
CRIME AND JUSTICE INSTITUTE



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An Examination of Florida's Prison Population Trends

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Table of Contents

Executive Summary	2
Introduction	3
National Overview: Florida in Context	3
Overview of Florida Adult Criminal Justice System	6
Crime Rate Trends	6
Felony Filing Trends	7
Sentencing Trends	8
Jail Population Trends	9
Prison Population Trends	9
Community Supervision Trends	21
Prison Admissions	23
Sentencing Guidelines Overview	23
Alternatives to Incarceration	27
Responses to Violations	32
Year-and-a-Day Sentences	35
Enhancements and Mandatory Minimums	38
Property Offenses	42
<i>Burglary</i>	43
<i>Theft</i>	43
Drug Offenses	46
Elderly Prisoners	48
Release and Reentry	52
Time Served	52
Prison Release Types and Reentry Planning	55
Recidivism	59
Conclusion	62
Appendix: Data and Interview Sources and Methodology	64

EXECUTIVE SUMMARY

In 2016, the Florida Legislature appropriated funding for “a comprehensive review of Florida's criminal justice system, including but not limited to criminal law and procedure, law enforcement, prosecution and defense of criminal offenses, the judicial and courts system, sentencing, and corrections.” This report aims to provide a comprehensive overview of trends in Florida’s criminal justice system over the last decade, and illuminate those trends with data from across the system.

After 30 years of growth, the last decade has seen Florida’s prison population plateau and its community supervision population decline. Two competing trends have led to the stabilized prison population: a decline in prison admissions, driven by major reductions in crime rates, arrests, and criminal prosecutions, balanced out by longer sentences for those who are sent to prison.

This report explores how Florida sentencing and release policies have shaped these competing trends, and looks beneath the statewide numbers at cases that defy these trends.

Key findings include:

- Florida’s imprisonment rate is 23 percent higher than the national average, and 10th overall in the nation.
- In the last decade, Florida’s violent and property crime rates and drug arrests have all dropped approximately 30 percent, although the total crime rate remains 15 percent higher than the national average.
- Prison admissions declined 28 percent in the last decade, driven by the declines in crime as well as declining revocations from supervision after Florida Department of Corrections (FDC) policy shifts in how violations are addressed.
- In the same period, average sentence length increased 22 percent, balancing out the admissions decline and leading to a mostly stable prison population.
- Trends in admissions and prison population vary widely across the state. In general, southern and eastern Florida counties send people to prison at a lower rate than northern, central, and western counties.
- Due to mandatory minimum sentences, sentence enhancements, and statutory time served requirements, prisoners in Florida serve significantly longer periods in prison than in other states, including for nonviolent crimes.
- Long sentences and few release options are the main driving force of the growth of the elderly population in Florida’s prisons.
- Most offenders leave prison with little or no post-prison release supervision.

Due to the time constraints of this project, as well as unavailability of data, there is still a great deal about the Florida criminal justice system that is unknown. Development of or access to further information on court processes and sentences, violations and revocations, problem-solving courts, and community supervision are needed to better understand the system.

INTRODUCTION

In November 2016, the Florida Legislature released an *Invitation to Negotiate* seeking an independent consultant to conduct an assessment of Florida's criminal justice data. This project fulfills the requirements of proviso language in Specific Appropriations 2654 and 2655 in Ch. 2016-66, *Laws of Florida*, also known as the General Appropriations Act, passed during the 2016 session of the Florida Legislature that called for "a comprehensive review of Florida's criminal justice system, including but not limited to criminal law and procedure, law enforcement, prosecution and defense of criminal offenses, the judicial and courts system, sentencing, and corrections."

After a competitive bid process, the Crime and Justice Institute (CJI) at Community Resources for Justice was selected to conduct this assessment. CJI began work on the assessment at the beginning of February 2017 with a final report due on May 1, 2017.

As part of the assessment, CJI identified, collected, and analyzed key data elements from a number of agencies, including the Florida Department of Corrections (FDC) and the Office of the State Court Administrator (OSCA). CJI also reviewed Florida statutes and agency policies, and interviewed stakeholders from across the criminal justice system. See the Appendix for a full list of data sources used and interviews conducted, as well as a description of coding and methodology.

This report covers a broad range of topics in adult corrections, with a focus on the Florida prison population and drivers of that population. First, it reviews the history of prison population growth in Florida and the United States, followed by a survey of high-level data on the last decade in Florida criminal justice, from crime rates through sentencing, the prison population, and finally, community supervision. The remainder of the report focuses on specific trends within the Florida prison system, in rough order of how an offender moves through the system, beginning with prison admissions, then taking a closer look at a growing portion of the prison population made up of offenders age 50 and older, and finally examining trends in release types and length of stay. In the conclusion, the report returns to data gaps and omissions and makes suggestions for further review.

National Overview: Florida in Context

Across the country, state prison populations expanded rapidly starting in the early 1970s, and state officials have spent an increasing share of taxpayer dollars to keep pace with prison costs.

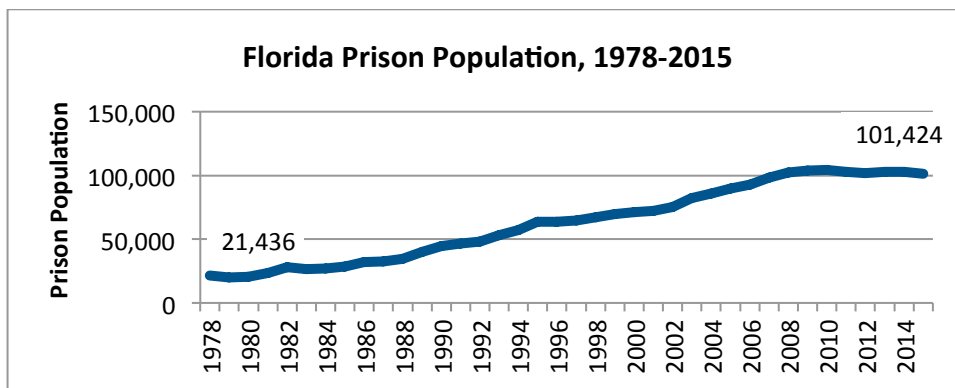
From the mid-1980s to the mid-2000s, spending on corrections was the second-fastest growing state budget category, behind only Medicaid.¹ Nationally, in 2015, 1 in 15 state general fund dollars went to corrections. In Florida, the equivalent measure was 1 out of 11.² Most corrections dollars go to the capital, security, and health care costs of prisons. In Fiscal Year 2015-2016, 69 percent of the FDC budget of \$2.3 billion went to institutional operations and

security and an additional 16 percent to health services, compared to just 9 percent to community corrections. In the last decade, the FDC institutional budget has risen 14 percent while the community corrections budget has fallen 22 percent.

After 38 years of uninterrupted growth, the national prison population declined 5.5 percent between 2009 and 2015.³ Within this overall pattern states have followed very different trajectories, particularly in the last ten years. Since 2009, 24 states have declined their prison populations while 26 have experienced growth, ranging from a 24 percent decline in California to a 21 percent increase in North Dakota.

Florida's prison population has tended to follow the national path, with a similar trajectory of rapid growth through 2010 followed by stability or minor decline. From 2010 to 2015, the Florida prison population declined slightly (three percent), and it now hovers around the level of the mid-2000s. This leaves Florida with the third-largest state prison population in the country, after Texas and California.

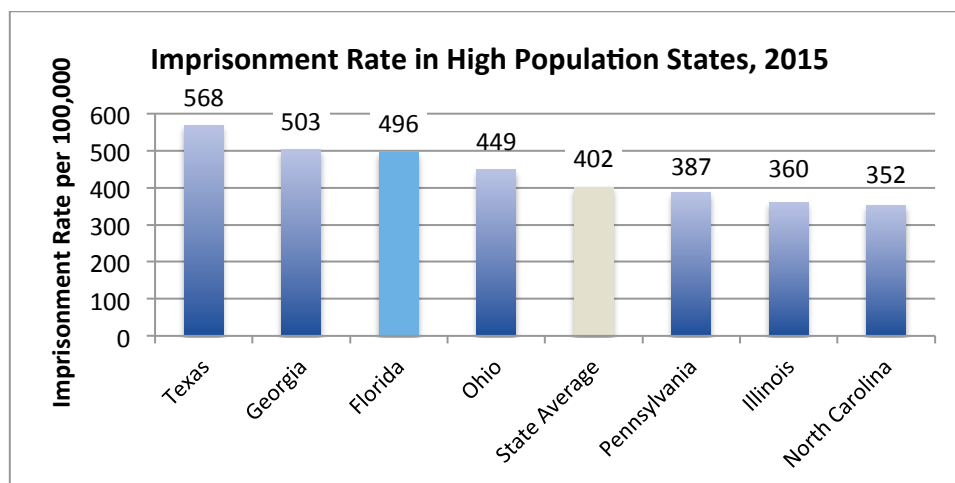
Figure 1: Florida's Prison Population Grew 373 Percent Since 1978



Source: Bureau of Justice Statistics, National Prisoner Series

Florida's imprisonment rate (the number of people in prison per 100,000 residents) has followed a similar pattern, but still hovers 23 percent above the national average. Compared to other high-population states, Florida's imprisonment rate is higher than most (see Figure 2), and is 10th highest overall in the United States.

Figure 2: Florida's Imprisonment Rate 23 Percent Higher Than Average



Source: Bureau of Justice Statistics, National Prisoner Series

The national crime rate has been falling since the early 1990s and is now at its lowest level since 1968.⁴ Florida's crime rate has also fallen significantly, though it remains 15 percent higher than the national average. Currently, Florida has the 15th highest total crime rate and the 11th highest violent crime rate in the country (although the FBI cautions against rankings).⁵ Since 2010, 31 states (including Florida) have reduced both their imprisonment and crime rates.⁶

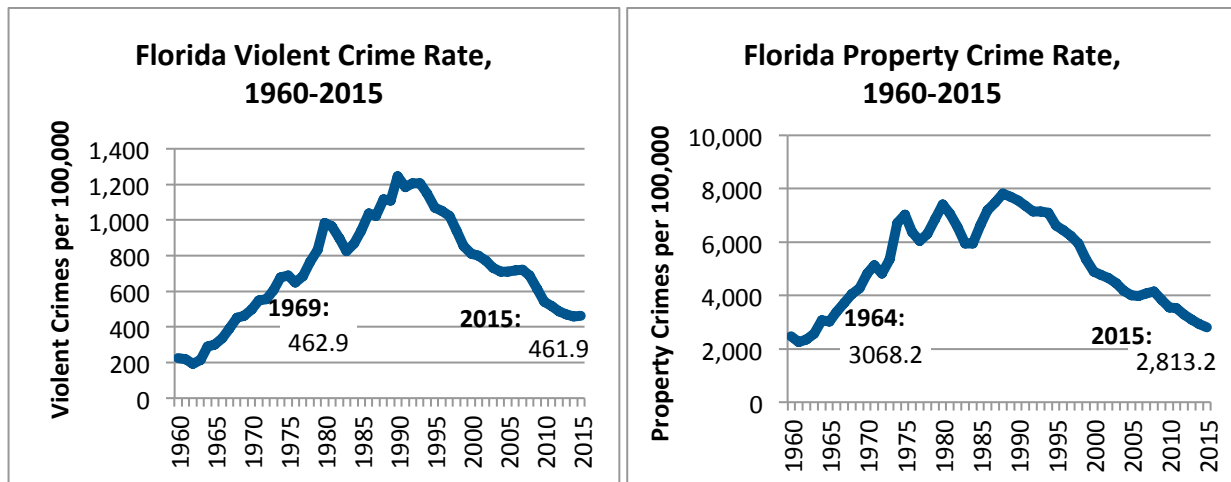
OVERVIEW OF FLORIDA ADULT CRIMINAL JUSTICE SYSTEM

Over the last ten years, Florida's prison population size has remained fairly stable, but many other aspects of the adult criminal justice system have changed. This section reviews high-level trends from crime rates through community supervision. The overarching trends described here are covered in more detail in the sections that follow.

Crime Rate Trends

Like the rest of the country, Florida's crime rate has plunged precipitously from its peak in 1988. In the last ten years, this trend continued following a short leveling off period in the early 2000s. Since 2006, the Florida violent crime rate fell 36 percent and the property crime rate fell 29 percent.

Figure 3: Florida Violent and Property Crime Rates at Lowest Point Since Mid-to-Late-1960s



Source: Uniform Crime Rate Reports, Federal Bureau of Investigation

In the last year of available data (2014 to 2015) there was a tiny (one percent) uptick in the violent crime rate in Florida. It remains to be seen if this is a one-year anomaly or the start of a new trend.

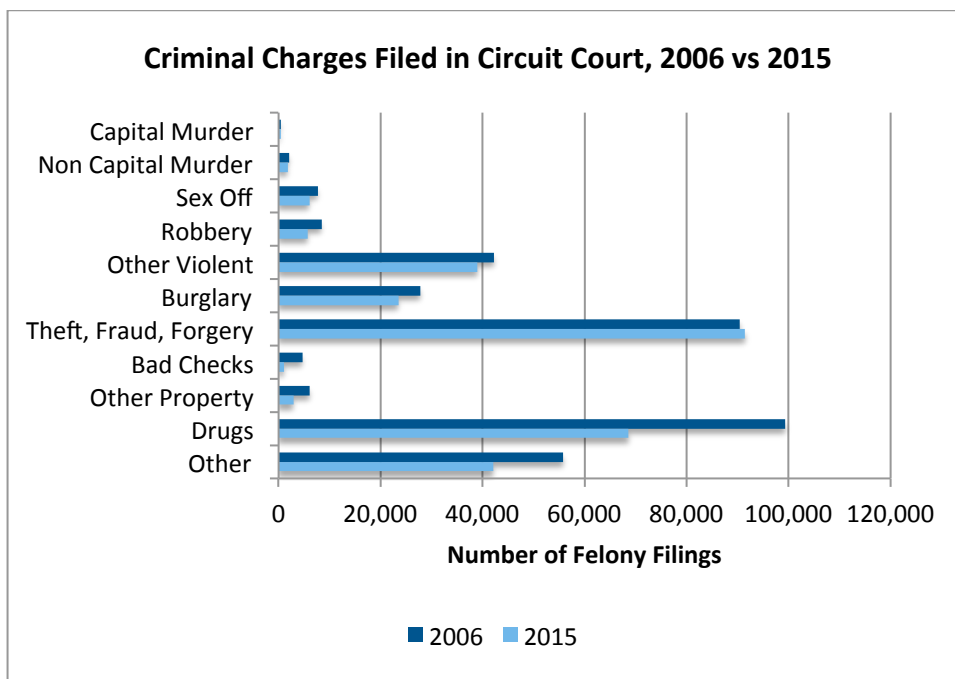
Drug arrests also fell over this period. From 2006 to 2014, drug arrests in Florida fell 26 percent. Total arrests also declined 22 percent, a little less than the decline in property and violent reported crimes. This may be because there are more arrests for crimes which are not included in the serious (“index”) crime count collected and reported by the FBI, or because there are more arrests per reported crime.

Felony Filing Trends

Over 315,000 criminal charges were filed in Florida circuit courts in 2015, related to almost 168,000 defendants. These numbers represent significant drops from a decade ago — an 18 percent decline in charges filed and a 24 percent decline in the number of defendants. The ratio of felony charges to total arrests in the state rose only slightly over this period (shifting from .42 felony charges filed per arrest in 2007 to .46 in 2014ⁱ), suggesting that the main reason for the decline was because of fewer crimes and arrests.

In 2006, drug crimes represented the single largest criminal category in the state. After a 31 percent decline in drug charges, the theft, fraud, and forgery crime category had taken the top spot in 2015. The decline in drug charges filed accounts for just under one-half of the overall decline in felony filings. The number of charges for theft, fraud, and forgery grew.

Figure 4: Felony Filings Declined 18 Percent, Driven by 31 Percent Decline in Drug Charges Filed



Source: Florida Trial Court Statistics Query Tool

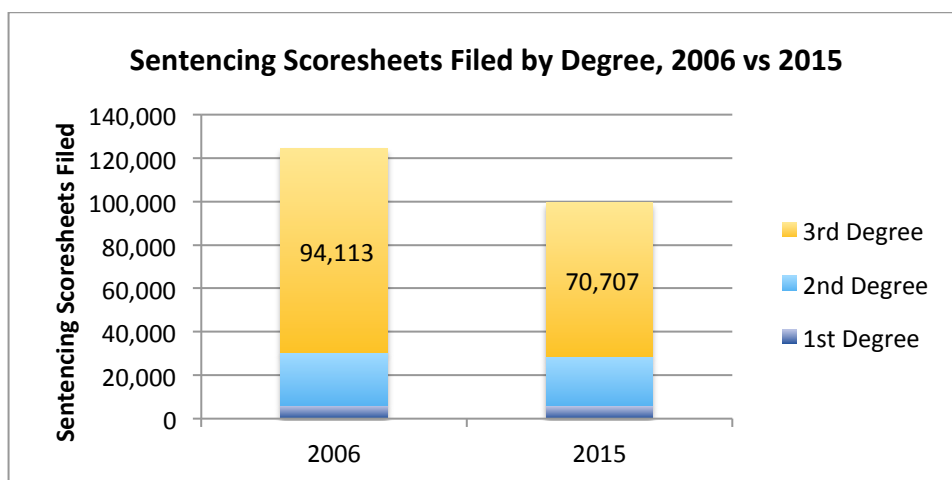
ⁱ This ratio seemed to rise to .51 in 2015, however there is a possibility that the 2015 arrests have been underreported which would artificially drive that number up.

Sentencing Trends

Under the Florida sentencing guidelines system, known as the Criminal Punishment Code (CPC) — explained in greater detail beginning on page 23 of this report — every felony conviction should be accompanied by a sentencing scoresheet. The sentencing scoresheets filed with the Florida Department of Corrections (FDC) were examined to understand the sentencing trends in the state. While these data are imperfect (see the Appendix for a discussion of missing data and methodology) they provide a picture of how sentencing decisions have changed accounting for offense severity, criminal history, and other important factors that affect felony sentences.

Because of the reduction in felony filings shown above, the number of overall felony cases resulting in a sentence has declined significantly in the last ten years. In particular, this drop has been concentrated among lower-level crimes: third degree crimes with lower severity levels as defined in the CPC (Figure 5).

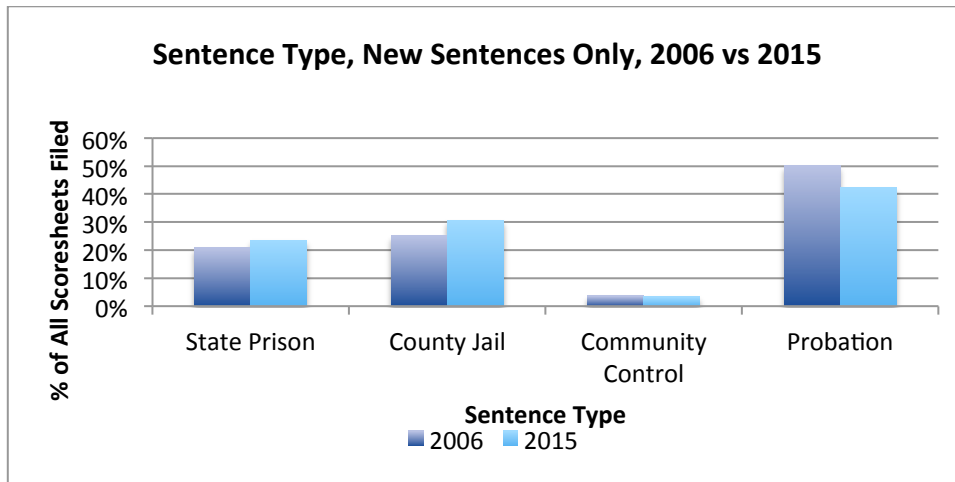
Figure 5: 25 Percent Decline in Sentencing Scoresheets Filed For Third Degree Felonies



Source: CJI Analysis of Scoresheet Data Provided by the Florida Department of Corrections

A conviction today is more likely to result in a prison or county jail sentence than it was ten years ago (Figure 6). This is primarily because the pool of felonies receiving sentences is made up of more first and second degree felonies after the decline in third degree felonies shown in Figure 5. Comparing similar crimes, the number of state prison sentences has declined and the number of county jail sentences has increased, as discussed further in the prison admissions section of this report.

Figure 6: New Felony Cases Today More Likely to Result in Incarceration Sentence

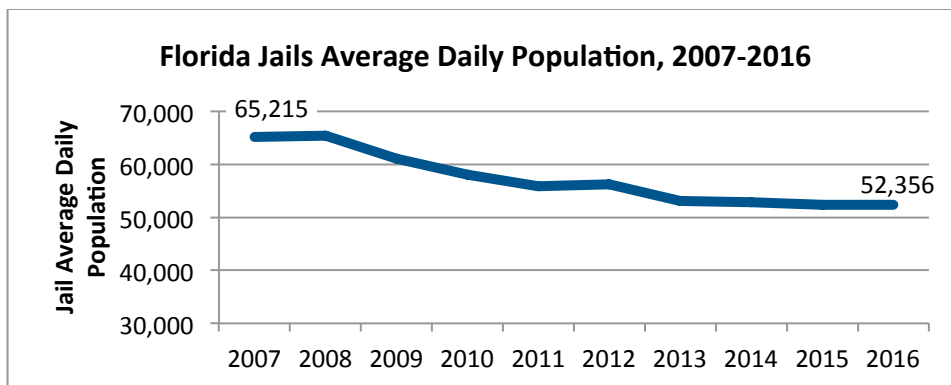


Source: CJI Analysis of Scoresheet Data Provided by the Florida Department of Corrections

Jail Population Trends

Like crime rates, arrests, and felony filings, the county jail average daily population has fallen over the last decade. According to reports compiled by FDC, the jail population has fallen 20 percent since 2007, or about 10,000 beds.

Figure 7: Jail Average Daily Population Has Fallen 20 Percent in Last Decade



Source: Florida Department of Corrections Report on County Detention Facilities

According to the same reports, just under two-thirds of those held in county detention facilities are being held pretrial. This percentage declined from 2007 to 2011 before rebounding slightly in more recent years.

Prison Population Trends

All changes to the prison population are driven by changes to either admissions (who comes in the door), length of stay (how long they stay in prison), or both. When one of these factors shows significant change, there is a likelihood that the change affects the overall prison

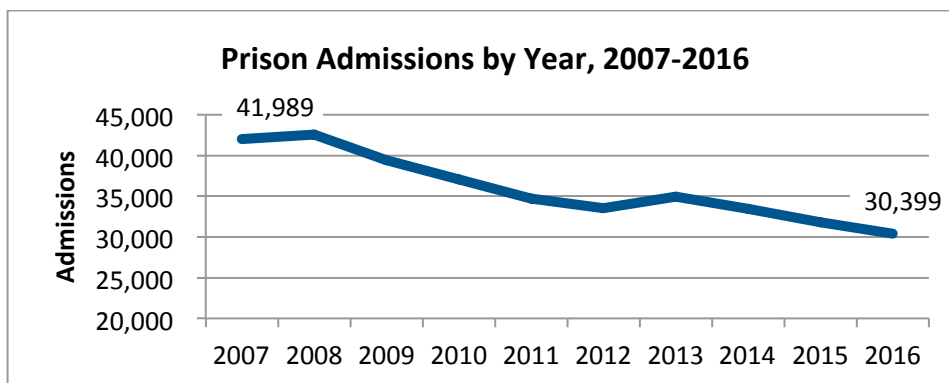
population. In other words, if admissions are consistently declining over a multi-year period this typically results in a declining prison population.

However, this is not the case in Florida. In Florida, prison admissions and lengths of stay are moving in opposite directions; examining each separately provides a clearer understanding of why the prison population has remained mostly steady in the last decade despite the decline in crime, felony filings, and sentences to prison.

Admissions

Prison admissions in Florida are down significantly in the last decade. This change is driven by the reduction in felony filings described above, as well as changes in FDC policy regarding responses to violations committed by people on community supervision.

Figure 8: Prison Admissions Declined 28 Percent in Last Decade



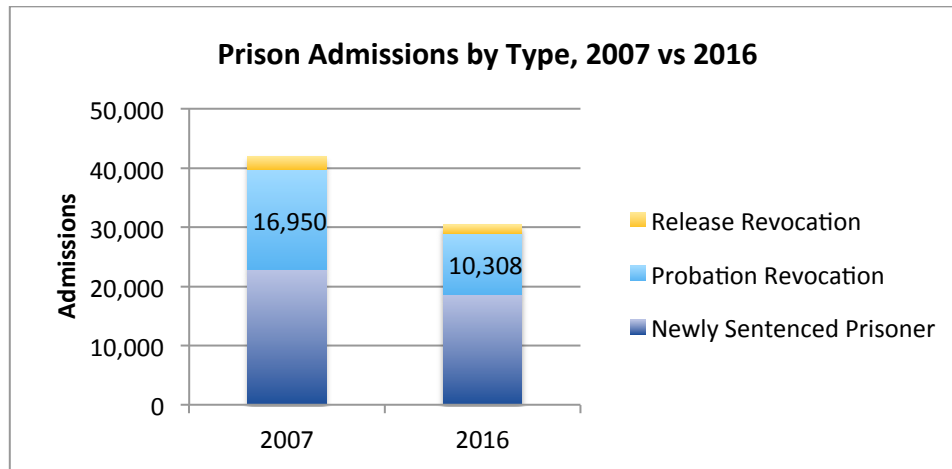
Source: CJI Analysis of Prison Admissions and Intake Data Provided by the Florida Department of Corrections

Florida prison admissions are made up of three distinct groups:

- **Newly sentenced prisoners:** people sentenced directly to prison for their crimes
- **Probation revocations:** people put on probation or community control supervision and later revoked either for a new crime or a technical violation, which includes any alleged violation that is not a new felony or misdemeanor offense, or criminal trafficking offense⁷
- **Release revocations:** people released to post-prison release supervision and later returned to prison on a technical violation

Because data on release revocations is incomplete, most of the analysis in this report focuses on **new court commitments**, which includes both newly sentenced prisoners and probation revocations.

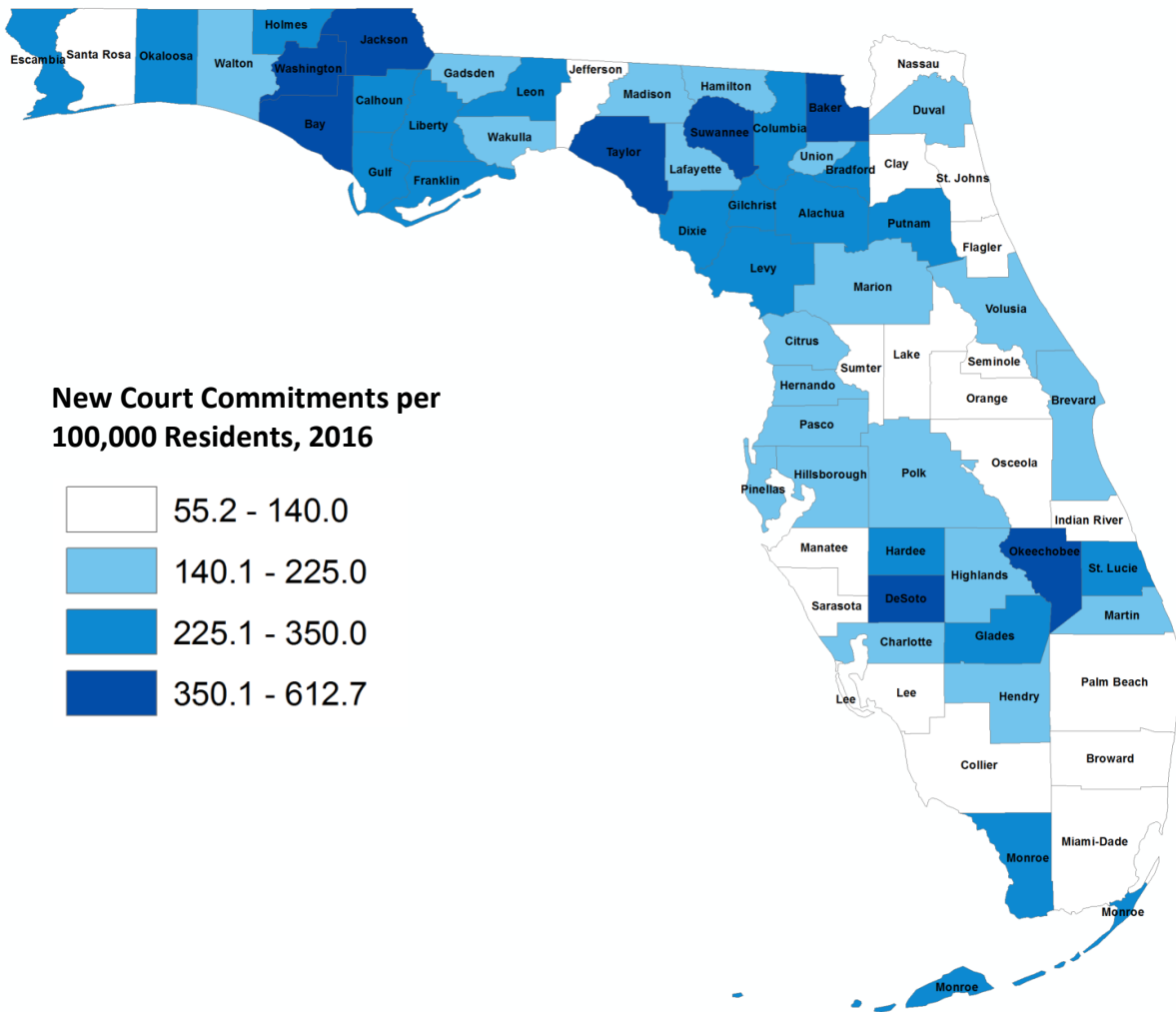
Figure 9: Prison Admission Decline Driven by 39 Percent Reduction in Admissions for People Already on Supervision



Source: CJI Analysis of Prison Admissions and Intake Data Provided by the Florida Department of Corrections

Of the total decline in people admitted to Florida's prisons over the last decade, about 60 percent was caused by a decline in probation revocations, which fell 39 percent in this period. The number of newly sentenced prisoners also fell by 18 percent.

Figure 10: The Rate of Prison New Court Commitments per Resident Varies Widely Across the State



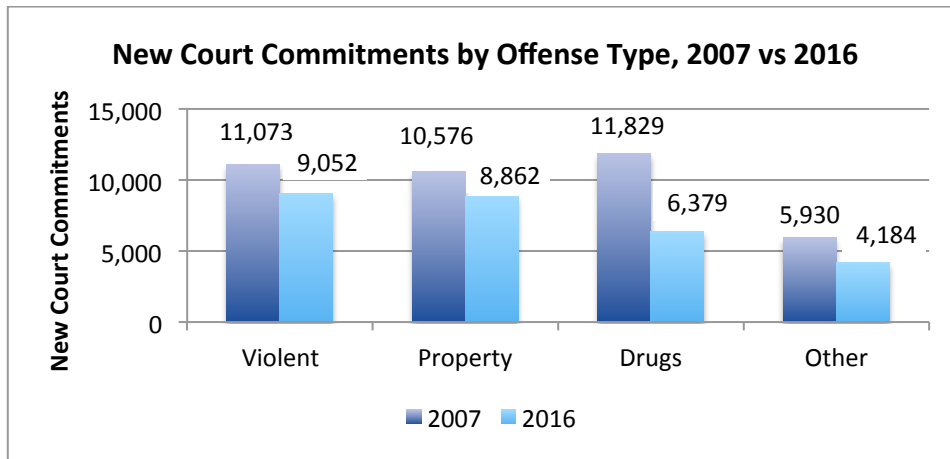
Source: CJI Analysis of Prison Admissions and Intake Data Provided by the Florida Department of Corrections

The prison admissions rate varies significantly across the state. Figure 10 shows the new court commitments (prison admissions excluding returns from post-prison release supervision) per 100,000 residents by county, ranging from 55 to over 600.

In general, southern and eastern Florida counties send people to prison at a lower rate than northern, central, and western counties. These patterns hold when looking at admissions per reported crime or admissions per arrest, which means that the disparity is not driven by underlying crime rates.

While admissions for all primary offense types declined in the last decade, the largest decline was for drug offenders. In 2016, just under two-thirds (63 percent) of Florida prison admissions came in with a nonviolent primary offense.

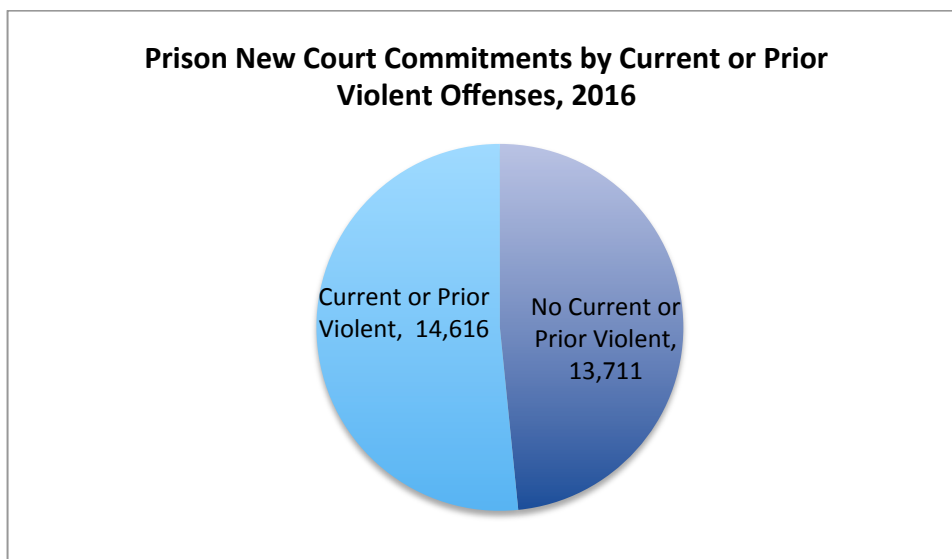
Figure 12: 46 Percent Decline in Drug New Court Commitments to Prison



Source: CJI Analysis of Prison Admissions Data Provided by the Florida Department of Corrections

Looking at additional offenses and criminal history, just under half (48 percent) of total new court commitments to prison in 2016 had no current or prior violent offenses on their record.

Figure 13: 48 Percent of New Court Commitments to Prison Have No Current or Prior Violent Offense



Source: CJI Analysis of Prison Admissions Data Provided by the Florida Department of Corrections

Overall, eight of the top ten primary offenses are nonviolent (Table 1). Despite the decline in drug offenses coming into prison, drug offenses still make up three of the top ten offenses at

admission.ⁱⁱ The number of new court commitments admitted for third degree possession of a controlled substance has decreased by more than half since 2007, though it is still the second most common offense at admission, with second degree sale/manufacturing/delivery, also reduced by around half, coming in third.

Meanwhile burglary of a dwelling or an occupied structure/conveyance is now the number one crime at admission after rising eight percent in the last decade. Trafficking in stolen property is up, while other property offenses have declined.

Table 1: Eight of the Top Ten Offenses at Admission are Nonviolent

Primary Offense	2007	2016	Change
Burglary of a Dwelling/Occupied Structure/Conveyance	2,171	2,352	8%
Possession of Controlled Substance (3rd Degree)	4,417	1,965	-56%
Sale/Manufacturing/Delivery of Controlled Substance (2nd Degree)	3,842	1,958	-49%
Traffic In Stolen Property	1,327	1,507	14%
Felon/Delinquent with Gun/Concealed Weapon/Ammunition	1,037	1,500	45%
Burglary of an Unoccupied Structure/Conveyance-or Attempted	1,953	1,194	-39%
Trafficking in Controlled Substance (1st Degree)	1,560	1,190	-24%
Grand Theft, \$300-\$5,000	1,389	973	-30%
Robbery with a Deadly Weapon	986	832	-16%
Robbery	919	608	-34%

Source: CJI Analysis of Prison Admissions and Intake Data Provided by the Florida Department of Corrections

Length of Stay

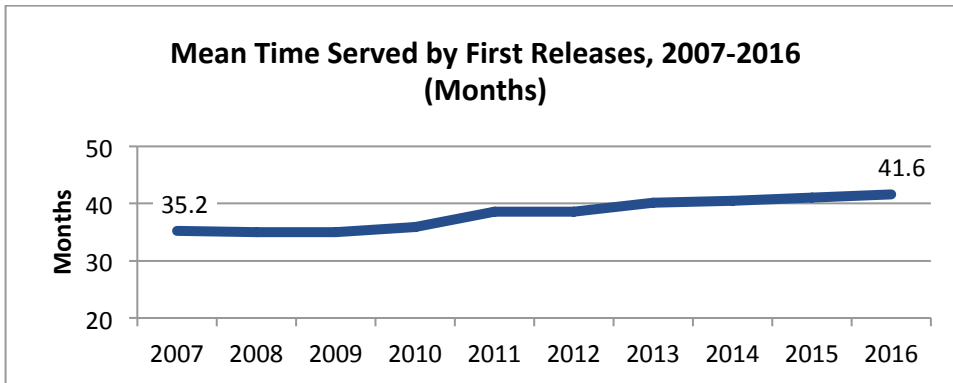
While admissions have declined, sentence length and length of stay in prison has risen over the last decade. This may be partially due to the reduction in lower-level offenders coming in to prison, although there are indications it may also be driven by increased sentences within certain offense types and offenses, for example burglary of a dwelling or occupied structure and trafficking in stolen property, which had both increased admissions and average sentence length.

For newly sentenced offenders, the average sentence length has risen 22 percent in the last decade. Length of stay for those released from prison has risen 18 percent, suggesting there is some lag between the new, longer sentences coming into prison and who is being released.

ⁱⁱ For the purposes of discussing specific offenses, CJI combined all drug crimes into possession, sale/manufacturing/delivery, or trafficking by degree (this separates drugs which are treated differently in terms of penalty, but allows a clearer view of the impact of a category of drug charges on the prison population).

The most common measure of length of stay in prison is the time from admission to release for everyone who gets out of prison. Length of stay is commonly measured for **first releases**, or offenders who come in on a new prison sentence rather than a violation of post-release supervision.

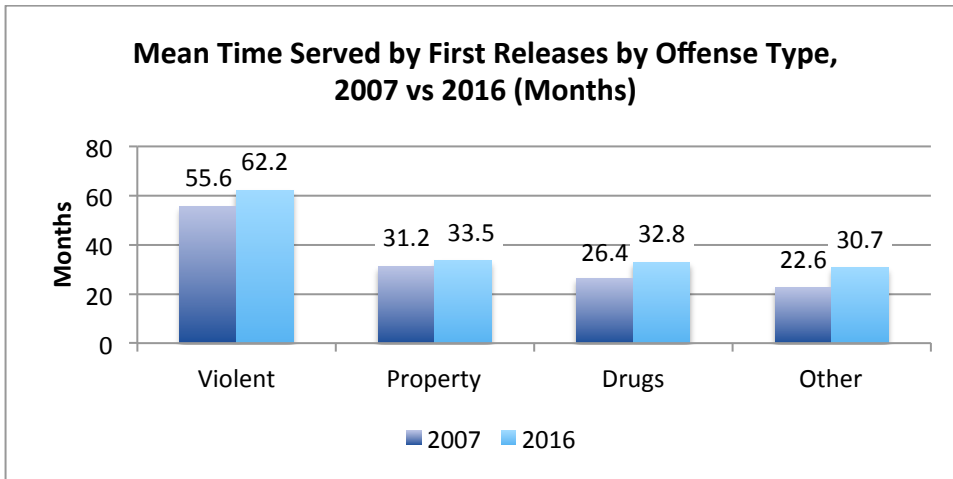
Figure 14: Time Served in Prison Rose 18 Percent in Last Decade



Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

The increase in sentence length and length of stay is not limited to violent crimes. Both sentence length at admission and length of stay at release have risen across all offense types.

Figure 15: Time Served Increased Across All Offense Types

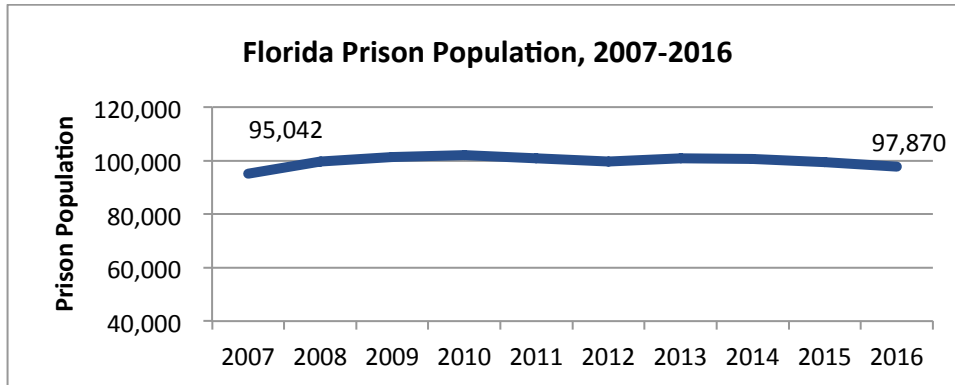


Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

Prison Population

As a result of the declining admissions but growing length of stay in prison, the prison population has been fairly steady over the last ten years. Overall, the population has grown three percent in the last decade. Although the prison population has declined each of the last two years and is projected to continue declining for the next three years, it is projected begin growing again, albeit slowly, in Fiscal Year 2020-2021.⁸

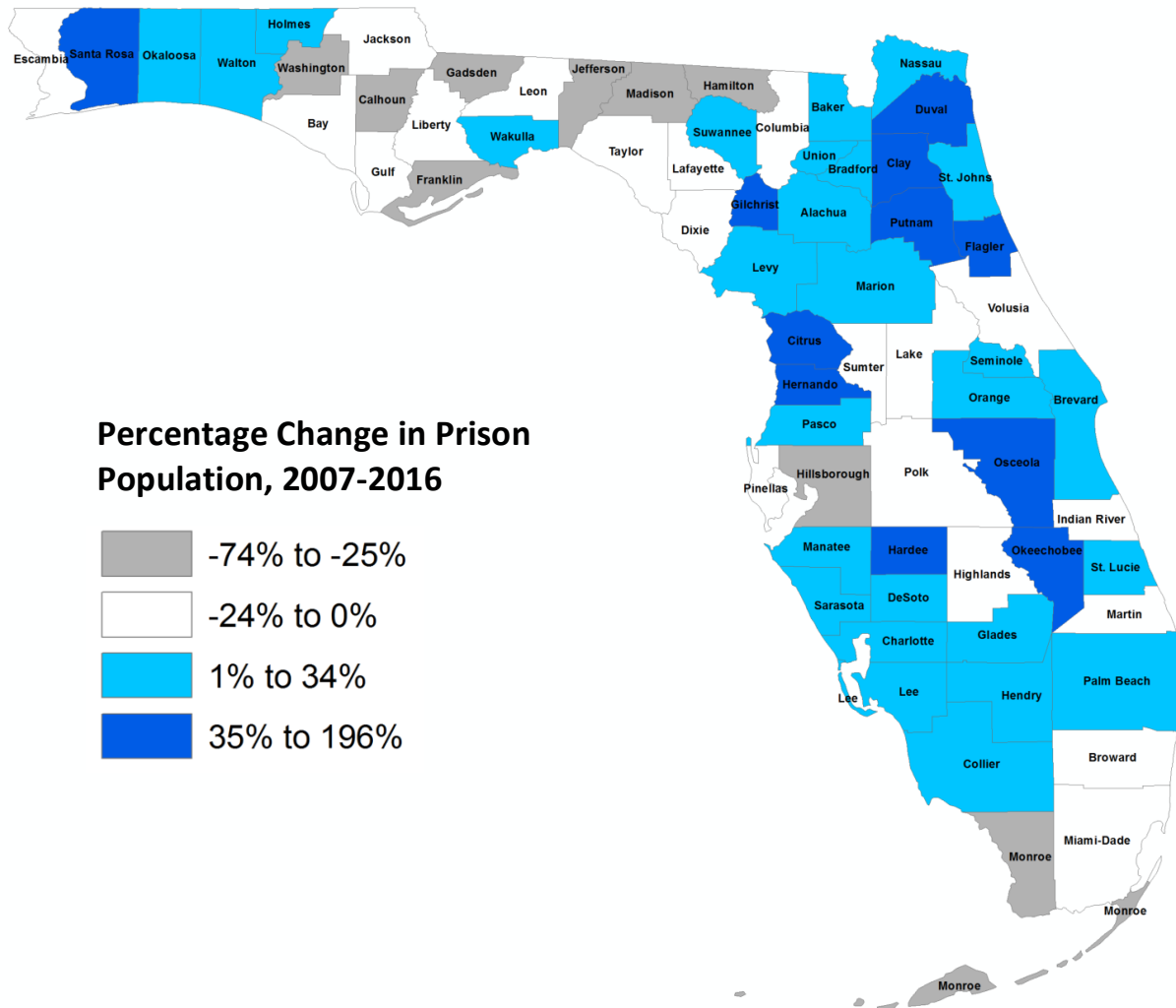
Figure 16: Florida Prison Population Mostly Steady Over Last Decade



Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Correctionsⁱⁱⁱ

ⁱⁱⁱ Figure 16 shows the custody population as recorded in FDC's "status population file" on December 31 of each year 2007-2016. Figure 1 showed the total jurisdictional population in December of each year reported by FDC to the Bureau of Justice Statistics through 2015. Jurisdiction counts may include prisoners held outside the state and prisoners in certain types of confined community settings who are not included in the custody population count.

Figure 17: Fewer than Half of Counties Reduced Prison Bed Use



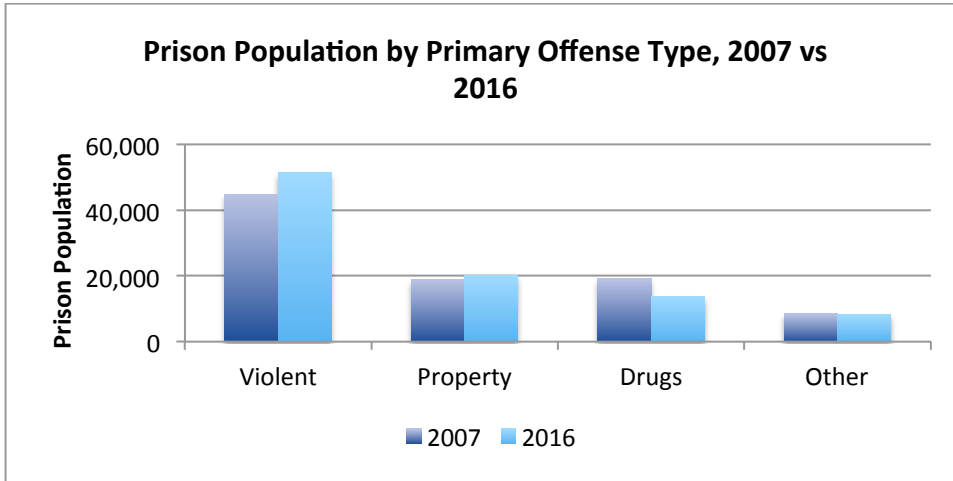
Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Corrections

Beneath the steady prison population numbers lie significant changes in the composition of the prison population. Geographically, more prisoners are now coming from counties in central and northeastern Florida, with southern Florida counties and most panhandle counties reducing their prison use, in some cases significantly (see Figure 17).

Overall, 29 of 67 counties reduced their use of prison. Duval County now has the most people in prison of any county in the state, up 35 percent from 2007, while Miami-Dade, which used to be the top contributor, has reduced the number of people in prison by eight percent due to drastically curtailed admissions.

The mix of offense types within the prison population has also changed in the last decade. Commensurate with the reduction in admissions for drug offenses, there are now fewer drug offenders in prison than in 2007. At the same time, the number of property and violent offenders has grown.

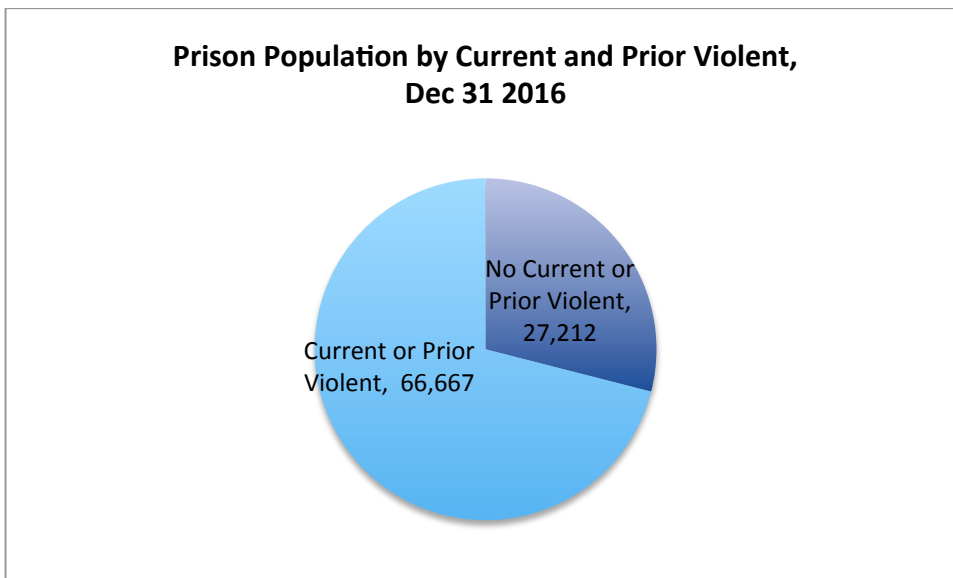
Figure 18: The Number of Property and Violent Offenders in Prison Grew in Last Decade



Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Corrections

Overall, 39 percent of the current prison population does not have any violent crime related to their current confinement. When adding in past crimes, 29 percent of the prison population or just over 27,000 people in prison have no current or prior violent crimes.^{iv}

Figure 19: 29 Percent of Prison Population Has No Current or Prior Violent Crime



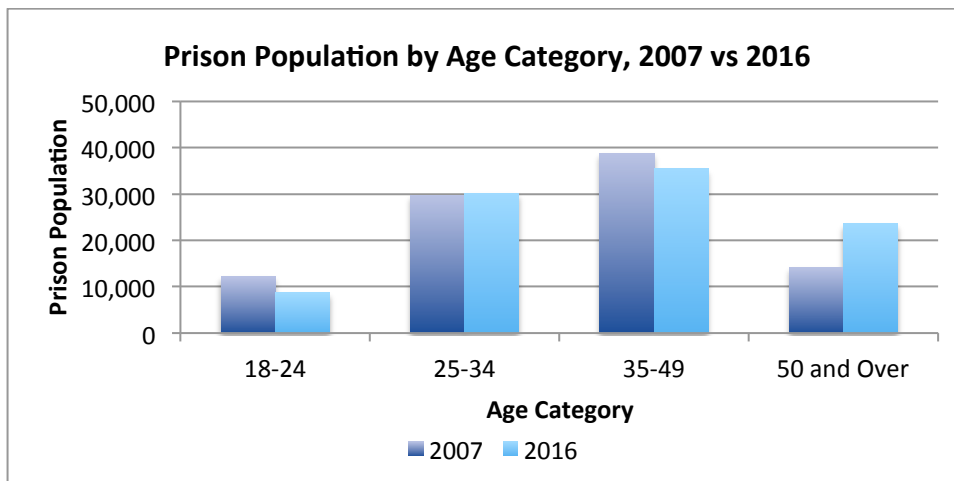
Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Corrections

^{iv} Four percent of the prison population could not be matched to past records and is excluded from this count.

One reason that average sentence length for new court commitments has grown faster than average length of stay for people released from prison is that offenders with longer sentences, including many life sentences, are being admitted to prison but not being released. In December 2016, the average prisoner had already served 71 months in prison and had 75 months remaining until his or her tentative release date, compared to 52 months served so far for the average prisoner in December of 2007, and 64 months until tentative release.

Along with this stacking effect and the growth of violent offenders in prison, the prison population has become older over time. While offenders aged 35-49 make up the largest group in Florida's prisons, "elderly offenders," defined in statute as age 50 or older, make up the fastest growing portion of the population.

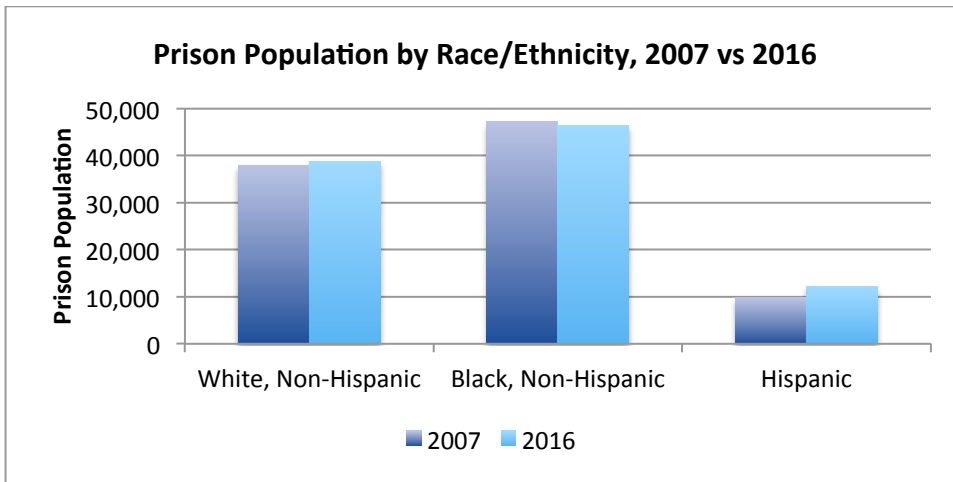
Figure 20: The Number of 18-24 Year Olds in Prison Has Fallen While the Number Age 50 or Older Has Grown



Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Corrections

Finally, while the number of Hispanic inmates has been growing slightly over the last decade, black non-Hispanic inmates still make up almost half of the 2016 prison population (47 percent) compared to just 17 percent of the Florida resident population in 2015.

Figure 21: Black, Non-Hispanic Inmates Make Up Just Under Half of Prison Population

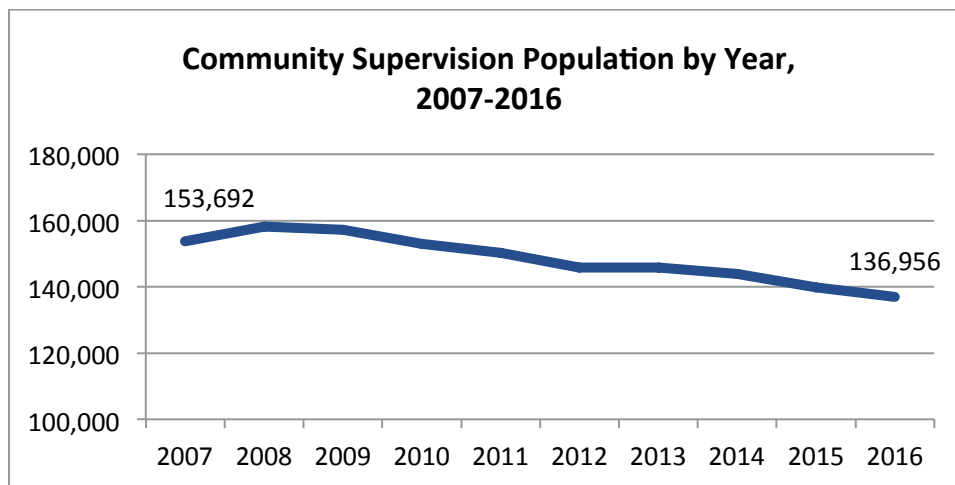


Source: CJI Analysis of Prison Status Population Data Provided by the Florida Department of Corrections

Community Supervision Trends

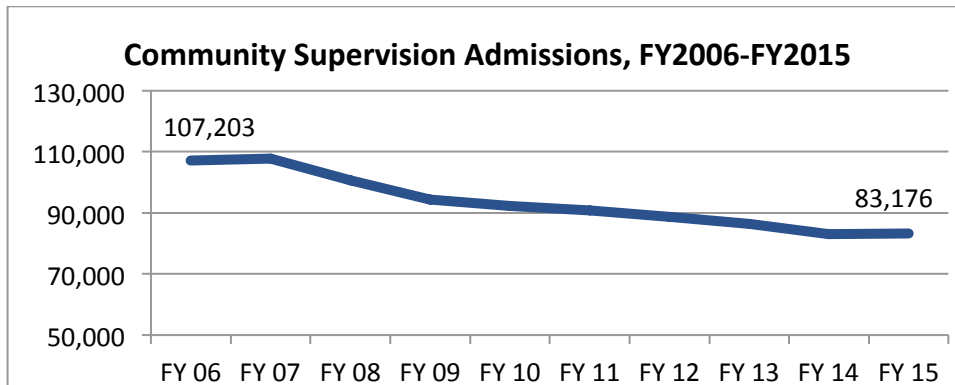
Over the past decade, the statewide population of individuals on any kind of community supervision, including probation or post-prison release supervision, has declined gradually, mirroring declines in felony filings and sentences to prison.

Figure 22: Community Supervision Population Declined 11 Percent in Last Decade



Source: Florida Department of Corrections 2015-2016 Agency Statistics

Similarly, new admissions to community supervision have decreased consistently since 2007 at a slightly slower rate than prison admissions (22 percent versus 28 percent).

Figure 23: Community Supervision Admissions Declined 22 Percent in Last Decade

Source: Florida Department of Corrections 2015-2016 Agency Statistics

Key Findings

- Florida's crime rate has declined close to 30 percent since its peak in 1988
- The decline in reported crimes and arrests led to commensurate declines in felony charges, particularly among third degree felonies
- Prison admissions dropped 28 percent, driven by a 39 percent decline in probation revocations
- 18 percent growth in length of stay balanced out the effect of the admissions decline on the prison population, leading to an overall stable prison population in the last decade

The following sections of the report take a deeper look at the trends highlighted above. The remainder of the report examines laws, policies, and practices that have contributed to the these trends, including:

- exploring the reduction in admissions through the use of alternatives to incarceration and changes in revocation policy and practice,
- how enhancements and mandatory minimums may be contributing to the growth in sentence lengths,
- sentencing laws and practices for common property and drug crimes,
- further information about elderly prisoners, and
- a look at release and reentry programs and recidivism.

PRISON ADMISSIONS

In Florida, sentencing decisions are driven primarily by the use of the states' sentencing guidelines, known as the Criminal Punishment Code (CPC). In this section, we review the sentencing guidelines used by the state, alternatives to incarceration available to judges and trends in their use, trends in the use of revocations from supervision and year and a day prison sentences, exceptions from the guidelines in the form of mandatory minimums and enhancements, and sentences and trends for common property and drug crimes.

Sentencing Guidelines Overview

In 1983, Florida established sentencing guidelines with the goal of ensuring uniform sentencing across the state. Since the sentencing guidelines were first enacted, they have undergone three major revisions in 1994, 1995, and 1997.⁹ In the last major revision in 1997, the Criminal Punishment Code (CPC) was established, applying to all felonies, except capital felonies, committed on or after October 1, 1998.¹⁰

Under the CPC, every defendant charged with a non-capital felony has a CPC worksheet completed prior to sentencing to determine the lowest permissible sentence that can be imposed by the judge.¹¹ The lowest permissible sentence is based on the total sentencing points the defendant is awarded, which in turn is based on the primary offense, additional offenses, the defendant's criminal history, and other considerations such as violations committed, and offense or sentencing enhancements.¹² Each offense is assigned a severity level from 1 to 10, and a corresponding point value. The offense with the highest total sentencing points is the primary offense.

The CPC allows for greater discretion than the previous sentencing guidelines used by the state but expands the range of defendants who can receive a prison sentence. Under the previous guidelines, only offenders with a total sentencing score of 52 points or more could receive a prison sentence. Under the CPC, it's possible for any felony offender to receive a prison sentence.¹³

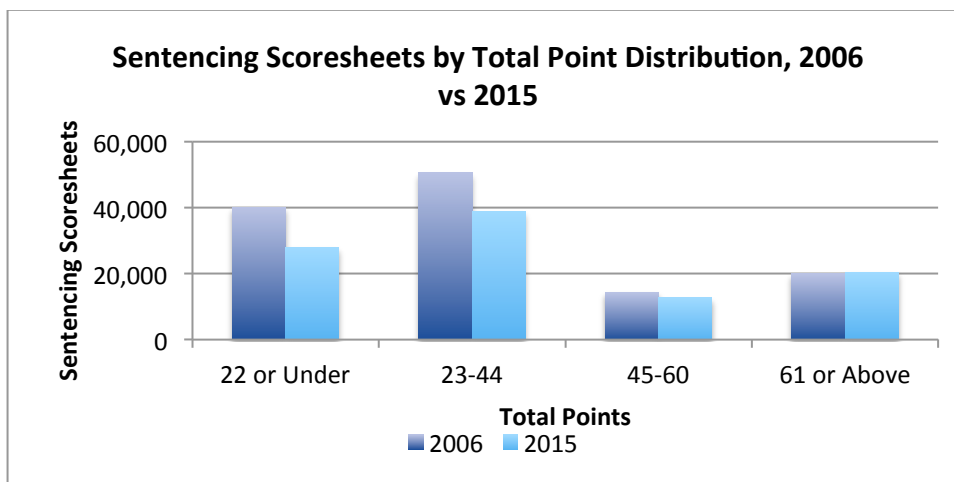
Total sentencing scores are grouped into four major categories based on the recommended sentence. In 2009, the state expanded the use of non-state prison sanctions that can be ordered by the judge but limited the use of these sanctions to third degree felonies. Non-state prison sanctions include probation, community control, drug court, and other alternatives to incarceration described in the following section.

Table 2: Sanction by Total Point Category

Point Total	Suggested Sanction
22 Points or Less	Presumptive non-state prison sanction if the defendant is convicted of a nonviolent third-degree felony ^v Non-state prison sanction or state prison for all other offenses at the discretion of the sentencing judge
22.1-44 Points	Non-state prison sanction or state prison at the discretion of the sentencing judge
44.1-60 Points	State prison, except for the following situations: ¹⁴ <ul style="list-style-type: none"> Prison diversion program if the total points are 48 or less (or 54 points or less and six points are for a technical violation of community supervision) AND primary offense is a nonviolent third-degree felony Post-adjudicatory drug court or drug offender probation if the total points are 60 or less AND primary offense is a third-degree felony or second degree drug purchase or possession offense
60.1 or More Points	State prison

Over the last decade, the number of scoresheets filed with total sentencing points in the lower ranges has fallen, while the number of high-scoring sheets has remained steady (Figure 24). This is driven by the decline in filings for third degree felonies discussed above.

Figure 24: Decline in Felony Cases with Lower Sentencing Point Totals



Source: CJI Analysis of Sentencing Scoresheet Data Provided by the Florida Department of Corrections

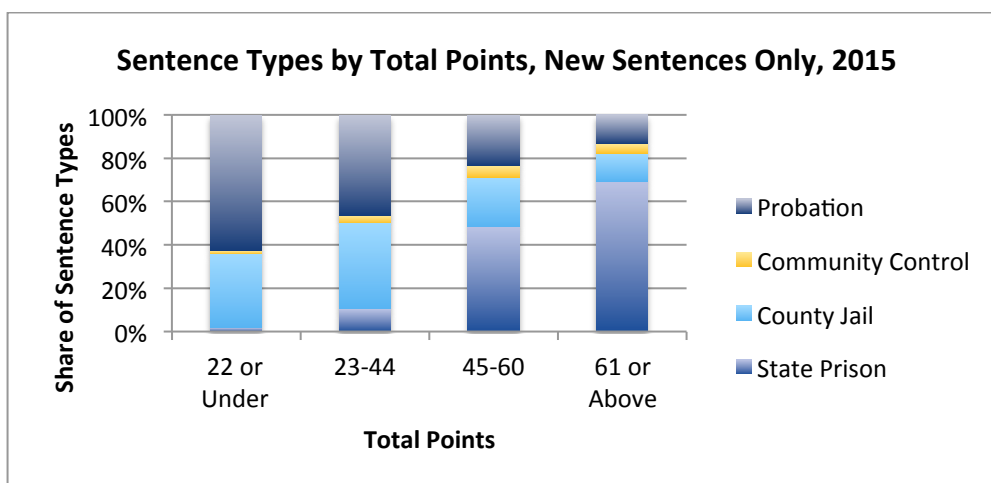
^v Exclusions include if the primary offense is a forcible felony, even if the severity level allows it to fall into this point range. Judges can also depart from the presumptive non-prison sentence if the non-prison sanction could present a danger to the public.

A downward departure, or a sentence lower than the recommended sentence, can be ordered by the judge upon a finding that certain mitigating factors justify the departure.¹⁵ Mitigating factors that can be used to justify a downward departure are listed in statute, however the judge is not limited to the factors specifically listed.¹⁶ The one exception relates to a defendant's substance abuse addiction, including intoxication at the time of the offense. The court is prohibited from considering substance abuse as a mitigating factor justifying downward departure, except when determining eligibility for the post-adjudicatory drug court program.¹⁷

The recommended sentence for offenders receiving 45 or more total sentencing points is state prison, although in certain cases other sanctions are permitted (Table 2). As shown in Figure 25, many offenders falling in this range received less serious sanctions. In 2015, 48 percent of defendants in the 45-60 point range received prison sentences as did 69 percent of defendants in the 61 or above category, meaning that over 30 percent of defendants in the 61 or above category did not receive prison sentences.

Despite these departures, it is clear that the sentencing guidelines have an impact on sentences given the clear differentiation between the groups.

Figure 25: Sentencing Point Totals Drive Sentences, With Significant Downward Departures



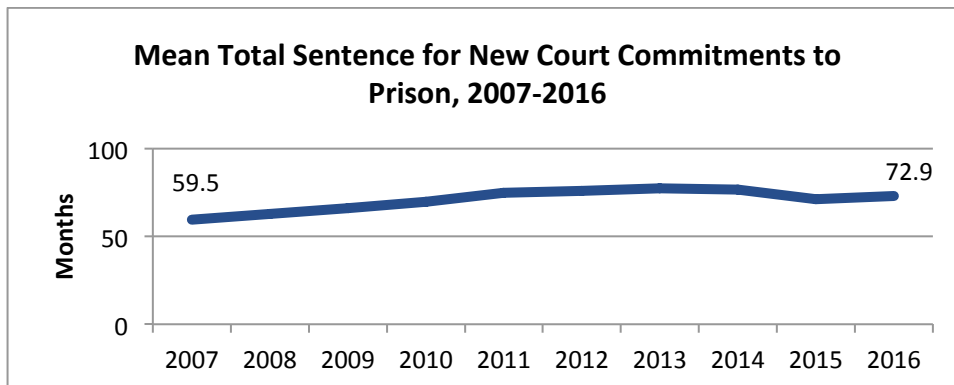
Source: CJI Analysis of Sentencing Scoresheet Data Provided by the Florida Department of Corrections

Under the CPC, the lowest permissible state prison sentence is based on the total number of sentencing points. The maximum sentence is based on the felony degree assigned to the primary offense (Table 3). However, if a defendant is being sentenced for a mandatory minimum, the mandatory minimum trumps the guideline recommendation. Florida has at least 108 crimes with mandatory minimums, discussed in further detail in the mandatory minimum and enhancements section below.¹⁸

Table 3: Felony Classifications

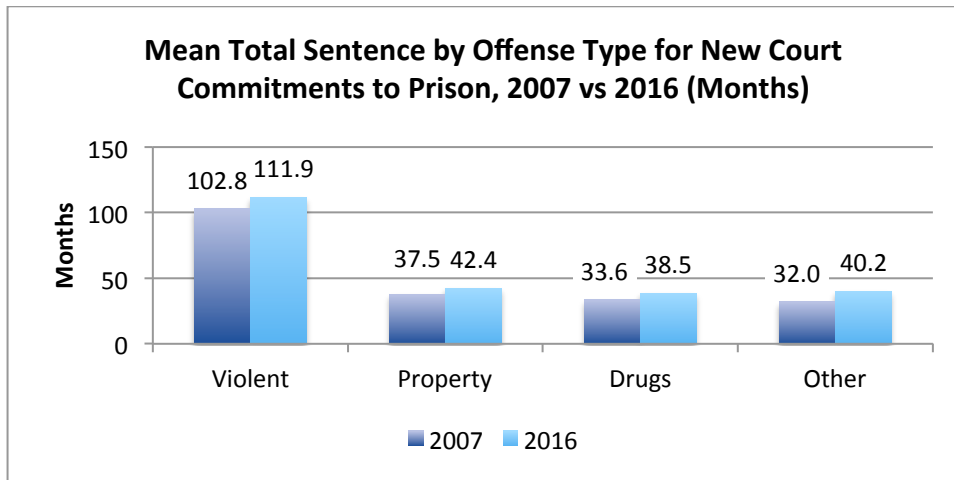
Felony Degree	Maximum Sentence
Life Felony	Life
1 st Degree	30 Years
2 nd Degree	15 Years
3 rd Degree	5 Years

Average sentence lengths for those offenders who do receive a prison sentence have grown 22 percent over the last decade, from 59.5 months to 72.9 months. This is a large increase, but it is partially explained by the change in which types of offenders are being sentenced to prison. Individuals sentenced to prison in 2016 are, on average, convicted of more serious crimes. These changes are explored further in the following sections on alternatives to incarceration, year and a day sentences, and probation revocations, all of which reflect changes in how individuals are sentenced in Florida compared to a decade ago.

Figure 26: For Those Sentenced to Prison, the Average Length of Sentence Increased 22 Percent in Last Decade

Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

The change in who is coming to prison does not tell the full story. Sentences have increased for all offense types, and as discussed further below, for certain offenses where there was no reduction in admissions.

Figure 27: Sentence Lengths Rose for All Offense Types

Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

Key Findings

- Most felony sentences in Florida are based on sentencing guidelines that factor in primary and secondary offenses, criminal history, violations, and enhancements to come up with a recommended sentence
- In the last decade, the number of new sentences scoring in the lower points ranges has fallen
- Average sentence length for those offenders receiving prison sentences has grown, partially, but not entirely, driven by the change in felony charges

Alternatives to Incarceration

Prison admissions are often reduced by expanding the use of alternatives to incarceration. These alternatives are other sanctions, often involving community supervision, given in lieu of a prison sentence. There are four main alternatives to incarcerations in use in Florida: probation, community control, drug offender probation, or problem solving courts.

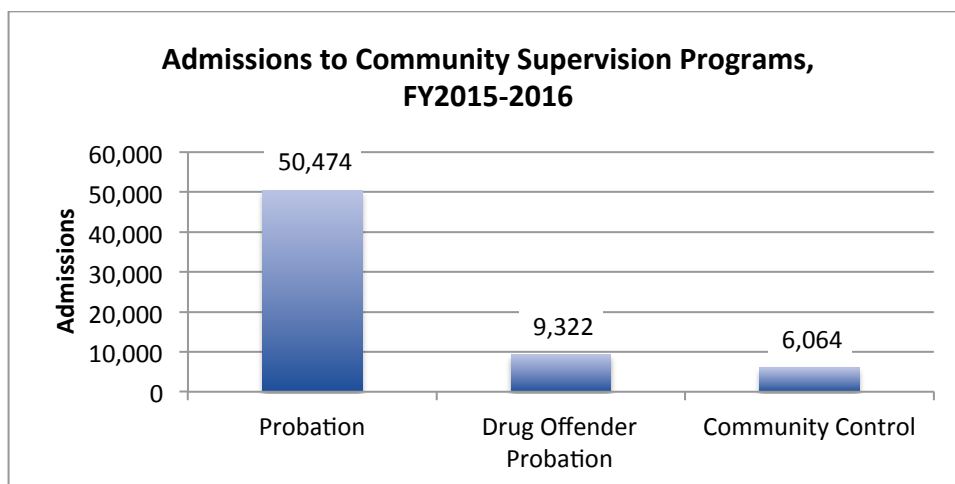
Probation is a form of community supervision that is often used for low-level offenses. Any defendant convicted of a felony who meets the requirements for a non-state prison sanction, as described above, may be placed on probation where he or she will be supervised by the Florida Department of Corrections (FDC). If the offender violates the terms or conditions of probation, the court is authorized to impose any sentence that it could have imposed at the

defendant's original sentencing. This is the most common form of alternative to incarceration in Florida (see Figures 28 and 30).

Community control is a form of intensive community supervision that is typically used as an alternative to incarceration for offenders who qualify for a non-state prison sanction but do not qualify for probation.¹⁹ It can also be used as a sanction for individuals who violate the terms of their supervision. Individuals placed on community control are typically restricted to their homes with the exception of employment.

Drug offender probation is a form of intensive supervision directed towards offenders with a chronic substance abuse addiction. While most of the alternatives to incarceration are limited to third degree felonies, individuals convicted of a second-degree felony for purchase or possession of a controlled substance can be placed on drug offender probation. Individuals placed on drug offender probation are subject to all of the regular standard conditions of supervision and some special conditions which can often include inpatient or outpatient substance abuse treatment, frequent drug testing and curfew restrictions.

Figure 28: Regular Probation is the Most Commonly Used Alternative to Incarceration



Source: Florida Department of Corrections FY2015-2016 Annual Report

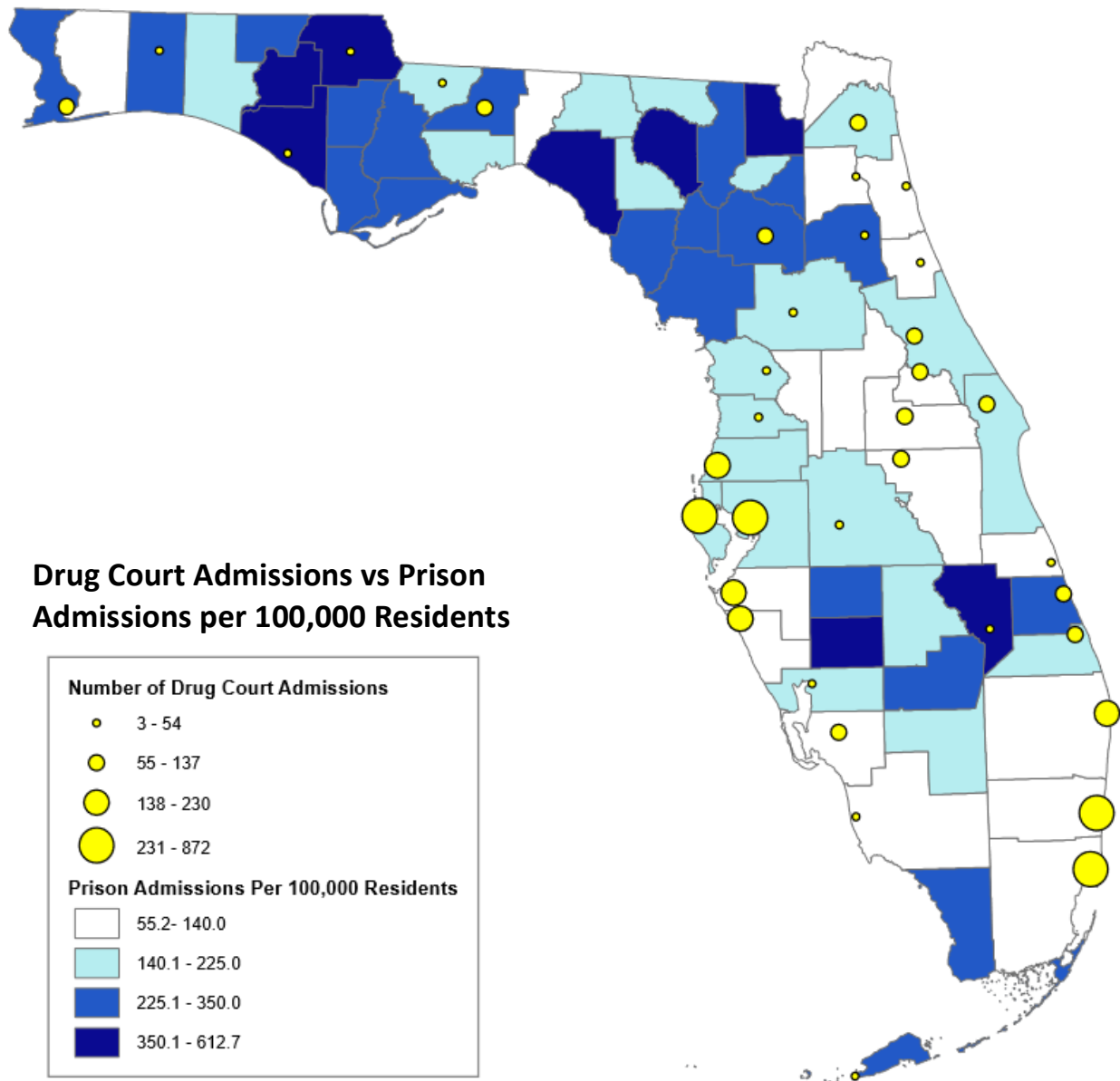
Problem-solving courts are intensive, court-focused forms of supervision geared towards specialized populations. Currently, there are 107 problem-solving courts available to adult felony offenders: 46 drug courts, 4 DUI courts, 27 mental health courts, and 30 veterans courts.

Drug courts are the problem-solving court used most often in Florida and are available both pre-adjudication and post-adjudication. Typically drug court participation is limited to nonviolent offenders with an assessed substance abuse treatment need. There is currently no standardized screening tool to determine this need used statewide.

While state-run alternatives to incarceration such as probation and community control are available across the state, availability of problem-solving courts is inconsistent, with access

depending on capacity and funding within court circuits. As Figure 29 shows, many of the counties that send individuals to prison at the highest rates have little or no adult felony drug court availability. This may be driven by the small size of some of these counties and the lack of services or funding in more rural areas of the state.

Figure 29: Counties with Lower Prison Admission Rates Have More Adult Felony Drug Court Admissions

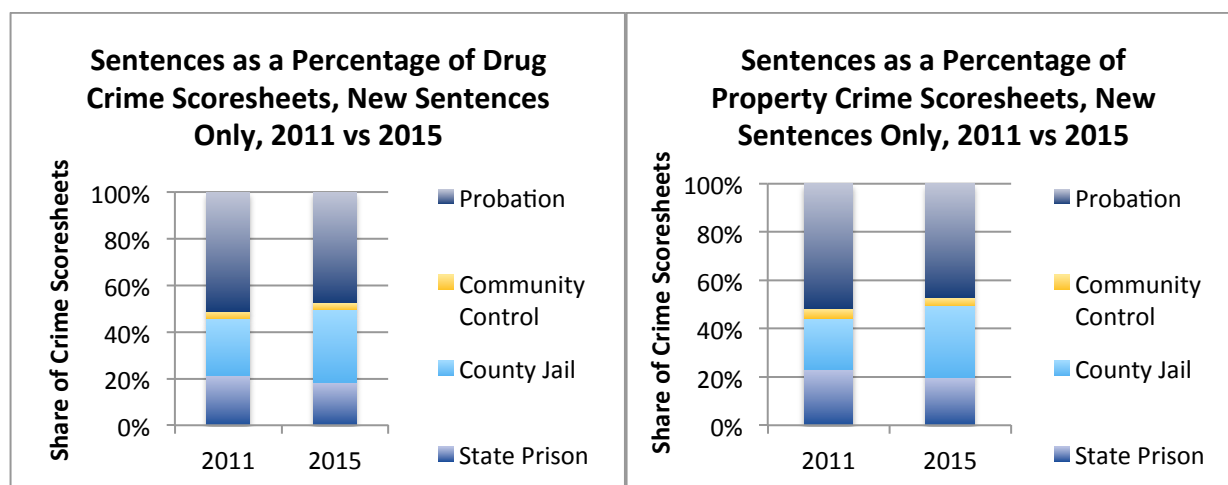


Source: CJI Analysis of Problem-Solving Court Data Provided the Office of the State Courts Administrator and Prison Admissions Data Provided by the Florida Department of Corrections

Trends in Use of Alternatives to Incarceration

Over the last decade, Florida has successfully moved lower-level offenders (in terms of offense severity levels and criminal history points) away from state prison sentences. Some of this shift away from prison, as discussed above, is the result of fewer felony filings and convictions. Additionally, there has been a reduction in the use of state prison as a sanction for offenders with drug and property crimes. Instead, nonviolent offenders are more likely to be sentenced to a stay in county jail (Figure 30).

Figure 30: Property and Drug Offenders Less Likely to Be Sentenced to Prison, More Likely to Receive Jail Time



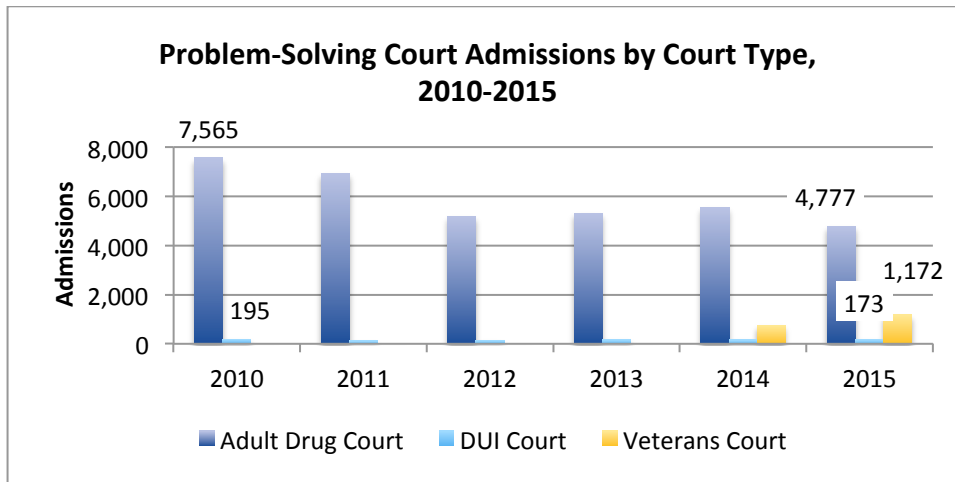
Source: CJI Analysis of Sentencing Scoresheets Data Provided by the Florida Department of Corrections

The scoresheet data only shows major categories of sanctions and therefore does not fully flesh out the picture of which alternatives to incarceration are being used and how that has changed over time. In particular, problem-solving court admissions are not included in the scoresheet data, likely because many problem-solving courts are pre-adjudication. Post-adjudication problem-solving courts may be marked as probation sentences.

The Office of the State Court Administrator was able to share data on admissions for certain types of problem-solving courts. Florida’s adult felony problem-solving courts admitted over 6,000 offenders in 2015.^{vi} Participation in drug courts has declined considerably since 2010, possibly driven by the decrease in drug arrests and charges discussed above.

^{vi} The Office of the State Courts Administrator was not able to provide admissions counts for mental health courts.

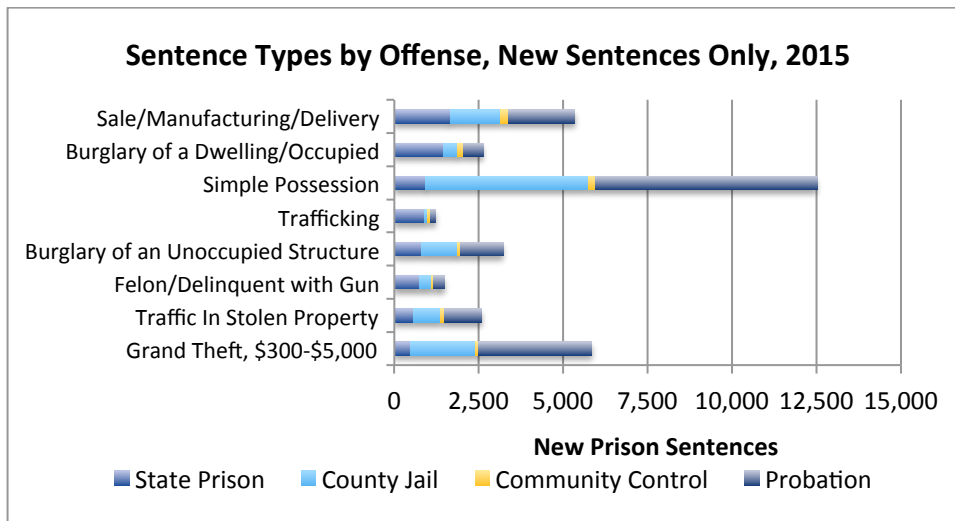
Figure 31: Problem-Solving Court Admissions Decline Since 2010



Source: CJI Analysis of Problem-Solving Court Data Provided the Office of the State Courts Administrator

While lower-severity crimes may be less likely to receive a prison sentence under the guidelines, these offenses still have an impact on the state prison population. For instance, only seven percent of offenders with a primary offense of simple possession of a controlled substance received a prison sentence compared to 73 percent of offenders with a primary offense of trafficking in a controlled substance. Because the overall pool of possession offenders is much larger, there were still a higher number of simple possession offenders sentenced to prison under the guidelines in 2015 (929 compared to 892 for trafficking²⁰).

Figure 32: Crimes with a Low Rate of Prison Sentences Can Still Impact the Population



Source: CJI Analysis of Sentencing Scoresheets Data Provided by the Florida Department of Corrections

Key Findings

- Counties with higher prison admission rates have lower drug court admissions, possibly due to their small size and lack of resources
- The number of new admissions to drug court has declined since 2010
- Drug and property offenders are less likely to be sentenced to prison, but more likely to be sentenced to county jail, than five years ago
- Due to the overall large number of convictions for certain crimes, even offenses which rarely receive prison sentences can impact the prison population

Responses to Violations

In 2016, revocations from supervision made up 39 percent of total admissions to prison. This section examines how practices in the community have impacted the number and type of revocations to prison.

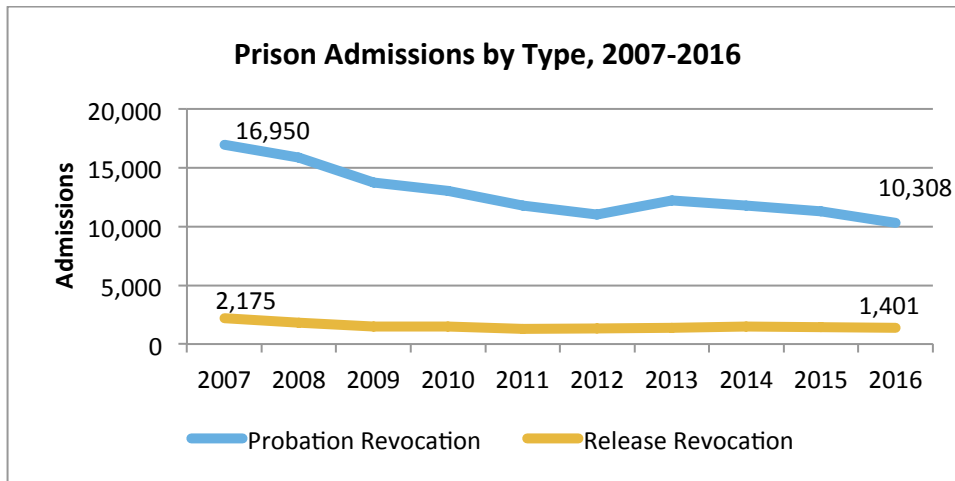
Upon placement on supervision, offenders are required to adhere to certain terms and conditions ordered by the sentencing judge or the Florida Commission on Offender Review (FCOR), formally known as the Florida Parole Commission. These terms and conditions often include regular reporting to the probation and parole officer, maintaining employment, drug testing, and completing programming and treatment requirements. FDC is responsible for monitoring the terms and conditions of an individual's community supervision and informing the court or FCOR of any violation of these terms and conditions.

Over the last 10 years, FDC's responses to technical violations of the terms and conditions of supervision have changed significantly. Prior to 2003, FDC parole and probation officers were given the discretion to determine whether an offender committed a willful violation of the terms and conditions of supervision before reporting the violation to the releasing authority. In March 2003, in response to a few high profile crimes, FDC implemented what was known as the "zero-tolerance policy." FDC's zero-tolerance policy required parole and probation officers to report every violation to the court, regardless of the severity of the violation or if the violation was a willful violation. In addition, violation reports that were submitted to the sentencing judge or FCOR under the zero-tolerance policy often requested that a warrant be issued.²¹

In 2006, FDC again changed its policy regarding responding to violations and gave parole and probation officers discretion in responding to violations, requiring only willful technical violations be reported to the court or FCOR. Since then the number of revocations to prison has dropped significantly. The number of offenders coming in as probation revocations dropped 39

percent, while the number of returns for violations of post-release supervision dropped 36 percent. In both cases the major drop came in the years immediately following the policy change.

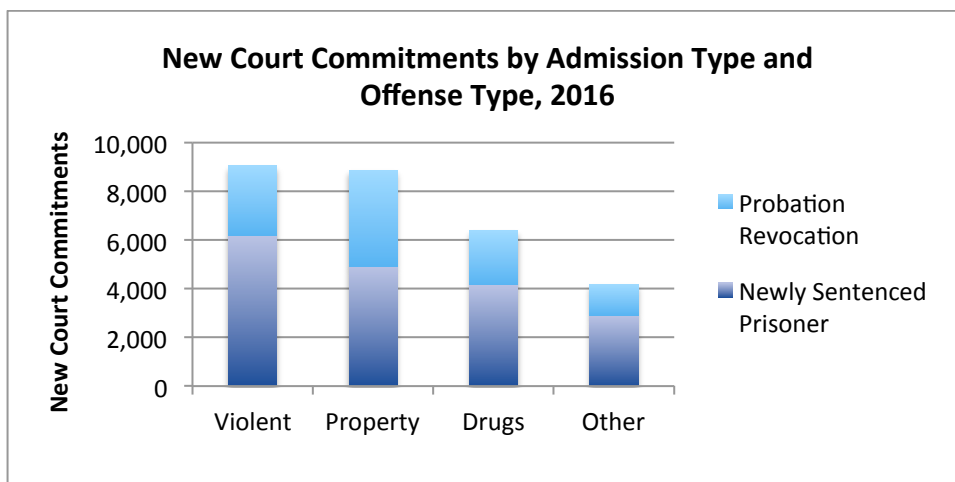
Figure 33: Revocations from Court Dropped 39 Percent in Last Decade



Source: CJI Analysis of Prison Admissions and Intake Data Provided by the Florida Department of Corrections

Property offenders are most likely to enter prison as a revocation. In 2016, 44 percent of property offenders sentenced to prison entered as probation revocations, compared to 35 percent of drug offenders.

Figure 34: 44 Percent of Property Offenders Admitted to Prison as Probation Revocations

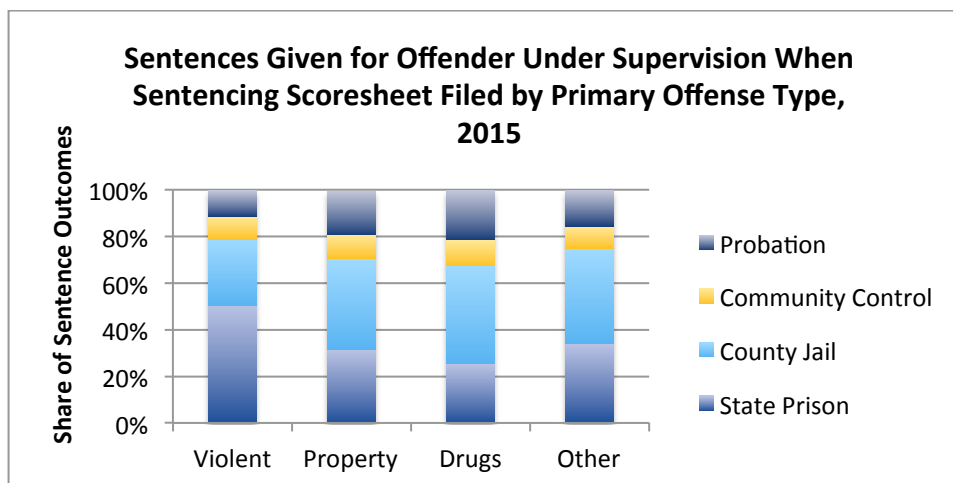


Source: CJI Analysis of Prison Admissions Data Provided by the Florida Department of Corrections.

Around 70 percent of scoresheets filled out for offenders who were previously on supervision resulted in some type of incarceration sanction. For nonviolent property and drug offenders who were previously on supervision, county jail was the most common sentence given, followed by prison. Compared to nonviolent offenders receiving new sentences (those not

previously under supervision), those being revoked were more likely to be sent to prison (30 percent compared to 20 percent of new sentences for nonviolent crimes).

Figure 35: Close to Two-Thirds of Nonviolent Offenders Previously on Supervision Receive Some Incarceration Sanction



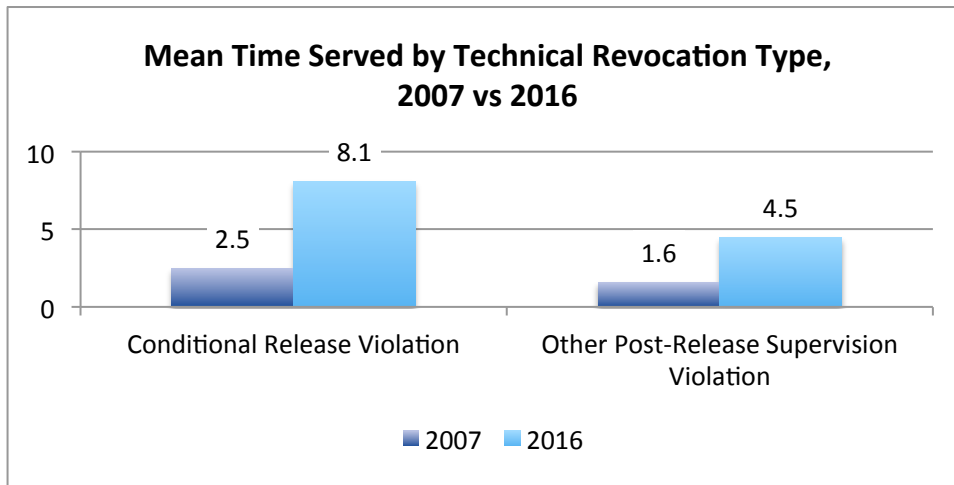
Source: CJI Analysis of Sentencing Scoresheet Data Provided by the Florida Department of Corrections

Although none of the available data directly indicates whether a probation revocation is for a new crime or a technical violation, the number of sentencing points awarded gives an indication. Six points are awarded for a technical violation and twelve points are awarded for a new conviction while on supervision. Of the 30,000 sentencing scoresheets filed for those already under supervision in 2015, 22 percent had no community sanction violation points, 40 percent had six points, and the remaining 39 percent had 12 or more points. The 40 percent with only six points are most likely technical violations. Of those with six violation points, 23 percent were sentenced to state prison, compared to 46 percent of those with more points.

For offenders serving post-prison release supervision, a revocation or return to prison may be for a short period either because it is in response to a low-level violation or because there is little time remaining on these sentences. That said, average time served among prisoners re-admitted following technical violations of post-prison release supervision has increased considerably over the past decade.

Time served for individuals returning to prison after conditional release violations has more than tripled from 2.5 to 8.1 months, while time served for other post-prison release supervision violations, such as control release or parole, has more than doubled from 1.6 to 4.5 months. In both cases, FCOR determines the need for a return to prison and the length of stay, subject to time left on the offender's sentence.

If an individual is revoked from parole, conditional release, control release, probation or community control, all time off their sentence earned prior to release is automatically forfeited. However, individuals revoked back to prison are eligible to earn new time to reduce their revoked sentence.²²

Figure 36: Time Served for Conditional Release Violations More Than Tripled in Last Decade

Source: CJI Analysis of Prison Release and Intake Data Provided by the Florida Department of Corrections

Key Findings

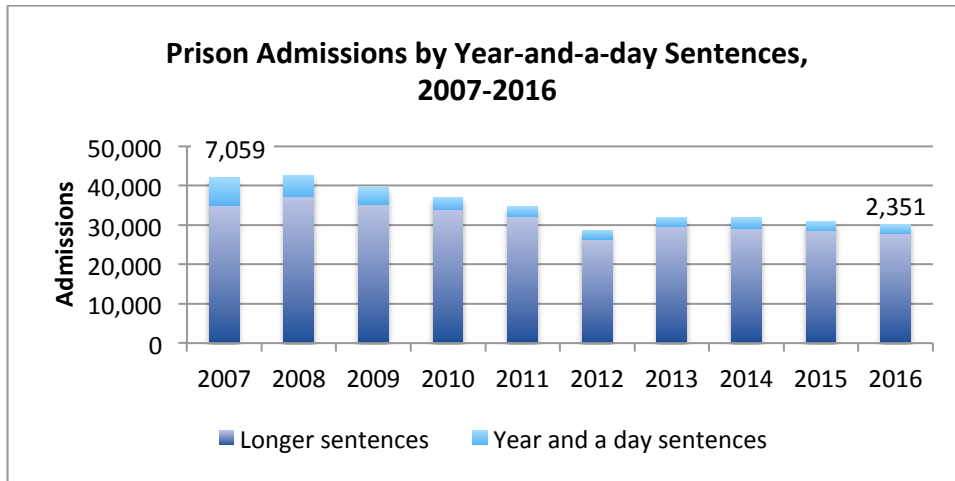
- Revocations to prison have dropped significantly, mostly driven by the repeal of the zero tolerance policy to violations of community supervision
- Using a proxy for technical violations, it appears that 40 percent of sentences for offenders previously under supervision have only a technical violation; of these 23 percent are sentenced to prison
- While violators of post-prison release supervision come back into prison for short periods, the length of these violation periods has grown significantly in the last decade

Year-and-a-Day Sentences

One of the reasons that admissions declined so steeply without greatly impacting the prison population is that admissions fell primarily among lower-level offenders serving short periods of time in state prison, while admissions with longer sentences did not decline and the lengths of those sentences grew. In particular, 39 percent of the overall decline in admissions was among offenders given “year and a day” sentences. These 366-day sentences are the minimum state prison sentence someone can be given. By the time an offender is processed into state prison and credited for pretrial jail time, he or she may serve only a few months in state custody. Removing these individuals from the prison population therefore does not have as significant an effect on the prison population as diverting an individual with a longer sentence.

The use of this type of sentence has declined significantly in the last decade, both for probation revocations and direct sentences to prison. In 2007, 17 percent of prison admissions were for these short prison sentences. By 2016, this had fallen to 8 percent.

37: 67 Percent Drop in 366 Day Sentences Drove Significant Portion of the Admissions Decline

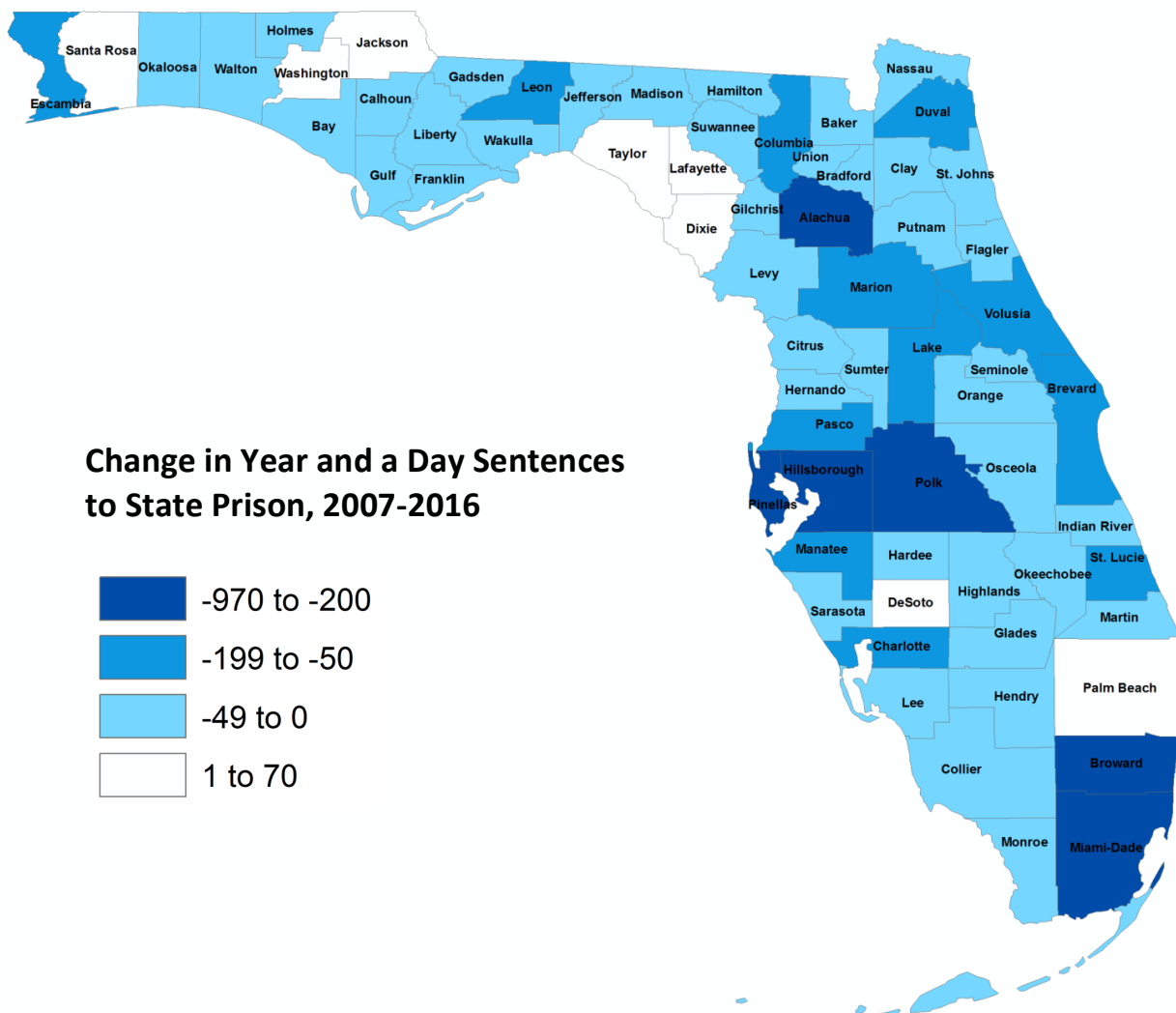


Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

Most 366 day sentences are for crimes with severity levels of seven and below such as possession of a controlled substance, or low-value grand theft. In 2007, 366 day sentences were most commonly given to drug offenders, but now property offenders are most likely to enter prison on this type of sentence.

While these sentences dropped across the state, two counties account for a significant portion of the shift: Hillsborough and Polk Counties. Both counties previously sent over 1,000 offenders a year to state prison with 366-day sentences, and both now send fewer than 400. Figure 38 shows the change in the number of year and a day sentences admitted to prison in 2007 vs 2016. Eight counties in the state are now sending more offenders for these short sentences, although the growth is small.

Figure 38: A Few Counties Account for Most of the Reduction in Year-and-a-Day Sentences



Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

County jail populations have declined in the last decade (see Figure 7). Anecdotal information suggests that the decline in 366-day sentences may coincide with the availability of space in county jails as well as the expansion of programs designed to divert revocations and provide more local services. If these offenders have shifted to county jail sentences rather than non-incarceration sentences, it may explain the uptick in sentences to county jail discussed above.

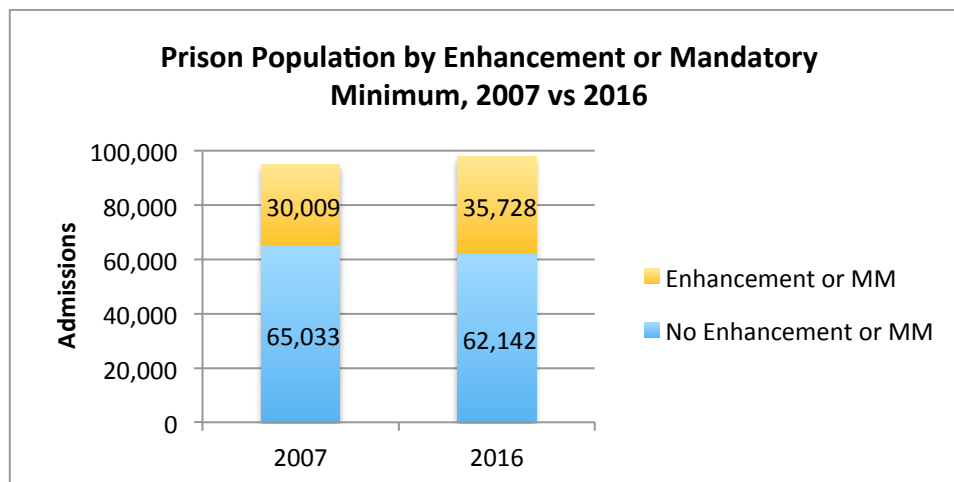
Key Findings

- Year and a day sentences have declined from 17 percent of prison admissions to 8 percent
- Two counties, Hillsborough and Polk, account for most of this reduction

Enhancements and Mandatory Minimums

Enhancements and mandatory minimum sentences have a significant effect on the Florida prison population. Almost 36,000 current Florida prisoners were sentenced with an enhancement or mandatory minimum, up 19 percent from 2007. These enhancements primarily impact length of stay in prison, leading to a stacking effect where offenders come in to prison but do not leave at the same rate.

Figure 39: 37 Percent of Offenders in Florida’s Prisons Were Sentenced Under a Mandatory Minimum or Enhancement



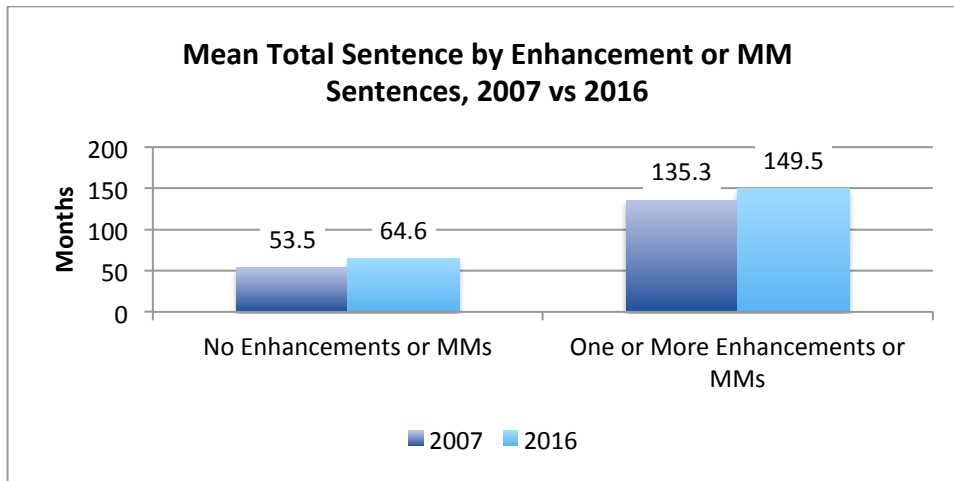
Source: CJI Analysis of Prison Population Data Provided by the Florida Department of Corrections

Florida has an extensive list of mandatory minimum sentences. In 2016, staff from Florida’s Senate Committee on Criminal Justice conducted an inventory of mandatory minimum terms in Florida and identified 108 offenses that carry a mandatory minimum sentence.²³ Examples include: fraud of motor vehicle, criminal use of personal identification, and lastly drug trafficking, which carries 47 separate mandatory minimum sentences.²⁴ Anyone found guilty of trafficking in a controlled substance faces a minimum three year mandatory minimum to a life sentence depending on the offense, drug type, and weight.

Of the scoresheets filed with a primary offense carrying a mandatory minimum, 74 percent had a minimum permissible sentence below the mandatory minimum, meaning they may have received a lower sentence if sentenced under the guidelines alone. These cases did not always result in an enhanced sentence, however; in many instances mandatory minimums and enhancements are used as negotiating tools in plea deals and then dropped from the final sentence.

Florida also has a number of additional enhancements, including an enhancement for weapons offenses and five major habitual offender provisions detailed below.

Figure 40: Sentence Lengths High and Growing for Offenders Coming in with Enhancements or Mandatory Minimums



Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

On average, those coming in with a mandatory minimum or enhancement were sentenced to 149.5 months in prison, compared to 64.6 months for those coming in without an enhanced sentence. This is partially due to enhanced sentences being given for more serious crimes, but even when offense type, criminal history, and other factors related to sentencing are taken into account, being convicted of an offense carrying a mandatory minimum or enhancement still has a large and statistically significant effect on the total sentence. Holding all else equal, having a primary offense that carries a mandatory minimum adds 11 months to an offender’s sentence, while being convicted of a habitual offender felony or violent enhancement adds 31 months. Both enhanced and non-enhanced average sentences have grown over the last decade.

The most common enhancements at prison admission are the habitual felony offender enhancement and the mandatory minimums for committing a crime with a firearm, otherwise known as “10-20-Life.” The number of offenders coming into prison with habitual offender enhancements has fallen over the last decade, while the number coming in with 10-20-Life sentences has risen (Figure 41).

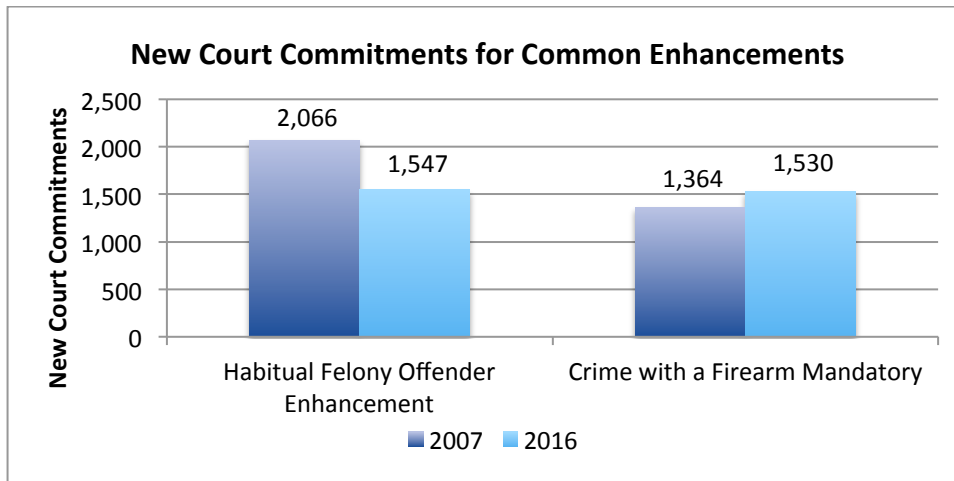
10-20-Life

Florida’s 10-20-life law requires the court to impose a mandatory minimum sentence if a weapon is used during the commission of certain offenses:^{25 26}

- If the individual was in possession of a firearm, the court must impose a ten year mandatory minimum sentence.
- If the individual was in possession of a semi-automatic/machine gun, the court must impose a 15 year mandatory minimum sentence.
- If the individual discharged any type of firearm, the court must impose a 20 year mandatory minimum.

- If the individual discharged a weapon which caused great bodily injury or death, the court must impose a 25 year mandatory minimum to life.

Figure 41: The Most Common Enhancements at Prison Admission are Felony Habitual Offender and Crime with a Firearm (“10-20-Life”)



Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

These mandatory minimum (MM) penalties are in addition and consecutive to the penalties for the underlying felony conviction. However, the court does have the discretion to order a three year mandatory minimum sentence, instead of the ten year mandatory, if an individual was in possession of a firearm while committing the offense of aggravated assault, possession of a firearm by a felon^{vii}, or burglary of a conveyance.²⁷

In recent years, changes have been made to Florida’s 10-20-Life law to give judges greater discretion to depart from the mandatory sentence for aggravated assault, one of the offenses to which the 10-20-Life law applies. In 2014, the Florida Legislature passed House Bill 89 which allowed the court to depart from the mandatory minimum for aggravated assault if the court makes certain written findings. In addition, in 2015, the Legislature passed Senate Bill 228 which removes aggravated assault from the list of crimes in which the 10-20-Life law applies.²⁸

Habitual Offender Provisions

Florida has five major habitual offender provisions: habitual felony offender, habitual violent felony offender, prison releasee reoffender, three-time violent felony offender, and violent career criminal. Table 4 summarizes each of these provisions.

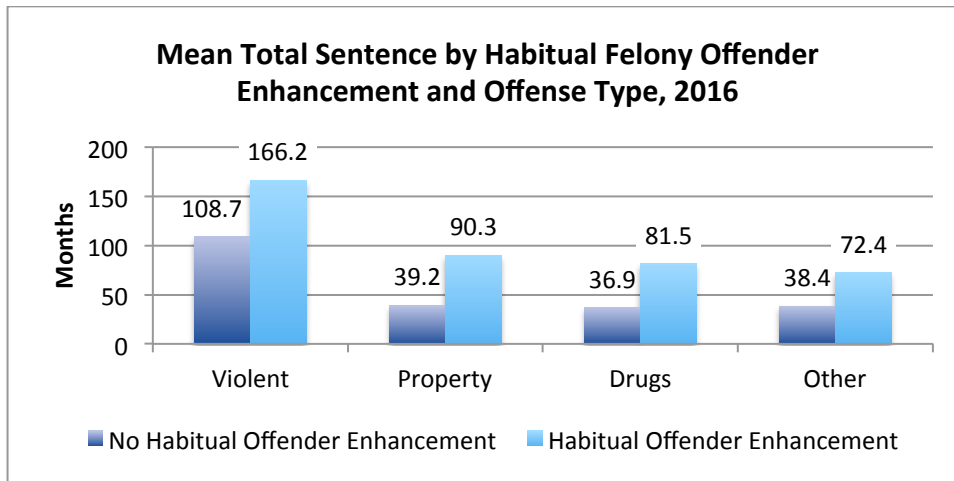
^{vii} If an offender who is convicted of the offense of possession of a firearm by a felony has a previous conviction of committing or attempting to commit a felony listed in 775.084(1)(b)1, Florida Statute and possessed a firearm or destructive device during the commission of the prior felony, the offender must be sentenced to the 10 year mandatory minimum

Table 4: Habitual Offender Enhancements

Enhancement	Summary	Felony Degree	Penalty	Release Eligibility
Habitual Felony ²⁹	Any person who has previously been convicted of any combination of two or more felonies in Florida, and commits a felony within five years of date of prior conviction, or release from prison, whichever is later.	Life felony or 1 st degree felony	Life	Eligible for gain-time and discretionary release and conditional release
		2 nd Degree	30 yr	
		3 rd Degree	10 yr	
Habitual Violent Felony ³⁰	Anyone who has previously been convicted of a felony or an attempt or conspiracy to commit a felony and has one or more prior conviction for certain violent crimes. ³¹	Life felony or 1 st degree	Life	Eligible for release after serving 15 years
		2 nd Degree	30 yr	Eligible for release after 10 years
		3 rd Degree	10 yr	Eligible for release after serving 5 years
Prison Releasee ³²	Anyone who commits or attempts to commit a certain offense within three years of being released from prison, while serving a prison sentence, while on escape status from prison. ³³	Life	Life	Ineligible for gain-time; must serve 100 percent of sentence
		1 st Degree	30 yr MM	
		2 nd Degree	15 yr MM	
Three-Time Violent ³⁴	Any person who has previously been convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit any offense or combination of certain violent offenses ³⁵	Life	Life	Ineligible for gain-time; must serve 100 percent of sentence
		1 st Degree	30 yr MM	
		2 nd Degree	15 yr MM	
Violent Career Criminal	Any person who has been convicted as an adult three or more times of an offense in Florida or any other qualified offense from a list of violent offenses. ³⁶	Life felony or 1 st degree felony	Life	Ineligible for gain-time; Eligible for conditional medical release
		2 nd Degree	30 yr MM	
		3 rd Degree	10yr MM	

Property offenders are the most likely to be sentenced under the habitual felony offender enhancement. Property offenders admitted to prison under this enhancement in 2016 received an average 90 month sentence, 131 percent higher than the 39 month average sentence for non-habitual property offenders. This is the largest proportional difference in sentence length for any offense type. Violent offenders receiving a habitual felony offender enhancement were sentenced to 53 percent longer than those who did not receive the enhancement.

Figure 42: Felony Habitual Property Offenders Receive 90 Month Average Sentence Compared to 39 Month for Non-Habitual



Source: CJI Analysis of Admissions Data Provided by the Florida Department of Corrections

Key Findings

- 37 percent of current prisoners in Florida were sentenced under either a mandatory minimum or an enhancement
- Florida has at least 108 mandatory minimums and five different habitual offender enhancements, many of which overlap and impact the same population
- The most common mandatory minimums and enhancements are the habitual felony offender enhancement, which most commonly is applied to property offenses, and the 10-20-Life mandatory minimum for use of a firearm in commission of a crime

Property Offenses

Almost 9,000 property offenders, or 31 percent of new court commitments, were sentenced to prison in 2016. While the number of property crimes reported in the state has gone down 21 percent in the last decade, the number of felony scoresheets filed on these crimes has actually increased four percent and the number of direct prison sentences has remained fairly steady from 2006 to 2015. The next section reviews the sentencing laws and practices for the most common property crimes in the state of Florida.

Burglary^{viii}

Offenders with a burglary primary offense make up 16 percent of both new court commitments to prison and the prison population. Generally, property offenses make up a smaller portion of the prison population than admissions because of shorter lengths of stay compared to violent crimes. The fact that burglary of a dwelling or occupied structure is the most common crime in prison and that burglary as a category takes up so many beds indicates that these crimes are subject to long penalties. This may be driven by the large number of enhancements and mandatory minimums, including several habitual enhancements as well as 10-20-Life, for which most burglary crimes are eligible.

More offenders are coming into prison for burglary of a dwelling than a decade ago, and with longer sentences. The number of admissions for burglary of an unoccupied structure, however, has fallen. This could indicate a shift in prosecutorial charging practices, given that burglaries overall are down in the state.

Theft

Trafficking in stolen property is the fourth most common crime at prison admission, and the number of new court commitments has grown 14 percent in the last decade. The number of new court commitments for repeat petit theft has risen 36 percent in the last decade. Sentence lengths for trafficking in stolen property, grand and petit theft, and grand theft of a motor vehicle have risen over the last decade, including in situations where the number of admissions also grew. This suggests that the growth in sentence length is not solely due to carving out less serious offenders from the admissions pool.

Florida has one of the lowest felony theft threshold amounts in the country at just \$300.³⁷ This felony threshold amount has not been increased since 1986, when it was raised from \$100 to \$300. Florida is tied with Hawaii for the fourth lowest felony theft threshold amount, followed by Massachusetts at \$250, and New Jersey and Virginia at \$200.³⁸ Any defendant who is charged with grand theft in the amount of \$300 to \$20,000 faces a third degree felony with a penalty of up to five years in prison. However, the majority of individuals sent to prison for grand theft fall within the lower threshold amount of \$300 to \$5,000.

Tables 5 and 6, on the following pages, include information on the most common offenses within the burglary and theft categories, their felony degrees, severity levels, primary offense points (within the sentencing guidelines), enhancements that apply to those offenses, the number of scoresheets filed in 2015 (as a proxy for the number of felony defendants), the median number of sentencing points earned by those defendants, the total percentage of defendants receiving a state prison sentence, the number of new court commitments (NCC) to prison in 2016, and finally, the prison population in 2016.

^{viii} FDC classifies burglary with an assault as a violent crime but burglary of a dwelling or occupied structure or conveyance as a property crime.

Table 5: Common Burglary Offenses

Offense	Felony Degree	Severity Level (Primary Offense Points)	Enhancements/ Mandatory Minimums	Scoresheets Filed 2015	Median Sentencing Points	Percent Sentenced to State Prison	NCCs in 2016	Prison Population in 2016	Mean Sentence Length for NCCs in 2016 (Months)
Burglary, Armed with Explosive or Dangerous Weapon	1 st	8 (74)	Habitual Felony Habitual Violent Felony (MM) Prison Releasee (MM) 3-Time Violent (MM) 10-20-Life (MM)	512	114	78%	474	2,885	111
Burglary of a Dwelling/ Occupied Structure/ Conveyance	2 nd	6/7(36/56)	Habitual Felony Prison Releasee (MM) 10-20-Life (MM)	4,267	77	55%	2,352	8,210	59
Burglary of an Unoccupied Structure/ Conveyance-or Attempted	3 rd	4 (22)	Habitual Felony 10-20-Life (MM)	5,062	34	25%	1,194	1,946	30

Source: CJI Analysis of Data Provided by the Florida Department of Corrections

Key Findings

- Burglary of a dwelling or occupied structure is the most common crime at prison admission and in the prison population
- The most common burglary offenses are all eligible for the 10-20-Life enhancement, including burglary of an unoccupied structure or conveyance

Table 6: Common Theft Offenses

Offense	Felony Degree	Severity Level (Primary Offense Points)	Enhancements/ Mandatory Minimums	Scoresheets Filed 2015	Median Sentencing Points	Percent Sentenced to State Prison	NCCs in 2016	Prison Population in 2016	Mean Sentence Length for NCCs in 2016 (Months)
Traffic In Stolen Property	2 nd	5 (28pts)	Habitual Felony	4,488	41	22%	1,507	2,815	35
Grand Theft Motor Vehicle	3 rd	4 (22pts)	Habitual Felony	1,794	32	17%	429	524	25
Grand Theft, \$300-\$5,000	3 rd	2 (10pts)	Habitual Felony	8,947	16	8%	973	1,195	25
Petit Theft/3rd Conviction	3 rd	1 (4pts)	Habitual Felony	2,849	19	14%	505	645	22

Source: CJ Analysis of Data Provided by the Florida Department of Corrections

Key Findings

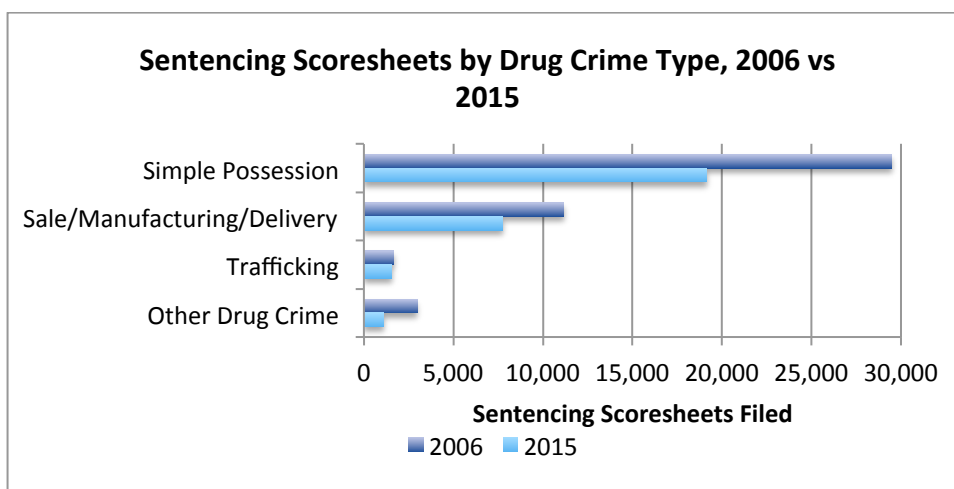
- Many common theft offenses have growing numbers of admissions to prison, including trafficking in stolen property (14 percent growth) and petit theft, 3rd or subsequent conviction (36 percent growth)
- Florida is tied for the fourth lowest felony theft thresholds at \$300, and it hasn't been changed since 1986

Drug Offenses

Driven by the reduction in drug arrests across the state, felony drug filings, sentences, and prison admissions declined significantly in the last decade. Yet, drug offenses still make up some of the most common crimes at prison admission and within the prison population.

The large decline in drug cases was driven by a decline in felony simple possession. The number of scoresheets filed for this crime declined 35 percent from 2006 to 2015, although this number has crept back up in recent years.

Figure 43: Drug Possession Scoresheets Filed Declined 35 Percent in Last Decade



Source: CJI Analysis of Sentencing Scoresheets Data Provided by the Florida Department of Corrections

While possession of a controlled substance is still the most common drug crime at prison admission, trafficking is the most common drug crime in the prison population, followed by second degree sale/manufacturing/delivery of a controlled substance. While the felony degrees assigned to drug offenses vary greatly, second degree sale/manufacturing/delivery mostly covers schedule I and II substances^{ix}, while first degree sale/manufacturing/delivery covers those same substances within a school zone, church, or other statutorily designated area.

Drug trafficking offenses have their own mandatory minimums, as well as being subject to enhancements under 10-20-Life and habitual enhancements. Of the drug traffickers in prison now, 73 percent are serving a mandatory minimum or enhanced sentence. The number of new court commitments with a primary drug offense and a mandatory minimum rose 34 percent in the last decade, from 941 in 2007 to 1,264 in 2016.

^{ix} Including heroin, GBH, opium, cocaine, fentanyl, methadone, and methamphetamine.

Table 7: Common Drug Offenses

Offense	Felony Degree	Severity Level (Primary Offense Points)	Enhancements/ Mandatory Minimums	Scoresheets Filed 2015	Median Sentencing Points	Percent Sentenced to State Prison	NCCs in 2016	Prison Population in 2016	Mean Sentence Length for NCCs in 2016 (Months)
Trafficking in Controlled Substance (1st Degree)	1 st	7-9 (56-96)	Habitual Felony 10-20-Life (MM)	1,375	84	75%	1,190	4,949	71
Sale/ Manufacturing/ Delivery of Controlled Substance (1st Degree)	1 st	5-7 (28-56)	Habitual Felony	661	92	76%	538	1,953	57
Sale/ Manufacturing/ Delivery of Controlled Substance (2nd Degree)	2 nd	3-6 (16-36)	Habitual Felony	4,613	42	38%	1,958	3,767	32
Possession of Controlled Substance (3rd Degree)	3 rd	3(16)	N/A	19,028	23	11%	1,965	2,128	22

Source: CJI Analysis of Data Provided by the Florida Department of Corrections

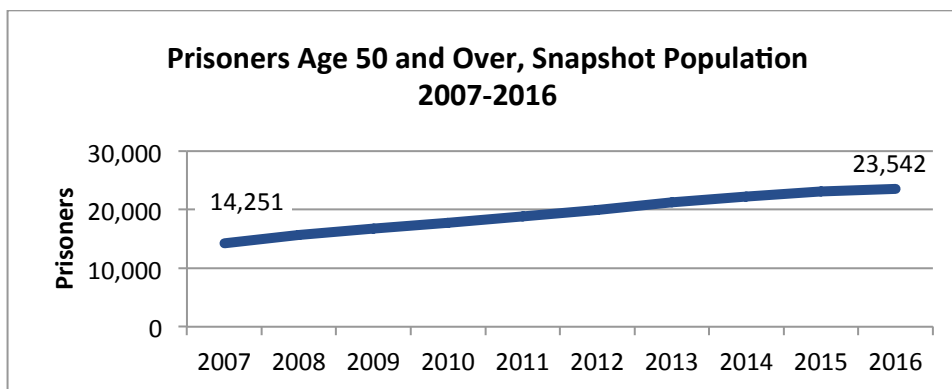
Key Findings

- Third degree simple possession is still the most common drug offense at prison admission, and the third most common in the prison population
- First degree sale/manufacturing/delivery, which mostly covers enhanced offenses such as school zone or church offenses, has almost double the average sentence for second degree sale/manufacturing/delivery (57 months vs 32 months) although by and large they cover the same substances

ELDERLY PRISONERS

One of the striking demographic stories in Florida's prison system is the growth of prisoners age 50 and older, defined as elderly in Florida statute 944.02.³⁹ In 2016, elderly prisoners made up 23 percent of the prison population, up from 14 percent in 2007. In raw numbers, this is more than 23,500 offenders age 50 or older in Florida's prisons. This number has grown 65 percent in the last decade.

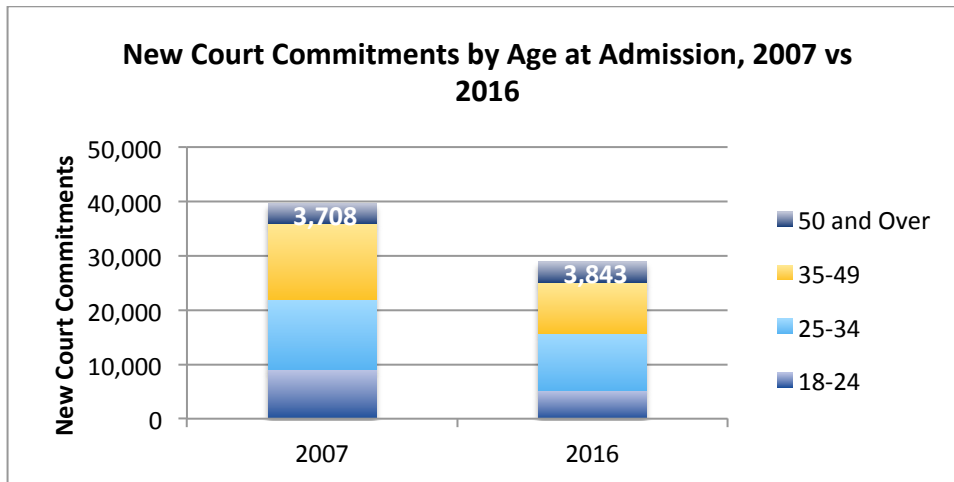
Figure 44: Number of Prisoners Age 50 or Over Grew 65 Percent in Last Decade



Source: CJI Analysis of Prison Population Data Provided by the Florida Department of Corrections

As discussed in the overall trends section, growth in the prison population can be driven by two things: how many people come in, and how long they stay. In this case, the latter is the main driver of growth in this portion of the population. Overall, 13 percent of new court commitments to prison are age 50 and over at the time of admission. The number of prison admissions for offender's over age 50 has grown only four percent in the last decade. By contrast, length of stay in prison for elderly prisoners has grown significantly over that period.

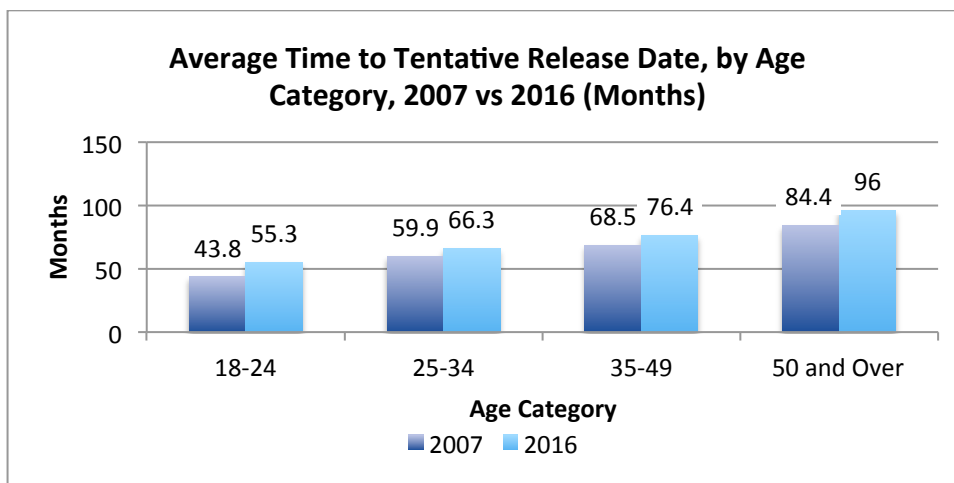
Figure 45: Four Percent Growth in Number of Elderly Prisoners Admitted



Source: CJI Analysis of Prison Admissions Data Provided by the Florida Department of Corrections

The average sentence for current prisoners age 50 and over is 313 months, compared to 184 months for prisoners under age 50. These offenders also have the longest remaining period until their tentative release date, a way of measuring the future impact of those currently in prison. While the time remaining until tentative release has grown for all age groups as sentences grew over the last decade, it has grown the most for older offenders.

Figure 46: Elderly Prisoners Have 8 Years on Average Remaining Until Release

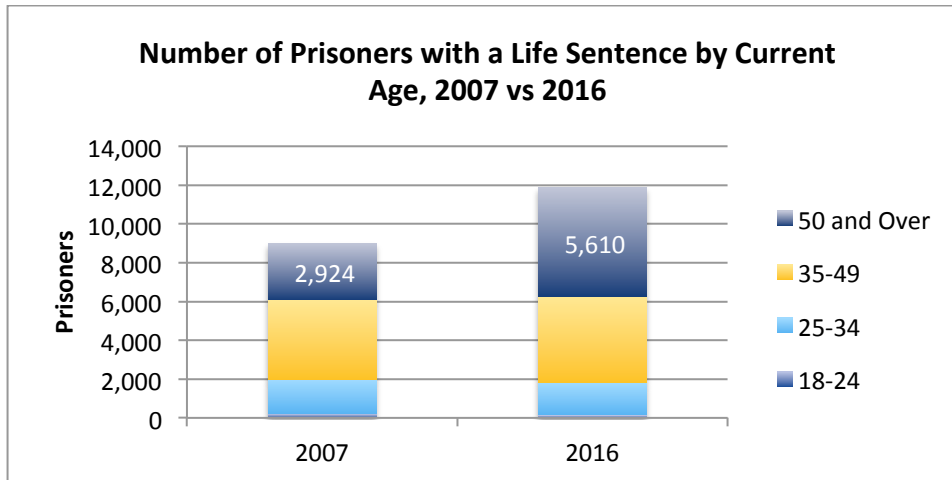


Source: CJI Analysis of Prison Population Data Provided by the Florida Department of Corrections

The time until release understates the potential impact of these offenders on the prison population, however, because it does not include those without a release date at all. Offenders with life sentences are not given tentative release dates, and these include many current elderly prisoners. In fact, just under half (47 percent) of prisoners with life sentences are age 50 or older. The number of offenders over age 50 with a life sentence has grown 91 percent in the last decade. Any person sentenced to life imprisonment for offenses committed on or after

October 1, 1998, will be incarcerated for the rest of their natural lives, unless granted pardon, executive clemency, or conditional medical release.⁴⁰

Figure 47: 47 Percent of Prisoners with Life Sentences are Age 50 or Older



Source: CJI Analysis of Prison Population Data Provided by the Florida Department of Corrections

Unsurprisingly, given the long sentences, the majority (63 percent) of elderly offenders are in prison for primary violent offenses, followed by drugs (12 percent) and nonviolent forms of burglary (10 percent). Despite many elderly offenders having been sentenced for very serious crimes, they are much more likely to be classified as being low risk to reoffend compared to younger offenders. This fits with a strong body of research showing that age is one of the strongest predictors of criminal behavior with criminal offending declining significantly as individuals age.⁴¹

In Florida's current prison population, 37 percent of elderly prisoners are classified in the lowest risk to recidivate category, compared to 15 percent of the total population. This is likely understating the number of low risk elderly offenders because the older the offender in prison, the less likely he or she is to have been assessed, and the more likely to be low risk if assessed. If the remaining 38 percent of elderly offenders who currently do not have a risk score were assessed, it is almost certain that an even larger percentage of the overall group would be in the lowest risk category.

While some states have early release options geared towards the elderly population, in Florida, the only early release mechanism for this group is conditional medical parole, which has stringent eligibility criteria.⁴² Compared to their younger peers, older inmates typically have high rates of both mild and serious health conditions, leading to much greater medical needs. Due to the high medical needs of the elderly inmate population, prisons nationwide spend about two to three times more to incarcerate these individuals than younger inmates.⁴³ According to the Florida Department of Correction's (FDC) most recently published annual report, in Fiscal Year 2014-2015, the elderly inmate population accounted for 53 percent of all episodes of care compared to 22 percent of the inmate population.⁴⁴

While there is no early release policy targeted specifically towards the elderly, given the unique needs of this population, FDC has made efforts to manage this population within the confines of prison facilities. In particular, FDC has established elderly offender housing for inmates who meet certain criteria in order to account for their work limitations and health care needs. To be eligible for an elderly housing dorm, an inmate must be at least 50 years or older, must not have received any violent disciplinary reports within the last three years, must not otherwise be deemed to be a security or disciplinary risk for placement, and must be compatible with the facility's mission and profile.⁴⁵

Key Findings

- The number of prisoners age 50 or over grew 65 percent in the last decade
- This growth was driven by prisoners with very long sentences aging into the definition of “elderly prisoner”
- Almost half of prisoners with a life sentence — for which there is no release mechanism besides limited medical release — are already over the age of 50
- In FY2015, prisoners over age 50 accounted for 53 percent of all health care episodes compared to 22 percent of the inmate population

RELEASE AND REENTRY

The vast majority of offenders who enter Florida’s prison system are eventually released. This section describes the laws and practices around prison release and reentry, and how these affect how long offenders spend in prison before their release.

Time Served

In Florida, individuals sentenced to state prison for a crime committed on or after October 1, 1995 are required to serve at least 85 percent of the sentence or sentences imposed before they are eligible for release, regardless of the type of crime.⁴⁶ Some enhancement and habitual offender provisions require an inmate to serve 100 percent of their sentence in prison. Many states increased time served requirements for violent offenders in the 1990s to comply with the federal Truth in Sentencing program. However, only a few states included nonviolent offenders in these requirements.⁴⁷

Gain-Time

Currently, the only way for inmates to reduce the time they serve in prison is through what is known as “gain-time.” The Florida Department of Corrections (FDC) is statutorily authorized to award gain-time to inmates with the intended goal of incentivizing inmates to participate in programming and comply with the rules of the institution.⁴⁸ There are four types of gain-time an eligible inmate^x can earn to reduce their sentence by 15 percent: incentive gain-time, meritorious gain-time, educational achievement gain-time, and education gain-time.

Table 8: Gain-Time Options for Eligible Inmates

Gain Type Options	Requirements	Gain-Time Earned
Incentive	Credits earned based on rating received related to institutional adjustment, work, and participation in programs	Up to 10 days per month
Meritorious	Completion of outstanding deed	One time credit of up to 60 days
Educational Achievement	Completion of GED or vocational program	One time credit of 60 days
Education	Satisfactorily participated in 150 hours of functional literacy instruction	One time credit of up to 6 days

Source: Florida Administrative Code, 33-601.101 Incentive Gain Time.

^x Only inmates who committed crimes after October 1, 1995 are eligible for the types of gain-time described in Table 8.

Most inmates can begin earning gain-time within the first month of commitment to FDC. But, if someone is serving a sentence for mandatory minimum, they cannot begin to earn gain-time until they have served the mandatory portion of the sentence. As a result, individuals serving mandatory minimum sentences have limited incentive to participate in programming or comply with the rules of FDC during the mandatory term of their sentence.⁴⁹

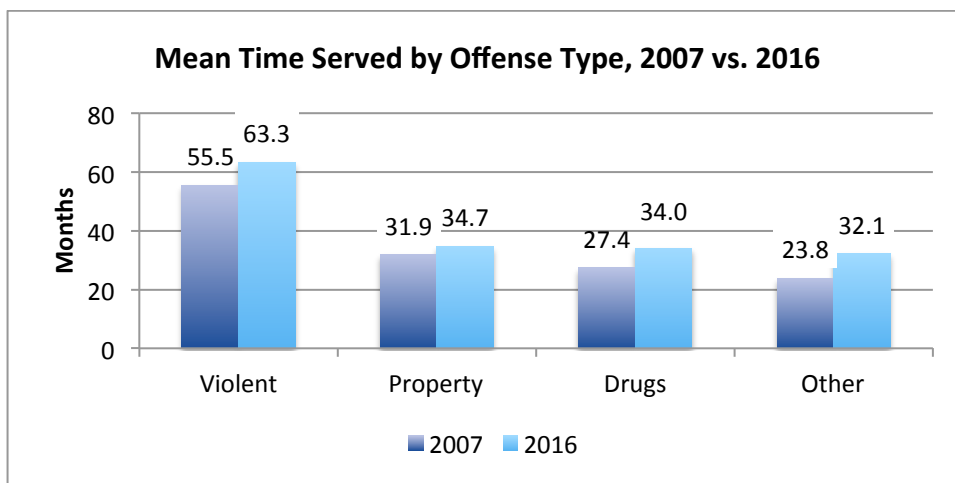
The majority of gain-time earned by inmates is incentive gain-time. FDC has set up a process for awarding incentive gain-time based on the results of monthly evaluations completed by FDC security and programming staff. Eligible inmates can be awarded anywhere from zero credits for unsatisfactory evaluations to eight days for above satisfactory evaluations. Additional gain-time days can also be awarded, up to the ten day statutory limit, based on adherence to program or treatment plan, work or program stability, or program achievement. Inmates who have earned gain-time towards a reduction of their sentence may have all or some of their gain-time forfeited for certain types of misconduct.⁵⁰

Length of Stay Trends

The average length of incarceration for first releases — offenders released for the first time on their current sentence — has increased steadily over the past decade. The current statewide average in 2016 was 42 months, up from 35 in 2007. Although an increase of seven months may not sound significant, when multiplied by the thousands of people moving through Florida’s prison system, this growth can have a significant effect on the prison population.

The median length of stay in 2016 was 27 months, up from 21 months in 2007. While it is difficult to compare length of stay across states, the most recent national estimates from the Bureau of Justice Statistics put median length of stay for violent offenders at 28 months, compared to 35 months in Florida.⁵¹

Figure 48: Time Served for Drug Offenses Has Increased 24% Since 2007

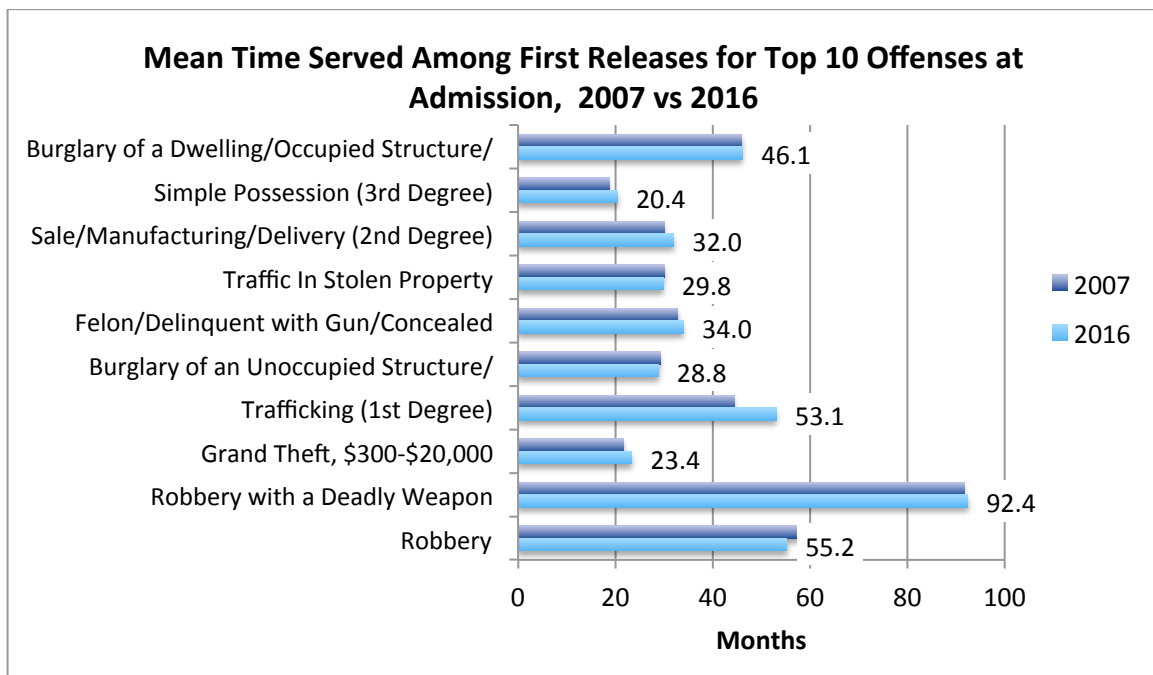


Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

Since 2007, time served has increased for all offense types, with the largest increases occurring among drug offenders and “other” offenders. Most significantly within that “other” group, average time served for Felon Driving with License Suspended/Revoked/Canceled/Denied increased 24% (from 17 to 21 months).

Among the top 10 offenses at admission, length of incarceration for first degree trafficking has grown the most, from 44 months for 2007 releasees to 53 months for 2016 releasees. Releasees with a primary offense of burglary of a dwelling or occupied structure served an average of almost four years (46 months), steady from 2007, although the number of offenders coming in for this crime has risen in the last decade. The mean length of stay for simple possession offenders is about 20 months on average, up slightly from 2007. The most recent national estimate puts median time served for drug possession at 10 months compared to 16 months in Florida.⁵²

Figure 49: Trafficking Offenders Serve 53 Months on Average, Up 20 Percent from 2007



Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

The vast majority of offenders released from prison serve over 85 percent of their sentence due to the time served requirements passed in 1995. Violent offenders’ average time served hovers closest to 85 percent of their sentences, whereas drug offenders, property offenders, and other types of offenders typically serve one to two additional months beyond 85 percent of their sentence. This may be because violent offenders, serving longer in prison, have more opportunities to earn gain time.

Key Findings

- All offenders sentenced after October 1, 1995 must serve at least 85 percent of their sentence behind bars
- Those with mandatory sentences cannot begin earning gain-time until they have completed the mandatory portion, reducing their incentive to participate in programming
- The statutory time served requirements have led to long lengths of stay in prison compared to national averages
- Length of stay in prison has grown for all offense types in the last decade, including in cases where the number of admissions was steady or growing

Prison Release Types and Reentry Planning

Once an inmate serves at least 85 percent of their sentence or sentences, with or without gain-time, the inmate may be released through either expiration of sentence or released to post-prison release supervision. Expiration of sentence includes offenders released without supervision, as well as those with a split probation sentence released to probation or community control supervision.

The main types of post-prison release supervision in Florida include: parole, control release, conditional release, addiction recovery supervision, and conditional medical release. Conditional release and addiction recovery supervision are both nondiscretionary release types that do not require a formal decision by the Florida Commission on Offender Review (FCOR) but rather are a type of mandatory supervision for inmates who meet certain criteria. Specifically, **conditional release** is for individuals serving sentences for certain violent or habitual crimes. **Addiction recovery supervision** is required for inmates who have a history of substance abuse or addiction or have participated in any drug treatment program.^{xi}

While FCOR does not make a formal release decision for conditional release and addiction recovery supervision, FCOR is responsible for setting the terms and conditions of supervision and overseeing the revocation process, when necessary.

^{xi} Individuals with a current or previous conviction for a violent offense, drug trafficking, sale of a controlled substance, certain property offenses, or a traffic offense involving injury or death are ineligible for addiction recovery supervision. Eligible inmates are screened into the program using the FDC's Simple Drug Screening Instrument.

Parole, control release and conditional medical release are all discretionary release types and require a formal release decision by FCOR. While **parole** was formally abolished in 1983, there are still a number of individuals in prison who are eligible for this discretionary release type. **Control release**, while not currently being used, is another early release option which can be granted to eligible inmates if the prison population exceeds 99 percent of its capacity. **Conditional medical release** is for inmates who FDC has determined to be permanently incapacitated or terminally ill. FCOR considers persons for possible conditional medical release upon a referral from FDC.

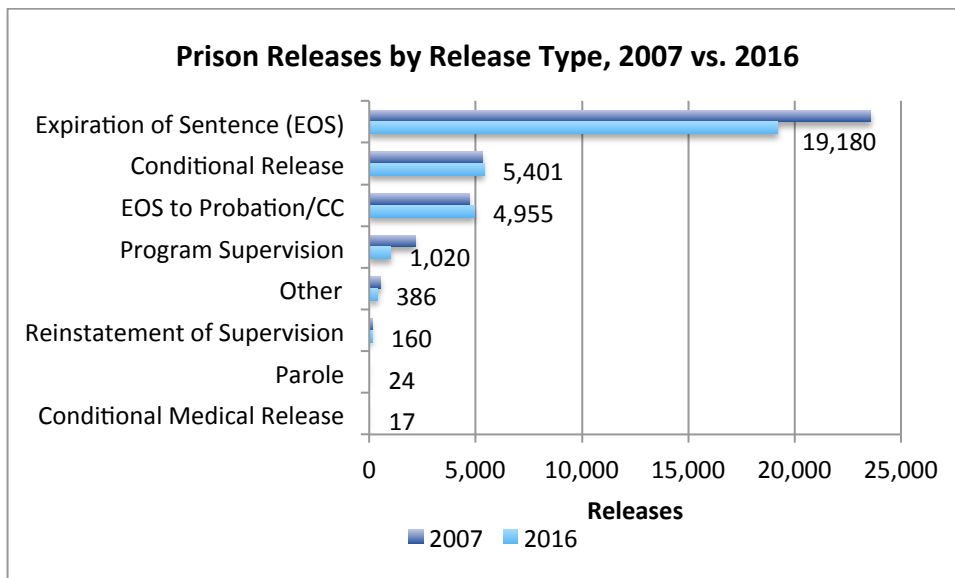
Inmates who are released to post-prison release supervision will be supervised for the period equal to the gain-time that they received in prison.

Release Trends

Although Florida has nearly 20 different release types on record, only about half of them have been used regularly over the past decade. Among active release options, expiration of sentence without probation is most common. Sixty-three percent of released prisoners return to their communities without any kind of community supervision.

The next most common release options are conditional release supervision and expiration of sentence to probation or community control (CC). Conditional release, as described above, is based on the offense and is most common for violent offenders. An expiration of sentence with probation or community control to follow happens when a judge gives a split sentence before the offender comes to prison. This is most common for violent and property offenders, of whom 16 percent and 11 percent, respectively, have court-ordered supervision to follow.

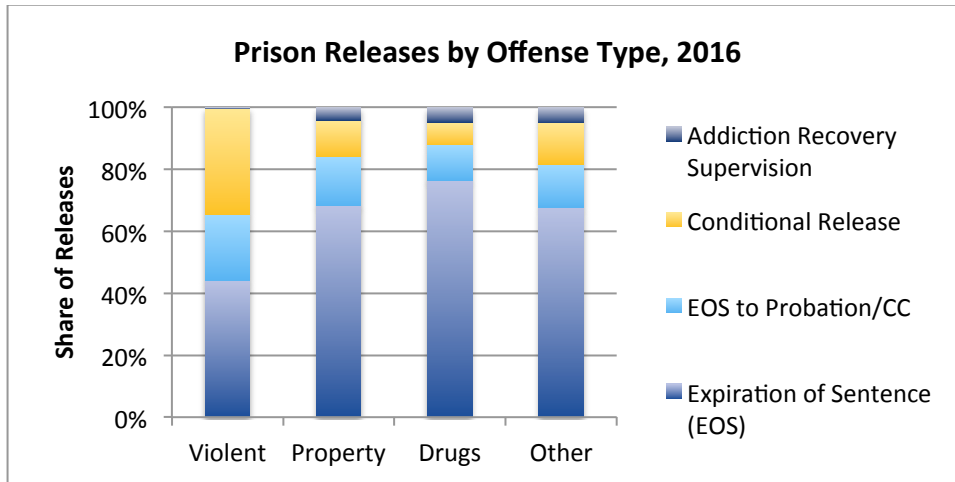
Figure 50: Most Prison Releasees Have No Supervision to Follow



Source: CJJ Analysis of Prison Release Data Provided by the Florida Department of Corrections

Drug offenders are most likely to be released without any supervision to follow, whereas violent offenders are most likely to have supervision to follow. Only 32 percent of property offenders and 24 percent of drug offenders have any supervision to follow release.

Figure 51: Most Property and Drug Offenders Released Without Supervision to Follow

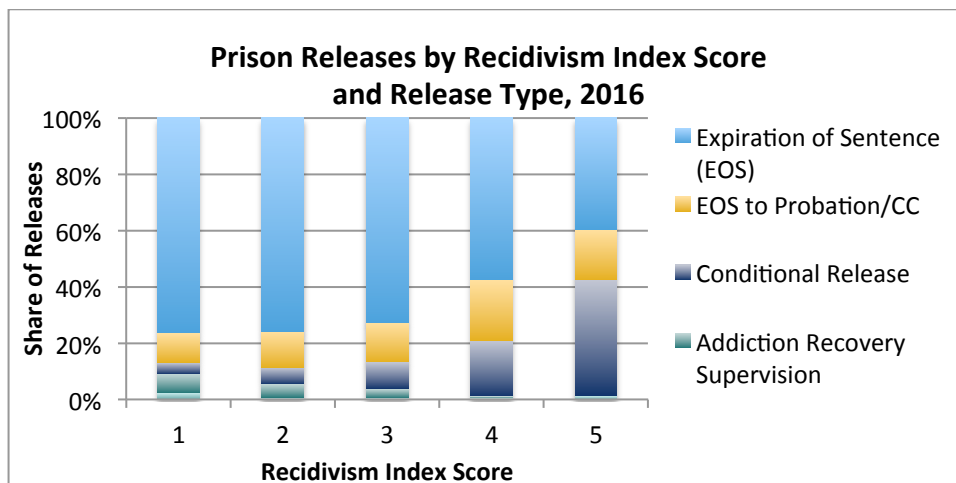


Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

Recently, FDC has expanded its practice of conducting risk assessments of prisoners prior to release. Risk assessment instruments identify the likelihood that an individual will recidivate, and research shows that they are effective tools for targeting interventions, including supervision and programming.⁵³

In 2016, 89 percent of released prisoners had a risk assessment conducted prior to release.^{xii} Among individuals evaluated and released that year, 49 percent were determined to be a high risk to recidivate at their final assessment (with Recidivism Index scores of 4 or 5 on a scale of 5). Forty percent of offenders in the highest risk level were released without supervision, compared to just under 80 percent in the lowest risk level (Figure 52).

^{xii} On average, this risk assessment was conducted two-thirds of the way through the releasee’s prison sentence.

Figure 52: Higher Risk Offenders More Likely to Have Supervision to Follow Release

Source: CJI Analysis of Prison Release Data Provided by the Florida Department of Corrections

Although looking at release types by recidivism index score shows that supervision is generally being targeted at higher risk offenders, it also highlights that program supervision, also known as addiction recovery supervision, is mostly targeted at offenders with a low risk of recidivism (those with scores of 1, 2, or 3). A strong body of research indicates that too much treatment or supervision for low-risk offenders can actually increase recidivism.⁵⁴

Reentry Planning

Since the majority of individuals released from Florida prisons are released without supervision to follow, FDC has recognized the need to streamline the Department's reentry planning processes. In particular, FDC has made efforts to change their reentry planning philosophy from a process that occurs directly prior to release to a more front end approach that begins the day an individual walks in the door. While FDC reports that it does not currently have enough programming slots to provide programming to every offender incarcerated, FDC's newly established Division of Development: Improvement and Readiness is considering changing its policy related to the prioritization of programming to focus programming on inmates within five years of release, rather than the current policy of three years prior to release.⁵⁵

Reentry programming focuses on substance abuse treatment, educational/academic, career/technical education, and faith and character-based programs.⁵⁶ Currently, programming decisions are determined based on the length of time an inmate has remaining on their sentence and the results of the Correctional Integrated Needs Assessment System (CINAS). While most facilities still use the CINAS, FDC is in the process of piloting a new assessment tool known as "Spectrum." FDC reports that Spectrum will provide them with information on the programming and treatment needs of every inmate shortly following their commitment to FDC.

In addition to the steps taken by FDC, the Florida Legislature has introduced legislation to respond to inmate reentry needs and improve the overall reentry process in the state. In 2014, the Florida Legislature passed, and the Governor subsequently signed, House Bill 53, which

requires FDC to collaborate with the Department of Health and the Department of Highway Safety Motor Vehicles to provide every Florida-born inmate with a copy of their birth certificate and a state-issued identification card prior to their release. State-issued identification cards are often a necessary reentry document in order for an individual to obtain employment, housing, or apply for public benefits.

While many system stakeholders have recognized the need to improve the reentry process in the state, individuals released from prison still face significant barriers due to the many collateral consequences tied to a felony conviction. For example, there are a number of offenses that require suspension or revocation of an individual's driver's license, including possessing, selling, or trafficking a controlled substance, theft offenses, passing worthless bank checks, and graffiti/criminal mischief.

Key Findings

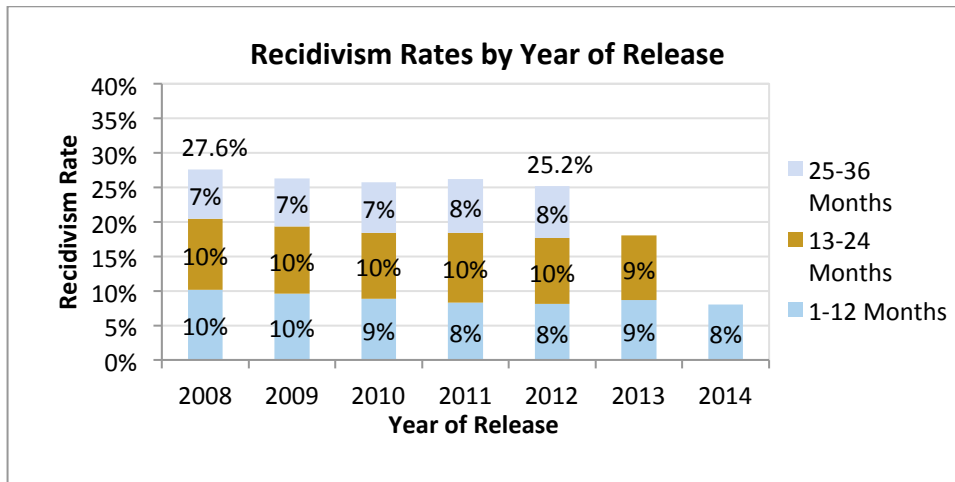
- Sixty-three percent of prisoners are released without any supervision to follow
- Violent and higher-risk offenders are most likely to have post-release supervision
- The department is taking steps to facilitate reentry for individuals released without supervision, but they still face many collateral consequences

Recidivism

Recidivism has declined slightly among offenders released from prison in Florida in the last five years, driven by small declines in one-year recidivism (return to prison within 12 months of release).

While recidivism can be a strong measure of successful outcomes for prisoners released into the community, it can also be driven by many factors besides successful rehabilitation.⁵⁷ First, recidivism may be driven by the underlying risk of the population. If many low-risk offenders are sent to prison, this will lower the overall recidivism rate, not because the system is successfully rehabilitating offenders but because of underlying characteristics of the offenders themselves. Similarly, return to prison, the measure used by Florida, can be sensitive to the amount and type of post-prison release surveillance done. Florida, with minimal post-prison release supervision, may have a lower return-to-prison rate than other states because of underlying dynamics rather than agency practices.

Figure 53: Slight Decline in Recidivism Rates Since 2008

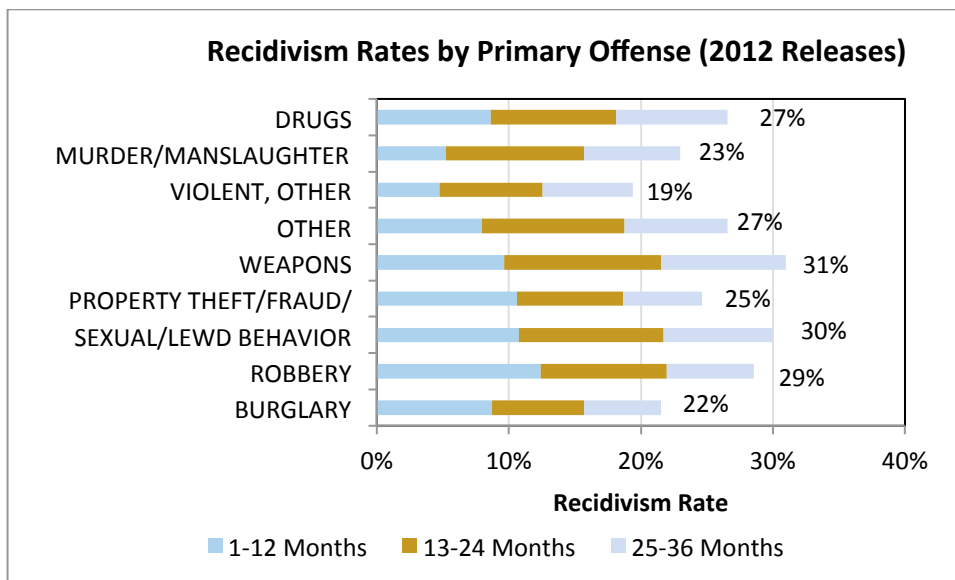


Source: Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2008 to 2014*

Despite these limitations, recidivism is a useful indicator of whether individuals released from prison are likely to commit future crimes, and how that varies by underlying characteristics of the individual.

Looking at people released from prison in 2012 (who have three years of follow-up information available), recidivism varies by offense type, with “other” violent offenses (which includes aggravated assault, battery, and arson) having the lowest recidivism rate, with only 19 percent of released offenders returning within three years, followed by burglary at 22 percent.

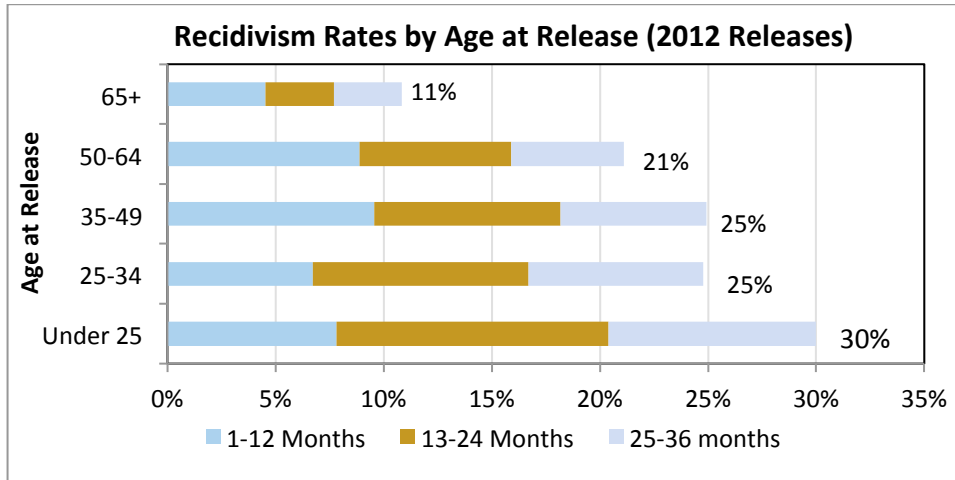
Figure 54: Recidivism Varies from 19 Percent for “Other” Violent Crime to 31 Percent for Weapons Offenses



Source: Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2008 to 2014*

Recidivism also varies by age. Overall, it is lowest for elderly offenders released from prison, fitting with the lower risk profile of these offenders discussed in the prior section.

Figure 55: Elderly Offenders Have Significantly Lower Recidivism Than Younger Offenders



Source: Florida Department of Corrections, Florida Prison Recidivism Report: Releases from 2008 to 2014

Key Findings

- Recidivism as defined by how many prison releases return to prison within three years has declined since 2008 from 27.6 percent for those released in 2008 to 25.2 percent for those released in 2012
- Offenders convicted of “other” violent crimes and burglary have the lowest recidivism rates
- Individuals released over the age of 65 have considerably lower recidivism than those released at younger ages

CONCLUSION

The size and diversity of Florida's criminal justice system make it a challenge to summarize. This report reviewed data that was readily available to try to piece together a picture of some of the main forces and issues driving the size and composition of the Florida prison population. Still, much remains unknown, either because data does not exist, was unavailable, or was not able to be gathered and analyzed in the period of this contract.

Further data development or review as discussed below may help the legislature better understand Florida systems and practices.

Florida Circuit and Specialty Courts

The Office of the State Court Administrator (OSCA) was able to share individual-level data from 53 out of 67 counties in the state, reaching back at least ten years. However, several large counties — including Duval County, where significant growth in prison admissions took place over the last decade — were not represented in this dataset. In addition, much of the data about specific cases was missing, including most sentencing information. These data also did not have sentencing guidelines information such as total sentencing score, prior criminal history points, or enhancements. Instead, CJI mostly used sentencing scoresheet data collected by the Florida Department of Corrections (FDC) to shed insight into the types of sentences given. As noted in the Appendix, the sentencing scoresheet data is also incomplete. Full data from all 67 counties, and linked or complete data so that each court case can be linked to a sentencing scoresheet and prison or probation admissions, would ensure accurate tracking and reporting of sentencing outcomes and changes over time.

OSCA also collects data on specialty court programs, including court-level data on drug court admissions and survey information from each court on eligibility requirements, capacity, and other important issues. However, most of this data collection does not extend to other types of specialty courts such as mental health courts and DUI courts. Risk information is not collected from the majority of courts, although this is an important indicator of whether specialty court programs are being targeted to the right population. In addition, although OSCA collects numbers of participants completing each year, these numbers are not linked to admissions in a way that allows any evaluation of success or failure rates without more extensive data analysis. Ideally, admission cohorts would be tracked in such a way that success and failure can be accurately tracked over time.

Revocations

FDC has impressive data systems and reporting. One area where improvement may be warranted is in the links between community supervision data and data used to track and manage the prison population. In its general reporting, FDC does not consider technical violations of supervision to be new admissions, and what CJI referred to as “post-release revocations” are not included in normal FDC admission counts. They are also not tracked in

regular reports on length of stay. Although this is a small group, prison resources are used to process them in and out for short stays.

In addition, although FDC is supervising probationers and those on community control, it's not possible to tell how many of the admissions coming in the door to prison are for new crimes or technical violations, what the underlying crime is versus the new crime if there is one, and how long technical violators of probation stay in prison. Using scoresheet data, CJI was able to make rough estimates of these questions, but given the limitations of the scoresheet data, there may be much better ways to do this by linking administrative datasets from community supervision and prison admission. More detailed information on the number and types of violations leading to revocation to prison and how they affect prison sentences may also help state and local agencies and the legislature monitor and evaluate innovative court and agency programs that target violations and revocations.

APPENDIX: DATA AND INTERVIEW SOURCES AND METHODOLOGY

The data used in this report is a combination of aggregate data from pre-existing sources and new analysis of individual level administrative data gathered by the Florida Department of Corrections.

The following data sources were pulled from public websites:

- Bureau of Justice Statistics, National Prisoners Series data on prison populations and imprisonment rates. This is a 50-state and federal set of comparable data across time. Accessed at: <https://www.bjs.gov/index.cfm?ty=nps>
- Federal Bureau of Investigations, Uniform Crime Report data on violent and property crimes and crime rates in Florida, the United States, and individual Florida counties (aggregated up to the county level from reporting law enforcement agencies in each county). Accessed at: <https://www.ucrdatatool.gov/>
- Florida Department of Law Enforcement, Uniform Crime Report data on arrests and arrest rates by year. Accessed at: <http://www.fdle.state.fl.us/cms/FSAC/Data-Statistics/UCR-Arrest-Data.aspx>
- Florida Office of the State Courts Administrator, Trial Court Statistics data on circuit criminal counts and defendants by month and year. Accessed at: <http://trialstats.flcourts.org/>
- Florida Department of Corrections, Annual and Monthly Reports on community supervision populations and admissions by year. Accessed at: <http://www.dc.state.fl.us/pub/spop/2017/01/index.html>

Non-public data shared with CJJ in aggregate form included:

- Drug court admissions and population by court, by year, shared by the Office of the State Court Administrator.

Interviews with agency staff and other stakeholders across the state helped to fill out the policy and practice picture. Altogether, 22 individuals were interviewed or helped arrange interviews, pull data, or otherwise provide contextual information:

- Lee Adams, Chief of Sentence Structure, Florida Department of Corrections
- Beth Atchison, Southern Regional Director, Florida Department of Corrections
- Michael Burke, Data Analyst, Florida Department of Corrections
- James Clark, Legislative Policy Analyst, Office of Program Policy Analysis and Governmental Accountability
- Nancy Daniels, Former Public Defender, Second Circuit Public Defender's Office and Florida Public Defender's Association
- Ricky Dixon, Assistant Secretary for Institutions, Florida Department of Corrections

- David Ensley, Chief of Research and Data Analysis, Florida Department of Corrections
- Judge Ronald Ficarrota, Chief Judge, Thirteenth Judicial Circuit
- Steven Fielder, Chief of Staff to Secretary Jones, Florida Department of Corrections
- Gina Giacomia, Director of Administration, Florida Commission on Offender Review
- Jennifer Grandal, Senior Court Operations Consultant, Office of the State Courts Administrator
- Kristina Hartman, Chief of Programs, Division of Development: Improvement and Readiness, Florida Department of Corrections
- Caleb Hawkes, Legislative Affairs Director, Florida Commission on Offender Review
- Julie Jones, Secretary, Florida Department of Corrections
- Brad Locke, Chief of Applied, Research and Policy, Division of Development: Improvement and Readiness, Florida Department of Corrections
- Claire Mazur, State Director, Office of Program Policy Analysis and Governmental Accountability
- Rusty McLaughlin, Chief of Classification, Florida Department of Corrections
- Sarah Naf, Chief of Legislative Affairs, Office of State Courts Administrator
- Jenny Nimer, Assistant Secretary for Community Corrections, Florida Department of Corrections
- Rose Patterson, Chief of Education and Improvement, Office of the State Courts Administrator
- Abe Uccello, Director of Development, Division of Development: Improvement and Readiness, Florida Department of Corrections
- Joe Winkler, Deputy Regional Director, Florida Department of Corrections

Finally, the remainder of the analysis was done using Florida Department of Corrections (FDC) individual-level offender data files. FDC shared six major individual-level data files with CJI:

- Prison admissions, CY2007-CY2016, including prior admissions for those admitted during the 2007-2016 period
- Prison status population snapshots from December 31 of each year, 2007-2016
- Prison releases, CY2007-2016
- All related offense information for offenders included in the three files above
- Intakes, CY2007-2016, including everyone admitted to FDC custody not considered a new admission (this included both technical violators of certain kinds of supervision, and returns from court, returns from escape, and other intake types which were excluded as discussion below)
- Sentencing scoresheets filed with FDC, CY2006-2015

Below we describe how we cleaned and analyzed the data from these six FDC data files.

Whenever possible, CJI used FDC's data definitions and categories. For instance, offense type and offense category are four and nine group categories used by FDC, which CJI also used.

When these categories were not included in a particular dataset, CJI matched them in based on the primary offense name and code given in both datasets.

CJI further categorized drug crimes into four categories based on the conduct:

- Simple possession
- Sale/manufacturing/delivery
- Trafficking
- Other drug crime (this includes purchase or intent to purchase)

These four categories were used to aggregate drug crimes up from the specific drug type and weight without losing all information about conduct.

CJI also categorized admissions into three major types:

- Newly sentenced prisoners: This includes all offenders who were not on supervision before prison admission, as defined by an FDC flag.
- Probation revocations: This consists of everyone admitted on a new sentence who was on supervision before prison admission as defined by the flag probation violator in the FDC admissions dataset or the “Under Supervision” flag in the sentencing scoresheets dataset. There may be some revocations of community control and other supervision types included in this category. Technical violators of probation and community control would also be included in this category.
- Release revocations: These are technical violators from post-release supervision such as conditional release and parole. They are not counted in typical FDC admission counts because they do not have a new sentence or a new admission date. They were added to the admission file using the “intake date” from the intake file and the admission code. Only intakes with the admission codes “COND. VIO. NO N/S” “COND.MED.REL.RETURN” “CNTL.REL.VIOLATOR” “PROG.SUPV. VIOL” RET SCRP N/S” “COND.MED.REL.VIOL.” “PRS VIOLATOR” “COMMUTATION/RETURNED” and “PAR.VIO-NO N/S” were retained and added to any admissions for the listed admission codes to make up this category. These intake dates were also added in to the release file (substituting for repeated admission dates linked to multiple release dates) to determine length of stay in prison for these violation types.

Examining sentence lengths, CJI used the total sentence length variable defined by FDC to calculate sentence averages. Life and death sentences were included in averages with a substituted value of 50 years. When calculating the percentage of sentence served, these sentences were filtered from the calculation, as were sentences for offenses committed before October 1, 1995 since these were not subject to the 85 Percent law.

Primary offense degree, severity level, and criminal history were merged into the admissions, status, and release files from the full offense files. To determine whether an individual had a history of violent crime, all prior offenses were coded as either violent or nonviolent based on the FDC offense type, and then the offender was coded as having any prior or current violent crime, whether or not these were the primary offenses for the current or prior admissions. Twelve percent of status population records were not able to be matched to full offense

records, meaning felony degree and criminal history information is not complete. The vast majority of these unmatched records were for offenders in prison with current violent crimes.

The sentencing scoresheet data was pulled separately from the other data in response to a different data request and then shared with CJI. For this reason, 2016 data was not complete and was not used in the analysis. The sentencing scoresheet data filed with FDC is missing cases, as discussed in the FDC Sentencing Reports (see http://www.dc.state.fl.us/pub/sg_annual/1516/sg_annual-2016.pdf for the most recent report). Comparing the number of sentences to prison recorded in the sentencing scoresheets versus the number of people admitted to prison with a new sentence gives evidence of this missingness. In 2006, 26 percent of prison admissions did not have a corresponding scoresheet available. By 2015, this missingness declined to 12 percent (it fell rapidly from 2006-2008 and since then has varied from 10 to 16 percent). It is unknown whether non-prison sentences are more or less underrepresented in the scoresheet data. In either case, the decline in prison sentences given from 2006 to 2015 may be understated in the scoresheet data because of the higher number of missing scoresheets in the earlier year.

To determine the sentence given in the scoresheet data, flags for each sentence type were compared and the most serious sentence given was selected, with seriousness defined as state prison > county jail > community control > probation. If a defendant was given a split sentence the sentence was recorded as the most serious part of that split sentence. County jail sentences may include sentences given of time served pretrial, where none of the incarceration time was actually served post-adjudication. Prison sentences may also include some or all time served pretrial.

In addition to the analysis presented in the report, CJI ran more than 175 tables cross-tabbing and summarizing variables of interest in these datasets. The full analytical results will be shared with OPPAGA.

¹ National Association of State Budget Officers (1987), "The State Expenditure Report," http://www.nasbo.org/sites/default/files/ER_1987.PDF; National Association of State Budget Officers (2007), "State Expenditure Report Fiscal 2006", http://www.nasbo.org/sites/default/files/ER_2006.pdf. Note: Comparison excludes capital expenditures.

² National Association of State Budget Officers, "Examining Fiscal State Spending 2014-2016," <https://www.nasbo.org/mainsite/reports-data/state-expenditure-report>.

³ Bureau of Justice Statistics (2016), "Prisoners in 2015", <http://www.bjs.gov/content/pub/pdf/p15.pdf>.

⁴ Federal Bureau of Investigation, Uniform Crime Reports, UCR Data Tool, accessed at <http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm>

⁵ Federal Bureau of Investigation, (2016), "Crime in the United States 2015," Table 5, accessed at: <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-5>

⁶ Pew Public Safety Performance Project (2016), "National Imprisonment and Crime Rates Continue to Fall," http://www.pewtrusts.org/~media/assets/2016/12/national_imprisonment_and_crime_rates_continue_to_fall_web.pdf

⁷ Fla. State. § 948.08(1)(h)1

⁸ Florida Criminal Justice Estimating Conference, February 2017.

⁹ Florida Department of Corrections and Office of State Courts Administrator, “Florida Criminal Punishment Code, Scoresheet Preparation Manual” http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

¹⁰ Fla Stat. § 775.082

¹¹ Florida Department of Corrections and Office of State Courts Administrator, “Florida Criminal Punishment Code, Scoresheet Preparation Manual” http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

¹² *Ibid.*

¹³ Florida Department of Corrections, *Florida’s Criminal Punishment Code: A Comparative Assessment*, http://www.dc.state.fl.us/pub/sg_annual/0001/

¹⁴ Fla. Stat. § 921.0026

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Florida Department of Corrections and Office of State Courts Administrator, “Florida Criminal Punishment Code, Scoresheet Preparation Manual” http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

¹⁹ Fla. Stat. § 948.001

²⁰ Note that these numbers are smaller than the actual number of admissions to prison for these crimes because of missing scoresheets.

²¹ The Florida Senate, Committee on Criminal Justice, Interim Project Report 2006-109, “Review of Sanctions Ordered for Violations of Probation”

http://archive.flstate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-109cj.pdf

²² Fla. Admin. Code. R. 33-601.101 (2017).

²³ The Florida Senate, SPB7066 Bill Analysis and Fiscal Impact Statement (2015) <https://www.flstate.gov/Session/Bill/2016/7066/Analyses/2016s7066.pre.cj.PDF> .

²⁴ *Ibid.*

²⁵ The offenses which apply to the 10-20-life law include: murder, sexual battery, robbery, burglary, arson, aggravated battery, kidnapping, escape, aircraft piracy, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, unlawful throwing, placing, or discharging or a destructive device or bomb, carjacking, home-invasion robbery, aggravated stalking, drug trafficking, and possession of a firearm by a felon.

²⁶ Fla. Stat. § 775.087

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Fla. Stat. § 775.084

³⁰ *Ibid.*

³¹ **Habitual violent provision** applies to: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, murder, manslaughter, aggravated manslaughter of a child, unlawful throwing, placing, or discharging or a destructive device or bomb, home-invasion robbery, aggravated stalking, aggravated battery and armed burglary.

³² Fla. Stat. § 775.082

³³ **Prison Releasee** applies to 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, carrying a weapon during offense, lewd and lascivious offenses with victim under age of 16,, child abuse and neglect offenses, use of and promoting sexual performance by a child and child pornography..

³⁴ Fla. Stat. § 775.084

³⁵ **Three-Time Violent** applies to: all offenses on the habitual violent offender list (arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, murder, manslaughter, aggravated manslaughter of a child, unlawful throwing, placing, or discharging or a destructive device or bomb, home-invasion robbery, aggravated stalking, aggravated battery and armed burglary) and as well as carjacking.

³⁶ **Violent Career Criminal** applies: any forcible felony, aggravated stalking, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, lewd or lascivious battery, molestation, conduct, or exhibition, escape, or any felony violation involving the use or possession of a firearm.

³⁷ Fla. Stat. § 812.014

³⁸ National Conference of State Legislators (2015), "Making Sentence of Sentencing: State Systems and Policies," <https://www.ncsl.org/documents/cj/sentencing.pdf>

³⁹ Fla. Stat. § 944.02(4)

⁴⁰ Fla. Stat. §944.275(4)(c)

⁴¹ Devers, Lindsey. *Desistance and Developmental Life Course Theories: Research Summary*. Rep. N.p.: Bureau of Justice Assistance, 2011. <https://www.bja.gov/Publications/DesistanceResearchSummary.pdf>

⁴² A 2010 study by the Vera Institute of Justice stated that as of 2009, 15 states had some type of specific geriatric release policy. Many other states have indeterminate sentencing systems which may allow for parole or other early release accounting for, but not based on, age. Vera Institute of Justice (2010) "It's About Time: Aging Prisoners, Increasing Costs, and Geriatric Release," accessed at: <http://archive.vera.org/sites/default/files/resources/downloads/Its-about-time-aging-prisoners-increasing-costs-and-geriatric-release.pdf>

⁴³ B Jay Annot et al., *Correctional Health Care: Addressing the Needs of Elderly, Chronically Ill, and Terminally Ill Inmates*, U.S. Department of Justice, National Institute of Corrections, 2004.

⁴⁴ Florida Department of Corrections, 2014-2015 Annual Report.

⁴⁵ Fla. Admin. Code. R. 33-601.217 (2016).

⁴⁶ Fla. Stat. §944.275

⁴⁷ Bureau of Justice Statistics, (1999), "Truth in Sentencing in State Prisons," Accessed at: <https://www.bjs.gov/content/pub/ascii/tssp.txt>

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Bureau of Justice Statistics, Prisoners in 2013, Table 17. Accessed at:

<https://www.bjs.gov/content/pub/pdf/p13.pdf>

⁵² *Ibid.*

⁵³ Bonta, James and D.A. Andrews (2007) *The Risk-Needs-Responsivity Model for Offender Assessment and Rehabilitation*.

⁵⁴ Latessa, Edward and Christopher Lowenkamp (2006), « What Works in Reducing Recidivism ? », Accessed at : https://www.uc.edu/content/dam/uc/ccjr/docs/articles/What_Works_STLJ.pdf

⁵⁵ Conference call with Abe Uccello, FDC Director of Development.

⁵⁶ Conference call with Kristina Hartman, FDC Chief of Programming.

⁵⁷ King, Ryan and Brian Elderbroom, (Oct 2014), "Improving Recidivism as a Performance Measure," Accessed at: <http://www.urban.org/research/publication/improving-recidivism-performance-measure>

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