

1. **Explanation of calculation of impacts:**

- To create a projection, we looked at recent historical trends in the prison population, referenced policy changes that occurred in other states, spoke with state practitioners, and gathered additional data.
- Our projections aim to be conservative, and we typically don't run impacts on policies with significant discretion (e.g. broadening discretionary parole eligibility for serious inmates)
- Because details of policies are still being discussed, these impacts reflect an estimate according to information currently available. We'll continue to modify and strengthen these projections as more policy details are decided upon, but we hope they are helpful as high-level comparison points during these final working groups.
- The sum of these impacts does not equal the total impact of all of these policies are combined. Because many of these policies overlap – i.e. affect similar groups of people – the total impact is often *less* than the sum of its parts.
- These projections only reflect changes to the prison population. They do not account for changes to the community supervision population. However, if the policy increased the number of people on supervision, the projections do account for the likelihood that a portion of that group is likely to be revoked back to prison.

2. **Review of policies and impacts:**

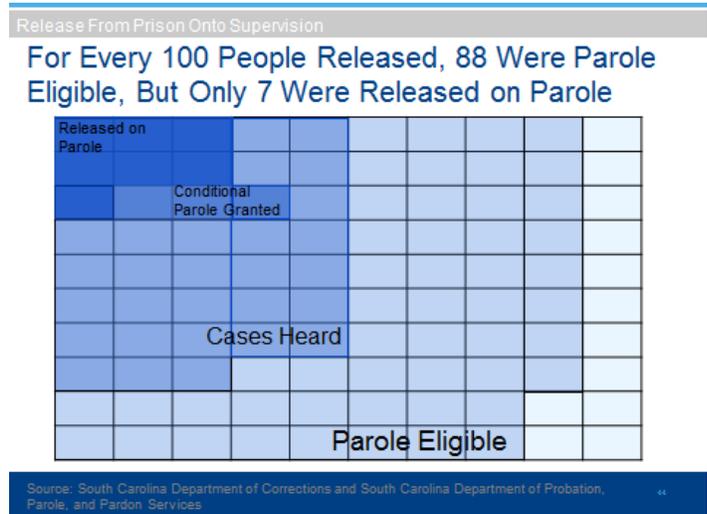
- Administrative parole
- Parole for vulnerable population
- Effective sanctioning practices
- Incentivizing good behavior and recidivism reduction program completion in institutions
- Mental Health

➤ **POLICY: Administrative Parole**

➤ **Data:**

- From 2010 to 2016, average time-served increased by 29% or 16 months.
- On average, nonviolent inmates serve 54% of their sentence; violent inmates serve 70% of their total sentence¹ (even though they are eligible for parole at 25 and 33%, respectively).
- We see for every 100 people released from prison:

- 88 are parole eligible.
- 38 get a parole hearing.
- 10 are granted parole by the Board.
- And 7 are actually released on parole in that year



➤ **Policy recommendation:** To promote compliant behavior, participation in recidivism reduction programming, and reduce administrative delays for parole, establish an administrative parole policy with the following criteria:

- **Eligibility:**
 - Nonviolent offenders that adhere to the Department of Corrections intake plan (includes: work, education, and/or program participation)
 - Plans will be achievable by the inmate’s earliest parole eligibility date and will not preclude an inmate from being released if access to the program was out of the control of the inmate.
 - Inmates cannot receive any Level 1 disciplinarys within one year of the parole release date.
- **Notice:**
 - Victims will be notified of the administrative parole release date in advance to provide them with an opportunity to request a hearing.
- Parole hearings will only be conducted for inmates who:
 - Failed to comply with the intake plan; or,
 - Committed a Level 1 disciplinary within a year of their parole eligibility date; or,
 - In cases where a victim requested a hearing.
- All other inmates will be released at their parole eligibility date without a hearing

➤ **Policy recommendation:** Parole eligibility will be determined based on the inmate’s active incarceratory sentence. (Currently, parole eligibility for inmates with split sentences – sentences comprised of both active and suspended incarceratory time – is based on the sum of these periods).

➤ **Impacts** (includes administrative parole and parole calculation change): 1,255 prison beds in 10 years

¹ Includes prison releases without a suspended sentence and with complete time served information in the data.

Geriatric parole

➤ **Research:**

- **Low risk to recidivate:** Researchers have consistently found that age is one of the most significant predictors of criminality, with criminal or delinquent activity peaking in late adolescence and decreasing as a person ages.² Studies on parolee recidivism find the probability of parole violations decrease with age, with older parolees the least likely group to be re-incarcerated.³
- **Costly population to incarcerate:** Compared with their younger peers, older inmates have higher rates of both mild and serious health conditions, leading to much greater medical needs. Because of these increased needs, prisons nationwide spend about two to three times more to incarcerate geriatric individuals than younger inmates.⁴

➤ **Current policy:** an inmate who is at least seventy and incapacitated as determined by a licensed physician to the extent that the inmate does not pose a public safety risk⁵

➤ **Policy Recommendation:** To provide an opportunity for compassionate release for elderly inmates who have a low risk to recidivate and are costly to incarcerate, amend the geriatric parole policy with the following criteria:

• **Eligibility:**

- Inmates who are at least 55;
- Have served a minimum of at least 50% of their sentence; and
- Are not in prison due to a domestic violence or sex offense.
- This policy does not grant parole, but provides the inmate an opportunity for a hearing. The petitioner for parole can include: the inmate, any relevant DOC correctional staff, or an advocate for the inmate.
- The sole reason for the parole board's denial is based on whether the individual poses a threat to public safety or is a risk to the victim.

➤ **Impacts:**

- Current eligible estimate (for a parole hearing): 650 – 788 inmates.⁶

² Devers, Lindsey. *Desistance and Developmental Life Course Theories: Research Summary*. Rep. N.p.: Bureau of Justice Assistance, 2011.

<https://www.bja.gov/Publications/DesistanceResearchSummary.pdf>

³ Vera Institute for Justice. "It's About Time: Aging Prisons, Increasing Costs, and Geriatric Release" April 2010.

<http://www.vera.org/download?file=2973/its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>

⁴ B Jay Annot et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, 2004.

⁵ S.C. Code Ann. § 24-21-715

⁶ This is estimated based on the prison population on June 30th, 2016. The range recognizes that in certain cases, we did not have the full information about time served in jail and this does not exclude those with prior domestic violence offenses.

Medical parole

- **Data:**
 - From 2011 to 2016, 29 inmates were referred to medical parole; 22 received hearings and only 12 were granted parole.⁷

- **Current policy:**
 - No less than one year prior to the parole eligibility date.
 - Board determines that the physical condition of the prisoner is so serious that he would not be reasonably expected to live for more than one year.
 - The Board requires the medical opinion of two licensed physicians that determine that the inmate is terminally ill and cannot be expected to live for more than one year.
 - Only the full Board may order the release for an inmate that is geriatric, terminally ill, or permanently incapacitated.

- **Policy Recommendation:** To provide an opportunity for compassionate release for inmates with debilitating health conditions, amend the medical parole policy with the following criteria:
 - **Eligibility:**
 - Inmates with serious, debilitating medical conditions;
 - Have served a minimum of at least 50% of their sentence; and
 - Are not in prison due to a domestic violence or sex offense.
 - This policy does not grant parole, but provides the inmate an opportunity for a hearing. The petitioner for parole can include: the inmate, any relevant DOC correctional staff, or an advocate for the inmate.
 - The sole reason for the parole board's denial is based on whether the individual poses a threat to public safety.
 - **Parole Board consideration:**
 - To support release efforts, the Parole board may consider releasing the individual to:
 - Home confinement; or,
 - A "sponsor" for certain categories of high risk crimes/individuals
 - **Remaining questions:**
 - Allow for "permanently incapacitated" to consider mental health conditions such as Alzheimer's, dementia, and other intellectual disabilities?
 - Establish a medical parole docket to prioritize a parole hearing on behalf of the petitioner?
 - The medical parole docket would include inmates that have spent more than 30 or more days in an infirmary in the prior calendar year or received costly and frequent medical treatment outside a Department of Corrections facility in the previous 12 months.

⁷ Analysis provided to the Vera Institute of Justice by the South Carolina Department of Probation, Parole and Pardon Services, July 2017.

POLICY: Effective Sanctioning Practices

Revocations limits

- **Data:**
 - 1 in 4 admissions to prison are due to breaking the rules of supervision (also known as compliance violation revocations).
 - Average sentence length for a compliance violation revocations is 35 months.

- **South Carolina Overview:**
 - ***Probation violation:*** When a probationer commits a violation, probation agents can:
 - Administer sanctions on the probationer; or
 - Seek revocation with the sentencing authority.
 - The court can revoke probation and impose all or a portion of the sentence.⁸
 - ***Parole violation:*** In situations involving parole violations, the board makes the final decision and can either⁹:
 - Continue the individual on parole; or,
 - Revoke parole and sentence to an amount of the parolee’s remaining sentence.

- ***Policy Recommendation:*** To foster swift and certain sanctions while prioritizing prison beds for people who pose a public safety risk, limit revocation sentences based on the following criteria:
 - ***Eligibility:***
 - People on supervision who have are being revoked for a compliance violation (would not include people whose revocation is based on a new criminal conviction or a community safety violation).
 - PPP defines violations in the following manner¹⁰:
 - **Compliance Violation:** Violations that reflect a resistance to follow basic supervision guidelines such as maintaining contact, meeting financial requirements and drug testing, as well as difficulties in maintaining a stable residence and employment. Failure to address substance abuse problems also falls into this category.
 - **Community Safety Violation:** Violations that place the community, individually or collectively, in danger. Failure to comply with restrictions designed to limit the offender’s movement in the community, all violations committed by a sex offender except purely financial violations, and weapons violations are examples of community safety violations.
 - **New Criminal Conviction:** A conviction for an offense committed during the period in which the supervisee was on supervision.

 - ***Revocation limits:***
 - First revocation: sentence up to 3 days (weekend time allowed)
 - Second revocation: sentence up to 10 days (weekend time allowed)
 - Third revocation: sentence up to the remainder of the sentence

⁸ S.C. Code Ann. § 24-21-460

⁹ S.C. Code Ann. § 24-21-680; *see also supra* n. 19, p. 36-38.

¹⁰ South Carolina Department of Probation, Parole, and Pardon Services, Policy & Procedure No. 701. Violation of a no contact order or Special Order of Court is considered a violation of “High Severity.” *See* No. 702.

- **Remaining questions:**

This policy could be structured in one of the following ways:

- 1) Revocations could continue to be decided by judges/Parole Board with limitation in the time that they could impose.
- 2) A supervisee's first or second revocations would fall under the purview of PPP (though this could raise due process concerns).
- 3) Revocations would continue to fall under the purview of judges/Parole Board, though PPP would be empowered to utilize jail sanctions as part of graduated sanctions.

Allow for probationers and parolees who are detained awaiting a revocation hearing for a compliance violation to be released from custody after serving their potential max time -- even if the hearing has not yet taken place -- unless new criminal charges have been filed.

➤ **Impacts:** between 300 – 500 prison beds in 10 years

POLICY: Incentivizing Good Behavior and Recidivism Reduction Program Completion in Institutions

➤ **Data:**¹¹

- The average time served for people in prison has increased 29% since 2010 (55 months in 2010 compared to 71 months in 2016).
- This increase is driven in part by a greater number of inmates serving long sentences. Since 2010, the number of longest serving inmates has increased (3,420 in 2010 to 4,290 in 2016). The majority of inmates within this large and growing group were convicted of truth-in-sentencing crimes – those crimes which are parole-ineligible and require the inmate to serve at least 85 percent of the sentence prior to being eligible for release.

➤ **State Example:**

Louisiana:

- In 2016 and 2017, Louisiana dropped time served requirements for its “no-parole offenses” (previously not eligible for release until serving 85% of their sentence):
 - Allowed people convicted of these offenses to be eligible for parole at 65%, with some exceptions¹²
 - Allowed people to be released on good time credits at 75% of sentence served, with some exceptions¹³
 - Good time calculated at rate of one day for every three days in custody
- For people convicted of violent offenses¹⁴:
 - Diminution of sentence is calculated at the rate of one day for every three days in custody
- Individuals *cannot* earn a diminution of sentence if they are:
 - Convicted of violent offenses with prior violent offense convictions
 - Convicted of violent offenses and sentenced under the habitual offender statute
 - Convicted of a sex offense

➤ **Policy Recommendation under consideration:** To foster compliant behavior and incentivize participation in programming for inmates with ‘no parole’ convictions, it is recommended to amend the current policy and with the following changes?

- Increase good conduct credits from 3 to 5 days for no-parole offenses?
- Increase work & education credits from 6 to 10 days for no-parole?
- Allow this population to be eligible for parole after serving 65% of their sentence?
- Are there certain groups of inmates that should be excluded from this incentive?

Earned Credits: Program Completion

➤ **State Examples (see handout)**

¹¹ Prison population on June 30th 2010 and June 30th 2016 are compared. Time served is time between admission date to release date; it does not include jail time. “Longest serving” defined as those whose time served is longer than 10 years.

¹² L.A. Code Ann. R.S. § 15:574(A); inmates who were convicted of a sex offense, or were convicted of a violent offense and had a prior violent offense conviction, would not be eligible for parole release until serving 75% of their sentence.

¹³ L.A. Code Ann. R.S. § 15:571.3; inmates who were convicted of a sex offense, or convicted of a violent offense and had a prior violent offense conviction, or were sentenced under the habitual offender statute, would not be eligible for earn time at this accelerated rate.

Policy: Addressing Mental Health Needs

The ideal response to individuals with mental health disorders is to address those behavioral health needs before an individual enters the criminal justice system. Collateral consequences that arise from a criminal conviction can often hinder the progress of someone with mental health and/or substance use disorders. Given that, there have been three main approaches to address these concerns:¹⁵

I. Diversion at the law enforcement phase¹⁶

II. Diversion at the pretrial or prosecution phase

South Carolina's current practice:

- South Carolina has Pre-Trial Intervention (PTI) and Alcohol Education (AEP) Program

III. Diversion at the problem-solving/specialty court phase

South Carolina's current practice:

- There are seven mental health courts in South Carolina:
 - 1) Marlboro (4th Circuit)
 - 2) Richland (5th Circuit); also includes a Juvenile Mental Health Court
 - 3) Charleston (9th Circuit)
 - 4) Anderson (10th Circuit)
 - 5) Greenville (13th Circuit)
 - 6) Horry (15th Circuit – serves Myrtle Beach and Georgetown)

Under South Carolina law¹⁷, the Office of Pretrial Intervention Coordinator collects data on all programs administered by a circuit solicitor, the Commission on Prosecution Coordination, or a court, which divert offenders from prosecution to an alternative program or treatment. Regarding mental health courts, the following information is collected:

1. Number of individuals who applied/referred
2. Number of original criminal offenses applied/referred.
3. Number of individuals accepted
4. Number of individuals who successfully completed within a twelve-month period
5. Number of individuals who did not complete within a twelve-month period, but who are still participating

¹⁵ Center for Health & Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, December 2013, available at:

http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf.

¹⁶ Tallon, Jennifer A., Labriola and Spadafore, *Creating Off-Ramps: A National Review of Police-Led Diversion Programs*, Center for Court Innovation (2016): available at <http://www.courtinnovation.org/sites/default/files/documents/Creating%20Off-Ramps%20A%20National%20Review%20of%20Police-Led%20Diversion%20Programs.pdf>. Survey of 1,500 law enforcement agencies, looking at models for specialized police response to mental health issues; found even short-term jail sentences may actually increase likelihood of future offending, police agencies should develop programs to reduce exposure to the traditional justice system.

¹⁷ S.C. Code Ann. § 17-22-1120

Policy Discussion:

- *Policy Option: Establish a grant fund available for counties, agencies, local providers, and nonprofit organizations that would request proposals for programs or practices to reduce recidivism and support treatment providers, specifically targeting mental health providers*
 - *Recidivism reduction programming in the community: County and locally focused organizations are often best suited to identify the types of programming, treatment, and services that would best impact that community and go farthest to reduce recidivism, hold offenders accountable, and control costs. With this in mind, some states have created performance incentive grant programs that provide funding to support programs and practices that reduce recidivism, revocations, and the eventual impact on state prison populations. These grant programs help enhance the local public safety infrastructure through housing, employment, treatment, problem-solving courts, and re-entry services.*
 - *Could include:*
 - *Mental Health Courts for remaining counties*
 - *In addition to the data currently being collected in problem solving courts, track recidivism data for those individuals that successfully complete mental health court and provide incentives to mental health courts for successful completions.*
 - *Establish a gap analysis or a sequential intercept model that maps the community's health organizations and at what points they could intersect with the criminal justice system at the various stages of arrest, pre-trial, reentry, and community supervision.*
- *S. 173 requires law enforcement officers of a certain class to complete continuing education in mental health or addictive disorders over a three-year re-certification. This education includes, but is not limited to:*
 - *crime scene response, crisis situation response in which an individual is experiencing a mental health or addictive disorder crisis, Fourth Amendment issues, incident report writing, determination of primary aggressors, dual arrests, victim and offender dynamics, victims' resources, victims' rights issues, interviewing techniques, mental health courts and mental health court programs, offender treatment programs, and recognition of special needs populations*