



Smart Reforms to Prison Time Served Requirements in Florida

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Florida's criminal justice policy decisions, including strict time served requirements, have resulted in an unsustainably large prison system.¹ The average length of time served in Florida prisons has risen dramatically in recent decades, far outpacing increases in other states and contributing to the state's large prison population.² Adjusting the state's inflexible time served requirement is one approach to reducing incarceration that could allow Florida policymakers to save money and invest instead in preventing crime and helping people succeed after coming home from prison. This brief describes the results of an analysis that shows thousands of people in Florida's prisons could be released at lower time served requirements, and, for the time they would have been in prison, would not be arrested.

Key Findings

- Florida's current sentencing requirements hold many people behind bars even though they would not create additional justice system burdens during the balance of their prison terms if they were at home. One in three people in the Florida prison population (34 percent), if released immediately, would experience no additional justice system contact during the balance of their prison terms, even without any additional reentry services or support.
- Adjustments to reduce time served requirements, even minor ones, can significantly lower the number of people in Florida prisons. If the time served requirement were dropped from 85 to 80 percent and was fully implemented, the prison population would instantly drop 5 percent, and 98 percent of those released would experience no increased likelihood of rearrest. If the requirement were dropped to 65 percent, the prison population would drop 18 percent, and 87 percent of those released would experience no increased likelihood of rearrest.
- By reducing the number of people in prison, Florida can save taxpayer resources and redirect savings to further reduce crime rates by advancing crime prevention, reentry support, treatment, and service provision.

Background

With more than 96,000 people in its prisons as of June 2018,³ Florida has one of the largest prison populations—and the 11th highest state imprisonment rate—in the nation.⁴ The number of people in Florida’s overcrowded prisons significantly exceeds current staffing capacity, leading to dangerous conditions for incarcerated people and correctional employees alike.⁵ The Florida criminal justice system is not effectively equipping people for success when they return to their communities, and one in four people released from prison return within three years.⁶ Absent significant reform, Florida’s prison population is expected to remain high, costing the state over \$2 billion each year.⁷ To address a \$28 million budget deficit in 2018, the Department of Corrections cut critical programming and services that can reduce recidivism such as substance abuse treatment, mental health care, and reentry and work-release supports.⁸

The Florida criminal justice system’s broad reach has a particularly heavy impact on people of color. A recent report on Miami-Dade County found racial and ethnic disparities at every decision point in the justice system.⁹ This disparity impacts who serves prison time, and Black Floridians are imprisoned at a rate nearly five times higher than that for white people in Florida.¹⁰ Black people are also overrepresented among those serving the longest prison terms in Florida. In 2014, Black people made up 48 percent of the overall Florida prison population but 54 percent of those who had served 10 or more years.¹¹ Efforts to reduce the size of the prison population can also reduce the disparate impact that justice policy decisions have on communities of color in Florida.

Policy Reform Levers: Admissions and Length of Stay

Two primary policy levers influence the size of the Florida prison population: the number of people sentenced to prison each year, and the length of time they spend there. While annual admissions have declined in recent years, approximately 28,000 people were admitted to Florida prisons in fiscal year 2018, half of them for the first time.¹² Working to achieve better outcomes in the community is key to reducing Florida’s prison population.

The average length of time people serve in Florida prison is high and growing. Between 2000 and 2014, the time the average person in prison had served so far rose by nearly a third, and the number of people who had served 10 or more years in prison more than doubled. A key contributing factor to this trend is people serving increasingly long prison terms with rigid time served requirements.¹³ This has contributed to an aging prison population. The number of people in Florida prisons aged 50 and older—the population the Florida Department of Corrections defines as elderly—is growing steadily, increasing 12.5 percent between 2014 and 2018 alone. In 2018, nearly a quarter of the prison population was age 50 or older.¹⁴

Florida’s “truth in sentencing” policy contributes to long prison terms by requiring all people convicted of felonies after 1995 to serve 85 percent of their sentences irrespective of any individual or circumstantial considerations. This requirement limits opportunities for people in prison to receive “gain time” off their sentences by participating in programming and treatment, and it leads to longer

prisons stays that can increase the likelihood of returning to prison down the road (Nieuwbeerta, Blokland, and Nagin 2009; Spohn and Holleran 2002).

Methodology

Using Department of Corrections data, this analysis simulates the impact on rearrest rates of reducing length of stay.¹⁵ Specifically, historical data from the Florida Department of Corrections and Florida Department of Law Enforcement were used to calculate the future likelihood of segments of the Florida prison population being rearrested over different periods. This calculation was then applied to the entire population of people serving non-life sentences in Florida prisons on December 31, 2014. This created an estimate for how changing time served requirements would impact additional use of justice system resources by simulating an estimated frequency of postrelease rearrests for Florida's prison population. This analysis does not identify specific people and predict their likelihood of arrest during this period; rather, this analysis is based on the characteristics of the entire specified prison population.

This analysis uses arrests as the unit of measurement for additional justice system contact. Notably, arrests are the most conservative measure of negative justice outcomes for several reasons:

- First, an arrest does not necessarily reflect the occurrence of crime, because many arrests result in no further legal action. Thus, arrest predictions are not a proxy for public safety impact.
- Second, people with previous justice system involvement (such as incarceration) are more vulnerable to experiencing subsequent arrests. They can be under increased scrutiny, through either formal community supervision or informal heightened police surveillance. They can also be arrested for technical violations of community supervision that are not crimes for people who are not being supervised, such as not being home at a certain time or not holding a job.
- Third, the prevalence of rearrest is measured as a proportion of release cohorts based on reductions in time served requirements applied across the entire Florida prison population. Individualized release planning could further lower the prevalence of rearrest.

Findings

The current Florida sentencing structure keeps thousands of people in prison who would experience no additional contact with the justice system for the balance of their sentences if they were allowed to stay in their communities instead. In fact, one in three people in the Florida prison population (34 percent) continues to be held behind bars even though they would not be rearrested, let alone reincarcerated, if they were immediately allowed to return to their communities for the balance of their sentences.

Adjustments to reduce time served requirements, even minor ones, can significantly lower the number of people in Florida prisons. Florida's 85 percent requirement is keeping thousands of people behind bars for long periods, many of whom would not be arrested if they were allowed to return home

for the balance of their sentences. Modeling different time served requirements (as shown in table 1) illustrates the effects on Florida's prison population:

- *80 percent:* If the time served requirement were dropped from 85 to 80 percent and were fully implemented, the prison population would instantly drop 5 percent (4,653 people). This drop would reduce the median time served by two months. Ninety-eight percent of these people would be predicted to experience no rearrests during the balance of their original stays in prison, avoiding any additional contact with the justice system.
- *85 and 65 percent:* Some states have different time served requirements for different offense types. In Florida, dropping time served requirements for property, drug, and other less serious offenses to 65 percent while keeping requirements for offenses involving violence at 85 percent would reduce the prison population 11 percent (10,484 people) if fully implemented. In this scenario, the median time served would fall by five months, and an estimated 92 percent of these people would experience no rearrests during the balance of their original prison stays.
- *65 percent:* Dropping time served requirements from 85 to 65 percent would instantly reduce the prison population 18 percent (18,370 people) if fully implemented. The median time served would fall by six months, and 87 percent of these people would be predicted to experience no rearrests during the balance of their original prison stays.
- *50 and 25 percent:* Adopting Mississippi's time served requirements of 25 percent of sentences for drug, property, and other offenses and 50 percent for offenses involving violence would nearly halve the prison population (a reduction of 47 percent, or 47,171 people) if fully implemented. This scenario would reduce the median time served by 16 months. Forty-three percent of those released would have less than a year left on their original length of stay, and 15 percent would have more than five years. Over half the people released (54 percent) would be predicted to experience no rearrests during the balance of their original stays in prison.

Stringent time served requirements do not effectively prevent future justice system contact.

First, even if all people were released as soon as they met their time served requirements under these different scenarios—meaning no consideration were given to individual circumstances or increased reentry support—the vast majority would not be rearrested, let alone reconvicted for committing a crime, during the time they would have spent in prison under the 85 percent requirement. The number of additional rearrests under these scenarios would barely increase the total number of annual arrests in Florida (see the final row in table 1). Second, arrests are not interchangeable with convictions or returns to prison. Only some people who are released from prison and subsequently rearrested—approximately one in four people released from Florida prisons in a given year—are sent back to prison within three years.¹⁶ The remainder of individuals who are arrested after being released from prison are given community-based diversion or disposition options, are found to not be in violation of conditions of supervision or guilty of a new crime, or simply have their charges dropped and are allowed to return home. Adjusting time served requirements to reduce the number of people in prison would allow resources to instead be invested in reentry support for people in the years following release to prevent rearrest and reincarceration when they are most vulnerable.

TABLE 1

Summary of Prison Population Reduction Models by Time Served Requirements

		80%	85% V/ 65% P/D/O	65%	50% V/ 25% P/D/O
<i>Percentage-point change from current time served requirements</i>					
		-5	0/-20	-20	-35/-60
Original prison population		99,485	99,485	99,485	99,485
New prison population		94,832	89,001	81,115	52,314
Population reduction from original prison population	#	4,653	10,484	18,370	47,171
	%	5	11	18	47
No rearrests during balance of original time served	#	4,574	9,599	16,043	25,638
	%	98	92	87	54
Reduction in months served	Mean	3.5	9	12.5	33.2
	Median	2	5	6	16
Percent projected increase in total Florida annual arrests		0.01	0.11	0.30	2.79

Source: Author's calculations based on data from Florida Department of Corrections, Florida Department of Law Enforcement, and 2015 Uniform Crime Reports.

Note: V = offenses involving violence, P/D/O = property, drug, other offenses

Many people who are sent to prison would not have had any additional contact with the justice system if they had been allowed to stay home in their communities instead. A significant number of people in Florida are put behind bars even though they likely would not have been arrested had they remained in their communities. The model predicts that nearly 2,000 people in prison (2 percent of the total prison population) would not have been arrested at *any* point if they had spent the length of their entire prison term in their communities instead. This group could have been diverted from prison without any additional contact with law enforcement and corrections staff had they been in their communities for the duration of their prison terms.

In sum, Florida's additional investment in putting and keeping so many people behind bars while cutting funding for community supports is a poor use of taxpayer resources. Florida's spending on corrections has increased dramatically in the past several decades. General fund spending on corrections rose 278 percent between 1985 and 2017 (adjusted for inflation), and the state spent \$2.6 billion of its general fund on corrections in fiscal year 2017, making up 8.7 percent of all general fund spending (NASBO 2017, table 34). Spending on local jails and law enforcement makes the full fiscal cost even higher.

Solutions

The data are clear that Florida can safely reduce the number of people in state prisons. Here are three strategies policymakers can consider:

1. **With a more nuanced front-door policy, Florida can divert people from prison who would achieve better outcomes by staying in their communities.** Florida could follow the lead of

states using multiple strategies to narrow the front end of their prison systems, including the following:

- » Building out, and expanding eligibility for, diversion options.
- » Developing and adopting an accurate, nuanced decisionmaking aid tailored to Florida's population and designed to avoid incarceration without increasing racial and ethnic disparities in imprisonment rates.
- » Expanding community-based treatment and supervision programs.

2. **Florida can adjust time served requirements to allow them to be tailored to individual circumstances and considerations.** Reforms to adjust time served requirements and offer meaningful opportunities for release include the following:

- » Eliminating, or reducing, the 85 percent requirement, such as removing or decreasing time served requirements and allowing people in Florida prisons to use all earned gain time. One option is adopting Mississippi's strategy of tiered time served requirements (50 percent for people convicted of violent offenses, 25 percent for nonviolent offenses).
- » Expanding opportunities to earn gain time by participating in programming and educational offerings.
- » Adopting a second look provision that allows judges to reexamine long sentences after someone has served a certain period in prison and decide whether adjustments are appropriate.
- » Rolling back mandatory sentencing that results in long sentences, such as habitual offender laws and three strikes policies.
- » Retroactively adjusting sentencing thresholds, and adjusting statutory sentence lengths.
- » Creating "carve out" sentencing structures to allow some people to serve the last portion of their required time in their community, rather than in prison.

3. **Florida can redirect savings from reduced incarceration to advance crime prevention and reentry support instead.** Keeping more people in their communities and increasing investment in crime prevention and social services are more effective uses of taxpayer resources than putting and holding people behind bars who would not have otherwise even experienced a single arrest during the time they spend in prison. This strategy would also help to address the state's overcrowding crisis, and it could allow Florida to reverse recent cuts to mental health and substance abuse treatment and reentry support for incarcerated people. Well-crafted evidence-based prison programming can reduce recidivism.¹⁷ The money saved by freeing up bed space could be used to increase public safety by investing instead in evidence-based prison programming that meets the complex needs of individuals experiencing disproportionate justice system involvement. Supportive, wraparound reentry services can decrease the likelihood of recidivism and help people returning home from prison access medical care, housing, jobs, and social safety net services.¹⁸ These investments can also help ameliorate racial disparities in the justice system by increasing access to supportive services and community-based options in communities of color.

There are many strategies that Florida policymakers could use to address the prison population crisis, and the state is well-positioned to join the more than half of all US states that have enacted bipartisan criminal justice reform in recent years.¹⁹ Florida prisons are overcrowded and understaffed, creating dangerous conditions and straining state coffers. By adjusting the state's criminal code and sentencing law time served requirements, Florida policymakers can help ensure that people better served in the community do not enter prison in the first place, and that people in prison are given meaningful opportunities for release. Reinvesting corrections savings in other public safety priorities, such as violence prevention programs, substance abuse treatment, and reentry support, can further benefit Floridians by contributing to declines in both crime and incarceration.

Notes

- ¹ See Engel and McNamara (2018) and Savage and Savage (2015).
- ² Leigh Courtney, Elizabeth Pelletier, Sarah Eppler-Epstein, Ryan King, and Leah Sakala, "A Matter of Time: The Causes and Consequences of Rising Time Served in America's Prisons," Urban Institute, July 2017, <http://apps.urban.org/features/long-prison-terms/trends.html>; and Pew Center on the States (2012).
- ³ Florida Department of Corrections (FDC) 2017–2018 Annual Report, available at http://www.dc.state.fl.us/pub/annual/1718/FDC_AR2017-18.pdf.
- ⁴ See Carson (2018).
- ⁵ See Engel and McNamara (2018) and Savage and Savage (2015).
- ⁶ See the FDC 2017–2018 Annual Report.
- ⁷ FDC 2017–2018 Annual Report.
- ⁸ Mary Ellen Klas, "Florida Prisons Cut Programs to Cover \$28 Million Deficit," *Tampa Bay Times*, May 6, 2018, <http://www.tampabay.com/florida-politics/buzz/2018/05/06/florida-prisons-cut-programs-to-cover-28-million-deficit/>.
- ⁹ See Petersen et al. (2018).
- ¹⁰ Florida Department of Corrections 2016–2017 Annual Report, available at http://www.dc.state.fl.us/pub/annual/1617/FDC_AR2016-17.pdf; and US Census Bureau, "Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States," July 1, 2017, available at <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.
- ¹¹ Courtney et al., "A Matter of Time," <https://apps.urban.org/features/long-prison-terms/intro.html>.
- ¹² FDC 2017–2018 Annual Report.
- ¹³ Courtney et al., "A Matter of Time."
- ¹⁴ FDC 2017–2018 Annual Report.
- ¹⁵ For more detail on this methodology, see Bhati (2006).
- ¹⁶ FDC 2017–2018 Annual Report.
- ¹⁷ "Corrections & Reentry," National Institute of Justice, Crimesolutions.Gov, accessed March 26, 2019, <https://www.crimesolutions.gov/TopicDetails.aspx?ID=31>.
- ¹⁸ See, for example, Lutze, Rosky, and Hamilton (2014).
- ¹⁹ For an overview of some recent state accomplishments Florida policymakers can consider, see Sakala and King (2016).

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