

2016 FINAL REPORT  
CORRECTIONS AND CRIMINAL JUSTICE OVERSIGHT TASK FORCE  
NOVEMBER 30, 2016

The Corrections and Criminal Justice Oversight Task Force conducted its final meeting November 30, 2016. The Oversight Task Force released this report December 12, 2016.

### **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 Oversight 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 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. Hal Kittrell, District Attorney, 15th Circuit Court District, Chair;
- Hon. Michael Guest, District Attorney, 20th Circuit Court, Vice Chair;
- Hon. Ted Booth, PEER Staff;
- Hon. Judge Vernon R. Cotten, Circuit Judge, 8th Circuit Court District;
- Mark Gardner, DeSoto County Board of Supervisors;
- Hon. André de Gruy, State Defender, Office of State Public Defender;
- Sheriff K.C. Hamp, Tunica County Sheriff's Office;
- Sheriff Martin Pace, Warren County Sheriff's Office;
- Steve Pickett, Chair, State Parole Board;
- Hon. Anthony Schmidt, Staff Attorney, Mississippi Department of Corrections;
- Hon. Onetta Whitley, Deputy Attorney General, Mississippi Attorney General's Office;
- Sen. Brice Wiggins, Medicaid Chair, District 52; and
- Ken Winter, Executive Director, Mississippi Association of Chiefs of Police.

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 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 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.

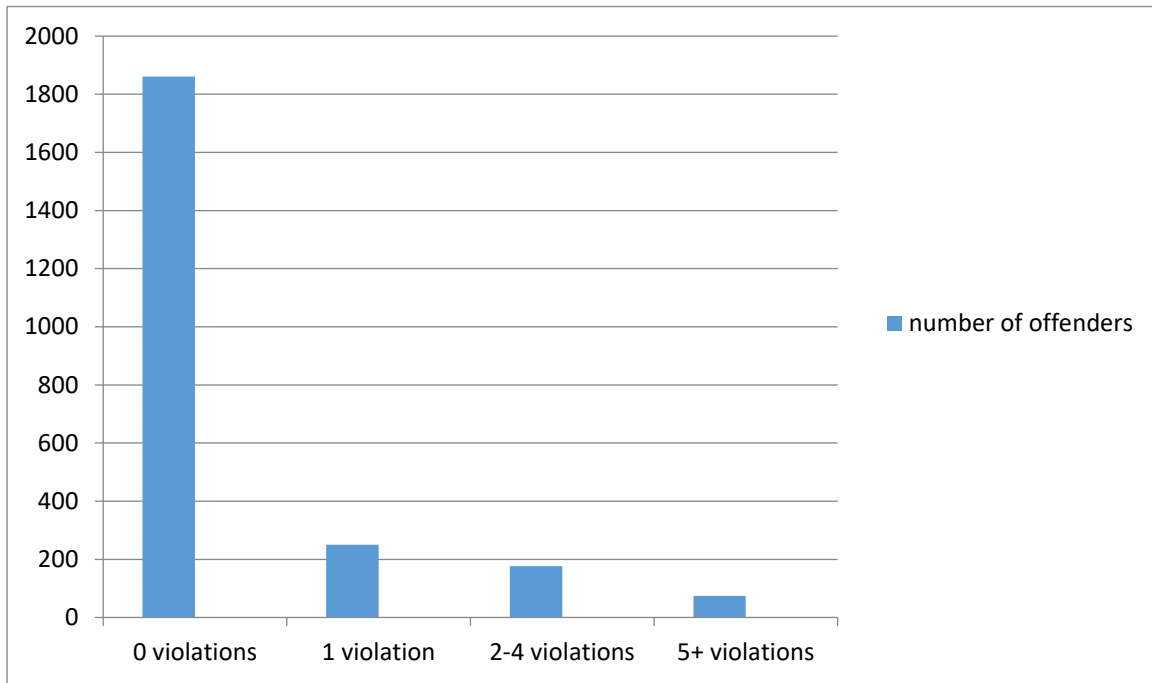
## Methods and Procedures

During 2016 the task force focused its efforts on review of past recommendations made to the Legislature for the purpose of refining a set of proposals that the membership considers necessary to make H. B. 585 a more effective tool for addressing the problems of recidivism and remediation in the criminal justice system. This effort included the following:

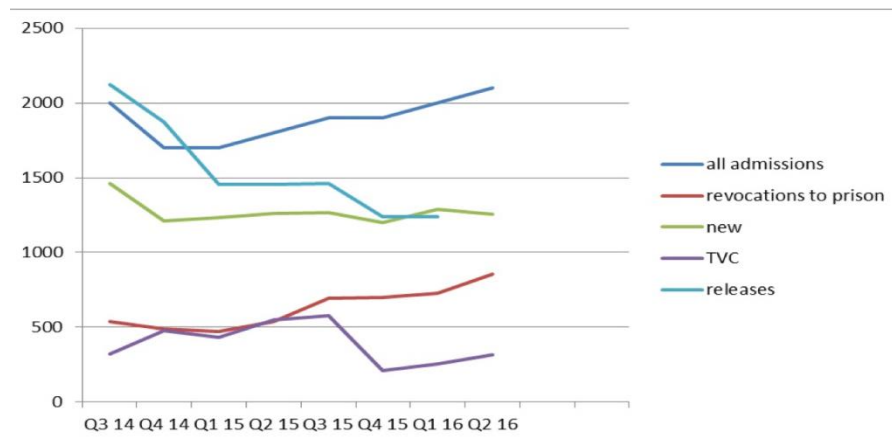
1. The task force conducted lengthy discussions of how to make the Technical Violations Center a more effective tool for remediating conditions that caused persons under MDOC supervision to violate conditions of release. It was the sense of the task force that changes needed to be made in law that would strengthen the position of the Department of Corrections by ensuring that persons committed to the TVC have access to the full benefit of the programs offered and empowering MDOC to address problems associated with persons committed to the centers who do not cooperate or participate meaningfully in the program.
2. At its July meeting, the task force heard the following presentations from MDOC staff regarding certain aspects of agency operations, and from two not-for-profit organizations with proposals for operating transitional housing.

**Ms. Audrey McAfee's (MDOC) Report:** Ms. McAfee provided an overview of the Technical Violation Center's (TVC), population census, and who is incarcerated. Some highlights:

- The TVC was originally housed at three state prisons from July 2014 to November 2015. They averaged about 300 offenders. It then became community-based, with operations in Simpson County, Flowood (for females), and Leflore County. Of the total revocations since inception (3,138), 1,874 were from parole revocations and 1,264 from probation revocations. Of the revocations, 338 female offenders were revoked and the rest were males. Lauderdale, Rankin, and DeSoto counties had used the centers the most.
- Of misconduct in the TVC, there were 500 offenders, amassing over 1,100 incidents, with 250 offenders having only one violation; 176 offenders having between two and four violations 74 offenders with five or more violations. Seventy-nine percent, or 1,861 offenders, had no violations; 3%, or 74 offenders, had five or more. The misconduct data relates only to those housed in a TVC in Institutional Corrections; the data for the program after being moved to Community Corrections was incomplete and not useful for comparison. MDOC incident reports are not reflective of all violations that have occurred.



- Admissions declined from 2013 through about September 2015 but then began to increase, with revocations driving the increase, she said. The population fell to a low of 18,267 offenders in September 2015. By July of 2016, it had increased to 19,496 (1,234-person increase). The 2016 Legislature in H. B. 107, adopted in part this task force's recommendation of providing parole eligibility to nonviolent offenders convicted between July 1, 1995, and June 30, 2014, excluded under 47-7-3(1)(f). Many offenders benefiting from that change are now serving their sentences on parole. The custody population on November 8, 2016, was down to 18,933, a 563-person decrease. The



parole population increased in the same period from 7,143 to 7,693, a 550-person increase.

- Violent offenses now make up 23% of admissions, compared to 17 prior to passage of H. B. 585. Judges are not giving longer sentences, based on the data, Ms. McAfee said. There are more revocation hearings in FY 16 than there were in FY 15.
- There has been a slight increase in new court commitments, but Ms. McAfee said the more notable increases are in revocations to prison and a decline in releases.
- Violent offenders make up about 57% of the total population today, compared to 46% about three years ago.
- The number of offenders classified to the Intensive Supervision Program (ISP) by the courts has not significantly changed.

**Ms. Pat Owen's (MDOC) Report:** Ms. Owen presented an overview of the Recidivism Reduction Program, which is the alternative program that has replaced Regimented Inmate Discipline, or RID. The program will be housed at South Mississippi Correctional Institution for males and at the facility in Flowood for females. Like any new program, the program will need tweaking and details were still being worked out, Ms. Owen said. She provided a schedule of how the classes will flow within five periods.

**Ms. Christy Gutherz' (MDOC) Report:** Ms. Gutherz discussed the caseload for probation and parole agents. Citing information from the American Probation and Parole Association (APPA), she said:

- For intensive or high-risk offenders, the APPA recommends a ratio of 20:1. MDOC has 3,541 high-risk offenders. The optimum number of agents to supervise them would be 177.
- For moderate- to high-risk offenders, the ratio is 50:1. MDOC's current population of these offenders is 10,895; thus, 217 agents would be the optimum supervision number.
- For low-risk offenders, the ratio is 200:1. MDOC has 12,204 such offenders. The optimum number of agents for supervision would be 61.
- The optimum number would be 455 agents for the current MDOC caseload. MDOC has 338 positions, of which 233 are filled.
- The average caseload is 145 statewide. Factors need to be considered other than simply numbers, including the type of caseload, Ms. Gutherz said. Someone supervising sex offenders (high-risk) may have 50 offenders; the ISP caseload is 30.

3. Regarding Transitional Housing, the task force heard discussions and third-party presentations on the need for and options for establishing transitional beds for inmates who have been released and have no suitable environment in which they can lead a stable existence while seeking gainful employment. It was the sense of the task force that beneficial options exist for housing recently released persons that would provide material assistance to them in a meaningful transition into post-institutional life.

Larry Perry of New Way Mississippi, Inc., and Vicki DeMoney of Crossroads Ministries, two not-for-profit organizations operating in Mississippi, offered presentations on transitional housing and their organizations' capacity to provide such.

Mr. Perry said New Way provides transitional services for 100 offenders: 75 males and 25 females. He said his organization focuses on the criminal behavior, changing the offenders' mind-set.

Ms. DeMoney said her organization provides a foundation for women to restart their lives in a structured, safe environment for three to four months in two phases. She cited one participant in particular who is about to graduate from paralegal study in January.

4. At several meetings the task force also discussed several other issues related to 2016 recommendations that merit re-adoption in this year's report. These included the need for amendments to several sections regarding presumptive parole, and commitments to reinvestment of resources in diversionary programs and other services.
5. At its meeting of October 12, 2016, the task force recommitted itself to the collection of data related to measuring the effectiveness of H. B. 585 by the Pew Public Safety Performance Project and CJI to request assistance in analyzing the outcomes of the bill. The Task Force is interested in the extent to which H.B. 585 achieved its goals to reduce the prison population, improve probation and parole outcomes, and divert prison savings into reinvestment priorities, and request that Pew and CJI report back to the Corrections and Criminal Justice Oversight Task Force so that the task force may use these findings when considering recommendations for the 2017 legislative session.

### **Findings**

The 2016 task force chose to republish findings from its January 2016 report related to (1) the structuring of the Technical Violations Center; (2) the need to amend Code provisions dealing with presumptive parole; (3) amendments to certain Code provisions regarding burglary to make certain persons eligible for consideration as drug court participants; and (4) the continuing need for securing and funding transitional beds.

The task force also goes on record as being supportive of reentry courts, such as Mental Health Courts, which could be worthy recipients of future reinvestment funds.

The 2013 Task Force recognized the underfunding of community corrections. This situation has worsened with increases in the number of people under community supervision and the increased demands placed on probation and parole agents. The expectations placed on this aspect of the system cannot be met without proper support. MDOC should increase staff to meet caseload standards set by APPA.

## **Recommendations**

### *Technical Violation Centers*

1. MISS. CODE ANN. §§ 47-7-27 and/or 47-7-37 (1972) should be amended to reflect 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.
2. MISS. CODE ANN. §§ 47-7-27 and/or 47-7-37 (1972) should be amended to reflect that an offender ordered to the TVC shall remain at the center until completion of the program, up to 180 days.
3. MISS. CODE ANN. §§ 47-7-27 and/or 47-7-37 (1972) should be amended to reflect that a revocation charge shall be dismissed if the hearing is not held within 30 days of service of a warrant, unless good cause is established in the record.
4. MISS. CODE ANN. § 47-7-37 (1972) should be amended to reflect that 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 the TVC.
5. MISS. CODE ANN. § 47-7-38.1 (1972) should be amended 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 to be served at the Technical Violation Center, up to 180 days.

### *Earned Discharge Credits*

6. MISS. CODE ANN. §§ 47-7-40 (1972) should be amended to reflect that 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.

### *Drug Court Utilization*

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, provided that the sentencing judge has found that the crime was not one of violence.

### *Presumptive Parole and Parole Case Plans*

8. 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.
9. 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.

### *Technical Amendment*

10. 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.

### *Transitional Housing*

11. 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 for any not-for-profit organization to manage the inmates, subject to Parole Board oversight. Persons released with chemical dependency problems may also be sent to drug courts after release for intensive supervision.

### *Support of Mental Health Courts*

12. The task force supports the consideration of establishing reentry courts, such as Mental Health Courts, utilizing funds reinvested from grants and other sources as well as H. B. 585 savings reinvested.

### *Support for Community Corrections*

13. The task force recommends a line item to Department of Corrections to fund up to 455 probation/parole agents in Community Corrections to meet American Probation Parole Association standards for caseload.

### *Further Reduce Burdens on Local Jurisdictions*

14. The Department of Corrections should be given 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, DOC 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.

### *Study of Geriatric Parole*

15. The Task Force recommends the evaluation of geriatric parole. With an ever-aging population, there is a need to create an avenue for nursing homes and hospice centers to serve this population. The Council recommends legislation to address the certificate of need requirement to provide care to this population since existing providers do not admit parolees to "general population." Federal Medicare and Medicaid regulations require that parolees be in parole status and not in inmate status to meet eligibility standards. Legislation is needed to address the issues of end of life and long-term care.

While there are 302 males and 17 females (319) eligible for parole as of October 13, 2016, significant numbers of such aging inmates are expected to be in MDOC custody through the foreseeable future if some action is not taken to provide for their release and care. As of November 28, 2016, the inmate population was 18,933 and the above totals of persons who are incarcerated and 60 years of age and older represent 1.7% of the total population.

Implementation of this recommendation could lead to cost savings and an improved quality of care facilities for parole eligible offenders.



## **Adoption**

After due consideration, the Oversight Task Force adopts this as its report on November 30, 2016, and directs its chair to sign and deliver copies of the report 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 16, 2017.\*

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Hal Kittrell, Chair

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