



**PAC** Prosecuting  
Attorneys'  
Council of Georgia

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# 2017

## RECIDIVIST REVIEW PROJECT



## Table of Contents

History and Purpose.....	3
Law Review.....	3
Results .....	4
Augusta.....	4
Clayton.....	4
Conasauga.....	4
Cordele.....	5
Douglas.....	5
Gwinnett.....	5
Middle.....	5
Rome.....	5
Southwestern.....	6
Stone Mountain.....	6
Tifton.....	6
Western.....	6
Conclusion.....	7

## History and Purpose

In the spring of 2017, the District Attorneys' Association of Georgia (DAAG) engaged the Prosecuting Attorneys' Council of Georgia (PAC) to gather information from the Georgia Department of Corrections (GDOC) about inmates under recidivist sentences where the actual sentence was for a drug offense and the defendant had received more than ten (10) years in prison.

The GDOC provided PAC a list of 274 currently incarcerated offenders who met the criteria. Thirty-seven (37) of the forty-nine (49) Georgia judicial circuits had at least one offender on the list. The sentences ranged from twelve (12) years to Life without Parole (LWOP) with an average sentence of twenty-six (26) years. One hundred (100) of the 274 offenders were serving a sentence for sale or possession with intent to distribute cocaine, twenty-seven (27) were serving a sentence for sale or manufacturing of methamphetamines, and another twenty-six (26) were serving a sentence for sale or possession with intent to distribute marijuana.

PAC distributed the information received from GDOC to the District Attorneys for review. The District Attorneys were to evaluate each case and determine whether or not any warranted a sentence modification based on current sentencing policies and, among other factors, the nature of the crime committed, the criminal history of the offender, and the length of the original sentence. To fully appreciate the nature of the offenders under consideration one needs to understand the law related to the punishment of repeat offenders.

## Law Review

Under the provisions of O.C.G.A. §17-10-7 (c), "any person who, after having been convicted under the laws of this state for three felonies...commits a felony within this state shall, upon conviction for such *fourth offense or for subsequent offenses*, serve the maximum time provided...and shall not be eligible for parole until the maximum sentence has been served." All offenders on the list provided by GDOC were serving a sentence for at least their fourth felony conviction.

Recent changes to O.C.G.A. §42-9-45 (b), as a result of Criminal Justice Reform measures, now makes a certain class of drug offenders serving a recidivist sentence eligible for parole consideration after twelve (12) years, regardless of the length of the sentence handed down by the court. Offenses include manufacturing, delivering, distributing, selling and possession with intent to distribute cocaine, methamphetamines and other schedule I and II drugs. The changes in this area provide for a detailed list of criteria that must be present before an offender would qualify for such consideration. The new law allows consideration after six (6) years for repeat offenders who are sentenced to possession of these same substances.

In light of these significant changes in policy, the District Attorneys of Georgia believed this exercise was necessary to ensure that no offender who could have technically qualified for these new considerations for parole was not serving an unreasonable sentence. The District Attorneys also believe that a detailed analysis of this population would discredit any claims that low level drug offenders are still serving significant prison sentences in this state. The District Attorneys believe that this review will show that the overwhelming majority of repeat offenders serving prison sentences in this state are, in fact, justified and warranted given the nature of the offense and the criminal record of those offenders.

## Results

At the conclusion of the project, PAC received responses from twenty-eight (28) circuits.<sup>1</sup> An overwhelming majority of the reviews found that no modification of the sentence was warranted. Several District Attorneys provided synopses of their reviews:

### Augusta

District Attorney Natalie S. Paine provided feedback on three (3) unique cases:

1. The first case was listed as a recidivist sentence inaccurately. This case actually involved the manufacturing of methamphetamines that was eligible for parole. Upon further inquiry, it was determined that this sentence was concurrent with a parole revocation by the Parole Board on another case.
2. The second case involved a 30-year sentence for possession of cocaine with intent to distribute. However at least one of the inmate's prior felony convictions was for the offense of Aggravated Battery, an enumerated serious violent felony where the offender "maliciously causes bodily harm to another by depriving him or her of a member of his or her body, by rendering a member of his or her body useless, or by seriously disfiguring his or her body or a member thereof."
3. The third case involved multiple prior drug offenses. The information provided showed the offender on a 40-year sentence under the recidivist provision. Upon further inquiry, DA Paine found that the judge sentenced this repeat offender to serve only 10 years of the 40-year sentence in prison for possession with intent to distribute marijuana and subsequent to his sentencing on this offense, the offender had several concurrent and unrelated sentences revoked at the same time.

Upon review, the inmates identified did not warrant a sentence modification.

### Clayton

District Attorney Tracy Graham provided feedback on two (2) unique cases.

- In the first case, she initiated the process that ultimately led to the release of the offender who had served 17 years for Simple Possession of Cocaine and had no disciplinary reports.
- Her review of the second case found an offender that went to trial and was found guilty for selling methamphetamines. The offender had five (5) prior felony convictions, four (4) prior misdemeanor convictions, and two (2) prior probation violations. This case did not warrant a sentence modification.

### Conasauga

District Attorney Bert Poston reviewed six (6) cases from his circuit. He found that five (5) of the cases were currently serving what he believed to be appropriate sentences considering the nature of the offense and the criminal history of the offender. Two of the cases involved career criminals with multiple felony convictions that were used to support their

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<sup>1</sup> As of the date of this publication, the remaining circuits identified as having at least one offender under a recidivist sentence are pending review.

current recidivist sentences. However, one case he believed warranted revisiting. This 1994 conviction for Sale of Cocaine revealed prior possession charges, but no other violent record. At the time of review, the offender had served twenty-three (23) years of his sentence. DA Poston contacted the Southern Center for Human Rights and, working with them, filed an extraordinary motion for new trial to set aside the prior conviction and sentence. The offender entered a guilty plea was then sentenced for the charge again but this sentence involved time served (23 years) plus 2 years' probation (for transitional services, no fines or community service or other punitive elements). DA Poston found that the offender had strong family support and they were making sure he had a place to live and work before he was released. As of this report the offender has been out of prison for about four (4) months and was complying with the terms of his release.

### Cordele

District Attorney Brad Rigby reviewed seven (7) cases from his circuit and found that each of the cases warranted the sentences received under today's standards. The cases from this circuit included one offender under a twenty (20) year sentence for the offense of Riot in a Penal Institution, Felony Obstruction of an Officer, and Aggravated Assault, with six prior felony convictions which included Robbery, two (2) separate Sale of Cocaine charges, and one Aggravated Assault.

### Douglas

District Attorney Brian Fortner reviewed a total of fourteen (14) cases. He found the vast majority of those cases were appropriate sentences which involved drug trafficking, sale of illegal drugs, or violent criminal records. He did find two cases that warranted reconsideration. He reduced the sentence and made it non-recidivist for one offender who possessed less than a gram of Cocaine. DA Fortner also reduced a sentence and made it non-recidivist for an offender charged with Attempt to Possess a Controlled Substance.

### Gwinnett

District Attorney Danny Porter reviewed the case identified from the Gwinnett Circuit and found that the inmate was not in fact under a recidivist sentence. The Offender is currently serving a 16-year sentence for Possession of Methamphetamine. She has multiple prior felony drug convictions and one 1<sup>st</sup> Degree Vehicular Homicide as a result of her being under the influence of an illegal drug. Upon review, DA Porter determined the sentence to be justified based on the aforementioned criteria.

### Middle

District Attorney Hayward Altman reviewed the cases identified from the Middle Circuit and found that all sentences were appropriate and did not warrant a sentence modification. One offender had eight (8) prior felony convictions, several had five (5) or more convictions and the rest of the offenders listed from the Middle Circuit had more than three (3) prior convictions to warrant recidivist treatment.

### Rome

District Attorney Leigh Patterson reviewed the fifteen (15) cases identified from the Rome Circuit and found that all the sentences were appropriate and did not warrant a sentence modification. Her review found one offender received a recidivist sentence for Sale of Cocaine and his prior convictions included Robbery, False Imprisonment, and two (2)

separate Burglaries. The offenders that were serving the sentences all had prior Sale convictions or Possession with Intent to Distribute convictions.

### Southwestern

District Attorney Plez Hardin reviewed the one case identified from the Southwestern Circuit and found that the inmate was deceased.

### Stone Mountain

District Attorney Sherry Boston reviewed one case and, upon review, it was determined that the inmate was actually serving a 15-year sentence resulting from a 2012 conviction in the Atlanta Judicial Circuit, not the Stone Mountain Judicial Circuit. This case was added to the cases for review by the District Attorney in the Atlanta Judicial Circuit.

### Tifton

District Attorney Paul Bowden reviewed the three (3) cases identified from the Tifton Circuit and found that all sentences were appropriate. One offender is serving a split sentence with fifteen (15) years to serve for Manufacturing Methamphetamine. He has prior felony convictions that include Aggravated Assault and Felony Manslaughter. Another offender serving a recidivist sentence for Sale of Cocaine had four (4) prior unrelated Sale of Cocaine convictions.

### Western

District Attorney Ken Mauldin reviewed four (4) unique cases. The first case was shown as a 30-years-in-confinement sentence; however, the offender actually received ten (10) years to serve in 1997 followed by probation for his five (5) prior felony convictions. He was only returned to prison for a two (2) year revocation after having nine (9) prior probation revocations while serving the probated portion of the sentence.

One case reviewed found the offender was originally sentenced in another circuit. Additionally, the third case reviewed was found to be sentenced to twenty (20) years as a recidivist with only the first 120 days in confinement *suspended* upon entry into RSAT. The offender had four (4) prior convictions.

The final case reviewed by DA Mauldin was for an offender that received a thirty (30) year sentence after being previously convicted of seven (7) prior felonies. Only two (2) of those convictions were drug charges. Following this review, DA Mauldin determined that the offender identified did not warrant a sentence modification. It should be noted that prior to this project, DA Mauldin agreed to a "Sentencing Order Clarification" that allowed a drug offender who was sentenced to life without parole following a conviction after jury trial for three (3) counts of Sale of Cocaine in 1994. The result of this Order allowed the defendant to be released in July 2017.

The following District Attorneys participated in this project, reviewing every case identified by GDOC, and found that the sentences were justified today as well as at the time they were sentenced, and that no case warranted modification:

<b>CIRCUITS</b>	<b>FINDINGS</b>
<b>Alcovy</b>	District Attorney Layla Zon reviewed a total of ten (10) cases identified from the Alcovy Circuit.
<b>Atlantic</b>	District Attorney Tom Durden reviewed a total of three (3) cases identified from the Atlantic Circuit.
<b>Cherokee</b>	District Attorney Rosemary Greene reviewed a total of four (4) cases identified from the Cherokee Circuit.
<b>Coweta</b>	District Attorney Pete Skandalakis reviewed a total of fifteen (15) cases identified from the Coweta Circuit.
<b>Dougherty</b>	District Attorney Greg Edwards reviewed a total of three (3) cases identified from the Dougherty Circuit.
<b>Enotah</b>	District Attorney Jeff Langley reviewed the one (1) case identified from the Enotah Circuit.
<b>Griffin</b>	District Attorney Ben Coker reviewed a total of two (2) cases identified from the Griffin Circuit.
<b>Houston</b>	District Attorney George Hartwig reviewed a total of eighteen (18) cases identified from the Houston Circuit.
<b>Lookout Mountain</b>	District Attorney Herbert Franklin reviewed a total of twenty-eight (28) cases identified from the Lookout Mountain Circuit.
<b>Macon</b>	District Attorney David Cooke reviewed the one (1) case identified from the Macon Circuit.
<b>Northern</b>	District Attorney D. Parks White reviewed a total of two (2) cases identified from the Northern Circuit.
<b>Ocmulgee</b>	District Attorney Steven Bradley reviewed a total of five (5) cases identified from the Ocmulgee Circuit.
<b>Oconee</b>	District Attorney Tim Vaughn reviewed the one (1) case identified from the Oconee Circuit.
<b>Ogeechee</b>	District Attorney Richard Mallard reviewed a total of two (2) cases identified from the Ogeechee Circuit.
<b>Rockdale</b>	District Attorney Richard Read reviewed a total of four (4) cases identified from the Rockdale Circuit.
<b>Waycross</b>	District Attorney George Barnhill reviewed the one (1) case identified from the Waycross Circuit.

## Conclusion

The District Attorneys of Georgia take their responsibility as ministers of justice very seriously. They have been and continue to be an active participant and partner in the criminal justice reforms that have taken place in Georgia. The nationally recognized success of the criminal justice reform project would not have been possible without all the partners of the criminal justice system at the table. This recidivist review project was intended to look retrospectively at cases that were handled prior to the recent reforms and ensure that the state goals of reform and reserving space in prison for the worst offenders and not merely a place for “low level drug possessors” was attained. As detailed above, the District

Attorneys have sought sentence modification for at least five (5) offenders that were sentenced under prior sentencing policies.

The project has also shown that the overwhelming majority of the 274 offenders in this state that are serving recidivist sentences for a drug related offense are doing so because of extensive prior felony convictions. The prior convictions range from Armed Robbery to Burglary to prior Sale of illegal drugs. These are the offenders for which recidivist punishment was intended and still is appropriate.

At the conclusion of the project, the District Attorneys of Georgia believe that the current laws related to offenders with multiple prior felony convictions are appropriate and are being appropriately applied to the proper offenders upon conviction of their fourth (4<sup>th</sup>) felony conviction.

The project proves that the public misconceptions surrounding prison populations consisting primarily of inmates serving lengthy sentences for nonviolent drug offenses is inherently untrue.