
- Improve public safety by reinvesting a portion of the savings into strategies that reduce crime and recidivism; and
- Hold offenders accountable by strengthening community-based supervision, sanctions, and services.

In its first year, the Special Council produced policy recommendations that led to significant adult corrections and sentencing reform enacted through HB 1176, which passed the General Assembly unanimously and was signed by Governor Deal on May 2, 2012. Soon after, the Governor expanded the Special Council's membership and directed it to focus on Georgia's juvenile justice system. That work led to the passage of HB 242, which prompted a sweeping rewrite of the juvenile code.

In March 2013, the General Assembly passed and Governor Deal subsequently signed HB 349, which created the newly named Georgia Council on Criminal Justice Reform in statute and gave it a mandate to improve public safety through better oversight of the adult and juvenile correctional systems. HB 349 also extended Council terms to five years, allowing members to tackle more complex projects over their longer tenure.

Members of the Georgia Council on Criminal Justice Reform

Hon. Bill Cowsert
Senator, 46th District

Hon. Chuck Efstrotation
Representative, 104th
District

Hon. Michael P. Boggs
Justice, Supreme Court of
Georgia (Co-Chair)

Hon. Jason Deal
Superior Court Judge,
Northeastern Circuit

Hon. Steve Teske
Judge, Clayton County
Juvenile Court

Hon. George Hartwig
District Attorney, Houston
Judicial Circuit

Hon. Scott Berry
Sheriff, Oconee County

Hon. Stephanie Woodard
Solicitor General, Hall
County

Tracy J. BeMent
District Court
Administrator, Tenth
Judicial District

R. David Botts, Esq.
Criminal Defense Attorney

Roy Copeland, Esq.
Criminal Defense Attorney
and Assistant Professor,
Valdosta State University

David J. Dunn, Esq.
Circuit Public Defender,
Lookout Mountain Circuit

Carey A. Miller, Esq.
Executive Counsel, Office
of the Governor (Co-Chair)

Teresa Roseborough, Esq.
Executive V.P., General
Counsel and Corporate
Secretary, The Home Depot

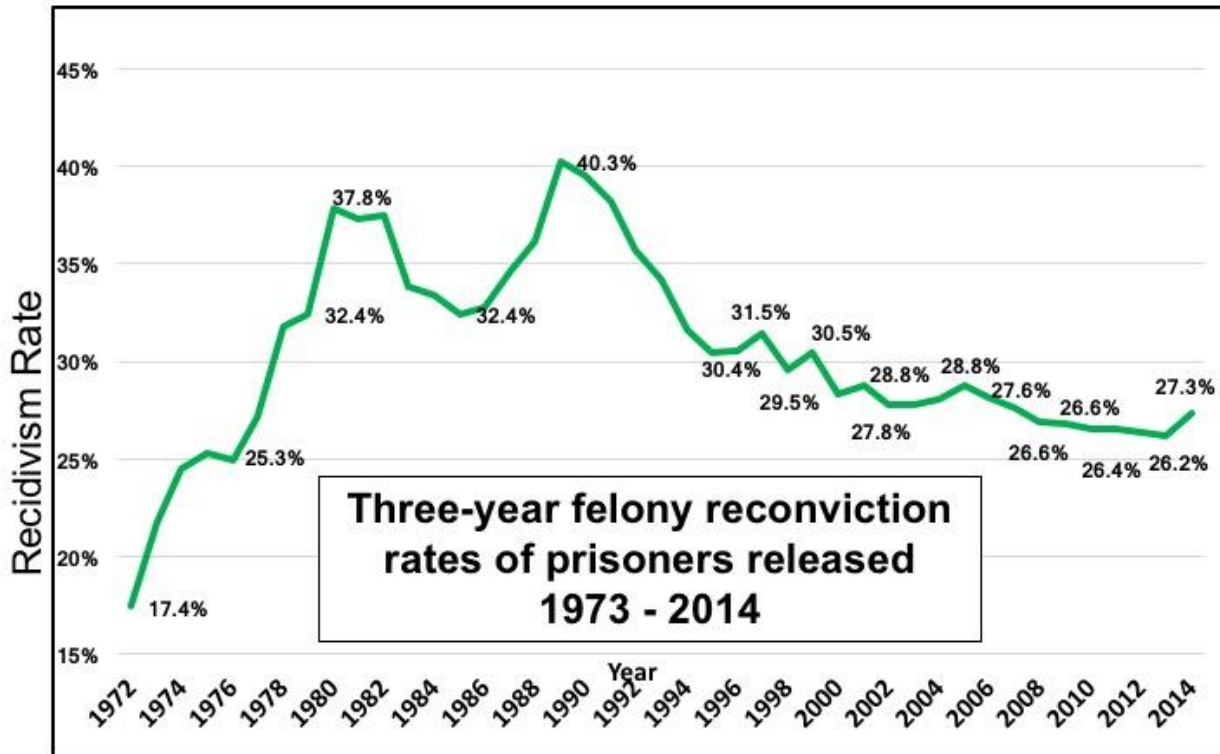
Christine Van Dross, Esq.
Circuit Public Defender,
Clayton Judicial Circuit

Adult System: Progress and Recommendations

Background

Like many other states, Georgia experienced tremendous growth in its prison system as the 20th Century ended and the 21st began. Between 1990 and 2011, the state’s adult prison population more than doubled to nearly 56,000 inmates.¹ State spending on corrections spiked as well, from \$492 million to more than \$1 billion annually.² At the start of 2011, Georgia’s prisons were operating at 107 percent of capacity, and the state’s incarceration rate – 1 in 70 adults behind bars – was the fourth highest in the nation.³ Five-year projections forecast additional growth in the inmate population and another \$264 million in prison costs.⁴ Meanwhile, Georgia’s recidivism rate—the proportion of inmates reconvicted within three years of release—had barely budged for a decade, hovering around 30 percent.⁵

Recidivism Rates Since 1972



Source: Georgia Department of Corrections. All inmate facilities.

Confronting similar challenges, more than a dozen states – beginning with Texas in 2007 and including Kentucky, North Carolina, Ohio, and Arkansas – had launched reforms to rein in corrections spending and obtain a better public safety dividend from their criminal justice systems. Grouped under the banner of “justice reinvestment,” these reforms typically sought to control costs by prioritizing expensive prison space for people convicted of serious and violent offenses and diverting savings from reduced incarceration to evidence-based alternatives for those committing lower level crimes.

In 2011, Georgia joined the list of states transforming their correctional approach. Resolving to improve public safety, hold offenders accountable, and curb prison spending, the Georgia General Assembly passed and Governor Deal signed HB 265 to create the bipartisan, inter-branch Special Council on Criminal Justice Reform for Georgians. The Council’s first project was examining sentencing and corrections data to identify factors driving growth in the adult prison system. With technical assistance from The Pew Charitable Trusts (Pew), members also took a hard look at state correctional policies and practices and solicited input from prosecutors, sheriffs, crime victim advocates, county officials, and other stakeholders. The intensive review took almost a year and revealed that drug and property offenders, many of whom were at low risk to reoffend, made up nearly 60 percent of all prison admissions.⁶ The Council also found that Georgia’s judges had few sentencing options aside from prison, and that probation and parole agencies lacked the authority and capacity to adequately supervise offenders in the community or provide interventions likely to reduce recidivism.⁷

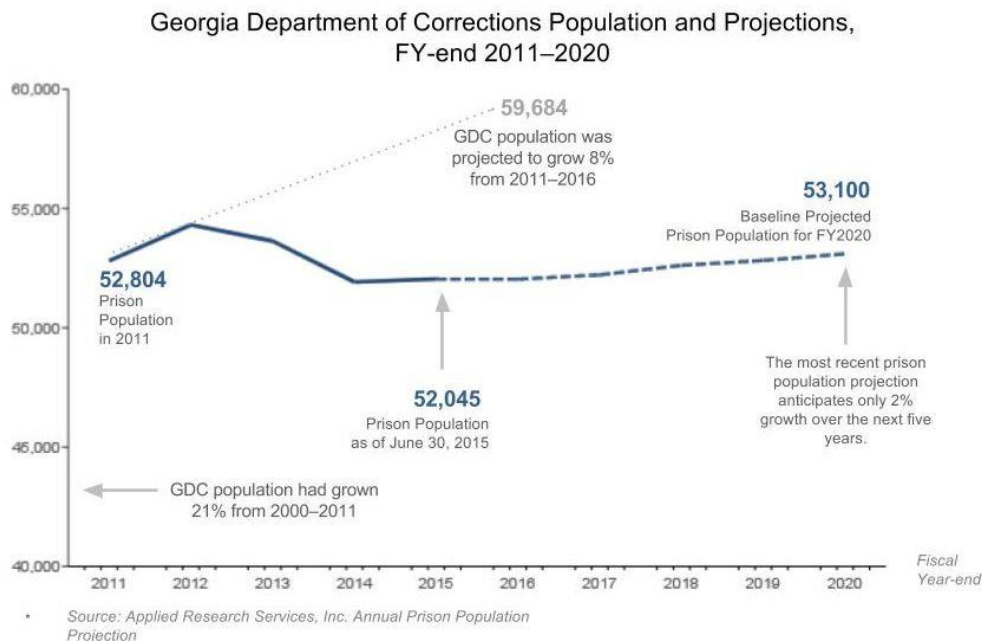
In November 2011, the Council released a comprehensive report detailing its findings and proposing a broad range of data-driven reforms. Most of these proposals were included in HB 1176, which passed unanimously in both chambers of the Georgia General Assembly and was signed by the Governor on May 2, 2012. The package of reforms was expected to enable Georgia to avoid the projected 8 percent growth of the inmate population as well as \$264 million in associated new costs.⁸

Less Incarceration, Lower Taxpayer Costs

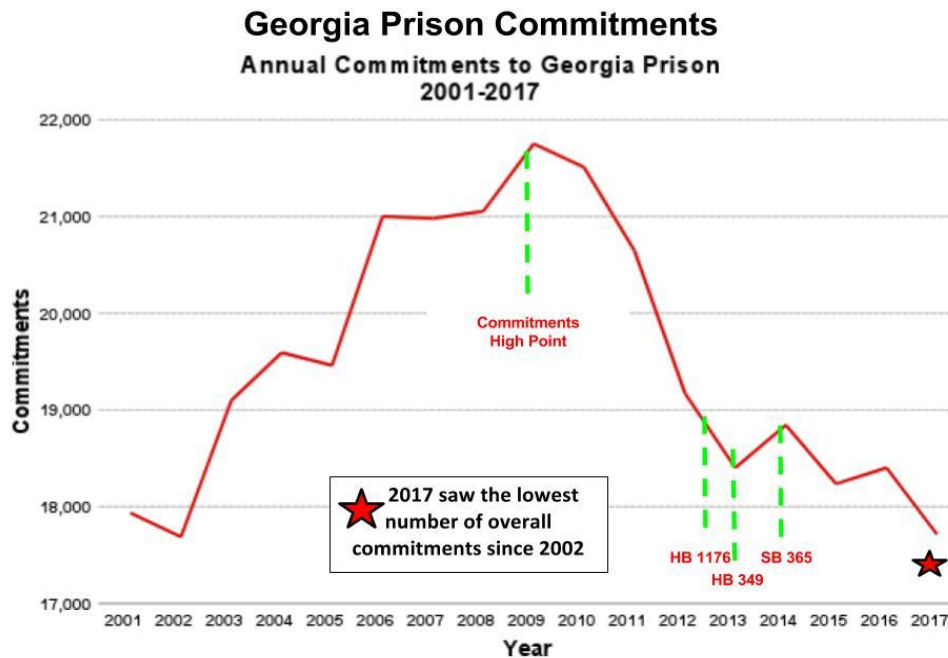
Passage of HB 1176 and the adoption of related administrative policies set in motion broad reforms across the adult correctional system. While it will take time for the full array of positive impacts to unfold, progress is visible on many fronts, from the size and composition of the prison population to the number of people in county jails awaiting transfer to a state facility. At the end of 2017, Georgia’s prison population stood at 52,962.⁹ This figure represents a drop from the peak of 54,895 inmates in July 2012 and is well below the more than 60,000 inmates Georgia had been projected to incarcerate

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by 2018, absent reform.¹⁰ The jail backlog, meanwhile, stood at just 925 as of December 2017, far below the high of 5,338 people awaiting assignment to a state facility in March of 2009.¹¹



Georgia continues to make strides on another benchmark – reducing annual commitments to prison. In 2009, the state recorded 21,651 admissions to prison; in 2017, the number was 17,616.¹² The state system also continues to experience a shrinking population of African-Americans behind bars. In 2009, two-thirds of the state’s male prison population was African-American; by 2017 that proportion, while still substantial, had dipped to 60 percent. The downward trajectory is expected to continue as the number of black men committed to prison continues its steady decline. While overall prison commitments dropped 18.6 percent between 2009 and 2017, commitments of black males dropped 29.7 percent over the same timeframe. During the same period, the number of black women declined 38.2 percent, while the number of white women committed to prison increased 8 percent. Overall, the number of African-Americans committed to prison in 2017 – 9,298 – was at its lowest level since 1987.¹³



Source: Georgia Department of Corrections

Georgia Prison Commitments Racial Composition 2009 -2017

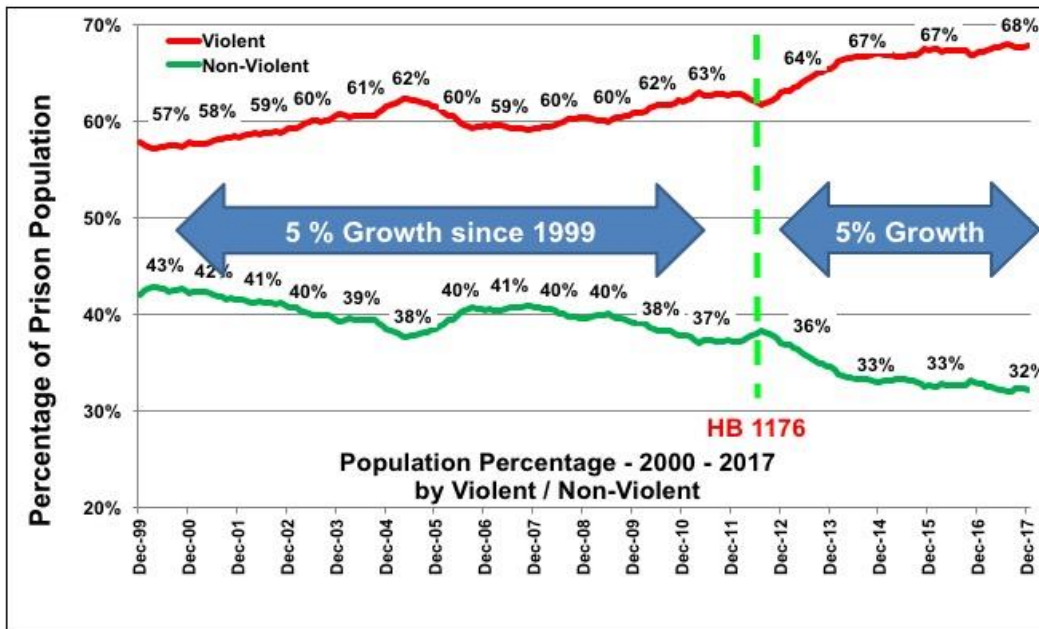
Calendar Year	Total Commitments	African American	Caucasian
2009	21,651	13,369 (61% of Total)	7,294
2014	18,747	10,567	7,488
2015	18,037	9,908	7,571
2016	18,305	9,945	7,717
2017	17,616	9,298 (52% of Total)	7,786
Change 2009 - 2017	-18.6%	-30.4%	6.7%
Change 2014 - 2017	-6.1%	-12.1%	3.8%

The number of African Americans entering the prison system in 2017 (9,298) was the lowest since 1987.

Source: Georgia Department of Corrections

Another important goal of criminal justice reform is prioritizing prison space – the costliest correctional sanction – for people convicted of the most serious offenses while strengthening evidence-based alternatives for those who commit less serious crimes. The numbers show that Georgia has made strong progress toward meeting this objective: at the start of 2009, 58 percent of the state’s prison beds were occupied by Georgia’s most serious offenders; now that proportion stands at 68 percent.¹⁴

Violent vs. Non-Violent Population Trends



Source: Georgia Department of Corrections

On the fiscal front, the state’s criminal justice reforms are conserving taxpayer dollars and ensuring that Georgians obtain better public safety results from their correctional system. When the first wave of reform began in 2011, projections called for the prison population to exceed 60,000 inmates by the end of 2016, growth that was expected to cost the state an additional \$264 million in general expenses and new construction.¹⁵ Through the package of initiatives passed in subsequent years, Georgia has avoided those costs and used much of the savings to invest in accountability courts, vocational and on-the-job training, the Georgia Prisoner Reentry Initiative, and Residential Substance Abuse Treatment facilities and programs. This reinvestment has been a critical force in producing the positive outcomes experienced in Georgia, a pattern expected to continue as additional reforms are put in place. On a related note, the dramatic reduction of the population of people held in jail pending assignment to a state facility has cut the state’s jail subsidy spending from more than \$25 million per year in 2011 to zero in FY2017.¹⁶

Accountability Courts

Accountability courts have played an integral role in Georgia’s criminal justice reforms and are particularly helpful in reducing recidivism among offenders diagnosed with a substance use disorder and/or mental illness. Since FY2013, the state has reinvested

more than \$113 million in accountability courts through grants to local programs.¹⁷ That funding, along with committed involvement from partner organizations in the community, has led to a dramatic expansion of accountability court participation.

At the start of 2018, Georgia had 149 accountability courts operating in all 49 of the state's judicial circuits, up from 47 judicial circuits the prior year. In FY2017, the number of new participants entering such courts increased by 24 percent statewide, and approximately 8,900 individuals were served. Managing such cases through the special courts – including drug, DUI, mental health, family treatment, veterans, and juvenile accountability courts – enabled Georgia to avert about \$113 million in incarceration costs. Mirroring past trends, adult felony drug and DUI courts maintained the largest caseloads. At the end of FY2017, adult felony drug courts alone had 2,747 active participants. If Georgia had lacked the accountability court alternative, individuals with demonstrated substance abuse issues likely would have been in state prison.¹⁸

“The results have been far more successful than I or anyone else could have ever contemplated, and we have shown we can make these reforms without jeopardizing public safety.”

***Governor Nathan Deal
Atlanta Journal Constitution, January 25, 2018***

In 2015, the General Assembly passed HB 328 and created the Council of Accountability Court Judges (CACJ), leading to increased statewide collaboration among courts. The CACJ sets standards and practices for all accountability court divisions based on national best practices, such as those from the National Drug Court Institute and Substance Abuse and Mental Health Services Administration. Membership consists of judges who preside over a drug court division, mental health court division, veterans court division, DUI court division, and/or a family treatment court division.

Last year, the passage of SB 174 further codified the operation of DUI and other accountability courts and clarified the oversight responsibilities of the CACJ. The organization continues to conduct certification and peer review of accountability courts to ensure adherence to best practices, and also partners with state departments to streamline court processes, promote treatment best practices, and promote parity in service access throughout the state.

In FY2018, the CACJ, with the support of the Judicial Council/Administrative Office of the Courts and the Criminal Justice Coordinating Council, began building a data

repository to receive accountability court data electronically. All certified and/or funded accountability courts report program activity at a quarterly rate to the CACJ. This new automated data submission process will support the continued adherence to statutory requirements and evidence-based best practices by court programs, contribute to the state’s ability to analyze and report data to the Legislature and identified stakeholders, and enhance efforts to serve as many eligible Georgians as possible through accountability court programs.

Crime Trends and Criminal Justice Reform

Throughout its seven years of work, the Council has never lost sight of its foremost obligation – to make recommendations that improve efficiencies and equity within the criminal justice system while ensuring public safety. Fortunately, Georgia’s reform efforts demonstrate that it is possible to simultaneously reduce imprisonment *and* crime rates, saving hundreds of millions of taxpayer dollars. Between 2008 and 2016, Georgia reduced its overall imprisonment rate by 24 percent while cutting its index crime rate by 6 percent. Thirty-four other states also reduced incarceration and crime simultaneously during the same period.¹⁹ (See chart in Appendix A.)

“Above all, Georgia’s criminal justice reform efforts demonstrate that it is possible to simultaneously reduce imprisonment and crime rates, saving hundreds of millions of taxpayer dollars while holding offenders accountable.”

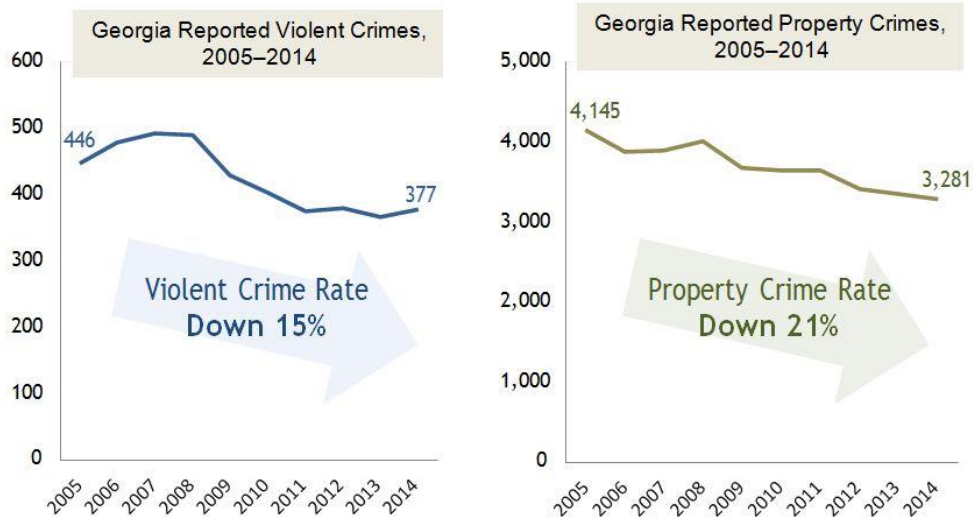
***Michael P. Boggs
Justice, Supreme Court of Georgia
Co-Chairman, Georgia Council on Criminal Justice Reform***

To be sure, a recent FBI report indicating a national increase in violent crime in 2015 and 2016 merits attention, and the Council has made every effort to analyze potential crime factors that might be related to Georgia’s reforms. The fact is, however, that national, state, and local crime rates shift for reasons that are complex and poorly understood.²⁰ And overall, violent and property crime rates have dropped by more than half since peaking in 1991, reaching lows not seen since the late 1960s.²¹

Even though violent crime rates have inched up nationally, it is important, we think, to dispel any argument that seeks to establish a connection between Georgia’s reform efforts and such increases. Toward that end, the Council believes that certain objective and verifiable data should be highlighted. For example, from 2014 to 2016, Georgia’s statewide violent crime rate increased 5 percent, but in its largest city, Atlanta, the violent crime rate dropped by 12 percent. Also noteworthy is the fact that over a longer period, from 2005 to 2014, statewide violent crimes decreased 15 percent. Moreover,

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and given the longstanding focus of Georgia’s reform initiatives on nonviolent drug and property offenders, it is important to note that property and drug crime rates continue to drop. Between 2004 and 2014, for example, property crimes fell by 21 percent. This drop reflects national declines in property and drug crime rates, which are half of what they were in the 1990s. In sum, the national property crime rate is the lowest since 1966 and national violent crime levels have been lower than the current rate only five times since 1971.



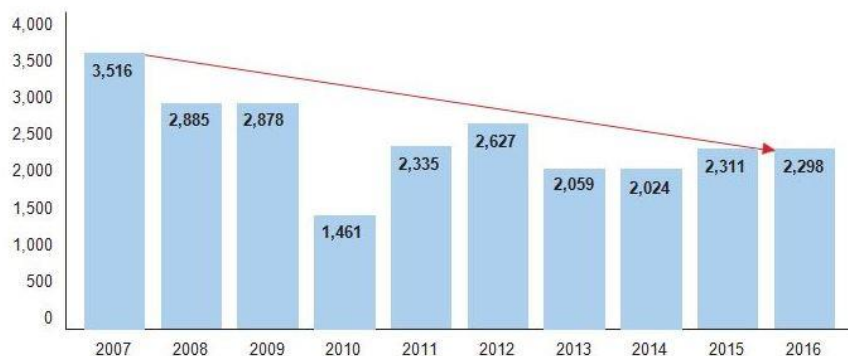
Source: Uniform Crime Reports, Index Crimes and Arrests

Additionally, data suggest that nonviolent property and drug offenders targeted by Georgia’s reform efforts are not contributing to an increase in crime. Between 2007 and 2016, the number of people revoked to prison for parole violations dropped from 3,516 to 2,298, the number of people revoked to prison for new convictions fell by 666, and the number of people revoked for technical violations of parole fell by 552.²² During the same period, while the probation population grew 17 percent, the number of people on probation who were revoked to prison fell from 4,080 to 3,394.²³ Moreover, the reconviction rate for probationers has not changed. Between 2004 and 2013, the rate of probationers reconvicted for a felony within three years of starting supervision remained flat at 23 percent.²⁴ And, all of this occurred while Georgians experienced a 21 percent decline in the violent crime rate between 2006 and 2015.²⁵

35-percent decline in parole revocations to prison

Between 2007 and 2016, the number of people revoked to prison for parole violations dropped from 3,516 to 2,298. The number of people revoked to prison for new convictions fell by 666, and the number of people revoked for technical violations of conditions of parole fell by 552.

People Admitted to Prison Due to Parole Violations



ADDITIONAL PUBLIC SAFETY MEASURES



Steady reconviction rate for people on probation

Between 2004 and 2013, the rate of probationers reconvicted for a felony within three years of starting supervision remained flat at 23 percent.



17-percent decline in probation revocations

Between 2007 and 2016, the probation population grew 17 percent, but the number of people on probation who were revoked to prison fell from 4,080 to 3,394.



21-percent decline in violent crime rate

Between 2006 and 2015, the number of violent crimes reported per 100,000 residents declined 21 percent from 478 to 378.

Source: Council of State Governments Justice Center

As noted above, these crime trends have occurred while Georgia has strategically and safely reduced its prison population from nearly 55,000 in 2011, when criminal justice reform began, to approximately 53,000 at the end of 2017. At the same time, Georgia has experienced a substantial drop in prison commitments, from a high of 21,555 in 2009 to 17,616 in 2017 – the lowest number of commitments to prison since 2002.

These outcomes underscore one undeniable fact: Georgia has shown that it is possible to responsibly lower the prison population without adversely affecting public safety. In so doing, Georgia has saved taxpayers hundreds of millions of dollars while ensuring that low-risk, nonviolent offenders are held accountable for their crimes.

Misdemeanor Bail Reform: Findings and Recommendations

In 2017, the Council set its sights on improving pretrial justice in Georgia, with a special focus on misdemeanor bail practices. In recent years, a growing number of researchers, justice system stakeholders, and advocacy groups have highlighted troubling consequences of money-based bail and have recommended changes. Given the size of the incarcerated pretrial population, the fiscal benefits of reform – especially for local governments – can be considerable. Roughly 60 percent of jail inmates nationwide are pretrial, and three out of four of the pretrial group are people accused of property, drug, or other nonviolent offenses.²⁶ While many are neither a danger to public safety nor a flight risk, their detention contributes significantly to the \$9-billion jail bill paid by local governments across the United States each year.²⁷

The calls for reform have been spurred in part by studies showing a range of negative impacts caused by pretrial detention. For those who can't afford bail, some of the human costs are obvious. People held in jail often lose their jobs, leaving them unable to support their families and, ultimately, meet their court-imposed financial obligations. Conversely, studies show that people released on bail who are employed, connected with their families, and are not abusing drugs or alcohol are more likely to make their court appearance.²⁸

Harsher Penalties, Racial Disparities

Pretrial detention also leads to harsher criminal justice outcomes.²⁹ Research has consistently shown that people detained throughout the pretrial period receive harsher penalties than those who obtain release before adjudication. One study, conducted in Harris County, Texas, and focused solely on misdemeanors, found that those who remained detained throughout the pretrial period pleaded guilty at a 25 percent higher rate than similarly situated defendants who were released during the pretrial period.³⁰ Those detained were also 43 percent more likely than those released to receive a jail sentence, and they received sentences that were, on average, twice as long as the sentences of people released pretrial.³¹ One of that study's authors, Assistant Professor Sandra G. Mayson of the University of Georgia School of Law, summed up the findings this way: "Our analysis showed that Harris County's misdemeanor cash bail schedule resulted in the widespread detention of poorer defendants, which skewed case outcomes in favor of the wealthy and increased crime – in addition to costing taxpayers dearly." Another recent study found that that pretrial detention significantly raises the probability of conviction, primarily through an increase in guilty pleas, and also that pretrial detention decreases formal sector employment and the receipt of employment- and tax-related government benefits.³²

The money-based bail system also exacerbates racial disparities in the criminal justice system because it inherently discriminates against poor defendants who are less able to cover bond. According to a report by Harvard Law School’s Criminal Justice Policy Program: “Due to well-established linkages between wealth and race, money bail will often result in increased rates of pretrial detention for Black and Latino defendants. Studies have shown that Black and Hispanic defendants are more likely to be detained pretrial than white defendants and less likely to be able to post money bail as a condition of release. Because pretrial detention has such a profound effect on later-in-the-case outcomes, racial disparities in the application of cash bail may reinforce or exacerbate larger inequalities in rates of incarceration.”³³

Public Safety Impacts, High Taxpayer Costs

Multiple studies have highlighted the impact of current bail practices on public safety.³⁴ One Kentucky study evaluating 153,000 defendants between 2009 and 2010 found that people held in jail for two to three days after arrest were 39 percent more likely to be arrested on a new charge while the first case was pending than people who were released on the first day. The study showed that the negative effects grew more serious the longer those accused of misdemeanors were held. Those jailed for four to seven days, for example, were 50 percent more likely to be arrested for new criminal activity than those released on the first day.³⁵ Two-year recidivism rates were also higher for the group held longer in jail, according to the same study. Those incarcerated for four to seven days were 35 percent more likely to commit a new crime within two years of their prior adjudication than those released within one day of arrest.³⁶

“Many states engaging in bail reform are forgoing money bail in favor of signature or recognizance bonds, using monetary conditions only as a last resort. In imposing non-monetary conditions, states have emphasized the importance of individual review and a preference that only those conditions necessary to ensure public safety and future court appearances be imposed.”

***Professor Lauren Sudeall Lucas
Center for Access to Justice, Georgia State University College of Law***

The fiscal costs of detaining people pretrial are another consequence receiving increased scrutiny.³⁷ Estimates show that budgets for county jail operations rose from \$5.7 billion in 1983 to \$22.2 billion in 2011. These figures do not, however, take into consideration related county costs, such as employee pension benefits and contracted health care to jail inmates, thereby leaving the total economic impact on taxpayers unknown.³⁸ Given the lack of solid data, policymakers and the public are often unaware of the total strain of jail operations on county coffers.³⁹ Nonetheless, the toll of that fiscal

strain is real: 40 percent of jail officials said in a national survey that reducing costs is one of their most serious issues.⁴⁰

Widespread Support for Reform

Over the past four years, a growing chorus of diverse justice system stakeholders have voiced support for the adoption of evidence-based pretrial practices. In 2012, for example, the Conference of State Court Administrators issued a policy paper concluding that “[m]any of those incarcerated pretrial do not present a substantial risk of failure to appear or a threat to public safety, but do lack the financial means to be released. Conversely, some with financial means are released despite a risk of flight or threat to public safety ...”⁴¹ The paper also said that, “Imposing conditions on a person that are appropriate for that individual following a valid pretrial assessment substantially reduces pretrial detention without impairing the judicial process or threatening public safety.”⁴²

Endorsing those conclusions, the Conference of Chief Justices issued a resolution urging that “court leaders promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of non-financial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crime.”⁴³ Numerous other national associations also have issued policy statements or resolutions calling for bail reform. These include: the International Association of Chiefs of Police, the National Sheriffs’ Association, the American Judges Association, the American Bar Association, the American Jail Association, the Association of Prosecuting Attorneys, the National Legal Aid and Defenders Association, the National Association of Criminal Defense Lawyers, the American Probation and Parole Association, and the National Association of Counties.⁴⁴

Reflecting that support, states have begun examining their pre-trial practices and adopting reforms. Legislatures in at least four states – Colorado, Kentucky, New Jersey, and Alaska – recently re-wrote their bail laws to bring them in line with legal and evidence-based pretrial justice practices.⁴⁵ A handful of other states, including Arizona, California, Illinois, Indiana, Maine, Maryland, Nevada, New Mexico, Ohio, Texas, and Utah, have appointed expert panels to examine the issue and the statutory or court rule changes needed to incorporate legal and evidence-based practices.⁴⁶

While reforms vary, there are some common elements.⁴⁷ These include:

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- Requiring mandatory release on personal recognizance or unsecured bond, or a presumption of release on personal recognizance or unsecured bond, in certain low- or moderate-risk cases;
- Monetary conditions are either eliminated or viewed as a last resort, to be imposed only if necessary to ensure future court appearances;
- If monetary conditions are imposed, individualized review of a person's financial status and ability to pay is required;
- Providing by statute for a specific list of non-monetary conditions that may be imposed in lieu of money bail;
- If any conditions are imposed, mandating use of the least restrictive conditions or combination of conditions to ensure public safety and future court appearances;
- If conditions are imposed, creating a procedure for timely review;
- Mandating or strongly encouraging the use of locally validated and empirically based risk assessment tools; and
- Establishing a right to counsel at bail hearings⁴⁸

As part of the committee's information gathering, a team conducted a site visit to see Kentucky's pretrial release process in action. Lessons learned included the need for access to court records and criminal histories, automation of a risk assessment process, clean-up of failure-to-appear designations in criminal histories, and involvement of judges and stakeholders in the pretrial process.

Courts Driving Policy Change

On the legal front, litigation across the country has focused attention on the problems surrounding money bail and forced some jurisdictions to make changes resulting in the prompt release of people charged with misdemeanors. Courts that have considered the constitutionality of money bail practices have typically held that it is a violation of the Fourteenth Amendment's Equal Protection and Due Process clauses to impose money bail without individualized consideration of a person's ability to pay, and, secondly, to incarcerate defendants solely because they are unable to post monetary bail.⁴⁹

In 2017, the U.S. District Court for the Southern District of Texas issued a preliminary injunction requiring judges in Harris County, Texas, to release most people charged with misdemeanors on personal or unsecured bonds.⁵⁰ Similar lawsuits have forced courts in Alabama, Kansas, Louisiana, Missouri, and Mississippi to dramatically transform their bail-setting practices. The bail practices declared unconstitutional in the Harris County case are very close to those used in Georgia, and the state has not been spared from legal challenges. In 2016, the U.S. District Court for the Northern District of Georgia

issued a preliminary injunction ordering the City of Calhoun to implement post-arrest procedures that comply with the Constitution, and specifying that, until then, it had to release any misdemeanor arrestees on their own recognizance or on an unsecured bond. The court also said the city could not keep people accused of misdemeanors in custody for any amount of time solely because they could not afford a monetary bond.⁵¹

The Calhoun case involved Maurice Walker, a man with a mental disorder who was arrested by police in September 2015 after officers responded to a 911 call about a person who appeared drunk on the side of the road. Walker was charged with a misdemeanor offense of being a pedestrian under the influence, and he remained in jail for six days with a bond of \$160. At the time, the city used a misdemeanor bail schedule that set the same bond for every person who had been charged with the same crime. The policy did not consider a defendant's ability to pay.

District Judge Harold Murphy granted the injunction after concluding the city's bail system discriminated against people based on their wealth. Calhoun officials appealed, and in March 2017, the U.S. Court of Appeals vacated the injunction and ruled in favor of the city, saying Murphy's original order was too vague. City officials then came up with a new policy, one that would keep people in jail for no more than two days. At that point, a judge could let defendants go on their own recognizance if they couldn't afford to pay bond. Judge Murphy rejected that policy as well, concluding that even two days behind bars was unfair and discriminated against the poor. He issued a second preliminary injunction and again told the city to draft new rules. That prompted a second appeal by the city, and as of January 2018, the case was back before the 11th Circuit Court of Appeals. Meanwhile, the case has drawn national attention, with former Acting U.S. Atty. Gen. Sally Yates signing an amicus brief filed in November 2017 by Georgetown University Law Center's Institute for Constitutional Advocacy and Protection.

The Council's Review

In examining the issues surrounding pretrial justice in Georgia, the Council was assisted by the Judicial Council Ad Hoc Committee on Misdemeanor Bail Reform, which was led by Chief Judge Wayne M. Purdom of DeKalb County State Court, and included members from the Superior Court, State Court, Magistrate Court, Probate Court and Municipal Court. The Committee's goals in considering changes to bail practices – goals shared by the Council – were threefold:

- Maximize public safety
- Maximize pretrial appearances

- Maximize personal liberty

The committee began by conducting an extensive analysis of the issue, including a legal review of legislative reforms and pending litigation around the country, a review of bail and pretrial detention in Houston, an assessment of current bail and bond practices in Georgia, and a review of articles, case law, and research on bail, pretrial detention, and risk assessment.

The Committee's first meeting began with each member describing the misdemeanor bail practices in their respective courts. Here, the Committee found that many of the members' jurisdictions used a bail schedule, but that a few jurisdictions had abandoned a bail schedule and have instituted the use of a pretrial risk assessment for an individualized bail determination. In order to obtain more information on misdemeanor bail practices statewide, a survey was sent to judges across the state. To learn more about national bail reform trends, the Committee held numerous information gathering meetings that involved presentations from the Pre-Trial Justice Institute (PJI), the director of New Jersey's Administrative Office of the Courts, and Fulton County's Pre-Trial Services division.

Rachel Logvin, vice president at PJI, provided the Committee with information on current national trends in pretrial justice reform. PJI also informed the committee about the use of pretrial risk assessments. There are currently several risk assessment tools in use throughout the country. Georgia could adopt one of those or create its own tool. Logvin stressed that a risk assessment is not meant to replace judicial discretion. Instead, a risk assessment is simply a tool that judges may use in making pretrial release decisions.

“What struck me in examining the research was not so much the adverse impact of pretrial detention on defendants and the substantial monetary costs to the public, both of which I understood, but how inappropriate and unnecessary pretrial detention actually undermines public safety by increasing recidivism.”

***DeKalb County Judge Wayne M. Purdom
Chairman, Ad Hoc Committee on Misdemeanor Bail Reform***

Judge Glenn Grant, director of New Jersey's Administrative Office of the Courts, met with the Committee via video conference to share information about New Jersey's recent efforts on bail reform. Judge Grant said the new system in New Jersey was still in its early stages, and that implementation required a judicial culture shift in addition to changes in statutes and court rules. New Jersey courts have been able to view Failure to Appear (FTA) data since implementation of the reforms, which applied to

misdemeanor and felony offenses, began.

Staff from Fulton County described the county's pretrial services division for the Committee. Fulton County employs several pretrial services officers who conduct intake screenings on people arrested, usually within six to eight hours of arrests. The intake officers can assist the courts in funneling those arrested to accountability courts and other court services and also determine a defendant's eligibility for representation by a public defender. Staff noted that the pretrial services division provided a substantial cost savings for Fulton County – approximately \$7 million dollars per year – because fewer low risk defendants are housed in jail.

The Committee also heard from Mayson, the University of Georgia School of Law professor who has studied bail practices in Harris County, Texas, which are the subject of an ongoing federal lawsuit. Her study found that people who were detained showed several negative trends, including a greater likelihood to commit future offenses when compared to those who were released earlier. Her study excluded those with probation holds and holds from another jurisdiction. She also stated that she had no data related to FTAs because such data was difficult to analyze properly. Members of the Committee noted that this was a problem in Georgia as well.

In addition, the committee heard presentations from a wide range of advocacy groups and stakeholders. These included: Southern Center for Human Rights, Georgia Association of Professional Bondsmen, the Georgia Municipal Association, the Georgia Association of Chiefs of Police, the Georgia Sheriffs' Association, and the American Civil Liberties Union.

The Committee then developed recommendations that focused on several key areas for enhancing pretrial justice in misdemeanor cases. These areas included:

- Facilitating early release by increasing the use of citations and expanding the authority of courts to make bail decisions
- Facilitating release on the least restrictive conditions, including unsecured bonds
- Ensuring that individuals who do not need to be in jail do not remain there due to an inability to pay a secured bond, by implementing a financial ability-to-pay review process
- Ensuring public safety, by stopping many of those who may pose a danger to a victim or the community from buying their way out of jail through a bond schedule before seeing a judge
- Gathering accurate, complete, and uniform data so that judicial officers can make more informed decisions and so that outcomes can be measured

- Providing support, such as court date reminders, to those on pretrial release to help them succeed
- Providing support to judicial officers to help them in their decisions regarding pretrial release, including through the use of pretrial assessment tools

2018 Bail Reform Recommendations

Based on its findings, the Council adopted the following policy recommendations to increase the fairness of Georgia's bail system.

Ability-to-Pay Determination

Recommendation 1: Make explicit the requirement to consider the financial circumstances of a defendant in setting bail.

Recommendation 2: Provide for an expedited financial ability-to-pay determination for purposes of bail only.

When a defendant is arrested upon a warrant and a monetary surety, property, or cash bond is required, an inquiry as to the person's financial ability to post the required bond should be made within 24 hours of arrest. In cases involving a warrantless arrest, a financial inquiry should be conducted within 48 hours of arrest or within 24 hours of issuance of a post-arrest warrant, a written order determining probable cause, or other charging document, whichever time is less. Most courts use a post-arrest warrant to reflect the finding of probable cause of a specific offense that is required to be determined within 48 hours. The court could authorize a court-annexed administrative review, such as through pre-trial services, to undertake such review.

Consideration of financial ability to post a monetary bond should not be limited to situations where the defendant meets a general indigence standard; rather, the standard should be the ability to promptly meet the financial bond requirements of the initial bond set by the court. This determination should not be controlling on a latter finding of indigence.

In cases where a jurisdiction opts to expedite the first appearance timeline, a court would have the option to combine proceedings, such as the conduct of the first appearance hearing and the determination of indigence for provision of counsel. The Council also recommends that the topics covered in the first appearance hearing should

include a review of the financial capacity of the defendant to post any existing bond, if the defendant has not previously been heard on that issue.

Arrest by Citation

Recommendation 1: *Increase the use of citations issued by police officers. State, magistrate, probate, and municipal courts should have the same citation authority.*

Many low-level misdemeanor offenses may not require the setting of a monetary bail. People accused of the following offenses, for example, could *initially* qualify for release without monetary condition other than an unsecured bond: violations of municipal, county, and state authority ordinances, offenses without incarceration as a penalty, and offenses that may be prosecuted with a citation in magistrate court, such as deposit account fraud. Currently, there are slight variants in the citation authority of magistrate, probate, and municipal courts. To avoid confusion, citation authority should be consistent across the courts. Such citation authority, at a minimum, would include misdemeanor offenses such as theft by shoplifting, refund fraud, underage possession of alcohol, and possession of less than an ounce of marijuana.

Specifically, Georgia law on arrest by citation is inconsistent. Under existing statute, law enforcement officers only have the *express* statutory discretion to issue citations for traffic offenses and certain offenses related to minors in possession of alcohol (O.C.G.A. § 17-4-23). However, under current law, magistrate courts can adjudicate cases made by citation for four other *misdemeanor* offenses: drug possession, theft by shoplifting, theft by refund fraud, and criminal trespass. Despite the inconsistency, it appears that law enforcement agencies throughout the state are currently using their discretion to arrest by citation for the limited misdemeanors currently allowed by citation in our magistrate courts. The Council recommends modifying section (a) of O.C.G.A. § 17-4-23 to make the discretionary arrest authority consistent with the magistrate courts' jurisdictional authority. While this recommendation *would not* expand the current discretionary practice of law enforcement to arrest by citation, it would clarify this authority and bring uniformity to existing practices.

The Council further recommends that the state's misdemeanor offenses be reviewed for consideration of possible classification of offenses that might in the future be considered for citations.

Recommendation 2: *Create statutory authorization for a single Uniform Misdemeanor Complaint & Summons Form through the Uniform Rule process, with limited conditions to be authorized as conditions of release.*

To minimize the need for bail, more charges could be handled through citations instead of arrests. As noted in Recommendation 1, the first step would be allowing citations that are authorized for one class of court to be used in other classes of court with concurrent jurisdiction. In some jurisdictions, for example, solicitor-generals prefer to prosecute citation-possible cases in state court with other misdemeanors. The second step is the creation of a Uniform Misdemeanor Complaint & Summons Form similar to the Uniform Traffic Citation that is used throughout the state for traffic-related offenses. The new uniform form would allow for greater use of citations for offenses while also providing the accused with more information on the nature of the offense. The form would also include special conditions appropriate to the most common offenses.

New Jersey's experience is useful as a model for setting conditions associated with summons. Among suggested conditions are instructions that a defendant not return to the scene of an alleged offense [e.g. a store that was the scene of an alleged shoplifting] as well as a condition barring contact with victims named in a citation. These conditions should be carefully limited. A uniform citation or summons form may be adopted for such prosecutions by uniform rule pursuant to Article 6, Section 9, Paragraph 1 of the Georgia Constitution.

Alternatives to Monetary Bond

Recommendation 1: *Explore permitting release on an initial non-monetary bail for individuals whose offenses do not authorize jail time as a sentence.*

Based on its review of the issue, the Council recommends greater opportunities for non-monetary release of people accused of low-level offenses. One example is an individual arrested for an offense that otherwise would be handled with a citation. Other suitable cases would include people accused of violating municipal ordinances or committing any offense for which no jail time is permitted by statute. Any arrestees processed on the listed offenses or for the violation of any municipal ordinance for which an arrest is authorized should be released on non-monetary bail.

In cases involving repeat offenders, it is presumed that should the defendant reoffend while the existing charges are pending, the proper remedy would be revocation of the initial bond in accordance with the procedure outlined in *Hood v. Carstens*, 267 Ga. 579 (1997). Pursuant to O.C.G.A. § 17-6-13, only the initial bond is a matter of right and a second or subsequent bond could be revoked if another offense occurs while the defendant is released subject to a hearing on the revocation of the bond. The right to revoke the initial bond upon the commission of a subsequent penal offense could be spelled out in legislation, if necessary.

The Council recommends further consideration for the possible establishment of a set of offenses for which defendants are to be released on non-monetary bonds (not secured or cash bonds).

Recommendation 2: Provide local courts with the option to authorize unsecured bonds on bail schedules for other misdemeanors.

While a judge reviewing a case on an individual basis should have broad authority to release a person on an unsecured bond, certain misdemeanors are inappropriate for such releases without a judicial review of the case circumstances. The Council recommends that courts be permitted to expand their local list of offenses for which unsecured bonds or other non-monetary releases are preset by a bail schedule.

Recommendation 3: Establish a committee or body to study the use of statutorily authorized alternatives to monetary bond.

Current law permits the sheriff to allow people to post their driver's license as collateral for bail only after being detained for five days and only for amounts up to \$1,000. Allowing a judge by bail schedule to permit the use of a driver's license as collateral earlier and for a greater amount would create another resource for release. Other possible considerations include developing a list of low-level offenses for which release by unsecured bond or release on recognizance is expressly permitted by state law.

Individualizing Bail Determinations

Recommendation 1: Allow for the setting of bond by any judge of a court of inquiry, or sitting thereby by designation.

While legal opinions grant any court of inquiry the ability to set bond, a lack of clarity has prompted judges in many magistrate and municipal courts to hesitate in exercising that authority. This Council recommendation is designed to eliminate such confusion.

Recommendation 2: Allow for the release of individuals with bail-restricted offenses by any judge of a court of inquiry, or sitting thereby by designation.

Under current law, only elected judges may release individuals with bail-restricted offenses. This recommendation extends that authority to appointed judges and those sitting by designation.

Recommendation 3: *Mandate the release on the least restrictive conditions for misdemeanors.*

Generally, bail is used for two purposes – to ensure defendants return to court and to prevent any additional crimes pending the disposition of their cases. Statutory language indicates that a misdemeanor defendant is entitled to an initial bond, and case law supports the concept that a monetary bond that a defendant cannot post amounts to excessive bail. But in practice, absent a special showing, a defendant is typically only released if he or she can post a “standard bond.”

This recommendation emphasizes the statutory presumption of release with respect to misdemeanors, clarifying that pretrial detention is necessary only if the court determines that the defendant is unlikely to return to court or that public safety or the administration of justice is threatened. According to the Pretrial Justice Institute, “least restrictive conditions” is a concept related to excessive bail, as evidenced by the United States Supreme Court’s opinion in Salerno, which explained that conditions of bail must be set at a level designed to assure a constitutionally valid purpose for limiting pretrial freedom “and no more.” This concept encourages courts to use conditions such as pretrial supervision, electronic monitoring, and posting of secured monetary bonds only when necessary to ensure the safety of the public and the defendant’s return to court.

Recommendation 4: *Eliminate a bail schedule for family violence offenses.*

To increase the safety of the alleged victim in family violence cases, the Council recommends eliminating the use of a bail schedule for acts of family violence. Instead, in all family violence cases as defined by O.C.G.A. § 19-13-1, including family violence criminal trespass, bond would be set on a case-by-case basis under the standards set forth in O.C.G.A. § 17-6-1(f)(3), and the “judge shall give particular consideration to the exigencies of the case at hand and shall impose any specific conditions as he or she may deem necessary.”

Effective Pretrial Release

Recommendation 1: *Develop a statewide judicial inquiry system.*

Judges require up to date information on the criminal status and court appearance history of defendants. Currently, access to such data is cumbersome and the data is often outdated or missing critical context. To facilitate the acquisition of such information, development of a statewide judicial inquiry system is necessary. Such

information could be used to automate a tool to assist judges in assessing such information more quickly and effectively.

Recommendation 2: Establish a uniform definition of “failure to appear” and a specific procedure for notation and correction in criminal histories.

The use of “failure to appear” (FTA) data is a key factor in pretrial risk assessments, whether it is considered on a case by case basis or in formal evidence-based risk assessment scoring. Information from other states, as well as the experience of judges in Georgia, suggest that records on FTA notations are problematic.

This recommendation seeks to resolve the problem through creation of an appropriate data definition for FTA notations on criminal records, and by specifying a uniform procedure for the court to correct those notations when warranted. If courts are to rely on such data in the future for formal pretrial risk assessment scoring, improved quality assurance of this data is imperative.

Recommendation 3: Promote greater use of court appearance notifications through the use of electronic reminders and plain language notices.

Many instances of FTA result from individuals forgetting their court dates. Pretrial incarceration of those who miss a court date is not only an expensive burden on local governments, but also causes the same harm as other pretrial incarceration.

Studies show that FTA rates can be decreased substantially by reminder notices. Given such findings, the Council recommends that local jurisdictions use electronic court reminders and evaluate their effectiveness. The Judicial Council should develop a statewide contract setting rates and terms for such notices and make it available for local courts. The use of plain language in notices also has been proven to be more effective than complicated legalese. Therefore, such reminders also should plainly describe the consequences of failing to appear for court.

Recommendation 4: The Council recommends requesting that court-approved notices for appearances and jury service be exempted from the “opt in” requirement for text messages, like the exemption granted for medical appointments.

While the courts are probably exempt from these provisions under current law, electronic notices are most economically conveyed by private vendors who are commercial entities that may be subject to opt-in regulations and liable for penalties for non-compliance.

Best Practices

Recommendation 1: Update Uniform Superior Court Rules on pretrial release to allow for additional options to be utilized at the discretion of local courts.

The Uniform Superior Court Rules provide guidance to local courts on a variety of topics, including the use of pretrial release. In order to provide additional assistance to local courts, these rules should be updated to reflect current best practices in the field while giving local courts the authority to develop programs that model those best practices.

Recommendation 2: Establish a statewide repository of bond schedules.

One troubling characteristic of Georgia’s bail system has been the wide variation in bail amounts set throughout the state. To resolve this problem and ensure transparency, the Council recommends the creation of a central repository of bond schedules. To ensure consistency, the Council suggests revising uniform rules to require the filing of a copy of all bond schedules with the Judicial Council of Georgia.

Recommendation 3: Institute a system of data collection and reporting to the Judicial Council of Georgia to determine the effectiveness of pretrial detention practices.

Pretrial release cannot be effective and reliable without easy access to data, and that requires automation. To better inform policymakers and judges on the use of bail and pretrial detention, the Council recommends development of a statewide data collection system. Data collection should include:

- FTA rates for misdemeanor defendants awaiting arraignment
- Number/rate of misdemeanor bond forfeitures (i.e., for FTAs)
- Recidivism rates for misdemeanor defendants awaiting disposition
- Local jail data analysis of misdemeanor defendants in jail who cannot make bond (e.g., length of stay, bond amounts)

In addition, any changes to the criminal database should consider how data elements may need to be used in automated programs calculating risk assessment scores.

Recommendation 4: Develop a bench card for judges that outlines alternatives to monetary bail.

The Council and the Judicial Council of Georgia have developed several bench cards for judges noting key changes in the law and best practices on a variety of topics. For example, after previous reforms on misdemeanor probation and felony sentencing, a bench card was produced and well received. Such a bench card would be beneficial to note these reforms and the numerous bail reforms and alternatives to monetary bonds.

Recommendation 5: Encourage the use of best practices for pretrial release.

Best practices for pretrial release and supervision programs include:

- Use of evidence-based supervision practices
- Use of validated pre-trial risk assessment
- Notice to defendant of court date at release
- Follow-up notice of court dates (e.g., phone, text, letter)
- Use of plain language in notices when possible, including a clear warning of consequences for non-appearance
- Sharing of data/information on programs
- Establishment of training and protocols
- Tracking of key benchmarks
- Expedited review of initial bond/financial decision
- Earlier access to indigent defense

Another best practice is a timely evaluation of the first evidentiary financial review of the appropriate constraints on monetary bonds by the anticipated trial court – or a judge of another court specifically designated by the trial court. If the case was expected to be tried in the superior court, for instance, that court might choose to designate a particular magistrate to conduct a second financial review with appointed counsel available.

Recommendation 6: Promote judicial education on adopted reforms and national research on pretrial incarceration effects.

Due to the depth and breadth of these reforms, education of the state’s trial judges is critical. In partnership with the Institute for Continuing Judicial Education, efforts should be made to deliver educational content on bail reform and pretrial alternatives through both in-person and web-based sessions for judges and court personnel.

Other Adult System Findings and Recommendations

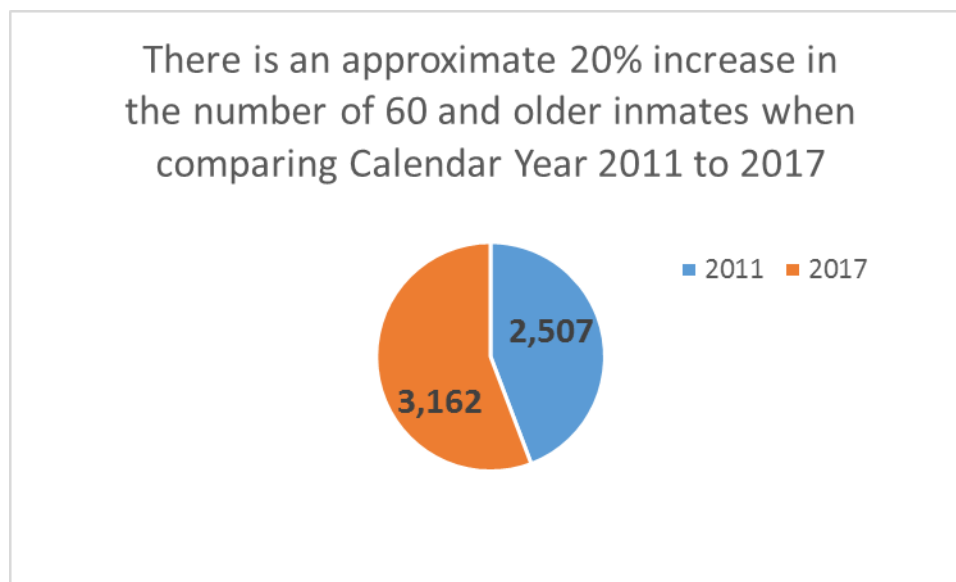
While the Council’s priority for 2017-2018 was improving Georgia’s policies and procedures for misdemeanor bail, members also produced recommendations targeting other aspects of the criminal justice system. Among additional topics receiving Council

attention were: parole, felony probation, accountability courts, the protection of people in long-term care facilities, enhancements of penalties for crimes involving guns, and driving privileges.

Parole

Like other states, Georgia has experienced a continuing increase in the number of prisoners who are over sixty years old. In December 2011, there were 2,507 inmates at or above age 60. By December 2017, there were 3,162, an increase of approximately 20 percent. That growth has occurred despite a drop in the overall prison population.⁵²

In addition to the institutional challenges created by aging inmates, Georgia faces difficulties in properly caring for elderly inmates who may not be eligible for a medical reprieve, but who require heightened medical attention that prisons are not equipped to provide. Many of these individuals might be eligible for parole and Medicaid-funded nursing homes. But to obtain parole, inmates typically must identify a place of residence in the community, and there are few alternatives for offenders requiring intensive medical care. Compounding the problem is the lack of a formalized process to determine whether an inmate is Medicaid-eligible.



Source: Georgia Department of Corrections

These problems were largely attributable to the Centers for Medicare and Medicaid Services' policy of denying reimbursement for nursing home services if a person was restricted to the nursing home as a condition of parole. Within the last two years, however, the policy has changed and now allows for the funding of private nursing

home services for a paroled inmate, even if that inmate is restricted to the home as a parole condition. Despite the change, Georgia parolees have been unable to tap into the federal funds because the state lacks a process for determining Medicaid eligibility and establishing an approved Medicaid provider for parolees.

Creating such a process would open parole consideration for certain inmates that may need to be restricted to a facility because of public safety concerns, while also reducing the burden on prisons to care for a challenging population. While many of these inmates do not have an illness that is immediately life-threatening, they may be eligible for a nursing home environment if they have two or more life skills impaired and/or have a debilitating disease.

Recommendation: *Create a process to determine inmate eligibility for Medicaid-funded nursing home services that will further aid parole determination and placement.*

Felony Probation

In 2016, the Council's primary focus was examining Georgia's adult probation supervision model to determine whether it was producing cost-effective and meaningful public safety results. That work followed the Council's 2015 review of Georgia's misdemeanor probation system, which had been the subject of broad criticism in audits, in the media, and by the courts. The Council's study of misdemeanor probation produced a dozen recommendations to address deficiencies and improve transparency and fairness in misdemeanor probation supervision services.⁵³

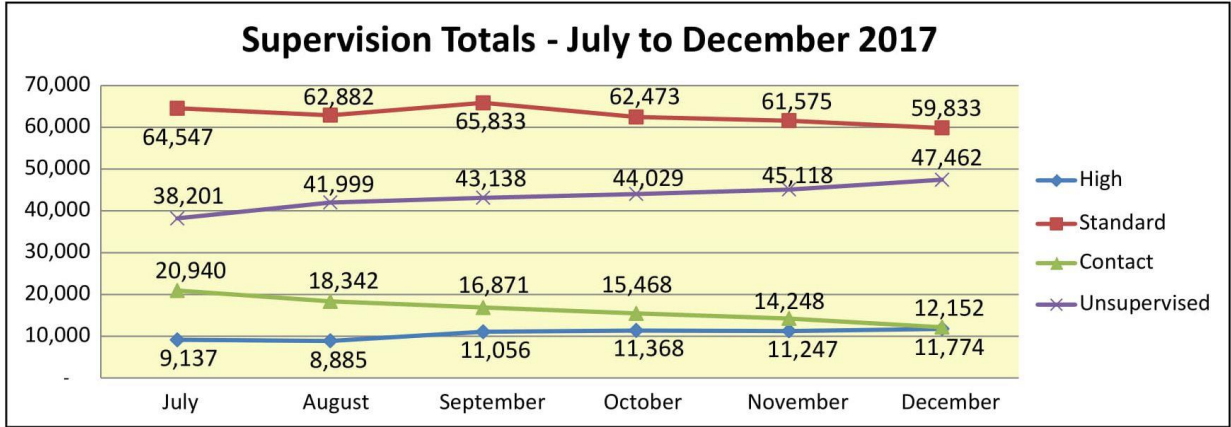
The Council's work on felony probation was aided by experts from The Council of State Governments Justice Center (CSG), who helped analyze relevant state data and develop recommendations for improvements. Felony probation was targeted in part because Georgia had the highest felony probation rate in the country—a rate twice that of Texas and four times the rate in North Carolina.⁵⁴ Based on the most recent data gathered by the Bureau of Justice Statistics, in 2015 Georgia had 5,570 adults on probation (misdemeanor and felony) per 100,000 residents. While this number represented a decline from the 6,161 adults on probation the prior year, it far exceeded the national average of 1,568 adults on probation per 100,000 residents.⁵⁵ As of December 2016, 156,563 people in Georgia were on active probation, and four out of five of them had been under supervision for more than a year. Another 47,429 people were on unsupervised status.⁵⁶

The Council's analysis found that two primary factors were fueling Georgia's high felony probation rate: one, the use of probation as a sentence in lieu of incarceration and in combination with imprisonment in what is known as a "split" sentence, and two, the state's history of imposing relatively long felony probation terms. The Council also learned that probation revocations were a key reason Georgia's incarceration rate had remained high despite recent criminal justice reforms. About 68 percent of people admitted to prison, the Council found, had likely been revoked from probation or parole either because of new crimes or violations of supervision conditions.⁵⁷

Overall, the Council concluded that Georgia's heavy probation caseloads meant that most officers were required to follow a reactive supervision approach, one limited to confirming that people on standard probation were aware of the conditions of their supervision and ensuring that those conditions were met.⁵⁸ To more effectively reduce recidivism among people on probation, the Council proposed that Georgia shift its practices to a more proactive approach. Under this model, people on probation would be assessed to determine their risk of reoffending and their criminogenic needs, and officer time would be concentrated on those with the highest risk.

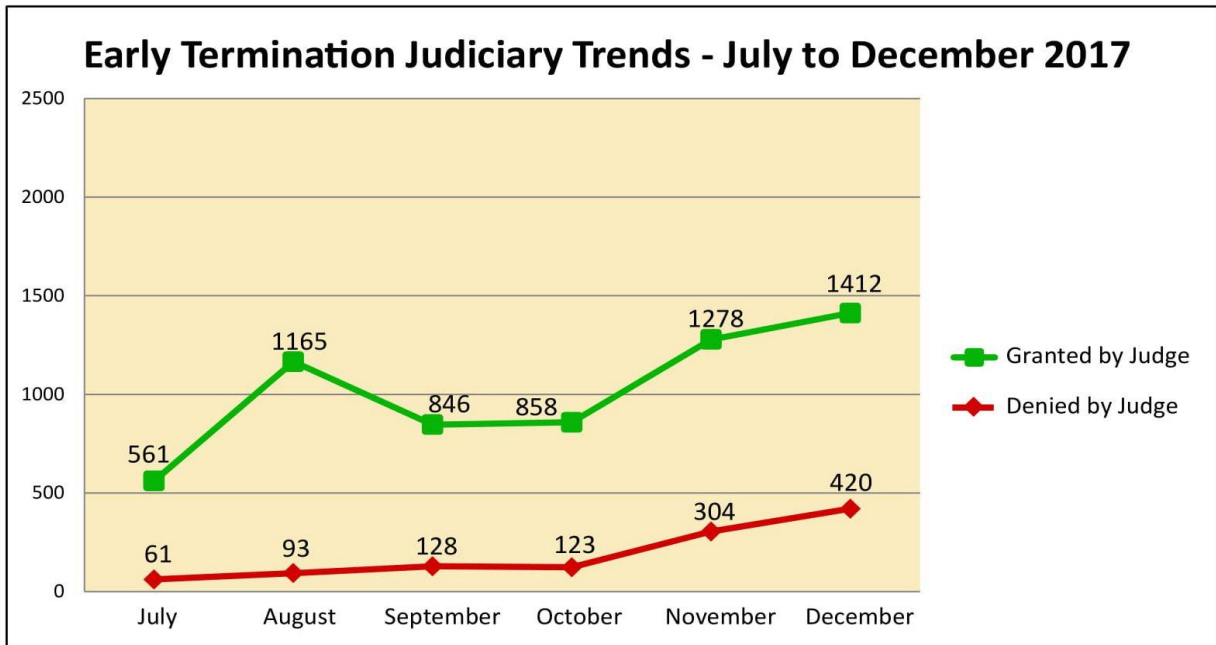
With help from the CSG experts, the Council approved a package of recommendations to improve probation practices and, ultimately, reduce recidivism. Projections showed that if the recommendations were fully implemented, the state would reduce the forecasted prison population by up to 5 percent by FY2022, avoiding as much as \$245 million in spending.⁵⁹

The recommendations formed the foundation for SB 174. Approved unanimously in the General Assembly in mid-2017, the bill aims to ensure that high-risk people on probation receive more intensive supervision, while certain low-risk individuals on probation are shifted to unsupervised status after two years, significantly reducing officer caseloads and costs. The bill also limited the length of probation terms for people who demonstrate compliance with supervision. Upon the first conviction for nonviolent felony property or drug offenses, direct probation sentences now include a Behavioral Incentive Date not to exceed three years. Under the new policy, the Department of Community Supervision (DCS) is required to file a petition to the court for early termination of probation sentences if the person remains in compliance with the terms of his or her supervision, achieves case plan objectives, has no new arrests, and has paid all restitution prior to reaching the Behavioral Incentive Date.



Source: Georgia Department of Community Supervision

To comply with the new requirements, the DCS information technology team created a system that identifies people on probation who are nearing their Behavioral Incentive Date and alerts probation officers. The DCS database portal also was modified to notify officers when people on probation become eligible for unsupervised status, as outlined in SB 174. This strategy produced an immediate impact on caseloads: 17,570 active cases were moved to unsupervised status over a two-month period beginning July 3, 2017. Because the approach was applied retroactively, the large decline did not continue in the following months. But a consistent flux of cases moving from active to unsupervised status continues.



Source: Georgia Department of Community Supervision

Along with these changes, DCS has continued to develop its Enhanced Supervision Program, which involves a set of supervision techniques for supervising officers to use in their daily interactions with people on their caseloads. The approach is based on effective behavioral change tactics that are proven to discourage criminal activities and reduce recidivism. As of January 2018, more than 937 DCS staff and community partners had completed the program. Training in enhanced supervision techniques also has been incorporated into the Basic Community Supervision Officer curriculum, ensuring every cadet is prepared to deliver meaningful supervision.

SB 174 also addressed the large number of people on probation who have trouble meeting their financial obligations. The bill required judges to waive fines, fees, and surcharges – or convert them into community service hours – for felony sentences if a person is found to be indigent and has a significant financial hardship. While SB 174 and administrative changes have reduced probation officer caseloads, they remain among the highest in the nation. In 2016, the average caseload was 170. Now, officers supervise an average of 130 people on active probation. A key goal moving forward is to further reduce caseload size and focus on people most in need of supervision and assistance.

Recommendation 1: Pursuant to SB 174, the Council recommends that in cases involving petitions to terminate probation for people who have been compliant for three years and have paid all restitution, judges should schedule a timely hearing if the petition is not otherwise granted as unopposed.

Under SB 174, people on probation for nonviolent felony property or drug offenses may have their probation terminated if they have complied with all conditions of supervision and paid all restitution. OCGA 42-8-37(c) requires DCS to file a petition to terminate probation with the court, and says “the court shall take whatever action it determines would be in the best interest of justice and the welfare of society.” In some instances, such petitions do not receive a hearing and disposition within a timely manner.

Recommendation 2: Clarify that Behavioral Incentive Dates as set forth in OCGA 17-10-1 apply to people sentenced pursuant to the First Offender Act and to those conditionally discharged.

Background Checks for Long-Term Care Home Employees

Most surrounding states use the FBI’s fingerprint-based national background check to screen prospective employees seeking work at long-term care homes. This ensures that

applicants who are convicted of a crime that makes them ineligible to work in such homes cannot move to an adjoining state and obtain employment in a facility. Georgia, however, uses a more limited process involving a name-based query that reviews applicants only for crimes that occur in the state.

In 2017, the Council learned that there are approximately 25,000 employees in more than 10 different facility categories that provide care for the elderly and are subject only to the name-based background check. As part of its federal responsibility for licensing and reviewing nursing homes, the state Department of Community Health received a federal grant to enhance the background procedure for applicants and employees of facilities that have direct contact with the elderly patients and/or residents.

Recommendation: *To strengthen protections for residents of such facilities, the Council recommends that Georgia adopt the FBI's fingerprint-based national background check for employees and employee applicants who have direct access to the elderly.*

Expanding Access to Jobs and Housing for People with Criminal Records

Georgia is an outlier when it comes to criminal record restriction and sealing, a process commonly known as expungement. The state is also behind most others when it comes to limiting access to prior convictions for purposes of employment and housing. The majority of other states, including most Southern states, provide a mechanism to restrict and seal certain past convictions from public access.⁶⁰ Currently, Georgia only allows for the restriction and sealing of non-convictions, with a limited exception for eligible misdemeanor convictions that occurred before the age of 21.⁶¹

Research has consistently shown that criminal records present significant barriers to former offenders' ability to obtain employment and housing.⁶² With the digitization of court records, background checks have become ubiquitous. Over 90 percent of employers, for example, report running criminal background checks on some or all applicants.⁶³ Criminal background checks are common in the housing context as well and, in one survey, 66 percent of housing providers reported that they will not accept any applicant with a criminal history.⁶⁴

The unfettered public access to criminal histories bars millions of Georgians from opportunities for a stable income and secure shelter, and these eliminated opportunities come with a cost.⁶⁵ Studies show a significant economic impact,⁶⁶ and also a significant impact on public safety.⁶⁷ Unemployment is one of the strongest predictors of

recidivism: when people cannot find jobs, their likelihood of committing a new crime rises.⁶⁸

As other states have recognized, creating mechanisms for record restriction and sealing of past convictions is not only a matter of providing second chances, but also an issue of economics and public safety. The Council believes that a process that allows individuals to petition a court to restrict and seal certain past convictions is necessary to bring Georgia in line with other states and to ensure a successful reentry for Georgians with criminal histories.

Recommendation 1: *The General Assembly should consider legislation that allows individuals with certain misdemeanor convictions to petition the convicting court for record restriction and sealing. The prosecutor should have the opportunity to object, and the court should have the ultimate discretion on whether to grant petitions.*

Individuals with misdemeanor convictions should be eligible to petition three years after successful completion of a sentence, assuming no convictions have occurred in the three years prior to petitioning. Certain offenses, including, but not necessarily limited to, serious traffic offenses, sex offenses, and family violence offenses, should be excluded. A restricted and sealed record under this process should not have to be disclosed for employment or housing purposes and should not be used against a person in those contexts. However, such a record could be retained for law enforcement use, in Department of Driver Services records, and for use in other ways now allowable for prior convictions (e.g., impeachment, to determine First Offender eligibility, etc.).

Recommendation 2: *Explore the extension of the above process to allow for restriction and sealing of felony convictions.*

Regretfully, the Council did not have the capacity this year to adequately consider specific legislative proposals regarding the restriction and sealing of felony convictions, but members are supportive of the development of such proposals. The Council acknowledges that felony convictions also present a significant barrier to accessing housing and employment, and believes restriction and sealing legislation that incorporates felony convictions should be explored.

Enhanced Penalties for Offenses Involving Guns

Recommendation 1: *Enhance the punishment for convicted felons and first offender probationers by making second and subsequent convictions for theft of a firearm a five- to ten-year sentence.*

Currently, anyone who steals a firearm is guilty of a felony and faces one to ten years in prison. O.C.G.A. § 16-8-12(a)(6)(B). Under this recommendation, trial courts would retain the ability to probate the sentence.

Recommendation 2: Enhance the punishment for anyone who possesses a firearm with an altered serial number, making the first offense punishable by a sentence of one to ten years and the second and subsequent convictions subject to a sentence of five to ten years. Trial courts would retain discretion to probate the sentence.

Recommendation 3: Prohibit possession of a firearm for defendants serving a felony probation sentence pursuant to the conditional discharge statute (O.C.G.A. § 16-13-2).

Under O.C.G.A. § 16-11-131 defendants serving a sentence under the First Offender Act (O.C.G.A. § 42-8-60) and defendants who have been convicted of a felony but have not had their rights restored by the Board of Pardons and Paroles are prohibited from possessing a firearm. Defendants serving a felony probation sentence pursuant to the conditional discharge statute should similarly be prohibited from owning guns.

Recommendation 4: The Council recommends enhancing the penalties for convicted felons, first offenders, and conditional discharge probationers who possess firearms. A first offense should be punished by a sentence of one to ten years and second and subsequent convictions should be punishable by a sentence of five to ten years, which can be probated.

Recommendation 5: The Council recommends punishing straw purchasers with the same penalty used to punish the convicted felon or other prohibited person for whom the straw purchaser is buying the firearm.

Current law (O.C.G.A. § 16-11-113) makes it a misdemeanor. Under the recommendation, if a purchaser knowingly buys a gun for a person prohibited from possessing a firearm, the straw purchaser faces one to five years for the first offense and five to ten years for second and subsequent offenses, which can be probated.

Accountability Courts

Recommendation: The Council recommends that support be provided to local governments to assist with costs related to accountability courts incurred by such governments and their associated Sheriff's Offices.

The expansion of Georgia's Accountability Courts has resulted in an increased demand for local law enforcement and other staff to be present in court sessions that are held past normal business hours. Additional law enforcement staff also is needed for county jails that house participants who receive sanctions resulting in jail time. Transportation is another challenge, as court participants often need help traveling to treatment. Recognizing these challenges, the Council recommends a supplemental grant system be created to help pay for other operational costs that are incurred by county governments. The Council also suggests that grants awarded for these costs not supplant current funding, but provide additional resources.

Driving Privileges

Recommendation 1: *The Council recommends that Georgia law be amended to authorize the Department of Driver Services to confer limited driving privileges to a person who meets requirements set forth in statute for privileges, except for the fact that their Georgia driver's license is expired.*

Under prior recommendations by the Council, Georgia has enhanced access to limited driving privileges for certain suspended drivers. Specifically, participants in accountability court programs who meet certain conditions can be granted limited driving privileges if the court agrees. Such privileges have required that drivers' licenses not be expired. This recommendation addresses that unique category not explicitly covered under the law.

Recommendation 2: *Provide more flexibility for issuing limited driving permits for people participating in any accountability court program.*

Sex Offender Supervision

Recommendation: *For convictions requiring a defendant to register on the state sexual offender registry, pursuant to Code Section 42-1-12, the period of active probation supervision shall remain in effect until the court orders unsupervised probation, or until termination of the sentence, whichever occurs first.*

Due to a conflict in current law, petitions are having to be filed by DCS to keep sex offenders on active probation supervision, rather than moving to inactive status. The

Council recommends clarifying this conflict to avoid confusion and unnecessary petitions.

Misdemeanor Probation

Recommendation 1: *The Council recommends amending paragraph 2 of code section 42-8-105 to clarify tolling expectations for misdemeanor probation.*

In its 2015 report, the Criminal Justice Reform Council approved several recommendations aimed at improving the transparency and fairness of misdemeanor probation. Less than three years later, these changes have improved Georgia's oversight of misdemeanor probation providers and led to other changes. DCS has promulgated and implemented improved rules and regulations for misdemeanor probation officers, leading to increased training requirements and oversight, and has established an annual registration process for individual misdemeanor probation officers and providers.

After a careful review of misdemeanor probation laws and rules, the Council recommended clarification of the procedures for tolling a misdemeanor probation case. Currently, paragraph 2 of code section 42-8-105 is ambiguous in tolling expectations for misdemeanor probation. This code section requires that specific steps be taken in order for a probation case to be tolled, but language in paragraph 2 has created confusion in the field. To remedy this concern, the Council proposes to amend paragraph 2 of code section 42-8-105 to include language that provides specific procedures for if a probationer does or does not report to his or her probation officer in the ten-day period outlined in paragraph 2. If the probationer does not report, then the misdemeanor probation officer is required to submit an affidavit and tolling order delineating actions taken to contact the probationer. If the probationer reports during the appropriate span of time, then the misdemeanor probation officer need not submit the requisite affidavit or tolling order.

Recommendation 2: *Clarify that the pay-only probation fee cap applies to all fees related to the administration of probation.*

In 2015, HB 310 created pay-only probation for people who were to be placed under probation supervision solely because such person was unable to pay the court-imposed fines and statutory surcharges when their sentence was imposed. Under this law, supervision fees are required to be capped after three-months; after that, people are responsible only for fulfilling the remaining financial obligations of the sentence. This

recommendation clarifies that the fee cap imposed by HB 310 applies to all fees associated with the administration of probation. The Council also would like to note that the majority of misdemeanor probation providers in the state are compliant with both the letter and spirit of the law, and, in fact, support this recommendation to close any unintended gap.

Recommendation 3: *Expand the definition of community service to include organizations that provide services to the public that enhance social welfare and the general well-being of the community, as approved by the court.*

Recommendation 4: *Allow courts to convert fines and fees to community service for local ordinance violations and non-probation cases.*

Reentry: Progress and Recommendations

The Georgia Prisoner Reentry Initiative

Approved by the Council at the end of 2013, Georgia's Prisoner Reentry Initiative (GA-PRI) was designed to provide more effective, comprehensive support to individuals transitioning from incarceration to the community. The five-year plan has two primary objectives: to improve public safety by reducing crimes committed by former offenders, thereby reducing the number of crime victims, and to boost success rates of Georgians leaving prison by providing them with a seamless plan of services and supervision, beginning at the time of their incarceration and continuing through their return to society. To help coordinate this initiative, the Governor created, by executive order, the Governor's Office of Transition, Support and Reentry.

Backed by significant grant support and more than \$60 million in state and federal funding, Georgia's investment in reentry has stood out as a leading example for other states. The GA-PRI began with six Community Pilot Sites in 2015 and had expanded to 17 sites statewide by the end of 2016. The initiative was designed to reduce the overall statewide recidivism rate by seven percent in two years and by 11 percent over five years – from 27 percent to 24 percent, a three-point drop and an 11 percent overall rate reduction.

To centralize supervision and reentry efforts, the Council recommended creation of a new Department of Community Supervision (DCS), which was accomplished through legislation in 2015. The new agency combined felony probation services from the

Georgia Department of Corrections, parole supervision from the Board of Pardons and Parole, and juvenile supervision from the Department of Juvenile Justice (DJJ). Under the direction of DCS, the reentry initiative has continued to advance its mission, both with dedicated internal staff and through a growing list of vital community partners. As the initiative enters its fourth year, staff are steadily expanding the scope of their work to better prepare inmates for success outside prison walls.

One core element of the GA-PRI is the “in-reach process,” designed to clear barriers to resources that historically hindered former offenders upon release. In-reach staff begin their work by interviewing inmates scheduled for release and providing resources that help with the reentry transition. Staff also connect peer mentors with GA-PRI program participants to further support reintegration in the community. In 2017, the initiative experienced broader coverage in correctional facilities statewide as well as an increase in participant orientation, completed case plans, and overall in-reach contacts. As of January 2018, in-reach staff were providing services at 49 state facilities (32 state prisons, four private prisons, and 13 transitional centers).

“Helping rehabilitated offenders transition back into society will reduce recidivism, save taxpayer dollars and keep Georgians safe. I am committed to working with legislators to lead new efforts in job training and job placement so that former offenders can become functioning members of the community, working to support their families and paying taxes.”

***Governor Nathan Deal
January 10, 2014***

To improve the success of reintegration, DCS has steadily increased the availability of community support and resources for formerly incarcerated Georgians. In 2017, community coordination and faith and justice initiatives saw growth in new partnerships and collaborations. Community coordinators have been hired in 17 pilot counties, with housing coordinators working in five counties. These individuals help organize and promote employment fairs and recruit community organizations to become partners in the reentry process. One subset of these community groups is the Stations of Hope Program, a component of Healing Communities, involving faith-based groups. To date, 240 congregations have committed to become Stations of Hope, offering reentering persons access to various forms of assistance such as food, clothing, and shelter.

Determined to ensure continuing progress under GA-PRI, the state engaged Applied Research Services to help evaluate impacts of the policy changes. One study will analyze the comparative outcomes of individuals under GA-PRI versus historical

cohorts, while another evaluation will compare current GA-PRI individuals with those not participating in GA-PRI. While official results of two-year recidivism rates will not be available until the end of 2018, early indications show that numbers are trending in a positive direction under GA-PRI.

Housing remains a critical challenge for people leaving prison. Studies consistently show that permanent housing is a key component for successful reentry, and yet many landlords have blanket policies against renting to anyone who has been arrested or incarcerated. Reducing barriers that prevent those reentering society from securing stable housing is clearly in the interest of public safety.

The Reentry Housing Work Group reconvened in the fall of 2017 to review the progress made on recommendations submitted to the Council in 2016 and to develop new recommendations.

2018 Reentry Recommendations

Housing Market Access

Recommendation 1: Ensure compliance with the Fair Housing Act protection against race discrimination, which prohibits blanket rental bans based on arrest or conviction and requires an individualized assessment of an individual's specific circumstances.

Recommendation 2: Encourage the Department of Community Affairs to continue to strengthen and expand enforcement of the U.S. Department of Housing and Urban Development guidance for public housing agencies and owners of federally assisted housing by including a fuller set of requirements for public housing providers in the Qualified Allocation Plan, State Plan, and contractual agreements with public housing providers.

Recommendation 3: Convene a task force to develop model rules and increase the education of consumers and landlords with the goal of promoting lawful and consistent application of reentry housing policies.

Recommendation 4: Revise the language and formatting of Department of Community Services and Department of Corrections Program and Treatment Completion Certificates to communicate that a rebuttable presumption of due care is afforded to landlords, employers, and others who rely on completion certificates. OCGA §42-2-5.2(c), §42-3-2(h)(2), §50-1-54 (b).

Recommendation 5: *Recommend that the departments of Community Supervision, Corrections, and Community Affairs, along with reentry-serving nonprofit organizations, explore “Ready to Rent” training programs that provide enhanced skills, ongoing support, and case management services to support a successful tenancy.*

Recommendation 6: *Encourage the creation and private or non-profit funding of a Landlord Risk Mitigation Fund to provide limited recourse to landlords to recover losses resulting from a failed tenancy for an individual released from prison or jail within the prior 18 months.*

Support for People with Significant, Permanent Disabilities

Recommendation 1: *The Council recommends that the Department of Behavioral Health and Development implement stronger identification of, and referral and linkage to supportive housing to better serve eligible persons leaving prison and jail.*

The Department of Justice’s Department of Behavioral Health and Development Settlement Agreement Extension provides that, “The state shall implement procedures that enable individuals with SPMI [Serious and Persistent Mental Illness] in the target population to be referred to supported housing if the need is identified at the time of discharge from ... jail, prison.” This recommendation reflects that direction.

In addition, every prison should have access to the Forensic Peer Mentor program for persons with a documented history of behavioral health or addiction disorders who are leaving prison. All prisons, Day Reporting Centers, and jails should be connected with the Department of Behavioral Health and Development, Community Service Boards, and other community mental health providers. A structure is needed to affiliate Forensic Peer Mentors with mental health providers so they can bill for community-based support that is provided post-release and so they can access Medicaid funding.

Recommendation 2: *The Council recommends exploring a long-term rent subsidy program for returning citizens with permanent physical, developmental, intellectual, or brain trauma disabilities who are in need of long-term supports.*

This program would complement the current Georgia Housing Voucher Program that serves only people with Serious and Persistent Mental Illness. It would begin as a pilot initiative providing housing vouchers for 200 persons likely to qualify for a disability under the federal Social Security Act. The target population would be people for whom

the Department of Corrections is unable to identify appropriate long-term housing and who otherwise would be eligible for release or probation.

Recommendation 3: *The Council recommends expanding the Department of Behavioral Health and Development’s Forensic Community Integration Program.*

The Forensic Community Integration Program is a supervised housing program serving 61 individuals who are leaving state psychiatric hospitals, are under criminal court jurisdiction, and have been adjudicated incompetent to stand trial or not guilty by reason of insanity. This housing model allows individuals who no longer require hospital level care to move to the community with supervision, generally under a court order with conditions.

The Council recommends development of a similar program for inmates released into the community who are classified as “Level 4 Mental Health.” There is currently no community housing placement for such persons other than in a full institutional setting.

Transition Support

Recommendation 1: *Expand Department of Community Supervision in-reach programs to each state prison and ensure that connections with inmates are established no later than six months prior to release.*

The most difficult reentry task is the transition from incarceration to community-based systems of support. At an inmate’s release, responsibility for supporting the returning citizen shifts from one state administrative structure to another, and community-based organizations must share responsibility for the support. The Council recommends expanding Community Transition Planning resources for Community Service Boards and other community mental health providers serving persons leaving jail and prisons, and supporting earlier in-reach that continues beyond release.

Recommendation 2: *Expand the Reentry Partnership Housing program by recruiting new providers in regions that lack housing facilities and where the demand for such housing exceeds supply.*

The lack of short-term housing options often prevents a reentering person from accessing community-based systems of support and results in longer term incarceration or homelessness. The Georgia Reentry Partnership Housing Program enables prisoners who lack an appropriate residential plan to obtain the short-term housing that enables parole or probation and supports successful reentry. The program provides six

months of support post-release, paying providers \$600 per month per person, or \$675 per person for those with Serious and Persistent Mental Illness.

Recommendation 3: *The Council recommends the creation of jail-based residential substance abuse treatment programs lasting six to nine months to support recovery and reduce recidivism. The goal is to demonstrate the value of such programs in jails, and federal funding is available.*

Georgia's Criminal Justice Coordinating Council administers a federal grant to provide seed money for jails to create, expand, and/or enhance residential substance abuse treatment programs such as the model created in Rockdale County. With this grant of approximately \$65,000 (including matching funds and in-kind contributions), plus additional funds from a Department of Justice Second Chance Act grant, Rockdale County implemented the Rockdale Residential Substance Abuse Treatment program and has demonstrated a dramatic decrease in recidivism. Since the program started in 2014, there have been more than 350 participants, who had a group recidivism rate of 57 percent prior to entering the program. Only 24 participants (7.2 percent) released from the jail have returned on new charges, while an additional 48 (14.7 percent) have returned for probation violations. Meanwhile, Rockdale County Jail has seen the recidivism rate for the overall jail population drop from 58.3 percent in November 2014 to 45.3 percent in January 2018, due in part to this program. Other counties throughout the state should be encouraged to pursue any available federal grant money through the Criminal Justice Coordinating Council to establish similar programs.

Recommendation 4: *Create a statewide public-private partnership to serve as a clearinghouse for best practices, information, and resources that support developing and sustaining local community-based reentry collaboratives to serve persons leaving prisons and jails.*

This partnership would bring together law enforcement, Community Service Boards, nonprofit organizations, faith-based community service providers, legal services, corrections, and behavioral health providers in every county to provide case planning and connection to services following successful models.

Medicaid Benefits and Identification

Recommendation 1: *Support the Department of Community Health in its efforts to implement a process that will suspend, rather than terminate, a person's Medicaid enrollment for 18 months upon incarceration in jail.*

This action will provide access to Medicaid for inmates upon release and enable those with a disability to access behavioral health services and medications in the community. It will also help returning citizens avoid a gap in coverage.

Recommendation 2: *Identify people with disabilities who were receiving or who are likely to be eligible for Medicaid, Medicaid waivers, SSI, or SSDI benefits and direct that the restoration or application process begin during incarceration to facilitate prompt receipt of benefits upon release.*

Preventing Homelessness

Recommendation 1: *Support access to appropriations and encourage private and non-profit participation in the State Housing Trust Fund for the Homeless in order to fund housing for people leaving prisons and jails.*

This appropriation would help the state save millions more on incarceration, court services, unreimbursed hospital costs, and other expenses. The Senate Committee on Homelessness has also recommended an increased appropriation to the Trust Fund.

Recommendation 2: *To illustrate the true costs borne by the state because of the homeless reentry population, the Council recommends preparing an analysis of the fiscal impacts of this population on law enforcement, the justice system, hospitals, and all other local and state departments affected by the problem.*

Juvenile System: Progress and Recommendations

Background

After passage of HB 1176 created a strong framework for reform of the adult correctional system, Governor Deal in mid-2012 asked the Council to broaden its focus and examine the state's approach to juvenile justice. As a former juvenile court judge, Governor Deal was troubled by data showing that Georgia's approach to managing delinquent youth was producing disappointing results. He also recalled his frustration over the lack of sentencing options available for youth who had committed low-level crimes and appeared before him in court: "I could either send them to be incarcerated in

a facility [or] I could send them back home into the environment that got them in trouble in the first place.”

Historically, juvenile justice programs in America were anchored in a rehabilitative model. A rise in juvenile crime in the late 1980s, however, created public perceptions that the system was too lenient. In response, many states passed punitive laws, including mandatory sentences and automatic transfers to adult court for certain crimes.⁶⁹ By the mid-1990s, confinement for even minor offenses was on the rise after sociologists inaccurately predicted a wave of violence from a new kind of juvenile offender dubbed “superpredators.”⁷⁰ By 2011, juvenile justice reform was underway in some states, but there remained a relatively high proportion of youth in out-of-home placements in Georgia.⁷¹ Approximately 95 percent of youth in the state’s secure juvenile facilities were in long-term placements, with an average length of incarceration exceeding 650 days.⁷²

A lack of evidence-based community alternatives for delinquent youth was one key problem plaguing Georgia’s juvenile system, but there were other challenges as well. Recidivism was particularly troubling. Despite annual costs to taxpayers of more than \$300 million, more than half of the youth in the system were re-adjudicated delinquent or convicted of a criminal offense within three years of release, a rate that had held steady since 2003.⁷³ For those released from Georgia’s secure youth development campuses, the recidivism rate was 65 percent, a proportion that had increased by six percentage points since 2003.⁷⁴

To explore these problems and develop solutions, the Council, aided by a team of experts from Pew, solicited input from a wide variety of stakeholders and conducted an exhaustive analysis of juvenile justice laws, facilities, administration, programs, and outcomes. The findings showed an expensive system heavily reliant on out-of-home facilities that were producing poor results, for taxpayers and youth alike. The cost of the state’s secure residential facilities averaged \$90,000 per bed per year. And while the majority of juveniles in out-of-home placements were felony offenders, nearly one in four were adjudicated for low-level offenses, including misdemeanors or status offenses.⁷⁵ Four in ten, meanwhile, were assessed as a low risk to reoffend.⁷⁶

A New Direction

Based on such findings, the Council produced a comprehensive set of research-based recommendations aimed at prioritizing costly out-of-home facilities for serious, higher-risk youth while strengthening evidence-based supervision and community programs for

those who had committed lower level offenses. Most of these recommendations were embodied in HB 242, which passed both chambers of the General Assembly unanimously and was signed into law by Governor Deal on May 2, 2013. A February 2013 poll of registered voters in Georgia demonstrated public support for the new direction. The poll showed that 87 percent of respondents favored a strategy that sent fewer lower-risk juveniles to secure facilities and used the savings to strengthen probation.⁷⁷

“The success of the Juvenile Justice Incentive Grant program and other juvenile justice efforts is one of the crowning achievements of Governor Deal’s criminal justice reform initiative. It will undoubtedly improve public safety in our state for years to come.”

***Carey A. Miller
Executive Counsel, Governor Nathan Deal
Co-Chairman, Georgia Council on Criminal Justice Reform***

The new law reorganized, revised, and modernized Georgia’s juvenile code and created a new mandate for juvenile courts and the Department of Juvenile Justice (DJJ): *to improve public safety and decrease costs by preserving and strengthening family relationships in order to allow each child to live in safety and security.*⁷⁸ The law also set in motion a cascade of changes that positioned the state as an emerging model for juvenile justice reform. HB 242 granted judges more flexibility to keep juveniles out of facilities and increased the likelihood that youth would receive mental health treatment, substance abuse counseling, and help through family therapy programs. The law also reduced mandatory minimum confinement periods, prohibited residential commitment for status offenders and some misdemeanants, and established an incentive grant program to support counties that reduce the number of juveniles committed to state custody.

Confinement, Commitments Decline

Progress has been encouraging under the new framework, which took effect in January 2014. The number of youth in secure confinement has dropped 36 percent, total commitments to DJJ are down by almost half, and the number of youth awaiting placement has dropped 27 percent.⁷⁹ To ensure the right youth are enrolled in the right programs, Georgia in 2014 began using validated assessment instruments to evaluate and place youth in appropriate settings, based on their individual risk level and needs.

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Overall, the shrinking juvenile commitment population has enabled the state to take two detention centers and one Youth Development Campus off-line.

The driving force behind much of the change is the Juvenile Justice Incentive Grant Program. The program was launched in 2013 because many of Georgia’s regions lacked community-based programs, leaving juvenile court judges with few dispositional options short of commitment to state facilities. In addition to providing courts with alternatives to out-of-home placements, the incentive grants have helped reduce short-term program admissions and felony commitments to DJJ by 56 percent across the participating counties.

In 2014, a second program, the Community Services Grant Program, was funded with a similar mission. Combining state and federal dollars, the two programs offer funding and technical support for a set of nationally recognized treatment programs, including Multi-Systemic Therapy, Family Functional Therapy, Thinking for A Change, and Aggression Replacement Training. The programs are listed in a National Institute of Justice-sponsored registry and are deemed “effective” or “promising” for reducing criminogenic behavior by juveniles.⁸⁰

Out-of-Home Placement (OHP) Reduction Targets and Outcomes over Four Implementation Years

	FY 2014	FY 2015	FY 2016	FY 2017
FY 2012 Baseline – Total OHP	2,603	2,664	2,616	2,513
Reduction Target of OHP	15%	20%	20%	20%
Percent Reduction Achieved	62%	54%	53%	56%
Total Out-of-Home Placements	989	1,227	1,238	1,099
Implementation Period	9 months	12 months	12 months	12 months
Number of Grantee Courts	29 courts	29 courts	28 courts	25 courts
Number of Counties Served	49 counties	51 counties	48 counties	34 counties
Number of Youth Served	1,122	1,666	1,723	1,465

*Juvenile Justice Incentive Grant Program Funding Committee
November 2017*

Nearly all of Georgia’s at-risk juvenile population – 98 percent – now lives in a county served by one of the grant programs. All told, the programs have directed more than

\$37 million to evidence-based sentencing options throughout the state.⁸¹ More than 8,000 youth have received individual and/or group therapy funded through the grants since 2014.⁸² Approximately two-thirds of youth graduate successfully from their programs, and in 2017, 93 percent of those served were either enrolled in or had completed school.⁸³

Juvenile Detention Alternatives Initiative

Another integral piece of Georgia’s juvenile justice reform is the Juvenile Detention Alternatives Initiative (JDAI). The initiative is a multi-year, multi-site demonstration project initiated by the Annie E. Casey Foundation in 1993. It was developed in response to the growing number of youth nationwide who are placed in secure detention for nonviolent acts. JDAI operates in 40 states, including Georgia. Its goal is to help jurisdictions reduce their reliance on secure detention while ensuring public safety through the establishment of more effective and efficient interventions.

Based on experience in the initial JDAI sites, the Annie E. Casey Foundation produced *Pathways to Juvenile Detention Reform*, which is comprised of eight interconnected core strategies that address the primary reasons youth are unnecessarily or inappropriately detained, and are used to help jurisdictions develop a better approach:

- Promoting collaboration between juvenile court officials, probation agencies, prosecutors, defense attorneys, schools, community organizations and advocates
- Using rigorous data collection and analysis to guide decision making
- Utilizing objective admissions criteria and risk-assessment instruments to replace subjective decision-making processes to determine whether youth should be placed in secure detention facilities
- Implementing new or expanded alternatives to detention programs — such as day and evening reporting centers, home confinement and shelter care — that can be used in lieu of locked detention
- Instituting case processing reforms to expedite the flow of cases through the system
- Reducing the number of youth detained for probation rule violations or failing to appear in court, and the number held in detention awaiting transfer to a residential facility
- Combatting racial and ethnic disparities by examining data to identify policies and practices that may disadvantage youth of color at various stages of the process, and pursuing strategies to ensure a more level playing field for youth regardless of race or ethnicity

- Monitoring and improving conditions of confinement in detention facilities

Georgia has had two local JDAI sites since 2003, Clayton and Rockdale counties. Clayton County has been particularly successful in implementing the JDAI core strategies and has become a national leader in developing school-justice partnerships to dismantle the school-to-prison pipeline. Recognizing this success, Governor Deal asked the Council to explore JDAI as an option to support and promulgate the juvenile justice reforms passed by the General Assembly in 2013.

In December 2014, the Council recommended that Georgia pursue state scale expansion of JDAI. The following year Governor Deal appointed juvenile justice stakeholders from around the state to the Georgia JDAI Steering Committee, and JDAI became the guiding philosophy for system reform. The committee subsequently hired a state JDAI coordinator and voted to administratively attach that position to the Council of Juvenile Court Judges. Since then, the committee has doubled its membership, completed a JDAI fundamental training, conducted a model site visit to New Jersey, created a list of targeted site expansion, completed a state work plan, attended national JDAI Inter-Site Conferences, established a successful relationship with DJJ's data team, and hired a state assistant coordinator. Meanwhile, the number of Georgia counties participating in JDAI has grown from two to five: Athens-Clarke, Clayton, Glynn, Newton, and Rockdale. In line with the state work plan, two additional counties (Chatham and Fulton), have completed JDAI Readiness and System Assessments in order to become JDAI sites.

Juvenile System Recommendations

Two sections from the Juvenile Code provide for the use of assessment instruments, the Detention Assessment Instruments (DAI) and Juvenile Pre-Dispositional Reporting Assessment (PDRA), to evaluate whether the detention of a youth is appropriate at given points in a delinquency proceeding. O.C.G.A. 15-11-505(a) provides for the administration of the DAI to determine whether a child should be detained in a Regional Youth Detention Center or other detention facility after arrest and prior to adjudication. O.C.G.A. 15-11-601 provides for the administration of the PDRA for use in the consideration of final disposition.

These risk instruments are critical components of a successful juvenile justice system that protects the public while addressing the needs of the youth. The DAI helps officials evaluate whether a child taken into custody may safely stay at home or in the community – in a program funded by a Juvenile Incentive Grant or Juvenile Detention

Alternatives – prior to adjudication of the alleged offense. The DAI score results in one of three recommendations: release, release with conditions, or detain. When assessments are properly administered, research has shown that community-based alternatives to detention are often more cost effective than detention while providing equivalent public safety assurances.

The PDRA evaluates a youth's risk for reoffending, and its use helps agencies ensure that high-risk youth receive more intensive intervention, possibly including confinement in a secure facility, while low- and moderate-risk youth receive less intensive intervention, such as placement in an evidence-based community program. But the validity of both assessment instruments is compromised, particularly in metro Atlanta, when criminal arrests and legal history information from other jurisdictions are not known or are not immediately available. Specifically, this missing or unknown information can lead to an inaccurate scoring that does not reflect a youth's actual risk level. As such, the subsequent detention or disposition decision based upon the inaccurate score may not adequately protect the public or serve the rehabilitation needs of the youth.

To address this problem, DJJ has authorized the independent courts to access its Juvenile Tracking System (JTS) for use in administering the assessments. If all courts were to utilize JTS, a centralized record could be created. But under current rules, the process is duplicative because court personnel must enter the same data twice: once for their home system and once for JTS. The Juvenile Incentive Grant program offered participating counties funds for personnel to enter the data into the DJJ system, but not all counties have accepted the funding.

To resolve the challenge and ensure the availability of accurate data, the Council recommended creation of the Juvenile Data Exchange (JDEX) project. JDEX is a repository that allows juvenile courts to query an index system for data from any participating court to use in administering assessments.

The implementation of JDEX led to a collaborative agreement between the juvenile courts, the Judicial Council of Georgia, the Council of Juvenile Court Judges, the DJJ, and the Criminal Justice Coordinating Council to ensure that JDEX's operation allows all juvenile courts the ability to assess juvenile offenders' delinquent history to determine a youth's suitability for the Juvenile Incentive Grant's alternatives to incarceration program. Diversion of eligible youth into grant-funded, evidence-based programs has allowed Georgia to avert over \$250 million in detention costs since the program's inception in 2013.

The Council finds that the continuation and effectiveness of JDEX depends on each juvenile court's continued cooperation in providing sufficient data from its case management system, or through DJJ. The data utilized by JDEX to provide information to judges and juvenile court staff for assessments for detention alternatives and the public's safety are only reliable if complete criminal data histories from all counties are included.

Therefore, the Council recommends a process be established by the juvenile courts, Judicial Council, and DJJ to continue to compel each county's vendor for juvenile case management systems to provide to JDEX the data necessary for the detention assessment.

Recommendation: *The Council recommends that the Judicial Council of Georgia establish a process to continue to compel each county's vendor for juvenile case management systems to provide JDEX the data necessary for detention assessment.*

Moving Forward

In 2011, the Council set out to identify reforms that would improve the effectiveness and fairness of Georgia's criminal justice system. Our mandate was clear: hold offenders accountable, contain correctional costs, and protect public safety by investing in strategies proven to reduce crime and recidivism. Seven years later, Georgia is often cited as a national model of bipartisan reform in the criminal justice arena. With help from dedicated partners in the community, as well as guidance from The Pew Charitable Trusts and the Council of State Governments, the state has reframed its approach to adult and juvenile corrections with landmark reforms that will continue to produce fiscal and public safety dividends far into the future.

The Council is scheduled to sunset in July 2018, but there remains much work to be done. Our bail reform initiative is an unfinished product, hindered by a lack of time to adequately explore appropriate improvements to our imperfect system. We also regret our inability to fully address three other critical policy areas: fines and fees, the intersection of mental illness and the criminal justice system, and mandatory minimum sentencing. With that in mind, the Council encourages the Legislature and future governors to consider the creation of new expert panels to carry on this important work,

and provide continuing oversight to ensure reforms adopted to date reach their full potential.

Bail Reform

Due to a shortage of time, the Council was unable to fully consider and reach consensus on multiple issues related to the shortcomings of Georgia's cash bail system. In addition to the set of recommendations adopted in 2018, the Council examined the following proposals, and urges further work on these areas in the future.

Recommendation 1: Explore adoption of a policy allowing for greater use of the posting of a driver's license as collateral.

Current law permits county sheriffs to allow people to post their driver's license as collateral for bail only after being detained for five days and only for amounts up to \$1,000. Allowing the use of a driver's license as collateral earlier and for a greater amount would create another resource for release.

Recommendation 2: Explore permitting release on an initial non-monetary bail for individuals whose offenses do not authorize jail time as a sentence.

Recommendation 3: Consider increasing the number of offenses for which arrest by citation is appropriate.

Criminal Fines, Fees and Surcharges

In Fiscal Year 2017, Georgia courts collected \$508,670,016 in statutorily authorized criminal fines, fees, and surcharges (add-ons). Approximately \$423,439,300 of this was retained by local governments to fund 19 local court-related obligations. These included county and city general funds, funding for county jails, county law libraries, local crime victims compensation programs, victim restitution, and the employment retirement plans for clerks, magistrate court judges, probate court judges, and sheriffs. In addition, \$85,230,709 was remitted by local authorities to 16 state entities throughout FY2017. These recipients included indigent defense funding, funding for the Peace Officer and Prosecutor Training Fund, the Georgia State Crime Lab, the Georgia Victims Compensation Program, and funding for judicial operations. (See charts in Appendix B.) The state collected a total of \$524,835,015 in FY2016.

Issues arising from criminal justice practices related to fines, fees, and add-on surcharges have become a common topic of discussion throughout the nation.⁸⁴ Given the significant amount of money generated by fines, fees, and surcharges, critics have

raised concerns about the use of such money as an ongoing funding source for a wide array of programs. This conversation focuses not only on the enormity of the sums generated by surcharges, but also on the question of whether placing this revenue generating burden on defendants is an appropriate and ethical function of our criminal justice system. Similarly, these conversations find at their core exactly what the Justice Department found in its report on Ferguson, Missouri, that “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs.” The report also found that this emphasis on revenue “ha[s] sown deep mistrust between parts of the community and the police department, undermining law enforcement legitimacy ...”⁸⁵

In Georgia, the revenue tied to criminal fine surcharges – as opposed to the fines themselves – for those convicted of misdemeanor or felony offenses continues to stoke debate about the efficacy of surcharges as a revenue source. It also highlights the numerous benefactors of this funding, all of which are generally important and necessary services and programs. While important and timely, however, this issue is complex, and the Council lacked sufficient time, resources, and data to adequately survey the wide breadth of issues presented.

The council encourages state leadership to take a serious look at whether, and to what extent, criminal fine surcharges, and the criminal justice system specifically, are appropriate mechanisms to fund these mostly essential local and state programs.

For guidance in adopting best practices for courts involving the imposition and enforcement of court-ordered legal obligations, the Council recommends that interested parties consider the well-reasoned and recently released report of the National Task Force on Fines, Fees, and Bail Practices – Principles on Fines, Fees, and Bail Practices.⁸⁶

Mental Illness and the Criminal Justice System

Since its inception in 2011, the Council has maintained an intentional focus on the drivers of the state’s prison population. Along with that focus has come a recognition that most people in the criminal justice system would be better served with improved access to effective mental health and substance abuse treatment in the community. Reflecting that knowledge, the Council has recommended, and the General Assembly has passed, legislation that has expanded accountability courts, improved training of law enforcement officers, eliminated barriers to access to Medicaid benefits for those released, and initiated significant peer supports for people with mental illness or other disabilities. The increase in resources has been dramatic and historic. We already see results in the lowering of the prison population, the significant decline in the state’s

reliance on county jails, and the effective transition of people to probation or parole. Georgia is using the cost savings from reduced incarceration to build services for our citizens who struggle with mental illness and intellectual or developmental disabilities.

In 2017, an ad hoc task force of stakeholders and advocates developed proposals for additional benefits and savings that could be achieved by focusing resources on the front end of the criminal justice system, especially by identifying people in need of mental health and/or substance abuse treatment before arrest. Many counties already are investing in pre-arrest intervention and treatment referrals to relieve the strain on criminal justice resources, and other states have made strides in this area as well. The research is clear: when people are diverted to effective treatment, recidivism rates – and taxpayer costs – decrease. In Florida’s Miami Dade County, for example, a program involving pre-arrest diversion to treatment has allowed officials to close two detention facilities and transform the facilities into mental health and substance abuse centers.

The Council believes that a continued focus on the intersection of incarceration with mental illness, substance abuse, and developmental disability is essential to reduce recidivism, ensure the wise use of taxpayer dollars, and maintain public safety. We have previously recommended incentive grants to increase community-based programs for accountability courts and juveniles. Similarly, we encourage courts, jails, and the public mental health system to collaborate to increase available resources for treatment prior to incarceration.

Toward that goal, the Council recommends that a study committee or commission be established to focus on the intersection of mental illness, substance abuse, and incarceration and report findings and recommendations to the General Assembly. Among other issues, this panel should explore opportunities to increase community-based mental health and substance abuse treatment, evaluate the effectiveness and possible expansion of crisis intervention training or mental health first aid for all law enforcement first responders, and identify ways to increase the number of Assertive Community Treatment teams focused on people who cycle through jails and need shelter or other assistance.

Mandatory Minimum Sentencing

From the outset, a key priority for the Council has been moving nonviolent offenders out of costly state prison beds and into evidence-based programs proven to reduce criminal offending. Against that backdrop, reform initiatives have centered on individualized risk

assessments and on providing judges and others with tools proven to reduce recidivism and improve public safety. Specific examples include the dramatic expansion of accountability courts in Georgia and the adoption of the Georgia Prisoner Reentry Initiative.

While critical to the goals of criminal justice reform, these efforts have also illuminated another key driver of the prison population – mandatory sentences that do little to improve public safety and are imposed by judges who have no sentencing discretion. To date, reform efforts in this area have been important but limited. The Council believes the issue merits further attention, in part because of the impact such sentences have on Georgia’s incarceration levels. In 2017, nearly one in three state prison inmates had been sentenced to a mandatory term of at least ten years for a serious, violent felony.

In 2012, the Council recommended and the General Assembly unanimously passed HB 1176, which gave Superior Court judges more discretion in sentencing drug purchase and possession offenses and repealed sentencing enhancement for a second drug possession offense. In 2011 and 2012, the Council recommended statutory authority permitting judges to depart from mandatory minimum sentences for drug trafficking and certain serious violent felonies, under specific circumstances. These recommendations, adopted by legislators in 2013, now authorize a mandatory minimum safety valve for drug trafficking offenses that would allow judges to depart from the mandatory minimum sentence under specific circumstances when the prosecutor and defense counsel agree. But the imposition of mandatory minimum sentences for other crimes, excluding the seven deadly sins, continues to create potential for sentencing inequities and merits further discussion.

In addition, the General Assembly approved a Council recommendation extending parole eligibility to a limited class of nonviolent offenders. These efforts targeted low-risk drug and property offenders who had never been to prison before, who had no prior conviction of a serious violent felony, but who were currently serving mandatory, non-parole eligible prison sentences due to our recidivist sentencing provisions. This statutory framework essentially works as a mandatory minimum sentence and prohibits the exercise of any sentencing discretion by judges, who are thus blocked from fashioning a sentence that fits the crime. The Council believes that restoring judicial discretion to other classes of nonviolent offenders affected by Georgia’s recidivist sentencing scheme deserves further consideration.

More broadly, the Council recommends exploring the cost and public safety returns realized by the imposition of mandatory/non-parole eligible sentences, and examining

whether fiscal, moral, and public safety benefits can be realized by restoring sentencing discretion, in limited circumstances, to our state's elected trial court judges.

Possible issues to consider include:

- Allowing judicial discretion to depart from mandatory minimum sentences for serious violent felony offenses even if the prosecutor will not consent
- Limiting recidivist sentencing to crimes of violence
- Limiting recidivist sentencing to convictions that occurred within the previous ten years
- Allowing judicial discretion to depart from the mandatory prison sentences when appropriate

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Sonja Allen-Smith, Division Director, Public Safety Division

Georgia Department of Community Supervision

Michael Nail, Commissioner

Scott Maurer, Assistant Commissioner

Mark Morris, Director of Transition, Support and Reentry

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Georgia Department of Corrections

Greg Dozier, Commissioner

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Terry Barnard, Chairman

Chris Barnett, Executive Director

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Jill Travis, Deputy Legislative Council

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Jay Neal, Director

Steven Hatfield, Deputy Director

Robert Thornton, Division Director

Aisha Ford, Program Director

Samantha Wolf, Program Director

Administrative Office of the Courts

Cynthia Clanton, Executive Director

State Bar of Georgia

Christine Butcher Hayes

Director of Government Affairs

Association of County Commissioners of Georgia

Debra Nesbit, Associate Legislative Director

The Home Depot

Paul J. Kaplan, Senior Corporate Counsel – Commercial Litigation

Reentry Housing Work Group

Conveners

Doug Ammar - Georgia Justice Project

Elizabeth Appley - Georgia Supportive Housing Association

Paul Bolster - Georgia Supportive Housing Association

Participants

Natasha Alladina - Georgia Justice Project

Tonya Ashley- Georgia Department of Corrections

Harris Childers - Department of Community Supervision

Susan Goico - Atlanta Legal Aid Society

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Cliff Hartley - Georgia Department of Corrections
Cory Isaacson - Georgia Justice Project
Chris Johnson - Georgia Justice Project
Mike Kraft, Department of Community Supervision
Elizabeth Lummus - Georgia Justice Project
Jill Mays - Department of Behavioral Health and Developmental Disabilities
Carey Miller – CJRC Co-Chair, Governor’s Executive Counsel
Evan Mills - Advantage Behavioral Health
Lt. Dennis Pass - Rockdale County Sherriff/ Metro Atlanta Reentry Coalition
Letitia Robinson - Department of Behavioral Health and Developmental Disabilities
Caleb Saggus - Governor’s Deputy Executive Counsel
Mariel Sivley - Georgia Supportive Housing Association
Brenda Smeeton -Georgia Justice Project
Donna Vernae Tebought - Georgia Department of Corrections
Leanza Warren - Prison consultant
Samuel Wegleitner - Georgia Legal Services Program
Talley Wells - Atlanta Legal Aid Society
David Whisnant - Department of Community Affairs

Georgia Justice Project

Doug Ammar
Cory Isaacson

Members of the Judicial Council Ad Hoc Committee on Misdemeanor Bail Reform

Judge Wayne Purdom
Chief Judge Brenda S. Weaver
Senior Judge Melodie Clayton
Judge Russ McClelland
Judge Mark Mitchell
Judge Ben Studdard
Judge Berryl Anderson
Judge Michael Barker
Judge Bob Turner
Judge Allen Wigington
Judge Rooney Bowen
Judge Matthew McCord
T. J. BeMent

Technical Assistance Providers

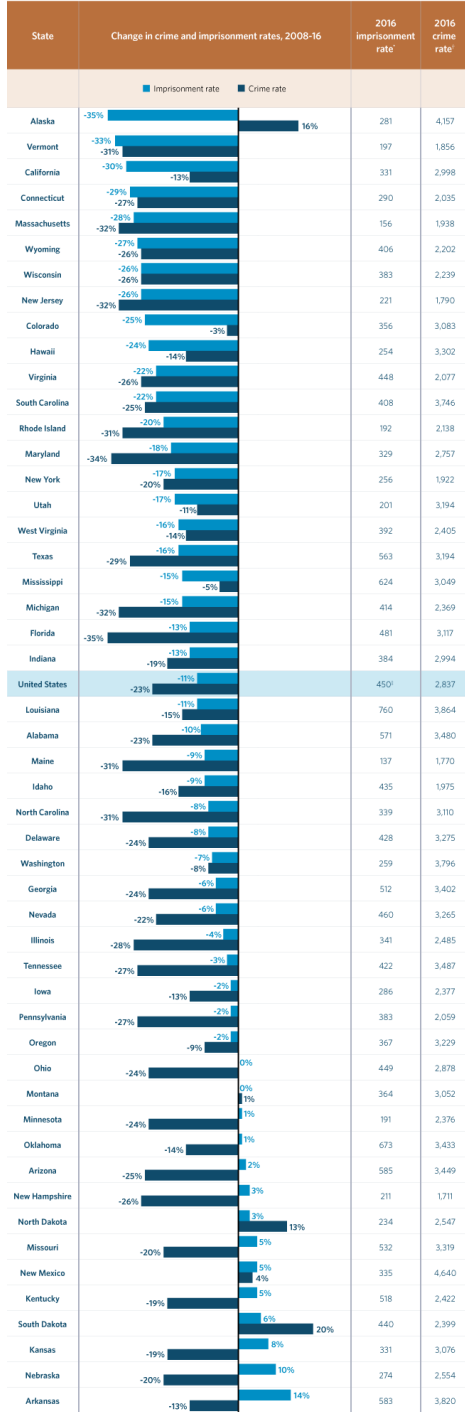
Dr. John Speir, Applied Research Services

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Tammy Meredith, Applied Research Services
Sharon Johnson, Applied Research Services
Marshall Clement, Council of State Governments Justice Center
Angie Gunter, Council of State Governments Justice Center
Alison Martin, Council of State Governments Justice Center
Jenifer Warren, Warren Communications

Appendix A

35 States Cut Crime and Imprisonment Simultaneously State rankings by imprisonment rate declines, 2008-16



¹ The imprisonment rate is per 100,000 residents of all ages. It counts people sentenced to more than a year in prison and does not reflect people housed in jails or other facilities under the jurisdiction of correctional authorities, except for Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, which have integrated prison and jail systems so data for those states include total jail and prison populations. Total and individual state estimates include imputed counts for North Dakota and Oregon, which did not submit 2016 data to the Bureau of Justice Statistics.

² The crime rate is per 100,000 residents of all ages. It reflects Part I offenses as defined by the FBI's Uniform Crime Report and combines violent and property crimes.

³ The U.S. imprisonment rate includes people held in federal prisons and excludes those held in local jails.

Source: Bureau of Justice Statistics, Prisoners series, 2008-16, <https://www.bjs.gov/content/pub/pdf/p16.pdf>; Pew analysis of FBI, Crime in the United States series, 2008-16, <https://ucr.fbi.gov>

Appendix B



Daily Reportable Funds Report

Total reported values as of Friday, June 30, 2017 11:50 PM

FUND NAME	TODAY	MONTH-TO-DATE	YEAR-TO-DATE
Alternative Dispute Resolution	\$7,632.50	\$427,094.56	\$5,359,538.12
City General Fund	\$5,046.50	\$12,005,004.57	\$123,739,922.49
Clerks' Retirement Fund	\$7,861.61	\$219,196.90	\$2,410,709.17
County General Fund	\$675,930.96	\$18,970,790.35	\$211,782,498.11
County Jail Fund	\$56,828.32	\$1,860,335.52	\$19,938,717.48
Drug Abuse Treatment and Education	\$68,216.22	\$866,432.68	\$8,859,463.30
Indigent Defense Application Fee	\$3,199.25	\$39,013.97	\$468,675.04
Indigent Defense POPIDF-A-Bond Forfeitures	\$0.00	\$192.88	\$5,855.94
Indigent Defense POPIDF-B-Bond Forfeitures	\$0.00	\$192.88	\$8,503.68
Judicial Operation Fund Fee (Reportable)	\$38,925.00	\$260,030.00	\$2,458,915.42
Law Library	\$13,350.34	\$571,915.21	\$5,995,136.90
Local Crime Victims Compensation Fund	\$26,650.54	\$1,113,262.29	\$12,009,337.15
Magistrate Retirement Fund	\$0.00	\$132,864.00	\$1,574,336.97
Peace Officers Annuity and Benefit Fund	\$33,998.16	\$1,293,699.93	\$14,014,303.60
Probate Retirement Fund	\$394.60	\$137,601.53	\$1,446,161.61
Probation Fees	\$135.25	\$373,371.92	\$4,750,025.16
Publication Fee	\$0.00	\$4,521.20	\$64,867.36
Restitution	\$4,113.95	\$557,612.15	\$6,634,265.88
Sheriffs Retirement Fund	\$2,618.75	\$174,662.27	\$1,918,073.98
TOTALS:	\$944,901.95	\$39,007,794.81	\$423,439,307.36



Daily Remittance Report

Total Remittances as of Friday, June 30, 2017 11:30 PM

FUND NAME	TODAY	MONTH-TO-DATE	YEAR-TO-DATE
Brain and Spinal Injury Trust Fund	\$12,757.48	\$137,556.15	\$1,445,857.02
Crime Lab Fee	\$5,580.64	\$112,249.63	\$1,228,998.61
Crime Victims Compensation Fund	\$4,246.97	\$48,688.27	\$519,236.91
Divorce surcharge (CTF)	\$415.00	\$17,360.00	\$221,367.35
Driver Education and Training Fund	\$6,893.74	\$276,804.78	\$3,095,265.73
Indigent Defense Application Fee	\$0.00	\$14,684.13	\$317,008.06
Indigent Defense Civil Action Surcharge	\$16,380.00	\$992,262.37	\$11,443,149.30
Indigent Defense POPIDF Surcharge	\$55,494.07	\$2,301,702.44	\$25,301,815.10
Indigent Defense POPIDF-A-Bond Forfeitures	\$0.00	\$8,884.34	\$80,313.31
Indigent Defense POPIDF-B-Bond Forfeitures	\$0.00	\$8,884.34	\$79,292.53
Judicial Operation Fund Fee	\$80,900.00	\$1,524,841.46	\$17,371,282.14
Marriage License Fee (CTF)	\$195.00	\$102,585.00	\$1,206,241.00
Peace Officers, Prosecutor Training Fund	\$49,331.75	\$2,084,234.16	\$22,806,605.37
Safe Harbor Fund	\$0.00	\$530.00	\$919.88
Trust Fund Interest	\$13.25	\$7,300.80	\$88,058.02
Trust Fund Interest - Sheriffs	\$8.32	\$2,291.89	\$25,298.73
TOTALS:	\$232,216.22	\$7,640,859.76	\$85,230,709.06

Source: Georgia Superior Court Clerks' Cooperative Authority, CourTRAX, Year End Reports for Fiscal Year 2017

Endnotes

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