



Florida's Modest First Step Act Must Be Amended to Consider Racial Impact

For decades, Florida – like the rest of the United States – has relied primarily on incarceration as the so-called solution to criminal justice issues. However, this has created an extraordinarily harsh system that drives too many people into jails and prisons – and costs taxpayers millions – without meaningfully increasing public safety. What's more, mass incarceration disproportionately affects people of color, particularly black people.¹

More than 30 states and the federal government have recognized that these “tough-on-crime” policies are counterproductive, and they have responded by adopting data-driven, evidence-based reforms.²

Florida lawmakers are finally recognizing that our state's over-reliance on mass incarceration is unsustainable, ineffective and a threat to public safety. The Legislature is poised to push for some modest reforms in the Florida First Step Act (SB 642 & HB 705). As currently drafted, the Florida First Step Act is less likely to benefit black and brown people and may exacerbate racial disparities in our prison population.

Reforms that overlook the outsized impact of the criminal justice system on communities of color are not ones that our legislature should support. Floridians deserve better justice.

THE PROBLEM

Proposals in Florida's First Step Act are modest

- In a time of divisive politics, criminal justice reform has been a bipartisan issue. Congress overwhelmingly adopted the First Step Act – which was sponsored by both Republican and Democratic members. President Trump endorsed and signed it.³ Since 2007, 35 states – including Alabama, Georgia, Louisiana, Mississippi and Texas – have adopted successful bipartisan criminal justice reform.⁴
- Unlike the federal First Step Act, the Florida version doesn't include any investment in mental health services, substance abuse treatment, educational programs or job training, much less get anyone out of prison.
- Floridians overwhelmingly support criminal justice reform, as demonstrated most recently by the bipartisan support for restoring voting rights to formerly incarcerated people who have paid their debt to society.

Reforms would worsen justice system's racial disparities

- Racial disparities permeate our criminal justice system, from juvenile transfers to adult court to sentence lengths to placement in solitary confinement. People of color make up 59.4 percent of Florida's incarcerated population,⁵ but only 42.5 percent of our general population.⁶ The numbers are even worse for black people who make up 47 percent of those in prison,⁷ but only 16.9 percent of Florida's population.⁸
- The Florida First Step Act excludes many people with past convictions, making them ineligible for discretionary sentencing and opportunities to earn an earlier release date. Due to longstanding racial bias in our criminal justice system and the disproportionate impact of policing the proposed reforms are less likely to benefit communities of color. Looking at a snapshot of the prison population in September 2018, 44.5% of the white prison population would be potentially eligible for increased gain-time opportunities, while only 38.9% of the Hispanic population and 31.9% of the black population would qualify.⁹

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- Similarly, the bill enables departures from mandatory minimum sentencing only for drug trafficking. Looking at the same snapshot, those with this conviction are disproportionately white—about 53 percent, compared to 36 percent who are black.
- The proposed carve-outs in the bill mean that more people of color will continue to suffer under excessive sentences with fewer opportunities for early release, which would widen racial disparities in Florida’s prison population.

Florida’s criminal justice system is expensive and ineffective

- Florida spends more than \$2.4 billion each year to incarcerate nearly 100,000 people in its state prison system.¹⁰
- In 2018, under then-Gov. Rick Scott, the Florida Department of Corrections cut \$28 million in substance abuse and re-entry programming because of a budget shortfall.¹¹ These are the kinds of programs that prevent crime, help formerly incarcerated people find success and keep all of us safe.
- Over the last decade, violent and property crime in Florida have decreased by 30 percent to a 50-year low, but sentence lengths have increased 22 percent.¹²
- One big reason for these longer sentences is the requirement that individuals serve at least 85 percent of their sentence, effectively capping people’s incentives to participate in education and rehabilitative programs to earn gain time for early release, even though longer sentences do not correlate with reduced recidivism.¹³

THE SOLUTION

Oppose the Florida First Step Act (SB 642 and HB 705) unless it is amended to include the following changes:

- Require a racial impact assessment six months after the Florida First Step Act goes into effect and mandate a racial impact statement for future criminal justice bills.
- Eliminate carve-outs so people with a previous conviction who have already served their time can be eligible for judicial discretion in sentencing and have the same opportunities to earn gain time toward an earlier release date.
- Remove the current cap of 15 percent on gain time for currently incarcerated people and anyone who enters prison in the future to incentivize good behavior and rehabilitation.
- Fully fund the Department of Corrections, including previously cut mental health and substance abuse treatment funding and an additional \$25 million to create opportunities for rehabilitation.
- Ensure that technical violations of probation or parole do not result in returning to jail or prison.

1 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, The Sentencing Project (June 14, 2016),

<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

2 *35 States Reform Criminal Justice Policies Through Justice Reinvestment*, Pew Trusts (July 11, 2018), https://www.pewtrusts.org/-/media/assets/2018/07/pspp_reform_matrix.pdf.

3 President Donald J. Trump Secures Landmark Legislation to Make Our Federal Justice System Fairer and Our Communities Safer, White House Fact Sheet (Dec. 21, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-secures-landmark-legislation-to-make-our-federal-justice-system-fairer-and-our-communities-safer/>.

4 *Supra* n.2.

5 2017-18 Annual Report Florida Department of Corrections, at p. 17, http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.

6 QuickFacts, Florida, United States Census Bureau (2018), <https://www.census.gov/quickfacts/fl>.

7 *Supra* n.5, at p. 17.

8 *Supra* n.6.

9 These numbers are a projection of the impact of the bill were it to apply to those in prison. As it stands now, however, the bill is not retroactive.

10 *Supra* n.5, at p. 13.

11 Mary Ellen Klas, *Florida prisons cut programs to cover \$28 million deficit*, Tampa Bay Times (May 6, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/05/06/florida-prisons-cut-programs-to-cover-28-million-deficit/>.

12 Felicity Rose et al., *An Examination of Florida’s Prison Population Trends*, Crime and Justice Institute (May 2017), <http://www.cri.org/assets/2017/08/FL-state-report.pdf>.

13 Len Engel & Maura McNamara, *Data-Driven Solutions to Improve Florida’s Criminal Justice System*, Crime and Justice Institute (Feb. 2018), http://www.cri.org/assets/2018/01/FINAL_Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf.