

A CASE FOR REFORM

# FLORIDA'S CAP ON REHABILITATION CREDITS

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## **ABOUT THE SOUTHERN POVERTY LAW CENTER**

The Southern Poverty Law Center, based in Montgomery, Ala., is a nonprofit civil rights organization founded in 1971 and dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.

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**THE SOUTHERN POVERTY LAW CENTER**

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## SUMMARY

Florida’s arbitrary cap on the ability of people in prison to earn time off their sentence for good behavior — also known as “gain time” — effectively requires people to serve a minimum of 85 percent of any sentence.

This cap on rehabilitation credits toward time served on prison sentences inflates the length of time people spend incarcerated to satisfy prison sentences, but without a definite benefit to public safety and at great cost to taxpayers. Even for people convicted of minor offenses, the cap on rehabilitation credits makes it impossible to satisfy any sentence in a reasonable amount of time after rehabilitation. It not only significantly increased the average prison stay by 22 percent over the last decade, but also took away incentives for good behavior or participation in rehabilitation programs aimed at reducing recidivism.

With over 96,000 people incarcerated in state prisons, Florida has the 11th-highest incarceration rate in the nation — costing the state over \$2.7 billion a year.<sup>1</sup> People of color are also imprisoned at a disproportionate rate; African

Americans, for example, make up 47 percent of the Florida prison population, but only 17 percent of the state population.<sup>2</sup>

Reinstating the system for good behavior rehabilitation credits as it existed before 1995, and increasing incentive or education, training and program rehabilitation credits would make an immediate impact on unnecessarily long prison sentences. An analysis of 2019 Florida prison data shows the potential benefits of reforming the cap on rehabilitation credits for currently incarcerated people and for the state overall:

- Reinstating the previous good behavior credits system could produce earlier releases for over 11,000 incarcerated people in the first year, if implemented retroactively. What’s more, expanding incentive rehabilitation credits retroactively could produce earlier releases for over 18,000 incarcerated people. If retroactively implemented together, these reforms would mean a total of 24,000 people could be released in the first year of such reforms.

- Restoring good behavior credits and expanding incentive rehabilitation credits could shorten the average prison sentence by 18 months if enacted together while adjusting the cap on rehabilitation credits to require a minimum of 65 percent of an incarcerated person’s prison sentence is served. These measures would also decrease racial disparities in Florida’s prison population by 35 percent.

- Restoring good behavior credits and expanding incentive rehabilitation credits could save Florida an estimated \$1.7 billion and \$1.8 billion, respectively, which could be reinvested in programs addressing recidivism and rehabilitation. If implemented while eliminating the cap on rehabilitation credits, Florida could save over \$2.6 billion.

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# OVERVIEW

As harsher sentencing policies became increasingly popular after the passage of the 1994 federal crime bill, caps on rehabilitation credits forced people to serve longer portions of their prison sentences. The federal government encouraged states to enact stricter mandatory time-served requirements in exchange for federal funding for prison construction and law enforcement. Florida responded by enacting its own cap on rehabilitation credits (also known as the “85 Percent Rule”) which requires incarcerated people to serve a mandatory minimum of 85 percent of their sentence before becoming eligible for release.

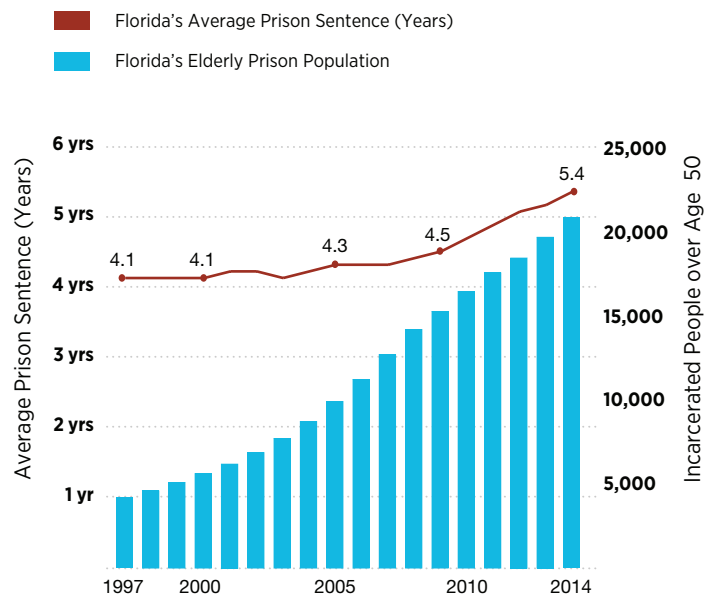
Florida’s cap on rehabilitation credits, however, goes far beyond the federal crime bill’s standard by requiring that everyone with a prison conviction – regardless of the nature and severity of the offense – serve a minimum of 85 percent of their sentence. Consequently, the state’s prison population has exploded by 65 percent since 1995 as people are forced to serve longer sentences at a rapidly growing cost to taxpayers.

Still, this commitment to incarceration offers little evidence of its positive impact on public safety.<sup>3</sup> The average prison stay in Florida increased by 33 percent from 1996 to 2014,<sup>4</sup> while the number of people with sentences of 10 years or more tripled since the cap on rehabilitation credits took effect.<sup>5</sup> Today, chronically overworked prison personnel struggle to keep overcrowded prisons safe, a problem that would cost an estimated \$90 million and require hundreds of new personnel to address.<sup>6</sup>

The cap on rehabilitation credits has also produced a gray-ing prison population. The percentage of people in prison in Florida over the age of 50 has more than quadrupled from 5.3 percent in 1995 to nearly a quarter (24.2 percent) of the state prison population in 2018.<sup>7</sup> Research, however, shows little

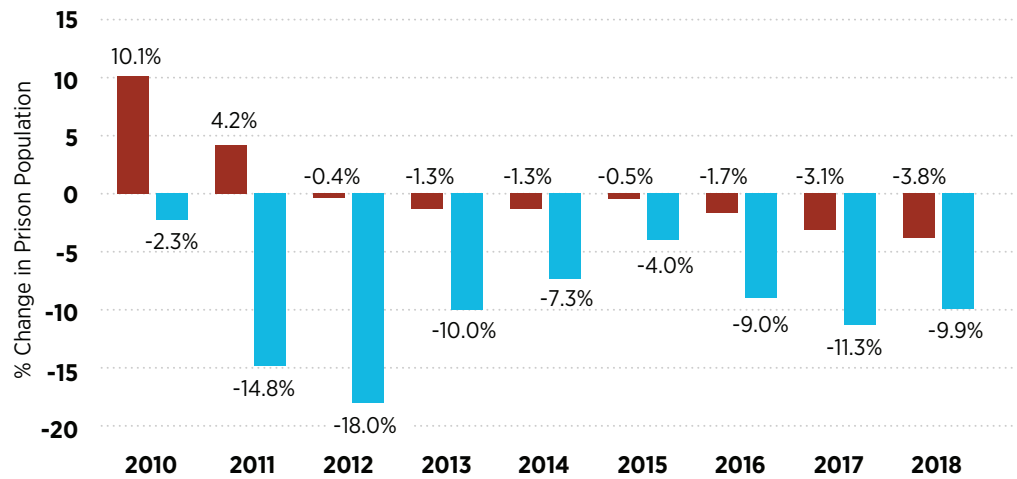
benefit from incarcerating such a large population of older people: Less than 10 percent of people over the age of 50 tend to recidivate when released, compared to almost one quarter (24.7 percent) of the overall prison population.<sup>8</sup> Incarcerating an aging prison population is also more expensive due to rising health care costs. In 2018, health care expenses comprised 23.7 percent of an incarcerated person’s daily prison cost in Florida, compared to 18.6 percent in 1995.<sup>9</sup>

## FLORIDA PRISON SENTENCES AND ELDERLY PRISON POPULATION



## PERCENTAGE CHANGE IN FLORIDA PRISON POPULATION AND ADMISSIONS

- Percentage Change in Prison Population from 3 Years Prior
- Percentage Change in Prison Admissions from 3 Years Prior



Even with significantly declining prison admission rates over the past decade, the size of Florida’s prison population has remained fairly stagnant by comparison. This is a direct result of the cap on rehabilitation credits, which forces longer stays in prison before a sentence is satisfied. It also solidifies racial disparities in the prison population.

## GOOD BEHAVIOR AND INCENTIVE REHABILITATION CREDITS

Before the cap on rehabilitation credits was enacted in the mid-1990s, people could shorten their sentences through both good behavior rehabilitation credits (referred to in statute as “basic gain time”) and incentive rehabilitation credits (referred to in the statute as “incentive,” “educational,” and “meritorious” gain time). The 15 percent cap on rehabilitation credits has not only significantly increased the average prison stay by 22 percent over the last decade, but also took away incentives for good behavior or participation in rehabilitation programs aimed at reducing recidivism.

Good behavior rehabilitation credits allowed people to reduce their sentence by 10 days for every month of their sentence. This time was awarded as a lump sum upon entering prison, regardless of the convicted offense, and could only be forfeited based on a person’s lack of good behavior while incarcerated. For example, a person sentenced to five years, or 60 months, in prison received a lump sum of 600 days of good behavior rehabilitation credits – enough credits to reduce their sentence by more than 1.5 years if they are not forfeited.

A person could also earn incentive rehabilitation credits for exemplary behavior, extraordinary service, and participation in various prison education and vocational training programs. Incentive rehabilitation credits could accumulate up to 20 to 25 days per month served by people convicted of crimes before Oct. 1, 1995, and up to 10 days per month served for convictions that occurred afterward.

After Oct. 1, 1995, Florida’s cap on rehabilitation credits eliminated good behavior rehabilitation credits and capped incentive rehabilitation credits to 15 percent of a person’s

sentence. These changes create an arbitrary mandatory minimum length of stay that disregards a person’s ability to demonstrate rehabilitation and merit an earlier release without posing a public safety risk. In fact, a study by the Pew Center on the States estimated that 14 percent of people with nonviolent convictions (2,640 people) could have been released without any recidivism risk, ultimately saving Florida taxpayers \$54 million in prison expenses.<sup>10</sup>

## REHABILITATION CREDIT CAP REFORMS IN THE SOUTH

### LOUISIANA

*LA Rev Stat § 15:571.3; LA Rev Stat § 15:828*



Increased the availability of rehabilitation credits for participating in job skills, treatment and rehabilitation programs from 250 to 360 days. Also created a substance abuse release program for people with first- or second-time nonviolent drug offenses who are within a year of their scheduled release.

### MISSISSIPPI

*MS Code § 47-5-138*



Any person under the age of 21 convicted of a nonviolent offense is not subject to Mississippi’s cap on rehabilitation credits.

### SOUTH CAROLINA

*SC Code § 24-13-210*



A person not convicted of an offense that bars parole – also known as a “no parole offense” – can earn up to 20 days for every month served in prison.

### TENNESSEE

*TN Code § 41-21-236*



A person may earn up to eight days per month served for good behavior, and eight days a month for participation in prison programs. Good time credits may reduce a prison sentence by up to 30 percent.

### TEXAS

*TX Gov. Code § 498.002 - § 498.003*



A person can accrue up to 15 days of good time credit for every 30 days served. These credits are earned for good behavior and participation on prison work and educational programs.

## OVER 24,000 PEOPLE COULD BE RELEASED IN THE FIRST YEAR IF THERE WAS NO CAP ON REHABILITATION CREDITS.

### REHABILITATION CREDIT CAP REFORMS THROUGHOUT THE SOUTH

Recognizing how longer prison sentences contribute to more expensive and overcrowded prisons, potentially increase the risk of recidivism and no longer bring in additional federal funding, several states reformed their rehabilitation credit caps, including states throughout the South.

In most cases, state reforms were designed to encourage faster rehabilitation and safe release for people with lower level nonviolent and drug convictions. States like Oklahoma, Tennessee and Kentucky revised their caps on rehabilitation credits to only apply to the most dangerous offenses.<sup>11</sup>

### REHABILITATION CREDIT CAP REFORM OPTIONS FOR FLORIDA

As states across the country are reforming their caps on rehabilitation credits, Florida could reap similar benefits from doing the same. Reform options could involve reinstating basic good behavior rehabilitation credits, increasing opportunities to earn incentive rehabilitation credits through participation in educational and vocational programming – or both – while allowing rehabilitation credits to accrue beyond 15 percent to 35 percent of a sentence. Any of these changes would save the state millions in tax dollars that could be reinvested in programs addressing recidivism, rehabilitation and racial disparities.

The Southern Poverty Law Center analyzed individual-level prison population data from the Florida Department of Corrections. The information, comprised of data as of May 14,

2019, included information about a person's convicted offense, length of prison sentence and personal demographics.<sup>12</sup> The prison population at that time was over 96,000 people, with an average prison sentence of 4.3 years.<sup>13</sup> Using this data, we were able to calculate how many people would be impacted if good behavior rehabilitation credits were restored and incentive rehabilitation credit opportunities were extended in Florida at the same time the rehabilitation cap is reduced from 85 percent to 65 percent. We also assessed what impact the change would have on sentence lengths and racial disparities, as well as savings that could be realized.

**Restoring good behavior credits and expanding incentive rehabilitation credits could produce earlier releases for over 11,000 to 18,000 incarcerated people in the first year, respectively, if implemented retroactively. If retroactively implemented together with no cap on rehabilitation credits, over 24,000 people could be released in the first year in Florida.**

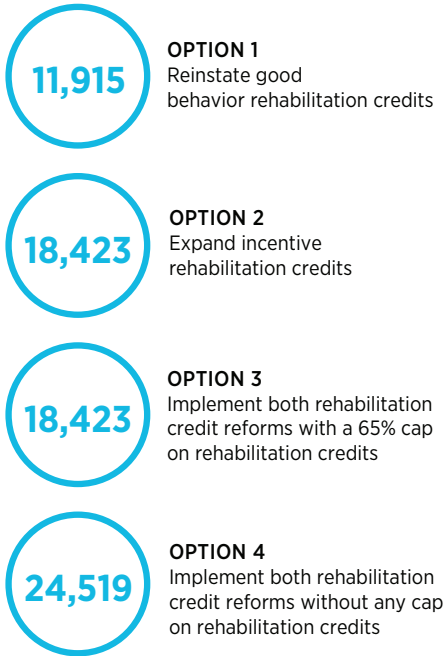
Thousands of people incarcerated in Florida prisons could be released early under these reforms and would otherwise pose little to no risk to public safety. If implemented retroactively for currently incarcerated people, the most immediate impact from rehabilitation credit reform would be for people with shorter sentences – usually people with convictions for nonviolent crimes. The Urban Institute found that if rehabilitation credits were reformed and expanded in Florida, the vast majority of people released early would not be re-arrested during the remaining time they would have spent in prison.<sup>14</sup> Additionally, an estimated 34 percent of the entire Florida prison population would not be re-arrested at all if released early.

**Restoring good behavior credits and expanding incentive rehabilitation credits could shorten the average prison sentence by 18 months if enacted together while adjusting the cap on rehabilitation credits to 65 percent. These measures would also decrease racial disparities in Florida's prison population by 35 percent.**

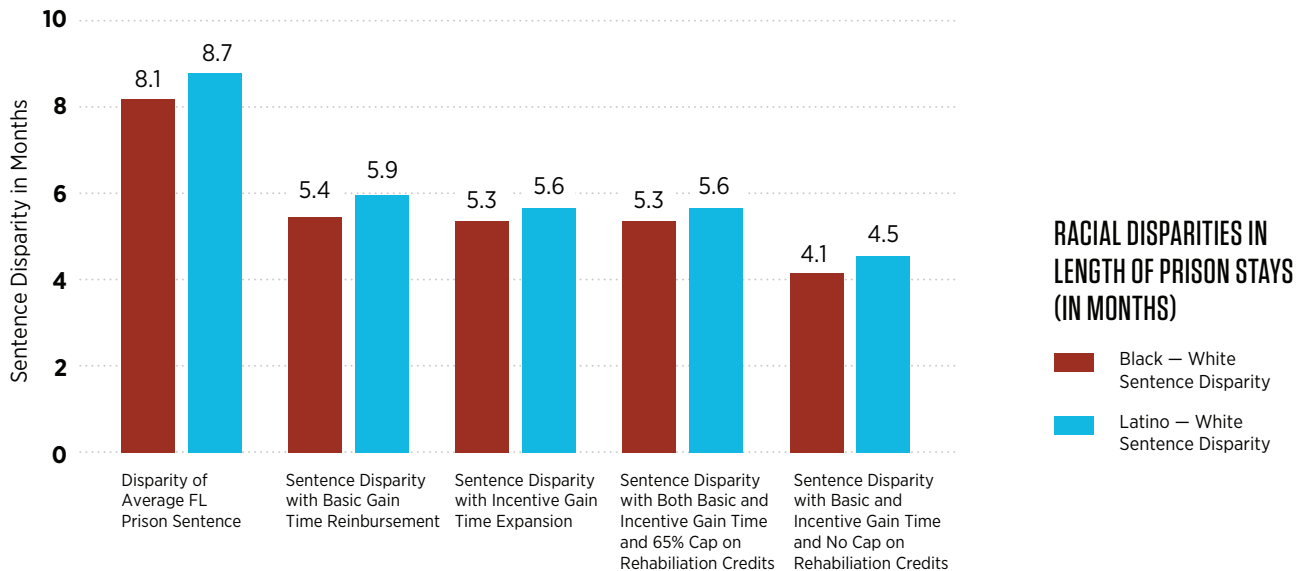
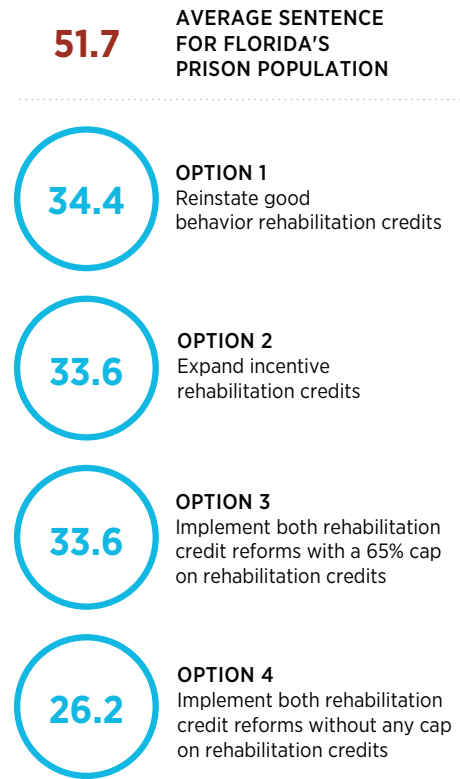
# 34%

*An estimated 34% of the entire Florida prison population would not be re-arrested at all if they were released early.*

## FLORIDA PRISON POPULATION REDUCTION AFTER ONE YEAR OF CREDIT CAP REFORM



## AVERAGE PRISON SENTENCE (MONTHS)





## RESTORING GOOD BEHAVIOR CREDITS AND EXPANDING INCENTIVE REHABILITATION CREDITS COULD SAVE FLORIDA BETWEEN AN ESTIMATED \$1.7 AND \$1.8 BILLION.

Longer prison sentences are not proven to deter crime or lessen recidivism. However, they do create an aging prison population that is more expensive to oversee. In fact, longer sentences can be counterproductive to public safety as increasing prison expenses can divert money from programming and re-entry support aimed at reducing recidivism.<sup>15</sup>

Reforming and expanding rehabilitation credit opportunities and lowering the cap also provides a particular benefit to people with longer prison sentences, which tend to be people of color. Black people incarcerated in Florida prisons average sentences 8.1 months longer than their white counterparts, while Latinos average sentences 8.7 months longer than white people<sup>16</sup> Reforming the ability to earn rehabilitation credits could significantly decrease those disparities.

Reinstating good behavior rehabilitation credits and increasing incentive rehabilitation credit opportunities could save a considerable amount of taxpayer expense if applied to everyone in state prisons. Rehabilitation credits not only incentivize participation in programs for job training, education and treatment, but also generate savings that could be used to expand those same programs and fund re-entry services proven to reduce recidivism. By contrast, in 2018, the Florida Department of Corrections was forced to cut programming and re-entry services aimed at reducing recidivism in order to cover a \$28 million budget deficit.<sup>18</sup> From a cost-effectiveness standpoint, rehabilitation credits have the potential to release more people and conserve resources that could support their success.

Restoring good behavior credits and expanding incentive rehabilitation credits could save Florida between an estimated \$1.7 billion and \$1.8 billion, respectively, in expenses that could be reinvested in programs addressing recidivism and rehabilitation. If implemented while eliminating the cap on rehabilitation credits, Florida could save over \$2.6 billion.<sup>17</sup>

### MONEY SAVED WITH REHABILITATION CREDIT EARLY RELEASES

**\$1.76  
BILLION**

**OPTION 1**  
Reinstate good behavior rehabilitation credits

**\$1.83  
BILLION**

**OPTION 2**  
Expand incentive rehabilitation credits

**\$1.83  
BILLION**

**OPTION 3**  
Implement both rehabilitation credit reforms with a 65% cap on rehabilitation credits

**\$2.61  
BILLION**

**OPTION 4**  
Implement both rehabilitation credit reforms without any cap on rehabilitation credits



# CONCLUSION

Overall, the country is shifting away from harsher and more punitive methods of criminal justice, preferring remedies that are more rehabilitative and appropriate for an incarcerated person's needs. Even crime victims have voiced a need for shorter prison sentences and support for more rehabilitative programming and preventative efforts.<sup>19</sup>

By reforming and expanding rehabilitation credits and adjusting the cap on rehabilitation credits, Florida has an opportunity to make a substantial change in its approach to criminal justice. This reform is an opportunity for Florida to protect public safety, save taxpayer dollars, reduce racial disparities, rehabilitate and restore humanity to incarcerated people, and reunite families and communities.

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# ENDNOTES

1 Florida Policy Institute, Fiscal Year 2019-20 Budget: Summary by Issue Area, Dept. of Corrections, <https://www.fpi.institute/category/state-budget-taxesfl/>.

2 Florida Department of Corrections 2017-18 Annual Report. [http://www.dc.state.fl.us/pub/annual/1718/FDC\\_AR2017-18.pdf](http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf). Population estimate from the U.S. Census, American Community Survey, 2018.

3 Lufkin, Bryan, *The myth behind long prison sentences*, BBC Future, May 15, 2018. <https://www.bbc.com/future/article/20180514-do-long-prison-sentences-deter-crime>

4 Courtney Leigh, Elizabeth Pelletier, Sarah Eppler-Epstein, Ryan King, and Leah Sakala, *A Matter of Time*, Urban Institute, July 2017. [http://apps.urban.org/features/long-prison-terms/a-matter\\_of\\_time\\_print\\_version.pdf](http://apps.urban.org/features/long-prison-terms/a-matter_of_time_print_version.pdf)

5 Sayre, Wilson, *Average Florida Prison Sentences are Getting Longer. Here's Why You Should Care*, WUSF Public Media, July 2017. <https://wusfnews.wusf.usf.edu/post/average-florida-prison-sentences-are-getting-longer-heres-why-you-should-care>

6 Ceballos, Ana, *Prisons chief: Status quo 'unsustainable'*, The Gainesville Sun, Oct 16, 2019. <https://www.gainesville.com/news/20191016/prisons-chief-status-quo-unsustainable>

7 Florida Department of Corrections, Annual Reports.

8 Hunt, Kim and Bill Easley, *United States Sentencing Commission Report: The Effects of Aging on Recidivism Among Federal Offenders*, U.S. Sentencing Commission, Dec 2017. [https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf)

9 Florida Department of Corrections, Annual Reports.

10 Urahn, Susan, and Michael Caudell-Feagen, *Time Served: The High Cost, Low Return of Longer Prison Terms*, The Pew Center on the States, June 2012. [https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/PrisonTimeServed.pdf](https://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/PrisonTimeServed.pdf)

11 Engel, Len, and Maura McNamara, *Data-Driven Solutions to Improve Florida's Criminal Justice System*, Crime and Justice Institute, Feb 2018. <http://www.crj.org/assets/2018/01/FINAL-Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf>

12 Our analysis makes several assumptions based on data availability and limitations. We assume that no jail time credit goes toward release time, as we did not have information on length of jail stays before entering prison. We assume that multiple sentences run concurrently, as the

data does not distinguish if sentences are concurrent or consecutive. We assume sentences do not have mandatory minimums where gain time cannot be applied, as the data did not indicate where mandatory minimums are enforced. We assume everyone earns and/or keeps all available gain time, as we are not able to predict how often people attend rehabilitative programming or exhibit bad behavior. Our cost savings estimates assume 100 percent of the daily cost to incarcerate would be saved by early release. Lastly, our analysis does not include people given life sentences or death sentences.

13 Note that we did not include individuals with death sentences or life sentences without parole in the calculation of prison sentence length averages.

14 Sakala, Leah, *Smart Reforms to Prison Time Served Requirements in Florida*, Urban Institute, March 2019. [https://www.urban.org/sites/default/files/publication/100040/smart\\_reforms\\_to\\_prison\\_time\\_served\\_requirements\\_in\\_florida\\_0.pdf](https://www.urban.org/sites/default/files/publication/100040/smart_reforms_to_prison_time_served_requirements_in_florida_0.pdf)

15 Mauer, Marc, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, *The Sentencing Project*, Nov. 2018. <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>

16 Native Americans have a current sentence disparity of 36.3 months longer than the average sentence for white people. Restoring basic and incentive gain time decreases the disparity to 23.6 months if a 65 percent cap on rehabilitation credits is in place, and 18 months if there was no cap at all. Note that there are only 79 people labeled as Native American in the dataset. However, it is possible that some Native Americans and Latinos are labeled as white or "unknown."

17 Basic gain time was calculated as a lump sum award of 10 days per month of an individual's sentences. Incentive gain time was calculated as 20 days earned per month spent in prison. A scenario with both basic and incentive gain time would calculate incentive gain time based on a reduced prison sentence after the basic gain time lump sum had been applied. Cost estimates are based on an average daily expense of \$59.57 per day for each person incarcerated in Florida prisons, according to the Florida Department of Corrections FY 2017-18 Annual Report.

18 Klas, Mary Ellen, *Florida Prisons Cut Programs to Cover \$28 Million Deficit*, Tampa Bay Times, May 6, 2018. <http://www.tampabay.com/florida-politics/buzz/2018/05/06/florida-prisons-cut-programs-to-cover-28-million-deficit>

19 *Crime Survivors Speak: The First-Ever National Survey of Victims' Views on Safety and Justice*, Alliance for Safety and Justice, 2016. <https://allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf>

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