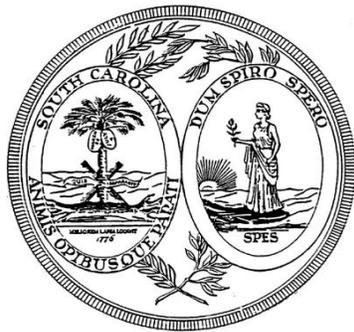


SOUTH CAROLINA SENTENCING REFORM COMMISSION REPORT TO THE GENERAL ASSEMBLY



February 1, 2010

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Senator John M. "Jake" Knotts, Jr.
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**SENTENCING REFORM COMMISSION
REPORT TO THE GENERAL ASSEMBLY
FEBRUARY 1, 2010**

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Executive Summary

Creation of the Sentencing Reform Commission

Rising recidivism rates, increasing prison populations, limited sentencing alternatives and re-entry programs, and mounting correctional costs for both state and local governments led the South Carolina General Assembly to enact Act 407 in 2008, which established the Sentencing Reform Commission (Commission). The Commission consists of members from the legislature, the judiciary, and the executive branch. The members appointed to the bipartisan Commission are Senator Gerald Malloy, Chair, Representative G. Murrell Smith, Jr., Vice-chair, Senator John M. “Jake” Knotts, Jr., Senator George E. “Chip” Campsen III, Representative Douglas Jennings, Jr., Representative R. Keith Kelly, Justice Donald W. Beatty, Judge Aphrodite K. Konduros, Judge William P. Keesley, and Jon Ozmint, Director of the S.C. Department of Corrections.

The Commission was given the responsibility of reviewing and recommending: (1) appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year is allowed; (2) maintaining, amending, or abolishing the current parole system; and (3) guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate.

The Commission’s ultimate goals are to make South Carolina better and safer; reduce recidivism and the revolving door to prisons; propose fair and effective sentencing options; use tax dollars wisely; and improve public safety by ensuring that prison beds are available for violent offenders who need to be in prison and remain in prison.

The South Carolina Picture

Over the past twenty-five years, South Carolina’s correctional population has soared, increasing from approximately 9,137 inmates in 1983 to more than 25,000 in 2009. The correctional population growth has come at a significant financial cost. In 1983, the state spent \$63.71 million on prison operations. By 2008, only 25 years later, the costs increased by more than 500 percent to \$394.15 million. Unfortunately, the rates of violent crime in South Carolina are too high, and greater numbers of repeat offenders are returning to crime once released from prison. The Commission’s analysis of South Carolina’s corrections system includes a projection of the prison population if there are no changes in South Carolina’s sentencing and release policies or practices. On the current course, in five years, South Carolina’s inmate population is expected to increase by over 3,200 to a total of 27, 903 inmates. This could add an additional \$141 million to the Department of Corrections annual operating costs within the next five years. In addition, to house the additional prisoners, construction of new prison space, at a cost of approximately \$317 million, could be required.

Drivers of Prison Growth

There are several key factors driving the state's prison growth.

- Sentencing policies in recent years have led to a significant number of offenders entering South Carolina prisons who are committed for low-level offenses for short periods of time. Admissions to prison have increased 26 percent since 2000, yet a significant number of sentences are for less serious offenses that result in short sentences. In fact, 44 percent of new admits have a sentence of less than 18 months, and 46 percent of felony convictions are for class F felonies, the lowest class of felonies.
- Second, again largely based on sentencing policies, the number of offenders entering prison for non-violent offenses, mostly drug and property crimes, has increased significantly. Forty-nine percent of South Carolina's prison population is being held for non-violent offenses. The percentage of offenders incarcerated for drug-related offenses has more than tripled. In 1980, there were 473 inmates convicted of drug related offenses – six percent of the total population. In 2009, that number had increased to 4,682 inmates or 20 percent of the population.
- Third, offenders on parole and probation are being sent back to prison for non-criminal violations, due to the lack of available alternatives. In recent years, an increasing number of people in South Carolina have been incarcerated for violating the conditions of their probation or parole, not for committing a new crime. In FY2009, the S.C. Department of Probation, Pardon and Parole Services (PPP) revoked 3,205 offenders to prison, accounting for 24 percent of all prison admissions, 66 percent of whom, or more than 2,100 offenders, were sent back to prison for non-criminal (technical) violations, such as failure to show up at the probation office, or alcohol and drug use.
- Fourth, South Carolina's parole board has substantially cut the rate at which it releases inmates who are eligible for parole. In 2009, the Parole Board rejected 3,993 parole applications and approved 511. This represented only 3.5 percent of all inmates released.

Making South Carolina Safer

Prison space should be reserved for violent criminals and those with violent tendencies. Research shows that low-risk offenders, those who pose minimal risk to the public, are more effectively managed outside the prison system. After an in-depth analysis of the state's sentencing and corrections data, the Commission has developed recommendations that will reduce recidivism while also reducing the costs of corrections.

The Commission's proposals would increase public safety by ensuring that there is prison space for high-risk, violent offenders; ensuring that those offenders serve longer terms in prison; requiring supervision for offenders leaving prison so they cannot just disappear into South Carolina communities without any oversight; and improving supervision for those on probation and parole so that they stay crime and drug free.

The Commission's proposals also would reduce the cost of corrections by limiting the increase in projected prison population over the next five years by over 2,400 prison beds, and saving approximately \$317 million in construction costs for building new prison space. The proposals also could result in savings of over \$92 million in operating costs over the next five years. Those savings could then in turn be used to fund other recommendations of the Commission and help keep communities safe through means other than incarceration.

It is important to note that these recommendations represent both short-term and long-term goals and policy options that the Sentencing Reform Commission hopes can be implemented to reduce recidivism and victimization, hold offenders accountable, and maximize limited financial resources in the state. The recommendations, voted on unanimously by the Commission, focus on the three objectives given to them, by requiring the criminal justice system to be more accountable and transparent, by strengthening release and supervision decisions, and by offering effective alternatives to incarceration for appropriate offenders, so prison beds remain available for those who should be there.

Background

The creation of the Sentencing Reform Commission was a proposal from the Senate Criminal Justice System Task Force, which itself had been appointed in 2006 by Senator Glenn McConnell, President Pro Tempore of the South Carolina Senate and Chairman of the South Carolina Senate Judiciary Committee.

The Task Force was charged with examining South Carolina's criminal justice system in order to identify problems that had led to an increase in the number of repeat offenders and violent criminal acts in many areas of the state and to offer possible solutions for the S.C. General Assembly to consider. Through the numerous meetings held by the Task Force in 2006 and 2007, it became evident that the information received on the need for alternative sentencing, prison overcrowding, sentencing inconsistencies, and insufficient reentry mechanisms needed to be studied in more depth than could be handled by the Task Force, and thus legislation was introduced to create the Sentencing Reform Commission.

The Commission, created by legislation in 2008, was tasked with reviewing and recommending: (1) appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year is allowed; (2) maintaining, amending, or abolishing the current parole system; and (3) guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate. The Commission consists of members from the legislature, the judiciary, and the executive branches, by requiring appointment of three individuals by the chair of the Senate Judiciary Committee, three individuals by the chair of the House Judiciary Committee, three members of the judiciary by the Chief Justice of the S.C. Supreme Court, and one individual by the Governor. The members appointed to the bipartisan Commission are Senator Gerald Malloy, chair, Representative G. Murrell Smith, Jr., vice chair, Senator John M. "Jake" Knotts, Jr., Senator George E. "Chip" Campsen III, Representative Douglas Jennings, Jr., Representative R. Keith Kelly, Justice Donald W. Beatty, Judge Aphrodite K. Konduros, Judge William P. Keesley, and Jon Ozmint, Director of the SC Department of Corrections.

To help fulfill its mandate, the Commission requested technical assistance from the Public Safety Performance Project of the Pew Center on the States. Pew, along with its partners, the Crime and Justice Institute and Applied Research Services, Inc., assisted South Carolina in analyzing the state's sentencing and corrections data and generating policy options to reduce recidivism and victimization, hold offenders accountable, and maximize limited financial resources in the state.

National Picture

Across the country, states are facing challenges similar to South Carolina as prison populations have grown significantly over the past two decades, accompanied by large costs. Yet, despite imprisoning more individuals than ever before, recidivism rates have remained unchanged, and many states that dramatically expanded their prison systems have not seen crime rates drop any faster than states whose prison growth was more moderate. State leaders across the nation are now working to use their correctional dollars in a smarter way, by developing more effective criminal justice systems that increase public safety, hold offenders accountable, and control corrections spending.

The growth in South Carolina's prison population mirrors the national growth. Research and data show that the increase in national prison populations was driven not by an increase in crime, but by state decisions to put more low-risk, non-violent offenders behind bars, to increase prison terms for violent and non-violent offenders alike, and to neglect community corrections and reentry programs, so a significant number of parole and probation violators return to prison.

As a result of the increase in prisoners across the country, spending on corrections rose drastically to become the fastest expanding major segment of many state budgets in 2008. Over the past two decades, its growth as a share of state expenditures has been second only to Medicaid. Twenty-one years ago, states spent \$10 billion on corrections; today, state spending on corrections is more than \$50 billion.¹

Despite the significant increase in spending on corrections, results are not keeping up with the costs. Nationally, recidivism rates remain unchanged, as more than half of released prisoners are back behind bars within three years. More than 40 percent of probationers and more than half of parolees do not complete their supervision terms successfully. In fact, revocations of those on parole and probation account for about half of state prison admissions across the country and up to two-thirds of admissions in some states. Taxpayers are not getting a good public safety return on their investment.

Serious, chronic, and violent offenders belong behind bars, for a long time, and the expense of locking them up is justified many times over. But non-violent, lower-level inmates are also filling our prisons, and states are recognizing that there are better approaches to reducing crime and dealing with these offenders.

Policy makers across the country are examining ways to reduce crime and cut prison spending. A voluminous body of solid research shows that "evidence-based" sentencing and corrections practices do work and can reduce crime rates more effectively than prisons, at much lower costs.² Such practices include better ways to identify which offenders need a prison cell

¹ See, Pew Center on the States, *One in 31: The Long Reach of American Corrections*, (Washington, D.C.: The Pew Charitable Trusts, March 2009).

² See, e.g., Steve Aos, Marna Miller & Elizabeth Drake, Washington State Institute for Public Policy, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates* (2006).

and who can be safely supervised in the community, new technologies to monitor their whereabouts and behavior, and more effective supervision and treatment programs to help them rehabilitate. Taken together, these trends are encouraging policy makers to diversify their states' array of criminal sanctions with options for low-risk offenders, which save tax dollars but still hold offenders accountable for their actions. A number of states already are reaping encouraging results.

Facing daunting projections of significant increases in correctional costs due to the growth in their prison population, Kansas and Texas have embraced a strategy that blends incentives for reduced recidivism with greater use of community supervision for lower-risk offenders. In addition, the two states increasingly are imposing sanctions other than prison for parole and probation violators whose infractions are considered technical, such as missing a counseling session. The new approach, born of bipartisan leadership, allows the two states to ensure they have enough prison beds for violent offenders, while helping less dangerous lawbreakers become productive, taxpaying citizens.

State data in Kansas and Texas indicate that these reforms have reduced crime and cut costs. In Kansas, probation and parole revocations to prison have dropped by 48 percent, and new crimes by parolees dropped 26 percent. The state has saved \$33 million to date and is projected to save an additional \$162 million over the next decade. Similarly, Texas has seen a similar reduction in probation revocations by 26 percent, while saving \$511 million to date and is projected to save an additional \$522 million in averted costs over the next decade.

In addition, many other states are currently addressing issues similar to South Carolina. In 2009 alone, states enacted the following:

- Several states, such as Virginia and Colorado, have ongoing task forces, commissions or working groups, while thirteen states created such entities in the 2009 legislative session on a variety of issues that legislatures anticipate addressing in the 2010 or 2011 sessions.
- North Carolina adjusted sentence lengths of offense classes to make them more proportional.
- Rhode Island removed the mandatory minimum sentence for manufacturing, selling, or possessing a controlled substance.
- States such as North Carolina, Tennessee, Illinois, and New York are creating or expanding use of risk assessments to identify offenders who are appropriate for community-based sentences and those who need to be incarcerated.
- Several states, including California and Illinois, enacted performance incentive funding programs that give counties a share of the savings if they reduce probation revocations to state prison.
- Several states, including Louisiana, Tennessee, Colorado, Mississippi, Oregon, New York, Nevada, and California, created or expanded inmate earned time or good time policies.

- Georgia and Louisiana permitted certain violent and repeat offenders to participate in work release during their final period of confinement.
- Minnesota limited the length of confinement for first-time violations of supervision, and Oregon limited confinement lengths for technical probation violations.
- Kentucky required their Parole Board to review low-risk inmates for release after serving a minimum period of confinement, while Nevada allowed certain low-level offenders to be granted parole without a hearing.
- Maryland now provides inmates with identification cards upon release.
- Maine, Washington, and New York expanded eligibility for medical parole.
- Georgia permitted a continuum of sanctions for probation violations, while Minnesota permitted an intermediate sanctions facility pilot program for probation violators.
- New York instructed the Board of Parole to use graduated sanctions and risk assessments for parole supervision.
- Several states, including Oregon and Wisconsin, permitted early termination of community supervision.

With immense fiscal challenges, state leaders across the country must ensure that taxpayer dollars are wisely spent. Understanding that the current crime and punishment policies are not delivering satisfactory results, many states in addition to South Carolina are also looking to analyze their data, review research, and use evidence-based proven programs to improve public safety, hold offenders accountable, and balance their budgets.

Problems Facing South Carolina

The data collected and analyzed by the Sentencing Reform Commission over the past year demonstrates that, without significant systemic changes to policies and laws, the problems confronting South Carolina of high rates of repeat offenders, insufficient and unevenly evaluated alternatives to incarceration, high crime rates, growing correctional populations, and over-extended judicial case loads will continue.

The circumstances facing South Carolina communities are daunting. According to the Pew Center on States, in South Carolina, the number of adults under some form of correctional control in 2007 was one in every 38 adults (including those on state and federal probation, parole, prison, and local detention centers).³ A large number of those on probation or released from prison under some form of supervision go back to prison for violating the terms of their supervision. In South Carolina, one of every four new prison admissions in FY2009 was for a probation or parole revocation, with most not committing a new criminal offense. Since 1978, the prison population in South Carolina has more than tripled, increasing from a population of 7,526 in 1978 to 24,460 at the end of FY2009. Costs of incarceration have increased significantly for many different reasons, and in the past 25 years have increased by more than 500 percent from a budget of \$63.71 million in 1983 to \$394.15 million in 2008.⁴

The number of offenders entering prison for non-violent offenses, mostly drug and property crimes, has increased significantly in the last four years.⁵ Admissions to prison have increased 26 percent since 2000, yet a significant number of sentences are for less serious offenses that result in short sentences. In fact, 44 percent of new admissions have a sentence of less than eighteen months, and 46 percent of felony convictions are for class F felonies, the lowest class of felonies. Thus, a significant number of offenders entering South Carolina prisons are committed for low-level offenses for short periods of time. The costs of these are ever increasing. As one example, the state will spend nearly \$4 million over a five-year period to incarcerate approximately 1,000 offenders for shoplifting, grand larceny, forgery, possession of cocaine and possession of marijuana with intent to distribute, even though South Carolina's DOC costs per inmate are low, at approximately \$14,000 per inmate a year.

The current inmate population in the state's prison system is 24,781. If the state does nothing to change the current course, the prison population is estimated to increase to 27,903 by 2015. But the cost of inaction is not just prison crowding. Given the current level of prison overcrowding, this magnitude of growth will require the construction of at least one, and possibly two, prisons to accommodate the additional inmates. With such a significant cost facing South Carolina taxpayers, the question to answer is whether building more prisons to accommodate low-risk, non-violent offenders is the smartest use of tax payers' money to protect public safety. The opinion of the Commission is that it is not.

³ Pew Center on the States, *One in 31: The Long Reach of American Corrections*, (Washington, D.C.: The Pew Charitable Trusts, March 2009).

⁴ *Id.*, State Fact Sheet on South Carolina.

⁵ For example, four of the five offenses with the highest number of prison admissions rates are Burglary 2nd degree, non-violent, Fraud/Insufficient funds, Driving Under Suspension, and Shoplifting.

Current correctional research indicates incarceration is best used for violent crimes and offenders. In South Carolina, however, as stated above, more offenders are being sentenced to prison for drug-related, non-violent offenses. In 1980, there were 473 inmates convicted of drug-related offenses, which was six percent of the total population. In 2009, that number had increased to 4,682 inmates, or 20 percent of the population. Non-violent types of offenders placed under a well-structured and appropriately funded system of alternatives to incarceration often perform well without jeopardizing public safety. To be successful, supervision in the community must be combined with proven treatment programs to be effective in reducing the risk of re-offense, and the use of a validated assessment tool to determine an offender's risks and needs is necessary in making placement, revocation, and sentencing decisions.

The research is clear. Offenders who complete programs that prepare them to transition into the community and have some appropriate supervision after release are less likely to return to criminal activity than those inmates who are released from prison without services or supervision. The trends in South Carolina indicate that more and more inmates, especially higher risk offenders, are released at the end of their sentences and walk out the prison door with no supervision and no connection to services or support. This only fosters continued criminal activity and increased victimization.

In recent years, an increasing number of people in South Carolina have been incarcerated for violating the conditions of their probation or parole, not for committing a new crime. In FY2009, the Department of Probation, Parole, and Pardon (PPP) revoked 3,205 offenders to prison, accounting for 24 percent of all prison admissions, 66 percent of whom, or more than 2,100 offenders, were sent back to prison for non-criminal (technical) violations, such as failure to show up at the probation office, or alcohol and drug use, and did not involve a new criminal conviction. The proportion of PPP's funding from state dollars in FY2009 was 44 percent (down from 57 percent in 2000). The remainder of its funding comes from client fees. Over the years, both PPP and DOC have had to reduce the number of fulltime employees to accommodate budget limitations while their populations have increased.

South Carolina must address its challenges head on. The need for alternatives to incarceration, smarter use of correctional funding to deal with rising prison populations, fair and effective sentencing that make the punishment fit the crime, elimination of sentencing inconsistencies, transparency in sentences, and insufficient reentry mechanisms needed to be studied in more depth, and the following parts of the report explain how the Sentencing Reform Commission tackled the problems and proposed solutions.

Overview of Sentencing Reform Commission

The Sentencing Reform Commission met for the first time on February 11, 2009, to organize, discuss its mission and goals, and set a meeting schedule for the future months. Between February 2009 and January 2010, during more than fourteen meetings, the Commission heard from:

S.C. Department of Corrections
S.C. Department of Juvenile Justice
S.C. Department of Probation, Parole and Pardon Services
S.C. Commission on Prosecution Coordination
S.C. Public Defender Association
S.C. Association of Criminal Defense Lawyers
S.C. Attorney General Henry McMaster
S.C. Court Administration
S.C. Magistrates' representatives
S.C. Sheriff's representative
League of Women Voters
American Civil Liberties Union
S.C. Center for Fathers and Families
Chief Justice Jean H. Toal
Crime victims' representatives

Additional testimony and presentations were provided by Roger Warren with the National Center for State Courts, retired North Carolina Justice Tom Ross, several individuals with concerns about sentencing issues, and experts from the Pew Charitable Trust, the Crime and Justice Institute, and Applied Research Services, Inc.⁶

These groups presented an abundance of information, listing many of the problems facing South Carolina regarding the increase of repeat offenders, the overcrowding of the state and local correctional facilities, the increase of inmates incarcerated for non-violent offenses, the lack of available alternative sentencing options, and the impact of reduced funding on state and local governmental agencies. Many persons also offered solutions, centered on the three objectives of the Commission. In addition, with funding provided by the Pew Charitable Trust, the Commission held a two-day retreat in June 2009 in which eleven different speakers⁷ gave presentations on such diverse topics as the trends in criminal justice sentencing policies, evidenced-based principles and how they affect correction and sentencing policies, proactive community supervision programs, criminal justice treatment programs, prison release options, principles of offender reentry into society, an overview of Virginia's Criminal Sentencing Commission and the affect it has had on prison populations and reduction in recidivism, and crime victims' and survivors' needs and concerns.

⁶ See website, www.scstatehouse.gov/citizensinterestpage/SentencingReformCommission/SentencingReform.html, for presentations from all meetings.

⁷ *Id.*, for biographies of speakers at retreat.

Dr. John Speir with Applied Research Services, Inc., discussed the South Carolina data he obtained from the DOC, PPP, Court Administration, SLED, and SAC (Statistical Analysis Center), and what that data indicated were the reasons for the rising prison population, the increased numbers of persons under PPP supervision, the increased numbers of probation and parole revocations without a new crime being committed, what offenses brought the most new prison admissions each year to DOC, and what impact changes brought about by the three objectives of the Commission could have on these numbers.⁸

As a result of the information and potential solutions presented to the Commission, Senator Malloy assigned the Commission members and staff to three different Work Groups, each delegated to one of the specific statutory objectives of the Commission. Senator Malloy and staff attorney Katherine Wells oversaw coordination of the work products from the various Work Groups to prevent unnecessary duplications and communicated information to all of the members on the work in progress.

Work Group 1 was assigned to review current felony sentences to determine whether or not the classifications of various violent or non-violent offenses should be changed, and how classification changes could ensure fairness and certainty in sentencing, effective use of taxpayers' dollars, and protect the public's safety and obtain justice for victims. It was chaired by Rep. Murrell Smith, with Justice Beatty and Jonathan Ozmint as members, and staffed by J.J. Gentry and John Speir.

Work Group 2 was assigned to review the current parole system, determine what was working and what was not, and examine prison release mechanisms so that the public is protected, but offenders are successfully reintegrated into the community so that recidivism and victimization is reduced. It was chaired by Sen. Knotts, with Judge Konduros and Rep. Jennings as members, and staffed by Bonnie Anzelmo and Kristy Danford.

Work Group 3 was asked to review current alternatives to prison and determine what type of alternative sentencing systems, supervision strategies, and treatment programs work, what could be improved or added, such as community based centers and substance abuse programs, and what would work better to make certain that alternatives were available to appropriately identified offenders, so that adequate supervision and treatment would continue to protect the public at less cost than prison incarceration. It was chaired by Sen. Campsen, with Judge Keesley and Rep. Kelly as members, and staffed by Stephanie Nye and Kristy Danford.

All three Work Groups met numerous times over the summer and into the fall. Prior to the legislative adjournment, several Commission members participated in a panel discussion organized by the S.C. Policy Council on controlling correctional costs while protecting public safety. During the summer and fall, members of the Commission gave presentations to the 2009 Judicial Conference, the 2009 Public Defenders Conference, the 2009 Solicitor's Conference, the Charleston School of Law Criminal Law Society, the South Carolina Black Lawyers, the South Carolina Police Chiefs Association. Senator Malloy also presented a preview of the recommendations from the report at the 2010 South Carolina Bar Convention. Recommendations from each Work Group for inclusion in this report were presented to the full Commission in five different meetings between October 2009 and January 2010.

⁸ *Id.*, Dr. Speir presentations.

On January 6, 2010, a final public hearing was held, which allowed anyone to be heard who had comments in favor or in opposition to the recommendations. The Commission met again on January 11, 2009, and voted on its final list of recommendations, keeping in mind the ultimate objectives of reducing recidivism, providing fair and effective sentencing options, recommending a continuum of community based options as alternatives to incarceration, and using tax dollars wisely, so there would be a smarter use of prison beds and prisons would have bed availability for those offenders who should be in prison.

Sentencing Reform Commission Work Groups

This section explains the objectives and mission of each work group. The short summaries of the testimony presented on each of the objectives and the considerations of possible solutions are included to assist in understanding how the Commission reached its decisions on the final list of recommendations.

Work Group 1: Charged with reviewing and recommending appropriate changes to current sentencing guidelines for all offenses for which a term of imprisonment of more than one year is allowed.

The mission of Workgroup 1 was to recommend revisions to South Carolina's offense classifications that ensure fairness and certainty in sentencing, effective use of taxpayer dollars, public safety and justice for victims. Updating the sentencing and criminal offense laws is one part of a comprehensive and systemic revision of the criminal justice system. As noted above, many interested parties and stakeholders presented detailed information and suggestions for changes to the system. A short summary of the testimony demonstrated the following:

- **Judicial decisions:** Testimony from several sources indicated that a court's pronouncement of a sentence is often confusing to the public regarding the actual term of imprisonment the offender will serve. A judge often has limited discretion and options available to impose non-incarceration sentences for low-level and non-violent crimes. Often, the judge has little information related to the individual's risk of re-offense.
- **Offense classification:** There are several crimes in the violent crime category, which are not violent crimes. There are violent crimes, recently added to the code, which are not on the violent crime list. The list of crimes on the "no-parole" list ranges from serious violent offenses, such as murder, to non-violent crimes, such as possession of cocaine. Monetary values of property crimes have not been adjusted since 1993.
- **Drug offenses and sentences:** A number of low-level drug offenses, including first-time convictions, currently require prison sentences. There are 54 drug crimes classified as violent crimes. There are 88 drug crimes that prohibit parole. Many offenses now defined as trafficking have low thresholds for quantities of drugs and require long prison terms. Possession with Intent to Distribute crimes are based solely on the quantity of the drug possessed and do not require evidence of intent to sell.
- **Miscellaneous:** Low-level misdemeanor offenders are often sent to state prison despite receiving very short sentences. Work release is unavailable to many offenders, despite the fact that research shows recidivism and new criminal activity are less likely to occur if offenders are prepared for reentry, as opposed to being discharged after several years in prison with minimal skills or connections to obtain a job. Testimony and data demonstrated that offenders who used to be eligible for work release had lower recidivism rates than offenders now incarcerated for the same offense who are not allowed to participate in work release programs. For a variety of reasons, sufficient information regarding the costs and benefits of proposed criminal justice legislation is not provided to the legislature.

Based on this information and data, Work Group 1 examined statutory changes to ensure that violent offenders are adequately punished and incarcerated; to enable broader access to good time and parole eligibility for inmates serving non-violent sentences; and to make sentencing more consistent. The work group also investigated opportunities to improve the administration of justice and the law-making process so that better and more relevant information could be provided to judges, enabling them to clearly communicate the term of imprisonment at the time of sentencing. Finally, the work group determined the population and fiscal impact of each policy change, so that each recommendation could be used to determine the actual number of offenders affected by the changes, and the cost calculations of these changes.

Work Group 2: Charged with reviewing and recommending whether to maintain, amend, or abolish the current parole system.

Work Group 2's mission was to determine if they could identify cost-effective prison release methods, which would improve successful reintegration into society by inmates and improve public safety. After hearing from various stakeholders and experts in the field of corrections and supervision, Work Group 2 focused its attention on the mechanisms in place to prepare inmates for release, assess their risk and needs related to re-offending, and decide whether and under what circumstances to place them in the community under supervision. The work group examined the research and also how other states with problems similar to South Carolina had responded and found key areas that South Carolina should immediately address within the existing probation and parole system to improve public safety by reducing recidivism and the number of victims of released offenders. Testimony and data from stakeholders and experts can be summarized in the following points:

- “Max outs.” Data and testimony indicated that the majority of inmates leaving the state’s prison system (53 percent of inmates released in FY2009) had maxed out or completed their sentence. Offenders who max out often return to South Carolina communities without any form of post-release supervision or transitional services to facilitate their reintegration into society. State law actually discourages some inmates from applying for parole release because they can earn more good time by staying in prison and completing their sentences earlier than they might on parole. In doing so, the offenders avoid the requirement to be supervised in the community and subject to probation and parole agent monitoring, surveillance, court/board ordered conditions, and financial requirements. The work group determined that sending moderate and high risk offenders out of prison without supervision, monitoring, treatment programs and services that adequately address offenders’ risk and needs is counterproductive to public safety.
- Parole eligibility and approvals: South Carolina’s parole board has substantially cut the rate at which it releases inmates who are eligible for parole. The parole hearing approval rates have declined from 26 percent in FY2004 to 11 percent in FY2009. Out of 4,504 cases in FY2009, the board rejected nearly 4,000 eligible offenders and released 511. This represented only 3.5 percent of all inmates released. In fact, more than 1,000 inmates each year decline a parole hearing, instead preferring to await release at their “max out” date. These offenders will not have any parole supervision upon release. South Carolina’s parole grant rate is among the lowest in the country.

- Department of Probation, Parole and Pardon Services: The department makes vital public safety decisions that, in most states, are made with modern, research-supported diagnostic tools for determining a person’s risk of re-offense and criminogenic needs to be met to safely transition to the community. These decisions are made by a body whose membership includes persons experienced in the criminal justice field. In South Carolina, there are no professional qualification requirements for the director of PPP. Statutorily, there are no minimum qualifications or training requirements for parole board appointees or criteria for the appointing authority to consider. There is little training for parole board members. Data from the department indicated that 20 percent of the Board’s decision-making action consists of processing parole waivers, and 70 percent of its actions are parole denials.
- High-cost, high-need inmates: South Carolina currently incarcerates a number of inmates who have significant health needs due to their age and physical condition. Many are terminally ill, permanently incapacitated, or geriatric and pose no risk to public safety. The cost of maintaining constitutionally required care and supervision of this population is exorbitant. Because these individuals are in a state prison, the state is not eligible to receive federal reimbursement of the expense for this level of care.

Based on the research, data, and testimony, the work group considered changes in the parole board statutes, which would increase the knowledge and experience of the parole board and parole staff and ensure consistent and data-driven decisions based on objective public safety criteria; changes requiring that parole-eligible inmates who are not subject parole supervision will be placed on mandatory reentry supervision; and changes to medical release to reduce the exorbitant costs of providing legally required medical care for terminally ill, permanently incapacitated and low-risk geriatric inmates.

Work Group 3: Charged with reviewing and recommending guidelines for legislation for offenders for whom traditional imprisonment is not considered appropriate.

Work Group 3’s mission was to recommend cost effective and incentive-based strategies regarding possible alternatives to incarceration that would divert those correctly identified to community supervised programs and improve public safety by reducing recidivism and ensuring victim restoration. The work group examined what alternative programs existed in South Carolina that diverted low risk offenders from incarceration, and the research on identifying and addressing the risk and needs of offenders, so they would not reoffend. The work group heard from a large number of interested parties and experts regarding how a continuum of locally based options, such as community service, day reporting centers, restitution centers, and substance abuse treatment options, could be implemented within the next five years. From these presentations, the following information was provided:

- Evidence Based Practices. The work group heard a great deal from the Crime and Justice Institute about evidence-based practices. Evidence-based practices (EBP) in corrections are practices and policies that are informed by data and research to reduce new crime and new victims in the community. Through EBP, administrators and policy makers can know which policies and correctional practices and programs work to improve public

safety and are a prudent use of tax-payer dollars. EBP holds offenders and agencies accountable for public safety outcomes. There are eight core principles of EBP that have been proven to achieve these purposes if applied to individual offenders and across systems. These principles are: (1) assess actuarial risk/needs for factors most strongly linked to recidivism; (2) enhance intrinsic motivation; (3) target interventions; (4) skill train with directed practice by using cognitive behavioral treatment methods; (5) increase positive reinforcement; (6) engage ongoing support in natural communities; (7) measure relevant processes/practices; and (8) provide measurement/feedback. The work group learned that those jurisdictions that have adopted these practices have had a reduction in recidivism without a huge spike in costs.⁹

In conjunction with EBP, research shows that if certain criminogenic factors are identified and addressed, criminal behavior can be reduced and public safety can be improved. Research also demonstrates that focusing resources on moderate to high-risk offenders, instead of low risk offenders, yields improved public safety results. Considering offenders' risk to reoffend and subsequently addressing the specific needs that drive criminal behavior allows agencies to target limited resources more effectively. Criminogenic factors linked to recidivism include:

- Antisocial behavior patterns (criminal history)*
- Antisocial personality (callousness/impulsivity)*
- Criminal associates (antisocial peers)*
- Criminal thinking (pro-criminal thought processes)*
- Low levels of employment/education
- Dysfunctional family/marital relationships
- Poor use of free time (involvement in antisocial activities)
- Substance abuse (alcohol and/or drug abuse)

**Most strongly linked to criminality*

The most proven mechanism to assess risk and address needs is through the use of actuarial assessment tools that assess the dynamic and static factors discussed above. Currently, PPP and DOC use a variation of objective assessment to manage their populations, but these assessments do not include all of the factors most linked to recidivism or include those discussed above. DOC, like most correctional facilities, utilizes assessment processes for security and classification purposes. This is different from the ways community corrections agencies in most states utilize assessment and case planning processes in order to provide supervision and treatment necessary to reduce offender risk. The current tool used by PPP is not inclusive of the above described criminogenic factors.

- Alternatives to incarceration. Alternatives to incarceration that include supervision in the community as well as treatment and programs that address offender risk and needs are fundamental to changing criminal behavior and guiding inmates through the process of becoming productive, tax-paying citizens. However, in South Carolina, there exists no formal network of community based alternatives, and there are limited opportunities for

⁹ Crime and Justice Institute (2009), *Implementing Evidence Based Policy and Practice in Community Corrections*, 2nd ed., Washington, DC; National Institute of Corrections.

diversion from criminal prosecution. Offenders convicted of crimes in South Carolina are generally sentenced to prison or probation. Additionally, it was not possible to compile data for all arraigned cases where diversionary sentences were given, because there is no central data collecting agency for all of the diversionary programs.

The state's diversionary programs are typically for first-time, non-violent offenders and are controlled through the discretion of the local solicitors. There are some state funds provided, but most are funded through client fees and fines. These programs are limited in number and access. Even if a diversionary program exists in a circuit, it does not mean that each individual county in the circuit has the program. There is no centralized database to evaluate their effectiveness, and not all programs operate in the same manner. For example, some drug courts are available as diversion from prosecution and others are available as a sentencing option. There are also statutory provisions excluding certain offenders from diversion programs.

The research is clear. Certain programs and rehabilitative intervention strategies, when applied to a variety of offender populations, reliably produce significant reductions in recidivism. There is a rich body of research that describes correctional assessment, programming, and supervision strategies that lead to improved public safety outcomes. They are also more cost effective.

- **Administrative Sanctions.** Data from DOC and PPP showed that, in FY2009, PPP revoked 3,205 offenders to prison, accounting for 24 percent of all prison admissions. Of the 3,205 offenders PPP returned to prison through revocation proceedings, 2,109 were for technical violations (66 percent), meaning that the revocations were for violations of their probation or parole orders, but no new crime was committed. Current statutory law, PPP policy, and South Carolina case law restrict the ability of the department to respond to violations with swiftness and certainty. PPP maintains a policy which clearly defines violations in two categories, compliance or community safety and a process for violation proceedings. The department has the authority to respond to violations in a limited fashion. They have the authority to issue a verbal/written reprimand, increase reporting frequency and require substance abuse testing/treatment, education and vocational training in response to a violation(s). However, the addition of community service, electronic monitoring/curfew/GPS, extensions or modifications of the supervision period or revocation may only be ordered by a judge or parole board. This process typically includes significant delays from the point of violation to judgment, which diminishes the impact of the sanction. Given the amount of violations experienced by those under the supervision of PPP, the rate at which they return to costly prison beds and the extensive backlog of court cases, the work group was presented with information about alternate methods for responding to violation activity with swiftness and certainty. From data supplied by PPP and DOC, it is estimated that in five years, a 25 percent reduction in parole or probation revocations based on technical violations could result in cost reductions of more than \$3 million (estimating cost savings of \$10/day per violator). These savings could be averted to support other public safety policies recommended by the Commission.
- **Maintaining success in the community.** Testimony concerning behavioral changes that have been successful in other states indicated that behavior is often changed through positive reinforcement. Offenders who abide by the conditions of their supervision and

lead law-abiding lives do not need to be kept under supervision as long as those who do not. Currently, PPP is limited in the incentives it can offer. Sentence reduction credits in South Carolina only apply to offenders in prison and not to those under the supervision of probation or parole. Programs and services in the community that are effectively moving offenders toward a stable life outside of the criminal justice system are not rewarded for these outcomes. To provide an incentive for offenders to become law abiding, tax-paying citizens, it was suggested to the work group that a regular system of earned compliance credits for appropriate probationers or parolees would provide a clear and direct incentive for offenders to stay out of trouble and comply with the terms of their supervision. Over time, this incentive could assist in reducing the population supervised by PPP, so the department can focus its resources on those who pose the greatest public safety threats (moderate and high risk).

Based on the research, data, and testimony, Work Group 3 reviewed many types of risk and needs assessment tools, so that PPP and DOC could better identify the individuals more likely to benefit from the alternative programs and what types of interventions would be necessary. The work group also examined statutory changes that would offer incentives for compliance with supervision orders as well as allowing alternatives to incarceration for technical violations of those orders. The work group also realized the need for a continuum of services within communities to provide treatment and reentry programs, and the need for a central depository of information on current diversion programs when it could not obtain sufficient information to objectively analyze current diversion programs.

Detailed Recommendations List

The Commission, by a unanimous vote, compiled a complete package of recommendations in order to meet the objectives assigned to it. The recommendations are proposed to ensure that high-risk, violent offenders go to prison and serve longer sentences; that there is consistency in what offenses are classified as violent and which are non-violent; that offenders who are released from prisons do not disappear into South Carolina communities without any oversight; that current parole systems are strengthened through education and experience; that prison beds are not used by non-violent offenders who better perform under alternatives to incarceration; that a system of programs and services be put in place to address offender risk and needs to reduce recidivism, and that oversight continues to ensure performance with the objectives. Although the recommendations are grouped according to the three objectives of the Commission, they should be considered in their entirety, since each fulfills an objective only when examined in conjunction with all of the recommendations.

Ensure Justice and Make the Criminal Justice System More Accountable and Transparent

These recommendations cover many issues. They are proposed to provide consistency in classifications of offenses; improve consistency, certainty, and transparency in sentencing; ensure longer terms in prison for high-risk, violent offenders; and tailor sentences to the crime committed and the level of risk for re-offending.

Recommendation 1: Increase penalties for repeat offenders of “most serious” or “serious” crimes

Enact legislation to require a sentence of imprisonment for life without the possibility of parole, if a person is convicted of a most serious offense, pursuant to Section 17-25-45, and has one or more prior convictions for a “Most Serious Offense” or two or more prior convictions for a “Serious Offense,” all as defined by Section 17-25-45. Also, provide in the legislation discretion to the prosecutor on invoking serious offense and most serious offense sentencing.

Recommendation 2: Changes to Violent Crimes offense list to clarify list and make other changes to reduce recidivism

Enact legislation to add the following twenty four offenses to the Violent Crimes listing in Section 16-1-60: “Detonating a Destructive Device upon the Capitol Grounds” resulting in death with malice (§10-33-325(B)(1)); “Killing by Poison” (§16-3-30); “Killing by Stabbing or Thrusting” (§16-3-40); “Lynching in the 1st Degree” (§16-3-210); “Killing in a Duel” (§16-3-430); “Spousal Sexual Battery” (§16-3-615); “Producing, Directing, or Promoting Sexual Performance by a Child” (§16-3-820); “Lewd Act upon a Child under 16” (§16-15-140)(except that an offender is eligible to participate in the youthful offender program if evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for the offense resulted from consensual sexual conduct, provided the offender was 18 years of age or less at the time of the act and the other person involved in the act was at least 14 years of age at the time of the act); “Sexual Exploitation of a Minor First Degree” (§16-15-395); “Sexual Exploitation of a Minor Second Degree” (§16-15-405); “Promoting

Prostitution of a Minor” (§16-15-415); “Participating in Prostitution of a Minor” (§16-15-425); “Aggravated Voyeurism” (§16-17-470(C)); “Detonating a Destructive Device” resulting in death with malice (§16-23-720(A)(1)); “Detonating a Destructive Device” resulting in death without malice (§16-23-720(A)(2)); “Boating under the Influence” resulting in death (§50-21-113(A)(2)); “Vessel Operator’s Failure to Render Assistance” resulting in death (§50-21-130(A)(3)); “Removing or Damaging an Airport Facility or Equipment” resulting in death (§55-1-30(3)); “Failure to Stop when Signaled by a Law Enforcement Vehicle” resulting in death (§56-5-750(C)(2)); “Interference with Traffic-Control Devices, Railroad Signs, or Signals” resulting in death (§56-5-1030(A)(2)); “Hit and Run” resulting in death (§56-5-1210(A)(3)); “Felony DUI or DWUAC” resulting in death (§56-5-2945(A)(2)); “Putting Destructive or Injurious Materials on a Highway” resulting in death (§57-7-20(D)); and “Obstruction of a Railroad” resulting in death (§58-17-4090).

Enact legislation to amend the murder statute, Section 16-3-20, so that the sentence is changed from a mandatory minimum of “thirty years or life imprisonment” to “thirty years to life imprisonment,” and enact legislation to repeal certain obsolete statutes related to “Murder”, such as “Killing by Poison” pursuant to Section 16-3-30, “Killing by Stabbing or Thrusting” pursuant to Section 16-3-40, and “Killing in a Duel” pursuant to Section 16-3-430, which are rarely or never enforced.

Enact legislation to provide that a person under the age of 21 charged with certain selected violent crimes, such as “Armed Robbery” pursuant to Section 16-11-330(A), “Attempted Armed Robbery” pursuant to Section 16-11-330(B), or “Burglary 2nd degree” pursuant to 16-11-312, may still be eligible for a youthful offender sentence, but must serve a three-year minimum sentence.

Enact legislation to prohibit persons convicted of a violent crime, as defined to Section 16-1-60, from selling, purchasing, or possessing a firearm or ammunition.

Enact legislation to allow judicial discretion to sentence a controlled substance offender to an additional five years of imprisonment if the offender possessed a firearm during the commission of a controlled substance offense except a possession offense. In the legislation, require that the firearm was reasonably accessible to the offender in order for the enhanced penalties to apply.

Recommendation 3: Restructure controlled substance offenses

Enact legislation to allow for probation, suspension of sentences, parole, work credits, education credits, and good conduct credits for all non-trafficking controlled substance offenses, including “Possession”, “Possession with the Intent to Manufacture” (PWIM), “Manufacturing”, “Possession with the Intent to Distribute” (PWID), “Distribution,” “Possession with the Intent to Purchase” (PWIP), “Purchasing,” and proximity offenses.

Enact legislation to equalize all penalties related to controlled substance offenses involving crack, cocaine, or meth, which previously were not equalized.

Enact legislation to reduce the unlawful amount of ephedrine, pseudoephedrine, or phenylpropaneolamine from 12-28 grams, to 9-28 grams, for first offense “Possession” pursuant to Section 44-53-375(E)(1), and eliminate the mandatory minimum of three years for a conviction.

Enact legislation to provide time limits for use of possession offenses in subsequent offense sentencing, so that a possession of marijuana offense does not count as a prior controlled substance offense for purposes of enhancing the penalty on a subsequent controlled substance offense, unless the subsequent offense involves marijuana, and a conviction for a 1st offense Possession of marijuana offense does not count as a prior substance offense for purposes of enhancing the penalty on a subsequent controlled substance offense unless the prior offense occurred within five years from the date of the conviction or the release of the person from confinement, whichever is the later date. In the legislation, require that for all other first offense controlled substance offenses, the prior offense must have occurred within ten years from the date of the conviction or the release of the person from confinement, whichever is the later date.

Enact legislation to clarify the intent of the proximity to schools statute, Section 44-53-445, so that an offender must have actually committed or intended to commit a controlled substance offense within the proximity of a school, playground, or park in order for the person to be charged with a proximity offense. Include in the legislation that a person who is merely stopped by law enforcement for the offense within the proximity of the school, playground, or park without the actual intent to commit a controlled substance offense within the proximity of the school, playground, or park shall not be charged with a proximity offense.

Enact legislation to eliminate the suspension of a driver's license, pursuant to Section 56-1-745, unless the offender is a minor, for committing a controlled substance offense other than an offense for driving under the influence.

Recommendation 4: Assess controlled substance fees to support alternative substance abuse programs

Enact legislation to require a controlled substance offender to pay a special controlled substance offense assessment in addition to all other fines, fees, and assessments, and allocate the proceeds of the fee to support alternative sentencing programs for offenders with substance abuse issues. In the legislation, also allow a conditional discharge for all 1st offense controlled substance possession charges, including all Schedule II-V pharmaceuticals, pursuant to Section 44-53-450, and require that the person charged with the controlled substance offense pay a conditional discharge fee, and allocate the proceeds of the fee to support alternative sentencing programs for offenders with substance abuse issues.

Enact legislation to clarify existing language in Section 44-53-582, so as to provide that a judge can order, as part of sentencing, that a controlled substance offender reimburse applicable law enforcement agencies for money used by such law enforcement agencies to purchase controlled substances from the offender.

Recommendation 5: Coordinate drug schedules with federal law enforcement

Enact legislation to allow South Carolina's controlled substance schedules to automatically update when the federal schedule of controlled substances is updated.

Recommendation 6: Restructure or revise specific criminal offenses

Enact legislation to restructure by statute the degrees of assault and battery, including the existing common law and statutory offenses, so that the common law offense of "Assault and

Battery of a High and Aggravated Nature” is abolished, and the statutory offense of “Assault and Battery with Intent to Kill” (Section 16-3-620), is repealed. In the legislation, establish graduated offenses of “Assault and Battery,” to include “Attempted Murder,” “Aggravated Assault and Battery,” and “Assault and Battery,” with commensurate penalties.

Enact legislation to consolidate into one statute, specialized “Assault and Battery” offenses such as “Assault and Battery against School Personnel,” “Assault and Battery upon a Correctional Facility Employee,” “Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home Healthcare Worker,” “Aggravated Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home Healthcare Worker,” and “Assault and Battery against Sports Officials and Coaches” into the graduated offenses of “Assault and Battery.” In the legislation, provide the same penalties for all of the protected classes.

Enact legislation to restructure the degrees of “Arson,” pursuant to Section 16-11-110 as follows: a person who commits “Arson” resulting in the death of a person is guilty of “Arson in the First Degree” and must be imprisoned thirty years to life; a person who commits “Arson” resulting in serious bodily injury to a person is guilty of “Arson in the Second Degree” and must be imprisoned not less than three years nor more than 25 years; and a person who commits “Arson” resulting in bodily injury or simply damage to property is guilty of “Arson in the Third Degree” and must be imprisoned not more than fifteen years.

Enact legislation to reduce the penalty for the offense “Burglary in the Second Degree” (non-aggravating circumstances), pursuant to Section 16-11-312(A) from imprisonment for not more than fifteen years, to imprisonment for not more than ten years.

Enact legislation to require a more serious act than currently exists as an element in order for a person to be charged with “Disturbing Schools”, pursuant to Section 16-17-420. In the legislation, grant jurisdiction to magistrates for this offense.

Enact legislation to establish the offense of “Felony Driving under Suspension,” so as to provide enhanced penalties if a person causes serious bodily injury or death while driving under suspension.

Enact legislation that requires the Department of Motor Vehicles (DMV) to offer a “Driver’s License Suspension Amnesty” week on an annual basis. In the legislation, provide that during the amnesty period, a person who has had his or her driver’s license suspended may have the license reinstated without paying a license reinstatement fee. The amnesty period would not include a person who has had his or her license suspended for certain serious offenses such as “Failure to Pay Child Support”, “DUI” or “DWUAC”, “Reckless Driving”, and habitual traffic offender offenses.

Enact legislation to allow judicial discretion when a judge is sentencing a person to prison for a driving under suspension violation, pursuant to Section 56-1-460, to consider home detention as an alternative to imprisonment upon special qualifications, with the offender paying the costs of the home detention.

Enact legislation to grant magistrates jurisdiction over the offense of “Driving without a License,” pursuant to Section 56-1-440.

Enact legislation to establish a comprehensive “Failure to Return Property” statute, including these offenses: “Failure to Return Property to Libraries and Other Institutions” pursuant to Section 16-13-340, “Failure to Return Rented or Leased Property” pursuant to Section 16-13-420, and “Failure to Return a Video or Cassette Tape” pursuant to Section 16-13-425.

Enact legislation to increase the penalties for the offense of “Harboring or Providing Assistance to a Fugitive” pursuant to Section 16-5-50, from a fine of not less than \$50 nor more than \$1,000, or imprisonment for not less than three months nor more than one year, or both, to a fine of not more than \$3,000, or imprisonment for not more than three years, or both.

Enact legislation to change the name of the offense “Lynching” pursuant to Sections 16-3-210 and 16-3-220, to a more appropriate title such as “Assault and Battery by Mob”. In the legislation, restructure the degrees so that a person who commits “Assault and Battery by Mob” resulting in the death of a person is guilty of “Assault and Battery by Mob in the 1st Degree” and must be imprisoned thirty years to life; a person who commits “Assault and Battery by Mob” resulting in serious bodily injury to a person is guilty of “Assault and Battery by Mob in the 2nd Degree” and must be imprisoned not less than three years nor more than twenty-five years; and a person who commits “Assault and Battery by Mob” resulting in bodily injury is guilty of “Assault and Battery by Mob in the 3rd Degree” and must be imprisoned not more than one year.

Recommendation 7: Improve transparency and certainty in sentencing decisions and at bond and bail hearings

Recommend that all interested persons be provided the sentencing information necessary for sentencing in a manner that the offender, victim, lawyers, and public can understand, including, but not limited to, a description of the minimum and maximum imprisonment the offender must serve and how suspension, probation, parole, good time credits, etc., will impact the offender’s sentence. Encourage DOC to continue its efforts to create a website where this information may be easily obtained once all sentencing reports and other data pertinent to a conviction have been received.

Recommend that Court Administration provide all judges with a criminal law sentencing reference manual that would include, but not be limited to, general statistical information regarding sentencing and alternative sentencing options throughout the state. Judges could voluntarily review such information to be better informed as to sentencing practices for various criminal offenses and to learn about alternative sentencing options available for such crimes.

Recommend improved training for bail or bond setting judges, as well as for law enforcement, prosecutors, and public defenders, so that judges can make more informed decisions as to those persons who present high risks of absconding or further committing crime.

Enact legislation to require that the prosecutor or law enforcement officer appearing before the judge at the bail or bond hearing be required to provide judges with improved information, such as criminal records and current bail status, necessary to make more informed bail-setting decisions.

Recommendation 8: Protect and increase victims’ rights

Enact legislation so that victim restitution limits are increased to correlate with the civil jurisdiction limits of each applicable court. In the legislation, consider adding an automatic

inflation factor, a legislative review of the restitution limits every ten years, or an automatic increase when other jurisdictional limits are increased.

Enact legislation to add victim notification provisions to the “Youthful Offender Act” statutes.

Recommendation 9: Provide incentives for cooperation with law enforcement

Enact legislation similar to the proposed S.C. Rules of Criminal Procedure to allow for a reduction in sentencing or downward departure for an offender who, after sentencing, provides substantial assistance to a law enforcement agency, solicitors’ office, or the Department of Corrections. In the legislation, allow for a reduction in sentencing or “downward departure” for an offender who, after sentencing, provides substantial assistance to a law enforcement agency, solicitors’ office, or the Department of Corrections. “Downward departure” procedures would be modeled after proposed Rule 152(e) of the S.C. Rules of Criminal Procedure. In the legislation, upon the state’s motion made within one year of sentencing, the court could reduce a sentence if the person, after sentencing, provided substantial assistance in investigating or prosecuting another person, or provided aid to a Department of Corrections employee, volunteer, or other person who was in danger of being seriously injured or killed. In the legislation, upon the state’s motion made more than one year after sentencing, the court could reduce a sentence if the person’s substantial assistance involved: (A) information not known to the person until one year or more after sentencing; (B) information provided by the person to the state within one year of sentencing but which did not become useful to the state until more than one year after sentencing; (C) information, the usefulness of which could not reasonably have been anticipated by the person until more than one year after sentencing and which was promptly provided to the state after its usefulness was reasonably apparent to the person; or (D) aid to a Department of Corrections’ employee, volunteer, or any other person who was in danger of being seriously injured or killed. A motion made pursuant to this provision would be filed in the county where the offender’s case arose by that circuit’s solicitor. The State would send a copy to the chief judge within five days of filing. The chief judge or a circuit court judge currently assigned to that county would have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion would not be limited to the original sentencing judge.

Recommendation 10: Correlate property crimes to value of property

Recommend studying property crime value limits and penalties to determine if such limits and penalties should be changed to reflect current values and sentencing.

Strengthen Release and Supervision Decisions

These recommendations are proposed so that existing provisions for parole and probation that are successful are maintained, but changes are proposed to other provisions in the probation and parole system, where needed, so there is more likelihood of successful reintegration through cost-effective prison release mechanisms that assist in reducing repeat offences and improving public safety.

Recommendation 11: Increase the knowledge and expertise of parole board and staff

Enact legislation to retain existing law that provides for the Governor to appoint the Director of the S.C. Probation, Parole and Pardon agency and the parole board members, and require that the director of the PPP have a degree from a four-year accredited college or university, and at least ten years experience in criminal justice, probation, parole, or other correction-related field, and that the at-large Parole Board member have a background in criminal justice, probation, parole, or other correction-related field.

Enact legislation to amend existing law requiring training for parole board members by requiring a specified amount of training per year and that the training must parallel national standards for parole board training.

Enact legislation to require the Parole Board to develop a plan to include the following: a process for institutionalizing a validated actuarial risk and need assessment tool consistent with evidence-based practices and factors known to drive criminal behavior to guide parole decisions; a description of how this assessment tool will be used to guide release decision making and set conditions of parole; definitions of additional objective criteria that will go into the parole decision-making process and the way that the final decision will be reached; and an establishment of data-driven goals for the board and PPP, which should include training expectations, mechanisms to ensure the assessment tool is implemented with quality, and performance indicators. The legislation should include a requirement that the agency must report back to the oversight commission that is included in Recommendation 22, and that penalties would be implemented for failure to comply.

Recommendation 12: Expand the use of Evidence-Based Practices in probation and parole supervision

Enact legislation to require parole and probation officers to use assessment tools consistent with evidence-based practices, as explained in more detail in the overview portion of the report, so that processes are instituted to ensure appropriate reentry supervision of all inmates, based on objective criteria, and reduce the risks to South Carolina communities when offenders return without adequate preparation or supervision. The legislation must include provisions so actions that drive criminal behavior can be more accurately identified before an offender is paroled or placed on probation and so that the risk and criminogenic needs are identified and supervision and treatment decisions can best be determined, based on objective public safety criteria.

Recommendation 13: Mandate reentry supervision of all inmates

Enact legislation to require that no inmate who is housed at a state correctional facility is released without mandatory reentry supervision. When applicable, inmates would be paroled under current parole eligibility guidelines and placed under appropriate reentry supervision at that time. The legislation would provide that those who were denied parole and all other inmates, at least 180 days before their max-out date, or for sentences of less than five years, a percentage of time of their sentence, would go through mandatory reentry supervision to be conducted by DOC or PPP, whichever agency would be appropriate. The offenders under the mandatory reentry supervision would not be supervised for a period that exceeded the sentence imposed by the court. Those inmates who were sentenced to “time served” would not be subject to the mandatory supervision requirements.

Enact legislation to allow appropriate inmates convicted of certain selected violent offenses, such as “Kidnapping” (§16-3-910), “Voluntary Manslaughter” (§16-3-50), “Armed Robbery” (§16-11-330(A)), “Attempted Armed Robbery” (§16-11-330(B)), “Burglary in the Second Degree” (§16-11-312(B))(aggravating circumstances) or “Carjacking” (§16-3-1075) to be eligible to participate in work release programs if the person is within three years of release from imprisonment and the crime did not involve any criminal sexual conduct or any other “Violent Crime.” This change will assist with an inmate’s reentry into the community and will reduce recidivism, in coordination with recommendations on mandatory reentry supervision.

Recommendation 14: Special parole for qualified terminally ill or geriatric inmates

Enact legislation to add to existing laws the definitions of “terminally ill,” “permanently incapacitated,” “geriatric,” and other appropriate terms so that specific requirements are met to be eligible for this special parole, which would be distinguished from furloughs currently allowed by law. The legislation would require that only the DOC director could petition for the parole of the inmate, and that a DOC physician and specialist would have to provide evidence to support the DOC petition, and that the full parole board would have to hear the matter. The legislation would also require that the inmate was on parole, not furlough, and would require an annual rehearing before the full parole board with updated physician reports to substantiate the health conditions that are the basis for the special parole.

Effective Alternatives to Incarceration

These recommendations propose to increase the effectiveness of the corrections system in South Carolina by providing cost-effective and incentive based strategies for alternatives to incarceration in order to reduce recidivism but maintain public safety.

Recommendation 15: Establish a continuum of options for community based treatment and programs

Enact legislation to require centralized reporting of current diversionary programs, such as drug courts, alcohol education programs, traffic education programs, mental health courts, worthless check units, pre-trial interventions, and juvenile arbitration by the Commission for Prosecution Coordination, to determine what programs currently exist, the effectiveness of the programs, and what is needed, through statutory enactment or funding, to expand or eliminate each program, since the only diversion program that has available statewide data is the pre-trial diversion program. The legislation must include requirements that any service or program that is expanded or funded must be based on offender risks and criminogenic needs, and include specific interventions that target criminogenic factors.

Enact legislation to require training of parole and probation officers on evidence-based practices to influence reductions in recidivism.

Recommend further study of criminal law mediation or arbitration to see if practices similar to juvenile arbitration could be applied to adult criminal matters, and that the SC ADR Commission be requested to study this matter and report back to the oversight commission referenced in the systemic changes recommendations.

Recommend that day reporting centers and restitution centers be combined and that funding be made available to those centers that provide programming consistent with evidence-based practices to address risks and needs.

Recommendation 16: Validate and examine existing assessment tools

Enact legislation to require PPP to adopt assessment tools designed with evidence-based practices that also target criminogenic need factors. Recommend that PPP examine its currently used assessment tools to determine if they would satisfy evidence-based practices and the criminogenic needs factors if the tools were validated and normed, by a method selected by the executive director with advice from outside consultants, if possible. Recommend that PPP may purchase a tool, obtain a free tool from another jurisdiction, or create a tool, so long as the assessment tools use evidence-based practices and include criminogenic need factors.

Recommend funding for examination and validation of assessment tools currently used by probation and parole officers and, consideration of implementation of a new assessment tool.

Enact legislation to require an actuarial assessment of offender risks and needs to make objectively based decisions on the offenders who would benefit from remaining in the community without endangering public safety and to determine supervision and services necessary, consistent with evidence based practices, for those on supervision.

Recommendation 17: Expand administrative sanctions for technical violations

Enact legislation to define technical violations of probation and parole and authorize appropriate administrative sanctions that are immediate and certain, but proportionate to the violation, including, but not limited to community service, enhanced supervision, or home detention.

Enact legislation to require that parolee and probationers' technical violation revocations to prison be reduced by 25 percent within five years from the FY 2009 baseline.

Recommendation 18: Earned compliance credit

Enact legislation to allow probationers and parolees who are sentenced to at least one year under the supervision of PPP to earn a reduction of their time on active supervision by up to twenty days for each month of compliance with the conditions of the probation or parole order.

Recommendation 19: Extend probation sentences

Enact legislation to allow judicial discretion to either extend probation past the current five-year limit on a case-by-cases basis, or in cases where the only term of probation not completed is the restitution payment, to allow for continuing administrative supervision of the offender until restitution is completed, or consent order of offer of judgment is filed.

Recommendation 20: Implement mechanisms to facilitate reentry to communities

Enact legislation to provide mechanisms to facilitate appropriate offenders' transitions back to communities to allow them to become taxpaying citizens, by assisting them in obtaining identification cards that are necessary to obtain a job. The legislation should consider codifying a Memorandum of Agreement, created in 2001, in accordance with budget proviso 72.87, which is an agreement between DOC, DMV, and PPP to work together to provide DMV-issued identification cards to inmates who wish to possess one upon their release in order to facilitate re-entry.

Recommend that DOC and PPP coordinate with regional technical schools on instituting an employment eligibility program to certify appropriate individuals on work skills and work eligibility to make it easier to obtain a job during or after probation or parole.

Recommendation 21: Performance Incentive Funding

Recommend that the General Assembly develop a funding process and schedule that ensures limited resources are being diverted to agencies and service providers that support evidence based practices and the objectives of the Commission.

Recommendations for Systemic Changes to Assist All Objectives

Systemic changes were proposed by the Sentencing Reform Commission to assist in implementation of the recommendations.

Recommendation 22: Continue the existing Sentencing Reform Commission

Enact legislation for a continuing free standing Sentencing Reform Commission, composed of legislative, executive, and judicial members, as a continuing organization to monitor and report back to the General Assembly on the performance of the Report recommendations, the implementing legislation, and to make additional recommendations to the General Assembly on future legislation and policy options.

Recommendation 23: Encourage universal system of coding and collecting data on offenses, sentences, corrections, and releases.

Recommend that all state and local agencies, including but not limited to DOC, PPP, SLED, and the South Carolina Judicial Department, begin coding data in the same formats, so there is consistency in the data as to the type of offense that has been committed, the Code Section under which the crime is prosecuted, the sentence that is ordered, and the sentence that is served. Ensure that the current DOC coding systems are supplemented and not replaced, so that the additional offense coding collected by DOC is not omitted, and that, for all agencies, there is no loss to the information that is currently collected.

Recommendation 24: Require more detailed and timely Fiscal Impact statements

Enact legislation to require that a Fiscal Impact Statement (FIS) be requested automatically upon introduction of a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing criminal offense. Also, require a minimum amount of time, such as 12 legislative days or 30 calendar days, for preparation of the FIS. As well, strengthen the Office of State Budget's authority to require the submission of information from state agencies so the FIS more accurately reports exactly what state agencies report as the fiscal impact for the agencies. Finally, recommend that the Office of State Budget request fiscal impact information from non-governmental agencies and organizations, such as the South Carolina Sheriffs' Association, that are affected by criminal legislation.

Issues, Ideas, Concepts, and Solutions Not Adopted by Sentencing Reform Commission

There were many ideas, issues, concepts, and possible solutions to problems that were presented to both the Sentencing Reform Commission and the different Work Groups in the many meetings that were held from February 2009 to January 2010. For a variety of reasons, not all were adopted as a recommendation for the Final Report. However, in an effort to make this report useful for the long-term, as well as for the immediate time period, the Sentencing Reform Commission has decided to include this section in the report itemizing, and in some instances, giving details on those ideas and issues that were not adopted as recommendations. The following list was not voted on by the SRC and is not arranged in any special order.

1. The Commission does recommend continuing the Sentencing Reform Commission, but did not recommend establishing the Commission as an independent stand-alone entity. The Commission considered other types of entities including an oversight body to manage and assess the implementation of the Commission's recommendations or a criminal justice coordinating commission composed of appointees from DOC, PPP, legislators, courts, solicitors, public defenders, private bar, crime victim advocates, former offender, sheriffs, researchers and full time staff. The proposals considered would have tasked the entity with overseeing the implementation of the recommendations of the Sentencing Reform Commission; collecting the data and tracking implementation efforts and evaluation; developing a uniform, statewide reentry plan; further studying the YOA issue and any other significant populations who represent a significant portion of offenders returning to prison; identifying short-term goals as well as long-term oversight and management responsibilities for ongoing improvement to the criminal justice system in South Carolina.
2. Controlled substances offense change: Provide that a person who has committed a controlled substance offense, which is not punishable by a mandatory minimum of 25 years or more, is eligible to participate in home detention programs. (See H. 3976, introduced in 2009-10 session).
3. Make bail more restrictive: Provide that a person who, while released on bail pending trial, is accused in this State of a violent offense shall have bail revoked and denied pending trial if a judge during a hearing in this State determines by a preponderance of the evidence that the person violated a condition of release relating to the safety of the community or the safety of any other person. (See S. 5, introduced in the 2009-2010 session). Consider adding being accused in this State of a controlled substance offense. Also, provide that a court, in determining conditions of release on bail, shall consider any charges pending against the accused, and whether the accused is lawfully present in the United States and poses a substantial flight risk. If a person has been previously released on bail pending trial and during his release is charged with a violent offense, and the court finds by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the appearance of the person as required or the safety of any other person and the community, then the court shall deny release of the person pending trial. (See S. 6, introduced in the 2009-2010 session).

4. Judicial risk assessments: Develop a voluntary risk assessment tool for judges to utilize in making bail decisions. The tool would assist judges in making more informed decisions as to those persons who present high risks of absconding or further committing crime.

5. Fiscal Impact Statements: Require that a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing criminal offense that is reported out of the House or Senate Judiciary Committee be submitted to the House or Senate Finance/Ways and Means Committee, as applicable, for review before being placed on the House or Senate calendar for second reading. Also require that a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing offense be introduced in the House or Senate, as applicable, by the first day of the legislative session.

6. Prisoner Housing: Provide that someone who commits a non-violent, low level, misdemeanor offense and is sentenced to less than 180 days, or 365 days, must remain in local detention facilities for the remainder of the person's sentence.

7. Changes to specific criminal offenses that were not adopted:

A. Increasing penalties for cockfighting: Provide that a person who engages in, is present at, or possesses birds for the purpose of "Cockfighting" is guilty of a felony and must be fined \$500-\$1,000 or imprisoned six months to five years for a first offense; or felony and fined \$1,000-\$3,000 or imprisoned one to five years for a second or subsequent offense. Also, remove the exception for "game fowl testing." Finally, allow for forfeiture of monies, negotiable instruments, and securities specifically gained or used to engage in or further "Cockfighting" for first and subsequent offenses. (See. H. 3227 introduced in the 2009-10 session).

B. Changes to Controlled Substances possessions laws: Require probation or other non-prison sanctions for first time, and possibly second time, controlled substance "Possession" violations, particularly if the risk level is low. Require actual intent to distribute as an element of "Possession with the Intent to Distribute" (PWID). Restructure the offense of "Possession with the Intent to Distribute" (PWID) to read like "Trafficking" (i.e. call it "Possession of a Distributable Amount" (PDA)) regardless if the person claimed the controlled substance was for personal use. Have a threshold of more than 1 gram but less than ten grams of cocaine, crack, and meth, and two grains of heroin. The marijuana threshold could be more than 1 ounce but less than ten pounds. The statute should read to allow for the prosecution to make the argument for PWID even though the weight is not present. The argument can be made using other evidence found at the scene of the crime (i.e. baggies, scales, money, etc.). Additional consideration needs to be given to the threshold amounts.

C. Restructuring the penalties for controlled substance trafficking laws.

D. Establish controlled substance "Trafficking" offenses for all narcotic pharmaceuticals and some non-narcotic pharmaceuticals.

E. Expand "Accommodation" to include meth, crack, Schedule I (b) and (c) narcotic controlled substances, LSD, and Schedule II narcotic controlled substances.

F. Establish enhanced penalties for the "Distribution" of controlled substances resulting in serious injury or death.

G. Establish a new felony offense or enhanced penalties for a person who uses the USPS, UPS, Fed Ex, etc., to ship controlled substances or proceeds of the same. The language would have to include shipping, receiving, or aiding in anyway.

H. Provide that the offense of “Disturbing Schools” does not apply to a student, teacher, or other employee while on the premises of the school where he or she is enrolled or employed, or in the alternative, repeal the offense entirely.

I. Establish statutory degrees of “Robbery” and “Attempted Robbery.”

J. Adjust the age limit for participation in the “Youthful Offender Act” (YOA) program.

K. Classify criminal domestic violence as a violent offense, pursuant to the listing of Section 16-1-60.

L. Reduce the penalty for the offense of “Unlawful Carrying of a Handgun” pursuant to Sections 16-23-20 and 16-23-50, from a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both, to a fine of not more than \$500 or imprisonment of not more than 30 days, or both.

8. Provide judges with a two-tier voluntary risk assessment tool to use for post-conviction sentencing of non-violent offenders who would otherwise go to prison. The tool would assist judges in making more informed decisions as to those persons who should go to prison and those persons who should receive some form of alternative sentencing.

9. For any sentencing reference manual used by the judiciary, include input from the South Carolina criminal victim services community.

10. Require a circuit court to determine if a request for medical or geriatric furlough from the Department of Corrections was acceptable. Also prohibit the appeal of a denial of medical or geriatric furlough, but allow a prosecutor to appeal the grant of the furlough.

11. The Commission recommended that the at-large Parole Board member have a background in criminal justice, probation, parole, or other correction-related field, but did not recommend that all Parole Board members have a degree from an accredited university or college, nor did it change the appointment process of the Parole Board to allow the at-large parole board member be appointed by the chairman of the parole board. Also, the Commission did not require PPP to include in its plan what practices PPP would use to improve public safety.

12. Eliminate parole in South Carolina and add a “middle court system” to the judiciary for non-violent offenders. Offenders would be referred to the middle court, where their sentence would be suspended and the offender would have to complete three stages of gradually less frequent court hearings and support group meetings.

13. Use Hawaii’s Opportunity Probation with Enforcement (HOPE) program, especially the special court, to re-engineer the probation enforcement process. In HOPE, the probationers attend a warning hearing where the judge advises them that they have been assigned to HOPE because of their poor record on probations and that they will have to comply with the terms and conditions of HOPE or face immediate sanctions. Probationers report to court only if they are

charged with a violation. Seventy percent of all sanctions are imposed within 72 hours of the violation.

14. Conditional Post-Conviction Release Bond Act: Proposed model legislation presented by Senator Mike Rose, obtained from the American Legislative Exchange Council (ALEC), was offered as an alternative to current laws allowing furloughs of inmates under certain conditions. The proposed legislation would allow appropriately selected inmates to be released from confinement and would use performance bonds and security and indemnity agreements with family members to keep participants from committing new crimes and assure their prompt return to custody if the terms of the performance bonds or indemnity agreements were violated. The performance bond could contain requirements such as house arrest, drug testing, recovery program participation, mandatory reporting requirements, non-interference with witnesses or victims, maintenance of gainful employment, payment of restitution, and no subsequent arrests. The process would also mandate family members' participation by requiring them to be parties to the indemnity agreements, in order to possess a monetary incentive to encourage compliance by the participant.

15. The Commission recommends the creation and use of a central database of diversion programs, but did not require that outcomes be analyzed and performance standards set for community based programs so that only programs with a certain percentage of successful graduates will be continued and funded. The Commission also did not recommend that one agency be tasked with collecting a database of all diversion programs, treatment programs, supervision programs, and reentry programs, although it noted that many programs are scattered throughout the state, and there is no database containing all governmental, private, and faith-based initiatives that serve the community supervised offenders.

16. Broaden the PPP directory of preferred service providers, so that the information is not limited to information submitted by the providers, but includes the type and quality of these services, evaluated pursuant to evidence based practices.

17. Expand funding to enhance the current information technology infrastructure of PPP to house the assessment results, provide evaluation to determine predictive validity, regularly report on its effectiveness and accuracy, and provide evidence for future policy direction.

18. The Commission does recommend expanding administrative sanctions for technical violations of probation or parole, but did not include short periods of incarceration similar to what Oregon and Georgia have instituted as part of their administrative sanctions. Similarly, the Commission does recommend earned compliance credits, but did not recommend that PPP be given sole responsibility for setting the terms.

19. Implement a system across the state over the next several years that includes: (1) evidence-based practices; (2) an array of interventions that are evidence-based and other necessary services in the community to target the factors that contribute to criminal activity; and (3) centralize management and oversight to collect and analyze data, conduct evaluations and provide feedback to insure these practices are implemented as intended and agencies are held accountable to achieve the desired outcomes.

20. Establish a competitive grant program for community corrections designed to increase public safety and reduce the risk of offenders in community supervision, similar to one instituted by Kansas. Grant requirements should include criteria such as the use of assessment instruments, targeting resources on moderate and high risk offenders, the use of swift and certain responses to violations, treatment services to mitigate offender risk and needs, staff training, and accountability system.

21. Crime victim impact statements (VIS) and the process to develop and distribute statements must be improved so that all relevant parties have the information necessary to make appropriate decisions. A standardized letter for VIS should be developed and used statewide that details the importance of VIS information; how it is reviewed and used; and its importance as a valued adjunct source of information to accompany offender risk assessment data. This will also provide the opportunity for crime victim advocates to work closely with crime victims and survivors to assist them through the prisoner's release period; identify and assess their most important needs related to information, notification, protection/safety, restitution and other issues and concerns; and develop a case plan to address their most important needs, and link them with appropriate support and services.

22. South Carolina crime victim advocates, based in solicitors' offices, should receive training about the important role of VIS information in sentencing and effective offender management. A copy of the sentencing order should be made available by the court to victims/survivors at no cost to them.

23. Existing law regarding VIS, especially Section 16-3-1555(c), must be enforced so that the prosecuting agency maintains the VIS, and does not provide it to the defendant until after the defendant has been adjudicated, and all parties and the court must be reminded that by law, the VIS and its contents are not admissible as evidence in any trial.

24. Study alternative funding mechanisms for community corrections programs, so that PPP and other agencies do not rely on monitoring fees for funding their programs. PPP should identify a reasonable level of fees to be collected from offenders, and other methods of funding the agency should be used so that the agency is allowed to focus more on changing offender behavior instead of focusing on surveillance.

Conclusion

South Carolina faces critical problems with increasing numbers of repeat offenders, costs of increasing prison populations, the financial costs of building new prisons, insufficient alternatives to incarceration, and a probation and parole system that is inadequately trained and ill equipped with the tools to best utilize their resources.

The detailed Recommendations List provides the majority of conclusions from the Sentencing Reform Commission, but they are only the beginning. The Commission intends to introduce legislation to implement many of the recommendations.

If all recommendations are enacted and fully funded, instead of facing additional five-year operating costs of \$141 million, the state may save as much as \$92 million from diversion of non-violent offenders from prison beds to more appropriate and cost-effective forms of supervision. More importantly, enactment and funding of these recommendations may also be the key to turning offenders who now pose a tax burden into tax-paying contributing members of society.

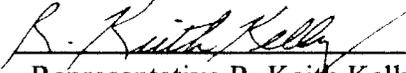
The Commission acknowledges that, in the current economic climate, many of the funding requests and changes in methodology may not be immediately available. However, it is imperative that they not be forgotten. It is only through a systemic and total review of all of the correctional system that whole-sale changes can be made for the better and with no unintended consequences.

As stated previously, the Commission's ultimate goals are to make South Carolina better and safer; reduce recidivism and the revolving door to the prisons; provide fair and effective sentencing options, use tax dollars wisely, and improve public safety by ensuring that prison beds are available for violent offenders who need to be in prison and remain in prison. We believe the strategies we propose in the report meet that challenge.

RESPECTFULLY SUBMITTED,



Senator Gerald Malloy, Chair



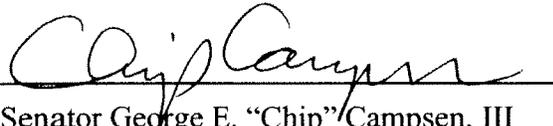
Representative R. Keith Kelly



Senator John M. "Jake" Knotts, Jr.



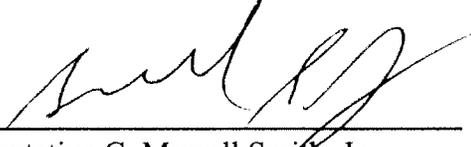
Justice Donald W. Beatty



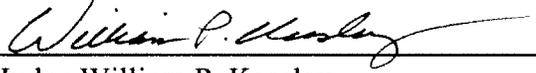
Senator George E. "Chip" Campsen, III



Judge Aphrodite K. Konduros



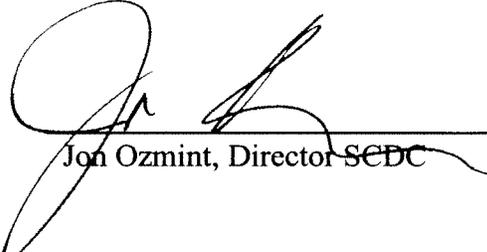
Representative G. Murrell Smith, Jr.



Judge William P. Keesley



Representative Douglas Jennings, Jr.



Jon Ozmint, Director SCDC