Georgia Probation and Sentencing Subcommittees

Fifth Meeting

October 20, 2016

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Please note that these draft policy options are for discussion purposes only, and input from subcommittee members is needed.

For the next subcommittee meeting, the CSG Justice Center will present updated policy options based on feedback from the subcommittee, projected impacts based on updated policy options, and estimated reinvestments.
Georgia has the highest correctional control rate in the country, driven by the high rate of people on probation and lengthy supervision terms

### Problem Statement

<table>
<thead>
<tr>
<th>National Rank</th>
<th>Total Rate</th>
<th>Probation</th>
<th>Jail</th>
<th>Prison</th>
<th>Parole</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia</td>
<td>1st</td>
<td>7,580</td>
<td>550</td>
<td>686</td>
<td>334</td>
</tr>
</tbody>
</table>

1. **166,383 felony probationers, Rate of 1,629 per 100,000 residents**
2. **38,979 felony probationers, Rate of 388 per 100,000 residents**
3. **198,911 felony probationers, Rate of 724 per 100,000 residents**

**Two main drivers of Georgia’s high felony probation rate:**
1. Use of probation in lieu of incarceration, and in addition to incarceration as split sentences
2. Lengthy felony probation terms
Georgia’s large felony probation population creates challenges to applying effective supervision practices

**Three Key Challenges:**

1. DCS is not able to frontload supervision resources on people who pose the highest risk

   Transitioning probationers from active to unsupervised status more quickly, based on risk, will allow officers to target resources and efforts to people who pose the highest risk

2. Intensity of supervision for people at the highest risk may not be sufficient to change behavior

   **DCS minimum contact standards**
   - Specialized: Twice per month
   - High: Once per month for 2–5 minutes
   - Standard: Once every 90 days for 2–5 minutes

   **Meaningful, proactive engagement with motivational interviewing for high-risk probationers requires at least 15–20 minutes, multiple times per month**

3. Due to high caseloads, supervision follows a reactive approach

   **Supervision should follow a proactive case planning approach**

Source: CSG Justice Center focus groups with community supervision officers, August 16-17, 2016
Adherence to RNR principles is especially important to the effectiveness of community supervision as a recidivism-reduction strategy.

Reducing recidivism among people on probation and parole can increase public safety and reduce prison admissions.

Problem Statement

Roughly 68% of prison admissions are likely probation and parole revocations for new offenses or violations of special conditions.

Half of those admitted to prison on a new sentence while on probation were within the first two years of their supervision period.

The estimated 10,051 people admitted to prison while on probation is only 6% of the FY15 felony probation population.

Note: GDC data does not capture cases where probationers were reconvicted with a new offense and subsequently admitted to prison; the values presented here are estimated based on matching probation terminations to prison admissions where the termination was close to the admission date.

Source: CSG Justice Center Analysis of Prison Admissions and Probation Terminations Data
### Overview

1. Use probation, programming, and treatment to reduce recidivism among people convicted of a 1\(^{\text{st}}\) or 2\(^{\text{nd}}\) drug or property offense

2. Enable the reduction of lengthy probation sentences for certain offenses and as an incentive

3. Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision

4. Improve the cost-effectiveness of responses to probation and parole violations

5. Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements
Challenge 1: People convicted of property and drug offenses with no more than one prior felony conviction who were sentenced to probation had significantly lower rates of reconviction than similar people sentenced to prison.

Three-Year Felony Reconviction Rates
for Property and Drug Convictions,* FY2011–FY2013

- Direct Probation: 10.3%
- Prison (Direct and Splits): 22.9%

*Excludes 1st degree burglary and drug trafficking

Source: CSG Justice Center Analysis of Probation and Inmate research files
Most first and second felony convictions of property and drug crimes are already sentenced to probation

Probation Placements and New Admissions of Property and Drug Offenses with No Prior or One Prior Felony Conviction, FY2015

- **Probation:**
  - No Prior Felonies: 12,273
  - One Prior Felony Conviction: 2,247

- **Prison:**
  - No Prior Felonies: 1,485
  - One Prior Felony Conviction: 4,125

**Total:**
- Probation: 14,520
- Prison: 5,610

**2,943**
(or 15% of total prison admissions)
Number of property and drug prison admissions with no more than 1 prior, excluding 1st-degree burglary and drug trafficking offenses

Specific Offense Breakdown

- **Burglary:** 1,228 (30%)
- **Theft:** 720 (17%)
- ** Forgery/Fraud:** 302 (7%)
- **Other Property:** 135 (3%)
- **Drug Possession:** 1,162 (28%)
- **Drug Sales:** 320 (8%)
- **Drug Trafficking:** 258 (6%)

*Approx. 75% of new prison admissions for burglary are first-degree

Source: CSG Justice Center Analysis of Prison Admissions and Probation Placements Data
Policy Goal 1: Use probation, programming, and treatment to reduce recidivism among people convicted of a first or second drug or property offense

- Create a presumption of probation upon the 1st or 2nd conviction for certain drug and property offenses, excluding drug trafficking and 1st-degree burglary.

New Placements to Probation or Prison by Criminal History, by Property and Drug Offenses, FY2015

- Probation
  - No prior felonies: 13,294 (85%)
  - One prior felony: 3,043 (70%)
  - Two prior felonies: 1,551 (65%)
  - Three prior felonies: 951 (55%)
  - Four or more priors: 1,724 (42%)

- Prison
  - No prior felonies: 3,043 (30%)
  - One prior felony: 1,551 (35%)
  - Two prior felonies: 951 (45%)
  - Three prior felonies: 1,724 (58%)

Of the Property and Drug convictions in FY2015, 76% (15,667) received probation in lieu of incarceration (4,896),

* Adjusted to exclude 1st-degree burglary and drug trafficking

Total all FY15 Placements: 36,309
Total Property and Drug: 23,586
Adjusted Property and Drug*: 20,563

Source: CSG Justice Center Analysis of Inmate Data and Probation Data, FY2015
Overview

1. Use probation, programming, and treatment to reduce recidivism among people convicted of a 1st or 2nd drug or property offense.

2. Enable the reduction of lengthy probation sentences for certain offenses or as an incentive.

3. Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision.

4. Improve the cost-effectiveness of responses to probation and parole violations.

5. Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements.
Challenge 2: Georgia has lengthy felony probation terms regardless of criminal history and especially for the probation portion of a split sentence.

Average Probation Sentence Lengths for **Property and Drug Convictions**
Placements to Probation, FY2005–FY2015

- **No prior felony convictions**: Direct 61, Split Sentence 90
- **One prior felony conviction**: Direct 64, Split Sentence 92
- **Two prior felony convictions**: Direct 67, Split Sentence 96
- **Three prior felony convictions**: Direct 68, Split Sentence 97
- **Four or more prior felony convictions**: Direct 70, Split Sentence 99
- **Total**: Direct 62, Split Sentence 93

7.5 years, average probation sentence for split sentences
5 years, average probation sentence for direct probation sentences

Source: CSG Justice Center Analysis of Probation Research file
Compared to North Carolina, Georgia has lengthier felony probation terms for people convicted of property and drug offenses.

**Community**
- 25 months, on average

**Intermediate (Split)**
- 28 months, on average
  - (¼ in prison, ¾ on probation)

**Active (Prison)**
- Range of 30–47 months

**Probation**
- 63 months, on average

**Prison**
- 9.9 years, on average

**Split Sentences**
- 20 years, on average
  - (12 years in prison, 8 years on probation)

For first and second property and drug convictions, the length of the prison portion of split sentences is longer than prison-only sentences.

<table>
<thead>
<tr>
<th>Georgia</th>
<th>Prison Only</th>
<th>Split Sentences</th>
<th>Statutory Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burglary 2(^{nd}) degree</td>
<td>84</td>
<td>7.9 Years</td>
<td>220</td>
</tr>
<tr>
<td>Theft (Taking/Receiving/Stolen)</td>
<td>208</td>
<td>7.3 Years</td>
<td>357</td>
</tr>
<tr>
<td>Forgery/Fraud</td>
<td>115</td>
<td>8.4 Years</td>
<td>187</td>
</tr>
<tr>
<td>Shoplifting</td>
<td>39</td>
<td>4.3 Years</td>
<td>116</td>
</tr>
<tr>
<td>Arson/Property Damage</td>
<td>25</td>
<td>7.0 Years</td>
<td>43</td>
</tr>
<tr>
<td>Other Property</td>
<td>9</td>
<td>7.1 Years</td>
<td>58</td>
</tr>
<tr>
<td>Drug Possession</td>
<td>428</td>
<td>6.3 Years</td>
<td>734</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>54</td>
<td>7.9 Years</td>
<td>266</td>
</tr>
</tbody>
</table>

Source: CSG Justice Center Analysis of Prison Admissions Data
Policy Goal 2: Enable the reduction of lengthy probation sentences for certain offenses and as an incentive

A. Presumptive, automatic early termination from straight probation sentences after 3 years for people serving a sentence for a 1\textsuperscript{st} or 2\textsuperscript{nd} property or drug offense, unless restitution is outstanding. For people serving a split sentence, the termination of supervision should be presumptive at 3 years or the length of the remaining prison sentence, whichever is longer.
   i. This approach could be automatic, unless the prosecuting attorney requested a hearing and upon showing of good cause.

B. As a part of a felony probation sentence, require a behavioral incentive date (BID) to be established and not exceed five years. If the person remains in compliance, has no new arrests, and has paid all restitution and fines prior to reaching the BID, notice shall go to the court and supervision shall be automatically terminated.
   i. This approach could be automatic, unless the prosecuting attorney requested a hearing and upon showing of good cause.
   ii. Make the imposition of a BID optional for people with more serious and violent convictions or with extensive criminal history.
Overview

1. Use probation, programming, and treatment to reduce recidivism among people convicted of a 1st or 2nd drug or property offense.

2. Enable the reduction of lengthy probation sentences for certain offenses and as an incentive.

3. Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision.

4. Improve the cost-effectiveness of responses to probation and parole violations.

5. Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements.
Challenge 3: High probation caseloads result in less effective supervision

Source: CSG Justice Center analysis of Probation Research file

### Fines and fees may be preventing people from transitioning to Unsupervised status, particularly for PRCC and Standard caseloads

<table>
<thead>
<tr>
<th></th>
<th>PRCC</th>
<th>Standard</th>
<th>High</th>
<th>Specialized</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 2 Years:</td>
<td>14,561</td>
<td>19,772</td>
<td>4,938</td>
<td>1,716</td>
</tr>
<tr>
<td>Reduce Recidivism</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt; 2 years:</td>
<td>29,598</td>
<td>21,862</td>
<td>7,751</td>
<td>4,565</td>
</tr>
<tr>
<td>Monitor new arrests, fines, fees, surcharges, and restitution</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Reducing standard caseloads would give probation officers more time to supervise high-risk people.

Caseload Example:

- **Standard**
  - 136 people / probation officer
  - Minimum contact for Standard: once per month for 2–5 minutes
  - Minimum contact for High: two contacts and one site visit

Potential Impact:

- **Shift to unsupervised**
  - 104 people / probation officer
  - Minimum contact: multiple times per month for 10–15 minutes

Shifting some proportion of people who have been on PRCC supervision for longer than 2 years to Unsupervised status could free up officers to further reduce caseload sizes.

Source: CSG Justice Center analysis of Probation Research file
Policy Goal 3: Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision

A. Reduce recidivism by ensuring that high-risk people on probation receive intensive, meaningful engagement in the first two years on supervision. Reduce caseloads for officers supervising high-risk people to enable increased contacts and engagement.

B. Move people on probation to unsupervised status after two years as suggested by current statute, unless the person owes restitution, is at a high risk of reoffending, or has been convicted of a sex offense.
Overview

1. Use probation, programming, and treatment to reduce recidivism among people convicted of a 1\textsuperscript{st} or 2\textsuperscript{nd} drug or property offense.

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3. Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision.

4. Improve the cost-effectiveness of responses to probation and parole violations.

5. Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements.
Challenge 4: Responses to probation violations could be more cost-effective

Upon revocation to prison, any restitution, fines, and fees that are outstanding are dropped, but the challenge of addressing the individual’s risk and needs upon release remains.

CSG Analysis of Movements file, Probation automated risk scores file, and Probation Admissions file
Georgia funds several types of responses to violation behavior in lieu of revocation:

**Intermediate Sanctions**
- Early curfews, more frequent visits with probation officer, more drug tests, community service, electronic monitoring, and other non-incarcerative responses to minor violations

**Day Reporting Center**
- Substance use, mental health, and cognitive thinking programs in the community

**Probation Detention Center**
- Short, incarcerative response for people who have failed DRC programs and/or continue to violate conditions of probation

**Probation Revocation**
- To prison for people who commit new crimes or if all other responses failed

**RSAT or ITF**
- Incarcerative response that should only target people who are high risk, high needs, followed by aftercare

**Incarcerative**

**Non-incarcerative**
Policy Goal 4: Improve the cost-effectiveness of responses to probation and parole violations

A. For people sentenced to split sentences, require parole supervision to follow probation conditions set by the judge in addition to any conditions set by the parole board, and enable parole to use responses to violations that are open to people on probation.

B. Require that a case plan to reduce recidivism be developed for any person on probation who is assessed to have a likelihood of recidivism greater than 60 percent.

C. Continue the total RSAT treatment program at 15 months (residential and aftercare). Increase the number of people in the existing capacity by reducing the RSAT program from 9 to 6 months, and expand RSAT aftercare program in the community from 6 to 9 months. Create criteria for RSAT placement, such as in response to probation violation behavior for people who are medium to high risk.

D. Expand state-funded community-based access to treatment for people at a high risk of reoffending who have substance use issues who may not require a full RSAT model.

E. Provide judges and DCS with the tools needed to reduce the number of probation condition violators from being sentenced to prison by 50 percent by reinvesting in expanding drug court capacity in lieu of revocation as well as a specialized probation revocation caseload.
   i. Counties where judges can reduce the number of people revoked to prison should utilize drug courts (with PDCs as a sanctioning option) and/or revoke people on to a specialized probation revocation caseload.
   ii. A specialized probation revocation caseload should be limited to no more than 20–30 people, and officers should have access to state-funded vouchers for services and programs to address the person’s risk and needs and stabilize them in the community (electronic monitoring, transitional housing, intensive outpatient, transitional employment and education).
   iii. Being moved to a specialized probation caseload should also enable swift and certain, short sanctions in response to violations. This could be piloted using PDCs.
Use probation, programming, and treatment to reduce recidivism among people convicted of a 1st or 2nd drug or property offense

Enable the reduction of lengthy probation sentences for certain offenses and as an incentive

Frontload active probation supervision to reduce caseloads and deliver more meaningful supervision

Improve the cost-effectiveness of responses to probation and parole violations

Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements
Summary of fines, fees, surcharges, and restitution obligations of active and terminated people on probation, based on limited data

Current Active Probationers*

<table>
<thead>
<tr>
<th>Placements occurring within past 2 years</th>
<th>Placements occurring 2 to 5 years ago</th>
<th>Placements occurring 5 or more years ago</th>
</tr>
</thead>
<tbody>
<tr>
<td>74,550</td>
<td>63,991</td>
<td>64,064</td>
</tr>
</tbody>
</table>

- 59,329 (80%) owe FFS
- 11,790 (16%) owe restitution
- 32,789 (51%) owe FFS
- 10,137 (16%) owe restitution
- 32,836 (51%) owe FFS
- 10,154 (16%) owe restitution

Over 65,000 people on probation for longer than 2 years owe court fines; Over 20,000 people on probation for longer than 2 years owe restitution.

Sample of active cases on supervision for at least 2 years:

- PRCC: Median amount owed $1,589
- Standard: Median amount owed $1,696
- Cases that expired in 2015: Median amount owed $657
  - Balances under $1,000 typically involved outstanding FFS
  - Balances over $1,000 typically included restitution obligations

*includes Warrant Cases, of which there are approximately 39,000

Source: Georgia Department of Corrections special data analysis, October 2016 and CSG Analysis of Probation data
Policy Goal 5: Improve handling and tracking of LFOs; adjust the recidivist sentencing statute; and consider policy options to sustain improvements

A. Establish presumption of indigency and waiving fines/fees/surcharges and supervision fees for felony sentences, similar to misdemeanor approach.

B. Confirm payment of restitution owed to individuals (and/or small businesses) prior to payment of outstanding fines, fees, and surcharges.
   A. Establish a statewide financial database to track any and all restitution, fines, fees, and surcharges ordered, what’s been collected, and individual indigency. Require the database to be able to crosscheck state and county levels of collection and consolidate orders by individual, not just case.
   B. Streamline the process for victims to receive the restitution that has been collected.

C. Restore parole eligibility for certain property offenses sentenced under the recidivist sentencing statute.

D. Establish a unified data system to collect information about people on misdemeanor probation.

E. Evaluate quality of programming in PDCs, ITFs, RSATs, and DRCs at least every five years.

F. Require that risk assessment instruments used by GDC and DCS be revalidated at least every five years.
Next steps

- Further refine policy options based on stakeholder feedback and discussions

- Present projected impacts, including:
  - Actively supervised probation population
  - Prison population
  - Potential recidivism reduction

- Present suggested reinvestments, based on averted costs
Proposed timeline for Georgia’s Justice Reinvestment project

**2017 Session**

- **Council Meeting 1:** July 26
- **Subcommittee Meeting 1:** July 6
- **Council Meeting 2:** August 17
- **Subcommittee Meeting 2:** August 17
- **Council Meeting 3:** September 7
- **Subcommittee Meeting 3:** September 7
- **Subcommittee Meeting 4:** October 13
- **Subcommittee Meeting 5:** October 20
- **Council Meeting 4:** October 13
- **Council Meeting 5:** October 20
- **Subcommittee Meeting 6:** November 1
- **Council Meeting 6:** November 9
- **Council Meeting 7:** December 6
- **Policymaker & Stakeholder Engagement**
  - Solicit Anecdotal Information
  - Policy Options Development
  - Ongoing Engagement
- **Data Analysis**
  - Initial Analysis
  - Detailed Data Analysis
  - Impact Analysis
- **Bill Introduction**
Thank You

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