



*Reason*

Reason Foundation  
Policy Study No. 444  
April 2015

# The High Cost of Incarceration in Florida: Recommendations for Reform

by Lauren Galik



# Reason Foundation



Reason Foundation's mission is to advance a free society by developing, applying and promoting libertarian principles, including individual liberty, free markets and the rule of law. We use journalism and public policy research to influence the frameworks and actions of policymakers, journalists and opinion leaders.

Reason Foundation's nonpartisan public policy research promotes choice, competition and a dynamic market economy as the foundation for human dignity and progress. Reason produces rigorous, peer-reviewed research and directly engages the policy process, seeking strategies that emphasize cooperation, flexibility, local knowledge and results. Through practical and innovative approaches to complex problems, Reason seeks to change the way people think about issues, and promote policies that allow and encourage individuals and voluntary institutions to flourish.

Reason Foundation is a tax-exempt research and education organization as defined under IRS code 501(c)(3). Reason Foundation is supported by voluntary contributions from individuals, foundations and corporations. The views are those of the author, not necessarily those of Reason Foundation or its trustees.

## Foreword

Over the past several decades, the United States' incarceration rate has skyrocketed, increasing by roughly 700% since 1970. Today, approximately one in 35 American adults are under some form of correctional supervision, and one in 110 are in prison or jail. In Florida, this trend is no less profound. While the population of the state roughly tripled between 1970 and 2014, its prison population increased by more than 1,000%. This profound growth occurred largely after the federal government and numerous states, including Florida, enacted various "tough on crime" policies aimed at incapacitating violent and nonviolent offenders alike. However, in addition to increasing the prison population, these policies also required that many low-level offenders be committed to prison for crimes that other nations punish with civil sanctions or community service.

How did we get to this point? To put the issue in its proper context for Florida, first consider some broad societal facts related to recent history. A half-century ago, the young people of the baby boomer generation passed through their teens and into American society's most crime-prone age group, young adulthood. A number of factors—including, most notably, narcotics laws that focused on punishment rather than on the treatment and rehabilitation of drug abusers—predictably caused the crime rate in the country to soar. So did public alarm over the rise in violent crime, fanned in part by the advent of the then-relatively new medium of television. Florida was no exception. Burglaries and armed robberies were rampant. Reports of tourists being wantonly murdered and "cocaine cowboys" running amok on the streets of South Florida stoked fears.

For political candidates, being perceived as "tough on crime" was a necessity while being perceived as "soft on crime" meant trouble. And while fears of violent crime were certainly well founded, elected officials in Florida and elsewhere responded with an ever-expanding series of measures, some of which ultimately went too far. These included tough sentencing guidelines—including mandatory minimum sentences for certain categories of offenses, both violent and nonviolent. States also enacted habitual criminal statutes, tougher drug laws and restrictions on sentence-reducing "gain time," often without questioning what the fiscal impact would be.

But after several decades of "tough on crime" policies, it appears we've finally reached a tipping point. Our prisons are overcrowded and all too often filled with a disproportionate number of nonviolent offenders. Now is the time to grapple with what can be done to address the problems that ensued, which are still costing our society in wasted money and ruined lives. Can Florida reduce its

prison population without endangering public safety? With this study, Lauren Galik, director of criminal justice reform at Reason Foundation, shows the ways in which the Sunshine State can start to become an effective leader when it comes to reform of its criminal justice system.

This report comes at a particularly opportune moment, as a renaissance is beginning to take place across the country with respect to the public's attitude toward the criminal justice arena. This evolution, which is sweeping typically hardline conservative states such as Texas and Utah, is turning the old notion of "tough on crime" on its head. Conservative voices at the local, state and federal levels are beginning to take a thorough look at our criminal justice laws to figure out which can be reformed.

Floridians from all along the political spectrum are also beginning to ask themselves tough questions, like: What if our prison system housed fewer inmates, allowing it to do a better job preparing nonviolent offenders for re-entry into society while prioritizing prison space for hardcore, violent felons and sexual predators? Is public safety really enhanced by retaining nonviolent offenders for decades, including some who are past the age of 75 or 80? Is prison the best solution for people whose offenses are attributable to mental health problems? Might drug addiction be more successfully treated as a medical issue rather than as a criminal justice one?

These questions and others—legacies of our nation's costly "war on crime"—deserve the serious review contained in this important study. This examination is especially timely because, with Medicaid gobbling up a growing share of Florida's budget, every dollar spent on the prison system is one less dollar available for other priorities—from education and public health to transportation and the environment.

Now that Texas and other states with a tough-on-crime reputation have begun to implement successful sentencing reform efforts, Florida's elected officials can remind their constituents, who may still be wary of the specter of violent crime, of two things. First, that Florida's prison system has proved to be enormously costly, in terms of lives as well as dollars. Second, that seeking an alternative to draconian justice isn't lax or soft—it's smart. In the quest to achieve balance in the criminal justice system, this report is a helpful starting point for reforms. Such an effort is long overdue in Florida, and it's about time we implemented a new age of reforms that will have a lasting and positive impact.

—Sal Nuzzo, Vice President of Policy at The James Madison Institute

# The High Cost of Incarceration in Florida: Recommendations for Reform

By Lauren Galik

## Executive Summary

Over the past few decades, Florida has passed a number of laws that have dramatically increased criminal sentences, and enacted others that have limited the amount of gain-time credits—or credits for good behavior or participation in rehabilitative programming—inmates may earn toward a reduction of their sentences. These laws have mandated that all prisoners, even nonviolent offenders, serve not only longer sentences, but a larger percentage of their sentences as well. Taken together, these laws have contributed to Florida's burgeoning prison population, which has become increasingly expensive for taxpayers.

Some of Florida's more problematic laws include:

- ***Drug Trafficking Statutes***: The types and quantities of drugs required for an offense to be considered drug trafficking in Florida are wildly disparate. Illegal possession of some drugs, such as prescription painkillers that contain oxycodone or hydrocodone, require a very small amount to trigger a drug trafficking charge that carries the same mandatory minimum sentence as trafficking a much larger quantity of other drugs, such as cocaine or marijuana, for example. Florida's mandatory minimum sentences for these offenses are not only disproportionately harsh, but have led to the imprisonment of numerous low-level, non-violent offenders, have increased corrections expenditures, and have effectively eliminated judicial discretion, which has resulted in unjust and unnecessary punishment in some cases.

- ***10-20-Life***: Florida’s 10-20-Life law was enacted with the intention of incapacitating violent offenders who use firearms during the commission of an offense, as well as deterring others from committing these types of crimes. However, the law has not necessarily worked as intended. Since its enactment, 10-20-Life has been routinely applied to defendants whose crimes were far removed from the original intent of the law, including those who have brandished a firearm or fired a “warning shot” to defend themselves or others. Although this aspect of the law was reformed in 2014, many who would not necessarily be sentenced to mandatory sentences under the law today remain in prison because these reforms were not made retroactive. In addition to being misapplied in some cases, studies have shown that the 10-20-Life law cannot be definitively linked to a reduction in violent crime in the state.
- ***Habitual Offender Statutes***: Florida has a number of overlapping habitual offender statutes that require judges to sentence certain offenders to significantly longer terms of imprisonment based on their criminal history. Some of Florida’s habitual offender laws, such as the Habitual Felony Offender Law and the Habitual Violent Felony Offender Law, have required judges to send a number of nonviolent offenders to prison for disproportionately longer terms of imprisonment, even when the judge may believe that doing so is not in the best interest of justice. There are currently over 100 Florida inmates serving life without parole sentences for a nonviolent offense under these habitual offender laws. Only two other states, Louisiana and Alabama, have more inmates serving a life without parole sentence for a nonviolent offense as habitual offenders than Florida.
- ***Limits on Incentive Gain-Time***: Most states allow at least some inmates to earn credits toward a reduction in their sentences as a way to incentivize rehabilitation and good behavior while incarcerated, and reduce recidivism post-release. Florida is unique in that it prohibits all of its inmates—regardless of whether they committed a violent or nonviolent crime—from earning more than a 15% reduction in their sentences in the form of credits. In other words, all inmates are required to serve 85% of their sentences at a minimum. Reducing the earning power of these credits by mandating that all prisoners serve such a large portion of their sentences not only disincentivizes rehabilitation and good behavior, but also removes individualization from punishment, and requires taxpayers to continue to pay for the incarceration of individuals who may have adequately rehabilitated themselves and are ready to return to society at an earlier date.

These laws have produced a number of unfortunate consequences, such as contributing to an 11-fold increase in the state's prison population between 1970 and 2014 while Florida's state population roughly tripled over that same period of time, and a \$1.1 billion increase in corrections expenditures over the past 20 years. Because these laws have mandated prisoners serve longer prison terms and larger percentages of their sentences, Florida's elderly prison population has increased at a faster rate than any other age group over the past 10 years. The cost of incarceration for these inmates—roughly \$68,000 per year—is more than three times higher than the cost of an average inmate.

Beyond this, evidence suggests that these laws may not have been the most effective at reducing crime in the state. Indeed, a study by The Pew Center on the States estimates that prison provided no public safety benefit for over 1,700 nonviolent offenders released from Florida prisons in 2004. In addition, it found that over 4,000 more nonviolent offenders could have been released earlier without negatively impacting public safety. Other studies have shown that laws mandating longer sentences, such as those in Florida, do not have a positive deterrent effect on crime, and may even be counter-productive. Another study has shown that Florida's 10-20-Life law cannot be definitively linked to a reduction of violent crime in the state.

Moreover, because many of these laws are routinely applied to low-level, nonviolent offenders whose lengthened terms of incarceration not only cost taxpayers exorbitant amounts of money and fail to increase public safety, they apply harsh laws indiscriminately, without concern for whether the sentence fits the crime.

In order to limit the unintended consequences and negative impacts of these laws, this study suggests numerous reforms legislators could pursue that would help reduce the state's prison population and corrections expenditures without compromising public safety.

First, this study suggests that Florida legislators eliminate mandatory minimum sentences in order to give judges more discretion in sentencing. This would allow judges to prevent the imposition of arbitrary and unjust prison terms, but retain the option of imposing long terms of imprisonment for those offenders whose crimes warrant such a punishment, such as violent or serious offenders. Eliminating mandatory minimum prison terms does not mean that individuals will suddenly stop being sent to prison for these crimes, but it will instead allow judges to make individual determinations in sentencing, so that a convicted offender receives a punishment that is proportionate to the crime committed.

Alternatively, this study suggests that legislators significantly increase the threshold necessary to trigger certain drug trafficking offenses and subsequent mandatory minimum prison terms so that they are targeted at higher-level dealers as intended, not low-level offenders. Although modest reform was enacted in 2014 to this end, many of Florida's drug trafficking laws still fail to distinguish between drug users, low-level drug dealers, and large-scale drug traffickers, and often end up punishing low-level offenders with the same type of severity normally reserved for more serious criminals. Indeed, a 2009 study published by the Florida Senate found that lower-level offenders are sometimes punished more harshly than higher-level dealers and traffickers under the state's drug trafficking laws.

If neither of these reforms is politically feasible, this study recommends that Florida legislators enact broad safety valve legislation, which would allow judges to depart below mandatory minimum sentences, such as those required under the 10-20-Life law and Florida's drug trafficking laws, when they believe doing so would be in the best interest of justice. This would give judges the option of not sending low-level offenders to prison for a mandatory minimum of 20 years if they determine that doing so is not warranted for the crime committed or would not be in the best interest of justice or public safety, for example.

This study also suggests that legislators limit the scope of Florida's habitual offender laws so that they may only be applied to violent habitual offenders. Prohibiting these laws from applying to nonviolent offenders would ensure that prison resources are being used to keep individuals who pose the largest threat to society behind bars, not those whose prolonged periods of incarceration do not benefit public safety.

Finally, this study also recommends that legislators allow certain inmates to earn additional incentive gain-time credits so that non-violent and/or low-level offenders whose prolonged incarceration results in no positive impact on public safety may be released before serving 85% of their sentences. Allowing inmates—especially nonviolent offenders—to earn more credits toward a reduction in their sentences incentivizes rehabilitation, which could help reduce the chances of recidivism upon release, and will save taxpayers millions of dollars in the long term.

Florida has the opportunity to become a leader in smart and effective criminal justice reform. Enacting any of the above-suggested reforms would be a clear step in that direction.



# Table of Contents

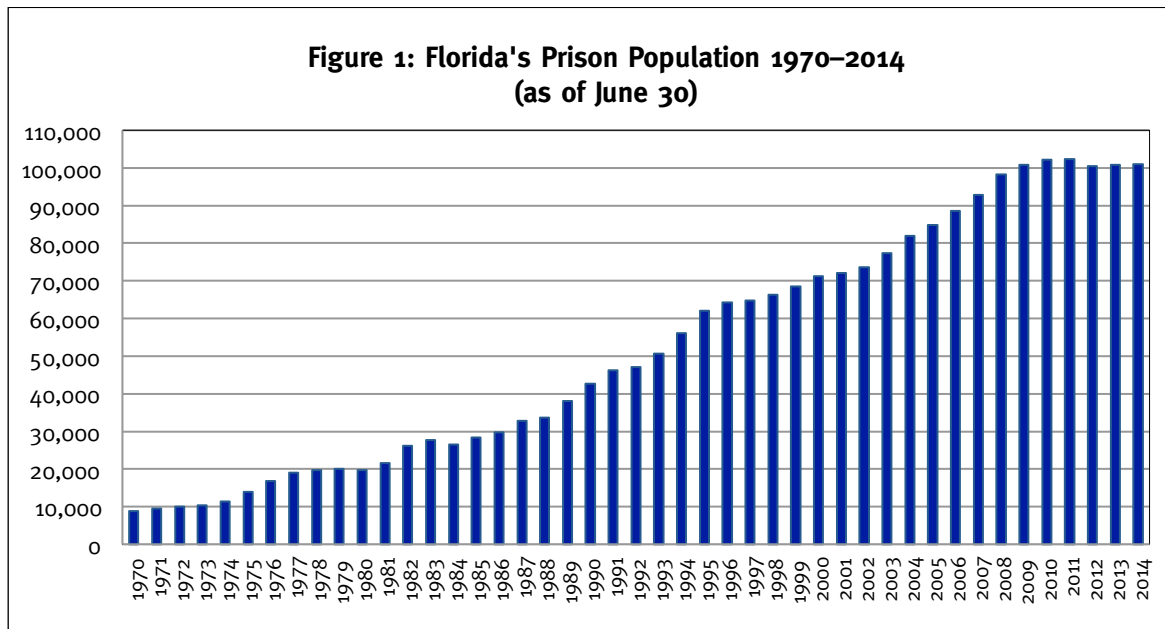
Overview .....	1
Causes of Florida’s Inmate Increase .....	5
A. Mandatory Minimum Sentences .....	5
1. Drug Trafficking Statutes.....	5
a) Mixtures.....	7
b) Conspiracy.....	8
c) Reforms to Florida’s Drug Trafficking Statutes: SB 360 (2014) .....	8
d) Problems with Florida’s Drug Trafficking Statutes .....	9
2. 10-20-Life (1999) .....	11
a) Unintended Consequences of 10-20-Life.....	12
1) 10-20-Life Has Not Reduced Crime .....	13
b) Reform to 10-20-Life Law: HB 89 (2014) .....	13
B. Habitual Offender Laws .....	13
1. Habitual Felony Offender Law (1988).....	14
2. Habitual Violent Felony Offender Law (1988).....	14
3. Safety Valve for Habitual Offender Laws.....	15
4. Problems with These Habitual Offender Laws.....	15
C. Gain-Time Restrictions.....	16
1. Basic Gain-Time Eliminated.....	16
2. Incentive Gain-Time Limited .....	17
3. Problems with Florida Gain-Time Laws .....	17
Unintended Consequences of Florida’s Sentencing Laws and Gain-Time Restrictions .....	19
A. Mandatory Sentencing Laws and Gain-Time Restrictions May Not Benefit Public Safety.....	19
B. Longer Sentences, Increased Costs.....	20
C. Increased Aging Prisoner Population .....	20
Policy Recommendations .....	22
A. Eliminate Mandatory Minimum Sentences .....	22
B. Increase the Threshold for Drug Trafficking.....	23
C. Enact Safety Valve Legislation .....	23
D. Reform Habitual Offender Laws .....	24
E. Make These and Previous Reforms Retroactive.....	24
F. Allow Inmates to Earn More Incentive Gain-Time .....	25
About the Author .....	26
Endnotes .....	27

## Part 1

# Overview

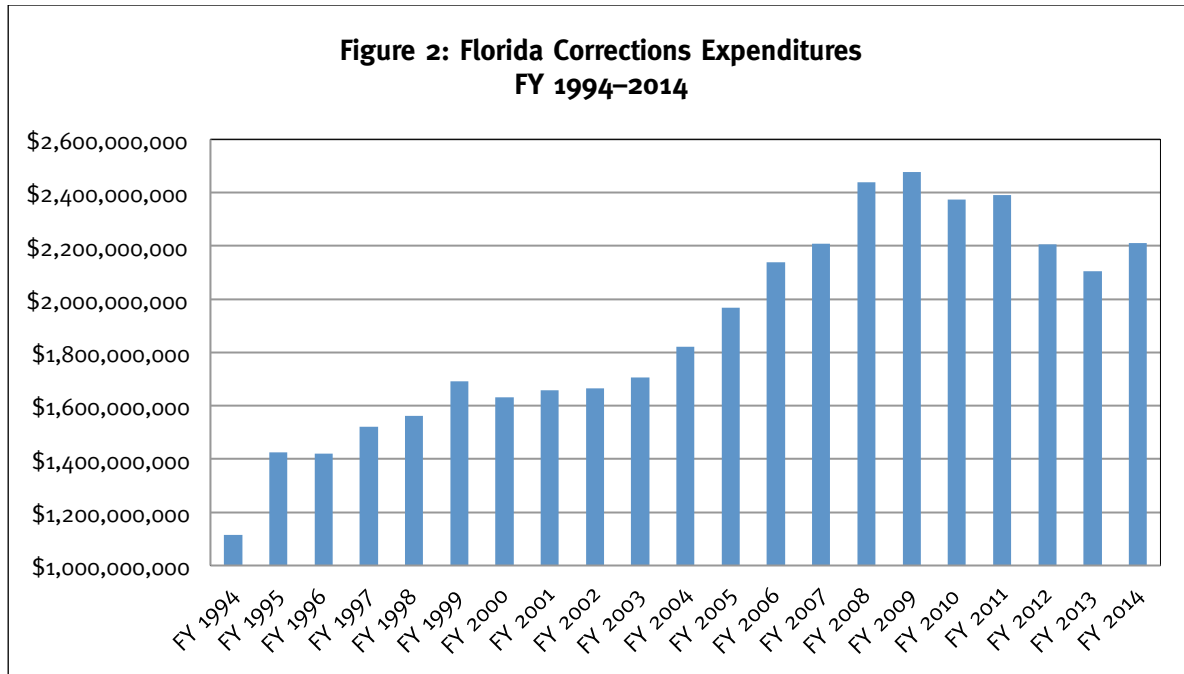
Florida's prison population has grown at a rapid rate over the past several decades. Between 1970 and 2014, Florida's total population increased by roughly 193%. However, its prison population increased by roughly 1,048% during that same time period. Today, Florida has the third largest prison population in the country—behind only California and Texas.

Between 1970 and 2014, Florida's prison population increased from 8,793 in 1970, which represented 0.13% of Florida's total population, to an astounding 100,942 in 2014, which represented roughly 0.51% of Florida's total population.<sup>1</sup>



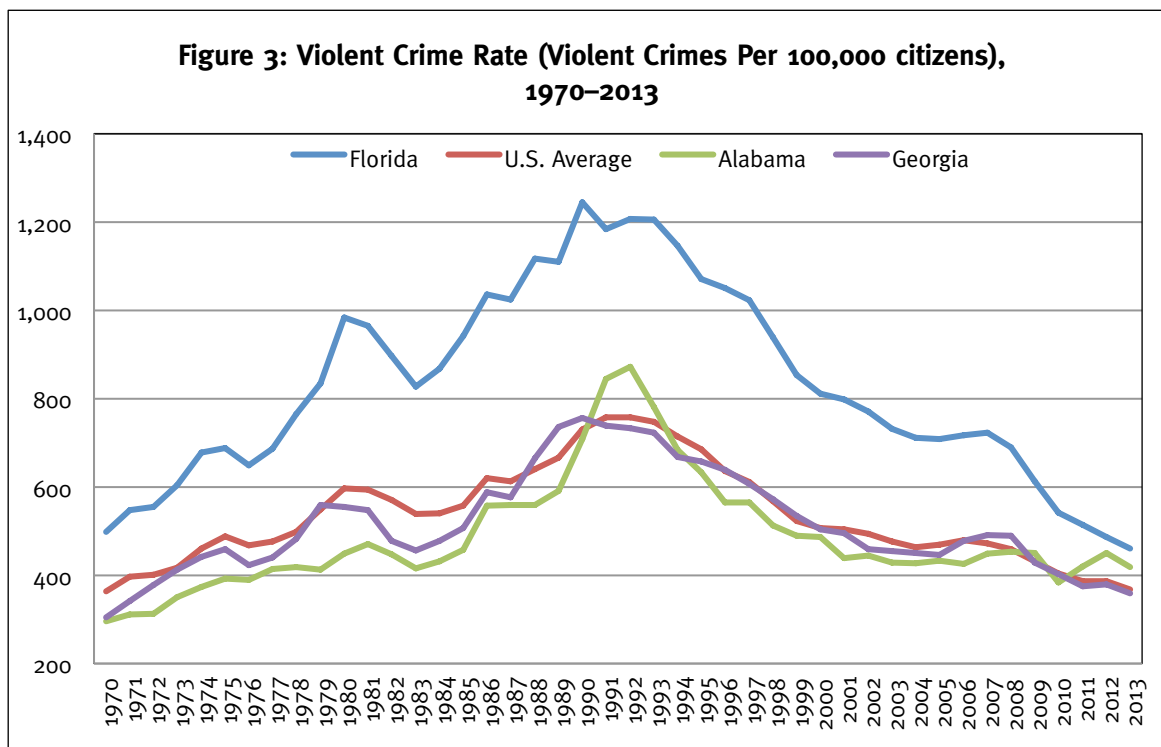
Source: Florida Department of Corrections

Florida's corrections expenditures have also dramatically risen over the past two decades. Between the 1994 and 2014 fiscal years, corrections expenditures rose by roughly \$1.1 billion dollars, which represents a nearly 98% increase.<sup>2</sup> Despite a slight decrease in expenditures in recent years that is likely due to increased use of privatized facilities and health care services, Florida taxpayers spent over \$2.2 billion on its correctional system in the 2014 fiscal year, as Figure 2 shows:<sup>3</sup>



Source: Florida Department of Corrections

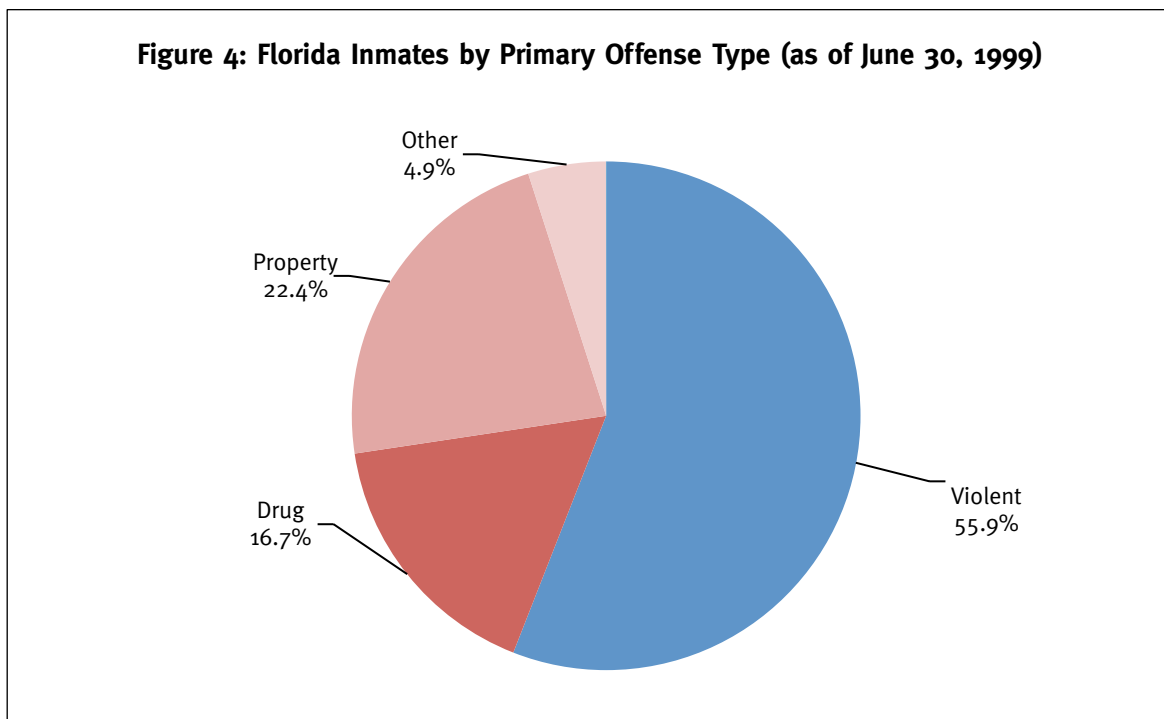
Despite a dramatic increase in its prison population and corrections expenditures, Florida still has one of the highest violent crime rates in the nation. As Figure 3 shows, Florida’s violent crime rate has remained consistently higher than its neighboring states, as well as the national average, for decades.<sup>4</sup>



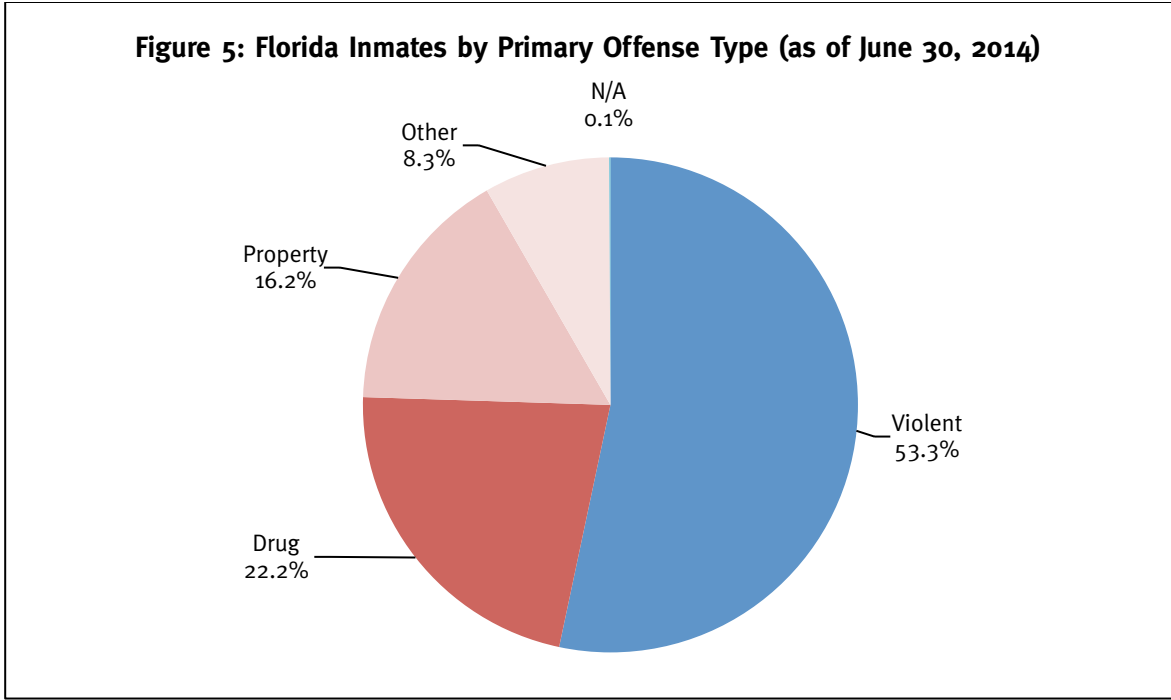
Source: Uniform Crime Reporting Statistics, FBI

While it's true that Florida's crime rate has dramatically decreased since the mid-1990s, it cannot be necessarily attributed to its increased prison population. If the decrease in violent crime were related to an increase in Florida's prison population, one would assume it is because Florida incarcerated violent offenders at an increasingly higher rate over time. Historically, however, that has not been the case. While the number of incarcerated violent offenders has indeed increased over time, it has increased at roughly the same rate as the number of incarcerated nonviolent offenders. Overall, the percentage of inmates incarcerated for a violent offense has remained fairly consistent over the years.

For example, as Figure 4 illustrates, roughly 55.9% of inmates were incarcerated for a violent offense in 1999, while 44% of inmates were incarcerated for a nonviolent offense.<sup>5</sup> However, as Figure 5 illustrates, approximately 53.3% of Florida inmates were serving a sentence for a violent offense in 2014, while 46.7% were serving a sentence for a nonviolent offense. This means that a higher percentage of Florida's inmates were incarcerated for a violent offense in 1999—when the violent crime rate was much higher—than in 2014.<sup>6</sup>



Source: Florida Department of Corrections



Source: Florida Department of Corrections

## Part 2

# Causes of Florida's Inmate Increase

So, why has this happened? One explanation is that over the past few decades, Florida legislators enacted a number of laws dramatically increasing criminal sentences, and enacted others limiting the amount of gain-time credits all inmates may earn toward a reduction of their sentences, either for participating in rehabilitative programming or for displaying “good behavior” while incarcerated.

These laws have required that all prisoners—violent and nonviolent alike—not only serve longer sentences, but also a larger percentage of their sentences. According to an analysis by The Pew Center on the States, the amount of time inmates served in Florida prisons increased by 166% between 1990 and 2009—the highest increase of any state measured—and sentences for inmates convicted of a drug offense increased by 194%.<sup>7</sup>

## A. Mandatory Minimum Sentences

A number of offenses in Florida carry mandatory minimum terms of imprisonment, which require judges to sentence offenders convicted of certain offenses to a fixed term of imprisonment that has been determined by the legislature instead of a judge. Many of these mandatory minimum sentences are disproportionately harsh for the crime committed, and require much longer terms of imprisonment than otherwise would be prescribed for similar offenses. Outlined below are descriptions of some of Florida's harshest mandatory minimum sentences, which are prescribed even for first-time, nonviolent convictions.

### *1. Drug Trafficking Statutes*

Despite enacting some modest reforms in 2014, Florida still has some of the harshest and broadest drug trafficking statutes in the nation. Laws against drug trafficking typically differ from other drug offenses, such as possession or sale, in that they are intended to target high-level dealers who sell or transport large quantities of illegal substances into or within a state, or individuals known as “drug kingpins.” In Florida, however, there is a rift between the intention of some of its drug trafficking statutes and the result.

A person may be convicted of a drug trafficking offense in Florida if he or she knowingly sells, purchases, manufactures, delivers, or is “knowingly in actual or constructive possession of” certain amounts of illegal substances.<sup>8</sup> Under this definition, a person found with a certain quantity of an illegal substance in his or her possession may be considered “trafficking,” even if there is no evidence to suggest the person was engaged in or making an attempt to sell or deliver the drugs. Indeed, even those caught possessing or purchasing a small amount of certain drugs may be convicted under Florida’s drug trafficking statutes.

Unfortunately, the amounts of drugs necessary to trigger a drug trafficking charge and a subsequent mandatory minimum sentence are wildly disparate.<sup>9</sup> With some substances, a drug trafficking charge is triggered only when an individual is in possession of or sells a very large amount of that substance, such as marijuana. This arguably targets higher-level dealers, since 25 pounds is a very substantial amount of marijuana that no low-level offender would be in possession of. However, with other substances, such as hydrocodone, oxycodone or heroin, a person only needs to be in possession of or sell a very small amount to trigger the same drug trafficking charge and subsequent mandatory minimum prison term, as Table 1 illustrates:

Drug	3 yrs, \$50k fine	7 years, \$100k fine	15 years, \$500k fine	25 Years, \$750k fine	Life
Marijuana*	25 lbs	2,000 lbs	10,000+ lbs		
Cocaine or Mixture	28 grams	200 grams	400 grams		150+ kilograms
Hydrocodone**	14 grams (27 pills)	28 grams (54 pills)	50 grams (97 pills)	200 grams (386 pills)	30+ kilograms (57,837 pills)
Oxycodone***	7 grams (14 pills)	14 grams (28 pills)	25 grams (50 pills)	100 grams (199 pills)	30+ kilograms (59,701 pills)
Heroin, Morphine, Hydromorphone, etc.	4 grams		14 grams	28 grams	30+ kilograms
Amphetamine or Methamphetamine	14 grams	28 grams	200+ grams		
LSD	1 gram	5 grams	7+ grams		

Source: Florida statutes Section XLVI Chapter 893.15

\* Fines for trafficking marijuana are half of what is required for other drugs;

\*\* Hydrocodone pill estimate derived from weight of 5mg Norco pill;

\*\*\* Oxycodone pill estimate derived from weight of 5mg Percocet pill.

For example, if a person is arrested for selling 14 grams of oxycodone, or roughly 28 Percocet pills, he or she will be charged with trafficking oxycodone and, upon conviction, subsequently sentenced to a mandatory minimum of seven years in prison, as well as ordered to pay a \$100,000 fine. This is the same sentence a person would receive if he or she trafficked roughly 14 times that amount of cocaine, or 2,000 pounds of marijuana. To trigger a 15-year mandatory minimum prison sentence and \$500,000 fine for trafficking oxycodone, a person needs to be in possession of only 50 Percocet pills—or less than a

month's supply for legal users. This is the same sentence a person would receive if he or she trafficked 10,000 pounds of marijuana, or 400 grams of cocaine.

This means, for example, that a person who becomes addicted to pain medicine after undergoing back surgery, runs out of his legal prescription, and seeks to buy a month's supply of Percocet from an undercover officer will be charged with trafficking oxycodone. He will then face a mandatory minimum 15 years in prison—the same sentence a large-scale marijuana or cocaine dealer would receive.

#### *a) Mixtures*

Under Florida law, the purity of the drugs involved during the commission of a drug crime is irrelevant. This means that mixtures of certain amounts of drugs are treated the same as drugs in their purest form. So, for example, a “dose” of pure LSD may weigh roughly 50 milligrams. However, some individuals consume the drug by first applying it to a sugar cube, which weighs roughly four grams. If an individual is caught possessing a sugar cube with LSD, the entire weight of the substance will be considered pure LSD, which means he or she will be charged with drug trafficking and face a mandatory minimum three-year prison sentence and \$50,000 fine under Florida law.<sup>10</sup>

Similarly, with prescription medication in pill or capsule form, the total weight of the pills is used to determine whether a threshold trafficking amount exists.<sup>11</sup> However, the actual amount of illegal substances contained in certain prescription medications varies a great deal, and certain pills may contain higher amounts of oxycodone or hydrocodone than others. Moreover, the actual amount of hydrocodone or oxycodone in prescription pills represents an extremely small portion of the total weight of the pill, as they are often mixed with other substances such as acetaminophen.

So for example, a 5mg Percocet pill contains 5mg of oxycodone and 325mg of acetaminophen, and the total weight of the pill is 0.5025 grams. To cross the seven-gram weight threshold necessary to trigger a drug trafficking charge in Florida, a person would have to illegally possess roughly 14 of these pills. However, the weight of pure oxycodone contained in these 14 pills is only approximately 0.07 grams. Despite this fact, a person convicted of illegally possessing 14 5mg Percocet pills will be charged as if he or she trafficked seven grams of pure oxycodone, and face a mandatory minimum three years in prison.<sup>12</sup>

The problem with allowing drug trafficking sentences to be determined by the total weight, including mixtures, of a substance instead of the weight or quantity of the actual illegal substance involved is that it does not adequately relate drug offender punishments to



criminal culpability, and instead promotes disparate sentencing practices that have resulted in lower level drug offenders receiving sentences intended for higher level dealers.

### *b) Conspiracy*

A person may be convicted of a drug trafficking offense even if he or she did not possess, sell or handle any drugs at all. Under Florida law, any person who agrees, conspires, combines or confederates with another person to commit a drug trafficking offense may be sentenced as if he or she had actually trafficked drugs.<sup>13</sup>

This means that if a person agrees to deliver approximately 27 5mg Norco pills (which contain hydrocodone) for an undercover officer, but never actually picks up or delivers the drugs, he or she may still be sentenced as if he or she had committed the crime of trafficking 14 grams of hydrocodone. This is problematic, as it fails to distinguish between widely different criminal acts.

Nonetheless, if a person is convicted of conspiracy, a judge must sentence him or her to the mandatory minimum sentences prescribed for the drug and quantity he or she would have trafficked.<sup>14</sup>

### *c) Reforms to Florida's Drug Trafficking Statutes: SB 360 (2014)*

Florida legislators passed and the governor signed SB 360 in 2014, which increased the amount necessary to trigger a drug trafficking mandatory minimum punishment for two specific substances: oxycodone and hydrocodone.

Prior to the passage of this law, possession of four grams of either hydrocodone or oxycodone—two substances that can be acquired legally with a prescription—was defined as drug trafficking under Florida law, and carried a mandatory minimum sentence of three years in prison, as Table 2 illustrates. Four grams equals roughly eight 5mg Norco pills (which contain hydrocodone) or eight 5mg Percocet pills (which contain oxycodone).

<b>Drug</b>	<b>3 years, \$50k fine</b>	<b>15 years, \$500k fine</b>	<b>25 Years, \$750k fine</b>	<b>Life</b>
Hydrocodone*	4 grams (8 pills)	14 grams (27 pills)	28 grams (54 pills)	30+ kilograms (57,837 pills)
Oxycodone**	4 grams (8 pills)	14 grams (28 pills)	28 grams (56 pills)	30+ kilograms (59,702 pills)

\* Hydrocodone pill estimate derived from weight of 5mg Norco pill;

\*\* Oxycodone pill estimate derived from weight of 5mg Percocet pill

**Table 3: Mandatory Minimum Penalties for Trafficking Hydrocodone and Oxycodone After SB 360 (2014) Reforms**

Drug	3 years, \$50k fine	7 years, \$100k fine	15 years, \$500k fine	25 Years, \$750k fine	Life
Hydrocodone*	14 grams (27 pills)	28 grams (54 pills)	50 grams (97 pills)	200 grams (386 pills)	30+ kilograms (57,837 pills)
Oxycodone**	7 grams (14 pills)	14 grams (28 pills)	25 grams (50 pills)	100 grams (199 pills)	30+ kilograms (59,702 pills)

\* Hydrocodone pill estimate derived from weight of 5mg Norco pill;

\*\* Oxycodone pill estimate derived from weight of 5mg Percocet pill

SB 360 increased the amount of hydrocodone and oxycodone necessary to trigger a drug trafficking offense to 14 grams of hydrocodone and seven grams of oxycodone, as Table 3 illustrates. However, by only modestly increasing the amount of these substances necessary to trigger a drug trafficking offense, this law still allows for many low-level offenders to be potentially affected by this law. Moreover, it is not in line with the amounts of other drugs necessary to trigger a drug trafficking offense/mandatory minimum sentence, as illustrated in Table 1 in the previous section.

The reform also created a discrepancy between the amount of hydrocodone and oxycodone necessary to trigger a drug trafficking offense and subsequent mandatory minimum sentence, despite the fact that some brands of pills that contain oxycodone and hydrocodone, such as 5mg Percocet and 5mg Norco, weigh roughly the same amount. However, it's important to note that the weight of these pills varies by the brand and manufacturer of the pill. For example, some may contain more acetaminophen than others, thus causing the pill to weigh more. Despite this fact, Florida's drug trafficking statutes classify hydrocodone and oxycodone pills that weigh varying amounts similarly across the board, increasing the probability that two offenders arrested for illegally possessing the same number of pills of different brands and weights will receive wildly different drug trafficking punishments.

As of February 20, 2014, there were 496 inmates serving sentences for trafficking an illegal substance, such as oxycodone, hydrocodone, heroin or hydromorphone, between four and 14 grams.<sup>15</sup> However, it's unclear how many of these inmates were convicted of trafficking only hydrocodone or oxycodone, and therefore would not have received the same sentences today.

#### *d) Problems with Florida's Drug Trafficking Statutes*

As highlighted above, Florida's drug trafficking statutes are wildly disparate, and target a wide range of offenders, including individuals caught in possession of a small amount of certain illegal substances. Unsurprisingly, the number of inmates serving a mandatory minimum term of imprisonment for drug trafficking has increased significantly over the

past two decades. In 1996, there were 2,068 inmates serving sentences for a drug trafficking offense. In 2014, that number more than tripled to 6,283.<sup>16</sup> The number of inmates imprisoned for trafficking a small amount of oxycodone or hydrocodone has increased significantly as well. In the 2000–2001 fiscal year, 60 offenders were admitted to prison for trafficking between four and 14 grams of hydrocodone or oxycodone, but in the 2010–2011 fiscal year, that number had increased to 849, representing a 14-fold increase.<sup>17</sup>

These figures signal that Florida’s mandatory minimum sentences for drug trafficking offenses are not only wildly disparate, but have failed to curb drug trafficking in the state. Instead, these laws have increased the percentage of the total prison population serving sentences for drug trafficking, as well as the number of low-level traffickers admitted to prison each year.

According to a report published by the Florida Senate, in September 2009, low-level offenders convicted of a drug trafficking offense were serving sentences that were above the mandatory on average, while inmates convicted of a higher-level trafficking offense were serving sentences below the mandatory, on average. Part of the reason for why, the report notes, is because lower-level offenders have little, if any, information about higher-level dealers in a trafficking organization, and therefore are unlikely to receive the benefit of a “substantial assistance” sentence reduction from the prosecution.<sup>18</sup>

Moreover, the mandatory minimum sentences that these offenses carry eliminate judicial discretion by requiring judges to sentence all offenders to fixed terms of imprisonment instead of allowing them to weigh the individual circumstances of the case or offender to determine an appropriate sentence, as with a drug possession or sale of a controlled substance conviction.

The mandatory minimum sentences these offenses carry help explain why a judge was forced to sentence Todd Hannigan to a mandatory minimum of 15 years in prison for trafficking between 14 and 28 grams of hydrocodone, for example, despite admitting in court that the sentence was inappropriate. Hannigan was arrested and charged with trafficking 22 grams of hydrocodone after he was found with 31 of his mother’s prescription Vicodin pills in a nearby park, where he was attempting to commit suicide by consuming a lethal dose. At the time of sentencing, the judge told Hannigan that he believed the sentence was inappropriate for him, but because of restraints placed upon his ability to stray from the mandatory minimum sentence, he could do “nothing more than perform an administrative function.”<sup>19</sup> By the time Hannigan is released, he will be 57 years old and have cost taxpayers roughly \$271,000 for the duration of his incarceration.<sup>20</sup>

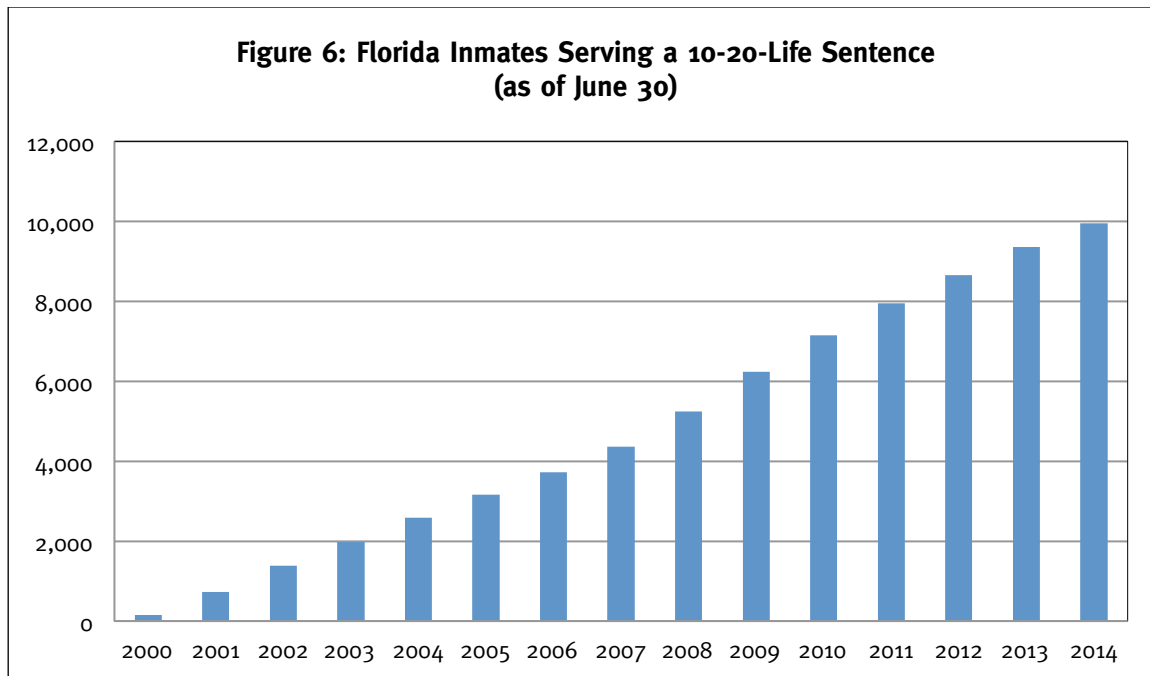
## *2. 10-20-Life (1999)*

The 10-20-Life law is one of the most notoriously harsh sentencing laws in Florida. Passed in 1999, the law prescribes various mandatory minimum sentencing enhancements for offenders who were in possession of or discharged a firearm or “destructive device” during the commission of certain violent or drug trafficking offenses. This law not only applies to criminal recidivists, but first-time offenders as well.<sup>21</sup>

If, during the commission of a violent or drug trafficking offense, an offender possessed a firearm or “destructive device,” a judge must sentence him or her to a mandatory minimum of 10 years in prison in addition to the sentence received for the underlying offense.<sup>22</sup> If the firearm was a semi-automatic or machine gun, the mandatory minimum increases to 15 years. If an offender discharges any type of firearm and causes great bodily injury or death to another individual during the commission of a violent or drug trafficking offense, a judge must sentence him or her to a mandatory minimum 20 years in prison. Finally, if an offender discharges any type of firearm and causes great bodily injury or death to another individual during the commission of a violent or drug trafficking offense, a judge must sentence him or her to a mandatory minimum of 25 years in prison, with a maximum sentence of life.<sup>23</sup>

The law also requires judges to sentence individuals convicted of possessing a firearm as a convicted felon to a mandatory minimum of three years in prison. The same sentence must also be prescribed for individuals convicted of aggravated assault or burglary of a conveyance to a mandatory minimum if they possessed a firearm or “destructive device” during the commission of the offense. However, if the person was convicted of possessing a firearm or destructive device as a convicted felon and was previously convicted of certain violent offenses, a judge must sentence him or her to a mandatory minimum of 10 years in prison.<sup>24</sup>

The number of inmates serving 10-20-Life sentences has skyrocketed since the law was enacted in 1999, increasing from 146 in 2000 to 9,957 in 2014, as Figure 6 shows.<sup>25</sup>



Source: Office of Economic & Demographic Research, Florida Legislature

#### *a) Unintended Consequences of 10-20-Life*

Florida’s 10-20-Life law was enacted with the intention of incapacitating violent offenders who use firearms during the commission of an offense, as well as deterring others from committing these types of crimes. Unfortunately, the law has been routinely applied to defendants whose crimes were far removed from the original intent of the law.

For example, prosecutors may charge defendants with aggravated assault if they brandished a firearm or fired a “warning shot” to defend themselves or others, for example. Because a gun was brandished or fired during the commission of these type of “offenses,” a conviction automatically warrants a 10- or 20-year sentencing enhancement under the law, and judges have no sentencing discretion whatsoever.

Individual cases worth noting are that of Marissa Alexander who was sentenced to serve a 20-year mandatory prison term for firing a warning shot to scare off her abusive husband, Orville Lee Wollard who was sentenced to mandatory 20 years in prison for firing a warning shot to scare off his daughter’s abusive boyfriend, and Ronald Thompson who was sentenced to a mandatory 20 years in prison for firing a warning shot into the ground to scare off his friend’s violent grandson and friends. He was a 62-year-old, disabled veteran at the time of sentencing, but has since been released after being granted a new trial, and accepting a plea offer for five years in prison with credit for time served.<sup>26</sup>

### 1) 10-20-Life Has Not Reduced Crime

In addition to being misapplied in some cases, there is little evidence to suggest that Florida's 10-20-Life law has effectively reduced crime in the state. A study conducted by Alex Piquero, a criminologist at the University of Florida, concluded that 10-20-Life has not been responsible for a reduction in the number of homicides in the state. Furthermore, the study notes that Florida's violent crime rate dropped 18.11% between 1994 and 1998, four years before the law was passed. Between 2000 and 2004, four years after the law was enacted, the violent crime rate dropped 11.86%, or 6% less than before the law was enacted, which suggests the law may not be responsible for a decline in Florida's violent crime rate.<sup>27</sup>

### *b) Reform to 10-20-Life Law: HB 89 (2014)*

In 2014, Florida legislators passed and the governor signed HB 89, which reformed the state's 10-20-Life law for the first time. Under this law, a person can no longer be sentenced under the 10-20-Life law for firing a warning shot, for example, if the judge finds he or she did so as an act of self-defense.

However, the reforms made with this law were not made retroactive, which means that offenders currently serving 10-year, 20-year, or life sentences who otherwise would not if they were sentenced today will continue to do so unless they are granted clemency from the state Clemency Board.

It is difficult to argue that it is socially or economically beneficial to require inmates to continue to serve these decades-long sentences, especially if they would be ineligible for a 10-20-Life sentence today under this reform.

## B. Habitual Offender Laws

Florida has a number of overlapping habitual offender laws that mandate significantly longer terms of imprisonment for individuals convicted of multiple crimes. While the intention of these laws was to incapacitate career criminals and offenders convicted of multiple violent crimes, two of Florida's habitual offender laws may be applied to individuals whose current offense is nonviolent. Indeed, over 100 inmates were sentenced to life in prison for a nonviolent offense because of these habitual offender laws.

## *1. Habitual Felony Offender Law (1988)*

Florida's Habitual Felony Offender Law was passed by the legislature in 1988. The law requires longer prison terms for offenders who were previously convicted of any combination of two or more felonies and whose current offense was committed either while he or she was serving a prison sentence or court-ordered supervision, or within five years of his or her previous conviction or release from prison, whichever date is later. To be sentenced as a felony habitual offender, one of the two prior felony convictions must not be for purchasing or possessing a controlled substance. This does not include drug trafficking.<sup>28</sup>

Florida's Habitual Felony Offender Law increases the maximum sentences that judges may issue certain offenders. Offenders convicted of a first degree or life felony as their third offense may be sentenced to prison for life (the maximum sentence for a first-time offender is 30 years). For offenders whose crime(s) were committed after October 1, 1995, a life sentence means life without parole. Judges may sentence offenders convicted of a second degree felony as their third offense to a maximum of 30 years imprisonment (double the maximum sentence for a first-time offender). For offenders convicted of a third degree felony as their third offense, the maximum sentence is 10 years imprisonment (again, double the maximum sentence for a first-time offender).

However, some offenses classified as first degree felonies under Florida law are nonviolent, such as the burglary of a commercial or industrial building that causes more than \$1,000 of property damage, or possession of seven grams or more of certain drugs, such as oxycodone, which falls under the broad definition of drug trafficking.<sup>29</sup>

So for example, if a person is convicted of trafficking seven grams of oxycodone on three separate occasions, the third of which occurred within five years after he or she was released from prison, that person must be sentenced to spend the rest of his or her life in prison if he or she is sentenced under the Habitual Felony Offender Law.<sup>30</sup>

## *2. Habitual Violent Felony Offender Law (1988)*

Passed along with the Habitual Felony Offender Law in 1988 by the Florida legislature, the Habitual Violent Felony Offender law requires judges to sentence offenders to substantially longer periods of imprisonment based on prior convictions.

To be considered a habitual violent offender, a person must have been previously convicted of at least one violent crime, and his or her current offense must have been committed either while he or she was serving a prison sentence or court-ordered supervision, or within five years of his or her previous conviction or release from prison,

whichever date is later. However, to be considered a habitual violent offender, the current offense or conviction does not need to be violent, but can be nonviolent as well.<sup>31</sup> This is problematic, in that it does not necessarily limit the application of the law to only individuals convicted of multiple violent offenses.

Florida's Habitual Violent Felony Offender Law requires judges to sentence offenders whose current conviction is a first degree or life felony to life in prison, with the requirement that at least 15 years be served before the offender becomes eligible for release. Offenders whose current conviction is a second degree felony must serve at least 10 years in prison, and face a sentence of up to 30 years. Offenders whose current conviction is a third degree felony must serve at least five years in prison, and face a sentence of up to 10 years.<sup>32</sup>

For example, a person could be sentenced to a mandatory life sentence under this law if he or she is convicted of trafficking 14 grams of hydrocodone, a first-degree felony, if he or she has been previously convicted of a violent offense within the past five years.

### *3. Safety Valve for Habitual Offender Laws*

It is important to note that Florida has a safety valve in place for these two habitual offender laws. This safety valve allows judges to not sentence a defendant to the mandatory minimum term of imprisonment required under these laws if he or she finds that imposing such a sentence is not necessary for the protection of the public.<sup>33</sup> The fact that Florida already allows judges to choose not to sentence offenders under these habitual offender laws suggests some acceptance of the idea that not every defendant should be subject to harsh, inflexible sentencing. Furthermore, it implies legislative recognition of the fact that such sentences are not always necessary to protect the public.

### *4. Problems with These Habitual Offender Laws*

While many of Florida's habitual offender laws were enacted with the intention of incapacitating violent career criminals, these two laws have allowed for a number of nonviolent offenders to receive substantially longer criminal sentences as habitual offenders. Even more alarming, there are currently 105 inmates in Florida who were sentenced to life without parole for a nonviolent offense under one of the state's habitual offender laws, according to a recent report by the ACLU.<sup>34</sup> These inmates account for 38.9% of all Florida prisoners sentenced to life without parole for a nonviolent offense.<sup>35</sup> These 105 inmates will never have an opportunity for release, and will likely die in prison, which is far harsher punishment than many inmates who have been convicted of a violent offense.



Allowing nonviolent offenders to be sentenced to life without parole under these habitual offender laws is costly, inefficient, and does not ensure that the punishment fits the crime committed. Moreover, there is little evidence that suggests these laws have led to a decrease in crime since their enactment. For example, a 1998 RAND study found that states that enacted habitual offender or “three strikes” laws—Florida included—have not seen a more rapid decrease in crime than states that did not enact such legislation.<sup>36</sup>

## C. Gain-Time Restrictions

Mandatory minimum sentences and habitual offender laws have significantly increased the length of prison sentences in Florida. However, the dramatic increase in *time served* by Florida inmates owes much to legislation passed in the 1990s, which restricted the amount of gain-time Florida inmates are eligible to earn while incarcerated.

Indeed, these restrictions were imposed as a reaction to previous policies that gave offenders credits automatically, rather than through program participation and good behavior. These policies allowed inmates to serve only 30% of their court-imposed sentences before being released—even violent offenders.

### 1. *Basic Gain-Time Eliminated*

The first piece of legislation that restricted the amount of gain-time inmates could earn, called the “Safe Streets Act,” was passed by the 1992–1993 legislature. This legislation eliminated basic gain-time for all inmates whose offenses were committed on or after January 1, 1994. Prior to this, inmates received 10 days of basic gain-time for each month of sentence imposed. The amount was awarded in a lump sum upon entering prison. So for example, an inmate sentenced to serve a two-year prison sentence would receive 240 days in basic gain-time upon entering prison. This meant the inmate would only have to serve 490 days (approximately one year and four months) instead of 730 days (two years) in prison. The credits would be granted automatically, regardless of whether an inmate displayed good behavior or participated in rehabilitative programming. This was problematic, as inmates were not awarded credits based on merit, but just for being in prison.

Current inmates whose offenses were committed between July 1, 1978, and December 31, 1993 may still be granted 10 days of basic gain-time for each month of the sentence imposed. Inmates whose offenses were committed on January 1, 1994 or later are not eligible for any basic gain-time whatsoever.

## *2. Incentive Gain-Time Limited*

Most states allow inmates to earn a number of days or months off of their sentences in the form of gain-time, or credits, if inmates meet certain criteria. Gain-time or awarded credit is typically used to incentivize inmates to participate in rehabilitative programming and engage in good behavior while incarcerated, though the way it is awarded varies.

However, Florida significantly limited the amount of gain-time credits inmates may earn with the passage of a truth-in-sentencing law in 1995. The law requires all inmates whose crimes were committed after October 1, 1995 to serve a minimum of 85% of their court-imposed sentences, regardless of whether they were convicted of a violent or nonviolent crime. As of June 30, 2014, 90.4% of all inmates were serving 85% of their sentences under this law.<sup>37</sup>

Several other states have enacted similar truth-in-sentencing statutes, requiring violent offenders to serve 85% of their sentences. Indeed, truth-in-sentencing laws were particularly popular during the 1990s, especially after the Violent Crime Control and Law Enforcement Act of 1994 was passed by Congress and signed into law by President Clinton. The Act, commonly referred to as the Federal Crime Bill, provided funding to states that adopted truth-in-sentencing laws that required violent offenders to serve at least 85% of their sentences.<sup>38</sup>

However, Florida's law goes far beyond requirements for Crime Bill funding eligibility, as *all* offenders are required to serve 85% of their court-imposed sentences, not just violent criminals.

## *3. Problems with Florida Gain-Time Laws*

Mandating that all offenders serve a minimum of 85% of their court-imposed sentences is an arbitrary requirement that forces the state to view individual prisoners—violent or nonviolent, and regardless of the circumstances of their crimes—as a collective whole that deserve to be locked away for the same specific period of time, and after that specific period of time, are ready to be released. This ignores the basic fact that individuals rehabilitate at different rates—some benefit from serving a larger portion of their sentences, whereas others do not, as demonstrated by their behavior while incarcerated.

Additionally, requiring all offenders to serve 85% of their sentences discourages them from actively participating in rehabilitative programming while incarcerated, which may make them more likely to recidivate after their eventual release. Conversely, this requirement also prevents offenders who have effectively rehabilitated themselves while incarcerated from freeing up resources and prison space for more serious offenders.

Moreover, requiring all inmates to serve a larger percentage of their sentences does not always serve in the best interest of public safety, and may be a waste of millions of taxpayer dollars. Analysis by The Pew Center on the States estimates that 14% of the nonviolent inmates released from Florida prisons in 2004—roughly 2,640 inmates—could have been released between three months and two years earlier than they were, and that doing so would not have negatively impacted public safety. Based on the Pew estimates, if Florida had released these inmates before they had served the mandated 85% of their sentences, the state could have saved \$54 million.<sup>39</sup>

## Part 3

# Unintended Consequences of Florida's Sentencing Laws and Gain-Time Restrictions

Besides significantly increasing Florida's prison population and corrections expenditures over the past several decades, Florida's sentencing laws have produced a number of unfortunate, albeit unintended, consequences, some of which have been highlighted above. Additional unintended consequences are discussed below:

## A. Mandatory Sentencing Laws and Gain-Time Restrictions May Not Benefit Public Safety

Florida's sentencing laws and limits on gain-time not only burden Florida taxpayers, but there's little evidence to support the notion that requiring some nonviolent inmates to serve 85% of their sentences enhances public safety. As highlighted earlier, analysis by The Pew Center on the States estimates that 14% of the nonviolent inmates released from prison in Florida in 2004 could have been released between three months and two years earlier without jeopardizing public safety. Moreover, that same study found that incarceration of 1,771 nonviolent inmates released from prison in 2004 provided no public safety benefit whatsoever.<sup>40</sup>

Generally, research on the issue has found that laws mandating longer terms of imprisonment do not have a positive deterrent effect on crime, and in fact may be counter-productive. Instead, increasing the certainty of punishment, researchers have found, serves as a more effective deterrent to crime than increasing the severity of punishment.<sup>41</sup>

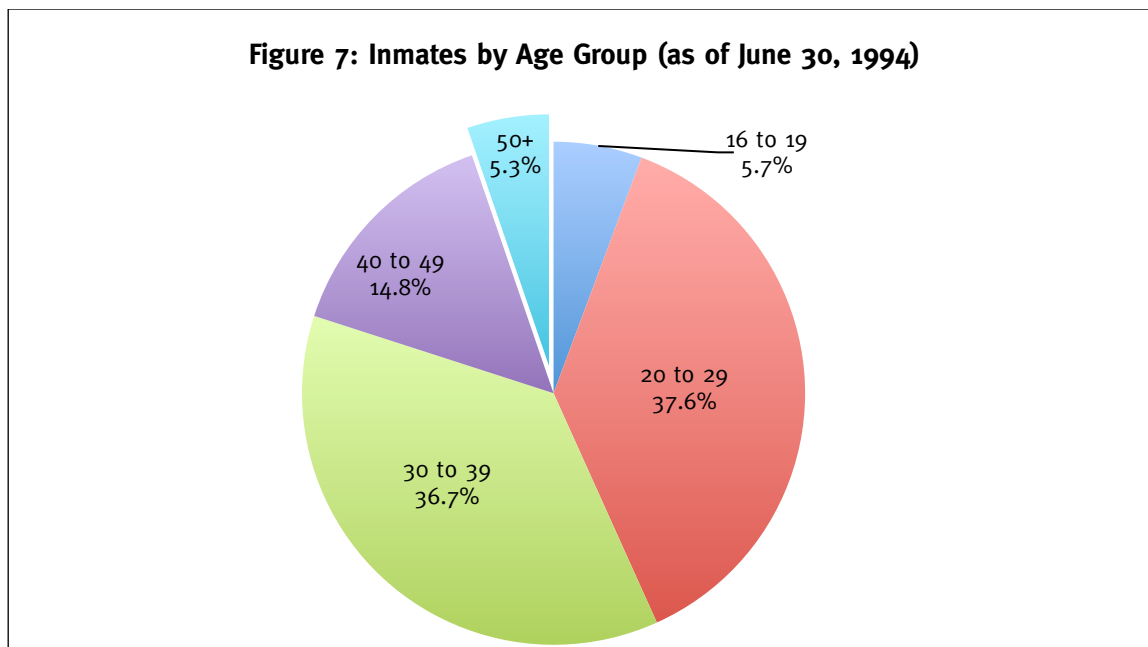
## B. Longer Sentences, Increased Costs

Florida’s sentencing laws, which have required inmates to serve longer terms of imprisonment and longer percentages of their prison terms, have cost Florida taxpayers a significant amount of money. Analysis by The Pew Center on the States estimates inmates released in 2009 spent an average of 22 months longer, on average, in prison than they would have if they were released in 1990, which cost taxpayers an additional \$1.4 billion.<sup>42</sup>

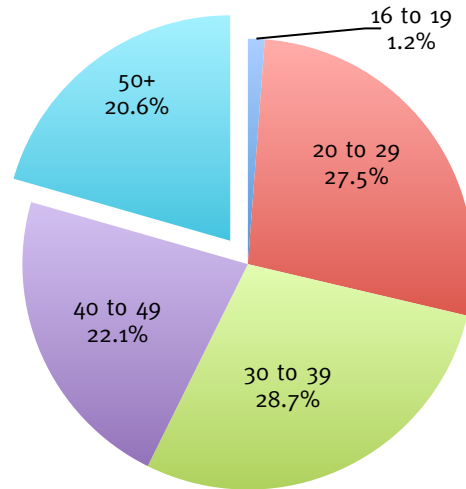
## C. Increased Aging Prisoner Population

Today, Florida inmates are required to serve significantly longer prison sentences compared to inmates sentenced over two decades ago. As a result, Florida’s aging prison population has increased significantly.

Between June 1994 and June 2014, the total number of Florida prisoners aged 50 and older—the age at which inmates are considered elderly—increased by over 600%, from 2,947 to 20,753. In June 1994, inmates aged 50 and older accounted for roughly 5.3% of the total prison population. However, by June 2014, elderly inmates accounted for roughly 20.6% of the total prison population, as Figures 7 and 8 illustrate.<sup>43</sup>



Source: Florida Department of Corrections

**Figure 8: Inmates by Age Group (as of June 30, 2014)**

Source: Florida Department of Corrections

The problem with this is that elderly inmates are much more expensive to incarcerate than inmates of average age, as they have higher rates of chronic illness that require more frequent medical visits, procedures and medication. A report published by the American Civil Liberties Union found it costs \$68,270 annually, on average, to incarcerate an inmate aged 50 and older, which is nearly four times the cost of incarcerating an inmate of average age in Florida.<sup>44</sup> Applying this average, it costs approximately \$1.4 billion per year to incarcerate Florida’s 20,753 elderly inmates. This figure accounts for roughly 60% of the Florida Department of Correction’s total operating funds for FY 2013–2014.<sup>45</sup>

According to the Florida Department of Corrections, elderly inmates utilized a disproportionate percentage of hospital services in 2014. Despite representing only 20.6% of the total prison population, elderly inmates accounted for 51.3% of all “episodes of care” and 63.4% of all hospital days in 2014.<sup>46</sup>

Furthermore, elderly inmates are much less likely to recidivate than younger offenders. In New York, for example, only 7% of prisoners released from prison between the ages of 50 and 64 were convicted of a new crime and returned to prison within three years. Only 4% of released inmates aged 65 and older were returned to prison within three years.<sup>47</sup>

While it’s true that many elderly inmates have committed violent or heinous crimes that warrant substantially longer terms of imprisonment, not all were convicted of violent offenses. As of June 30, 2014, 12.9% of elderly Florida inmates were serving a sentence for a drug offense.

## Part 4

# Policy Recommendations

## A. Eliminate Mandatory Minimum Sentences

As this study has shown, Florida's mandatory minimum sentencing laws, such as its drug trafficking statutes and its 10-20-Life law, have produced a number of unintended consequences, ranging from sending low-level, nonviolent offenders to prison for disproportionately long periods of time to increasing correctional expenditures, failing to reduce violent crime and eliminating judicial discretion.

To limit the negative consequences of these laws without implicating public safety, Florida legislators should consider eliminating mandatory minimum sentences. Doing so would return discretion to judges, who will be able to determine an appropriate punishment based upon the individual circumstances of the crime, and ensure that low-level offenders do not receive disproportionately longer terms of imprisonment if it would not be in the best interest of justice. It is important to note that eliminating mandatory minimum sentences would still allow judges to retain the option of requiring long terms of imprisonment for offenders who pose a significant threat to the public. Essentially, eliminating mandatory minimum prison terms would require that punishment for these crimes would be handed out as it is for the majority of crimes in Florida—that is, judges will have discretion over sentencing as long as it does not exceed a certain amount of time as dictated by Florida law. So for example, Florida law specifies that a person convicted of a second-degree felony in Florida may be sentenced to a term of imprisonment that does not exceed 15 years.<sup>48</sup> This gives judges the opportunity to sentence individuals to the amount of time he or she finds appropriate and in the best interest of justice.

Furthermore, eliminating mandatory minimum prison sentences would ensure that Florida's scarce resources are spent more efficiently—on incarcerating those who pose a larger threat to public safety.

## B. Increase the Threshold for Drug Trafficking

Alternatively, if it is not politically feasible for legislators to eliminate mandatory minimum sentences for drug trafficking offenses, they should instead consider increasing the threshold necessary to trigger certain drug trafficking offenses and subsequent mandatory minimum sentences. As outlined in this study, Florida's drug trafficking statutes are not just applied to drug kingpins and larger dealers, but to lower-level offenders as well. In fact, lower-level offenders are sometimes punished more harshly than high-level dealers under Florida's drug trafficking laws.

By increasing the amount of certain substances necessary to trigger a drug trafficking charge and a subsequent mandatory minimum prison sentence upon conviction, Florida legislators can ensure that drug trafficking laws target intended high-level dealers, not those who are in possession of a small amount of a particular controlled substance, such as 14 oxycodone pills. Florida legislators should specifically seek to significantly increase the amount of hydrocodone, oxycodone, heroin, morphine, amphetamine and LSD necessary to trigger a drug trafficking charge and subsequent mandatory minimum prison sentence, so that amounts of all drugs necessary to trigger a drug trafficking statute are aligned and proportionate. As this study has shown, the current amount of these particular substances that is necessary to trigger a drug trafficking offense is much lower than for other substances such as cocaine and marijuana and, as a result, has targeted low-level offenders. This would introduce more proportionality in sentencing, thereby freeing up prison space for more serious offenders and saving taxpayer dollars in the meantime.

## C. Enact Safety Valve Legislation

If neither of these reforms is politically feasible, legislators may consider enacting safety valve legislation, which would not eliminate mandatory minimum sentences under Florida's drug trafficking statutes or 10-20-Life law as they exist now, but would instead allow judges to depart below the mandatory minimum prison terms required by these laws if they determine it would be appropriate, as the state currently allows judges to do under certain habitual offender laws. This would return some sentencing discretion to judges and help prevent low-level offenders whose crimes do not warrant a long prison sentence from receiving a mandatory minimum term of imprisonment as punishment.

Several states, such as Florida's neighboring Georgia, have enacted various types of safety valve legislation, which have allowed judges to depart below mandatory minimum sentences for certain offenders. In Georgia, the safety valve, along with other criminal justice reforms, was passed in 2013 with the intention of protecting public safety "while controlling prison costs and holding offenders accountable."<sup>49</sup> If Florida were to enact



safety valve legislation for these crimes, it would mark an important step toward achieving these same goals.

## D. Reform Habitual Offender Laws

Florida has enacted several overlapping habitual offender statutes over the past two decades. However, two of these statutes may be applied to offenders whose current conviction is nonviolent. Despite already having a safety valve in place for the habitual offender laws highlighted in this study, many nonviolent offenders have been sentenced under these laws, and over 100 have been sentenced to life without the possibility of parole—a sentence normally reserved for the individuals who have committed some of the most heinous crimes.

Instead of allowing nonviolent offenders to serve disproportionately longer terms of imprisonment under these laws, Florida legislators should consider limiting the scope of these habitual offender laws so that they only apply to offenders whose current and prior offenses are violent offenses. That way, the laws would only target violent habitual offenders, and judges would have more discretion in sentencing individuals whose current offense is nonviolent. Moreover, this would allow Florida to reserve prison space and resources for offenders who have demonstrated they pose the greatest risk to society.

This reform would not prevent judges from sentencing a nonviolent offender to prison for a longer period of time due to aggravating factors, such as a violent criminal past. However, it would just prevent mandatory minimum terms of imprisonment from being imposed on individuals whose current conviction is nonviolent.

## E. Make These and Previous Reforms Retroactive

As things stand, individuals who were sentenced to 10 or 20 years for firing a warning shot in self-defense before 2014 under the 10-20-Life law will continue to be incarcerated, despite the fact that the law was reformed in 2014 to prohibit individuals in similar circumstances from being sentenced under the law. In addition, many individuals convicted of certain drug trafficking offenses prior to the enactment of the 2014 reforms will not have their sentences adjusted despite the fact that they would not be sentenced under the law today. There's little evidence that suggests requiring these inmates to serve their full sentences is either socially or economically beneficial.

Beyond this, Florida would benefit if any of the above recommended reforms were made retroactive, so as to apply to individuals currently incarcerated who otherwise wouldn't be if any of these reforms were enacted.

## **F. Allow Inmates to Earn More Incentive Gain-Time**

Another recommendation for Florida legislators to pursue would be to eliminate the requirement that all offenders must serve 85% of their sentences, and instead allow them to earn additional gain-time credits through programs that prepare them for release. If that is not politically feasible, Florida could allow only those convicted of a nonviolent offense to earn additional gain-time credits through participating in rehabilitative programming. Allowing inmates to earn more incentive gain-time credits would encourage them to participate in more rehabilitative programming while incarcerated, thereby reducing the chances that they will recidivate upon release. More importantly, it would free up prison space and resources for more serious offenders.

It is time for Florida to become a leader in smart and effective criminal justice reform. Enacting any of the reforms suggested here would be a clear step in that direction.

## About the Author

**Lauren Galik** is the director of criminal justice reform at Reason Foundation, where she focuses on a variety of criminal justice issues, including sentencing reform, prison reform, drug policy and police reform—particularly at the state level. Lauren graduated from The Ohio State University in June 2012 with a B.A. in Political Science and International Relations. She is the co-author of the 2013 Reason Foundation policy study, *Smart on Sentencing, Smart on Crime: An Argument for Reforming Louisiana’s Determinate Sentencing Laws*.

# Endnotes

- <sup>1</sup> 1977 prison population was measured as of June 30. Statistic taken from “Annual Report 1977-1978,” Florida Department of Corrections. Available at: <http://edocs.dlis.state.fl.us/fldocs/dcor/areports/1977-1978.pdf>; 2014 prison population taken from Inmate Population, 2013–2014 Agency Statistics. Florida Department of Corrections. Available at: [http://www.dc.state.fl.us/pub/annual/1314/stats/im\\_pop.html](http://www.dc.state.fl.us/pub/annual/1314/stats/im_pop.html); 1977 and 2014 Florida population statistics taken from the United States Census Bureau estimates.
- <sup>2</sup> For uniformity, corrections expenditures are calculated by adding the total operating funds and total fixed capital outlay fund figures for each fiscal year, as that is how corrections expenditures were calculated in FY 13–14 and many other previous years; 1994 corrections expenditures taken from “1993–1994 Annual Report: The Guidebook to Corrections in Florida,” Florida Department of Corrections. Available at: <http://edocs.dlis.state.fl.us/fldocs/dcor/areports/1993-1994.pdf>; Fiscal year 2013–2014 corrections expenditures taken from “Budget,” 2013–2014 Agency Statistics, Florida Department of Corrections. Available at: <http://www.dc.state.fl.us/pub/annual/1314/budget.html>
- <sup>3</sup> Fiscal year 2013–2014 corrections expenditures taken from “Budget,” 2013–2014 Agency Statistics, Florida Department of Corrections. Available at: <http://www.dc.state.fl.us/pub/annual/1314/budget.html>
- <sup>4</sup> Uniform Crime Reporting Statistics, Crime—national or state level, state-by-state and national crime estimates by year(s), U.S. Department of Justice, Federal Bureau of Investigation. <http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm?NoVariables=Y&CFID=91777&CFTOKEN=14352fe4f916fc0f-273AA481-EA75-2D41-DC50FFB4F1C85306>
- <sup>5</sup> Breakdown of inmates serving a sentence for a violent offense as of June 30, 1999 provided by Lori Nolting of the Bureau of Research & Data Analysis of the Florida Department of Corrections, via email with the author, January 30, 2015.
- <sup>6</sup> Breakdown of inmates serving a sentence for a violent offense as of June 30, 2014 provided by Lori Nolting of the Bureau of Research & Data Analysis of the Florida Department of Corrections, via email with the author, January 29, 2015.
- <sup>7</sup> “Time Served: The High Cost, Low Return of Longer Prison Terms,” The Pew Center on the States, June 2012, p. 20. Available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/PrisonTimeServedpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/PrisonTimeServedpdf.pdf)
- <sup>8</sup> 2014 Florida Statutes Title XLVI Chapter 893.135. Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0800-0899/0893/Sections/0893.135.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0800-0899/0893/Sections/0893.135.html)
- <sup>9</sup> Note: the number of pills required to trigger a drug trafficking offense varies in type and brand.
- <sup>10</sup> 2014 Florida Statutes Title XLVI Chapter 893.135 (6). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0800-0899/0893/Sections/0893.135.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0800-0899/0893/Sections/0893.135.html)
- <sup>11</sup> Ibid.
- <sup>12</sup> Pill weight information obtained through a licensed pharmacist.

- <sup>13</sup> 2014 Florida Statutes Title XLVI Chapter 893.135 (4). Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0800-0899/0893/Sections/0893.135.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0800-0899/0893/Sections/0893.135.html)
- <sup>14</sup> Ibid.
- <sup>15</sup> The number of inmates sentenced under offense code 9571 (TRAFF ILL DRUGS 4-U/14 GRAMS) was provided by Ronald McLane, Government Analyst II for the Florida Department of Corrections, via email with author, February 24, 2014.
- <sup>16</sup> 1996 statistics taken from “Primary Offenses,” Inmate Population on June 30, 1996 fact sheet. Florida Department of Corrections 95–96 Annual Report. Available at: <http://www.dc.state.fl.us/pub/annual/9596/stats/ipt4.html>; 2006 statistics taken from “Primary Offenses,” Inmate Population on June 30, 2006, Florida Department of Corrections 2005–2006 Annual Report, p. 65. Available at: <http://www.dc.state.fl.us/pub/annual/0506/PDFs/imPop.pdf>; 2014 statistics taken from “Inmate Population: Population by Primary Offenses,” 2013–2014 Agency Statistics Fact Sheet. Florida Department of Corrections. Available at: [http://www.dc.state.fl.us/pub/annual/1314/stats/ip\\_primary.html](http://www.dc.state.fl.us/pub/annual/1314/stats/ip_primary.html)
- <sup>17</sup> “Florida’s Prescription Drug Diversion and Abuse Roadmap 2012–2015,” Florida Office of the Attorney General. p. 34. Available at: [http://myfloridalegal.com/webfiles.nsf/WF/KGRG-8T8L5K/\\$file/PrescriptionDrugDiversionAndAbuseRoadmap.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KGRG-8T8L5K/$file/PrescriptionDrugDiversionAndAbuseRoadmap.pdf)
- <sup>18</sup> “A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers,” Interim Report 2010–109, Committee on Criminal Justice, The Florida Senate. October 2009. Available at: [http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim\\_reports/pdf/2010-109cj.pdf](http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf)
- <sup>19</sup> Details of Hannigan’s case may be found here: <http://famm.org/todd-hannigan/>
- <sup>20</sup> Ibid.
- <sup>21</sup> 2014 Florida Statutes Title XLVI Chapter 775.087. Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.087.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.087.html)
- <sup>22</sup> Exceptions: A person convicted of aggravated assault, possession of a firearm by a felon, or burglary of a conveyance shall be sentenced to a minimum term of imprisonment of three years if such person possessed a “firearm” or “destructive device” during the commission of the offense. 2014 Florida Statutes Title XLVI Chapter 775.087 (2)(a)(1). Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.087.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.087.html)
- <sup>23</sup> 2014 Florida Statutes Title XLVI Chapter 775.087. Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.087.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.087.html)
- <sup>24</sup> 2014 Florida Statutes Title XLVI Chapter 775.087 (2)(a)(1). Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.087.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.087.html)
- <sup>25</sup> “Criminal Justice Trends,” Presented at the Criminal Justice Estimating Conference, held February 27, 2015, p. 52. Office of Economic & Development Research, Florida Legislature. Available at: <http://edr.state.fl.us/content/conferences/criminaljustice/trends.pdf>
- <sup>26</sup> Information about these three cases may be found here: <http://famm.org/marissa-alexander/>; here: <http://famm.org/orville-lee-wollard/>; and here: <http://famm.org/ronald-thompson/>

- <sup>27</sup> Alex R. Piquero, Reaction Essay: “Reliable Information and Rational Policy Decisions: Does Gun Research Fit the Bill?” *Criminology & Public Policy*, Volume 4, Issue 4. December 7, 2005. pp. 787–792.
- <sup>28</sup> 2014 Florida Statutes Title XLVI Chapter 775.084 (1)(a). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.084.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.084.html)
- <sup>29</sup> 2014 Florida Statutes Title XLVI Chapter 893.135 (1)(c)(1). Available at: [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0800-0899/0893/Sections/0893.135.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0800-0899/0893/Sections/0893.135.html)
- <sup>30</sup> 2014 Florida Statutes Title XLVI Chapter 775.084 (4)(a)(1). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.084.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.084.html)
- <sup>31</sup> 2014 Florida Statutes Title XLVI Chapter 775.084 (1)(b). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.084.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.084.html)
- <sup>32</sup> 2014 Florida Statutes Title XLVI Chapter 775.084 (4)(b). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.084.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.084.html)
- <sup>33</sup> 2014 Florida Statutes Title XLVI Chapter 775.084 (3)(a)(6). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String&URL=0700-0799/0775/Sections/0775.084.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0700-0799/0775/Sections/0775.084.html)
- <sup>34</sup> “A Living Death: Life Without Parole for Nonviolent Offenses,” American Civil Liberties Union (ACLU). November 2013, p. 24. Available at: <https://www.aclu.org/files/assets/111213a-lwop-complete-report.pdf>
- <sup>35</sup> Ibid.
- <sup>36</sup> Peter W. Greenwood et al, “Three Strikes Revisited: An Early Assessment of Implementation and Effects,” RAND, August 1998. Prepared for the National Institute of Justice. Available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/194106.pdf>
- <sup>37</sup> “Inmate Population,” 2013–2014 Agency Statistics. Florida Department of Corrections. Available at: [http://www.dc.state.fl.us/pub/annual/1314/stats/ip\\_percent\\_served.html](http://www.dc.state.fl.us/pub/annual/1314/stats/ip_percent_served.html)
- <sup>38</sup> “Violent Crime Control and Law Enforcement Act of 1994,” U.S. Department of Justice Fact Sheet, October 24, 1994. Available at: <https://www.ncjrs.gov/txtfiles/billfs.txt>
- <sup>39</sup> “Time Served: The High Cost, Low Return of Longer Prison Terms,” The Pew Center on the States, June 2012, pp. 36–37. Available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/PrisonTimeServedpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/PrisonTimeServedpdf.pdf)
- <sup>40</sup> Ibid.
- <sup>41</sup> Valerie Wright, “Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment,” The Sentencing Project, November 2010. Available at: <http://www.sentencingproject.org/doc/deterrence%20briefing%20.pdf>
- <sup>42</sup> “Time Served in Florida,” State Fact Sheet, The Pew Center on the States, June 6, 2012. Available at: <http://www.pewstates.org/research/state-fact-sheets/time-served-in-florida-85899396309>

- <sup>43</sup> June 1994 prison population by age group taken from “1993–94 Annual Report: The Guidebook to Corrections in Florida,” Florida Department of Corrections, p. 79. Available at: <http://edocs.dlis.state.fl.us/fldocs/dcor/areports/1993-1994.pdf>; June 2014 prison population by age group taken from “Current Age of Inmate Population on June 30, 2014,” Agency Statistics, Florida Department of Corrections. Available at: [http://www.dc.state.fl.us/pub/annual/1314/stats/ip\\_age.html](http://www.dc.state.fl.us/pub/annual/1314/stats/ip_age.html)
- <sup>44</sup> “At America’s Expense: The Incarceration of the Elderly,” American Civil Liberties Union., June 2012, p. 57. Available at: [https://www.aclu.org/files/assets/elderlyprisonreport\\_20120613\\_1.pdf](https://www.aclu.org/files/assets/elderlyprisonreport_20120613_1.pdf); Annual cost of incarceration for Florida inmates in FY 2013–2014 was \$18,064. “Budget,” 2013–2014 Agency Annual Report, Florida Department of Corrections. Available at: <http://www.dc.state.fl.us/pub/annual/1314/budget.html>
- <sup>45</sup> Total operating funds for FY 2013–2014 were \$2,168,523,999. “Budget,” 2013–2014 Agency Statistics, Florida Department of Corrections. Available at: <http://www.dc.state.fl.us/pub/annual/1314/budget.html>
- <sup>46</sup> “Elderly Inmates,” 2013–2014 Agency Statistics, Florida Department of Corrections. Available at: <http://www.dc.state.fl.us/pub/annual/1314/ar-additional-facts-elderly.html>
- <sup>47</sup> “At America’s Expense,” p. ii.
- <sup>48</sup> 2014 Florida Statutes Title XLVI Chapter 775.082 (3)(d). Available at: [http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0700-0799/0775/Sections/0775.082.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html)
- <sup>49</sup> “Report of the Georgia Council on Criminal Justice Reform,” January 2014. P. 3. Available at: [http://gov.georgia.gov/sites/gov.georgia.gov/files/related\\_files/document/GA%20Criminal%20Justice%20Reform%20Council%20Report.pdf](http://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/GA%20Criminal%20Justice%20Reform%20Council%20Report.pdf)



5737 Mesmer Ave.  
Los Angeles, CA 90230  
310-391-2245  
reason.org

*Reason*

