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Crimes and Offenses HB 1176

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CRIMES AND OFFENSES

Appeal or Certiorari by State in Criminal Cases: Amend Chapter 7 of Title 5 of the Official Code of Georgia Annotated, Relating to Appeal or Certiorari by the State in Criminal Cases, so as to Change Provisions Relating to the State's Right to Appeal; Amend Titles 15, 16, 17, 35, and 42 of the Official Code of Georgia Annotated, Relating to Courts, Crimes and Offenses, Criminal Procedure, Law Enforcement Officers and Agencies, and Penal Institutions, Respectively, so as to Enact Provisions Recommended by the 2011 Special Council on Criminal Justice Reform for Georgians and Enact Other Criminal Justice Reforms; Change Provisions Relating to Drug and Mental Health Court Divisions; Provide for Performance Measures and Best Practices; Provide for Certification; Provide for Funding; Provide for Oversight by the Judicial Council of Georgia; Increase the Fees for Pretrial Intervention and Diversion Programs; Revise Provisions Relating to Additional Criminal Penalties for Purposes of Drug Abuse Treatment and Education Programs; Expand the List of Offenses with Respect to Which Such Additional Penalties Shall be Imposed; Provide that Funds from Such Penalties May be Used for Drug Court Division Purposes; Substantially Revise Punishment Provisions and the Elements of the Crimes of Burglary, Theft, Shoplifting, Counterfeit Universal Product Codes, Forgery Deposit Account Fraud, Controlled Substances, and Marijuana; Provide for and Change Definitions; Extend the Statute of Limitations for the Prosecutions of the Offenses of Cruelty to Children in the First Degree, Rape, Aggravated Sodomy, Child Molestation, Aggravated Child Molestation, Enticing a Child for Indecent Purposes, and Incest; Change Provisions Relating to Recidivist Punishment; Amend Section 5 of Article 1 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, Relating to Reporting of Child Abuse, so as to Expand Mandatory Reporting Requirements and Provide for Exceptions; Change Provisions Relating to Inspection, Purging, Modifying, or Supplementing of Criminal Records; Provide for

Definitions; Provide for Time Frames Within Which Certain Actions Must be Taken with Respect to Restricting Access to Records or Modifying, Correcting, Supplementing, or Amending Criminal Records; Provide for Procedure; Provide for Individuals Who Have Not Been Convicted to Have Their Arrest Records Restricted; Provide for Having the Arrest Records of Individuals Convicted of Certain Misdemeanor Offenses Restricted Under Certain Circumstances; Provide that the Board of Corrections Adopt Certain Rules and Regulations; Change Provisions Relating to the Administration of Supervision of Felony Probationers; Provide for the Use of Graduated Sanctions in Disciplining Probationers Who Violate the Terms of Their Probation; Change Provisions Relating to Terms and Conditions of Probation; Provide for a Maximum Stay in Probation Detention Centers; Clarify Provisions Relating to Probation Supervision and Provide for Early Termination of a Sentence; Amend Titles 5, 15, 16, 17, 31, 36, and 42 of the Official Code of Georgia Annotated, Relating to Appeal and Error, Courts, Crimes and Offenses, Criminal Procedure, Health, Local Government, and Penal Institutions, Respectively, so as to Conform Provisions and Correct Cross-references; Provide for Related Matters; Provide for Effective Dates and Applicability; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS: O.C.G.A. §§ 5-6-34 (amended); 5-7-1, -2 (amended); 15-1-15, -16 (amended); 15-10-260 (amended); 15-11-30.3, -83 (amended); 15-18-80 (amended); 15-21-100, -101 (amended); 16-7-1 (amended); 16-8-12, -14, -17 (amended); 16-9-1, -2, -3, -20 (amended); 16-11-131 (amended); 16-13-30, -31 (amended); 16-14-3 (amended); 16-16-1 (amended); 17-3-1, -2.1 (amended); 17-6-1 (amended); 17-7-70.1 (amended); 17-10-1, -7, -9.1, -30 (amended); 19-7-5 (amended); 31-7-250, -350 (amended); 35-3-34, -37 (amended); 36-32-9

	(amended); 42-1-1 (amended), -11.2 (new); 42-2-1, -11 (amended); 42-5-50, -85 (amended); 42-8-21, -23, -35, -35.4, -37, -38 (amended)
BILL NUMBER:	HB 1176
ACT NUMBER:	709
GEORGIA LAWS:	2012 Ga. Laws 899
SUMMARY:	The Act seeks to curb the growth of Georgia's prison population by decreasing sentences for certain nonviolent theft crimes and drug crimes, and enhance community-based supervision of probationers by permitting probation supervisors to impose graduated sanctions without subsequent judicial intervention and expanding the use of electronic monitoring. To reduce recidivism, the Act provides for a statewide system of accountability courts and requires the Georgia Board of Corrections to establish rules and regulations for managing inmates and probationers in accordance with evidence based practices, and to track performance outcomes. The Act also expands the list of mandated reporters of child abuse to include nurses' aides and pregnancy and reproductive health center personnel and volunteers, eliminates the statute of limitations for certain crimes against children, and restricts access to certain criminal records, including records of arrests that do not result in prosecution, to law enforcement and court personnel.

EFFECTIVE DATES: O.C.G.A. §§ 5-7-1, -2, 15-1-15, -16, 15-10-260, 15-11-30.3, 15-18-80, 15-21-100, -10, 16-7-1, 16-8-12, -14, -17, 16-9-1, -2, -3, -20, 16-11-131, 16-13-30, -31, 16-14-3, 16-16-1, 17-3-1, -2.1, 17-6-1, 17-7-70.1, 17-10-1, -7, -9.1, -30, 19-7-5, 31-7-250, -350, 36-32-9, 42-1-1, -11.2, 42-2-1, -11, 42-5-50, 85, 42-8-21, -23, -35, -35.4, -37, -38, July 1, 2012; §§ 5-6-34, 15-11-83, 16-13-30, 35-3-34, -37 July 1, 2013; § 16-13-30, July 1, 2014

History

Amidst a wave of public demand to address the perceived increase in criminal activity during the 1990's, Georgia placed itself at the forefront of the "tough on crime" movement by enacting some of the strictest sentencing laws in the nation, including the "two strikes" and "seven deadly sins" laws, and other mandatory sentencing policies.[1] Consequently, Georgia's prison population nearly doubled over the past two decades.[2] With one in seventy adults behind bars, Georgia now has the fourth highest incarceration rate in the nation.[3]

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1. Michael Light, *Georgia's Criminal Justice System at a Crossroads: Tough Laws, Smart Decisions*, GA. COUNTY GOV'T MAG. (Mar. 1 1999), http://georgiapolicy.org/georgias-criminal-justice-system-at-a-crossroads-tough-laws-smart-decisions/. Georgia's "seven deadly sins" law, passed in 1994, requires that persons convicted of any of seven serious violent felonies including kidnapping, armed robbery, rape, aggravated sodomy, aggravated sexual battery, and aggravated child molestation serve a minimum of ten years in prison without parole. ROBERT Z. WELSH, GA. BUDGET & POLICY INST., TOUGH ON CRIME AND THE BUDGET: THE DIFFICULT BALANCING ACT OF PUBLIC SAFETY AND SKYROCKETING PRISON COSTS 3 (2008), *available at* http://gbpi.org/wp-content/uploads/2012/01/20080111_ToughOnCrimeandTheBudget.pdf. The "two strikes" law prescribes a mandatory life sentence without parole for persons convicted of a second "deadly sin." *Id.*

2. *See* SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS, REPORT 2 (Nov. 2011) [hereinafter COUNCIL REPORT], *available at* http://www.legis.ga.gov/Documents/GACouncilReport-FINALDRAFT.pdf. As of November 2011, Georgia's prisons were operating at 107% capacity, housing nearly 56,000 offenders. *Id.* at 7.

3. Kenneth L. Shigley, *Tough on Crime, Smart on Crime*, GA. BAR J., http://www.gabar.org/aboutthebar/article4.cfm (last visited Aug. 25, 2012). The national average incarceration rate is 1 in 100 adults. *Id.* Additionally, Georgia has the highest proportion of adults in the country under some form of correctional supervision, at a rate of 1 in 13 adults. *Id.*

As a result, Georgia's correctional spending soared from an annual rate of $492 million in 1990 to over $1 billion in 2011.[4] With Georgia prisons already operating at 107% capacity, if the incarceration rate continues to climb at the current pace, the prison population will increase an additional 8% by 2016, requiring an additional $264 million to meet the demand.[5]

To make matters worse, this unsustainable spending increase produced no appreciable impact on the recidivism rate, which hovered around 30% for the past decade.[6] An estimated three quarters of Georgia's prisoners have drug or alcohol addictions.[7] By 2011, it was clear that incarcerating these individuals without providing substance abuse or mental health treatment created a revolving prison door for this population.[8]

In his 2011 inaugural address, Governor Nathan Deal made a commitment to address these issues by expanding probation and treatment options for nonviolent offenders—particularly those who struggle with addiction.[9] As a first step toward creating a more effective and fiscally sustainable approach to rehabilitating these offenders, the Georgia General Assembly passed House Bill 265 in March of 2011, creating both the Special Council on Criminal Justice Reform and Special Joint Committee on Criminal Justice Reform.[10]

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4. News Release, Ga. House of Representatives, House Passes Legislation to Reform Georgia's Criminal Justice System (Mar. 16, 2011). Georgia spends an average of about $18,000 annually to house each prison inmate. Moreover, an aging prison population and increase in catastrophic offender claims has resulted in a 160% increase in healthcare costs from $69.3 million in 1997 to $180.2 million in 2007. WELSH, *supra* note 1, at 3.

5. COUNCIL REPORT, *supra* note 2, at 7.

6. Carol Hunstein, C.J., Ga. Sup. Ct., *2012 State of the Judiciary Address* 2 (Jan. 25, 2012), http://www.gasupreme.us/press_releases/2012_soj.pdf.

7. News Release, Ga. House of Representatives, *supra* note 4.

8. *See* Mike Klein, *Georgia Prison System Reform Will Focus on Sentencing Alternatives*, WATCHDOG.ORG (Feb. 17, 2011), http://watchdog.org/8331/georgia-prison-system-reform-will-focus-on-sentencing-alternatives/ (quoting Rep. Jay Neal).

9. Governor Nathan Deal, Inaugural Address (Jan. 10, 2011), http://www.11alive.com/news/local/story.aspx?storyid=172361 ("For [nonviolent, first-time] offenders who want to change their lives, we will provide the opportunity to do so with Day Reporting Centers, Drug, DUI and Mental Health Courts and expanded probation and treatment options. As a State, we cannot afford to have so many of our citizens waste their lives because of addictions. It is draining our State Treasury and depleting our workforce. As Governor I call on local elected officials, Sheriffs and local law enforcement personnel to work with me and State law enforcement officers to break this cycle of crime that threatens the security of all law abiding citizens."). *Id.*

10. HB 265, as passed, 2011 Ga. Gen. Assembly § 1, p. 2–3, ln. 25–84.

Composed of members appointed by leaders from each branch of state government,[11] the Council's mission was to study Georgia's criminal justice system and sentencing practices, and to make policy recommendations for sentencing reform and alternatives to incarceration for nonviolent offenders.[12] The Legislature required the Council to submit a report containing their findings and recommendations to the General Assembly by November 1, 2011.[13] The Special Joint Committee would then utilize the report to formulate and propose criminal justice reform legislation.[14]

Beginning in the summer of 2011, the Council collaborated with the Public Safety Performance Project of the Pew Center on the States and various stakeholders to conduct "an in-depth analysis of the state's sentencing and corrections data, [as well as] corrections policies and practices . . . ."[15] The Council then divided its members into working groups to develop policy recommendations in the areas of "sentencing and prison admissions; prison length-of-stay and parole; and community supervision."[16]

Findings

The Council determined that the increase in prison population could not be attributed to an increase in crime, as the crime rate for both violent crimes and property crimes actually decreased over the past decade.[17] Instead, the report concluded the skyrocketing prison population results largely from policy choices about who the State

11. O.C.G.A. § 28-13-2 (repealed 2012). *See also* News Release, Ga. House of Representatives, *supra* note 4.

12. O.C.G.A. § 28-13-1 (repealed 2012). *See also* News Release, Ga. House of Representatives, *supra* note 4.

13. O.C.G.A. § 28-13-2 (repealed 2012).

14. *Id.* § 28-13-3.

15. PEW CTR. ON THE STATES, GEORGIA HB 1176: SUMMARY OF PROVISIONS FROM THE REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM, *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Georgia_public_safety_bill.pdf [hereinafter PEW CENTER SUMMARY]. *See also* COUNCIL REPORT, *supra* note 2, at 5 ("Pew has provided assistance to over a dozen states by analyzing data to identify the drivers of prison growth and by developing research-based, fiscally sound policy options to protect public safety, hold offenders accountable and contain corrections costs."). The Crime and Justice Institute and Applied Research Services, Inc. assisted Pew in their research. *Id.*

16. Council Report, *supra* note 2, at 5.

17. *Id.* at 9.

sends to prison and for how long.[18] Over the past ten years, the majority of new prison admissions were for drug and property crimes, with these nonviolent offenders serving sentences averaging three times as long as in 1990.[19] Although many of these individuals are unlikely to reoffend, the Council found that incarceration can actually increase the likelihood of recidivism in some circumstances, particularly for offenders convicted of drug crimes.[20]

Despite the lack of community-based alternatives to incarceration, Georgia's population of probationers and parolees has also risen consistently.[21] The average probation sentence in Georgia—seven years—is more than twice the national average, resulting in an overburdened supervision system.[22] Moreover, the Council found supervision agencies lack the authority and resources to effectively manage offenders.[23]

Recommendations

The Council Report divided policy recommendations into three sections. The first contained recommendations to "improve public safety and hold offenders accountable by improving the criminal justice system in Georgia."[24] To achieve this goal, the council's recommendations focused on ensuring access to community-based services, strengthening community-based supervision, ensuring effective use of resources, and improving government performance and oversight.[25] The council proposed improving access to community-based services by creating a statewide system of accountability courts, and expanding access to evidence-based treatment services around the state.[26] To improve supervision services, the Council recommended requiring supervision agencies to

18. *Id.*
19. *Id.*
20. *Id.* at 10.
21. *Id.*
22. Council Report, *supra* note 2, at 10.
23. *Id.* at 11. *See also* PEW CENTER SUMMARY, *supra* note 15.
24. COUNCIL REPORT, *supra* note 2, at 12.
25. *Id.* at 12–17.
26. *Id.* at 13–14. Specifically, the Council suggested increasing the number of Residential Substance Abuse Treatment Programs (RSATs) and Day Reporting Centers (DRCs) to make them available in all areas of the state. *Id.* at 14.

adopt evidence-based practices proven to reduce recidivism,[27] creating "performance incentive funding pilot projects" supervised by the Department of Corrections,[28] and implementing mandatory supervision of at least six months for all offenders who finish their sentences.[29] The Council made several proposals aimed at improving resource management, including allowing certain probationers who have completed all probation requirements to be removed from probation prior to completing their full term, and capping stays at Probation Detention Centers at 180 days.[30] Finally, the Council proposed strengthening performance oversight by creating a Criminal Justice Reform Oversight Council, improving electronic communication between government agencies, and requiring the Department of Corrections to track performance measures in several key areas—including recidivism—and to conduct internal audits to ensure the use of evidence-based practices.[31]

The second portion of recommendations presented policy options designed to curtail the prison population by focusing prison beds on violent, career criminals and expanding sentencing options to allow lower-risk offenders to be supervised in the community when possible.[32] This section presented several options for revising current sentencing laws for drug possession, property crimes, and misdemeanor traffic offenses.[33] These proposals included creating degrees of burglary and forgery based on the seriousness of the offense—increasing sentences for the most serious offenders while relaxing them for less serious offenders.[34] The Council also recommended raising the felony threshold for various theft crimes, and creating a graduated penalty system based on the value of stolen property.[35] Additional recommendations included creating a

27. *Id.* at 14. The report defines evidence-based practices as "supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-release supervision." *Id.* at 5 n.2.

28. *Id.* at 15. The recommendation proposed creating up to ten pilot programs to provide substance abuse treatment and risk reduction programs, reduce supervision caseloads, and extend victim services. *Id.*

29. *Id.* at 15.

30. COUNCIL REPORT, *supra* note 2, at 16–17.

31. *Id.* at 17–19.

32. *Id.* at 19–21.

33. *Id.* at 19–25.

34. *Id.* at 21–22. *See also* PEW CENTER SUMMARY, *supra* note 15.

35. COUNCIL REPORT, *supra* note 2, at 21. *See also* PEW CENTER SUMMARY, *supra* note 15.

graduated scale of drug possession offenses based on the weight of the controlled substance.[36]

The final portion of the Council Report recommended reinvesting diverted prison costs in certain areas.[37] The Council identified providing funding for accountability courts, residential treatment beds, and day reporting centers as a top priority.[38] Finally, the Council recommended enacting legislation to provide funding to implement external audits and performance measurement, integrating state and local information systems, and increasing drug testing and electronic monitoring for offenders on community-based supervision.[39]

The Council submitted its completed report to Governor Nathan Deal in November of 2011, and the report was delivered to the Special Joint Committee for consideration.[40] The seventeen-member Joint Committee consists of designated legislators from both houses, as well as three members appointed by House Speaker David Ralston, and three members appointed by Lieutenant Governor Casey Cagle.[41] Beginning in November, the committee met extensively to utilize the Council's recommendations to formulate criminal justice reform legislation.[42] On February 26, 2012, the Committee introduced the first version of HB 1176 to the House of Representatives.[43]

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36. COUNCIL REPORT, *supra* note 2, at 24.
37. *Id.* at 25.
38. *Id.* at 25.
39. *Id.* at 25.
40. *See* Bill Rankin, *Panel Recommends Reforms to Stem Prison Spending*, ATLANTA J.-CONST., Nov. 11, 2011, at A1, *available at* http://www.ajc.com/news/georgia-politics-elections/panel-recommends-reforms-to-1231974.html.
41. *See* News Release, Ga. House of Representatives, *supra* note 4.
42. Greg Bluestein, *Georgia to Consider Vast Changes to Justice System*, ONLINE ATHENS: ATHENS BANNER HERALD, Nov. 26, 2011, http://onlineathens.com/local-news/2011-11-25/ga-consider-vast-changes-justice-system.
43. State of Georgia Final Composite Status Sheet, HB 1176, May 10, 2012.

Bill Tracking of HB 1176

Consideration and Passage by the House and Senate

Representatives Rich Golick (R-34th), Edward Lindsey (R-54th), Jay Neal (R-1st), Mary Margaret Oliver (D-83rd), Wendell Willard (R-49th), and Mike Jacobs (R-80th) sponsored the bill in the House.[44]

The House read the bill for the first time on February 27, 2012, and a second time the following day, February 28, 2012.[45] On March 21, 2012, the Joint Committee favorably reported the bill to the House, and the bill was read for a third time on March 22, 2012.[46] During the House debate, there was discussion of the Act's various purposes and goals. Representative Golick, Chairman of the Joint Committee and a sponsor of the Act, explained that one central purpose is to change Georgia's criminal justice system with respect to drug offenders.[47] Instead of incarcerating non-violent drug offenders for subsequent offenses, the Act diverts them to alternative programs, clearing up bed space that should be reserved for violent offenders.[48] Securing enough beds for violent offenders, Representative Golick stated, "is not just for the sake of tax dollars. It's for the sake of public safety."[49]

The Joint Committee recommended changing drug crime sentencing to a weight-based system. Previously, an offender who possessed one gram of a drug was in the same sentencing category as another offender who possessed twenty-eight grams of the drug.[50] Chairman Golick further noted that an individual in possession of two grams and one in possession of 27.5 grams are "two very different offenders and our sentencing laws ought to reflect that."[51] Because there will be an up-front cost for crime lab equipment and

44. HB 1176, as introduced, 2012 Ga. Gen. Assem.
45. State of Georgia Final Composite Status Sheet, HB 1176, May 10, 2012.
46. *Id.*
47. Video Recording of House Floor Debate, Mar. 22, 2012 at 13 min., 55 sec. PM (remarks by Rep. Rich Golick (R-34th)), *available at* http://www.gpb.org/lawmakers/2012/day-37 [hereinafter House Video].
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*

personnel, he explained that the Act will incrementally implement the weight-based system.[52]

Representative Golick also discussed the Act's increase of felony theft thresholds to $1,500, with the exception of shoplifting, which remains at $500.[53] The House did not increase the shoplifting threshold because of the existence of "organized retail crime syndicates"—an organization of sophisticated individuals who intentionally shoplift amounts right under the felony threshold.[54] Representative Golick explained, "with respect to our retail community and at their request, we understand that if we go ahead and set the limit high, the thieves are going to go right up to that line. That's not going to help our businesses. Big businesses and small businesses."[55]

The House version of HB 1176 created three categories of burglary to replace the single general burglary definition under the previous statute.[56] A first-degree burglary was defined as a dwelling-related burglary with a weapon; a second-degree burglary as a dwelling-related burglary without a weapon; and a third-degree burglary as a burglary in a non-dwelling.[57] The purpose of the three categories put forward by the House was to amend the severity of the punishment to reflect the circumstances of the actual crime.[58] Another aspect of the bill emphasized by Representative Golick was removing the statute of limitations for sex crimes committed against children under the age of sixteen.[59] The House version of HB 1176 also expands individuals who are mandatory reporters of child abuse to include hospital staff.[60] The House was reluctant to extend mandatory reporting any further due to concerns of creating "a situation where . . . everyone and anyone's a mandatory reporter, because . . . you'd have a lot of he-said she-said situations with regard to child

52. *Id.*
53. House Video, *supra* note 47, at 21 min., 25 sec. (remarks by Rep. Rich Golick (R-34th)).
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.*
59. House Video, *supra* note 47, at 21 min., 25 sec. (remarks by Rep. Rich Golick (R-34th)).
60. *Id.*, at 25 min., 25 sec. (remarks by Rep. Rich Golick (R-34th)).

abuse and the district attorney would be in a situation of potentially indicting innocent people."[61]

One major concern regarding the bill's new felony thresholds was that the elevated numbers of misdemeanors would overburden county jails.[62] Representative Neal, another sponsor, discussed the bill's attempt to remedy the issue in three ways.[63] First, the House bill required the State to send sentenced individuals' sentencing package to the county jail electronically within thirty days, rather than by mail; as a result, sentenced individuals will become state detainees faster.[64] Second, the House bill reduced the length of time that an individual can be sentenced to a probation center to 180 days.[65] Representative Neal explained that "by moving them through those probation detention centers, by not having those offenders in county jails waiting on the opportunity to get to the probation detention center, that will also ease the backlog."[66] Additionally, Representative Neal noted that, in the new budget, Governor Deal allocated funding to open 600 new residential substance abuse treatment (RSAT) beds in state prisons.[67] RSAT centers seek to combat recidivism by providing certain offenders with substance abuse treatment while they are serving prison sentences.[68] Those 600 new beds will also help alleviate backlog in county jails.[69] Additionally, the bill aimed to reduce the population of inmates in county jails by giving probation officers, as opposed to judges, the discretion to impose sanctions for minor probation violations—a system known as graduated sanctions.[70] By eliminating the requirement that probationers appear before a judge to receive sanctions, probationers with minor probation violations will not be in

61. *Id.*
62. *Id.*, at 47 min., 34 sec. (remarks by Rep. Jay Neal (R-1st)).
63. *Id.*
64. House Video, *supra* note 47, at 47 min., 34 sec. (remarks by Rep. Jay Neal (R-1st)).
65. *Id.*
66. *Id.*
67. *Id.*, at 49 min., 45 sec. (remarks by Rep. Jay Neal (R-1st)).
68. *See, e.g.*, OFFICE OF JUSTICE PROGRAMS, U.S. DEPARTMENT OF JUSTICE, RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS (RSAT) PROGRAM (2005), *available at* https://www.ncjrs.gov/pdffiles1/bja/206269.pdf.
69. *Id.*
70. House Video, *supra* note 47, at 50 min., 20 sec. (remarks by Rep. Jay Neal (R-1st)).

county jail awaiting their court date.[71] The House passed the bill on March 22 with only one dissenting vote.[72]

The bill was immediately transmitted to the Senate, sponsored by Senator Bill Hamrick (R-30th). The Senate read the bill for the first time the same day, March 22, 2012, and then referred it to the Joint Committee.[73] On March 26, 2012, the Senate read the bill for the second time.[74]

On March 27, 2012, the bill was read a final time in the Senate and eleven amendments were discussed.[75] Seven amendments were adopted without discussion, two amendments were withdrawn, and two amendments failed to pass. Amendment one, by Senator Bill Hamrick, allows the State to appeal on motions for new trials that are granted.[76] This amendment was created in response to concern by both chambers that state courts would be overburdened by the bill's higher felony threshold for theft. Because more thefts will now be misdemeanors, a higher volume of these cases will be heard in state courts. Allowing prosecutors to appeal an order granting a motion for a new trial provides one more layer of review on the basis for the new trial prior to expending the state courts' scant judicial resources.[77]

The second amendment, also by Senator Hamrick, is the Senate's version of the burglary statute. The House version delineated three degrees of burglaries, but the Senate amendment narrowed burglary to only two degrees because, after consulting with prosecutors, the conclusion was that three separate burglary categories were "a little too complicated."[78]

The third amendment, also by Senator Hamrick, clarifies a recidivism provision in the bill so that misdemeanors are counted

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71. *Id.*
72. State of Georgia Final Composite Status Sheet, HB 1176, May 10, 2012.
73. *Id.*
74. *Id.*
75. *Georgia General Assembly – HB 1176*, http://www1.legis.ga.gov/legis/2011_12/sum/hb1176.htm (last visited June 23, 2012).
76. Video Recording of Senate Floor Debate, Mar. 27, 2012 at 2 hr., 48 min., 39 sec. (remarks by Sen. Bill Hamrick (R-30th)), *available at* http://www.gpb.org/lawmakers/2012/day-39 [hereinafter Senate Video].
77. *Id.*
78. *Id.*

when prosecutors are determining the number of prior convictions.[79] Amendment four, by Senator Hamrick, creates a separate category for check forgery along with a felony threshold of $1,500 for possession of ten or more blank checks.[80] Senator Hamrick stated that although blank checks are not yet forged, the intent behind possessing these blank checks is to commit a crime; therefore it is a felony if the requisite number of checks exists.[81] Amendment five, by Senator Hamrick, removes the sentencing range for subsequent convictions of possession of Flunitrazepam (commonly known as the "date rape" drug).[82]

Amendment six, authored by Senator Charlie Bethel (R-54th), includes "trafficking a person for sexual servitude" as a kind of sex crime that can be committed against a minor.[83] Although the House excluded it from the list, Senator Bethel found the inclusion "appropriate" because trafficking minors is within the category of offenses that the Legislature intended to target when they removed the statute of limitations for sex crimes committed against persons under the age of sixteen.[84] Amendment seven, also by Senator Bethel, includes "hospital volunteers" as mandatory reporters.[85] The House version only included "hospital staff" due to concerns that including other individuals would be too broad. Senator Bethel characterized the volunteer inclusion as a negotiated "intermediate position."[86]

The issues surrounding Amendment eight generated much debate in the Senate. The Act encourages diversion programs or accountability courts, such as drug courts, as a substitute for incarceration of non-violent offenders.[87] However, it also gives judges the discretion to impose a fee of $1,000 to offenders—a $700

79. *Id.*
80. *Id.*
81. *Id.*
82. House Floor Amendment Five to HB 1176, introduced by Senator Bill Hamrick (R-30th), March 22 2012.
83. House Floor Amendment Six to HB 1176, introduced by Senator Charlie Bethel (R-54th), March 22 2012; Senate Video, *supra* note 76, at 3 hr., 00 min., 14 sec. (remarks by Sen. Charlie Bethel (R-54th)).
84. Senate Video, *supra* note 76, at 3 hr., 00 min., 14 sec. (remarks by Sen. Charlie Bethel (R-54th)).
85. House Floor Amendment Seven to HB 1176, introduced by Senator Bill Hamrick (R-30th), March 22 2012.
86. Senate Video, *supra* note 76, at 3 hr., 01 min., 08 sec. (remarks by Sen. Charlie Bethel (R-54th)).
87. O.C.G.A. § 15-1-15(a)(1) (Supp. 2012).

increase from the previous $300 maximum.[88] This charge raised concern in the Senate because some senators feared that "the kind of offender that we're working with"—such as a drug offender—may be unable to pay the fee or obtain the funds and would prefer to return to jail, thereby defeating the whole purpose of a diversion program.[89] It was emphasized, however, that the fee is discretionary and that installment plans are available. In response to criticism, Senator Bethel stated, "I think what [the fee] does is allow prosecutors to recover a higher fee when someone is able to pay, but certainly it would be penny wise and a pound foolish for them to insist on the higher fee when it costs them money to incarcerate an individual."[90] Amendment eight sought to reduce the $1000 maximum fee cap to $600. Senator Fort (D-39th), who proposed the amendment, stated that while the fee is discretionary, "the fact of the matter is you're going to have some offenders in the position when they're not going to be able to pay a fee of up to a thousand dollars when its applied and they're going to go back to jail, which defeats the whole purpose of this bill."[91] The Senate voted on the amendment, which lost by a margin of 18 to 32.[92]

Amendment nine, authored by Senator Jason Carter (D-42nd), sought to change the language regarding the pretrial fee so that a showing of good cause for a fee waiver, partial fee payment, or installment plan is made to the court rather than to the prosecuting attorney.[93] Senator Carter believed the change was necessary because "the person who is charging the fee also determines whether or not that fee should be waived, so it's all part of a plea bargaining process . . . ."[94] The amendment was later withdrawn upon request by Senator Carter.[95] Amendment ten, by Senator Jones, sought to change the language in line 1557 from "if he or she agrees to record restriction" to "if it meets the requirements for restriction set forth in

88. *Id.* § 15-18-80(f).
89. Senate Video, *supra* note 76, at 2 hr., 54 min., 14 sec. (remarks by Sen. Vincent Fort (D-39th)).
90. *Id.*, at 3 hr., 02 min., 15 sec. (remarks by Sen. Charlie Bethel (R-54th)).
91. *Id.*, at 3 hr., 03 min., 03 sec. (remarks by Sen. Vincent Fort (D-39th)).
92. Failed House Floor Amendment to HB 1176, introduced by Sen. Vincent Fort (D-39th), Mar. 27, 2012.
93. Failed House Floor Amendment to HB 1176, introduced by Sen. Jason Carter (D-42nd), Mar. 27, 2012.
94. Senate Video, *supra* note 76, at 3hr., 05 min., 45 sec. (remarks by Sen. Jason Carter (D-42nd)).
95. *Id.* at 3hr., 14 min., 05 sec.

this code section."[96] This amendment, which sought to clarify the language and strengthen the bill, was withdrawn upon request by Senator Jones.[97]

Amendment eleven, by Senator Stoner, sought to change the definition of a "forcible felony" for juveniles by making only burglary in the first degree a forcible felony.[98] The Act included all burglaries under the definition of a forcible felony.[99] Senator Stoner stated that his reason for proposing a more relaxed definition of a juvenile forcible felony is that "some of us sometimes make mistakes when we're a little bit younger. . . . And what we're looking at here is . . . someone makes a mistake young in life and we don't end up trying them as an adult right off the bat."[100] The Amendment lost by a margin of 12 to 26.[101]

After discussing and voting on the amendments—amendments one through seven passed and amendments eight through eleven either lost or were withdrawn—the Senate unanimously passed the bill.[102] The bill returned to the House on March 29, 2012 for a final vote with the Senate amendments.[103] The House unanimously agreed to the amended bill with little discussion.[104]

On April 10, 2012, the bill was sent to Governor Deal and he signed into law on May 2, 2012.[105]

The Act

Section 1-1 revises paragraph 7 of Georgia Code section 5-7-1 so that the State can now appeal from an order granting a motion for a

96. Failed House Floor Amendment to HB 1176, introduced by Sen. Emanuel Jones (D-10th), Mar. 27, 2012.
97. Senate Video, *supra* note 76, at 3hr., 14 min., 45 sec. (remarks by Sen. Emanuel Jones (D-10th)).
98. Failed House Floor Amendment to HB 1176, introduced by Sen. Doug Stoner (D-6th), Mar. 27, 2012.
99. O.C.G.A. § 16-11-131(e) (Supp. 2012).
100. Senate Video, *supra* note 76, at 3 hr., 15 min., 45 sec. (remarks by Sen. Doug Stoner (D-6th)).
101. Failed House Floor Amendment to HB 1176, introduced by Sen. Doug Stoner (D-6th), Mar. 27, 2012.
102. State of Georgia Final Composite Status Sheet, HB 1176, May 10, 2012.
103. *Id.*
104. *Id.*
105. *Id.*

new trial.[106] This applies to both superior and state court. Section 2-1 amends Georgia Code section 15-1-15.[107] It incorporates the Judicial Council's standards and policies into a work plan for courts by mandating standardized Mental Health Court policies and performance management systems.[108]

Section 2-2 amends Code section 15-1-16 by giving judges the option to establish a mental health court division as an alternative to traditional incarceration for mentally ill offenders.[109] Section 2-3 gives prosecutors the discretion to charge offenders up to $1,000 for entry into pretrial and diversion programs.[110] Section 2-4 amends Code sections 15-21-100 and 15-21-101 by giving courts the discretion to charge an additional fifty percent penalty to offenders in DUI, vehicular homicide, serious injury by vehicle (if also charged with DUI), and providing alcohol to a minor.[111]

Section 3-1 amends Code section 16-7-1, Georgia's burglary statute, by breaking burglary into two degrees—entry into a dwelling and entry into all other structures.[112] Punishment for burglary in the first degree is one to twenty years for a first offense; two to twenty years for a second offense; and five to twenty-five years for third or subsequent offenses.[113] First offenders for second-degree burglary receive one to five years and all subsequent convictions receive one to eight years.[114] Section 3-2 restructures the sentencing provisions of Code section 16-8-12, which applies to most theft offenses.[115] Theft over $24,999.99 is a mandatory felony, with two to twenty years imprisonment; theft over $5,000 but under $25,000 is a discretionary felony, with one to ten years imprisonment; theft over $1,500 but under $5,000 is a discretionary felony, with one to five years imprisonment; and theft under $1,500 is a misdemeanor.[116] Upon a

106. O.C.G.A. § 5-7-1 (Supp. 2012).
107. *Id.* § 15-1-15(a)(1)-(10).
108. *Id*.
109. *Id.* § 15-1-16(b)(1)-(10).
110. *Id.* § 15-18-80(f).
111. *Id.* §§ 15-21-100(a) and 15-21-101(b).
112. O.C.G.A. § 16-7-1(a)–(d) (Supp. 2012).
113. *Id.* § 16-7-1(b).
114. *Id.* § 16-7-1(c).
115. *Id.* § 16-8-12(a)(1)–(7).
116. *Id.* § 16-8-12(a)(1)(A)-(C).

third or subsequent theft conviction, punishment is one to five years imprisonment.[117]

Code section 16-8-14, Georgia's theft by shoplifting statute, has always had a distinct sentencing scheme.[118] Section 3-3 amends Code section 16-8-14 by increasing jurisdictional amounts.[119] Theft by shoplifting goods under $500 are misdemeanors, with fines for second shoplifting misdemeanor offenses increased to $500; theft by shoplifting goods over $500 has a punishment of one to ten years imprisonment.[120] For recidivist offenders who commit a theft in the same county, within seven days, and with an aggregate of over $500, punishment is one to ten years imprisonment.[121] For state-wide theft within 180 days, where the aggregate exceeds $500, punishment is one to ten years imprisonment.[122]

Section 3-4 amends Code section 16-8-17 and section 3-5 amends Code sections 16-9-1, -2, and -3, Georgia's forgery statutes.[123] Forgery is broken into four distinct degrees, and the legislature distinguished between checks (a "check") and other documents (a "writing").[124] The legislature defined a check as "any instrument for the payment or transmission of money payable on demand and drawn on a bank."[125] A writing includes "printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification."[126] Section 3-6 revises Code section 16-9-20 by raising the felony threshold for deposit account fraud from $500 to $1,500 or more, and also sets various levels of punishments for deposit account fraud based on the instrument's monetary amount.[127]

Sections 3-7(A)–(C) address controlled substances. The Georgia Controlled Substances Act remains structurally intact, but

117. *Id.* § 16-8-12(a)(1)(D).
118. O.C.G.A. § 16-8-14 (Supp. 2012).
119. *Id.*
120. *Id.* § 16-8-14(b)(1).
121. *Id.* § 16-8-14(b)(3).
122. *Id.* § 16-8-14(b)(4).
123. *Id.* §§ 16-8-17, 16-9-1, 16-9-2, 16-9-3.
124. O.C.G.A. § 16-9-1(a)(2)-(3) (Supp. 2012).
125. *Id.* § 16-9-1(a)(2).
126. *Id.* § 16-9-1(a)(3).
127. *Id.* § 16-9-20(b).

punishments for user-level amounts have decreased under the Act. Possession, purchase, or control of a Schedule I narcotic, Schedule II narcotic, and/or Schedule II non-narcotic results in a one to fifteen year sentence range, with sentencing variations based on aggregate weight; subsequent offenses no longer receive enhanced punishments.[128] Punishment for possession of Schedule III, IV, or V drugs is one to three years for a first conviction and one to five years for third or subsequent offenses.[129] Possession of imitation controlled substances results in a one to two year sentence. Possession of Flunitrazepam, commonly known as the "date rape drug" results in a one to fifteen year sentence, based on aggregate weight.[130]

Harsher punishments exist for manufacturing, delivery, sale, and/or possession with intent to sell narcotics. First offenders for Schedule I or II drugs receive five to thirty years; second or subsequent offenses receive ten to forty years, or life.[131] The manufacturing, delivery, sale, or possession with intent of Schedule III, IV, or V drugs, or imitation controlled substances, receive a one to ten year sentence.[132] For Flunitrazepam, punishment ranges from five to thirty years; subsequent offenders receive ten to forty years or life.[133]

Code section 16-13-31, Georgia's trafficking statute, was amended to clarify that the applicable mandatory minimum controls an offender's sentence.[134] The determination is based on aggregate quantity and the substance's categorization.[135]

Section 4-2(a) amends Code section 17-3-2.1 so that after July 1, 2012, there is no statute of limitations for specific crimes committed against children under the age of sixteen.[136] These offenses are: trafficking a person for sexual servitude; cruelty to children in the first degree; rape; aggravated sodomy; child molestation; aggravated child molestation; enticing a child for indecent purposes, and

128. *Id.* § 16-13-30(c). However, O.C.G.A. § 16-13-31 still applies to opiates.
129. *Id.* § 16-13-30(g).
130. O.C.G.A. § 16-13-30(k)(1)(1) (Supp. 2012).
131. *Id.* § 16-13-30(d).
132. *Id.*
133. *Id.* § 16-13-30(k)(2).
134. *Id.* § 16-13-31(h).
135. *Id.*
136. O.C.G.A. § 17-3-2.1(b) (Supp. 2012).

incest.[137] Section 4-3 amends Code section 17-10-1(2) by changing the probation statute so that supervision terms only affect persons under active probation.[138] Section 4-4 adds a new subsection, (b.1) to Code section 17.10.7, which revises subsections (a) and (c) so that persons with their second or subsequent felony conviction for certain drug offenses are not sentenced to the maximum period of time prescribed by law.[139]

Section 5-1 amends Code section 19-7-5 so that nurses' aides, child service organization personnel, reproductive health care facility personnel (including volunteers), schools, and clergy (if not during a confession) are mandatory reporters of child abuse.[140]

Section 6-1 revises Code section 35-3-34 by preventing access of criminal records when such access is restricted by Code section 35-3-37, the expunction statute.[141] The former expunction statute is repealed in section 6-2. The new language in O.C.G.A. § 35-3-37 broadens the scope of records that may be expunged and forbids the expunction of certain offenses.[142]

Analysis

Criminal Justice Reform in the United States

A discussion of criminal justice reform in the United States is, at its core, a discussion of this country's incarceration rates. The United States' prison system has grown, and continues to grow, at an unprecedented rate; indeed, as one legal scholar put it, "the thirty-five years after 1972 produced a growth in rates of imprisonment that has never been recorded in the history of developed nations."[143] Prison population growth in the United States can be traced to a variety of policy decisions in the last few decades—most notably, "three strikes" laws, "truth-in-sentencing" requirements, mandatory

137. *Id.*
138. *Id.* § 17-10-1(2).
139. *Id.* § 17–10–7(b.1).
140. *Id.* §§ 19-7-5(c)(1)(O), -5(c)(2), -5(c)(e), -5(c)(g).
141. O.C.G.A. § 35-3-34(D) (Supp. 2012).
142. *Id.* § 35-3-37.
143. Franklin E. Zimring, *The Scale of Imprisonment in the United States: Twentieth Century Patterns and Twenty-First Century Prospects*, 100 J. CRIM. L. & CRIMINOLOGY 1225, 1230 (2010).

minimums, and "zero tolerance" for parole violations—the latter accounts for over one-third of prison admissions.[144] Despite such high incarceration rates, however, recidivism rates are also high; two-thirds of felons released from prison in 1994 were re-incarcerated within three years.[145]

While the United States only holds 5% of the world's population, it incarcerates 25% of the world's prisoners.[146] Between 1980 and 2010, the federal prison system grew 761%, from 24,252[147] inmates to 209,771.[148] State prison populations are also rising, with a 1.4% increase between 2000 and 2009, though not at the same pace as its federal counterpart, which grew 4.1%.[149] In 2009, 18% of people in state prisons, and half of the federal prison population (51%), were incarcerated because of a drug offense.[150] In the federal system, the number of incarcerated drug offenders rose 1950% between 1980 and 2010, from 4,749 prisoners to 97,472.[151] Meanwhile, only 8% of federal prisoners were convicted of violent offenses.[152] Due to the sharp increase of prisoners, federal prisons are operating at 35% above capacity, resulting in more confined sleeping areas and the use of non-housing quarters for inmates[153] alongside the Bureau of Prison's utilization of private prisons.[154] Lack of prison space is not

144. CHRISTINE S. SCOTT-HAYWARD, VERA INSTITUTE OF JUSTICE, THE FISCAL CRISIS IN CORRECTIONS: RETHINKING POLICIES AND PRACTICES 7 (2009), http://www.vera.org/files/The-fiscal-crisis-in-corrections_July-2009.pdf (last visited Aug. 8, 2012).

145. BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, *Reentry Trends in the U.S.,* http://bjs.ojp.usdoj.gov/content/reentry/recidivism.cfm (last visited Aug. 15, 2012).

146. *Prison Spending Bleeds Education System*, CNN.COM, http://articles.cnn.com/2011-04-07/opinion/jealous.prison.reform_1_prison-populations-prison-spending-offenders-from-state-prisons?_s=PM:OPINION (last visited Aug. 15, 2012).

147. THE SENTENCING PROJECT, FEDERAL PRISON FACTSHEET 1, *available at* http://www.sentencingproject.org/doc/publications/inc_FederalPrisonFactsheet_March2012.pdf (last visited Aug. 8, 2012).

148. BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, *Prisoners in 2010* at 2 (2012), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf.

149. *Id.*

150. *Id.*

151. U.S. DEPARTMENT OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 2003, *Federal Prison Population, and Number and Percent Sentenced for Drug Offenses: United States, 1970-2004*, http://www.albany.edu/sourcebook/pdf/t657.pdf (last visited June 22, 2012).

152. *Id.*

153. *Fiscal Year 2012 Budget Request for the Bureau of Prisons, Subcomm. on Commerce, Justice, Sci. and Related Agencies of the H. Comm. on Appropriations,* 112th Cong. 1 (2011) (Statement of Harley G. Lappin, Director of the Federal Bureau of Prisons), *available at* http://appropriations.house.gov/_files/031511BOPDirectorStatement.pdf (last visited Aug. 15, 2012).

154. *See* Prisoners in 2010*, supra* note 148.

just a concern in the federal system; in 2010, 7% of state prisoners were housed in private facilities.[155]

The cost of feeding, housing, and providing medical care to the rising number of inmates in the federal system has taken its toll on our federal budget. Adjusted for inflation, federal correction expenditures increased from $1.1 billion in 1982 to $6.3 billion in 2007, or by 475%.[156] Because each state has its own independent criminal justice system, it is difficult to discuss state incarceration statistics as one unit; state trends vary.[157] However, a majority of states—thirty-seven—have seen an increase in their incarceration rates, with Southern states showing the sharpest increase at 2.8% in 2007 alone.[158] Predictably, increases in prisoners strain state budgets as well; in the past twenty years, prison expenditures rose an average of 127% across states—a rate six times higher than states' higher education spending for that time period.[159] Approximately 6.8 percent of states' general budgets go to correctional agencies, though Georgia fell below the national average, at 5.4%, in a 2007 survey.[160]

Unsurprisingly, then, there has been a strong call for criminal justice reform in the United States in the last decade, with the goal of reducing the number of incarcerated low-level offenders at its forefront. States have addressed the issue by, among other things, revising "truth in sentencing" laws, which prevented many inmates from early release; repealing mandatory minimum sentences; mandating evidence-based supervision practices; funding more substance abuse treatment; and, modifying the definition or classification of certain criminal offenses in a way that would affect sentencing.[161]

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155. *Id.* at 7.

156. *Id.* at 2.

157. JENIFER WARREN *ET. AL.*, PEW CENTER ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 2008, 7 (2008), *available at* http://www.dpfhi.org/A_PDF/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf (last visited Aug. 7, 2012).

158. *Id.*

159. *Id.* at 15.

160. *Id.*

161. ADRIENNE AUSTIN, VERA INSTITUTE OF JUSTICE, CRIMINAL JUSTICE TRENDS: KEY LEGISLATIVE CHANGES IN SENTENCING POLICY, 2001-2010, 2 (2010), *available at* http://www.vera.org/download?file=3060/Sentencing-policy-trends-v1alt-v4.pdf (last visited Aug. 15, 2012). Such re-classification has focused on low-level, nonviolent offenses. In fact, many legislatures have increased penalties for certain categories of offenders, such as sex offenders, violent offenders, and repeat offenders. *Id.*

For example, in 2007, the state of Texas, in a bipartisan move, revamped its criminal statute after spending $2.3 billion on 108,000 more prison beds—only to discover that 14,000-17,000 more beds would be needed within the next five years.[162] Instead of adding more beds in conventional correctional facilities, Texas passed the Justice Reinvestment Initiative, which allowed for the investment of $214 million dollars for substance abuse treatment and diversion beds.[163] Texas also increased its number of drug courts, dropped mandatory sentences for non-violent crimes, and stopped incarcerating offenders who had committed technical parole violations, such as a failed drug test or missed appointment.[164] Instead, probationers and parolees with substance abuse issues were diverted to a program that provided six months at a secure inpatient treatment and three months at a transitional facility.[165] The results have been overwhelmingly positive; Texas saved $210.5 million for the 2007-2008 fiscal biennium, the crime rate dropped ten percent, recidivism dropped twenty-two percent, probation revocations to prison dropped four percent, and parole revocations decreased by twenty-five percent.[166] It is estimated that the state saved billions of dollars in costs.[167] And, for the first time in history, Texas closed a prison.[168]

Other states have initiated similar reforms. Since 2004, thirteen states have created legislation that diverts non-violent or mentally ill offenders from a traditional correctional facility to a community corrections option, such as drug courts or mental health programs.[169] In 2007, Kansas redesigned its parole system after probation or parole revocations constituted two-thirds of its prison admissions, with nine out of ten of those revocations due to technical violations. The state's Incentive-Funded Community Corrections Reform Act

162. *See supra* note 157, at 17.

163. *Id.* As the Texas House Chair of the Corrections Committee, Representative Jerry Madden, put it, "It's far better for our society if we can get rid of the drug habit than if they just serve a short period of incarceration and go back to drugs after they come out."

164. Pippin Ross, *Smart on Crime*, COMMONWEALTH MAGAZINE, http://www.commonwealthmagazine.org/Investigations/What-Works/2012/Winter/001-Smart-on-crime.aspx (last visited Aug. 15, 2012).

165. *See supra* note 161, at 8.

166. *Id.*

167. *See* supra note 164.

168. *Id.*

169. *See supra* note 157, at 18.

(SB 14), created a grant program, which provided financial support for interested counties, provided that they set a goal to reduce revocation rates by twenty percent. Rather than being incarcerated, the individuals were required to complete treatment and vocational programs. The act also offered guidelines for judges and officers making revocation decisions.[170] Other states, such as Nevada, have come up with different solutions. Nevada offers its eligible prisoners a "credit" for meeting a certain milestone—such as the completion of an educational or rehabilitative program—which the inmate uses to shorten his or her time in prison.[171]

The last decade produced a remarkable shift in states' utilization of the criminal justice system. In the 1980s and 1990s, state legislators and policymakers, under a "tough on crime" mantra, focused their energy on increasing sentencing penalties.[172] With the surge in state prison populations, and a growing body of evidence showing that incarceration does not prevent future crime, legislators and policy makers shifted to a "smart on crime" approach—a system that is less punitive, economical, and relies on evidence-based solutions.[173]

Like successful reform legislation implemented in other states, the Act seeks to deflect skyrocketing prison costs by reducing the number of prison beds occupied by non-violent, low-risk offenders without compromising public safety.[174] To achieve this goal, the Act balances sentencing reforms that will reduce the amount of prison time served by certain non-violent offenders with measures designed to reduce recidivism and strengthen community-based supervision.[175]

Accountability Courts

Although the Special Council's original recommendations included a variety of new rehabilitative measures aimed at reducing

170. *Id.* at 19.

171. AB 510, 2007 Nev. Leg. Besides reducing the length of time that an inmate is incarcerated, "this strategy aids wardens and correctional officers by giving inmates an incentive to behave . . . "; VERA INSTITUTE OF JUSTICE, *Managing State Prison Growth: Key Trends in Sentencing Policy,* 19 (2008). Sex offenders and those convicted of violent crimes are not eligible for the program. AB 510 §2 (2007).

172. *See supra* note 161.

173. *Id.*

174. *See* Telephone Interview with Rep. Rich Golick (D-34th) at 1 (Apr. 19, 2012) [hereinafter Golick Interview].

175. *See* PEW CENTER SUMMARY, *supra* note 15.

recidivism,[176] the Act ultimately adopted a more targeted approach by focusing on expanding accountability court programs that already show some measure of success.[177] Adult drug courts and mental health courts are community-based programs that provide participating offenders with ongoing judicial supervision, comprehensive treatment, drug testing, and other services.[178] These programs enable successful participants to avoid incarceration and criminal conviction through pre-trial diversion, deferred sentencing, or suspended sentencing.[179] In pre-trial diversion programs, the district attorney defers prosecution while the offender is participating in the program, and dismisses charges if the offender completes the program.[180] In deferred or post-plea sentencing programs, the offender enters a plea, but the court does not impose a sentence unless the offender fails to complete the program.[181] Upon successful completion, the court may vacate the plea and request that the district attorney dismiss the case.[182] Finally, in suspended sentencing or post-adjudication programs, the court imposes, but suspends, the offender's sentence until he or she completes the program, at which time the court may reduce the original sentence (usually from a prison term to probation).[183]

Drug courts in Georgia have proven successful in reducing recidivism rates for these offenders at a substantially lower cost than incarceration.[184] Nonetheless, a 2010 audit conducted by the Georgia

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176. For example, the Council recommended creating up to ten performance incentive funding pilot projects for local corrections agencies to implement new risk reduction programs and improve victim services. *See* COUNCIL REPORT, *supra* note 2, at 15.

177. *See* O.C.G.A. §§ 15-1-15, -16 (Supp. 2012).

178. *See* ADMIN. OFFICE OF THE COURTS, FACTS ABOUT GEORGIA'S DRUG COURTS 1 (2011), *available at* http://w2.georgiacourts.org/gac/files/Facts%20Sheet%20-Drug%20Court%20 Programs%202-23-2011(1).pdf [hereinafter FACTS ABOUT GEORGIA'S DRUG COURTS]; GA. ACCOUNTABILITY COURTS, GEORGIA'S ACCOUNTABILITY COURTS: DEFINING ELEMENTS 3, *available at* http://w2.georgiacourts.org/gac/files/Georgia%20Accountability%20Courts-%20Defining%20 Elements.pdf.

179. *See* FACTS ABOUT GEORGIA'S DRUG COURTS, *supra* note 178, at 2.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *See The Time is Now*, GEORGIA ACCOUNTABILITY COURTS, http://w2.georgiacourts.org/ gac/files/Time%20is%20Now%202011(1).pdf (last updated Feb. 2011). The average operation cost for each Georgia drug court participant is $13.54 per day—70-80% less than the average daily cost of traditional sentencing. *Id.* Moreover, two-year recidivism rates for offenders who successfully completed a drug court program are only 7%, as compared to 29% for offenders serving prison

Department of Audits and Accounts revealed that these programs are underutilized and lack research-based eligibility standards that would allow them to target offenders that are most likely to successfully complete the programs.[185] Further, the report concluded the Administrative Office of the Courts (AOC) does not employ uniform performance-tracking measures to ensure the programs' effectiveness.[186]

As of February 2011, there were thirty-three adult felony drug courts throughout the state serving only sixty-seven of Georgia's 159 counties.[187] Additionally, as of 2009, existing adult drug courts were only operating at 68% of their collective capacity, with a total of 1,924 participants statewide.[188] Although the State saves over $10,000 in sentencing costs for each offender who completes a drug court program instead of a prison sentence, at that time, approximately 4,000 offenders who would have been eligible to participate in a drug court were serving their sentences in state prison.[189] If only 20% of these prisoners had been admitted to drug courts instead, the state could have saved as much as $8 million.[190]

Although drug courts are significantly more cost-effective than incarceration and many other sentencing alternatives, the Department of Audits identified a number of barriers that have prevented localities from establishing or expanding drug courts and other accountability court programs.[191] Two of the primary barriers preventing expansion are insufficient funding and limited availability of treatment providers.[192] Unlike the state prison system, which is

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sentences. *Id.*

185. GA. DEP'T. OF AUDITS AND ACCOUNTS PERFORMANCE AUDIT OPERATIONS, JUDICIAL BRANCH ADULT FELONY DRUG COURTS 15–26 (2010), *available at* http://w2.georgiacourts.org/gac/files/Final%20FY10%20GA%20Dept%20of%20Audits_Adult%20Drug%20Courts%2009_2010.pdf [hereinafter 2010 Audit].

186. *Id.* at 24–26. The Administrative Office of the Courts is the judicial agency responsible for monitoring drug court compliance with statewide accountability standards. *Id.* at 4.

187. *See* FACTS ABOUT GEORGIA'S DRUG COURTS, *supra* note 178.

188. 2010 Audit, *supra* note 185, at 18.

189. *Id.* at 17–18.

190. *Id.*

191. *Id.* at 22–23.

192. *Id.* Other barriers highlighted in the report were lack of judicial time and resources to devote to managing drug courts, and limited ancillary services such as community-based housing, job skill development, and employment services. *Id.* Because providing treatment services and drug screens are drug courts' primary expenditure, *see id.* at 8, increasing funding for drug courts would presumably have at least some impact on drug court divisions' ability to access treatment providers.

funded through a combination of state and federal dollars,[193] drug courts receive the majority of their funding from county governments, with state and federal dollars contributing 20% and 7.8%, respectively, toward operating costs.[194] Because the percentage of state contributions has actually declined in recent years, drug courts have been forced to turn to budget-strapped counties make up the difference.[195] While most counties have managed to meet the demand, in the wake of the current budget crisis, some counties have actually begun to cut drug court funding.[196]

To provide existing accountability courts with the ability to sustain their operations while also enabling expansion, the Act increases the maximum fee that may be collected from each offender participating in a pre-trial intervention or diversion program from $300 to $1,000.[197] The Act also expands the number of crimes for which courts must impose an additional fee in the amount of 50% of the original fine imposed to be deposited in the County Drug Abuse Treatment and Education (DATE) Fund, and allows counties to utilize DATE Funds for purposes of the county drug court division.[198]

Currently, the AOC collects data about drug courts' compliance with state standards from information supplied in county drug courts'

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193. CHRISTIAN HENRICHSON & RUTH DELANEY, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 15 (Vera Inst. of Justice 2012), *available at* http://www.vera.org/download?file=3495/the-price-of-prisons-updated.pdf.

194. *See* 2010 Audit, *supra* note 185, at 7.

195. *Id.* at 22–23.

196. *Id.* at 23.

197. O.C.G.A. § 15-21-80 (Supp. 2012).

198. *Id.* §§ 15-21-100, -101; ASS'N. OF CNTY. COMM'RS OF GA., HB 1176: CRIMINAL JUSTICE REFORM BILL OVERVIEW 2 (2012), *available at* http://www.accg.org/library/Apeendix%20D%20-%20Criminal%20Justice%20Reform%20Bill%20Overview.pdf. The Act adds the following crimes to those requiring an additional 50% DATE Fund fee whenever a fine is imposed:

> unlawful manufacture, distribution or possession with intent to distribute of imitation controlled substances; possession of substances containing ephedrine, pseudoephedrine, and phenylpropanlamine; possession of substances with intent to use or convey such substances for the manufacture of Schedule I or Schedule II controlled substances; trafficking ecstacy; transactions in and possession of drug related objects; use of communication facility in committing or facilitating the commission of a felony; manufacturing, distributing, dispensing, or possessing controlled substance in or around K-12 schools, housing projects, parks or drug free commercial zone[,] . . . furnishing alcohol to a minor or the attempt to purchase and possess alcohol by a minor; DUI; homicide or serious injury by vehicle if a DUI was involved.

Id.

annual applications for state grant funding.[199] While grant applications require courts to report data that could be used to track performance in key areas such as recidivism and program completion, the 2010 audit found that the AOC does not analyze the data to determine drug court effectiveness "on either an individual or statewide basis," and conducts no independent assessments to verify the accuracy of the reports or compliance with state standards.[200] Moreover, the information collected from the applications would not be effective in assessing drug court success under national performance measures.[201] To correct these problems, the Act requires the Judicial Council of Georgia to utilize research from the National Drug Court Institute and the Substance Abuse and Mental Health Services Administration to develop new standards for county drug and mental health court divisions and to develop a certification and peer review process for drug and mental health courts, conditioning eligibility for state funding on compliance.[202] The Act also requires that the AOC create electronic information systems to track drug and mental health court performance in a consistent format.[203]

County Costs

While additional fines and fees provided under the Act will help offset county costs to operate accountability courts, those critical of the Act expressed concern that much of the savings realized at the state level will come at the cost of placing additional financial burdens on counties.[204] By reducing prison terms and increasing the felony threshold on various non-violent drug and property offenses, the Act will increase the number of cases brought in Municipal and

199. *See* 2010 Audit, *supra* note 185, at 24.

200. *Id.* at 24–25.

201. The Department of Audits recommended that the AOC develop an assessment plan to measure drug courts' effectiveness in accordance with standards promulgated by the National Drug Court Institute. *Id.* at 24. The Special Council on Criminal Justice Reform echoed this recommendation in its 2011 report. *See* COUNCIL REPORT, supra note 2, at 13.

202. O.C.G.A. §§ 15-1-15, -16 (Supp. 2012).

203. *Id.*

204. *See, e.g.*, Amy Leigh Womack & Mike Stucka, *Bibb Sheriff Proposes Jail Expansion; Others Look at Intervention Program*, TELEGRAPH (June 3, 2012), http://www.macon.com/2012/06/03/2047824/bibb-sheriff-proposed-jail-expansion.html; Geoff Folsom, *Changes Will Allow Flexibility in Alternative Sentencing*, MARIETTA DAILY J. ONLINE (June 14, 2012), http://mdjonline.com/bookmark/18977744 (quoting Cobb County Sheriff Neil Warren).

State Courts and will likely produce some growth in the number of offenders being housed in county jails as opposed to state prisons.[205] Because there is no aggregated data tracking the monetary value of stolen property or weights of controlled substances in felony drug and property crimes, it is difficult to predict what portion of these crimes will now be prosecuted as misdemeanors, and if so, what proportion of those offenders will be sentenced to incarceration and for how long.[206]

Supporters of the Act point out that it includes several measures likely to decrease county jail populations, including implementing an electronic transmittal system to facilitate quicker transfer of convicted inmates from county jails to state prisons, encouraging courts to utilize probation as an alternative to incarceration, and increasing the number of offenders being served by accountability courts and other pre-trial diversion programs.[207] Also, because cases handled in State and Municipal Courts typically move more quickly through the court system than those brought in Superior Courts, the Act is likely to decrease the amount of time some offenders spend in jail awaiting prosecution.[208] Additionally, since under the current system, a significant portion of drug and property offenders initially charged with felonies plead guilty in exchange for having their charges reduced to misdemeanors, the Act is unlikely to produce as sharp an increase in the numbers of convicted misdemeanants as some may fear.

Even if counties end up bearing some of the costs, Representative Rich Golick and other proponents of reform point out that the change was long overdue, as the felony thresholds for theft crimes have not been updated since 1983.[209] Rather than effecting a radical change, the $1500 threshold imposed for most theft crimes under the Act will simply bring Georgia law in line with that of other states in our

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205. *See* House Video, *supra* note 47, at 35 min., 22 sec. (remarks by Rep. Rich Golick (R-24th)).

206. *See* Maggie Lee, *Plan for Fewer Felony Charges Worry Midstate Sheriffs*, TELEGRAPH (Mar. 26, 2012), http://www.macon.com/2012/03/26/1963469/plan-for-fewer-felony-charges.html.

207. *See* House Video, *supra* note 47, at 47 min., 12 sec. (remarks by Rep. Jay Neal (R-1st)); Amber Pittman, *Proposed Bill Could Free Up Jail Space*, COVNEWS (Mar. 10, 2012 9:55 PM), http://www.covnews.com/archives/27155/.

208. Jason Swindle, *Legislature Succeeds on Criminal Justice Reform*, TIMES-GEORGIAN.COM (Apr. 10, 2012), http://www.times-georgian.com/view/full_story/18185713/article-Legislature-succeeds-on-criminal-justice-reform.

209. *See* Golick interview, *supra* note 174, at 3.

region.[210] Lastly, in response to these concerns, the Deal administration committed to continue its sponsorship of the Special Council on Criminal Justice Reform to examine the impact of reform efforts and recommend additional changes, if needed.[211]

State Savings

With rising prison costs placing an increasingly unsustainable burden on the state budget, the Act seeks primarily to contain criminal justice spending without compromising public safety.[212] While only time will tell the exact amount of savings the measures will yield, the Special Council projected that the prison population will continue to grow, albeit at a far more manageable rate.[213] Nonetheless, the Act represents a much needed step toward containing spending by stabilizing prison growth, with some estimates projecting state savings as high as $264 million over the next five years.[214]

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210. *See* House Video, *supra* note 47, at 33 min., 22 sec. (remarks by Rep. Rich Golick (R-24th)).

211. *Id.* at 1 hr., 5 min., 30 sec. (remarks by Rep. Jay Neal (R-1st)); Mike Klein, *Did Longer Time Serve Reduce Crime or Just Cost Money?*, MIKE KLEIN ONLINE (June 18, 2012), http://mikekleinonline.com/tag/georgia-criminal-justice-reform/.

212. *See* Golick interview, *supra* note 174, at 1.

213. COUNCIL REPORT, *supra* note 2, at 21.

214. Aaron Gould Sheinin & Bill Rankin, *Governor to Sign Sweeping Justice Reform Bill*, ATLANTA J-CONST., Mar. 16, 2012, at A1, *available at* http://www.ajc.com/news/georgia-government/governor-to-sign-sweeping-1429614.html.