

# 2017 FINAL REPORT

## CORRECTIONS AND CRIMINAL JUSTICE OVERSIGHT TASK FORCE



## **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 (Pew) and its partner the Crime and Justice Institute (CJI) 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 Task Force, the 2014 Mississippi Legislature passed, and Governor Phil Bryant signed into law, H.B. 585, which made sweeping changes to criminal sentencing and corrections laws in Mississippi.

## **Membership**

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. Prentiss G. Harrell, Circuit Judge, 15th Circuit Court District, Chair;
- Hon. Paula Broome, SAAG, Director of Domestic Violence, Vice Chair;
- Hon. Michael Guest, District Attorney, 20th Circuit Court;
- Hon. Ted Booth, Joint Committee on Performance Evaluation and Expenditure Review;\*
- Supervisor Mark Gardner, DeSoto County Board of Supervisors;
- Hon. André de Gruy, State Defender, Office of State Public Defender;
- Sheriff Troy Peterson, Harrison County Sheriff's Office;
- Steve Pickett, Chair, State Parole Board;
- Hon. Pelicia Hall, Commissioner, Mississippi Department of Corrections;
- Hon. Joel Smith, District Attorney, 2nd Judicial District; and
- Ken Winter, Executive Director, Mississippi Association of Chiefs of Police.

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

## Authority

The Oversight Task Force is charged with the following responsibilities related to the implementation of H.B. 585, Regular Session 2014 (MISS. CODE ANN. § 47-5-6):

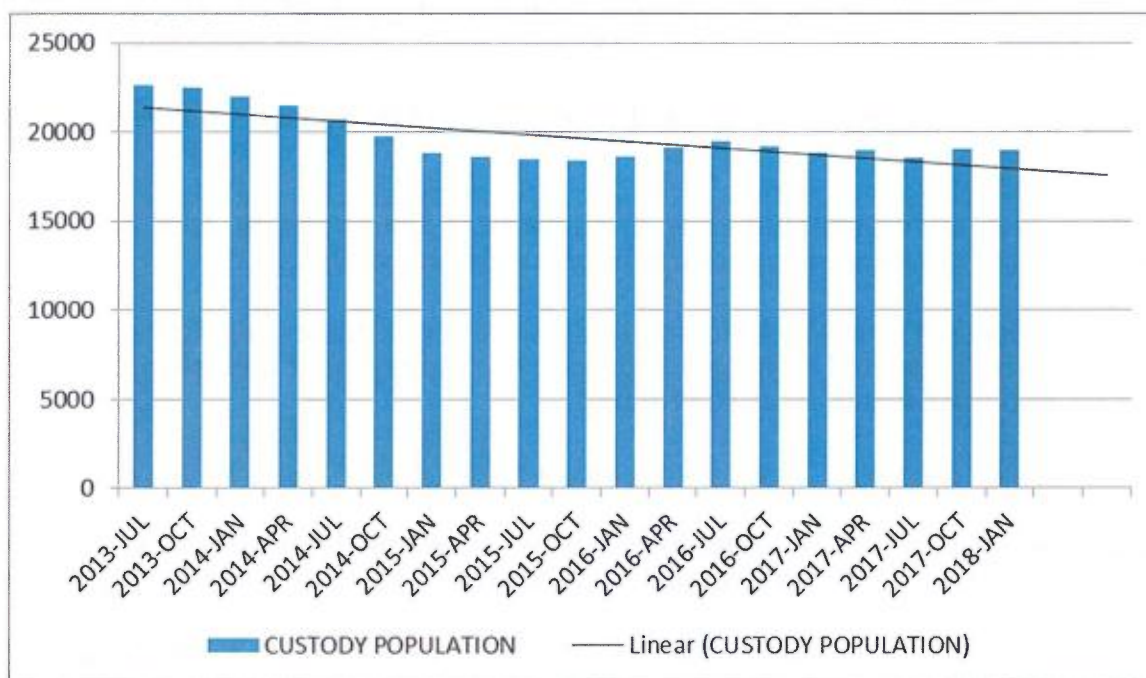
- Track and assess outcomes from the recommendations in the Corrections and Criminal Justice Task Force Final Report of December 2013.
- Prepare and submit to the Legislature, Governor, and Chief Justice, no later than the first day of the second full week of each regular session of the Legislature, an annual report on outcome and performance measures and recommendations for improvements; recommendations on transfers of funding based on the success or failure of implementation of the recommendations and a summary of savings; and any 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.
- 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 Oversight Task Force report of December 2013; and
  - apply for and expend grants, gifts, or federal funds it receives from other sources to carry out its duties and responsibilities.



## Methods and Procedures

During 2017, the task force focused its efforts on seeking opportunities to maintain gains made in prison population reduction and offer suggestions for Justice Reinvestment (JRI) that the membership considers necessary to make H.B. 585 an effective tool for addressing the problems of recidivism in the criminal justice system. This effort included the following:

1. The task force conducted lengthy discussions of how to facilitate better reentry outcomes for formerly incarcerated people that would keep custody populations down, while maintaining public safety. To this end, the task force focused on “reentry courts” and other enhanced supervision initiatives as well as how to make the Technical Violation Center (TVC) a more effective tool for remediating conditions that caused persons under Mississippi Department of Corrections supervision to violate conditions of release. It was the sense of the task force that changes needed to be made in law to ensure proper utilization of the TVC program and give the MDOC tools to ensure that persons committed to the TVC have access to the full benefits of the program and empowering MDOC to encourage cooperation of participants and address problems associated with noncompliant offenders, create “reentry courts,” and support community corrections.
2. The discussions were informed by reports and data from MDOC. Data showed that in the first year post enactment, Mississippi’s prison population dropped by nearly 11%, contributing to the state’s precipitous fall from the second-highest to the fifth-highest incarcerator in the nation. However, in its second year post enactment, Mississippi’s prison population began to climb again. The primary reasons for this rise were significant increases in revocations to prison; a lower parole grant rate (while still historically high); and an increase in the number of offenders sentenced to prison for drug possession.



SOURCE: MDOC

Lower inmate population in the years after implementation (all of which cannot be directly attributable to HB 585) are part of the reason for lower outlays, however renegotiations on numerous service contracts and policy changes regarding payment for state inmates housed in county jails are also

contributing factors. Additionally, lower than preferred security staffing levels are another undesired factor in the lower expenditures since July 1, 2014.

The reduction in the population allowed MDOC to optimize non-per diem beds and lower the outlay for local confinement. MDOC is in a good position to capitalize on any future population decreases that HB 585 may allow. Reinvestment in community-based programs is essential to maintaining a lower custody population. Proven programs and readily available services are key to preparing incarcerated offenders for reentry to the community and equally important, decreasing their chances of returning to prison.

**Cost savings.** The expenditures for MDOC were greater in the two fiscal years prior to the start of HB 585 than in the two complete fiscal years after the start of HB 585. In FY 2013 and FY 2014 MDOC expended \$361,403,056 and \$377,539,752 respectively. The expenditures for the fiscal years that follow and the corresponding inmate population are listed in the chart below. Based on this analysis, MDOC has reduced its expenditures by approximately \$40M since FY 2014.

**Schedule of Reductions in Expenditures from FY 2014 to 2017**

<b>FY</b>	<b>Actual Expenditures</b>	<b>Average Population</b>	<b>Change in Pop</b>	<b>Change in Expenditures</b>
2014	\$377,539,752	21,798	-439	\$16,136,696
2015	\$359,712,213	19,380	-2418	-\$17,827,539
2016	\$358,716,905	18,995	-385	-\$995,308
2017	\$337,336,537	19,102	107	-\$21,380,368
<b>From FY 2014 to FY 2017</b>			<b>-2696</b>	<b>-\$40,203,215</b>

SOURCE: *Cost savings info extracted from the "Mississippi's Public Safety Reform/Justice Reinvestment - Three Years Later" report*

Comparing MDOC population data and Department of Justice crime data:

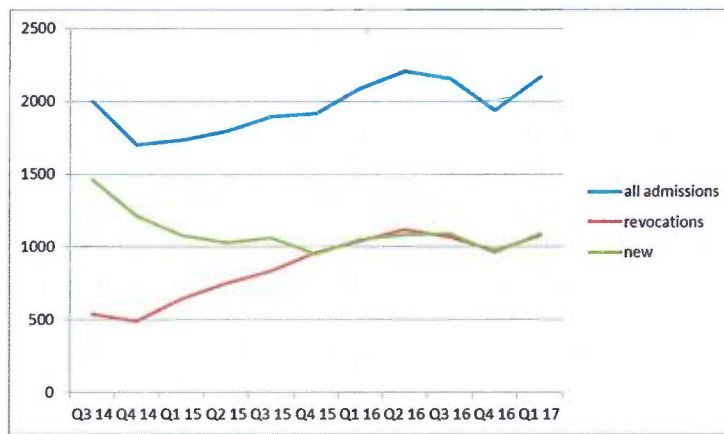
The prison population decline has occurred alongside reductions in crime in Mississippi. The prison population decline during 2014-2017 is driven by fewer people in custody for non-violent property (down 27%) and drug offenses (down 23%). From 2014 to 2016 (latest year data available), Mississippi's overall crime rate declined 4.7%—driven by declines in the nonviolent offenses targeted by H.B. 585.

3. At its August meeting the task force received the detailed data presentation from Audrey McAfee, Director of MDOC Management Information Systems. Ms. McAfee provided a data overview of prison admissions, releases, and sentencing trends.

Ms. McAfee opened her presentation with the warning that, if we do nothing, the custody population will rise.

Some highlights:

- TVC numbers are less than desired.
- Admissions began trending up when TVC use began to drop.



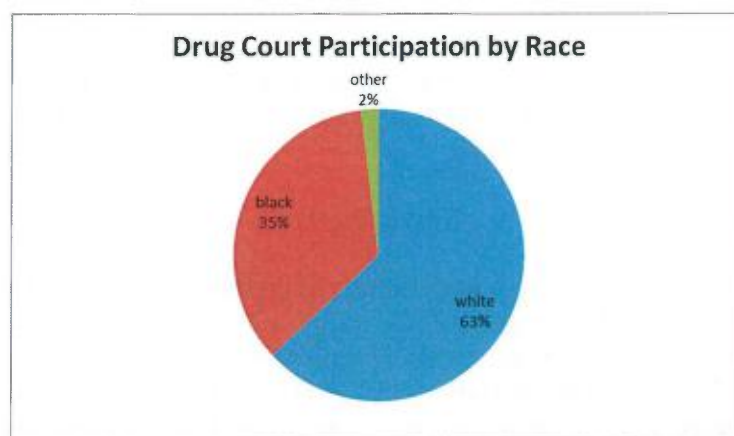
- Low TVC use is also resulting in higher than desired drug and other non-violent admissions.
  - From Q1 of 2015 through Q1 of 2017 over 80% of revocations were for technical violations, even higher than the percentage in FY 2012. Yet the proportion of revocations to TVC rather than prison declined from 30% in 2015 to 25% in 2016 to less than 22% in FY 2017 (through three quarters).
4. In September the task force considered which recommendations from the 2016 report should be revived and republished in the 2017 report. The task force agreed on the following:
- **MDOC's Recommendations:** The task force supported MDOC's three recommendations. Regarding the recommendation for the law to be amended for the courts and parole board to consider the number of prior revocations, Judge Harrell said he, as the sitting judge, should consider the number of prior revocations with the current number of allegations. He said MDOC should tweak the current probation and parole form to include prior revocations.
  - The other two recommendations are to allow persons convicted of possession of a controlled substance in prison to receive earned time and an Earned Release Supervision (ERS) date, except for correctional staff who introduce contraband, and to have the authority to work out the logistics of the case and discharge plans. Commissioner Hall said officers convicted of introducing contraband do not deserve a break and the current H.B. 585 provisions for implementing the case and discharge plans are burdensome for MDOC.
  - **Public Defender Office Recommendations:** The Task Force supported several of the recommendations offered by Mr. De Gruy of the Office of State Public Defender. These being that certain CODE provisions should be amended to provide
    - a. that for purposes of determining placement in the TVC, the courts and parole board should consider the number of prior revocations, not the current number of violations alleged.
    - b. MDOC the discretion to provide incentives to inmates to follow the rules and participate in required programs, and if an offender fails to follow the rules of the Technical Violation Center, the offender may be placed in general population for the remainder of the term to be served at the Technical Violation Center up to 180 days.
    - c. MDOC a fourteen (14) day window to pick up offenders sentenced to prison, TVC, Restitution Center, or Recidivism Reduction Program after receiving the court order.



- On the 15th day, MDOC should start reimbursing the local jail the per day cost of housing the state inmate and continue until the offender is removed from the local jail.
- d. for certain pre-585 convictions Section 47-7-3(f) should be amended to delete the reference to “felonies with enhanced penalties.”

Additionally, there was discussion at this meeting of the possible increased costs to local governments attributable to H.B. 585, derived from changes in the felony/misdemeanor thresholds for certain crimes, e.g., shoplifting, petit larceny. Some believe there have been increases in local prosecutions for these offenses, which, if correct, would have resulted in increased costs, particularly for municipal law enforcement.

5. In October the task force discussed what should be the principal thrust of its 2017 report. While agreeing that several recommendations from earlier reports should be republished, the task force believed the report should emphasize the need for reinvestment in programs for persons on post release. These should include forms of reentry courts that have the power to oversee persons after release and to work with them in programs geared to preparing them for useful future endeavors.
6. In November the task force received a presentation from Joey Craft, State Drug Court Coordinator at the Administrative Office of the Courts. Mr. Craft reported that changes to the program mandated by H.B. 585 have been implemented and are working. The original task force identified a problem with drug courts in that people were being admitted to the program that were more suited to local diversion programs. Now that enhanced screenings are being utilized, the programs are focusing on the high-risk/high-need population that they are intended to serve. Mr. Craft raised three areas of concern: (1) admission criteria may be too limited to reach all potential beneficiaries; (2) many who meet the current admission criteria do not have access because they are never screened; and (3) the racial demographics of the programs seem out of sync with the criminal justice involved population—63% of Drug Court participants are white and 35% are black.



In regard to this task force’s discussions of the use of existing problem-solving courts for the reentry population Mr. Craft advised that “the structure was in place” and supported the concept.

Additionally, the task force heard a presentation from Marshall Goff, Staff Attorney, Mississippi Department of Corrections, regarding reentry programs offered in the Louisiana correctional system. The presentation noted the following:

- Generally, reentry courts manage an individual's return to the community using the authority of the courts to apply graduated sanctions and positive reinforcement to promote positive behavior in the returning inmate.
- Louisiana utilizes what it calls the Offender Rehabilitation and Workforce Development Program at the Angola State Penitentiary.
- The essential steps in the program are initial selection, sentencing, transfer to DOC, sentencing court, communication with inmate during incarceration, release to probation, and supervision and management after release.
- Critical to the program are selection of the persons to participate, case management, and court communication through the period of incarceration, and management and service to the released inmate during probation.

Ted Booth of the PEER staff provided a list (copy attached to this report) of evidence-based reentry programs that was compiled by the PEER Performance Budgeting staff. Evidence-based programing is an important component of program budgeting in Mississippi. MISS. CODE ANN. Section 27-103-159(1)(a) defines evidence-based programs as

“Evidence-based program” shall mean a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

Agencies, such as the Department of Corrections, are encouraged to implement intervention programs that have an evidence base.

## **Findings**

### Background

Earlier efforts regarding revocations, parole, and community corrections, particularly those discussed in the 2013 Corrections and Criminal Justice Task Force Report bear repeating as they had an impact on the substance of H.B. 585.

### *Revocations*

Recommendation #14 of the Corrections and Criminal Justice Task Force was to create Technical Violation Centers. (Final Report, December 2013, at 16-17) Data showed many offenders entering prison not because of new crimes but because of revocations. After years of revocation increase, by FY 2012 more offenders entered prison from a revocation than a new crime. This practice contributed to a standing prison population that was more than one-third revocations. (Report at 9)

Moreover, the vast majority of offenders revoked to prison were not admitted for engaging in new criminal activity but rather for failing to comply with the terms of their supervision sentences. In FY 2012, 75% of offenders entering prison on a revocation of probation were revoked on a technical violation. (Report at 9)



This was obviously a major cause of the exceptionally high incarceration rate. H.B. 585 attempted to remedy this situation by amending §§ 47-7-27 and 47-7-37 and creating § 47-7-38.1. In response to concerns from judges, the law was tweaked in 2015 with H.B. 1267 that created § 47-7-37.1. However, these provisions have failed to accomplish full potential because of underutilization. The prison population bottomed out in late 2015 and began to rise. The most significant category to rise was revocations to prison.

### *Parole Eligibility*

People sentenced between July 1, 1995 and June 30, 2014, to a sentence with an enhancement are not parole eligible. (Miss. Code §47-7-3(1)(f)) This class of offender was found by the Corrections and Criminal Justice Task Force not to pose a risk to public safety. (See Report at 16) The 2014 Legislature adopted this recommendation in H.B. 585; thus, people sentenced with an enhancement on or after July 1, 2014, are eligible for parole. Those already sentenced were not granted eligibility. This class includes 146 inmates.

### *Community Corrections*

The 2013 Task Force recognized the underfunding of community corrections. This situation has worsened with the increased demands placed on probation and parole agents under H.B. 585. The expectations placed on this aspect of the system cannot be met without proper support. Caseload standards set by American Probation and Parole Association should be followed. Probation and Parole Agents alone cannot be expected to supervise the reentering population. "Reentry courts" are necessary to ensure public safety and facilitate the successful reentry into society by released ex-offenders.

### 2017 Findings

#### *Republished Findings*

The task force republishes findings from earlier reports regarding the use of Technical Violation Centers, reduced local burdens on local jail budgets, and parole. The task force also finds that there is a continuing need to fund community corrections positions to ensure proper oversight of persons post release.

#### *Reentry and Community Corrections*

The task force recognizes that, although most of the recommendations in this report will result in further cost savings, some will require new investments. Increased costs for Community Corrections needs, reentry courts, or local jurisdiction reimbursements should be "Justice Reinvestment" (JRI) priorities. In the three years since enactment of H.B. 585, MDOC has successfully reduced its expenditures for incarceration as projected. The total reduction in expenditures for incarceration is approximately \$40,000,000 since FY 2014. We can and should reinvest a small portion of that to ensure this progress continues.

One form of reinvestment is the reentry court. As discussed previously, these programs prepare certain incarcerated persons with the skills and support to become productive citizens. The task force finds that development of an evidence-based reentry court program would be a beneficial use of reinvested funds.

## Other Matters

Finally, the task force recognizes that changes implemented at the state level can have a fiscal impact on local jurisdictions. The financial impact of these changes, although indeterminate at this time, should be studied and lessened to the extent possible.

## Recommendations

### *Technical Violation Centers*

1. MISS. CODE ANN. § 47-7-38.1 (1972) should be amended to provide MDOC the discretion to provide incentives to inmates to follow the rules and participate in required programs, and if an offender fails to follow the rules of the Technical Violation Center, the offender may be placed in general population for the remainder of the term to be served at the Technical Violation Center up to 180 days.

### *Streamlining of Parole*

2. MISS. CODE ANN. § 47-7-3.1 (1972) should be amended to give MDOC authority to develop and determine compliance with parole case plans, eliminating unnecessary reviews by the Parole Board, and more flexibility in developing parole case plans to include authority to establish a method of determining compliance to ensure that the case plan process is workable, effective, and efficient.
3. MISS. CODE ANN. § 47-7-3 (f) (1972) should be amended to delete reference to “felonies with enhanced penalties for controlled substances offenses.”
4. MISS. CODE ANN. § 47-5-198 (1972) should be amended to allow early release for possession by an inmate of a controlled substance or narcotic drug in the prison but not for correctional staff who introduce contraband.

### *Meeting Reentry Needs*

5. MISS. CODE ANN. § 9-23-15 (1972) should be amended to expand screening of potential participants and jurisdiction of problem-solving courts, such as drug courts, veterans courts, and mental health courts, to allow them to reach more people and to function as “reentry courts.” Reentry programs should be evidence-based within the meaning of MISS. CODE ANN. Section 27-103-159.
6. Related to reentry programs, the Legislature should reinvest funds in Community Corrections by funding community corrections staffing at American Probation and Parole Association (APPA) standards.

### *Reduce Burdens on Local Jurisdictions*

7. Contingent upon adequate funding, MISS. CODE ANN. § 47-5-901 (1972) should be amended to provide MDOC a fourteen (14) day window to pick up offenders sentenced to; a TVC, Restitution Centers, or the Recidivism Reduction Program, after receiving the court order. On the 15th day, MDOC should start reimbursing the local jail the per day cost of housing the state inmate and continue until the offender is removed from the local jail.

### **Adoption**

After due consideration, the Oversight Task Force adopts this report on January, 4, 2018, and directs its chair to sign and deliver copies of the report to the Legislature, the Governor, and the Chief Justice.

  
Prentiss G. Harrell, Circuit Judge, Chair