

PA-ROLLING OUT A NEW SOLUTION: HOW FLORIDA SHOULD ADDRESS ITS BROKEN PAROLE SYSTEM

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When you were a child and you had been abused, the government wasn't there. When your stepfather abused you, the government wasn't there. When your stepbrother abused you, the government wasn't there. But, when you get a little bit of crack, the government's there.¹

- Aimée T. Canty

I. INTRODUCTION

A typical parole system provides an inmate with a conditional release after serving a portion of his or her maximum sentence,² followed by a period of supervision.³ Parole is not considered an absolute right, but rather, the decision to grant an inmate parole is “an act of grace of the State.”⁴ Unfortunately, Florida is currently

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1. Aimée T. Canty, *A Return to Balance: Federal Sentencing Reform After the “Tough-on-Crime” Era*, 44 STETSON L. REV. 893, 893 (2015) (citing Kara Gotsch, *Breakthrough in U.S. Drug Sentencing Reform: The Fair Sentencing Act and the Unfinished Reform Agenda*, THE SENTENCING PROJECT 3 (Nov. 2011), <https://www.sentencingproject.org/publications/breakthrough-in-u-s-drug-sentencing-reform-the-fair-sentencing-act-and-the-unfinished-reform-agenda/> (illustrating the frustrations of Judge Murphy of the Southern District of Illinois with the excessive mandatory sentence of twenty-two years he was required to give Eugenia Jennings for possessing thirteen grams of cocaine because Ms. Jennings had two prior convictions for selling small amounts of crack cocaine, and therefore was classified as a career offender)) (internal citations omitted).

2. The average amount of time an inmate serves depends on the type of crime committed. The time served is higher for violent crimes, and lowest for nonviolent drug crimes, with inmates across the nation serving roughly 41 percent of their maximum sentence. Danielle Kaebel, *Time Served in State Prison, 2016*, BUREAU OF JUST. STAT. 4 (Nov. 2018), <https://www.bjs.gov/content/pub/pdf/tssp16.pdf>.

3. *Parole*, NAT'L INST. OF CORRECTIONS, <https://nicic.gov/parole> (last visited Mar. 27, 2021).

4. *Release Types: Parole*, FLA. COMMISSION ON OFFENDER REV., <https://www.fcor.state.fl.us/release-types.shtml> (last visited Apr. 12, 2021); see Moore v. Fla. Parole & Prob. Comm'n, 289 So. 2d 719, 720 (Fla. 1974) (stating how although there is no absolute right, “there is a right to a proper consideration for parole”); Reggie Garcia,

functioning without a parole system for nearly all inmates sentenced for crimes committed on or after October 1, 1983,⁵ and the system in place for those sentenced before 1983 is in dire need of improvement. Unless the state reduces the length of incarceration for Florida's nonviolent inmates or improves the mechanisms for release, Florida's prison population will continue to increase at staggering rates and continue to negatively affect the citizens of Florida.⁶ Holding inmates in prison for longer periods of time has not only increased the state's spending, but the practice may also have little to no positive impact on recidivism rates.⁷ Moreover, if the process were structured, fair, and efficient, restoring parole in Florida could be the most suitable way for nonviolent inmates to be released prior to the end of their unnecessarily long sentences.⁸

Although there are additional ways for Florida inmates to be released early, the alternatives are hard to come by and rarely employed.⁹ For an inmate to be granted clemency, Florida's governor and two members of the Florida cabinet must approve the inmate's application, while at all times the governor has full discretion to deny the application for any reason.¹⁰ To be approved for conditional medical release by Florida's Commission on Offender Review ("Commission"), the inmate must be "permanently incapacitated or terminally ill," and only twenty-nine such cases were approved in fiscal year 2015–2016.¹¹ The only other available route for Florida inmates who are eager to start a new path is the State's current faulty parole system.¹²

Early Release Options Exist for Florida Inmates, TALLAHASSEE DEMOCRAT (May 10, 2015, 11:45 AM ET), <https://www.tallahassee.com/story/opinion/2015/05/10/early-release-options-exist-florida-inmates/27082485/> (declaring how parole is about "compassion, redemption, and forgiveness").

5. FLA. COMM'N ON OFFENDER REVIEW, ANNUAL REPORT 4 (Dec. 2017) [hereinafter ANNUAL REPORT].

6. *See generally* LEN ENGEL, MAURA MCNAMARA & CRIME & JUSTICE INST., DATA-DRIVEN SOLUTIONS TO IMPROVE FLORIDA'S CRIMINAL JUSTICE SYSTEM 7 (Feb. 2018) [hereinafter DATA-DRIVEN SOLUTIONS].

7. *See id.* at 3 (analyzing years of research regarding recidivism reduction and the effectiveness of incarceration and finding "longer time spent in prison is not associated with lower recidivism").

8. As this Comment addresses, this would require a multifaceted undertaking, including implementing necessary rules and having the appropriate people in charge to carryout same.

9. Garcia, *supra* note 4. Apart from being granted parole, an inmate's options include being granted executive clemency by the Governor, community work release, or conditional medical release. *Id.*

10. *Id.* (explaining that only 148 prisoners have been approved for clemency since 1980).

11. *Conditional Medical Release*, FAMM 1, 3 (June 2018), https://famm.org/wp-content/uploads/Florida_Final.pdf.

12. Garcia, *supra* note 4.

Accordingly, Florida needs to restore, restructure, and reinvigorate its parole system to allow nonviolent offenders a meaningful opportunity for release by allowing those who were sentenced to crimes committed after 1983 to be heard, giving more weight to important factors that are currently being ignored by Florida's Commission on Offender Review ("Commission"),¹³ and reducing the impact of factors that increase the likelihood of unnecessarily long prison sentences. Restoring, restructuring, and reinvigorating Florida's parole system is imperative to decrease Florida's crime rate, high prison population, and spending, and strive toward Florida Department of Corrections' motto, "[i]nspiring success by transforming one life at a time."¹⁴

Part II of this Article illustrates the historical context of Florida's parole system, how sentencing guidelines¹⁵ and other laws have inevitably deteriorated the parole mechanism for nonviolent offenders, and the current process for an inmate seeking parole. Part III analyzes who makes up the Commission, how they are chosen for the job, and how the Commission may impact who is granted parole. Additionally, Part III addresses case law relevant to the Commission's prior parole decisions. Part IV discusses the current factors the Commission considers when determining who can be released on parole and the process of same. Part V explains why Florida needs to not only reinstate the old parole system, but why an improved, efficient, and logical system is needed. Suggestions are given, which include what factors the Commission should consider in their parole determination, and how the Commission itself could improve overall to help the lives of so many nonviolent offenders.

II. HISTORICAL BACKGROUND

Because of the changes in sentencing guidelines, parole in Florida has been completely abolished for nearly all inmates who were sentenced to a period of incarceration for a crime committed

13. The Commission on Offender Review is established by the Florida Constitution. FLA. CONST. art. IV, § 8(c) (authorizing the creation of a parole commission "with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime").

14. *Our Vision*, FLORIDA DEP'T OF CORRECTIONS, www.dc.state.fl.us/vision.html (last visited Apr. 12, 2021). This Comment is aimed toward encouraging Florida lawmakers to give nonviolent incarcerated persons ample opportunity to earn early release and a fair process when deciding if inmates should be granted parole.

15. Including Florida's Criminal Punishment Code and the enactment of harsher mandatory minimum sentences.

on or after October 1, 1983, including nonviolent offenders.¹⁶ The legal significance of Florida's current parole system—or the lack thereof—is wider than imaginable, affecting more than just an inmate's freedom.¹⁷ The ramifications of a poorly functioning parole system and complete elimination of such produce unnecessary long prison sentences thereby causing, on a macro level, an increase in Florida's prison populations, state taxes, and recidivism rates. On a micro level, the glaringly inadequate parole system negatively impacts individual families in our communities.¹⁸ The increase in Florida's prison population is undisputed. Specifically, Florida's prison population has grown 373% since 1978, making its incarceration rate twenty-one percent higher than the United States' average.¹⁹ Moreover, Florida has the tenth highest incarceration rate in the nation at 500 per 100,000,²⁰ leading to an overall increase in Floridians' taxes.²¹ The negative effects of Florida's current prison system are widespread, and Florida's record regarding sentencing policies is telling.

A. The Defective Foundation

Since 1983, Florida's sentencing policies have become progressively harsher. Most prominently, individuals convicted in Florida are locked up due to the complete elimination of the state's parole system, consequential to the following factors: (1) Florida's Criminal Punishment Code ("CPC");²² (2) an increase in mandatory

16. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10. This Comment will focus primarily on nonviolent offenders, which comprised nearly sixty-three percent of all admissions to Florida prisons in 2016. *Id.* at 11.

17. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (explaining the hardships caused by extended prison sentences on Florida families).

18. *Id.* A study found after interviewing one hundred residents of two Tallahassee, Florida communities, nearly every resident had experienced or were expecting to experience the return of a family member from prison. *Id.*

19. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 6. These figures include data from 1978 through 2015. *Id.*

20. OFFICE OF PROGRAM POLICY ANALYSIS & GOV'T ACCOUNTABILITY, *DIVERTING LOW-RISK OFFENDERS FROM FLORIDA PRISONS: REPORT NO. 19-01 1* (2019) [hereinafter *DIVERTING LOW-RISK OFFENDERS*].

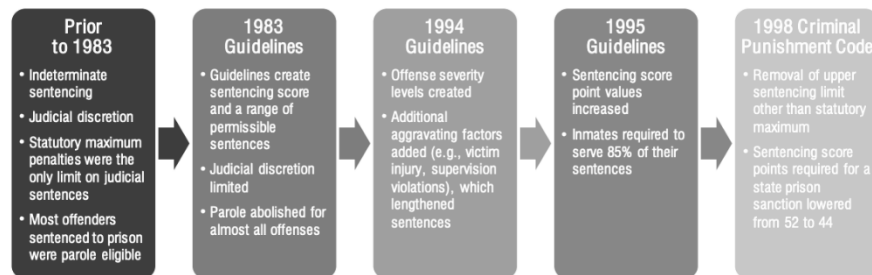
21. Lauren Galik, *The High Cost of Incarceration in Florida: Recommendations for Reform*, REASON FOUND. 1 (Apr. 2015). In 2014, Florida taxpayers spent over \$2.2 billion on the prison system and the cost is increasing. *Id.*

22. The CPC is the predominant sentencing system in Florida, originally enacted in 1997 to provide greater judicial discretion, authorizing courts to sentence felony offenders up to the statutory maximum allowed by guidelines. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10; *DIVERTING LOW-RISK OFFENDERS*, *supra* note 20, at 2.

minimum sentences;²³ (3) parole guidelines;²⁴ and (4) truth-in-sentencing laws.²⁵ Because of the policy changes outlined in Figure 1, just in the last decade, the average sentence length for a Florida inmate has increased twenty-two percent, and the average amount of time he or she will serve has increased eighteen percent.²⁶

Figure 1:²⁷

Changes in Felony Sentencing in Florida



Source: Florida Department of Corrections.

Prior to the overhaul in 1983, Florida's legislature enacted the Objective Parole Guidelines Act²⁸ in 1978 that implemented rules and criteria for deciding who could be released on parole.²⁹ When establishing the criteria, the legislature considered: risk assessment, historical Commission decision-making experience, and individual case elements.³⁰ The Florida legislature, however, failed to consider the negative implications of excessively long prison sentences on nonviolent offenders and the community at large.³¹ At the time, the policy behind locking convicted criminals

23. Today, more inmates are sentenced under a mandatory minimum than ever before, resulting in an overall increase in the amount of time inmates serve in prison. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10. There are currently 108 offenses that require a mandatory minimum term in Florida, and of those, forty-seven are for nonviolent drug offenses such as possession of cocaine. *Id.* at 22; see FLA. STAT. § 893.135 (2020).

24. 28 C.F.R. § 2.20 (2021). The United States Parole Guidelines contain many recommendations including, but not limited to, ranges of time to be served before release, instructions for the rating of certain offenses, and a list of salient factors to be considered. *Id.*

25. See FLA. STAT. § 944.275 (2020) (mandating an inmate serve at least eighty-five percent of their sentence before even beginning the parole process); DATA-DRIVEN SOLUTIONS, *supra* note 6, at 6.

26. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 7 (citing FELICITY ROSE, COLBY DAWLEY, YAMANDA WRIGHT, LEN ENGEL & CRIME & JUSTICE INST., AN EXAMINATION OF FLORIDA'S PRISON POPULATION TRENDS, CRIME & JUST. INST. 15 (2017)).

27. DIVERTING LOW-RISK OFFENDERS, *supra* note 20, at 5.

28. FLA. STAT. § 947.001 (2020). Compare with 28 C.F.R. § 2.20 (2021) (listing the guidelines for parole release consideration adopted by the U.S. Parole Commission).

29. *Release Types: Parole*, *supra* note 4.

30. *Id.*

31. Galik, *supra* note 21, at 19–20 (arguing mandatory minimum sentencing laws may not benefit public safety or the individual inmate).

in prison for extended periods was based on society's belief that incarceration could benefit public safety—both by preventing inmates from committing crimes while behind bars and deterring them from committing future crimes to avoid further incarceration.³² Possibly surprising to some, studies over the past two decades have disputed the accuracy of the latter of those two beliefs.³³

A mere five years after Florida passed the Objective Parole Guidelines Act, the legislature enacted strict sentencing guidelines that abolished parole for most offenders who committed crimes on or after October 1, 1983.³⁴ Due to the legislature's further enactment of stricter mandatory minimum sentences, sentence enhancements, and truth-in-sentencing laws, Florida cornered itself into the complete removal of its parole system by 1995, continuing down its historic and longstanding tradition of being tough on crime.³⁵ Since then, no one sentenced to prison in Florida—regardless of the offender's age or the type of offense committed—has been or will be eligible for early release under Florida's current laws.³⁶ Accordingly, the number of inmates granted parole has decreased significantly.³⁷ Prior to these changes, around 3,860 inmates were granted parole in 1983.³⁸ Within ten years, that number dropped to a staggering 166 inmates.³⁹ Just two years ago, a mere twenty-one inmates were granted parole in Florida, which was less than one percent of those

32. Daniel S. Nagin et al., *Imprisonment and Reoffending*, 38 CRIME & JUST. 115, 115 (2009) (explaining how crime prevention is the primary rationale for imprisonment, both by “incapacitation and deterrence”).

33. See Galik, *supra* note 21, at 19 (finding “laws mandating longer terms of imprisonment do not have a positive deterrent effect on crime, and in fact may be counterproductive”); DATA-DRIVEN SOLUTIONS, *supra* note 6, at 9 (showing “incarceration has a limited effect on recidivism reduction”).

34. *Release Types: Parole*, *supra* note 4.

35. C.J. Ciaramella, *Florida Passed A Hugely Important Amendment to Allow Lawmakers to Reduce Criminal Sentences*, REASON (Nov. 9, 2018, 8:00 AM), <https://reason.com/2018/11/09/florida-passed-a-hugely-important-amendm/>. Florida's inflexibility to criminal justice reform dates back to 1885 when the “Savings Clause” was added to Florida's Constitution, which prohibited retroactive application of criminal sentencing laws. *Id.* Until the passage of Amendment 11 in 2018, Florida was the only state to have a constitutional ban on reducing past criminal sentences. See HOUSE OF REPRESENTATIVES STAFF ANALYSIS, C.S./H.B. 7069 at 2 (Fla. 2019). See generally Galik, *supra* note 21, at 19–20 (stating how Florida has been “tough on crime” and explaining the negative implications of such).

36. *Release Types: Parole*, *supra* note 4.

37. ANNUAL REPORT, *supra* note 5, at 8.

38. Paula Dockery, *Dust the Cobwebs Off Courts' Parole Option*, ORLANDO SENTINEL, May 18, 2016, <https://www.orlandosentinel.com/opinion/os-ed-parole-reform-paula-dockery-051916-20160518-story.html>.

39. *Id.*

eligible,⁴⁰ and currently, about sixty-three percent of inmates will not be released until the end of their sentence.⁴¹

Florida presently has determinate sentencing, which is characterized by fixed sentence lengths with no parole opportunity or discretionary releases.⁴² The rationale behind determinate sentencing is to “increase certainty in the amount of time served, improve proportionality of the sentence to the gravity of the offense, and reduce disparities that might exist when sentences are more indeterminate.”⁴³ However, determinate sentencing can be ineffective because it gives judges almost no discretion during the sentencing phase, resulting in the requirement that inmates must be in prison for longer periods of time.⁴⁴ Recent studies have accumulated a copious amount of evidence that contradicts or places into question the legislature’s reasoning behind some of Florida’s harshest laws.

B. Long Sentences and How Recidivism is Affected

The Florida legislature selected the Crime and Justice Institute (“CJI”)⁴⁵ after a competitive bidding process to conduct an assessment of Florida’s criminal justice data.⁴⁶ The assessment started in February 2017 and the results were published on May 1, 2017 (“First Assessment”).⁴⁷ After submitting the First Assessment to the Florida Senate, CJI was asked to continue assessing Florida’s criminal justice system, and a second assessment followed in 2018 (“Second Assessment”).⁴⁸ To complete the Second Assessment, CJI researched and identified practices that impact Florida’s prison population and what factors reduce recidivism effectively.⁴⁹

40. *Annual Report*, *supra* note 5, at 8.

41. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10.

42. ALISON LAWRENCE, MAKING SENSE OF SENTENCING: STATE SYSTEMS AND POLICIES 4 (2015).

43. *Id.*

44. DIVERTING LOW-RISK OFFENDERS, *supra* note 20, at 4.

45. The CJI has a reputation for unbiased issue analysis, and “work[s] with local, state, and national criminal justice organizations to improve public safety and the delivery of justice.” CRIME & JUSTICE INST. FACT SHEET, https://www.cj institute.org/assets/sites/2/2020/11/CJI_Factsheet_20190729_FINAL_cropped.pdf (last visited Apr. 12, 2021).

46. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 5. In 2016, Florida “adopted a measure as part of the General Appropriations Act calling for ‘a comprehensive review of Florida’s criminal justice system,’” which led to the selection of CJI. *Id.*

47. *Id.*

48. *Id.* The Second Assessment detailed fifteen policy recommendations designed to “[f]ocus prison and jail resources on serious and violent offenders; [s]trengthen alternatives to incarceration; [i]mprove community supervision practices; and [e]nsure the sustainability of criminal justice reforms.” *Id.* at 17.

49. *Id.* at 5.

After accumulating and analyzing results from many statistical studies,⁵⁰ the CJI determined “at best, longer sentences have no effect on recidivism and, at worst, they actually increase recidivism.”⁵¹ Psychologists and criminologists generally understand that prisoners “adapt to their environment”⁵² while in prison, which contributes to a “post-incarceration syndrome.”⁵³ This is especially true for drug offenders.⁵⁴ Studies reveal that any positive effect of long prison sentences on nonviolent, low-level offenders is even more attenuated because of the “criminogenic effect” prison has on those inmates.⁵⁵ The longer an inmate stays behind bars, the more likely that inmate’s personality will change to adjust to prison life, prolonging the detrimental impact of incarceration well past release.⁵⁶

In 2017, the State of Florida spent \$2.4 billion on the Department of Corrections, with a cost of about \$59.57 to accommodate one inmate per day.⁵⁷ In comparison to other states, in 2015, only four states had greater prison expenditures than Florida.⁵⁸ Georgia’s legislature in 2011 amended certain sentences

50. See Daniel S. Nagin & G. Matthew Snodgrass, *The Effect of Incarceration on Re-Offending: Evidence from a Natural Experiment in Pennsylvania*, 29 J. OF QUANTITATIVE CRIM. 601, 601 (2013) (finding “[o]n the whole, there is little evidence in our data that incarceration impacts rearrest”); Nagin, *supra* note 32, at 115 (concluding the results of their study “casts doubt on claims that imprisonment has strong specific deterrent effects”); Patrice Villettaz et al., *The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge*, 11 CAMPBELL SYSTEMATIC REV. 1, 7 (2015).

51. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 9. This was as a result of “evaluat[ing] whether similar offenders, when subjected to different terms of incarceration, recidivate at different rates.” *Id.*; see also Benjamin Meade et al., *Estimating a Dose-Response Relationship Between Time Served in Prison and Recidivism*, 50 J. RES. IN CRIME & DELINQUENCY 525, 526 (2012) (finding offenders who spent more time in prison had lower odds of recidivism and “specific deterrent effect of prison sentences may be limited”); Christian Jarrett, *How Prison Changes People*, BBC (May 1, 2018), <http://www.bbc.com/future/story/20180430-the-unexpected-ways-prison-time-changes-people>.

52. “Prisonization” refers to “the adoption of the folkways, mores, customs, and general culture of the inmate subculture.” Dr. Brent A. Paterline & Dr. Douglas Orr, *Adaptation to Prison and Inmate Self-Concept*, 4 J. OF PSYCHOL. & BEHAV. SCI. 70, 70 (2016).

53. Jarrett, *supra* note 51.

54. Cassia Spohn & David Holleran, *The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders*, 40 CRIMINOLOGY 329, 329 (2002) (arguing “imprisonment has a more pronounced criminogenic effect on drug offenders than on other types of offenders”).

55. *Id.* at 351. This effect means essentially “prisons breed crime.” *Id.* Spending time in prison may not only affect the inmate for worse, it could also affect society’s response to the inmate once released back into society, “making it more difficult to find stable employment, secure suitable housing, or reconcile with his family.” Further, without having these “informal social controls and strong social bonds,” the inmate may find himself inevitably falling back into criminal activity. *Id.*; see DATA-DRIVEN SOLUTIONS, *supra* note 6, at 11.

56. Jarrett, *supra* note 51. Personality adjustments may help an inmate survive their time in jail, but the changes can be counter-productive when released back into society and may lead to the commission of more crimes. *Id.*

57. DIVERTING LOW-RISK OFFENDERS, *supra* note 20, at 1. In 2017, Florida spent approximately \$21,743 to house one inmate for one year. *Id.*

58. *State Prison Spending*, BACKGROUND CHECKS, <https://backgroundchecks.org/home-security/state-prison-statistics> (last visited Apr. 12, 2021). Only California, New York, Texas, and Pennsylvania spent more than Florida on their prison systems in 2015. *Id.*

for nonviolent crimes, which *saved* the state \$264 million and reduced its prison population by nearly six percent.⁵⁹ In the following three years after the reforms, Georgia’s crime rate fell by ten percent.⁶⁰ Similarly in Mississippi⁶¹ after the state encountered an increase in prison overcrowding, the legislature enacted policies in 2013 amending certain guidelines.⁶² These policy changes included a reform package that improved access to alternatives to incarceration and modified the sentencing structure of drug and property offenses to avoid a projected prison growth of 2,000 inmates.⁶³ As a result, Mississippi *saved* \$266 million and experienced a three percent drop in crime in just two years.⁶⁴ Additionally, as part of its reforms, Mississippi “charged a bipartisan, inter-branch oversight council with monitoring and evaluating implementation of its reforms.”⁶⁵ The policy reforms which led to unprecedented results in both Georgia and Mississippi signify how decreasing long sentences can have a positive impact on a state in a multitude of ways.⁶⁶

C. What Caused the Elimination of Parole: Sentencing Guidelines, Mandatory Minimums, and Truth-in-Sentencing Laws

As a result of the Florida legislature continuing to advocate for a tougher criminal justice system, additional policies were passed that increased mandatory minimum sentences—leaving offenders in prison for much longer than before.⁶⁷ Currently in Florida, when a citizen has committed a crime that requires a mandatory minimum term, there is no room for judicial discretion in the court’s sentencing decision.⁶⁸ For example, if a citizen is

59. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 9.

60. *Id.* Importantly, this data exemplifies how reducing long sentences for nonviolent inmates can not only produce a financial benefit to the state, but the reduction can also decrease crime rate. *Id.*

61. Mississippi has an indeterminate sentencing system, meaning the parole system is discretionary. See Jorge Renaud, *Grading the Parole Release Systems of All 50 States*, PRISON POLY INITIATIVE (Feb. 26, 2019), https://www.prisonpolicy.org/reports/grading_parole.html.

62. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 3.

63. *Id.*

64. *Id.* at 3, 9. Mississippi’s parole system earned a “C-” grade by the Prison Policy Initiative with just three states scoring better. Renaud, *supra* note 61.

65. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 29.

66. *Id.* at 9 (listing thirty-one states that have “reduced both their imprisonment rates and crime rates” in the last nine years).

67. *Id.* at 3. Between 1978 and 2015, Florida’s prison population grew from about 21,000 inmates to over 100,000. *Id.*

68. See FLA. STAT. § 893.135 (2020); FLA. STAT. § 316.1935 (2020); FLA. STAT. § 456.065 (2020); FLA. STAT. § 624.401 (2020); FLA. STAT. § 775.082 (2020); FLA. STAT. § 775.084

found guilty of possessing twenty eight grams of cocaine, that citizen is automatically sentenced to a mandatory minimum of three years in prison.⁶⁹ In 2016, over thirty-seven percent of offenders in Florida were sentenced under a mandatory minimum—an increase of nineteen percent since 2007.⁷⁰ Moreover, in 1995, Florida enacted truth-in-sentencing laws that require an inmate to spend considerably more time behind bars before an opportunity to be considered for early release.⁷¹

Truth-in-sentencing laws mandate that prisoners serve around eighty-five percent of their court-imposed minimum sentence prior to being considered for parole.⁷² This eighty-five percent requirement is mandated regardless of whether the inmate was convicted of a nonviolent crime⁷³ and is not mitigated even if an inmate behaves without any retribution or takes the initiative to participate in rehabilitation programs.⁷⁴ Per Section 947.16, Florida Statutes,⁷⁵ an inmate serving a mandatory term of fifteen or more years cannot have an initial parole interview before eighteen months prior to the end of the mandatory minimum portion of that inmate's sentence.⁷⁶ As an example, someone serving a minimum of twenty-five years will not have the opportunity to be heard by the Commission until they have already served over twenty-three years in prison. This law has had a substantial impact on Florida's prison population. As of 2014, roughly ninety percent of all inmates were serving the mandated eighty-five percent of their sentences under the truth-in-sentencing laws.⁷⁷

Recently, Florida has shifted its historically hardline stance on crime to a more progressive view of trying to positively change the criminal justice system. In early 2019, Florida's Senate proposed a criminal justice reform bill⁷⁸ that would, among other things, raise the threshold for felony theft, allow earlier release of certain nonviolent prison inmates, and give judges more discretion

(2020); FLA. STAT. § 796.05 (2020); FLA. STAT. § 817.234 (2020); FLA. STAT. § 817.568 (2020); FLA. STAT. § 893.13 (2020).

69. FLA. STAT. § 893.135(1)(b) (2020).

70. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10.

71. Galik, *supra* note 21, at 17.

72. *Id.* (explaining the incredible impact this law has had on Florida inmates). See FLA. STAT. § 947.16 (2020).

73. *Id.*

74. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 6.

75. FLA. STAT. § 947.16 (2020).

76. *Id.* § 947.16(2)(g)(3).

77. Galik, *supra* note 21, at 17.

78. S.B. 642 1 (Fla. 2019). This bill was introduced and led by Senator Jeff Brandes. *Id.*

over sentencing drug crimes.⁷⁹ The Senate had been pushing for a few categories of nonviolent inmates to earn “gain time,”⁸⁰ which the Commission was unable to consider to reduce an inmate’s minimum sentence.⁸¹ The reform bill would have allowed an inmate to be released after serving sixty-five percent of their sentence rather than eighty-five percent.⁸² This provision that would have allowed earlier release and judicial discretion was unfortunately dropped from the legislation due to either the fear of change⁸³ or concerns over jeopardizing public safety.⁸⁴

House Bill 7125, which did not include the reform provisions, was passed at the end of the Florida legislature’s annual session and became effective October 1, 2019.⁸⁵ Many lawmakers, reformers, and activists in the state are angered by the exclusion of these criminal justice reform provisions,⁸⁶ including Senator Jeff Brandes.⁸⁷ Senator Brandes intends to continue reforming criminal justice into 2020, requesting an interim study on the effects of reducing nonviolent offenders sentence requirements to sixty-five percent and plans to push for the reintroduction of parole.⁸⁸

D. Florida’s Current Inadequate Parole Process

Moreover, once an inmate becomes eligible for parole—those who committed crimes before 1983 and who have served eighty-

79. Emily L. Mahoney, *Legislature Oks Criminal Justice Reforms but No Change to Mandatory-Minimum Sentencing*, MIAMI HERALD (May 4, 2019 01:13 AM), <https://www.miamiherald.com/news/politics-government/state-politics/article229998714.html>.

80. Gain time allows inmates to earn credits “through programs that prepare them for release.” Galik, *supra* note 21, at 25.

81. *Weller v. State*, 547 So. 2d 997, 997 (Fla. Dist. Ct. App. 1989) (finding the inmate did not have a right to an interview for purposes of setting a proposed parole release date because there was no statutory authority to support the Commission reducing the inmate’s fifteen year mandatory minimum sentence for trafficking in cocaine).

82. Gary Blankenship, *Criminal Justice Reform Bill Passes Legislature*, FLA. B. (May 3, 2019), <https://www.floridabar.org/the-florida-bar-news/criminal-justice-reform-bill-passes-legislature/>.

83. Mahoney, *supra* note 79. House Speaker José Oliva stated how in the previous years “the idea was being tough on crime” and sometimes new ideas “take time for people to understand.” Even so, Representative Oliva thinks the evidence showing the harms of the current policies “started a conversation” that is now maturing. *Id.*

84. *Id.* Representative Paul Renner insisted that the reform process “needs to be done incrementally,” and the bill “is a product that won’t in any way jeopardize public safety.” *Id.*

85. Administration of Justice, H.R. 7125, 2019 Legislature (Fla. 2019).

86. Judy Thompson, *Legislators threw away real criminal justice reform — and millions in taxpayer money*, FLA. POLITICS (July 8, 2019), <https://floridapolitics.com/archives/300484-judy-thompson-florida-legislators-threw-away-real-criminal-justice-reform-and-millions-in-taxpayer-money>.

87. Mahoney, *supra* note 79 (quoting Senator Brandes that he is “incredibly disappointed” by the end result of the bill).

88. Blankenship, *supra* note 82; *see also* Mahoney, *supra* note 79 (stating how “[l]awmakers in both the House and Senate have said they intend on taking up some of the issues that failed next year”).

five percent of their minimum sentence—the current process outlined in Florida laws creates a difficult path for an inmate to be released.⁸⁹ To begin, a Commission investigator (“Investigator”) must determine whether the inmate’s record during confinement is “good.”⁹⁰ If the inmate’s record is “good,” the Investigator will conduct an initial interview with the inmate to discuss the severity of the inmate’s offense(s) and any aggravating or mitigating factors.⁹¹ Based on that consultation and the objective parole guidelines, the Investigator will determine the inmate’s presumptive parole release date (“PPRD”)⁹² and make a recommendation to the Commission.⁹³ Once the Commission receives the Investigator’s recommendation, a panel of at least two commissioners decides whether to accept the date⁹⁴ with full authority to ignore the recommendation at its discretion.⁹⁵ The Commission is allowed to “independently recompute” the PPRD by applying any aggravating or mitigating factors it deems necessary.⁹⁶ If the panel fails to agree on the inmate’s PPRD, either the Commission Chair or any commissioner the Chair selects will make the final decision.⁹⁷ The inmate must be notified in writing of the PPRD within ninety days from the inmate’s initial interview.⁹⁸

An “effective interview” is scheduled ninety days prior to the inmate’s decided PPRD, whereby an Investigator will determine whether to “authorize an effective parole release date and [] establish a parole release plan.”⁹⁹ After receipt of the inmate’s parole release plan, the Commission has the authority to either suspend or extend the PPRD, and must state the reasons for doing

89. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 10.

90. FLA. ADMIN. CODE r. 23-21.006(9)(c)(1)–(5) (2019) (describing how an inmate must pass five criteria for their record to be considered “good,” including: (1) no disciplinary actions; (2) no pending court prosecutions in Florida; (3) no reclassification actions raising custody classification; (4) no terminations of community work release; and (5) no entries of an order revoking parole). If the inmate’s record during confinement is not “good,” the Investigator ends the interview process and recommends rescheduling the initial interview within six months. *Id.*

91. FLA. STAT. § 947.172(1) (2020); FLA. ADMIN. CODE r. 23-21.006 at 10.

92. A presumptive parole release date is a “tentative parole release date as determined by objective parole guidelines.” *Release & Supervision Frequently Asked Questions*, FLA. COMMISSION ON OFFENDER REV., <https://www.fcor.state.fl.us/mediaFactSheet.shtml> (last visited Apr. 12, 2021) [hereinafter *Release & Supervision*].

93. FLA. STAT. § 947.172(2) (2020). The recommendation also includes the “salient factor score, severity of offense behavior, aggravation, mitigation, [and] time in custody calculation[.]” FLA. ADMIN. CODE r. 23-21.006 at (11).

94. FLA. STAT. § 947.172(2) (2020). The written recommendation must be provided to a panel of no fewer than two commissioners within ten days after the initial interview. *Id.*

95. FLA. ADMIN. CODE r. 23-21.010(4) (2019).

96. *Id.*

97. FLA. STAT. § 947.172(2) (2020).

98. *Id.*; FLA. ADMIN. CODE r. 23-21.006 at (14).

99. FLA. ADMIN. CODE r. 23-21.015(1) (2019).

so with particularity.¹⁰⁰ The Commission must determine within thirty days of the receipt of the inmate's plan whether to authorize the effective parole release date, thereby granting the inmate parole.¹⁰¹ Inmates rarely make it through this process, with less than one percent being released on an annual basis.¹⁰² For most serious offenses,¹⁰³ if a court vacates an inmate's parole release order, Florida law only requires the Commission re-interview the inmate once within seven years after such order.¹⁰⁴ Regarding most nonviolent offenses, the Commission is required to re-interview the inmate within two years of receiving the vacated release order.¹⁰⁵

III. THE UNBRIDLED FLORIDA COMMISSION ON OFFENDER REVIEW

Despite the elimination of the parole system, Florida prisons currently hold more than 4,500 inmates who are legally eligible to be considered for parole by the Commission.¹⁰⁶ Due to many obstacles, it is extremely difficult for these inmates to successfully petition for their early release.¹⁰⁷ The decision of whether an inmate should be granted parole is determined by a combination of many factors, including various state statutes,¹⁰⁸ state and federal parole guidelines,¹⁰⁹ and political influences.¹¹⁰ Nevertheless, an inmate's freedom is ultimately decided by the three members who sit on the Commission who create their own

100. *Id.* at (9); *Release & Supervision*, *supra* note 92.

101. FLA. ADMIN. CODE r. 23-21.015 at (7). The Commission must look to Section 947.18, Florida Statutes, to make this determination, and it must be based upon review of the inmate's entire official record. *Id.* at (10).

102. ANNUAL REPORT, *supra* note 5, at 8. Out of all fifty states, the Prison Policy Initiative gave Wyoming's parole release system the highest grade of a "B." because, among other things, Wyoming: mandates in-person parole hearings; allows prison staff to provide in-person testimony; allows inmates to reduce their time with good behavior; and does not use the "seriousness of the offense" as a reason to deny parole. *See* Renaud, *supra* note 61.

103. Serious offenses include murder, sexual battery, kidnapping, robbery, or any crime which includes a minimum mandatory sentence of 25 years. FLA. STAT. § 947.16(4)(g) (2020).

104. *Id.*

105. *Id.*

106. *Release Types: Parole*, *supra* note 4. Parole still applies to offenders who committed crimes prior to October 1, 1983. *Id.* The Commission operates under the authority of Sections 20.32 and 947.13, Florida Statutes. FLA. STAT. § 20.32 (2020); FLA. STAT. § 947.13 (2020).

107. *Release Types: Parole*, *supra* note 4.

108. FLA. STAT. Ch. 947 (2020).

109. FLA. STAT. § 947.165 (2020); 28 C.F.R. § 2.20 (2020).

110. *The Parole System*, 120 U. PA. L. REV. 282, 301 (1971) (claiming that sometimes parole boards "would rather keep a man in prison than risk the public outcry likely if a parolee should commit another crime") (citation omitted). Commissioners have previously been blamed for crimes committed by violent offenders out on early release. *See* Berry v. State, 400 So. 2d 80, 80 (Fla. Dist. Ct. App. 1981) (finding members of Florida's parole board were "immune from damages liability to mother for [the members'] alleged failure to comply with parole statute" in releasing the prisoner that subsequently killed the mother's child). The suggestions made in this Article relate only to nonviolent offenders.

rules,¹¹¹ develop parole guidelines how they choose,¹¹² and implement them as they see fit.¹¹³ The Commission has the authority to adopt rules for its governance and is “required to develop and implement objective parole guidelines.”¹¹⁴ Moreover, the power to grant parole “is vested solely in the Parole Commission . . . and it has the ultimate discretion in deciding whether to grant parole to a particular convict.”¹¹⁵ Because the commissioners have full discretion in deciding whether an inmate deserves early release, it is critical to question who the commissioners are and how they are selected.¹¹⁶

A. How Commissioners Are Currently Chosen

As outlined by Section 947.02, Florida Statutes,¹¹⁷ each commissioner is appointed by the Governor of Florida and the Cabinet from a list of three eligible individuals and confirmed by the Senate.¹¹⁸ The list is created and submitted by the Parole Qualifications Committee (“Committee”), whose members are also appointed by the Governor and the Cabinet.¹¹⁹ Minimum qualifications¹²⁰ are set by the Committee, and the applications of those eligible are reviewed by the Committee.¹²¹ The Committee then conducts interviews of the applicants to make certain determinations regarding their character and habits as well as the applicants’ “philosophy.”¹²² Additionally, Section 947.02(1), Florida Statutes,¹²³ requires the membership of the Commission include

111. FLA. STAT § 947.07 (2020) (including “rules of practice and procedure and rules prescribing qualifications to be possessed by its employees”).

112. *Id.* § 947.165.

113. *See* Taylor v. State, 426 So. 2d 73, 74 (Fla. Dist. Ct. App. 1983) (finding that the Commission “has the authority to determine whether and under what conditions parole will be granted”); Owens v. State, 308 So. 2d 171, 171 (Fla. Dist. Ct. App. 1975) (determining a court has no authority to grant parole because the decision is exclusively in the hands of the Commission).

114. FLA. STAT § 947.165 (2020).

115. *Id.* § 947.13(1)(a).

116. *The Parole System*, *supra* note 110, at 300 (describing how “[b]ecause the parole release determination is largely a discretionary one, the individuals composing the parole boards have significant effect on the system”) (citation omitted).

117. FLA. STAT § 947.02 (2020).

118. Each commissioner is appointed for a six-year term and cannot serve more than two consecutive terms. *Id.* § 947.03(1). A commissioner’s annual salary is \$90,723.96. *Criteria for Commissioners of the Florida Commission on Offender Review*, FLA. COMM’N ON OFFENDER REVIEW, <https://www.fcor.state.fl.us/fpc-criteria.shtml> (last visited Apr. 12, 2021) [hereinafter *Criteria for Commissioners*].

119. FLA. STAT § 947.02(3) (2020); *Criteria for Commissioners*, *supra* note 118.

120. The minimum member qualifications seem to only require that the member is a resident of the state. FLA. STAT § 947.01 (2020).

121. *Id.* § 947.02. The Committee examines the applicants’ background including work, educational, and criminal. *Criteria for Commissioners*, *supra* note 118.

122. FLA. STAT § 947.02(2) (2020). The term “philosophy” used in this context is not further defined. *Id.*

123. *Id.* § 947.02(1).

“representation from minority persons,”¹²⁴ but fails to specify a minimum number.¹²⁵

B. Current Composition and Obligations of the Commission

The Commission consists of three appointed members¹²⁶ who are “[r]esponsible for the careful selection of candidates who are appropriate for parole.”¹²⁷ Currently, of the three Commissioners with this imperative duty, not one member has any significant history of advocating for accused criminals; rather, all three have worked for the State or worked alongside the State in *prosecuting* those accused.¹²⁸ The chairman is currently Melinda N. Coonrod, a former assistant state attorney and member of multiple organizations, including Florida Sheriffs Association and Florida Police Chiefs Association.¹²⁹ The vice chair of the Commission is Richard D. Davison, a former assistant state attorney who previously worked as legal counsel and director of administration for a sheriff’s office.¹³⁰ David A. Wyant, the Commission’s secretary, previously served as a patrol officer, detective, and deputy chief.¹³¹

Furthermore, the commissioners have a multitude of obligations that distract from their time making parole decisions.¹³² In addition to determining parole, the commissioners

124. “Minority person” is defined as “a lawful, permanent resident of Florida” who is either an African American, Hispanic American, Asian American, Native American, or an American woman. FLA. STAT. § 288.703(4)(a)–(e) (2020).

125. With a plain reading of the statute, we can assume the legislature intended merely more than one minority “persons,” and because “minority person” is defined to include an “American woman,” this requirement is satisfied so long as there is one American female on the Commission. FLA. STAT. § 947.02(1) (2020). In turn, there is no way to ensure a person of color will have a place in deciding the fate of parole eligible prisoners.

126. *Id.* § 947.01 (requiring the membership of the commission to be three members).

127. ANNUAL REPORT, *supra* note 5, at 5.

128. *Id.* at 3.

129. *Id.* During her years prosecuting “perpetrators of crimes,” Chairman Coonrod spent time working closely with victims and alongside multiple law enforcement agencies. *Id.* She was appointed to the Commission by Governor Rick Scott in 2012. *Id.* In 2016, she was appointed as Chairman by the Governor and Cabinet to a two-year term and reappointed in 2018 to serve an additional six-year term.

130. *Id.* Vice Chair Davison was also an assistant statewide prosecutor where he “prosecuted white collar crime, organized crime, and other criminal enterprises.” *Id.* Governor Rick Scott appointed him to the Commission in 2014. *Id.*

131. *Id.* During his time as a detective, Secretary Wyant spent time investigating narcotic, economic, person, and property crimes. *Id.* In 2016, like the other commissioners, Secretary Wyant was appointed by Governor Rick Scott. *Id.*

132. See STATE OF FLA. AUDITOR GENERAL, COMMISSION ON OFFENDER REVIEW: POST-PRISON SUPERVISORY RELEASE PROGRAMS & SELECTED ADMINISTRATIVE ACTIVITIES, NO. 2017–005 at 2 chart 1 (Aug. 2016) [hereinafter AUDITOR GENERAL] (finding for the 2014–15 fiscal year, the Commission spent only eleven percent of their workload hours on a combination of parole and conditional medical release activity).

must make decisions regarding clemency,¹³³ revocations,¹³⁴ victims' services,¹³⁵ conditional release and addiction-recovery release,¹³⁶ and releasees' supervision statuses.¹³⁷ The Commission holds approximately thirty-six meetings per year to address the preceding list of activities.¹³⁸ While victims and victims' families are encouraged to attend these meetings, inmates do not have the same right or opportunity.¹³⁹ Instead, the Commission "provides a victims' coordinator and an inmate family coordinator to assist both parties during the proceedings."¹⁴⁰

C. The Commission's Prior Legal Encounters

The Commission has been criticized¹⁴¹ and sued for failing to properly decide parole.¹⁴² Florida courts have held that the Commission abuses its discretion if the Commission deviates from the legal requirements imposed upon it.¹⁴³ This includes the Commission's obligation to review an inmate's complete record and to articulate the basis for its decision.¹⁴⁴ In *Thomas v. Florida*

133. *Id.* (explaining the Commission spent fifty-three percent of their workload hours determining clemency).

134. *Id.* (detailing how the Commission spent twenty-six percent of their workload hours dealing with revocation hearings for post release supervision violators).

135. *Id.* (noting how the Commission spent six percent of their workload hours on victims' services).

136. *Id.* (describing how the Commission gave four percent of their time toward this activity).

137. *Organization*, FLA. COMMISSION ON OFFENDER REV., <https://www.fcor.state.fl.us/overview.shtml> (last visited Apr. 12, 2021) [hereinafter *Commission Organization*].

138. ANNUAL REPORT, *supra* note 5, at 5. The meetings are held at the Central Office in Tallahassee and other locations across the state "to encourage participation by victims, victims' families, and inmates' families who would otherwise not be able to attend." *Id.*

139. *Id.*

140. *Id.*

141. AUDITOR GENERAL, *supra* note 132, at 1 (concluding "[t]he Commission did not always ensure that reviews of offenders placed on parole, conditional release, or control release were timely conducted in accordance with State law").

142. *Williams v. Fla. Comm'n on Offender Rev.*, 265 So. 3d 651 (Fla. Dist. Ct. App. 2018) (examining how the Commission improperly aggravated the inmate's presumptive parole release date by considering a conviction that was already included in the definition of another conviction already being used as an aggravator); *Battle v. Fla. Comm'n on Offender Rev.*, 188 So. 3d 10 (Fla. Dist. Ct. App. 2016); *see Wilson v. Fla. Parole & Prob. Comm'n*, 426 So. 2d 60, 61 (Fla. Dist. Ct. App. 1983) (holding it was error for the Commission to establish the inmate's severity of offense behavior as a first degree felony because there was no indication that the inmate pled guilty to burglary of a dwelling while armed with a dangerous weapon).

143. *Earley v. Fla. Comm'n on Offender Rev.*, 152 So. 3d 691, 693 (Fla. Dist. Ct. App. 2014). However, it is extremely difficult for an inmate to successfully argue the Commission abused its discretion in denying parole. *See, e.g., Fla. Parole & Prob. Comm'n v. Paige*, 462 So. 2d 817, 820 (Fla. 1985) (holding the Commission did not abuse its discretion in denying parole); *Parole & Prob. Comm'n v. Bruce*, 471 So. 2d 7, 8 (Fla. 1985) (determining that because the inmate had a history of breaking parole conditions, there was no abuse of discretion by the Commission).

144. FLA. STAT. § 947.13 (2020); *see, e.g., Alday v. Fla. Parole Comm'n*, 58 So. 3d 327, 329 (Fla. Dist. Ct. App. 2011) (maintaining how the Commission is required to provide reasoning for its finding that an inmate continues to be a poor candidate for parole release); *Welsch v. State*, 823 So. 2d 310, 311 (Fla. Dist. Ct. App. 2002) (finding the Commission "must

Parole Commission,¹⁴⁵ the court remanded the denial of an inmate's writ of mandamus after finding the Commission abused its discretion by failing to cite record support for its decision or identify the information relied upon.¹⁴⁶ Moreover, the Commission is not allowed to deny an inmate parole based upon improper considerations, such as unconstitutional convictions.¹⁴⁷ Although the Commission is allowed to rely on certain evidence to render a decision outside of the Matrix Time Range,¹⁴⁸ the Commission has previously relied on insufficient evidence to justify its determination that additional aggravation was warranted, as in *Rodriguez v. Florida Parole Commission*.¹⁴⁹ The court granted the inmate's writ of certiorari in *Rodriguez* because the Commission relied solely on a statement made by a prosecutor twenty years after the offense to determine the inmate's presumptive parole release date.¹⁵⁰ Part of the reason the Commission has been under fire in the previous decades is due to the unclear and ambiguous factors the Commission relies upon when denying parole.

IV. CURRENT FACTORS & PROCESS

The Commission determines whether the evidence gathered by the hearing examiner¹⁵¹ supports the inmate's release based on certain conditions.¹⁵² The Commission must decide whether it believes an inmate will no longer be a threat to the public welfare.¹⁵³ This is exemplified in Section 947.18, Florida Statutes,¹⁵⁴ which states, “[n]o person shall be placed on parole

articulate with specificity the reasons for its decision and provide the information from the complete official record in the inmate's case that supports those reasons”.

145. 107 So. 3d 517, 518 (Fla. Dist. Ct. App. 2013).

146. *Id.* at 519 (citing FLA. ADMIN. CODE r. 23-21.0155; 23-21.0161 (2020)).

147. *Moore v. Fla. Parole & Prob. Comm'n*, 289 So. 2d 719, 720 (Fla. 1974) (reiterating how the Commission cannot consider convictions in which a defendant was denied his right to counsel). The regulations also make it clear that the Commission may not rely on certain information to change an inmate's Matrix Time Range. *See* FLA. ADMIN. CODE r. 23-21.010 (detailing the aggravating factors that shall not be used, including the following: any element of the crime; information included in calculating either the salient factor score of the severity of offense; or charges for which a person was acquitted after trial).

148. FLA. ADMIN. CODE r. 23-21.010; *see Taylor v. Fla. Parole & Prob. Comm'n*, 543 So. 2d 367, 368–69 (Fla. Dist. Ct. App. 1989) (reiterating competent and persuasive evidence relevant to the aggravating or mitigating circumstances must support the decision to score outside the Matrix Time Range).

149. 984 So. 2d 575, 576 (Fla. Dist. Ct. App. 2008).

150. *Id.* (finding that the evidence to support the aggravating factor “failed to satisfy the competent and persuasive evidence standard”).

151. FLA. STAT. § 947.1745(1) (2020).

152. *Id.* § 947.18 (explaining generally what the Commission should consider when deciding whether to grant parole).

153. Dockery, *supra* note 38. A previous chairman for the Commission stated that the number one consideration in parole decisions is whether the inmate “no longer poses a risk to public safety.” *Id.*

154. FLA. STAT. § 947.18 (2020).

until and unless the [C]ommission finds that there is reasonable probability that . . . he or she will live and conduct himself or herself as a respectable and law-abiding person” and that the release “will be compatible with . . . the welfare of society.”¹⁵⁵ Additionally, the Commission analyzes its own Objective Parole Guidelines,¹⁵⁶ which were originally established to “prevent arbitrary and random parole decisions” as to whether an inmate should be released.¹⁵⁷ However, the structure is flawed for determining an inmate’s Salient Factor Score and Matrix Time Ranges for the purposes of deciding parole.

A. Determining Salient Factor Score & Matrix Time Range

The Matrix Time Range is defined as “the range of months found where the offender’s salient factor score total intersects with the offender’s severity of offense behavior.”¹⁵⁸ To figure out the Matrix Time Range, both the Salient Factor Score and the Severity of Offense Behavior must first be determined.¹⁵⁹ The factors that are analyzed when determining an inmate’s Salient Factor Score include the following: (1) number of prior criminal convictions; (2) number of prior incarcerations; (3) total time imposed in years; (4) number of probation, parole, or MCR revocations; and (5) number of prior escape or attempted escape convictions.¹⁶⁰ Although prior convictions, prior incarcerations, and time served may all come from the same events and are essentially interchangeable, all three are currently considered *separate* salient factors.¹⁶¹

155. *Id.*

156. *Id.* § 947.165.

157. *Revising the Florida Objective Parole Guidelines to Improve Prison Release Decisions*, FLA. ST. UNIV., <http://criminology.fsu.edu/center-for-criminology-public-policy-research/institutes/corrections-research-and-policy-institute/conceptual-plan-to-research-possible-methods-of-revising-the-florida-objective-parole-guidelines-to-improve-prison-release-decisions/> (last visited Apr. 12, 2021).

158. FLA. ADMIN. CODE r. 23-21.002(27) (2020).

159. *Id.* r. 23-21.009. Both length of sentence and the Salient Factor Score are considered when determining the presumptive parole release date. *Id.*; see *Jenrette v. Wainwright*, 410 So. 2d 575, 576 (Fla. 3d Dist. Ct. App. 1982) (“Specific ranges of months to be served for each crime are established in the matrix, with the number of months included in each range dependent upon the salient factor score.”).

160. FLA. ADMIN. CODE r. 23-21.007(1)–(5); see *Dockery*, *supra* note 38 (explaining how “the nature of the crime, arrest history, disciplinary reports and substance abuse history” are all considered).

161. Thomas Blomberg et al., *Recommended Considerations for the Florida Parole Commission*, FLA. ST. UNIV. C. OF CRIMINOLOGY & CRIM. JUST. 2 (Dec. 11, 2013), <http://criminology.fsu.edu/wp-content/uploads/Recommended-Considerations-for-the-Florida-Parole-Commission.pdf>. Based on empirical assessments and review of prior research studies, the Florida State University College of Criminology and Criminal Justice submitted recommendations to the Commission in 2013 intending to help improve Florida’s parole system (“Florida State University Recommendations”). *Id.* at 1–2.

After calculating the Salient Factor Score, the Commission must then determine the inmate's Severity of Offense Behavior.¹⁶² Once that is established, the Commission must locate the Matrix Time Range "where the Salient Factor Score total intersects with the Severity of Offense Behavior."¹⁶³ Importantly, the Commission may render a decision outside the Matrix Time Range "based on any competent and persuasive evidence relevant to aggravating or mitigating circumstances."¹⁶⁴ Evidence is "competent and persuasive" if the information is specific as to the inmate's alleged behavior, and the source of the allegation "appears to be reliable."¹⁶⁵ Moreover, information that can be relied upon as aggravating or mitigating circumstances can include "information supporting a count of an indictment that was dismissed as a result of a plea agreement."¹⁶⁶ If the Commission decides the individual inmate's Present Offense of Conviction warrants a decision outside the Matrix Time Range, the relevant aggravating and mitigating factors must be stated with particularity in writing.¹⁶⁷ The number of mitigating factors, however, is scarce.

B. Mitigating Factors: The Few and Far Between

While the Commission heavily weighs multiple salient factors, mitigating factors are given much less thought in the determination.¹⁶⁸ In this context, "mitigate" means to "reduce the number of months used to establish the presumptive parole release date."¹⁶⁹ The Commission only considers a few factors that could make this difference in an inmate's overall score.¹⁷⁰ Importantly, the Commission completely fails to evaluate an inmate's recent overall good behavior or anything positive about their completion

162. FLA. ADMIN. CODE r. 23-21.009(2). "The severity of offense behavior shall reflect the present offense of conviction's degree of felony or misdemeanor." *Id.* r. 23-21.008.

163. *Id.* r. 23-21.009(3). The Matrix Time Ranges are reported in months. *Id.* r. 23-21.009(5).

164. *Id.* r. 23-21.010(1).

165. *Id.*

166. *Id.* r. 23-21.010(2).

167. FLA. STAT. § 947.172 (2020); FLA. ADMIN. CODE r. 23-21.009(4); *see Baker v. Fla. Parole & Prob. Comm'n*, 384 So. 2d 746, 747 (Fla. Dist. Ct. App. 1980) (explaining "[o]nly if a factor influences the Commission to aggravate an inmate's term *beyond* the Guidelines must a written explanation of that factor be given").

168. Blomberg et al., *supra* note 161, at 2.

169. FLA. ADMIN. CODE r. 23-21.002(28).

170. Blomberg et al., *supra* note 161, at 2. Although rarely done, the Commission is able to decide below the inmate's Matrix Time Range if the Commission chooses to consider things such as the inmate's mental capacity at the time of the crime, if the inmate had only a peripheral role in the crime, or if the victim of the crime induced the offense. FLA. ADMIN. CODE r. 23-21.010(5)(b).

of duties assigned after being convicted.¹⁷¹ The age of the inmate is also not considered in the Commission's evaluation, and maturity at the time of potential release has no bearing on the decision.¹⁷² Without considering any of the inmate's mitigating factors, the Commission supports its determination primarily on the "perceived dangerousness" of the offender.¹⁷³

V. RECOMMENDED CHANGES

Instead of accomplishing the Florida legislature's goal of "transforming one life at a time,"¹⁷⁴ the Commission—through current laws—has been consistently and repeatedly cheating well-deserved inmates out of a second chance.¹⁷⁵ To prevent injustice from continuing to occur, the Commission needs to create more clear-cut guidelines to aid in its decision-making process and replace the factors that have no scientific support with factors that have proven to be better indicators of recidivism. Florida lawmakers should combine certain salient factors to prevent unnecessary overlap and add mitigating factors such as current behavior, gain time, and age (both at the time of the crime and upon release). The Commission should not be allowed to change the inmate's parole release date based on evidence of an inmate's prior indictment count that was dismissed as a result of a plea deal. Moreover, the Commission should comprise of more than three members and include individuals with different career backgrounds apart from fighting crime and putting accused criminals in prison. There should be a wider variety of individuals in the decision-making process who have more diverse qualifications as different experiences lead to different viewpoints – this will bring new and much-needed perspectives to the process.

Reinstating Florida's parole mechanism by giving nonviolent offenders the opportunity for a chance at early release will not necessarily eliminate the mandatory minimum guidelines, but rather, act as an exception to such rule. Giving nonviolent inmates

171. "No person shall be placed on parole merely as a reward for good conduct or efficient performance of duties assigned in prison." FLA. STAT. § 947.18 (2020).

172. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 13.

173. *Divided Court Backs Off Some Juvenile Sentencing Reviews*, THE FLA. BAR (Aug. 1, 2018), <https://www.floridabar.org/the-florida-bar-news/divided-court-backs-off-some-juvenile-sentencing-reviews/>.

174. ANNUAL REPORT, *supra* note 5, at 1.

175. Because the Commission has failed to consider mitigating circumstances, failed to review the complete record, and is generally reluctant in granting parole, most of those who are legally eligible will not have a real opportunity to start fresh in our free society.

a chance at early release could save the State—and, in turn, Florida taxpayers—millions of dollars,¹⁷⁶ all while possibly decreasing the crime rate.¹⁷⁷ By changing the factors the Commission considers, how those factors are weighed, and who has the authority to ultimately make the parole decisions, inmates convicted of nonviolent crimes in Florida will have a more fair, logical, and efficient process in which to fight for their freedom.

A. Adjustments to Florida’s Current Factors & Process

The factors the Commission considers during its interview process play a large role in determining who will be released on parole. According to Section 947.165, Florida Statutes,¹⁷⁸ “[a]t least once a year, the commission shall review the objective parole guidelines and make any revisions considered necessary” through statistical analysis.¹⁷⁹ The objective parole guidelines which the Commission relies upon are required to be “developed according to an acceptable research method.”¹⁸⁰ The Commission should do more to consider an assessment that determines which factors are evidence-based, including how much weight to give each aggravating and mitigating factor.¹⁸¹ By properly adjusting the factors the Commission considers, the parole release rate could potentially increase, thereby decreasing lengths of incarceration. This is a positive result, as supported by studies performed by CJI which have demonstrated “longer time spent in prison is not associated with lower recidivism and long sentences may be adding significant costs to the taxpayer with very little or no improvement on public safety.”¹⁸²

176. See DATA-DRIVEN SOLUTIONS, *supra* note 6, at 3. The policies that have effectively abolished parole in Florida (changes in the Criminal Punishment Code, harsher mandatory minimum sentences, and truth in sentencing laws) have successively increased taxpayers’ costs to pay for the large prison population. Therefore, allowing parole as an early release mechanism will reverse this trend. *Id.*

177. *Id.*; see Jarrett, *supra* note 51, at 9 (discussing how evidence suggests the longer the prison sentence, the higher the risk of reoffending).

178. FLA. STAT. § 947.165 (2020).

179. *Id.* § 947.165(2).

180. *Id.* § 947.165(1); 15B FLA. JUR. 2d *Criminal Law—Procedure* § 2988 (2017) [hereinafter *Criminal Law—Procedure* § 2988].

181. Blomberg et al., *supra* note 161, at 2; see § 947.165(2) (stating “the commission shall review the objective parole guidelines and make any revisions considered necessary by virtue of statistical analysis of commission actions, which analysis uses acceptable research and methodology”).

182. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 3 (emphasis added).

1. Combine Salient Factors

As stated in Section 947.165(1), Florida Statutes,¹⁸³ “[f]actors used in arriving at the salient factor score and the severity of offense behavior category shall not be applied as aggravating circumstances.”¹⁸⁴ Currently, the policies in place itemize an inmate’s prior convictions, prior incarcerations, and time served as separate salient factors to be considered.¹⁸⁵ Florida lawmakers need to pass legislation combining prior convictions, prior incarcerations, and time served to prevent unnecessary overlap.¹⁸⁶ This overlap “caus[es] a score in one factor to automatically result in a score in another factor,” resulting in an erroneous score.¹⁸⁷ If these numbers were factored together, the Commission would be reviewing a more accurate matrix score and have a better understanding of the inmate’s unique situation. Accordingly, by combining overlapping scores, an inmate would have a fairer opportunity at being considered for parole.

2. Change Commission’s Ability to Decide Outside Matrix Time Range

The Commission should not be able to adjust an inmate’s Matrix Time Range as currently permitted.¹⁸⁸ The evidence the Commission uses to modify an inmate’s Matrix Time Range, and thereby change when they can be released on parole, is held to a shockingly low standard. The fact that the Commission may render a decision outside the Matrix Time Range simply by relying on any “competent and persuasive” evidence that relates to *any* aggravating or mitigating circumstance¹⁸⁹ undercuts the integrity of the whole process. This standard allows for a variety of information to influence the Commission’s decision on whether to grant an inmate parole even after the Matrix Time Range has been determined.¹⁹⁰ This could enable the Commission to circumvent

183. FLA. STAT. § 947.165(1) (2020).

184. *Id.*

185. Blomberg, *supra* note 161, at 2.

186. *Id.*

187. *Id.*

188. FLA. ADMIN. CODE r. 23-21.010 (2019) (detailing how undemanding it is for the Commission to render a different decision, so long as they furnish a written explanation to the inmate).

189. *Id.* r. 23-21.010(1).

190. *Id.*

the parole process entirely and deny an inmate parole based on its liberty to use additional evidence.

The type of information the Commission can rely on is also alarming and should no longer be considered. To render a decision outside the Matrix Time Range, the Commission may rely on “information supporting a count of an indictment that was dismissed as a result of a plea agreement.”¹⁹¹ When a defendant agrees to a plea deal as a result of count bargaining,¹⁹² it should be safe to assume that the dropped count resulting from the plea deal will not later be used against the defendant. Currently, however, the Commission is able to use evidence against an inmate that he or she understood could never be used against them again.

3. Consider Current Behavior and Gain Time as Mitigators

The Commission should be required to consider an inmate’s current behavior because it serves as a better predictor of future conduct in society.¹⁹³ After the Investigator determines whether an inmate has acted “good” in the previous six months of confinement, the inmate’s decent behavior is no longer discussed.¹⁹⁴ Rewarding inmates who have behaved well in prison by granting them early release will save Florida taxpayers money without increasing crime.¹⁹⁵ After exploring the relationship between rewarding inmates and crime rates, Professor A. Mitchell Polinsky argues that rewarding an inmate for good behavior creates more positive results than negative.¹⁹⁶ In his 2015 study, Polinsky analyzed how socially desirable it is to reward an inmate’s good behavior and analyzed multiple rewards, including time off, parole, and in-prison privileges.¹⁹⁷ Polinsky stated that it is indeed “socially desirable to reward good behavior with either time off or parole.”¹⁹⁸ Polinsky explains that because behaving well in prison is difficult,

191. *Id.* r. 23-21.010(2).

192. Count bargaining involves a defendant pleading guilty to one or more of the charges “in exchange for the prosecution dropping the other charges.” *Plea Bargains*, JUSTIA, <https://www.justia.com/criminal/plea-bargains/> (last updated May 2019).

193. A. Mitchell Polinsky, *Deterrence and the Optimality of Rewarding Prisoners for Good Behavior*, 44 INT’L REV. L. & ECON. 1, 1 (2015).

194. FLA. ADMIN. CODE r. 23-21.006(9)(c), (10) (2019).

195. Polinsky, *supra* note 193, at 1.

196. *Id.* at 2; see Bethany Augliere, *Rewarding Good Behavior of Prisoners is a Benefit to Society*, *Stanford Expert Says*, STANFORD NEWS (Oct. 6, 2015), <https://news.stanford.edu/2015/10/06/prisoners-early-release-101615/> (explaining Professor Polinsky’s extensive background in economics, criminal law, and criminal justice, and summarizing his determinations based on his 2015 study).

197. Polinsky, *supra* note 193, at 1–3.

198. *Id.* at 1.

reducing an inmate's sentence should not increase crime.¹⁹⁹ Polinsky's analysis exemplifies how there is an "overall benefit to society from rewarding prisoners for good behavior," including granting parole.²⁰⁰ This finding could also be used to support the argument that periodic awards for inmates throughout their time in prison could have a positive impact on both the inmate and society's future well-being.

In the same vein, the Commission should consider inmates' gain time credits when deciding parole. Considering gain time²⁰¹ would give inmates the opportunity to earn credits for their time participating in programs that prepare them for release.²⁰² More specifically, Florida should allow *nonviolent* offenders to earn gain time credits through participating in any rehabilitative program the prison offers.²⁰³ Authorizing this would not only encourage inmates to be involved in helpful programs while incarcerated, but the knowledge to be gained could also have a positive impact on the inmates once released.²⁰⁴ Ultimately, allowing the Commission to consider gain time as a mitigator in its parole decision would give more inmates a better chance at early release and, in turn, decrease prison populations and free up resources for more serious, violent offenders.²⁰⁵

4. Include Age as a Mitigator

Like the CJI and the Florida State University Recommendations argued, the Commission should add older age (fifty years and older) as a mitigating factor to the analysis when deciding whether to grant parole.²⁰⁶ In Florida, from 2007 to 2016,

199. Augliere, *supra* note 196.

200. *Id.*

201. Currently, the Commission may not reduce a minimum mandatory sentence with gain time as there is "no statutory authority" for the Commission to do so. *See* Weller v. State, 547 So. 2d 997, 997 (Fla. Dist. Ct. App. 1989); *Criminal Law—Procedure* § 2988, *supra* note 180.

202. Galik, *supra* note 21, at 25.

203. *Id.* Other states have enacted truth in sentencing laws as well, but most only require *violent* offenders to serve eighty-five percent of their sentences. *Id.* at 17. Florida has gone too far by placing this umbrella over all offenders. *Id.*

204. *Id.* at 25.

205. COMMITTEE ON CRIMINAL JUSTICE, BILL ANALYSIS & FISCAL IMPACT STATEMENT SPB 7066, at 1 (Fla. 2016) (arguing that modifying gain-time laws by decreasing the eighty-five percent minimum time requirement to sixty-five percent for nonviolent inmates would "result in a reduction of 7,772 inmates over the next five fiscal years, with a cost avoidance of nearly \$1 billion").

206. The "criminological consensus" is that fifty is the age at which prisoners should be considered "elderly." AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY, AM. CIV. LIBERTIES UNION 48 (2012) [hereinafter MASS INCARCERATION OF THE ELDERLY]; Blomberg et al., *supra* note 161, at 2 (suggesting that older age should be considered a mitigator based on the low recidivism rates of the elderly).

the population of inmates over the age of fifty increased sixty-five percent, with more than 23,500 inmates sitting in Florida's prisons today.²⁰⁷ With this high number of elderly inmates in Florida's prison system, adding older age as a mitigator in the Commission's analysis would help increase the chance of early release for many, thereby decreasing the amount of money Florida spends on taking care of them.²⁰⁸ Importantly, this all could be done without the need to worry about the dangerous possibility of recidivism, as the recidivism rate for the elderly population is low.²⁰⁹ The inmate's age on their potential release date is relevant and should matter to the Commission because studies have shown recidivism rates "decline relatively consistently as age increases."²¹⁰ According to the CJJ, age is "one of the most significant predictors of criminality."²¹¹ The Florida State University Recommendations stated people released over the age of fifty are forty-nine percent less likely to reoffend, which is consistent with prior studies.²¹²

Moreover, providing older inmates with a conceivable chance at release could decrease prison costs for the state.²¹³ It costs roughly \$68,000 per year to incarcerate one inmate over the age of fifty, which is approximately double the cost of a younger-aged inmate.²¹⁴ Because of their older age, these inmates have a higher chance of serious health conditions which require the state to provide more medical care.²¹⁵ Elderly inmates make up approximately 20.6 percent of the total prison population, but in 2014, these inmates "accounted for 51.3% of all episodes of care and 63.4% of all hospital days."²¹⁶ Even if elderly inmates "rely on public assistance for support upon release," the state on average "will save \$66,294 per aging prisoner released per year."²¹⁷

Other states have included age as a mitigating factor when determining parole, and some states have even made old age a

207. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 25. On average, this age group is serving longer sentences than younger inmates by nearly 129 months. *Id.* As of 2014, almost thirteen percent of elderly inmates in Florida prisons were serving a sentence for a drug offense. Galik, *supra* note 21, at 21.

208. Galik, *supra* note 21, at 21.

209. *Id.*

210. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 13 (citing Darrell J. Steffensmeier et al., *Age and the Distribution of Crime*, 94 AM. J. SOC. 803, 804 (1989)).

211. *Id.*

212. Blomberg et al., *supra* note 161, at 2. *See also* DATA-DRIVEN SOLUTIONS, *supra* note 6, at 25 (citing Brie Williams & Rita Abraldes, *Growing Older: Challenges of Prison and Reentry for the Aging Population*, in PUBLIC HEALTH BEHIND BARS: FROM PRISONS TO COMMUNITIES 56, 67 (Robert B. Greifinger ed. 2007)).

213. Galik, *supra* note 21, at 21.

214. MASS INCARCERATION OF THE ELDERLY, *supra* note 206, at 57.

215. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 25.

216. Galik, *supra* note 21, at 21 (internal quotations omitted).

217. MASS INCARCERATION OF THE ELDERLY, *supra* note 206, at 57.

reason for release.²¹⁸ Both Louisiana and Virginia have implemented policies that allow offenders over a certain age who have served a portion of their sentence to automatically be eligible for parole.²¹⁹ Mississippi has recently modified its conditional medical release policy, which in turn affected the aging population of its prisons.²²⁰ The Federal Sentencing Commission revised its compassionate release guidelines to add a new “non-terminal illness” category that includes inmates experiencing deteriorating health because of the aging process.²²¹

The Florida legislature should acknowledge the compelling statistics showing older age is a reliable figure in predicting future behavior and either include it as a strong mitigator or allow inmates over a certain age who have served at least fifty percent of their sentences to be automatically eligible for parole.

B. Recommended Changes to the Commission

The Commissioners have a great role in deciding the fate of thousands of lives, and without considering all viewpoints and factors, the Commission cannot properly make those determinations. The Florida legislature needs to increase the number of commissioners and require the appointment of members from different backgrounds, such as former public defenders, state lawmakers, and community leaders. The current Commission is over-saturated with members whose prior careers were focused on the prison system and prosecuting accused criminals.²²² For example, the Chairman, Melinda N. Coonrod, began her career as an assistant state attorney and has been involved in more than fifty-seven jury trials and thirty nonjury trials as the lead prosecutor.²²³ Her responsibilities included making charging decisions, “prosecut[ing] perpetrators of crimes,” and “advocate[ing] sentencing of those found guilty.”²²⁴

218. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 25.

219. *Id.*

220. *Id.* at 26. In these modifications, Mississippi added additional considerations (along with the medical condition of the inmate) including the implication that older, sick inmates may have on the state’s expenses and whether further incarceration would “serve a rehabilitative purpose.” *Id.*; see MISS. CODE ANN. § 47-7-4 (2012).

221. DATA-DRIVEN SOLUTIONS, *supra* note 6, at 26 (citing Brie Williams et al., *For Seriously Ill Prisoners, Consider Evidence-Based Compassionate Release Policies*, HEALTH AFF. (Feb. 6, 2017), <https://www.healthaffairs.org/doi/10.1377/hblog20170206.058614/full/>).

222. *Commission Organization*, *supra* note 137. All three of the current Commissioners have a background in prosecution or law enforcement. *Id.*

223. *Organization: Commissioner Melinda N. Coonrod, Chairman*, FLA. COMMISSION ON OFFENDER REV., <https://www.fcor.state.fl.us/chair.shtml> (last visited Apr. 17, 2021).

224. *Id.*

The Prison Policy Initiative argued that prosecutors should not be permitted to weigh in on the parole process because “[t]heir voices belong in the courtroom when the original offense is litigated.”²²⁵ By allowing prosecutors to have an opinion, the parole decision is no longer based on the inmate’s transformation or current behavior; rather, the decision is “contaminated by outdated information” that was used when convicting the inmate.²²⁶ It is as if the inmate is being retried by a prosecutor for the same crime. By only involving people with backgrounds in prosecution, the parole review lacks other viewpoints and perspectives – this could be remedied by including a prior defense attorney who is more likely to view the process from the inmate’s perspective.

Many other states have already begun reforming their own parole systems,²²⁷ including Ohio.²²⁸ The Governor of Ohio, Mike DeWine, is pushing criminal justice reform and intends to expand the viewpoints on the state’s parole board.²²⁹ Governor DeWine is seeking to make the process more transparent and implementing new guidelines for the board when determining inmate misconduct.²³⁰ In May of 2019, Governor DeWine stated that he believes the main priority in reforming the state’s parole system should be to “diversify[] the parole board,” and include more people “with different experiences.”²³¹ By involving individuals with diverse backgrounds, the decisions of the Commission will better reflect the multiple perspectives that are present in parole decisions.

225. Renaud, *supra* note 61 (summarizing and explaining the parole systems of all fifty states and suggesting ways to improve upon the same).

226. *Id.*

227. Nicole D. Porter, *Top Trends in State Criminal Justice Reform, 2018*, THE SENT’G PROJECT (Jan. 16, 2019), <https://www.sentencingproject.org/publications/top-trends-state-criminal-justice-reform-2018/> (explaining that Mississippi, Michigan, and Oklahoma are a few states that have adopted parole reforms in the past year); *see, e.g.*, Dan Petrella, *Gov. J.B. Pritzker Signs Law Creating Parole Review for Young Offenders with Lengthy Sentences*, CHI. TRIBUNE, Apr. 1, 2019, <https://www.chicagotribune.com/politics/ct-met-jb-pritzker-parole-reform-20190401-story.html> (reforming Illinois’ parole system to allow for young adults sentenced to lengthy prison time to be eligible for parole after serving ten years).

228. Laura A. Bischoff, *Gov. DeWine Calls for Reform of Ohio Parole Board After DDN Story*, DAYTON DAILY NEWS (May 1, 2019), <https://www.daytondailynews.com/news/gov-dewine-calls-for-reform-ohio-parole-board-after-ddn-story/U7iZPk6DMoFZVD8Om4OdbO/>.

229. *Id.*; *see* Jeremy Pelzer, *Ohio’s Parole Board Undergoes Sweeping Reforms to Increase Transparency & Fairness*, CLEVELAND (May 1, 2019), <https://www.cleveland.com/politics/2019/05/ohios-parole-board-undergoes-sweeping-reforms-to-increase-transparency-fairness.html> (explaining how the Ohio parole process has been criticized in recent months for being too arbitrary).

230. Bischoff, *supra* note 228.

231. *Id.*

VI. CONCLUSION

Florida's pattern of passing harsh laws, including mandatory minimum sentencing guidelines and truth in sentencing laws, exemplifies the state's implicit policy of being tough on crime. These laws, however, have inevitably destroyed the parole mechanism for nonviolent offenders sentenced in Florida after October 1, 1983. Nonviolent inmates should have a more conceivable opportunity to be released early due to Florida's current high prison population, the high costs to Florida taxpayers to house these inmates, and the negative implications of extended periods of incarceration on the inmates themselves. Not only should the Commission be giving more weight to important factors such as the inmate's current behavior, gain time, and age, but the Commission should also reconsider the salient factors used in its determination and combine the factors that cause an unnecessary overlap. Florida lawmakers need to increase the number of decisionmakers on the Commission, and the group should include individuals with diverse qualifications to allow for more perspective. Therefore, restoring, restructuring, and reinvigorating Florida's parole system is imperative to alleviate preventable issues the state of Florida is currently battling.