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Tough On Crime and The Budget

The Difficult Balancing Act of Public Safety and Skyrocketing Prison Costs

Special Report

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Executive Summary

The criminal justice system is often described as an intricate plumbing system with a steady flow of inmates, clogs, pressures and release valves. Although there are many entities involved in maintaining this system, the Georgia Department of Corrections (GDC) and the Georgia Board of Pardons and Paroles (“the Board”) are the main agencies tasked with the public safety objective. The budget of this system has experienced rapid growth over the last decade due, in part, to Georgia’s tough on crime policies and the rising age of inmates and their associated healthcare costs. These budget pressures are likely to continue, given the growing and aging inmate population, unless policymakers focus on differentiating between non-violent offenders and serious violent, sexual, and habitual offenders.

Between 1997 and 2007, expenditures for GDC increased by \$335.2 million, surpassing \$1 billion in 2007 for the first time in the history of the state. For FY 2008, the General Assembly approved a GDC budget of \$1.124 billion.

- In 1991, 22,945 state sentenced inmates in jail or prison cost Georgia \$478.5 million. By the end of fiscal year (FY) 2007, as the prison population approached 52,000, state sentenced inmates cost Georgia almost \$1.1 billion, more than doubling since 1991. Ninety percent of the GDC expenditures pay for personnel, county subsidies, health service purchases, and private contracts.
- The capital cost per bed in a medium security prison, of which 41 percent of the prison population is classified, increased by 31 percent between January 2002 and January 2006, or from \$45,000 to \$59,000 a year. GDC will pay an estimated \$1.7 billion in capital costs alone for new prison beds between FY 2007 and 2013.
- The Board’s expenditures rose only 23 percent or \$9.5 million between 1996 and 2007. This modest increase was mostly due to cost-of-living salary increases and inflation. While the number of inmates within GDC has increased dramatically, the number of parolees supervised by the Board has only increased approximately 2 percent since 1991.

Georgia’s average daily prison (ADP) population increased from 11,554 to 52,806 (357 percent) between 1980 and 2007. The ADP is projected to increase by 25 percent between 2007 and 2015 for a total of over 66,250 inmates in GDC facilities by 2015.

- In 2006, Georgia’s incarceration rate was 550 adults per 100,000 residents, which was 11 percent higher than the national average of 497 per 100,000 residents.

The increase in the prison population can be attributed to laws and policies enacted in the late 1980s and early 1990s that mandated incarceration and incarceration for longer periods of time. The greater number of prisoners, both violent and non-violent offenders, and the increased age of prisoners serving longer sentences are the driving factors causing the increase in the Department of Corrections budget.

- The Federal Crime Act of 1994, through the Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS), encouraged states to implement harsher sentencing laws and policies. Georgia received \$82.2 million from the VOI/TIS program from 1996 to 2001. Georgia spent its VOI/TIS funds on capacity expansion and drug testing.
- Georgia Senate Bill 441, passed in 1994, required that anyone convicted of any of seven serious violent felonies (“seven deadly sins”) must serve a minimum of ten years in prison without parole. Anyone convicted of a second of the seven serious violent felonies must receive a mandatory sentence of life without parole (“two strikes and you’re out” law).

- The Parole Board implemented a policy requiring all inmates convicted of twenty additional violent crimes not included under the “seven deadly sins” to serve a minimum of 90 percent of their court imposed sentence. After the 90 percent policy was defeated twice in court, the Board implemented the Board Designated Violent Offender Policy in 2006 requiring applicable inmates to serve 65, 75, or 90 percent of their court sentence before becoming eligible for parole.
- GBPI estimates that current and future costs to house offenders convicted and sentenced under qualified VOI/TIS policies, namely “seven deadly sins,” “two strikes and you’re out,” and the Board Designated Violent Offender Policy, combined will cost taxpayers approximately \$5.6 billion to \$12.3 billion over 31 years.
- The number of violent offenders incarcerated in November 2000 through November 2007 has increased by 19.5 percent (4,815 inmates), whereas the number of non-violent offenders has increased by 23 percent (4,468 inmates).

Between 1979 and 2007, the number of offenders age 50 and older grew from 570 to 6,438. With this aging of the offenders population, GDC has experienced a significant increase in health care costs.

- Between 1997 and 2007, health care costs increased by 160 percent, from \$69.3 million to \$180.2 million. The per day, per inmate cost of health care increased by 40 percent between 1996 and 2005. One of the main reasons for higher health care costs has been an increase in catastrophic offender health claims. GDC paid \$13.8 million in medical claims for the 100 costliest inmates in 2006.
- The mental health caseload grew by 12.2 percent between FY 2005 and FY 2007. The average daily population of offenders in need of mental health services is projected to increase by 19.4 percent between 2007 and 2015.

With the continued fiscal pressures in other budget areas, such as education and transportation, the growing criminal justice budget will be in competition for limited state dollars. To control future costs and ensure the limited prison space and tax dollars are focused on the highest risk offenders, we recommend that policymakers:

- Require a fiscal note for sentencing legislation.
- Implement an evidence based, cost-benefit policy option study.
- Expedite the evaluation of proposed sentencing guidelines currently being piloted in four counties across the state and review sentencing laws and parole guidelines to maximize the use of alternative and community based sanctions.
- Expand Drug and Mental Health Courts Statewide.

Introduction

The criminal justice system is often described as an intricate plumbing system with a steady flow of inmates, clogs, pressures and release valves. Although there are many entities involved in maintaining this system, the Georgia Department of Corrections (GDC) and the Georgia Board of Pardons and Paroles (“the Board”) are the main agencies tasked with the public safety objective. GDC’s, and to a lesser extent the Board’s, annual budgets represent the “water meter” of the system as a whole. Naturally, as the general population grows, the prison population grows and so too the budgets of these agencies. However, GDC’s inmate population and its budget are not just growing in Georgia, but rather, they are exploding—taking up a larger portion of the state budget year after year.

Georgia had over 473,500 adult offenders under some form of state supervision in 2006. Georgia’s 2006 offender population consisted of 52,232 incarcerated persons, 388,199 persons on probation or parole, and an additional 33,074 persons in probation or county facilities or in jail awaiting trial.¹ This makes up approximately 5 percent of the total population of Georgia. Georgia has the third fastest growing prison population in the nation, behind only New Hampshire and Vermont, whose entire prison populations make up only a fraction of Georgia’s.

Between 1997 and 2007, expenditures for GDC increased by \$335.2 million, surpassing \$1 billion in 2007 for the first time in history.² GDC will continue to experience significant spending increases in the coming decades, while the Board’s budget will grow at a much slower pace. With state education, transportation, and healthcare costs on the perpetual incline, it is crucial to examine budget growth in the state’s next largest and fastest growing spending area—criminal justice. A close assessment of how we got here and where we are going will assist policy makers and the public in understanding the seriousness of this looming budget crisis and the tough choices Georgians will be forced to make in the coming years.

Georgia Department of Corrections

Background

GDC is made up of ten major supervisory components. Individuals under state supervision are managed via one of the following facilities or conditions: regular probation supervision, intensive probation supervision, specialized probation supervision, community service, day reporting centers, diversion centers, detention centers, boot camp, state prisons, and county prisons. As of November 7, 2007, almost two-thirds of the 54,000 inmate population were housed in prisons.³

The Corrections Division of GDC is responsible for the direct supervision of all offenders and employs the following facilities to accomplish its objective: 37 state prisons, 3 private prisons by contract, 24 county prisons by contract, 13 transitional centers, 3 inmate boot camps, 1 probation boot camp, 22 probation detention centers, 12 diversion centers, and 5 day reporting centers.⁴ By the end of 2007 there were 52,633 total beds in GDC facilities. The original design capacity of GDC facilities was 41,205 beds; however, through the construction of 11,428 additional beds, its original design capacity was increased by 28 percent.⁵

Department of Corrections Expenditures

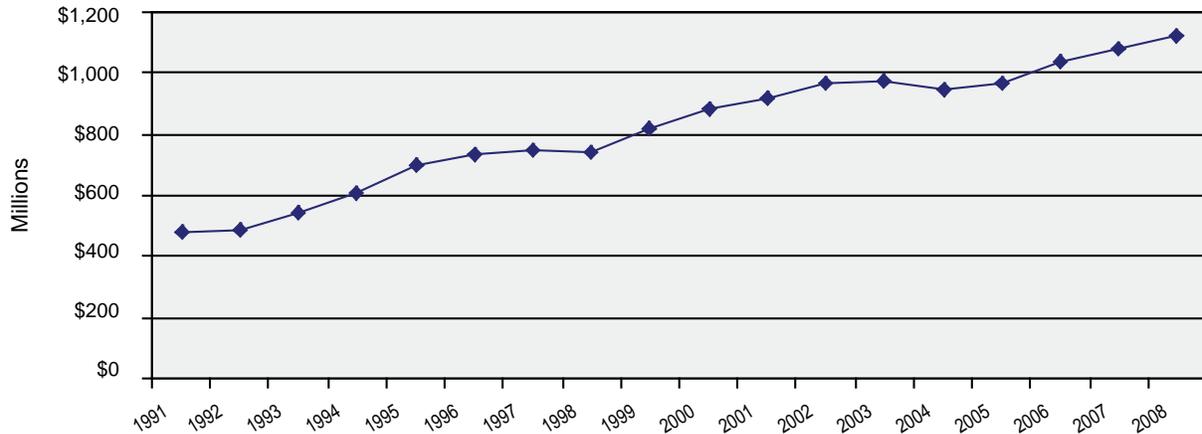
In 1991, 22,945 state sentenced inmates in jail or prison cost Georgia \$478.5 million.⁶ By the end of fiscal year (FY) 2007, as the prison population approached 52,000, state sentenced offenders cost Georgia almost \$1.1 billion, more than doubling since 1991.⁷ Ninety percent of 2007 GDC expenditures paid for personnel, county subsidies, health service purchases, and private contracts. As shown in Figure 1, for FY 2008, the General Assembly approved a GDC budget of \$1.124 billion.⁸

According to GDC’s own Master Plan, Georgia’s offender population is projected to reach 66,250 by 2015.¹ GBPI estimates that offenders sentenced between 2008 and 2015 will cost taxpayers an estimated \$10.8 billion (\$1.35 billion per year) on average in capital and operating costs.¹¹

¹Rosser, C, Paul. 10 Year Facility Master Plan. Georgia Department of Corrections. February 2007 and Board of Corrections

¹¹GBPI’s analysis of projected costs held constant annual admissions and annual operating costs. Capital costs are derived from the 10 Year Facility Master Plan.

Figure 1: GDC Expenditures 1991-2008



Source: Governor's Budget Report
 Note: 2008 numbers represent approved budget and not actual expenditures

Operations Costs

While the overall GDC budget has grown with the growth in the inmate population, per prisoner operating costs have actually declined in recent years. These costs can be defined as day-to-day expenses other than capital costs, including but not limited to rents, utilities, and personnel. As shown in Table 1, operating costs per offender in almost all types of correctional facilities have decreased between 2002 and 2006.⁹ In prisons, which house close to a majority of the offender population, per offender operating costs per day have decreased by 1.4 percent.

These reductions in per offender operating costs are due in part to the slow growth in personnel as the offender population has grown. While the number of inmates increased by 130 percent between 1991 and 2007, the number of GDC employees increased by only 25 percent.¹¹ The budget shortfalls of 2001 and 2002 resulted in a reduction of GDC staff, and those reductions have continued. Between 2004 and 2007 the offender population increased by 6,908, while the number of GDC employees actually decreased by 389.

Another vital operating cost is rehabilitative services. GDC's Re-entry Program is the umbrella for all rehabilitative services and programs. There are 228 separate prison re-entry programs, which can be divided into six major categories: assessments, substance abuse, counseling programs, academic education, vocational education, and on-the-job training.¹³ The overall number of offenders who completed these programs decreased 38 percent between 2003 and 2007. Funding for these re-entry programs totaled \$36.2 million in FY 2007, or approximately 3 percent of the GDC budget. This equates to \$683 per offender in per year re-entry services costs in FY 2007, which is a decrease of 4 percent in per offender costs since 2005. GDC expenditures for on-the-job-training amounted to \$184,422 in FY07 and \$115,863 in FY05, which amounts to 28 cents and 41 cents per offender, respectively. Within rehabilitative services, substance abuse programs are particularly crucial to successful re-entry efforts, as 70 percent of all offenders self-reported substance issues.¹⁴ Substance abuse treatment has been shown to reduce use by 40 to 60 percent and significantly decrease criminal activity during and after treatment. Substance abuse program completions decreased by 38 percent between 2003 and 2007.¹⁵

The starting salary for a corrections officer is \$23,613 plus benefits.¹⁰ Georgia pays the lowest entry level salary of any of its surrounding neighbors, which average \$26,400.¹¹ GDC officials have unsuccessfully tried to increase the entry level salary to \$25,000. Although correctional costs can vary widely state to state, the U.S. Bureau of Labor Statistics reported that the median annual earnings for correction officers employed by state governments was \$33,750 as of May 2004.¹²

¹¹GBPI analysis of 2007 available data represents average monthly offenders from January through November. Employee data obtained from Governor's annual budget book represents authorized positions.

Table 1: Operating Cost (per offender)

	Per Day 2002	Per Year 2002	Per Year 2006	Per Year 2006
Long Term Facilities Average Operating Costs, all state prisons	\$48.65	\$17,758	\$47.46	\$17,324
Probation Detention Centers (short-term)	\$44.82	\$16,361	\$47.64	\$17,390
Probation Diversion Centers (work release)	\$54.00	\$19,709	\$49.22	\$17,967
Transition Centers (half-way houses)	\$43.40	\$15,840	\$39.76	\$14,511
Community Supervision				
-Regular Probation Supervision	\$1.49	\$543	\$1.30	\$474
-Intensive Probation Supervision	\$3.50	\$1,277	\$3.40	\$1,242
Pre-release Centers			\$34.28	\$12,511
Parole Center (Whitworth)			\$40.11	\$14,641
Probation Boot Camp (West Georgia)			\$56.67	\$20,684
Probation Substance Abuse Treatment Center (Bainbridge)			\$60.75	\$22,175
Day Reporting Centers			\$15.72	\$5,736

Source: GDC

Note: Short-term facilities, including probation detention centers and boot camps, turn over their population two or three times a year. Thus, the cost for an individual offender will only be a fraction of the "per year" cost. Probation Diversion Center residents pay a flat \$20.00 per day on room & board. Transitional Center residents pay 30% of their salary per week, not to exceed \$90.00 per week.

Capital Costs

While operation costs per offender declined slightly in recent years, the capital costs for housing those offenders continued to increase. Capital costs can be defined as all expenses related to the construction of new or additional physical space, which includes but is not limited to building materials, labor, and equipment. The capital cost per bed in a medium security prison, of which 41 percent of the prison population is classified, increased by 31 percent between January 2002 and January 2006, or from \$45,000 to \$59,000 a year (Table 2).¹⁶

Table 2: Prison Capital Outlay (construction) Cost

	Cost Per Bed 2002	Cost Per Bed 2006
Minimum Security Prison	\$23,554	\$27,823
Medium Security Prison	\$45,150	\$58,982
Close Security Prison	\$58,920	\$76,967
Maximum Security Prison	\$81,345	\$106,262
Startup Cost per bed for a new or expanding facility		\$3,500

Source: GDC

Note: Every prison is unique and cost may vary depending on capacity, services offered and the type of inmates it is designed to house.

Georgia increased its prison capacity 177 percent, from 19,000 to 52,633 beds, between 1990 and 2007.¹⁷ However, this expansion still is not keeping up with demand. The increase in the prison population has resulted in overcrowding. The standard occupancy rate for prison population maintenance is ideally below 100 percent with bed space utilization at +/- 2 percent. As of November 16, 2007, Georgia's prison bed utilization rate stood at 105.9 percent, an increase of 1.8 percent since June of 2007 (Table 3).¹⁸ As the prison population continues to grow and bed utilization exceeds 100 percent of capacity, corrections officials are forced to request more funds to build new prison facilities. GDC will pay an estimated \$1.7 billion in capital costs alone for new prison beds between FY 2007 and 2013.¹⁹ Of the new beds that will be added in 2008, many will be part of GDC's new triple bunk initiative and implemented by March 3, 2008.²⁰ The triple bunk initiative exemplifies how GDC is forced to find new and creative ways to deal with a growing population and limited space.

Table 3: Bed Utilization
(As of November 16, 2007)

Prisons	105.9%
Pre-Release Centers	98.6%
Inmate Boot Camps	115.0%
Transitional Centers	91.6%
Probation	98.6%
Probation Diversion	96.3%
Probation Boot Camps	94.8%

Source: GDC

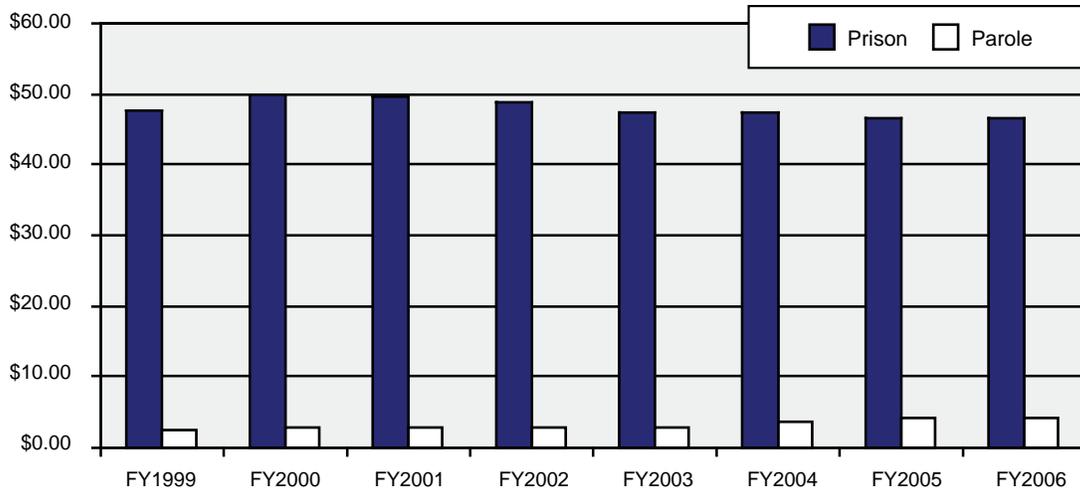
State Board of Pardons and Paroles

The State Board of Pardons and Paroles acts as a crucial release valve on the back end of the criminal justice system.²¹ The Board's existence ensures that the Executive Branch of state government has some discretionary role in determining prison length. Parole eligible inmates serving sentences for felony convictions are automatically considered for parole, with most inmates being statutorily eligible for parole after serving at least one-third of their sentence. Very few inmates serving life sentences are granted parole at their initial eligible date.

Although parole consideration is governed by statutory Parole Decision Guidelines, the Board does have the option to accept or reject the guideline recommendations. The law governing the guidelines requires that the Board also consider the "inmates conduct, and the social factors which the Board has found to have value predicting the probability of further criminal behavior."²² The Board is also the only entity in the state with the constitutional authority to grant executive clemency, pardons and commutations of sentences.

Board expenditures totaled \$51.4 million in fiscal year 2007. During FY 2007, the Board spent \$35.7 million on parole supervision, \$10.2 million on clemency parole selection, and \$4.9 million on administration.²³ The Board's expenditures rose only 23 percent (\$9.5 million) between 1996 and 2007. This modest increase was mostly due to cost-of-living salary increases and inflation. While the number of inmates within GDC has increased dramatically, the number of parolees supervised by the Board has only increased approximately 2 percent since 1991.²⁴ In addition to the slow growth in parolees, it costs the Board considerably less to supervise a parolee than for GDC to house an inmate (Figure 2).

Figure 2: Cost Per Day - Parole Supervision vs. Prison Incarceration



Source: The Board

Quick Facts:²⁵

- In 2006, the Board employed 740 persons, of which 349 were parole officers and Assistant Chiefs. The number of parolees totaled over 23,700.
- The current average caseload per parole officer is 68.2, which is above the recommended ratio of 1 to 40.²⁶
- As of 2005, the parolee rate was 338 per 100,000 residents, which is 39 percent above the national rate of 243 per 100,000.
- In 2006, the successful completion rate (rate of parolees who complete parole without being sent back to prison during that period) for Georgia parolees was 60 percent, which is higher than the national rate of 45 percent. In addition, the Board has a first in the nation dynamic tracking system, which allows it to calculate the parole completion rate in real time at any moment.
- In 2006 the Board released 11,616 parole eligible inmates, of which 2,601 (22 percent) were released prior to serving one-third of their sentence.

The Increasing Prison Population and Expenditures

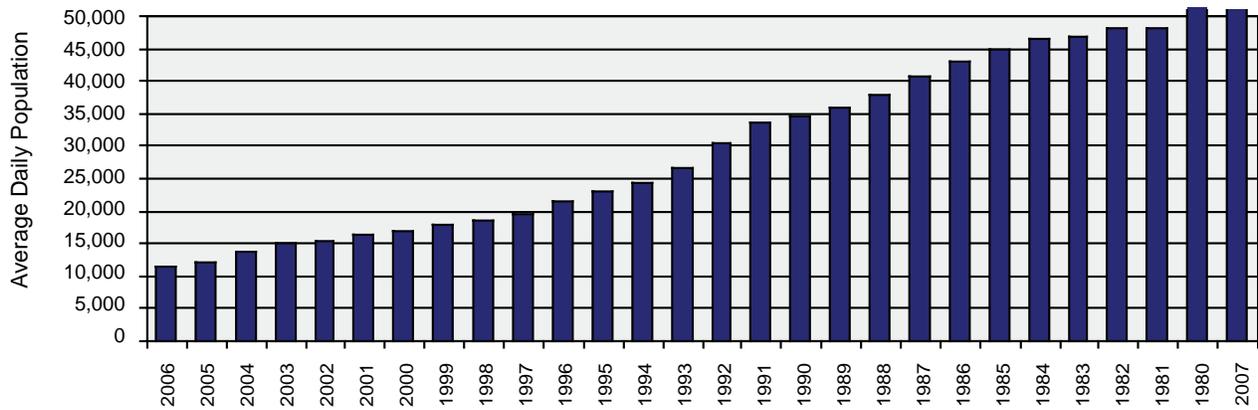
As shown in Figure 3, Georgia’s average daily prison (ADP) population increased from 11,554 to 52,806^{IV} (357 percent) between 1980 and 2007.²⁷ In 2006 alone, the prison population increased by 3,000 inmates from the previous year.²⁸ The ADP is projected to increase by 25 percent between 2007 and 2015 for a total of over 66,250 inmates in GDC facilities in 2015.²⁹

^{IV}GBPI’s analysis of available 2007 data represents average monthly inmates from January through November.

This increase in the prison population goes beyond the growth of the state's overall population and can be attributed to laws and policies enacted in the late 1980s and early 1990s that mandated incarceration and incarceration for longer periods of time. The greater number and increased age of prisoners serving longer sentences are the driving factors causing the increase in the Department of Corrections budget.

In 2006, Georgia's incarceration rate was 550 adults per 100,000 residents, which was 11 percent higher than the national average of 497 per 100,000 residents.³⁰

Figure 3: Historical Average Daily Population



Source: GDC

Federal Government Role

Rising crimes rates in the 1970s and early 1980s created the environment for “tough on crime” reforms. In October 1972, the federal Board of Parole created explicit guidelines for parole release decision making.³¹ By May 1976, the Parole Commission and Reorganization Act took effect and re-titled the Board of Parole as the U.S. Parole Commission. The Act incorporated the dissolved Board’s requirement for explicit guidelines. These guidelines were used as the model for Georgia when it enacted its parole guidelines in 1979.

Tough on crime reform efforts culminated in 1984 with the passage of the Comprehensive Control Act.³² The Act created a U.S. Sentencing Commission to establish sentencing guidelines for the federal courts and a regime of determinate sentences, which remove judicial discretion and set a fixed sentence length for certain offenses. The U.S. Sentencing Commission’s guidelines went into effect on November 1, 1987 and mandated that defendants sentenced for offenses committed on or after that date are to serve determinate sentences. Parole for federal offenses was abolished.

Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program

The Federal Crime Act of 1994, through the Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS), encouraged states to implement harsher sentencing laws and policies.³³ VOI/TIS provided formula grants to states to build or expand correctional facilities and jails and to increase secure confinement space for violent offenders.

To qualify for funds, Georgia had to be in the process of implementing a litany of tough on crime policies or demonstrate the satisfaction of performance measures, which included:

- “ensuring violent offenders serve a substantial portion of the sentence imposed,
- providing sufficiently severe punishment for violent offenders,
- increasing the number of persons arrested for crimes and sentenced to prison,
- increasing the average prison time actually served by violent offenders, and
- requiring persons convicted of violent crimes to serve no less than 85 percent of the sentence imposed.”³⁴

Georgia received \$82.2 million from the VOI/TIS program from 1996 to 2001.³⁵ The state spent its VOI/TIS funds on drug testing and capacity expansion, including the addition of beds to six facilities, the construction costs of nine new facilities, and the planning cost of one facility.

Georgia Legislation and Policies

During the 1980s and into the 1990s the Georgia General Assembly passed significant “tough on crime” legislation. In 1984 the Georgia legislature repealed the earned time statute, which mandated that inmates receive 2 days credit off of their term for every day served. From 1985 onward, all sentences handed down by a judge had to be served day for day unless released on parole.

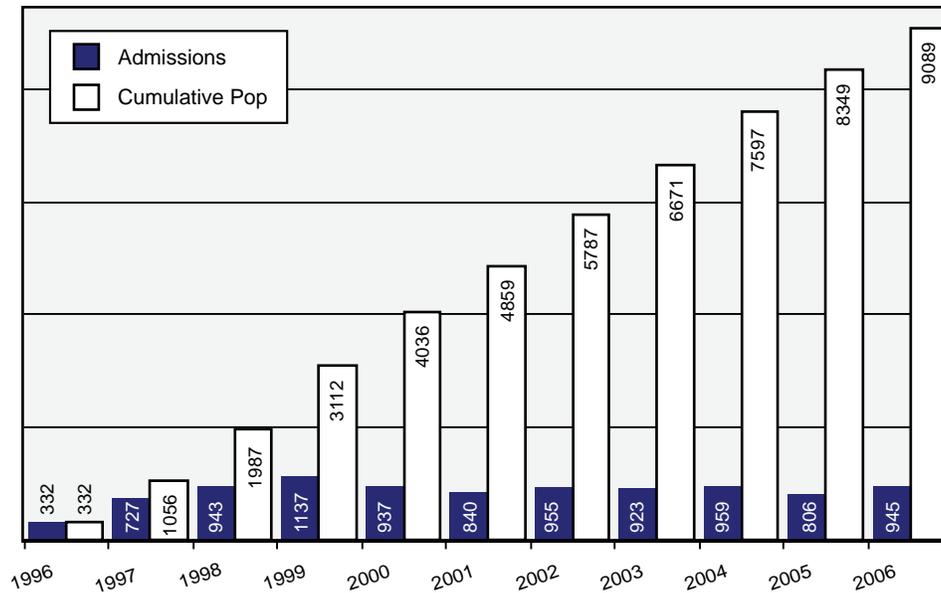
Violent Offender Sentencing

Senate Bill 441, passed in 1994, required that anyone convicted of any of seven serious violent felonies (“seven deadly sins”) must serve a minimum of ten years in prison without parole. Anyone convicted of a second of the seven serious violent felonies must receive a mandatory sentence of life without parole (“two strikes and you’re out”).

According to GDC’s *Transformation Campaign Plan 2006 to 2026*, the “seven deadly sins” legislation (SB 441) remains the most powerful determinant of future population size and correctional costs.³⁶ As shown in Figure 4, the number of inmates convicted under “seven deadly sins” has increased substantially since its effective date. GBPI estimates that inmates classified under “seven deadly sins” will cost Georgia taxpayers \$5 billion to \$8 billion over a 10 to 31 year time period contingent upon if the judge sentences the offender to the minimum (ten years) or maximum allowed under the law, respectively.^v

^vThis cost range estimate holds constant annual operating cost per offender at \$17,600 and the number of inmates classified under “seven deadly sins” (as of October 3, 2007).

Figure 4: Seven Deadly Sins
Annual Admissions and Cummulative Population



Source: GDC

Non-Violent Offender Sentencing

At the same time that Georgia greatly increased its violent offender population through tougher sentencing, the population of non-violent offenders was also on the rise. As shown in Table 5, the number of violent offenders incarcerated increased by 19.5 percent (4,815 inmates), whereas the number of non-violent offenders increased by 23 percent (4,468 inmates) from November 2000 through November 2007.³⁷

Table 4: Violent and Non-Violent Inmates

November	2000	2001	2002	2003	2004	2005	2006	2007
Violent	24,704	26,013	27,052	27,727	28,665	28,830	29,708	29,519
Non-Violent	19,547	20,048	20,382	19,683	20,004	19,423	22,749	24,015
Total	44,251	46,061	47,434	47,410	48,759	48,253	52,457	53,534

Source: GDC

Note: For this purpose, offenders in prison for all sex crimes and any offense identified as violence (and attempted) against another person are considered violent offenses. Inmates convicted of property, drug and other offenses are considered non-violent offenders.

Georgia contains 159 counties each with its own judicial circuit, and the sentences handed out by judges for non-violent offenses can vary widely from circuit to circuit or county to county. As indicated in Table 6, the average sentence for various non-violent offenses can range from 3.5 years in Clayton County to 8.1 years in Tallapoosa County.³⁸ These varying sentence lengths for non-violent offenses can be a concern as prison population growth begins to overwhelm capacity, both physical and budgetary. To determine if circuit sentencing disparities could be mitigated and Georgia prisons could focus more heavily on criminals who pose the greatest danger to our communities (rather than non-violent offenders), Executive Order B-22-0336-2001 was issued by Governor Roy R. Barnes. The Executive Order formed the Governor's Commission on Certainty in Sentencing, which released its finding on December 6, 2002.³⁹ The Commission designed sentencing guidelines based on defendants' instant criminal conduct and prior criminal history to make more equitable decisions about which offenders go to prison. In addition, the guidelines emphasize the incarceration of violent, sexual and habitual offenders.

Table 5: Non-Violent Offenses Sentencing Practices 2006

Circuit	Total Cases	Avg. Prison Sentence	% Prison	% Probation
Rockdale	447	4.2 yrs	43.4	56.6
Douglas	1021	5.1 yrs	42.0	58.0
Clayton	1537	3.5 yrs	41.5	58.5
Griffin	839	5.0 yrs	40.5	59.5
Chatham	1547	4.4 yrs	39.5	60.5
Chattahoochee	1463	4.5 yrs	39.0	61.0
Dekalb	2451	4.8 yrs	34.0	66.0
Fulton	4022	3.7 yrs	33.5	66.5
Augusta	1677	5.5 yrs	29.0	71.0
Macon	746	7.9 yrs	18.0	82.0
Ocmulgee	702	6.6 yrs	16.0	84.0
Alapaha	212	6.7 yrs	16.0	84.0
Mountain	549	7.1 yrs	15.0	85.0
Tallapoosa	266	8.1 yrs	13.0	87.0
Pataula	320	5.4 yrs	11.5	88.5

Source: GDC

These guidelines are designed to be advisory rather than mandatory, with built-in departure factors and flexibility for other extenuating circumstances. The sentencing guidelines are currently being piloted in four circuits: Clayton, Rome, Tifton, and Macon.

Parole Board Policies

In addition to tougher sentencing, parole policies, such as the State Board of Pardons and Paroles' former 90 percent policy, can drive longer prison sentences and increases in the inmate population.⁴⁰ On January 1, 1998, the Board implemented the 90 percent policy, requiring all inmates convicted of twenty additional violent crimes not included under the "seven deadly sins" to serve a minimum of 90 percent of their court imposed sentence (table 6). Prior to this change, these offenders time-to-serve was determined within a range.

Table 6: Tough on Crime Policies

“Seven Deadly Sins”	Former “90 Percent Policy” Crimes	
Murder	Aggravated Assault (w/Injury or weapon)	Vehicular Homicide while
Rape	Voluntary Manslaughter	D.U.I. or Habitual Violator
Aggravated Sodomy	Involuntary Manslaughter	Criminal attempt to Murder
Aggravated Child Molestation	Incest	Hijacking a Motor Vehicle
Aggravated Sexual Battery	Feticide	Aggravated Stalking
Armed Robbery	Aggravated Battery on Police Officer	Residential (Occupied)Burglary
Kidnapping	Aggravated Assault on Police Officer	Enticing a Child for Indecent Purposes
	Attempted Rape	Bus Hijacking
	Aggravated Battery	Statutory Rape
	Child Molestation	Robbery
	Cruelty to Children	

Source: The Board

The former 90 percent policy was highly controversial and was challenged and defeated in court twice. In 2002, the state court ruled that the application of the 90 percent policy retroactively, prior to its effective date, was unconstitutional.⁴¹ After this first court decision, the Board stated that offenders previously considered for parole under the 90 percent policy’s retroactive provision would be reconsidered for parole under parole decision guidelines that did not include the 90 percent policy. An inspection of 1,114 out of 6,300 inmates classified under the retroactive portion of the policy indicates the Board continued to apply an extended time-to-serve policy in extreme excess of the Parole Decision Guidelines. Data indicates 999 of 1,114 retroactive cases averaged an 80 percent time-to-serve and totaled an average of 229 years above parole guidelines, costing \$3.9 million.⁴² The testimony of a top Board official during a 2003 deposition indicated, of approximately 10,000 inmates classified under the non-retroactive portion of the policy, only 18 had been released prior to serving 90 percent of their sentence.⁴³

In 2005, a federal judge ruled the policy “ineffective and [having] no force or effect.”⁴⁴ After the second court decision, the Board stated it would apply the ruling to all cases previously considered using the former 90 percent policy.⁴⁵ As a result, the Board reconsidered over 7,000 cases. On November 18, 2005, the Board unanimously voted to adopt a new Board Designated Violent Offender Policy. This new policy took effect January 1, 2006 and covers inmates convicted of 23 offenses (crime severity level VIII)^{VI}, 20 of which were included under the former 90 percent policy. The three new offenses added to the policy are violations of the Georgia Controlled Substance Act and include cocaine or methamphetamine (400 or more grams), marijuana (10,000 or more pounds), and opiates (28 or more grams).

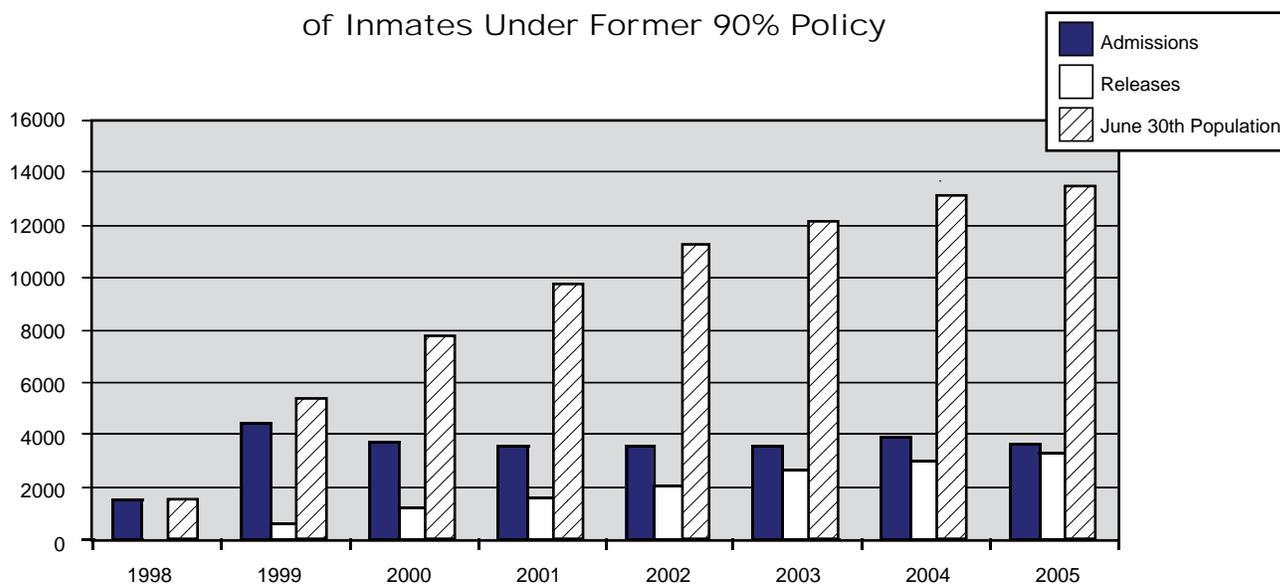
The new policy requires applicable offenders to serve 65, 75, or 90 percent of their court sentence before reaching parole eligibility. Time-to-serve is determined by a two-dimensional grid that matches the inmate’s crime severity level (offense) with a parole success score, which corresponds to one of the three predetermined percentages.⁴⁶

By applying an extended time-to-serve policy to certain offenders, the Board has contributed greatly to the increase in the offender population – an increase that will remain one of the primary drivers of GDC spending. According to GDC’s Transformation Campaign Plan 2006-2026, as shown in Figure 5, the offender population classified under the 90 percent policy increased 800 percent between 1998 and 2005. This population has risen sharply because new admissions grew an average of 17 percent a year, while the overall number of offenders released remained relatively low in comparison. Under the new Board Designated Violent Offender Policy, this segment of the prison population will continue to grow, as will their cost. According to GBPI estimates, if offenders classified under the new policy are required to serve 90 percent of their sentence, it will cost Georgia taxpayers \$590 million to \$4.3 billion over 30 years contingent upon if the judge sentences the offender to the minimum or maximum allowed under the law, respectively.^{VII}

^{VI}The Board categorizes most offenses into I to VIII crime severity levels, with VIII being the most violent (Board Designated Violent Offender Policy crimes) and I being non-violent crimes.

^{VII} GBPI’s cost estimate holds constant annual operating cost at 2007 levels and excludes projected admissions classified under the policy after October 2007.

Figure 5: Annual Admissions and Year-End Population of Inmates Under Former 90% Policy



Source: GDC Transformation Campaign Plan 2006-2026

Serving Longer

Not surprisingly, offenders who fell under the former 90 percent policy were expected to serve an average 2.3 years more in prison than inmates sentenced for the same crimes prior to the implementation of the policy.⁴⁷ However, data indicates that all offenders are serving longer amounts of their sentences.

For example, in 1991^{vii}, inmates across the board served an average of 1.5 years of a 5.7 year sentence. By 2006, inmates served an average of 3.2 years of a 4.4 year sentence.⁴⁸ In fact, since 1991 the average percentage of sentences served for all inmates (not including life, life without parole, or death) increased to 60 percent—the highest percentage in 26 years.⁴⁹

Life Sentence Parole Policies

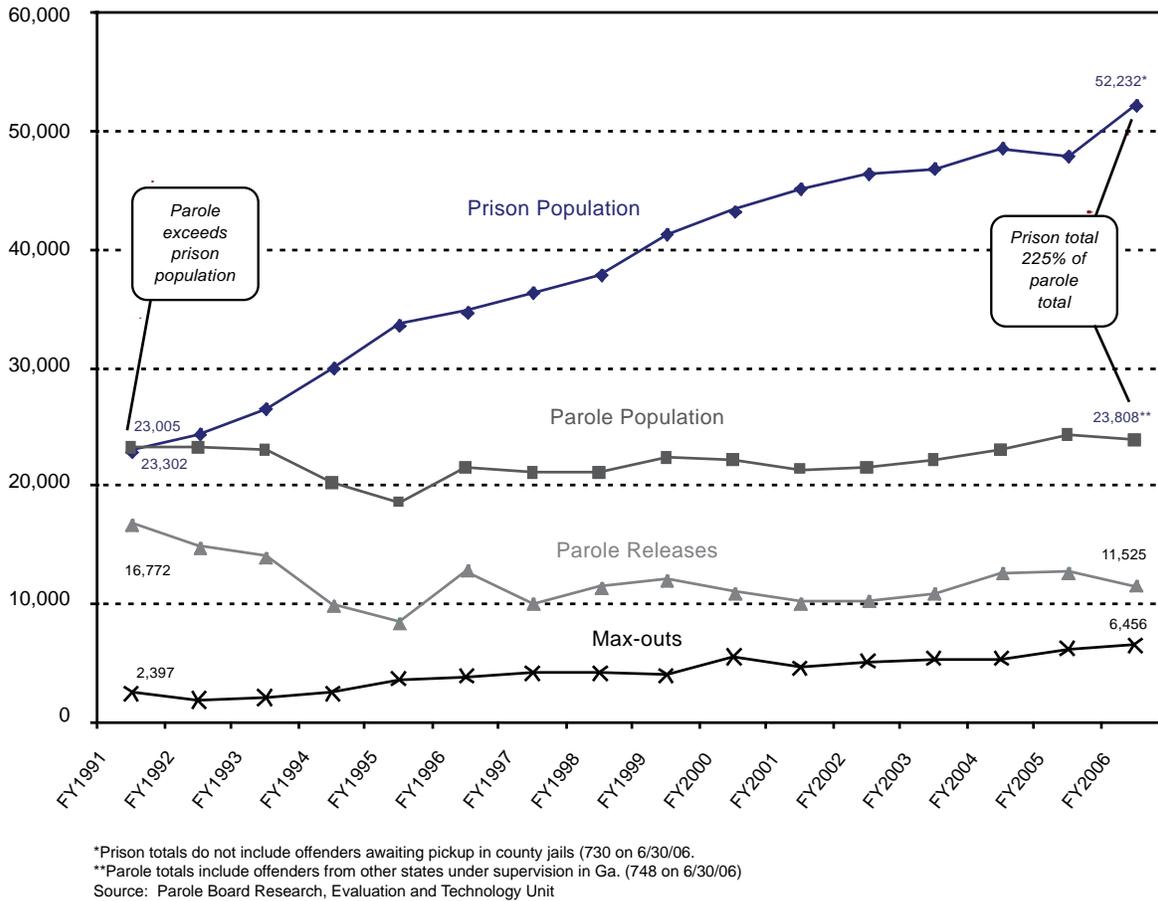
Another statutory change affecting prison growth is parole eligibility concerning certain violent offenders sentenced to life in prison. Prior to 1995, offenders sentenced to life for serious violent felony offenses were eligible for parole after serving 7 years of their court imposed sentence. Most of these offenders have already received their initial parole review. However, in 1995, parole eligibility for these offenders was increased to 14 years. Most inmates in prison serving these life sentences will initially be considered for parole in 2009. On July 1, 2006 parole eligibility increased again from 14 years to 30 years.⁵⁰ Moreover, new court cases where the offender was sentenced to life served 94 percent more time in correctional facilities between 1980 (yearly average 8.92) and 2005 (yearly average 17.29).⁵¹

Combined Impact of Georgia Sentencing and Parole Changes

The most telling picture of the combined effect of these laws and policies on the inmate population is best illustrated by examining prison population, parole population, parole releases, and those who serve their entire maximum term of incarceration in prison. As shown in Figure 6, the prison population has skyrocketed, while the number of parole releases has declined 31 percent between 1991 and 2006.⁵² The steep increase in the number of max outs is of particular concern, because instead of providing a vehicle for inmates to integrate back into their communities under some form of state supervision (ideally parole), inmates max-out and are released with \$25 dollars and a bus ticket.

^{viii} In 1991 the Governor's early release program ended. The program was started in 1989 after the federal government threatened to takeover the Georgia Department of Corrections because of prison overcrowding. In addition the Board reports that in 1994 inmates served on average 1.78 years of a 4.89 year sentence or 36.4 percent. However, by 2006, inmates served on average 3.19 years of a 4.78 year sentence or 66.7 percent.

Figure 6: Prison and Parole Populations, Parole Releases, and Prison Maxouts FY1991 to FY2006



As tough on crime policies lock up more offenders for longer periods of time, the ability of GDC and the Board to effectively house and manage its populations becomes more costly and challenging. Current and future costs to house offenders convicted and sentenced under qualified VOI/TIS policies, namely “seven deadly sins,” “two strikes and you’re out,” and the new Board Designated Violent Offender Policy, combined may cost taxpayers approximately \$5.6 billion to \$12.3 billion over 31 years, according to GBPI analysis.^{ix} Georgia will spend twice to almost five times as much annually in obligated costs for offenders convicted and sentenced under VOI/TIS policies than it received in total from the program (\$82.2 million). As these violent offenders need more prison space and GDC expenditures, the focus on proportionate sentencing for non-violent offenders will become increasingly crucial.

^{ix}GBPI analysis of seven deadly sins, two strikes and you’re out and 90 percent policy cost. Note: “Seven Deadly Sins” refers to legislation requiring persons convicted of seven offenses to serve a minimum of ten years in prison. Any sentence in excess of ten years is parole proof. “Two-strikes and you’re out” refers an amendment to the seven deadly sins law and requires persons convicted of second deadly sin to serve life in prison without parole.

New Parole Policy Might Reduce Growth

On November 8, 2007, the Board voted to approve a proposed amendment to revise its Parole Decision Guidelines.⁵³ The proposed revisions “represent a three-year study and analysis of risk factors utilized in granting clemency to offenders, past clemency practices, and the effects of the new guidelines on prison capacity. [The revised guidelines] will integrate a scientifically based, data driven risk mechanism with new time-to-serve guidelines. [The revised guidelines (grid) will link] historical Board decisions with statewide-average length of prison sentences imposed by Superior Court Judges.”⁵⁴

Although the intent is to maximize the use of state prison beds for the most dangerous offenders, the revised guidelines may actually increase the minimum time-to-serve for many non-violent offenses, while decreasing the minimum time-to-serve for several of the violent offenses. If the revised guidelines are implemented and Board compliance is 70 percent, with 15 percent above and 15 below the grid, a board simulation model projects that by June 2010 the prison population will decline by 1,730 inmates. However the Board can accept or reject the grid recommendation.

According to Board Chairman Garland Hunt, “the new Parole Decision Guidelines exemplify the Board’s effort to ensure public safety for the citizens of Georgia, while making the best use of state prison beds for the most dangerous offenders. Amending our Parole Decision Guidelines will provide increased consistency in parole decisions, thus allowing for the continued support, trust and confidence from our counterparts in the criminal justice community.”⁵⁵

An Aging Prison Population and Soaring Healthcare Costs

As the general population has continued to age and the amount of time served by offenders has more than doubled in fifteen years, it is no surprise the prison population has gotten older. For residents beyond the wire, an older adult may typically be defined as someone 65 years or older, which is the most rapidly growing age group in the U.S. However, GDC typically defines older offenders as those age 50 years or older, since age 50 for a typical offender presents a physical age of 60.

The 50-year-old threshold to define “older inmates” is primarily due to several factors that lower life expectancy, such as the propensity to have engaged in a lifetime of poor health habits, extensive drug and alcohol abuse histories, lack of preventive medical care, and negligent dietary habits and other factors associated with poverty and lack of education.⁵⁶ Other factors include basic stress of prison life, anxiety associated with a change in environment, isolation and ostracism from family and friends, the prospect of living a large portion of life in confinement, and the threat of victimization, which disproportionately affects older inmates.⁵⁷

In 1979, offenders age 29 and younger made up 64 percent of the prison population in Georgia. There were only 570 inmates over age 50.⁵⁸ By 2007, the number of offenders age 29 and younger dwindled to 33 percent, and the number of offenders 50 and older exploded to 6,438 (11 percent).⁵⁹ The average inmate age has increased from 29 to 34 between 1979 and 2007.⁶⁰

As the average age of offenders has increased, so has the percentage of older inmates serving longer prison sentences. In 2002, the most recent data available, nearly seven in ten older offenders were serving sentences for violent or sex crimes and nearly three-fourths were serving sentences of 10 years or more, with an average sentence length of over 15 years. As indicated in Table 7, the percent of offenders in the three major age cohorts who were serving ten years or longer broke down accordingly: 73 percent of the age 50 and older cohort, 63 percent of the age 30 to 49 cohort, and 51 percent of inmates age 29 or younger cohort.⁶¹

Table 7: Sentence Served by Age Cohort, 2002

Age Range	15 - 29	30 - 49	50+
% of Inmates with 10 + Year Sentence	51%	63%	73%
Average Sentence (Years)	10.04	13.22	15.62

Source: GDC

Compared to the general and younger prison populations, older offenders are far more likely to suffer poor health conditions. As shown in Table 8, offenders are more likely to face numerous mental, chronic, and infectious diseases than the general population.⁶²

Table 8: Prevalence of Mental, Chronic, and Infectious Disorders in Inmate Populations

Category	Disorder	Prevalence Compared to U.S. Population
Infections Diseases	Active Tuberculosis	4 times greater
	Hepatitis C	9-10 times greater
	AIDS	5 times greater
	HIV Infection	8-9 times greater
Chronic Diseases	Asthma	Higher
	Diabetes/Hypertension	Lower
Mental Illness	Schizophrenia or Other Psychotic Disorders	3-5 times greater
	Bipolar Disorders	1.5-3 times greater
	Major Depression	Roughly equivalent

Source: GDAA

Providing health care to offenders is an obligation Georgia cannot avoid. Under the Constitution, inmates in the custody of state, federal or local correctional systems are entitled to health care. In order to justify an inmate's health care right, courts have generally cited the Eighth Amendment of the United States Constitution, which protects a person from cruel and unusual punishment.⁶³

The most notable piece of case law regarding inmate health care rights is *Estelle v. Gamble* (1976). The U.S. Supreme Court found that an inmate had the right to be free of "deliberate indifference to their serious health care needs," and that indifference is a violation of a person's Eighth Amendment protection.⁶⁴ Through court rulings three basic rights have emerged:

- "Inmates have the right to access health care services;
- Inmates have the right to a professional medical judgment; and;
- Inmates have the right to care that is ordered by a health care professional."⁶⁵

Offenders are not guaranteed the right to the best health care money can buy, but rather a community standard of care, which may be defined by expert panels and organizations.⁶⁶ Similar to public health care, the offender health care system

can be broken down into four major components: mental health care, physical health care, dental health care, and pharmacy services. As offenders continue to be inherently more susceptible to illnesses and their population steadily grows and gets older, maintaining a constitutionally guaranteed community standard of care will become increasingly costlier to Georgia taxpayers.

Mental Health Care

Approximately 15 percent of the offenders in Georgia's prisons were on the mental health caseload at the end of fiscal year 2005.⁶⁷

The mental health caseload grew by 12.2 percent, from 7,034 to 7,968 inmates, between fiscal year 2005 and 2007.⁶⁸ Over the same time period, the number of budgeted mental health counselor positions increased by approximately 15 percent; however, GDC estimates they are still short 42 counselors (about 20 percent) of their target counselor-to-inmate ratio. Ten of the 26 facilities with mental health caseloads are understaffed.

These issues have contributed to GDC's Office of Health Services receiving poor evaluations of its mental health care operation from 2004 through 2007. The 2007 evaluation indicated the operation has gradually deteriorated and cites:

- "a decrease in staff allocations,
- staff vacancies,
- an inability to identify and generally fix problems identified via the [continuous quality improvement] process, which has continued to decrease because of limited central office staffing allocations,
- lack of an adequate management information system, and
- staffing allocation issues in GDC facilities."⁶⁹

The average daily population of inmates in need of mental health services is projected to increase by 19.4 percent between 2007 and 2015.⁷⁰

Physical Health Care Costs

It is crucial to understand GDC's health care operation because it represents the single largest and fastest growing department expenditure. As stated earlier, the offender population is growing and aging, which puts a serious strain on health care costs. As the average age and incidence of chronically ill offenders in the prison population increases, so must the cost of providing daily health care. Between 1997 and 2007, health care costs increased by 160 percent, from \$69.3 million to \$180.2 million.⁷¹ The per day, per inmate cost of health care increased by 40 percent between 1996 and 2005.⁷²

The per day, per inmate cost of health care increased by 40 percent between 1996 and 2005.

In 2004, the Georgia Department of Audits and Accounts projected that health care costs per inmate would grow by 4 percent a year, resulting in a fiscal year 2006 total GDC health care expenditure of \$171 million. A 2007 audit of GDC discovered the agency actually spent \$179.3 million, or \$8.2 million more than projected.⁷³

According to GDC, one of the main reasons for higher costs has been the increase in catastrophic offender health claims. Direct care or care provided by hospitals and private medical providers for the sickest, and thus costliest, offenders has become the single largest driver of increased health care costs. GDC paid \$7.4 million in medical claims for the 100 costliest offenders in 2004 and \$13.8 million in 2006, an increase of 86 percent. This amount is projected to grow to \$17.7 million by 2007, a 28 percent increase over 2006. In 2007, GDC stated it was \$10.1 million over budget for its health care program and partly blamed the 100 costliest offenders.⁷⁴

As offenders serve longer sentences, grow older, and get sicker, costs will continue to rise. As shown in Table 9, GDC projects health care costs will increase 9 percent annually between 2007 and 2011.⁷⁵ The total health care cost will reach a projected \$277 million (\$4,826 per inmate) in 2011.

Table 9: Total Health Care Cost Projection, Fiscal Years 2007 - 2011

	Actual	Projected					% Annual Increase
	2006	2007	2008	2009	2010	2011	2007 - 2011
Inmate Population	46,458	48,822	50,877	53,019	55,251	57,578	4 %
Cost Per Inmate	\$3,860	\$4,037	\$4,221	\$4,414	\$4,616	\$4,826	5 %
Total Costs	\$179.3M	\$197M	\$214M	\$234M	\$255M	\$277M	9 %

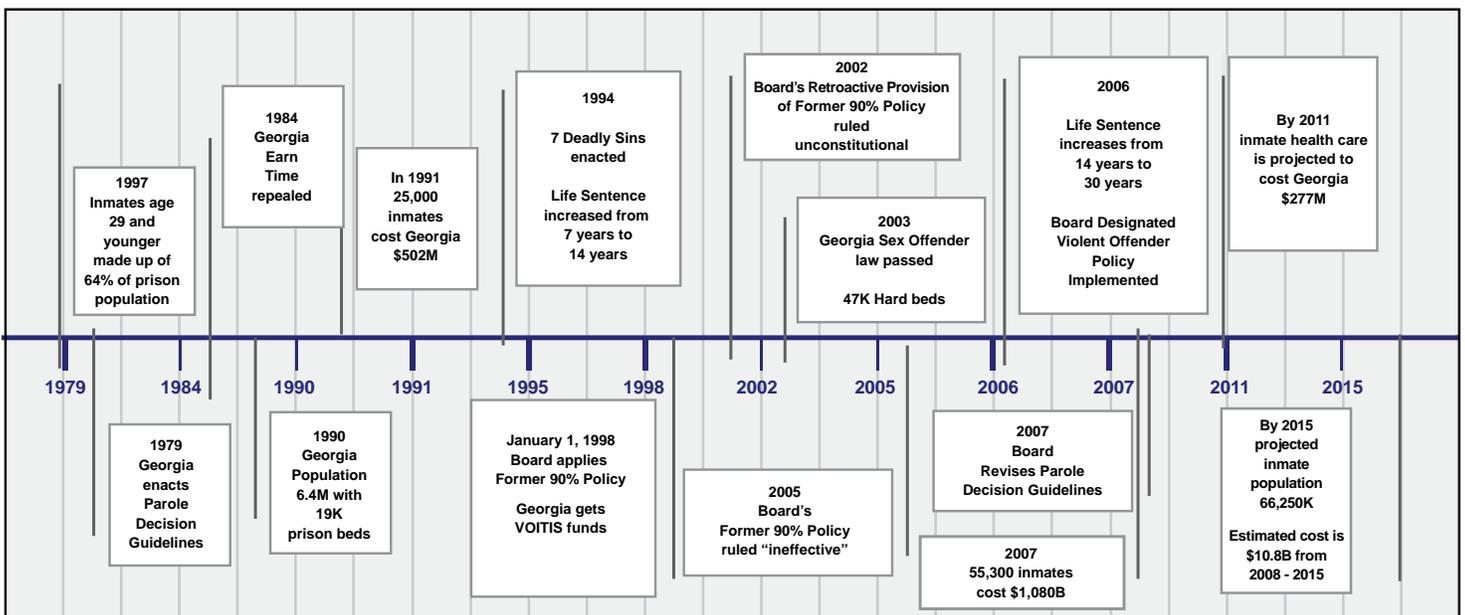
Notes: For FY 2007, the average daily inmate population was available and is presented; total correctional health care expenditures, however, were not available and are projected. This population includes inmates in GDC-operated facilities only, excluding county and privately operated prisons. The projected annual increase of 4.21% in inmate population is based on a study by Rosser International, which is a GDC consultant. The projected annual of 4.57% in inmate health care cost is based on historical increases from FY 2003 to FY 2006.

Conclusion

As indicated below in Figure 7, Georgia has implemented a litany of tough on crime policies, which have resulted in substantial increases in the prison population and costs.⁷⁷ Without a change in policy, the budget for the Department of Corrections will increase substantially over the next decade. As the number of inmates continues to grow and those inmates become older with increased healthcare needs, the funding needs of the Department of Corrections will result in fewer funds available for other vital state budget priorities, such as education, healthcare, and transportation. Thoughtful analysis of criminal justice policies may reveal opportunities to save and redirect tax dollars to much needed services and programs that can benefit all Georgians and truly enhance public safety.

“We need to clearly determine who we are afraid of and who we’re simply mad at. Can we truly afford a bricks and mortar solution, or can we find alternative solutions to this challenge?”⁷⁶
 – GDC Commissioner James E. Donald

Figure 7: Policies, Population and Cost



Recommendations

- **Require a fiscal note for sentencing legislation.** Any state legislation that would increase the number of persons subject to a particular criminal sanction or increase the potential sentence length for any criminal offense should require an official fiscal note before passage. Legislators should consider the immediate and long-term fiscal consequences of such legislation.
- **Implement an evidence based, cost-benefit policy option study.** This study would review comparison group evaluations of adult and juvenile corrections policies and programs, as well as adult and juvenile prevention programs. These programs should include but not be limited to, drug treatment programs in the community, parent-child interaction therapy, jail diversion for mentally ill offenders and scared straight for juveniles. The costs and benefits of these options should be estimated, and projections of the degree to which alternative portfolios of these programs could affect future prison construction needs, criminal justice costs, and crime rates in Georgia analyzed. For example, Washington estimated that by implementing a moderate-to-aggressive portfolio it could exert a considerable cumulative impact on the future need for prisons. It estimated that expanding evidence-based programs will reduce its incarceration rate and crime rate, while saving \$1.9 to \$2.6 billion by 2020.⁷⁸
- **Expedite the evaluation of proposed sentencing guidelines currently being piloted in four counties across the state and review sentencing laws and parole guidelines to maximize the use of alternative and community based sanctions.** Addressing the growth in the inmate population on the front and back end of the criminal justice system is vital to mitigating the growing GDC expenditures. Reviewing sentencing laws and parole guidelines to ensure alternative and community based sanctions are maximized is the key to reducing the number of low-risk non-violent offenders in the prison population.
- **Expand Drug and Mental Health Courts Statewide.** Mental health courts and drug courts have been proven to address underlying factors that greatly contribute to criminal behavior such as substance abuse, developmental disabilities and mental retardation. These courts have the ability to address recidivism by using judicial intervention, comprehensive supervision, drug testing treatment and other social services. Georgia currently has twenty-six Drug Courts, nine Juvenile Drug Courts, seven Family Dependency Treatment Courts and seven Mental Health Courts. The City of Atlanta also has a misdemeanor Community Court. In 2008 four Drug Courts and two Mental Health Courts will open.

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