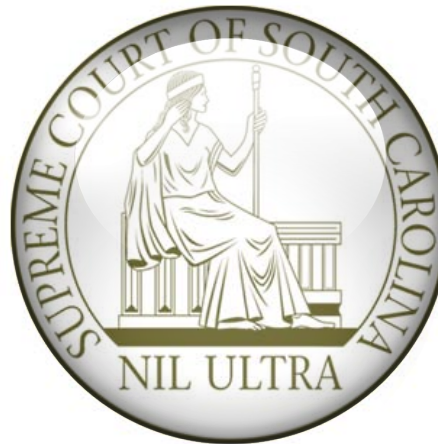


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# Sentencing Reform in South Carolina



**Sentencing That Makes Sense: Why Should I?**  
**2010 Sentencing Workshop:**  
**Alabama Judicial College and the Pew Center on the States**  
**Chief Justice Jean Hoefler Toal**

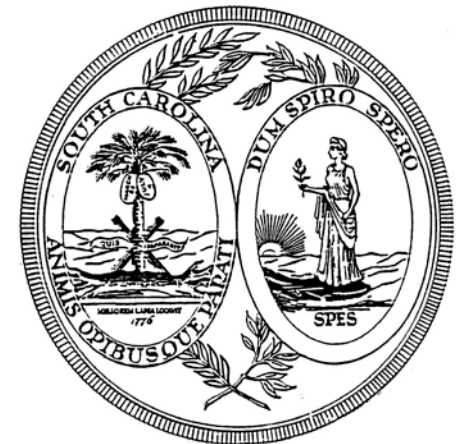
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# South Carolina Sentencing Reform

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## Overview:

- I. Creation and Work of the South Carolina Sentencing Reform Commission
- II. Recommendations and Report
- III. Legislative Implementation
- IV. Next Steps



# I. South Carolina Sentencing Reform

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## Background:

- In 2006 the Senate Judiciary Criminal Justice System Task Force was created
- In January 2007 the Task Force made a report to the General Assembly
- The Task Force enacted legislation to reduce recidivism:
  - Anti-gang legislation
  - Statewide Public Defender System
  - DNA arrestee & Post-Conviction DNA testing
  - Sentencing Reform Commission

# South Carolina Sentencing Reform

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- The Task Force created the Sentencing Reform Commission because it realized more study was needed to understand:
  - Prison overcrowding
  - Alternative Sentencing
  - Ways to reduce recidivism and prison population
  - Evidence based ways to improve public safety
- Task Force originally introduced the Commission as the “Sentencing Guidelines Commission”-- much resistance to the name so it was changed to the “Sentencing Reform Commission”

# South Carolina Sentencing Reform

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- Pursuant to Act 407 of the 2007-2008 Legislative Session, the primary duty of the South Carolina Sentencing Reform Commission is to prepare a comprehensive report that reviews the following 3 objectives and recommends action in the report:

# South Carolina Sentencing Reform

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- Objective #1: Determine appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year is allowed
  - Classification of violent and non-violent offenses
  - Ensure fairness and certainty in sentencing
  - Ensure effective use of taxpayer dollars
  - Protect the public's safety and obtain justice for victims

# South Carolina Sentencing Reform

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- Objective #2: Determine whether South Carolina should maintain, amend, or abolish the current parole system
  - What really works to protect the public and promote community reintegration?
  - What works best for determining release eligibility?
  - What post-prison supervision best reduces recidivism?

# South Carolina Sentencing Reform

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- Objective #3: Develop guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate
  - How can we best use our prison beds for those who belong there?
  - How can we best use our community based resources?
    - For example, community service, treatment, appropriate programming, specialty courts, and GPS
  - What can we do to maximize public safety and reduce recidivism while being fiscally responsible?



# Sentencing Reform Commission

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Senate	House	Judiciary	Governor's Appointee
Senator Gerald Malloy, Chair	Representative Murrell Smith	Justice Don Beatty, Supreme Court	Jon Ozmint, Director of SC Dept. of Corrections
Senator Jake Knotts	Representative Doug Jennings	Judge Aphrodite Konduros, Court of Appeals	
Senator Chip Campsen	Representative Keith Kelly	Judge William Keesley, Circuit Court	

# South Carolina Sentencing Reform

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- Even with only 3 objectives, the Commission had to conduct research, determine data, decide which issues to include in the final report and tackle through legislation
- Fortunate to partner with:
  - The Pew Charitable Trust
  - Crime and Justice Institute
  - Applied Research Services, Inc.
- Because of this technical and research support, the Commission's final report was based on evidence based principles

# South Carolina Sentencing Reform

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## Timeline:

- Began meeting in February 2009
- Held a 2-day conference in June 2009
- Presentations from all meetings and conference are available on the South Carolina General Assembly's website: [www.scstatehouse.gov](http://www.scstatehouse.gov)

# South Carolina Sentencing Reform

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- Presentations made by: DOC, DJJ, PPP, AG, Solicitors, Public Defenders, Court Administration, League of Women Voters, ACLU, SC Center for Fathers and Families, SC Re-Entry Initiative, National Center for State Courts, Crime and Justice Institute, Applied Research Services, and others
- Because of the involvement of the Pew Charitable Trust and their partners, an incredible amount of research and data was available to the Commission

# South Carolina Sentencing Reform

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- Through the financial and research assistance of the Pew Charitable Trust, the Commission held a 2 day conference in Charleston at the end of June 2009
- Heard from nationally-known experts on topics geared toward the 3 objectives
- The Commission then divided into 3 work groups:
  - Offense Re-Classification
  - Prison Release Mechanisms
  - Alternatives to Incarceration and Community Corrections

# South Carolina Sentencing Reform

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## What the Commission learned:

- Total South Carolina Inmate Population
  - FY08: 24,600
  - FY09: 24,460
  - Even with a slight decrease, total population is more than **326%** the size it was 30 years ago. FY78- pop. @ 7,500

# South Carolina Sentencing Reform

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- FY09 Admissions: 13,198
- New Admissions: 54 % of the Total Population
  - ❖ 3 out of every 4 are new court commitments
  - ❖ 1 out of every 4 are revocations

# South Carolina Sentencing Reform

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## Sentencing Trends = Increased Prison Population:

1) Drug Law Violations - more offenders sentenced to prison for drug-related offenses

In 1980, there were 473 inmates convicted of drug related offenses - 6% of the total population

- In FY08 there were 4,931 – 20% of the total population
- In FY09 there were 4,682 – 20% of the total population



# South Carolina Sentencing Reform

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## 2) Mandatory Minimum/Enhancement Sentences (e.g., Firearms – Consecutive 5 yr. sentence)

SCDOC estimates that year end count of inmates increased from **159 in FY 1992** to **1,417 in FY08**

- ❖ Estimates that they are housing almost 10 times the number of offenders with this sentence enhancement as in 1982

# South Carolina Sentencing Reform

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## 3) Truth in Sentencing Admissions and Year End Count

- ❖ From 1997 to 2008, 212% increase in number of inmates (from 540 to 1,684)
- ❖ In FY08 TIS inmate count: 10,328 – 42% of total population
- ❖ In FY09 TIS inmate count: 10,452 – 42% of total population (no significant change from FY08)

# Sentencing Reform Commission

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## Top 10 New Court Commitments in South Carolina

- Burglary 2<sup>nd</sup> Degree Non-Violent
- Assault and Battery – High & Aggravated Nature
- Fraud/Insufficient Funds
- Driving Under Suspension
- Shoplifting
- Forgery
- Possession Meth/Cocaine Base 1<sup>st</sup>
- Crack Distribution
- Grand Larceny
- CDV 1/2/3 – Non-Mandatory

# II. Recommendations and Report

20

- **Ensure Justice and Make the Criminal Justice System More Accountable and Transparent**
  - ❖ **Recommendations:**
    - ❖ Provide consistency in classifications of offenses;
    - ❖ Improve certainty and transparency in sentencing;
    - ❖ Ensure longer terms in prison for high-risk, violent offenders; and
    - ❖ Tailor sentences to the crime committed and the level of risk for re-offending.

# Recommendations and Report

21

## ➤ **Strengthen Release and Supervision Decisions**

- ❖ Maintains existing provisions for parole and probation that are successful; but
- ❖ Proposes changes to the probation and parole system, where needed, for more successful reintegration through cost-effective prison release mechanisms to assist in reducing repeat offences and improving public safety.

# Recommendations and Report

22

## ➤ **Effective Alternatives to Incarceration**

- ❖ Provide cost-effective and incentive based strategies for alternatives to incarceration in order to reduce recidivism but maintain public safety.

## ➤ **Recommendations for Systemic Changes to Assist All Objectives**

- ❖ Propose systemic changes to assist in implementation of the recommendations.

# Recommendations and Report

23

## ➤ Non-Legislative Recommendations:

### ❖ Sentencing Inquiries:

- ❖ DOC website: great progress made on making information available as timely as possible to judges, victims, prosecutors, and defense attorneys on maximum and minimum imprisonment once sentence is ordered.

### ❖ Sentencing Reference Manual:

- ❖ Provide a sentencing report to judges that shows the average sentences for certain offenses.

# Recommendations and Report

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## ➤ Non-Legislative Recommendations:

### ❖ Sentencing Data Compilation:

- ❖ All state and local agencies to begin coding data in same formats so there is consistency in data as to type of offense, code section under which crime is prosecuted, sentence that is ordered, and sentence that is served.

### ❖ Criminal Law Mediation or Arbitration:

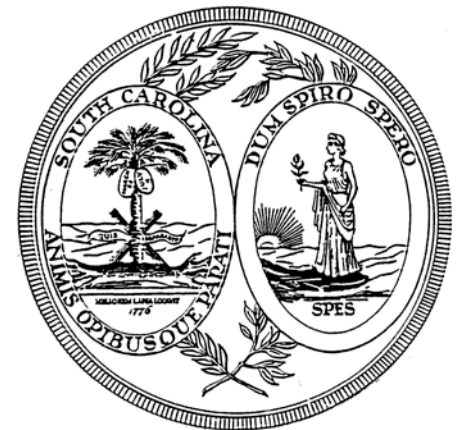
- ❖ SC ADR Commission will study this concept and report to the Oversight Committee.



# III. Legislative Implementation

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- **S. 1154 -- Legislative Implementation of SRC Report Recommendations (94 pages):**
  - ❖ **“Omnibus Crime Reduction and Sentencing Reform Act of 2010”** was signed by the Governor on June 2, 2010
  - ❖ Had to meet one-subject requirement of state constitution
  - ❖ Had to restrict provisions to those from report recommendations



# S. 1154 – Part One

26

## **Part One -- Offense Reclassification:**

- ❖ Tackled the largest incarceration drivers and crimes that would make the most impact on public safety
- ❖ Added applicable crimes to violent crime list
- ❖ Restructured controlled substances offenses
- ❖ Restructured or revised specific criminal offenses – e.g., Assault and Battery

# S. 1154

27

## ➤ **Examples:**

- ❖ **Changed Lynching to Assault and Battery by a Mob**
- ❖ **Restructured Assault and Battery:**
  - Removes special crimes dealing with particular individuals, so that all are contained within the new assault and battery statute
  - Contains increasing penalties to fit escalating elements

# S. 1154 – Assault and Battery

28

- ❖ A&B, 1<sup>st</sup> degree (0-30 days);
- ❖ A&B, 2<sup>nd</sup> degree (0-3 yrs.);
- ❖ A&B, 3<sup>rd</sup> degree (0-10 yrs.);
- ❖ ABHAN (0-20 yrs.); and
- ❖ Attempted Murder (0-30 yrs.) –
  - Changed to fit within SC laws
  - Range of penalties similar to penalties in neighboring states
  - Makes violent crime statistics in SC consistent with other states
  - Contains provisions to explain Code references

# S. 1154

29

- Clarifies that misdemeanor offenses for driving without a license and handicapped parking violations are within jurisdiction of summary courts.
- **DUS**: Allows amnesty week and installment plans for reinstatement fees by DMV in certain circumstances and for certain offenses.

# S. 1154 – Driving Under Suspension

30

## ➤ DUS:

- ❖ Home detention option for 3<sup>rd</sup> offense;
- ❖ Route restricted drivers' licenses for DUS, 1<sup>st</sup> and 2<sup>nd</sup> offense; and
- ❖ Increased penalties for great bodily injury or death when person is a habitual offender, and drives with a suspended license.

# S. 1154 – Miscellaneous

31

- **Restitution:** Increases amount of victim restitution allowed in summary courts to conform to civil jurisdiction amount.
- **Bond Hearing:** Requires officers at bond hearings to provide various information about defendant to the judge, including information on pending charges, so judge has more knowledge of defendant requesting bond. Clarifies that the judge has contempt powers to enforce the provisions.
- **Property Crimes:** Amounts not increased since 1993, so doubled values; clarifies that first offenses are misdemeanors and triable in summary courts.

# S. 1154 – Part Two

32

## **Part Two -- Strengthen Release and Supervision Provisions:**

- ❖ Focused legislation on evidence-based practices to obtain and use proven methods that can make smarter use of Probation Parole and Pardon (PPP) resources;
- ❖ Provide incentives for people under supervision to comply with conditions, and reduce overall costs of correctional system.



# S. 1154 – Probation, Parole & Pardon

33

- ❖ Increases education and experience requirements for PPP Director and the at-large parole board member.
- ❖ Requires PPP Director and PPP agents to write policies and procedures to use assessment tools that identify offender needs as well as criminal risks, so that probationers and parolees are better evaluated and not just supervised.

# S. 1154 – Probation, Parole & Pardon

34

- ❖ Requires mandatory reentry supervision of all nonviolent inmates incarcerated for at least 2 years (180 days prior to max-out date).
- ❖ Data showed more inmates choose to “max-out” sentence rather than go through parole or probation because they do not want the supervision. Mandatory reentry supervision means fewer inmates are released back to the community without some supervision.

# S. 1154 – PPP Assessment

35

- ❖ Requires PPP agents to use more data and evidence-based practices for assessment and supervision of probationers and parolees.
- ❖ Research shows that assessment of criminal risk factors as well as supervision requirements work best in reducing recidivism.
- ❖ Allows persons under PPP supervision to earn “good-time” credits for meeting all of conditions of probation or parole.
- ❖ PPP agents will have more time to supervise the ones who need it the most.

# S. 1154 – Administrative Monitoring

36

- ❖ **Establishes procedure for administrative monitoring.**
  - Allows extension of current statutorily mandated 5-yr. probation period to be extended to those who have not paid all of their restitution, fines, and fees for sole purpose of repayment.
  - Low-level monitoring as long as payments are made.
- ❖ **Establishes procedure for payment of the administrative monitoring obligations, so that payments are made pro-rata to each of the financial obligations of restitution and fees.**
  - Fines are collected by clerks of court according to current procedures.

# S. 1154 – Administrative Sanctions

37

- ❖ Establishes administrative intermediate sanctions, which can be imposed by PPP against persons under supervision.
- ❖ Allows for swift and immediate sanctions to be imposed so punishment is timely and proportionate to the violation.
- ❖ Can be imposed at agent level or by hearing officer at preliminary hearing.
- ❖ Research shows administrative sanctions are effective in decreasing probation and parole violations, and therefore decreases number of probationers and parolees returning to prison.
- ❖ Requires PPP to promulgate regulations for implementation.

# S. 1154 – Data on Alternatives

- ❖ No formal network of community based alternatives to incarceration exists; limited options for diversions from criminal prosecutions.
- ❖ Sentencing Reform Commission discovered there is no central data collection, so it could not determine effectiveness of programs. First step is to compile and analyze the data.
- ❖ Requires Prosecution Coordination Commission to collect and report data on pre-trial diversion programs, like PTI, drug courts, alcohol and traffic education programs, and juvenile arbitration.

# S. 1154 – Part Three

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## **Part Three – Sentencing Reform Oversight Committee**

- ❖ 7 members:
  - 3 (2 Senators, 1 member of public) appointed by Senate Judiciary Chair;
  - 3 (2 Representatives, 1 member of the public) appointed by the House Judiciary Chair; and
  - 1 appointed by the Governor.
  
- ❖ Oversee the implementation of SRC recommendations and review reports required in legislation to evaluate effectiveness of changes, as well as recommend performance incentive funding, based on actual results.
  
- ❖ Required to make recommendations to legislature on additional changes needed and report on evaluations.
  
- ❖ Sunsets after 5 years, unless renewed by joint resolution.

# S. 1154 – Oversight Committee

40

- ❖ Purpose is to facilitate General Assembly having accurate fiscal impact information on new criminal law legislation.
- ❖ Allows legislators introducing new criminal law legislation to obtain assistance from state budget office before legislation is introduced.
- ❖ Sets timelines for fiscal information to requesting committees.
- ❖ Allows budget office to contact non-governmental agencies and organizations for fiscal impact information.



# IV. Next Steps

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- ❖ Sentencing Reform Oversight Committee
- ❖ Future of Sentencing Reform

