

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**CRIMINAL JUSTICE**  
**Senator Evers, Chair**  
**Senator Dean, Vice Chair**

**MEETING DATE:** Tuesday, January 25, 2011

**TIME:** 10:45 a.m.—12:45 p.m.

**PLACE:** Mallory Horne Committee Room, 37 Senate Office Building

**MEMBERS:** Senator Evers, Chair; Senator Dean, Vice Chair; Senators Dockery, Margolis, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill:			
1	<b>SPB 7008</b>	OGSR/Concealed Weapons or Firearms; Amends provision which provides an exemption from public records requirements for personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm. Saves the exemption from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemption.	
Consideration of proposed committee bill:			
2	<b>SPB 7010</b>	OGSR/Biometric Identification Information ; Amends a provision which provides an exemption from public records requirements for biometric identification information held by an agency. Saves the exemption from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemption.	
Consideration of proposed committee bill:			
3	<b>SPB 7012</b>	OGSR/Current & Former Employees of DJJ and Family; Amends a provision which provides an exemption from public records requirements for certain records relating to current and former employees of the Department of Juvenile Justice and their family members, including juvenile probation officers and supervisors, detention and assistant detention superintendents, senior juvenile detention officers, juvenile detention officers and supervisors, house parents and supervisors, group treatment leaders and supervisors, rehabilitation therapists, and social service counselors, etc.	
4	Presentation by Tax Watch on criminal and juvenile justice reform.		
5	Presentation by the Department of Corrections on work and vocational education programs within the state prison system.		

**COMMITTEE MEETING EXPANDED AGENDA**

Criminal Justice

Tuesday, January 25, 2011, 10:45 a.m.—12:45 p.m.

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SPB 7008

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Open Government Sunset Review of Section 790.0601, F.S., Personal Identifying Information of Applicant or Licensee, Concealed Weapon or Firearm

DATE: January 18, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

This bill reenacts a public records exemption for “personal identifying information” contained in records maintained by the Department of Agriculture and Consumer Services (DACS) concerning applicants for and recipients of a concealed weapons permit. The bill provides that the exempt information may be provided with the written consent of the applicant, upon written request of a law enforcement agency, or by court order upon a showing of good cause.

The bill reenacts section 790.0601 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created

thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law<sup>1</sup> specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge....”<sup>2</sup>

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995<sup>3</sup> establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”<sup>4</sup>

Section 119.15(6)(a), F.S.,<sup>5</sup> requires, as part of the review process, the consideration of the following questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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<sup>1</sup> Chapter 119, F.S.

<sup>2</sup> *Shevin. Byron, Hairless, Schaffer, Reid & Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(3)(b), F.S.

<sup>5</sup> Formerly s. 119.15(4)(a), F.S. (as revised by s. 37, ch. 2005-251, L.O.F.).

An exemption may be maintained only if it serves an identifiable public purpose and only if the exemption is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government, and the purpose cannot be accomplished without the exemption:

- The exemption “[a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption “[p]rotects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption “[p]rotects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”<sup>6</sup>

### **Exempt Personal Identifying Information**

Social Security numbers,<sup>7</sup> credit and debit cards,<sup>8</sup> and bank account<sup>9</sup> information are exempt from public disclosure. Additionally, personal information contained in a motor vehicle record that identifies the subject in the record is exempt from disclosure.<sup>10</sup> Exempt information includes driver’s license and identification card numbers.<sup>11</sup>

### **Concealed Weapons License**

A concealed weapon is defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie.<sup>12</sup> The Department of Agriculture and Consumer Services (DACS) is statutorily authorized to issue a license to carry a concealed weapon to those applicants who qualify.<sup>13</sup>

There is no other governmental agency that collects this particular information from applicants, and it cannot be obtained by the public from another source. The information is not protected by another exemption, nor do multiple exemptions for the same type of information exist.

An applicant for such license must submit to the department a completed application, a nonrefundable license fee, a full set of fingerprints, a photocopy of a certificate or an affidavit

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<sup>6</sup> Section 119.15(6)(b), F.S.

<sup>7</sup> Section 119.071(5)(a)3, F.S.

<sup>8</sup> Section 119.071(5)(b), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 119.0712(2), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 790.06(1), F.S.

<sup>13</sup> *Id.*

attesting to the applicant's completion of a firearms course, and a full frontal view color photograph<sup>14</sup> of the applicant.<sup>15</sup> The application must include:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A statement that the applicant is in compliance with licensure requirements;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents; and
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense.<sup>16</sup>

There are currently over 750,000 valid license-holders in Florida.<sup>17</sup> It is these persons whose personal information is currently protected by the public records exemption under review.

In Chapter 2006-102, Laws of Florida, which created the exemption, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law states:

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm held by the Division of Licensing of the Department of Agriculture and Consumer Services be made confidential and exempt from public records requirements, with certain exceptions. The carrying of a concealed weapon in the state by members of the general public requires an individual to obtain a license from the Department of Agriculture and Consumer Services. The applicant for a license to carry a concealed weapon or firearm must state that he or she seeks a concealed weapon or firearms license as a means of lawful self-defense. The knowledge that someone has applied for or received a license to carry a concealed weapon or firearm can very easily lead to the conclusion that the applicant or licensee has in fact armed himself or herself. This knowledge defeats the purpose behind the authorization to carry a concealed weapon or firearm. If the applicant or licensee had intended for the general public to know he or she was carrying a weapon or firearm, he or she would have applied for a regular weapon or firearms permit rather than a license to carry a concealed weapon or firearm. The Legislature has found in prior legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second

<sup>14</sup> The photograph must be taken within the preceding 30 days. The head, including hair, must measure 7/8 of an inch wide and 1 1/8 inches high. Section 790.06(5)(e), F.S.

<sup>15</sup> Section 790.06(5), F.S.

<sup>16</sup> Section 790.06(4), F.S.

<sup>17</sup> "Concealed Weapon / Firearm Summary Report," viewed September 21, 2010  
[http://licgweb.doacs.state.fl.us/stats/cw\\_monthly.html](http://licgweb.doacs.state.fl.us/stats/cw_monthly.html).

Amendment right to keep and bear arms as guaranteed under the United States Constitution. Release of personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm could be used to harass an innocent person based solely on that person's exercised right to carry a concealed weapon or firearm. Further, such information could be used and has been used to identify individuals who have obtained a license to carry a concealed weapon or firearm for the purpose of making the identity of the applicant or licensee publicly available via traditional media and the Internet. Once again, such public disclosure contradicts the purpose of carrying a concealed weapon or firearm. Therefore, the Legislature finds that the personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to chapter 790, Florida Statutes, must be held confidential and exempt from public records requirements.

The above-referenced statement of public purpose conveys the 2006 Legislature's concern with protecting information of a sensitive personal nature concerning individuals. Although not directly stated, the language adopted by the Legislature invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a *concealed* firearm or weapon and *making public* that individual's *personally identifying information*. The inference that can be drawn from the statement of public purpose is that it is a *matter of personal safety* that an individual who carries a concealed firearm or weapon *keep the weapon's very presence out of the public view or scrutiny*, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

### III. Effect of Proposed Changes:

This bill reenacts s. 790.0601, F.S., to provide a public record exemption for "personal identifying information" contained in records that are maintained by DACS concerning applicants for a license to carry a concealed weapon or individuals who have already received a concealed weapons permit. However, this information may be released:

- With the express written consent of the applicant or licensee or his or her legally authorized representative.
- By court order upon a showing of good cause.
- Upon written request by law enforcement in connection with an active criminal investigation.

This bill reenacts the exemption by deleting its repeal date of October 2, 2010.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

**B. Public Records/Open Meetings Issues:**

This bill reenacts a public records exemption to protect identifying information maintained by the Department of Agriculture and Consumer Services of applicants for and recipients of a concealed weapons permit.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SPB 7010

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: OGSR/Biometric Identification Information

DATE: January 18, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

Section 119.071(5)(g), F.S., exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of the exemption (July 1, 2006).<sup>1</sup> Biometric identification information consists of any record of friction ridge detail, fingerprints, palm prints, and footprints.

This exemption is subject to review under s. 119.15, F.S., the Open Government Sunset Review Act, and will sunset on October 2, 2011, unless saved from repeal through reenactment by the Legislature. The bill reenacts the exemption. The bill does not expand the scope of the existing public records and meetings exemptions, so it does not require a two-thirds vote.

This bill reenacts section 119.071(5)(g) of the Florida Statutes.

**II. Present Situation:**

**Constitutional Requirements Regarding Public Records**

Article I, section 24 of the Florida Constitution, as it relates to records, provides that every person has the right to inspect or copy any public record that is made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by the Florida Constitution. This section is self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of this section provided such law: (1) states with

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<sup>1</sup> Section 3, ch. 2006-181, L.O.F.

specificity the public necessity justifying the exemption and is no broader than necessary; (2) contains only exemptions from the requirements of this section and provisions governing the enforcement of this section; and (3) relates to one subject. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Legislature is also required by this section to enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the Legislature may adopt rules governing enforcement of this section in relation to records of the legislative branch.

### **The Public Records Act**

The general purpose of the Public Records Act (ch. 119, F.S.) is to open public records to allow Florida's citizens to discover the actions of their government.<sup>2</sup> The act specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency<sup>3</sup> records are available for public inspection. The term "public record" is broadly defined to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>4</sup>

The Florida Supreme Court has interpreted this definition to encompass "any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."<sup>5</sup> Materials which "are not, in themselves, intended as final evidence of the knowledge to be recorded" are not public records.<sup>6</sup> "It is impossible to lay down a definition of general application that identifies all items subject to disclosure under the act. Consequently, the classification of items which fall midway on the spectrum of clearly public records on the one end and clearly not public records on the other will have to be determined on a case-by-case basis."<sup>7</sup>

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<sup>2</sup> See *Christy v. Palm Beach County Sheriff's Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997).

<sup>3</sup> The term "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>4</sup> Section 119.011(12), F.S.

<sup>5</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So.2d 633, 640 (Fla.1980).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

There is a difference between records the Legislature has made exempt from public inspection and those made confidential and exempt. If the Legislature makes a record confidential and exempt, the exempted record may not be released by an agency to anyone other than to the persons or entities designated by law.

### **The Open Government Sunset Review Act**

Section 119.15, F.S., the Open Government Sunset Review Act, establishes a process for the review and repeal or reenactment of public records exemptions. The act provides that in the fifth year after enactment of a new exemption or substantial amendment<sup>8</sup> of an existing exemption, the exemption is repealed on October 2nd of the fifth year, unless the Legislature reenacts the exemption.<sup>9</sup> An exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the public purpose it serves.<sup>10</sup> An identifiable public purpose is served if the exemption meets one the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety;<sup>11</sup> or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>12</sup>

The Legislature must also consider the following as part of the sunset review process:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?<sup>13</sup>

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<sup>8</sup> An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. s. 119.15(4)(b), F.S.

<sup>9</sup> Section 119.15(3), F.S.

<sup>10</sup> Art. I, s. 24(c), Fla. Const; s. 119.15(6), F.S.

<sup>11</sup> Only information that would identify the individuals may be exempted for this purpose.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> Section 119.15(6)(a), F.S.

**Biometric Identification Exemption (s. 119.071(5), F.S.)**

In 2006, the Legislature created s. 119.071(5)(g), F.S.,<sup>14</sup> which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of this exemption (July 1, 2006).<sup>15</sup> Biometric identification information consists of any record of friction ridge detail, fingerprints, palm prints, and footprints.

The Legislature provided the following statement of public necessity for enacting the exemption:

The Legislature finds that it is a public necessity that biometric identification information held by an agency before, on, or after the effective date of this exemption be made exempt from public records requirements. Biometric identification information is used to verify the identity of persons and by its very nature involves matters uniquely related to individual persons. The use of multiple methods of biometric identification is a growing technology in detecting and solving crime, in preventing identity theft, and in providing enhanced levels of security in agency and other operations. Given existing technological capabilities for duplicating, enhancing, modifying, and transferring records, the availability of biometric identification information creates the opportunity for improper, illegal, or otherwise harmful use of such information. At the same time, use of biometric identification information by agencies is a useful and increasingly valuable tool. Thus, the Legislature finds that it is a public necessity to protect biometric identification information held by an agency before, on, or after the effective date of this act.<sup>16</sup>

Section 119.071(5)(g), F.S., stands repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature. *The Florida Department of Law Enforcement (FDLE), one of the agencies most affected by retention or repeal of the exemption, recommends retention of the exemption. Senate professional staff concurs with this recommendation.*

The FDLE indicates that the identifiable public purpose or goal of the exemption in s. 119.071(5)(g), F.S., is to prevent fingerprints and other biometric identification information from being used for improper purposes, such as identity theft and fraud as well as security breaches.<sup>17</sup> Disclosure of the information also has the potential to hinder, compromise, or prevent criminal intelligence gathering, a criminal investigation, or a criminal prosecution, if the information were used, for example, to create phony or altered fingerprint cards or create false evidence of fingerprint impressions at a crime scene. The efficient and effective administration of the FDLE would be significantly impaired by public disclosure because the biometric identification information could be demanded for an unlawful purpose. An agency cannot inquire as to the purpose or proposed use for which an entity makes a public records request.

Persons most uniquely affected by the exemption (as opposed to the general public) are those persons whose fingerprints have been submitted to an agency for any reason, which includes

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<sup>14</sup> Ch. 2006-181, L.O.F.

<sup>15</sup> Section 3, ch. 2006-181, L.O.F.

<sup>16</sup> Section 2, ch. 2006-181, L.O.F.

<sup>17</sup> Response of the FDLE to the *Senate Committee on Criminal Justice Open Government Sunset Review Questionnaire to the Florida Department of Law Enforcement*, dated September 22, 2010 (on file with the Senate Committee on Criminal Justice). All information in the remainder of the "Present Situation" section of this analysis is from this source, unless otherwise indicated.

arrest prints and applicant prints (i.e., criminal history background checks for employment, licensing, name change, sealing/expungement, eligibility, etc.). Other forms of biometric identification may be taken as latent lifts from a crime scene.

Fingerprints are taken and submitted to the FDLE by agencies and fingerprint scanning services. These fingerprints may be inked impressions or electronic submissions, which include applicant prints, arrest prints (from criminal justice agencies), or latent lifts from crime scenes.<sup>18</sup> Applicant prints are taken as required or authorized by law; arrest prints and latent lifts are taken as needed for criminal justice purposes. Arrest prints and, as authorized, applicant prints are stored in the Automated Fingerprint Identification System (AFIS) authorized under s. 943.05(2), F.S.<sup>19</sup>

The purposes for which the FDLE collects, receives, maintains, or shares the biometric identification information covered by the exemption include:

- Positive identification, usually against criminal records;
- Criminal justice or forensic purposes (e.g., latent lifts are compared to known standards for crime scene analysis and to identify unknown, missing, and deceased persons);
- Employment or licensing background checks; and
- As otherwise required by law (e.g., for comparison with criminal records).

The FDLE shares arrest prints and latent lifts with other criminal justice agencies (covered by the exemption) for criminal justice purposes. These receiving agencies also protect against public disclosure of the biometric identification information.

Other law enforcement agencies may retain copies of the fingerprints of persons the agencies have arrested or booked. Other criminal justice agencies which have local AFIS maintain arrest fingerprints. Crime scene fingerprints (and other biometric identification information) are collected and maintained as part of criminal investigations and may be shared with other agencies that engage in forensic identification as well as prosecution of criminal defendants. Courts may collect fingerprints to identify judgments in criminal cases.

Federal law prohibits public disclosure of the biometric identification information in s. 119.071(5)(g), F.S., to the extent such information is considered a part of a national criminal history record.<sup>20</sup>

According to the FDLE, the biometric identification information exempted pursuant to s. 119.07(5)(g), F.S., is also protected to a limited extent by s. 937.028(1), F.S., which applies only to “fingerprints [which] have been taken for the purpose of identifying a child, in the event a child becomes missing.” Biometric identification information associated with a criminal investigation may be protected as active criminal investigative information under s. 119.07(2)(c)1., F.S. Arrest fingerprints which identify the subject of a criminal history record

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<sup>18</sup> The FDLE indicates that the fingerprints and other biometric identification information are not readily obtainable by alternative means.

<sup>19</sup> Pursuant to s. 943.051(4), F.S., criminal history records must be based on fingerprints.

<sup>20</sup> Florida Attorney General Opinion 99-01 (January 6, 1999) and 28 C.F.R. § 20.33.

that has been expunged or sealed are confidential pursuant to s. 943.0585(4) and s. 943.059(4), F.S. The FDLE states that these described exemptions do not duplicate s. 119.07(5)(g), F.S., but serve different and distinct purpose. Consequently, these exemptions do not appear appropriate to merge.

Senate professional staff have reviewed these exemptions and other exemptions and none of them appear to be appropriate for merger or repeal (as clearly being duplicative of or completely subsumed within the exemption in s. 119.07(5)(g), F.S.).

### **III. Effect of Proposed Changes:**

The bill reenacts s. 119.071(5)(g), F.S., which exempts from public inspection or copying biometric identification information held by an agency before, on, or after the effective date of this exemption (July 1, 2006). The biometric identification information consists of the following information:

- Any record of friction ridge detail;
- Fingerprints;
- Palm prints; and
- Footprints.

The bill does not expand the scope of the existing public records and meetings exemptions, so it does not require a two-thirds vote.

The effective date of the bill is October 1, 2011.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

Article I, section 24 of the Florida Constitution permits the Legislature to provide by general law for the exemption of open meetings and for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.

If a reenactment of an exemption does not expand the scope of the exemption, it does not require a new repealer date, public necessity statement, or a two-thirds vote.<sup>21</sup> It is only when the exemption is expanded (i.e., more records are exempt, records are exempt for a longer period of time, etc.) that these three requirements come into play, because that is tantamount to creating a new exemption.

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<sup>21</sup> See Art. I, s. 24(c), Fla. Const., and s. 119.15, F.S.

The reenactment of the exemption in s. 119.071(5)(g), F.S., does not expand the exemption.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SPB 7012

INTRODUCER: For consideration by the Criminal Justice Committee

SUBJECT: Reenactment of Public Record Exemption/Certain Specified Personal Information of DJJ Direct Care Employees

DATE: January 18, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon		<b>Pre-meeting</b>
2.				
3.				
4.				
5.				
6.				

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**I. Summary:**

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the Department of Juvenile Justice (DJJ), their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

This bill reenacts sub-subparagraph i. of section 119.071(4)(d)1. of the Florida Statutes.

**II. Present Situation:**

**Public Access**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraphs (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department



created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law.....Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

### **Florida's Public Records Law**

Florida's public records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."<sup>3</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>5</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption<sup>7</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>8</sup>

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<sup>1</sup> s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

<sup>2</sup> s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

<sup>4</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

<sup>5</sup> Article I, s. 24(c) of the State Constitution.

<sup>6</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>9</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

### **Current Exemptions in Section 119.071(4)(d)1., F.S.**

The Legislature has enacted exemptions from the public records law for the home addresses, telephone numbers, social security numbers, photographs, spouse's places of employment, and schools and daycare locations of the children of the following agency personnel (active and former):

- Law enforcement;
- Correctional and correctional probation officers;
- Certain personnel at the Department of Children and Family Services;
- Department of Health personnel;
- Department of Revenue personnel;
- Certified firefighters;
- Justices, judges, magistrates, administrative law judges and child support hearing officers;
- Code enforcement officers;
- Guardians ad litem;
- Local government agent and water management district human resources administrators;
- Department of Juvenile Justice personnel;
- Local and statewide prosecuting attorneys; and
- Public defenders, criminal conflict and civil regional counsel, and their assistants.

The particular DJJ employees that the exemption applies to include the following direct care employees (and their spouses and children):

- juvenile probation officers

<sup>7</sup> s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>8</sup> Article 1, s. 24(c) of the State Constitution.

<sup>9</sup> Attorney General Opinion 85-62, August 1, 1985.

<sup>10</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

- juvenile probation supervisors
- detention superintendents
- assistant detention superintendents
- senior juvenile detention officers
- juvenile detention officer supervisors
- juvenile detention officers
- house parents I and II
- house parent supervisors
- group treatment leaders
- group treatment leader supervisors
- social service counselors
- rehabilitation therapists

The exemption was created in 2006 for these DJJ direct care employees and their families. It will expire on October 2, 2011, unless the Legislature reviews and reenacts it pursuant to the Open Government Sunset Review Act under s. 119.15, F.S.

The Senate Criminal Justice professional staff reviewed the public record exemption created in s. 119.071(4)(d)1.i., F.S., during the 2010 interim and recommends that it be reenacted. According to the DJJ, the exempted records contain information that is of a sensitive, personal nature concerning those DJJ employees who have direct contact and provide care and supervision to juvenile offenders from the time of their arrest until they are released back into society.

The DJJ states that it is paramount to the safety of these employees and their families that their personal information remain exempted. Direct care employees and their families are subject to the same risk of threats and reprisals from juveniles, their families and gang members as those who work in law enforcement, corrections, and the court system. For instance, the children of these employees are subjected to this risk if they attend the same school or ride the same bus as the juvenile offender, the offender's family or friends. Additionally, the DJJ asserts that providing easier access to the employee's personal information will interfere in the department's administration of the juvenile justice system by jeopardizing the workplace safety of its employees.

### **III. Effect of Proposed Changes:**

The bill reenacts the public record exemption in s. 119.071(4)(d)1.i., F.S., which provides that certain personal information of current or former specified direct care employees of the DJJ, their spouses, and children are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The covered direct care employees include juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, social service counselors, and rehabilitation therapists.

The bill will take effect October 1, 2011.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The DJJ recommends that the exemption language covering specified direct care employees be updated to reflect several technical position title reclassifications that have occurred since the exemption was created.

**VII. Related Issues:**

The First Amendment Foundation believes that the exemption is overly broad and recommends an amendment to narrow the exemption language by requiring direct care employees, prior to the exemption taking effect, to provide a written statement indicating that they have made reasonable efforts to protect such information from being accessible through other means available to the public.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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LEGISLATIVE ACTION

Senate

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House

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The Committee on Criminal Justice (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 132 - 142  
and insert:  
detention superintendents, ~~senior~~ juvenile justice detention  
officers I and II, juvenile justice detention officer  
supervisors, juvenile justice residential officers, juvenile  
justice residential officer supervisors I and II, juvenile  
justice counselors, juvenile justice counselor supervisors,  
human services counselor administrators, senior human services  
counselor administrators ~~juvenile detention officers, house~~  
~~parents I and II, house parent supervisors, group treatment~~



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~~leaders, group treatment leader supervisors, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if such personnel of the Department of Juvenile Justice provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the~~

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 9 - 13

and insert:

detention superintendents, juvenile justice detention officers and supervisors, juvenile justice residential officers and supervisors, juvenile justice counselors and supervisors, human service counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors; requiring a written statement indicating reasonable efforts to protect such information from being accessible through other means available to the public; saving the exemption from repeal

# **Cost-Savings Recommendations for the Criminal and Juvenile Justice System**

***Based on the Report and Recommendations of  
the Government Cost Savings Task Force for  
FY2011-12***



**Presented to the Senate Criminal Justice Committee  
Senator Greg Evers, Chair  
Senator Charles S. Dean  
January 25, 2011**



# Who is Florida TaxWatch?



Florida TaxWatch is a nonpartisan, non-profit research institute and state and local government watchdog whose mission is to provide the citizens of Florida and public officials with high quality, independent research and education on government revenues, expenditures, taxation, public policies and programs and to increase the productivity and accountability of Florida Government.



# 31 Years of Success



Florida TaxWatch has published numerous success reports and recommendations in cost savings across all areas of government:

✓ **Constructive Ideas to Help Florida Address the Budget Shortfall**, January 2009

✓ **Report and Recommendations of the Government Cost Savings Task Force to Save More than \$3 Billion**, March 2010

✓ **Report and Recommendations of the Government Cost Savings Task Force for FY2011-12**, December 2010

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**TaxWatch**

# Report and Recommendations of the Government Cost Savings Task Force for FY2011-12



New Report contains **125** innovative, cost-saving ideas worth **more than \$4 billion**, if fully implemented.

## Subject Areas:

- ✓ Pension Reform
- ✓ Justice Reform
- ✓ Medicaid Reform
- ✓ Healthcare Reform
- ✓ Procurement Reform
- ✓ Revenue Enhancement
- ✓ General Government Operations
- ✓ Productivity Enhancement and Workforce Optimization

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# Some Examples

- ✓ Eliminate DB plan and switch all FRS members to DC plan  
\*\*Estimated Savings for FY2011-12: **\$337 million**
- ✓ Expand nursing home diversion programs  
\*\* Estimated Savings for FY2011-12: **\$397 million**
- ✓ Require purchase of generic equivalent for off-the-shelf products  
\*\*Estimated Savings for FY2011-12: **\$305 million**
- ✓ Contingency Contract to drawdown federal funds already earned  
\*\* Estimated Savings for FY2011-12: **\$150 million**
- ✓ Create benchmarks for administration costs & overhead across agencies  
\*\*Estimated Savings for FY2011-12: **\$277 million**
- ✓ Implement pre-payment audit system for PBM claims  
\*\* Estimated Savings for FY2011-12: **\$40 million**

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# **Why Justice Reform?**

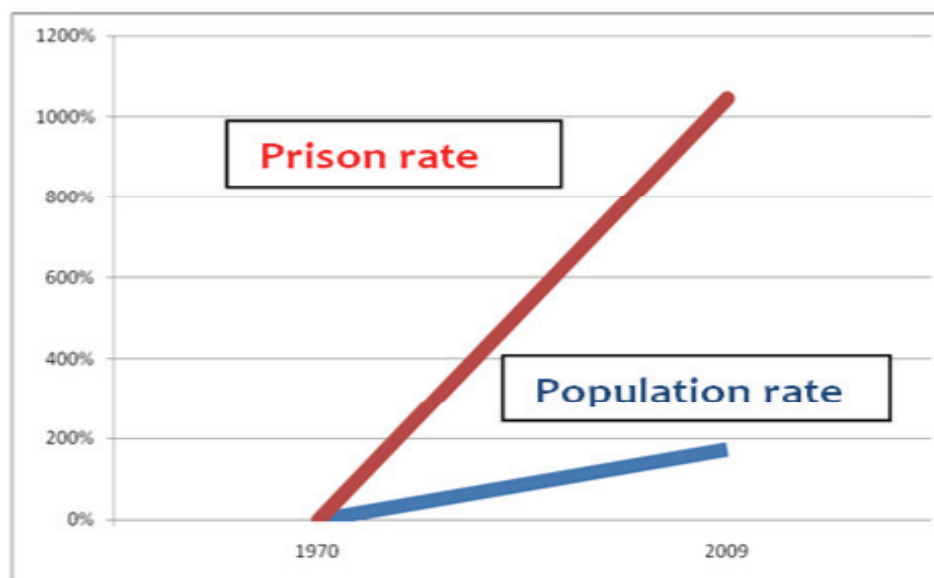


❑ Prison  
Population of  
more than  
100,000

❑ Dramatic  
11.4-fold  
increase in  
Prison  
Population from  
1970 to 2009  
*while*  
Population only  
increased 2.7-fold  
during the same  
time period

## Stunning Corrections Growth

1970 – 2009 Growth Rates  
Florida population vs. prison population

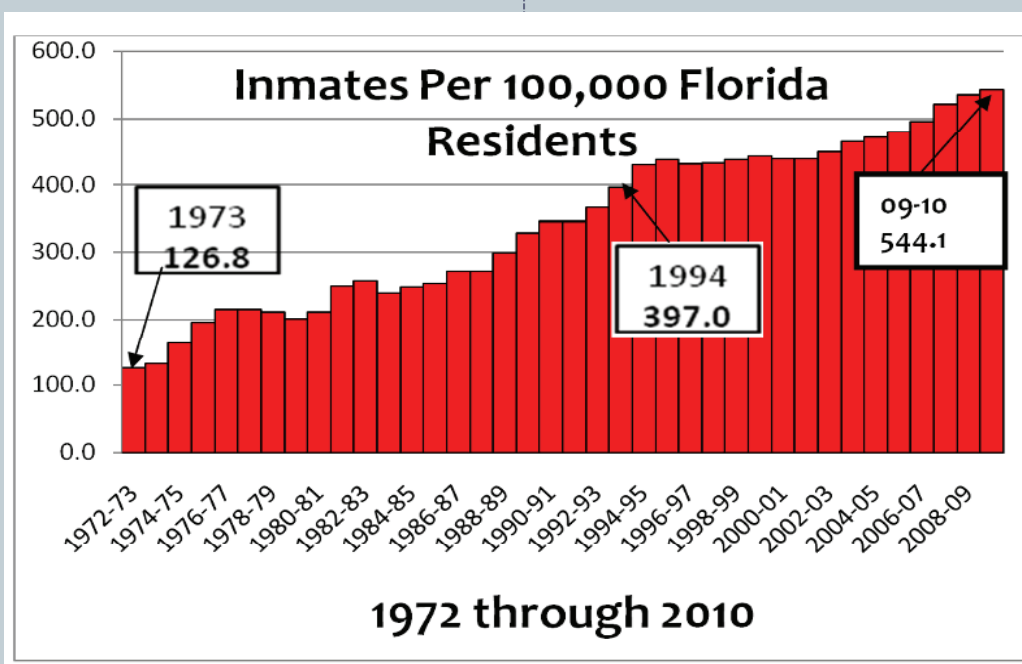


**Sources:** Legislative Committee on Intergovernmental Relations (LCIR) and Office of Economic and Demographic Research

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**TaxWatch**

# Increase Caused by Higher Incarceration Rate

**Increased rates of incarceration offer diminishing returns that are costly and do not enhance public safety**



- Florida spent \$2.4 billion to maintain its prison population in FY2009-10

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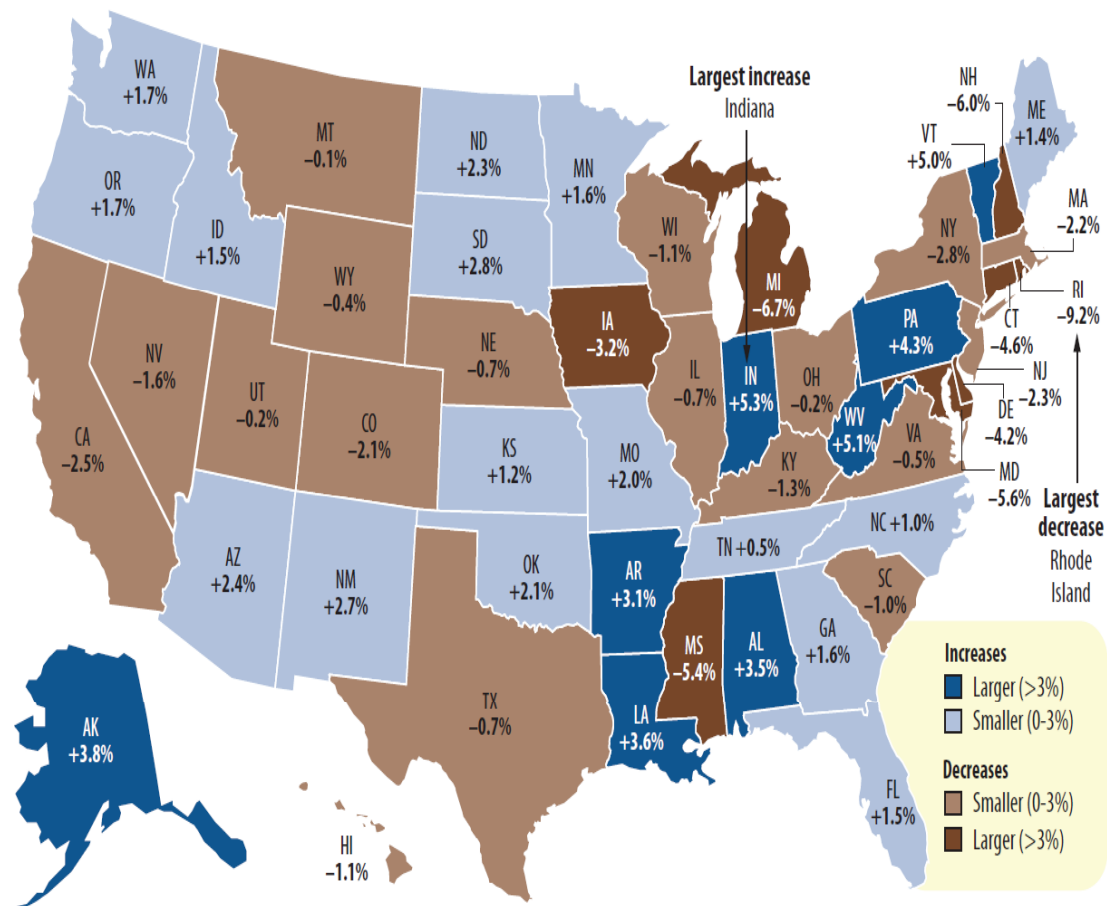
# Other States Have Decreased Crime While Decreasing Incarceration Rates

**26 states reduced  
prison rolls last year,  
even tough on crime  
states such as Texas,  
Mississippi, & South  
Carolina**

**Florida's had second  
largest uptick  
nationwide**

## STATES MOVE IN DIFFERENT DIRECTIONS

Percent change in state prison populations, 2008–2009.



NOTE: Percent change is from December 31, 2008 to January 1, 2010 unless otherwise noted in the jurisdictional notes.

SOURCE: Pew Center on the States, Public Safety Performance Project

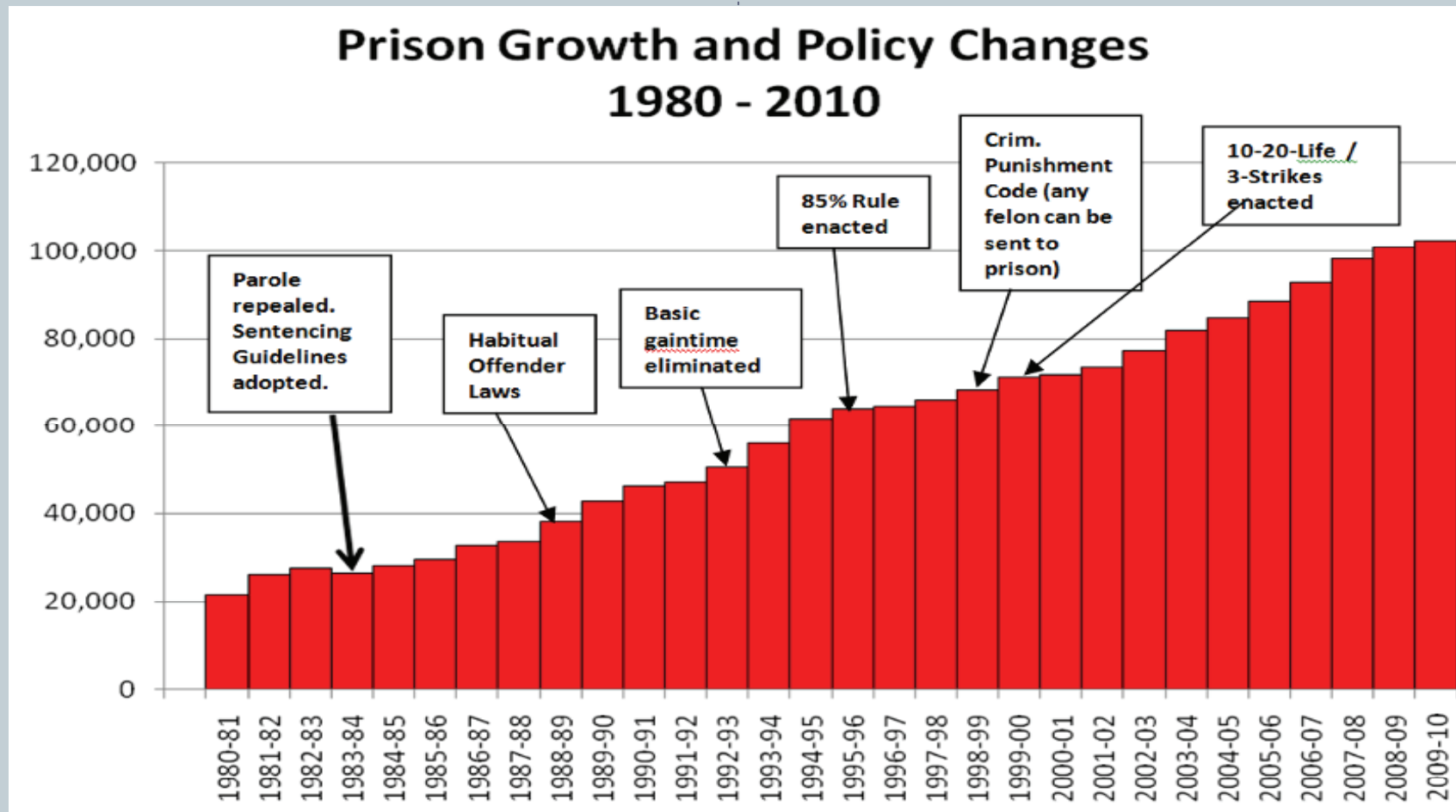


# Prison Population Drivers



- Elimination of Parole and Lengthened Sentences and Period of Incarceration
- Widespread Use of Short State Prison Sentences
- State Prison Incarceration for Technical Probation Violations for Adults and Juveniles
- Recidivism

# Elimination of Parole and Lengthened Sentences and Period of Incarceration Cause Growth

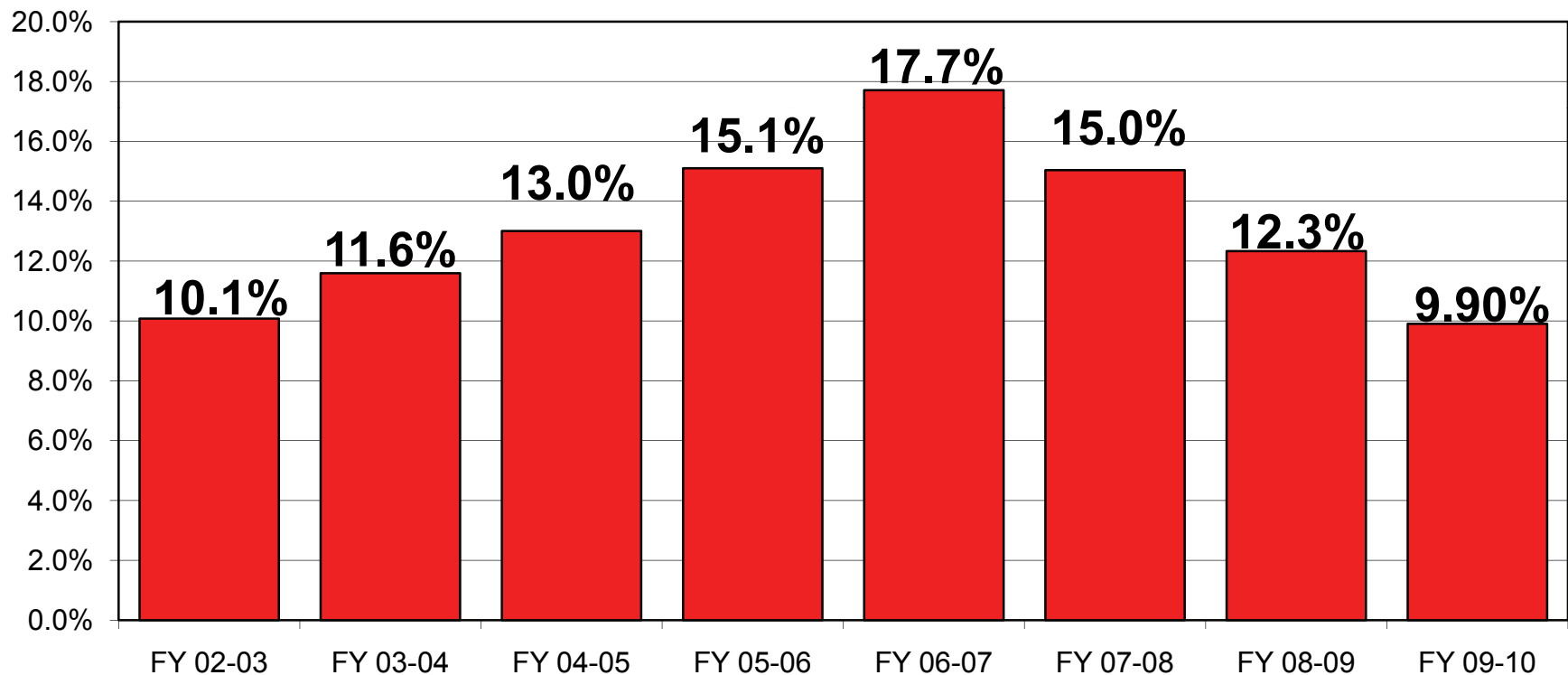


Source: Office of Economic and Demographic Research

# Widespread Use of Very Short Sentences Drives Growth



## Year- and-a-Day Sentences as Percent of All Sentences

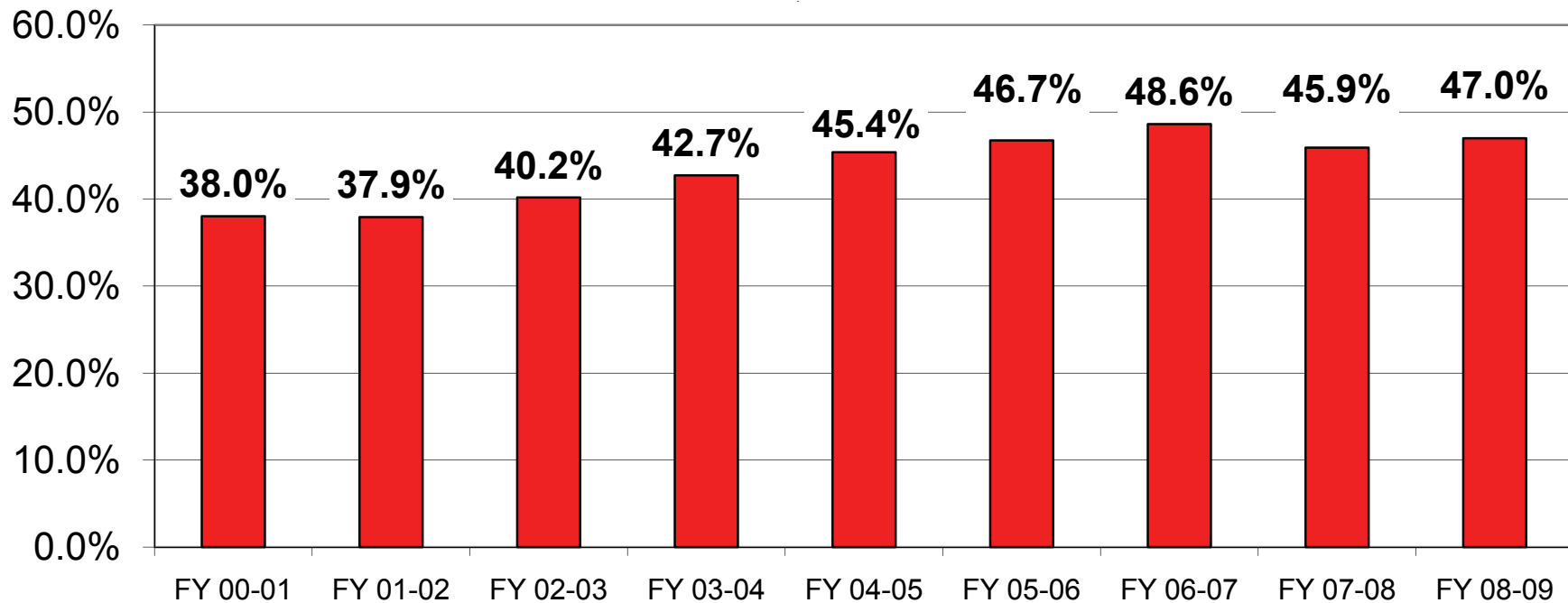


Source: Office of Economic and Demographic Research

# State Prison Incarceration for Technical Probation Violations for Adults and Juveniles

**The majority of prison inmates have NOT been sentenced for serious or violent crimes**

**Third Degree Felonies as Percent of New Commitments**



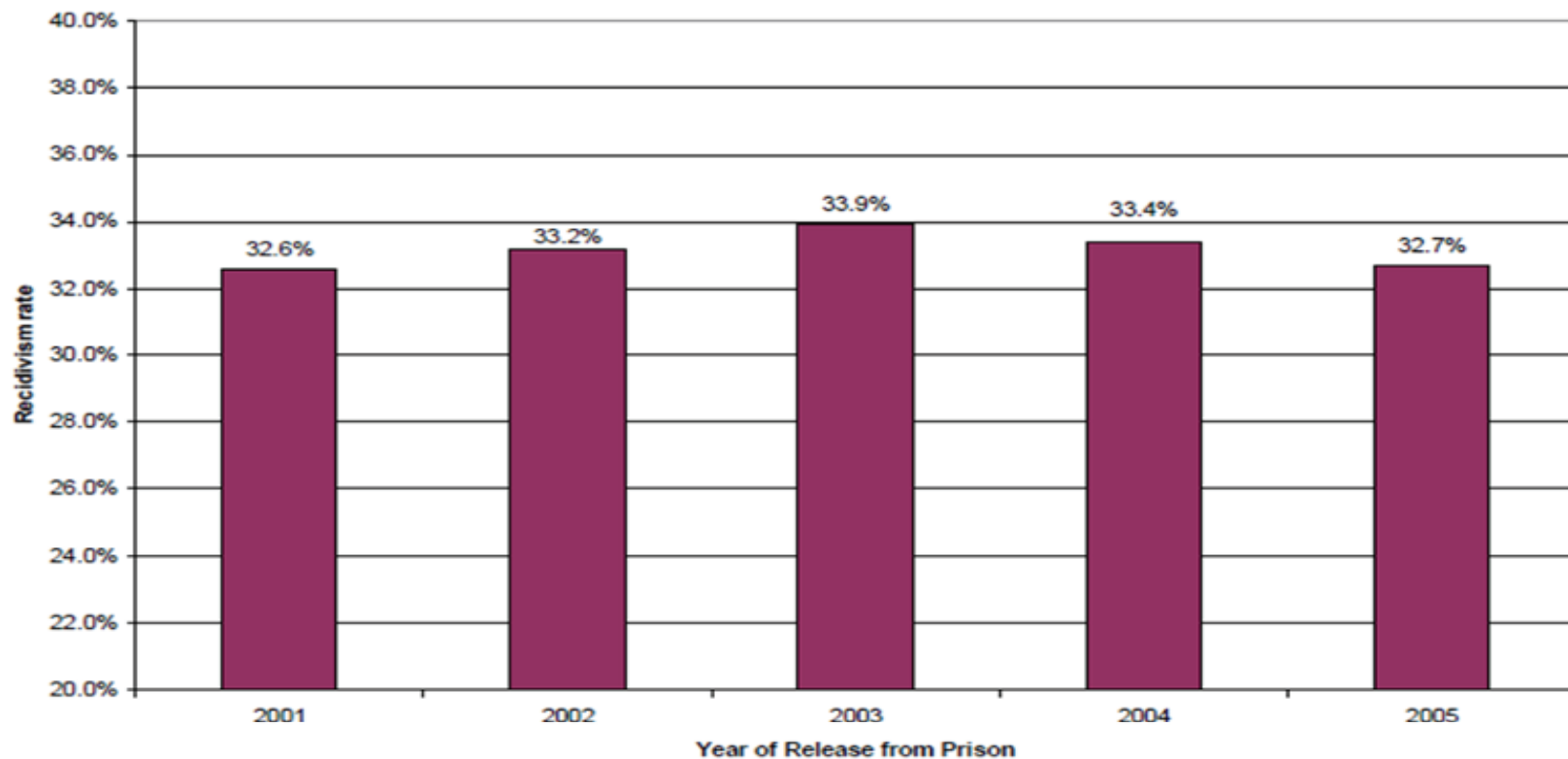
Source: Office of Economic and Demographic Research

# Recidivism Drives Growth



## RECIDIVISM RATES OVER TIME

Three year recidivism rate by year of release



Source: Florida Department of Corrections

# Other Issues that Spur Growth



## People with Serious Mental Illnesses

- Represents the fastest growing sub-population within Florida's prison system
- Over past 15 years, inmates suffering from mental illness has tripled

# Other Issues that Spur Growth - DJJ

## Criminalizing Youth Instead of Offenses

- Most youth offenders charged with non-violent property or drug crimes
- \$50 million spent on youth committed to residential facilities
- 40% of all children are committed for technical violations of probation or misdemeanors
- Average length of stay has increased 30% in past ten years – trend that cost nearly \$20 million last year

# Recommendations for Justice Reform



Current Trends in Florida's Corrections, Criminal, and Juveniles Justice System are Unsustainable.

Report contains **24 Recommendations** worth nearly \$400 million in cost-savings to help save taxpayer dollars, improve public safety, & hold offenders accountable.





# **Section I: Big Picture Recommendations**

*Ideas that are essential to long-term cost containment and improved public safety*

# Create a Commission to do a top-to-bottom review of the Criminal Justice System & Corrections



Recommendation: Create a Commission composed of members of the executive and judicial branches along with experts in the field to do a data-driven assessment of the System to find comprehensive, actionable reforms to improve public safety and slow prison growth.

# Establish an Independent Oversight Body over the DOC and DJJ



Recommendation: An independent entity responsible to the Governor and Legislature should be established with oversight, investigating, monitoring, and reporting authority over DOC and DJJJ to review and report on the departments based on established performance measures.

# Develop risk/needs assessment & cost-analysis tools to be used at the time of sentencing (Missouri model)



Recommendation: Develop a web-based tool that will assess an individual's sentencing options, defendant risk reduction, and sentencing costs and will be available to judges, attorneys, and the public.

**Section II:**  
**Cost-Saving**  
**Recommendations**  
**Related to People**  
**Convicted of**  
**Low-level Offenses/**  
**Short-term Sentences**

# Require written justification for state prison sentences given to individuals with low sentencing scores – 44 or less



- Currently 22 or less to require written justification
- If 50% of individuals with 44 or less were to be diverted from prison,  
the state would **save \$31.4 million annually**

# Incentivize localities for reducing their rates of state incarceration & increasing local alternatives



- Change incentives to impose state prison sentences on people better served in local communities
- Assuming the percent of inmates sentenced a year-and-a-day continues to decline 9% annually, it is estimated that Florida **could save up to \$51.3 million.**

# Align Florida's marijuana and cocaine possession laws with Texas and other similar states



➤ States are making changes to their drug laws to reduce penalties from felonies to misdemeanors.

i.e. Felony Marijuana Possession:

➤ Florida: 7/10 of an ounce

➤ Texas: 4 ounces

➤ If half of first-time offenders were diverted from prison, **the state could save approx. \$6.7 million annually.**



# Update Value Thresholds for Property Felonies



- Most theft, fraud, and other property offenses are felonies at \$300 threshold
- Increasing the dollar threshold that makes property offenses a felony to be in line with other states could **save the state nearly \$300,000 annually** for every 1% of inmates diverted from prison.

## Amend the Driving with a Suspended License Law to Reduce the Penalty from Felony to Misdemeanor when the reason for suspension is inability to pay a financial obligation



- More failures-to-pay, such as court fines and child support, are now punished with suspended license which has spiked prison commitments in recent years.
- For every 1% of these individuals diverted from prison, the state could **save \$180,000 annually**.

# Expand Electronic Monitoring as an Alternative to State Prison Sentences



- Studies have found that the release of nonviolent offenders at different levels of their incarceration to electronic monitoring for the remainder of their sentence reduces the likelihood of recidivism.
- If EM is used for the last 20% of the sentence, the state could **save more than \$43 million annually.**

# Expand Adult Post-adjudicatory Drug Courts



Recommendation: Expand drug court criteria to serve offenders who are cited for technical probation violations and give judges discretion to allow offenders with prior violent offenses who are appropriate for treatment to participate.

**Section III:**  
**Cost-Saving**  
**Recommendations**  
**related to Incarceration,**  
**Release, Supervision, and**  
**Reducing Recidivism**

# Institute Adult Post-incarceration Drug Courts



50% of those sentenced for drug crimes need substance abuse treatment but current programs serve only a small portion of those needing treatment.

Recommendation: Allow some nonviolent offenders to participate in drug court programs after serving 60% of their sentence so as to continue their monitoring but also receive treatment at a lower cost to the state.

# Increase the maximum gain-time accrual allowed



- Currently, DOC may not grant incentive gain time that exceeds 15% of an offender's sentence.
- Adjusting the cap would incentivize the prisoners to engage in constructive behavior and reentry programming that would result in savings to the state without a risk to public safety.
- Flexibility to the 85% rule could **save Florida up to \$53 million in FY2011-12.**

# Authorize the possibility of parole for certain elderly offenders



- Florida is increasingly saddled with medical costs of an elderly prison population when some pose little, if any, risk to the public outside of prison.
- Create minimum qualifications for release of 20 to 25 years served before reaching 65 and no capital murder.
- If Florida released elderly prisoners who have served minimally 20 years, the **state could save \$2.6 million in FY2011-12.**



# Expand Prison Work Release Programs



- Expand programs to allow pre-screened, low-risk inmates to work at paid employment in the community and live at work release centers outside of prison during the last 15 months of their sentence and capped to 4 % of the inmate population
- Rescind the informal DOC policy of holding one prison bed in reserve for every work release bed
- **Florida could save more than \$20 million annually**, if these inmates served final 35% of max. sentence in programs.

# Expand sound prison-based programs that reduce recidivism



- 1/3 of inmates come back to prison within 3 years of release.
- Yet, Florida allocates only 1% of the Corrections budget to prison-based programming aimed at reducing recidivism.

Recommendation: A portion of the savings from front-end reforms should be reinvested in expanding prison and community-based programs that slow prison growth.

## A) Expand evidence-based Substance Abuse Treatments



- More than 65% of DOC inmates are in need of treatment but treatment slots were made available to only 7.4% of these inmates.
- Recommendation: Restore the \$10 million in DOC programming and target it to in-prison and community-based treatment.

## B) Expand evidence-based Mental Health Treatment



- Review and amend statutes to facilitate more effective system collaboration among stakeholders involved directly in the delivery of mental health services, particularly as they relate to continuity of care for individuals involved or at risk of becoming involved in the justice system.
- Pass the Community Mental Health & Substance Abuse Treatment & Crime Reduction Act.
- Authorize county court judges to order involuntary outpatient treatment as a condition of release for defendants with mental illnesses when appropriate.

## C) Expand Evidence-based Literacy, Educational, and Vocational Training



- More than 50% of DOC inmates were tested as reading at or below the 6<sup>th</sup> grade level in FY2008-09.
- For every education level an inmate gains, that person is 3% to 4% less likely to come back to prison.

Recommendation: An aggressive approach to find innovative ways to partner with community colleges and public and private workforce development entities to improve skill levels of inmates.

## D) Expand Life Management Skills Training

- Expanding the availability of rehabilitative and training programs that address criminal thinking to offenders who are on waiting lists or otherwise eligible could curb the rising inmate population and reduce recidivism.
- Recommendation: Implement evidence-based programming to address criminal thinking and provide release programming through facilitators rather than relying on self-study .

## E) Expand Faith- and Character-based Prisons



- Faith- and Character-based prisons have been found to improve institutional safety, reduce recidivism rates, and attract more volunteers.
- Currently, there are more than 10,000 on the waiting lists for such facilities. These facilities should be expanded by the DOC.

## **F) Help inmates apply for Medicaid, Social Security Income, and Veterans benefits prior to release**



Assistance to help offenders receive benefits to which they are entitled prior to release will help them succeed as they reenter into the community and reduce the likelihood they will return to prison.



# Review and Revise State-created Employment Restrictions Based on Criminal Records



- Many hurdles face people released from incarceration in successfully reentering into society and securing a job.
- There is a patchwork of state-created restrictions on employers and employees regarding candidates with criminal records.

Recommendation: Revisit and adopt the employment restriction reform recommendations made by the Governor's Ex-Offender Task Force.

# Expand the Florida Accountability Initiative for Responsible (FAIR) Probation



Targets probationers who are at highest risk of reoffending and discourages such offending with swift, predictable, and immediate sanctions.

Recommendation: Implement a pilot FAIR program in collaboration with state courts as a viable alternative to incarceration.

# Expand Veterans Courts



- Up to 50% of Veterans return from war with PTSD and many do not seek treatment.
- Veterans Courts offer treatment and diversion for non-violent offenders with high success rates.
- Such programs are also eligible for Federal grants.

# Reduce costs of inmate hospitalization (in non-DOC hospitals)



- DOC spends approx. \$50 million annually on hospitalization.
- Medicaid does not pay for care provided in DOC facilities. Inmate hospitalization outside DOC hospitals would pay these costs through Medicaid and lower the total cost.

Recommendation: Measures should be taken to ensure inmate remain Medicaid-eligible during incarceration so Medicaid can cover hospitalization costs when inmates receive care in non-DOC settings

**Section IV:**  
**Cost-Saving**  
**Recommendations**  
**Related to Juveniles in the**  
**Justice System**




**SPLC**  
**Southern Poverty**  
**Law Center**



# Fiscal Responsibility

*The Key to a Safer, Smarter, and Stronger Juvenile Justice System*

December 2010



## Overreliance on incarceration in residential facilities

- Florida currently spends \$240 million annually on juvenile justice residential facilities that do not make Florida safer, but more vulnerable because they make low-risk children *more* likely to re-offend and they incur higher long-term costs to the state.
- Redirection of low-risk children produces better outcomes than incarceration at significantly less cost – **saving the state more than \$50 million in the past five years.**



## Residential Facilities are Costly to the State

- Children in residential facilities *stay 30% longer* than they did ten years ago, which costs the state *\$20 million annually*.
- Currently, Florida is on track to spend *\$70 million* to incarcerate children for misdemeanors and probation violations in FY2010-11.



# **5 Cost-Saving Recommendations**

# Comprehensively Review and Implement Blueprint Commission Recommendations



These recommendations will help Florida set out in a new direction that focuses on utilizing community resources and evidence-based approaches to juvenile offender rehabilitation and increase public safety while producing savings to the state and taxpayers.

# Study the Effects of Barring Commitment of Misdemeanants to State Custody



- More than 2,500 children were admitted to DJJ residential facilities for misdemeanors or probation violations in FY2008-09.
- States, such as Texas, North Carolina, and Virginia, have already barred the commitment of misdemeanants to state custody with great success.
- If Florida were to do the same,  
the **state would save \$30 million annually.**

# Expand the Redirection program to avoid custodial care of juveniles



- Youth who successfully completed the Redirection program are more than 30% less likely to subsequently rearrested.
- Florida's Redirection program has saved the state more than \$50 million since it began five years ago.

Recommendation: The Redirection Program should be expanded to serve wider geographical and socio-demographic populations.

# Expand the use of Juvenile Civil Citations



Implement early intervention and effective diversion programs at the local level for juveniles who commit minor crimes.

If the practice of Civil Citations were expanded statewide,  
**Florida could save nearly \$140 million annually.**

## **Increase Operational Efficiencies and Public Safety by Aligning the Average Length of Stay by Delinquents with Best Practices in residential facilities**



- Average lengths of stay have been steadily increasing at a significant cost to the state – \$20 million per year.
- Studies, such as the SPLC & FTW report, have found that children kept in facilities for prolonged periods are more likely to re-offend once released.

**Recommendation:** Examine the increasing average length of stay by young offenders.

# THANK YOU



## Government Cost Savings Task Force

### Chapter 2: Criminal and Juvenile Justice Reform

**Report**.....p. 29 - 44

**Recommendations**.....p. 45

#### *Section I: Big Picture Recommendations*

**11. Create a commission to do a top-to-bottom review of the Criminal Justice System and Corrections**

**12. Establish an independent oversight body over the Departments of Corrections and Juvenile Justice**

**13. Develop risk / needs assessment and cost-analysis tools to be used at the time of sentencing (Missouri model)**

#### *Section II: Recommendations Related to Sentencing People Convicted of Low-level/Short-term Sentences*

**14. Require written justification for state prison sentences given to individuals with low sentencing scores – 44 or less (currently 22 or less)**

**15. Incentivize localities for reducing their rates of state incarceration and increasing local alternatives**

**16. Align Florida’s marijuana and cocaine possession laws with Texas and other similar states**

**17. Update value thresholds for property felonies**

**18. Amend the driving with a suspended license law to reduce the penalty from felony to misdemeanor when the reason for the suspension is inability to pay a financial obligation**

**19. Expand electronic monitoring as an alternative to state prison sentences**

**20. Expand adult post-adjudicatory drug courts**

#### *Section III: Recommendations Related Incarceration, Release, Supervision, and Reducing Recidivism*

**21. Institute adult post-incarceration drug courts**

**22. Increase the maximum gain time accrual allowed**

**23. Authorize the possibility of parole for certain elderly offenders**

**24. Expand prison work release programs**



- 25. Expand evidence-based prison-based programs that reduce recidivism**
  - A. Expand evidence-based substance abuse treatment**
  - B. Expand evidence-based mental health treatment**
  - C. Expand evidence-based literacy, education and vocational training**
  - D. Expand life management skills training**
  - E. Expand faith- and character-based prisons**
  - F. Apply inmates for Medicaid, SSI, and VA benefits prior to release**
- 26. Review and revise state-created employment restrictions based on criminal records**
- 27. Expand the Florida Accountability Initiative for Responsible (FAIR) Probation**
- 28. Expand Veterans Courts**
- 29. Reduce costs of inmate hospitalization (in non-DOC hospitals)**

***Section IV: Recommendations Related to Juvenile in the Justice System***

- 30. Comprehensively review and implement Blueprint Commission recommendations**
- 31. Study the effects of barring commitment of misdemeanants to state custody**
- 32. Expand the Redirection program to avoid custodial care of juveniles**
- 33. Expand the use of juvenile civil citations**
- 34. Increase operational efficiencies and public safety by aligning the average length of stay by delinquents with best practices in residential facilities**

## **Introduction**

For the last year, Florida TaxWatch and the Government Cost Savings Task Force have given special attention to the rising costs of Florida's criminal justice system, especially the state Department of Corrections.

With a prison population of over a hundred thousand costing taxpayers \$2.4 billion this year, we can no longer afford the broken policy choices that have led to this out of control growth without making our communities any safer or offenders more accountable.

We recognize that a myriad of factors are driving these rising costs and thus a multi-pronged approach is essential. It is not enough to home in on reducing recidivism through new prisoner reentry strategies. It is not enough to reform probation and reduce the number of people sent to prison on technical probation violations. It is not enough to address the growing share of the prison population doing very short-term sentences. It is not enough to look at sentence length or scale back some crimes from felonies to misdemeanors. And it is not enough to revisit our release policies.

Furthermore, Florida spent more \$400 million on the Department of Juvenile Justice in FY2010-11. In total, the FY 2010-11 Florida state budget appropriated more than \$2.7 billion to the Departments of Corrections and Juvenile Justice and authorized more than 34,000 FTEs.

All of these policies – and many more – must be addressed if we are to succeed in saving tax dollars, improving public safety and holding offenders more accountable.

We know that the 24 cost-saving recommendations set forth here do not exhaust all the possibilities. That is why Florida needs the contributions that an expert, data-driven criminal justice and corrections commission could add to the deliberations about justice reform. And that is why creating such a body is our first recommendation.

## **Background – Florida's stunning corrections growth**

Over the last forty years, Florida, like states across the nation, made a series of policy decisions that have driven a dramatic increase in its prison population, which reached 102,440 inmates on September 30, 2010,<sup>57</sup> up from 33,681 on June 30, 1988.<sup>58</sup> Inevitably, the costs associated with incarceration have increased just as dramatically. In 1988, the Corrections budget was \$502 million; in FY2010-11 it had jumped to nearly \$2.4 billion.

The growth in the prison population is not attributable to Florida's overall population growth. From 1970 through 2009, Florida experienced significant growth – a 2.7-fold growth in its population. But during that same period, the prisons grew *11.4-fold*.

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<sup>57</sup> Criminal Justice Estimating Conference, 10/19/09, Office of Economic and Demographic Research, The Florida Legislature

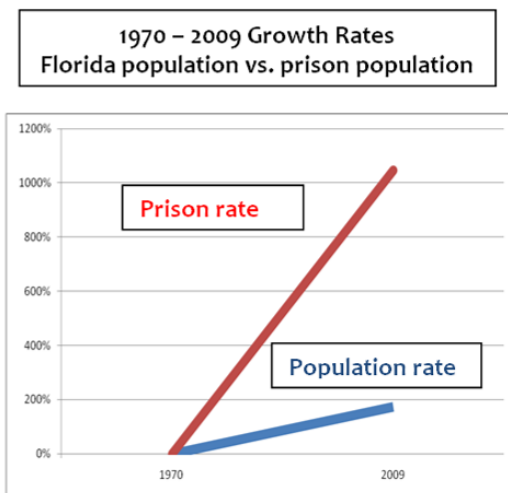
<sup>58</sup> Florida Department of Corrections. Available at: [www.dc.state.fl.us/oth/timeline/1988-1990.html](http://www.dc.state.fl.us/oth/timeline/1988-1990.html) (last retrieved December 6, 2010).

**Figure 9**

Florida Population growth and prison population growth						
	1970	1980	1990	2000	2009	
Florida Population	6,791,418	9,746,961	12,938,071	15,982,824	18,537,969	
		1970-1980	1980-1990	1990-2000	2000-2009	1970-2009
Percent Increase		43.5	32.7	23.5	15.9	172.9
		1970-1980	1980-1990	1990-2000	2000-2009	1970-2009
FL Prison Population	8793	19722	46223	71223	100894	
Percent Increase		124.3	134.3	54.1	41.7	1047.4

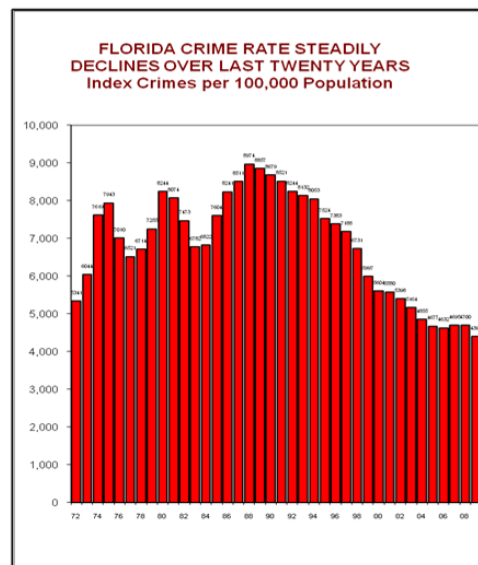
Crime rates do not explain the growth either. Crime rates fluctuated up and down during the seventies and eighties, but starting in 1988, the crime rate has declined steadily each year but one. The crime rate certainly did not increase more than 11-fold as the prison population has.

**Figure 10**



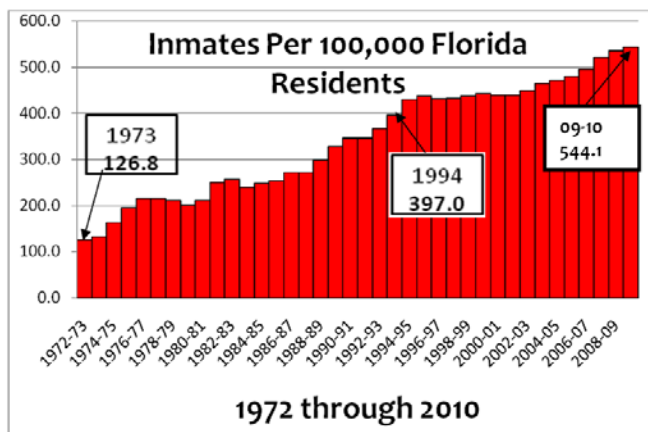
Sources: Legislative Committee on Intergovernmental Relations (LCIR) and Office of Economic and Demographic Research

**Figure 11**



Source: Office of Economic and Demographic Research

**Figure 12**



The increase in the prison population was achieved by increasing the *rate* of incarceration. Policy choices dictated that result. The rate of incarceration is the percent of people that Florida locks up in prison. It has jumped from .13 percent to .54 percent. Forty years ago the rate of incarceration was one quarter of what it is today.

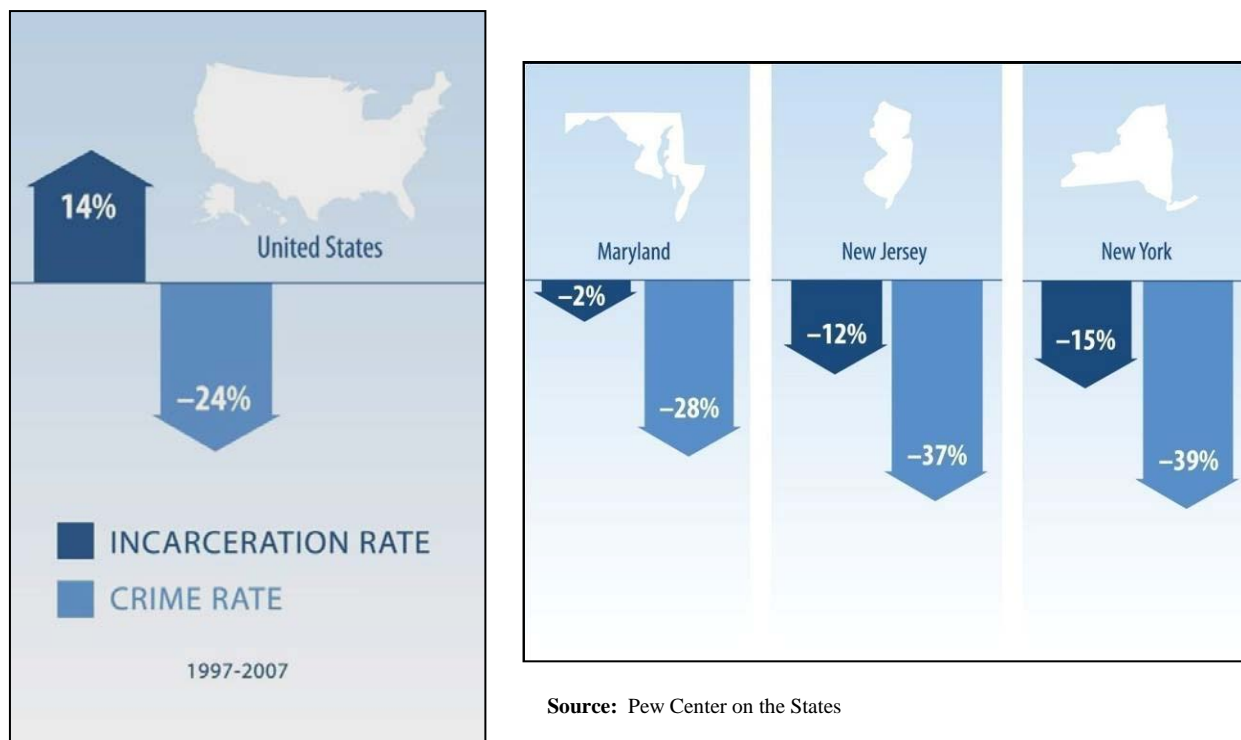
**If Florida incarcerated people today at the same rate as in FY1972-73 (126.8 per 100,000), the prison population would be 23,848, at a cost of \$446 million instead of the \$2.4 billion Florida spent in FY2009-10.**

It is tempting to credit the decline in crime to the increase in the rate of incarceration. Some have tried hard to make such a case, but research shows that while some decrease in crime is attributable to incarcerating dangerous criminals, after a point, increased rates of incarceration offer diminishing returns and a negative benefit-to-cost ratio. This is especially true when we increasingly incarcerate people for nonviolent drug offenses and other low-level crimes.<sup>59</sup>

The Vera Institute for Justice examined the key studies on this issue 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>60</sup>

Indeed, several states are finding that they can decrease their crime rates while simultaneously decreasing their incarceration rates, as demonstrated in **Figure 13**.

**Figure 13**

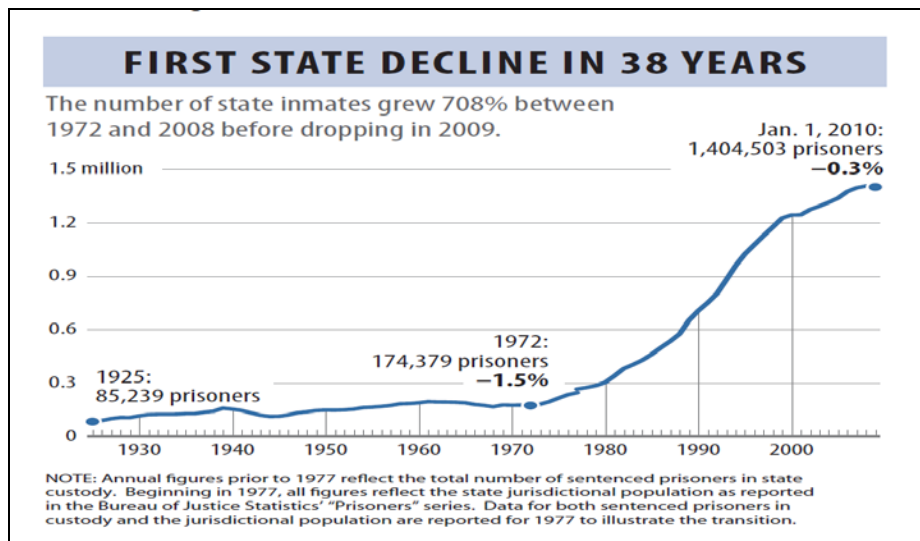


How has this been achieved? By data-driven strategies designed both to improve public safety and save taxpayers money.

<sup>59</sup> Pew Center on the States, Public Safety Performance Project, *One in 31: The Long Reach of American Corrections*, March 2009, at 17-21.

<sup>60</sup> Stemen, Don, *Reconsidering Incarceration, New Directions for Reducing Crime*, Vera Institute of Justice, January 2007.

**Figure 14**



Source:  
Pew Center on  
the States

States are now reexamining and revising the policy choices that led to such spectacular prison growth. As a result, in 2009, the United States prison population declined for the first time in 38 years.<sup>61</sup> Twenty-six states reduced their prison rolls in 2009, including some of the toughest on crime states such as Texas, Mississippi and South Carolina, which have enacted reforms to stem the tide of growing prison populations.

Unfortunately, Florida was not among them. While modest policy changes over the last couple of years have caused Florida's prison admissions to decline (by 5.6 percent in FY2009-10 over the previous year, and by 5.3 percent in FY2008-09 – after increases in each of the previous 11 years), Florida's prison population nonetheless grew by 1,527 inmates in 2009, making it the state with the second largest uptick in its prison population last year.<sup>62</sup> And on October 19, 2010, the Legislature's Criminal Justice Estimating Conference predicts that Florida's prisons will continue to grow – reaching 109,178 by FY2015-16.

### **The four main drivers of prison population growth**

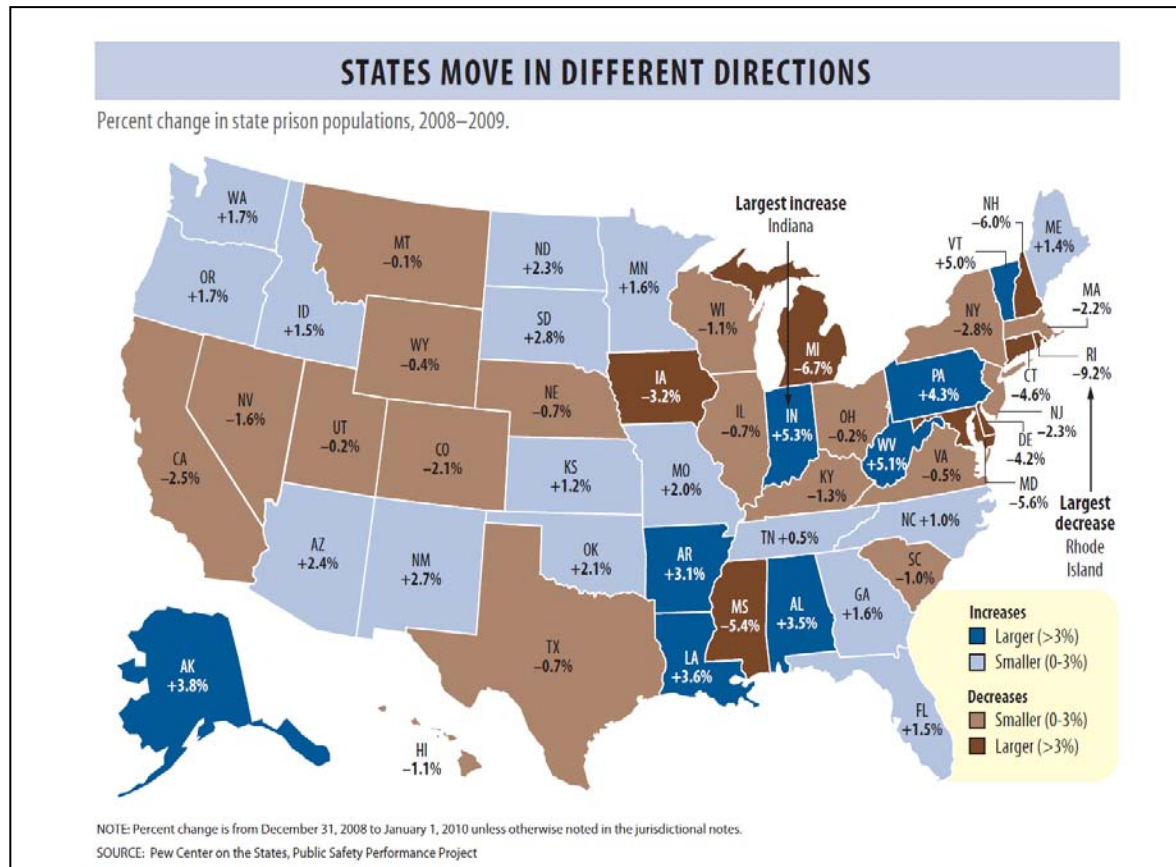
The policy changes Florida has made over the last thirty years are still very much being felt. Reviewing patterns of growth over the past thirty years, the Florida TaxWatch Government Cost Savings Task Force has identified four primary drivers of growth:

- **The elimination of parole and the adoption of policies lengthening both sentences and the period of incarceration**
- **Widespread use of very short state prison sentences in lieu of community-based alternatives (e.g., jail, probation, treatment, electronic monitoring)**
- **State prison incarceration for technical probation violations**
- **Recidivism – people *returning* to prison for new crimes or violations**

<sup>61</sup> Pew Center on the States, *Prison Count 2010*, April 2010.

<sup>62</sup> Pennsylvania had the largest increase.

Figure 15



#### STATES WITH INCREASES

Maine	+31
North Dakota	+34
South Dakota	+92
Kansas	+102
Vermont	+105
Idaho	+110
Tennessee	+145
Minnesota	+154
New Mexico	+176
Alaska	+190
Oregon	+237
Washington	+307
West Virginia	+308
North Carolina	+389
Arkansas	+455
Oklahoma	+533
Missouri	+606
Georgia	+843
Arizona	+934
Alabama	+1,053
Louisiana	+1,399
Indiana	+1,496
Florida	+1,527
Pennsylvania	+2,122

-4,257	California
-3,260	Michigan
-1,699	New York
-1,315	Maryland
-1,257	Texas
-1,233	Mississippi
-945	Connecticut
-602	New Jersey
-479	Colorado
-371	Rhode Island
-313	Illinois
-300	Delaware
-290	Kentucky
-281	Iowa
-268	Wisconsin
-252	Massachusetts
-235	South Carolina
-204	Nevada
-195	Virginia
-173	New Hampshire
-80	Ohio
-64	Hawaii
-30	Nebraska
-11	Utah
-9	Wyoming
-2	Montana

#### STATES WITH DECREASES

NOTE: Change is from December 31, 2008 to January 1, 2010 unless otherwise noted in the jurisdictional notes.  
SOURCE: Pew Center on the States, Public Safety Performance Project

Florida's policy changes affected both sentencing and the period of actual incarceration in cases both of people convicted of minor nonviolent offenses (who after 1998 could be sent to prison for any felony) and those convicted of serious violent offenses (whose sentences were lengthened).

**The elimination of parole and the adoption of policies lengthening sentences and incarceration have driven prison growth.**

Parole was eliminated in 1983, which, in 1980, had been the method of release for 62% of the state's prisoners. In eliminating parole, Florida followed the national "truth in sentencing" trend. Instead of the state evaluating whether an individual is appropriate for release under supervision, the majority of prisoners are not assessed for readiness or fitness. Nor are they supervised upon release.

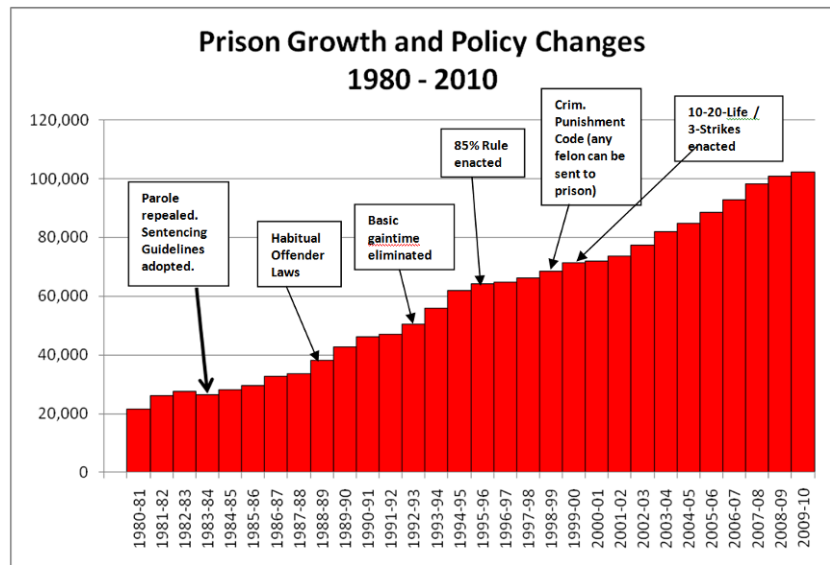
In FY2009-10, 64 percent of prisoners (23,909) were released upon the expiration of their sentence, completely reversing the practice prior to 1983.

Approximately 5,000 are still eligible for parole; they were sentenced before 1983. But in FY 2008-9, 0.1 percent -- just 42 of the **37,391** inmates released -- were paroled.<sup>63</sup>

When parole was eliminated, basic gain time (which reduced the number of days of incarceration without regard to the inmate's conduct) came to be used as a tool in the eighties and early nineties to reduce prison overcrowding.

In 1995, in response to the use of gain time simply to decrease overcrowding and the resulting relatively low percentage of sentenced time actually served, and in response to certain high profile crimes, the Legislature enacted a law [944.275 (4)(b)(3), F.S.] requiring prisoners to serve 85 percent of their sentences and eliminated basic (non-merit) gain time, though it preserved incentive gain time.

**Figure 16**



Source: Florida Office of Economic and Demographic Research

<sup>63</sup> Florida Dept. of Corrections Annual Report, 2008-09.



With the elimination of basic gain time and the restrictions placed on incentive gain time (based on good conduct) pursuant to the law mandating serving 85 percent of one's sentence, inmates began serving significantly higher percentages of their sentences.

**Figure 17**

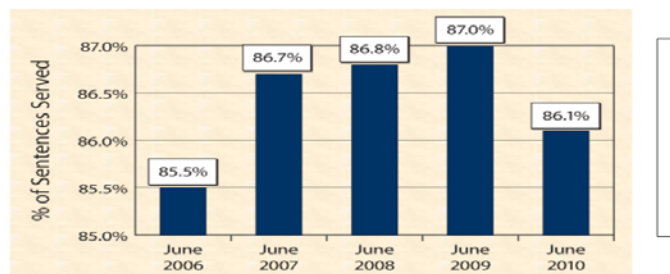
### Time Served is Lengthening: Truth in Sentencing (85% rule – Gain-time slashed)

In 1995, the Legislature enacted a requirement that individuals sentenced to prison must serve a minimum of 85% of their court-imposed sentence. Since imposition of 85% requirement, average time served in state prison has increased.

**Average time served**

**FY 1994-95**  
**27.3 months**

**FY 2008-09**  
**35.5 months**



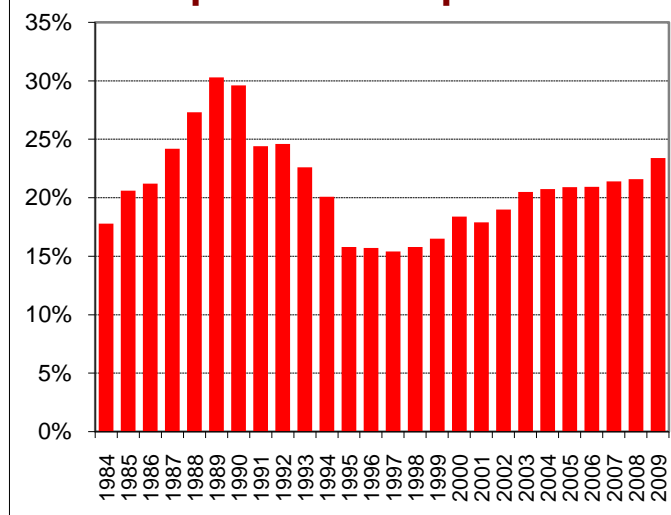
Incentive gain-time is limited to up to 10 days per month. When the inmate's tentative release date becomes equivalent to the 85% minimum service date, the inmate is prohibited from earning further gain-time awards.

In 1995, the Legislature also reduced the sentencing discretion of judges by creating presumptive minimum sentences through the establishment of sentencing guidelines, which were modified in 1994, and then again in 1995, 1996 and 1997, each time increasing the penalties. In 1998, the guidelines were prospectively repealed and replaced by the Criminal Punishment Code [921.002, et seq., F.S.] which maintains the basic structure of presumptive minimum sentences, while preserving upward discretion.

The Criminal Punishment Code allows a judge to sentence any person convicted of a felony to prison, whereas under the repealed Guidelines, people convicted of low-level felonies and without much in the way of a criminal history could not be sentenced to prison.

**Figure 18**

### Percent of Guilty Dispositions Imprisoned



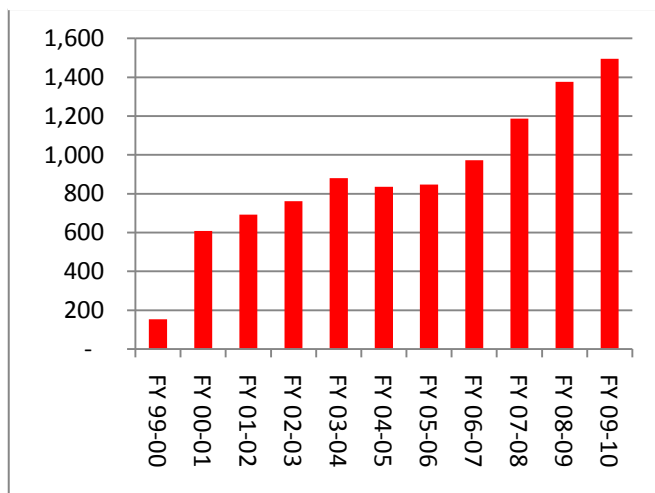
**Source:** Florida Office of Economic and Demographic Research



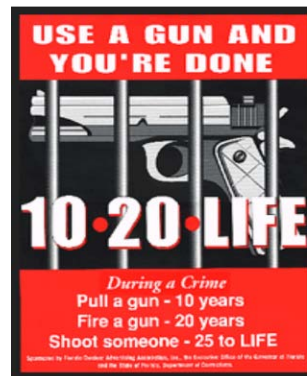
Presumptive sentencing generally serves to increase the percentage of people who are convicted being sent to prison, as has happened in Florida.

In 1999, the Legislature also increased the instances in which longer sentences and life sentences could be meted out. The law, officially 3-10-20-Life but colloquially called 10-20-Life, mandates stiff sentences for gun crimes. Incarceration under this law has increased by more than 145% since 2000, the first year of implementation.

**Figure 19: Incarceration under 3-10-20-Life**



**Figure 20**

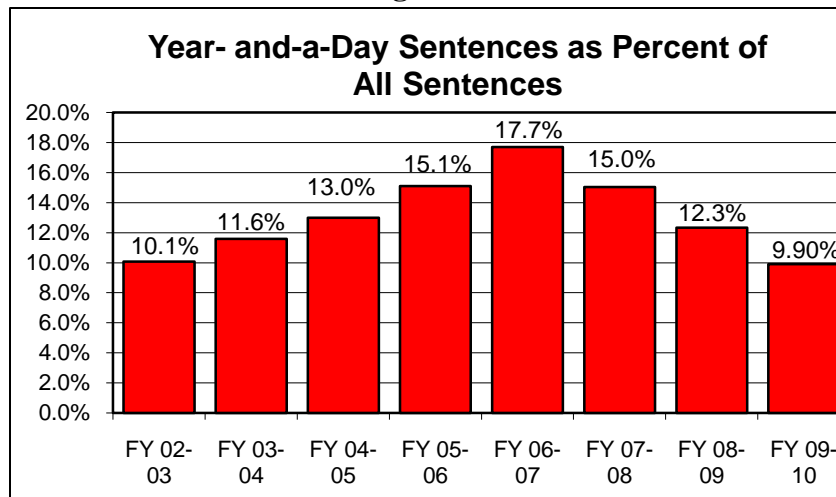


**Source:**  
Florida Office of Economic and Demographic Research

### Widespread use of very short sentences drives growth.

While stiffer sentences for serious crimes became the norm over the last few decades, another trend emerged as well. When judges were given the discretion to sentence people to prison who were convicted of the very least serious felonies (and as increasing numbers of felonies were created), that discretion came to be exercised in many counties to hand out sentences just long enough (one year and a day) that it would be served in state prisons (at state cost) rather than in local jails or community alternatives (at county cost). Such sentencing varies widely among the counties.

**Figure 21**



**Source:** Florida Office of Economic and Demographic Research

Clearly, the practice of year and a day sentences is not as widespread as just a few years ago, but the wide variations in its use are as prevalent as ever.

**Figure 22**

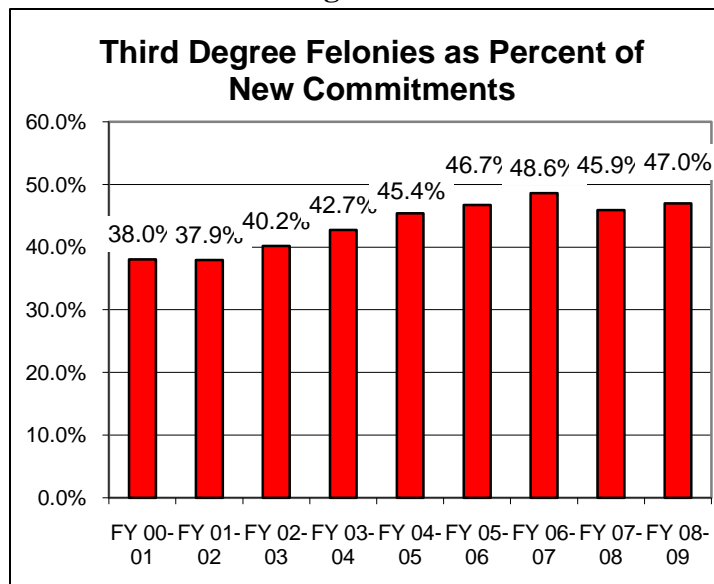
**New Commitments and Change in New Commitments by County**

Counties Decreasing Use of Year and A Day Sentences				
County	FY 2007-08	FY 2008-09	Change	Change %
Hillsborough	3,846	3,090	(756)	-19.7%
Broward	3,734	3,170	(564)	-15.1%
Polk	2,429	2,049	(381)	-15.7%
Pinellas	2,674	2,310	(364)	-13.6%
Alachua	821	634	(187)	-22.8%
Marion	1,349	1,173	(177)	-13.1%
Miami-Dade	2,575	2,449	(126)	-4.9%
Seminole	478	363	(115)	-24.1%
Bay	1,146	1,039	(107)	-9.3%
Volusia	1,157	1,054	(103)	-8.9%
Okaloosa	519	426	(94)	-18.0%
Sub-total	20,729	17,756	(2,973)	-14.3%
Counties Increasing Use of Year and A Day Sentences				
Santa Rosa	239	321	82	34.3%
Pasco	782	864	83	10.6%
Martin	340	439	98	28.9%
Escambia	1,136	1,275	138	12.2%
Brevard	1,194	1,340	145	12.2%
Saint Lucie	720	959	239	33.1%
Orange	1,649	2,025	376	22.8%
Duval	1,694	2,113	419	24.7%
Sub-total	7,754	9,335	1,581	20.4%
All other counties	12,008	11,641	(367)	-3.1%
<b>Total</b>	<b>40,491</b>	<b>38,732</b>	<b>(1,759)</b>	<b>-4.3%</b>

**Source:**  
Florida Office of  
Economic and  
Demographic  
Research

What is also apparent from analysis of the data is that there is no correlation among the counties regarding their relative population sizes, crime rates, felony filings, and prison admissions. For example, Miami-Dade County, with the largest population and the most felony filings sends *fewer* people to prison than Broward or Hillsborough County.

**Figure 23**



**Source:** Florida Office of Economic and demographic Research

Contrary to common wisdom (and common sense), the majority of prison inmates have not been sentenced for serious or violent offenses.

In fact, Chart X shows that an increasing high percentage of Florida inmates are serving prison sentences for non-violent third-degree felonies (which is the lowest level of felony in Florida), which is largely due to the discretion granted to judges in 1995 to sentences such low level offenders to

state incarceration (instead of jail sentences of less than 365 days). This situation also contributes to the growing share of inmates sentenced to short stents in prison.

Further contributing to the large share of short sentences is the percent of prisoners sentenced for crimes denominated “other.”

Over the past thirteen years, the share of violent offenses accounting for prison admissions decreased by 28 percent. During that same period, the share of admissions for “other” offenses, i.e., offenses that are nonviolent, are not property crimes, and are not drug crimes increased by 189 percent.<sup>64</sup>

One of the “other” offenses is driving with a suspended license -- the charge that landed a 78-year-old grandmother in the Broward County jail for 15 days in January 2010.<sup>65</sup>

**Figure 24**

FLORIDA NEW COMMITMENTS FOR OTHER OFFENSES						
	Time period		Percent		Change	Percent Change
	FY 2008-09	FY 2009-10	FY 2008-09	FY 2009-10		
Drive with license suspended/revoked	1,311	769	31.6%	23.9%	(542)	-41.3%
Felony DUI (3rd or 4th conviction)	462	350	11.1%	10.9%	(112)	-24.2%
Fleeing/eluding LEO offenses	1,072	918	25.8%	28.6%	(154)	-14.4%
Sex offender registration offenses	567	512	13.7%	15.9%	(55)	-9.7%
Remainder of offenses in "Other" category	741	666	17.8%	20.7%	(75)	-10.1%
<b>Total</b>	<b>4,153</b>	<b>3,215</b>	<b>100.0%</b>	<b>100.0%</b>	<b>(938)</b>	<b>-22.6%</b>

Some efforts have been made to address this problem, and fewer offenders were committed for “other” offenses in FY2009-10 than in FY2008-09, but even so 3,215 people were sentenced in FY 2009-10 to prison for “other” offenses, including 769 (accounting for 24% of all “other” offenses) for driving with a suspended or revoked license.

A final factor driving growth for low-level crimes – here drug and property offenses – is that the core definitions have not been revised in many years. When the dollar threshold making it a third-degree felony to steal \$300 in property was enacted, and when possession of less than an ounce of marijuana was made a felony, judges could not sentence most first-time third-degree felony offenders to prison.

<sup>64</sup> Florida Dept. of Corrections Annual Reports, 1995-96 and 2007-08.

<sup>65</sup> Christensen, Dan, “Hallandale Beach grandma sent to jail -- and forgotten,” *Miami Herald*, January 12, 2010.

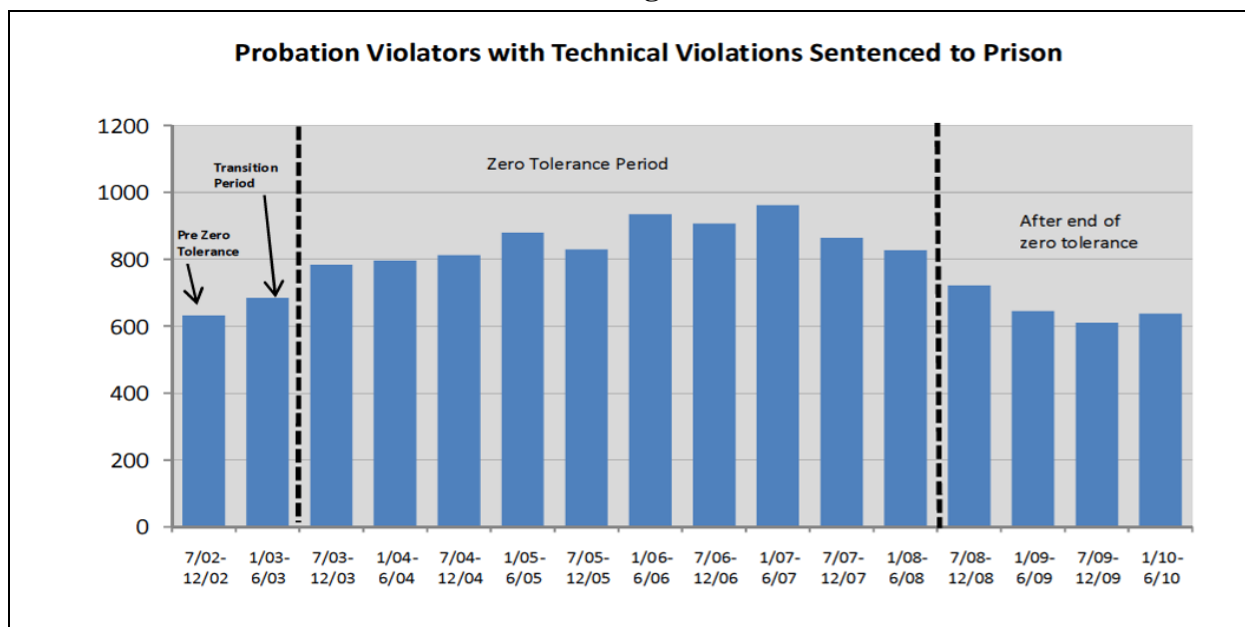
### **Incarcerating people for technical probation violations drives growth, too**

The terms of probation are set by the court at sentencing and typically include: reporting to the probation officer; permitting home visits by the probation officer; obtaining and maintaining employment; abiding by travel restrictions; paying restitution, fines and child support; complying with restrictions on living arrangements, associations, and contact with the victim; and submitting to required drug testing. Violating any of these terms can result in a technical probation violation, which can result in the implementation of a prison sentence by a judge.

Under the Criminal Punishment Code, judges have retained a measure of discretion in sentencing those convicted of low-level offenses (e.g., third-degree felonies) and may sentence those with fewer than 44 points on the required score sheet to a non-prison sentence. Often, this means placing the individual on probation. If the person sentenced to supervision violates the terms of supervision, the offender can be sent to prison *at the discretion of a judge*.

In 2003, the DOC implemented a “zero tolerance” approach to probation violations in the wake of a couple of high profile crimes committed by individuals under state supervision. Although the zero tolerance policy has since been rescinded and a more flexible approach relying on a judge’s discretion has been implemented, probation violations and subsequent revocations are still driving growth. In fact, in FY 2009-10, 7,479 people were sent to prison not for committing a new crime but for technical probation violations.

**Figure 25**

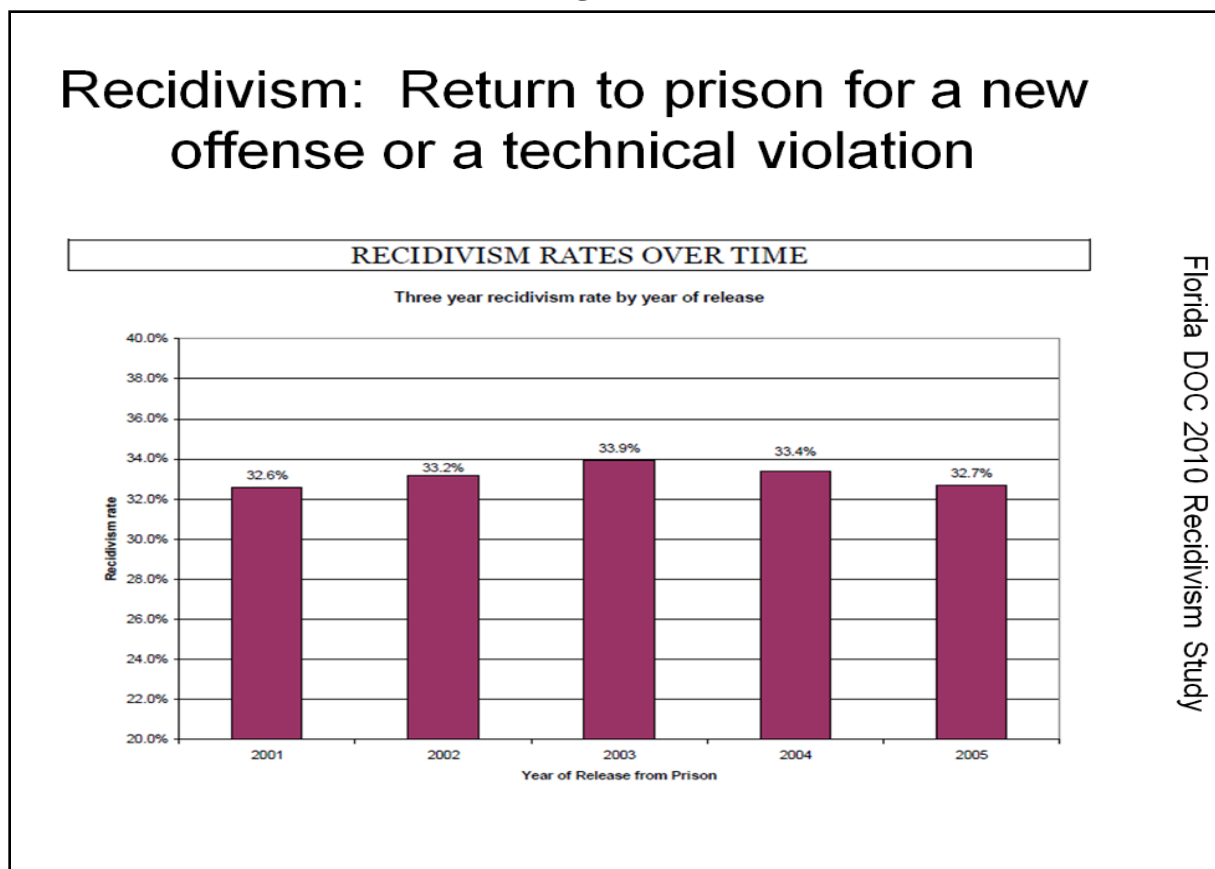


### **Finally, recidivism drives growth**

While the Department of Corrections has revised its mission statement to include “reentry” [defined as “to protect the public safety, to ensure the safety of Department personnel, and to provide proper care and supervision of all offenders under our jurisdiction while assisting, as

appropriate, their re-entry into society”], and has committed to focusing on reducing recidivism, **recidivism (as measured by returning to prison for a new crime or a probation violation) continues to drive prison growth.**

**Figure 26**



### **Other important issues in the growth of the criminal justice system**

In addition to the four main drivers of prison population, people with mental illnesses in the criminal justice system raise important challenges because they are poorly addressed by the current system and add to the overall population levels. Likewise, the lack of intervention programs for juvenile delinquents and the failure of the current system to deter those delinquents from becoming tomorrow’s prison inmates will continue to result in a more costly corrections system for Florida’s taxpayers.

### **People with mental illnesses involved in the criminal justice system**

Approximately 125,000 people experiencing serious mental illnesses (e.g., schizophrenia, bipolar disorder, major depression) are arrested and booked into Florida jails annually. On any given day, there are nearly 18,000 state prison inmates, 15,000 local jail detainees, and 40,000 individuals under correctional supervision in communities around the state who suffer from

serious mental illnesses. Although about half of these individuals are charged with low-level, non-violent offenses, many languish in prisons, jails and state-funded forensic treatment facilities for months or years because more cost effective placement alternatives do not exist.

**Figure 27**

<b>Population on June 30th</b>	<b>Total prison population</b>	<b>Number of inmates with mental illnesses</b>	<b>Inmates with mental illness as a percentage of total inmate population</b>
1996	64,333	6,777	10.5%
2009	100,894	17,957	17.8%
Growth:	56.8%	165.0%	69.0%

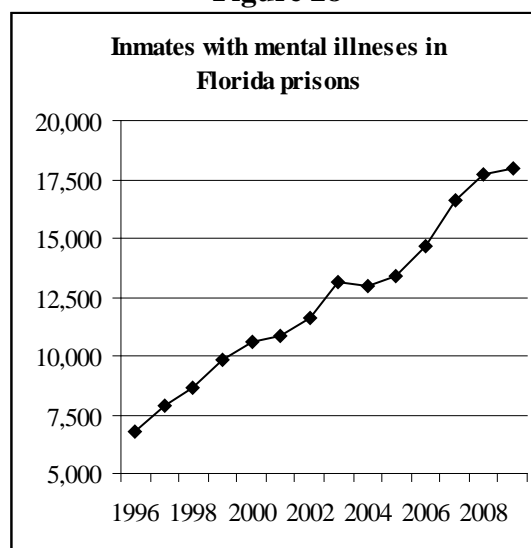
People with mental illnesses represent the fastest growing sub-population within Florida’s prison system. Between 1996 and 2009, the overall inmate population in Florida prisons increased by 57 percent, but the number of inmates suffering from mental illness increased almost three times more over the same period.<sup>66</sup>

#### **Expand evidence-based mental health treatment.**

Florida currently spends exorbitant amounts of money to provide mental health treatment services in prisons and other institutional settings; however the policies and practices that drive this investment are based on an outdated system of care that does little to prevent individuals from becoming involved in the justice system or to break cycles of crime and recidivism. In addition, the current system of care fails to account for the unique treatment needs and life experiences of people with justice system involvement.

Over the past several years, a task force convened by the Supreme Court of Florida has been working with leaders from all three branches of government, as well as the state’s leading experts on mental health and criminal justice, to address issues relating to the disproportionate representation of people with mental illnesses involved in the justice system. This body developed a report titled “Transforming Florida’s Mental Health System,” which details comprehensive recommendations for planning, leadership, financing, and service development. The recommendations made target evidence-based and sustainable approaches to treatment and service delivery that will help divert people with mental illnesses from the justice system into

**Figure 28**



<sup>66</sup> From 1996 – 2009 (the same time period), the number of prison inmates receiving ongoing mental health treatment in state prison increased by 165 percent. It is important to note that at least some of the increase in the number of people with mental health problems in prison is due to an increase in assessments and diagnosis of such conditions.

more appropriate community-based treatment and support services, while at the same time helping to ensure public safety. The report also outlines steps to begin shifting investment of state dollars from costly, deep-end services provided in institutional settings into more effective, efficient, and sustainable front-end services provided in the community. The Community Mental Health and Substance Abuse Treatment and Crime Reduction Act, which would implement many of the task force's recommendations, has been considered during past legislative sessions.

Recently, the Florida Senate released an interim project report reviewing preliminary outcomes of a pilot program implemented in Miami-Dade County which is based on recommendations made by the Supreme Court task force and targeted toward diversion of individuals from state forensic hospitals into community-based treatment and support services. The report identifies key systems level features necessary to ensure continuity of care and to effectively divert people away from the justice system including cross systems collaboration, effective communication, and leadership. In addition, the report identifies essential treatment elements necessary to ensure successful outcomes among justice system-involved individuals. Based on the early success of the program in Miami-Dade County, the Senate report suggests that the legislature may wish to expand the pilot program to other communities around the state. In addition, the Senate report recommends authorizing county court judges to order involuntary outpatient treatment as a condition of release for defendants re-entering the community who meet statutory criteria.

### **Florida's juvenile justice system – criminalizing youth instead of offenses**

In Florida, prevention, diversion and progressive sanctions policies have resulted in safely implementing a significant reduction in commitments to DJJ between FY2005-06 and FY2009-10.<sup>67</sup> More than \$85 million was saved in FY2008-09 alone as a result of these policies. These outcomes are notable, but reform was long overdue in Florida. In 2006, Florida incarcerated children at a rate 50% higher than the national average.

Recently, much work has been done focused on improving Florida's juvenile justice system. One important example of the progress toward a smarter juvenile justice system is the creation of the Florida Department of Juvenile Justice's Blueprint Commission. The 25-member Blueprint Commission addressed key concerns in the juvenile justice system such as repeat offenders, overrepresentation of minorities, and a growing female population.

In January 2008, the Blueprint Commission published *Getting Smart About Juvenile Justice*, which focuses rehabilitating youth offenders and reducing the use of restrictive sanctions for low-risk and misdemeanor offenders while reserving those restrictive sanctions for serious and habitual offenders. The report offers numerous suggestions for reforming Florida's juvenile justice system in ways that will rehabilitate and improve the lives of juvenile offenders, increase

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<sup>67</sup> From FY2005-06 to FY 2009-10, the number of DJJ commitments decreased by 28%. During the same period the overall crime rate also fell, which undoubtedly accounts for some portion of the decrease.

public safety, and produce significant savings for the state. Some of the recommendations have been implemented, but many have not yet been.

In spite of determined efforts and substantial progress over the past five years, there is still significant room for improvement.

Florida has adopted a practice of criminalizing youth offenders instead of criminalizing the offenses. From 2000 to 2008, the average length of stay for juveniles in residential facilities increased by 30%, a trend that cost nearly \$20 million last year alone.<sup>68</sup> Not only is the average length of stay too long, the number of incarcerated youth is too high.

DJJ continues to incarcerate large numbers of relatively low-risk youth. Nearly half (44%) of all children admitted to DJJ facilities in FY2008-09 were committed for misdemeanors and violations of probation.

Florida will spend more than \$50 million on children committed to non-secure residential facilities on misdemeanors and probation violations this year. Most of these youth are housed in large, congregate-care detention centers awaiting court hearings and are held in custody at costs ranging from \$100 to more than \$300 per day.

Few of these youth offenders are confined for serious offenses. Most are charged with non-violent property or drug crimes and 40% of all children are committed for technical violations of probation or misdemeanors, including non-violent property offenses and public order violations.

Reforms, such as prevention, intervention, diversion, and treatment, cost less than commitment. They are also better at holding youth accountable and reducing recidivism. While Florida must continue to incarcerate youth who pose serious risks to public safety, detention and incarceration of young people should be an option of last resort.

Tools such as risk assessment and sentencing guidelines let jurisdictions distinguish between youth who pose risks to public safety and those who would be better and more cost effectively served in less-restrictive settings.

Many juvenile justice systems have embraced community-based alternatives to institutionalization. These systems improve the life chances of juveniles in the justice system and reduce unwarranted costs while enhancing public safety.

Getting smart on crime requires efficient and effective use of limited resources in prevention, diversion, and intervention programs, especially when it comes to juvenile justice.

### **Conclusion**

As we have seen, Florida's 11.4-fold rate of prison population growth is simply unsustainable. There are more effective, less costly policy choices we can make to protect and improve public

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<sup>68</sup> Analysis by the Southern Poverty Law Center (unpublished report).



safety. The recommendations below address each of the policy choices that have led to these drivers of prison growth:

- **The elimination of parole and the adoption of policies lengthening sentences and incarceration**
- **Widespread use of very short sentences**
- **Incarcerating people for technical probation violations**
- **Recidivism – people *returning* to prison for new crimes or violations**
- **The lack of alternatives for people with mental illnesses**
- **The juvenile justice’s failure to rehabilitate system (i.e., criminalizing youth instead of offenses)**

## **Justice Reform Recommendations**

### **Section I: Big Picture Recommendations**

The first four recommendations will not result in immediate (i.e., July 1, 2011) cost savings, but are essential to long-term cost containment and the improvement of public safety.

#### **11. Create a commission to do a top-to-bottom review of the Criminal Justice System and Corrections**

Florida has not conducted a comprehensive review of the laws and policies that have been driving its prison growth, nor does it have an entity charged with the responsibility of doing so.

Senate Bill 2000, passed in 2008 (Chapter No. 2008-54), established the Correctional Policy Advisory Council, which was to evaluate “correctional policies, justice reinvestment initiatives, and laws affecting or applicable to corrections, and for the purpose of making findings and recommendations on changes to such policy, reinvestment initiatives, and laws,” and to advise the Legislature and Governor on such matters. Members were appointed but the Council never met; and the enabling legislation provides that the Council shall be abolished on July 1, 2011.

Such a body, but expanded in both scope and membership, is essential to the deliberative process necessary for meaningful, sustainable, cost-effective justice reforms. Virtually every state that has made the substantive policy changes that have succeeded in reducing the size of their corrections population has accomplished this through a bipartisan deliberative body engaging all three branches of government. Indeed, the Pew Center on the States’ Public Safety Performance Project requires such a cooperative effort for it to provide technical assistance in identifying the key drivers of prison growth and developing a menu of options to reverse the trend.

While this report contains many recommendations that can save tax dollars and improve public safety, we know it does not address all of the possibilities. Florida needs the contributions that such a deliberative body could add to justice reform.

**Recommendation:** *The Governor, with the bipartisan, bicameral cooperation of the legislature and judiciary, create a commission composed of members of the executive, legislative and judicial branches along with experts in criminology, sentencing, corrections, veterans affairs, mental health, substance abuse, reentry, and community supervision to do a top-to-bottom data-driven assessment of Florida’s corrections and criminal justice system with a focus on cost-effective ways to improve public safety while slowing prison growth. This commission should be required to produce comprehensive, actionable reforms in time for consideration by the legislature in 2012.*

## **12. Establish an independent oversight body over the Departments of Corrections and Juvenile Justice**

As the bipartisan Commission on Safety and Abuse in America's Prisons found in 2006, "All public institutions, from hospitals to schools, need and benefit from strong oversight. Citizens demand it because they understand what is at stake if these institutions fail. Prisons and jails should be no exception. They are directly responsible for the health and safety of millions of people every year, and what happens in correctional facilities has a significant impact on the health and safety of our communities. Corrections leaders work hard to oversee their own institutions and hold themselves accountable, but their vital efforts are not sufficient and cannot substitute for external forms of oversight."

As the March 2010 Florida TaxWatch report<sup>69</sup> and *Florida Trend* reported in July 2009, the critical component of any such oversight is the entity's independence. Under current law, the Corrections and Juvenile Justice inspectors general are appointed by the agency's secretary and may be removed without cause by the secretary. Indeed, in 2003, the Secretary of DOC fired the Inspector General who was uncovering the misconduct of a DOC employee who was a friend of the Secretary. Later, both the Secretary and the employee who was being investigated were indicted and incarcerated by the federal government – but by then, correctional oversight had already been compromised.

No scandal involving the Florida DOC inspector general's office has emerged since that time, but structurally, with the IG responsible to no one but the Secretary and able to be fired at will, there simply is not the independence needed. Nor is there adequate transparency. The IG's very brief annual report (most of it lays out its duties and authority rather than what has been accomplished) provides data on the number and types of investigation, but nothing whatever about their disposition, except how many cases are referred for prosecution.

There are a number of models for independent corrections oversight. California, for instance, created an independent inspector general's office, which has broad oversight -- investigatory, monitoring and inspecting, along with a requirement that each warden be audited one year after appointment and each prison audited every four years.

Currently, Florida has oversight of medical and mental healthcare established through the Correctional Medical Authority (CMA) and this could serve as a model for general oversight.

The American Bar Association has studied the various types of oversight of corrections agencies in place among the states and in other nations and has developed a set of key requirements of effective correctional monitoring. Among these requirements are:

- Independence from corrections

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<sup>69</sup> Bragg, Cecil T., CPA, "How Independent Are Florida Inspectors General?," March 2010

- Headed by a person appointed for a fixed term by an elected official, subject to legislative confirmation, and subject to removal only for just cause
- Sufficient expert and trained staff
- Duty to conduct regular inspections of the facilities, as well as the authority to examine, and issue reports on, a particular problem at one or more facilities.
- Authorization to inspect or examine all aspects of a facility's operations and conditions including, but not limited to: staff recruitment, training, supervision, and discipline; inmate deaths; medical and mental health care; use of force; inmate violence; conditions of confinement; inmate disciplinary processes; inmate grievance processes; substance-abuse treatment; educational, vocational, and other programming; and reentry planning.
- Authority to conduct both scheduled and unannounced inspections
- Authority to obtain and inspect any and all records, including inmate and personnel records, bearing on the facility's operations or conditions.
- Authority to conduct confidential interviews with any person, including line staff and inmates, concerning the facility's operations and conditions; to hold public hearings; to subpoena witnesses and documents; and to require that witnesses testify under oath.
- Requirement of an annual report of its findings and activities that is public, accessible through the Internet, and distributed to the media, the jurisdiction's legislative body, and its top elected official.<sup>70</sup>

**Recommendation:** *An independent entity, accountable to the governor, legislature and the people of Florida, should be established with oversight, investigating, inspecting, monitoring and reporting authority over state corrections and juvenile justice and their facilities. It should also establish performance measures and review and report on the data collected pursuant to such measures.*

### **13. Develop risk / needs assessment and cost-analysis tools to be used at the time of sentencing (Missouri model)**

Since Florida first enacted its Sentencing Guidelines in 1983, Florida's sentencing policy has explicitly rejected rehabilitation as a primary purpose of sentencing. Today, under the Criminal Punishment Code, adopted in 1998, 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>71</sup>

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<sup>70</sup> American Bar Association, "Key Requirements for the Effective Monitoring of Correctional and Detention Facilities", August 2008.

<sup>71</sup> 921.002 (b), The Criminal Punishment Code

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 such as the nature of the primary offense and any additional offenses, prior criminal history, and injury to the victim. These are factors that cannot change and thus cannot be addressed through targeted interventions.

Florida's sentencing policy is consistent with the trend across the U.S. that began in the late seventies with determinant sentencing, focusing on punishment (called "just deserts"), deterrence and incapacitation. (It must be said that all states did not move in this direction. For instance, Article 1, Section 12 of the Alaska constitution provides that "Criminal administration shall be based upon the following: the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation.")

Yet, as a 2006 National Conference of State Courts survey found, "the top concerns of state trial judges hearing felony cases included the high rates of recidivism among felony offenders, the ineffectiveness of traditional probation supervision and other criminal sanctions in reducing recidivism, restrictions on judicial discretion that limited the ability of judges to sentence more fairly and effectively, and the absence of effective community corrections programs. The survey also found that the state chief justices believed that the most important sentencing reform objective facing the state courts was to improve public safety and reduce recidivism through expanded use of evidence-based practices and programs, including offender risk and needs assessment tools."<sup>72</sup>

While evidence-based approaches to rehabilitation have been most commonly associated with prison and community-based programs, states, in response to this frustration and stubborn recidivism rates, have been developing policies and practices that address risk at the time of sentencing so that the sentence is most appropriate to the individual defendant's risks of recidivating.<sup>73</sup>

Accordingly, states are moving away from policies that barely consider the public safety objective of reducing recidivism (and thus reducing crime) and are instead embracing sentencing policies and practices based on what research has demonstrated and which helps to rehabilitate people convicted of crimes and to reduce recidivism. This is at the heart of drug courts and other treatment-oriented courts (also called problem-solving courts), regardless of whether the official state policy favors or eschews rehabilitation.

Among the practices being adopted are:

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<sup>72</sup> Warren, Roger K., Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries, for the Crime and Justice Institute, National Institute of Corrections, and National Center for State Courts, The Crime and Justice Institute and the National Institute of Corrections, Community Corrections Division, 2007.

<sup>73</sup> See. e.g., Pew Center on the States, Public Safety Policy Brief, "Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Cost," May 2009.

- **Establishing recidivism reduction as an explicit sentencing goal.** The Oregon Judicial Conference, for example, requires judges to consider the sentence’s potential impact on reducing future criminal conduct.
- **Building flexibility into the sentencing laws so that judges can mete out sentences that are aimed at reducing recidivism.** As the Pew Center on the States has found, “The research indicates that whether a particular offender is an appropriate candidate for recidivism reduction cannot accurately be assessed relying solely on the type of offense committed and the offender’s prior criminal history. Individual offender characteristics must also be taken into consideration. This means shorter or probationary sentences for some offenders, and perhaps longer prison terms for others.”<sup>74</sup>
- **Using risk and needs assessments in formulating a sentence.** Rather than focusing only on the unchangeable static factors (nature of the crime, criminal history, etc.) a validated tool that assesses “dynamic” risks and criminogenic needs (e.g. low self-control, substance abuse, antisocial attitudes, criminal thinking) can guide sentencing so that it results in effective treatment.

Missouri’s Sentencing Commission has 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, prosecution, defendants and their attorneys, and the public. The user simply types in the code number for the highest level offense upon 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.

**Recommendation:** *The commission appointed pursuant to Recommendation #12 should lead the development of a similar web-based tool for purposes of illuminating sentencing options, defendant risk reduction and sentencing costs.*

## **Section II: Cost-saving recommendations related to sentencing people convicted of Low-level offenses /short-term sentences**

As DOC reports in its annual sentencing report,<sup>75</sup> one of the notable impacts of the 1998 repeal of the Sentencing Guidelines and the enactment of the Criminal Punishment Code is that “all felony offenders have the potential to receive a prison sentence, whereas many under the

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<sup>74</sup> *Id.*

<sup>75</sup> Florida Department of Corrections, Florida’s Criminal Punishment Code: A Comparative Assessment, September 2009.

guidelines were, by policy, excluded from such a possibility.” In FY2008-09, only 28.2 percent of the new admissions to prison were incarcerated for violent crimes; the rest were admitted for drug, property or “other” offenses. Sentencing practices vary considerably from county to county, but all counties send increasing numbers of nonviolent low-level offenders to prison.

**14. Require written justification for state prison sentences given to individuals with low sentencing scores – 44 or less (currently 22 or less)**

Under Florida law, a person who has been convicted of a felony in the third-degree may be punished by a term of imprisonment not exceeding 5 years.<sup>76</sup> The discretion provided judges is limited, however, by the Criminal Punishment Code, which essentially establishes minimum sentences.<sup>77</sup> Under the Code, sentencing scores are used to calculate the *lowest* permissible sentence. Offenses are ranked under this law according to the seriousness of the most serious offense from one to ten. Calculation of the total sentence points includes multiple factors, such as secondary offenses, injury to the victim, and prior record.

If the total number of sentence points equals or is less than 44 points, the *lowest* permissible sentence is a non-state prison sanction,<sup>78</sup> but the non-state sanction is still within the discretion of judge to impose or not. Until 2009, a judge had unfettered discretion to sentence any person convicted of a third-degree felony for up to five years in prison, regardless of the total sentence score calculated under the Criminal Punishment Code. That year, the Legislature had discovered that thousands of defendants with point scores less than the 44-point threshold recommended for a prison sanction were nonetheless sentenced to state prison.

Effective July 1, 2009, 775.082, F.S., (SB 1722) was amended to require the court to sentence those with 22 points or less (and that have not been convicted of a forcible felony) to a non-state prison sanction unless the court makes written findings that a non-state prison sanction could present a danger to the public.

Still, as OPPAGA reported in October 2010, in FY2009-10, 11.5% of defendants with sentencing scores between 22 and 44 were sent to prison (1,470 individuals), and 2.6% (364 people) of those with scores of 22 and below were sent to prison.<sup>79</sup> This is a reduction over the previous fiscal years, but it is not sufficient.

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<sup>76</sup> Section 775.082, F.S., specifies the penalty structure for the different felony classifications.

<sup>77</sup> (Chapter 921, the Criminal Punishment Code applies to defendants whose non-capital felony offenses were committed on or after October 1, 1998.)

<sup>78</sup> Section 775.082, F.S., specifies the penalty structure for the different felony classifications.

<sup>79</sup> OPPAGA, *Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings*, Report No. 10-54, October 2010

**Figure 29: Sentencing Scores and Sentences FY 2007-08 and FY 2008-09**

Sanction Imposed	Recommended Sanction Category							
	FY 2007-2008 Sentence Dates <sup>1</sup>				FY 2008-2009 Sentence Dates <sup>2</sup>			
	22.0 Points or Less	22.1 to 44.0 Points	More than 44.0 Points	Total	22.0 Points or Less	22.1 to 44.0 Points	More than 44.0 Points	Total
State Prison	1,230	5,150	13,530	<b>19,910</b>	1,204	5,145	13,325	<b>19,674</b>
	3.4%	13.2%	60.7%	<b>20.4%</b>	3.9%	13.8%	61.2%	<b>21.8%</b>
Community Control	997	2,234	1,203	<b>4,434</b>	872	2,152	1,273	<b>4,297</b>
	2.8%	5.7%	5.4%	<b>4.6%</b>	2.8%	5.8%	5.8%	<b>4.8%</b>
Probation	23,160	18,009	4,507	<b>45,676</b>	19,914	17,625	4,491	<b>42,030</b>
	64.1%	46.3%	20.2%	<b>46.9%</b>	63.9%	47.4%	20.6%	<b>46.7%</b>
County Jail	10,416	13,022	2,903	<b>26,341</b>	8,910	11,911	2,551	<b>23,372</b>
	28.8%	33.4%	13.0%	<b>27.1%</b>	28.6%	32.0%	11.7%	<b>25.9%</b>
Other	336	520	154	<b>1,010</b>	245	338	124	<b>707</b>
	0.9%	1.3%	0.7%	<b>1.0%</b>	0.8%	0.9%	0.6%	<b>0.8%</b>
<b>Total</b>	<b>36,139</b>	<b>38,935</b>	<b>22,297</b>	<b>97,371</b>	<b>31,145</b>	<b>37,171</b>	<b>21,764</b>	<b>90,080</b>
	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
*Total points greater than 44. <sup>1</sup> Offense dates on or after October 1, 2006. <sup>2</sup> Offense dates on or after October 1, 2007.								

According to the data provided in the above figure, a 10% diversion of individuals with 44 or less points would save \$1.6 million, annually. If half of these individuals could be successfully diverted from prison, the state could realize an annual savings of \$31.4 million.<sup>80</sup>

**Recommendation:** *775.082, Fl. Statutes should be further revised to require written justification for sentencing individuals with 44 or fewer points to state prisons.*

### **15. Incentivize localities for reducing their rates of state incarceration and increasing local alternatives**

Florida, like many other states, has been tracking and wrestling with the increasing phenomenon of local courts sentencing individuals to state prison under circumstances that would have equally warranted, under existing law, local jail sentences or community-based alternatives.

In some states, the cost of local incarceration is borne by local governments (in Florida, it is the counties), while the cost of state prisons is borne wholly by the state. In Florida, this may be one of the reasons behind the common use of year-and-a-day sentences (and year-and-a-month in one county), which, by law, send individuals to state prison at state cost. A sentence of just one day less and the costs would inure to the county.

In many cases, the state prison sentence actually served is just a few months because the majority of the sentence has already been served (and credited against the total) in jail, pending disposition of the case. Significantly, on a per-bed basis, the first six weeks of the sentence are the most costly because every new prisoner begins the sentence at a reception center and the per-

<sup>80</sup> The average daily cost of \$44.03 per inmate was used in calculations (weighted average that excludes the daily cost of reception centers based on the Florida Department of Corrections FY08-09 Budget Report.) These estimates accounted for \$5,000 in assumed diversion program costs per diverted offender.



diem at such facilities ( \$85.94) is more than twice the cost of a bed, for instance, in a typical male facility (\$42.31). Thus, the cost of a short-term sentence can be far greater per day than that of a longer term sentence.

In light of this phenomenon, some states are looking to reverse or lessen the incentives to impose state prison sentences on people who would be equally or better served in the local community – or specifically incentivize counties for keeping low-level offenders out of state prison.

In Illinois, for example, the Crime Reduction Act (Public Act 96-0761) established the Adult Redeploy Illinois program (based on its successful Juvenile Redeploy program), which provides financial incentives to local jurisdictions for designing community-based programs to treat offenders in the community instead of sending them to state prisons.

In states such as California, Colorado, Arizona, Kansas and Alabama, incentive funds are also being made available to localities to reduce recidivism and to reduce the number of probation revocations that land people back in prison. Indeed, in 1968, when Ronald Reagan was governor of California, one of the strategies employed to reduce the prison population by 34 percent over the course of his governorship was to provide counties incentives to keep individuals from being sent to prison.<sup>81</sup>

There are many possible approaches to incentivizing local sentences. If, for example, the state reimbursed counties 50 percent of the savings achieved when counties reduce the number of offenders sent to state prison that are instead sentenced to local options (jail or community-based alternatives, including electronic monitoring), taxpayers would save 50% of the cost of diverting each such person from state prison, and the localities would reap the benefit of funds they would not have otherwise. Of course, critical to such an approach is assurance that these are true diversions and not local sentences of people who would have been locally sentenced anyway. Therefore, counties would be able to access state funds only if they materially reduce the number of low-level offenders sent to state prison, which would be measured against a baseline rate of offenders that each county sent to state prison in previous years.

From FY 2005-FY 2009, an average of 14% of all new commitments has been sentenced under the year-and-a-day practice. This is an average decline of approximately 9% in year-and-a-day sentencing over the previous five years.<sup>82</sup> Assuming that many of the individuals sentenced to a year and a day would be the ones that would avoid prison if proper incentives were provided to the counties, and assuming the percent of new commitments sentenced to a year-and-a-day remains constant at 14%, it is **estimated that expanding state prison diversion would result in \$4.7 million to \$93 million savings over the next three years. Assuming the percent of**

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<sup>81</sup> Palta, Rena, Prison Overcrowding: What Would Reagan Do?: San Francisco Chronicle, Oct. 4, 2010

<sup>82</sup> Calculations use prison data and projected new commitments from the Justice Estimating Conference. The average daily cost of \$44.03 per inmate was used in calculations (weighted average that excludes the daily cost of reception centers based on the Florida Department of Corrections FY08-09 Budget Report). These estimates accounted for \$5,000 in assumed diversion program cost per diverted offender.

inmates sentenced to a year-and-a-day continues to decline 9% annually, it is estimated that Florida would save between \$2.6 million and \$51.3 million.

**Figure 30: Estimated Cost Savings**

<b>Scenario 1- Approximately 14% of new commitments sentenced year-and-a-day</b>				
	<b>Number of Eligible New Entrants</b>	<b>50% Diverted</b>	<b>25% Diverted</b>	<b>10% Diverted</b>
<b>FY2011-12</b>	4,934	\$30,930,877.98	\$15,465,438.99	\$1,546,543.90
<b>FY2012-13</b>	5,008	\$31,395,152.71	\$15,697,576.36	\$1,569,757.64
<b>FY2013-14</b>	5,108	\$32,022,669.60	\$16,011,334.80	\$1,601,133.48
<b>Scenario 2 - Average 9% annual decline in number of new commitments with year-and-a-day sentences</b>				
	<b>Number of Eligible New Entrants</b>	<b>50% Diverted</b>	<b>25% Diverted</b>	<b>10% Diverted</b>
<b>FY2011-12</b>	2,986	\$18,718,286.51	\$9,359,143.25	\$935,914.33
<b>FY2012-13</b>	2,719	\$17,047,166.95	\$8,523,583.47	\$852,358.35
<b>FY2013-14</b>	2,477	\$15,525,240.56	\$7,762,620.28	\$776,262.03

**Recommendation:** *Florida should reverse the incentives counties now have to send people convicted of low-level nonviolent crimes to state prisons and reward them for sentencing them to community-based alternatives.*

#### **16. Align Florida’s marijuana and cocaine possession laws with other Texas and other similar states**

Florida laws authorize the incarceration in state prisons for the possession of very low quantities of drugs. Possession without intent to deliver or distribute of over 20 grams (7/10th of an ounce) of marijuana in Florida is a felony punishable by up to five years in prison. By contrast, in Kentucky and New York to reach felony level, the accused must have possessed 8 ounces or more (11 times the Florida felony amount); in Texas, it’s 4 ounces.

**Possession of *any* amount of cocaine is also a felony in Florida and this offense has been a major driver of prison growth.**

People convicted of drug offenses make up 19.8% of the prison population; those convicted of simple possession of cocaine made up 19% of new commitments (1,938 people) for drug offenses in 2009. According to OPPAGA, “1,265 drug possession inmates currently in prison scored fewer than 5 prior record points (likely no significant prior offenses). If half were diverted, the state would save \$10.4 million annually.”<sup>83</sup>

<sup>83</sup> OPPAGA, Research Memorandum, Options for Reducing Prison Costs, March 3, 2009.

Across the country, states are making changes in their drug laws to reduce penalties from felonies to misdemeanors.<sup>84</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 (and marijuana possession is decriminalized in Colorado). Colorado is reinvesting the money saved in treatment programs.<sup>85</sup>

As of July 1, 2010, there were 2,260 inmates in custody of the Florida Department of Corrections due to charges of illegal possession of marijuana or cocaine. One third of these inmates were first-time offenders. The average maximum sentence for illegal possession is 2.9 years with an average of 2.17 years for first time offenders. **If half of the first-time offenders were diverted from prison, the state could save approximately \$6.7 million, annually.<sup>86</sup> A 50% reduction in all current drug offenders serving time for cocaine or marijuana possession would constitute a savings of \$21.2 million.**

**Recommendation:** *The Florida Legislature should amend 893.13(6)(b), Florida Statutes, to reclassify low-level marijuana and/or cocaine possession as a misdemeanor.*

## **17. Update value thresholds for property felonies**

In Florida, most theft, fraud and other property offense laws establish the dollar threshold that makes the crime a felony at \$300; other thresholds are even lower. For instance, for food stamp fraud it is \$200. For fraud through issuing a worthless check or stopping payment on a check, it is \$150. And for removal of a from rental property if a landlord's lien has been placed on it, it is \$50. Florida also makes the theft of specific objects (e.g., pigs) a felonious theft regardless of value.

As with the changes other states are making to their drug laws by raising the weight level thresholds that make drug possession crimes a felony, other states are also raising the dollar value thresholds that make property crimes felonies.

Among the states that have raised their thresholds for felony property crimes are South Carolina (increasing the threshold for felony malicious injury to animal or property from \$5,000 to \$10,000); Delaware (Class G felony computer crimes from \$500 to \$1,500); Montana (increased threshold dollar amounts for a number of felony property crimes from \$1,000 to \$1,500); Washington (increased minimum threshold of Class C felony property crimes from \$250 to \$750).<sup>87</sup>

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<sup>84</sup> See, e.g., Vera Institute of Justice, Criminal Justice Trends; Key Legislative Changes in Sentencing Policy, 2001–2010; September 2010.

<sup>85</sup> Colorado Criminal Justice Reform Coalition, 2010 Legislative Summary.

<sup>86</sup> As of July 1, 2010, 712 were first-time offenders. Estimates assume an average per diem cost of \$52.00 for public institutions and \$45.53 for private institutions.

<sup>87</sup> *Id.*

As of July 1, 2010 there were 1,581 inmates in custody of the Florida Department of Corrections with carrying charges of grand theft between \$300 and \$5,000. The average maximum sentence for all of these individuals is 2.93 years. **For every 1% inmates with grand theft charges diverted from prison, the state could save approximately \$296,000 annually.**<sup>88</sup>

**Recommendation:** *The Florida Legislature should increase the dollar thresholds that make property offenses a felony and reexamine offenses made felonious based solely on the type of property stolen.*

**18. Amend the driving with a suspended license law to reduce the penalty from felony to misdemeanor when the reason for the suspension is inability to pay a financial obligation**

Just a few years ago there was a spike in the number of people being sent to state prison for driving with a suspended license. This happened as a result of the Legislature having made a number of changes in the law over the years that made the failure to meet an increasing list of financial obligations (for instance, court fines and child support) cause to suspend a driver's license.

With more such failures punishable by license suspension, there were more felony convictions for driving a third time with a suspended license. In 2003, the increase was 10.8 percent; in 2004, it was another 10.4 percent.

The Legislature responded, passing a law<sup>89</sup> that changed what had been a felony for repeated convictions for driving with a suspended license to a misdemeanor for the many offenders whose convictions had resulted from the inability to make payments on obligations. However, a qualifier was put in the law, namely that this change did not apply "if a person does not have a prior forcible felony conviction as defined in s. [776.08](#), F.S" – no matter how long ago.

As of July 1, 2010, there were 1,023 inmates in custody of the Florida Department of Corrections held on charges of driving with a suspended license with an average maximum sentence of 4.79 years. **For every 1% of these individuals diverted from prison, the state could save approximately \$179,000 annually.**<sup>90</sup>

**Recommendation:** *The Legislature should rescind this qualifying language and that driving with a suspended license, when the suspension was due to failure to pay a financial obligation, be recast as a misdemeanor offense in all instances.*

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<sup>88</sup> This assumes that this prison population represents an accurate sample of relevant offenders incarcerated by Florida at any given time. Estimates assume an average per diem cost of \$52.00 for public institutions and \$45.53 for private institutions.

<sup>89</sup> CS/SB 1988.

<sup>90</sup> An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institutions.

## **19. Expand electronic monitoring as an alternative to state prison sentences**

In January of 2010, a significant study prepared for the National Institute of Justice and produced by Florida State University Center for Criminology and Public Policy Research looked at the impact of Florida's electronic monitoring (EM) policies and practices. It found that "EM reduces the likelihood of failure under community supervision. The reduction in the risk of failure is about 31%, relative to offenders placed on other forms of community supervision."<sup>91</sup>

The findings of this study show that EM is effective for offenders under a variety of different types of supervision and that involve varying levels of control and conditions, and across crime types and age groups.

The research team recommended that "there needs to be a reevaluation of the criteria the judiciary uses in EM placement, as well as laws which unilaterally mandate EM for specified offender types, regardless of whether the research indicates that it will make a difference in behavior."

Cost savings can be realized through the release of nonviolent inmates at different levels of their incarceration and utilize EM throughout the remainder of the sentence versus keeping them until they serve 85% of their sentences. Given varying rates of success, the state could save between \$1.14 million and \$11.4 million for FY2011-2012 if EM is used for the last 20% of the sentence. If that sentence percentage is increased, the state could save between \$4.4 and \$43.8 million if EM is used for the remaining 35% of the sentence, given various success rates.<sup>92</sup>

**Figure 31: Estimated Cost savings<sup>93</sup> FY2011-12**  
(Monitoring the remaining sentence via EM)

<b>Success Rate</b>	<b>Final 20% of Maximum Sentence</b>	<b>Final 25% of Maximum Sentence</b>	<b>Final 30% of Maximum Sentence</b>	<b>Final 35% of Maximum Sentence</b>
<b>100%</b>	\$11,417,106	\$22,655,389	\$33,462,449	\$43,778,758
<b>50%</b>	\$5,708,553	\$11,327,694	\$16,731,224	\$21,889,379
<b>25%</b>	\$2,854,276	\$5,663,847	\$8,365,612	\$10,944,689
<b>10%</b>	\$1,141,711	\$2,265,539	\$3,346,245	\$4,377,876

<sup>91</sup> Bales, Bill, et al., A Quantitative and Qualitative Assessment of Electronic Monitoring, Report Submitted to the Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, The Florida State University College of Criminology and Criminal Justice, Center for Criminology and Public Policy Research, January 2010

<sup>92</sup> The savings are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution. An average per diem cost of \$8.94 is used for EM.

<sup>93</sup> Estimates based on release of nonviolent inmates without any prior commitment to the state prison system. Estimates do not include costs to administer the EM program, which could potentially be off-set through fees to individual offenders (dependent on successful collection of such fees), or any potential increase of workload for DOC patrol officers or other law enforcement officers, if necessary.

**Recommendation:** *The Legislature should expand authority for the use of electronic monitoring as an alternative to incarceration either at sentencing or as part of a reentry program at the end of a prison sentence.*

## **20. Expand adult post-adjudicatory drug courts**

In 2009, with federal funds, the Legislature established eight post-adjudicatory drug courts with the goal of diverting otherwise prison-bound offenders and saving corrections costs. At the same time, the legislature directed OPPAGA to evaluate these courts' effectiveness.

In October 2010, OPPAGA released its report, finding that while the drug courts were operating as directed, the cost savings anticipated were not realized because "initial admissions targets overestimated the potential population of offenders who would qualify for the programs and strict eligibility criteria limited admissions. Some programs also appear to be serving offenders who would be unlikely to be sentenced to prison in the absence of drug court."<sup>94</sup>

The 2009 legislation was expected to divert 4,000 people from prison and thereby save \$95 million in Corrections costs. The 2010 midyear target was 900 diversions; instead, the courts served 324 people.

Those admitted met the statutory criteria that they "had no prior or current violent felony offenses, had committed third-degree nonviolent felony offenses or received technical violations of probation, and had sentencing scores of 52 points or fewer." But most participants scored below 44 points.

Significantly, according to OPPAGA, "Judges in six of the eight expansion counties are certifying that the offenders admitted to drug court with sentencing scores below 44 points would have been sentenced to prison in the absence of drug court. [See Recommendation #5 above] However, in Polk and Orange counties it appears that drug court participants would *not* have been sentenced to prison in the absence of this alternative.

OPPAGA found that 92% of offenders in these counties scored below 44 points. (The Legislature's Office of Economic and Demographic Research has found that Polk has recently cut its (related) year-and-a-day commitments by 40%.)

**Recommendation:** *The Legislature should enact legislation adopting the recommendations made by OPPAGA related to expanding drug court criteria by: 1) Authorizing drug courts to serve offenders who are cited for technical violations of probation other than a failed substance abuse test, if substance abuse was the main factor at the time of their violation; and 2) Giving judges discretion to allow offenders with prior violent offenses who are appropriate for treatment and do not present a risk to public safety to participate in expansion drug court.*

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<sup>94</sup> Without Changes, Expansion Drug Courts Unlikely to Realize Expected Cost Savings, Report No. 10-54, October 2010

### **Section III: Recommendations relating to incarceration, release, supervision and reducing recidivism.**

Florida must not only address the front-end drivers of prison growth, but also the policy choices that maintain the large numbers of people in prison and that fail to address recidivism reduction.

#### **21. Institute adult post-incarceration drug courts**

While 26.7 percent of those entering Florida prisons in 2009-10 were sentenced for drug crimes, over 50 percent need substance abuse treatment.<sup>95</sup> Approximately 60 percent of all arrests in Florida are for crimes committed either under the influence of drugs and alcohol or are committed to acquire drugs or alcohol.<sup>96</sup>

As of December 31, 2009, there were 23,463 inmates serving time for property crimes (e.g., any burglary, theft or fraud).<sup>97</sup> If at least 30 percent of these inmates committed their crime for drug related reasons, then there are more than 7,040 individuals in Florida's prisons who committed property crimes and are in need of drug rehabilitation.

Concurrently, there are 19,723 drug offenders (e.g., possession, trafficking, and manufacturing) serving in Florida's prison system. Although drug rehabilitation programs exist within state facilities, they serve a fraction of those needing treatment. DOC established a goal of increasing the number of inmates participating in substance abuse treatment programs by 10 percent annually, but it started from a baseline of just 4,902 inmates receiving primary treatment (while 39,361 receive screening assessments) during FY2008-09.

Significant savings could be achieved if certain offenders were allowed to receive treatment outside of the confines of prison during the last portion of their prison sentence, and research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls. Allowing some nonviolent offenders to participate in drug court programs after serving 60 percent of their sentence would ensure that they continue to be monitored but receive treatment at a significantly lower cost to the state and with potentially greater outcomes.

Florida TaxWatch identified approximately 15,000 nonviolent<sup>98</sup> offenders currently in the state prison system, many of which could be directed towards post-incarceration drug courts

***Recommendation: The Legislature should authorize the Florida Parole Commission to permit incarcerated drug-involved offenders who have served at least 60 percent of their original***

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<sup>95</sup> OPPAGA Report No. 04-69

<sup>96</sup> Supreme Court Task Force on Treatment-Based Drug Courts, "Report on Florida's Drug Courts," July 2009.

<sup>97</sup> Data provided by the Department of Corrections Bureau of Research and Data Analysis. "Property Crime" as defined by the White House ONDCP, [www.whitehousedrugpolicy.gov/publications/factsht/crime/index.htm](http://www.whitehousedrugpolicy.gov/publications/factsht/crime/index.htm).

<sup>98</sup> See Appendix on page 55.

*prison sentence to complete the remaining portion of their term as a participant in a community-based drug court program.*

## **22. Increase the maximum gain time accrual allowed**

The notion of incentive gain time, that is, 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 DOC when "an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities."

In 1995, the Legislature limited the reach of gain time and enacted a law that provides: "for sentences imposed for offenses committed on or after October 1, 1995, the department may grant up to 10 days per month of incentive gain time, *except that no prisoner is eligible to earn any type of gain time in an amount that would cause a sentence to expire, end, or terminate, or that would result in a prisoner's release, prior to serving a minimum of 85 percent of the sentence imposed.*" [Emphasis added] 944.275, F.S.

Accordingly, during the last fifteen percent of an inmate's term in prison, DOC has no discretion to reward good behavior, and inmates have no gain time incentive to comply with reentry planning efforts or participate in programs that are designed to reduce recidivism upon release.

Adjusting the cap on accumulated gain time would provide critically needed incentives for prisoners to engage in constructive behavior and reentry programming and would result in considerable cost savings for the state, with no risk to public safety.

Significant cost savings can be realized by allowing nonviolent inmates to be released at different points of maximum gain time as opposed to preventing release before reaching the 85% threshold of the sentence.<sup>99</sup> Based on a range of maximum gain time levels and percentage of inmates released with maximum gain time, **flexibility to the 85% rule could save Florida \$1.4 million to \$53 million in FY2011-12.**

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<sup>99</sup> Estimates are based on inmates who have reached maximum gain time and have had no prior commitment to the state prison system. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institutions. The savings are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010.



**Figure 32: Estimated Cost Savings FY2011-12**

<b>Percent of Nonviolent Inmates Released with Maximum Gain Time</b>	<b>20% Maximum Gain Time</b>	<b>25% Maximum Gain Time</b>	<b>30% Maximum Gain Time</b>	<b>35% Maximum Gain Time</b>
<b>100%</b>	\$13,819,336	\$27,423,455	\$40,506,339	\$52,995,892
<b>50%</b>	\$6,909,668	\$13,711,727	\$20,253,169	\$26,497,946
<b>25%</b>	\$3,454,834	\$6,855,864	\$10,126,585	\$13,248,973
<b>10%</b>	\$1,381,933.61	\$2,742,345.47	\$4,050,633.85	\$5,299,589.25

**Recommendation:** *The legislature should revisit its 1995 amendments to the gain time law, or include consideration of the gain time laws as part of the top-to-bottom commission review (from Recommendation 11).*

### **23. Authorize the possibility of parole for certain elderly offenders**

While the literature shows that most offenders age out of their crime-committing years, the nation's prison population is graying; nationally 10 percent of the U.S. prison population is 50 years old or older.<sup>100</sup> In Florida, it is far higher and surging. As of June of 2010, 16.1 percent (16,483 people) of the Florida prison population were 50 years or older. In 1996, 5.7 percent of Florida's prisoners were elderly; in 2000, 8.0 percent were 50 years or older.

According to Florida Senate staff research, the cost of incarcerating a person over the age of 50 is three times greater than that of incarcerating younger people, primarily due to medical costs. Individuals in the community or nursing homes who are disabled or elderly are eligible for federally funded Medicaid (with state match) and/or Medicare, but people who are incarcerated are not eligible for such federal health care support, nor are the prisons.

Thus, Florida is increasingly saddled with the medical costs of an elderly prison population when some of these offenders would pose little, if any, risk to the public out of prison.

Many elderly prisoners were sentenced prior to 1983 when Florida abolished parole and thus are parole eligible. However, while approximately 5,000 inmates in Florida's prisons are parole eligible, only 42 of the 37,391 inmates released from prison in FY2008-09 were actually paroled.

Alteration of parole standards for inmates over the age of 65 would save the state a significant amount without compromising public safety. Although determination should likely be made based on level of disability and potential risk, and must be made by the Florida Parole Commission or other appropriate body based on the individual offender, assuming only prisoners over 65 further limits the total number of prisoners eligible under such a program.

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<sup>100</sup> BJS, Prisoners in 2008.

Assuming only inmates who have minimally served 20 to 25 years of their maximum sentence prior to the age of 65 and have not committed capital murder,<sup>101</sup> but without specific consideration of level of disability, **Florida could save between \$263,000 and \$2.6 million in FY2011-12 if elderly inmates were released after 20 years** – considering varying levels of approval by the Florida Parole Commission based on level of disability and individual offenders potential risk. Assuming the same factors, **Florida could save between \$172,500 and \$1.7 million if varying levels of elderly inmates were granted parole after commuting 25 years of their sentences.**

**Figure 33: Estimated Cost Savings**

<i>Percent of eligible inmates approved for parole by Parole Commission after 20 years of sentence</i>				
	<b>100% Approved</b>	<b>50% Approved</b>	<b>25% Approved</b>	<b>10% Approved</b>
<b>FY2011-12</b>	\$2,632,387	\$1,316,194	\$658,097	\$263,239
<b>FY2012-13</b>	\$3,404,545	\$1,702,272	\$851,136	\$340,454
<b>FY2013-14</b>	\$4,176,702	\$2,088,351	\$1,044,176	\$417,670

<i>Percent of eligible inmates approved for parole by Parole Commission after 25 years of sentence</i>				
	<b>100% Approved</b>	<b>50% Approved</b>	<b>25% Approved</b>	<b>10% Approved</b>
<b>FY2011-12</b>	\$1,724,793	\$862,396	\$431,198	\$172,479
<b>FY2012-13</b>	\$1,949,363	\$974,681	\$487,341	\$194,936
<b>FY2013-14</b>	\$2,597,975	\$1,298,988	\$649,494	\$259,798

**Recommendation:** *The Florida Legislature should pursue strategies that allow for release of elderly prisoners who do not pose a risk to public safety.*

## **24. Expand prison work release programs**

Florida's work release programs allow selected (i.e., pre-screened as low-risk) inmates to work at paid employment in the community and live at work release centers outside of prison during the last 15 months of their sentence.

Housing inmates at work release centers is significantly cheaper than housing them in a regular prison facility. The average cost of housing an inmate at a work release center is \$25.84 less per

<sup>101</sup> FDOC cross section of inmate population in custody data report on July 1, 2010 was used for these estimates. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution.

day than housing them at a regular prison facility.<sup>102</sup> Expanding the work release program to include additional individuals who are currently on the waiting list could produce significant savings for Florida.

The key step to achieve such savings is to incorporate more eligible inmates into the program. DOC should rescind the informal policy of holding one prison bed in reserve for every work release bed and capping work release at 4 percent of the inmate population.

Allowing nonviolent inmates to carry out the remaining portion of their maximum sentence in a work release program is more cost effective than mandating inmates carry out 85% of the sentence in a regular prison facility. Given varying rates of success, **the state could save \$536,000 to \$5.4 million annually if 20% of the maximum sentence is completed in work release programs. With 35% of the maximum sentence completed in work release programs, the state would save between \$2.1 million and \$20.9 million in cost savings.**<sup>103</sup>

**Figure 34: Estimated Cost Savings for FY2011-12**  
(% of final sentences served in work release programs)

<b>Success Rate</b>	<b>Final 20% of Maximum Sentence</b>	<b>Final 25% of Maximum Sentence</b>	<b>Final 30% of Maximum Sentence</b>	<b>Final 35% of Maximum Sentence</b>
<b>100%</b>	\$5,359,818	\$10,717,792	\$15,915,608	\$20,893,834
<b>50%</b>	\$2,679,909	\$5,358,896	\$7,957,804	\$10,446,917
<b>25%</b>	\$1,339,955	\$2,679,448	\$3,978,902	\$5,223,458
<b>10%</b>	\$535,982	\$1,071,779	\$1,591,561	\$2,089,383

**Recommendation:** *The legislature should require that DOC establish a process that immediately: 1) expands the current capacity of the work release program to include those eligible individuals who are currently on waiting lists to join; 2) ensures that the capacity of the program is set at the maximum sustainable level and reevaluated on a regular basis; and 3) expedites the movement of individuals into work release so that the average participating population in each program is maintained as close to full capacity as possible.*

<sup>102</sup> Collins Center for Public Policy Report, “Smart Justice: Findings and Recommendations for Florida Criminal Justice Reform,” February 2010. According to the report the average cost of housing an inmate at a work release center is \$26.16, the average cost of housing an inmate in a prison facility is about \$52.00 (even when work release centers are excluded from the calculation).

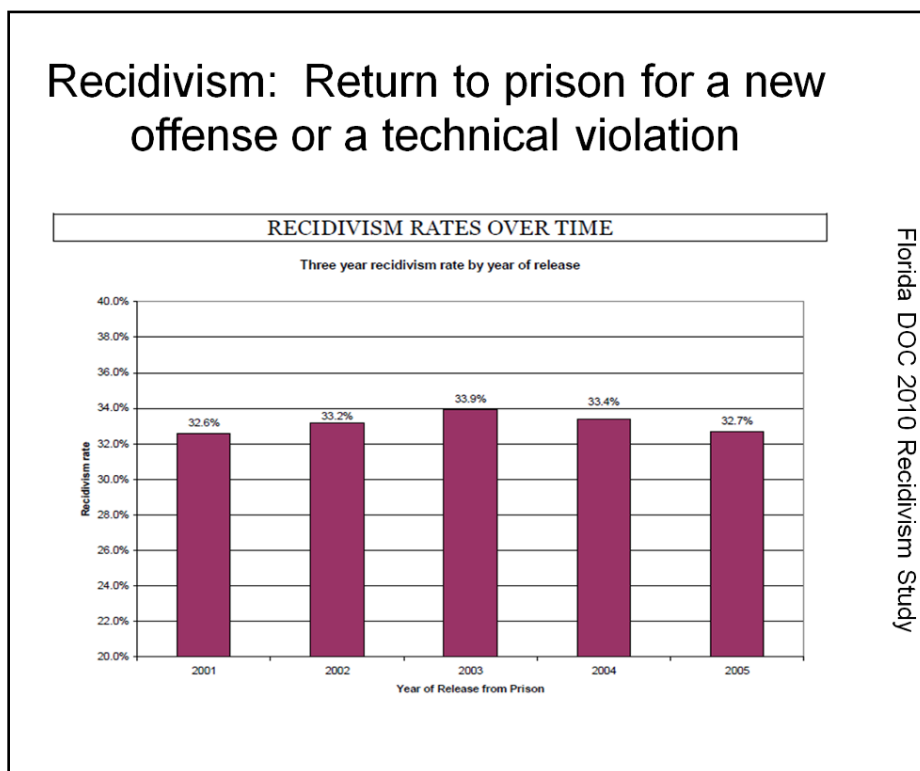
<sup>103</sup> The estimates are calculated for the period between July 1, 2011 and June 30, 2012, using a cross section of the inmate population in custody of the FDOC as of July 1, 2010. An average per diem cost of \$52.00 is used for inmates housed in a public institution and an average per diem cost of \$45.53 is used for inmates housed in a private institution. An average per diem cost of \$30.80 is used for work release facilities. Those individuals who are already housed in work release facilities are not included in the analysis and additional upfront costs of expanding work release are not factored into cost savings.

## 25. Expand evidence-based prison-based programs that reduce recidivism

Florida allocates about one percent of the Corrections budget to prison-based programming (substance abuse treatment, education, vocational training, release planning, etc.) aimed at improving the chances that the inmates will not return to prison.

While DOC has a goal of reducing recidivism, about one third of the inmates nevertheless do come back within three years of release. Florida has not focused sufficient resources in preparing them during their previous stints in prison to succeed upon being released.

Figure 35



In December 2009, OPPAGA reported DOC was concentrating its rehabilitative programming on evidence-based approaches, which have “four basic components: assessing inmates using validated risk and needs assessment instruments; addressing offender attributes that directly relate to criminal behavior; developing release plans to facilitate offender reentry into society; and evaluating program effectiveness.” This is important, especially due to the extremely limited resources available for programming.

At the same time, community-based programs are also in short supply, and research shows that programs in the community produce twice the impact on recidivism as the same program behind the walls.

**Recommendation:** *the Legislature should reinvest a portion of the savings realized from front-end reforms that slow prison growth into expanding prison and community-based*

*programming to reduce recidivism, thereby slowing prison growth further. In the meantime, these programs could be expanded at no additional cost to the state through the use of “trusties” (i.e., inmates who have earned trust through good behavior) and volunteers.*

**A. Expand evidence-based substance abuse treatment**

While 65.1 percent of DOC inmates (65,706 individuals) were in need of treatment, there were only 4,902 treatment slots available in FY2008-09 (before the \$10 million cut in DOC programming), making treatment available to only 7.4 percent of those who need it.

**Recommendation:** *The legislature should restore the \$10 million in DOC programming and target it to in-prison and community-based treatment*

**B. Expand evidence-based mental health treatment**

In Florida, about 17,957 inmates (17.8% of the total) receive ongoing mental health care; the number of those incarcerated who suffer from mental illness and are not being treated is not known. Compare that to the total forensic and civil commitment state psychiatric beds: 2,723. Prisons and jails are the default mental health system in Florida. Texas enacted an information sharing law that makes it easy to share information on individuals with mental illnesses who are accessing so many deep end services including those in the criminal justice system. It allows them to track individuals with Serious Mental Illness (SMI) to assure case management, consistent medication and re-entry. It has also helped them tremendously to keep people with SMI out of jail and prison.

**Recommendation:** *The Legislature should review and amend statutes to facilitate more effective collaboration among stakeholders involved in the delivery of mental health services, particularly as they relate to continuity of care for individuals involved in or at risk of becoming involved in the justice system. This should include consideration of opportunities to improve information exchange among state and county agencies, as well contracted entities, that provide mental health and/or substance abuse treatment services. Consideration of such information sharing should be for the purposes of facilitating continuity of care only and should not be used as evidence in any criminal proceeding. The Legislature may wish to review chapter 614.017 of the Texas Health and Safety Code as an example of such cross systems collaboration.*

*The Legislature should pass the Community Mental Health and Substance Abuse Treatment and Crime Reduction Act.*

*The Legislature should authorize county court judges to order involuntary outpatient treatment as a condition of release for defendants with mental illnesses when appropriate.*

**C. Expand evidence-based literacy, education and vocational training**

DOC reported that 50.5 percent of DOC inmates (44,786 total) in FY2008-09 were tested as reading at or below the 6th grade level and that “for every education level an inmate gains, that

person is 3% to 4% less likely to come back to prison. Inmates with a vocational certificate at release recidivate 14% less than inmates overall.”

That year DOC was able to award 1,953 GED certificates and 1,881 vocational certificates. As demonstrated below in DOC’s annual report, the completion rates in the literacy, adult basic education, and vocational programs are quite low.

***Recommendation:*** *The DOC should continue to aggressively look for innovative ways to partner with community colleges and public and private workforce development entities to improve skill levels of inmates.*

**Figure 36**

***Participation in Correctional Education Classes in FY 2008-09***

Enrollments*	Mandatory Literacy	Adult Basic Education	ITA <sup>1</sup>	GED	Vocational	Total
Number of Courses	1,700	8,086	6,201	2,064	5,034	23,085
Number of Inmates	1,700	8,086	6,201	2,064	4,789	***22,840
Completions**						
Number of Courses	412	557	1,953	1,881	4,803	
Number of Inmates	412	557	1,953	1,562	4,484	***4,484
<p>* "Enrollments" includes inmates enrolled as of 7/1/08 and new enrollments through 6/30/09.  ** "Completions" are from 7/1/08 through 6/30/09.  *** Inmates who participated in Mandatory Literacy, Adult Basic Education, GED and Vocational courses get counted for participation in all four programs.  "Number of Courses" and "Number of Inmates" are different for vocational counts since it is possible for a given inmate to be involved in more than one course in this program year.  For greater detail, Adult Basic Education (course "9900004") is shown in a separate column from the GED (course "9900026").  "Completions" are defined as a CMP, ATT or CXS code on the DC32 screen for MLP and ABE participants, a GED certificate for course "9900026" participants, and a vocational certificate for vocational program participants.  <sup>1</sup>ITA=Inmate Teaching Assistant Program.  Note that none of the counts in the above tables include program participation or certificates earned at private facilities.</p>						

***D. Expand life management skills training***

OPPAGA notes that there was a lack of programming addressing criminal thinking.<sup>104</sup> This component was to be added to DOC’s 100-hour transition / release program; however, during FY2008-09, 8,850 inmates (26.9% of all released inmates who completed the course) took the course via self-study. This is less than optimal not only because of the low literacy rate of the inmates but because without the interaction with a facilitator, the results can be negligible.

Expanding currently available rehabilitative and training programs to those offenders who are on waiting lists, or are otherwise eligible to participate in them, could curb the rising inmate population and eliminate the need for the continued expansion of state prisons.

***Recommendation:*** *The DOC should continue its efforts to provide evidence-based programming to address criminal thinking and to provide release programming through facilitators rather than relying on self-study.*

<sup>104</sup> Department of Corrections Should Maximize Use of Best Practices in Inmate Rehabilitation Efforts, Report No. 09-44, December 2009.

**E. Expand faith- and character-based prisons**

OPPAGA has found that faith- and character-based prisons improve institutional safety, achieve lower recidivism rates and attract more volunteers. Wakulla County's recidivism rate, for example, is 15 percent lower than that of comparable prisons. Yet these more effective prisons had a waiting list of 8,890 inmates for the institution-based programs and 1,600 for the dorm-based programs at the time of October 2009 study.<sup>105</sup>

**Recommendation:** *The DOC should expand its faith- and character-based prisons.*

**F. Help inmates apply for Medicaid, Social Security Income, and Veterans benefits prior to release**

Receiving the benefits of social programs to which they are entitled upon release will help those ex-offenders succeed in the community and reduce the likelihood that those individuals will return to prison. Helping inmates apply for those social benefits before release can improve their chances of successful reentry.

**Recommendation:** *The legislature should expand programs that help reentering inmates apply for government benefits for which they are qualified.*

**26. Review and revise state-created employment restrictions based on criminal records**

Gainful employment is essential to any strategy to reduce recidivism, and thus to reduce crime and make communities safer.<sup>106</sup> However, among the many hurdles facing people coming home from prisons and jails is in successfully reintegrating into society, getting a good job is often one of the most daunting challenges.

Equally daunting, for both the person with the record and for workforce staff who might attempt to help him search for jobs, is figuring out what occupations and places of employment are possibly open to people with criminal records.

Recognizing this challenge, Governor Jeb Bush, on the advice of the Governor's Ex-Offender Task Force, and concerned about Florida's stubborn recidivism rate, and understanding that

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<sup>105</sup> OPPAGA, *Faith- and Character-Based Prison Initiative Yields Institutional Benefits; Effect on Recidivism Modest*, Report No. 09-38, October 2009.

<sup>106</sup> "Finding and maintaining a job is a critical dimension of successful prisoner reentry. Research has shown that employment is associated with lower rates of reoffending, and higher wages are associated with lower rates of criminal activity. However, former prisoners face tremendous challenges in finding and maintaining legitimate job opportunities. . . ."Baer, et al. *Understanding the Challenges of Prisoner Reentry: Research Findings from the Urban Institute's Prisoner Reentry Portfolio*, Urban Institute, January 2006, citing, Jared Bernstein and Ellen Houston, *Crime and Work: What We Can Learn from the Low-Wage Labor Market* (Washington, DC: Economic Policy Institute, 2000); Bruce Western and Becky Petit, "Incarceration and Racial Inequality in Men's Employment," *Industrial and Labor Relations Review* 54, no. 3 (2000): 3-16. A Canadian study found that "Offenders who were employed were convicted of less than half the convictions (22.2% versus 42.9%) and one quarter of the new violent convictions (5.6% versus 20.6%) of offenders who did not obtain employment in the first six months of release." Gillis, et al., *Prison Work Program (CORCAN) Participation: Post-Release Employment and Recidivism*, Research Branch, Correctional Service Canada, March 1998.

gainful employment reduces recidivism, issued an executive order in 2006 requiring his state agencies to inventory the employment restrictions they administer, provide data on their impact and recommend reforms. Bush was the first governor to order such a review, which was hailed as a “landmark” in the Washington Post.

The Florida inventory, the findings of which were laid out in the Task Force’s report to the Governor,<sup>107</sup> revealed a vast, bewildering and unwieldy patchwork of hundreds of state-created restrictions of widely varying severity, often regardless of the trust and responsibility required of the job, affecting over 40% of Florida’s public and private sector jobs.

The Task Force reported that sometimes the restrictions offer the employer a measure of hiring discretion after reviewing a background check. Sometimes they give the employer the right to assess the relevance of the past crime to the job. Sometimes they provide the job seeker with an opportunity to demonstrate their rehabilitation. But often the restrictions offer little flexibility to either employers or people looking for work.

Each restriction has its own nuances. Some restrictions put jobs or places of employment off-limits to anyone with a record of a criminal conviction. Some put them off-limits only for those convicted of certain crimes. Sometimes the restriction creates a lifetime ban. Sometimes the restriction is time-limited. Sometimes the time limits depend on the crime.

For employers, it’s a minefield. Hiring in violation of the restrictions can lead to a loss of a business license and other harsh penalties.

For job seekers with a criminal record, the impact of restrictions are often both unknown and unknowable until after incurring the costs of a course of study, tests, and fees and the application for a job or license is finally reviewed.

Despite this strong effort to understand the restrictions and the Task Force’s reform recommendations, few reforms have been adopted.

**Recommendation:** *The Legislature and the Governor revisit and adopt the Task Force’s common sense employment restrictions reform recommendations.*

## **27. Expand the Florida Accountability Initiative for Responsible (FAIR) Probation**

Despite, as OPPAGA reported in April 2010, rescission by DOC of its zero-tolerance policy on probation violations adopted in 2003 and a concomitant decrease in the number of technical violators sent to prison, in the 2009-10 fiscal year, 7,479 people were sent to prison on technical probation violations.<sup>108</sup>

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<sup>107</sup> [Key Findings and Recommendations](#) Based on the Task Force’s Analysis of the State Agency Responses to Executive Order 06-89.

<sup>108</sup> Zero Tolerance Policy Rescinded and Alternatives Implemented to Address Technical Violations, Report No. 10-39, April 2010.



FAIR, modeled after Project HOPE, designed by Judge Steven Alm in Hawaii, is a model that challenges what is often in actuality and in perception a kind of “randomized severity” of sanctions, that is, sometimes the violation will be punished harshly, sometimes mildly, sometimes not at all.

A program evaluation of HOPE commissioned by the National Institute of Justice was completed in 2009 and found that among HOPE participants, compared to the control groups: positive drug tests were reduced by 86%; missed probation appointments were reduced by 80%; revocations of probation were reduced by more than 50%; and arrests for new crimes reduced by more than 50%.<sup>109</sup>

Like HOPE, FAIR targets probationers who are at the highest risk of reoffending and discourages such offending with swift, predictable, and immediate sanctions – typically resulting in several days in jail – for each detected violation, such as detected drug use or missed appointments with a probation officer.

A strong nexus exists between drugs, crime and incarceration. FAIR Probation works to lower heavy drug consumption and improve public safety. FAIR Probation is a way to support Florida’s drug courts by maximizing limited treatment space. In order to lower incarceration costs and improve public safety, community supervision must be strengthened in order for judges to view it as a viable alternative. FAIR Probation works to make community supervision a cost-effective alternative by instituting swift and certain consequences for non-compliance. The keystone of the project is creating personal responsibility on the part of the offender.

FAIR Probation has not yet been initiated in Florida. FAIR Probation is close to being piloted in Circuit 9 (Orlando). All stakeholders (judge, county jail, prosecutors, public defenders, and probation) have been briefed and are close to starting after January 1. Alachua County (Gainesville Circuit 8) has also been in early discussions about starting the project.

**Recommendation:** *The Department of Corrections should work with the state courts to implement FIAR as a pilot and expand the program if it proves effective. Strengthen community supervision as a viable alternative to costly incarceration by creating and expanding the Florida Accountability Initiative for Responsible (FAIR) Probation.*

## **28. Expand Veterans Courts**

Studies have found that anywhere from 20% to 50% of veterans returning from Iraq and Afghanistan suffer from Post Traumatic Stress Disorder (PTSD). Furthermore, about half of these individuals do not seek treatment. PTSD and other mental health disorders are strongly

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<sup>109</sup> *The Pew Center on the States*, The Impact of Hawaii's HOPE Program on Drug Use, Crime and Recidivism, January 2010.

linked to drug use and related criminal behavior. It is estimated that approximately 10% of all individuals with criminal records are veterans.<sup>110</sup>

Many state and local governments across the U.S. have instituted veterans courts to offer treatment and diversion for non-violent offenders in this group, with promising results. For example, a veterans court in Buffalo has a 90% graduation rate and no incidence of recidivism. According to Florida Senate research, 10 states have or are in process of passing legislation to expand veterans courts.

The momentum to initiate such programs in Florida is also growing. Palm Beach County implemented a veterans court in 2010.<sup>111</sup> Given the success rate of existing veterans courts targeting non-violent offenders in other states, instituting and expanding similar programs in Florida could help reduce recidivism and save valuable tax dollars. Such programs are also eligible for Federal grants, saving additional state funds.

**Recommendation:** *The Governor should convene a task force of veterans' affairs and criminal justice leaders to identify and resolve issues of veterans' encounters with the criminal justice system and to establish a framework for expanding veterans' courts.*

## **29. Reduce costs of inmate hospitalization (in non-DOC hospitals)**

Inmates requiring hospitalization in non-DOC facilities cost the state million each year. Estimates of the total cost of hospitalization put the total cost at approximately \$50 million annually. Paying these costs through Medicaid would lower the total cost to the state because Medicaid is majority funded by the federal government and often pays lower hospitalization rates. While Medicaid will not pay for care provided in DOC facilities, the state should ensure that all potential costs of hospitalization at non-DOC facilities (i.e., when prisoners have to be taken to community hospitals) are shifted to Medicaid.

**Recommendation:** *The legislature should ensure that inmates remain Medicaid-eligible during incarceration so that Medicaid can cover hospitalization costs when inmates receive care in non-DOC settings.*

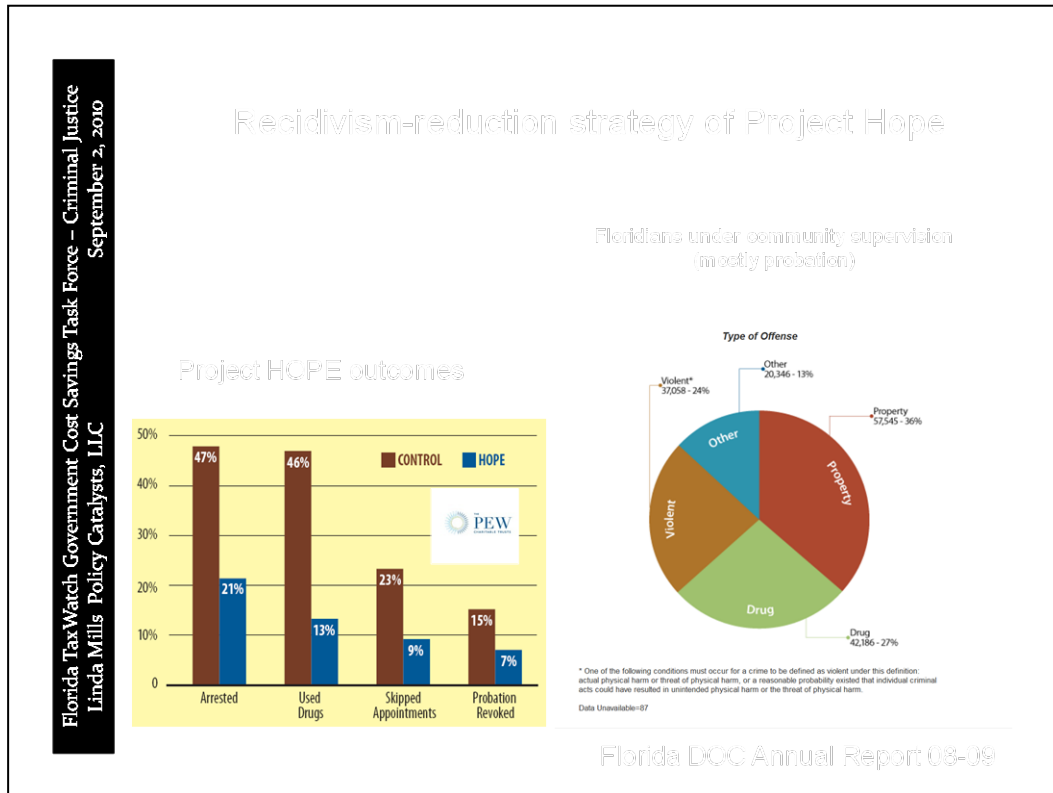
*Alternative: set state reimbursement rate at the Medicaid rate instead of 110% of Medicare rate.*

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<sup>110</sup> <http://www.slate.com/toolbar.aspx?action=print&id=2244158>

<sup>111</sup> <http://www.chicagotribune.com/topic/fl-palm-new-veterans-court-20101120,0,6995203.story?track=rss-topicgallery>

**Figure 37**



#### Section IV: Recommendations related to juveniles in the justice system

Getting smart on crime requires efficient and effective use of limited resources in prevention, diversion, and intervention programs, especially when it comes to juvenile justice.

#### **30. Comprehensively review and implement Blueprint Commission recommendations**

Although some of the recommendations of the 2008 report have been adopted and implemented, the overwhelming majority of them have not. One key recommendation, the revision of zero-tolerance policies in public schools to ensure that students who are expelled or referred to law enforcement pose a serious threat to school safety and are not expelled or arrested for petty misconduct, was implemented in 2009. Although this measure will reduce costs by removing unnecessary cases from the juvenile justice system, there is still much progress to be made.

Adopting the Blueprint Commission's recommendations will help Florida set out in a new direction that focuses on utilizing community resources and evidence-based approaches to juvenile offender rehabilitation, and increasing public safety while simultaneously producing savings to the state and taxpayers.

**Recommendation:** *The Legislature should conduct a full review of the 2008 Blueprint Commission report and explore the implementation of all cost savings recommendations that have not yet been implemented.*

### **31. Study the effects of barring commitment of misdemeanants to state custody**

Texas, North Carolina, and Virginia have adopted legislation to keep misdemeanants out of state custody and have reduced commitment rates substantially. In all three states, the state not only realized significant cost-savings as a result of the legislation, but also saw improvements in public safety. In Texas, youth cannot be committed to residential facilities for misdemeanor offenses unless adjudicated for four or more prior offenses. This resulted in a 36% reduction in commitments in the past three years. At the same time, juvenile arrests for violent offenses dropped. North Carolina has adopted similar legislation that bars youth from being committed to residential facilities for misdemeanor offenses or violations of misdemeanor probation. This had the effect of reducing commitments by 61% from 1998 to 2008. Over the same time period, juvenile arrests for violent offenses dropped by 20%. Legislation in Virginia bars youth from commitment to residential facilities unless the youth has been previously adjudicated for a felony of three or more Class 1 misdemeanors on separate occasions. Virginia saw a 50% drop in commitments from 1999 to 2009, and a 36% drop in juvenile arrests for violent offenses.

More than 2,500 children were admitted to DJJ residential facilities for misdemeanors or violations of probation in FY2008-09. If Florida had a statute barring the commitment of misdemeanants to state custody, DJJ would have reduced admissions by 1,273, or 21% during that period, which could have saved approximately \$30 million (\$25,668,000 for 1,183 children in non-secure residential beds and \$4,421,000 for 90 children in secure residential beds).<sup>112</sup> While Florida must continue to incarcerate youth who pose serious risks to public safety, detention and incarceration of young people should be an option of last resort.

**Recommendation:** *The Legislature should examine the potential savings produced by limiting the commitment of juvenile misdemeanants.*

### **32. Expand the Redirection program to avoid custodial care of juveniles**

The Redirection program is a community-based, family-centered alternative to residential juvenile justice commitments. According to a 2009 program evaluation, youth who successfully completed the Redirection Program were 31 percent less likely to be subsequently arrested than similar youth who successfully completed residential commitment programs.

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<sup>112</sup> Southern Poverty Law Center, *Opportunities to Strengthen Florida's Juvenile Justice System*, September 17, 2010.

An April 2010 OPPAGA study found that the Redirection Program has achieved \$51.2 million in cost savings for the state since it began five years ago, due to its lower operating costs when compared to residential delinquency programs.<sup>113</sup>

Redirection began as a way to redirect juvenile offenders with non-law probation violations from residential commitment to lower cost, therapy-based community programs and has expanded to serve additional youth, such as nonviolent offenders being considered for commitment due to misdemeanors and third-degree felonies.

The contracted project director estimates the program could serve 10 percent more juveniles under the current framework. Expanding the program could result in much greater savings in the first year.

**Recommendation:** *The legislature should expand the Redirection Program and we endorse the specific OPPAGA recommendations to expand the program (a) into underserved counties; (b) to serve gang-involved youth; and (c) to implement a program to serve youth who commit certain sex offenses. Additionally, the Legislature should examine potential savings from expanding the program to include youth who have committed certain third- degree felonies.*

### **33. Expand the use of juvenile civil citations**

Civil citation programs are an alternative to arresting and taking children who commit misdemeanors into custody. Civil Citation emerged as a way to replace the existing practices of the current arrest model and incorporate early intervention and effective diversion programs for juveniles who commit minor crimes. As stated in Florida Statutes, the Civil Citation process was established “for the purpose of providing an efficient and innovative alternative to the custody by the Department of Juvenile Justice of children who commit non-serious delinquent acts and to ensure swift and appropriate consequences.”

The program allows juveniles who have committed a misdemeanor to complete community service hours or participate in intervention programs as an alternative to being arrested and taken into custody by the Department of Juvenile Justice (DJJ). The program is implemented at the local level in coordination with the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved.

Authorized by 985.301, F.S., the program allows “any law enforcement officer, upon making contact with a juvenile who admits having committed a misdemeanor [to] issue a civil citation assessing not more than 50 community service hours, and may require participation in intervention services appropriate to identify the needs of the juvenile.”

According to a 2010 Senate analysis<sup>114</sup> of a bill related to the citation program, “the programs exist at the local level with the concurrence of the chief judge of the circuit, state attorney, public

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<sup>113</sup> Redirection Saves \$51.2 Million and Continues to Reduce Recidivism, Report No. 10-38, April 2010.

defender, and the head of each local law enforcement agency involved. Currently, there are nine civil citation programs funded by the DJJ and seven programs that are funded locally.”

Based on data from two major Civil Citation programs in Leon County and Miami-Dade County, a statewide implementation of the Civil Citation program is estimated to reduce the number of youth referred for delinquency by 40%.<sup>115</sup> This would be an equivalent of 30,153 juveniles according to the most recent data. The cost saving per civil citation would be \$4,614 according to a recent study by Florida Juvenile Justice Foundation or \$1, 467 according to the 2009 Hillsborough County Study.<sup>116</sup> Using the number from the first study for Scenario 1 and the second study for Scenario 2, the annual cost savings of implementing statewide Civil Citation programs is estimated to range from \$44 million to \$139 million.

Given the estimated short-term annual savings of \$44 to \$139 million, it makes perfect sense to implement Civil Citation programs throughout the state. Keeping juveniles away from prisons will also generate long-term economic benefits in the form of increased output and employment.

**Recommendation:** *The Legislature, state and local governments, business and community organizations should work together to design and implement statewide Civil Citation programs that give a second chance to all children who commit non-serious delinquent acts.*

#### **34. Increase operational efficiencies and public safety by aligning the average length of stay by delinquents with best practices in residential facilities**

Over the past eight years, the average length of stay for delinquents in residential facilities has been steadily increasing, even as the number of commitments has fallen. This increase cannot be explained in the change of profile of youth committed to DJJ. In fact, the percentage of youth committed for misdemeanors or probation violations was approximately the same in FY 2008-09 as it was in FY 1999-2000.<sup>117</sup> Increases in the average length of stay have significant cost implications for the state, almost \$20 million per year. Furthermore, there is evidence that increased lengths of stay may actually reduce public safety.

The Florida Department of Juvenile Justice’s 2008 Blueprint Commission Report concluded from the best available research: “...youth who are kept in programs for prolonged length of

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<sup>114</sup> SB 2544 (2010)

<sup>115</sup> Florida Juvenile Justice Foundation, “Getting Smart on Juvenile Crime in Florida: Taking It to the Next Level,” August 2010.

<sup>116</sup> Dewey & Associates Inc., “Civil Citation of Hillsborough County, Cost Savings Analysis,” July 2009.

<sup>117</sup> Office of Program Policy Analysis and Government Accountability. 2001. Misdemeanant and Non-Law Violation Youth in Juvenile Justice Commitment Beds, Report No. 01-49.

stays after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved.”<sup>118</sup>

The Blueprint Commission recommends the creation of small, community-based programs that use a continuum of care and the implementation of an “offender review” process that systematically identifies and reviews non-violent and non-serious offenders as well as those who have made significant progress in their treatment programs. Suitable candidates would be referred to the courts for early release or “step down” into community-based programs.<sup>119</sup>

Another way to reduce the length of stay is to count services and education received in detention towards the completion of the youth’s treatment plan, per the Blueprint Print Commission’s recommendation. The Commission also suggests counting these services in competency restoration.<sup>120</sup> This recommendation reduces cost by eliminating the duplication of services.

**Recommendation:** *Florida should examine the increasing average lengths of stay by youth offenders in residential facilities. One possible option is that length of stay be limited to the completion of treatment goals, and enact the Blueprint Commission’s specific recommendations to (1) implement an offender review process that would allow for the early release of suitable candidates or a “step-down” to less restrictive, community-based care; (2) count education and services received in detention towards the completion of the youth’s treatment plan.*

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<sup>118,9,&10</sup> Florida Department of Juvenile Justice. “Report of the Blueprint Commission: Getting Smart About Juvenile Justice,” January 2008, p. 69. Available at: [www.djj.state.fl.us/blueprint/documents/Report\\_of\\_the\\_Blueprint\\_Commission.pdf](http://www.djj.state.fl.us/blueprint/documents/Report_of_the_Blueprint_Commission.pdf).

<sup>119</sup> *Id.* at 41.

<sup>120</sup> *Id.* at 42.

# Fiscal Responsibility

*The Key to a Safer, Smarter, and Stronger Juvenile Justice System*

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DECEMBER 2010





# At a Glance

Despite record budget deficits, Florida's Department of Juvenile Justice continues to spend enormous sums of taxpayer dollars on expensive residential institutions. These institutions hold thousands of children who could be better served in less expensive, more effective community-based programs — programs that hold youth accountable, protect public safety, produce better outcomes for children and families, and make it more likely that children go on to become productive and employable members of society. This fiscal year, the state is on track to spend \$70 million to incarcerate children for something other than a felony. For more than 1,100 of these children, a misdemeanor is their most serious offense.

Not only does Florida incarcerate too many children, but children in residential facilities stay too long. The average length of stay increased by 30% from 2000 to 2008 — a trend that cost the state nearly \$20 million last year. Simply by moving closer to its published best practices, DJJ could safely accommodate a \$49 million reduction to its residential budget, close more than 1,000 beds, and re-invest a portion of the savings in cost-effective community-based sanctions that would not just preserve, but enhance, public safety.

Most importantly, the \$240 million the state spends on residential facilities each year is not making Florida safer, but instead more vulnerable. Residential facilities have higher recidivism rates than community-based alternatives, and repeated studies have proven that institutional programs make low-risk children more likely to re-offend.<sup>1</sup> The practice of holding children in facilities longer is also dangerous. The Blueprint Commission summarized the best research when it concluded that children “who are kept in programs for prolonged length of stays after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved.”<sup>2</sup>

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Although Florida continues to spend heavily for expensive and often antiquated residential facilities, the state has also pioneered some of the more effective and efficient approaches to juvenile delinquency. Redirection, an alternative to incarceration, produces better outcomes than incarceration at significantly less cost, saving the state more than \$50 million in the past five years. By divesting from expensive residential facilities, Florida can improve outcomes for youth, promote public safety, save tens of millions of dollars, and initiate a self-sustaining cycle in which reform not only pays for itself, but also generates additional cost-savings.

## WHEN IT COMES TO YOUTH INCARCERATION, FLORIDA IS OUT OF THE MAINSTREAM

In 2006, the time of the most recent national survey, Florida incarcerated children at a rate 50% higher than the national average. Only Texas and California, the most populous states in the nation, had more children in residential placement — and both states incarcerated far fewer youth on a per capita basis.<sup>3</sup> Recently, Florida has taken some preliminary steps toward a more efficient allocation of juvenile justice resources. Commitments to residential facilities have fallen 30% and the Department of Juvenile Justice (DJJ) has closed more than 1,800 beds — a reduction that saves the state \$85 million every year.<sup>4</sup> As the state cut beds and saved millions of taxpayer dollars, serious juvenile crime dropped dramatically — by 25% since 2006.<sup>5</sup>

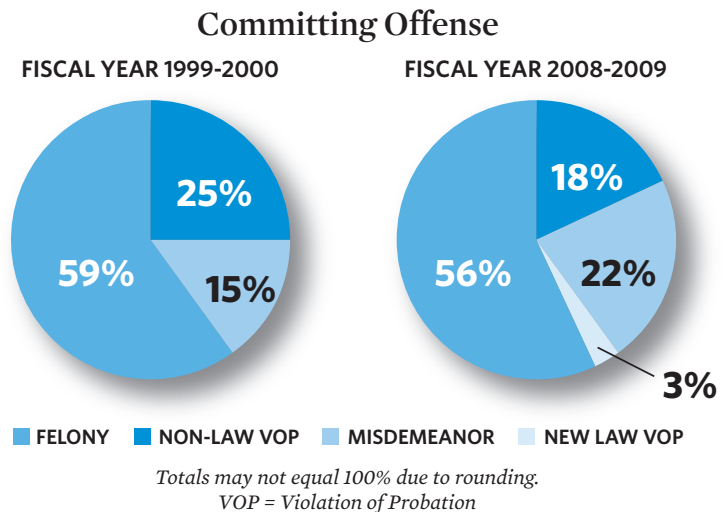
Despite these initial steps in the right direction, Florida needs to do more. Florida's juvenile justice system is still far from the mainstream, and far from doing the best it can to protect public safety by effectively and efficiently rehabilitating youth. By any standard, the state over-utilizes expensive residential facilities, pulling thousands of children out of their homes for non-violent offenses.

Residential facilities, which cost the state \$109.22 per child per day for non-secure and \$155.98 per child per day for secure facilities, consume scarce resources that could be better used to fund more effective and less expensive community-based interventions.<sup>6</sup> Cheaper and better programs like Redirection, a cost-efficient and effective community-based program that has saved the state \$50 million since 2005, have seen their budgets threatened, while the DJJ unjustifiably continues to throw good money after bad, spending \$240 million for residential facilities in FY2010-11.<sup>7</sup>

Florida's juvenile justice system is still far from the mainstream, and far from doing the best it can to protect public safety by effectively and efficiently rehabilitating youth. By any standard, the state over-utilizes expensive residential facilities, pulling thousands of children out of their homes for non-violent offenses.

## FLORIDA INCARCERATES LOW-RISK YOUTH AT ENORMOUS COST

Today, nearly 4,000 children are confined in residential facilities in Florida.<sup>8</sup> The vast majority of those youth are incarcerated for non-violent behavior. There is no question that many of these children could be served more efficiently and effectively without being removed from their homes, schools, and families.



Although the number of children committed to DJJ fell over the past decade, the percentage of committed children who pose little threat to public safety remains high. In 2001, The Office of Program Policy Analysis and Government Accountability (OP-PAGA) released a report finding that misdemeanants and non-law technical probation violators accounted for 41% of all committed children.<sup>9</sup> Despite falling crime and reduced admissions over the past nine years, misdemeanants and technical probation violators still make up 40% of children admitted to DJJ.

A recent analysis of FY2008-09 admissions revealed large subsets of committed children who could be better treated in less expensive and less restrictive alternatives to incarceration:

- 71% of admissions to DJJ institutions were for non-violent behavior
- More than 2,500 children (44% of all admissions) were admitted for probation violations or misdemeanors, at a cost of approximately \$66 million
- More than 1,100 children admitted had never committed a felony, costing the state as much as \$40 million last year.
- Only 1/3 of girls (34%) were admitted for felony offenses.<sup>10</sup>

The Blueprint Commission agreed with the best research on the topic when it concluded that “youth who are kept in programs for prolonged length of stays after treatment goals are achieved often begin to deteriorate and may be more likely to re-offend once release is finally achieved.”

Expensive and intensive residential treatment should be reserved for serious offenders.<sup>11</sup> Misdemeanants and probation violators pose little risk to public safety, and placing them in expensive residential facilities consumes scarce resources that would be better spent on high-risk youth. After Texas, North Carolina, and Virginia adopted legislation banning the commitment of misdemeanants, all three states experienced a decline in juvenile arrests for violent offenses. In North Carolina, juvenile violent arrests fell 20%, and in Virginia, they fell 36%.<sup>12</sup>

#### **INCREASED LENGTHS OF STAY COST \$20 MILLION A YEAR AND HARM PUBLIC SAFETY**

Today, children incarcerated in residential facilities stay more than two months longer than children did in FY2000-01, amounting to a 30% increase in average length of stay.<sup>13</sup> Because children stay in facilities longer, the state has been unable to realize all of the potential cost-savings from reduced admissions. The cost of maintaining extra beds for children who are staying longer was \$18.6 million in FY2007-08.<sup>14</sup>

Increased lengths of stay not only hurt the state’s bottom line, they also harm public safety and run counter to what DJJ has identified as best practices. As previously noted, the Blueprint Commission concluded that children held for prolonged lengths of stay “often begin to deteriorate and may be more likely to re-offend.”<sup>15</sup> The longer a child is removed

from her school, her community, and her family, the harder it is for her to re-integrate, placing her at greater risk of re-entering the system.

Because children are currently staying in expensive residential facilities longer than is effective, DJJ could accommodate a \$49 million reduction to its residential services budget simply by moving lengths of stay closer to best practices.<sup>16</sup> Reducing lengths of stay would allow DJJ to close beds and realize substantial cost-savings while simultaneously improving outcomes for youth and promoting public safety. The privatized nature of Florida’s residential facilities provides the flexibility to reduce capacity quickly and economically. Unlike most juvenile justice systems, more than 80% of the beds in Florida’s network of institutions are run by private companies — most of which operate as for-profit corporations.

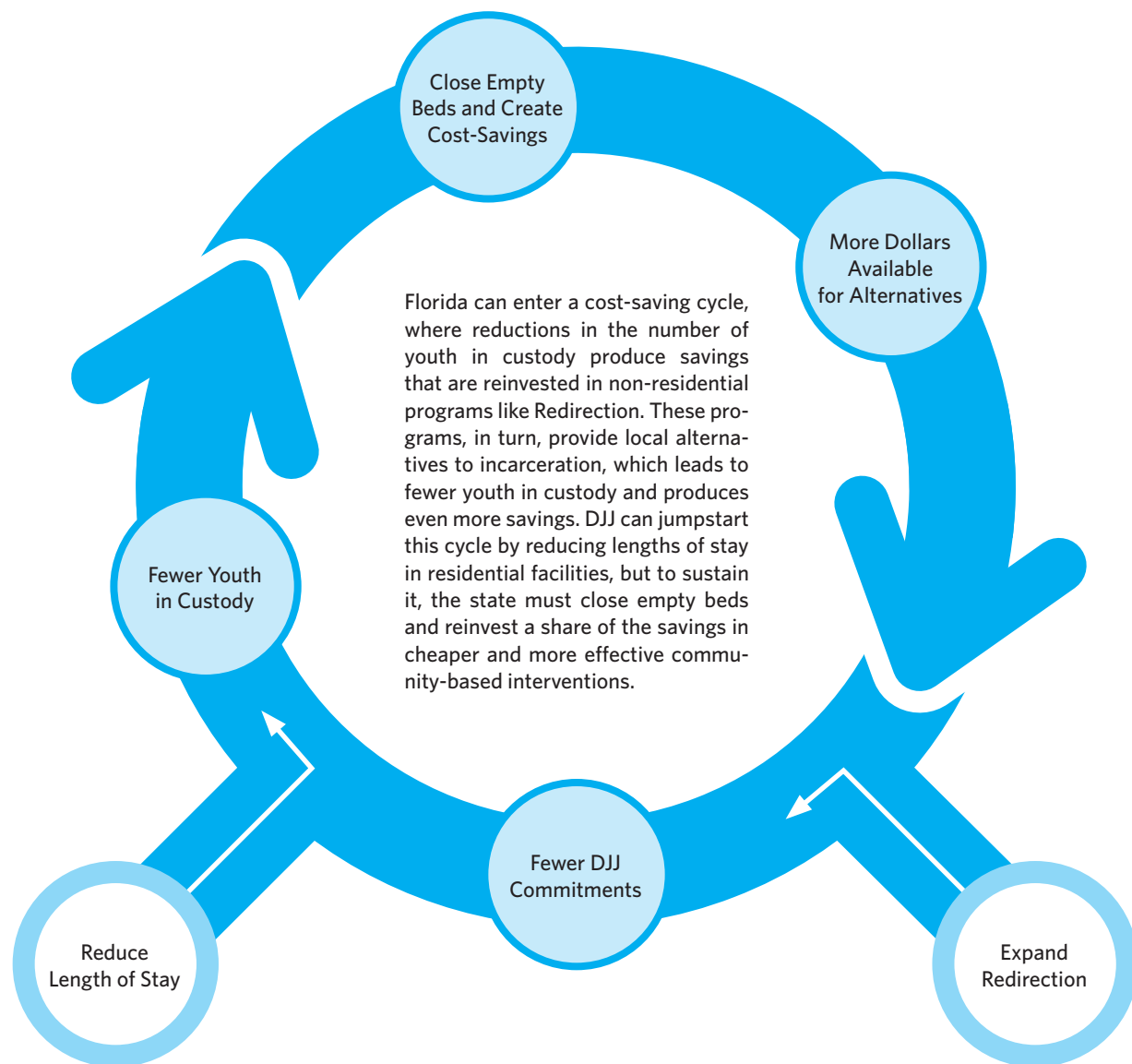
#### **A SHARE OF SAVINGS SHOULD BE RE-INVESTED IN ALTERNATIVES**

Florida is home to a number of innovative programs and approaches to juvenile delinquency that deserve to be expanded. OPPAGA has clearly shown that Redirection, which currently operates in 41 counties, significantly reduces the chances that a child commits a serious offense or goes to prison. Since 2005, Redirection has saved the state \$51.2 million in juvenile incarceration costs alone.<sup>17</sup> The program has also allowed the state to avoid countless additional costs that are substantial but difficult to quantify, including the costs to crime victims, to society in general, and to the state’s adult correctional system. Redirection’s undeniable success — effectively rehabilitating youth while saving the state money — mandates taking the program statewide and expanding it to the type of children who are currently being committed to residential facilities.

OPPAGA has also identified a host of other programs that deserve to be replicated and expanded. DJJ’s *Sourcebook for Delinquency Interventions* details even more programs and practices that are cheaper and more effective than institutions. In

### **DJJ Could Move Lengths of Stay Closer to Best Practices and Save \$50 million**

MODIFYING LENGTHS OF STAY (LOS), WOULD ENABLE DJJ TO CUT BEDS AND SAVE MILLIONS				
FACILITY LEVEL	MOST RECENT LOS	REDUCED LOS	BEDS SAVED	MONEY SAVED
Moderate Risk	244 days	180 days	767	\$30,576,685
High Risk	342 days	240 days	325	\$18,503,128
<b>TOTAL</b>			<b>1092</b>	<b>\$49,079,813</b>



general, these programs contain elements of Multi-Systemic Therapy, Functional Family Therapy, Life Skills Training, Aggression Replacement Training, and cognitive behavior curricula.<sup>18</sup> They have all proved to be more effective and more efficient than residential facilities.

By shifting resources from expensive residential facilities to more effective and efficient community-based sanctions, Florida can improve outcomes for youth, promote public safety, save tens of millions of dollars, and initiate a self-sustaining cycle in which reform not only pays for itself, but also generates additional cost-savings.

## CONCLUSION

Florida over-utilizes residential placements for children. Thousands of children committed to DJJ simply do not belong in custody: 71% are non-violent offenders, and more than 1,100 have never committed a felony. Not only are too many children committed to DJJ, but they stay in residential facilities far too long.

The DJJ's over reliance on incarceration has compromised public safety and hurt Florida's finances. Community-based approaches to juvenile delinquency are more effective, more efficient, and ready to be expanded. By shifting resources from expensive residential facilities to more effective and effective community-based sanctions, the state can enhance public safety, save money, and achieve better results for Florida's youth.

## ENDNOTES

- 1 Lowenkamp, Christopher and Edward Latessa. 2004. Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders. *Topics in Community Corrections*: 3-8. Retrieved November 17, 2008 from [www.nicic.org/pubs/2004/period266.pdf](http://www.nicic.org/pubs/2004/period266.pdf); Lipsey, Mark. 2009. The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview. *Victims and Offenders*, 4: 124-147; Lowenkamp, Christopher, Edward Latessa, and Alexander Holsinger. 2006. The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs? *Crime and Delinquency*, 52: 77-93; Lowenkamp, Christopher T., Edward Latessa and Scott Smith. 2006. Does Correctional Program Quality Really Matter? The Impact of Adhering to the Principles of Effective Interventions. *Criminology and Public Policy*, 5: 201-220; Office of Juvenile Justice and Delinquency Prevention. 2001. OJJDP Fact Sheet: The 8% Solution, available at [www.ncjrs.gov/pdffiles1/ojjdp/fs200139.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/fs200139.pdf).
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# **Department of Corrections**

## **Overview of Correctional Work and Vocational Education Programs**

**Presentation to Senate Criminal Justice Subcommittee**

**January 25, 2011**

# Vocational Education

- The Department has 84 vocational education programs in 36 correctional institutions and annexes.
- As of January 18, 2011, there are 1,697 inmates enrolled in Vocational Programs.
- The Specter Grants to States for Workplace and Community Transition Training for Incarcerated Individuals provides post-secondary vocational training for offenders 35 years of age and under who have a high school diploma or GED. As of January 18, 2011, there are 155 inmates enrolled in SPECTOR programs.
- Programs are operated at 9 correctional institutions through contracts with accredited post-secondary education providers.



# Vocation Programs

Some examples of the vocational programs offered:

- PC Support Services
- Carpentry
- Masonry Brick and Block
- Cabinet Making
- Plumbing Technology
- Commercial Foods and Culinary Arts
- Automotive Service Technology
- Environmental Services
- Nursery Management
- And many more



# Custody Levels

Custody is determined using the Custody Assessment and Reclassification System (CARS) that groups inmates according to the level of risk they represent to the public, the staff, other inmates and the facility itself.

The system uses five (5) distinct groups, described as custody levels: maximum, close, medium, minimum, and community.

- Medium: Refers to inmates eligible for placement at a work camp with a secure perimeter, but who are not eligible for placement in an outside work assignment without armed supervision.
- Minimum: Refers to inmates eligible for outside work assignments, but not for placement at a community residential facility.
- Community: Refers to inmates eligible for placement at a community residential facility.

# Work/Forestry Camps

- Work/Forestry Camps are minimum to medium custody facilities, surrounded by fences and razor ribbon. Inmates are usually transferred to a work camp after completing part of their sentences at a correctional institution and demonstrating satisfactory adjustment.
- Most of these work camps are located next to correctional institutions enabling the sharing of facilities like laundry and health services.
- The inmates housed at these facilities may be assigned to community and public work squads. Their jobs include cleaning up roadways and right-of-ways, grounds and building maintenance, painting, building construction projects, moving state offices, and cleaning up forests.
- 11% of the prison population resides in work camps.

# Road Prisons

- Road Prisons house minimum custody inmates and have perimeter fences.
- Most of these inmates work on community work squads and the highways doing road work.
- Their jobs also include support services to state agencies such as collecting recycling materials and moving furniture.
- Less than 1% of the prison population is housed in road prisons.

# Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE)

- Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) doing business as PRIDE Enterprises, is an inmate training company operating Agriculture, Sewn Products, Graphics, Manufacturing, and Services facilities throughout the state of Florida.
- PRIDE operates 41 training centers providing work and training to inmates in 29 state correctional facilities.
- PRIDE is a private, not-for-profit corporation founded in 1981, by the state legislature. PRIDE is financially self-sufficient and receives no appropriated funding from government. All programs are operated through sale of goods, with “profits” from work programs being reinvested to further PRIDE's Mission.
- Department records indicate as of January 21, 2011, there are 2,153 inmates assigned to PRIDE jobs.

# PRIDE Programs

- **Agriculture Programs** consists of Sugarcane, Citrus, Cattle, and Land Management.
- **Services** is made up of individual units that are operated independently, including Tire Retread, Optical Lab, Dental Lab, Warehouse, and Food Processing.
- **Sewn Products** divisions include Bedding, Uniforms, Footwear, Garment, Institutional Products and Cutting & Distribution.
- **General Manufacturing** features Seating & Panel Systems, Wood Products, Metal Products, Paint, Tag, Sanitary Maintenance & Supplies, Laundry Services, and Lumber Products.
- **Graphics** is comprised of Specialty Graphics, Digital Services, Box, Central Florida Graphics, North Florida Graphics, and South Florida Graphics.

# Work Release Centers (WRC)

Work Release Centers (WRC) house three categories of inmates:

- Inmates who are allowed to participate in paid employment while still in the custody of the department. (Inmates must be within 14 months of their earliest release date)
- Inmates who are assigned to the work release center in the capacity of a center work assignment inmate to assist in maintenance of the facility, (food service, laundry etc.) (Inmates must be within 19 months of their earliest release)
- Inmates who are assigned to participate in a transitional re-entry program that offers a continuum of substance abuse services, a curriculum on changing criminal behavior, educational and vocational programming. (Must be within 28 months of their earliest release date)

# Work Release Centers (WRC)

## **Note:**

- Sex offenders may not participate in community release programs.
- There are no perimeter fences, and inmates must remain at the WRC when they are not working or attending programs.

# Work Release Centers (WRC)

- Inmates participating in work release must save part of their earnings in order to pay toward victim restitution as well as room and board.
- More than 9,000 inmates within the last year participated in Florida's 33 work release programs
- Work release center beds account for 3.9% of the total prison population.



# Analysis of Work Release Centers

	Beds	% Employed	Average Pay
DOC 20 facilities	2,133	74%	\$7.77
Contract 13 facilities	1,859	81%	\$8.60

An inmate earns \$8.15 an hour for 35 hours  
a week = \$240 after taxes

- \$132      55% room and board
- \$ 24      10% restitution or COPS
- \$ 24      10% family assistance, incl.  
child support
- \$ 24      10% for mandatory inmate  
savings account
- \$ 36      Remainder for personal use

# Per Diem Analysis (Excluding Substance Abuse)

	Cost per Day	DOC Subsistence Collected	Net Cost
DOC	\$ 31.26	\$ 7.58	\$ 23.68
Contract	\$ 21.43	N/A	\$ 21.43

# Expansion of Work Release Beds

- Total Work Release Capacity December 2010 - 3,992
- By March 2011, DOC beds will increase by 600
- Total Work Release Capacity by December 2011 - 4,592