

JUNE 2010

South Carolina's Public Safety Reform

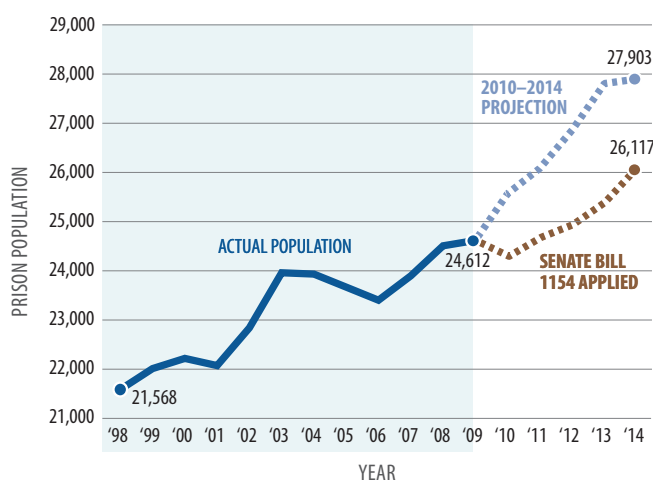
Legislation Enacts Research-based Strategies to Cut Prison Growth and Costs

In 2010, South Carolina enacted a comprehensive package of sentencing and corrections legislation that puts the state at the forefront of states advancing research-driven criminal justice policies designed to produce a greater public safety return on corrections spending.

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (S. 1154)—the result of more than a year of work by the South Carolina Sentencing Reform Commission—passed

PROJECTED IMPACT

S. 1154 reduces the need to build and operate new prison beds during the next five years by 1,786, saving the state a projected total of \$241 million during the next five years.



SOURCE: South Carolina Department of Corrections (historical data); Applied Research Services, Inc. (projections).

HIGHLIGHTS

- **Population.** South Carolina's correctional population nearly tripled during the past 25 years and was projected to grow by more than 3,200 inmates by 2014.
- **Costs.** Since 1983, state spending on prisons increased by more than 500 percent to \$394 million. Meanwhile, recidivism rates actually increased in recent years.
- **Drivers.** Data collected and analyzed found high rates of repeat offenders, high rates of incarceration for non-violent offenders and over-extended judicial caseloads.
- **Reforms.** With intensive technical assistance from the Pew Center on the States, the Sentencing Reform Commission developed a set of reforms leading to the Omnibus Crime Reduction and Sentencing Reform Act of 2010. The Act, which makes common sense sentencing reforms, improves parole release decision-making, strengthens supervision for offenders on probation and parole and provides ongoing oversight of sentencing and corrections reform in the state.
- **Impact.** The legislation, S. 1154, is designed to protect public safety, hold offenders accountable and control the growth of corrections costs. The law is projected to save the state up to \$175 million in construction costs and avoid more than \$66 million in operating costs during the next five years.

unanimously in the state Senate and passed the state House 97-4 before being signed into law by the governor.

The Commission's mandate was to make South Carolina safer, reduce recidivism and the revolving door of prison, use tax dollars more effectively and ensure that prison space is available for violent offenders who need to be there.

“By using corrections dollars more efficiently—making them work harder—we ensure violent criminals remain locked up, reduce the likelihood that low-level offenders will commit new crimes and free up resources for law enforcement efforts that prevent crime in the first place.”

—State Senator Gerald Malloy (D), chair, South Carolina Sentencing Reform Commission, February 28, 2010

The bipartisan, inter-branch Commission produced a set of reforms that increase penalties for certain violent crimes and ensure fairness and certainty in sentencing. The reforms also require supervision for offenders leaving prison; focus corrections resources on high-risk offenders; provide greater accountability for non-violent, lower-level offenders; require greater accountability from state agencies; and provide ongoing data-driven oversight of sentencing and corrections reform in the state.

The 2010 legislation, which enacts these reforms, is projected to slow the growth of the state's prison

population substantially during the next five years. Forecast models estimate the reforms will reduce the need to build and operate new prison space by 1,786 inmates,¹ saving the state up to \$175 million in construction costs and avoiding more than \$66 million in operating costs during the next five years.² Because the effects of some of the provisions will not be felt for several years, the bill will have an even larger impact on reducing the number of prison beds needed and will achieve even more cost savings after 2014.

The legislation also strengthens community corrections options to reduce recidivism and increase public safety. By improving the use of evidence-based programs, requiring the use of a risk and needs assessment tool and improving supervision for all offenders, this legislation will aid the state in reducing the number of parolees and probationers committing technical violations and new crime, thereby slowing the revolving door of prisons.

South Carolina is a leading example of what can happen when policy makers take a data-driven approach to difficult policy issues and then work together in a bipartisan fashion across the three branches of government to find solutions.

Public Safety and Public Spending in South Carolina

South Carolina's correctional population nearly tripled during the past 25 years, reaching 24,612 in 2009.³ The correctional population growth has resulted in significant financial cost

to state taxpayers. Since 1983, state spending on prisons increased by more than 500 percent to \$394 million.⁴

Despite these increases, South Carolina's crime rate remained high. According to the FBI's Uniform Crime Report, South Carolina was the state with the highest violent crime rate in the country in 2008, a distinction held for seven years (2002–2008).⁵ In addition, the recidivism rate actually increased. Of the inmates released in fiscal year (FY) 1999, 27.6 percent were returned to prison within three years; of those released in FY 2003, 32.7 percent were returned to prison within three years.⁶

If the state did not take action, the prison population in South Carolina was projected to grow by more than 3,200 inmates by 2014.⁷ Such an increase could have added \$141 million to the Department of Corrections' operating costs during the next five years, plus another \$317 million for the construction of new prison space.⁸

The data collected and analyzed by Pew during the past year demonstrated the problems confronting South Carolina: high rates of repeat offenders, high rates of incarceration for non-violent offenders, growing correctional populations and over-extended judicial caseloads. The analysis found several key factors driving the state's prison growth:

1 Sentencing policies in recent years led to a significant number of offenders entering South Carolina prisons who were committed for low-level offenses for short periods of time. Admissions to

prison had increased 26 percent since 2000,⁹ and a significant portion of the increase was for less serious offenses with short sentences. In fact, 44 percent of new prison admissions in 2009 had a sentence of fewer than 18 months.¹⁰

“About half of South Carolina’s prison population is being held for nonviolent offenses... Such low-level violations, as well as certain nonviolent drug-related crimes, can be punished in other ways that aren’t as expensive as prison. We build prisons for people we’re afraid of. Yet South Carolina has filled them with people we’re just mad at.”

—Newt Gingrich, former speaker of the U.S. House of Representatives, and Pat Nolan, vice president of Prison Fellowship, May 3, 2010

2 The number of offenders in prison for non-violent offenses, mostly drug and property crimes, increased significantly, largely as a result of sentencing practices. Of South Carolina's prison population, 49 percent (approximately 12,000 inmates) were being held for non-violent offenses.¹¹ The percentage of offenders incarcerated for drug-related offenses had more than tripled. In 1980, state prisons held 473 inmates convicted of drug-related offenses, six percent of the total prison population. In 2009, that number had increased to 4,682 inmates or 20 percent of the prison population.¹²

3 Increasing numbers of South Carolina offenders on parole and probation were being sent back to prison for breaking the rules of their release, not for committing new crimes. In FY 2009, the Department of Probation, Parole and Pardon Services revoked 3,205 offenders and sent them back to prison, accounting for 24 percent of all prison admissions. Of those offenders 66 percent (more than 2,100) were sent back to prison for non-criminal (technical) violations, such as failure to show up at the probation office, or for alcohol and drug use.¹³

4 The South Carolina Board of Pardons and Paroles (the parole board) substantially cut the rate at which it releases inmates who are eligible for parole. In 2008, the Parole Board rejected 5,358 parole applications and approved 564, or 10 percent of all hearings. In 2000, the Parole Board approved 27 percent of all applications, releasing 1,714 offenders; but in 1980, the Parole Board

approved 63 percent of all applications.¹⁴ In addition, a greater number of inmates, including higher-risk offenders, were being released at the end of their sentences and walking out the prison door with no supervision or accountability and no connection to the services or support that would reduce the chances they would return to crime or drug use.

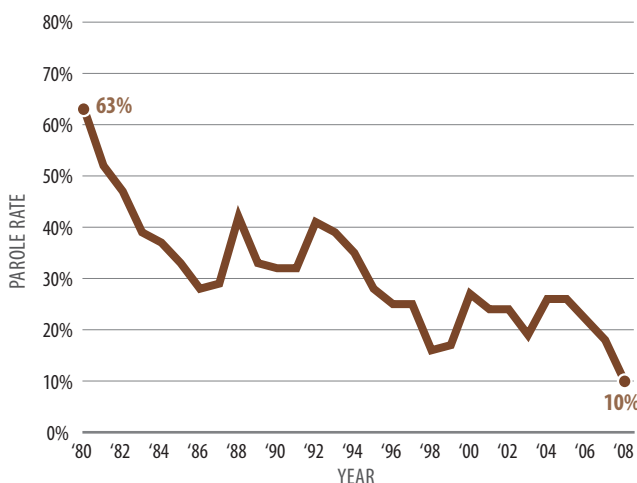
Building Consensus

In 2008, the South Carolina legislature established the Sentencing Reform Commission, which included three state senators, three state representatives, three members of the Judiciary and the director of the Department of Corrections. The legislature tasked the commission with reviewing and recommending:

1. Appropriate changes to existing felony sentences;
2. Maintaining, amending or abolishing the current parole system; and
3. Alternatives to incarceration for low-level offenders.

PAROLE GRANT RATES

South Carolina's parole board has substantially cut the rate at which it releases inmates who are eligible for parole, from 63 percent in 1980 to 10 percent in 2008.



SOURCE: Data from the Statistical Analysis Center, South Carolina Department of Public Safety.

In February 2009, the Commission requested technical assistance from the Public Safety Performance Project of the Pew Center on the States. Pew, along with its partners, the Crime and Justice Institute and Applied Research Services, Inc., assisted the Commission in analyzing South Carolina's sentencing and corrections trends and in generating policy options to protect public safety, hold offenders accountable and control the growth of corrections costs.

Working with Pew and its partners, the Commission analyzed the state's sentencing

and corrections trends to ensure that the recommendations and subsequent legislation would be based on data and research. Pew obtained data from the Department of Corrections; the Department of Probation, Parole and Pardon Services (PPP); the South Carolina Court Administration; the South Carolina Law Enforcement Division (SLED); and the Statistical Analysis Center (SAC), and merged the data into a common database for analysis. Pew and its partners analyzed the key drivers of prison growth and costs, the increase in the number of offenders on probation and parole, and the population and fiscal impact of various policy options.

For nearly a year, the Commission held more than 14 hearings and numerous workgroup meetings to analyze the data and research and to reach consensus on recommendations. Throughout the process, the Commission received input from stakeholders including prosecutors, crime victims, law enforcement, the defense bar and other key members of the criminal justice community.

“This approach is soft on the taxpayer and smart on crime. It is soft on the taxpayer because it will reduce the need to build more prisons. It is smart on crime because community-based alternatives such as restitution and drug courts entail more accountability and have been proven to reduce recidivism.”

—State Senator George E. “Chip” Campsen III (R), member of the South Carolina Sentencing Reform Commission, April 21, 2010

In February 2010, the Commission submitted its final report to the legislature with 24 specific recommendations. To implement these recommendations, the Commission drafted and introduced legislation—the Omnibus Crime Reduction and Sentencing Reform Act of 2010 (S. 1154). A total of 26 senators co-sponsored the legislation.

SOUTH CAROLINA SENTENCING REFORM COMMISSION MEMBERS

Senate Appointees

Senator Gerald Malloy, *chair*
 Senator John M. “Jake” Knotts Jr.
 Senator George E. “Chip” Campsen III

House of Representatives Appointees

Representative G. Murrell Smith Jr., *vice-chair*
 Representative Douglas Jennings Jr.
 Representative R. Keith Kelly

Judiciary Appointees

Justice Donald W. Beatty
 Judge Aphrodite K. Konduros
 Judge William P. Keesley

Governor’s Appointee

Jon Ozmint, *director, South Carolina Department of Corrections*

Comprehensive Legislation Seeks Less Crime at Lower Cost

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 (S. 1154) makes common sense sentencing reforms, improves parole release decision-making, strengthens supervision for offenders on probation and parole, and provides ongoing oversight of sentencing and corrections reform in the state. Overall, it will ensure that there is more prison space for the state's violent and career criminals while helping stop the revolving door for lower-risk, non-violent offenders.

LESS CRIME, LOWER COST

- 1 Adopting common sense sentencing reforms
- 2 Improving release policies
- 3 Strengthening parole and probation
- 4 Establishing ongoing oversight

1. ADOPTING COMMON SENSE SENTENCING REFORMS

The legislation increases penalties for certain violent crimes, ensures fairness and certainty in sentencing and provides justice for victims. Specifically, the Act:

■ Adds 24 crimes to the “violent crime” list that were not classified as “violent” offenses, even though many resulted in a victim’s death.

■ Restructures or revises specific violent and property offenses, including:

- Creating an “attempted murder” offense, with a penalty of up to 30 years, which previously was not included in South Carolina’s criminal code.
- Providing that a person convicted of a “most serious offense” shall be sentenced to life without parole if the person had two or more prior convictions of a “serious offense.”

■ Reducing the maximum penalty for burglary in the 2nd degree, non-violent (i.e., burglary of commercial buildings during the daytime) from 15 years to 10 years, and making these offenders eligible for parole.

■ Increasing the property value threshold from \$1,000 to \$2,000 for all felony property crimes, making all property crimes below \$2,000 misdemeanors.

■ Increasing penalties when a habitual motor vehicle offender driving with a suspended license causes an accident that results in great bodily injury or death.

■ Establishing a consolidated assault and battery statute, with graduated penalties for more serious conduct or harm; also eliminating provisions related to assault and battery against special classes of individuals (e.g., sports officials, EMS providers), which are now covered by the consolidated statute.

■ Restructures controlled substance offenses, including:

■ Providing that persons convicted for a first or second drug offense, other than trafficking offenses, are eligible for probation or a suspended sentence, parole, work release, good conduct and other credits; and that persons convicted of a third or subsequent drug offense, other than trafficking offenses, be eligible for probation, suspension, parole and credits in limited circumstances. Drug

trafficking remains a violent offense with no probation or parole allowed.

- Equalizing penalties for drug offenses to erase the disparity for crack and powder cocaine possession.

“[T]he substance of the law, the way lawmakers worked together to pass it and the change it signals to our counter-productive approach to criminal justice make it one of the most significant accomplishments in a decade.”

—The State, *Sentencing reform law will make S.C. safer*, June 6, 2010

- Clarifying the proximity to schools statute (requiring enhanced penalties for controlled substance offenses within the proximity of a school, park or playground) to require intent to commit a controlled substance offense and intent to commit it within the proximity of a school, park or playground.
- Redefining what is considered a second or subsequent drug offense for specific drug crimes (e.g., marijuana possession is no longer counted as a second or subsequent offense if a first offense of marijuana possession occurred more than five years before the conviction; for other offenses for drug possession, the first offense must have been within 10 years to count as a prior offense).
- Requiring drug offenders to pay a controlled substance offense assessment (with a waiver for indigent defendants), and allocating the proceeds to drug treatment court programs.

- Makes other significant sentencing reforms, including:

- Increasing the amount of victim restitution that can be ordered by magistrates or municipal courts from \$5,000 to \$7,500; if the civil jurisdiction amount in summary courts increases, the victim restitution limit will also increase.
- Prohibiting persons convicted of a violent crime from possessing a firearm or ammunition, consistent with federal law.
- Revising work release provisions so that inmates convicted of certain offenses with long prison terms now may be eligible for work release in the last three years of their sentence.
- Allowing for a reduction in an offender's sentence based on cooperation with law enforcement, the Department of Corrections or prosecutors.
- Requiring an accurate fiscal impact statement prior to any committee action for any legislation that would establish a new criminal offense or that would amend the sentencing provisions of an existing criminal offense.

2. IMPROVING RELEASE POLICIES

The Act provides cost-effective prison release methods to improve successful reintegration into society by inmates and ensure public safety. Specifically, the Act:

- Increases the education and experience requirements for the director of the Department of Probation, Parole and Pardon Services and the at-large parole board member and requires annual training for all board members.

- Requires the parole board to adopt a validated actuarial risk and needs assessment tool for use in making parole decisions and setting parole conditions.
- Allows parole for an inmate who is terminally ill, geriatric or permanently incapacitated upon the petition of the Department of Corrections.
- Directs the Department of Corrections and the Department of Probation, Parole and Pardon Services to work with the Department of Motor Vehicles to provide inmates released from prison with a valid photo identification card.

3. STRENGTHENING PAROLE AND PROBATION

The legislation focuses probation and parole supervision resources on high-risk offenders. It also improves the transition of lower-risk offenders—those considered least likely to re-offend—into the community. Specifically, the Act:

- Requires that non-violent inmates who have been incarcerated for at least two years be released to mandatory supervision 180 days before their release date.
- Requires probation agents to conduct actuarial assessments of offenders' risks and needs, and make decisions about the type of supervision and services that are consistent with evidence-based practices.
- Establishes incentives for good behavior (i.e., compliance credits) for offenders with a term of supervision of more than one year; an offender on supervision may earn up to 20 days off of their period of supervision for each 30-day period in which the offender has complied with the conditions of supervision and has no new arrests.

- Allows for administrative monitoring (i.e., a lower, less costly level of supervision) for offenders who have fulfilled all of their conditions of supervision except their payment of financial obligations (e.g., restitution, fines and fees).

- Extends supervision, under administrative monitoring, beyond the current five-year maximum probation term for offenders who have not paid all of their restitution, fines and fees, for the sole purpose of repayment.

- Authorizes the Department of Probation, Parole and Pardon Services to impose administrative sanctions in response to violations of the terms and conditions of supervision.

4. ESTABLISHING ONGOING OVERSIGHT

The Act provides ongoing oversight of sentencing and corrections reform in the state. Specifically, the Act:

- Establishes the Sentencing Reform Oversight Committee to review the implementation of the recommendations made by the Sentencing Reform Commission, oversee the various reports and plans required by S. 1154 and conduct additional studies and evaluations of sentencing reform issues.
- Provides for a system of performance incentive funding that allows for the shifting of resources from prisons to probation and parole. Specifically, the Oversight Committee is required to report on the expenditures avoided by reductions in the revocation rate and reductions in new felony offense convictions by those under supervision, and the Oversight Committee is to recommend to the legislature whether to shift up to 35 percent of any cost savings achieved to the Department of Probation, Parole and Pardon Services.

Launched in 2006, the Public Safety Performance Project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable and control corrections costs.

For more information, please visit www.pewcenteronthestates.org

Endnotes

¹ The inmate projection was produced by Applied Research Services, Inc.

² The operational and new construction costs were provided by recent budget calculations from the South Carolina Department of Corrections.

³ Data from the South Carolina Department of Corrections provided to Applied Research Services, Inc., and the South Carolina Sentencing Reform Commission, 2009.

⁴ Pew Center on the States, *One in 31: The Long Reach of American Corrections* (Washington, DC: The Pew Charitable Trusts, March 2009) at http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf. See also South Carolina State Fact Sheet at http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/PSPP_1in31_factsheet_SC.pdf.

⁵ Federal Bureau of Investigation, *Crime in the United States, 2008* (Washington, DC: U.S. Department of Justice, September 2009) at http://www.fbi.gov/ucr/cius2008/data/table_05.html. South Carolina led all 50 states with a violent crime rate of 729.7 per 100,000 inhabitants. The District of Columbia had the highest violent crime rate in the country at 1,437.7 per 100,000 inhabitants. South Carolina state officials note that South Carolina reports crimes using the National Incident-Based Reporting System (NIBRS), which has not been implemented in many states or localities. They note that this may impact the state's ranking on violent crime rates when compared with states that report crimes using the Uniform Crime Reporting (UCR) Program.

⁶ Data from the South Carolina Department of Corrections provided to Applied Research Services, Inc., and the South Carolina Sentencing Reform Commission, 2009.

⁷ Population projections calculated by Applied Research Services, Inc.

⁸ Cost projections calculated by Applied Research Services, Inc.

⁹ All data are from the South Carolina Department of Corrections, and analysis was completed by Applied Research Services, Inc.

¹⁰ All data are from the South Carolina Department of Corrections, and analysis was completed by Applied Research Services, Inc.

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¹² Data from the South Carolina Department of Corrections provided to Applied Research Services, Inc., and the South Carolina Sentencing Reform Commission, 2009.

¹³ Data from the South Carolina Department of Probation, Parole and Pardon Services provided to Applied Research Services, Inc., and the South Carolina Sentencing Reform Commission, 2009.

¹⁴ 2008 data provided by the Department of Probation, Parole and Pardon Services. Historical data provided by the Statistical Analysis Center, South Carolina Department of Public Safety, to Applied Research Services, Inc., and the South Carolina Sentencing Reform Commission, 2009.



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