

FINAL REPORT
CORRECTIONS AND CRIMINAL JUSTICE OVERSIGHT TASK FORCE
JANUARY 8, 2016

The Corrections and Criminal Justice Oversight Task Force conducted its final meeting of 2015-2016 on January 8, 2016, and adopted this as its 2016 report.

Background

The 2013 Mississippi Legislature passed, and Governor Phil Bryant signed into law, House Bill 1231 to establish the bipartisan, inter-branch Corrections and Criminal Justice Task Force, which was charged with developing policies to improve public safety, ensure clarity in sentencing, and control corrections costs. The Corrections and Criminal Justice Task Force received technical assistance in analyzing sentencing and corrections data from the public safety performance project of the Pew Charitable Trusts and its partner, the Crime and Justice Institute at Community Resources for Justice, in conjunction with the Justice Reinvestment Initiative of the U.S. Department of Justice. The findings and conclusions of the Corrections and Criminal Justice Oversight Task Force were submitted to the Legislature in a comprehensive package of policy recommendations.

Based primarily on the policy recommendations of the Corrections and Criminal Justice Oversight Task Force, the 2014 Mississippi Legislature passed, and Governor Phil Bryant signed into law, House Bill 585, which made sweeping changes to criminal sentencing and corrections laws in Mississippi.

Membership and Authority

Section 68, H. B. 585, Regular Session 2014, established a committee to be known as the Corrections and Criminal Justice Oversight Task Force, hereinafter referred to as "Oversight Task Force" and "Task Force", to review and monitor the implementation of H. B. 585.

The Oversight Task Force is composed of the following members:

- Hon. Patricia Burchell, District Attorney, 12th Judicial District, Chair
- Senator Brice Wiggins, District 52, Vice-Chair
- Hon. Judge Vernon R. Cotten, Circuit Judge, 8th Judicial Circuit,
- Mark Gardner, DeSoto County Board of Supervisors,
- Andre' de Gruy, Director, Capital Defense Counsel,

- Hon. Michael Guest, District Attorney, 20th Judicial District,
- Sheriff Harold Jones, Covich County Sheriff's Office,
- Sheriff Martin Pace, Warren County Sheriff's Office,
- Steve Pickett, Chair, Mississippi State Parole Board,
- Anthony Schmidt, Special Assistant Attorney General Assigned to MDOC,
- Onetta S. Whitley, Deputy Attorney General, Miss. Attorney General's Office
- Ken Winter, Mississippi Association of Chiefs of Police, and
- Ted Booth, PEER Committee Staff.

The Oversight Task Force is charged with the following responsibilities related to the implementation of H. B. 585, Regular Session 2014:

- track and assess outcomes from the recommendations in the Corrections and Criminal Justice Task Force report of December 2013;
- prepare and submit an annual report no later than the first day of the second full week of each regular session of the Legislature on the outcome and performance measures to the Legislature, Governor and Chief Justice. The report shall include recommendations for improvements, recommendations on transfers of funding based on the success or failure of implementation of the recommendations, and a summary of savings. The report may also present additional recommendations to the Legislature on future legislation and policy options to enhance public safety and control corrections costs;
- monitor compliance with sentencing standards, assess their impact on the correctional resources of the state and determine if the standards advance the adopted sentencing policy goals of the state;
- review the classifications of crimes and sentences and make recommendations for change when supported by information that change is advisable to further the adopted sentencing policy goals of the state;
- develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length;
- request, review, and receive data and reports on performance outcome measures as related to this act;

- undertake such additional studies or evaluations as the Oversight Task Force considers necessary to provide sentencing reform information and analysis; and,
- prepare and conduct annual continuing legal education seminars regarding the sentencing guidelines to be presented to judges, prosecuting attorneys and their deputies, and public defenders and their deputies, as so required.

Additionally, the Oversight Task Force is empowered to:

- use clerical and professional employees of the Department of Corrections for its staff;
- employ or retain other professional staff, upon the determination of the necessity for other staff;
- employ consultants to assist in the evaluations and, when necessary, the implementation of the recommendations of the Corrections and Criminal Justice Task Force report of December 2013; and,
- apply for and may expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.

Methods and Procedures

The Oversight Task Force began its work in May 2015 and continued monthly meetings through November 2015. During the monthly meetings, the Oversight Task Force discussed issues involving the operations of the Mississippi Department of Corrections (also referred to herein as MDOC), legislative issues, parole and reentry issues, the implementation of H. B. 585 requirements, and data analysis.

The Oversight Task Force utilized several methods for arriving at findings and recommendations. These included:

- presentations from Mississippi Department of Corrections staff;
- discussion among members of the Task Force regarding implementation issues;
- the Oversight Task Force inspection of the Rankin County Technical Violation Center (TVC) occurring on October 30, 2015; and,
- reports of subcommittees appointed by the Chair.

Mississippi Department of Corrections' Staff Presentations

The Department of Corrections made its executive level staff available to present information regarding progress toward implementation of H. B. 585. Presenters and their subject matter included:

- Deputy Commissioner Jerry Williams presented the Oversight Task Force with an overview of the institutional correction facilities and answered questions of the group regarding the various operations at the Mississippi Department of Corrections, including the Technical Violation Centers, the Regimented Inmate Discipline program (RID), and inmate case plans.
- Deputy Commissioner Christy Gutherz presented the Oversight Task Force with an overview of the community supervision operations at the Mississippi Department of Corrections and answered questions regarding graduated sanctions, case plans and revocations.
- Lisa Lucas, MDOC Grants Coordinator, provided the Oversight Task Force with an overview of the obligations of the Mississippi Department of Corrections under H. B. 585. Ms. Lucas explained the status of implementation and the challenges facing the Mississippi Department of Corrections to achieve full implementation. A summary of the status of implementation is as follows:
 1. Full Implementation: Mississippi Department of Corrections has fully implemented the provisions of Trusty Time, True Minimums, Victims Notification, Transitional Housing, MDOC training, Parole Board Training, Preliminary Hearings, and Oversight Task Force.
 2. Partial Implementation: Mississippi Department of Corrections has partially implemented the provisions of Presumptive Parole, Reentry Planning, Graduated Sanctions, Earned Discharge, Community Corrections Case Planning, Risk and Needs Assessment, Technical Violation Centers, and Revocation Hearings.
- Audrey McAfee, Management Information Systems Director at MDOC, provided the Task Force with an overview of the data collection and analysis required by H. B. 585. Members reviewed the data provided by Ms. McAfee, but were cautioned by Ms. McAfee and Ted Booth from PEER that it is too early to determine whether H. B. 585 has made an impact. Both Ms. McAfee and Mr. Booth stated that several years of data are needed before any conclusions can be drawn about recidivism and cost reduction.
- The data provided by Ms. McAfee is as follows:

1. A review of trends in admissions, releases, and current inmate population (both pre-H. B. 585 and post-H. B. 585) are necessary to identify the impact of the modifications to sentencing guidelines, parole eligibility, minimum terms and the like enacted under House Bill 585.
2. Overall, there has been a -28.4% change in admissions to prisons since July 2013. While new commitments have dropped by -10.8%, parole returns have dropped by -36.7%.
3. The largest drop for all categories was during April – June 2014, prior to the implementation of HB 585. Admissions continued to drop through the 1st quarter of 2015. However, data shows a slight upswing in this past quarter, which ended June 30th. This upswing is worthy of further monitoring.
4. Declines have been present in convictions for drug and property crimes. Admissions declined -37.3% and -31.0% respectively. Admissions for violent crimes are very stable, with only a -0.5% change in admissions for this offense category.
5. As for the term of sentence for new commitments/admissions, an important factor to consider is the term of sentence imposed. From January 2014 to March 2015, the term of sentence imposed decreased for drug crimes by -17.2% going from 66.3 months to 54.9 months to serve.
6. Admissions for property crimes saw an increase in sentence terms of 9.6% with the average term going from 45.3 months to 49.6 months. Admissions for violent crimes also have a longer term of sentence, an increase of 17.5% going from 144.9 months to an average of 170.3 months.

Additionally, Ms. McAfee offered the following observations:

- while the number of offenders admitted to prison is declining, those who are sentenced to prison time are getting longer terms to serve. This factor is one to monitor. It may or may not be the beginning of a trend;
- regarding prison releases overall, there has been a -33.6% change in prison releases from January 2014 to June 30, 2015. All release types have experienced a drop, with Earned Release Supervision noting the largest decline at -59.1%, followed by probation at -38.6%, expiration of sentence at -11.4%, and parole at - 9.9%;
- the drop in prison releases and the beginning of an increase in admissions should be monitored for the potential impact on the number of available beds. Additionally, the type of offenders who are incarcerated and will be for

substantial periods of time, namely violent offenders and sex offenders, will impact both the number of beds and the security level of required bed capacity, that is, there may be a need to look at the number of maximum security beds;

- regarding the percent of time served for prison releases when comparing releases from January 2014 to June 2015; there is a slight decline in the percent of term served relevant to term of sentence imposed for all offense types. Differences for the two comparison periods are as follows: drug crimes 41.4% to 40.6%; property crimes: 45.9% to 41.4%; violent crimes: 68.3% to 66.5%;
- with the implementation of H. B. 585 mandatory minimums and other modifications, it is probable that the percent of time served may increase for offenders entering the system after its effective date;
- active inmate population: the custody population has dropped significantly since January 2014 to June 2015, going from 21,992 to 18,936 – a -13.9% change;
- the makeup of the population has changed and better reflects a desired state, that is, the more offenders are imprisoned for serious and violent offenses rather than drug or property crimes. In January 2014, the breakdown was: drug offenses – 25%; property offenses – 27%; and violent offenses – 48%. In June 2015, the breakdown is: drug offenses – 23%; property offenses – 21%; and violent offenses – 56%;
- use of graduated sanctions and technical violation centers: 3,961 graduated sanctions have been recorded in our tracking database since 2014 – QTR4. Considering the number of offenders on parole and probation, the number of sanctions loaded into the tracking system appear to be lower than expected;
- upon further review of the data, 43% of sanctions were recommendations for revocation to a technical violation center;
- there have been 1,771 commitments to TVC centers for an average term of 100 days. There are three technical violation centers and all of them have maintained a consistent offender population. The average TVC population for CMCF is 113 offenders, SMCI – 89 offenders, MSP – 89 offenders; and,
- earned discharge credits: approximately 36,000 parole and probation offenders receive monthly discharge credits equivalent to the number of days in the calendar month.

Oversight Task Force Member Discussions

Members discussed numerous legislative issues related to the implementation of the Technical Violation Centers, the procedure for revocations, and sentencing. Concerns were raised about the lack of any means for encouraging TVC offenders to participate in the programs of the centers, as they are aware that there is no sanction for failing to participate. Failure of courts to address technical violations in a timely manner was also a point of concern for many members of the Oversight Task Force.

Other issues discussed by the Oversight Task Force included the need for transitional housing and other reentry problems for individuals being released on parole, and the need for training for judges, prosecutors, and defense attorneys on the implementation of H. B. 585.

Of considerable interest to members of the Oversight Task Force is the future status of the Regimented Inmate Discipline program (RID), which gave judges an alternative to incarceration for certain offenders whom the courts believed needed a program intended to instill program participants with an appreciation for discipline and responsibility. RID programs have been institutionally based and have not been offered in the community. 2015 legislation phased these programs out effective in 2017 because of the Legislature's concern that such programs are not effective as a means of combating recidivism. Most participants including judges, prosecutors, and representatives of defense attorneys shared the concern over the elimination of RID programs.

Regarding the extensive statistical reports made by the Department of Corrections, it was the belief of the Oversight Task Force that data from outlying years will be essential to drawing any conclusions regarding the success of the measure as a means of reducing incarceration and the use of other remedial means of addressing certain forms of criminal activity.

Inspection of the Rankin County Technical Violation Center

Members were provided the opportunity to visit and inspect the Technical Violation Center in Rankin County. Upon inspection of the Rankin County facility, it became clear that space for providing educational programs to TVC offenders was not adequate for its purpose. Specifically, Oversight Task Force members observed that multiple classes were being held in one large room that appeared to be distracting to the offenders in the individual classes.

Sub-Committee Reports

Several subcommittees made reports to the Task Force. Their concerns are incorporated into the findings and recommendations set out in the following section of the report.

Oversight Task Force Findings

After the meetings, presentations, discussions, inspection, and review of documents, the Oversight Task Force adopted the following findings.

Technical Violations Centers

The Oversight Task Force found significant conditions regarding the Technical Violations Centers that impact the centers' ability to address the needs of the people committed there. The centers were intended to provide an alternative to outright revocation of post release supervision for people who had committed technical violations of their release. So often this can be attributed to a lack of education or preparation for a responsible life outside of confinement. As for legal and operational impediments to the centers proper functioning, the Oversight Task Force found:

- the current Technical Violation Centers are inadequate to accommodate the number of offenders being ordered to the centers, which results in many offenders spending long periods of time in local facilities waiting for placement. The space within the current Technical Violation Centers are inadequate to accommodate teaching the programs that are designed to be completed by offenders prior to release from the centers; and,
- the current legislation providing for placement of offenders in a Technical Violation Center for violation(s) of probation, post-release supervision and parole is not clear and is not being used consistently by judges throughout the state. In addition, there currently is no provision to sanction offenders who fail to participate in and/or complete the programs designated for the Technical Violation Centers.

Completion of Community Supervision/Non-Payment of Fines and Restitution

Persons on community supervision are often under an obligation to pay restitution to victims, or to pay fines or costs associated with their crimes. Despite the fact that these persons are expected to earn funds sufficient to pay these sums, many offenders who are ordered to complete community supervision under probation or post-release supervision are being rewarded with earned release credits that allows early release from probation and post-release supervision even though they are not in full compliance with the terms of their court order as it relates to payment of fines, fees, and restitution.

The Regimented Inmate Discipline Program

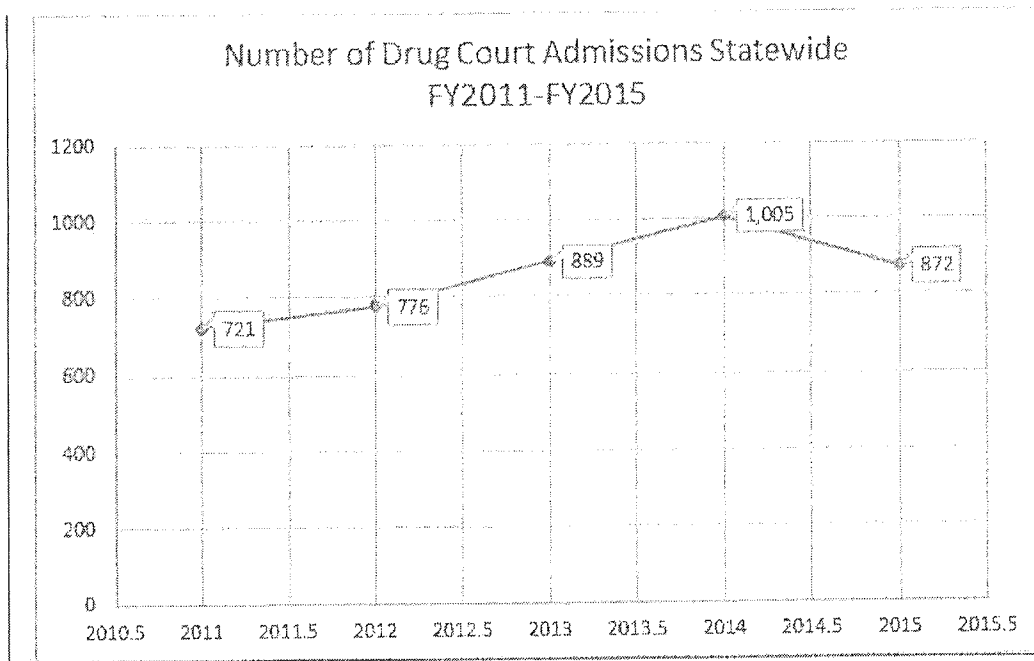
The RID program has met a need for providing discipline and order to certain offenders who often are not adjudicated, but are in need of a specialized program to provide them with the discipline and cognitive preparation to live in the community. The RID program, whatever its deficiencies, attempted to provide such services to these offenders. Since the RID program is scheduled to repeal in 2017, there is a need to create a program or programs that will meet the need the courts have for providing this necessary opportunity to eligible offenders.

Parole Eligibility

The 2013 Corrections Task Force and the 2014 Legislature found that all non-violent offenders presented a lower public safety risk than violent offenders and would benefit from parole eligibility. H. B. 585 amended the parole statute (47-7-3) to provide parole eligibility for people convicted of low-level drug sales and enhanced sentences among other offenses. These changes were not made retroactive. The Task Force found that there are over 1600 inmates (approximately 9% of the institutional population) in this category convicted between July 1, 1995, and June 30, 2014.

Drug Court Utilization

The Oversight Task Force found that H. B. 585 expanded eligibility for offenders to participate in drug courts, but numbers available to date do not reflect that this alternative to sentencing is being utilized as anticipated by H.B. 585.



Source: Drug Court Admissions provided by Joey Craft, State Drug Court Coordinator.

The Oversight Task Force found that H.B. 585, perhaps inadvertently, altered the drug court eligibility requirements to exclude some burglary of a dwelling offenders and that state law should be clarified to allow some persons convicted of burglary of a dwelling to participate in drug court programs.

Transitional Services

Members of the Oversight Task Force are aware of the need for transitional services for inmates who are approaching their release date. Transitional services are intended to provide inmates with skills needed to successfully function outside of the institution. H. B. 585 provides for, at minimum, 100 transitional beds for offenders being released on parole, which is inadequate for the number of offenders being released.

Uniform Reporting of Offenses

Members of the Oversight Task Force are also concerned that law enforcement agencies of the state are not producing uniform offense reports. If the Legislature adopted a standardized offense reporting system there would be a clearer picture of crime in Mississippi and allow for single source reporting to DOJ through uniform crime reporting and NIBRS, which would increase the availability of grant funding through DOJ and OJP among other grantees. It would also provide better overall records of offenses and movement of offenders throughout the state, which would be a valuable tool in predicting and preventing criminal activity. If properly synched with arrest and disposition reporting it will be a valuable tool for measuring the impact of programs intended to reduce recidivism, incarceration, and provide more support services in the community.

Impact of H. B. 585 on Inmate Populations/Recidivism

The Oversight Task Force believes that it is premature to report any findings on the impact that H. B. 585 has had on inmate population and recidivism. Future reports of the Task Force will be able to address these subjects as more data becomes available.

Recommendations

At its meeting of November 20, 2015, the Oversight Task Force made the following recommendations to the Legislature and the Department of Corrections:

Technical Violations Centers

1. The Mississippi Department of Corrections should allocate additional space for Technical Violation Centers with separate spaces for classes. Such facilities should

be located outside of MDOC institutions and overseen by the community corrections division.

2. The Legislature should amend MISS. CODE ANN. §§ 47-7-27 and/or 47-7-37 (1972) to reflect the following:

- for purposes of determining placement in a TVC, the courts and parole board should consider the number of prior revocations, not the current number of violations alleged;
- an offender ordered to the Technical Violation Center shall remain at the center until completion of the program, up to 180 days;
- a revocation charge shall be dismissed if the hearing is not held within thirty days of service of a warrant, unless good cause is established in the record;
- the revocation process for technical violations may, when practicable, be streamlined by providing offenders with limited legal representation early in the process to allow offenders to make an informed waiver of judicial review and proceed immediately to a TVC; and,
- offenders on probation or post-release supervision shall only be entitled to a reduction of their term of supervision if all court costs, fines, fees, assessments and restitution are paid.

3. The Legislature should amend MISS. CODE ANN. § 47-7-38.1 (1972) to reflect that if an offender fails to follow the rules of the program in the Technical Violation Center, the offender may be placed in general population for the remainder of the term at the Technical Violation Center, up to 180 days.

Drug Court Utilization

4. To foster enhanced utilization of drug courts, the Legislature should amend MISS. CODE ANN. § 9-23-15 (1972) to allow persons convicted of burglary of a dwelling to participate in the drug court program. Further persons released with chemical dependency problems may also be sent to drug courts after release for intensive supervision if they meet all the criteria for inclusion in the drug court program. The Task Force also encourages the Drug Court Advisory Committee to study the feasibility and best possible structure for the creation and implementation of misdemeanor drug courts and drug re-entry courts in each county.

Regimented Inmate Discipline Program Alternatives

5. The Department of Corrections should plan and implement an alternative to the current Regimented Inmate Discipline program that will provide a cognitive

behavior program with elements of discipline within the correctional institution(s) prior to the expiration of the Regimented Inmate Disciplinary program in January 2017. This would not foreclose the development of other community-based programs to be administered by other entities to address the provision of cognitive behavior programs for non-adjudicated offenders.

Parole Eligibility

6. The Legislature should amend MISS. CODE ANN. § 47-7-3 (1972) to provide parole eligibility to non-violent offenders convicted between July 1, 1995, and June 30, 2014, currently excluded under paragraph (f).

Additional Concerns

The Oversight Task Force recommends the following additional changes:

7. MISS CODE ANN. Section 9-23-15 should be amended to allow persons convicted of burglary of a dwelling to participate in drug court.

8. MISS. CODE ANN. §§ 47-7-18 and 47-7-3.1 (1972) should be amended to apply to inmates convicted on or after July 1, 2014.

9. MISS. CODE ANN. §§ 47-7-18(1) should be amended to remove mandatory language "shall." This would make the section consistent with other sections addressing parole.

10. MISS. CODE ANN. § 47-7-38(4) (1972) should be amended to delete the word "technical" in the last sentence, and to reflect a "violation" for an arrest for a new criminal offense.

11. MISS. CODE ANN. § 47-7-27.1 (1972) should be added to create the same revocation standard for parole as for probation.

12. MISS. CODE ANN. § 97-3-2 (1972) should be amended to delete "for parole" to the requirement to serve at least 50% of the sentence.

Enhanced Training on H. B. 585 Provisions

13. Enhanced training for judges, prosecutors and defense lawyers on the implementation of H. B. 585 should be provided. The Judicial College, Prosecutor Training Division, and the Defender Training Division should be encouraged to collaborate on training and consider a joint training of all stakeholders.

Transitional Housing

14. Amounts for transitional housing should be specifically appropriated in a line item to the Department of Corrections. Further, the Parole Board should be given authority in general law to place homeless inmates in transitional housing and allow any not-for-profit to manage the inmates, subject to Parole Board oversight. The Task Force further recommends to the Legislature that funding for transitional beds be increased to fund at least 300 beds.

Fiscal Notes

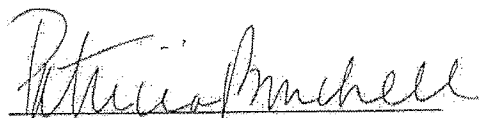
15. The Department of Corrections should prepare fiscal notes on all changes in law recommended in this report.

Future Matters

16. The Oversight Task Force serving in 2016 shall continue to study the impact of H. B. 585 and consider the offering of recommendations on enhanced transitional services and uniform law enforcement reporting of criminal offenses unless specific recommendations are brought forward by the Re-Entry Council Steering Committee and/or the Legislature takes steps to address the need for a standardized offense reporting system.

Adoption

After due consideration, the Oversight Task Force adopts this as its report on January 8, 2016, and directs its chair to sign and deliver copies of the report, and all necessary legislation carrying forward legislative recommendations to the Governor, the Chief Justice of the Mississippi Supreme Court, the Speaker of the Mississippi House of Representatives, the Speaker Pro Tempore of the Mississippi House of Representatives, the Lieutenant Governor, the President Pro Tempore of the Mississippi Senate, the Chairs of the Judiciary Committees of the Mississippi House of Representatives and Senate, and the Chairs of the Corrections Committees of the Mississippi House of Representatives and Senate, by January 15, 2016.*



(Hon.) Patricia Burchell, Chair

* The representative of PEER took no part in the adoption of findings and recommendations found in this report.