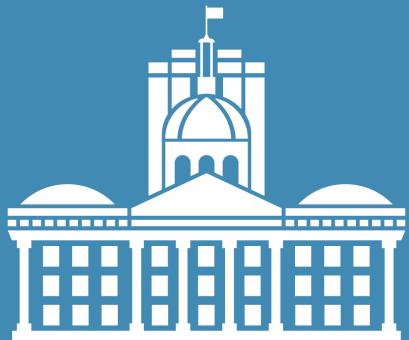


# Parole and Early Release

Report No. 19-13

November 2019



**OPPAGA**

Office of Program Policy Analysis and Government Accountability

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## EXECUTIVE SUMMARY

Florida currently has few mechanisms for early prison release. Due to the state's determinate sentencing requirements, which specifies that inmates must serve a mandatory 85% of their sentence, most inmates are released when their sentence ends. Gain-time, awarded to inmates by the Florida Department of Corrections for institutional adjustment, educational program completion, and good behavior, is the only opportunity eligible inmates have to earn a sentence reduction. Some inmates may also be released prior to sentence expiration to community supervision. Some of these mechanisms are discretionary and require a formal release decision from the Commission on Offender Review for inmates to serve the remainder of their court-imposed sentence in the community under strict terms of supervision. Very few inmates are granted release this way—66 in Fiscal Year 2018-19. Conditional release and addiction recovery supervision are non-discretionary release programs in which inmates are granted release to mandatory post-prison supervision after they serve their sentence. While more inmates— 6,375 in Fiscal Year 2018-19—are released under these programs, the programs are limited to inmates with violent or habitual criminal histories or with a substance abuse history.

Florida is 1 of 16 states that abolished parole between 1976 and 2000 and have not reinstated it. The Florida Legislature abolished parole for most offenders in 1983. Florida still exercises parole authority over offenders whose crimes occurred prior to the state's abolishment by making release decisions and retaining revocation authority for offenders under parole supervision. Like Florida, the majority of states employ the use of gain-time as a mechanism to reduce an offender's overall sentence. In terms of other release programs, compassionate release for offenders with terminal illness or other medical conditions is the most common early release program in other states. However, although many states have compassionate release as an early release program, it is rarely used.

Florida could modify its prison release mechanisms. If the Legislature increases the number of inmates eligible for release from prison, consideration should be given to the types and characteristics of offenders who would be eligible and the role that risk assessments, supervision level, and service provision have in helping to ensure public safety and support reentry success. Modifications could include reinstating parole, modifying truth in sentencing thresholds, and expanding discretionary release options for infirmed elderly inmates and those with debilitating illnesses. Stakeholders support using any savings resulting from expanding early release for correctional system infrastructure and services to support reentry.

### REPORT SCOPE

As directed by the Legislature, OPPAGA assessed prison release mechanisms in Florida and other states, including mandatory requirements for the amount of sentence to be served. Our review answers three questions.

- What are the current mechanisms for releasing offenders from prison?
- What are other states' policies regarding prison release?
- What are the considerations for modifying Florida's early prison release mechanisms?

# QUESTIONS AND ANSWERS

## What are the current mechanisms for releasing offenders from prison?

Offenders in Florida are currently sentenced under the Criminal Punishment Code; inmates must serve 85% of their sentence

The Criminal Punishment Code, enacted in 1998, codifies Florida's current sentencing structure. The code establishes sentencing criteria, provides criminal penalties, and limits the application of such penalties. The code also provides judges with a sentencing range based on offenses and offender characteristics, such as the seriousness of the offense and the offender's prior criminal record.<sup>1</sup> Additionally, some offenses have mandatory minimum sentences requiring a set term of imprisonment. The rationale for this determinate sentencing is to increase certainty in the amount of time served, improve proportionality of the sentence to the severity of the offense, and reduce disparities between sentences. Florida statutes also require that all individuals with offenses committed on or after October 1, 1995 serve a minimum of 85% of their sentence.<sup>2</sup> Thus, an offender cannot be released from prison until they have satisfied that minimum amount of their term.

Today's criminal sentencing guidelines are different from past schemes. Prior to 1983, Florida had an indeterminate sentencing structure that gave courts broad discretion to set a sentence length for each individual case and offender to provide opportunity for rehabilitation and assessment of an offender's progress. Offenders were eligible for parole and could be released prior to the end of their sentences at the discretion of the Florida Parole Commission.<sup>3</sup> To impose more uniformity in sentencing and certainty in the amount of time served, the 1983 Legislature set the determinate Florida Sentencing Guidelines and eliminated parole eligibility for almost all offenses. However, due to prison capacity issues, by 1987 inmates were eligible to earn early release credits, which reduced actual time served to 40% of the imposed sentence. Further statutory changes aimed to address this situation by reducing early release credits and modifying the guidelines to rank the severity and link the offense to a sanction and the length of that sanction.

**Florida has limited prison release mechanisms; most inmates are released at sentence expiration**

The Florida Department of Corrections (FDC) releases about one-third of its total inmate population each year; in Fiscal Year 2017-18, FDC released 30,224 inmates. Inmates are released in three ways. They can be released from custody at the expiration of their sentence without any term of community supervision; after serving a specified time in prison followed by some form of community supervision; or at the discretion of the Commission on Offender Review using statutory or administrative determinations of eligibility followed by some form of community supervision.<sup>4</sup>

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<sup>1</sup> Florida statutes categorize each felony offense in a level according to the severity of the offense, which corresponds with the harm or potential harm to the community that is caused by the offense. See the offense severity ranking chart in s. [921.0022, F.S.](#), for more information.

<sup>2</sup> Sections [921.002](#) and [944.275, F.S.](#)

<sup>3</sup> In 2014, the Legislature changed the name of the Parole Commission to the Florida Commission on Offender Review.

<sup>4</sup> Other release mechanisms include inmates having their sentence vacated, provisional release, commutation, parole reinstatement, and conditional pardon.

**Most inmates are released at the end of sentence; inmates can earn gain-time to be released after serving 85% of their sentence.** The most common mechanism for inmate release in Florida is through expiration of sentence. Gain-time is the only opportunity eligible inmates have to earn a reduction in the sentence imposed by the court. FDC awards incentive gain-time, in the form of 0-10 days, to inmates sentenced for offenses on or after October 1, 1995, for institutional adjustment as demonstrated through evaluations of their behavior in security, work, and program components.<sup>5</sup> Made on a monthly basis, the number of gain-time days awarded varies in relation to the inmate's rated performance and adjustment.<sup>6</sup> The department uses gain-time to encourage satisfactory inmate behavior, provide an incentive for inmates to participate in productive activities, and reward inmates who perform outstanding deeds or services.<sup>7</sup>

Each inmate has a tentative release date. This date may not be later than the maximum sentence expiration date, which represents the date at the end of an inmate's sentence or combined sentences. When an inmate earns gain-time, it is applied to make the tentative release date proportionately earlier. However, because inmates are required to serve 85% of each sentence imposed, they can only apply earned gain-time up until the tentative release date equals 85% of the sentence imposed. At that point, gain-time is no longer applied to reduce the sentence. For example, at a rate of 10 days per month, an inmate could earn approximately 913 days (2.5 years) of gain-time when serving a 10-year sentence. However, due to the requirement that at least 85% of the sentence be served, only 548 days (1.5 years), could be applied to the release date.

An August 2019 FDC analysis found that 10,466 inmates have tentative release dates equal to the date that is 85% of their imposed sentence.<sup>8</sup> While these inmates can no longer shorten their sentence, they may continue to earn gain-time. Further analyses found that 2,280 inmates had earned enough gain-time for immediate release. However, these inmates had an average of 112 days remaining on their sentence owing to the 85% requirement. The average sentence length for these offenders is 9.1 years. Almost a quarter (23%) of these offenders are serving a sentence for a primary drug offense, 17% for a sex offense, 15% for burglary, 11% for other violent offenses (e.g., aggravated assault, arson, kidnapping), 10% for a property offense, 8% for murder or manslaughter, 6% for robbery, 6% for other non-violent offenses (e.g., residency restrictions, traffic), and 3% for a weapons-related offense.

Statutes also allow gain-time to be withheld or forfeited.<sup>9</sup> An inmate's right to earn gain-time during all or any part of the remainder of their sentence may be forfeited because of the seriousness of a single instance of misconduct or because of the seriousness of an accumulation of instances of misconduct. These forfeitures are applied to make the tentative release date proportionately later. The department has the discretion to restore all or any part of forfeited gain-time. In addition, certain offenders are not eligible to receive any gain-time or have restrictions in gain-time eligibility. For example, inmates serving life sentences and certain sex offenders cannot earn any gain-time.<sup>10</sup> Additionally, the Prison Releasee Reoffender Punishment Act requires offenders to serve 100% of the statutory minimum of their new term, with no allowance for gain-time, if they commit a specified offense within three years

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<sup>5</sup> Some inmates, almost 9,000, with offense dates prior to October 1, 1995 are eligible to earn different types and amounts of gain-time.

<sup>6</sup> The gain-time calculation also includes time served in the county jail as credited by the sentencing court.

<sup>7</sup> Inmates may also earn a one-time, 60-day educational achievement gain-time award for receiving a General Educational Development (GED) diploma or completing a vocational program certificate. Also, per s. [944.275\(4\)\(c\)](#), F.S., inmates may be considered for a maximum 60 day meritorious good time award if they commit an outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or in some manner performing an outstanding service.

<sup>8</sup> Inmates serving mandatory/minimum sentencing provisions were excluded from this review.

<sup>9</sup> Sections [944.28](#), F.S., and [944.281](#), F.S.

<sup>10</sup> This includes offenders serving a sentence for sex offenses specified in s. [944.275](#), F.S., which include sexual battery and lewd or lascivious offenses, committed on or after October 1, 2014.

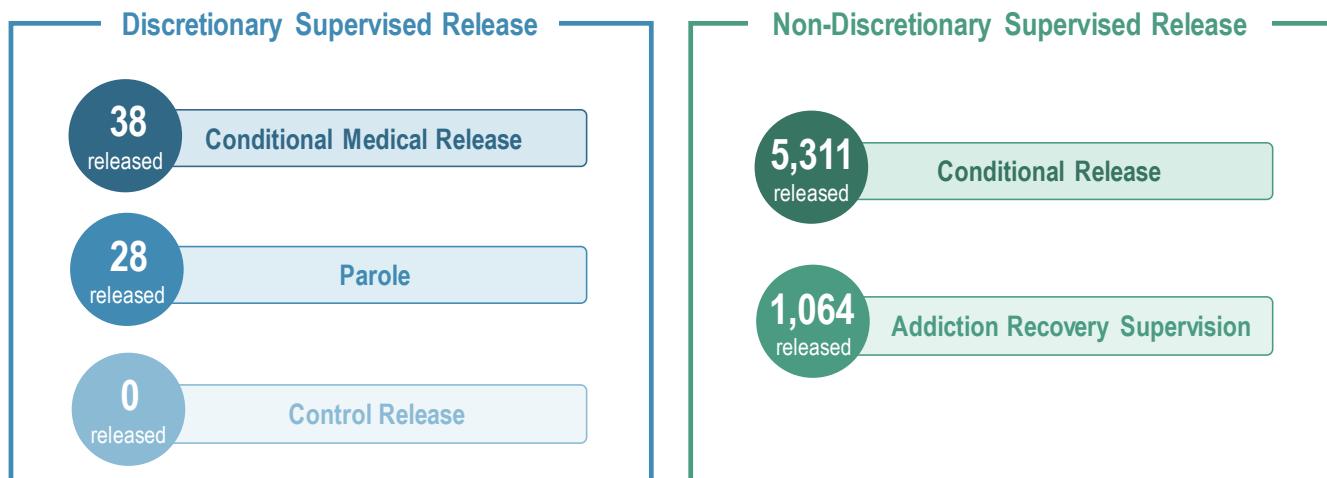
of their release.<sup>11</sup> Moreover, inmates serving certain minimum mandatory sentences, such as those for firearm offenses, are not eligible to earn gain-time during the portion of time the mandatory sentences are in effect.

Section 951.21, *Florida Statutes*, authorizes gain time for offenders incarcerated in county jails. Each county's board of county commissioners can vote to authorize commutation of jail time for good conduct or elect to discontinue or revise gain time policies for good conduct. If gain time is authorized, an inmate can receive up to 5 days per month when no charge of misconduct is sustained against that inmate, with additional days added depending on the length of sentence. The board of county commissioners may also adopt a policy to allow county inmates to earn extra time for meritorious conduct or exceptional industry not to exceed 5 days per month.<sup>12</sup> Several Florida counties have voted to utilize gain time for offenders in county jail and follow the statutory language of 5 days per month for good conduct and 5 days per month for meritorious conduct or exceptional industry. However, at least one county has authorized gain time for inmates in county jails at a substantially lower rate. In Marion County, jail inmates are only able to receive a 1-day deduction from their sentence for every 30 days served in addition to a 5-day deduction for inmates who qualify and participate in the inmate work program.

**Some inmates are granted release from prison under supervision.** Approximately one-third of all inmates released from prison in Florida are under some form of supervision. This supervision can include probation and parole, control release, conditional medical release, conditional release, and addiction recovery supervision. As shown in Exhibit 1, some of these release types are discretionary and require a formal release decision, and some are non-discretionary and are a type of mandatory supervision for inmates who meet certain criteria.

### Exhibit 1

#### Use of Discretionary and Non-Discretionary Supervised Prison Release Programs in Fiscal Year 2018-19



Source: Florida Commission on Offender Review.

<sup>11</sup> Per s. [775.082\(9\)](#), F.S., these crimes are treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault with a deadly weapon; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of a dwelling or burglary of an occupied structure; or any felony violation of ss. [790.07](#), [800.04](#), [827.03](#), [827.071](#), or [847.0135\(5\)](#), F.S.

<sup>12</sup> Meritorious conduct gain time may be awarded as the result of a singularly noteworthy action or a noteworthy pattern of behavior. Exceptional industry may be awarded for dutifully completing work assignments.

The Florida Commission on Offender Review (FCOR), a three-member, quasi-judicial, decision-making body, presides over approximately 36 meetings annually to make determinations regarding the release or revocation of certain offenders under supervision. The commission is also responsible for setting the terms, conditions, and length of supervision for these offenders. These conditions can include requirements such as mandatory drug testing and treatment and obtaining permission to change their residence. The Florida Department of Corrections is responsible for monitoring released offender's adherence to these terms as well as conditions and monitoring offenders on probation.

Parole is a discretionary prison release that allows offenders to serve the remainder of their court-imposed sentence in the community under strict terms of supervision. Parole eligibility is very limited in Florida. Primarily inmates whose offenses occurred before 1983 are eligible for parole.<sup>13</sup> FCOR uses its discretion to determine which eligible offenders are released on parole and retains revocation authority for offenders under parole supervision. The commission interviews inmates for parole consideration every one to seven years, depending on the severity of their offense. The three-member commission and its staff use the rules and criteria in *Objective Parole Guidelines* to guide parole decisions, including setting a presumptive parole release date for eligible inmates.<sup>14</sup> This date, which is the tentative date an eligible inmate may be released on parole, can change, with the commission deciding to modify or suspend it.

Inmates eligible for parole consideration are those who committed the following.

- Any felony committed prior to October 1, 1983, or those who elected to be sentenced outside the sentencing guidelines for felonies committed prior to July 1, 1984
- All capital felonies committed prior to October 1, 1995, except
  - a) murder or felony murder committed after May 25, 1994;
  - b) making, possessing, throwing, placing, or discharging a destructive device or attempt to do so which results in the death of another person after May 25, 1994;
  - c) first degree murder of a law enforcement officer, correctional officer, state attorney, or assistant state attorney committed after January 1, 1990; and
  - d) first degree murder of a justice or judge committed after October 1, 1990.
- Any continuing criminal enterprise committed before June 7, 1993
- Any attempted murder of a law enforcement officer committed between October 1, 1988, and October 1, 1995

Source: Florida Commission on Offender Review.

As of September 2019, 4,095 inmates met parole eligibility criteria and 424 offenders were on parole supervision. Historically, very few inmates are granted parole each year. For example, in Fiscal Years 2017-18 and 2018-19, FCOR granted parole to 14 and 28 inmates, respectively. Currently, 237 parole-eligible inmates have a presumptive parole release date between October 8, 2019 and October 8, 2021. In addition, 475 parole-eligible inmates have exceeded their presumptive parole release dates but are still in custody with the release date suspended.<sup>15</sup>

FCOR staff reported that the primary reason release date suspension occurs is because the commission finds the inmate to be a poor candidate for parole release pursuant to s. 947.18, *Florida Statutes*. The law includes provisions that require the commission to find that there is reasonable probability that a parolee will conduct themselves as a respectable and law-abiding person

<sup>13</sup> Legal challenges to the sentencing guidelines in 1983 prevented the full implementation of provisions eliminating parole until the following year. Additionally, parole remained an option until 1995 for offenders convicted of capital felonies resulting in a life sentence, once the offender had served 25 years of imprisonment.

<sup>14</sup> Section 947.165, F.S.

<sup>15</sup> The presumptive parole release dates for these offenders range from April 14, 1982 to October 5, 2019.

and that the person's release will be compatible with their own welfare and the welfare of society. Another reason that parole-eligible inmates may not be granted parole is that they have a parole-ineligible sentence in addition to a parole-eligible sentence.

FCOR is also responsible for setting terms and conditions and making revocation determinations for two non-discretionary, mandatory post-prison supervision programs: conditional release and addiction recovery supervision. These programs require post-release supervision for a limited number of inmates who meet certain criteria. Inmates are not released early from prison to participate in these programs, as they first must serve their sentence, minus accrued gain-time, up to the 85% amount.

- Conditional release requires mandatory post-prison supervision for inmates who are sentenced for certain violent or habitual crimes.<sup>16</sup> After release from prison, inmates who are subject to conditional release are supervised in the community for a period equal to the gain-time that they earned while incarcerated. These offenders are subject to the conditions of supervision set by FCOR, and this supervision can be revoked and the releasee returned to prison if they violate these terms. The average time of conditional release supervision is nine months. As of June 2019, there were 2,978 releasees on conditional release supervision. In Fiscal Year 2018-19, the commission set the conditions for 5,311 offenders scheduled to be granted conditional release supervision.
- The addiction recovery supervision program also provides post-prison supervision. Offenders convicted on or after July 1, 2001, who have a history of substance abuse or addiction as determined by FDC's drug screening instrument, have participated in any drug treatment, and have not been convicted of a disqualifying offense are eligible.<sup>17</sup> These offenders serve the time they would have been in prison, if not for gain-time, under supervision terms that commonly require outpatient drug treatment. The term of addiction recovery supervision is often short, an average of three months. As of June 2019, there were 269 offenders on addiction recovery supervision. During Fiscal Year 2018-19, FCOR set the conditions for 1,064 offenders scheduled to be granted release into the program.

**FDC is responsible for supervising offenders on parole, conditional release, and addiction recovery supervision and for enforcing release terms and conditions.** Department probation officers visit the released offender in the community to monitor compliance with conditions of supervision, conduct searches and curfew checks, verify residence and employment, and observe attendance at treatment or community service work sites. The department reports violations to FCOR, which makes final determinations regarding alleged violations. Upon a finding of fact that an offender has violated the terms and conditions of their release, the commissioners may vote to revoke supervision and return the offender to prison. In Fiscal Year 2018-19, the commission made 1,527 revocation determinations and issued 1,907 arrest warrants.

In addition to supervising these offenders, FDC supervises offenders on probation. Probation is a court-ordered term of community supervision under specified conditions for a set period of time that cannot exceed the maximum sentence for the offense. While it can serve as an alternative to imprisonment, 16% (4,833) of inmates released from prison in Fiscal Year 2017-18 were released to probation or community control.<sup>18</sup> Florida statutes allow the court to impose a split sentence for

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<sup>16</sup> These include the crimes of murder or manslaughter, sexual offenses, robbery or other violent personal crimes and those who have served a prior felony commitment at a state or federal correctional institution or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or court-designated sexual predator.

<sup>17</sup> Per s. [944.4731](#), F.S., offenders are ineligible for addiction recovery supervision if they have a current or previous conviction for a violent offense, drug trafficking, unlawful sale of a controlled substance, certain property offenses, or a traffic offense involving injury or death.

<sup>18</sup> Community control is a form of intensive community supervision in which an offender is restricted to their residence, with the exception of being allowed to work, attend treatment, visit the probation office, and limited other occasions that must be approved in advance by FDC. Per

offenders facing a punishment of imprisonment, except for a capital felony.<sup>19</sup> The court sentences the offender to a specified period of incarceration and then directs that they be placed on probation or into community control immediately upon release. Probation officers monitor for violations of supervision terms, which can include non-law or technical violations, such as not meeting curfew or failing to meet community service requirements and new law violations. Willful non-compliance or a violation of any of the set conditions may result in modification of the sentence or revocation by the court.

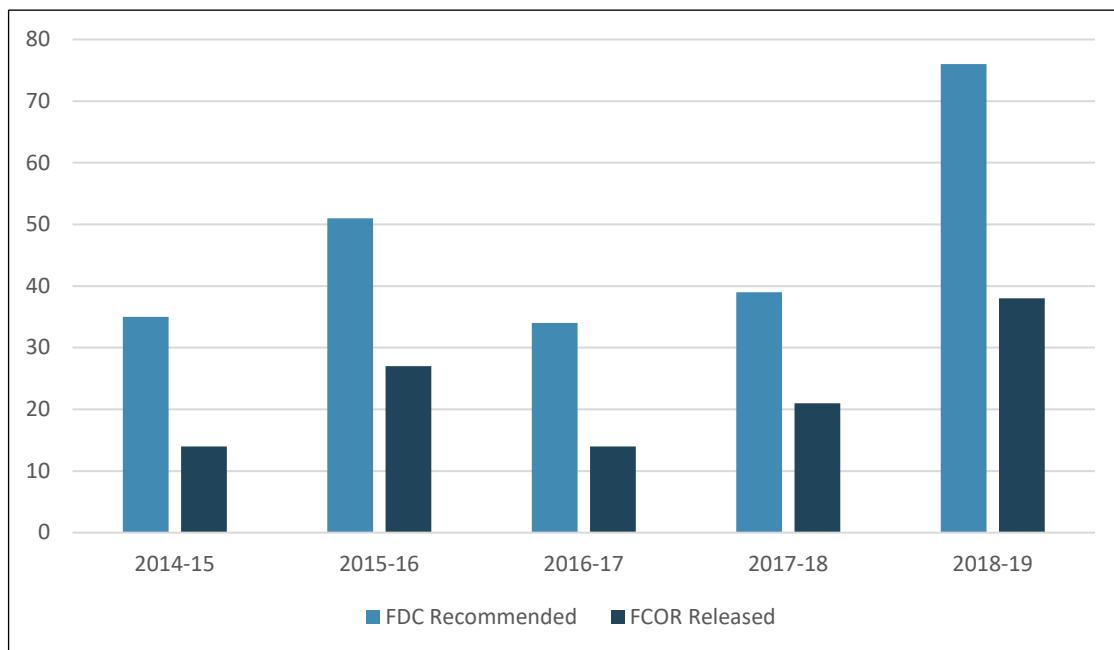
## Florida's use of discretionary early release programs is very limited

Florida has few mechanisms to release inmates prior to serving 85% of their imposed sentence. Historically, this type of discretionary early release was linked to prison capacity needs. In 1989, the Legislature created the Control Release Authority, with the members of the Florida Commission on Offender Review as the release authority.<sup>20</sup> When active, control release is utilized as a prison population management tool to keep capacity between 99% and 100%. The commission determines which parole-ineligible inmates would be eligible for control release and sets a control release date.<sup>21</sup> State law requires that the commission prioritize consideration of eligible inmates closest to their tentative release date. In addition, statute prohibits inmates serving sentences for certain crimes (e.g., sex offenses and other violent crimes) and those serving mandatory minimum sentences from being eligible for control release. The commission does not currently review the inmate population for discretionary release under this authority, as there are sufficient beds for the prison population.

There is only one program currently being used to release inmates prior to the completion of their sentence—conditional medical release. However, its use is very limited, with less than 40 inmates released in each of the past five years. (See Exhibit 2.)

### Exhibit 2

#### Few Inmates Have Been Released Under Conditional Medical Release



Source: OPPAGA analysis of Florida Commission on Offender Review data.

s. [948.10, F.S.](#), the community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, would be incarcerated.

<sup>19</sup>Section [948.012, F.S.](#)

<sup>20</sup>Section [947.146, F.S.](#)

<sup>21</sup>In addition to being parole-ineligible, inmates must not have a violent or sexual criminal history.

Created in 1992, conditional medical release allows the Florida Commission on Offender Review to grant a period of supervision to inmates who, because of an existing medical or physical condition, are determined to be permanently incapacitated or terminally ill.<sup>22,23</sup> The Florida Department of Corrections is responsible for identifying inmates who might be eligible for release and refers them to FCOR for consideration. The commission reviews the information provided by FDC, which includes clinical reports, medical information documenting the prisoner's condition, and a release plan that includes necessary medical care. The commission may also receive input from victims regarding the inmate's release, ask FDC for additional medical evidence and examinations, and obtain additional information or verification of the prisoner's release plan. If FCOR approves the inmate for release, they serve the remainder of their sentence, without any reduction for good behavior, under supervision that includes periodic medical evaluations and other terms. The commission can revoke conditional medical release if any of the conditions of release are violated. Additionally, if an offender's medical condition improves to the extent that they no longer meet the release criteria, FCOR may order a return to custody, and the offender must serve the balance of the sentence with credit for the time served on conditional medical release.

## What are other states' policies regarding prison release?

Truth in sentencing practices vary greatly across states, but most states without parole limit application of 85% or greater truth in sentencing requirements to violent offenders

Truth in sentencing refers to sentencing practices that seek to minimize the difference between an offender's imposed term of imprisonment and the amount of time an offender serves in prison. Modifying a slogan from the federal truth in lending laws of the 1970s that required consumer lenders and merchants to disclose interest rates and other key financing terms, truth in sentencing policies were a response to indeterminate sentencing systems that many viewed as lacking in deterrence. Because truth in sentencing refers to a range of sentencing practices, jurisdictions vary in their definition of truth in sentencing policies. For example, Florida's requirement that all offenders serve 85% of their sentence of imprisonment is often referred to as the "truth in sentencing" law.<sup>24</sup>

The Federal Violent Crime Control and Law Enforcement Act of 1994 created the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Programs. These grants provided funds to states and U.S. territories to increase their capacity to incarcerate people convicted of violent offenses. Under the Truth-in-Sentencing Incentive Grant Program, states could receive grants only if they enacted—or had already adopted—laws or policies that required people convicted of violent offenses to serve 85% of their court-ordered sentences or had policies that achieved the same result. The Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Programs did not require states to have a set proportion of term of imprisonment for non-violent offenders. Both grant programs ended in 2001.

**Most states (34) have parole release in which judges impose a sentencing range or maximum sentence, and parole boards have some degree of discretion in determining release dates for most inmates.** However, 16 states, including Florida, abolished parole between 1976 and 2000 and have not reinstated it. These states abolished parole for new offenses but still exercise parole authority

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<sup>22</sup>Section [947.149](#), F.S., defines a permanently incapacitated inmate as one who has a condition caused by injury, disease, or illness, which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to themselves or others. The statute defines a terminally ill inmate as an inmate who has a condition caused by injury, disease, or illness, which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent so that the inmate does not constitute a danger to themselves or others.

<sup>23</sup>Inmates sentenced to death are not eligible for conditional medical release.

<sup>24</sup>Chapter 95-294, *Laws of Florida*, which created the 85% requirement for Florida inmates, was entitled the Stop Turning Out Prisoners Act, named after a nonprofit citizens' activist group opposed to early release programs.

over offenders convicted prior to the effective date of the determinate sentencing statute or inmates serving life sentences. Additionally, three states—Colorado, Connecticut, and Mississippi—eliminated discretionary parole for a time but reinstated it.<sup>25,26</sup> All of the states that have eliminated parole have some mandatory proportion of sentence an offender must serve. However, this varies greatly by the proportion of sentence and to whom it applies. (See Exhibit 3.) Arizona and Virginia have requirements similar to Florida, whereby all offenders sentenced to prison must serve 85% of their prison sentence. In Ohio and Wisconsin, all offenders are required to serve 92% and 100% of their prison sentences, respectively. In North Carolina, offenders are sentenced to a range of imprisonment and must serve the minimum range.

### Exhibit 3

#### Truth in Sentencing Requirements in States That Abolished Parole

State	Year Parole Abolished	Truth in Sentencing Requirements	
		Offenders	Minimum Percentage of Sentence to Be Served
Arizona	1994	All offenders	85%
California <sup>1</sup>	1977	Convicted of violent felony	85%
Delaware <sup>2</sup>	1990	All offenders	~80%
Florida	1983	All offenders	85%
Illinois	1978	Convicted of serious felony Convicted of other felonies	85% 50-75%
Indiana	1977	Proportion of sentence required to serve varies depending on offense category	50-100%
Kansas	1993	Convicted of serious felony Convicted of other felonies must serve 80% of prison sentence	85% 80%
Maine <sup>3</sup>	1976	Convicted of murder, domestic violence, incest, or sexual offenses All other offenders	86% 77-81%
Minnesota	1982	All offenders	67%
New Mexico <sup>4</sup>	1979	Convicted of violent felony Non-violent offenders	88% 50%
North Carolina	1994	All offenders	100% of minimum sentence range
Ohio	1996	All offenders	92%
Oregon	1989	Convicted of serious violent felony All other offenders	100% 80%
Virginia	1995	All offenders	85%
Washington	1994	Convicted of a violent or sexual felony or other specified felonies Non-violent offenders	90% 50%
Wisconsin	2000	All offenders	100%

Note: Analysis of states' truth in sentencing laws was limited to provisions related to release. Mandatory minimum requirements, sentencing enhancements, and offense-specific sentencing provisions may further restrict the possibility of early release for many offenders.

<sup>1</sup> In 1977, California eliminated most discretionary release decisions by the parole board. In 2016, voters passed Proposition 57, which gave California's parole board greater discretion in granting parole for non-violent offenders who have served the full term of the sentence for their primary offense and who demonstrate that their release to the community would not pose an unreasonable risk of violence to the community.

<sup>2</sup> In Delaware, the minimum percentage of sentence to be served is based on earned credit; 90 days per year of sentence completed, which rounds to 80% of a sentence, must be completed.

<sup>3</sup> In Maine, the minimum percentage of sentence to be served is based on earning the maximum possible credits of seven days per month served for most inmates, or 81%. However, for inmates close to release, two additional days of earned credit may be given for participation in community programming; thus, they must serve 77% of their remaining sentence. Inmates convicted of murder, domestic violence, incest, or sexual offenses may only receive five days of earned credit per month served; thus, they must serve 86% of the total sentence imposed.

<sup>4</sup> In New Mexico, the minimum percentage of sentence to be served is based on earning the maximum possible credits of four days per month served for those convicted of a violent offense, which equates to violent offenders completing 88% of their term of imprisonment. Those convicted of non-violent offenses may earn credit of up to 30 days per month of time served, which equates to an inmate completing 50% of their imposed sentence.

Source: Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota review of states' sentencing practices and OPPAGA analysis of other state statutes.

<sup>25</sup> Colorado eliminated parole in 1979 but reinstated it in 1985; Connecticut eliminated parole in 1981 and reinstated it in 1990; and Mississippi eliminated parole in 1995 but reinstated it in part in 2000.

<sup>26</sup> In 2015, the Virginia governor established a commission to evaluate policy, assess progress and public safety outcomes, and determine whether the intended goals of abolishing parole for felony offenders had been achieved. In its final report, the Virginia commission did not address reinstating discretionary parole, citing limited time and incomplete data.

Comparing the minimum proportion of a prison sentence an offender must serve is difficult because the length of sentence for similar crimes can vary significantly across states. As presented in Exhibit 3, Arizona, Virginia, and Florida require offenders to serve a minimum of 85% of their imposed prison sentence. Moreover, Ohio requires that offenders serve 92% of their sentence, and Wisconsin requires that offenders serve 100% of their sentence. However, the actual length of time, or number of days, that an offender serves in prison is conditioned on both the sentence given and the release policies of the state. For example, OPPAGA analyzed publically available data on inmates' admissions to state prisons in the five states discussed above (Florida, Arizona, Ohio, Virginia, and Wisconsin) with a mandatory term of imprisonment of 85% or greater.<sup>27</sup> Findings indicate that 51% of motor vehicle theft offenders admitted to Florida prisons, 59% of such offenders admitted to Virginia prisons, and 99% of such offenders admitted to Wisconsin prisons were sentenced to terms of two years or longer in state prison from 2010 to 2016.<sup>28</sup> Only 3% of inmates admitted to prisons in Ohio and 15% of inmates admitted to prisons in Arizona received sentences longer than two years for motor vehicle theft during the same time period. In other words, states with stricter truth in sentencing requirements in terms of the proportion of an imposed sentence an offender must serve may still have lower overall lengths of imprisonment because their initial court imposed sentences were shorter, either by statute or by judicial and prosecutorial decision-making.

**OPPAGA found only one state that decreased the mandatory proportion of a sentence an offender must serve by lowering its truth in sentencing requirements.**<sup>29</sup> In 2014, Mississippi reduced the state's truth in sentencing requirements. Individuals with certain violent convictions could serve 50% of their prison sentence, instead of 85% of their sentence, before becoming eligible for parole. This change was part of a larger criminal justice legislative bill, which included changes to technical revocations of community supervision, expanded specialty courts, and expanded parole eligibility for certain classes of non-violent offenders. However, it is difficult to isolate the impact of the change from 85% to 50% on either crime or incarceration rates because the state made other changes in statute that designated additional crimes as violent offenses, thus lengthening the time-served requirements for those offenses. Since the implementation of Mississippi's criminal justice statutory changes, its inmate population declined 5.5%, from 20,680 in 2014 to 19,541 in 2019. This percentage of decline is comparable to Florida's decline in its inmate population of 5.3% over the same period. Thus, it is unclear whether changes in Mississippi's truth in sentencing requirement had a significant impact on imprisonment rates or if the decline related to other factors.

## The majority of states employ gain-time as a mechanism to reduce an offender's overall sentence

Like Florida, most states have gain-time policies for inmates. Hawaii, Michigan, Minnesota, Montana, South Dakota, and Wisconsin are the only states that do not offer gain-time. While policies differ among the states, the most common policies are earned time and good time. Earned time is a credit against an inmate's sentence that they earn for participating in or completing productive activities. Good time (i.e., incentive) credits are awarded to offenders for following institution rules and can be offered in addition to earned time credits. Some states authorize inmates' gain-time to be forfeited

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<sup>27</sup> United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. National Corrections Reporting Program, 1991-2016: Selected Variables. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2018-08-30. <https://doi.org/10.3886/ICPSR37021.v1>

<sup>28</sup> Data on prisons admissions in Virginia for 2016 is missing, so rate is based on data from 2010 to 2015.

<sup>29</sup> Several states, such as Maryland, Alabama, Nebraska, and Utah, did modify the length of imprisonment by amending their sentencing structure. Other states with discretionary parole expanded eligibility, such as Louisiana, Rhode Island, Arkansas, and Montana.

based on disciplinary issues or even add time to an inmate's sentence because of misconduct.<sup>30</sup> Several other states limit the earning of gain-time based on type of offense. Specifically, states including Florida, Georgia, Massachusetts, and Rhode Island restrict gain-time for inmates who are habitual offenders or who have committed certain offenses, such as murder, kidnapping a minor, and sexual offenses.

**Education, including vocational programs, and work offer the most common opportunity for earned time.** Over half the states (28) offer earned time for participating in or completing educational courses, with 22 states extending that to include vocational programs. In Nevada, for example, an inmate can earn 10 days of gain-time per month of incarceration by participating in an educational program, along with an additional 60, 90, or 120 days for earning a certificate, diploma, or degree, respectively. The education credits would be in addition to any good time credits the offender earned during that time. Florida also offers credits for completing educational or vocational programs, but this is limited to a one-time award of 60 days. Other states that offer gain-time for the completion of educational programs allow offenders to get credit for other educational programs, such as college degrees. Additionally, over 20 states offer earned time for participating in and completing rehabilitative programs, such as treatment for mental health and substance abuse. Offenders in Colorado can receive up to 60 days deducted from their parole eligibility dates for completion of a program milestone or phase of a therapeutic program. The state considers mental health counseling, substance abuse treatment, and behavioral health group programs as qualifying for the earned time requirements.

At least 21 states provide earned time for work, including facility work assignments, jobs with prison industries, and work crews. Five states—California, Colorado, Louisiana, Nevada, and Texas—reward offenders who are trained to work on conservation projects or in disaster relief. Sentence credits for disaster relief programs are typically greater than those earned for participation in ordinary prison work or training. For example, inmates in California can earn up to two days' credit for every one day of working at a conservation camp or as an inmate firefighter. Some states allow inmates to receive multiple awards of gain-time for the completion of educational programs. Florida does not offer gain-time for work done by offenders but does provide the opportunity for inmates to earn meritorious gain-time. Nearly one-third of the states (15) provide the opportunity for inmates to earn meritorious gain-time. This type of gain-time requires meritorious service by an inmate, such as saving a life, preventing escape, or performing an outstanding deed that helps to maintain the safety and security of the institution. The sole type of gain-time offered by Idaho is meritorious gain-time, at a rate of up to 15 days per month for an extraordinary act of heroism at the risk of their own life or for outstanding service to the state.

**In Florida, most gain-time is earned through good time or incentive time.** Over half of other states (30) have some form of good time available to inmates. For example, West Virginia awards good time credit on a day-for-day basis for every day the inmate is incarcerated as long as the inmate follows the institution's rules and policies. Thus, offenders in West Virginia can reduce their sentence by up to 50% via good time, while other states offer good time to inmates at a lower rate. In Tennessee, inmates who exhibit good institutional behavior may be awarded up to 8 days per month of incarceration. Florida allows inmates to earn up to 10 days of gain-time per month but only permits offenders to use it to reduce their incarceration for up to 15% of their overall sentence, in accordance with the state's truth in sentencing law. Thus, as discussed earlier, offenders earn gain-time that they are not

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<sup>30</sup> Under Alabama's truth in sentencing law, which takes effect in 2020, offenders typically serve the minimum sentence in prison but could serve additional time based on conduct while incarcerated or conduct on post-release supervision.

permitted to use to reduce their sentence. Other states with truth in sentencing laws, such as Oregon, have tailored their gain-time requirements to reflect the credit allotment permitted by their truth in sentencing statute. In Oregon, all offenders are required to serve at least 80% of their sentence, and their good time is tailored to allow inmates to earn credits for up to 20% of their sentence.

## Compassionate release is the most common early release program in other states

Like Florida, other states also have conditional release and emergency release, as well as release programs regarding an inmate's addiction or mental health. The most common type of early release program is compassionate release, with every state but one having some mechanism of compassionate release. Compassionate release is defined as the early release of incarcerated people due to illness or advanced age. Iowa is the sole state without some form of compassionate early release mechanism.<sup>31</sup> Several states, such as Illinois, have no formal compassionate release program but allow executive clemency. The governor of Illinois has the authority to commute the sentence of a prisoner with a serious medical condition. Other states, such as Wisconsin, rely on sentence modification. Under this mechanism, the sentencing court makes the final decision as to whether the public interest would be served by a modification of the prisoner's sentence due to the offender's extraordinary health condition or age and time served. While the existence of compassionate release programs is common across the nation, use of the programs is limited. For example, Kansas has detailed eligibility requirements and procedural rules, but just seven offenders were granted compassionate release from 2009 through 2018. Similarly, in New Jersey, medical parole has been granted no more than two times a year since 2010.

In some states, including Florida, the parole board or a judge makes the decision regarding the release of inmates under compassionate release, ensuring that inmates meet the various criteria to qualify. Some states impose additional requirements beyond a qualifying condition for compassionate release, typically involving risk to public safety or cost of medical care. To be considered for medical parole in New Hampshire, an inmate must have a terminal or incapacitating medical condition, and the cost of their medical care must be excessive. Several states also exclude certain inmates for consideration for compassionate release, usually due to the type of offense committed or the sentence being served. In Oregon, early medical release is not available to offenders sentenced to death for aggravated murder, offenders sentenced to life imprisonment without the possibility of release or parole, or offenders with sentencing orders stating they are not entitled to any form of early release. Due to changes in the criminal justice system, some states have different early release schemes based on when the offender was sentenced. Delaware provides compassionate release to eligible inmates with serious mental or physical conditions under two separate laws: eligible inmates serving sentences for crimes committed on or after June 30, 1999, may be considered for sentence modification due to illness or infirmity, and eligible inmates serving sentences for crimes committed before June 30, 1999, may be considered for medical parole.

The most common types of compassionate release include medical release for inmates considered to be incapacitated or those with terminal illnesses. For example, in Connecticut, to be eligible for medical parole inmates must be terminally ill, defined as having a terminal condition that results in the prisoner being debilitated or incapacitated to the point of being physically incapable of presenting a danger to society. Many states, such as Kansas, include incapacitation or terminal illness as a qualifying

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<sup>31</sup> Despite the lack of a formal mechanism, the state has released at least one offender before the expiration of her sentence due to a terminal medical condition. In this instance, the offender was released on parole after consideration of her case, in which she had been sentenced to life in prison as a juvenile, and her terminal condition was a factor in the release decision.

condition for medical release. The state refers to its two types of medical release as functional incapacitation release and terminal medical release.

**Several states have implemented elderly release as a form of early release.** For example, Georgia offers supervised release due to advanced age. The Georgia Constitution states that the Board of Pardons and Paroles has the authority to release any inmate who is age 62 or older. Louisiana also has a form of parole based on age but splits the criteria into two categories. The first category allows inmates age 45 and older serving a sentence of 30 years or more to be eligible for parole consideration when they have served at least 20 years in custody and has no further inmate requirements. The second category permits inmates age 60 and older who have served at least 10 years of their sentence to be eligible for parole. However, inmates falling into the second category can only be eligible as long as they have no disciplinary offenses within a year of the parole hearing date, complete 100 hours of pre-release programming, complete substance abuse treatment (if applicable), attain a GED or complete a training or education program, and have a low-risk level designation from a validated risk assessment instrument.

## What are the considerations for modifying Florida's early prison release mechanisms?

Risk assessment coupled with effective community supervision and services can help ensure public safety and support successful reentry into the community for released offenders

If Florida increases the number of inmates eligible for release from prison, consideration should be given to the types and characteristics of offenders who would be eligible and the role that risk assessments, supervision level, and service provision have in helping to ensure public safety and support reentry success.

**Validated risk assessment instruments are currently used for offenders under supervision or in prison but are not used to make release decisions.** Differentiating higher risk offenders from lower risk offenders is an important public safety consideration. Risk assessment instruments address two general concerns: first, how likely an offender is to commit a new offense and second, what can be done to decrease this likelihood. Although perfect prediction is an unattainable goal, there has been considerable research identifying risk factors for reoffending. Risk factors, such as prior offenses, substance abuse, and age, are routinely used to make decisions concerning sentencing, need for treatment, and suitability for release. Risk assessments typically consider these and other risk factors organized into structured actuarial scales.<sup>32</sup> The Florida Department of Corrections currently conducts risk assessments for offenders on community supervision and for in-custody inmates.

Implemented in 2009, the Offender Classification System estimates an offender's predicted likelihood of reoffending and their level of risk to the public while under supervision in the community. The system assigns a level of supervision (minimum, medium, or maximum) appropriate to the offender's

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<sup>32</sup> Different types of risk factors are relevant for different types of risk decisions. Static factors (e.g., age at first offense, prior criminal history) can be used to assess long-term recidivism potential. The evaluation of change in offender risk level, however, requires the consideration of dynamic (changeable) risk factors (e.g., substance abuse, pro-criminal attitudes, and negative peer associations). Consideration of dynamic risk factors can gauge how an offender has changed during their incarceration and, if appropriate, recommend further programming or treatment prior to approving community release.

risk score based on eight static variables.<sup>33</sup> Offenders under community supervision have contact with their probation officer at intervals commensurate with the danger or risk the offender represents to the community. FDC also completes a needs and risk assessment for inmates. The Correctional Integrated Needs Assessment System calculates their predicted probability of recidivating after release and identifies academic, vocation, and substance abuse programming needs while in prison. The department is currently piloting an evolution of the system, called Spectrum, which focuses on case planning and connections to services while incarcerated and upon release. Inmates complete an assessment upon intake at FDC reception centers, and the information is used to generate a case plan that is used throughout their term of incarceration. Prior to release, department staff update the information and, based on assessed needs, add referrals to community services from the department's online database. When released, offenders receive a copy of this case plan. The department is also piloting Spectrum at community corrections offices in some circuits. Probation officers in these locations are able to administer the Spectrum assessment to complete a transition plan for offenders sentenced to probation who did not serve time in prison.

As discussed above, risk assessment instruments identify factors that increase the probability of recidivism. Furthermore, risk assessment instruments assist in the decision-making processes for both release decisions and determining the appropriate level of community supervision for released offenders. Routine validation is necessary to determine and improve the predictive accuracy of the risk assessment instrument.<sup>34</sup> Florida does not require the use of a validated risk assessment tool in making discretionary prison release determinations. As required by statutes and rule, the Florida Commission on Offender Review utilizes objective parole guidelines when determining an offender's presumptive (tentative) parole release date.<sup>35</sup> When this presumptive release date nears, commission staff review an inmate's criminal history and circumstances of the offenses, mental attitude, institutional disciplinary reports, and self-betterment or treatment program completion records to establish that the offender does not pose a public safety risk. The offender must also show that they have a place to live and employment or other means of support. For example, the commission may require an offender to spend their first year on parole in a reentry or halfway house. Additionally, according to FCOR staff, victims play a key role in parole release determinations. Victims and their families are entitled to attend and speak at conditional release hearings. Written comments may also be submitted for consideration prior to a hearing.

For conditional medical release, Florida's only other discretionary release program currently in use, the commission also does not use a risk assessment to determine if an inmate should be released. Instead, commission staff review an inmate's medical records to establish that they are physically incapable of posing a risk. They also review the inmates' age; criminal history; institutional disciplinary reports; release plan, including support available to the offender in the community; and the opinion of the state attorney or law enforcement agency involved with the offender's case. Commission staff also take into account any victim opposition to the release.

At least 30 states utilize risk assessment tools at the parole release decision-making stage. Although the use of risk assessment tools is typically required by statute, there is usually no requirement as to what instrument(s) should be adopted. Risk assessment tools can be developed in-house or

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<sup>33</sup>The eight static variables used in the Offender Classification System are age, sex, prior supervision, prior prison term, murder as a current or prior offense, robbery/burglary/weapon as a current or prior offense, firearm offense under s. [775.087](#), F.S., and habitual felony offender designation under s. [775.084](#), F.S.

<sup>34</sup>Validation of a risk assessment instrument tests whether a tool's estimated risk for an individual corresponds to actual behavior. This requires additional data against which the tool's prediction can be tested.

<sup>35</sup>Section [947.165](#), F.S., and ss. 23-21.007 through 23-21.011, F.A.C.

commercially, the most common of which include the Level of Service Inventory-Revised and the Correctional Offender Management Profiling for Alternative Sanctions. There are also specialized instruments that assess offenders for particular factors, including risk of violence, risk of sexual offending, treatment needs, mental illness, and criminal thinking.

Some states, such as Nebraska, rely on the assessment of risk in the absence of parole guidelines. The Nebraska Board of Parole's Division of Parole Supervision uses two components of the Ohio Risk Assessment System: the Reentry Tool and the Community Supervision Tool. The Reentry Tool is used with offenders just before they transition from incarceration to community supervision, while the Community Supervision Tool is intended for clients already in the community. Both tools assess offenders based on their likelihood of reoffending, but the Community Supervision Tool also identifies an offender's individual criminogenic needs once out of incarceration. The Nebraska Parole Board guidelines require the use of scored decisional factors, which include offense severity, program participation, institutional behavior, and the results of risk assessment tools. Each of the factors are given a score, which are all added together and result in the offender's Decision Guidelines Score, which is a consideration, but not the deciding factor, for parole eligibility. The board can also consider additional statutory factors that are unscored, including but not limited to the offender's personality, parole plan, and prior criminal record.

Other states, such as Colorado, incorporate a risk assessment instrument within their parole guidelines framework. The Colorado State Board of Parole Administrative Release Guideline Instrument provides a two-dimensioned matrix for parole release decisions. The first dimension is an offender's risk of recidivism and the second is an offender's readiness for parole. The Colorado Actuarial Risk Assessment Scale and the Level of Supervision Inventory-Revised are among the data elements that serve as the basis for the information utilized in the matrix. The stated goal of Colorado's parole release guideline instrument is to provide a consistent framework for the parole board to evaluate and weigh specific release decision factors and to offer an advisory release decision recommendation for eligible parole applicants.

**Determining and applying the appropriate level of supervision is important for public safety and reentry success.** The amount and type of supervision post-release is a consideration for any discretionary release program. Current research shows that providing the most intensive supervision and treatment for those at a high risk of reoffending results in the greatest reductions in recidivism, with several studies finding that public safety could be maintained with less supervision for low risk offenders. Requiring intensive programming for people at a low risk of reoffending can be counterproductive. For example, having more provisions about how offenders must spend their time by requiring frequent meetings, drug tests, and other obligations can make it more difficult to get to work or school or to care for family members. Studies show that while this more intensive supervision leads to more technical violations, it does not necessarily produce public safety benefits in the form of a reduced number of new offenses committed.

Reentry stakeholders reported that supervision can have a positive effect on offenders' likelihood to engage and follow through with reentry services. This is likely because supervised offenders need to accomplish tasks such as seeking out and gaining employment, securing identification or driver's license, and establishing a stable residence—all reentry milestones that local task forces and coalition providers assist offenders in achieving. Offenders not on supervision and therefore not required to meet these milestones may not follow through, if they ever sought out assistance in the first place. However, even those required to meet the terms of their supervision may not be fully taking advantage

of transition services. Florida Department of Corrections staff reported that once in the community, supervised offenders cannot be mandated to engage in transition services unless it is stipulated by the judge in their supervision order.

**Community service provision has a role in helping to ensure public safety and support reentry success.** Overall, reentry stakeholders stressed the need for coordination between FDC's pre-release services and reentry organizations' post-release services when offenders are released into the community. Further, they felt that best practice is to engage with offenders pre-release. This allows providers to pre-assess and pre-enroll offenders in needed supports, such as a job or job training program, housing, food, and healthcare. Putting the reintegration plan in motion prior to release gives the reentering offender a clear plan for their first days back in the community. Additionally, these organizations described the benefits of teaming a case manager or reentry coordinator with a probation officer for those offenders under supervision. This team approach improves an offender's likelihood of success by providing access to support services and coaching while holding the offender accountable to the terms of their court-ordered supervision. Supervision terms geared towards reentry milestones, such as securing housing and employment, or the individual's offense(s), such as drug testing, were characterized as most relevant to reentry success.

In some Florida counties, service coordination happens through reentry task forces and coalitions. These organizations are typically composed of multiple stakeholders, such as local law enforcement, judges, victim advocates, social service, and faith-based organizations. Their missions are focused around increasing public safety and reducing recidivism and victimization by coordinating and facilitating reentry services. In addition to assisting offenders returning to the community by providing services directly or via referrals, these local entities bring stakeholders together to identify community resources and improve outcomes for returning offenders. Some have case managers that work with offenders and probation officers to develop individualized reentry plans, and some have funding available for basic necessities, including first month's rent or utilities, identification cards, work boots or tools, and transportation. While local reentry organizations can be important to the reentry success of offenders returning to the community, not all counties have them.<sup>36</sup> To further formalize the coordination between the Florida Department of Corrections and local reentry providers, the Legislature may wish to consider requiring the department to coordinate with local governments and agencies and participate in any local reentry task forces or coalitions to assess local service capacity and establish a plan to meet the needs of offenders returning to the community.<sup>37</sup>

Florida statute currently provides a mechanism for funding some reentry services. First Step Programs are local nonprofit organizations that provide small, non-binding loans to offenders for a range of expenses, such as birth certificates and driver's licenses, counseling and treatment, bicycles and bus passes, and rent and utilities.<sup>38</sup> Each local program is run similarly, but criteria for who can access the funds and which expenses are eligible varies. First Step Programs are funded by assessing offenders in the program's geographic areas \$1 per month in addition to their supervision costs. These funds are paid to the Florida Department of Corrections, which in turn sends the money to the local program. While FDC staff and local reentry organizations felt this funding was beneficial, especially

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<sup>36</sup>The Florida Department of Corrections provided a list of reentry programs in 15 counties.

<sup>37</sup>Under a similar requirement, s. [409.1754, F.S.](#), required the Florida Department of Children and Families to coordinate with local agencies, including law enforcement officials, child advocates, service providers, and other stakeholders, to assess local service capacity to meet the needs of commercially sexually exploited children and establish a plan to develop the necessary capacity. Further, the department's circuit administrator is required to participate in any task force, committee, or advisory group in their service area that is involved in coordinating responses to address human trafficking; if such an entity does not exist, the circuit administrator must initiate one.

<sup>38</sup>First Step Program funds are loans. However, according to FDC staff, the expectation for repayment is low. While offenders sign a loan agreement, those unable to repay do not violate the terms of their supervision.

for newly released offenders, most communities do not have a First Step Program. There are fully operational programs in 7 of Florida's 20 judicial circuits; an eighth program in the Second Judicial Circuit started collecting the \$1 monthly fee approximately two years ago and has now collected enough money to begin making loans.<sup>39</sup>

## Florida could consider modifying prison release mechanisms

Several options exist should the Legislature wish to modify Florida's current release mechanisms or add mechanisms to allow for early, conditional release. Reinstating parole and modifying truth in sentencing requirements to allow inmates to earn additional gain-time can encourage good institutional behavior and inmate participation in self-betterment and rehabilitative programs in order to be released earlier. These programs can have a positive effect on an offender's likelihood of success upon reentry. The Legislature could also consider expanding discretionary release options for infirmed elderly inmates and those with debilitating illnesses, which may result in savings to the state for this high cost population.

**Parole.** One option the Legislature could consider would be to reinstate parole. Several other states use parole as a discretionary early prison mechanism. Given that Florida has not sentenced any new offenders to parole in over 20 years, the Legislature would need to develop and fund a new parole system. This would include establishing statutory criteria for the types of offenders who could be eligible as well as operationalizing expectations for inmate behavior and rehabilitative efforts that would allow them to earn a discretionary early release. Additionally, there would be several cost implications to increasing the number of inmates eligible for parole. The Florida Commission on Offender Review may require additional positions to process and investigate offenders prior to setting presumptive parole release dates and conducting parole hearings. In addition, as victims and their families play a key role in parole release decisions, FCOR would need to provide more assistance to victims. Reinstating parole would also increase the number of probation officers required to supervise additional paroled offenders in the community.

**Truth in sentencing and gain-time.** Another option is to consider allowing offenders to be incarcerated for shorter periods and then released to community supervision. A primary advantage of releasing offenders from prison to supervision is cost; the per diem cost to incarcerate an offender was \$59.57 for Fiscal Year 2017-18 system-wide compared to \$5.47 to supervise that offender in the community. In addition, both probation officers and required terms of supervision can link offenders to services in the community, such as housing assistance and treatment. However, gain-time incentives cannot reduce the required portion of an incarcerative sentence more than 15%, as both Florida's Criminal Punishment Code and gain-time statute specify that offenders must serve a minimum of 85% of their sentence.<sup>40</sup>

Florida is in the minority of truth in sentencing states by requiring non-violent offenders to serve the same percentage as those with violent offenses. The Legislature may wish to consider modifying the percentage of time non-violent offenders serve to less than 85%.<sup>41</sup> According to FDC, 44.2% of inmates were in prison for a non-violent offense as of June 30, 2018. During the 2019 legislative session, the Criminal Justice Estimating Conference examined the impact of proposed bills that contemplated

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<sup>39</sup> Judicial circuits with fully functioning First Step Programs are the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 10<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, and 18<sup>th</sup>.

<sup>40</sup> Sections [921.002](#) and [944.275](#), F.S.

<sup>41</sup> In 2019, Senate Bill 1212 sought to reduce the amount of time that inmates must serve for a non-violent offense to 65% while maintaining the 85% requirement for violent offenses.

changes to Florida's truth in sentencing requirements.<sup>42</sup> These estimates found that after five years of lowering the truth in sentencing threshold to 65% for non-violent offenders, there would be a total reduction of 7,266 inmate beds and a total cost savings of \$441 million.<sup>43,44</sup> Other proposed legislation contemplated additional gain-time opportunities for offenders and lowering the truth in sentencing minimum proportion of sentence served from 85% to 65% for non-violent offenders; these proposed changes were estimated to have a similar impact on prison populations and costs over a five-year period.<sup>45</sup> This legislation also proposed other changes that would have had an impact on imprisonment.

In addition to the financial benefits to the state of early release, motivated offenders can also benefit from greater opportunities to earn gain-time. Increasing the percentage of time an offender can productively reduce their sentence by completing education, treatment, or training programs can support pre-release rehabilitation and improve the likelihood of reentry success. The Legislature could also consider expanding gain-time opportunities to include new types of gain-time, such as entrepreneurship, disaster related community service, and treatment programs. Providing additional gain-time eligible programming may entail costs such as additional instructor positions and course materials, including text books or digital curriculum. However, it is likely that earlier release dates attained by motivated inmates would result in shorter sentences for a subset of the prison population, resulting in per diem cost savings. A 2019 bill proposed a prison entrepreneurship program that would have been eligible for a 60-day, one-time educational achievement gain-time award. The bill would have authorized an exception for this award to reduce an inmate's sentence to less than 85% for those who complete the program. Inmates serving a sentence for a dangerous crime or who are required to register as a sexual offender or predator would not have been eligible for such a reduction.

**Conditional medical release.** Lastly, Florida could consider expanding the criteria for conditional medical release. Florida's current conditional medical release program provides for the discretionary early release of offenders who are permanently and irreversibly physically incapacitated or terminally ill to the extent that death is imminent.<sup>46</sup> These narrow statutory definitions contribute to few offenders being conditionally released under these provisions; 38 inmates were released in Fiscal Year 2018-19 compared to 288 inmates who died a natural death during this time.

The number of elderly in Florida's prisons has increased for the last several years, from 14,486 in June 2009 to 21,711 in June 2018; by 2023, that number is projected to grow to 27,719.<sup>47,48</sup> As of June 2019, FDC reported 1,677 inmates age 70 and older, of which, 199 were 80 or older. Inmates often come to the department with multiple chronic diseases, poor dental health, undiagnosed mental illnesses, and

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<sup>42</sup> Florida's Criminal Justice Estimating Conference holds impact conferences to estimate the effect of changes or proposed changes to criminal justice laws. Impact conferences are limited to the analysis of changes to the state inmate population and related incarceration costs; thus, they do not examine indirect or latent fiscal impacts to the state, such as costs associated with recidivism or added revenue associated with increased consumer spending.

<sup>43</sup> See <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB1001.pdf>

<sup>44</sup> Estimates were based on Fiscal Year 2017-18 inmate per diem of \$56.96 for inmates housed in department facilities (excluding private facilities) and a per diem of \$36.72 for inmates housed in dorm/work camps. Per diem calculations included costs such as health care and officers assigned to security, but they did not include indirect and administrative costs. It would be expected that specialized early release programs, such as medical or elderly release programs, would have significantly high per diems because of higher per inmate healthcare costs.

<sup>45</sup> See <http://edr.state.fl.us/content/conferences/criminaljusticeimpact/HB1133.pdf>

<sup>46</sup> Section [947.149](#), F.S.

<sup>47</sup> Section [944.02](#), F.S., defines inmates as elderly if they are age 50 or older. This is a typical elderly inmate age designation in a corrections environment (as opposed to the community), because many inmates do not access medical, dental or mental health care services before incarceration.

<sup>48</sup> Figures for 2009 and 2018 exclude inmates in private correctional facilities.

a history of substance abuse. Accordingly, they may have high health care and other related costs.<sup>49</sup> In addition, as of June 2019, 65% of Florida's elderly inmates were not low risk because they were incarcerated for violent crimes. The commensurate longer sentences for these crimes means that they will continue to age and potentially become unhealthier and costlier while in prison.

Given Florida's large number of infirmed elderly offenders and the cost of their care, the conditional release of low risk elderly inmates could result in cost savings, with potentially limited impact on public safety.<sup>50</sup> Corrections departments across the country report that health care for older inmates costs between four and eight times what it does for younger inmates. In Florida, comparing Fiscal Year 2008-09 to Fiscal Year 2017-18, episodes of outside care for elderly inmates increased from 10,553 to 21,469.<sup>51</sup> During this period, the percentage of inpatient hospital days attributed to elderly inmates rose 10%, from 42% to 52%. Older inmates also have longer inpatient hospital stays than younger patients, at 5.85 days versus 4.8 days for the under 50 population. This results in increased health care costs to the department as well as security and transportation costs when inmates are housed at unsecured hospital units. To address these costs, the Legislature could consider expanding the terminally ill designation to include inmates within 12 months of death and allowing infirmed elderly inmates or those with debilitating illnesses to be conditionally released. The Legislature could also consider contracting with a residential care provider to develop a nursing home for paroled and conditionally released infirmed and debilitated elderly inmates.

Several states have considered opening nursing homes for paroled or conditionally released elderly inmates who require a nursing home level of care and do not pose a public safety risk. For example, in 2013, Connecticut contracted with a nursing home provider to operate a facility that accepts prison inmates who require long-term nursing care. The program is less expensive than prison-based health care and is certified to receive federal Medicaid payments. According to the Connecticut governor's office, the state received \$5 million in Medicaid reimbursements per year for facility residents.<sup>52</sup> In addition, the state's department of corrections reduced its medical services contract because these medically needy inmates were transferred out of prison healthcare. Staff reported that in the six years the facility has been open, offenders have not caused a single incident requiring an emergency services response, nor have there been any workers' compensation claims due to offenders harming facility staff. Other states, including Kentucky, Michigan, Mississippi, and Wisconsin, have explored this care model.

### **Stakeholders support using any savings resulting from early release for correctional system infrastructure and services to support reentry**

The per diem cost to incarcerate an offender is much greater than the cost to supervise that offender in the community, at an average of \$59.57 and \$5.47, respectively. If certain offenders were conditionally released from prison early to be supervised in the community, it would likely result in cost savings. The amount of savings would depend on a number of factors, including number of

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<sup>49</sup> While elderly or disabled inmates are not eligible to have their health care services funded by Medicaid or Medicare while in prison, those who receive inpatient care outside of a prison, such as at a hospital or nursing home and have been admitted for more than 24 hours are eligible for this funding. Some states, including Arkansas, Colorado, Kentucky, and Michigan bill for these services.

<sup>50</sup> Several cost drivers are responsible for the increased cost of elderly inmates, including custody level, physical condition, and housing needs. Florida's elderly inmates are more likely to be in close custody, which is a higher cost custody level. They are more likely to have medical conditions that need intensive, ongoing care. Additionally, while most elderly inmates are in general population, those with complex medical and/or mental health needs, including dementia and palliative care, require specialized housing units.

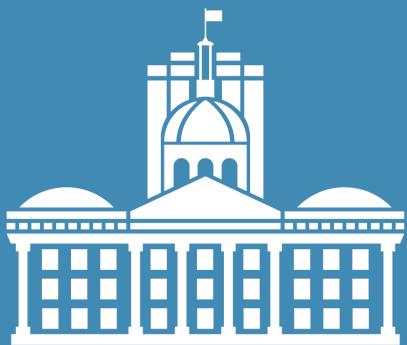
<sup>51</sup> Episodes of outside care include inpatient and outpatient hospital encounters and specialty consultations conducted outside FDC facilities.

<sup>52</sup> The facility keeps four to five beds open for unanticipated and emergency placements.

offenders, average reduction in prison time, average increase in supervision time, level of supervision, and offender services required in the community.

As part of this review, OPPAGA spoke to law enforcement and reentry stakeholders to obtain their input on cost savings redirection. Law enforcement stakeholders stated that any cost savings should be used to finance prison infrastructure needs and correctional officer staffing. These stakeholders stated that the Florida Department of Corrections should be adequately funded to carry out all of its statutory requirements, and sentences should not be arbitrarily shortened to manage prison costs. Additionally, they were in support of reentry services for offenders returning to the community. They expressed that releasing offenders to the same communities where they engaged in criminal behavior without the tools to change their behavior results in relapse and reoffending.

Reentry stakeholders reported that savings should be used for services to support offenders returning to the community. We asked reentry task forces and coalitions to describe the greatest challenges to offenders successfully transitioning back into the community and ways to address them. The challenges primarily cited included housing and employment. Specifically, returning offenders with criminal histories often have difficulty finding stable, safe, and affordable housing. In addition, offenders' lack of job readiness, including job skills and interview preparedness, combined with the reluctance of employers to hire those with a felony criminal history, are also fundamental barriers. From stakeholders' perspective, investing in short-term assistance to offenders for housing, employment, and basic necessities in the first few months of release can prevent supervision violations and offenders returning to prison.



# OPPAGA

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