

CRIMINAL JUSTICE

Overview

In the late 1980's, Florida's citizens were barraged with bad news concerning crime and demanded results from state officials. Violent crime in Florida had been increasing since the 1970's, and in response to the rise in crime, the Legislature passed a number of bills requiring stiffer sentencing. Construction of new prison beds was limited however. As a result, Florida's prisons were crowded beyond capacity. In 1975, the federal courts granted an injunction requiring Florida to alleviate prison overcrowding. A decade later, Florida's prisons were still overflowing and army-style tents on prison grounds housed yet more prisoners.

To avoid an across the board release ordered by federal judges, the Legislature enacted an administrative gain time statute which served as a population pressure relief valve. While the measure prevented a judicial release of offenders, it reduced time-served for many prisoners to 20 to 37 percent of sentence. This rendered the sentencing structure ineffectual.

In 1987, serious expansion of prison capacity began, but crime was reaching an all time high, in part as a result of the early releases. Since 1988, bed space and time served in Florida's prisons has doubled. Early release has been replaced with conditional release with the possibility of return to prison for the duration of the sentence.

The decision to incarcerate involves a substantial commitment of taxpayer resources. An efficient and effective criminal justice system must prioritize the incarceration of individuals based upon the actual threat to public safety. Recently in Florida, the policy decision has been made to reserve the stiffest sentences for habitual and violent offenders and those who use firearms in the commission of a crime. The table that concludes this section illustrates, over time, the policies and their results.

There has also been a recent trend to balance the threat posed to public safety by the older and more violent juvenile offenders with the same policies and balances previously reserved for adults. Current policies also recognize, however, that some young adult offenders can be rehabilitated through youthful offender status and programs designed to rescue them from becoming incorrigible, hardened lifelong criminals.

Beyond punishment for criminal acts, the Legislature has taken significant steps to directly enhance personal safety and prevent criminal conduct. Some sexual offenders are likely to pose a continuing threat to others, even after extensive incarceration. To control this threat, the Florida Legislature has provided for registration of sexual offenders and, in some cases, civil commitment. In addition, Florida was an early state to adopt a permit system to empower law-abiding citizens to carry concealed weapons for self-defense. These policies are also explained below.

CRIMINAL PUNISHMENT

Since the 1980s, the Florida Legislature has taken a number of steps to ensure that criminals are fully punished. These steps reached their greatest intensity in 1994 and 1995, when sentencing guidelines were reformed and then strengthened and a major prison construction initiative begun. Policies have also been adopted to more severely punish those who reoffend after an early release, those who repeatedly commit violent crimes, and those who use firearms in the commission of a crime.

The 85 Percent Rule

Prior to 1995, prisoners were awarded various types of gain-time, which resulted in prisoners serving a small percentage of the sentence received. Under one sentencing scheme, the Safe Streets Initiative of 1994, a prisoner could be awarded up to 25 days of gain-time for each month of prison served. In 1995, the Legislature passed the Stop Turning Out Prisoners Act, which mandates that, for offenses committed on or after October 1, 1995, inmates be required to serve a minimum of 85 percent of their sentence. As a result, on average, prisoners serve a much higher percentage of their sentence than they had previously. Prisoners released in June 2000 served an average of 80.9 percent of their sentence. In comparison, prisoners released in June 1990 served an average of 33.1 percent of their sentence.

The Punishment Code

The sentencing guidelines, which became effective January 1, 1994, and were subsequently revised October 1, 1995, divided most felony crimes into 10 levels of severity. A point system was used to determine sentence recommendations for felony offenders. An offender would receive a score based on the severity of the primary offense, additional offenses committed during the primary crime, the offender's prior record, and the extent of victim injury. The score would then be converted into a sentence recommendation of either a "non-state prison sanction" or a specific term of months in prison. A 25 percent increase or decrease in the number of prison months recommended was still considered "within the guidelines range" and not considered a "departure" sentence. Judges were prohibited from sentencing defendants above or below the sentencing guidelines unless statutorily authorized as an upward or downward departure sentence. Sentencing an offender to the statutory maximum provided for life felonies, or felonies of the first, second, and third degree, was only authorized if the court imposed an upward departure sentence based upon the existence of "aggravating" factors.

Effective October 1, 1998, the Florida Criminal Punishment Code (the Code) replaced the guidelines. All noncapital felony offenders in adult court are subject to the Code for offenses committed on or after October 1, 1998. The Code establishes a "floor," or minimum sentence that a court may impose for the offenses before it, unless a reason for a more lenient sentence (a "downward departure sentence") is authorized by statute. This minimum sentence is called the "lowest permissible sentence." Unlike the sentencing guidelines, however, the Code does not establish an upward "cap" on a prison sentence based on points. Under the Code, the judge has the discretion to sentence an offender up to the statutory maximum based on the severity of the offense, rather than on aggravating factors. For third degree felonies the statutory maximum is

5 years, for second degree felonies the maximum is 15 years, and for first degree felonies the maximum is 30 years.

The Prison Releasee Reoffender Act

In late 1996 and early 1997, two court decisions were issued that affected previous legislative efforts to restrict several early release mechanisms used to control prison population.

In October 1996, the Florida Supreme Court ruled in Gwong v. Singletary that the Department of Corrections (DOC) could not change the manner in which “incentive gain time” had been previously awarded, because a retrospective change violated the Ex Post Facto Clause of the U.S. Constitution. As a result of Gwong, approximately 500 inmates were immediately released in November and December of 1996. By August 1997, approximately 1,800 additional inmates were released. Most inmates affected by Gwong, had been convicted of murder and sexual battery.

In February 1997, the U.S. Supreme Court held in Lynce v. Mathis that Florida’s 1992 and 1993 statutes, which canceled administrative gain-time and provisional release credits, violated the Ex Post Facto Clause,¹ because it disadvantaged the affected inmates by increasing their time served. As a result of Lynce, approximately 2,700 inmates had their sentences reduced from 30 days to as much as 7 years. Of those affected, approximately 500 were released during the first 2 weeks of March 1997. Since then, the remaining inmates have been released on an average of 10 to 12 inmates per month, and they will continue to be released over the next several years.

In order to address the anticipated likelihood that many of these offenders would reoffend shortly after their release, in 1997, the Legislature passed the Prison Releasee Reoffender Act. The act did not exclusively apply to this particular group of offenders due to constitutional concerns. The bill was designed to reach any offender (including those released as a result of the two court rulings) who, after serving a prison sentence, commits a qualifying violent felony within 3 years of being released from prison. Persons sentenced under this act must be sentenced to the maximum period of incarceration for their crimes and serve 100 percent of the court-imposed sentence. A court is not precluded from imposing a greater sentence if a longer sentence is otherwise provided by law through the use of sentencing enhancements.

Three-Time Violent Felony Offenders/“Three Strikes”

In 1999, the Legislature passed the Three-Time Violent Felony Offender Act, which requires the court to impose a minimum mandatory term of imprisonment if the defendant is being sentenced for one of a list of violent felonies, has two previous convictions for violent felonies, and the offense before the court was committed within 5 years of serving a sentence for a violent felony. The minimum mandatory sentence that must be imposed is equal to the statutory maximum sentence for the crime committed: 30 years in prison for a first degree felony; 15 years in prison for a second degree felony; and 5 years in prison for a third degree felony. Florida statutes

¹ Article I, Sections 9 and 10 of the Florida Constitution prohibit laws that retrospectively change the legal consequences of acts or deeds.

contain other sentencing enhancement mechanisms with different specific criteria for sentencing a defendant with prior felony convictions, including the Habitual Felony Offender Act, Habitual Violent Felony Offender Act, and the Violent Career Criminal Act.

However, in February 2000 the Florida Supreme Court struck down the Violent Career Criminal Act passed in 1995, which increased punishment for certain offenses under the sentencing guidelines and created civil remedies for victims of domestic violence, because the bill violated Article III, Section 6 of the Florida Constitution, requiring every law to have only one subject. As a result, more than 12,000 inmates who were adversely affected by the 1995 guidelines are entitled to file motions in circuit court to be sentenced under the 1994 guidelines and receive a lesser sentence.

GUN CRIMES

In recent years the Florida Legislature has enacted a number of laws relating to the sale, possession, and use of weapons and firearms. The Legislature has been proactive in areas such as sentencing of offenders who use firearms in the commission of a crime. These laws have targeted the punishment of armed criminals and the protection of the public, without damaging the rights of law-abiding citizens of the State.

10-20-Life

In 1999, Florida enacted one of the toughest gun crime laws in the country. Section 775.087, F.S., popularly known as “10-20-Life,” established new and longer minimum mandatory prison sentences for criminals convicted of committing violent crimes or drug trafficking offenses while armed with a firearm. The minimum prison sentences apply to specific violent felonies including murder, sexual battery, robbery, arson, kidnapping, home-invasion robbery, and carjacking. Criminals who possess a firearm during the commission of any of the specified felonies are subject to a 10-year minimum term of imprisonment. If the firearm possessed is a semi-automatic weapon or machine gun, the minimum mandatory prison term is increased to 15 years. If the perpetrator discharges the gun during the commission of the crime, the minimum term of imprisonment is increased to 20 years. If the gun is fired and someone is seriously injured or killed, the perpetrator is subject to a minimum term of 25 years imprisonment, and may be sentenced to life imprisonment.

Despite the name, “10-20-Life,” the law actually provides for a 3-year minimum mandatory prison term (as opposed to the 10-year minimum term) for aggravated assault, burglary of a conveyance, and possession of a firearm by a convicted felon. Criminals serving the minimum mandatory portion of their sentence under “10-20-Life” are not eligible for discretionary early release.

10-20-Life “Junior”

During the 2000 Legislative Session, legislation was passed (chapter 2000-136, Laws of Florida) to apply the provisions of “10-20-Life” to juvenile offenders 16 and 17 years of age, who either

possess a firearm during the commission of a crime and meet specific eligibility criteria, or discharge a firearm during the commission of a crime.

Weapons in Schools

The 1999 Legislature passed legislation (chapter 99-284, Laws of Florida) to restrict weapons and firearms on school property in response to the number of firearms and weapons related acts of violence on school premises throughout the country.

Florida law provides that a minor charged with possessing or discharging a firearm on school property be held in secure detention, with a probable cause hearing to be held within 24 hours after the child is taken into custody. The court may order that the child continue to be held in secure detention for a period up to 21 days, during which time the appropriate medical, psychiatric, psychological, or substance abuse examinations can take place and a written report can be completed. The penalty for a minor charged with possession of a firearm for a second or subsequent offense was increased from a first degree misdemeanor to a third degree felony. The allowable time in detention was also increased and minimum mandatory detention periods were provided, as well as other treatment provisions for offenses involving the use or possession of a firearm. In addition, juveniles who are convicted of any felony are prohibited from possessing firearms for any purpose until they reach age 24.

Constitutional Waiting Period on Handguns

A constitutional waiting period on retail delivery of handguns adopted by voters in 1990 was implemented by the 1991 Legislature and has been revised by the Legislature in 1992, 1998, and 1999. A 3-day waiting period (excluding weekends and legal holidays) is required between the purchase and the delivery of any handgun. The 3-day waiting period does not apply when a citizen, who holds a valid concealed carry permit, is the purchaser of the handgun or if there is a trade-in of another handgun at the time of purchase. After Florida adopted its handgun waiting period, Congress passed a similar law in 1999.

CRIME PREVENTION

Sexual Predator Registration, Commitment and Treatment

Sexual predator registration has been broadened and expanded over the years since the initial enactment of the Florida Sexual Predators Act in 1993. The original purpose of the act was to enhance public safety by requiring the registration of sexual predators, providing for the monitoring of their activities, tracking their whereabouts, and facilitating law enforcement investigation and prosecution.

The original act applied to offenders who were convicted of specified crimes committed on or after October 1, 1993. The designation of "sexual predator" applied to individuals who committed a single offense that was a capital, life, or first degree felony violation for sexual battery or selling or buying of minors for sexual purposes. "Second offense" sexual predators were those convicted of second degree or greater felony violations for sexual battery, lewd,

lascivious, or indecent acts, or for sexual performance by a child, where the offender had a previous conviction for a specified sex offense. If the court made a written finding of sexual predator status, the individual was required to provide registration information to the Florida Department of Law Enforcement (FDLE). Any change of residence of the sexual predator required reregistration within 48 hours. However, these individuals were not subject to agency-initiated community and public notification.

In 1996, chapter 96-388, Laws of Florida, broadened the criteria for determining who would meet sexual predator status. This act further provided that sexual predators who committed an offense on or after October 1, 1996, were required to register with FDLE and were subject to broad agency-initiated community and public notification. This included FDLE's notification to the sheriff, the state attorney, and the chief of police of the community within 48 hours of the sexual predator's registration. Law enforcement could provide the community with information including the name of the predator, a description and photograph, the predator's current address, and the circumstances of the predator's offense. In addition, sexual predators were prohibited from working with children.

Effective October 1, 1997, the Public Safety Information Act established that all sexual predators who committed crimes on or after October 1, 1993, would be subject to mandatory community notification and registration requirements. Additionally, the act broadened registration requirements to include sex offenders who had been released from any sanction of the court, or from the custody of the DOC, on or after October 1, 1997.

Effective July 1, 1998, notification requirements were broadened further by mandating that the sheriff or chief of police must notify each public or private day care center, elementary school, middle school, and high school of the sexual predator's presence in the community. Also in 1998, the Sexual Predators Act amended Florida's laws relating to registration of sexual predators to comply with federal standards conditioning federal funding, which the state receives.

Since January 1, 1999, the Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act has been in force. The act establishes legal procedures by which sexually violent predators may be committed to the Department of Children and Family Services for control, care, and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large.

Self-Defense: Concealed Carry Permits

The concealed carry permit system was passed into law by the 1987 Legislature. The original law allowed citizens of Florida to carry a weapon or firearm concealed on their person, provided they were in possession of a valid permit issued by the Secretary of State's office. At the time, Florida was one of the first states to issue such permits and has since been a model for other states.

Since 1987, the Legislature has revisited the concealed carry permit law nearly every year. The program was modified by the 1999 Legislature to allow citizens of other states to carry a

concealed firearm in Florida, so long as they hold a valid permit in their home state, and the home state allows citizens of Florida to carry a concealed weapon or firearm in that state.

Section 790.06, F.S., establishes who is authorized to carry a concealed weapon or firearm and what individuals are exempt from the permitting process (primarily law enforcement officers). The statute mandates a training course prior to the application process for a concealed carry permit. The law also provides that a license will be revoked for circumstances including, but not limited to, convictions related to the use of controlled substances, any felony or misdemeanor of the first degree conviction relating to a domestic violence conviction, or an adjudication of incapacitation. A permit does not authorize a citizen to carry a concealed weapon or firearm in an airport, a place that serves alcoholic beverages, any school, or a jail or detention facility.

JUVENILE JUSTICE

In contrast to the adult criminal justice system, which is generally considered to operate under a “retributive” model of justice, Florida has traditionally managed juvenile offenders under a “rehabilitative” model of justice. A juvenile who is alleged to have committed a violation of law is formally charged by the filing of a petition for delinquency by the state attorney. The issue of delinquency is decided by the court in a proceeding called an adjudicatory hearing. A finding of delinquency does not operate as a criminal conviction, but may result in the offender being placed in a residential commitment facility against his or her will. Because a juvenile is subject to serious deprivation of liberty upon adjudication, federal constitutional law requires that juveniles be afforded many of the same due process safeguards afforded adult criminal defendants. For example, a juvenile offender has the same right to counsel as an adult defendant. The standard of proof at an adjudicatory hearing is the same as at a criminal trial -- proof beyond a reasonable doubt. In other respects, juvenile proceedings differ from criminal trials. A jury is not involved.

Ultimately, a juvenile charged with a violation of law has a state constitutional right to be charged and tried as an adult.² Florida law specifies several circumstances where the state is afforded the right to initiate the prosecution of a juvenile offender in the adult criminal system. Nonetheless, many of these offenders remain subject to juvenile, rather than adult, sanctions at the discretion of the trial judge. Changes in policy have set forth the circumstances where the state no longer has a primary interest in rehabilitating juvenile offenders.

In 1994, Florida began changing its direction away from a social service approach to delinquent behavior, toward a criminal justice approach. Prior to that time, all “proceedings relating to children” were contained in chapter 39, F.S., which addressed all manner of actions involving children, ranging from dependency actions in child abuse cases to delinquency proceedings for juvenile offenders charged with criminal acts. The administrative responsibility for all children affected by chapter 39, F.S., was assigned to the Department of Health and Rehabilitative Services (HRS). The agency’s approach to handling “dependent” children (typically children under state care for abuse, neglect or abandonment) and “delinquent” children (children found to

² Article I, Section 15 of the Florida Constitution

have committed a crime) was the same--provide social services to the child and the family in order to fix what was is broken.

In 1994, the Legislature created the Department of Juvenile Justice (DJJ), providing for the transfer of powers, duties, property, records, personnel, and unexpended balances of related appropriations and other funds from the HRS Juvenile Justice Program Office to the new agency. The DJJ was assigned responsibility for children and families in need of services (CINS/FINS) cases and juvenile delinquency cases. Substantively, juvenile justice provisions of chapter 39, F.S. remained virtually unchanged until 1997 when they were removed and recreated as chapters 984 and 985. Many of the DJJ employees had previously been employees of HRS. Philosophically, DJJ continued to approach juvenile offenders as children needing social services, rather than as juvenile offenders in need of both rehabilitation and punishment.

A 1998 DJJ caseload examination revealed that although "chronic offenders" made up only 16.2 percent off all juvenile offenders, they accounted for 72.1 percent of the adjudicated cases, and 46.2 percent of all cases. In fiscal year 1997-98, juveniles released from "minimum risk" commitment programs averaged nearly nine prior delinquency referrals upon entry into the programs. Juveniles released from "high risk" and "maximum risk" commitment programs averaged nearly 18 prior delinquency referrals with more than 6 felony adjudications. It became apparent that a great deal of juvenile justice resources were being consumed by the older repeat and more violent juvenile offenders cycling in and out of programs without success. For every older, repeat and violent juvenile offender consuming resources in an expensive juvenile program without success, younger more impressionable youth with less serious delinquency histories were forced either onto waiting lists or into less structured community programs with minimal supervision. It was not uncommon for a juvenile waiting to be placed into a commitment program for a serious crime to commit more serious crimes while waiting for placement, further reinforcing patterns of delinquent behavior.

In the 2000 session the Legislature passed HB 69. This bill defined a class of primarily 16 and 17 year old violent and repeated felony juvenile offenders for mandatory removal from the juvenile system and placement into the adult system for prosecution and disposition. The purpose of the bill was twofold. First, it attached more adult consequences for 16 and 17 year old offenders who commit repeated and violent "adult" crimes. Second, it removed a class of offenders from the juvenile system who are believed unamenable to rehabilitative efforts of the juvenile system, thereby making room for those younger more impressionable youth who have been previously denied the most appropriate commitment program due to lack of bed space.

EXPANSION OF CORRECTIONAL INSTITUTION CAPACITY

Florida's state correctional facilities housed 71,233 prisoners on June 30, 2000. About one-third of the residential beds space available for these prisoners were created during the past 12 years. About 12,000 of these new beds were authorized in the single budget year of 1994-95. This expansion of institutional capacity has ended the earlier practice of early release to ease overcrowding. Florida now has the ability to carry out its policy that prisoners serve a minimum of 85 percent of their sentences. Completion of an additional 20,000 beds is scheduled under the 1999-2004 5-year plan of the DOC.

Prior to 1995, the DOC's measurement of bed capacity was greatly influenced by the Costello v. Wainwright lawsuit.³ As a result of this lawsuit, the state signed an agreement in 1979 that allowed the correctional system to operate at maximum capacity, until June 1985, at which time the agreed-upon capacity (lawful capacity) would be reduced to 33 percent above design capacity. In effect, for every 100 design beds in the system, the department can house 133 inmates.

The Florida Legislature provided the assurance that the DOC would continue to abide by the lawful capacity agreement by codifying these standards into Florida statute. The 1995 Legislature redefined the lawful capacity as "total capacity" and increased it from 133 percent to 150 percent of design capacity.⁴

Private Prisons

In 1989, the Legislature authorized the DOC to enter into contracts with private corrections firms for the construction and operation of private prisons. (See section 944.105, F.S.). The goal of the privatization was to promote cost-savings, speedy construction, and efficient management. Implementation of the law was delayed by a series of bid protests, legal challenges, budget reductions, inability of bidders to meet the 10 percent cost savings criterion and disagreements on cost estimates produced by the DOC. Finally, the State of Florida opened a 768-bed private prison in Gadsden County in March 1995.

The 1993 Legislature established in chapter 957, F.S., a five-member Correctional Privatization Commission (CPC) within the Department of Management Services. The CPC was charged with entering into a contract with vendors for the financing, construction and management of two 750-bed private correctional facilities. These two facilities were opened in July and August of 1995. Since 1995, two more private prisons have opened, and the Gadsden County facility was placed under the jurisdiction of the CPC in 1999. Currently, the state contracts through CPC for approximately 4,000 privatized beds serving the adult correctional system.

Results of Legislative Policy

As a result of the changes in sentencing laws, supported by expansion of prison capacity, criminals convicted of violent crimes in Florida are serving longer terms of imprisonment and crime rates have fallen substantially. The following chart reflects the changes in sentencing laws, prison capacity and the rate of and time served for violent offenses during recent years.

³ This case was originally filed in 1972 as a health care lawsuit and was later expanded to cover overcrowding and general prison condition issues. The case was active for 21 years.

⁴ The new law provided a few exceptions to the 150 percent requirement, such as medical or mental health beds and confinement beds. The bill also provided that when it is evident that the system may exceed total capacity, the Secretary shall devise a plan which addresses alternatives to prevent over capacity from occurring. The plan must be submitted to the Governor and the Legislature at least 30 days prior to any projected bed deficit.

CRIMINAL JUSTICE POLICIES, POPULATIONS AND RESULTS

Sentencing Policy	Gaintime Policy	Release Practices	New Construction Authorized	Inmate Population June 30	YEAR	Years Served For Violent Crimes	Crime Rate
Indeterminate sentencing through a parole system	Up to 20 or 36 days per month served for Incentive or Work/ Extra Gaintime	Parole or expiration of sentence	NA		1979-80	6.0	787.0
					1980-81	5.7	965.1
					1981-82	6.4	970.1
					1982-83	6.4	897.7
Determinate sentencing under 1983 Sentencing Guidelines	Basic gaintime reduced sentences by one-third upon entering prison. Incentive gaintime up to 20 days per month served.	Expiration of sentence	NA	28,310	1983-84	5.4	826.8
					1984-85	4.8	869.7
					1985-86	4.5	949.0
Determinate sentencing under 1983 Sentencing Guidelines	Basic gaintime reduced sentences by one-third upon entering prison. Incentive gaintime up to 20 days per month served.	Expiration of sentence and early prison release due to overcrowding	NA	32,764	1986-87	4.0	1,044.0
			4,158	33,681	1987-88	3.6	1,032.5
			4,085	38,059	1988-89	3.7	1,131.1
			8,022	42,733	1989-90	4.4	1,159.6
			6,508	46,233	1990-91	5.1	1,240.9
			178	47,012	1991-92	5.4	1,198.7
			6,951	50,603	1992-93	5.9	1,200.3
1994 Sentencing Guidelines	Up to 20 or 25 days of incentive gaintime per month served	Expiration of sentence	17,033	61,992	1994-95	6.7	1,136.6
1995 Sentencing Guidelines and Criminal Punishment Code	Incentive gaintime up to 10 days per month served, however, gaintime cannot cause inmate to serve below 85% of sentence	Expiration of sentence	3,552	64,333	1995-96	6.5	1,061.6
			0	64,713	1996-97	7.3	1,050.2
			534	66,280	1997-98	7.7	1,025.0
			806	68,599	1998-99	8.6	931.1

Note: Sources-Department of Corrections and F.D.L.E. Not all authorized construction was completed due to changing budgetary requirements. Major prison expansion, low time served and high crime rates are in bold.