

UCLA

Other Recent Work

Title

HIV Criminalization in Georgia: Length of Incarceration and Fiscal Implications

Permalink

<https://escholarship.org/uc/item/4cb6f5zf>

Authors

Cisneros, Nathan
Sears, Brad

Publication Date

2021-05-01

RESEARCH THAT MATTERS

HIV CRIMINALIZATION IN GEORGIA

Length of Incarceration
and Fiscal Implications

June 2021

Nathan Cisneros
Brad Sears

EXECUTIVE SUMMARY

The Williams Institute previously examined the enforcement of HIV criminal laws in Georgia in January 2018.¹ In that report, which analyzed data through the third quarter of 2017, we identified 571 people who had been people arrested and 74 people who had been convicted of HIV-related offenses.² In this update we provide additional details on those who have been incarcerated in Georgia prisons for HIV-related crimes with new data through calendar year 2020. Those incarcerated for HIV crimes in Georgia are a subset of those convicted of HIV crimes.

Our new analysis reveals that even more people have been impacted by Georgia's HIV crimes than previously known, that enforcement of these laws has not decreased in recent years, and that the cost to Georgia of incarceration alone for these laws adds up to over \$9 million in the last two decades.

KEY FINDINGS

- From July 1999 to the end of 2020, between 114 and 125 people were incarcerated in Georgia prisons for HIV-related crimes. We also have evidence that eight people were incarcerated for HIV-related crimes before 1999 based on discharge data, bringing our estimate for the total number of people incarcerated in Georgia state prisons to between 122 and 133.
- All almost all of those incarcerated, over 97%, were the result of Georgia's reckless conduct crime law. Only three were the result of Georgia's criminal statute focused on exposure of law enforcement officers to HIV or hepatitis.
- There has not been a reduction in the enforcement of Georgia's HIV crime laws in recent years. 2017, 2018, and 2019, all saw above-average prison admissions; only twice in two decades was the number of admissions higher than in those years.
- Over 72% of those incarcerated under Georgia's HIV crime laws have been men. This is consistent with our 2018 report which found that 73% of those arrested for HIV crimes in Georgia were men.
- The average sentence length for HIV crimes in Georgia was 8.3 years at time of admission to prison.
- On average, those incarcerated actually served 3.2 years, or 38.7% of their original sentence.
- Of those discharged, about half—50.5%—were released on parole.

Using this updated incarceration data, we estimate the total cost of incarceration for HIV-related offenses over the past two decades. We find that:

- The average annual cost-per-person incarcerated during this period was \$23,577.22 when adjusted for inflation.

¹ Amira Hasenbush, The Williams Institute, University of California Los Angeles School of Law, *HIV Criminalization In Georgia: Penal Implications For People Living With HIV/AIDS* (2018), (<https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-GA-Jan-2018.pdf>).

² *Id.*, pg. 14.

- The total cost to the state of Georgia of incarcerating people for HIV crimes between 1999 and 2020 was between \$8.7 and \$9.5 million. This estimate does not include costs related to HIV crimes for policing, prosecuting, probation, parole, etc.
- As a more conservative measure for the cost of incarceration, we estimate the marginal cost of incarceration for HIV crimes in Georgia for the same period to be between \$1.04 and \$1.14 million.

Combining our 2018 analysis with this new data we have now documented that between 122 and 133 people have been incarcerated for an HIV crime since 1988. Our 2018 report estimated that 74 people had been convicted. This is a 61% to 76% increase in the number of people convicted over the previous estimate. Much of the difference (26 cases) is the result of new data from 2017 to the present.

BACKGROUND

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status.³ While only one HIV criminalization law can be found in federal law, more than two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Almost all HIV criminal laws do not require transmission of HIV, and in most states, these laws criminalize conduct that poses little to no risk of transmission, such as spitting or biting.

Georgia has one statute that outlines the seven HIV-related criminal offenses under state law.⁴ It is divided into two subsections: (1) Ga. Code Ann. § 16-5-60(c): reckless conduct by a person living with HIV—this includes offenses related to sex work, needle sharing, sexual exposure, and blood and tissue donation—and (2) Ga. Code Ann. § 16-5-60(d): assault on a law enforcement or corrections officer with intent to transmit HIV or hepatitis. Neither of these offenses requires actual transmission of HIV.

The Williams Institute previously examined the enforcement of these laws in Georgia in January 2018 using data supplied by the Georgia Crime Information Center at the Georgia Bureau of Investigation.⁵ That analysis revealed:

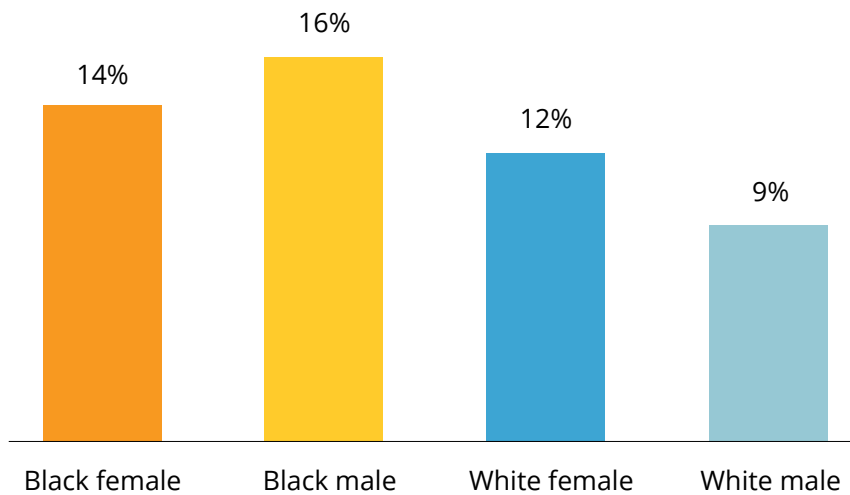
- 571 HIV-related arrests in Georgia from 1988 to September 2017, of which, 90% occurred after 1999.
- In 31% of all reckless conduct incidents, the reckless conduct offense was the only crime for which the person was arrested for or convicted.
- More than six in ten (61%) people arrested under an HIV-related offense were Black.
- Nearly three-quarters (73%) of those arrested were men.
- Overall, 13% of HIV-related arrests resulted in a conviction for an HIV-related crime. (Two-thirds of incidents did not result in any conviction, and 19% had convictions for non-HIV-related offenses.)
- Incidents involving both sex work and HIV-related reckless conduct were the most likely to involve a conviction overall, whether that was for HIV-related reckless conduct or for some other offense (usually sex work).

³ *Id.*, pg. 6.

⁴ *Id.*, pg. 6.

⁵ *Id.*

Figure 1. Conviction rates for HIV offenses in Georgia by race/ethnicity and sex⁶



In this update to our 2018 report, we concentrate on prison incarcerations for HIV offenses using data from the Georgia Department of Corrections, which oversees the state’s prison system. (See section “Data and Methods” below for more detail.) Incarcerations are a subset of convictions, which are in turn a subset of arrests. For example, incarcerations here do not include those arrested but not charged or convicted or those convicted but only sentenced to probation or parole. The new incarceration and sentencing data from Georgia extend the time window for our analysis from September 2017 through the end of calendar year 2020. The new data also allow us to examine sentence length and time served, information that was not available in the original analysis.

We also provide new estimates for the average per-person cost of incarceration, and an estimate of the total cost of incarceration to the state of Georgia of HIV-related offenses. Georgia incurs additional costs related to the enforcement of HIV crimes—including for policing, prosecution, parole, and probation—that are not included in this cost estimate.

MAIN FINDINGS

Incarceration and Sentences for HIV Crimes

In this section we present findings on the number of people who entered Georgia state prisons (admissions) on HIV-related offenses,⁷ as well as the length of stay (sentence length and time served) for those who have already completed their sentence (discharges).

Admissions

We find between 114 and 125 people have entered Georgia prisons for HIV-related crimes since the

⁶ *Id.*, pg. 16.

⁷ The Georgia Department of Corrections data count admissions by primary offense. Only those whose primary offense was an HIV-related crime are counted here.

third quarter of 1999 based on prison admissions data.⁸ (See Table 1.) We provide two estimates of admissions. The first uses fiscal year data for FY2000 through 2005, when calendar year data become available, then uses calendar year data from 2005 through 2020. The second estimate uses fiscal year data only, which ends in June 2020, the end of FY2020.⁹

The overwhelming majority of admissions—all but three—were for reckless conduct offenses.¹⁰ 72% were identified as male by the Georgia Department of Corrections.

Because these admissions records only go back through the second half of 1999, they undercount the overall number of people who entered Georgia prisons for HIV-related offenses. We have prison discharges going back to 1988, which reveals an additional eight people discharged for HIV-related offenses between 1994 and 1999, which is when admissions data begin. These increase our total estimate for the number of admissions for HIV-related offenses to between 122 and 133.¹¹

Table 1. Total Prison admissions for HIV offenses in Georgia

	TOTAL ADMISSIONS	PERCENT MALE
FY (2000-2005) / CY (2005-2020)		
All crimes	125	72.00
Reckless conduct	122	72.13
Assault officer	3	66.67
FY (Q3 1999-Q2 2020)		
All crimes	114	72.81
Reckless conduct	111	72.97
Assault officer	3	66.67

⁸ See section “Data, Methods, Limitations” for an explanation of the range of new admissions.

⁹ We prefer calendar year data whenever available to facilitate direct yearly comparisons with our previous report, which used calendar years. However, calendar year data are available only from 2005. When switching from the fiscal year source to the calendar year source we double count the first six months of 2005. Moreover, the fiscal year sequence ends six months earlier than the calendar year sources (end of June 2020 rather than end of December 2020). We are only able to estimate a range for the double count in 2005 and the undercount in 2020, and hence present a range here.

¹⁰ Georgia Corrections data include only new admissions to the prison system; those with new sentences added while in prison are not included here.

¹¹ There were eight people discharged by the Georgia Department of Corrections for the reckless conduct charge between FY 1994 and FY 1999 (July 1 1993 and June 30 1999). Georgia Department of Corrections admissions data begin in FY 2000 (July 1 1999).

Figure 2. Prison admissions for HIV offenses in Georgia by year

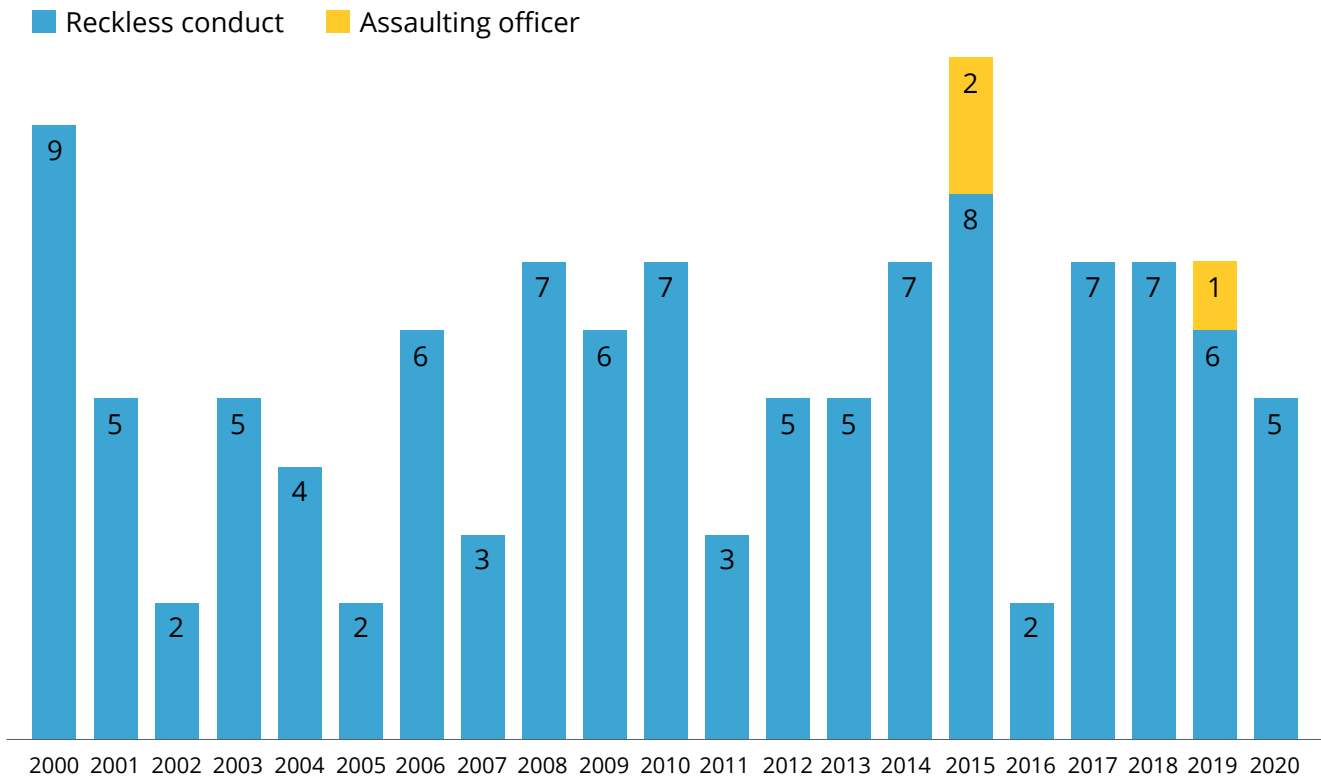
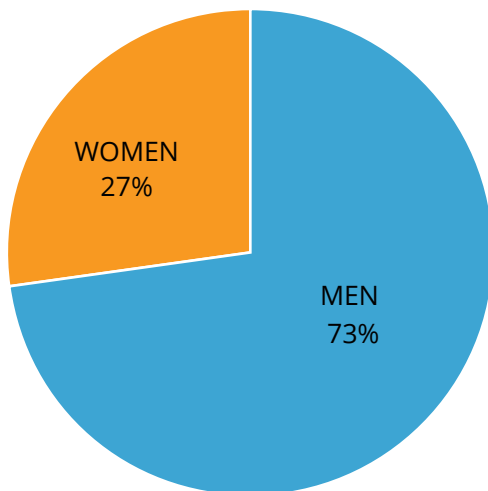


Figure 3. Admissions for HIV offenses in Georgia by gender



Sentence Length and Discharge

We have discharge data for a longer period, extending back to 1988, the year Georgia first enacted its HIV criminalization law. We observe 91 discharges during this period, with the earliest discharge in 1994. All but two individuals discharged were sentenced for reckless conduct.

We have sentence length data for all those discharged between 1994 and the end of 2020. (See Table 2.) Average sentence length at time of admissions was 8.3 years. On average, individuals served 3.2 years—38.7% of their sentence. Although sentence length was lower for the assault on a law enforcement officer charge, average time served was much higher—5.4 years compared to 3.2 years. The total number of prison years actually served between all incarcerated individuals was 293.4 years; the total sentence length was 759.0 years. Of those discharged, about half (50.5%) were released on parole.

For comparison, during the same time period, the average prison sentence for all crimes was 9.7 years, of which 3.1 years (31.7%) were served. For violent crimes, which includes HIV offenses in Georgia, 4.5 years on average were served on a 11.5-year sentence. For sex crimes, the average sentence length was 13.9 years, of which 5.5 years were served.

Table 2. Sentence length, time served, and number of releases for HIV offenses and for major crime categories in Georgia

	HIV OFFENSES			COMPARISON TO MAJOR CRIME CATEGORIES		
	BOTH OFFENSES	RECKLESS CONDUCT	ASSAULT	ALL CRIME	VIOLENT CRIME	SEX CRIME
Number of people released	91	89	2	271,344	78,148	20,278
Total years served	293.37	282.65	10.72	831,943.15	347,909.94	111,548.95
Total sentence length	758.98	745.43	13.55	2,627,561.61	897,181.71	282,046.68
Average years served	3.22	3.18	5.36	3.07	4.45	5.50
Average sentence length	8.34	8.38	6.775	9.68	11.48	13.91
% of sentence served	38.65	37.91	79.11	31.66	38.78	39.55
Total paroled	46	45	1	133,216.51	36,246.36	5,043.88
Percent paroled	50.55	50.56	50	49.10	46.38	24.87

Figure 4. Sentence length and actual time served for HIV offenses in Georgia (years)

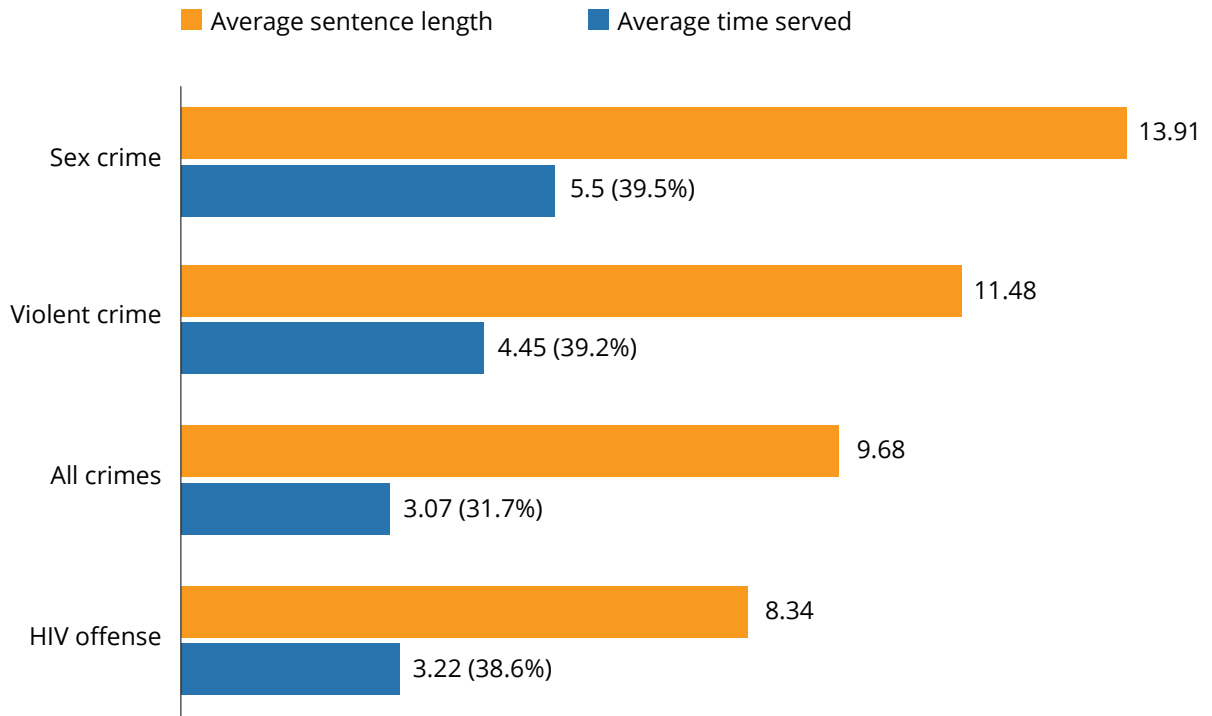


Figure 5. Number of incarcerated people with HIV offenses released from prison in Georgia by year

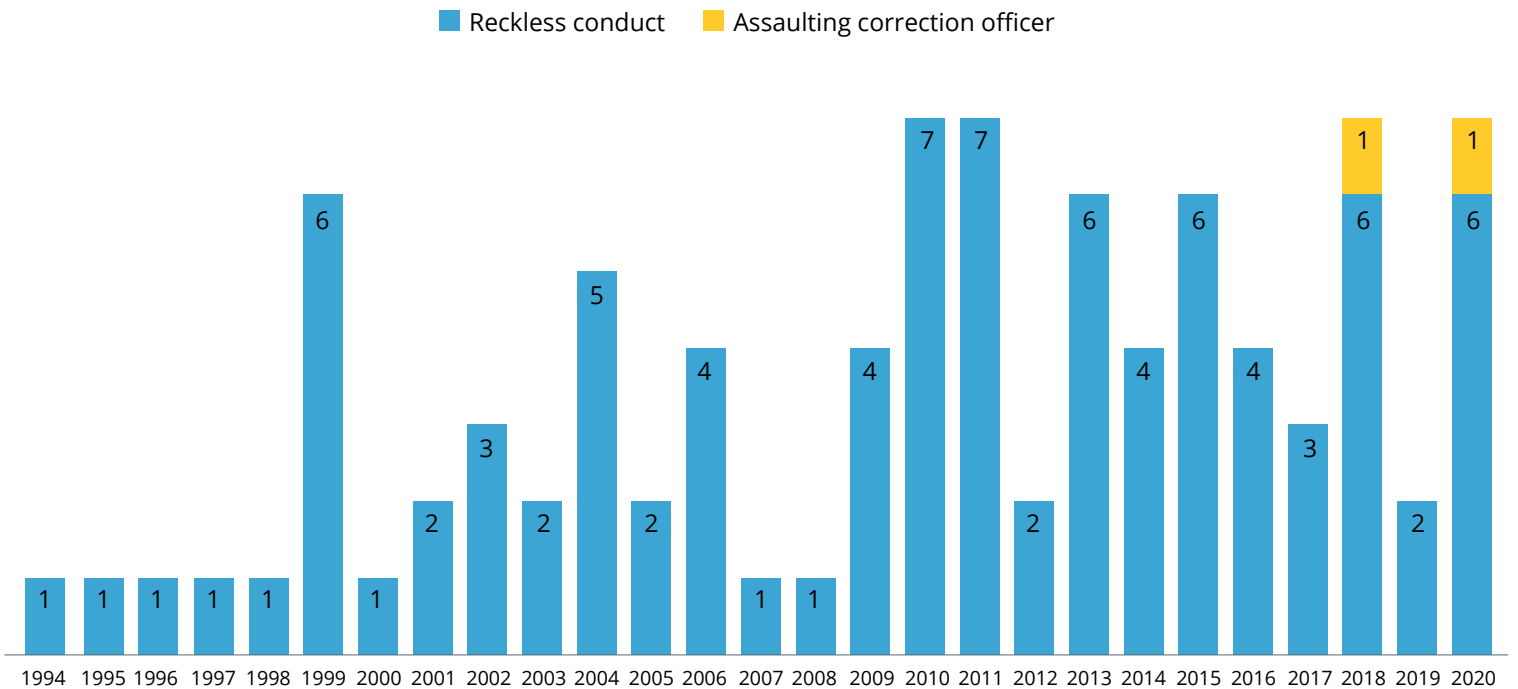
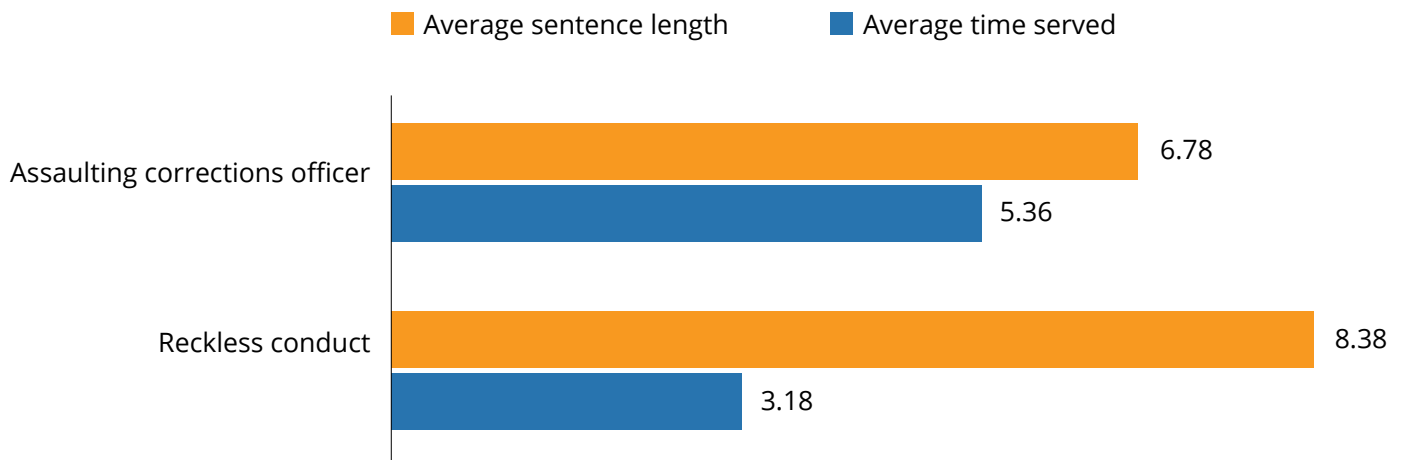


Figure 6. Average sentence length and number of years served for HIV-related offenses in Georgia



Economic cost

To estimate the economic cost of incarceration for HIV-related offenses, we multiplied the total number of years served in prison by the cost of incarceration per incarcerated person in Georgia per year.

Total number of years served: Using the estimates presented in the preceding section on number of admissions and average length of incarceration, we estimate the total number time served among all those serving time for HIV-related offenses to be from 393 to 429 years.¹²

Per-person cost of incarceration: The Georgia Department of Corrections provides an average annual cost-per-person incarcerated in fourteen of its Annual Reports from 1999 to 2020.¹³ We use the average of these figures, adjusted for inflation, to find an overall average annual cost-per-person of \$23,577.22 in 2020 dollars. (See “Data and Methods” below.) For comparison, the Vera Institute of Justice estimated the annual cost-per-person incarcerated in Georgia at \$19,977 in 2015 (\$21,693.34 in 2020 dollars).¹⁴

Using our above figures for the number of admissions (122 to 133), average number of years served (3.22), and average annual cost-per-person incarcerated (\$23,577.22 in 2020 dollars), we estimate the total cost of incarceration to be between \$9.3 million and \$10.1 million.

¹² 122 admissions x 3.22 years on average served = 393.31 years. 133 admissions x 3.22 years on average served = 428.77 years.

¹³ Georgia Department of Corrections, *Annual Report*, (1999-2007, 2014-2018), available at: http://www.dcor.state.ga.us/Research/Annual_FY_GDC_annual_reports.

¹⁴ Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015*, Vera Institute of Justice (2017), <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf>.

Although often used, average cost of incarceration may overstate actual cost of incarceration.¹⁵ An alternative measure is marginal annual cost. Marginal cost captures the additional expenses—food, healthcare, and the like—of housing an additional person, and excludes fixed expenses, such as the cost of building and maintaining facilities. We were unable to locate a marginal annual cost of incarceration estimate for Georgia. However, others have attempted to estimate marginal costs across state prison systems as a percent of average cost and have found marginal cost to be 12% of the average annual cost of incarceration.¹⁶ Accordingly, we estimate the marginal cost of incarceration for HIV crimes in Georgia for the same period to be between \$1.2 and \$1.3 million.

¹⁵ Christian Henrichson & Sarah Galgano, *A Guide to Calculating Justice-System Marginal Costs*, Vera Institute of Justice (2013), https://www.vera.org/downloads/Publications/a-guide-to-calculating-justice-system-marginal-costs-1/legacy_downloads/marginal-costs-guide.pdf .

¹⁶ Elizabeth Pelletier, Bryce Peterson, and Ryan King, "The Prison Population Forecaster Methodology and Appendixes," Urban Institute (2018), https://apps.urban.org/features/prison-population-forecaster/prison_population_forecaster-methodology.pdf .

DATA AND METHODS

ADMISSIONS, DISCHARGES, AND LENGTH OF STAY

The Georgia Department of Corrections compiles and publishes an annual inmate statistical profile of people admitted for every fiscal year going back to FY 2000 (which begins on July 1, 1999), and for every calendar year going back to 2005.¹⁷ These statistical profiles contain information on the number and gender of individuals admitted to Georgia state prisons by primary offense. The profiles do not include information on people who served their sentence outside of facilities run by Georgia Department of Corrections.

Whenever available, we rely on calendar year data. This allows us to better align our estimates across data sources. For prison admissions, we rely on fiscal year data until FY 2005, then switch over to calendar year data. This results in a double count of admissions for the first six months of 2005, but it adds six months to 2020 that are lost using fiscal year data. Using only the fiscal year data series, we find 114 total admissions. Using the combined FY 2000 – FY 2005 and CY 2005 – CY 2020 series we count 125 admissions.

Table 3. Prison admissions for HIV crimes in Georgia using different Georgia Department of Corrections data series

	TOTAL ADMISSIONS	PERCENT MALE
FY (2000-2005) / CY (2005-2020)		
Both HIV offenses	125	72.00
Reckless conduct	122	72.13
Assault officer	3	66.67
FY (Q3 1999-Q2 2020)		
Both HIV offenses	114	72.81
Reckless conduct	111	72.97
Assault officer	3	66.67
CY (2005-2020)		
Both HIV offenses	98	76.53
Reckless conduct	95	76.84
Assault officer	3	66.67

The Georgia Department of Corrections also compiles and publishes a statistical profile of inmates who were released each year going back 35 years.¹⁸ The releases data show that, between 1994 and June 30, 1999, eight people were discharged by the Georgia Department of Corrections after serving a prison term for an HIV-related offense. This is a time period is not covered by the admissions data. Combining the earlier discharge data with the admissions figures, we find 122 or 133 people passed through the Georgia Department of Corrections for an HIV-related offense since 1994.

¹⁷ Annual fiscal year admissions reports can be found at: http://www.dcor.state.ga.us/Research/Annual_FY_profile_inmate_admissions . Annual calendar year admissions reports can be found at: http://www.dcor.state.ga.us/Research/Annual_CY_profile_inmate_admissions .

¹⁸ Georgia Department of Corrections, "Prisoner Length of Stay (CY) Report: New Court Commitments Only" (2021), http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Length_of_stay_by_calendar_year.pdf .

The statistical profile of releases also contains information on sentence length and time served by primary offense. Here total years served refers only to those who have completed their sentence (91 individuals). We are unable to provide an exact figure for the number of people still incarcerated in Georgia prisons for HIV-related offenses because we do not have complete admissions data, and because the discharge figures might not capture everyone with an HIV-related sentence who has left Georgia Department of Corrections facilities. (For example, the data might not capture people who have left because of a transfer or who have passed away.)

Table 4. Number of releases, sentence length, and length of stay for HIV-related offenses and other major offense categories in Georgia

	HIV OFFENSES			EXCLUDING LIFE SENTENCES			INCLUDING LIFE SENTENCES		
	BOTH HIV OFFENSES	RECKLESS CONDUCT	ASSAULT	ALL CRIME	VIOLENT CRIME	SEX CRIME	ALL CRIME	VIOLENT CRIME	SEX CRIME
Number of people released	91	89	2	271,344	78,148	20,278	273,562	80,043	20,442
Total years served	293.37	282.65	10.72	831,943.15	347,909.94	111,548.95	881,946.55	392,080.40	115,797.69
Total sentence length	758.98	745.43	13.55	2,627,561.61	897,181.71	282,046.68			
Average years served	3.22	3.18	5.36	3.07	4.45	5.50	3.22	4.90	5.66
Average years served	3.22	3.18	5.36	3.07	4.45	5.50	3.22	4.90	5.66
Percent of sentence served	38.65	37.92	79.11	31.66	38.78	39.55			
Total paroled	46	45	1	133,217	36,246	5,044			
Percent paroled	50.55%	50.56%	50.00%	49.10%	46.38%	24.87%			

Cost of Incarceration

The Georgia Department of Corrections publishes an annual department report, available online back to 1999.¹⁹ Of the 22 available reports, 14 have either a per-inmate average cost of incarceration for the whole prison system for the year, or a per-facility average annual cost-per-person incarcerated. Where the per-facility average annual cost was the only one available, an overall systemwide average cost was calculated by weighting the cost per facility by the number of people incarcerated in that facility, then taking the overall mean. The average annual cost-per-person incarcerated was then adjusted for inflation using the U.S. Bureau of Economic Analysis Gross Domestic Product Implicit Price Deflator.²⁰ The average of the annual cost in 2020 dollars is \$23,577.22.

¹⁹ Georgia Department of Corrections, *Annual Report*, (1999-2007, 2014-2018), available at: http://www.dcor.state.ga.us/Research/Annual_FY_GDC_annual_reports .

²⁰ Available through the St. Louis Federal Reserve's online Federal Reserve Economic Data (FRED) interface: <https://fred.stlouisfed.org/series/GDPDEF> .

Table 5. Estimated average annual per-inmate cost of incarceration in Georgia

FISCAL YEAR	AVERAGE ANNUAL COST PER INMATE	GDP DEFLATOR	COST IN 2020 DOLLARS
1999	\$17,402.00	\$67.22	\$25,889.48
2000*	\$18,230.95	\$68.72	\$26,529.45
2001*	\$18,098.52	\$70.23	\$25,770.17
2002*	\$17,756.67	\$71.34	\$24,890.13
2003	\$17,332.00	\$72.66	\$23,853.26
2004	\$16,810.00	\$74.62	\$22,528.46
2005	\$17,017.00	\$76.94	\$22,116.67
2006	\$16,841.00	\$79.27	\$21,244.14
2007	\$16,841.00	\$81.40	\$20,688.53
2008	Not available	\$82.99	
2009	Not available	\$83.62	
2010	Not available	\$84.59	
2011	Not available	\$86.36	
2012	Not available	\$88.02	
2013	Not available	\$89.56	
2014	\$20,509.00	\$91.22	\$22,483.86
2015	\$21,290.00	\$92.09	\$23,119.15
2016	\$21,290.00	\$93.05	\$22,879.37
2017	\$22,087.00	\$94.80	\$23,298.19
2018	\$24,070.00	\$97.08	\$24,794.45
2019	Not available	\$98.81	
2020	Not available		

*Average annual cost per inmate calculated from weighted per-facility annual cost.

The Vera Institute for Justice reports a similar annual cost of incarceration for Georgia in their 2017 report *The Price of Prisons*.²¹ Vera reported an average annual cost-per-person incarcerated of \$19,977 in Georgia in 2015, which is \$21,693.34 in 2020 dollars. We prefer our method because it averages all available observation years. However, we note that it is in line with the widely used Vera Institute number.

Although often used, average cost of incarceration may overstate actual cost of incarceration.²² We therefore also calculate the cost of incarceration using marginal annual cost. Marginal annual cost excludes fixed costs that are incurred regardless of an additional number of people incarcerated. We were unable to locate a marginal annual cost of incarceration for Georgia. However, others have

²¹ Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015*, Vera Institute of Justice (2017), <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf>

²² Christian Henrichson & Sarah Galgano, *A Guide to Calculating Justice-System Marginal Costs*, Vera Institute of Justice (2013), https://www.vera.org/downloads/Publications/a-guide-to-calculating-justice-system-marginal-costs-1/legacy_downloads/marginal-costs-guide.pdf.

attempted to estimate marginal costs across state prison systems as a percent of average cost.²³ We report this marginal cost method (Average Cost * 12%), as well as the Vera average cost method for a range of incarceration populations in Table 6.

Table 6. Average and marginal cost estimates of incarcerating people for HIV crimes in Georgia

DATA SOURCE	NUMBER OF PEOPLE	TOTAL TIME SERVED (YEARS)	TOTAL COST OF INCARCERATION		
			AVERAGE COST METHOD	MARGINAL COST METHOD	VERA AVERAGE COST METHOD
Admissions FY / CY	125	402.98	\$9,501,288	\$1,235,167	\$8,742,001
Admissions FY	114	367.52	\$8,665,175	\$1,126,473	\$7,972,705
Admissions FY / CY + discharge	133	428.77	\$10,109,370	\$1,314,218	\$9,301,489
Admissions FY + discharge	122	393.31	\$9,273,257	\$1,205,523	\$8,532,193

²³ John Pfaff, "The Incalculable Costs of Mass Incarceration", *The Appeal* (Sept. 20, 2018), <https://theappeal.org/the-incalculable-costs-of-mass-incarceration/>; Pelletier, Peterson, and King, "The Prison Population Forecaster Methodology and Appendixes," *supra* note 16.

AUTHORS

Nathan Cisneros, M.S., is the HIV Criminalization Analyst at the Williams Institute.

Brad Sears, J.D., is the David Sanders Distinguished Scholar of Law and Policy and Founding Executive Director at the Williams Institute.

ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. These studies can be accessed at the Williams Institute website.

FOR MORE INFORMATION

The Williams Institute, UCLA School of Law
1060 Veteran Avenue, Suite 134
Box 957092, Los Angeles, CA 90095-7092
williamsinstitute.law.ucla.edu

RESEARCH THAT MATTERS

