



## AGENDA

### COMMITTEE OF THE WHOLE WORKSHOP BOARD OF COUNTY COMMISSIONERS

Board Chambers  
Suite 100  
Ernie Lee Magaha Government Building - First Floor  
221 Palafox Place

January 12, 2017  
9:00 a.m.

Notice: This meeting is televised live on ECTV and recorded for rebroadcast on the same channel. Refer to your cable provider's channel lineup to find ECTV.

1. Call to Order

(PLEASE TURN YOUR CELL PHONE TO THE SILENCE OR OFF SETTING.)

2. Was the meeting properly advertised?
3. GPS Capabilities and County Policy Development  
(Terry Gray - 60 min)
  - A. Board Discussion
  - B. Board Direction
4. Pensacola Beach Fee Simple Federal Bill  
(Alison Rogers - 15 min)
  - A. Board Discussion
  - B. Board Direction
5. Travel Discussion  
(Jack Brown - 20 min)
  - A. Board Discussion
  - B. Board Direction

6. Criminal Justice Reform  
(Commissioner Robinson - 30 min)
  - A. Board Discussion
  - B. Board Direction
  
7. Sector Plan  
(Horace Jones - 30 min)
  - A. Board Discussion
  - B. Board Direction
  
8. Adjourn

**Committee of the Whole**

**3.**

**Meeting Date:** 01/12/2017

**Issue:** GPS Capabilities and County Policy Development

**From:** Joy D. Blackmon, P.E., Director

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**Information**

**Recommendation:**

GPS Capabilities and County Policy Development

(Terry Gray - 60 min)

A. Board Discussion

B. Board Direction

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**Attachments**

GPS Presentation

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# Escambia County Networkfleet GPS

Escambia County Board of County Commissioners

Committee of the Whole Workshop

January 12, 2017

Terry Gray, Fleet Division Manager;  
Public Works Department



## Goals

- *Reduced operating budgets*
- *Increase Accountability and Transparency*
- *Increased Security*
- *Reduced Fuel costs*
- *Raise service levels*
- *Reduced Vehicle downtime*



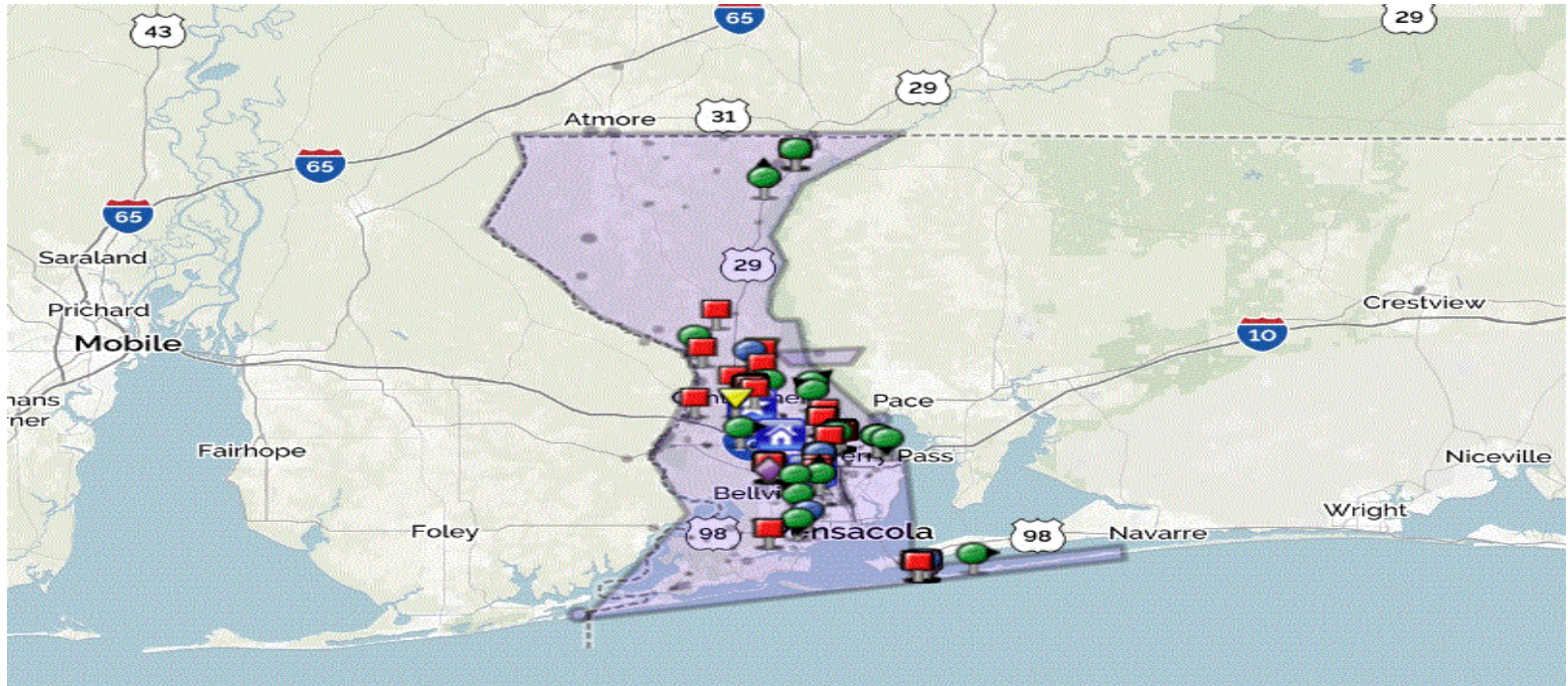
***Solution: Escambia County currently utilizes GPS Tracking and Vehicle Diagnostics with 555 units in operation.***

### ***Vehicle location and tracking***

- *Customized mapping solution*
- *Real-time and historic GPS location*
- *Landmark and geo-fence management*
- *Speed thresholds and speed vs. posted speed for safety*
- *Idle time reporting – fuel savings and reduced carbon footprint*
- ***Engine Diagnostics***
- *Real time Odometer readings*
- *Diagnostic Trouble Codes (DTC's)*



## ***Escambia County Overview Map - Clustered Locations***





## *Escambia County Overview Map - Satellite View - Single Unit*







# Sample Idle Time Report

## Report: Idle Time

Selected Groups:	<b>FLEET</b>	Average Idle Pct:	<b>16.37%</b>
Selected Attributes:	<b>Matches Any: All Attributes</b>	Average Idle Time(hh:mm):	<b>01:40</b>
Report Run Date/Time:	<b>1/9/17 1:56 PM CST</b>	Total Idle Time(hh:mm):	<b>15:21</b>
Report Time Period:	<b>1/2/17 12:00 AM - 1/9/17 12:00 AM</b>	Total Operating Time(hh:mm):	<b>71:03</b>
Total Vehicles in Report:	<b>7/151</b>	Report Time Window:	<b>12:00 AM - 12:00 AM</b>
Minimum Idle Filter (minute):	<b>10</b>	Day of the Week:	<b>Full Week</b>
Idle Percentage Threshold:	<b>N/A</b>		
Idle Hours Threshold:	<b>N/A</b>		

7 rows found. Displaying row 1 to 7, page 1/1.



Number of rows displayed per page: 50 ▼

[Expand All](#) [Collapse All](#)

Label ▲	Drivers	Total Operating Time (hh:mm)	Drive Time (hh:mm)	Total Idle Time (hh:mm)	Total Idle Percentage	Filtered Idle Time (hh:mm)	Filtered Idle Percentage	Start Time	Location
52629 FLEET TOW TRK INTL LG	FLEET, GRAY	01:43	01:13	00:30	29.07%	00:24	23.27%		
54046 FLEET TRUCK F150 9 MILE	FLEET, GRAY	01:47	01:30	00:18	16.5%	00:10	9.32%		
55972 FLEET DIV TRUCK F150 PARTS	FLEET, GRAY	08:09	07:58	00:10	2.05%	00:10	2.05%		
59848 FLEET DIV TRUCK F550 SVC TRK SS	FLEET, GRAY	11:10	07:48	03:22	30.12%	02:46	24.76%		
59849 FLEET DIV TRUCK F550 SVC TRK NE	FLEET, GRAY	14:25	10:18	04:07	28.56%	03:19	23%		
59852 FUEL DIST, TRUCK F150 CNG	MATHIS, FUEL JACKIE	14:51	13:34	01:17	8.65%	00:23	2.54%		
501094 ROAD DEPT. TRUCK INTL 4900 FUEL NE	T COWAN, FUEL TRK BOONE	18:58	13:20	05:38	29.69%	04:26	23.41%		

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## Activity Alerts - Speed Violations Report

### Report: Activity Alerts

Selected Groups: **FLEET**  
Selected Attributes: **Matches Any: All Attributes**  
Report Run Date/Time: **1/9/17 3:39 PM CST**  
Report Time Period: **12/1/16 12:00 AM - 1/1/17 12:00 AM**

Alert Type: **Speed Violations Alert**  
Total Number of Alerts: **0**  
Criticality: **All**

Key

Non-critical **Green**  
Warning **Yellow**  
Critical **Red**

0 rows found.

No data found for the requested report parameters

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## ***Board Direction***

- *Acceptable parameters for Idle Time –Departmental / Countywide*
- *Acceptable parameters for Speed Violations—MPH over posted speed/ duration of incident*

**Committee of the Whole**

**4.**

**Meeting Date:** 01/12/2017

**Issue:** Pensacola Beach Fee Simple Federal Bill

**From:** Alison Rogers, County Attorney

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**Information**

**Recommendation:**

Pensacola Beach Fee Simple Federal Bill

(Alison Rogers - 15 min)

A. Board Discussion

B. Board Direction

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**Attachments**

H. R. 1452

S. 770

Resolution R2015-45

Resolution R2011-77

Joint Resolution R2011-20

Joint Resolution R2010-214

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## Union Calendar No. 286

114TH CONGRESS  
1ST SESSION

# H. R. 1452

[Report No. 114-374]

To authorize Escambia County, Florida, to convey certain property that was formerly part of Santa Rosa Island National Monument and that was conveyed to Escambia County subject to restrictions on use and reconveyance.

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### IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2015

Mr. MILLER of Florida introduced the following bill; which was referred to the Committee on Natural Resources

DECEMBER 8, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

To authorize Escambia County, Florida, to convey certain property that was formerly part of Santa Rosa Island National Monument and that was conveyed to Escambia County subject to restrictions on use and reconveyance.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. CONVEYANCE OF PROPERTY.**

4       (a) **CONVEYANCE FREE OF RESTRICTIONS.**—Not-  
5 withstanding the restrictions on conveyance of property lo-  
6 cated on Santa Rosa Island, Florida, contained in the Act  
7 of July 30, 1946 (chapter 699; 70 Stat. 712), and the  
8 deed to the property from the United States to Escambia  
9 County, Florida, dated January 15, 1947, Escambia  
10 County may, at its discretion, convey or otherwise dispose  
11 of all of its right, title, and interest (in whole or in part),  
12 in and to any portion of the property that was conveyed  
13 to it pursuant to that Act and deed, to any person or enti-  
14 ty, free from any restriction on conveyance or reconvey-  
15 ance imposed by the United States in that Act or deed.  
16 Any conveyance under this subsection shall be subject to  
17 the conditions set forth in subsection (c).

18       (b) **LEASEHOLD INTERESTS.**—No person or entity  
19 holding a leasehold interest in the property as of the date  
20 of the enactment of this Act shall be required to involun-  
21 tarily accept a fee interest in lieu of their leasehold inter-  
22 est in the property.

23       (c) **CONDITIONS.**—Any conveyance under subsection  
24 (a) shall be subject to the following conditions:

1           (1) Not later than two calendar years after the  
2 date of the enactment of this Act, Escambia County  
3 shall convey to Santa Rosa County all right, title,  
4 and interest held in and to any portion of the prop-  
5 erty that was conveyed to Escambia County under  
6 the Act and deed that fall in the jurisdictional  
7 boundaries of Santa Rosa County, Florida. The con-  
8 veyance by Escambia County to Santa Rosa County  
9 shall be absolute and shall terminate any subjugation  
10 of Santa Rosa County to Escambia County or  
11 any regulation of Santa Rosa County by Escambia  
12 County. Santa Rosa County shall not be required to  
13 pay any sum for the subject property other than ac-  
14 tual costs associated with the conveyance.

15           (2) Santa Rosa County or any other person to  
16 which property is conveyed under this Act may re-  
17 convey property, or any portion of property, con-  
18 veyed to it under this section.

19           (3) For all properties defined under subsection  
20 (a) the leaseholders, or owners are free to pursue in-  
21 corporation, annexation, or any other governmental  
22 status so long as all other legal conditions required  
23 for doing so are followed.

24           (4) Each property defined under subsection (a)  
25 is under the jurisdiction of the county and any other



1 local government entity in which the property is lo-  
2 cated.

3 (5) Any proceeds from the conveyance of any  
4 property defined under subsection (a) by Escambia  
5 County or Santa Rosa County, other than direct and  
6 incidental costs associated with such conveyance,  
7 shall be considered windfall profits and shall revert  
8 to the United States.

9 (6) Escambia County and Santa Rosa County  
10 shall in perpetuity preserve those areas on Santa  
11 Rosa Island currently dedicated to conservation,  
12 preservation, public, recreation, access and public  
13 parking in accordance with resolutions heretofore  
14 adopted by the Board of County Commissioners of  
15 each respective county.

16 (d) DETERMINATION OF COMPLIANCE.—Escambia  
17 County and Santa Rosa County shall have no deadline or  
18 requirement to make any conveyance or reconveyance of  
19 any property defined under subsection (a) other than the  
20 conveyance required under subsection (e)(1). Each county  
21 may establish terms for conveyance or reconveyance, sub-  
22 ject to the conditions set forth in this Act and applicable  
23 State law.

Union Calendar No. 286

114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 1452**

[Report No. 114-374]

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## **A BILL**

To authorize Escambia County, Florida, to convey certain property that was formerly part of Santa Rosa Island National Monument and that was conveyed to Escambia County subject to restrictions on use and reconveyance.

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DECEMBER 8, 2015

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

114TH CONGRESS  
1ST SESSION

# S. 770

To authorize Escambia County, Florida, to convey certain property that was formerly part of Santa Rosa Island National Monument and that was conveyed to Escambia County subject to restrictions on use and reconveyance.

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## IN THE SENATE OF THE UNITED STATES

MARCH 18, 2015

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To authorize Escambia County, Florida, to convey certain property that was formerly part of Santa Rosa Island National Monument and that was conveyed to Escambia County subject to restrictions on use and reconveyance.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Escambia County  
5 Land Conveyance Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) COUNTY.—The term “County” means  
2 Escambia County, Florida.

3 (2) NON-FEDERAL LAND.—The term “non-Fed-  
4 eral land” means the former Santa Rosa Island Na-  
5 tional Monument land in the State of Florida that  
6 was conveyed by the United States to the County  
7 under the Act of July 30, 1946 (60 Stat. 712, chap-  
8 ter 699), and by deed dated January 15, 1947.

9 **SEC. 3. RECONVEYANCE OF NON-FEDERAL LAND.**

10 (a) IN GENERAL.—Notwithstanding the restrictions  
11 on conveyance in the Act of July 30, 1946 (60 Stat. 712,  
12 chapter 699) and the deed to the non-Federal land from  
13 the United States to the County dated January 15, 1947,  
14 and subject to subsection (c), the County may convey all  
15 right, title, and interest of the County in and to the non-  
16 Federal land or any portion of the non-Federal land, to  
17 any person or entity, without any restriction on convey-  
18 ance or reconveyance imposed by the United States in that  
19 Act or deed.

20 (b) EFFECT ON LEASEHOLD INTERESTS.—No person  
21 or entity holding a leasehold interest in the non-Federal  
22 as of the date of enactment of this Act shall be required  
23 to involuntarily accept a fee interest to the non-Federal  
24 land in place of the leasehold interest.

25 (c) LAND WITHIN SANTA ROSA COUNTY.—

1           (1) IN GENERAL.—The County may convey to  
2 Santa Rosa County, Florida, all right, title, and in-  
3 terest of the County in and to any portion of the  
4 non-Federal land that is within the jurisdictional  
5 boundaries of Santa Rosa County.

6           (2) REQUIREMENTS.—A conveyance under  
7 paragraph (1) shall—

8                   (A) be absolute;

9                   (B) terminate—

10                         (i) any subjugation of Santa Rosa  
11 County to the County; or

12                         (ii) any regulation of Santa Rosa  
13 County by the County; and

14                   (C) be without consideration, except that  
15 the County may require Santa Rosa County,  
16 Florida, to pay the actual costs associated with  
17 the conveyance of the non-Federal land.

18           (3) RECONVEYANCE.—Santa Rosa County,  
19 Florida, or any other person to whom Santa Rosa  
20 County, Florida, reconveys the non-Federal land  
21 may reconvey the non-Federal land or any portion of  
22 the non-Federal land conveyed to Santa Rosa Coun-  
23 ty, Florida, under paragraph (1).

24           (4) INCORPORATION OR ANNEXATION.—The  
25 owners or leaseholders of non-Federal land conveyed

1 under this subsection may pursue incorporation, an-  
2 nexation, or any other governmental status for the  
3 non-Federal land, if the owners or leaseholders com-  
4 ply with the legal conditions required for incorpora-  
5 tion, annexation, or the other governmental status.

6 (5) INTENT OF CONGRESS.—It is the intent of  
7 Congress that the conveyance under paragraph (1)  
8 shall be completed by the date that is 2 years after  
9 the date of enactment of this Act.

10 (d) JURISDICTION.—The non-Federal land conveyed  
11 under this section shall be subject to the jurisdiction of  
12 the county or unit of local government in which the non-  
13 Federal land is located.

14 (e) PROCEEDS.—Any proceeds from the conveyance  
15 of non-Federal land by the County or Santa Rosa County,  
16 Florida (other than amounts paid for the direct and inci-  
17 dental costs associated with the conveyance) under this  
18 section shall—

19 (1) be considered windfall profits; and

20 (2) revert to the United States.

21 (f) PRESERVATION.—The County and Santa Rosa  
22 County, Florida, shall preserve the areas of the non-Fed-  
23 eral land conveyed under this section that, as of the date  
24 of enactment of this Act, are dedicated for conservation,  
25 preservation, public recreation access, and public parking,

1 in accordance with resolutions adopted by the Board of  
2 County Commissioners of the County of Santa Rosa  
3 County, Florida, respectively.

4 (g) AUTHORITY OF COUNTIES.—The County and  
5 Santa Rosa County, Florida—

6 (1) shall not be subject to a deadline or require-  
7 ment to make any conveyance or reconveyance of the  
8 non-Federal land authorized under this section; and

9 (2) may establish terms for the conveyance or  
10 reconveyance of the non-Federal land authorized  
11 under this section, subject to this Act and applicable  
12 State law.

○

4/9/2015 CAT I-1

RESOLUTION NUMBER R2015- 45

A RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS SUPPORTING HOUSE BILL HR1452 AND SENATE BILL S770 TO CONVEY TO SANTA ROSA COUNTY CERTAIN PROPERTY THAT WAS FORMERLY PART OF SANTA ROSA ISLAND NATIONAL MONUMENT AND THAT WAS CONVEYED TO ESCAMBIA COUNTY SUBJECT TO RESTRICTIONS ON USE AND RECONVEYANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on January 15, 1947, the United States of America conveyed to Escambia County, Florida, a portion of Santa Rosa Island, more particularly described in that deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida; and

**WHEREAS**, Escambia County supports the conveyance of the easternmost four miles of property of Santa Rosa Island (Navarre Beach) to Santa Rosa County pursuant to that certain Lease Agreement between the Santa Rosa Island Authority, an agency of Escambia County, Florida, and Santa Rosa County, Florida, dated February 11, 1956; and

**WHEREAS**, House Bill HR 1452 has been filed by Congressman Jeff Miller and Senate Bill S770 has been filed by Senator Marco Rubio; and

**WHEREAS**, on November 18, 2010 and January 20, 2011 the Escambia County Board of County Commissioners enacted Joint Resolutions (attached R2010-214 and R2011-20) with Santa Rosa County which requested Congressional sponsorship of a bill that would amend the federal deed regarding property on Santa Rosa Island; and

**WHEREAS**, Escambia County resolves that it would be in the interests of the public to release the restrictions on conveyance to facilitate transfer of Escambia

Date: 4/14/2015 Verified By: J. Carew



County's interest to Santa Rosa and other persons and entities having leasehold interest on Santa Rosa County.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:**

**Section 1.** That the above recitals are true and correct and incorporated herein by reference.

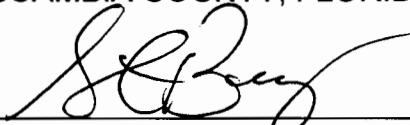
**Section 2.** Escambia County supports and requests that the said bill be duly enacted into law.

**Section 3.** That this Resolution shall take effect immediately upon its adoption by the Board of County Commissioners of Escambia County, Florida.

**Section 4.** The Clerk of the Board of the Escambia County Board of County Commissioners shall furnish a certified copy of this Resolution to Senator Bill Nelson, Senator Marco Rubio and Congressman Jeff Miller immediately upon its adoption.

ADOPTED this 9<sup>th</sup> day of April 2015.

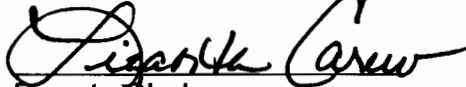
BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

  
\_\_\_\_\_  
Steven Barry, Chairman

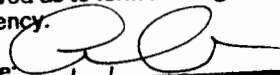
Date Executed

4/14/2015

ATTEST: Pam Childers  
Clerk of the Circuit Court

  
\_\_\_\_\_  
Deputy Clerk

Approved as to form and legal  
sufficiency.

  
By/Title: \_\_\_\_\_  
Date: 4/2/15



11/18/2010 CAT-2

RESOLUTION R2010-214 (Escambia County)

RESOLUTION 2010 - 39 (Santa Rosa County)

**A JOINT RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AND THE SANTA ROSA COUNTY BOARD OF COUNTY COMMISSIONERS REQUESTING THE SUPPORT OF CONGRESSMAN JEFF MILLER AND SENATOR BILL NELSON TO RELEASE CERTAIN RESTRICTIONS ON CONVEYANCE FOR PROPERTY ON SANTA ROSA ISLAND; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on January 15, 1947, the United States of America conveyed to Escambia County, Florida, a portion of Santa Rosa Island, more particularly described in that deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida; and

WHEREAS, currently the deed recites that the property shall "always be subject to regulation by said County whether leased or not leased but never to be otherwise disposed of or conveyed"; and

WHEREAS, Santa Rosa County has an interest in the easternmost four miles of the property conveyed to Escambia County (Navarre Beach) pursuant to that certain Lease Agreement between the Santa Rosa Island Authority, an agency of Escambia County, Florida, and Santa Rosa County, Florida, dated February 11, 1956; and

WHEREAS, the Lease Agreement contemplates that Escambia County will convey Navarre Beach to Santa Rosa County and that the parties will cooperate "in obtaining such conveyance and congressional and legislative approval therefore" and a 1993 Resolution of the Escambia County Board of County Commissioners assures the same; and

WHEREAS, Escambia County and Santa Rosa County agree that it would be in the interests of both counties to release the restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island; and

Verified By: *A. Macarthur*  
Date: 11/19/10

WHEREAS, the counties wish to express their intent to cooperate in drafting proposed legislation to release the restriction on conveyances and developing a process to convey Escambia County's interest to Santa Rosa County and persons and entities with a leasehold interest on Santa Rosa Island, and to request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor federal legislation to release the restrictions on conveyance; and

WHEREAS, the counties intend such legislation to require the counties to preserve those areas on Pensacola Beach dedicated to conservation, preservation, public, recreation or access uses and preserve conservation, preservation, public, recreation or access uses on Navarre Beach which are consistent with Santa Rosa County's Navarre Beach Master Plan 2001 Update and preserve the parking areas at New Jersey Street, Tennessee Street, Louisiana Street, Indiana Street, and Georgia Street, all on Navarre Beach; and

WHEREAS, the counties further intend such legislation to prohibit the counties from conveying the subject property for a windfall and that any profits collected above costs would be required to be turned over to the federal government; and

WHEREAS, the counties further intend that such legislation remove any language in the deed seen as a potential prohibition to the option of incorporation by communities on Santa Rosa Island; and

WHEREAS, the counties will direct their respective staffs and attorneys to cooperate in drafting proposed language for the legislation; and

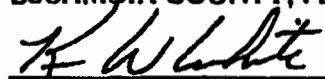
WHEREAS, each County, through its Board of County Commissioners, has considered this Resolution at public meetings of their respective Boards.

**NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE BOARDS OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AND SANTA ROSA COUNTY, FLORIDA:**

1. The above recitals are true and correct and incorporated herein by reference in the body of this Resolution.
2. Escambia County and Santa Rosa County hereby request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor legislation to release the restriction on conveyances for property on Santa Rosa Island, which shall be mutually agreed upon and drafted by the counties.
3. Each County's staff and attorneys shall cooperate in drafting the legislation, which will be approved by each of the Boards at future public meetings and subsequently forwarded to Congressman Jeff Miller and Senator Bill Nelson for consideration with sponsorship requested for the upcoming Congressional session.
4. The Clerk of the Board of the Escambia County Board of County Commissioners shall furnish a certified copy of this Resolution to Congressman Jeff Miller and Senator Bill Nelson immediately upon its adoption and execution by both counties.
5. This Resolution shall become effective upon the date last adopted by each of the Boards of County Commissioners.

ADOPTED by the Escambia County Board of County Commissioners on the 18<sup>th</sup> day of November, 2010.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

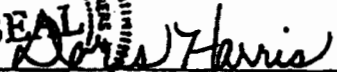
  
\_\_\_\_\_  
Kevin W. White, Chairman

Date Executed


11/18/2010



ERNIE LEE MAGAHA  
Clerk of the Circuit Court

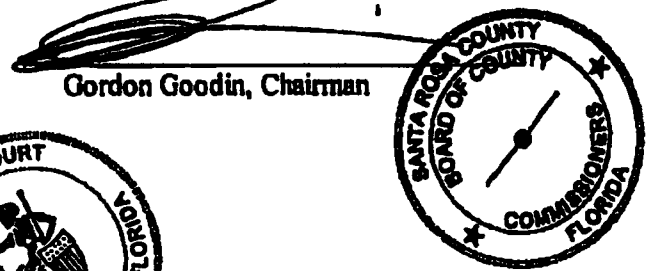
  
\_\_\_\_\_  
Deputy Clerk

Approved as to form:

  
\_\_\_\_\_  
Escambia County Attorney

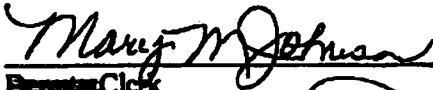
ADOPTED by the Santa Rosa Board of County Commissioners on the 10<sup>th</sup> day of  
November, 2010.

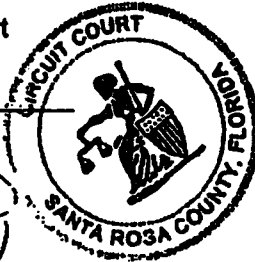
BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA



Gordon Goodin, Chairman

ATTEST: MARY M. JOHNSON  
Clerk of the Circuit Court

  
Deputy Clerk



Approved as to form:

  
Santa Rosa County Attorney

1/20/2011 CATI-1

ESCAMBIA COUNTY RESOLUTION R2011 - 20  
SANTA ROSA COUNTY RESOLUTION 2011 - 02

A JOINT RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AND THE SANTA ROSA COUNTY BOARD OF COUNTY COMMISSIONERS TO ADOPT A BILL TO RELEASE CERTAIN RESTRICTIONS ON CONVEYANCE FOR PROPERTY ON SANTA ROSA ISLAND; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 15, 1947, the United States of America conveyed to Escambia County, Florida, a portion of Santa Rosa Island, more particularly described in that deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida; and

WHEREAS, Santa Rosa County has an interest in the easternmost four miles of the property conveyed to Escambia County (Navarre Beach) pursuant to that certain Lease Agreement between the Santa Rosa Island Authority, an agency of Escambia County, Florida, and Santa Rosa County, Florida, dated February 11, 1956; and

WHEREAS, the Lease Agreement contemplates that Escambia County will convey Navarre Beach to Santa Rosa County and that the parties will cooperate "in obtaining such conveyance and congressional and legislative approval therefore" and a 1993 Resolution of the Escambia County Board of County Commissioners assures the same; and

WHEREAS, Escambia County and Santa Rosa County agree that it would be in the interests of both counties to release the restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island; and

WHEREAS, Escambia County's Joint Resolution R2010-214 and Santa Rosa County's Joint Resolution R2010-39 together agree that it would be in the interests of both counties to release the

Verified By: *d. Macarthur*

Date: 1/21/11

restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island.

WHEREAS, each County, through its Board of County Commissioners, has considered this Bill at public meetings of their respective Boards.

NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE BOARDS OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AND SANTA ROSA COUNTY, FLORIDA:

1. The above recitals are true and correct and incorporated herein by reference in the body of this Resolution.
2. Escambia County and Santa Rosa County hereby request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor the attached proposed bill to allow for release of the restriction on conveyances for property on Santa Rosa Island, with such sponsorship requested for the upcoming Congressional Session or as soon thereafter as possible.
3. Escambia County and Santa Rosa County understand and agree that during the legislative process, it may be necessary to make changes, corrections or other amendments to the bill language and support such changes so long as the bill substantively accomplishes release of the restriction on conveyance of the subject property.
4. This Resolution shall become effective upon the date last adopted by each of the Boards of County Commissioners.

ADOPTED by the Escambia County Board of County Commissioners on the 30<sup>th</sup> day of January, 2010.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

*K. W. White*  
Kevin W. White, Chairman  
Date Executed  
1/20/2011

ATTEST: ERNIE LEE MAGAHA  
Clerk of the Circuit Court  
*Ernie Lee Magaha*  
Deputy Clerk

Approved as to form:  
*[Signature]*  
Escambia County Attorney

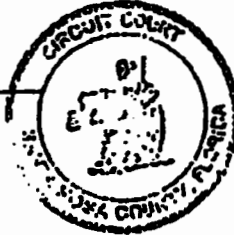
ADOPTED by the Santa Rosa Board of County Commissioners on the 13<sup>TH</sup> day of  
January, 2011.

BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA

*Lane Lychard*  
Lane Lychard, Chairman

ATTEST: MARY M. JOHNSON  
Clerk of the Circuit Court  
*Mary M. Johnson*  
Clerk

Approved as to form:  
*[Signature]*  
Santa Rosa County Attorney





RESOLUTION R2011-77

**A RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS; PROVIDING POLICY INTENTIONS FOR SANTA ROSA ISLAND IN THE EVENT FEE SIMPLE OWNERSHIP BECOMES AVAILABLE; DIRECTING THE CLERK OF COURT TO DISTRIBUTE COPIES; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on November 18, 2010 and January 20, 2011 the Escambia County Board of County Commissioners enacted Joint Resolutions (R2010-214 and R2011-20) with Santa Rosa County which requested Congressional sponsorship of a bill that would amend the federal deed regarding property on Santa Rosa Island; and

**WHEREAS**, should the proposed bill become law, Escambia County would be able to convey fee simple ownership of properties on Santa Rosa Island; and

**WHEREAS**, for those leaseholders within the jurisdictional boundaries of Escambia County, the potential of fee simple ownership on Santa Rosa Island poses uncertainties regarding the procedures that may be used for such conveyances; and

**WHEREAS**, the Escambia County portion of Santa Rosa Island is overseen by the Santa Rosa Island Authority, a special district supported by lease fees; and

**WHEREAS**, the Escambia County Board of County Commissioners desires to set forth some intentions of how fee simple could be conveyed to leaseholders and regarding the potential future for oversight of the Escambia County portion of Santa Rosa Island; and

**WHEREAS**, the Escambia County Board of County Commissioners finds it is in the interest of Escambia County as well as its residents and visitors, to set forth some intent regarding this process without legally binding Escambia County at this early juncture.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA:**

1. **Recitals.** The above recitals are true and correct and incorporated herein by reference in the body of this Resolution.

2. **Intentions.** The Escambia County Board of County Commissioners hereby resolves that it is their intent to proceed as set forth below:

A. Only proceed with the transfer to fee simple ownership if the U. S. Congress amends the federal deed, any applicable federal law and only if the Escambia County Property Appraiser legally assesses ad valorem taxes on both the improvements and land on Santa Rosa Island.

Verified By: *d. MacArthur*

Date: 5/9/11

B. If the option of fee simple title is available, it will be offered directly to sublessees wherever practical, legal and possible.

C. In the event fee simple title is available, and taxes are assessed on improvements and land, Escambia County will make efforts to eliminate lease fees for all leaseholders, including those who do not accept fee simple title.

D. Escambia County will maintain an entity on Santa Rosa Island to oversee certain services to help ensure the current levels of service regarding public safety, maintenance, recreation and promotions are upheld.

E. Escambia County does not intend to amend upwards the Pensacola Beach dwelling unit cap nor does it intend to amend the relevant portions of the Escambia County Master Plan or upzone properties unless proper quasi-judicial procedures warrant it.

3. **Distribution.** The Clerk of the Board of the Escambia County Board of County Commissioners shall furnish a certified copy of this Resolution to W. A. "Buck" Lee, Executive Director of the Santa Rosa Island Authority and Jim Cox, President of the Pensacola Beach Advocates.

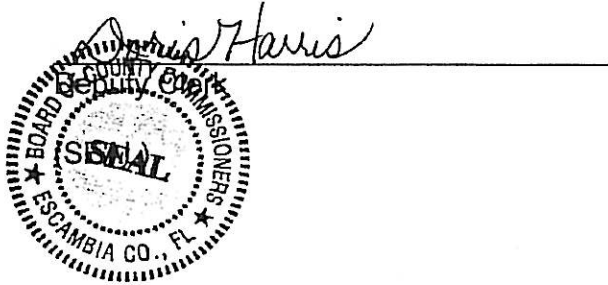
4. **Effective Date.** This Resolution shall take effect immediately upon its adoption by the Board of County Commissioners.

ADOPTED by the Escambia County Board of County Commissioners on the 5th day of May, 2011.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

[Signature]  
Kevin W. White, Chairman  
Date Executed

ATTEST: ERNIE LEE MAGAHA  
Clerk of the Circuit Court



5/5/2011  
This document approved as to form and legal sufficiency  
By [Signature]  
Title County Attorney  
Date 4/18/11

1/20/2011 CAT1-1

ESCAMBIA COUNTY RESOLUTION R2011 - 20  
SANTA ROSA COUNTY RESOLUTION 2011 - 02

A JOINT RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AND THE SANTA ROSA COUNTY BOARD OF COUNTY COMMISSIONERS TO ADOPT A BILL TO RELEASE CERTAIN RESTRICTIONS ON CONVEYANCE FOR PROPERTY ON SANTA ROSA ISLAND; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on January 15, 1947, the United States of America conveyed to Escambia County, Florida, a portion of Santa Rosa Island, more particularly described in that deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida; and

WHEREAS, Santa Rosa County has an interest in the easternmost four miles of the property conveyed to Escambia County (Navarre Beach) pursuant to that certain Lease Agreement between the Santa Rosa Island Authority, an agency of Escambia County, Florida, and Santa Rosa County, Florida, dated February 11, 1956; and

WHEREAS, the Lease Agreement contemplates that Escambia County will convey Navarre Beach to Santa Rosa County and that the parties will cooperate "in obtaining such conveyance and congressional and legislative approval therefore" and a 1993 Resolution of the Escambia County Board of County Commissioners assures the same; and

WHEREAS, Escambia County and Santa Rosa County agree that it would be in the interests of both counties to release the restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island; and

WHEREAS, Escambia County's Joint Resolution R2010-214 and Santa Rosa County's Joint Resolution R2010-39 together agree that it would be in the interests of both counties to release the

Verified By: *d. macarthur*  
Date: 1/21/11

restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island.

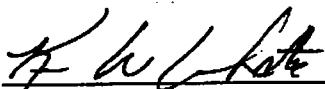
WHEREAS, each County, through its Board of County Commissioners, has considered this Bill at public meetings of their respective Boards.

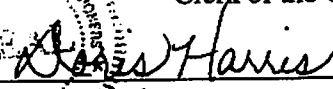
NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE BOARDS OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AND SANTA ROSA COUNTY, FLORIDA:

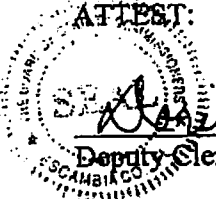
1. The above recitals are true and correct and incorporated herein by reference in the body of this Resolution.
2. Escambia County and Santa Rosa County hereby request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor the attached proposed bill to allow for release of the restriction on conveyances for property on Santa Rosa Island, with such sponsorship requested for the upcoming Congressional Session or as soon thereafter as possible.
3. Escambia County and Santa Rosa County understand and agree that during the legislative process, it may be necessary to make changes, corrections or other amendments to the bill language and support such changes so long as the bill substantively accomplishes release of the restriction on conveyance of the subject property.
4. This Resolution shall become effective upon the date last adopted by each of the Boards of County Commissioners.

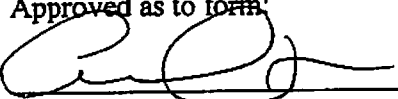
ADOPTED by the Escambia County Board of County Commissioners on the 20<sup>th</sup> day of January, 2010.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

  
\_\_\_\_\_  
Kevin W. White, Chairman  
Date Executed  
1/20/2011

ATTEST: ERNIE LEE MAGAHA  
Clerk of the Circuit Court  
  
\_\_\_\_\_  
Deputy Clerk

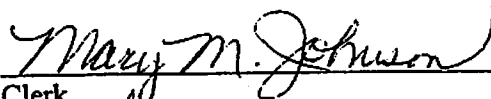


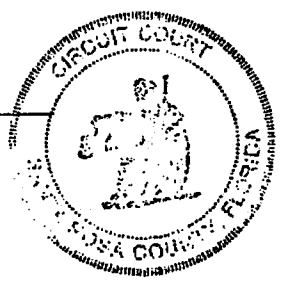
Approved as to form:  
  
\_\_\_\_\_  
Escambia County Attorney

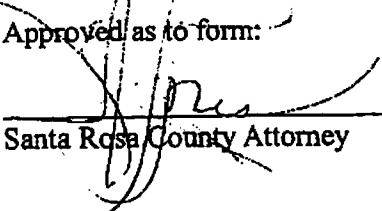
ADOPTED by the Santa Rosa Board of County Commissioners on the 13<sup>TH</sup> day of  
January, 2011.

BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA

  
\_\_\_\_\_  
Lane Lychard, Chairman

ATTEST: MARY M. JOHNSON  
Clerk of the Circuit Court  
  
\_\_\_\_\_  
Clerk



Approved as to form:  
  
\_\_\_\_\_  
Santa Rosa County Attorney

11/18/2010 CAT-2

RESOLUTION R2010-214 (Escambia County)

RESOLUTION 2010 - 39 (Santa Rosa County)

**A JOINT RESOLUTION OF THE ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AND THE SANTA ROSA COUNTY BOARD OF COUNTY COMMISSIONERS REQUESTING THE SUPPORT OF CONGRESSMAN JEFF MILLER AND SENATOR BILL NELSON TO RELEASE CERTAIN RESTRICTIONS ON CONVEYANCE FOR PROPERTY ON SANTA ROSA ISLAND; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on January 15, 1947, the United States of America conveyed to Escambia County, Florida, a portion of Santa Rosa Island, more particularly described in that deed recorded in Deed Book 248 at page 161 of the public records of Escambia County, Florida; and

WHEREAS, currently the deed recites that the property shall "always be subject to regulation by said County whether leased or not leased but never to be otherwise disposed of or conveyed"; and

WHEREAS, Santa Rosa County has an interest in the easternmost four miles of the property conveyed to Escambia County (Navarre Beach) pursuant to that certain Lease Agreement between the Santa Rosa Island Authority, an agency of Escambia County, Florida, and Santa Rosa County, Florida, dated February 11, 1956; and

WHEREAS, the Lease Agreement contemplates that Escambia County will convey Navarre Beach to Santa Rosa County and that the parties will cooperate "in obtaining such conveyance and congressional and legislative approval therefore" and a 1993 Resolution of the Escambia County Board of County Commissioners assures the same; and

WHEREAS, Escambia County and Santa Rosa County agree that it would be in the interests of both counties to release the restrictions on conveyance to facilitate transfer of Escambia County's interest to Santa Rosa County and other persons and entities having leasehold interests on Santa Rosa Island; and

Verified By: *H. MacArthur*

Date: 11/19/10

WHEREAS, the counties wish to express their intent to cooperate in drafting proposed legislation to release the restriction on conveyances and developing a process to convey Escambia County's interest to Santa Rosa County and persons and entities with a leasehold interest on Santa Rosa Island, and to request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor federal legislation to release the restrictions on conveyance; and

WHEREAS, the counties intend such legislation to require the counties to preserve those areas on Pensacola Beach dedicated to conservation, preservation, public, recreation or access uses and preserve conservation, preservation, public, recreation or access uses on Navarre Beach which are consistent with Santa Rosa County's Navarre Beach Master Plan 2001 Update and preserve the parking areas at New Jersey Street, Tennessee Street, Louisiana Street, Indiana Street, and Georgia Street, all on Navarre Beach; and

WHEREAS, the counties further intend such legislation to prohibit the counties from conveying the subject property for a windfall and that any profits collected above costs would be required to be turned over to the federal government; and

WHEREAS, the counties further intend that such legislation remove any language in the deed seen as a potential prohibition to the option of incorporation by communities on Santa Rosa Island; and

WHEREAS, the counties will direct their respective staffs and attorneys to cooperate in drafting proposed language for the legislation; and


WHEREAS, each County, through its Board of County Commissioners, has considered this Resolution at public meetings of their respective Boards.

**NOW, THEREFORE, BE IT JOINTLY RESOLVED BY THE BOARDS OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, FLORIDA, AND SANTA ROSA COUNTY, FLORIDA:**

1. The above recitals are true and correct and incorporated herein by reference in the body of this Resolution.
2. Escambia County and Santa Rosa County hereby request the support of Congressman Jeff Miller and Senator Bill Nelson to sponsor legislation to release the restriction on conveyances for property on Santa Rosa Island, which shall be mutually agreed upon and drafted by the counties.
3. Each County's staff and attorneys shall cooperate in drafting the legislation, which will be approved by each of the Boards at future public meetings and subsequently forwarded to Congressman Jeff Miller and Senator Bill Nelson for consideration with sponsorship requested for the upcoming Congressional session.
4. The Clerk of the Board of the Escambia County Board of County Commissioners shall furnish a certified copy of this Resolution to Congressman Jeff Miller and Senator Bill Nelson immediately upon its adoption and execution by both counties.
5. This Resolution shall become effective upon the date last adopted by each of the Boards of County Commissioners.

ADOPTED by the Escambia County Board of County Commissioners on the 18<sup>th</sup> day of November, 2010.

BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA

  
\_\_\_\_\_  
Kevin W. White, Chairman

Date Executed

11/18/2010



ERNIE LEE MAGAHA  
Clerk of the Circuit Court

  
\_\_\_\_\_  
Deputy Clerk

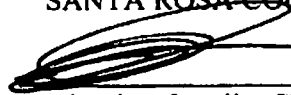
Approved as to form:

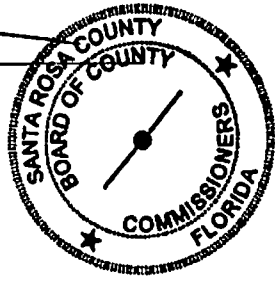
  
\_\_\_\_\_  
Escambia County Attorney



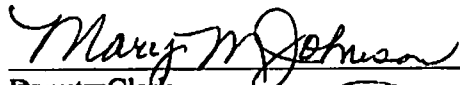
ADOPTED by the Santa Rosa Board of County Commissioners on the 10<sup>th</sup> day of November, 2010.

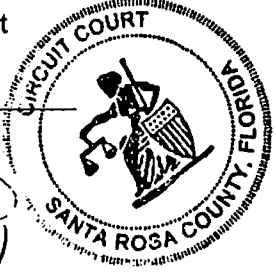
BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA

  
Gordon Goodin, Chairman

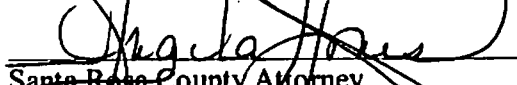


ATTEST: MARY M. JOHNSON  
Clerk of the Circuit Court

  
~~Deputy~~ Clerk



Approved as to form:

  
Santa Rosa County Attorney

**Committee of the Whole**

**5.**

**Meeting Date:** 01/12/2017

**Issue:** Travel Discussion

**From:** Jack Brown, County Administrator

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**Information**

**Recommendation:**

Travel Discussion

(Jack Brown - 20 min)

A. Board Discussion

B. Board Direction

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**Attachments**

*No file(s) attached.*

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**Committee of the Whole**

**6.**

**Meeting Date:** 01/12/2017

**Issue:** Criminal Justice Reform

**From:** Grover Robinson, District 4 Commissioner

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**Information**

**Recommendation:**

Criminal Justice Reform

(Commissioner Robinson - 30 min)

A. Board Discussion

B. Board Direction

---

**Attachments**

Rick Outzen's Outtakes, Bold Idea for 2017, FL Tax Watch - Over-Incarceration and Recidivism

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## **Outtakes—Bold Idea for 2017 (0/04/17) - Inweekly**



**By Rick Outzen**

Florida TaxWatch has been pushing for criminal justice reform for the past several years. Our state has one of the largest prison populations in the nation, and corrections expenditures have continued to take a larger percentage of state and county budgets.

The Escambia Board of County Commissioners spends \$35.8 million on detention. It is the largest department under its control. Five years ago, the detention budget was \$29.7 million. The county is set to spend about \$120 million on a new county jail, the largest single capital expenditure in its history.

It's time Escambia County look at becoming the state's criminal justice reform county by seeking out help from Florida TaxWatch and the Florida Legislature. The "tough on crime" policies of the 1980s and 90s haven't made our county safer. Instead, they have filled our jail with non-violent criminals who have become trapped in the system.

The two primary drivers of growth in the criminal justice system: over-incarceration and recidivism.

Overincarceration means putting some people in prison who should not be there. People are incarcerated for longer than they need to be, and tax dollars are diverted away from other services and capital needs.

Recidivism means that too many of our offenders return to jail. For the state prison system, it has only decreased 7 percent since 2006. Almost 8,500 of the inmates released from prison each year return within three years. I suspect the recidivism numbers for Escambia County are similar.

This past summer, Florida TaxWatch published its recommendations to reduce incarceration cost and lower crime. Many could have an immediate impact on Escambia County if we adopted them.

We need to expand the use of forensic mental health diversion programs. Sheriff David Morgan has described the county jail as “largest mental health facility.” The mentally ill comprise the fastest growing subpopulation within Florida’s prisons and jails, according to Florida TaxWatch.

Other Florida TaxWatch recommendations that could have an impact in Escambia are:

- Reduce penalties for and divert “driving while license suspended” offenders;
- Restore judicial discretion for specific mandatory minimum cases;
- Develop risk/needs assessments and cost-analysis tools to be used at the time of sentencing;
- Increase the amount of usable gain time for nonviolent inmates;
- Lengthen the period of eligibility for and expand transitional work-release programs;
- and
- Promote strategies that improve released offenders’ employment opportunities.

Implementation of these recommendations will require the cooperation of the county, law enforcement, state attorney’s office, and the judges. The state legislature could help create the pilot program and facilitate the pilot program.

What I do know is what we are doing now isn’t working.

FLORIDA SPENT

\$**2.2**<sub>b</sub>

ON CORRECTIONS  
IN FY2014, MORE THAN

**3X**

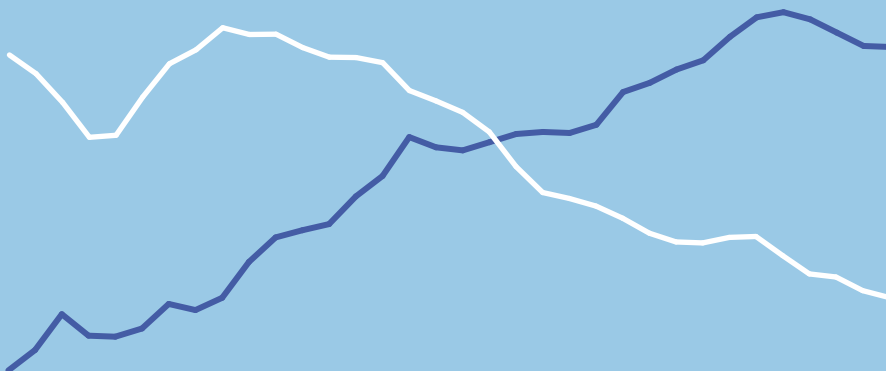
THE FY1980 BUDGET



# A State of Incarceration

*Florida Crime & Corrections Data Over Time*

AS FLORIDA'S CRIME RATE HAS FALLEN...



...ITS INCARCERATION RATE HAS CLIMBED





106 North Bronough Street, Tallahassee, FL 32301 [floridataxwatch.org](http://floridataxwatch.org) o: 850.222.5052 f: 850.222.7476

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**Michelle A. Robinson**  
Chairman of the Board of Trustees

**Dominic M. Calabro**  
President & Chief Executive Officer

Dear Fellow Taxpayer:

Florida policymakers have touted the state's falling crime rate as an indicator that our corrections system is working; however, recent headlines paint a very different picture of a prison system that is underfunded and overworked.

To examine Florida's criminal justice system, Florida TaxWatch conducted an analysis of the state's criminal history. This paper walks through criminal justice costs, crime rates, and incarceration rates over the past 30 years, while comparing Florida to other states in the nation.

The recommendations in this paper seek to identify opportunities to reform the state's criminal justice system to better align to rehabilitative best practices. By employing these recommendations, Florida's criminal justice system will be more efficient and effective, and will be a lesser strain on the Sunshine State's taxpayers and residents.

Respectfully,

*Dominic M. Calabro*  
Dominic M. Calabro  
President & CEO

# Introduction

In the 1980s and 1990s, criminal justice and corrections policies were uniformly aligned across the nation, creating a sentencing landscape that reflected public fears following the advent of crack cocaine and the “war on drugs.” As times have changed, so have methods of sentencing, and many states have begun to take a more rehabilitative approach to dealing with offenders.

Florida has made great strides towards shifting sentencing strategies to address the root causes of crime through targeted intervention and diversion options, but many outdated and severe strategies left over from the 1980s and 1990s are still used, and continue to have lasting effects (See Fig. 1). This report identifies these consequences, explains them in the context of time and the nation, and provides recommendations to improve Florida’s criminal justice policy.

Figure 1: Major Policies Contributing to Increased Incarceration Rates<sup>1</sup>

Parole is eliminated The 1983 Sentencing Guidelines create a pre-determined and uniform sentencing structure administered by the Supreme Court	1983
Felony Habitual Offender and Violent Habitual Offender laws are passed, creating harsher punishments for repeat or violent offenders Administrative Gaintime Credits become Provisional Credits, creating stricter requirements for early release	1988
Provisional Credits are replaced with Control Release Credits, narrowing eligibility for early release even further	1991
The 1994 Sentencing Guidelines are created to reduce disparities in sentencing and ensure that offenders serve a greater percentage of their sentences Basic Gaintime is eliminated, removing the opportunity for offenders to reduce their sentences by up to one-third Control Release (Early Release) Credits are eliminated, removing inmates from consideration for early release because of reduction[s] in prison admissions and a massive and accelerated prison building program	1994
The Truth-in-Sentencing Law passes, requiring inmates to serve minimum of 85% of their court-imposed sentence The Violent Career Criminal Act is created, building upon the Felony/Habitual Offender Laws of 1988 and requiring habitual violent offenders to serve longer sentences The 1995 Sentencing Guidelines are created, moving seven offenses up from the “discretionary prison or non-prison sanction” category to the “mandatory prison sentence” category	1995
The Prison Releasee Offender Act is enacted, instituting mandatory sentences for released offenders who recidivate within three years	1997
The Criminal Punishment Code is passed, allowing for the imprisonment, up to the statutory maximum, of any felony offender regardless of their Guidelines point level score	1998
10-20-Life is instituted, creating mandatory minimum terms of imprisonment for the possession, discharge, and causing injury or death with a firearm The Three Strike Violent Felony Offender Act passes, allowing statutory maximum sentences for repetitive violent offenders	1999

<sup>1</sup> “Historical Summary of Sentencing in Florida.” Florida Department of Corrections. Available at: [www.dc.state.fl.us/pub/history](http://www.dc.state.fl.us/pub/history)

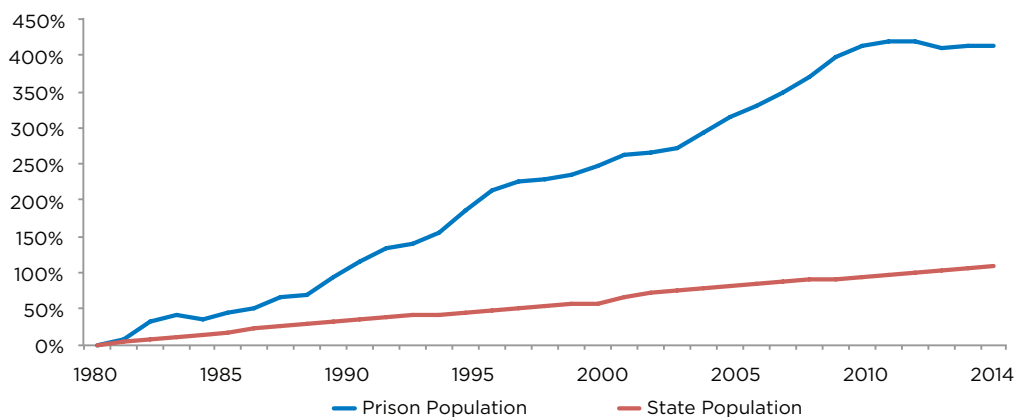


# Incarceration

When examining prison populations, rather than prison admissions, it becomes clear that the corrections issue Florida currently faces is rooted in the history of the state's approach to crime. The sanctions implemented by Florida in the 1980s and 1990s increased the average time served by inmates, with inmates serving an average of 64.2 percent of their sentences in FY1980<sup>2</sup> and 85.6 percent<sup>3</sup> in FY2014. This change led the prison population to expand to unprecedented levels.

Between FY1980 and FY2014, Florida's inmate population increased by an average of 5 percent each year, while the state population increased by an average of 2 percent annually.<sup>4</sup> Overall, the prison population increased more than 400 percent over the past two and a half decades, four times the percent increase in the total state population, from 19,692 inmates<sup>5</sup> to 100,942 inmates (see Fig 2).<sup>6</sup>

Figure 2: Cumulative Growth in Florida's State vs. Prison Populations (1980-2014)<sup>7</sup>



2 "Time Served from 1979 to 2004." (2004). Florida Department of Corrections. Available at: [www.dc.state.fl.us/pub/timeserv/annual/section1.html](http://www.dc.state.fl.us/pub/timeserv/annual/section1.html)

3 "2013-2014 Agency Statistics: Inmates Released and Time Served." Florida Department of Corrections. Available at: [www.dc.state.fl.us/pub/annual/1314/stats/ir\\_type.html](http://www.dc.state.fl.us/pub/annual/1314/stats/ir_type.html)

4 Data for FY1980-2012, source: Population History Summary Table. Florida Department of Corrections. Available at: [www.dc.state.fl.us/oth/timeline/pop.html](http://www.dc.state.fl.us/oth/timeline/pop.html); Data for FY2013 and FY2014, source: 2013-2014 and 2012-2013 "Agency Statistics: Inmate Population." Florida Department of Corrections. State population data from the Federal Bureau of Investigation UCR Data Tool, source: [www.ucrdatatool.gov](http://www.ucrdatatool.gov).

5 Population History Summary Table. Florida Department of Corrections. Available at: [www.dc.state.fl.us/oth/timeline/pop.html](http://www.dc.state.fl.us/oth/timeline/pop.html)

6 Inmate date from "2013-2014 Agency Statistics: Inmate Population." Florida Department of Corrections. Available at: [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).

7 Data for FY1980-2012, source: Population History Summary Table. Florida Department of Corrections. Available at: [www.dc.state.fl.us/oth/timeline/pop.html](http://www.dc.state.fl.us/oth/timeline/pop.html); Data for FY2013 and FY2014, source: 2013-2014 and 2012-2013 "Agency Statistics: Inmate Population." Florida Department of Corrections.

## Florida vs. Other States: Incarceration in 2013

Florida ranked 11th for incarceration rate in 2013, with 527 inmates per 100,000 residents. The top three states with the highest incarceration rates per 100,000 residents were (1) Louisiana at 850; (2) Delaware at 757; and (3) Mississippi at 734,<sup>8</sup> while the lowest in the nation were Maine and Massachusetts, which both had an incarceration rate of 164 inmates per 100,000 residents.<sup>9</sup>

Florida ranked 2nd for total number of non-citizen inmates in 2013, with 7,090. The only state with more incarcerated non-citizens was Texas, with 8,803. Ranked just below Florida, closing out the top three, was Arizona with 4,967 non-citizen inmates,<sup>10</sup> while the lowest ranked in the country<sup>11</sup> was Montana, with 15.<sup>12</sup>

## Corrections Spending

Increases in inmate populations caused increased correctional costs, despite many attempts to lessen the financial burden of corrections operations. Florida's per-inmate cost reached its peak in FY2008 at just over \$55 per diem and has since decreased to approximately \$49.50 in FY2014.<sup>13</sup> The total corrections budget for FY2014 was \$2.2 billion,<sup>14</sup> compared to \$164.5 million in FY1980.<sup>15</sup> Even accounting for inflation, which raises the FY1980 estimate to \$527.8 million,<sup>16</sup> this still marks an over 300 percent increase in corrections spending over 24 years.

If appropriations for corrections in Florida had only increased to account for inflation, the state would have spent \$472.6 million on corrections in 2014.<sup>17</sup> If corrections spending and populations had maintained the rate of increase seen between 1980 and 1985,<sup>18</sup> Florida would have spent \$1.2 billion in 2014. These two estimates are approximately 80 percent and 60 percent below what Florida currently spends on corrections, respectively (See Fig. 3).

8 Rates developed using the Bureau of Justice Statistics' Corrections Statistical Analysis Tool. Available at: [www.bjs.gov/index.cfm?ty=nps](http://www.bjs.gov/index.cfm?ty=nps)

9 Ibid.

10 "Prisoners in 2013." (2014). U.S. Department of Justice Bureau of Justice Statistics.

11 Of included states. States not included: Alaska, California, and Nevada.

12 See footnote 10.

13 "Annual Reports: Budget." Florida Department of Corrections. Available at: [www.dc.state.fl.us/pub/index.html](http://www.dc.state.fl.us/pub/index.html)

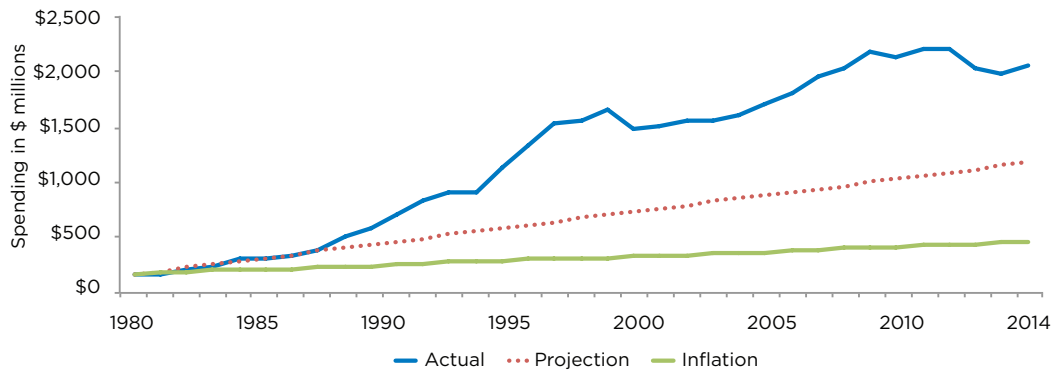
14 "2013-2014 Agency Statistics: Budget." Florida Department of Corrections. Available at: [www.dc.state.fl.us/pub/annual/1314/budget.html](http://www.dc.state.fl.us/pub/annual/1314/budget.html)

15 "Fiscal Analysis in Brief: Based on 1979 Legislation." Office of Economic and Demographic Research.

16 Converted to FY13-14 dollars using the Bureau of Labor Statistics Inflation Data. Available at: [www.bls.gov/cpi/data.htm](http://www.bls.gov/cpi/data.htm)

17 Ibid.

18 Calculated using annual spending estimates and projecting a line of best fit.

Figure 3: Actual, Projected, and Inflation-Adjusted Corrections Spending (1980-2014)<sup>19</sup>

## Florida vs. Other States: Corrections Spending in 2013

Florida ranked 4th for total<sup>20</sup> spending on corrections in 2013 at \$2.5 billion. The top three were (1) California at \$10.7 billion; (2) Texas at \$3.3 billion; and (3) New York at \$3 billion, while the lowest ranked was South Dakota, at \$93 million.<sup>21</sup>

Florida ranked 34th for per capita spending on corrections at \$125.46 per resident.<sup>22</sup> The top three were (1) Alaska at \$524.92; (2) Delaware at \$291.82; and (3) California at \$277.17, while the lowest ranked was Washington at \$18.07.<sup>23</sup>

<sup>19</sup> This chart shows a graph of actual corrections spending compared to inflation and estimated projections based on 1980-1985 spending. Data for 1980-1995 actual budget, source: EDR Fiscal Analysis in Brief. Data for 1996-2014, source: Florida Department of Corrections Annual Budget Reports. Inflation adjusted data created using Bureau of Labor Statistics Inflation Data. Available at: [www.bls.gov/cpi/data.htm](http://www.bls.gov/cpi/data.htm)

<sup>20</sup> Includes state funds, Federal funds, and bonds.

<sup>21</sup> "State Expenditure Report." (2013). National Association of State Budget Officers.

<sup>22</sup> See footnote 20.

<sup>23</sup> Per capita rates calculated using Census estimates for 2013 by state and state corrections expenditure estimates from: "State Expenditure Report." (2013). National Association of State Budget Officers.

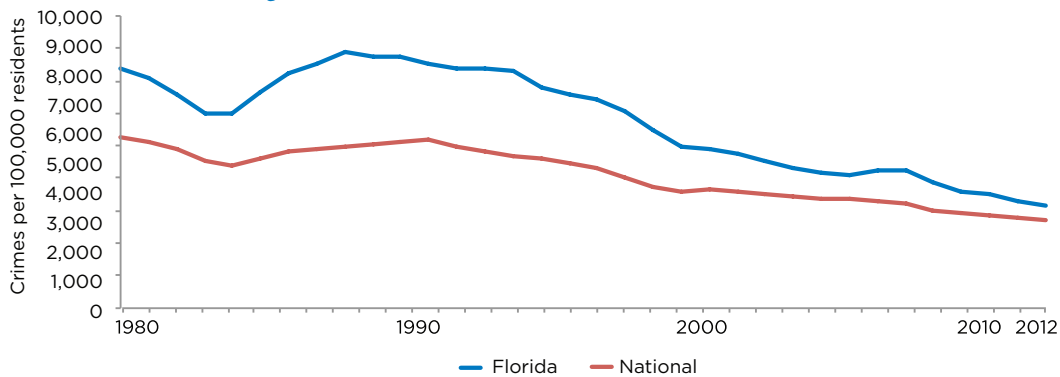
# Crime Rates

Spending and inmate populations have steadily increased despite decreases in crime rates since the late 1980s.<sup>24</sup> Violent crime peaked in 1990 at 1,244.3 crimes per 100,000 residents, while property crime peaked in 1988 at 7,819.9 crimes per 100,000 residents.<sup>25</sup>

Overall crime also peaked in 1988, at 8,937.6 crimes per 100,000 residents.<sup>26</sup> It has since decreased by almost 60 percent, to 3,627.3 crimes per 100,000 residents in 2013.<sup>27</sup>

Decreases in crime across the nation and in Florida are relatively consistent and have maintained that consistency despite state and regional differences in approaches to sentencing and punishment. Researchers note that decreases in crime are likely not attributable to harsher sentences, a conclusion consistently substantiated for decades.<sup>28</sup> This viewpoint is further validated in Florida by data indicating that the decrease in the state's criminal activity is consistent with a national trend of decline and, though Florida's crime rate has dropped significantly, it still remains 15 percent higher than the national rate of 3,142.3 per 100,000 (See Fig. 4).

Figure 4: National vs. Florida Crime Rates (1980-2013)<sup>29</sup>



<sup>24</sup> Based on 1980-2012 data from the FBI Uniform Crime Report Data Tool, available at [www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm](http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm). 2013 data from the 2013 FDLE Uniform Crime Report, available at [www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF\\_annual13.aspx](http://www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF_annual13.aspx). (Rates for 2013 were calculated at a rate congruent with 2013 Census estimates for Florida's population).

<sup>25</sup> Ibid.

<sup>26</sup> Based on 1980-2012 data from the FBI Uniform Crime Report Data Tool, available at [www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm](http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm). 2013 data from the 2013 FDLE Uniform Crime Report, available at [www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF\\_annual13.aspx](http://www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF_annual13.aspx). (Rates for 2013 were calculated at a rate congruent with 2013 Census estimates for Florida's population).

<sup>27</sup> Total crime index number from the FDLE 2013 report (698,607 crimes) and the 2013 Census estimate for Florida (population: 19,259,543) creates a crime rate of 3,627.3 crimes per 100,000 residents.

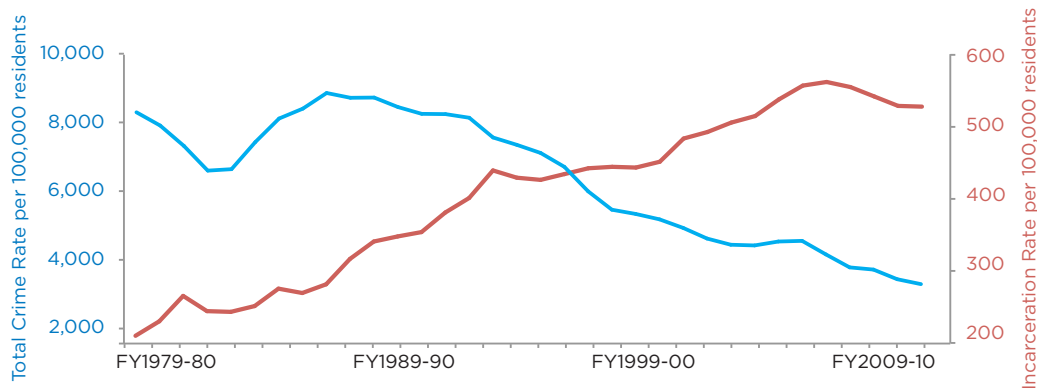
<sup>28</sup> E.g.: Blumstein et al., 1997, "Deterrence and Incapacitation - Estimating the Effects of Criminal Sanctions on Crime Rates"; Lynch & Sabol, 1997, "Did Getting Tough on Crime Pay? Policy Report No. 1"; Doob & Webster, 2003, "Sentence Severity and Crime: Accepting the Null Hypothesis"; Mauer & Ghandnoosh, 2014, "Fewer Prisoners, Less Crime: A Tale of Three States."

<sup>29</sup> Florida and national crime rates from 1980-2012 were retrieved from FBI UCR. The 2013 rate for Florida was calculated as described in footnote 26. 2013 data for the nation was calculated by adding the violent and property crime rates retrieved from the FBI "Crime in the Nation 2013" report, available at: [www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013](http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013)

# Conclusion

Florida's crime rate has fallen significantly since 1980, but the prison population continues to grow (See Fig. 5). Furthermore, research shows that these decreases in criminal activity are not entirely a result of the deterrent effects of harsh sentencing. Instead, findings show that the decreases are consistent with a national trend, despite states' varying approaches to dealing with criminals.

Figure 5: Crime vs. Incarceration (1980-2013)<sup>30</sup>



Florida maintains 100,000 prisoners and a corrections budget of more than \$2 billion despite a consistently decreasing crime rate (currently down 40 percent from 2000 levels). Now that Florida's crime rate is the lowest it has been in almost half a century,<sup>31</sup> the state must seek out options to minimize expenditures on corrections.

Florida TaxWatch has several smart justice recommendations for strategies that will continue to promote crime prevention, recidivism reduction, and improved public safety, but at lower cost to the state.

<sup>30</sup> Florida 1980-2012 crime data, source: FBI Uniform Crime Report Data Tool, available at [www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm](http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm). 2013 data, source: 2013 FDLE Uniform Crime Report, available at [www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF\\_annual13.aspx](http://www.fdle.state.fl.us/Content/getdoc/f6d1f24d-053e-466b-a67e-3cbe2fd38de6/CIF_annual13.aspx). Incarceration data for FY1980-2012, source: Population History Summary Table. Florida Department of Corrections. Available at: [www.dc.state.fl.us/oth/timeline/pop.html](http://www.dc.state.fl.us/oth/timeline/pop.html); Data for FY2013 and FY2014, source: 2013-2014 and 2012-2013 "Agency Statistics: Inmate Population." Florida Department of Corrections

<sup>31</sup> From Florida's crime rates from 1960-2012. Seen using the Federal Bureau of Investigation UCR data tool. Available at: <http://www.ucrdatatool.gov/>

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# Recommendations

## Allow more options for the conditional early release of low-risk inmates<sup>32</sup>

Over-incarceration of the lowest risk populations, like the elderly and the infirm, can be addressed through the creation of a new conditional release program or the expansion of the state's conditional medical release program. Similar elderly release programs are implemented in states across the nation.<sup>33</sup>

## Expand the use of civil citation for low-level offenders<sup>34</sup>

Civil citation is implemented sporadically and needs to be expanded statewide for both juveniles and adults. It gives police more discretion to be lenient where appropriate and provides a more individualized and cost-effective form of punishment that reserves prison/jail beds for more serious offenders, and keeps minor infractions from limiting individuals' future opportunities.

## Restore judicial discretion for specific mandatory minimum cases

Mandatory minimums provide a valuable level of consistency regarding sentencing, but also inherently exclude consideration of mitigating circumstances and external factors. Judges should have the authority to consider whether these variables affect an offender's culpability or should influence sentencing decisions.

## Promote reentry strategies to improve offender employment

Unemployment and low-socioeconomic status are two variables commonly correlated with criminal behavior. Many states are passing legislation, such as "Ban the Box" laws, to create fairer hiring practices that allow ex-offenders to be considered for employment based on merit before requiring them to divulge their criminal record.<sup>35</sup> Florida currently has similar practices in six cities that should be implemented statewide.<sup>36</sup>

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<sup>32</sup> "Florida's Aging Prisoner Problem." (2014). Florida TaxWatch.

<sup>33</sup> States with Geriatric Release Practices include: AL, CO, CT, LA, MD, MO, NC, NM, OK, OR, TX, VA, WA, WI, WY and the District of Columbia. Source: "It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release." (2010). Vera Institute of Justice.

<sup>34</sup> Juvenile Civil Citation is currently available in 51 of Florida's 67 counties. Leon is the only county in the state with an adult civil citation. Source: "Briefing: An Adult Civil Citation Program Can Save Taxpayer Dollars." (2014). Florida TaxWatch.

<sup>35</sup> States with statewide fair hiring practices include CA, CO, NM, NV, MN, IL, MD, DE, CT, RI, and MA. Additionally, WA, OR, TX, LA, MO, WI, MI, IN, KY, TN, OH, GA, FL, NC, VA, PA, NJ, and NY have cities or counties with similar practices. Source: Ban the box: major cities and counties adopt fair hiring policies to remove unfair barriers to employment of people with criminal records." (2014). National Employment Law Project.

<sup>36</sup> Cities include: Jacksonville, Tampa, St. Petersburg, Clearwater, Pompano Beach, and Tallahassee. Sources: "Ban the box: major cities and counties adopt fair hiring policies to remove unfair barriers to employment of people with criminal records". National Employment Law Project, July 2014; "City set to hear more on ban the box directive." (2015). Tallahassee Democrat; "City set to hear more on ban the box directive." (2015). Tallahassee Democrat; and "St. Petersburg bans the box to give convicts a second chance." (2014). Bay News 9.

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### Use Risk Assessment to Inform Sentencing<sup>37</sup>

Risk assessments allow for the calculation of a range of data, including the prediction of future risk of reoffending as well as the determination of appropriate treatment/supervision levels for offenders. The recommendations of these assessments should be supplied to and consulted at sentencing by judges, at their discretion.

### Use Electronic Monitoring as an Incarceration Alternative for Nonviolent Felons<sup>38</sup>

Electronic monitoring costs a fraction of what a stay in prison does, while retaining the supervision component. It should be used as a diversion tool to allow specific, nonviolent offenders to serve their sentences in the community and reserve valuable prison bed space for serious and violent offenders.

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<sup>37</sup> "Annual Florida TaxWatch Government Efficiency Recommendations." (2015). Florida TaxWatch. Available at: <http://www.floridataxwatch.org/resources/pdf/2015EfficiencyRecsFinal.pdf>

<sup>38</sup> Ibid.

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## ABOUT FLORIDA TAXWATCH

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

Florida TaxWatch is supported by voluntary, tax-deductible donations and private grants, and does not accept government funding. Donations provide a solid, lasting foundation that has enabled Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves for the last 35 years.

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The findings in this *Report* are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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# Lower Costs & Less Crime

Criminal and Juvenile Justice  
Reform Options for Florida

MAY 2016



106 North Bronough Street, Tallahassee, FL 32301 [floridatxwatch.org](http://floridatxwatch.org) o: 850.222.5052 f: 850.222.7476

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**Michelle A. Robinson**  
Chairman of the Board of Trustees

**Dominic M. Calabro**  
President & Chief Executive Officer

Dear Fellow Taxpayer,

Florida's prison population is among the largest in the United States and is expected to continue growing at a rate much faster than other, similar states in the coming years. Contributing to this trend is the fact that roughly one-quarter of Florida's inmates return to prison within three years of being released.

Several thousand inmates admitted into state and local facilities each year have served time before, but have failed to desist from crime. As these offenders cycle in and out of state and local facilities, they run up a costly corrections bill, building upon the already crippling corrections costs incurred by taxpayers.

Many states have recognized and forged policy solutions to address the cycle of recidivism and reduce the overall prison population to save taxpayer money while improving public safety. This report makes recommendations for Florida to do the same, through sensible, evidence-based policy changes.

Sincerely,

Dominic M. Calabro  
*President & CEO*

## EXECUTIVE SUMMARY

“Tough on crime” policies of the 1980s and 90s were meant to improve public safety, but recently crime has continued to decline across the nation, even in the face of “softer” approaches to punishment. Florida’s crime rate is no different, but the Sunshine State continues to have one of the largest prison populations in the nation, despite dwindling corrections budgets and diminishing returns to public safety.

Florida can no longer rely on the outdated and inefficient policies of the past, and must begin to consider policies and practices that not only keep Floridians safe, but also address the two primary drivers of growth in the criminal justice system: overincarceration and recidivism. The recommendations detailed in this report, while by no means an exhaustive list of necessary improvements, aim to put Florida on the path to achieve these goals. These recommendations are to:

- Increase the use of civil citation (or other pre-arrest diversion programs) for youth and adult misdemeanants;
- Expand the use of forensic mental health diversion programs;
- Reduce penalties for and divert “driving while license suspended” (DWLS) offenders;
- Restore judicial discretion for specific mandatory minimum cases;
- Develop risk/needs assessments and cost-analysis tools to be used at the time of sentencing;
- Update Florida’s drug possession laws and reduce penalties;
- Increase the amount of usable gain time for nonviolent inmates;
- Authorize the possibility of conditional and supervised early release for elderly and infirm inmates;
- Lengthen the period of eligibility for and expand transitional work-release programs; and
- Promote strategies that improve released offenders’ employment opportunities

# INTRODUCTION

In the 1980s and 90s, criminal justice and corrections policies were fairly consistent across the nation, creating a sentencing landscape that reflected public fears following the advent of crack cocaine and the “war on drugs,” instead of evidence-based practices that actually improve public safety. As times have changed, so have states’ attitudes. Florida has begun to take a more effective and efficient approach to dealing with offenders; but the state’s efforts still leave room for improvement.

Florida continues to have one of the largest prison populations in the country, at great taxpayer expense. Despite an annual budget of more than \$2 billion, the Department of Corrections requests more money each year to cope with the large numbers of inmates they are responsible for; but it does not have to be that way. With crime rates consistently decreasing across the nation, regardless of states’ varying approaches to punishment, many Florida policymakers are coming to the realization that the state has an incarceration problem, not a crime problem.

With a prison population of more than 100,000 costing taxpayers billions each year, Florida can no longer afford costly, outdated policy choices that do not substantially improve public safety or offender outcomes. An abundance of factors contribute to growing incarcerated populations and rising costs; looking at just one stage of the criminal or juvenile justice process will not provide the desired results. An holistic approach that tackles problems at all levels within the criminal justice process is essential.

The issues and cost-saving solutions identified in this report are just the tip of the iceberg of criminal justice issues that must be addressed if the state is to succeed in improving public safety while conserving taxpayer dollars. Continued commitment to data-driven research regarding Florida’s criminal and juvenile justice policies will ensure the safety and success of Florida and its residents in the future.

## BACKGROUND

Since the policy changes of the 1980s and 90s, Florida has seen a dramatic increase in its prison population, currently up more than seven-fold since FY1975 (13,880).<sup>1</sup> In contrast, the overall state population increased less than two-and-a-half fold in the same time frame.<sup>2</sup> Inevitably, the costs associated with incarceration also increased. In 1975, the Department of Corrections budget was roughly \$60.7 million<sup>3</sup> (\$291.6 million when adjusted for inflation),<sup>4</sup> by FY2014-15 it had jumped to nearly \$2.3 billion.<sup>5</sup>

Florida has made strides towards shifting sentencing strategies to address the root causes of crime through targeted intervention and diversion options, but many outdated and harsh strategies left over from the 1980s and 90s persist and continue to have lasting effects. Some of the justification for these antiquated and expensive policies is the assumption that higher levels of incarceration reduce the likelihood of crime. This assumption is understandable, but evidence consistently shows that incarceration is not a good deterrent on its own and is likely not responsible for reductions in crime.<sup>6</sup>

Specifically, research demonstrates that after a point, increased rates of incarceration actually provide diminishing or even negative returns, both fiscally and with regards to public safety.<sup>7</sup> This is especially true when incarcerating people for nonviolent drug offenses and other low-level crimes.<sup>8</sup> The Vera Institute of Justice examined key studies on the relationship between incarceration and crime/recidivism and found that, “Analysts are nearly unanimous in their conclusion that continued growth in incarceration will prevent considerably fewer, if any, crimes – and at substantially greater cost to taxpayers.”<sup>9</sup>

Recognizing that more incarceration means more money, but not necessarily less crime, many states have sought better approaches to dealing with offenders. Florida has not gotten on board with these new policies, despite the fact that they have allowed states to reduce their prison populations and corrections costs at little to no risk to public safety.

When comparing crime rates in Florida to those in New York, for example, the lines are almost parallel, with both states seeing about the same consistent reductions in crime since 1990 (Figure 1);<sup>10</sup> however, when examining the states’ incarceration rates, New York and Florida split paths around the year 2000,

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1 “Timeline: 1970-1975.” (Accessed 2/25/2016). Florida Department of Corrections.

2 Florida population in 1975: 8.518 million, 2015: 20.271 million. Source: U.S. Census Bureau.

3 “Fiscal Analysis in Brief: 1974-75.” (Accessed 2/25/2016). Florida Office of Economic and Demographic Research.

4 CPI Inflation Calculator: 1974 to 2014 dollars. (Accessed 2/25/2016). Bureau of Labor Statistics.

5 “2014-2015 Agency Statistics: Budget.” (2016). Florida Department of Corrections.

6 “A State of Incarceration: Florida Crime and Corrections Data Over Time.” (April 2015). Florida TaxWatch.

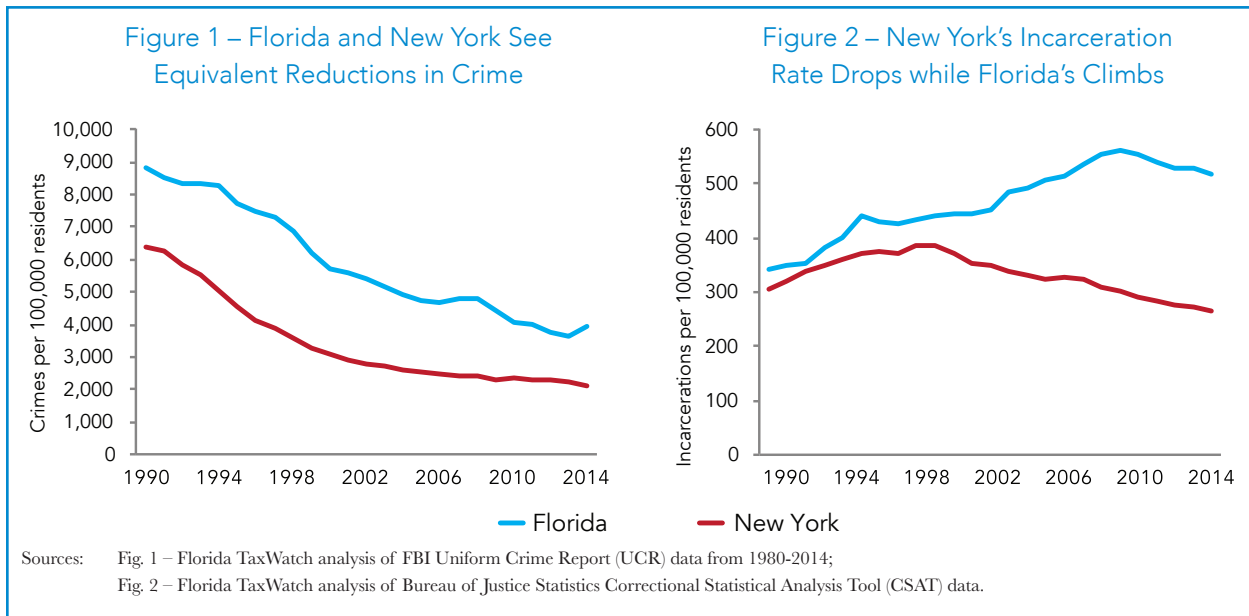
7 “What Caused the Crime Decline?” (Feb. 2015). Roeder et. al, Brennan Center for Justice.

8 “One in 31: The Long Reach of American Corrections.” (March 2009). PEW Center on the States, Public Safety Performance Project.

9 “Reconsidering Incarceration: New Directions for Reducing Crime.” (2007). Vera Institute of Justice.

10 Florida TaxWatch analysis of FBI Uniform Crime Report (UCR) data from 1980-2014.

with Florida’s incarceration rate climbing while New York’s decreased (Figure 2).<sup>11</sup> This is possibly due, in part, to the states’ different responses following the introduction of “Truth-in-Sentencing” (TIS) laws.



While both New York and Florida implemented “85 percent” rules under TIS, requiring inmates to serve at least 85 percent of their sentence before being eligible to be released,<sup>12</sup> they did so at varying levels. Florida applied the 85 percent rule to all prisoners. New York only applied it to violent offenders (the minimum required to receive extra federal funding) and mitigated the resulting increase in inmate population due to increased length of stay through its Merit Time Program (MTP). Enacted in 1997, MTP allows certain non-violent offenders to reduce their sentences by one-sixth by participating in programs while incarcerated.<sup>13</sup> One study estimates that this policy alone keeps 1,350 people out of New York prisons each year.<sup>14</sup>

Other states have also made policy reforms to address inefficiencies and other issues in criminal justice.<sup>15</sup> The total United States prison population declined for the first time in 38 years in 2009;<sup>16</sup> when 26 states reduced their prison rolls that year, including tough-on-crime states like Texas, Mississippi, and South Carolina, but Florida was not among them.

11 Florida TaxWatch analysis of Bureau of Justice Statistics Correctional Statistical Analysis Tool (CSAT) data.

12 “Historical Summary of Sentencing and Punishment in Florida.” (March 2003). Florida Department of Corrections; “How NYC Reduced Mass Incarceration.” (January 2013). JFA Institute, Vera Institute of Justice, and Brennan Center for Justice.

13 “Merit Time Program Summary October 1997-December 2006.” (2007). New York Department of Correctional Services.

14 “How NYC Reduced Mass Incarceration.” (January 2013). JFA Institute, Vera Institute of Justice, and Brennan Center for Justice.

15 Texas: “Texas prison population shrinks as rehabilitation programs take root.” (Aug 11, 2012). Mike Ward, The Statesman; Pennsylvania: “Pennsylvania State Prison Population Records Largest Decrease in 40 Years.” (Jan. 19, 2016). The website of Pennsylvania Governor, Tom Wolf: [governor.pa.gov](http://governor.pa.gov); California: “What you need to know about Proposition 47.” (accessed on 2/26/2016). California Department of Corrections and Rehabilitation; Other states: “States Take Sizeable Steps in 2012 to End Overincarceration.” (June 4, 2012). Alex Stamm, ACLU Center for Justice.

16 “Prison Count, 2010.” (April 2010). PEW Center on the States.

# DRIVERS OF GROWTH IN THE CRIMINAL JUSTICE SYSTEM

Outdated and inefficient policies have negatively affected sentencing and incarceration in Florida in cases of both people convicted of minor nonviolent offenses and those convicted of serious offenses.<sup>17</sup> These ineffective policies gave rise to the two central issues that plague the state’s criminal justice system today.

## Overincarceration

Overincarceration essentially means that there are some people in prison who should not be, or are serving longer sentences than are necessary. Florida incarcerates over 150,000 people each year in its state prisons and local jails combined.<sup>18</sup> This costs taxpayers a great deal of money. Prison inmates cost an average of \$51.65 per day to house, with costs as high as \$92.59 per diem for male youthful offender custody.<sup>19</sup> Jail inmates are even more expensive, averaging \$64.38 to house per day, but costs can run as high as \$155.<sup>20</sup> Overincarceration is a significant issue that wastes taxpayer dollars, but it stems from outdated and inefficient policies that Florida can easily improve.

Part of Florida’s overincarceration problem is that the state does not adequately redirect low-level offenders from prison into front-end diversion sanctions, even though many inmates would be better served through treatment programs. The mentally ill, for example, comprise the fastest growing sub-population within Florida’s prisons and jails, and many adult misdemeanor offenders are still arrested and sent to jail, even though pre-arrest diversion options for them exist in Florida and have been shown to be effective.

Restricted judicial discretion also contributes to higher numbers of inmates entering jails and prisons. In 1995, the Legislature limited the sentencing discretion of judges by implementing mandatory minimum sentences. Current statutes dictate that when the lowest permissible sentence (calculated using the Criminal Punishment Code Scoresheet) is less than the offense’s mandatory minimum, the mandatory minimum sentence takes precedence.<sup>21</sup> Not only do mandatory

“Some people say the only way you stop crime is to incarcerate. We [New York] have proven that to be untrue: successfully preventing crime and breaking cycles of criminal activity can save thousands from a life of cycling through the criminal justice system.”

— Former Mayor of New York City,  
Michael Bloomberg<sup>1</sup>

<sup>1</sup> “New York City’s Incarceration Rate Hits New Low.” (Dec. 20, 2012). New York City Government.

<sup>17</sup> “Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force.” (Dec. 2010). Florida TaxWatch.

<sup>18</sup> “2014-2015 Agency Statistics: Inmate Population.” (2015). Department of Corrections; “Florida County Detention Facilities’ Average Inmate Population.” (June 2015). Department of Corrections.

<sup>19</sup> “2014-2015 Agency Statistics: Budget.” (2015). Department of Corrections.

<sup>20</sup> “2014 Annual Jail Capacity Survey.” (2014). Department of Corrections.

<sup>21</sup> “Florida Criminal Punishment Code: Scoresheet Preparation.” (July 2015). Florida Department of Corrections.



minimums completely take diversion off the table, they often result in sentencing low-level offenders struggling with substance abuse issues to the same lengthy prison terms as violent offenders. This approach to sentencing not only puts people in prison who should not be there, but creates a length of stay issue that contributes to rising prison populations.

The length-of-stay portion of overincarceration is also affected by a lack of early release options for low risk offenders. With the abolishment of parole in 1983<sup>22</sup> and the cap on gain time implemented in 1995,<sup>23</sup> options to earn or be considered for early release from incarceration in Florida are limited. This shortfall exists despite the fact that longer sentences have been shown to have no effect on, or even worsen,<sup>24</sup> recidivism and despite the fact that there are low-risk populations of inmates that place great strain on correctional budgets. Elderly prisoners, for example, pose little or no risk to the public but use almost 50 percent of correctional healthcare dollars (despite only comprising 20 percent of the prison population).<sup>25</sup>

Overincarceration means putting some people in prison who should not be there; it means keeping people incarcerated for longer than they need to be; and it means no return on investment for taxpayers. These practices do not improve public safety, and cost the state billions of dollars.

## Recidivism

Another major problem facing Florida's criminal justice system is that so many released offenders return to prison. Florida has seen reductions in recidivism over the past decade – down 7 percent since 2006<sup>26</sup> – but almost 8,500 of the inmates released from prison each year return within three years.<sup>27</sup> Many of these individuals recidivate because of inadequate reentry preparation and post-release support.

Gain time, awarded for inmates' participation in prison vocational, educational, and other programs, provided a substantial incentive for inmates to begin the reformation/rehabilitative process while behind bars. The Truth-in-Sentencing (TIS) rule enacted alongside mandatory minimums in 1995 put a cap on gain time, not only contributing to overincarceration by driving up length of stay, but also increasing the probability of recidivism by limiting incentives for inmates to participate in beneficial programs.<sup>28</sup>

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22 "Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force." (Dec. 2010). Florida TaxWatch.

23 "A State of Incarceration: Florida Crime and Corrections Data Over Time." (April 2015). Florida TaxWatch; "Timeline: 1992-1995." (Accessed 2/25/2016). Florida Department of Corrections.

24 Bartell & Winfree, Jr. (1977); Gottfredson et al. (1973); Gottfredson, Gottfredson, and Garofalo (1977); Orsagh & Chen (1988); Berecochea and Jaman (1981); Sims & O'Connell (1985).

25 "Florida's Aging Prisoner Problem." (2014). Florida TaxWatch.

26 "Florida Prison Recidivism Study." (June 2015). Florida Department of Corrections; "2009 Florida Prison Recidivism Study; and Releases From 2001 to 2008." (May 2010). Florida Department of Corrections.

27 "2013-2014 Agency Statistics: Inmate Releases and Time Served." (2015). Florida Department of Corrections.

28 "Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook." (Aug. 22, 2013). RAND Corporation.

Additionally, released inmates do not always have access to the support necessary to lead a stable life free of crime. Many do not have friends or relatives they have kept in contact with and lack the financial stability to spend much time unemployed, and finding work is especially difficult for this population. Despite the fact that employment is shown to reduce recidivism, barriers exist that hurt ex-offenders' job opportunities, and behind-the-wall programs designed to train and transition inmates into the workforce when they are released are very limited. Work-release centers, for example, only have the capacity to serve about 10 percent of the tens of thousands of inmates released each year.<sup>29</sup>

Recidivism is bad for taxpayers, public safety, and inmates. About 80 percent of inmates sentenced in FY2015 will have completed their sentences by FY2020, so the process of preparing for reentry should begin immediately for all inmates.<sup>30</sup> It is incumbent on Florida to make the successful reentry of its ex-offenders a priority.

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29 "Frequently Asked Questions." (Accessed 1/6/2016). Florida Department of Corrections.

30 "2014-2015 Agency Statistics: Inmate Admissions." (2016). Florida Department of Corrections.

# JUSTICE REFORM RECOMMENDATIONS

As we have seen, Florida’s recidivism and overincarceration are bad for taxpayers as well as ex-offenders and are driven by a number of addressable issues and policies. The sections below provide recommendations that maintain public safety and improve offender outcomes at lower cost to Florida taxpayers.

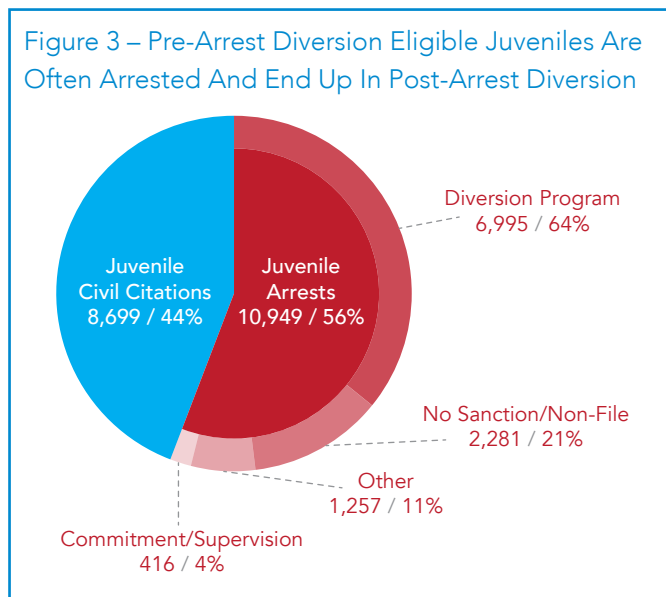
## 1. INCREASE THE USE OF CIVIL CITATION (OR OTHER PRE-ARREST) DIVERSION PROGRAMS FOR YOUTH AND ADULT MISDEMEANANTS

A central goal of the modern shift in ideology regarding offenders is to ensure that costly incarceration is reserved for those who pose a danger to society, and that alternative sanctions are used for low-level and non-violent offenders. Civil Citation and other pre-arrest programs allow swift and certain consequences (including victim restitution fees, community service, and specialized programming) to be applied to misdemeanor offenders without burdening them with the stigma of an arrest record or taxpayers with the cost of their incarceration. For these reasons, they have garnered a lot of support in recent years, but pre-arrest diversion programs for both adults and juveniles still have yet to achieve their full potential.

Despite the codification and statewide implementation of juvenile civil citation, which allowed counties to use civil citations or equivalent pre-arrest diversion programs for juveniles,<sup>31</sup> many Florida counties still do not use these alternatives.<sup>32</sup> Between December 2014 and November 2015, law enforcement arrested nearly 11,000 pre-arrest diversion-eligible youth; however, the majority of these youth were never sent to a residential facility.<sup>33</sup>

The Department of Juvenile Justice (DJJ) reports that arrested eligible youth in these counties overwhelmingly ended up in some form of *post-arrest* diversion program (Figure 3), with sanctions similar to those they would be subject to under civil citation or other pre-arrest programs.<sup>34</sup> This population could have been served through pre-arrest diversions, which would have spared them the criminal record.

Similar pre-arrest diversion options for adults are scarce. Adult civil citation only exists in Leon County, and has served approximately



31 F.S. 985.12

32 Civil Citation Dashboard. (Dec. 2014-Nov. 2015). Department of Juvenile Justice.

33 *Ibid.*

34 “Diversion” dispositions as reported are court outcomes for arrested youth. Source: Department of Juvenile Justice Civil Citation Dashboard.

1,000 misdemeanor adult offenders in its less than three year history. The program has not yet been expanded, despite positive outcomes (6 percent recidivism) and high completion rates (80 percent).<sup>35</sup> The majority of individuals served through this program are college-aged, meaning they are about to enter the workforce. Expanding this program statewide, like juvenile civil citation and other juvenile pre-arrest diversion programs, could provide millions in cost savings and ensure these individuals do not have a mark on their records that could affect their academic or employment prospects in the future.

**Recommendation 1A:** Florida should ensure that juvenile civil citation and other pre-arrest diversion programs are used.

**Recommendation 1B:** Florida should expand adult civil citation statewide.

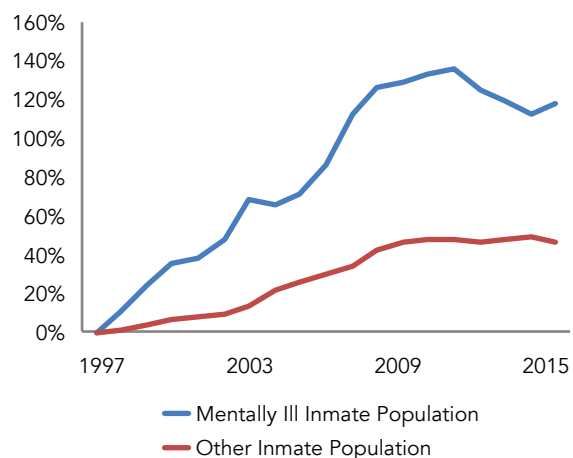
## 2. EXPAND THE USE OF FORENSIC MENTAL HEALTH DIVERSION PROGRAMS

People with mental illnesses represent the fastest growing sub-population within Florida’s prison system. Between FY1997 and FY2015, the number of Florida’s prison inmates with mild, moderate, or severe mental illness increased by about 118 percent, rising from approximately 7,900 to 17,000.<sup>36</sup> The portion of non-mentally ill prisoners, in contrast, only increased by about 46 percent in the same time frame (Figure 4).<sup>37</sup>

When including jail populations and those coming in and out of the system throughout the year, the total number of people suffering from mental illness who are incarcerated (in some form or another) in Florida rises to about 125,000 annually.<sup>38</sup> Many of these offenders do not receive adequate behind-the-wall or reentry services to treat their illness, which results in a population of individuals that cycle rapidly through Florida’s criminal justice and public behavioral healthcare systems, at great taxpayer expense.

Individuals with mental illness deemed competent to stand trial often end up in jail, while others deemed incompetent to stand trial are referred to competency restoration programs. There are

Figure 4: The Mentally Ill Inmate Pop. Sees Faster Growth Than The Non-Mentally Ill Pop.



Source: “Agency Statistics: Inmate Population.” (1997-2015). Florida Department of Corrections.

Note: The start point used (FY1997) was the first annual report that included data on mentally ill inmates. That year began with a population of 7,856 mentally ill inmates and 56,857 inmates not classified as mentally ill.

35 “Adult Civil Citations with Integrated Intervention – A ‘Pre-Arrest’ Alternative.” (2016). Civil Citation Network (unpublished analysis).

36 While this number has been declining steadily in recent years, FY2015 marks the first increase across the board (in mild, moderate, and severe inmates) since FY2011: “2014-2015 Agency Statistics: Inmate Population.” (2016). Florida Department of Corrections.

37 “Agency Statistics: Inmate Population.” (1997-2015). Florida Department of Corrections.

38 “Florida’s jails have become ‘the asylums of the new millennium’.” (2014). Jeff Kunerth, Orlando Sentinel.

two primary types of these programs: community competency services and forensic facilities. Community services provide competency restoration to individuals who do not necessitate a secure environment and conditionally receive services and training in the community.<sup>39</sup> Forensic facilities provide competency restoration for individuals that need a secure environment. These programs use up a significant portion of valuable state dollars. Between 150,000 and 170,000 Floridians need acute mental health treatment each year, but the state spends over 20 percent of its total adult mental health budget on restoring competency for just 4,500 people.<sup>40</sup>

When these individuals have their competency restored (often times receiving credit for time-served and then released) or are released from jail, many of them do not receive adequate post-release treatment.<sup>41</sup> Without adequate focus on reintegration and reentry for individuals exiting the competency restoration process, the state has a number of people who repeatedly cycle through the corrections and publicly funded mental health systems. The 97 most frequent utilizers of these systems in Miami-Dade County alone have cost Florida \$13 million dollars through a cumulative 27,000 days in jail and 13,000 hospital/psychiatric facility days.<sup>42</sup>

In August of 2009, Miami-Dade created a community-based program for mental health services, the Miami-Dade Forensic Alternative Center, which combines elements of both community-based and state forensic facility programs, and diverts individuals with mental illnesses from costly hospitals and jails. In addition to savings through fewer commitment days,<sup>43</sup> the average cost to provide services through the Forensic Alternative Center program is roughly 32 percent less than services provided in state forensic treatment facilities.<sup>44</sup> The program has also improved outcomes for participants, reducing recidivism rates from 75 percent to 20 percent.<sup>45</sup>

**Recommendation 2: The state should expand the Forensic Alternative Center or similar diversion programs statewide.**

### 3. REDUCE PENALTIES FOR AND DIVERT “DRIVING WHILE LICENSE SUSPENDED” (DWLS) OFFENDERS

License suspensions are a fairly common occurrence in Florida. In FY2013, Florida revoked or suspended approximately 1.3 million driver licenses.<sup>46</sup> The frequency of this sanction is a result of a number of legislative changes over the past several years that have made the failure to meet an increasing list of financial obligations (including court fines and child support) cause to suspend a driver’s license.

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39 “Juvenile and Adult Incompetent to Proceed Cases and Costs.” (Feb. 2013). Office of Program Policy Analysis and Government Accountability.

40 Call with Judge Steven Leifman on “incompetent to proceed” cases (8/29/2015).

41 *Ibid.*

42 “AHCA Study – Analysis of Service Use and Costs Among Arrestees.” (2010). University of South Florida: Louis de la Parte Florida Mental Health Institute.

43 Participants in the program spend an average of 31 days (18 percent) fewer days under forensic commitment than individuals who complete competency restoration services in state facilities: Whitepaper: Eleventh Judicial Criminal Mental Health Project. A handout provided by Judge Steven Leifman to the Forensic Mental Health Association of California. Available on their website.

44 “Mental Health Program.” (Accessed 1/6/16). Florida Department of Children and Families.

45 “Jacksonville officials eye Miami-Dade’s big gain in dealing with mentally ill inmates.” (Oct. 10, 2014). Derek Gilliam, The Florida Times Union.

46 Staff analysis for CS/HB 207: Driver Licenses. (Jan. 14, 2016). Florida House of Representatives: Highway & Waterway Safety Subcommittee.

Florida Statute 322.34 makes Driving While License Suspended (DWLS) a misdemeanor offense in most cases. The punishment is upgraded to a felony offense in four instances: when a Habitual Traffic Offender is driving on a revoked license; when an individual DWLS causes injury or death; when a second DWLS offense occurs while operating a commercial vehicle; or when a third DWLS offense occurs.

The felony upgrade for DWLS is not applied in the four exceptions above if the initial suspension was a result of a failure to pay a civil fine or debt and the individual has never committed a forcible felony;<sup>47</sup> however, this does not mean that all other cases warrant a felony upgrade. In 2008, OPPAGA reported that 355 individuals were incarcerated for DWLS when their initial suspension was due to excessive tickets or other (non-DUI) driving-related reasons.<sup>48</sup>

Between “community corrections”<sup>49</sup> and prison, Florida placed over 3,000 DWLS offenders under state supervision or confinement in FY2015,<sup>50</sup> when the majority of states do not upgrade DWLS to felony classification at all. Texas, for example, makes DWLS a Class B misdemeanor (up to 6 months in jail and \$500 fine). If prior DWLS offenses were committed, the violation becomes a Class A misdemeanor (up to 1 year in jail and \$4,000 fine).<sup>51</sup> Similarly, DWLS (except in DWI or DUI cases) is always classified as a misdemeanor in California.<sup>52</sup>

About 450 individuals are placed in prison for DWLS offenses each year, receiving an average sentence of 2 years. From this data, the state can save an estimated \$5.2 million annually by removing felony sanctions for DWLS.<sup>53</sup> Additionally, the prison experience often creates negative behavioral consequences for those imprisoned, and makes it far more difficult for these individuals to successfully reenter society and resume their employment and relationships once released. Keeping these low-level offenders out of prison would benefit public safety and offender outcomes while also conserving taxpayer dollars.

**Recommendation 3: The state should use diversion programs to minimize misdemeanor DWLS offenders’ involvement with the criminal justice system.**

#### 4. RESTORE JUDICIAL DISCRETION FOR SPECIFIC MANDATORY MINIMUM CASES

The responsibilities of judges changed during the switch to determinate sentencing in the 1980s and 90s. Rather than allow disparate sentences for similar offenses, states opted for uniform sentencing, which focused on the crime and set automatic, objective penalties for offenses.

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47 A forcible felony is defined in Florida Statute 776.08 as any type of crime which involved the threat or application of physical force against another.

48 Not including DUI or DWI.

49 Referring to offenders not housed in prisons but who remain under the supervision of the Department of Corrections in the community.

50 TaxWatch analysis of information from the Department of Corrections, received 2/5/2016.

51 Section 521.457 of the Texas Transportation Code.

52 License Suspension Laws – California Vehicle Code Section 14601.

53 Estimate assumes an average per diem (non-fixed) cost of \$15.91.

By applying a one-size-fits-all method of sentencing through mandatory minimums, Florida sought to ensure that all offenders would be subject to the same level of punishment, regardless of race, religion, socioeconomic status, or other variables; but these pre-determined sentences are not reserved solely for serious or violent criminals. Some offenders are sanctioned to lengthy sentences under the inflexible design of mandatory minimums without consideration of mitigating factors. This result is particularly concerning when examining the population of 10-20-Life inmates,<sup>54</sup> which, due to lengthy sentences under mandatory minimums, has increased by almost 7,000 percent since FY2000 and now comprises over 10 percent of the total prison population.<sup>55</sup>

While mandatory minimums ensure that serious offenders will serve longer sentences, they also mean that all applicable offenses are subject to the same, objective treatment.<sup>56</sup> Oftentimes this results in sentencing individuals struggling with substance abuse issues to the same lengthy prison terms as violent offenders.

A “Judicial Safety Valve,” which permits a judge to deviate from a defined mandatory minimum sentence for a particular offense, would allow for the restoration of judicial discretion where appropriate. As of right now, judicial discretion at the federal level can only be used in cases of “certain nonviolent, low-level, first-time drug offenses,”<sup>57</sup> but the federal government is already considering expanding it to include other drug offenses and beyond. Therefore, the next step for Florida would be to adopt principles of the judicial safety valve that would allow Circuit Judges the option to deviate from the mandatory minimum sentence in felony cases where a mandatory minimum sentence applies and undeniable proof of mitigating factors that could affect culpability are present.<sup>58</sup>

**Recommendation 4: Florida should create a “Judicial Safety Valve” that will allow judges to deviate from mandatory minimum sentences when details of a case do not necessitate them.**

## **5. DEVELOP RISK/NEEDS ASSESSMENT AND COST-ANALYSIS TOOLS TO BE USED AT THE TIME OF SENTENCING**

Since Florida first enacted its Sentencing Guidelines in 1983, the state has explicitly rejected rehabilitation as a primary purpose of sentencing. Today, the policy reads: “The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment.”<sup>59</sup> Thus, the calculation used to determine the sentence focuses not on risk or needs, or the likelihood of reoffending, but on the appropriate dose of punishment, based on static risk factors that cannot change, such as the nature of the primary offense and any additional offenses, prior criminal history, and injury to the victim.

54 “10-20-Life Criminals Sentenced to Florida’s Prisons: 2007.” (Sept. 2007). Florida Department of Corrections.

55 “Executive Summary.” (Feb. 27, 2015). Florida Criminal Justice Estimating Conference.

56 2014 Florida Statutes. (F.S. 893.135; F.S.775.087).

57 “Justice Safety Valve Act Would Give Flexibility on Mandatory Minimum Sentences,” The Huffington Post. March 20, 2013.

58 In other words, unable to consider mitigating factors like: firearm was unloaded, no history of violence, only an accomplice, addiction contributed to commission of crime, conduct did not cause/threaten physical harm, conduct a result of circumstances unlikely to recur, potential for reform, etc. For more info on mitigating factors and their pros and cons see: “The Thinking Advocate’s List of Mitigating Factors,” The Sentencing Project, 2003.

59 F.S. 921.002.

Dynamic factors are neglected by our current form of assessment both at sentencing and placement stages. These factors change over time, representing any progress an individual may make, and could potentially lower the risk level of an offender to make them better-suited for less costly programs, treatments, or services.

Several dynamic characteristics not outlined in Florida’s sentencing score sheet have been shown to greatly reduce risk of recidivism, including: attitudes towards crime, education level, and marital or employment status. Identifying where an offender stands with regards to these factors can help determine the appropriate services or treatments that would address the offender’s needs and provide the best outcome.

Recognizing the need for more comprehensive risk evaluations, the Broward County Sheriff’s Office partnered with Florida State University to determine the level of predictive accuracy and validity of the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk assessment instrument, which is used in other states to inform the pretrial release decision-making process. While still not implemented statewide, this tool was found to be highly accurate in predicting general recidivism, violence, and failure to appear in court at the pretrial, probation, and early release levels for offenders eligible for jail.<sup>60</sup>

Adding a cost component to the model and making it available at sentencing could better inform judges and legal professionals involved as to the safest and most cost-effective option for the offender. Missouri’s Sentencing Commission developed a web-based tool for judges to use in sentencing that provides them extensive information about sentencing options and the risks and costs associated with each alternative. The tool is available for use by judges, prosecutors, defendants and their attorneys, and the public. The user simply types in the code number for the highest-level offense for which the defendant has been (or will be) convicted, along with demographic, criminal history, substance abuse involvement, education, and other information about the defendant, and the tool provides the user with the recommended sentences, the risk assessment, recidivism projections, and the costs of incarceration, supervision, and community alternatives, including treatment where warranted.<sup>61</sup>

**Recommendation 5: The state should develop a web-based tool, to be used at sentencing, for purposes of illuminating options and costs of various methods of criminal justice supervision and their alternatives.**

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60 “Validation of the COMPAS Risk Assessment Classification Instrument.” (Sept. 2010). Blomberg et al., Center for Criminology and Public Policy Research, Florida State University.

61 “Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force.” (Dec. 2010). Florida TaxWatch.



## 6. UPDATE FLORIDA'S DRUG POSSESSION LAWS AND REDUCE PENALTIES

While Florida has made progress in drug sentencing by raising the thresholds for felony sentences involving hydrocodone and oxycodone<sup>62</sup> (consistent with Florida TaxWatch recommendations),<sup>63</sup> Florida still authorizes the incarceration in state prisons for the possession of very low quantities of drugs. Physical possession of any amount of any (non-prescribed) controlled substance is a third degree felony in Florida.

In Florida, possession of over 20 grams (0.7 ounces) of marijuana, without intent to deliver or distribute, is a felony punishable by up to five years in prison.<sup>64</sup> By contrast, Kentucky classifies marijuana possession up to 8 ounces (over 11 times as much) as a misdemeanor, punishable by up to 45 days in jail and a \$250 fine. In Texas, possession does not become a felony until it exceeds 4 ounces.<sup>65</sup> In New York, residents caught with marijuana for the first time are only subject to a fine of up to \$100 (as long as they do not have it out in the open).<sup>66</sup>

Over the past several years, states have been making changes to their drug laws to reduce penalties from felonies to misdemeanors.<sup>67</sup> For instance, in 2010, the Colorado legislature amended its drug possession laws to make possession of most drugs (e.g., cocaine and heroin) a misdemeanor rather than a felony (marijuana possession is legal in Colorado). Colorado is reinvesting the money saved in treatment programs.<sup>68</sup>

People convicted of drug offenses made up 15.5 percent of Florida's prison population, and those convicted of simple possession of cocaine made up almost 30 percent (2,044 people) of new commitments for drug offenses in FY2015.<sup>69</sup> According to OPPAGA, in 2009 "1,265 drug possession inmates currently in prison scored fewer than 5 prior record points (likely no significant prior offenses)."<sup>70</sup> Similarly, in FY2015, 3,350 drug offenders (48 percent of all drug offenders) admitted to Florida prisons had no prior prison commitments.<sup>71</sup> If half of this group had been diverted, the state would have saved about \$33 million.<sup>72</sup>

### **Recommendation 6: The state should update laws and sentencing policies for non-violent drug offenses to better reflect the nature and severity of the crime.**

62 CS.SB 360 Sentencing for Controlled Substance Violations by Appropriations; Sen. Bradley; Sen. Evers. (2014 Florida Legislative Session). The companion bill that did not pass was HB 99: Controlled Substances by Criminal Justice Subcommittee, Rep. Edwards, Rep. Hood.

63 "Briefing: Sentencing for Oxycodone and Hydrocodone Offenses." (January 2014). Florida TaxWatch.

64 F.S. 893.13 (6)(a).

65 TSC 481.121.

66 NY PL 221.05.

67 "Key Legislative Changes in Sentencing Policy, 2001-2010." (Sept. 2010). Vera Institute of Justice.

68 "2010 Legislative Summary." (2010). Colorado Criminal Justice Reform Coalition.

69 "2014-2015 Agency Statistics: Inmate Admissions." (2016). Florida Department of Corrections.

70 "Options for Reducing Prison Costs." (2009). OPPAGA.

71 "2014-2015 Agency Statistics: Inmate Admissions." (2016). Florida Department of Corrections.

72 No structural change would be needed for a population this size, so the per diem cost associated with each drug offender is \$15.91, for an average drug offender sentence of 3.4 years.

## 7. INCREASE THE AMOUNT OF USABLE GAIN TIME FOR NONVIOLENT INMATES

The notion of incentive gain time (days subtracted from one’s sentence for good behavior behind bars) has been in effect in Florida since 1989. Gain time is currently discretionary and may be awarded by the Department of Corrections when “an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.”<sup>73</sup>

In 1995, the Legislature limited the reach of gain time and enacted a law preventing prisoners from accruing enough gain time to result in their release prior to serving a minimum of 85 percent of their imposed sentences.<sup>74</sup> Adjusting the accruable gain time cap would further encourage prisoners to engage in constructive behavior and reentry programming and could result in considerable cost savings for the state, with little to no risk to public safety.

In CGL’s 2015 analysis of the Department of Corrections, they recommended that with regards to CINAS (the assessment tool used to identify programs best suited to rehabilitate inmates), “gain time incentives are needed to reward inmates who participate in and complete risk-reducing programs.”<sup>75</sup> Historically, studies show a relationship between time served and recidivism, noting that, past a certain point, incarceration does more harm than good, increasing the likelihood of recidivism or having no effect at all.<sup>76</sup> This research suggests that reducing sentences for lower-risk offenders, where appropriate, may be beneficial; findings that are extra important for Florida, which has led the nation in lengthening sentences, according to a study by the PEW Center on the States.<sup>77</sup>

Significant cost savings can be realized by allowing nonviolent inmates to earn additional gain time. About 46 percent of the total prison population is incarcerated for nonviolent offenses.<sup>78</sup> Changing the gain time cap for nonviolent inmates to require inmates to serve only 70 percent could save the state an additional \$350 million.<sup>79</sup> Further, Florida’s Criminal Justice Estimating Conference estimates that requiring nonviolent inmates to only serve 65 percent would result in a cumulative decrease of almost 7,800 prison beds and a cost-avoidance of almost \$940 million over the next 5 years (roughly \$419 million in operating costs and \$521 million in fixed capital outlay).<sup>80</sup>

**Recommendation 7: The Legislature should amend its 1995 changes to the gain time law and raise the cap on maximum accruable gain time for nonviolent offenders.**

73 F.S. 944.275.

74 [Emphasis added] F.S.944.275.

75 Recommendation 41: “Study of Operations of the Florida Department of Corrections.” (Nov. 2015). CGL.

76 Bartell & Winfree, Jr. (1977); Gottfredson et al. (1973); Gottfredson, Gottfredson, and Garofalo (1977); Orsagh & Chen (1988); Berecochea and Jaman (1981); Sims & O’Connell (1985).

77 “Time Served: The high Cost, Low Return of Longer Prison Terms.” (June 2012). PEW Center on the States Public Safety Performance Project.

78 “2014-2015 Agency Statistics: Inmate Population.” (2016). Florida Department of Corrections.

79 Inmates cost \$15.91 per inmate per diem and the average sentence length for nonviolent offenders is 8.7 years, at a cost of \$50,659.36 per inmate per sentence. 85 percent of that sentence would cost \$43,060.45; 70 percent would cost \$35,461.55; for a difference of \$7,598.90 per inmate. Assuming all nonviolent inmates accrued their maximum 30 percent gain time, there would be an additional savings of about \$350 million.

80 “SB Draft 591-01710C-16 –Criminal Justice.” Accessed 2/8/2016. Florida office of Economic and Demographic Research: Criminal Justice Impact Conference.

## 8. AUTHORIZE THE POSSIBILITY OF CONDITIONAL AND SUPERVISED EARLY RELEASE FOR ELDERLY AND INFIRM INMATES

Florida continues to bear the increasing medical and housing costs of a growing elderly prison population when some of these offenders would pose little, if any, risk to the public if they were released from prison.

From 2000 to 2015, Florida's elderly prison population (50 years of age and older under statutory definitions) grew from 5,605 to 21,620, at an average increase of about 10 percent per year. This growth rate is more than three times the growth rate of the general prison population.<sup>81</sup> By 2020, one out of every three prisoners in Florida will be elderly. This rate will be double the 16 percent national average, and impose huge and unsustainable fiscal burdens on Florida taxpayers.<sup>82</sup>

Elderly inmates also account for a disproportionate share of hospital services in Florida. In its 2012-13 annual report, the Florida Department of Corrections (DOC) reported that elderly inmates accounted for 49.9 percent of all episodes of care and 52.5 percent of all hospital days, although they only represented 19.4 percent of the total prison population.<sup>83</sup> The National Institute of Corrections estimates that states spend, on average, nearly three times what it costs to house a younger prisoner on elderly prisoners, largely because of the difference in healthcare costs.<sup>84</sup>

As a result of these high expenses, the federal government and other states have enacted initiatives such as "geriatric parole" and "compassionate release," to allow for the supervised and conditional early release of low-risk elderly and infirm inmates (Table 1).<sup>85</sup> Other localities have opted to modify an existing conditional medical release option to achieve the same goal. These initiatives have become the most common way for states to safely avoid enormous healthcare costs for aging prisoners.<sup>86, 87</sup>

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81 "Florida's Aging Prisoner Problem." (Sep. 2014). Florida TaxWatch.

82 *Ibid.*

83 Florida Department of Corrections, "Annual Report Fiscal Year 2012-13," December 2013.

84 Kevin McCarthy and Carrie Rose, "State Initiatives to Address Aging Prisoners", Office of Legislative Research, March 4, 2013.

85 Federal: "Early Release for Federal Inmates: Fact Sheet." (Feb. 3, 2014). Nathan James, Congressional Research Service.; and All other cited states: "It's About time: Aging Prisoners, Increasing Costs, and Geriatric Release." (April 2010). Vera Institute of Justice.

86 "Florida's Aging Prisoner Problem." (Sep. 2014). Florida TaxWatch.

87 For more information on eligibility criteria, please see: The Federal Bureau of Prisons Compassionate Release Program, U.S. Department of Justice Office of the Inspector General, April 2013.

Table 1: Many States have Existing Elderly Release Programs

	Minimum Age of Eligibility
Federal	70
Alabama	55
Colorado	65
Connecticut	Not specified. Must be physically or mentally disabled from age or illness and have served half of their sentence.
District of Columbia	65
Louisiana	45
Maryland	65
Missouri	Not specified. Must be advanced in age to the point of needing long term nursing home care.
North Carolina	65
New Mexico	65
Oklahoma	60
Oregon	Not Specified. Must be elderly and permanently incapacitated to the point that they need assistance to move from place to place.
Texas	Must be elderly and physically/mentally ill or disabled, or terminally ill, or those who have a condition necessitating long term care.
Virginia	60/65
Washington	Not Specified. Must have a serious medical condition that will necessitate costly care/treatment and be physically incapacitated due to age or medical condition.
Wisconsin	60/65
Wyoming	Not Specified. Must be incapacitated by age to the point that they lack the ability to provide self care within a correctional facility.

Florida could create a similar program and manage it under the policies and standards currently used by the Florida Commission on Offender Review (FCOR) for other forms of discretionary release, like conditional medical release. Conditional medical release allows for terminally ill or permanently incapacitated inmates to be considered for early release.<sup>88</sup> Inmates released through this process are highly vetted and subject to periodic medical reviews and check-ins as well as any other conditions of supervision set by the commission.<sup>89</sup>

<sup>88</sup> "Release Types." (Accessed 2/25/16). Florida Commission on Offender Review.

<sup>89</sup> "2014 Annual Report." (2014). Florida Commission on Offender Review.

The major benefit of the supervised conditional release of elderly prisoners is significant cost savings. This population costs the most to incarcerate, but poses the least danger to public safety. For every additional month that just one elderly inmate is not in prison due to supervised conditional release, the state could save approximately \$1,000 in prison expenditures (almost \$21 million when applied to the entire elderly inmate population).<sup>90</sup>

**Recommendation 8: Florida should create a supervised, conditional elderly release program that would allow elderly and infirm inmates to be considered for early release under the review processes already established by the Florida Commission on Offender Review for other forms of discretionary release.**

## 9. LENGTHEN THE PERIOD OF ELIGIBILITY FOR AND EXPAND TRANSITIONAL WORK-RELEASE PROGRAMS

Florida offers transitional community work-release for select (i.e., pre-screened as low-risk) inmates to work at paid employment in the community while living in work-release centers outside of prison. Florida has 34 of these centers<sup>91</sup> that serve about 3,000 inmates on work-release annually.<sup>92</sup> Wages for inmates in work-release programs vary based on the organization they work for, but all positions pay at least minimum wage and require inmates to work at least 32 hours per week, with a maximum of 40 hours per week.<sup>93</sup> Eligibility for work-release programs for inmates with non-advanceable<sup>94</sup> release dates (the majority of currently incarcerated offenders) begins just 14 months prior to the earliest tentative release date.<sup>95</sup>

These work-release programs allow inmates to obtain gainful employment while serving time as well as allow for the accumulation of savings to prepare inmates for life post-release. Inmates are required to save 10 percent of their earnings for when they are released, but the majority of their earnings go towards other purposes like general subsistence (55 percent).<sup>96</sup> Over the maximum 14 months an offender will participate in work-release programs, they will save roughly \$1,550.<sup>97</sup>

Having inadequate resources post-release contributes to higher rates of recidivism. Inmates released from Florida correctional facilities receive \$50 upon release<sup>98</sup> in addition to their savings. This small, one-time allowance is not enough money for released offenders to get back on their feet post-release, as finding

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90 Elderly inmates cost three times as much as younger inmates. We assume that twice the average per diem for Florida inmates would be roughly equivalent, as the elderly population only accounts for 20 percent of prisoners and age specific per diem costs are not reported. This is a per diem of \$31.82. (The per diem for the average inmate in Florida is \$51.65, but this includes fixed costs. In an update to the 2016 Government Efficiency Task Force, it was stated that the per diem for individual inmates when a reduction would not be large enough to close a facility, is \$15.91).

91 Florida Department of Corrections Facility Directory. (Accessed 1/6/2016; Last Updated 11/13/15).

92 “Frequently Asked Questions.” (Accessed 1/6/2016). Florida Department of Corrections.

93 Call with the Florida Department of Correction’s Communications Office (1/6/2016).

94 Refers to the majority of current inmates. Includes tentative release dates for offenders sentenced for crimes occurring on or after October 1, 1995 (the implementation of Truth in Sentencing. Source: Chapter 33-601.602, Florida Administrative Code (F.A.C.).

95 Chapter 33-601.602, F.A.C.

96 “Frequently Asked Questions Regarding Work-release.” (Accessed: 1/6/2016). Florida Department of Corrections.

97 Assumes at least a 32 hour work week at the minimum wage for Florida: \$8.05 as of 1/1/2015.

98 “Change in Florida Jail Policy Leads to Increased Homelessness.” (February 4, 2015). David Reutter, Prison Legal News.

employment is increasingly difficult for individuals with criminal records and approximately 40 percent of ex-offenders remain unemployed.<sup>99</sup>

Housing inmates at work-release centers is significantly cheaper for taxpayers than housing in a traditional prison facility. The average cost of housing an inmate at a work-release center is about \$20 less per day than housing at another type of DOC facility.<sup>100</sup> For every one month of additional eligibility, the state could save almost \$2 million.<sup>101</sup>

The state should seek out opportunities to grow work-release programs and serve more inmates. Expanding work-release to serve 50 percent of the 23,000 low-risk inmates<sup>102</sup> released each year would result in an additional savings to the state of more than \$72 million.<sup>103</sup> Adding additional program slots to serve more inmates and expanding the timeframe for work-release eligibility would provide benefits to both inmates and communities as well as provide a cost-effective and safe option that complies with the 85 percent rule.

**Recommendation 9A: Florida should lengthen the eligibility timeframe for transitional work-release programs.**

**Recommendation 9B: Florida should expand work-release programs to serve more inmates. This will save money on inmate housing, aid in offender stability post-release, and reduce recidivism.**

## 10. PROMOTE STRATEGIES THAT IMPROVE RELEASED OFFENDERS' EMPLOYMENT OPPORTUNITIES

One of the most important components in reducing recidivism is ensuring that persons with criminal records (PCRs)<sup>104</sup> maintain steady employment, because research shows that unemployment is closely linked to criminal behavior.<sup>105</sup> Unfortunately, to some employers, having a criminal history is the new scarlet letter. Simply having a crime, committed at any age, appear on a background check can reduce a job applicant's chance of being considered for an entry-level position by approximately 50-75 percent.<sup>106</sup> Another study found that in a list of characteristics of potential employees, employers considered PCRs to be the least

99 Department of Labor Notice of Availability of Funds and Solicitation for Grant Applications for Reintegration of Ex-Offenders – Adult Program Grants. (2011).

100 Weighted average for other DOC facilities (e.g. adult male custody, private, and contracted facilities) calculated from average inmate costs and populations: “2014-2015 Agency Statistics: Budget.” (2016). Florida Department of Corrections.

101 \$20 per diem difference x the total number of inmates served each year (3,000) x one month (30 days)= \$1,800,000.00.

102 Florida work release centers only serve 3,000 inmates each year (less than 10 percent of annual releaseses). The entire population of nonviolent annual releaseses (presumed to be low-risk) was 22,619 (about 70 percent of annual releaseses) in FY2014-15.

103 [(0.5 x 23,000 nonviolent releaseses)-3,000 low-risk already being served] x (\$20 saved daily) x (30.5 days) x (14 months) = \$72.6 million.

104 This term includes convicted felons and misdemeanants as well as those arrested but not convicted.

105 Le’Ann Duran et al. (2013). Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness. Office of Justice Programs - National Criminal Justice Reference Service; Christopher Uggen. (2000). Work as a Turning Point in the Life Course of Criminals. *American Sociological Review*, 65(4), 529-546; Nally et al. (2014). Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year follow-up Study in the United States. *International Journal of Criminal Justice Sciences*, 9(1), 16-34. See also: Haddock v. City of New York, 553 N.E.2d 987, 992 (N.Y. 1990). (noting that an opportunity for stable employment may mean the difference between recidivism and desistance).

106 Devah Pager. (2003). The mark of a criminal record. *American Journal of Sociology*, 108(5), 937-975; Jocelyn Simonson. (2006). “Rethinking ‘Rational Discrimination’ Against Ex-Offenders.” *Georgetown Journal on Poverty Law. & Policy*, 13(283,284).

desirable applicants.<sup>107</sup> States and the federal government have sought to remedy this issue through hiring incentives like the Work Opportunity Tax Credit and federal bonding programs.

In addition to private employers' hiring preferences, there are also a number of legal barriers to employment for PCRs. The American Bar Association's Collateral Consequences Project estimates that felony and misdemeanor PCRs in Florida face over 46,000 legal barriers, or "collateral consequences" of crime,<sup>108</sup> over 700 of which signify exclusions to a variety of employment opportunities.<sup>109</sup> These collateral consequences are meant to serve as legal barriers that protect the public from violent and dangerous offenders, but together they form a blanket sanction that limits opportunities for all PCRs.

Less than a third of the 30,000 PCRs released from prison each year are the intended target of legal barriers to employment, with almost 70 percent classified as nonviolent and over 50 percent having no prior incarceration history.<sup>110</sup> Further, research shows that, after a certain period of time, PCRs are no more likely to commit a crime than anyone else in the general population.<sup>111</sup>

It is important to remember that there is no silver bullet for reducing recidivism, but common sense and research both indicate a need for the reevaluation of the life-long barriers to employment that many PCRs currently face.

**Recommendation 10A: The Legislature should revisit employment restrictions for state and private employers and remove barriers to employment for PCRs where appropriate.**

**Recommendation 10B: The Legislature should consider a state complement to the Federal Work Opportunity Tax Credit to incentivize businesses and vendors to consider hiring qualified applicants with criminal records.**

## CONCLUSION

Florida has a number of outdated policies causing problems that continue to persist today, but the issues that currently exist in Florida's criminal and juvenile justice systems are by no means irreversible. To create lasting improvements in these areas, it is essential that Florida expand its horizons and avoid focusing on only one small part of these very complex systems. The recommendations in this report provide a holistic approach by addressing issues at a variety of stages of justice processes. This approach will enable Florida to address the drivers of unnecessary growth in its criminal and juvenile populations and costs in ways that are cost-effective, safe, and fair.

107 Gebo & Norton-Hawk. (2009). Criminal record policies and private employers. *Justice Policy Journal*, 6(1).

108 The American Bar Association (ABA) defines Collateral Consequences as the "wide variety of legal and regulatory sanctions and restrictions in addition to the sentence imposed by the court" that persons convicted of a crime are subject to. Available at: [www.abacollateralconsequences.org/description/](http://www.abacollateralconsequences.org/description/)

109 The Collateral Consequences Project. American Bar Association. (Accessed May 20, 2015). [www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)

110 Florida releases between 30,000 and 35,000 offenders annually, of which almost 70 percent are nonviolent and over 50 percent have no prior incarceration history. "2013-14 Agency Statistics: Prison Releases." (2014). Florida Department of Corrections.

111 Blumstein & Nakamura. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, 47(2), 327-359; Bushway, Nieuwebeerta, & Blokland. (2011). the predictive value of criminal background checks: Do age and criminal history affect time to redemption? *Criminology*, 49(1), 27-60.

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Florida  
**TaxWatch**

# LOCKED UP, THEN LOCKED OUT

*Removing Barriers to Employment  
for Persons with Criminal Records*

JULY 2016



**Michelle A. Robinson**  
Chairman of the Board of Trustees

**Dominic M. Calabro**  
President & Chief Executive Officer

Dear Fellow Taxpayer,

Florida's prison population is among the largest in the United States and is expected to continue growing in the coming years. Contributing to this trend, roughly one-quarter of Florida inmates reoffend within three years of being released. As these offenders cycle in and out of state and local facilities, they run up a costly corrections bill, building upon the already crippling corrections costs incurred by taxpayers.

Almost 9,000 inmates admitted into state and local facilities each year have served time before, but have been unable to successfully reintegrate into free society. Previous Florida TaxWatch research has provided useful policy recommendations to address this issue that would divert many low-level offenders from costly prison or jail sentences through treatment and programs. While these strategies are still essential, this report focuses on improving access to employment opportunities for ex-offenders.

Employment is a critical factor in reducing recidivism, and many states have forged policy solutions to address the cyclical relationship between unemployment and crime. To help stop this revolving door in Florida, this TaxWatch report makes recommendations for Florida to improve access to employment opportunities for released ex-offenders; reducing recidivism, driving down future prison populations, and saving taxpayer dollars.

Sincerely,

Dominic M. Calabro

## EXECUTIVE SUMMARY

Over time, the “F” in “felony” has become the new scarlet letter. Persons with criminal records (PCRs) are excluded from many opportunities critical for successful reentry into society, particularly employment. While this issue affects all individuals that have criminal records, including those who have been arrested but not charged or convicted, it particularly affects offenders leaving prison.

Common sense, research, and anecdotal evidence all show that if these released offenders do not secure stable employment, they are more likely to reoffend and return to prison. To decrease recidivism and increase the return on state investment in corrections, offenders need to be able to find jobs and keep them; however, there are several barriers to this goal. This paper addresses some of these barriers and recommends that Florida:

- Expand educational, vocational, and reentry programs to provide services to more inmates behind bars and ensure continued educational/employment assistance and support for PCRs post-release;
- Implement a state complement to the federal Work Opportunity Tax Credit (WOTC) for employers who hire qualified ex-offenders; and
- Authorize judges and the Florida Commission on Offender Review to issue Certificates of Rehabilitation for PCRs who have completed sanctions and shown commitment to a crime-free life.

## INTRODUCTION

As crime continues to decline across the U.S. despite states' varying methods regarding incarceration and reentry, the attitudes of policymakers across the country are beginning to align in favor of reforms. Specifically, there has been a shift in focus towards reforming prisoners, rather than just punishing them. Florida is no exception; Legislators, criminal justice leaders, and communities within the state are increasingly emphasizing the necessity of reentry and recidivism prevention programs.

When it comes to reentry, stability is a major contributor to success. Ensuring persons with criminal records (PCRs) have a stable environment is crucial. This stability allows them to form bonds with friends, family, neighbors, and their communities—the foundation, researchers have long agreed, essential for a life free of crime.<sup>1</sup> Critical to the longevity and durability of this foundation is that these individuals find and maintain employment. Research shows that steady employment plays a significant role in reducing the likelihood of future offending in PCRs, particularly those leaving prison.<sup>2</sup>

Unfortunately, many PCRs are not able to find employment post-release. It is crucial that barriers to employment opportunities be removed, where appropriate, in order to promote public safety and ensure the successful rehabilitation of PCRs. States have taken a variety of different approaches to accomplish these goals and have had success; Florida should do the same.

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1 Causes of Delinquency. (1969). Travis Hirschi. Berkeley, CA: University of California Press. See also: Criminological Theories: Introduction, Evaluation, and Application. (2009). Ronald L. Akers and Christine S. Sellers, New York, NY: Oxford University Press, Inc.

2 Le'Ann Duran et al. (2013). Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness. Office of Justice Programs - National Criminal Justice Reference Service; Nally et al. (2014). Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year follow-up Study in the United States. International Journal of Criminal Justice Sciences, 9(1), 16-34; Mark T. Berg and Beth M. Huebner. (2011). Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism. Justice Quarterly, 28(2), 382-410. See also: Haddock v. City of New York, 553 N.E.2d 987, 992 (N.Y. 1990). (noting that an opportunity for stable employment may mean the difference between recidivism and desistance).

## BACKGROUND

If you asked an employer who they would prefer as an employee—an ex-con or someone who has never committed a crime—you probably would not be surprised by the answer. Studies have found that having a crime (committed at any age) appear on a background check reduced job applicants’ chances of being considered for an entry-level position by up to 75 percent.<sup>3</sup> Another study found that, in a list of undesirable characteristics of potential employees, employers considered applicants with criminal records to be the least desirable.<sup>4</sup> This “once a criminal, always a criminal” attitude regarding PCR job applicants is a problem because the number of PCRs in the U.S. is growing every day.

*The Wall Street Journal* said it best: “America has a rap sheet.”<sup>5</sup> The U.S. has consistently incarcerated more people, per capita, than any other nation in the world<sup>6</sup> and that number continues to grow; the U.S. incarceration rate has increased almost four-fold since 1980.<sup>7</sup> As of 2013, 1 in 5 Americans had a criminal record.<sup>8</sup> Florida is no different, with approximately 150,000 inmates in its state prisons and local jails, and an estimated 3 million Floridians with criminal records.<sup>9</sup>

The assumption that PCRs are incapable of reform is not only problematic because of the reasons listed above, it is also untrue. First, having a criminal record does not always mean having a conviction. One study examining a sample of arrestees whose job options were affected by their records found that almost half of them were never convicted.<sup>10</sup> Second, in cases where an individual *was* convicted and served time, research has shown that their risk of reoffending

3 Devah Pager. (2003). The mark of a criminal record. *American Journal of Sociology*, 108(5), 937-975; Jocelyn Simonson. (2006). “Rethinking ‘Rational Discrimination’ Against Ex-Offenders.” *Georgetown Journal on Poverty Law. & Policy*, 13 (283,284).

4 Gebo & Norton-Hawk. (2009). Criminal record policies and private employers. *Justice Policy Journal*, 6(1).

5 “As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime.” (8/18/2014). Gary Fields and John R. Emshwiller, *The Wall Street Journal*.

6 “A Stigma that Never Fades.” (Aug. 8, 2002). *The Economist*.

7 Carson, E. Ann and Mulako-Wangota, Joseph. Bureau of Justice Statistics. (Imprisonment rates of total jurisdiction population). Generated using the Corrections Statistical Analysis Tool (CSAT) - Prisoners at [www.bjs.gov](http://www.bjs.gov). (Accessed 5/13/2016).

8 This does not include traffic citations, warnings, or other minor infractions. Source: “Check Yes or No: The Hurdles of Job Hunting with a Criminal Past.” (1/31/2013). Stan Alcorn, NPR.

9 This estimate assumes that national estimates hold true on a state by state basis. As Florida incarcerates at a much higher rate than much of the nation, this is likely a conservative estimate. Source: “Check Yes or No: The Hurdles of Job Hunting with a Criminal Past.” (1/31/2013). Stan Alcorn, NPR.

10 “As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime.” (8/18/2014). Gary Fields and John R. Emshwiller, *The Wall Street Journal*.

declines with time. After a certain period of desistance<sup>11</sup> (about 4 to 8 years), they are no more likely to commit a crime than anyone else in the general population.<sup>12</sup> Another study expanded on this finding by including how prior history of convictions can affect the future likelihood of reoffending and reached almost identical conclusions.<sup>13</sup>

Steady employment can help a PCR achieve the period of desistance necessary to get his or her life back on track and become no more of a risk than any other member of the population. Despite the findings of the aforementioned and numerous other studies, and despite the growing population of PCRs in Florida and the nation, stigma with regards to hiring PCRs persists, and they are excluded from employment opportunities that are crucial to their rehabilitation.

## UNEMPLOYED PCRs ARE A PROBLEM FOR FLORIDA

Excluding PCRs from employment opportunities based solely on their records not only borders on discriminatory, but is also detrimental to Florida taxpayers. About 40 percent of PCRs cannot find work in the years following their release from prison,<sup>14</sup> which can have a significant impact on Florida's public safety, as well as its budget.

### RECIDIVISM AND HIGHER TAXPAYER COSTS

Out of the approximate 33,000 inmates Florida releases each year,<sup>15</sup> about 13,000 are unable to find employment<sup>16</sup> and approximately 8,700 return to prison within three years.<sup>17</sup> Ensuring access to job opportunities for these PCRs could reduce this recidivism as well as save the state millions of tax dollars.

11 This term refers to the amount of time a PCR must remain crime-free until their risk level (the likelihood that they will reoffend) reaches a baseline or, in other words, they become no more likely to offend than anyone else.

12 "Redemption in the Presence of Widespread Criminal Background Checks." (2009). Blumstein and Nakamura, *Criminology*, 47(2), 327-359.

13 The study's findings were consistent with previous results, finding that criminal records over 6 or 7 years old held little predictive power regarding future offending. Additionally, this study found that first time offenders could take as little as one year of desisting to be considered reformed: "The predictive value of criminal background checks: Do age and criminal history affect time to redemption?" (2011). Bushway, Nieuwbeerta, & Blokland, *Criminology*, 49(1), 27-60.

14 Department of Labor Notice of Availability of Funds and Solicitation for Grant Applications for Reintegration of Ex-Offenders – Adult Program Grants. (2011).

15 "2014-2015 Agency Statistics: Inmate Releases and Time Served." (2015). Florida Department of Corrections.

16 Department of Labor Notice of Availability of Funds and Solicitation for Grant Applications for Reintegration of Ex-Offenders – Adult Program Grants. (2011).

17 Assumes a recidivism rate of 26.3 percent. Source: "2013 Florida Prison Recidivism Study." (May 2014). Florida Department of Corrections.

Employment has been cited as reducing recidivism by as much as 50 percent.<sup>18</sup> Assuming this holds true in Florida, corresponding reductions in corrections expenditures would save the state about \$86 million in averted future corrections costs, per group of released inmates.<sup>19</sup> Assuming reductions in recidivism were enough to close a prison, lower operational costs would boost this savings estimate to approximately \$280 million.<sup>20</sup>

Unemployed PCRs that do not recidivate may also pose a cost. Without work, some PCRs may have to rely on publicly funded assistance programs, like Medicaid. Medicaid spending per adult enrollee in FY2011 was \$2,880.<sup>21</sup> For every 100 PCRs that find employment and are able to procure their own health insurance, Florida residents save almost \$300,000 dollars in federal and state tax dollars.<sup>22</sup> When combining this with reductions in spending on corrections, police, courts, unemployment,<sup>23</sup> and other public assistance programs like SNAP<sup>24</sup> it becomes clear that improving access to employment for PCRs could help Florida avoid billions of dollars in spending in the years to come.

## UNEMPLOYMENT AND COST TO THE ECONOMY

A criminal record makes it very difficult for many Floridians to find employment. Increasing the number of Floridians without work is bad for businesses and bad for the economy. After just six months, families with one unemployed worker consume 16 percent less products; 24

18 “Ex-Felons get Second Chance at Jobs.” Alexa Vaughn, U.C. Berkeley News21.

19 If 4,350 (half of 8,700) released offenders recidivate and return to prison to serve an average of 3.4 years (source: “2014-2015 Agency Statistics: Inmate Releases and Time Served.” (2015). Florida Department of Corrections) at a cost—not including fixed operational costs—of \$15.91 per inmate per day (source: 2016 Government Efficiency Task Force: Civil and Criminal Justice Subcommittee update, 1/5/2016), the cost to house all of them is approximately \$86 million.

20 If 4,350 (half of 8,700) released offenders recidivate and return to prison to serve an average of 3.4 years (source: “2014-2015 Agency Statistics: Inmate Releases and Time Served.” (2015). Florida Department of Corrections) at a cost—including fixed operational costs—of \$51.65 per inmate per day (source: “2014-2015 Agency Statistics: Budget.” (2015). Florida Department of Corrections), the cost to house all of them is approximately \$280 million.

21 “Medicaid Spending per Enrollee, by State.” (Accessed 6/1/2016). The Henry J. Kaiser Foundation

22 100 PCRs x \$2,880 in per enrollee Medicaid spending = \$288,000. “Medicaid Spending per Enrollee, by State.” (Accessed 6/1/2016). The Henry J. Kaiser Foundation

23 The only PCRs ineligible for unemployment benefits (if they are within the time range in which these benefits are allowable) are those who committed crimes involving fraud in application, or other crimes in connection with their employment that lead to termination. Source: F.S. 443.101

24 Supplemental Nutritional Assistance Program. PCRs convicted of drug trafficking or who are running away from a felony warrant are ineligible. Source: “General Information about Food Assistance and SUNCAP.” (accessed 6/20/2016). Florida Department of Children and Families.



percent less if the sole worker in the family is unemployed.<sup>25</sup> Further, jobless PCRs caused a 1 percentage point drop in the U.S. employment rate and cost the nation's economy between \$57 and \$65 billion in lost output in 2008.<sup>26</sup>

## FEDERAL SOLUTIONS

The main hurdles when it comes to employment seem to be leveling the playing field and changing employers' perceptions of PCR applicants. The federal government has implemented several programs and incentives to address these issues and put PCRs on a path towards successful rehabilitation

The Federal Bonding Program lowers the liability of employers that hire PCRs by providing business insurance policies through a Federal Fidelity Bond that insures the employer for "theft, forgery, larceny, or embezzlement by the bonded employee."<sup>27</sup> This incentive attempts to mitigate employers' concerns regarding hiring PCRs by protecting businesses from the possibility of perceived risks.

Another incentive, the federal Work Opportunity Tax Credit (WOTC) program, encourages private, for-profit businesses to hire qualified ex-felons and vocational rehabilitation referrals. Depending on the applicant, employers can reduce their federal taxes by up to \$9,600 over two years, and there is no limit to the number of employees matching the incentive criteria for whom the employer can receive the credit.<sup>28</sup>

Taking another approach, the federal government also provides reentry support through the Second Chance Act (SCA). Enacted in 2007, the U.S. Bureau of Justice Assistance funds seven SCA grant programs that provide housing, education, employment, and other supports to PCRs post-release.<sup>29</sup> Since the first SCA appropriation in 2009, the Bureau of Justice Assistance has authorized a cumulative \$475 million in grants, training, and technical assistance to 49 states, the District of Columbia,

25 "Consequences of Long-Term Unemployment." (Aug. 20, 2013). Austin Nichols, Josh Mitchell, and Stephan Lindner, the Urban Institute.

26 "Ex-offenders and the Labor Market." (November 2010). John Schmitt and Kris Warner, Center for Economic and Policy Research.

27 Tax Credit and Incentive Programs: Federal Bonding Program. (accessed 6/20/2016). FloridaJobs.org

28 "Quickfacts: Workforce Services – Work Opportunity Tax Credit Program". (accessed 6/20/2016). FloridaJobs.org.

29 "Second Chance Act." (accessed 5/20/2016). U.S. Department of Justice Bureau of Justice Assistance.

and U.S. territories.<sup>30</sup> More than 113,000 people had participated in SCA programs as of March 31, 2015.<sup>31</sup>

## STATE SOLUTIONS

While the federal creation of incentives and reforms like those mentioned above are a huge step in the right direction, there are still improvements that can be made on a state level. To address the continuing issue of PCR unemployment, states have implemented varying strategies that better prepare PCRs for work as well as inform, protect, and incentivize the employers that hire them.

### HELPING PCRs PREPARE FOR, FIND, AND MAINTAIN WORK

The first thing states have done to improve PCRs' employment opportunities post-release is expand skills training and job-readiness programs that begin behind bars and provide substantial support post-release.

**Ohio** created the Ex-Offender Reentry Coalition in 2008, which seeks to address ex-offender employment “as part of [a] long term investment in the state’s economy.”<sup>32</sup> The Coalition finds available funding and offers support to local programs that provide offender reentry programs that address education, employment resources, and mentorship. It also monitors evidence-based practices and programs and makes recommendations to the legislature for reducing barriers to reentry.<sup>33</sup>

**Wisconsin** used federal SCA funding to expand and improve their “Windows to Work” job skills program, which begins pre-release and teaches PCRs interview skills, job market information, and financial literacy. Participants are also assigned a reentry coach, who continues to assist them with employment opportunities post-release. In 2008 and 2009, every individual who participated in the program obtained employment within 60 days of release.<sup>34</sup> Participants in Windows to

30 “Second Chance Act.” (accessed 5/20/2016). U.S. Department of Justice Bureau of Justice Assistance.

31 “Second Chance Act.” (accessed 5/20/2016). U.S. Department of Justice Bureau of Justice Assistance.

32 “Ex-Offender Employment Opportunities.” (July 2011). National Conference of State Legislatures. See also: The Ohio Ex-Offender Reentry Coalition website (accessed: 6/21/2016): [www.reentrycoalition.ohio.gov](http://www.reentrycoalition.ohio.gov).

33 “Ex-Offender Employment Opportunities.” (July 2011). National Conference of State Legislatures.

34 “Ex-Offender Employment Opportunities.” (July 2011). National Conference of State Legislatures.

Work have a low recidivism rate of 12.8 percent<sup>35</sup> compared to the overall prison recidivism rate of 30.1 percent.<sup>36</sup>

In **Maryland**, “Partnerships for Re-Entry Programming” (along with the state’s pre-release program) is offered to 90 percent of the offenders being released in the state and provides cognitive skills, employment readiness, career development, and other trainings to PCRs post-release.<sup>37</sup>

The Florida Department of Corrections offers transitional community work-release for low-risk inmates, but the program only serves 3,000 inmates annually (less than 10 percent of releasees).<sup>38</sup> Additionally, Florida reentry programs like the Transition from Prison to Community Initiative (TPCI) do not put adequate emphasis on aftercare; inmates in TPCI create plans for the “creation of employment opportunities” and other goals while behind bars, but are expected to meet those goals with limited support post-release.<sup>39</sup>

### **INCENTIVIZING BUSINESSES TO HIRE PCRs**

A number of states provide income tax benefits that complement the federal Work Opportunity Tax Credit (WOTC) for employers who hire PCRs. **Iowa’s** state WOTC provides employers with an income tax deduction of 65 percent of the wages paid to a PCR in the first 12 months of employment, with a maximum deduction of \$20,000.<sup>40</sup> The **Illinois** state WOTC for employers that hire PCRs is a flat \$1,500 per eligible employee.<sup>41</sup> Additional states with federal WOTC complements for employers hiring PCRs include **California**, **Louisiana**, and **Maryland**.<sup>42</sup>

35 “Becky Young Community Corrections Recidivism Reduction Fiscal Year 2014 Report.” (Oct. 2014). Wisconsin Department of Corrections.

36 “Recidivism After Release from Prison.” (June 2014). Dr. Megan Jones and Jenna Rogers, Wisconsin Department of Corrections.

37 “Maryland.” (accessed 5/17/2016). National HIRE Network.

38 “Lower Costs & Less Crime: Criminal and Juvenile Justice Reform Options for Florida.” (May 2016). Florida TaxWatch.

39 “Re-Entry: Transition from Prison to Community Initiative (TPCI).” (accessed 5/18/2016). Florida Department of Corrections.

40 “Income Tax Benefit for Iowa Employers who Hire Ex-Offenders.” (accessed 4/1/2016). Iowa Department of Revenue.

41 “2015 Schedule 1299-D Instructions.” (accessed 6/21/2016). Illinois Department of Revenue.

42 “New Illinois Law Aims to Help Ex-Felons Find Jobs.” (8/3/2013). Nancy Harty, CBS Chicago.

## CERTIFYING PCRs AS REHABILITATED

Other states improve PCR employment opportunities by certifying individuals with criminal records as rehabilitated or otherwise qualified for employment. **California, Illinois, New Jersey, New York, North Carolina,** and **Ohio** all authorize Certifications of Rehabilitation<sup>43</sup> or Qualification for Employment.<sup>44</sup> These certifications improve the potential for PCRs to become licensed by state boards and are awarded when a judge/parole board determines that a PCR has shown continued dedication to rehabilitation, and that classifying him or her as rehabilitated would be consistent with public interest and not pose a risk to public safety.<sup>45</sup>

**Arkansas, Minnesota, Montana, New Mexico,** and **North Dakota** also authorize the certified rehabilitated status of PCRs.<sup>46</sup> To be eligible, a PCR must have a 5-year period of desistance, completed his or her sanctions, and/or have a recommendation from his or her probation or parole officer. An approved application allows qualifying PCRs to enroll in certification or licensure programs from which they were previously excluded due to their criminal records.<sup>47</sup>

These certificates and their equivalents lift barriers that restrict employment and licensing opportunities for all PCRs, but do not erase felony convictions or seal criminal records. In California, for example, an offense is still considered a prior conviction if a PCR recidivates after being certified as rehabilitated and he or she is not allowed to claim no record of conviction when applying for employment.<sup>48</sup>

Convicted PCRs in Florida face almost 800 legal barriers to education, occupational/business licensure, and certifications,<sup>49</sup> such as ineligibility for a tattoo artist's license.<sup>50</sup> Despite this, Florida does not offer Certificates of Rehabilitation that would allow PCRs access to these opportunities after a period of desistance, and there have been no recent legislative attempts to establish a similar program.

43 "Ex-Offender Employment Opportunities." (July 2011). National Conference of State Legislatures.

44 Ohio: ORC 2953.25

45 "Ex-Offender Employment Opportunities." (July 2011). National Conference of State Legislatures.

46 "Ex-Offender Employment Opportunities." (July 2011). National Conference of State Legislatures.

47 "Ex-Offender Employment Opportunities." (July 2011). National Conference of State Legislatures.

48 "Certificate of Rehabilitation & Pardon Instruction Packet." (accessed 6/20/2016). Superior Court of California, County of San Diego.

49 "National Inventory of the Collateral Consequences of Conviction." (accessed 6/20/2016). American Bar Association. Available at: <http://www.abacollateralconsequences.org>.

50 S. 381.00783, F.S.

## CONCLUSION

To promote public safety and conserve taxpayer dollars, it is essential that Florida emphasize strategies that improve PCR's access to the opportunities necessary to desist from crime. Employment is one critical avenue to success that PCR's continue to have limited access to, despite the fact that helping these individuals find stable employment lessens the drain on taxpayer dollars and has consistently been shown to reduce recidivism.

To improve PCR's access to employment opportunities in Florida, the state must implement solutions that address employer perceptions and PCR job readiness. To do so, Florida should:

- Implement a state complement to the federal Work Opportunity Tax Credit (WOTC) for employers who hire qualified ex-offenders;
- Authorize judges and the Florida Commission on Offender Review<sup>51</sup> to issue Certificates of Rehabilitation for PCR's who have completed sanctions, desisted from crime, and shown commitment to a crime-free life; and
- Expand educational, vocational, and reentry programs to provide services to more inmates behind bars and ensure continued educational/employment assistance and support for PCR's post-release.

---

51 Formerly the Florida Parole Board.

**“IT’S REALLY EASY TO COMMIT CRIME WHEN YOU CAN  
PERSUADE YOURSELF THAT NO ONE ELSE OUT THERE IS  
CONVINCED OF YOUR REHABILITATION.”**

*– Glenn E. Martin, former offender and Vice President of  
the Fortune Society, a New York City program that provides  
a continuum of care for recently released offenders as well as  
alternatives to incarceration for certain offenders.<sup>52</sup>*

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<sup>52</sup> “Recidivism Hard to Shake for Ex-Offenders Returning Home to Dim Prospects.” (6/9/12).  
Tymaine Lee, Huffington Post.

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## JULY 2016

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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AUGUST 2016

## Juvenile Pre-Arrest Diversion in Florida

**H**istorically, Florida has taken a tough-on-crime stance that bolstered its criminal justice system in some ways, but hindered it in others. Criminal justice policies like mandatory minimums, for example, made sentencing more consistent, but also limited judges' ability to consider external factors, making sentencing harsher on low-level offenders as well as on Florida taxpayers. These and other tough-on-crime policies also led to overcriminalization, which had an impact not only on the number of adults coming into contact with police, but also on the number of children and adolescents coming into the juvenile justice system.

Fortunately, there has been a recent shift in juvenile justice policy toward approaches that provide sanctions to address the behavior of delinquent youth, while minimizing their involvement with the juvenile justice system. A central goal of this new shift in ideology is to ensure that juvenile residential beds are reserved for children and adolescents in need of stricter and more comprehensive supervision, while less expensive diversion alternatives that maintain public safety and reduce crime are used for low-risk juvenile offenders.

### STATEWIDE EXPANSION

Of these juvenile diversion alternatives, pre-arrest diversion programs (JPADs) hold great promise. JPAD re-routes certain juvenile offenders in ways that hold them accountable while sparing them from an arrest record and lessening the burden on taxpayers. These programs have seen success and inspired similar options for adults, such as adult civil citation in Leon County.<sup>1</sup>

Juvenile Civil Citation was recently codified (s. 985.12, F.S.) and expanded statewide. This expansion established a framework for civil citation and "other similar diversion programs around the state." These standards specify that all JPAD programs may be used for up to two subsequent misdemeanors (for a total of three)<sup>2</sup> for any juvenile misdemeanor.<sup>3</sup>

JPAD programs are available to child and adolescent misdemeanants and result in a number of sanctions intended to provide justice for the victim, rehabilitate the juvenile offender, and reduce recidivism; these sanctions include victim restitution payment, community service, and participation in special treatment programs.

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1 DISC Village Adult Civil Citation

2 F.S. 985.12

3 Examples of qualifying offenses include trespassing or possession of marijuana. Some programs impose additional requirements or exclusions for certain crimes, such as loitering, petit theft, or vandalism.

Currently, JPAD exists under in a variety of formats, including, but not limited to:<sup>4</sup>

- Teen courts
- Juvenile arrest avoidance programs
- Juvenile second chance programs
- Work-in-lieu-of-arrest (WILA) programs
- First offender programs
- Juvenile civil citations

## PROGRAM BENEFITS

Researchers have noted that early intervention and diversion programs targeting delinquent behavior in childhood and adolescence and can yield positive long-term outcomes.<sup>5</sup> JPAD reduces recidivism by holding low-risk juvenile offenders accountable without burdening taxpayers with the cost of their arrest or risking public safety.

### REDUCED RECIDIVISM

JPAD programs are effective in reducing the likelihood that juveniles will reoffend. Recidivism in JPAD programs—which serve about 9,000 juvenile offenders annually—is just 5 percent, the lowest recidivism rate of

any program type monitored by the Florida Department of Juvenile Justice (DJJ),<sup>6</sup> and has been shown to go as low as 1 percent in Lee county.<sup>7</sup> Comparatively, post-arrest diversion programs have a recidivism rate of 13 percent and post-arrest probation services show recidivism rates between 15 and 36 percent.<sup>8</sup>

### BETTER OUTCOMES AS ADULTS

Diverting youth pre-arrest not only directly reduces the likelihood that they will reoffend, but also allows juveniles to engage in current and future opportunities that may further disincentivize reoffending in adulthood. Criminologists frequently cite the complex relationships between education, employment, and criminal behavior.<sup>9</sup>

One study found that ex-offenders with steady employment recidivate between 40 to 50 percent less often than their unemployed counterparts.<sup>10</sup>

4 Information obtained from the Florida Department of Juvenile Justice on 2/18/2016.

5 “From Juvenile Delinquency to Young Adult Offending.” (accessed 2/23/2016). National Institute of Justice; “Delinquency Prevention & Intervention.” (accessed 2/23/2016). National Conference of State Legislatures; “Prevention and Intervention Programs for Juvenile Offenders.” (2008). Peter Greenwood, *Future Child*, 18(2): 185-210.

6 “Comprehensive Accountability Report: Civil Citation 2014-15.” (2015). Florida Department of Juvenile Justice.

7 “Civil citations keep kids out of jail in SW Florida.” (May 18, 2015). Dan DeLuca, *news-press.com*.

8 “Comprehensive Accountability Report: Probation Services 2014-15.” (2015). Florida Department of Juvenile Justice.

9 “Education Reduces Crime.” (Feb. 2003). Steurer & Smith, Correctional Education Association; “The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports.” (Oct. 2003). Lochner & Moretti; “Education and Public Safety.” (Aug. 2007). Justice Policy Institute; “Working for a Better Future.” (2012). Justice Policy Institute; “Chapter Six: Labor Markets and Crime Risk Factors.” (accessed 2/23/2106). Bushway & Reuter; “Summer jobs reduce violence among disadvantaged youth.” (Dec. 2014). Sara Heller, *Science*, 6214: 1219-1223.

10 Mark T. Berg and Beth M. Huebner. (2011). Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism. *Justice Quarterly*, 28(2), 382-410.

Similarly, other studies find that additional education and increasing the high school graduation rate can reduce violent crime by up to 30 percent, and certain property crimes by up to 20 percent.<sup>11</sup>

Additionally, while many individuals assume that juvenile arrest records are expunged when the youth turns 18, Florida statute mandates that the state's Criminal Justice Information Program retain the criminal history records of minors until the youth turns 25 or 26, depending on the severity of his or her past offenses.<sup>12</sup> This means that a juvenile's arrest for something as small as loitering may impact his or her employment and educational opportunities well into young adulthood. JPAD programs hold young offenders accountable without the mark of an arrest.

## IMPROVED COST EFFICIENCY AND RETURN ON INVESTMENT

Using JPAD for misdemeanor juveniles improves public safety by conserving taxpayer dollars and reserving costly arrests for more serious offenders. The cost to taxpayers for a civil citation, for example, is \$386 while the cost of an arrest is almost 13 times more expensive, at

\$5,000.<sup>13</sup> Some JPAD programs may cost even less, as participants are often asked to pay to participate in the program; however, payment is based on a sliding scale, and no juvenile can be denied JPAD due to an inability to pay.<sup>14</sup>

JPAD also saves money by reducing the strain on local law enforcement. Law enforcement officers make an average of about \$40,000 annually.<sup>15</sup> Assuming that a juvenile arrest takes at least an hour more of an officer's time than a pre-arrest alternative,<sup>16</sup> using JPAD for all eligible juveniles that were arrested between April 2015 and March 2016 would give taxpayers back a statewide total of about 16 months<sup>17</sup> (roughly \$218,000 worth)<sup>18</sup> of round-the-clock police protection.<sup>19</sup>

11 "Does Education Reduce Participation in criminal Activities?" (Sept. 2005). Enrico Moretti, UC Berkeley. See also: "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports." (March 2004). Lance Lochner and Enrico Moretti, *American Economic Review*, 94(1), 155-189.

12 F.S. 943.0515

13 "Florida Civil Citation Initiative: A Win for Youth and the Community." A presentation given by the Florida Department of Juvenile Justice on 4/20/2016 at the 2016 Adolescent Conference in Orlando, Florida. See also: "Florida: Cost-Effective Means to Increasing Public Safety in Juvenile Justice." A presentation given by the American Bar Association during the "Strategies to Save States Money, Reform Criminal Justice, and Keep Public Safe" dialogue on 5/6/2011 in Washington, D.C..

14 Interview with DJJ staff on 6/16/2016.

15 Florida TaxWatch analysis of DMS salary data for law enforcement.

16 A prominent study found that the time to arrest and process a juvenile offender at the national level is approximately 5-14 hours, so this is likely a conservative estimate (Source: Fiscal policy center toolkit: "How to calculate the cost of youth arrest." (2013). Conly, C. & Chaidez, J.C., National Juvenile Justice Network: Fiscal Policy Center.); however, our input was verified with officers and the staff in the Leon County Juvenile Assessment Center in 2014.

17  $1 \text{ hour} \times 11,336 \text{ arrested JPAD eligible youth} = 11,336 \text{ hours}$ .  $(11,336 \text{ hours} / 24 \text{ hours}) / 7 \text{ days} = 67.48 \text{ weeks}$ .  $67.48 \text{ weeks} / 4.3 \text{ weeks} = 15.69 \text{ months}$ .

18 Florida TaxWatch analysis of DMS salary data for law enforcement applied to the 2080 annual hour minimum used to define full-time employment. Resulting hourly wage:  $\$19.23$ .  $\$19.23 \text{ per hour} \times (1 \text{ hour} \times 11,336 \text{ arrested JPAD eligible youth}) = \$217,991.28$ .

19 At 24 hours a day, 7 days a week, 365 days a year.

## THE PROBLEMS

Not all JPAD programs align with the standards set forth in S.985.12, F.S. Inconsistencies in eligibility for and the application of these programs create a juvenile justice system where the level of punishment is a better reflection of Florida’s geography than the severity of the crime committed.

### ELIGIBILITY STANDARDS

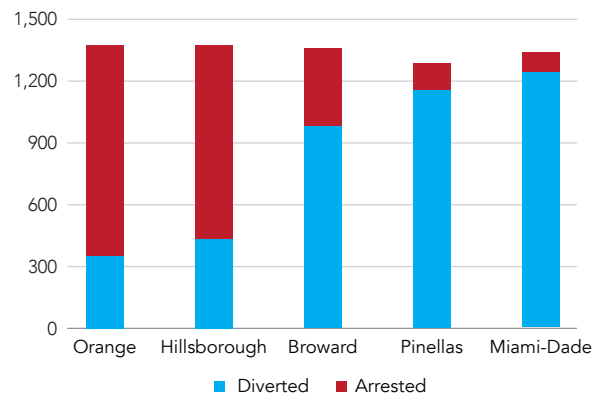
Of the 67<sup>20</sup> active JPAD programs in Florida, 15 use eligibility standards word-for-word as written for civil citation and “other similar diversion programs around the state” in S.985.12, F.S.<sup>21</sup> Another 11 use the statutory standards with a few additional restrictions (e.g. no vandalism, obstruction of justice, petit theft, loitering, or trespassing cases).<sup>22</sup> The majority of programs, however, use eligibility standards specific to their individual program’s model.<sup>23</sup> While this specificity may be necessary, as certain programs may serve certain groups of juveniles better than others, it means that eligibility for JPAD can differ by region; what gets a youth a referral in

one county may result in arrest just over the county line.

### UTILIZATION

While all Florida counties have at least one JPAD option available,<sup>24</sup> not all of them make use of these programs. Between April 2015 and March 2016, 21 counties used JPAD for less than 15 percent of eligible juveniles.<sup>25</sup> Eleven of the participating counties declined to use pre-arrest alternatives at all, arresting more than 1,000 eligible youth. The majority of these counties had eligible populations of less than 40 juveniles, but even among the counties with the five largest eligible populations the application of JPAD programs is inconsistent (Figure 1).

**FIGURE 1. COUNTIES WITH LARGE ELIGIBLE POPULATIONS DO NOT MAKE USE OF JPAD<sup>26</sup>**



20 This number includes only reporting counties. Bradford County has no JPAD program. Washington, Calhoun, Gulf, and Hardee have JPAD but do not report. Polk and Taylor Counties have JPAD but are in progress regarding reporting. (Source: “Civil Citation Implementation by County as of May 09, 2016.” (accessed 6/16/2016). Florida Department of Juvenile Justice). Duval, Marion, Martin, Pinellas, and St. Lucie Counties have multiple JPAD programs. (Source: Data received from the Florida Department of Juvenile Justice on 2/18/2016).

21 Data received from the Florida Department of Juvenile Justice on 2/18/2016.

22 Ibid.

23 Ibid.

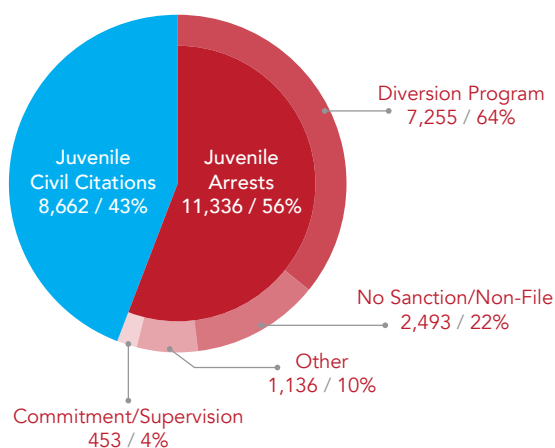
24 With the exception of Bradford County. Information obtained from the Florida Department of Juvenile Justice via phone interview on 2/17/2016.

25 “Civil Citation & Other Similar Diversion Program Dashboard: April 2015-March 2016.” (accessed on 6/1/2016). Florida Department of Juvenile Justice.

26 Ibid.

This inconsistent application of JPAD is a problem because the program keeps juveniles out of the system who should not be there, a realization that many counties not using JPAD have post-release. Florida arrested more than 11,000 youth eligible for JPAD between April 2015 and March 2016.<sup>27</sup> The Florida Department of Juvenile Justice reports that these arrested juveniles overwhelmingly end up in some form of post-arrest diversion program (about 64 percent) with an additional 22 percent receiving no sanction/non-file outcomes (Figure 2).<sup>28</sup>

**FIGURE 2. THE MAJORITY OF ARRESTED ELIGIBLE YOUTH ARE DIVERTED OR RECEIVE NO SANCTION<sup>29</sup>**



These outcome data indicate that many arrested misdemeanor youth may be adequately served through JPAD, which subjects juvenile offenders to similar sanctions to those seen in post-arrest diversion or probation, such as: counseling, behavioral health services, urinalysis monitoring, community service, and victim restitution.<sup>30</sup>

These eligibility and utilization issues may be rooted in the fact that the switch to a statewide JPAD network was originally an unfunded mandate. Counties that did not already have juvenile civil citation were charged with adapting existing programs without additional resources. Some of these programs may not have been equipped to handle all types of misdemeanor juveniles. This assumption makes sense when considering that many of these programs were formerly a one-time option for first time misdemeanants, but now serve juveniles who have committed multiple misdemeanors due to changes to S.985.12, F.S.,<sup>31</sup> which now allows JPAD up to 3 times.

27 Ibid.

28 “Diversion” dispositions as reported are court outcomes for arrested youth. Source: “Civil Citation & Other Similar Diversion Program Dashboard: April 2015-March 2016.” (accessed on 6/1/2016). Florida Department of Juvenile Justice.

29 Ibid.

30 “Florida Civil Citation Initiative: A Win for Youth and the Community.” A presentation given by the Florida Department of Juvenile Justice on 4/20/2016 at the 2016 Adolescent Conference in Orlando, Florida.

31 Data received from the Florida Department of Juvenile Justice on 2/18/2016.

## RECOMMENDATIONS

While post-arrest diversion programs are appropriate for certain juvenile offenders, it is essential that the state make the best use of its juvenile justice resources. JPAD programs are shown to reduce recidivism more than post-arrest diversion or probation, and do so without risking public safety, burdening low-level juveniles offenders with a criminal record, or imposing high costs on Florida taxpayers.

**Florida TaxWatch recommends that the Florida Legislature work with existing JPAD programs to create a graduated system of JPAD sanctions and align eligibility standards across tiers of service.**

Using alternative sanctions for low-level juvenile misdemeanants should remain a priority, but the consequences these individuals face in JPAD should still escalate with subsequent offenses. The Legislature should work with all programs now under the JPAD umbrella, (civil citation, teen courts, WILA programs, etc.) to determine which level of misdemeanor (first time, second time, third time) each JPAD program would best serve.

Further, the Legislature should align eligibility standards across service levels. While the decision to issue a civil citation or refer a juvenile to a similar JPAD program should remain at the discretion of the officer, it is essential that juvenile misdemeanants have equal access to JPAD. Creating this graduated system with aligned admission standards for each tier would help solve eligibility and utilization issues as well as maximize the range of available services.

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# DISCRETION ON THE BENCH

*Implementing a Judicial  
Safety Valve in Florida*

SEPTEMBER 2016



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**Michelle A. Robinson**  
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Dear fellow taxpayer,

In the last several decades, the approach to criminal justice sentencing in the United States has seen its share of drastic changes. State and national reforms during the “War on Drugs” 1980s and 90s brought swift, certain penalties that, while well intentioned, have resulted in the long-term imprisonment of thousands of low-level offenders.

Many of these individuals could be much better served through treatment and mental health programs, at a significantly lower cost to taxpayers and with little to no risk to public safety. Mandatory minimums currently restrict judges’ ability to use their professional discretion to consider factors of a crime by requiring one-size- fits-all punishment for transgressions that are anything but.

One reform gaining traction across the nation, at both federal and state levels, is the inclusion of a “judicial safety valve” that can authorize judges to deviate from mandatory minimums for low-level offenders under certain circumstances. This analysis highlights this increasingly popular reform, and provides recommendations for Florida’s policymakers.

Sincerely,

A handwritten signature in black ink that reads "Dominic M. Calabro".

Dominic M. Calabro  
President & CEO

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## EXECUTIVE SUMMARY

Mandatory minimums and other stringent sanctions implemented during the 1980s and 1990s have led Florida prisons to incarcerate low-level offenders for unnecessarily lengthy sentences when many could be better served through alternative treatments and sanctions. This approach to sentencing results in the waste of valuable resources, at great expense to Florida taxpayers.

This report recommends the implementation of a “Judicial Safety Valve” that would give judges the discretion to deviate from mandatory minimums for low-level offenders, but maintain the rights of victims, offenders, their attorneys, and the state to have input on sentencing decisions at sentencing hearings. Judicial Safety Valves targeting varying populations of offenders implemented by federal and other state governments have improved offender outcomes and reduced strains on corrections systems and taxpayers at little or no risk to public safety.

## INTRODUCTION & BACKGROUND

When Florida’s policymakers sought to improve public safety in the 1980s and 1990s, it is safe to assume they did not specifically intend to redefine the word “dangerous” in ways that were unjust, but today’s prisons, once reserved for truly dangerous offenders, have become places where we put “people we’re mad at,”<sup>1</sup> instead of institutions reserved for people who pose a sincere threat to public safety.

The problem with this application of justice policy is that it wastes millions of dollars on low-level offenders who could be better served through alternative treatments and sanctions. The state and its counties use valuable resources housing low-risk offenders in prisons and local jails that could be better used for evidence-based prevention, treatment, and reentry programs.

The purpose of this report is not to seek the eradication of mandatory minimums, but to create a state “Judicial Safety Valve,” which would authorize judges to apply their professional discretion to sentencing and deviate from a mandatory minimum in certain circumstances. Safety valves may be narrow or broad, may be applied to select offenses or the full range of criminal convictions, and do not impede on victims’, defendants’, or their attorneys’ right to have input on sentencing decisions.<sup>2</sup> The addition of a state “Judicial Safety Valve” to the Florida Statutes would help reduce strain on Florida’s corrections system and restore a necessary element of discretion to sentencing without compromising public safety.

### *The Shift to Stringent Sanctions*

In the 1970s, Florida’s criminal codes reflected indeterminate sentencing guidelines that placed the highest priority on offender rehabilitation. Judges had very wide sentencing latitude and parole commissions were quick to award gain time to reduce sentences for eligible offenders.<sup>3</sup> The goal was to shorten prison stays to minimize the negative consequences of institutionalization.<sup>4</sup>

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1 This statement has been made by numerous individuals, including: Texas House Representative, Jerry Madden; Director of Right on Crime, Marc Levin; Pennsylvania Corrections Secretary John Wetzel; Director of the American Conservative Union Foundation, Pat Nolan; and more.

2 Art. 1, Section 16 (b) of the Florida Constitution.

3 “A State of Incarceration.” (April 2015). Florida TaxWatch.

4 “Truth in Sentencing in State Prisons,” Bureau of Justice Statistics Special Report, January 1999.

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This approach to sentencing was largely abandoned as crime spiked to new highs in the 1980s.<sup>5</sup> At the same time, the popularity of television shows like *Miami Vice* and movies like the now-iconic *Scarface* brought the problems of drug trafficking into living rooms and theatres around the country and All-American basketball player Len Bias died from a cocaine overdose only days after being a first round choice of the Boston Celtics.<sup>6</sup> As all these events occurred, citizens began to demand swift and certain punishment for offenders. As a result, eradicating drugs and violent crime became a top priority of political leaders and law enforcement officials across the nation.

2 | The Comprehensive Crime Control Act of 1984, the first comprehensive revision of the U.S. criminal code since the 1900s, trumpeted this call for change in criminal justice philosophy, with the strong support of President Ronald Reagan.<sup>7</sup> This law reinstated the death penalty and mandatory minimum sentences of 20 years or longer for drug and violent offenses, with multipliers for habitual and violent felons. The Department of Defense was added to the mix of law enforcement assets dedicated to stopping drug runners,<sup>8</sup> and parole was abolished.<sup>9</sup> Ten years later, the Federal Violent Crime Control and Law Enforcement Act of 1994 created “three strikes and you’re out” laws to lock repeat offenders away, and encouraged states to pass “truth in sentencing” statutes requiring all prisoners to complete at least 85 percent of their sentences.<sup>10</sup>

5 Florida TaxWatch analysis of crime data from FBI Uniform Crime Reports between 1980 and 2014.

6 “Maryland Basketball Star Len Bias is Dead at 22.” (6/20/1986). Keith Harriston and Sally Jenkins, The Washington Post.

7 “An Overview of the Comprehensive Crime Control Act of 1984 – The Prosecutor’s Prospective,” Joseph DiGenova, 22 Am Crim L Rev 707 (1984-1985).

8 “Reluctant Recruits: The US Military and the War on Drugs,” Transnational Institute, August 1997.

9 “An Overview of the Comprehensive Crime Control Act of 1984 – The Prosecutor’s Prospective,” Joseph DiGenova, 22 Am Crim L Rev 707 (1984-1985).

10 Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796

Most states followed suit and began changing their criminal codes to reflect the federal government’s “tough on crime” approach.<sup>11</sup> Florida implemented federal reforms including the Crime Control Act, the Armed Career Criminal Act, and the Violent Crime Control and Law Enforcement Act, revamping Florida law on sentencing and corrections policy.<sup>12</sup> This changed sentencing in Florida to a determinate sentencing scheme, which mirrored the federal system, eliminating parole and imposing an 85 percent sentence completion requirement.

### *The Rise of Mandatory Minimums*

A component of the Comprehensive Crime Control Act of 1984, the Sentencing Reform Act sought to limit judicial discretion through the creation of the United States Sentencing Commission.<sup>13</sup> This commission created sentencing guidelines that regulated the discretionary sentencing decisions of judges<sup>14</sup> and eventually influenced the development of mandatory minimum statutes enacted by Congress.<sup>15</sup>

By 1986, flexibility in sentencing for drug offenders and specific violent offenders had been all but eliminated. Congress accomplished this through a number of sentencing reforms, including the Armed Career Criminal Act of 1984<sup>16</sup> and the Anti-Drug Abuse Act of 1986.<sup>17</sup> These two acts are merely examples of a variety of stringent sentencing policies enacted over the past few decades.

11 “The Growth of Incarceration in the United States,” National Academies of Science, April 2014.

12 “Truth in Sentencing in State Prisons”, Bureau of Justice Statistics Special Report, January 1999.

13 Sentencing Reform Act of 1984, Pub. L. No. 98-473, Ch. II, 98 Stat. 1987 (codified as amended at 18 U.S.C. §§ 3551-3586 (2006).

14 Ibid.

15 “Mandatory Sentencing was Once America’s Law and Order Panacea.: Here’s Why it’s Not Working,” Families Against Mandatory Minimums (FAMM) primer on mandatory sentences.

16 18 U.S.C. § 924 (1984).

17 21 U.S.C. § 801, 841, 951 (1986)

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By August 6, 2012, the federal government had implemented almost 150 sentencing guideline provisions related to mandatory minimums.<sup>18</sup>

Advocates of mandatory sentencing cite the advantages of such laws as crime deterrence and uniformity in sentencing.<sup>19</sup> Together, they ensure swift, certain, and severe sanctions for dangerous and violent offenders, locking them away consistently and for lengthier periods of time. Without mandatory minimums, geographic differences in sentencing for these dangerous offenders (due to regionality, biases, etc.) often went unchecked.<sup>20</sup>

Mandatory minimums were created to promote public safety and ensure justice is served for victims and their families.<sup>21</sup> Despite these benefits and good intentions, mandatory minimums also have some significant drawbacks.

## DRAWBACKS OF DETERMINATE SENTENCING

First, mandatory minimums do not eliminate discretion as much as shift it from the judge to the prosecutor, granting prosecutors a lot of power when it comes to plea bargaining. The threat of mandatory minimums makes many low-level offenders reluctant to take their chances in court, and for good reason. A 2013 report found that the average sentence for a federal drug offender was about three times shorter for a plea bargainer (roughly five years)

versus a defendant who went to trial (about 16 years).<sup>22</sup>

Second, mandatory minimums preclude the consideration of mitigating factors. While good for locking away dangerous and violent offenders, this approach often leads low-level offenders to serve unnecessarily lengthy sentences. A 42 year-old Orange County man, for example, was arrested in Florida while attempting suicide using a family member's Vicodin. Fortunately, the police intervened before he was able to take a lethal dose, but he still had 31 pills in his possession,<sup>23</sup> and was sentenced to a mandatory sentence of 15 years in prison for drug trafficking.<sup>24</sup>

The judge presiding over the case commented about being on "autopilot"<sup>25</sup> due to mandatory minimums, saying this during sentencing:

*"I do believe this is an inappropriate sentence for you...But there are restraints placed on my ability to stray from the statutory framework that would result in [your] early release... if there should be some change in the legislative framework that would result in [your] early release... no one would be happier than I.."*<sup>26</sup>

In the two decades that followed the implementation of determinate sentencing strategies like mandatory minimums and "truth in sentencing" laws, crime rates in Florida and the country dropped dramatically and returned to 40-year lows, or roughly where they were prior to the spike in the 1980s.

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18 "Federal Mandatory Minimums," FAMM, 2012.

19 "Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms." (Feb. 2014). Evan Bernick and Paul Larkin, The Heritage Foundation.

20 Bowers & Pierce. (1980). Deterrence or brutalization: What is the effect of executions? *Crime and Delinquency*, 26, 453-484.

21 "Time Served from 1979 to 2004 – Section 2: Violent crimes." (Aug. 2004). Florida Department of Corrections.

22 "An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty," Human Rights Watch, December 5, 2013.

23 "Families Against Mandatory Minimums Hopes to Change Sentencing Laws in Florida." (2/8/2011). *Broward Palm Beach New Times*.

24 Erin Fuchs, *Business Insider*. (4/23/2013). "10 People Who Received Outrageous Sentences for Drug Convictions."

25 "Todd Hannigan." (accessed 3/20/2016). Families Against Mandatory Minimums.

26 *Ibid*.

While many political leaders tout this as evidence of the success of more punitive sanctions, it is clear that not all of these policies promote public safety the way they purport to, and researchers further note that national crime trends (despite states' varying approaches to crime and incarceration) indicate that this decrease in crime is likely not a result of "tough on crime" sentencing policies like mandatory minimums.<sup>27</sup>

In fact, states that have stepped away from these policies have continued to see declines in crime. **California**, for example, passed Proposition 36, which modified the "three strikes" mandatory minimum law to make it only applicable to serious, violent felonies. These reforms were also made retroactive. Despite these changes, California's crime rate decreased by roughly 11 percent by 2014.<sup>28</sup>

consideration of all evidence regarding the commission of the offense and its aftermath (including input from defendants, victims, their attorneys, and the state),<sup>29</sup> as well as aggravating or mitigating circumstances unique to the defendant. Judges spent considerable time deliberating punishment based on these factors, and it was their exclusive responsibility to strike an appropriate balance among punishment, deterrence, and rehabilitation. It is essential that these positive aspects of judicial discretion be restored to increase public safety, improve offender outcomes, and reduce criminal justice expenditures.

Simply put, true justice dictates that punishment for a crime should actually fit the crime. This reasoning was supported in a powerful, comprehensive study by the National Research Council which stated:

*"...criminal sentences should be proportionate to the seriousness of the crime and should not exceed the minimum need to achieve its legitimate purpose... current policies have been...more harmful than effective and are inconsistent with U.S. history and notions of justice."*<sup>30</sup>

Florida judges (in cooperation with prosecutors, defense counsel, and others in the criminal justice system) are fully capable of determining just consequences for crimes committed by low-level mandatory minimum offenders. These offenders, many of whom criminal justice experts insist are not a threat to public safety and should be referred to alternative programs, and our communities would benefit from improved judicial

<sup>29</sup> Art. 1, Section 16 (b) of the Florida Constitution

<sup>30</sup> The Growth of Incarceration in the United States: Exploring Causes and Consequences. (2014). National Research Council of the National Academies, The National Academies Press: Washington D.C.

## THE SOLUTION: RESTORING JUDICIAL DISCRETION

Prior to changes in sentencing policies during the 1980s, sentencing discretion was inherent in the judicial role. Judges were entrusted with the responsibility of fashioning individual sentences in criminal cases based on the

<sup>27</sup> See: Blumstein et al., 1997, "Deterrence and Incapacitation – Estimating the Effects of Criminal Sanctions on Crime Rates"; Lynch & Sabol, 1997, "Did Getting Tough on Crime Pay? Policy Report No. 1"; Doob & Webster, 2003, "Sentence Severity and Crime: Accepting the Null Hypothesis"; Mauer & Ghandnoosh, 2014, "Fewer Prisoners, Less Crime: A Tale of Three States."

<sup>28</sup> Florida TaxWatch analysis of California crime data and U.S. Census Bureau state population estimates. The total decrease in crime rate between 2012 and 2014 was 347.6, or 10.9 percent. The crime rate in 2012 was 3177.9 per 100,000 California residents: (160,629 violent +1,048,764 property crimes)/38,056,055 California residents= .0318 crimes per resident. The crime rate in 2014 was 2,830.3 per 100,000 California residents: (151,245 violent + 946,682 property crimes)/38,792,291 California residents= 0.0283 crimes per resident. Sources: "CJSC Statistics: Crimes and Clearances." (accessed 7/19/2016). State of California Department of Justice, Office of the Attorney General; "Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2015: 2015 Population Estimates." (accessed 7/19/2016). U.S. Census Bureau.

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discretion.<sup>31</sup> These views are shared by federal and state policymakers, who have implemented or attempted reforms to address this issue.

### *Federal Reforms*

The first step in the series of federal reforms to restore judicial discretion came with the 1994 inclusion of a “Safety Valve” in the United States Code, which ameliorated mandatory minimums in cases of first-time, low-level drug offenders whose crimes did not involve guns or violence.<sup>32</sup>

The implementation of the federal Safety Valve was followed by the Fair Sentencing Act of 2010; the first law to erase a mandatory minimum sentence imposed during the 1980s war on crime and drugs.<sup>33</sup> No new safety valves have been implemented at the federal level, but there have been attempts to broaden the scope of the existing one:

**The Safety Valve Fairness Act** was sponsored first by Representative Albert Wynn (D-MD) in 2001 and again by Senator Carl Levin (D-MI) in 2002 and 2003.<sup>34</sup> The Act sought to make the drug crime safety valve created in the 1994 crime bill retroactive, allowing prisoners who had been sentenced for eligible drug crimes before 1994 to petition for reconsideration of their sentences.<sup>35</sup>

**The Smarter Sentencing Act** was first introduced in the U.S. Senate in July 2013, and

again in 2014 and 2015.<sup>36</sup> It would have expanded the existing, limited federal safety valve by reducing the mandatory minimum sentences for certain drug offenses, and allowing the court to deviate from statutory minimum sentences provided the offender does not have a significant criminal history.<sup>37</sup> The legislation gained traction in 2014 when Senator Richard Durbin (D-IL) sponsored S. 1410 with 31 co-sponsors from across the political spectrum, including Republicans from Utah, Georgia, Kentucky, and Texas, and Democrats from New York, Texas, Pennsylvania, Virginia and Louisiana.<sup>38</sup>

**The Justice Safety Valve Act** was also introduced in 2013 and again in 2015 by Senator Rand Paul (R-KY) and Senator Patrick Leahy (D-VT). The purpose of this legislation was to take the Smarter Sentencing Act one step further.<sup>39</sup> In both 2013 and 2015, the bill gave judges the standing ability to deviate from any mandatory minimum sentence when the mandated punishment did not take into account mitigating circumstances of the case that would otherwise significantly affect sentencing options.<sup>40</sup> Senator Leahy, a former prosecutor, supplemented the 2013 iteration of the bill with this statement:

*“Our reliance on mandatory minimums has been a great mistake. I am not convinced it has reduced crime, but I am convinced it has imprisoned people, particularly non-violent offenders, for far longer than is just or beneficial. It is time to let our judges go back to acting as*

31 Notable groups and people that share this position are: the Florida Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA); the Urban Institute; the National Center for Policy Analysis (NCPA); the President of the United States, Barack Obama; Right on Crime signatories Grover Norquist and Derek Monson; Georgia Governor Nathan Deal; and U.S. Attorney General Eric Holder.

32 See 18 USC § 3553; or Section 5C1.2 of the Federal Sentencing Guidelines.

33 “The fair sentencing act corrects a long-time wrong in cocaine cases,” The Washington Post, April 3, 2010.

34 See S.390—Safety Valve Fairness Act of 2003.

35 Ibid.

36 See H.R. 3382—Smarter Sentencing Act of 2013; see also S. 1410—Smarter Sentencing Act of 2014, S. 502—Smarter Sentencing Act of 2015, H.R. 920—Smarter Sentencing Act of 2015.

37 See S.502 – Smarter Sentencing Act of 2015.

38 See S.1410 – Smarter Sentencing Act of 2014.

39 See S. 353: Justice Safety Valve Act of 2015; see also H.R. 706.

40 Ibid.



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*judges and making decisions based on the individual facts before them. A one-size-fits-all approach to sentencing does not make us safer.”<sup>41</sup>*

The federal Smarter Sentencing Act and the Justice Safety Valve Act could provide a blueprint for states interested in reducing prison populations and lowering the cost of incarceration. These laws taken together could accomplish four primary things:

- Empowering judges to deviate from mandatory minimum sentences in drug cases after affording the prosecution the opportunity to argue on the applicability of the mandatory minimum sentence;
- Extending the Judicial Safety Valve opportunity to all felony cases which impose mandatory minimums;
- Reducing mandatory minimum sentences for low-risk drug offenders; and
- Authorizing retroactive reduction of sentences for non-violent drug offenders.

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### *State Reforms*

In addition to the reforms in **California** mentioned previously, **New York, Rhode Island**, and **Delaware** have all repealed the majority of their drug-related mandatory minimum laws while others limited the scope of their current laws or increased drug weight thresholds for felony offenses—like the federal government did with crack cocaine—to keep low-level offenders out of prison.<sup>42</sup>

A number of other states have instituted “Judicial Safety Valves.”

41 “Comment of Senator Patrick Leahy on Attorney General Holder’s Statement on Mandatory Minimums,” Office of U.S. Senator Patrick Leahy, Aug 12, 2013.

42 “Turning off the Spigot: How Sentencing Safety Valves can Help States Protect Public Safety and Save Money.” (June 2013). Families Against Mandatory Minimums.

**Minnesota** has mandatory minimum sentences for using or displaying a weapon while committing certain offenses, including many violent offenses and drug crimes. Their safety valve allows courts to sentence these offenders below the mandatory minimum, or opt for probation instead of a prison sentence, in cases where the court finds “substantial and compelling reasons to do so.”<sup>43</sup>

**New York** has a safety valve for certain gun offenses that would typically warrant an additional mandatory minimum sentence of five years. It allows state courts to ignore the mandatory minimum for these offenses if the court “finds on the record that such additional consecutive sentence would be unduly harsh and not imposing such sentence would be consistent with the public safety and would not deprecate the seriousness of the crime.”<sup>44</sup>

**Connecticut** has a safety valve for drug offenses. To deviate from the mandatory minimum, the defendant must not have used/threatened physical force and must provide a good reason to the court why a sentence lower than the minimum is appropriate.<sup>45</sup>

Other safety valves exist in **Maine, Oregon, Montana, Oklahoma, North Dakota**, and **Virginia** and have been proposed in **Georgia** and **Pennsylvania**.<sup>46</sup> States with Judicial Safety Valves have seen reductions in corrections expenditures with no harm to public safety. The safety valve Minnesota implemented in 2010 spared the state 1,200 prison beds and almost \$40 million in prison costs while crime steadily declined.<sup>47</sup>

43 Minn. Stat. § 609.11, subd. 8.

44 N.Y. PEN. LAW § 265.09(2).

45 CGS § 21a-283a (2012)

46 “Turning off the Spigot: How Sentencing Safety Valves can Help States Protect Public Safety and Save Money.” (June 2013). Families Against Mandatory Minimums.

47 Ibid.

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A national push for sentencing reform surrounding mandatory minimums is evident in federal and state legislation and reforms like those mentioned above. While these bills may not represent the ultimate language of the legislation this report aims to inspire, they provide crucial examples of national, bipartisan recognition of the need for sentencing reform.

### *Florida Reforms*

Florida has taken steps towards reforming sentencing to reserve prison for dangerous offenders. During the 2014 Session the Legislature passed bills increasing the quantities of hydrocodone and oxycodone required to constitute a felony and reducing mandatory minimum sentences for those possessing specified quantities of the drug.

The sponsor of the House Bill, Representative Katie Edwards stated publicly that, “too many families have been torn apart by harsh mandatory minimum sentences and this bill helps right that wrong.”<sup>48</sup>

This reform represented the first time Florida has reduced a mandatory minimum sentence or removed minor possession amounts from drug laws designed to punish drug traffickers; however, the law does not add the Judicial Safety Valve feature found in federal proposals and many states across the country.

## EXPLORING A JUDICIAL SAFETY VALVE FOR FLORIDA

The next step for Florida should be to implement a safety valve that adopts the principles of the Justice Safety Valve Act and

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48 “Florida Legislature Reforms Prescription Drug Trafficking Sentences.” (4/11/2014). Families Against Mandatory Minimums.

safety valves in other states, authorizing Judges to deviate from the mandatory minimum sentence in felony cases where a mandatory minimum sentence applies and undeniable proof of mitigating factors that could affect culpability are present.<sup>49</sup> This would reduce strain on prisons and criminal justice budgets with little or no risk to public safety.

The benefits of a Judicial Safety Valve in Florida include improved or maintained public safety at lower cost to state taxpayers. Studies have shown that lengthy prison sentences (particularly for low-level offenders) do little to reduce, and sometimes even increase, the likelihood of recidivism.<sup>50</sup> Further, a PEW analysis found that 14 percent of Florida’s annual released inmates could have served prison terms shorter by up to 2 years without jeopardizing public safety.<sup>51</sup> The same analysis estimated that Florida could reduce its average daily prison population by 2,600 by implementing policies that reduce length of stay for non-violent offenders alone. This seemingly small reduction could mean a cost-avoidance of up to \$50 million each year.<sup>52</sup>

In order to ensure these benefits without reverting to regional disparities in sentencing as seen prior to determinate sentencing or

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49 E.g. firearm was unloaded, no history of violence, only an accomplice, addiction contributed to commission of crime, conduct did not cause/threaten physical harm, conduct a result of circumstances unlikely to recur, potential for reform, etc. For more info on mitigating factors and their pros and cons see: “The Thinking Advocate’s List of Mitigating Factors,” The Sentencing Project, 2003. Available at: [http://www.sentencingproject.org/detail/publication.cfm?publication\\_id=110](http://www.sentencingproject.org/detail/publication.cfm?publication_id=110)

50 “A State of Incarceration.” (April 2015). Florida TaxWatch. See also: Blumstein et al., 1997, “Deterrence and Incapacitation – Estimating the Effects of Criminal Sanctions on Crime Rates”; Lynch & Sabol, 1997, “Did Getting Tough on Crime Pay? Policy Report No. 1”; Doob & Webster, 2003, “Sentence Severity and Crime: Accepting the Null Hypothesis”; Mauer & Ghandnoosh, 2014, “Fewer Prisoners, Less Crime: A Tale of Three States.”

51 “Time Served: The High Cost, Low Return of Longer Prison Terms.” (June 2012). PEW Center on the States.

52 This estimate is calculated using the average state per diem for prison facilities (\$51.65) and includes fixed costs necessary to operate facilities. Without an infrastructure change, the inmate variable per diem is \$15.91, resulting in a conservative cost-avoidance of just over \$15 million.

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disregarding the needs of victims, the state must also ensure checks and balances that guarantee the Judicial Safety Valve will not be abused. To protect against abuse of a Judicial Safety Valve, it is essential that victims, defendants, their attorneys, and the State retain their right to have input on the proper punishment at a sentencing hearing.

Further, State Attorneys must have the right to argue the merits of the case with the judge, and even be given the right to seek immediate appeal to the District Court of Appeals if they believe the Circuit Judge has abused his or her discretion. Parameters to address this potential appellate backlog would need to be set by the Legislature. In addition to the guidelines established and the prosecutor's right of appellate review, should an elected trial judge abuse or misuse the Judicial Safety Valve, that judge would ultimately be held accountable by the people in the ballot box.

Florida to take the next step. The safety valves discussed in this report do not propose radical changes. Instead, these changes are primarily focused on reducing sentences for low-level offenders and giving judges the ability to deviate from mandatory minimums, without impeding the rights of victims or defendants, when appropriate and necessary to avoid an injustice.

## RECOMMENDATIONS

Florida Judges should be afforded the ability to exercise their professional discretion based on the offender's circumstances (record, details of the crime, etc.) and other germane details when making decisions on mandatory minimum cases.

**Florida TaxWatch recommends that the legislature create a "Judicial Safety Valve," which will authorize judges to exercise judicial discretion and deviate from mandatory minimums.**

It is important that previous regional disparities in sentencing not be allowed to reappear. For this reason, Florida TaxWatch also emphasizes that victims, their attorneys, and the State must maintain the right to have their recommendations on sentencing fully considered by the sentencing judge as well as the opportunity to appeal to the District Court of Appeals regarding judges' decisions to exercise discretion through the Judicial Safety Valve.

Together these policies will increase public safety and improve offender outcomes at a reduced cost to Florida taxpayers.

## CONCLUSION

Federal criminal justice statutes and Florida state laws regarding crime and punishment have a common history and reflect similar philosophical approaches. Both moved from indeterminate sentencing schemes popular in the 1970s, to determinate sentencing regimes that abolished parole, required truth in sentencing, and added mandatory minimum sentences in the 1990s.

These changes resulted in huge increases in prison populations and their associated costs to Florida and the nation as a whole. U.S. Senators and Representatives from all regions of the country and from all segments of the political and ideological spectrum have joined to say the time has come to deal with America's mass incarceration problem. It is now time for

## AUGUST 2016

As an independent, nonpartisan, nonprofit taxpayer research institute and government watchdog, it is the mission of Florida TaxWatch to provide the citizens of Florida and public officials with high quality, independent research and analysis of issues related to state and local government taxation, expenditures, policies, and programs. Florida TaxWatch works to improve the productivity and accountability of Florida government. Its research recommends productivity enhancements and explains the statewide impact of fiscal and economic policies and practices on citizens and businesses.

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TaxWatch research is done under the direction of Dominic M. Calabro, President, CEO, Publisher & Editor.

The findings in this Report are based on the data and sources referenced. Florida TaxWatch research is conducted with every reasonable attempt to verify the accuracy and reliability of the data, and the calculations and assumptions made herein. Please feel free to contact us if you feel that this paper is factually inaccurate.

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**Committee of the Whole**

7.

**Meeting Date:** 01/12/2017

**Issue:** Sector Plan

**From:** Horace Jones, Director

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**Information**

**Recommendation:**

Sector Plan

(Horace Jones - 30 min)

A. Board Discussion

B. Board Direction

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**Attachments**

*No file(s) attached.*

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