Georgia Council on Criminal Justice Reform

Third Sentencing Subcommittee Meeting

September 7, 2016

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Chenise Bonilla, Policy Analyst
Dan Altman, Program Associate
## Data analysis and stakeholder engagement update

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Source</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arrests</td>
<td>Georgia Crime Information Center</td>
<td>Analyzed</td>
</tr>
<tr>
<td>Sentencing and Revocations</td>
<td>ARS</td>
<td>Analyzed</td>
</tr>
<tr>
<td>Inmate</td>
<td>ARS, originally provided by GDC</td>
<td>Analyzed</td>
</tr>
<tr>
<td>Probation</td>
<td>ARS, originally provided by GDC</td>
<td>Received</td>
</tr>
</tbody>
</table>

### Stakeholder Engagement Since the July Subcommittee Meeting

1**st Meeting of the Georgia Council on Criminal Justice Reform**
- Delivered a presentation discussing initial analysis shared with the Sentencing Subcommittee and Probation Subcommittee in July, as well as possible next steps

2**nd Sentencing Subcommittee Meeting**
- Stakeholder presentations delivered by a criminal defense attorney and the Southern Center for Human Rights

### Calls and Meetings with Subcommittee Members and Other Stakeholders
- 22 conversations with representatives of the judiciary, executive, legislature, prosecuting attorneys, criminal defense, criminal justice administrators, and advocacy groups
Overview

1. Recidivist Sentencing
2. Sentencing Analysis
3. Outcomes
4. Next Steps
Georgia’s recidivist sentencing statutes impact nonviolent offenses differently

The prosecuting attorney must charge as a recidivist under the relevant statute and prove all prior convictions.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Statutory Penalty Range</th>
<th>1&lt;sup&gt;st&lt;/sup&gt; Conviction</th>
<th>2&lt;sup&gt;nd&lt;/sup&gt;–3&lt;sup&gt;rd&lt;/sup&gt; Convictions</th>
<th>4&lt;sup&gt;th&lt;/sup&gt; + Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Possession of Cocaine, 1–4 grams</strong>&lt;br&gt;§16-13-30 (c)(2)</td>
<td>1–8 years in prison</td>
<td>1–8 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is parole eligible</td>
<td>1–8 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is parole eligible</td>
<td>1–8 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is parole eligible</td>
</tr>
<tr>
<td><strong>Theft by Taking, $1500–$5000</strong>&lt;br&gt;§16-8-2 and §16-8-12 (a)(1)(c)</td>
<td>1–5 years in prison</td>
<td>1–5 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is parole eligible</td>
<td>Sentencing pursuant to Recidivist Sentencing Statute (§17-10-7)&lt;br&gt;- 5 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is parole eligible</td>
<td>5 years&lt;br&gt;- Eligible for probation&lt;br&gt;- Prison sentence is NOT parole eligible</td>
</tr>
</tbody>
</table>
Property offenses comprise 41% of the recidivist admissions to prison under §17-10-7(c), with average sentence lengths of 21 years (prison + probation).

Ten-Year Recidivist* Admissions to Prison, FY2006–FY2015

- 42% of recidivists have violent priors in their criminal history.
- 53% of recidivists are property offenders.
- 26% of property recidivists fall under the recidivist sentencing scheme.
- 74% of property recidivists have no violent priors in their criminal history.
- 81% of drug recidivists have no violent priors in their criminal history.
- Life or LWOP: 12.7 years
- Average sentence length in prison for property offenses under recidivist sentencing scheme: 8.3 years
- Additional probation length for property offenses under recidivist sentencing scheme: 21 years

Only 2.5% of all admissions to prison fall under the recidivist sentencing scheme.

Source: CSG Justice Center Analysis of Inmate research file
There are currently 816 inmates in the prison population who were convicted of a property offense and sentenced under the recidivist sentencing statute.


- 95% Not a Recidivist Conviction, n. = 51,161
- 2% Recidivist/Violent, n. = 1,091
- 3% Recidivist/Nonviolent, n. = 1,444

Potential Impacts:

**585 Current Inmates**
Restoring parole eligibility for certain convicted recidivists has the potential to affect up to 585 qualifying cases*.

* By including “Other” recidivist convictions with no violent priors, an additional 105 inmates could become parole eligible.

**140 New Admissions**
An average of 140 new admissions annually under recidivist sentencing scheme for property offenses for people with no violent priors.

* By including “Other” recidivist convictions with no violent priors, an additional 30 admissions could become parole eligible.

**One-third** of the current on-hand recidivist population was convicted of a property crime.

585 people with no prior violent convictions, 231 people with one or more prior violent conviction(s)

51% Burglary, 49% Other Property

Source: CSG Justice Center Analysis of Inmate Research file
Overview

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Felony dispositions to prison have declined, while the share sentenced to probation and accountability courts account for two-thirds of all dispositions.

Superior court dispositions to prison declined from 30,344 in FY2009 to 17,920 in FY2015 (−41%).

Superior court dispositions to probation and accountability courts increased from 27,837 in FY2009 to 32,052 in FY2015 (+15%).

Source: CSG Justice Center Analysis of Sentencing Dockets Data and "Accountability Courts Output Reports Summary (SFY 2015)"
While overall dispositions to prison have declined, prison sentence lengths and average lengths of stay in prison have increased over the past 10 years.

**Changes in Sentencing:**

- Sentence lengths have increased **17%** over the past 10 years, from 9.9 years in FY2006 to 11.6 years in FY2015.
- Time served has increased slightly over the past 10 years, from 3 years in FY2006 to 3.6 years in FY2015.

*Source: CSG Justice Center Analysis of Sentencing Dockets Data and “Accountability Courts Output Reports Summary (SFY 2015)”*
The prison portion of a split sentence (prison + probation) is typically longer than for prison-only sentences, except for violent and sex offenses.

### Sentence Lengths (in Years), FY2015

<table>
<thead>
<tr>
<th>Offense</th>
<th>Direct Sentences</th>
<th>Splits</th>
<th>Probation Portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent</td>
<td>15</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Property</td>
<td>8</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Drug Sales</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>Drug Possession</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sex Offenses</td>
<td>6</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>Other Offenses</td>
<td>7</td>
<td>9</td>
<td>16</td>
</tr>
<tr>
<td>Total/Avg</td>
<td>10</td>
<td>12</td>
<td></td>
</tr>
</tbody>
</table>

Source: CSG Justice Center Analysis of Prison Inmate file
Admissions to prison for probation and parole revocations have increased slightly and represent more than a quarter of prison admissions.

Prison Admissions (New Admission or Revocation), FY2011–FY2015

28% of prison admissions are supervision revocations

Note: GDC isn’t capturing people who were on probation supervision and were reconvicted with a new offense; these cases are coded as new admissions.

Source: CSG Justice Center Analysis of Prison Admissions Data
As the number of prior felony convictions increases for an individual, the likelihood of getting a prison sentence increases.

### New Placements to Probation or Prison

<table>
<thead>
<tr>
<th>Criminal History</th>
<th>Probation</th>
<th>Prison</th>
</tr>
</thead>
<tbody>
<tr>
<td>No prior felonies</td>
<td>73%</td>
<td>27%</td>
</tr>
<tr>
<td>One prior felony</td>
<td>56%</td>
<td>44%</td>
</tr>
<tr>
<td>Two prior felonies</td>
<td>52%</td>
<td>48%</td>
</tr>
<tr>
<td>Three prior felonies</td>
<td>45%</td>
<td>55%</td>
</tr>
<tr>
<td>Four or more priors</td>
<td>34%</td>
<td>66%</td>
</tr>
</tbody>
</table>

Total: 36,309

**Data Issue:**
GDC may be undercounting the number of people who were on probation, and were convicted of a new offense and remanded to prison.

Source: CSG Justice Center Analysis of Inmate Data and Probation Data, FY2015
The majority of people with no prior convictions who are convicted of property and drug offenses are placed on probation.

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

- **No prior felonies**: 15,145 placements, 81% on probation for 4.9 years, 19% in prison for 10.5 years.
- **One prior felony**: 2,239 placements, 35% on probation for 9.7 years, 65% in prison for 9.7 years.
- **Two prior felonies**: 1,064 placements, 41% on probation for 9.8 years, 59% in prison for 9.8 years.
- **Three prior felonies**: 551 placements, 51% on probation for 9.3 years, 49% in prison for 9.3 years.
- **Four or more priors**: 755 placements, 36% on probation for 5.4 years, 64% in prison for 5.4 years.

Total Placements (All): 36,309
Total Placements (Property and Drug): 23,586

65% of all new placements involve property and drug convictions.

Source: CSG Justice Center Analysis of Inmate Data and Probation Data, FY2015
The majority of people with no prior convictions who are convicted of property and drug offenses are placed on probation.

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

- **No prior felonies**: 12,219 placements
  - Probation: 2,926
  - Prison: 2,239
- **One prior felony**: 1,199
  - Probation: 1,064
  - Prison: 750
- **Two prior felonies**: 563
  - Probation: 551
  - Prison: 1,320
- **Three prior felonies**: 755
- **Four or more priors**: Total placements (Property and Drug): 23,586

- **Total Placements (All)**: 36,309
- **Total Placements (Property and Drug)**: 23,586

65% of all new placements involve property and drug convictions.

Of the people convicted of property and drug offenses in FY2015, 71% (16,828) received probation in lieu of incarceration (6,758).

*Source: CSG Justice Center Analysis of Inmate Data and Probation Data, FY2015*
10 percent of people in prison now were convicted of a nonviolent offense (including current and prior convictions) and had no prior felony convictions.

On-hand Prison Population Composition, April 2016

- **17,661** (33%) Seven Deadly Sins
- **20,621** (38%) Violent Offense (Current or Prior)
- **15,493** (29%) Nonviolent Offenses (Current and Prior)

Nonviolent Offenses

- **2,841** One Prior
- **5,516** No Prior Felony Convictions
- **7,136** Two or More Priors

- Burglary: 1,770
- Other Property: 1,013
- Drug Sales: 970
- Drug Possession: 941
- Other: 822

Source: CSG Justice Center Analysis of Inmate Research file, on-hand cases, as of 4/9/2016
Overview

1. Recidivist Sentencing
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Controlling for prior felony criminal history, people sentenced to probation are reconvicted for new felonies at half the rate of those sentenced to prison.

Three-Year Felony Reconviction Rates by Criminal History, FY2012

- **No prior felonies**: 11% (Probation Only Sentence), 21% (Prison)
- **One prior felony**: 11% (Probation Only Sentence), 25% (Prison)
- **Two prior felonies**: 13% (Probation Only Sentence), 29% (Prison)
- **Three prior felonies**: 15% (Probation Only Sentence), 31% (Prison)
- **Four or more priors**: 15% (Probation Only Sentence), 37% (Prison)

Source: CSG Justice Center Analysis of Probation and Inmate research files
Looking at only property and drug sentences and controlling for prior felony conviction history, people sentenced to probation have lower recidivism rates than similar people sentenced to prison.

Three-Year Felony Reconviction Rates, for Property and Drug Convictions, by Criminal History, FY2012

- No prior felonies: 11% (Probation Only), 24% (Prison)
- One prior felony: 11% (Probation Only), 26% (Prison)
- Two prior felonies: 13% (Probation Only), 29% (Prison)
- Three prior felonies: 13% (Probation Only), 32% (Prison)
- Four or more priors: 17% (Probation Only), 37% (Prison)

Source: CSG Justice Center Analysis of Probation and Inmate research files
Overview

1. Recidivist Sentencing
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Summary of sentencing trends

Findings

- Recidivist sentences account for less than 3 percent of prison admissions. There are currently 800 people in prison on recidivist sentences for property offenses with an average prison term of 12.7 years who are not eligible for parole.

- New admissions to prison have declined since FY2009, but overall sentence lengths and time served are increasing.

- The prison portion of a split sentence is longer than a prison-only sentence, except for violent and sex offenses.

- Probation is used to divert a majority of people sentenced for felonies away from prison. People with prior felony convictions are less likely to receive a probation-only sentence.

- 20 percent of people without prior felony convictions who are sentenced for a property or drug offense received a prison sentence. Those people make up 10 percent of the prison population on any given day.

- People sentenced to probation recidivate at half the rate of people sentenced to prison, even after controlling for prior felony convictions and offense type.
Questions still being explored and analyzed

- Why are people with no prior felony record sentenced to prison for a property or drug offense?

- How do probationers with new felony convictions impact prison admission trends?
  - What types of offenses do probationers commit?
  - When, during their lengthy supervision terms, are they reconvicted?

- Other questions the subcommittee would like to explore?
Timeline for Georgia’s Justice Reinvestment project

2017 Session

Council Meeting 1: July 26
Subcommittee Meeting 1: July 6

Subcommittee Meeting 2: Stakeholders Present August 17
Subcommittee Meeting 3: September 7
Subcommittee Meeting 4: TBD

Council Meeting 2
Subcommittee Meeting 5: TBD

Bill Introduction

Jun | Jul | Aug | Sep | Oct | Nov | Dec | 2017 Session

Data Analysis

Initial Analysis | Detailed Data Analysis | Impact Analysis

Policymaker and Stakeholder Engagement

Solicit Anecdotal Information | Policy Options Development | Ongoing Engagement

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Thank You

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