

THERE IS ANOTHER WAY:

HOW FULL INVESTMENT IN
PROBLEM-SOLVING COURTS,
SENTENCING REFORM AND PUBLIC
DEFENSE IS CRITICAL TO ADDRESSING
GEORGIA'S INCARCERATION CRISIS

SUBMITTED TO THE
GEORGIA CRIMINAL JUSTICE REFORM COUNCIL
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OF THE
SOUTHERN
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INTRODUCTION

Our country's extraordinarily high incarceration rate, now recognized as a national tragedy, is a crisis most acute in the Deep South. Southern states have the highest incarceration rates in the nation¹ and the most expansive probation and parole systems. The number of people under state supervision (prison, probation, or parole) in the United States is the highest it has ever been, with Georgia leading all states with the highest rate of its residents are under correctional control.² One in thirteen adults in Georgia is in jail, prison, on probation or on parole.³ To make matters worse, about 80 percent of people accused of crimes are unable to afford legal representation.

The current economic crisis is leaving many middle class Americans jobless and driving people already living at or below the poverty line deeper into despair. At the same time, the economy's downturn has forced state legislators and communities nationwide to revisit tough-on-crime criminal justice policies.

The current economic climate also presents an unprecedented opportunity for Georgia to reexamine their approach to criminal justice policy-making. Given both the financial and social impact of such high incarceration rates, Georgia Governor Nathan Deal, Speaker of the House David Ralston and Chief Justice Carol Hunstein are to be commended for prioritizing the proposal and passage of evidence-based reforms that will move us toward ending our unnecessary overreliance on incarceration while keeping our communities safe.

Founded in 1976, the Southern Center for Human Rights (SCHR) is a non-profit public interest law firm dedicated to enforcing the civil and human rights of people involved in the criminal justice system in Georgia and Alabama. SCHR has compelled county, state, and federal governments to make significant improvements in prisons and jails across the South—to reduce overcrowding, provide adequate medical and mental health care, abate violence and abuse, and thereby fulfill their constitutional obligations to protect the people in their custody. SCHR monitors conditions in dozens of jails and prisons and uses litigation and advocacy to ensure compliance with constitutional standards.

SCHR presents this report to the 2011 Criminal Justice Reform Council ("Council") and Georgia's citizens with suggested reforms to Georgia's current criminal justice policies based. SCHR's recommendations are based on sound practices in other states as well as our own expertise over the last 35 years.

SCHR believes that the following should be included in recommendations made by the Council to the Governor and General Assembly for criminal justice reform:

- 1. Georgia must reduce or eliminate the use of incarceration for technical probation violations;**
- 2. Georgia must establish new and expand existing specialized problem-solving courts including drug, mental health, veterans and child support courts;**

¹ Louisiana, Mississippi, Texas, Oklahoma, Georgia, and Alabama have the highest incarceration rates nationwide. U.S. Dept. of Justice, Bureau of Justice Statistics, *Prisoners in 2007*, Table 6 (Dec. 2008).

² At a rate of one in 31 adults under correctional control, the national rate is at a historic high. Pew Center on the States, *One in 31: The Long Reach of American Corrections*, Table A-6 (March 2009).

³ *One in 31: The Long Reach of American Corrections* 45, Pew Center. on the States (March 2009). The rate in Georgia of one in 13 is more than 200% higher than the national rate.

3. Georgia must take measures to reduce the likelihood of recidivism by expanding prison programming and reentry planning for people who are incarcerated;
4. Georgia must end mandatory minimum sentencing; and
5. Georgia must improve funding for the public defender system.

OBJECTIVE 1: REDUCING INCARCERATION DUE TO TECHNICAL REVOCATIONS

The Problem

Nearly a quarter of Georgia's prison population consists of people who have violated probation or parole: 11% of the prison population consists of individuals convicted of probation violations and 12% for parole revocations.⁴

Many people are in county jails for failing to report to probation as required by their sentence. For example, a one-day snapshot of the Fulton County Jail population in August 2011 revealed 73 people detained in the Jail solely for technical violations of their probation⁵. The underlying reason for these technical violations is often because the probationer was told by their probation officer that they either should not bother reporting without having the money to pay their monthly supervision fee or that if they do show up without all their payment, they will be arrested.

However, Georgia currently underutilizes a state law that grants judges flexibility in responding to probation and parole violations. For example, Georgia law enables courts to consider the use of alternatives to confinement for probation violations including requiring community service or intensive probation supervision.⁶ However, some circuit courts under-utilize these options. Georgia law also enables the State Board of Pardons and Paroles to require people to perform community service as a condition of parole or as an alternative to the revocation of parole.⁷

Probation and Parole Reforms in Other States:

To reduce their prison populations, many states have curtailed the use of prison for people who violate the conditions of their probation or parole.

Rhode Island

H 7347 (2010) ended the prison sentences of people incarcerated as probation violators and later acquitted of the underlying charges. Prior to this reform, persons on probation accused of a new crime could be sent back to prison on a probation violation even if they were not found guilty of the new charge.

Alabama

In 2010, the Alabama legislature amended a state statute to limit sentences for technical probation revocations to not more than 90 days' incarceration for nonviolent offenders who have met the conditions of probation for an entire six-month period. The law is retroactive and could affect approximately 1,500 defendants who are in Alabama Department of Corrections facilities because of technical violations of probation. Ala. Code § 15-22-54.1 (2010).

⁴ Pew Center on the States presentation to the Georgia Criminal Justice Reform Council, July 2011.

⁵ Data obtained through information obtained through the monitoring of the Consent Decree entered in *Harper v. Fulton County*, No. 04-cv-1416-MHS (N.D. Ga.)

⁶ O.C.G.A. § 42-8-34.1.

⁷ O.C.G.A. § 42-9-44.3.

Kentucky

For technical violations of parole, parole officers in Kentucky now have discretion to confine a person who admits a technical violation in county jail for up to 10 days and no more than 30 days total within a 365-day period in lieu of going to prison. HB 1, 2010 Special Session.

Colorado

Colorado's HB 1360 (2010) authorizes the parole board to modify conditions of parole in lieu of revocation for technical violations, including requiring parolees to participate in residential or outpatient treatment programs. If parole is revoked, the maximum term of re-incarceration is 90 days if the parolee is assessed as low risk and the underlying conviction is not for a violent crime. Each year, the General Assembly is required to appropriate a portion of the cost savings from HB 1360 for re-entry support services for parolees related to obtaining employment, substance abuse treatment, or other services. Approximately \$4.5 million in avoided prison costs was appropriated during 2010 into treatment and reentry support services.

Pennsylvania

Pennsylvania's SB 1161 contains several provisions that limit the use of incarceration for parole and probation violations, including a provision that permits the parole board to divert technical parole violators from prison to parole violation centers. The statute requires the parole board to consider whether the parolee poses a risk to community safety in addition to evaluating whether there is space for the parolee to take part in the board's programs that address criminal thinking behavior and the use of community-based alternatives to incarceration. SB 1161 also authorizes courts to use of a risk assessment to help determine the appropriate sentence within the limits established by law.

SCHR'S RECOMMENDATIONS FOR REFORMS TO GEORGIA'S PAROLE AND PROBATION REVOCATION PRACTICES

- **Reduce the statutory maximum prison sentence for probation revocation from two years to one year or less.**
- **Mandate alternatives to confinement for technical violations (or cap the maximum sentence for technical violations).**
- **As in Rhode Island, mandate that defendants be released from prison if the defendant is acquitted of the criminal charges that served as the basis for the revocation.**
- **Consider indigence in setting monthly probation supervision fees and fines at the time of sentencing.**

OBJECTIVE 2: ESTABLISH NEW AND EXPAND EXISTING ALTERNATIVE SENTENCING OPTIONS

The Role of Specialized Problem-Solving Courts

Problem-solving courts address the underlying causes that lead to crime. These courts focus less on punitive responses to criminal behavior, and more on providing treatment and a supportive environment that assists an individual on his/her path to recovery. Examples of problem-solving courts include:

- **Drug Courts:** These courts work to break the cycle of substance abuse that too often lands those with drug and/or alcohol addictions in county jails and prisons. Community treatment providers collaborate with judges, defense attorneys, and prosecutors to provide individualized support and case management.
- **Mental Health Courts:** Recognizing the prevalence of untreated mental illness in the criminal justice system, mental health courts pair individuals living with mental health issues with community mental health services including case managers, access to medications, and assistance with securing public benefits with the aim of meeting the client's mental health needs and protecting public safety.
- **Veterans Courts:** Designed to address the needs of military veterans returning home, veterans courts work with veterans charged with criminal offenses to address the effects of homelessness, post-traumatic stress disorder, substance abuse, and other mental health issues. In some places, court personnel partner with VA hospitals to provide services and supervision, while others have established mentorship programs that pair court graduates with incoming veterans in need of services.

These courts are remarkable both in their holistic approach to crime and their impact on recidivism. According to the Georgia Administrative Office of the Courts, drug courts “divert non-violent offenders from costly prison time and sav[e] taxpayers money.”⁸ A judge in Augusta, Georgia remarked that veterans courts are beneficial to both veterans and the community because taxpayers will not be burdened with the costs of incarcerating veterans, while the courts help veterans become “productive member[s] of society.”⁹

As of July 2011, there were roughly 95 problem-solving courts in Georgia; of this number, 77 were drug courts; 15 were mental health courts; and 3 were veterans courts.¹⁰ This past session, Georgia's legislature took the laudable step of passing legislation to expand mental health courts across Georgia.¹¹ Bringing these and other problem solving courts to all areas in Georgia will not only increase Georgians' access to these effective services, but will ultimately lead to more cost-savings for taxpayers.

⁸ Facts about Georgia's Drug Courts, Administrative Office of the Courts (February 23, 2011), *available at* [http://w2.georgiacourts.org/gac/files/Facts%20Sheet%20-Drug%20Court%20Programs%202-23-2011\(1\).pdf](http://w2.georgiacourts.org/gac/files/Facts%20Sheet%20-Drug%20Court%20Programs%202-23-2011(1).pdf).

⁹ Adam Folk, *Veterans-Only Court Is In Works To Provide Treatment*, THE AUGUSTA CHRONICLE, March 6, 2011.

¹⁰ Georgia's Accountability Courts Map, Georgia Administrative Office of the Courts (July 28, 2011), *available at* <http://w2.georgiacourts.org/gac/files/2012%20GA%20Acc%20Courts%20Directory2.pdf>.

¹¹ See O.C.G.A. § 15-1-16 (“[A]ny court that has jurisdiction over a criminal case in which a defendant has a mental illness or developmental disability, or a co-occurring mental illness and substance abuse disorder, may establish a mental health court division to provide an alternative to the traditional judicial system for disposition of such cases. A mental health court division will bring together mental health professionals, local social programs, and intensive judicial monitoring.”)

Some of the alternatives available to problem-solving courts include:

- *Flexibility in punishment for misdemeanors*: In misdemeanor cases with sentences of six months or less, the judge has the discretion to allow the sentence to be served on weekends or nonworking hours.¹²
- *Conditional discharge of first time drug offenders*: The court has the discretion to place an individual convicted of a marijuana drug offense for the first time on probation or to require community service as well as to subject the person to a rehabilitation program for up to five years rather than to enter a judgment of guilt and sentence the person to incarceration.¹³
- *Imposition of Misdemeanor Punishment for Felonies*: In felony cases carrying sentences of ten years or less, the judge has the discretion to impose misdemeanor punishment.¹⁴

SCHR Experience from the Field: Child Support Problem-Solving Courts

Thousands of parents across Georgia have court-ordered child support obligations. When parents fall behind in their payments, many counties turn to their county jails with the hopes of compelling payment. Incarceration, however, does not increase child support payments; rather, it prevents parents from finding work and seeing their children. According to SCHR's research, there are over 500 parents in county jails across Georgia at any given time solely for child support contempt; some are held for weeks or months at a time. When they are released from jail, many are faced with the same hurdles that prevented them from complying with their court-ordered child support obligation in the first place – unemployment, limited education, and unstable housing, if not homelessness. For these parents, their freedom is temporary, as their indigence lands them back in jail yet again for failing to pay child support.

Recognizing the cyclical nature of incarceration due to child support contempt, a few courts in Georgia have created child support problem-solving courts that are specially tailored to address the issues that prevent compliance with child support orders, and, in doing so, increase the amount and frequency of child support payments.¹⁵

Child support problem-solving courts in Carroll County and Coweta County, for example, have yielded positive results. By relying less on incarceration for nonpayment and more on GED programs, job placement assistance, job training to address the root causes of child support contempt, these courts not only saw a marked increase in child support payments, but also a decrease in incarceration rates. One study on the effectiveness of these programs found that “participants spent significantly fewer days in jail post-program entry than they had in the 12 months preceding entry.”¹⁶ Moreover, parents participating in the child support problem-solving courts paid more in support than they had prior to entering the program.¹⁷

¹² O.C.G.A. § 17-10-3.

¹³ O.C.G.A. § 16-13-2.

¹⁴ O.C.G.A. § 17-10-5.

¹⁵ Child Support Court Problem Solving Court – Final Evaluation Report 3, Applied Research Services, Inc., August 16, 2011.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 16 (“Participants were found to pay significantly more in average monthly payments following their entry into court than they had in the year before they began participation.”)

These courts have had a demonstrated impact on incarceration rates across Georgia. They are, however, few and far between. There are less than five child support problem solving courts in the entire state.¹⁸ Given the cyclical nature of incarceration for nonpayment of support, expansion of child support problem courts is a vital tool in reducing Georgia's incarceration costs.

Alternative treatment options created for problem-solving courts in other states

Florida: SB 1722 (2009) eliminated prison sentences for certain third-degree felonies where there is no use or threat of violence and after a court finds that a non-prison sentence would not pose a threat to public safety.¹⁹

Tennessee: HB 2813 (2010) authorizes judges to sentence certain defendants to community corrections or probation for various nonviolent property offenses. Defendants are not eligible for the alternative sentencing structure if they have multiple convictions for the offense for which they are being sentenced.²⁰

Kentucky: HB 564 (2010) provides for release onto home arrest of individuals convicted of nonviolent low-level felonies (excluding sex offenses) who have 180 days left to serve; discharge planning to address issues such as education, employment, and housing is a requirement.²¹

South Carolina: The 2010 Omnibus Crime Reduction and Sentencing Reform Act requires the release of defendants with non-violent offenses who have been incarcerated for at least two years to mandatory supervision 180 days before their prison release date.²² The new law also makes certain defendants eligible for parole or work release within three years of their release date, including certain people convicted of drug offenses that were not previously eligible.

Alabama: HB 491/SB 348 (2003) raised the dollar amount for an offense to be considered a Class C felony theft from \$250 to \$500, and to \$2,500 for a Class B felony with projected bed savings of \$3,000 over five years.²³

SCHR'S RECOMMENDATIONS TO IMPROVE ACCESS TO PROBLEM-SOLVING COURTS:

- **Invest in existing problem-solving courts that provide a holistic approach to addressing crime and recidivism; and**
- **Increase the quantity of problem-solving courts – including but not limited to Drug Courts, Mental Health Courts, Veteran Courts and Child Support Courts – throughout Georgia.**

¹⁸ Georgia Accountability Courts Directory,

<http://w2.georgiacourts.org/gac/files/2012%20GA%20Acc%20Courts%20Directory2.pdf>

¹⁹ Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections: Setting a New Course*, Oct. 2010.

²⁰ Sentencing Project, *The State of Sentencing 2010, Developments in Policy and Practice*.

²¹ *Id.*

²² Vera Institute of Justice, *The Continuing Fiscal Crisis in Corrections: Setting a New Course*, Oct. 2010.

²³ Vera Institute of Justice, *Briefing on Criminal Justice Sentencing Policy Trends: 2001-2009* prepared for the South Carolina Sentencing Guidelines Commission, June 2009.

OBJECTIVE 3: REDUCING RECIDIVISM THROUGH REENTRY PLANNING AND PRISON PROGRAMMING

The Problem

A recent state-by-state study estimates that 40% of people leaving prison will return within three years of release,²⁴ and that a third of all re-arrests occur within the first six months of release. As noted above, 11% of those newly admitted to Georgia's prison system are there for violating probation, while 12% are admitted for violating parole.²⁵ A violation can mean the person was not able to meet the terms of probation, such as paying fines, getting a job, or meeting a curfew. Why such a dismal rate of success for people released from prison? People recently released from incarceration face many challenges reintegrating into society, but the largest obstacle comes from having a criminal record.

Georgia ranks as the third-worst state in the country for erecting roadblocks to people with criminal records, which are defined as "unfair and counterproductive barriers to reentry into society of people with criminal records."²⁶

In recent years, Georgia has taken initial steps to improve a person's chance of succeeding upon release by passing legislation such as SB 193 (2009), which allows first-time, serious violent offenders to participate in work-release programs during the final year of their incarceration. However, Georgia law continues to impose many barriers to successful re-entry. For example, current law allows employers in Georgia can ask about arrests that never led to a conviction and refuse to hire anyone with a criminal record no matter what their qualifications. Additionally, public assistance and food stamps are permanently denied to anybody convicted of a drug felony. These are federal restrictions that the State of Georgia may opt out of, but has chosen instead to enforce.

To make matters worse, members of the Georgia General Assembly continue to introduce legislation that would erect further barriers that would place undue burdens on successful reentry and prevent successful reentry. In 2011, HB 91 was introduced which would require that driver's license of people convicted of felonies and released from prison onto parole or probation read "CONVICTED FELON" for the duration of their sentence. This legislation would negatively impact people who are reentering society and their ability to obtain employment and housing, among other things.

In addition, the 2011-2012 General Assembly declined to pass legislation that would have assisted tens of thousands of unemployed people who require gainful employment to survive and avoid re-offending. HB 402 and HB 663 aimed to restrict criminal records from use by private entities and allow for expungement of arrests that did not lead to conviction.

Assistance on reentering society after prison should begin before release. The Georgia Department of Corrections has promoted its Reentry Handbook, which is to be provided to all prisoners upon their entry to prison. Effective use of the handbook requires a person to have access to telephone, email, internet, and fax machine services to complete the necessary applications for a birth certificate, Social Security benefits, job placement and housing. Without a dedicated staff to provide assistance, reentry planning while incarcerated is unattainable.

²⁴ Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons*, April 2011.

²⁵ Pew Center on the States presentation to the Georgia Criminal Justice Reform Council, June 2011.

²⁶ Legal Action Center (LAC), *Georgia Report Card, After Prison: Roadblocks to Reentry*, ca. 2008-09, <http://lac.org/roadblocks-to-reentry/index.php>; follow "Report Card" link, then "State Report Cards."

SCHR Experience from the Field

Transportation and Employment: In September 2011, a 24-year old woman was released from prison onto probation following 18 months of incarceration. She was convicted of DUI with Serious Injury and sentenced to 10 years, with three years to serve and the balance of her sentence on probation. She was released onto Intensive Probation Supervision, which mandates a 5 p.m. curfew. Upon release, the only instructions she had been given was to meet her probation officer within 72 hours. She was also required to complete 80 hours of community service at a location 35 miles from her home in a part of the state that does not have public transportation. Her license was suspended as part of her sentence. She was also required to find employment but to have all applications screened by her probation officer. All of these conditions require that someone else assist her with transportation.

She is fortunate to be able to count on her mother, who works full-time, to provide her with a place to live, food and transportation to her various appointments. She has struggled to find employment and complete the conditions of her sentence, even with the generous support of her family. More than 20 percent of people admitted to prison in 2010 reported to have been unemployed for more than six months before incarceration.²⁷ Barriers such as access to transportation and employment will contribute to recidivism, as more people are unable to complete their probation and parole sentences.

Identification: An Atlanta-based homeless ministry offers assistance with birth certificates, state identification cards, job skills training, and case management for housing placement. It serves many guests who are recently released from prison and jail. The greatest need is for assistance with identification. Upon inquiry, the ministry learned of an agreement between the Department of Driver Services and the Department of Corrections whereby someone released on parole or probation without a home can take a notarized statement from their probation officer to DDS to vouch for their residency. This form cannot be used by people who are not being supervised. This form satisfies one of two requirements for obtaining state identification: residency status. The homeless person still must prove identity with an original birth certificate or certified copy of a birth certificate. The certificate costs \$25 from Vital Records and the Identification Card costs \$20. The state provides someone leaving prison with \$25 “gate money” – not enough to obtain proper identification.

Georgia’s legislative efforts to provide reentry planning consist of the passage of SB 193 in 2009, which allows first time serious violent offenders to participate in work release programs during the final year of incarceration. But it should consider measures similar to the states described below that provide more wide-sweeping impact.

Lessons from other states:

Arkansas wrote into law the services that the Department of Corrections must provide to promote successful reentry and lower the recidivism rate.²⁸

South Carolina requires the development a reentry plan tailored to an individual’s needs.²⁹

²⁷ Ga. Dept. of Corrections, *Inmate Statistical Profile: Inmates Admitted during CY2010*, Jan. 2011, http://www.dcor.state.ga.us/Research/Annual/Profile_inmate_admissions_CY2010.pdf.

²⁸ A.C.A. § 12-28-101

²⁹ S.C. Code Ann. § 24-21-32

Louisiana has made it a priority to provide resources in the areas of employment, life skills training, and job placement, with access to many support services. The Department of Public Safety and Corrections identifies a transition specialist at each of the state correctional facilities whose duties span from assisting in the development of each offender’s post-release plan to job counseling.³⁰ In 2010, Louisiana also passed HB 102, a measure that exempts expungement fees only for people who did not participate in pretrial diversion programs.

Texas has passed HB 1711 (2007), which established a comprehensive reentry and reintegration plan for those getting out of correctional facilities, including provide housing and structured programs, including group homes for recovering substance abusers, through which offenders are provided services immediately following release or discharge.³¹

In 2010, **Connecticut**, **Massachusetts**, and **New Mexico** enacted statewide “Ban the Box” measures which delay inquiry from public employers regarding the criminal history of job applicants until job candidates are interviewed for the position. A similar measure is being proposed on a city level in Atlanta, Georgia.

SCHR RECOMMENDATIONS TO REDUCE RECIDIVISM:

In order to remove some of the roadblocks to successful reentry, Georgia should:

- **Adopt policies that support reintegration into society, such as acceptance of prison identification as a form of identification for purposes of obtaining a state identification card;**
- **Pass legislation such as Georgia HB 402 and HB 663 that allow for arrest records to be expunged under certain circumstances;**
- **Implement a statewide statute that would delay inquiry from public employers regarding the criminal history of job applicants until job candidates are interviewed for the position;**
- **Create and expand the availability of prison programming, including GED classes, life skills classes, and individual reentry assistance;**
- **Strengthen work-release programs that develop job and life skills prior to release from incarceration that will help reduce the risk of recidivism upon reentry;**
- **Improve access to affordable housing; and**
- **Remove policies that create collateral consequences for those with criminal convictions, such as opting out of the federal ban on food stamps and public assistance and housing benefits.**

³⁰ La. R.S. 15:827.1

³¹ TX Gov’t Code § 495.028

OBJECTIVE 4: END MANDATORY MINIMUM SENTENCING

The Problem

Georgia’s prison population has increased by 35% in the last 20 years. According to the Georgia Department of Corrections, 61% of Georgia’s prison population is incarcerated for violent offenses, and 18% are “seven deadly sin” offenses.³² In Georgia, serious violent felonies are subject to mandatory minimum sentences, which tie the judges’ hands and do not allow for the use of discretion regarding individual cases. The average time served for the “seven deadlies” is increasing.³³

- **Serious Violent Felonies – Penalties**

Serious violent felonies are subject to mandatory minimum sentences in Georgia. If a person is convicted of one of the following, they will be sentenced to *at least* the corresponding prison term.

Serious Violent Felony	Mandatory Minimum Sentence
Kidnapping where victim is >14 yrs. <u>or</u> Armed Robbery	10 years
Kidnapping where victim is <14 yrs. <u>or</u> Rape, <u>or</u> Aggravated child molestation, <u>or</u> Aggravated sodomy, <u>or</u> Aggravated sexual battery	25 years

- **Repeat Offenses** can receive longer prison sentences. For a fourth felony conviction, the judge will impose the longest sentence recommended by the guidelines. If a person is convicted of their **fourth serious violent felony**, they’re sentenced to life in prison without a chance for parole.
- **“SB 440”: Children Prosecuted as Adults**

Georgia law allows prosecutors to transfer children between the ages of 13 and 17 who are accused of one of the seven deadly crimes to adult court. If convicted of one of these crimes, a child faces a mandatory minimum sentence of ten years in adult prison without the possibility of parole.

The most extensive and comprehensive research on transfer of youth to the adult criminal justice system has shown conclusively that children are more likely to re-offend when they are tried and incarcerated in the adult criminal justice system.³⁴ Research funded by the U.S. Justice Department has shown that in Florida, youth tried as adults were a third more likely to re-offend than those retained in the adult system. Transferred youth also re-offended twice as quickly, and were twice as likely to be arrested for serious offenses.

³² Applied Research Services presentation to the Georgia Criminal Justice Reform Council on July 13, 2011.

³³ Pew Center on the States presentation to the Georgia Criminal Justice Reform Council, July 13, 2011.

³⁴ Bishop, Donna M. et al. (April 1996) “The Transfer of Juveniles to Criminal Court: Does it make a difference?” *Crime & Delinquency*, Vol. 42, No. 2.; and Florida Department of Juvenile Justice. Juvenile Transfer to Criminal Court Study: Final Report, January 8, 2002.

Many children are not competent to be tried in adult court. A study released by researchers from the MacArthur Foundation's Research Network on Adolescent Development and Juvenile Justice found that a third of children aged 11 through 13, and a fifth of those aged 14 or 15, understood legal matters at a level similar to mentally ill adults who have been found incompetent to stand trial. This report showed that the transfer of children into the adult criminal justice system almost surely leads to the prosecution in adult court of children who are *not competent* to stand trial.³⁵ The inability of adolescents to make reasoned decisions and to communicate effectively greatly affects their ability to participate in the criminal justice process, including communications with their attorney or understanding concepts such as their Miranda rights.³⁶

In addition, according to studies by the U.S. Justice Department, children incarcerated with adults are 5 times more likely to report being sexually assaulted, and 8 times more likely to commit suicide than youth held in juvenile justice facilities.³⁷

States that are repealing or modifying mandatory minimum sentencing schemes

South Carolina, Virginia and Tennessee have removed mandatory minimum sentencing laws for controlled substances and given judges sentencing discretion while lowering the maximum incarceration sentences. In 2010, South Carolina passed S 1154³⁸, which modified sentencing structures for certain criminal offenses and eliminated crack-powder sentencing disparity.

SCHR RECOMMENDATIONS FOR SENTENCING REFORMS

Reforming Georgia's mandatory minimum laws would have a significant financial impact and would drastically improve problems with prison overcrowding. As part of the state's reform efforts, Georgia should:

- **Reform mandatory minimum sentencing laws to allow for judicial discretion and individualized sentencing;**
- **Eliminate crack-powder cocaine sentencing disparity;**
- **For children accused of one of the seven deadly crimes, return original jurisdiction to juvenile court to decide when the child should be tried and sentenced as an adult, with a juvenile court judge deciding after a full hearing whether a child should be transferred to the adult criminal justice system;**
- **Require that all incarcerated children, whether tried as juveniles or adults, be held in a juvenile facility until the age of majority; and**
- **Exempt child offenders convicted of sexual offenses in superior court from the mandatory minimum twenty-five year prison term currently codified in O.C.G.A. §17-10-6.1(b)(2).**

³⁵ MacArthur Juvenile Adjudicative Competency Study (March, 2003), posted at www.macfound.org

³⁶ Adolescent Brain Development and Legal Culpability, ABA. Juvenile Justice Centers (Winter, 2003).

³⁷ Flaherty, Michael G "An Assessment of the National Incidences of Juvenile Suicides in Adult jails, Lockups and Juvenile Detention Centers." The University of Illinois, Urbana-Champaign, 1980.

³⁸ S.C. Code §§ 44-53-370, 44-53-375

OBJECTIVE 5: IMPROVE FUNDING FOR INDIGENT DEFENSE

The Problem

In the last thirty years, SCHR has observed, documented and litigated deficiencies in Georgia's indigent defense system. SCHR's litigation and legislative efforts helped bring about the creation of the current statewide public defender system. SCHR continues to investigate the quality of representation provided to poor people accused of crimes by observing courtroom proceedings, interviewing men and women about their experiences with court-appointed counsel, and examining records in the offices of court clerks and county commissions. What follows is a non-exhaustive list of deficiencies SCHR has observed in the years since the creation of the statewide public defender system:

- In one south Georgia judicial circuit, the public defender office has three attorneys who are required to provide representation to indigent adults and children appearing in four superior courts and four juvenile courts. Because the counties refuse to fund any attorney positions (and have no statutory obligation to do so), the office is unable to hire any additional attorneys. As a result, some indigent defendants enter guilty pleas on the day of arraignment – without any investigation being done into their cases – because the office does not have the resources to fully investigate defenses or potential mitigation;
- In one middle Georgia circuit, some public defenders are handling upwards of 500 cases at any one time, and share an investigator who has the sole responsibility of investigating cases in eight different counties. As a result, cases are rarely investigated, and the vast majority of defendants plead guilty as a result without any individualized attention being paid to their case;
- Other Georgia courts flat-out ignore indigent defendants' constitutional right to appointed counsel. For instance, judges in one state court encourage, and sometimes instruct, indigent defendants to speak directly to the solicitor without ever informing them of their right to counsel or suggesting that they speak to defense counsel first. As a result, an indigent defendant appearing here and in comparable courts does not have a lawyer to advocate for a reduced sentence, waiver of fees, or diversion programming.
- Georgia's underfunded public defender system has dealt a blow to indigent capital defendants like Jamie Weis. Before his case was resolved in July 2011, Mr. Weis had no representation at all for over a year because the State could not afford to pay his defense counsel. During that time, witness memories faded, evidence grew stale, and Mr. Weis was left with no one to investigate his mitigation claims that are so necessary in capital trials, no one to file pretrial motions on his behalf, no one to argue to the court that his day in court was more than overdue. Moreover, the cost to Georgia's taxpayers was tremendous. The five-and-a-half years Mr. Weis spent in five county jails cost Georgia sheriffs – and taxpayers by extension – roughly \$35 per day.

Full indigent defense funding will help ensure that public defenders are able to avoid conviction of the innocent, unnecessary lengthy incarceration of the guilty, and to provide each person accused of a crime with the individual and zealous representation to which they are entitled.

Underfunding Georgia's Public Defender System Leads to Unnecessary Incarceration

Georgia's inadequate funding for public defense has a negative financial impact on taxpayers. The Justice Policy Institute recently identified five ways in which poorly funded public defense systems can lead to increased incarceration and increased cost to tax-payers:

1. Increased pretrial detention for people who do not need to be detained

- People held in pretrial detention may wait a long time before ever speaking with a lawyer or appearing in court, increasing the financial burden on local communities.
- Being held in pre-trial detention may cause individuals to lose their jobs and may destabilize families who depend on the person in jail for financial support.

2. Increased pressure to plead guilty

- Individuals may feel pressure to plead guilty because their public defender is unable to fully investigate the case, prepare for trial, or explore diversion options.
- Individuals in pretrial detention may decide to take a plea agreement rather than sit in jail, particularly if they have limited contact with their attorney.

3. Wrongful convictions and other mistakes

- Ineffective public defense can contribute to wrongful convictions.
- The cost of wrongful convictions includes unnecessary incarceration, appeals, and possible lawsuits against city and state agencies.

4. Excessive sentences that fail to take into account individual circumstances

- Public defenders with excessive caseloads may be unable to fully advocate for their client at sentencing because they do not have the time to learn the facts in the case or research mitigating factors. The lack of advocacy at sentencing may lead to inappropriately long sentences.

5. Increased barriers to successful reentry

- A criminal conviction may lead to several collateral consequences such as deportation or restrictions on the individual's ability to secure public housing, public benefits and employment, to earn certain professional licenses, or to vote. The absence of supportive services and the inability to engage in civic life can prevent an individual returning home from prison from successfully re-integrating into society.³⁹

Georgia's Public Defenders Have Excessive Caseloads, Creating Assembly-Line Justice in Many Georgia Counties

The state of Georgia fails to provide funding to hire enough public defenders to adequately represent indigent defendants. One reason why the funding is inadequate is that the state has a misguided system for allocating public defender positions. By statute, the state provides funding for one public defender in a judicial circuit for every superior court judge, excluding the chief judge.⁴⁰ This creates a particular problem in rural areas, where there may be few judges, but a large number of cases.

³⁹ *System Overload: The Costs of Under-Resourcing Public Defense*, JUSTICE POLICY INSTITUTE (July 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf.

⁴⁰ Ga. Code Ann. § 17-12-27 (West).

As a result, many Georgia public defenders have caseloads that greatly exceed national standards. These standards recommend that public defenders handle no more than 150 felony, 400 misdemeanor, 200 juvenile, 200 mental health, or 25 appeals per year.⁴¹ High caseloads mean that a public defender may not be able to spend sufficient time investigating a case. Public defenders may not interview witnesses, test physical evidence, review documents, or meet with their clients prior to the court proceeding. These deficiencies create a sense of assembly line justice or a “meet ‘em and plead ‘em” approach to criminal defense that adds to the state’s corrections costs.

Although the state of Georgia provides some funding for indigent defense, the state still relies on county funding to supplement public defender offices’ budgets. Many counties that are in most need of public defense are least able to provide additional funding, leading to understaffed public defender offices that cannot provide clients with adequate services.

The Critical Importance of Investigators to Public Defense

Investigators play a critical role assisting attorneys representing indigent clients. Investigators locate and interview witnesses, family members, and law enforcement officials. They canvass crime scenes, locate evidence, verify key facts, and organize documents in preparation for court proceedings.

Georgia, however, provides funding for one investigator in each judicial circuit. See O.C.G.A. § 17-12-28. The Ocmulgee Judicial Circuit Public Defender Office, represents indigent defendants in eight counties, but only has one investigator. Between July 1, 2009, and June 30, 2010, the circuit public defender office handled 4,294 cases. (Data provided by Georgia Public Defender Standards Council). The number of investigators funded by the state is simply inadequate to provide meaningful investigation in more than a handful cases. The problem is compounded in circuits like Ocmulgee, where investigators may have to travel hours across multiple counties.

The individual and financial costs of inadequate investigation are acute: the state must bear the cost of lengthy appeals and prison sentences in cases that would have resulted in acquittal or a lesser sentence had the public defender had the resources to fully investigate the case.

The State of Georgia Spends 25 Times More on Corrections than Public Defense

Public defenders in Georgia serve tens of thousands of residents every year. Despite their best efforts, most public defenders handle too many cases and have too few resources to provide adequate representation. Georgia’s failure to adequately fund its public defender system results in unjust case outcomes and costs taxpayers millions of dollars each year in unnecessary corrections costs. In 2010, the State of Georgia allocated **\$986,640,067** from state general revenue funds to the Department of Corrections but only **\$40,989,395** for public defense.⁴²

⁴¹ See NAT’L ADVISORY COMM’N ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS 276 (1973).

⁴² *The Governor’s Budget Report, Fiscal Year 2011*.

http://opb.georgia.gov/vgn/images/portal/cit_1210/12/27/162459032state_of_georgia_budget_fy_2011.pdf

Indigent Defense Funds Not Directed to Fund Indigent Defense

Various fees and fines collected by court clerks' offices were authorized to pay for the state's indigent defense program since it was created in 2003. However, since the beginning, the Georgia General Assembly has redirected millions of those dollars for other uses.

In 2011, commendable steps were taken by some Georgia lawmakers to secure more money for the struggling public defender system. **House Bill 648**, introduced by House Judiciary Non-Civil Chairman Rich Golick, would not create any new sources of revenue for indigent defense, but it would make clear that the program's current sources of funding are dedicated solely to it. HB 648 and accompanying **House Resolution 977** call for a constitutional amendment that would create essentially a trust fund for indigent defense dollars collected by clerks.

Other Southern States Fully Fund their Public Defender Systems

In the past decade, states have moved toward providing full or greater state funding for public defense.⁴³ State funding ensures that the quality of public defense not depend on a person's zip code.

Arkansas, Kentucky, Florida, Virginia, West Virginia, and Tennessee all fund their state indigent defense systems entirely or mostly through state funds.

Even states that fund public defense through county funding distribute state funding contributions based on caseload, population, or similar empirical data. For example, the **Louisiana Indigent Defense Board**, the state agency that oversees indigent defense, supplements county funds based on a formula that considers population, caseload, and other criteria.

The **Texas Task Force on Indigent Defense**, which provides state oversight for indigent defense, awards grants to counties after considering population figures and other criteria.

⁴³ *System Overload: The Costs of Under-Resourcing Public Defense*, JUSTICE POLICY INSTITUTE (July 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf.

**Georgia Ranks Near the Bottom Among Southern States
When Comparing State Funding for Public Defense**

Rank of Southern States	State	2008 Population	Total State Funding	Ratio of State Funding to Population
1	West Virginia	1,814,460	\$36,975,540	\$20.38
2	Florida	18,328,340	\$354,034,500	\$19.31
3	North Carolina	9,222,410	\$117,691,230	\$12.76
4	Virginia	7,769,089	\$96,924,200	\$12.48
5	Tennessee	6,214,880	\$61,267,930	\$9.86
6	Alabama	4,661,900	\$43,495,290	\$9.33
7	Arkansas	2,855,390	\$26,244,210	\$9.19
8	Kentucky	4,269,245	\$36,500,000	\$8.55
9	South Carolina	4,479,800	\$22,013,080	\$4.91
10	Georgia	9,685,740	\$35,010,260	\$3.61
11	Louisiana	4,410,796	\$15,309,910	\$3.47
12	Mississippi	2,938,610	\$4,283,280	\$1.46
13	Texas	24,326,970	\$21,495,880	\$0.88

Source: State Funding Contribution and Population Figures came from *State, County and Local Expenditures for Indigent Defense Services Fiscal Year 2008*, THE SPANGENBERG GROUP (Nov. 2010).
http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_expenditures_fy08.authcheckdam.pdf

SCHR RECOMMENDATIONS TO IMPROVE FUNDING OF PUBLIC DEFENSE

The state of Georgia can reduce the costs of incarceration by adequately funding its public defense system. Improved public defense can reduce the financial cost of incarceration. Both the United States Supreme Court and national public defender standards⁴⁴ state that funding for public defense is a state responsibility.⁴⁵ Investing resources on the front end (through adequately funded public defender offices) will avoid greater costs on the back end (lengthy appeals and prison sentences). **As part of the state’s reform efforts, Georgia should:**

- **As a beginning step towards assuming full financial responsibility for the public defender system, Georgia should allocate funds generated by the Indigent Defense Fund exclusively to the provision of indigent defense as proposed in HB 648 and HR 977; and**
- **Based on caseload, population, or similar empirical data, supplement local funding in counties that are experiencing the greatest fiscal depression.**

⁴⁴ Principle Two of the ABA’s Ten Principles of a Public Defense Delivery System states “the responsibility to provide defense services rests with the state....”

⁴⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Conclusion

The current economic climate has provided an opportunity for revisiting expensive and ineffective statutes and policies that do not contribute to public safety, and in some instances only create barriers to fully participating in society as a law-abiding citizen. Many other states, including Georgia's immediate neighbors, have created legislation addressing these tough on crime laws, finding ways to provide for public safety, but with less cost to taxpayers.

The Southern Center for Human Rights commends Georgia Governor Nathan Deal, Speaker of the House David Ralston and Chief Justice Carol Hunstein for creating the Georgia Criminal Justice Reform Council and prioritizing the reexamination of Georgia's criminal justice policies. SCHR supports the efforts of the Council and urges its members to thoughtfully examine these recommendations for the sake of all of Georgia's citizens.