

State of the Judiciary Address  
Chief Justice Carol Hunstein, Georgia Supreme Court  
Message to the Legislature  
January 25, 2012, in Atlanta, Georgia

Lt. Governor Cagle, Speaker Ralston, President Pro Tem Williams, Speaker Pro Tem Jones, friends in the legislative and executive branches, my fellow judges, ladies and gentlemen:

Thank you for the opportunity once again to present to this distinguished body the annual State of the Judiciary address. This yearly tradition underscores our commitment to work together as co-equal branches of government in our common mission of serving the citizens of this great state. Together we can achieve far more than we can alone.

I am privileged to report to you today our accomplishments of the last year, the challenges we face, and our plans for the future. I am honored that joining me are my friends and colleagues on the Supreme Court of Georgia --- Presiding Justice George Carley, Justices Robert Benham, Hugh Thompson, Harris Hines, Harold Melton and David Nahmias. I want to pay special tribute today to my dear friend, George Carley – now Presiding Justice but soon to be Chief Justice before he retires later this year after 32 distinguished years on the bench. We in the judiciary are going to miss this brilliant jurist and wonderful colleague.

Also here are my friends and colleagues on the Georgia Court of Appeals – including Chief Judge John Ellington, former Chief Judge Charles Mikell and the newly appointed Judge Michael Boggs. And we are honored to have in the gallery many judges from around the state.

On behalf of all these judges and the judiciary, I want to sincerely thank you for the work that you do. We are deeply appreciative to you in the Legislature and to Governor Deal for your interest in -- and ongoing support of -- the judicial branch.

Above the bench of the Supreme Court of Georgia is a Latin phrase etched in stone. It says: “Fiat Justitia, Ruat Caelum.”

It means: “Let justice be done, though the heavens may fall.”

This pronouncement is the essence of an independent judiciary. It stands for the notion that above all else, the rule of law is the foundation of our nation, and regardless of anything else, we must protect it. That is our duty as judges. It is our job to uphold the law regardless of the outcome, regardless of public opinion, regardless of political favor. Our forefathers understood this principle through their embodiment in the United States Constitution of the three branches of government and the separation of their powers.

“In order to form a more perfect union,” our United States and state constitutions creatively check each branch’s authority and balance its limitations by guaranteeing its independence while at the same time ensuring the interdependence of all three branches.

You write the laws; the governor executes them; we interpret them. Simple but brilliant. In Georgia, at this time in our history, our three branches of government share a symbiotic relationship. Together as a whole, we can be stronger than our individual parts.

Never has this relationship come to greater fruition than through our work this past year on criminal justice reform. Nearly a year ago, I joined Governor Deal, Speaker Ralston, Lt. Governor Cagle, Rep. Jay Neal and others in an unprecedented news conference where all three branches of government stood as one in our pledge to reform Georgia's criminal justice system.

Through legislation introduced by Rep. Neal, the Special Council on Criminal Justice Reform embarked upon a detailed analysis of Georgia's sentencing and corrections system. Our primary goal was --- and remains --- the public safety of our citizens.

We began this process united in our conviction that our state can no longer afford to spend more than \$1 billion a year to maintain the nation's 4th highest incarceration rate and the nation's No. 1 highest rate of people under some kind of correctional restraint. We began united in our belief that warehousing non-violent offenders who are addicted to drugs or are mentally ill does nothing to improve the public safety. Indeed, in the long run, it threatens it.

And we began united in our commitment to come up with alternatives to incarceration for non-violent offenders that protect the public safety by addressing the roots of crime and reducing recidivism.

Georgia has a rich history of being tough on crime. This state did not just settle for a "three strikes, you're out" law. In 1994, we became the first in the country to pass a "two strikes, you're out" law. As a government, we must continue in our zeal to protect our citizens from violent and repeat offenders. Murderers, rapists, armed robbers and other violent felons deserve stiff prison sentences. No one suggests otherwise.

But if we truly want to be tough on crime, we must figure out how to reduce it. We now know that being tough on crime is not enough. We must also be smart about crime and criminal justice policy. If we simply throw low-risk offenders into prison, rather than holding them accountable for their wrongdoing while addressing the source of their criminal behavior, they merely become hardened criminals who are more likely to reoffend when they are released. The bottom line is that all those mandatory minimum sentences and get-tough prison measures did little to reduce our three-year reconviction rate, which has held steady for the last decade at nearly 30 percent.

Two months ago, the Special Council on Criminal Justice Reform published a report of its findings. The Council found that non-violent drug and property offenders represent 60 percent of all admissions to Georgia prisons. Between 1990 and 2010, their average time in prison tripled. In 2010, we who are judges sent thousands of low-risk drug and property offenders to prison -- people who never before had been locked up. For those low-risk offenders, the taxpayers spent \$49 a day to house them in prison, versus \$16 a day for community treatment at a Day Reporting Center or \$1.50 a day for probation supervision.

The Special Council found that at least one in four who entered Georgia's prisons had mental

health problems. In a special newspaper series this past fall, The Atlanta Journal-Constitution reported that Georgia's "jails have become the new asylums" with more mentally ill people locked behind bars than all those being treated in state psychiatric hospitals combined. As I speak to you today, up to a quarter of the thousands sitting in our county jails are mentally ill. That is costing our taxpayers millions of dollars, from which they get little return on their investment.

The Special Council has looked to other states and their successes -- notably Texas and South Carolina -- in recommending a series of policy options that are now before you for your consideration. Texas, for instance, invested a sizable amount in diversion and treatment centers, even though it faced a shortfall in prison beds. As a result, that state estimates it has avoided the need for two billion dollars in new prison construction, and for the first time in its history, Texas is actually closing a prison. But most significantly, in 2010, Texas posted its lowest crime rate since 1973.

Following the examples of Texas and other states, Georgia's Special Council recommends giving judges more sentencing options by creating a statewide system of accountability courts, which include drug courts, mental health courts, and veterans courts. Our veterans have been overseas sacrificing their lives and protecting our country. Many come back changed by traumatic brain injury, chemical dependency and mental health conditions that can lead to erratic behavior and possible involvement in the criminal justice system.

These accountability courts have a proven track record of holding offenders accountable while reducing their likelihood of reoffending. A national report issued just last month by the U.S. Government Accountability Office found that re-arrest rates for drug court graduates were 26 percent lower than the rate of recidivism among comparison groups. The goal is to turn lawbreakers from tax burdens into tax-payers, and these courts have already proven their effectiveness in doing that.

Yes, they may be more compartmentalized, but they are more efficient. Not only are they specialized, but they free up judges whose dockets have been clogged with drug crimes to deal with other important criminal and civil cases, including the very important business disputes.

The Council recommends other crime-fighting measures for your consideration. One involves offenders who are about to max out of prison -- many of whom have spent the majority of their lives locked behind bars. Rather than push them out the prison gate with a bus ticket, a travel kit and \$25 in cash, the Council recommends that six months before their discharge date, they be released to parole supervision to oversee their transition back into society.

Minor traffic offenses also clog our Georgia courts. Many of our citizens don't realize that Georgia criminalizes minor traffic offenses, entitling the offender to a trial by jury if requested. Most states treat these minor traffic offenses as violations penalized by a fine. The Council recommends in its report creating a new class of violations for less serious traffic offenses so they are no longer treated as misdemeanor crimes. This recommendation specifically excludes DUIs and other serious traffic offenses.

There are many more recommendations, and I urge you to read the entire report. I join Governor Deal in saying this is an important first step.

But this is like steering a ship. Changing our course will take time. And it will not come without courage and controversy. As Woodrow Wilson said: "If you want to make enemies, try to change something." But, as Dr. Martin Luther King, Jr. said: "A genuine leader is not a searcher for consensus but a molder of consensus." There are many consensus builders in this room, and I am confident in your ability to bring about significant reforms.

Governor Deal urged the Special Council to limit its focus to changes that affect the adult prison population. I agree. We must take this one step at a time. But today, I would like to plant a seed for your future consideration. In the last year, I have heard from many of our state's juvenile judges, who have the best interests of our young people and their families at heart. With state cuts in mental health services, child welfare services, group homes and alternatives for children who do not need to be behind bars, juvenile judges are too often faced with sending young people to locked facilities to get some kind of treatment, or sending them home to get nothing at all. So today I offer you a postscript: The same reforms we are recommending to you for adults must begin with children.

Perhaps you have heard the parable about the group of people who were standing at a river bank when they watched an infant floating by and drowning in the river. One person promptly dove in and rescued the child. But then another baby came floating by. And then another, and another! Frantic, everyone jumped in to try to save the babies. But they noticed one person was walking away. Accusingly, they shouted, "Where are you going?" He answered: "I'm going upstream to stop whoever is throwing babies into the river."

In Georgia, we are throwing children into youth prisons. They are technically known as Youth Development Campuses, but many YDC's look, feel and sound just like adult prisons. Some of our children are serious, violent, repeat offenders, and we must protect our citizens from them. But many are behind bars because juvenile judges have nowhere else to send them; because no one intervened before it was too late.

According to the Georgia Department of Juvenile Justice, during the last three years, nearly two thirds of the more than 10,000 youths locked behind bars have some kind of substance abuse problem; more than one third have been diagnosed with mental health conditions. As with adults, we have learned that our get-tough tactics have failed to scare juvenile offenders straight.

A recent study by The Annie E. Casey Foundation found evidence that our reliance on incarceration for young people provides no benefit to public safety, does not reduce their future offending, wastes taxpayer dollars and perhaps worst of all, exposes children to high levels of violence and abuse. In other words, our youth prisons are a pipeline to adult prison. Consider this: Within three years of juveniles' release from youth prison, up to 72 percent are convicted of a new offense, depending on the state.

Children who drop out of school, get involved in drugs, develop mental health problems, are

unruly, disrespectful, and out of control without ever getting any kind of intervention are strong candidates for becoming adult criminals. We must face the reality that for many of these children, Georgia's youth prisons are mere incubators for adult crime.

Tasha Hamilton was well on her way down that path to adult prison. Tasha was 8 years old when her mother abandoned the family, leaving her behind along with her baby sisters. Although their father worked, they had little money and at times they slept in a car. Tasha grew up angry and defiant. By 11 years old, she was smoking marijuana. By 12, she was hanging out with an older crowd and drinking. By 13, she was hooked on methamphetamine.

Tasha bounced in and out of Georgia's YDCs and boot camps --- spending 90 days here, another few months there --- often for minor infractions. By the time she was 16, Tasha had been in trouble so many times that she was committed to the State. And this time, they sent her away for nearly a year. Tasha describes the YDC as a "miserable" place full of "miserable people wanting to do harm." Tasha says youth prison "doesn't bring out the good in anybody." In her own words, she says: "You take away a little bit bad with you. You come out knowing worse people than when you went in, and you build relationships with them."

But something happened to Tasha that made all the difference. She had a probation officer, Jennifer King, who genuinely cared and refused to give up on her. Jennifer worked in the Douglas County Juvenile Court under Jenny McDade, Director of Juvenile Programs. Together, they made sure Tasha got the help she needed. Tasha got her G.E.D., she got drug treatment and ultimately she got a job. Without Jennifer, she says, it would have been easy for her to graduate into adult prison. She sadly wonders how many are in adult prison today who never had a Jennifer in their lives --- someone who said to them when they were teenagers: You can do it, when they had no hope that they could.

With the help of the Douglas County Juvenile Court system, under the able leadership of Judge Peggy Walker, Tasha was accepted into West Central Technical College. Today, she works fulltime in insurance, taking care of her two daughters --- as a tax payer, not a tax burden. Today, Tasha has that hope in her life she once lacked. And today, it's still important to Tasha that she continues to make her probation officer proud.

Ladies and Gentlemen, it is my honor to introduce to you Tasha Hamilton, Probation Officer Jennifer King, Jenny McDade and Judge Peggy Walker.

Together, we can move this ship in a new direction. You have a challenge ahead, and I recognize you have difficult choices to make. I do not envy you. This year, as in the previous few years, you face what we hope is the end of a recession that has cost citizens their jobs, their homes, and their hope in the American dream. This year, as always, you are charged with parsing out limited state funds to many worthy causes.

The judicial branch provides a core government function by protecting the public safety. We in the judiciary are grateful to you for understanding that we are bound by the Constitutions of our state and nation to uphold the rule of law and mete out justice in a fair and impartial way to all who come before us.

As I have said before, our courts are the emergency rooms of society: We must respond to all who come to us.

Yet in Georgia, our courts continue to struggle, putting justice in jeopardy.

State budget cuts, exacerbated by county cuts, have resulted in court backlogs across Georgia. DeKalb County has four pending death penalty cases that it cannot move forward due to a lack of resources. In some counties, including DeKalb, domestic violence cases have been delayed at the very time Georgia inches closer to the top in the rate of domestic violence homicides. According to the most recent FBI data, Georgia has gone from having the 10th highest rate of domestic violence homicides to now having the 6th highest rate. One metro Atlanta judge told me he worries about what could happen if a young mother found a locked courthouse door on the day she needed a temporary restraining order to protect her family from an abuser.

Civil trials in particular are being delayed in a number of jurisdictions. That is because our Constitution guarantees the right to a speedy trial in criminal cases. As a result, some judges have been forced to delay civil matters.

We are all proud that Georgia was recently ranked the 4th most business-friendly state in the nation. We in the judiciary want to do everything we can to protect that ranking by guaranteeing that businesses can resolve their disputes in a timely fashion.

In addition, divorce cases and dispossessory cases --- in which people have been evicted from their homes -- have been affected by court delays from Jackson County to Houston County. In one Northeast Georgia court, people are now waiting up to four months just to get a temporary hearing in a divorce -- a situation that can grow volatile when children are involved. For a landlord, court delays can mean an additional 2-to-3 weeks before a non-paying tenant is evicted and replaced with a paying tenant. For creditors, it can mean an additional 3-to-4 weeks before any collection efforts can be started.

As a superior court judge told me: "We are just one case away from a serious logjam if a major case is tried or defense attorneys start filing speedy trial demands."

Today, Georgia's entire judicial branch is funded with less than 1 percent of the state budget. Georgia's judiciary has never resisted sharing the burden of difficult economic times. The fact is we were lean before they struck. At the Supreme Court of Georgia -- the state's highest court -- until this year, we did not even have a paid employee to greet visitors or answer our phones in the main office. Our small staff of 51 is still fewer than we had a decade ago, yet our caseload -- like that of other courts -- has grown.

Justice is not a privilege; it is a right. Criminal cases must be heard; civil disputes must be resolved. Courts are critical to public safety. But in recent years, the erosion of budgets in the face of growing caseloads has put us perilously close to being unable to fulfill our constitutional mandates.

The good news is we have never idly sat by. I report to you today that even in the face of a mighty struggle, your court system remains sound, strong and stable. We are holding the line, doing more with less, and moving forward.

Georgia's courts and our 1500 judges are problem solvers. It was a judge who first identified the need for a drug court back in 1994, when Bibb County created Georgia's first. Since then, the number of accountability courts has grown to 100. We are greatly appreciative to you for your support of these courts in the past. The need now is to expand them statewide, along with the necessary treatment facilities, staff and security required to make them effective.

This year, we became one of the first states to move forward and create a new rule for the recusal of judges, following the United States Supreme Court's landmark ruling in the 2009 case, *Caperton v. A.T. Massey Coal Company*. Thanks to the leadership of Rep. Ed Lindsey and my colleague Justice Harold Melton, we have amended by order of the Supreme Court of Georgia the Code of Judicial Conduct to ensure that judges disqualify themselves in any proceeding in which their impartiality could be questioned. Georgia's rule has become a model rule and was recently adopted, with minor changes, by the American Bar Association.

We also continue to make strides in our efforts to switch from paper to the electronic filing of court documents. At the state Supreme Court, we are now close to 100 percent participation among attorneys in electronically filing their motions, briefs and applications to appeal.

Georgia's judiciary has a nationwide influence. Juvenile Judge Peggy Walker of Douglas County is now in line to become President of the National Council of Juvenile and Family Court Judges in 2014; Juvenile Judge Michael Key of Coweta County is the immediate past national president. This past summer, I was honored to co-host the annual conference of the nation's Supreme Court justices, as well as the nation's court administrators. Fully 75 percent of this country's chief justices came to Atlanta where Gov. Nathan Deal graciously welcomed them. The theme of the conference was "A World of Change: Courts and the Media in 2011."

In Georgia, we are committed to making our courts as open and as accessible to the public as possible. As someone once said, "One of our greatest freedoms is the right to know what our government is doing." I believe that openness and accessibility are critical to winning our citizens' faith and confidence in their justice system.

Our open-door policy extends to you. All of us who are judges would be honored to have you visit our courts. Especially as you consider the options now before you for reforming this state's criminal justice system, a half-day visit to your local courthouse could help enlighten you about the types of cases our judges face each day. About the challenges before them. And about the need they have for sentencing options other than prison alone. Also, you might consider attending a drug court graduation.

Thank you for standing with us as partners as we stand with you in moving Georgia into a new age. Thank you for your support of the judicial branch. And thank you for your service to this great state.

God bless you. And God bless the state of Georgia.