

## Criminal Justice Reform

### Principles:

- Public safety is a core responsibility of government. A well-functioning criminal justice system enforces order and respect for every person's right to property and life, and ensures that liberty does not lead to license.
- As with any government program, the criminal justice system must be transparent and include performance measures that hold it accountable for its results in protecting the public, lowering crime rates, reducing re-offending, collecting victim restitution and conserving taxpayers' money.
- An ideal criminal justice system works to reform amenable offenders who will return to society through harnessing the power of families, charities, faith-based groups, and communities.
- Criminal prosecution should be reserved for conduct that is either blameworthy or threatens public safety, not wielded to grow government and undermine economic freedom.
- The corrections system should emphasize public safety, personal responsibility, work, restitution, community service, and treatment – both in probation and parole, which supervise most offenders, and in prisons.
- Policies for both offenders and the corrections system must align incentives with goals of public safety, victim restitution and satisfaction, and cost-effectiveness, moving from a system that expands when it fails to one that rewards results.<sup>1</sup>

### Recommendations:

- Identify strategies for improving community relations with law enforcement
- Address inadequate and unsafe jail/prison conditions.
- Eliminate the use of probation for some offenses.
- Reclassify some traffic offenses to civil infractions.
- Seek meaningful reform of civil asset forfeiture law.
- Strengthen and formalize cross-agency collaboration to best serve those with mental health issues.
- Improve transparency.
- Re-establish the Georgia Council on Criminal Justice Reform, which sunset in July 2018.

### Facts:

- In 2009, nearly 22,000 people were admitted to state prisons; in 2017, the number was under 18,000.
- In 2009, 58% of the state's prison beds were occupied by people who were convicted of serious violent or sexual offenses; in 2017, that number was almost 70%, reflecting a decrease in the incarceration rate for non-violent offenders.
- From 2004 to 2014 the violent crime rate in Georgia decreased by 15%, and property crimes fell by 21%.
- Between 2007 and 2016, the number of people revoked to prison for parole violations dropped by 35%.<sup>2</sup>
- As of 2020, there are 163 accountability courts (drug, DUI, mental health, family treatment, veterans, and juvenile) operating in every judicial circuit in Georgia that have served nearly 17,000 Georgians statewide.<sup>3</sup>

These statistics, part of the Georgia Council on Criminal Justice Reform's final report in 2018, highlight the criminal justice challenges Georgia faced at the start of this decade and the progress made.

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<sup>1</sup> Right on Crime statement of principles, <http://www.rightoncrime.com/the-conservative-case-for-reform/statement-of-principles/>

<sup>2</sup> <https://dcs.georgia.gov/important-links/georgia-council-criminal-justice-reform>

<sup>3</sup> Update based on legislative testimony by the Executive Director of the Council of Accountability Court Judges of Georgia

Highlighted next are statistics showing the progress made during the council's work on reform.

### **2011 Report of the Georgia Council on Criminal Justice Reform:**

- One in every 13 adults under criminal justice supervision, the highest rate in the country
- One in every 70 adults under incarceration, the fourth highest percentage in the country
- 234,000 adults incarcerated, on parole or on probation in 2010
- Fewer than 30,000 incarcerated adults in 1990; 44,000 in 2000; 56,000 in 2010
- Projections of 60,000 incarcerated adults within five years if no reforms were undertaken
- \$500 million in 1990 annual state prison spending; \$1.1 billion in 2010 comparable spending
- State prisons at 107%, with thousands more state prisoners in county jails
- Recidivism rates (within three years of release) above 30%
- \$264 million would be required to build new prisons within five years without reforms

### **2012 Report of the Georgia Council on Criminal Justice Reform:**

- National and state juvenile crime has steadily declined but costs and recidivism are unacceptable
- Georgia budgeted \$300 million for the state Department of Juvenile Justice in FY 2013
- \$90,000 is the cost to incarcerate one juvenile for one year vs. \$18,000 for an adult inmate
- 65% of youths released from a juvenile state prison committed a new offense within three years
- 24% of incarcerated youths in 2011 were sentenced for status offenses or misdemeanors (Status offenders are youths who commit actions that would not be crimes if they were adults, for instance, school truancy.)
- Many areas of the state have limited or no community-based program services for youth.
- Risk and needs assessment tools are not being used effectively to inform decision-making
- A complex patchwork of juvenile courts in 159 counties make uniform data collection impossible

### **2016 Report of the Georgia Council on Criminal Justice Reform:**

- Prison population decreased 6% from 54,895 in July 2012 to 51,822 at the end of 2015
- Prison admissions declined 16.3%
- The number of African-American admissions in 2015 was the lowest since 1988  
Fewer Georgians are in prison for non-violent offenses (In 2011 nearly 50% of the state's prison population was considered non-violent vs. 33% in 2015).
- More than 130 accountability courts have served 3,500 Georgians statewide.
- The recidivism rate has declined from 30% in 2009 to 26.4% in 2015.
- Significant reductions in jail backlogs are saving nearly \$20 million for reinvestment in other initiatives.

### **2018 Report of the Georgia Council on Criminal Justice Reform**

- The state prison population of 52,962 was well below the 60,000-plus inmates that had been projected by 2018, absent reform.
- The jail backlog dropped from a high of 5,338 people in 2009 to 925 people.
- 149 accountability courts operating in all 49 judicial circuits served about 9,100 Georgians
- Prison admissions dropped from 21,650 in 2009 to 17,616 in 2017, the fewest since 2002. In 2009, 58% of state prison beds were occupied by Georgia's most serious offenders; in 2017, the proportion was 68%.
- Community-based programs launched in January 2014 reduced the number of youth in secure confinement 36% and total commitments to the Department of Juvenile Justice were reduced 46%; the state was able to close two detention centers and a Youth Development Campus, representing 269 beds.

## Overview

Georgia has been recognized nationally for the sweeping adult and juvenile justice reforms it has passed since the special council began its work to reform the state criminal justice system. Successful efforts in the state translated to the federal level with the passage of the bipartisan FIRST STEP Act by Congress in December 2018. The FIRST STEP Act – the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act – applies to the nation’s 181,000 federal prison inmates. Provisions include giving judges more sentencing leeway, reducing mandatory minimum drug sentences and limiting the sentencing disparity between crack and powder cocaine offenses.

It would also expand compassionate release for terminally ill prisoners, restrict how far from family federal inmates can be imprisoned, and provide “good time credits” that reduce sentences when inmates participate in educational and other re-entry programs intended to reduce recidivism. The legislation outlines about 60 offenses for which reduced sentences are prohibited.

Systematic reform of law enforcement became a focal point nationally after the deaths of multiple African Americans by police in 2020. In the wake of this debate, Georgia became the 47th state to enact “hate crimes” legislation. The law allows increased penalties in crimes that are motivated by race, religion, sexual orientation or disability and provides additional sentencing options for prosecutors. The law also requires the creation of a state database tracking hate crimes. A companion piece of legislation made it illegal to intimidate, harass or terrorize first responders such as police officers, firefighters and EMTs.

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## The Reform Process:

Today’s reduced state prison population can be traced to reforms that began in 2009, including:

- More Day Reporting Centers and Residential Substance Abuse Treatment Centers to give the judiciary a viable number of community alternatives to expensive prison beds.
- Focusing resources on geographic “hot spots:” ZIP codes where large numbers of incarcerations originate.
- Creating Probation Officer Sentencing Specialists to work closely with the judiciary to inform them of available alternatives to prison beds.
- Creating Community Impact Programs, collaborative programs located in several hot spots where the State Board of Pardons and Paroles, local law enforcement and community-based service providers provide a one-stop-shop of services for offenders to help reduce recidivism.
- Expanding Specialty Courts. Data show that offenders who are in accountability courts are less likely to violate their probation and ultimately return to prison.
- Implementation of swift, certain and proportionate sanctioning for probation violators. The Probation Options Management program allowed departmental hearing officers to handle low-level technical and misdemeanor violations of probation. Hearing officers were allowed to send the offenders to community or secure alternatives but not to prison. This reduced the number of cases before the judiciary and ultimately the number of cases that could have ended up in prison.

### **Phase One: Georgia's Adult Justice Challenge:**

The Special Council concluded incarceration should concentrate on violent offenders who pose a public safety threat; non-serious offenders should be diverted to community-based treatment. It also found there was insufficient funding to significantly support alternative programs. The report recommended expansion of accountability courts with better access to drug and mental health services, and more assistance for veterans.

The 2012 Legislature largely enacted serious offender incarceration and less serious offender alternative treatment recommendations. A robust package of ideas was included that sought to bring justice system agencies more into alignment to avoid duplication, for instance, having more than one agency simultaneously handle an individual offender after incarceration.

The Legislature addressed mandatory minimum sentences in 2013, allowing discretion in a limited number of very specific cases when the judge, prosecution and defense counsel agree a lesser sentence is appropriate. A new model was created for drug trafficking prosecutions with incarceration and fines based on the weight of the illegal drug being trafficked.

### **Phase Two: Georgia's Juvenile Justice Challenge:**

The juvenile recommendations, not surprisingly, were similar to ideas advanced one year earlier for adults: Focus youth detention on higher-risk serious offenders and reduce recidivism by strengthening evidence-based community supervision and programs. The Council concluded the number of detained youths could be reduced from more than 1,900 to less than 1,300 within five years (the 2018 calendar year), and the state could save \$85 million over the same period. New voluntary grant programs were proposed to help support the development of community resources.

The Council proposed a new two-tier Designated Felony Act to differentiate between serious felonies, such as murder or assault with a weapon, and less serious felonies such as smash-and-grab burglary. It recommended that status offenders and some misdemeanor offenders not be held in detention.

In 2013, Provost Academy Georgia was selected to offer digital learning options to juveniles under state supervision.

### **Phase Three: Georgia's Re-Entry Challenge:**

The 2013 work of the Georgia Council on Criminal Justice Reform focused on barriers to re-entry:

- Inadequate housing, employment, job training, general education and available medical care
- Insufficient community-based programs and insufficient funds to support those programs
- Insufficient protections for employers to limit their liability when they hire former offenders
- Transportation: The inability to get to work or treatment is a hurdle to success
- Poverty: Transition becomes harder for released offenders who have no financial resources
- Family abandonment: Families sometimes do not welcome back released offenders.
- No continuation of treatment for persons who had substance abuse issues prior to incarceration
- Silent discrimination when potential employers realize an applicant is a former offender
- Publicly available personal criminal history records are sometimes incomplete or inaccurate
- Lack of liability protection for employers who hire former inmates

### **Legislation passed in the 2016 session accomplished the following:**

- Allows parole eligibility for those serving long sentences for drug possession
- Improves misdemeanor probation by requiring a hearing before a person can be arrested because of inability to pay their fine

- Strengthens the First Offender Act and provides comprehensive record sealing
- Requires professional licensing boards to consider the seriousness of convictions and prohibits the consideration of irrelevant criminal convictions in the licensing process
- Eliminates the ban on food stamps for people with felony drug convictions
- Retroactively reinstates driver's licenses suspended due to a drug conviction at no cost to the individual
- Expands accountability court programs to include families in juvenile court and those charged with DUI
- Restricts secure detention of youth up to age 13 except for the most serious offenses
- Requires progressive discipline by local school boards before a criminal complaint is filed against a child
- Increases funding for young people in prison to receive high school education from a charter school

**In 2018, Senate Bill 407 included the Council on Criminal Justice Reform's recommendations:**

- Provide specific procedures for probationer reporting to a probation officer
- Expand the definition of community service to include organizations that provide services to the public that enhance social welfare and the general well-being of the community, as approved by the court
- Allow courts to convert fines and fees to community service for local ordinance violations and non-probation cases
- If probation termination petitions are opposed for people who have been compliant for three years and have paid all restitution, judges should schedule a timely hearing
- Allow people sentenced pursuant to the First Offender Act or Conditional Discharge Act to get a behavioral incentive date
- Provide more flexibility for issuing limited driving permits for people participating in any accountability court program
- To strengthen protections for residents of long-term care homes, adopt the FBI's fingerprint-based national background check for employees and employee applicants
- Consider legislation allowing individuals with certain misdemeanor convictions to petition the convicting court for record restriction and sealing. The prosecutor should have the opportunity to object and the court should have the ultimate discretion
- Enhance the penalties for convicted felons, first offenders and conditional discharge probationers who possess firearms, and enhance the penalties for a "straw" purchaser who knowingly buys a gun for a person prohibited from possessing a firearm
- Community service and educational advancement in lieu of fines.
- Reforms occupational licensing "ban-the-box" for non-pertinent offenses
- Create a process to determine inmate eligibility for Medicaid-funded nursing home services that will further aid parole determination and placement

**The Council on Criminal Justice Reform sunset in July 2018. In its final report, the Council acknowledged that several issues deserve consideration by state lawmakers in the years to come:**

**Fees and surcharges:** Georgia is heavily reliant on legal financial obligations when imposing criminal punishment. The Council urged lawmakers to consider the report of the National Task Force on Fines, Fees, and Bail Practices – Principles on Fines, Fees and Bail Practices, and to weigh the appropriateness of criminal fine surcharges as mechanisms to fund essential state and local programs.<sup>4</sup>

**Mental illness:** Georgia has expanded accountability courts, improved training of law enforcement officers, eliminated barriers to access to Medicaid benefits for those released and initiated significant peer supports for people with mental illness or other disabilities. The Council recommends a focus on the

<sup>4</sup> [https://www.ncsc.org/\\_data/assets/pdf\\_file/0020/14195/principles-1-17-19.pdf](https://www.ncsc.org/_data/assets/pdf_file/0020/14195/principles-1-17-19.pdf)

intersection of mental illness, substance abuse and incarceration, and a report on findings with recommendations to Georgia lawmakers.

**Mandatory minimum sentences:** In 2013, the Legislature codified the Council's recommendation to allow Superior Court judges flexibility on mandatory minimum sentences for drug trafficking and certain serious felonies. The Council recommended exploring the benefits of restoring judicial discretion in sentencing "in limited circumstances."<sup>5</sup>

## Recommendations

**Identify strategies for improving community relations with law enforcement.** Especially in the wake of recent shootings by law enforcement – justified or not – public trust in some communities is low. This has led to retaliatory violence against officers as well as mass resignations in some agencies as police and other first responders feel unappreciated and unprotected. Increasing public trust in law enforcement officers is critical to community policing. Some communities do not feel that the law enforcement community is concerned about their safety or well-being; residents sometimes fear the criminals in their midst and are reluctant to report criminal activity for fear of repercussions. Increasing trust between officers and the community can improve relations and communications both ways.

**Review probation.** Probation may not be the proper tool applied to certain individuals. With 1 in 15 Georgians under some form of correctional control, the state's rate of probation is four times the national average and more than double the rate of any other state. Many on probation do not pose a public safety risk. The stress of supervision can increase the likelihood of recidivism. The state may need to consider whether there are sufficient resources to help probationers in need of support learn new job skills or access to rehabilitative programs such as family counseling, continuing education or housing assistance.

**Reclassify some traffic offenses to civil infractions.** Traffic offenses in Georgia are currently considered misdemeanor offenses, which means a person can be sent to jail for running a red light or for speeding. The costs of incarcerating people for minor traffic offenses undermines Georgia's efforts to be more fiscally responsible and reserve jail/prison beds for those who need them. Also, the impact on low-income Georgians is significant when they are unable to pay fines and fees.

**Reform civil asset forfeiture law.** Law enforcement officers in Georgia can seize a person's property or money without ever charging the person with the commission of a crime. In 2015, the Georgia General Assembly passed legislation that improves civil asset forfeiture. The state can do more: Permanent seizure of private property through civil asset forfeiture should not take place without a conviction.

**Address inadequate and unsafe jail/prison conditions.** The level of overcrowding in prisons and jails throughout Georgia that is inherently dangerous. This issue is of heightened importance given the pandemic and reports of widespread infection among those incarcerated. Prison systems and county jails are nearly all either at or over capacity. Since 95% of current inmates will be released at some point, it is

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<sup>5</sup> <https://dcs.georgia.gov/document/publication/2017-2018-criminal-justice-reform-council-report/download>

essential that prison and jail conditions are safe and rehabilitative so that people can successfully reenter society and lead a crime-free life.

**Improve transparency.** Georgia voters have a right to know whether and which criminal justice reforms are working. The process to obtain information on reforms is being complicated. The internet has facilitated the sharing of information, so annual statistical data should be public and publicized. For example, in 2016, the Georgia Department of Corrections stopped publishing statistical information on the probation population on its website, requiring instead that requests go to the Department of Community Services.<sup>6</sup> With the sunset of the Council on Criminal Justice Reform and the end of its reports, this means Georgians must work that much harder to track down comparative data to discover the successes and failures in the state's landmark reforms.

**Re-establish the Georgia Council on Criminal Justice Reform, which was required to sunset in July 2018.** For seven years, the Council's stellar work provided legislative guidance and recommendations that resulted in Georgia becoming a national model for criminal justice reform and led to Congress establishing the FIRST STEP Act, guiding reforms at the federal level. Additionally, the Council's oversight provided data informing Georgians of the successes of its recommendations and the legislative process. These reforms are in the early years and deserve ongoing oversight and recommended course corrections by the Council. The Council was required to end its work in July 2018. Its work is not yet done, and there should be a concerted effort to re-establish the Council so that Georgia's efforts are tracked, monitored, shared and continue to serve as a national model of what works and what does not.

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<sup>6</sup> <http://www.dcor.state.ga.us/Research/Annual>