



Georgia Council on Criminal Justice Reform

First Sentencing Subcommittee Meeting

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Andy Barbee, Research Manager


Angie Gunter, Senior Research Associate

Chenise Bonilla, Policy Analyst

Dan Altman, Program Associate

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Overview

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- 1 Introduction & Background Information
 - 2 Georgia Recidivist Sentencing:
Law & Trends
 - 3 Next Steps

Council of State Governments Justice Center

Corrections



Justice Reinvestment



Mental Health



Reentry



Substance Abuse



Youth



Courts



Law Enforcement



National nonprofit, nonpartisan membership association of state government officials that engage members of **all three branches** of state government

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Justice Center provides **practical, nonpartisan advice** informed by the best available evidence.

What is Justice Reinvestment?



JUSTICE REINVESTMENT

A data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety

The Justice Reinvestment Initiative is supported by funding from the U.S. Department of Justice's **Bureau of Justice Assistance (BJA)** and **The Pew Charitable Trusts**

Justice reinvestment includes a two-part process spanning analysis, policy development, and implementation

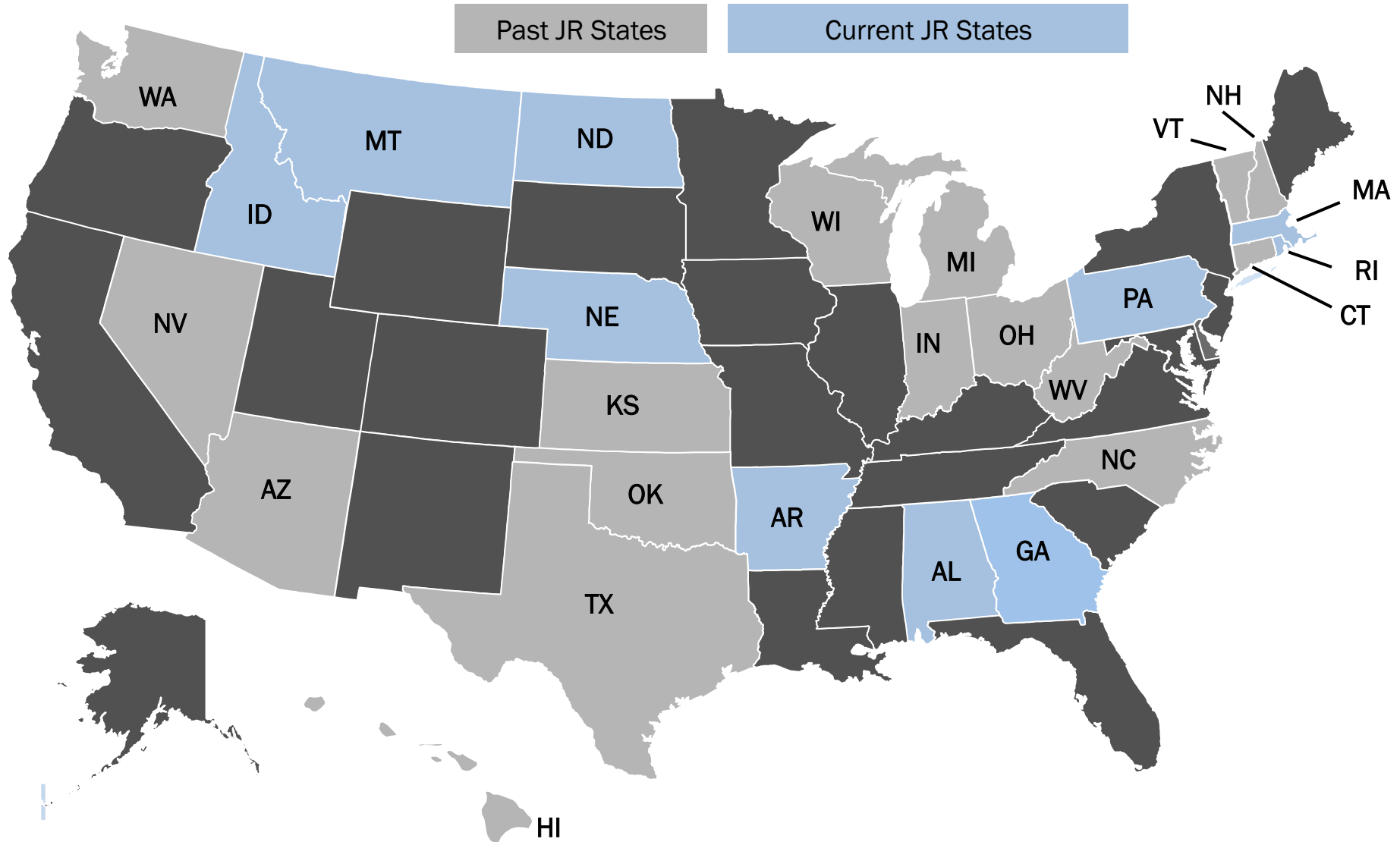
II. Pre-Enactment

1	Bipartisan, Interbranch Subcommittees	Assemble practitioners and leaders, receive and consider information, reports and policies
2	Data Analysis	Data sources should come from across the criminal justice system for comprehensive analysis
3	Stakeholder Engagement	Complement data analysis with input from stakeholder groups and interested parties
4	Policy Options Development	Present a policy framework to reduce corrections costs, increase public safety, and project the impacts

II. Post-Enactment

5	Policy Implementation	Identify needs for implementation and deliver technical assistance for reinvestment strategies
6	Monitor Key Measures	Monitor the impact of enacted policies and programs; adjust implementation plan as needed

States using the justice reinvestment approach with CSG Justice Center



Other states have reformed sentencing laws and parole release decision making to prioritize prison space for more serious offenses

STATE

FINDING

ENACTED POLICY



Mandatory sentencing required incarceration upon conviction of a second felony drug offense

Allow judicial discretion in sentencing second-time felony drug possession



People served time in prison well beyond their minimum sentence, with little variation based on risk level or offense type

Establish parole board guidelines and use the results of risk assessments to inform parole decision-making process



People convicted of low-level, nonviolent offenses were often sentenced to short prison terms that allowed for little to no post-release supervision

Use probation, rather than jail or prison, to hold people convicted of low-level, nonviolent offenses accountable

Georgia's recent history with criminal justice reform

Report of the Special Council on Criminal Justice Reform for Georgians—2011

If we did nothing...

- Projected Prison Growth of 8% by 2016
 - 57K to almost 60K
- Additional \$264 million to expand capacity

Other drivers...

- In 2010, more than 5,000 low-risk drug and property offenders were sentenced to the Department of Corrections, accounting for 25% of all admissions
- Pew's 1 in 30 Report—Georgia ranked last with 1 in 13

Four Reform Packages

2012

Adult
Sentencing
Reform

2013

Juvenile Justice
Reform/Code
Rewrite

2014

Offender
Reentry

2015

Misdemeanor
Probation
Reform

Georgia's reform efforts have involved substantial legislative and executive/administrative efforts

Legislative

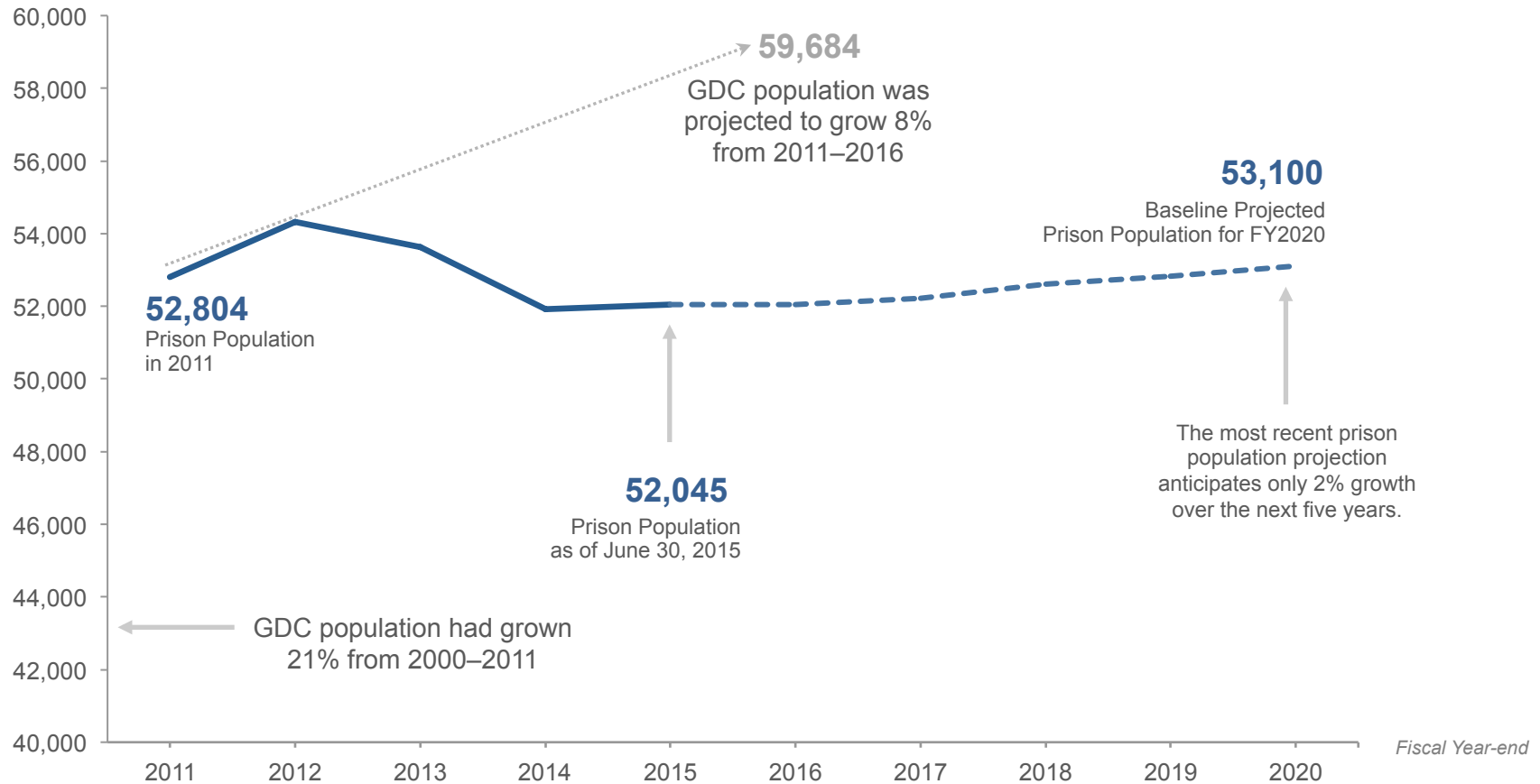
- ❑ Changed the felony threshold for burglary, theft, and forgery from \$500 to \$1,500
- ❑ Moved to weight-based drug sentencing
- ❑ Mandated the electronic submission of sentence from clerk of court to Department of Corrections
- ❑ Establishment of mandatory minimum “safety valves”
 - Drug trafficking if certain specific provisions are met
 - “Truth in pleading”
- ❑ Certificates of program and treatment completion
 - Presumption of due care in hiring, retaining, licensing, leasing to or admitting to a school program
- ❑ Conditional drivers' licenses for accountability court participants
- ❑ Expanded parole eligibility for nonviolent drug recidivists
- ❑ Creation of administrative probation

Executive/Administrative

- ❑ Capped length of stay in Probation Detention Centers (PDCs) at 180 days
 - Enabled conversion of underutilized PDCs to Residential Substance Abuse Treatment beds
- ❑ Automation of pre-sentence assessments
- ❑ Pre-release center conversions
- ❑ Day Reporting Center Lite Pilot Program
 - Creative solution for rural areas
- ❑ Probation Options Management (POM)
 - Matching the appropriate supervision level to the offender
- ❑ Appropriations—to date, over \$65 million in new state appropriations
 - \$20 million++ per year for expanding and strengthening accountability courts
 - Combination of \$5 million (state) and \$1 million (federal) per year for local juvenile justice incentive grants
 - \$10 million per year for education (technical and GED) in Department of Corrections
 - \$3 million per year for reentry services at Department of Community Supervision

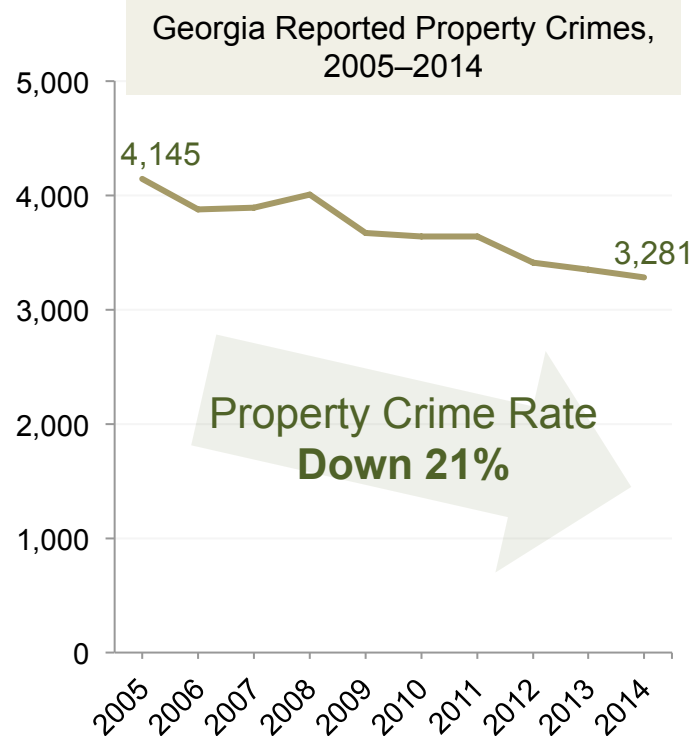
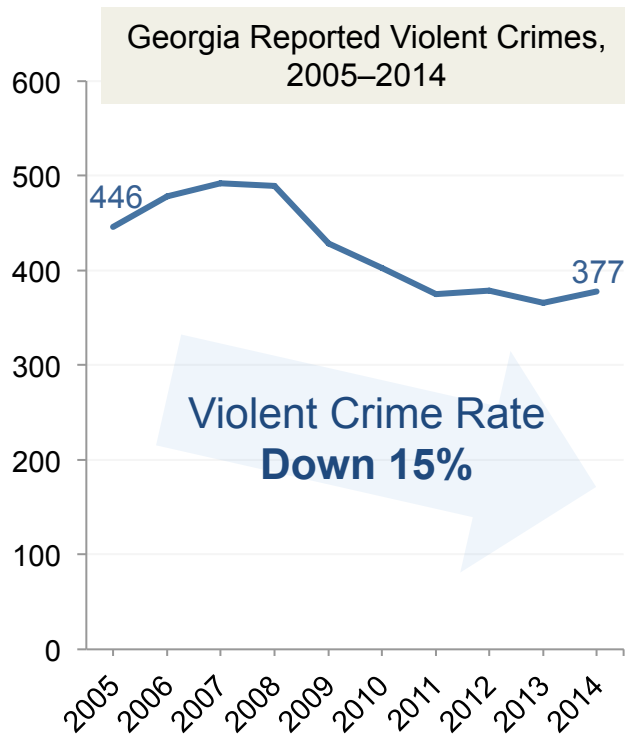
Georgia experienced a decrease in the state prison population in recent years

Georgia Department of Corrections Population and Projections,
FY-end 2011–2020



Source: Applied Research Services, Inc. Annual Prison Population Projection

While Georgia's crime rates have decreased steadily since 2008, the overall crime rate ranks the 8th-highest in the U.S.



**State Rankings:
Total Index Crimes**

South Carolina (4th)

Florida (5th)

Tennessee (7th)

Georgia (8th)

Alabama (9th)

Texas (12th)

N. Carolina (18th)

Georgia has shown that it is possible to lower the prison population and the total index crime simultaneously

Georgia has recently expanded judicial discretion in relation to mandatory minimum sentencing, primarily for drug purchase and possession offenses

2012 HB 1176

- Gave Superior Court judges more discretion in sentencing drug purchase and possession offenses
- Repealed sentencing enhancement for a second drug possession offense

2013 HB 349

- Judge may depart from the mandatory minimum sentence for offenses related to trafficking in cocaine, illegal drugs, marijuana, or methamphetamine and ecstasy if:
 - Defendant was not a leader of the criminal conduct
 - Criminal conduct did not result in death or a serious bodily injury to another person
 - Defendant has no prior felony conviction
 - Interest of justice will not be served by the imposition of the prescribed mandatory minimum sentence
- For certain serious violent offenses, the judge may depart from the mandatory minimum sentence when the prosecuting attorney and the defendant have agreed to a sentence that is below such mandatory minimum

2016 SB 367

- Allows some people serving drug-related mandatory minimum sentences to be eligible for parole

Georgia's Sentencing Subcommittee Membership

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Co-Chair

Thomas Worthy,
Co-Chair

Danny Porter,
Gwinnett
County

**Charles
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Prosecuting
Attorneys'
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§17-10-7 Punishment of repeat offenders; punishment and eligibility for parole of persons convicted of fourth felony offense

- (a) Except as otherwise provided in subsection (b) or (b.1) of this Code section, **any person** who, **after having been convicted of a felony** offense in this state or having been convicted under the laws of any other state or of the United States of a crime which if committed within this state would be a felony and sentenced to confinement in a penal institution, **commits a felony punishable by confinement in a penal institution** shall be sentenced to undergo the longest period of time prescribed for the punishment of the subsequent offense of which he or she stands convicted, provided that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend the maximum sentence prescribed for the offense.
- (b) (1) As used in this subsection, the term "serious violent felony" means a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1.
- (2) Except as provided in subsection (e) of Code Section 17-10-6.1, **any person who has been convicted of a serious violent felony** in this state or who has been convicted under the laws of any other state or of the United States of a crime which if committed in this state would be a serious violent felony **and who after such first conviction subsequently commits and is convicted of a serious violent felony** for which such person is not sentenced to death shall be sentenced to imprisonment for life without parole. Any such sentence of life without parole shall not be suspended, stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not be eligible for any form of pardon, parole, or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or any other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the sentence of life imprisonment without possibility of parole, except as may be authorized by any existing or future provisions of the Constitution.
- (b.1) Subsections (a) and (c) of this Code section shall not apply to a second or any subsequent conviction for any violation of subsection (a), paragraph (1) of subsection (i), or subsection (j) of Code Section 16-13-30.
- (c) Except as otherwise provided in subsection (b) or (b.1) of this Code section and subsection (b) of Code Section 42-9-45, any person who, **after having been convicted** under the laws of this state **for three felonies** or having been convicted under the laws of any other state or of the United States of three crimes which if committed within this state would be felonies, **commits a felony** within this state shall, upon conviction for such fourth offense or for subsequent offenses, serve the maximum time provided in the sentence of the judge based upon such conviction and shall not be eligible for parole until the maximum sentence has been served.
- (d) For the purpose of this Code section, conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction.
- (e) This Code section is supplemental to other provisions relating to recidivist offenders.

§16-13-30 Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana; penalties

(a) Except as authorized by this article, it is unlawful for any person to purchase, possess, or have under his or her control any controlled substance.

Subsection (b) addresses manufacture/delivery

Subsection (c) stipulates weight-based penalties for purchase/possession, Schedule I

Subsection (d) stipulates penalties for manufacture/delivery, Schedules I or II

Subsection (e) stipulates weight-based penalties for purchase/possession, Schedule II

Subsection (f) stipulates mandatory imprisonment (capped at twice the length of underlying crime) for third or subsequent

Subsection (g) stipulates penalty for purchase/possession, Schedules III - V

Subsection (h) stipulates penalty for manufacture/delivery, Schedules III - V

(i) (1) Except as authorized by this article, it is unlawful for any person to possess or have under his or her control a counterfeit substance. Any person who violates this paragraph shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than two years.

(j) (1) It shall be unlawful for any person to possess, have under his or her control, manufacture, deliver, distribute, dispense, administer, purchase, sell, or possess with intent to distribute marijuana.

(2) Except as otherwise provided in subsection (c) of Code Section 16-13-31 or in Code Section 16-13-2, any person who violates this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years.

Subsection (k) addresses hiring others to facilitate violations of drug laws, stipulates penalty

Subsection (l) stipulates weight-based penalties for purchase/possession of flunitrazepam specifically

Subsection (m) defines solid substance

Subsection (b.1) of §17-10-7 removes drug purchase and possession offenses from the implications of recidivist sentencing.

Deconstruction of §17-10-7

- ❖ Sentencing for second and subsequent felony convictions is subject to §17-10-7* pursuant to prosecution charging as such and proving all prior convictions

** Exceptions include drug possession offenses; instances where prosecutor and defense agree to departure; and instances where specific statutes override with regard to mandatory minimums and/or ability to suspend, etc. (e.g. burglary)*

§17-10-7
(a)

Base starting point requires that all sentences be the **MAXIMUM** allowed by law...

- ✓ Prison bound are parole eligible
- ✓ Sentence may be probated

Q1: Are both the current and one of the prior felony convictions for a “serious violent felony” offense?

Yes

Sentence must be **Life (in prison) without Parole**

No

Q2: Is the current conviction a fourth or subsequent felony conviction?

Yes

Sentence must be **MAXIMUM** allowed by law...

- ✓ Prison bound are not parole eligible
- ✓ Sentence may be probated

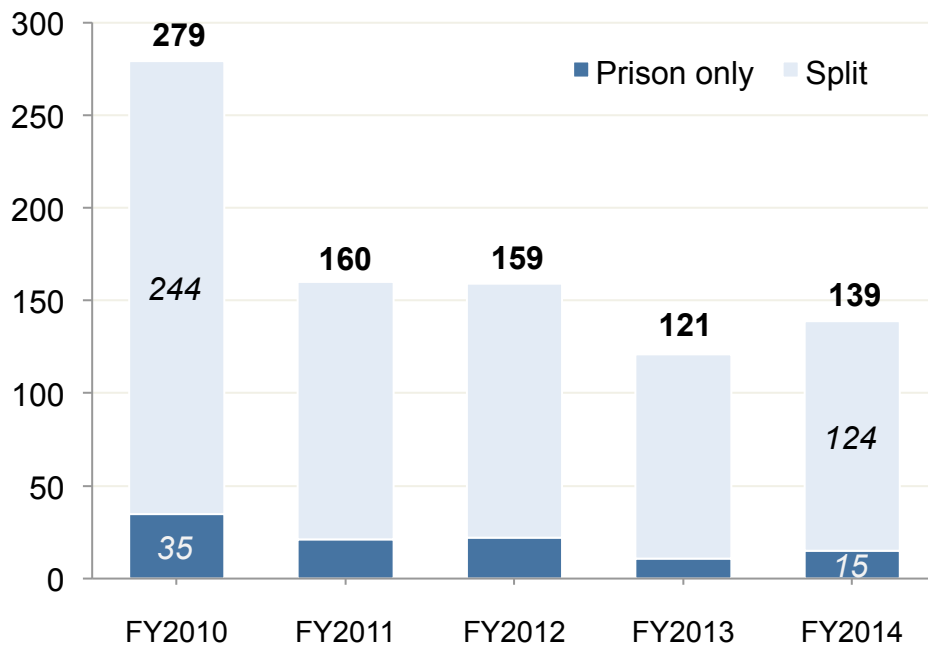
§17-10-7
(b)

§17-10-7
(c)

Number of prison admissions for property and drug offenses sentenced under recidivist statute

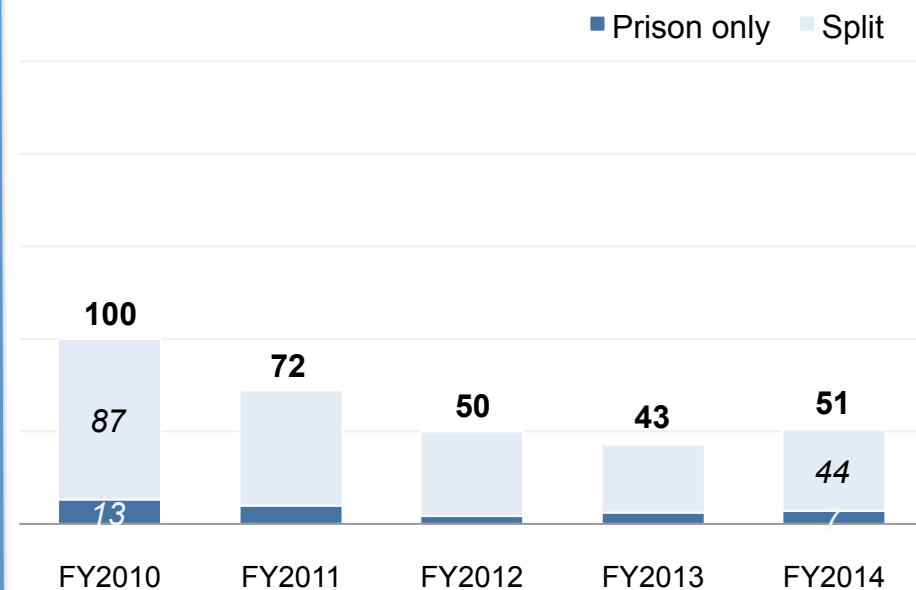
Number of Recidivist Prison Admissions by Type of Sentence (Straight/Split), FY2010–FY2014

Property Offenses



- 94% of FY2014 property admissions of recidivists were split sentences, up from 87% split sentences for this group in FY2010.

Drug Offenses

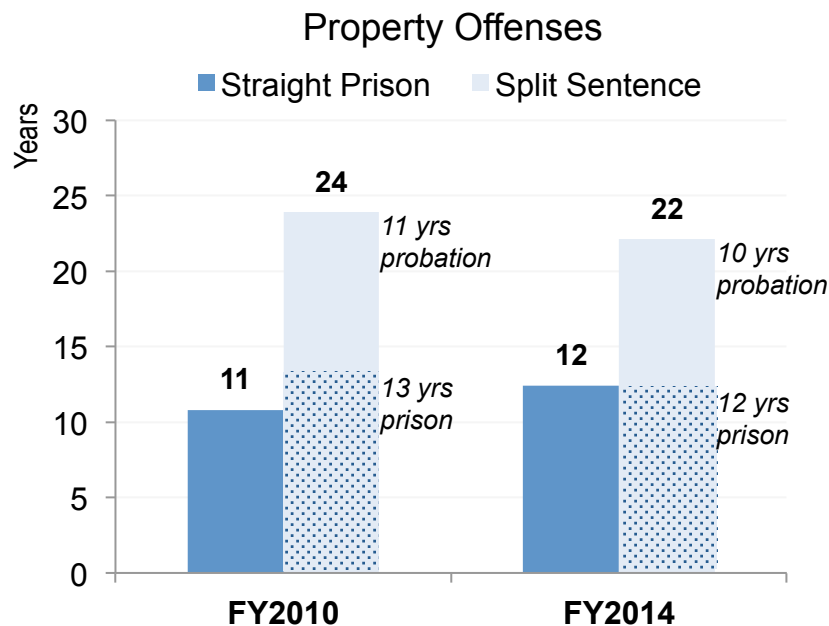


- 86% of FY2014 drug sales and possession admissions of recidivists were split sentences, nearly the same as the proportion in FY2010 (87%).

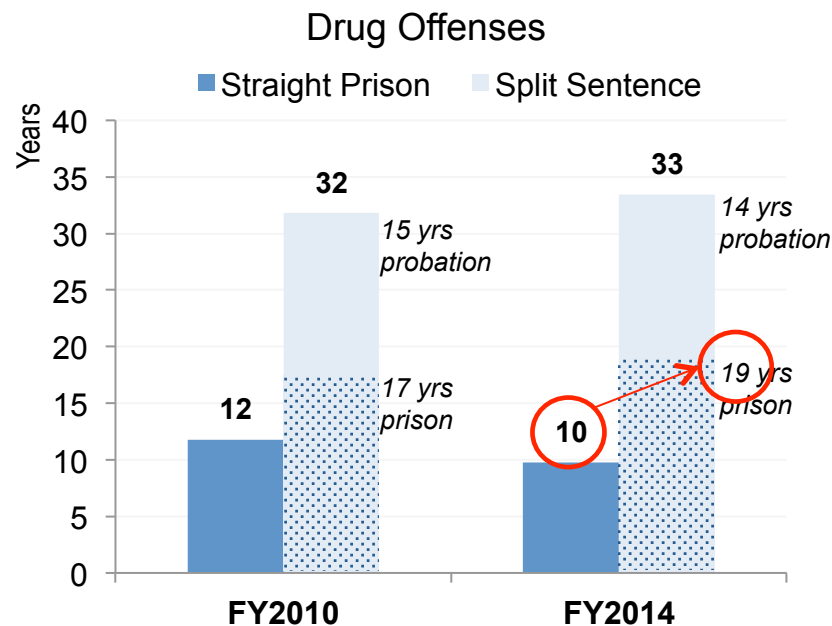
Source: CSG Analysis of Inmate Research Data File, June 2016

Sentence lengths for straight sentences to prison for drug recidivists are considerably shorter than the prison portion of split sentences

Average Sentence Length for Recidivists by Type of Sentence to Prison (Straight/Split), FY2010 and FY2014



Property recidivists with straight prison sentences had similar prison sentence lengths as those with split sentences.



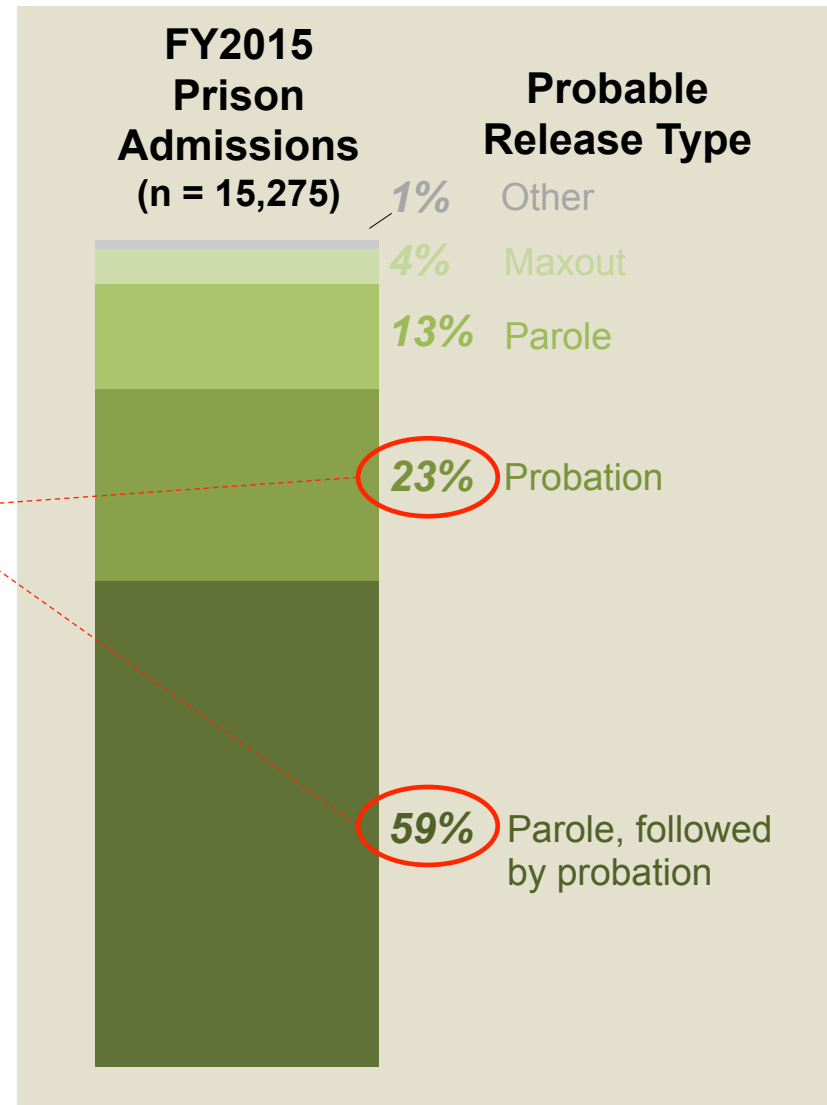
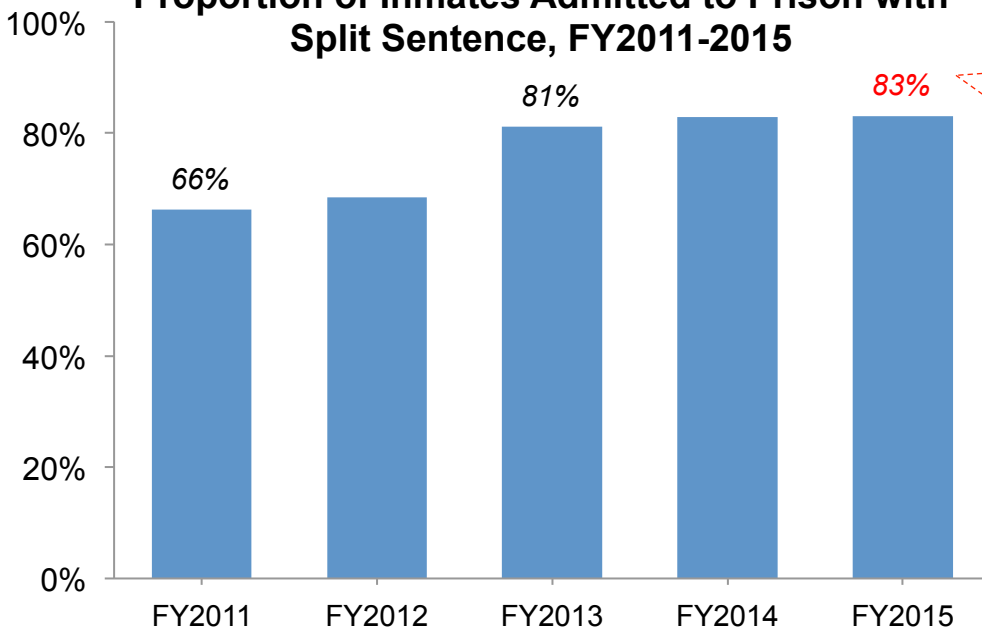
Drug recidivists with straight prison sentence had 10-year sentence lengths.

- But the prison portion for those with splits had 19-year prison sentences.

Georgia has a large and growing number of people in or admitted to prison with a split sentence

- As of May 2016, 73.5% of standing population has a split sentence, with probation supervision to follow release

Proportion of Inmates Admitted to Prison with Split Sentence, FY2011-2015



Source: Georgia Department of Corrections Inmate Statistical Profile, Admissions for FY2011 – FY2015

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Additional questions and potential areas of analysis

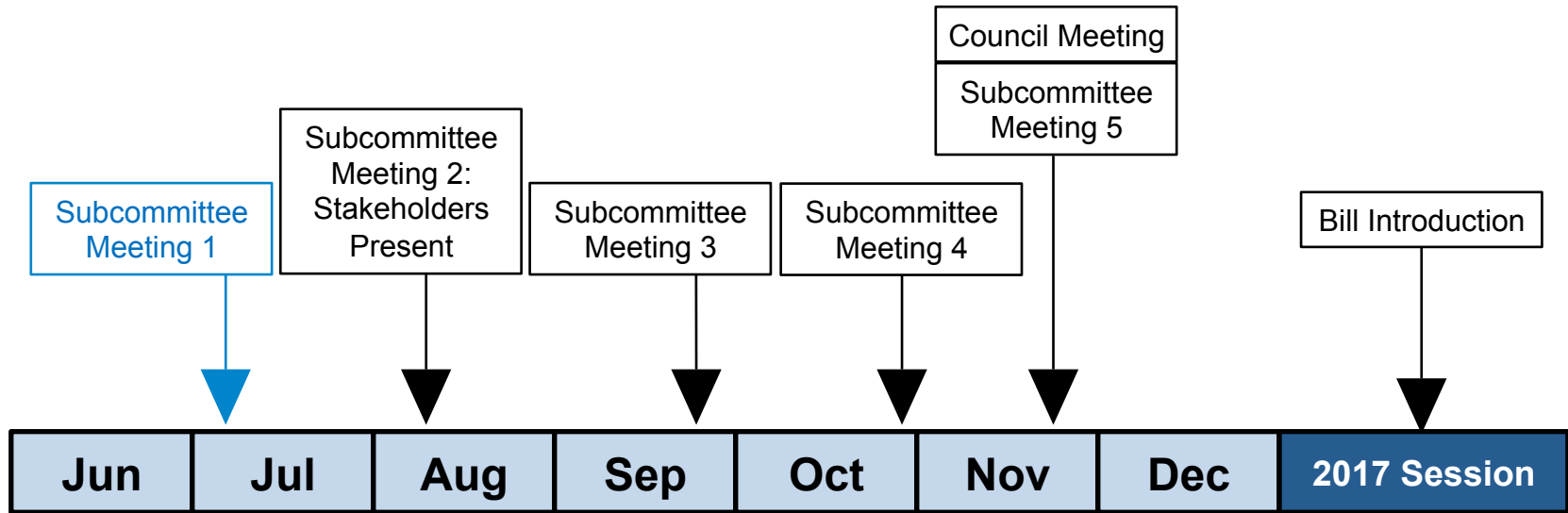
To what extent are non-7DS offenses driving the prison population per §17-10-7?

Length and type (e.g. straight, split) of sentence imposed

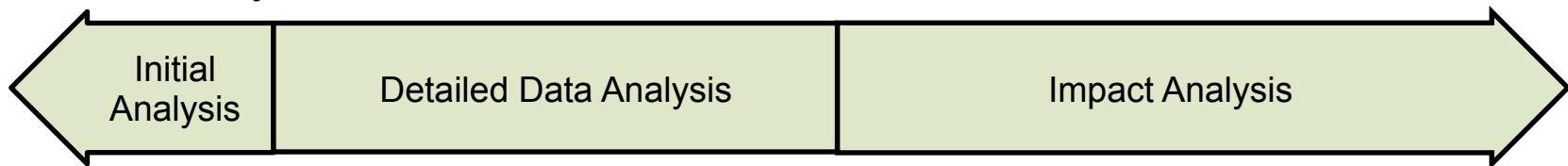
Current underlying offense types

Prior 7 Deadly Sins?

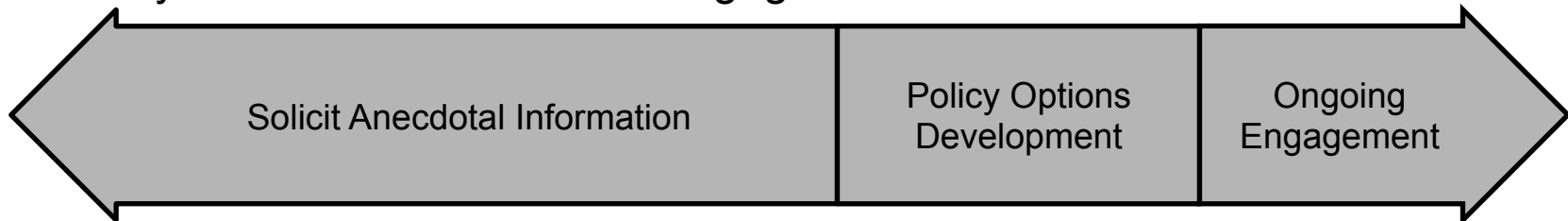
Proposed timeline for Georgia's Sentencing Subcommittee



Data Analysis



Policymaker and Stakeholder Engagement



Thank You

Chenise Bonilla, Policy Analyst
cbonilla@csg.org

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