

Agenda

Sentencing Classification Workgroup – October 10th, 3:30pm – 5:30pm

1. Introduction – Representative Smith

2. Drug policy in South Carolina – Emily Levett (Pew)

- a. Overview of the data on South Carolina’s drug offender population
- b. What the research says about effective responses to drug crime
 - i. The multiple objectives of incarceration
 - ii. What does not work to reduce drug crime
 - iii. What works to reduce drug crime
- c. South Carolina’s possession and possession with intent drug statutes in context with neighboring states
 - i. Policy options: possession and commercial drug offenses
- d. South Carolina’s trafficking statutes in context with neighboring states
 - i. Policy options: trafficking offenses
 1. Weight-based policy options
 2. Criminal history-based policy options
 3. Conduct-based policy options

3. Potential policy discussions for upcoming weeks

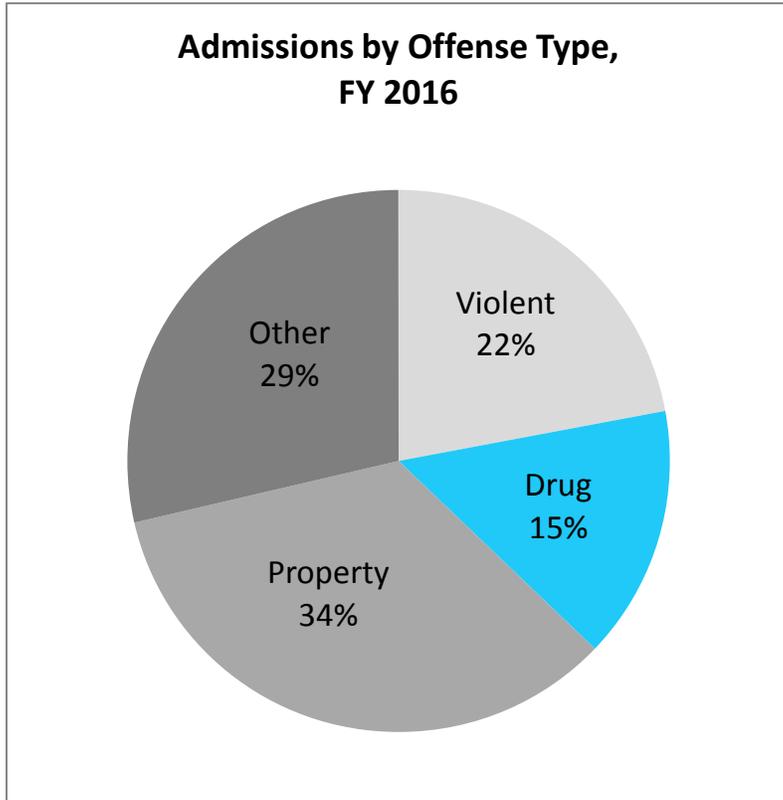
- a. Property offenses
- b. Felony F/Misd. A offenses
- c. Best practices in alternatives to incarceration

4. Proposed Meeting Times

- a. 2nd Sentencing Classification Workgroup Meeting: October 25th at 11am
- b. 3rd Sentencing Classification Workgroup Meeting: November 7th at 10am
 - i. Sentencing Reform Oversight Commission: November 8th at 2pm
- c. 4th Sentencing Classification Workgroup Meeting: December 5th at 10am
 - i. Sentencing Reform Oversight Commission: December 13th at 10am

Overview of the data on South Carolina's drug offender population.—

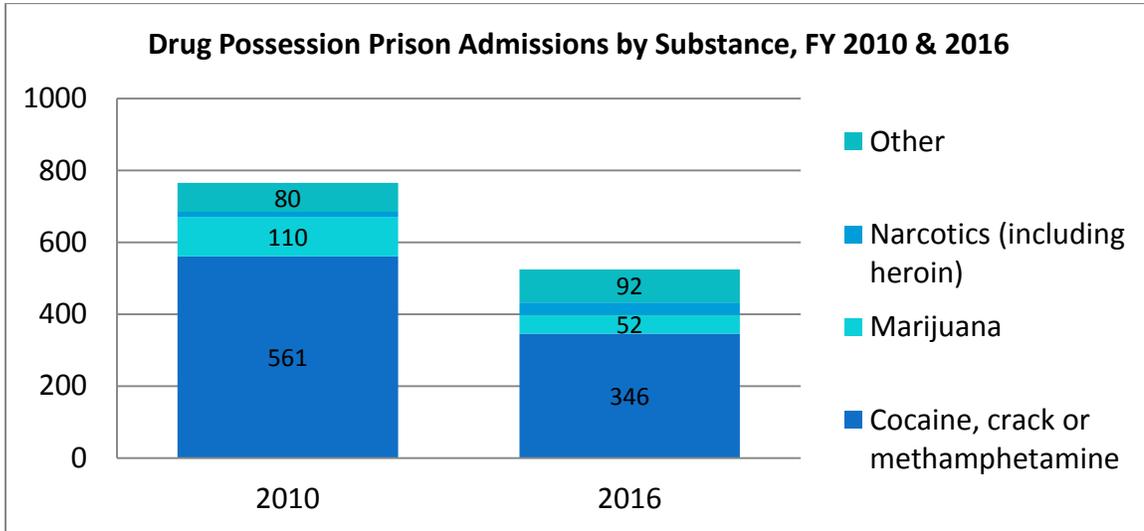
People convicted of drug offenses accounted for 15% of all admissions to prison in 2016.—



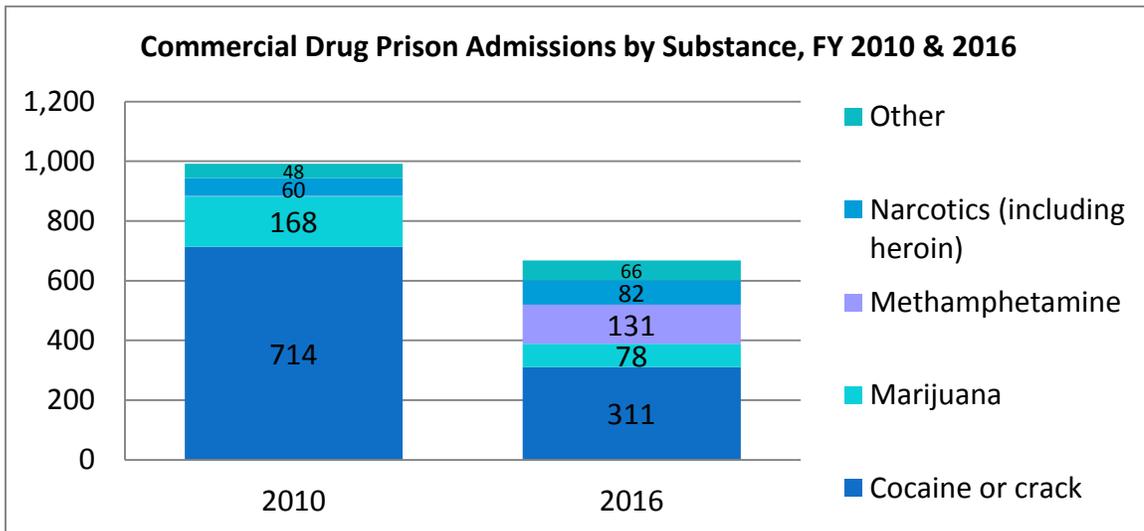
Four of the top 10 most common offenses at admission in 2016 were drug-related.—

Top 10 Offenses at Admission in FY 2016	
Offense	Number of Admissions
Burglary (2nd degree nonviolent and 3rd degree)	952
Commercial drug offense	668
Possession drug offense	525
Assault and battery – nonviolent	504
Shoplifting	497
Forgery/fraud	475
Burglary (2nd degree violent)	312
Common law robbery	288
Manufacture methamphetamine	280
Drug trafficking	271

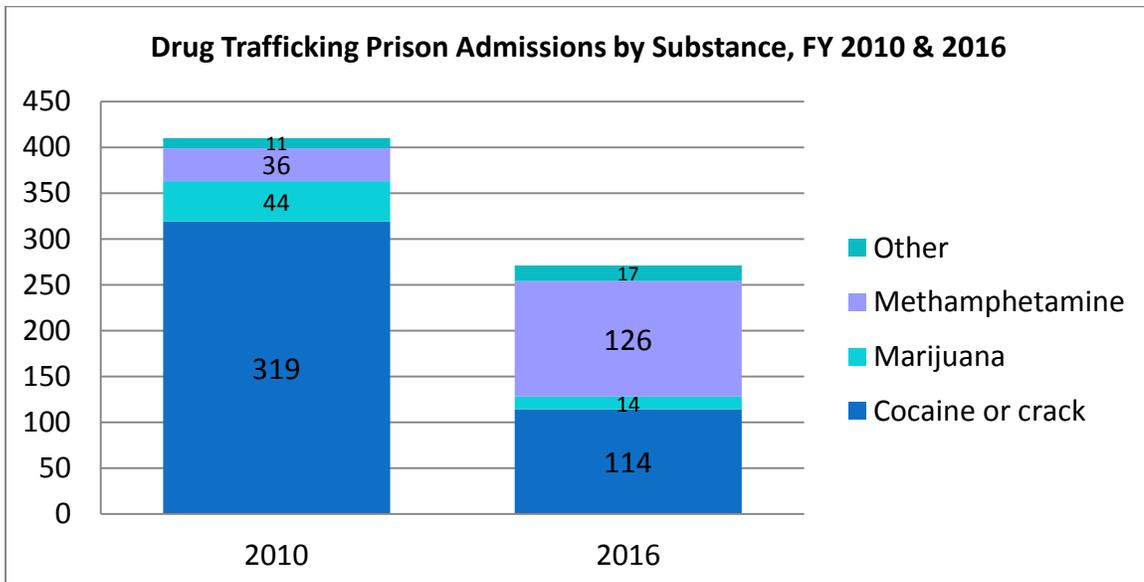
Cocaine, crack and methamphetamine are the most common drugs for possession admissions.—



Cocaine and crack are the most common drugs for commercial admissions.—



Methamphetamine is the most common drug for trafficking admissions.—



What the research says about effective responses to drug crime.—

The multiple objectives of incarceration. —

- There are many different reasons to use incarceration:
 - *Incapacitation* – removing the ability of offenders to commit crimes against the public by holding them in prison;
 - *Deterrence* – reducing the likelihood of future criminal involvement by increasing the punishment for the current offense;
 - *Rehabilitation* – reducing the likelihood of future criminal involvement by addressing the criminogenic needs of the offender; and
 - *Retribution* – punishment, in the form of imprisonment, for violating community norms.
- Researchers can study the effectiveness of the top three reasons – incapacitation, deterrence, and rehabilitation. However, there is no accepted way to study the value of retribution.

What does not work to reduce drug crime. — People who are leading and organizing drug trafficking deserve just punishment for selling substances that damage communities. However, research consistently shows that long prison sentences *for most drug offenders* are ineffective and costly:

- The chances of a typical cocaine street-level drug transaction being detected are about 1 in 15,000. With such a low risk of detection, drug dealers on the street are unlikely to be deterred by the remote possibility a prison term associated with each transaction.¹
- Incarceration has a limited deterrent effect even when the potential sentence that an offender faces is very long. The National Research Council concluded in a 2014 report that mandatory minimum sentences for drug and other offenders “have few if any deterrent effects.”²
- Even if street-level drug dealers are apprehended and incarcerated, their absence rarely disrupts the drug market. The “replacement effect” in drug markets – whereby new offenders quickly replace those imprisoned for street-level sale and trafficking roles – means that long sentences for individual offenders do not have an effect on the availability of drugs.³

What works to reduce drug crime. — Overall, there is little evidence for either general or specific deterrent effects based on the harshness of a drug sentencing system. Instead, the most effective responses to drug addiction and drug-related crimes include a combination of:

- Targeted law enforcement to curtail trafficking and limit the emergence of new drug markets;⁴
- Alternative sentencing to divert nonviolent drug offenders from incarceration to evidence-based supervision;⁵
- And prevention efforts that help identify individuals at a high-risk for addiction.⁶

South Carolina's possession and possession with intent statutes in context with neighboring states (cocaine).—

State	South Carolina		Alabama		North Carolina	
Cocaine						
Amount	Amount	Sentence	Amount	Sentence	Crim. History	Sentence
0 to .1g	0 – 1g	<i>Possession</i> : ⁷ 1: 0 – 3 years 2: 0 – 5 years 3+: 0 – 10 years	0 – 8g	<i>Possession</i> : ⁸ Any: 0 – 2 years (and up to 3 years suspended over a term of probation)	<i>Possession</i> ⁹	
.1g to .2g					Minimal crim history	.25 - .66 years
.2g to .3g					Moderate crim history	.33 - .8 years
.3g to .4g						
.4g to .5g						
.5g to .6g					Serious crim history	.5 – 1 years
.6g to .7g						
.7g to .8g						
.8g to .9g						
.9g to 1g					1 – 10g	<i>PWID</i> : ¹⁰ 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years
1g to 2g	<i>PWID</i> ¹¹					
2g to 3g	Minimal criminal history	.33 - .66 years				
3g to 4g						
4g to 5g	Moderate criminal history	.5 – 1.5 years				
5g to 6g						
6g – 7g						
7g – 8g	Serious criminal history	1 - ~2 years				
8g – 9g						
9g – 10g						
10g to 20g	10 – 28g	<i>Trafficking</i> : ¹³ 1: <u>3</u> – 10 years 2: <u>5</u> – 30 years 3: <u>25</u> – 30 years	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>
20g to 28g						
28g+	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>

South Carolina's possession and possession with intent statutes in context with neighboring states (meth).—

State	South Carolina		Alabama		North Carolina	
Methamphetamine						
Weights	Amount	Sentence	Amount	Sentence	Amount	Sentence
0 to .1g	0 – 1g	<i>Possession:</i> ¹⁴ 1: 0 – 3 years 2: 0 – 5 years 3+: 0 – 10 years	0 – 8g	<i>Possession:</i> ¹⁵ 0 – 2 years (and up to 3 years suspended over a term of probation)	<i>Possession</i> ¹⁶	
.1g to .2g					Minimal crim history	.25 - .66 years
.2g to .3g					Moderate crim history	.33 - .8 years
.4g to .5g					Serious crim history	.5 – 1 years
.5g to .6g						
.6g to .7g						
.7g to .8g						
.8g to .9g						
.9g to 1g						
1g – 2g	1g – 10g	<i>PWID:</i> ¹⁷ 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years	8 – 28g	<i>PWID</i> ¹⁹ : 2 – 20 years	<i>PWID</i> ¹⁸	
2g to 3g					Minimal crim history	33 - .66 years
3g to 4g					Moderate crim history	.5 – 1.5 years
4g to 5g					Serious crim history	1 - ~2 years
5g to 6g						
6g to 7g						
7g to 8g						
8g to 9g						
9g to 10g						
10g to 20g	10g – 28g	<i>Trafficking:</i> ²⁰ 1: <u>3</u> – 10 years 2: <u>5</u> – 10 years 3: <u>25</u> – 30 years	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>
20g to 28g						
28g+	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>	28g+	<i>Trafficking offenses</i>

South Carolina's possession and possession with intent to distribute statutes in context with neighboring states (heroin).—

State	South Carolina		Alabama		North Carolina	
Heroin						
Weights	Amount	Sentence	Amount	Sentence	Amount	Sentence
0 to .1g	0 - .13g (2 grains)	<i>Possession</i> ²¹ : 1: 0 – 2 years 2: 0 – 5 years 3+: 0 – 5 years	0 – 2g	<i>Possession</i> ²² Any: 0 – 2 years (and up to 3 years suspended over a term of probation) ²³	<i>Possession</i> ²⁴	
.1g to .2g					Minimal crim history	.25 - .66 years
.2g to .3g	.13g – 4g	<i>PWID</i> ²⁵ 1: 0 – 15 years 2: 5 – 30 years 3+, all priors possession: 10 – 30 years 3+: <u>10</u> – 30 years			Moderate crim history	.33 - .8 years
.4g to .5g					Serious crim history	.5 – 1 years
.5g to .6g						
.6g to .7g					<i>PWID</i> ²⁶	
.7g to .8g					Minimal crim history	33 - .66 years
.8g to .9g					Moderate crim history	.5 – 1.5 years
.9g to 1g					Serious crim history	1 - ~2 years
1g – 2g					2g – 4g	<i>PWID</i> ²⁷ : Any: 2 – 20 years
2g to 3g						
3g to 4g						
4g+	4g+	<i>Trafficking offenses</i>	4g+	<i>Trafficking offenses</i>	4g+	<i>Trafficking offenses</i>

Policy Options: Possession and Commercial Drug Offenses

1. How South Carolina’s possession and possession with intent to distribute statutes stack up with neighboring states.—

Possession and Possession with Intent to Distribute			
Scenario	Maximum Prison Time (Unsuspected) *Poss/PWID – designates		
	South Carolina	Alabama	North Carolina (years)
Possession of .5g of cocaine with 1 prior conviction for felony drug possession	Poss: 0 – 5 years	Poss: 0 – 2 years	Poss: .33 - .8
			PWID: .5 – 1.5
Possession of .8g of methamphetamine with two prior nonviolent felony burglary charges	Poss: 0 – 3 years	Poss: 0 – 2 years	Poss: .33 - .8
			PWID: .5 – 1.5 years
Possession of .2g of heroin with one prior conviction for drug distribution	PWID: 5 – 30 years	Poss: 0 – 2 years	Poss: .33 - .8
			PWID: .5 – 1.5
Possession of 4g of methamphetamine no prior convictions	PWID: 0 – 15 years	Poss: 0 – 2 years	Poss: .25 - .66
			PWID: .33 - .66
Possession of 2.1g of heroin with 1 prior conviction for felony drug possession	PWID: 5 – 30 years	PWID: 2 – 20 years	Poss: .33 - .8
			PWID: .5 – 1.5

In general, South Carolina has higher *maximum* sentences for possession and PWID offenses than Alabama and North Carolina.

- a. This is due in part to the fact that South Carolina’s presumptive threshold differentiating possession offenses from PWID offenses is comparatively low (e.g. 1 gram of cocaine or methamphetamine in South Carolina, compared to 8 in Alabama; or .13g for heroin in South Carolina, compared to 2g in Alabama).
- b. And part in due to South Carolina’s overall higher maximum sentences across possession and lower-weight PWID offenses.

2. Potential policies to bring South Carolina into line with neighboring Southern States.—

- a. Raise the presumptive weight threshold differentiating possession from PWID (and other commercial) offenses.
 - i. Within the larger range of possession offenses, create interim penalty tiers according to severity.
- b. And/or lower maximum sentences across possession and lower-weight commercial offenses.

South Carolina's trafficking statutes in context with neighboring states (cocaine). —

State	South Carolina ²⁸		Federal Government ²⁹		North Carolina ³⁰	
Cocaine						
Amount	Amount	Sentence	Amount	Sentence, in months min (max w/history)	Amount	Sentence
10g to 20g	10 – 28g	1: <u>3</u> – 10 years 2: <u>5</u> – 30 years 3: <u>25</u> – 30 years	<50 g	~.8 - ~1.3 years (2.5 ~3 years)	<i>See page 5 for North Carolina's penalties for weights of cocaine less than 28g.</i>	
20g to 30g						
30g to 40g	28g to 100g	1: <u>7</u> – 25 years 2: <u>7</u> – 30 years 3+: <u>25</u> – 30 years	50 – 100g	1.25 – 1.75 years (3 – ~4 years)	28g – 200g	Trafficking ~3 – 4.25 years
40g to 50g						
50g to 60g						
60g to 70g						
70g to 80g						
80g to 90g						
90g to 100g						
100g to 200g	100g – 200g	Any: <u>25</u> years	100 – 200g	1.75 – 2.25 years (~4 – 4.75 years)	200g – 400g	~6 – 7.75 years
200g to 300g	200g – 400g	Any: <u>25</u> years	200 – 300g	2.25 - 2.75 years (4.75 – ~6 years)		
300g to 400g			300 – 400g	2.75 ~3.5 years (~6 – 7.25))		
400g to 500g	400g+	Any: <u>25</u> – 30 years	400 – 500g	~3.5 – 4.25 years (7– 8.75 years)	400g+	175 – 222 mos
500g+			500g+	<u>5 years</u> – life (tiered by additional weights) (With previous drug conviction, <u>10 year minimum</u>)		

South Carolina’s trafficking statutes in context with neighboring states
(meth). —

State	South Carolina ³¹		Federal Government ³²		North Carolina ³³	
Methamphetamine						
Weights	Amount	Sentence	Amount	Sentence, in months min (max w/crim history)	Amount	Sentence
10g to 20g	10g – 28g	1: <u>3</u> – 10 years 2: <u>5</u> – 10 years 3: <u>25</u> – 30 years	10g – 20g	1.75 – 2.25 years (~4 – 4.75 years)	<i>See page 6 for North Carolina’s penalties for weights of methamphetamine less than 28g.</i>	
20g to 30g			20g – 30g	2.25 – 2.75 years (4.75 – ~6 years)		
30g to 40g	28g – 100g	1: 7 – 25 years 2: 7 – 30 years 3+: <u>25</u> – 30 years	30g – 40g	2.75 – 3.5 years (~6 – 7.25)	28g – 200g	Any: ~6 – 7.75 years
40g to 50g			40g – 50g	~3.5 – 4.25 years (7– 8.75 years)		
50g to 60g			50g – 200g	5 years – 5.25 (~8– ~10.5 years)		
60g to 70g						
70g to 80g						
80g to 90g						
90g to 100g						
100g to 200g			100g – 200g	Any: <u>25</u> years		
200g to 300g	200g – 400g	Any: <u>25</u> years	200g – 350g	5.25 – 6.5 years (<u>10</u> – 12.5) (With previous drug conviction, <u>10 year minimum</u>)	200g – 4000g	Any: 7.5 – 10 years
300g to 400g						
400g to 500g	400g+	Any: <u>25</u> – 30 years	350g – 500g	6.5 – ~8 years (~12 – ~14.5 years) (With previous drug conviction, <u>10 year minimum</u>)	400g+	Any: <u>18.75</u> – 23.5 years
500g+			500+	~8 years – life (tiered by additional weights) (With previous drug conviction, <u>10 year minimum</u>)		

South Carolina’s trafficking statutes in context with neighboring states (heroin). —

State	South Carolina ³⁴		Federal Government ³⁵		North Carolina ³⁶	
Heroin						
Weights	Amount	Sentence	Amount	Sentence, in months min (max w/crim history)	Amount	Sentence
4g to 5g	4g – 14g	1: <u>7</u> – 25 years 2+: <u>25</u> years	<10 g	~.8 - ~1.3 years (2.5 ~3 years)	4g – 14g	Any: <u>~6</u> - ~7.5 years
5g to 6g						
6g to 7g						
7g to 8g						
8g to 9g						
9g to 10g						
10g to 20g	14g – 28g	Any: <u>25</u> years	10g – 20g	1.25 – 1.75 years (3 – ~4 years)	14g – 28g	Any: <u>7.5</u> – 10 years
20g to 30g			20g – 40g	1.75 – 2.25 years (~4 – 4.75 years)		
30g to 40g	28g+	Any: <u>25</u> – 40 years	40g – 60g	2.25 - 2.75 years (4.75 – ~6 years)	28g+	Any: <u>~19</u> – 23.5 years
40g to 50g			60g – 80g	2.75 ~3.5 years (~6 – 7.25)		
50g to 60g			80g – 100g	~3.5 – 4.25 years (7– 8.75 years)		
60g to 70g			100g – 400g	<u>5</u> – 5.25 years (~8– ~10.5 years) (With previous drug conviction, <u>10 year minimum</u>)		
70g to 80g			400g – 700g	5.25 – 6.5 years (10 – 12.5 years) (With previous drug conviction, <u>10 year minimum</u>)		
80g to 90g						
90g to 100g						
100g to 200g						
200g to 300g						
300g to 400g			400g+	5.25 – 6.5 years (10 – 12.5 years) (With previous drug conviction, <u>10 year minimum</u>)		
400g+						
500g+						

Policy Options: Trafficking

1. How South Carolina’s trafficking statutes stack up with other jurisdictions.—

Trafficking			
Scenario	Prison Time		
	South Carolina	Federal Government	North Carolina
Trafficking 10g of cocaine, with no prior criminal convictions	<u>3</u> – 10 years	.8 – 1.3 years	Considered a possession or PWID case.
Trafficking 6g of heroin, with three prior non-drug felony convictions	<u>7</u> – 25 years	2.5 -3 years	6 – 7.5 years
Trafficking 125g of methamphetamine, with one prior felony drug conviction	<u>25</u> years	<u>10</u> years	6 – 7.75 years
Trafficking 200g of methamphetamine, with no prior felony convictions	<u>25</u> years	5.25 – 6.5 years (<u>5</u> year minimum)	7.5 – 10 years
Trafficking 100 grams of heroin, with a prior possession conviction	<u>25</u> – 40 years	<u>10</u> - 10.5 years	<u>19</u> – 23.5 years

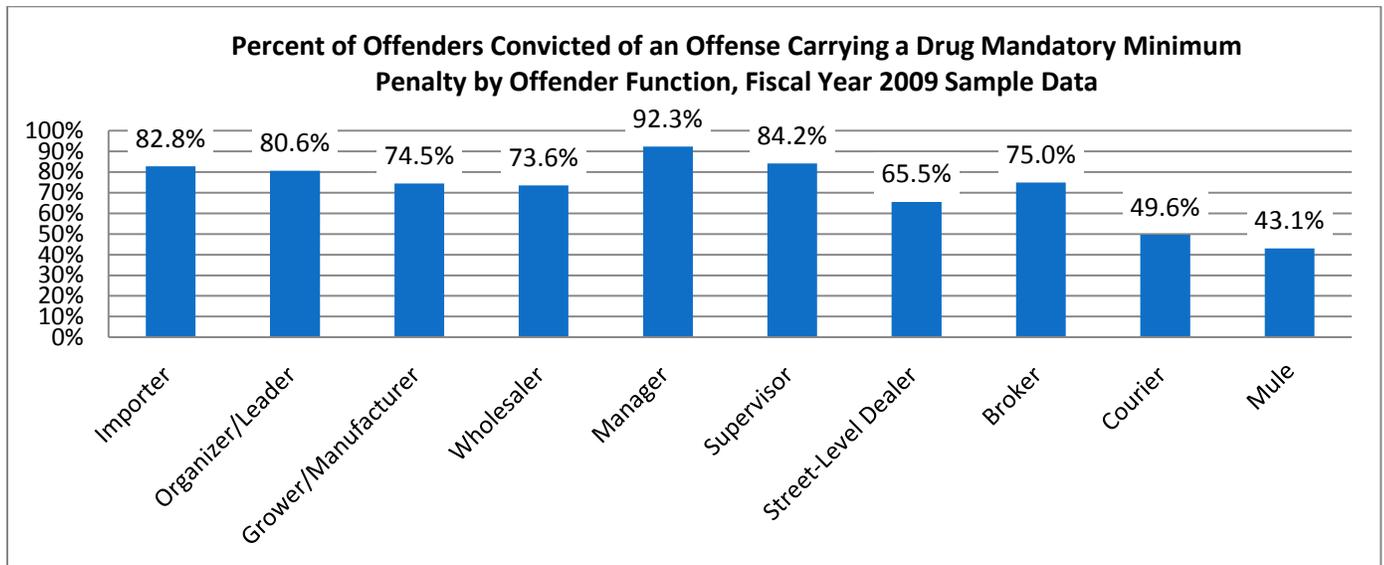
In general, South Carolina has higher *minimum* and *maximum* sentences for trafficking offenses than North Carolina and the federal government.

- a. This is due in part to the ratcheting up of sentences in South Carolina based on the offender’s previous convictions.
- b. And due in part to South Carolina’s overall higher minimum and maximum sentences for trafficking offenses.

2. Potential policies to bring South Carolina into line with other jurisdictions.—

- a. Weight-based policies: **For lower weights within the trafficking spectrum, reduce maximum sentences in accordance with other jurisdictions.**
- b. Criminal history-based policies: Currently, South Carolina’s drug trafficking statutes include criminal history enhancements that significantly ratchet up minimum and maximum penalties for offenders with any type of prior drug conviction. For example, a person with 11g of cocaine with no prior drug offenses would face a penalty range of 3 to 10 years, while a person with the same weight of drugs with two prior possession offenses would face a penalty range of 25 to 30 years. **To ensure that South Carolina is focusing its long trafficking sentences on those with a demonstrated criminal history of trafficking – not lower-level possession or PWID offenses – South Carolina could limit what prior drug offenses trigger these criminal history enhancements to trafficking offenses only.**

For trafficking offenses, weight is an imperfect predictor of drug crime severity. — Similar to South Carolina, federal drug trafficking laws rely primarily on weight to determine crime severity. However, a study conducted by the United States Sentencing Commission found that the quantity of drugs and the level of an individual’s involvement in drug activity are not necessarily correlated.³⁷ “Mules” – people that transported or carried drugs on their person and had no larger role within a drug trafficking organization – for example, were convicted of offenses carrying a mandatory minimum sentence 43.1% of the time.³⁸



Source: U.S. Sentencing Commission, 2009

- c. Conduct-based policies: Ensure that trafficking statutes are capturing serious offenders who are controlling the marketplace, as opposed to those who are working at the behest of others and have little influence.—
 - i. Option A [Opt-In]: Currently, mandatory minimums in South Carolina are determined solely by weight, which research from the federal government indicates is not a reliable predictor of the seriousness of offender conduct. **To ensure that South Carolina’s drug trafficking laws are capturing serious offenders, the state could require trafficking offenses to be proven by two factors: weight, as well as the offender’s conduct within the marketplace. Specifically, the policy would define roles – what constitutes a leader, manufacturer, importer etc. – and only apply the trafficking penalty to those who meet both the weight and the conduct threshold.**
 - ii. Option B [Opt-out]: **To ensure that judges have some flexibility in sentencing people who fall under the trafficking statute, but are not driving the marketplace, provide for a safety valve whereby judges can exempt certain people from the minimum sentence if they meet the requirements of a statutory test.**³⁹

Endnotes

- ¹ Pew Charitable Trusts (2016), “Public Safety Aspects of the Heroin Abuse Epidemic,” <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/07/public-safety-aspects-of-the-heroin-abuse-epidemic>.
- ² National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014), 83, <http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes>.
- ³ Ilyana Kuziemko and Steven D. Levitt, “An Empirical Analysis of Imprisoning Drug Offenders,” *Journal of Public Economics* 88 (2004):2043–2066, https://www0.gsb.columbia.edu/faculty/ikuziemko/papers/kl_jpube.pdf.
- ⁴ Jonathan P. Caulkins and Peter Reuter, “Towards a Harm-Reduction Approach to Enforcement,” *Safer Communities* 8 (January 2009): Nicholas Corsaro et al., “The Impact of Drug Market Pulling Levers Policing on Neighborhood Violence,” *Criminology & Public Policy* 11, no. 2 (2012), <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2012.00798.x/pdf>.
- ⁵ Ojmarrh Mitchell et al., “Drug Courts’ Effects on Criminal Offending for Juveniles and Adults” (Feb. 2, 2012) <https://www.campbellcollaboration.org/library/drug-courts-effects-on-criminal-offending.html>; Angela Hawken and Mark Kleiman, *Managing Drug Involved Probations With Swift and Certain Sanctions: Evaluating Hawaii’s HOPE* (Dec. 2, 2009), National Institute of Justice, <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.
- ⁶ The Surgeon General (2016), “Facing Addiction in America,” <https://www.ncbi.nlm.nih.gov/books/NBK424850/>.
- ⁷ S.C. Code Ann. § 44-53-370(d)(3).
- ⁸ Code of Ala. § 13A-12-212.
- ⁹ N.C. Gen. Stat. § 90-95(d)(2).
- ¹⁰ S.C. Code Ann. § 44-53-370(b)(1); In South Carolina, weight of the controlled substances gives rise to an assumption of intent to distribute, though intent would still need to be proven at trial.
- ¹¹ N.C. Gen. Stat. § 90-95(b)(1).
- ¹² Code of Ala. § 13A-12-211(c)(1).
- ¹³ S.C. Code Ann. § 44-53-370(e)(2)
- ¹⁴ S.C. Code Ann. § 44-53-375(A)
- ¹⁵ Code of Ala. § 13A-12-212.
- ¹⁶ N.C. Gen. Stat. § 90-95(d)(2).
- ¹⁷ S.C. Code Ann. § 44-53-375(B); In South Carolina, weight of the controlled substances gives rise to an assumption of intent to distribute, though intent would still need to be proven at trial.
- ¹⁸ N.C. Gen. Stat. § 90-95(b)(1).
- ¹⁹ Code of Ala. § 13A-12-211(c)(6).
- ²⁰ S.C. Code Ann. § 44-53-375(C).
- ²¹ S.C. Code Ann. § 44-53-370(d)(1).
- ²² Code of Ala. § 13A-12-212.
- ²³ Can also be sentenced as unlawful distribution of a controlled substance, if the defendant sells, furnishes, or delivers a controlled substance; Code of Ala. § 13A-12-211(a).
- ²⁴ N.C. Gen. Stat. § 90-95(d)(1).
- ²⁵ S.C. Code Ann. § 44-53-370(d)(1); In South Carolina, weight of the controlled substances gives rise to an assumption of intent to distribute, though intent would still need to be proven at trial.
- ²⁶ N.C. Gen. Stat. § 90-95(b)(1).
- ²⁷ Code of Ala. § 13A-12-211(c)(2).
- ²⁸ S.C. Code Ann. § 44-53-370(e)(2)
- ²⁹ United States Sentencing Commission, (2016) “2016 Guidelines Manual,” Chapter 2 –D, <https://www.ussc.gov/guidelines/2016-guidelines-manual/2016-chapter-2-d#NaN>.
- ³⁰ N.C. Gen. Stat. § 90-95(h)(3).
- ³¹ S.C. Code Ann. § 44-53-375(C).
- ³² United States Sentencing Commission, (2016) “2016 Guidelines Manual,” Chapter 2 –D, <https://www.ussc.gov/guidelines/2016-guidelines-manual/2016-chapter-2-d#NaN>.
- ³³ N.C. Gen. Stat. § 90-95(h)(3)(b).
- ³⁴ S.C. Code Ann. § 44-53-370(e)(3)
- ³⁵ United States Sentencing Commission, (2016) “2016 Guidelines Manual,” Chapter 2 –D, <https://www.ussc.gov/guidelines/2016-guidelines-manual/2016-chapter-2-d#NaN>.
- ³⁶ N.C. Gen. Stat. § 90-95(h)(4).
- ³⁷ U.S. Sentencing Commission, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (October 2011), Chapter 8, https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf.
- ³⁸ *Ibid.*
- ³⁹ For example, in the federal system, judges can sentence people convicted of federal drug trafficking offenses below the minimum penalty if (1) no one was harmed during the offense; (2) the person has little or no history of criminal convictions; (3) the person does not use violence or a gun; (4) the person was not a leader or organizer of the offense; and (5) the person told the prosecutor all he knows about the offense.