Diverting Low-Risk Offenders From Florida Prisons

A Presentation to the Senate Appropriations Subcommittee on Criminal and Civil Justice

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Chief Legislative Analyst
2018 General Appropriations Act Directed OPPAGA to

- Conduct a review of Florida's sentencing laws and identify policy options to reduce or divert low-risk offenders from entering Florida's prisons

- Consult with criminal justice policy experts who have conducted sentencing policy research in Florida
Questions

How are offenders sentenced in Florida?

What factors influence Florida’s incarceration rate?

How does prison diversion occur in Florida?

Are there low-risk offenders who could be diverted from prison?

What options exist for diverting low-risk offenders from prison?
How are Offenders Sentenced in Florida?
Criminal Punishment Code

Total Sentencing Points

- Primary Offense
- Additional Offenses
- Victim Injury
- Prior Criminal Record
- Violation of Supervision
- Additional Elements

More Than 44 Total Sentencing Points

- Lowest Permissible Sentence
  \[(\text{Total Sentencing Points} - 28) \times 0.75\]

Statutory Maximum Sentence

Source: OPPAGA analysis of the Criminal Punishment Code sentencing scoresheet.
Additional Factors That Determine Criminal Sentences

- **Mandatory Minimum Sentences**
  - Florida has more than 100 mandatory minimum terms that apply to many different crimes
  - Statutory mandatory minimums are applied if they are greater than the lowest permissible sentence

- **Downward Departures**
  - Judge may sentence below the lowest permissible sentence when mitigating factors are present but must make a written finding

- **Negotiated Plea Agreements**
  - 96% of felony sentences in Florida are the result of offenders’ pleas
Imprisonment Rates for Offenders That Scored Above 44 Points by Circuit

<table>
<thead>
<tr>
<th>Judicial Circuit</th>
<th>Average</th>
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</thead>
<tbody>
<tr>
<td>1st Circuit</td>
<td>66%</td>
</tr>
<tr>
<td>2nd Circuit</td>
<td>51%</td>
</tr>
<tr>
<td>3rd Circuit</td>
<td>52%</td>
</tr>
<tr>
<td>4th Circuit</td>
<td>71%</td>
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<tr>
<td>5th Circuit</td>
<td>72%</td>
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<tr>
<td>6th Circuit</td>
<td>58%</td>
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<tr>
<td>7th Circuit</td>
<td>65%</td>
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<tr>
<td>8th Circuit</td>
<td>67%</td>
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<td>9th Circuit</td>
<td>55%</td>
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<td>10th Circuit</td>
<td>79%</td>
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<tr>
<td>11th Circuit</td>
<td>37%</td>
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<tr>
<td>12th Circuit</td>
<td>64%</td>
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<tr>
<td>13th Circuit</td>
<td>49%</td>
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<tr>
<td>14th Circuit</td>
<td>58%</td>
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<tr>
<td>15th Circuit</td>
<td>56%</td>
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<tr>
<td>16th Circuit</td>
<td>43%</td>
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<tr>
<td>17th Circuit</td>
<td>50%</td>
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<tr>
<td>18th Circuit</td>
<td>62%</td>
</tr>
<tr>
<td>19th Circuit</td>
<td>79%</td>
</tr>
<tr>
<td>20th Circuit</td>
<td>63%</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>59%</strong></td>
</tr>
</tbody>
</table>

**Note:** Lighter blue color indicates lower imprisonment rate.

Source: OPPAGA analysis of Florida Department of Corrections scoresheet data for Fiscal Year 2016-17.
What Factors Influence Florida’s Incarceration Rate?
Annual Rate of Crimes per 100,000 and Incarceration Rate per 100,000

Crime Rate per 100,000 Population by County

Incarceration Rate per 100,000 Population by County

Source: OPPAGA analysis of Florida Department of Corrections data, Fiscal Year 2016-17.
How Does Prison Diversion Occur in Florida?
Prison Diversion in Florida’s Criminal Justice System

TRADITIONAL PATH OF CRIMINAL JUSTICE

Contact With Law Enforcement
- Adult Civil Citation

Arrest
- Pre-trial Intervention

Trial or Conviction
- Problem-solving Courts

Sentencing
- Post-adjudicatory Drug Courts
- Specialized Supervision

Prison
- Community Supervision

Source: OPPAGA analysis of Florida statutes.
Potential Barriers to Prison Diversion

- **Diversion programs often serve very low-level offenders**
  - Many programs limited to first-time or misdemeanor offenders

- **Limited resources available for treatment programs**
  - State attorneys and public defenders both mentioned a lack of treatment programs in some areas of the state and a lack of funding to pay for treatment

- **Limited statewide data on program participation and outcomes**
  - Statewide data on program participation, program costs, treatment information, completion rates, and recidivism analysis are currently unavailable
Are There Low-Risk Offenders Who Could be Diverted From Prison?
Most Offenders in Florida Prisons are Serving Sentences for Violent Crimes

Although violent offenders make up about one-third of those admitted to prison, they make up more than half of the population in prison.

**Admissions**  
N=27,916

<table>
<thead>
<tr>
<th></th>
<th>Drugs</th>
<th>Violent</th>
<th>Property</th>
<th>Other</th>
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<tbody>
<tr>
<td>23%</td>
<td>32%</td>
<td>30%</td>
<td>16%</td>
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**Population in Prison**  
N=96,253

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<th>Drugs</th>
<th>Violent</th>
<th>Property</th>
<th>Other</th>
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</thead>
<tbody>
<tr>
<td>14%</td>
<td>56%</td>
<td>21%</td>
<td>9%</td>
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**Releases**  
N=30,224

<table>
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<th>Drugs</th>
<th>Violent</th>
<th>Property</th>
<th>Other</th>
</tr>
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<tbody>
<tr>
<td>23%</td>
<td>32%</td>
<td>31%</td>
<td>14%</td>
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Source: Florida Department of Corrections Annual Report, Fiscal Year 2017-18.
Primary Offenses of Inmates with No Violent/Sexual Convictions and First Time Imprisonment

Violent/Sexual Offense, or Prior Incarceration: 83,982 (87%)

Lower-Level Offenders: 12,808 (13%)

Drug: 4,809 (5%)

Burglary: 3,800 (4%)

Theft or Fraud: 2,382 (2%)

Weapons: 896 (1%)

Other: 921 (1%)

N=96,790

Source: OPPAGA analysis of Florida Department of Corrections and Florida Department of Law Enforcement data.
Offender Matching Criteria for Recidivism Analysis

Match Criteria
- Type of Offense
- Total Sentencing Points
- Criminal History
- Probation Violations
- Age
- Race
- Sex

N=48,878
Comparison of Two-Year Recidivism Rates for Offenders on Community Supervision and in State Prison

- Community Supervision:
  - Two-Year Violent Recidivism: 2.9%
  - Two-Year Recidivism Rate: 23.4%

- State Prison (Post-Release):
  - Two-Year Violent Recidivism: 3.6%
  - Two-Year Recidivism Rate: 28.8%

Source: OPPAGA analysis of Florida Department of Corrections and Florida Department of Law Enforcement data.
Recidivism Rates for Offenders on Community Supervision and in State Prison

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Community Supervision</th>
<th>State Prison</th>
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</thead>
<tbody>
<tr>
<td>Drugs</td>
<td>21.1%</td>
<td>25.1%</td>
</tr>
<tr>
<td>Theft/Fraud</td>
<td>22.9%</td>
<td>29.3%</td>
</tr>
<tr>
<td>Burglary</td>
<td>22.8%</td>
<td>28.2%</td>
</tr>
<tr>
<td>Weapons</td>
<td>22.8%</td>
<td>28.2%</td>
</tr>
<tr>
<td>Other</td>
<td>24.5%</td>
<td>30.2%</td>
</tr>
</tbody>
</table>

Source: OPPAGA analysis of Florida Department of Corrections and Florida Department of Law Enforcement data.
Violent Recidivism Rates for Offenders on Community Supervision and in State Prison

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<th>Community Supervision</th>
<th>State Prison</th>
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</thead>
<tbody>
<tr>
<td>Drugs</td>
<td>2.2%</td>
<td>2.8%</td>
</tr>
<tr>
<td>Theft/Fraud</td>
<td>2.7%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Burglary</td>
<td>3.7%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Weapons</td>
<td>4.4%</td>
<td>5.5%</td>
</tr>
<tr>
<td>Other</td>
<td>3.3%</td>
<td>4.0%</td>
</tr>
</tbody>
</table>

Source: OPPAGA analysis of Florida Department of Corrections and Florida Department of Law Enforcement data.
What Options Exist for Diverting Low-Risk Offenders From Prison?
Cost Associated With Criminal Sanctions

Prison
- $55.80/day or $20,367/year
- 1,500 inmates cost $30.5 million/year

Probation
- $5.52/day or $2,015/year
- 1,500 supervisees cost $3 million/year
The Legislature Could Consider Options for Diverting Low-Level Offenders from Prison

- Encourage problem-solving courts to serve more offenders at risk of prison
- Create a safety valve or modify mandatory minimum terms for drug offenses
- Divert additional lower-level offenders from prison by reducing certain third degree felonies to misdemeanors
- Consider revising the Criminal Punishment Code to divert additional offenders from prison, while retaining judges’ discretion to use prison as a sanction when appropriate
Questions?
Contact Information

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OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.