

# Lower Costs & Less Crime

Criminal and Juvenile Justice  
Reform Options for Florida

MAY 2016



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

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

Dear Fellow Taxpayer,

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

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

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

Sincerely,

Dominic M. Calabro  
*President & CEO*

## EXECUTIVE SUMMARY

“Tough on crime” policies of the 1980s and 90s were meant to improve public safety, but recently crime has continued to decline across the nation, even in the face of “softer” approaches to punishment.

Florida’s crime rate is no different, but the Sunshine State continues to have one of the largest prison populations in the nation, despite dwindling corrections budgets and diminishing returns to public safety.

Florida can no longer rely on the outdated and inefficient policies of the past, and must begin to consider policies and practices that not only keep Floridians safe, but also address the two primary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

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

# INTRODUCTION

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

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

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

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

## BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

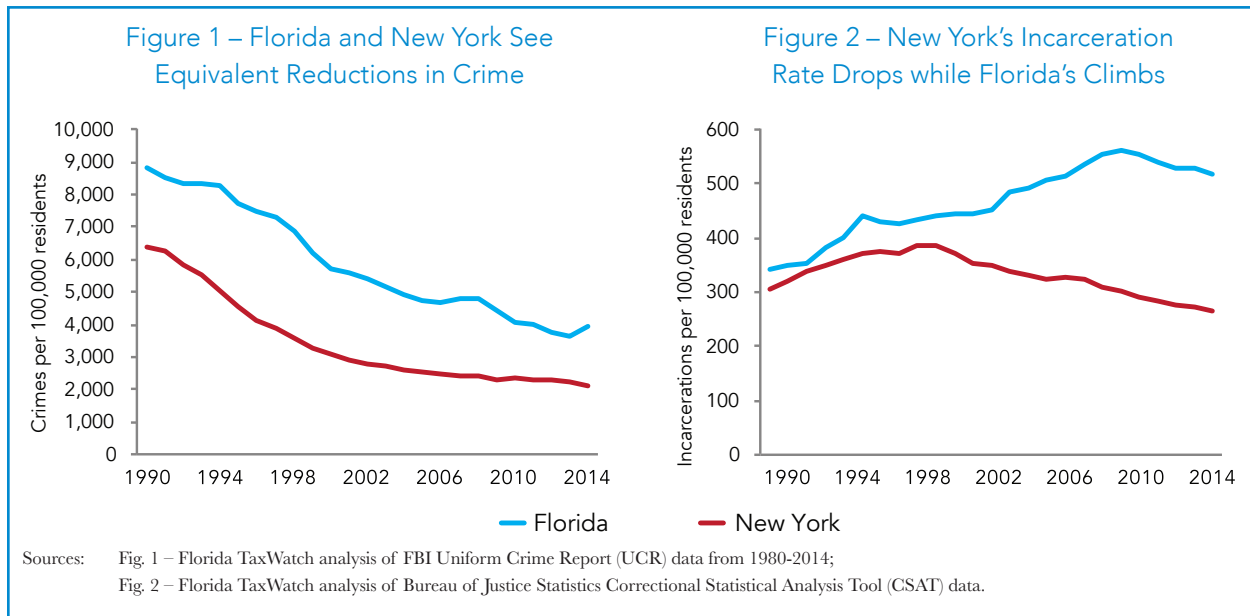
7 “What Caused the Crime Decline?” (Feb. 2015). Roeder et. al, Brennan Center for Justice.

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

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

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

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



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

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

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

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

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

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

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

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

# DRIVERS OF GROWTH IN THE CRIMINAL JUSTICE SYSTEM

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

## Overincarceration

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Recidivism

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

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

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

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

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

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

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

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

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



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

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

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

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

# JUSTICE REFORM RECOMMENDATIONS

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

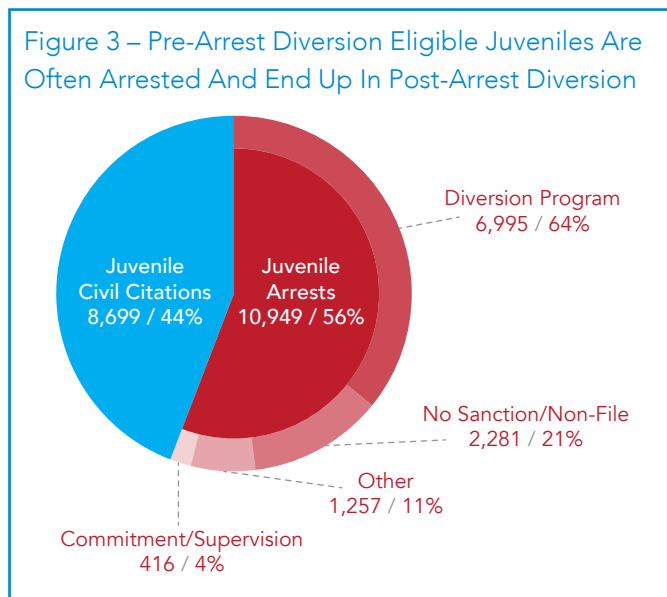
## 1. INCREASE THE USE OF CIVIL CITATION (OR OTHER PRE-ARREST) DIVERSION PROGRAMS FOR YOUTH AND ADULT MISDEMEANANTS

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

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

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

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



31 F.S. 985.12

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

33 *Ibid.*

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

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

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

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

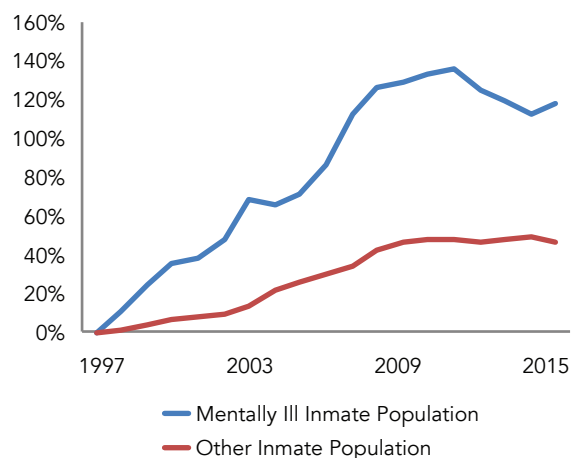
## 2. EXPAND THE USE OF FORENSIC MENTAL HEALTH DIVERSION PROGRAMS

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 *Ibid.*

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

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

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

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

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

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

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

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

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

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

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

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

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

48 Not including DUI or DWI.

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

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

51 Section 521.457 of the Texas Transportation Code.

52 License Suspension Laws – California Vehicle Code Section 14601.

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

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

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

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

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

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

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

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

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

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

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

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

59 F.S. 921.002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

65 TSC 481.121.

66 NY PL 221.05.

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

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

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

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

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

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



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

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

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

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

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

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

73 F.S. 944.275.

74 [Emphasis added] F.S.944.275.

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

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

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

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

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

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

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

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

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

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

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

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

82 *Ibid.*

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

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

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

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

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

Table 1: Many States have Existing Elderly Release Programs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## CONCLUSION

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

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

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

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

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

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

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

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