



ROBINA INSTITUTE
OF CRIMINAL LAW AND CRIMINAL JUSTICE

PRISON-RELEASE DISCRETION AND PRISON POPULATION SIZE

STATE REPORT: FLORIDA

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April 2021

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Definitions and Concepts

“Indeterminacy” means “unpredictability of time served.” Once we know the terms of a particular judicial sentence, can we say with confidence how much time the defendant will actually serve before the sentence’s expiration? If actual time-that-will-be-served is highly unpredictable based on the pronounced judicial sentence, then the sentence is highly indeterminate. If actual time-to-be-served is knowable within a relatively small range of possibility, then the sentence has a low degree of indeterminacy—or, we might say—it has a high degree of determinacy. “Determinacy” means “predictability of time served” at the time of judicial sentencing.

Scaling up to the systemwide level, the project explores the degree to which prison population size in each state is placed under the jurisdiction of decision makers who exercise time-served discretion after judicial sentences have been finalized. Higher degrees of indeterminacy across individual sentences add up to greater control over prison population size by “back-end” agencies such as parole boards and departments of correction. These structural features vary greatly across U.S. jurisdictions. One goal is to inform state governments how they may deliberately adjust their laws and practices of prison-release authority to achieve desired policy goals, such as reductions of prison populations in a manner consistent with public safety

Note on the project’s rankings of “degrees of indeterminacy”

To compare the degrees of indeterminacy in individual prison sentences or across the prison-sentencing systems of different jurisdictions, we use a qualitative ranking framework based on our cumulative learning while preparing the project’s 52 jurisdiction-specific reports. To avoid false precision, we place all systems within one of five categories (see table below).

Each of the five categories can be expressed in alternative terms: either the *degree of indeterminacy* or *degree of determinacy* thought to be present. Our five tiers are based on the variations we observe in current American sentencing systems, not any absolute or theoretical conceptions of degrees of indeterminacy that could be imagined in hypothetical systems.

The ranking scale is subjective, although the reasoning that supports our judgments is laid out in each report. Ultimately, the rankings indicate only the rough position of specific prison-sentencing systems vis-à-vis each other. No two American prison-release systems are alike and all are highly complex, so nuanced comparative analysis requires closer inspection.

Rankings of “Degrees of Indeterminacy”

Ranking	Alternative terminology	
1	Extremely-high indeterminacy	Extremely-low determinacy
2	High indeterminacy	Low determinacy
3	Moderate indeterminacy	Moderate determinacy
4	Low indeterminacy	High determinacy
5	Extremely-low indeterminacy	Extremely-high determinacy

Prison-Release Discretion and Prison Population Size

State Report: Florida¹

Executive Summary

We place Florida's prison-sentencing system in the category of *extremely high determinacy*. Florida has one of the nation's most unvarying determinate systems, with no parolable sentences of any kind in current law. All life sentences are life terms without the possibility of parole. Compassionate release is a parole function in Florida, but this affects only a tiny percentage of all prisoners.

Because there is no discretionary parole release in Florida, the only agency with substantial prison-release discretion across the bulk of prisoners is the department of corrections, exercised through the administration of gain-time credits. While the department stands alone in this domain, its back-end authority reaches only a modest fraction of total time-to-be-served by prisoners. Its ability to affect prison population size through the use (or nonuse) of its releasing powers is modest compared to back-end decision makers in many other states.

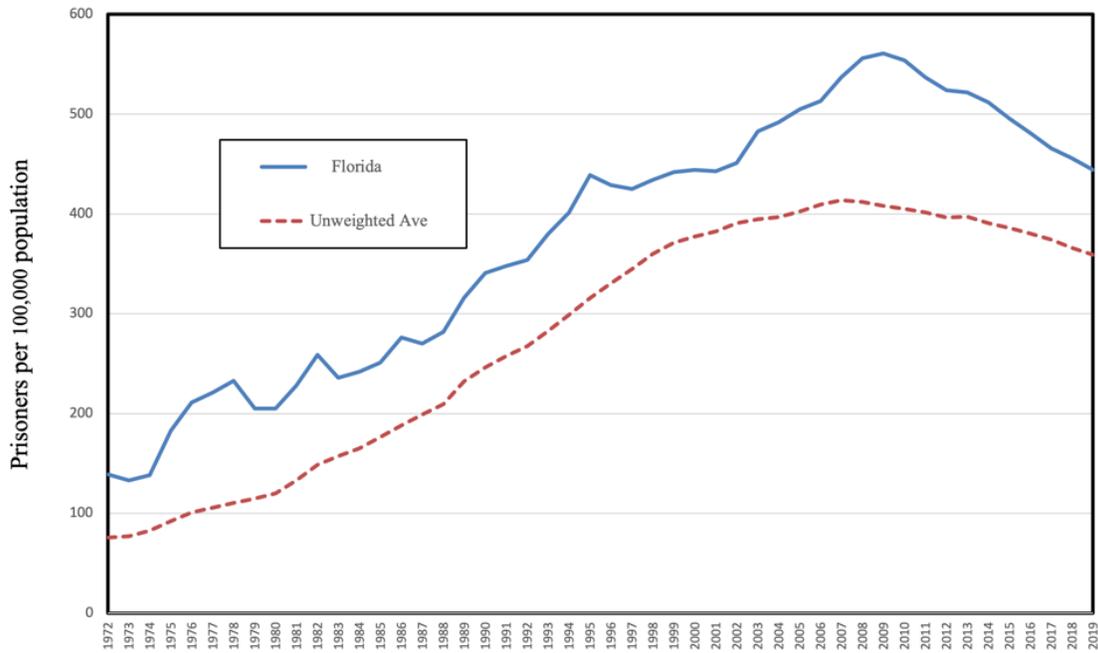
¹ This report was prepared with support from Arnold Ventures. The views expressed are the authors' and do not necessarily reflect the views of Arnold Ventures. We thank Laura Tully for her review of an earlier draft.

Introduction

Florida’s prison-rate history, 1972 to 2019

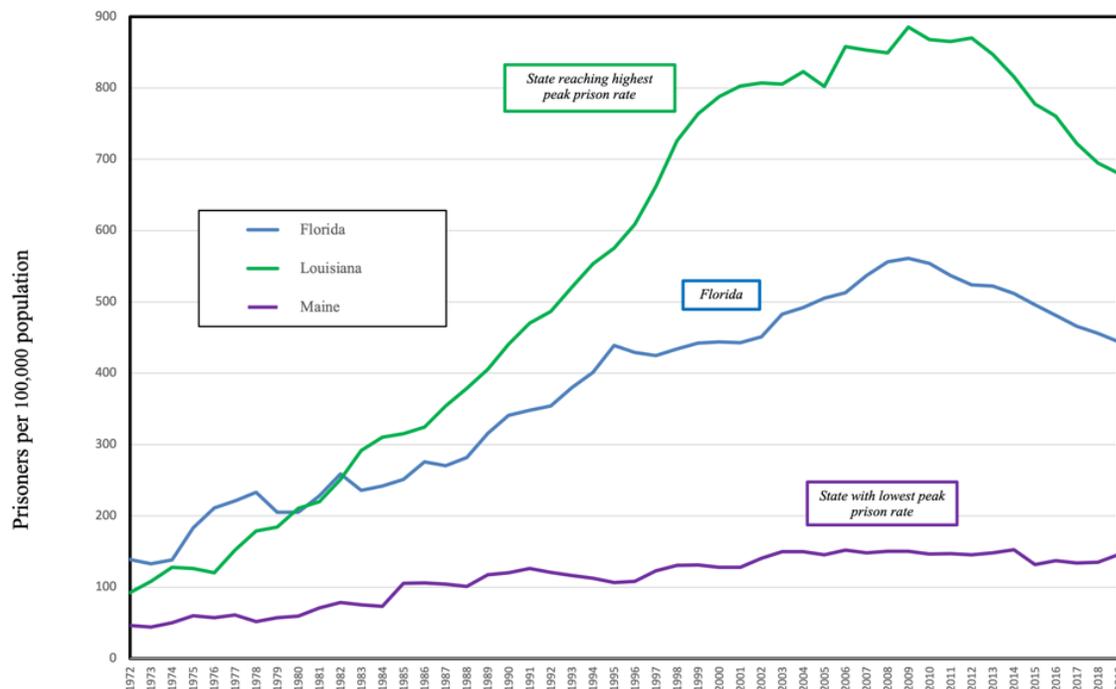
In 2019, Florida’s prison rate was 444 per 100,000 general population, with a yearend prison population of 96,009.² Florida’s prison rate was 10th highest among all states, or 13th lowest.

Figure 1. Prison Rate Change in Florida and (Unweighted) Average Among All States, 1972 to 2019



² E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 7 table 4, 11 table 7.

Figure 2. Prison Rate Change in Florida, Louisiana, and Maine, 1972 to 2019



Sources: Timothy J Flanagan, Kathleen Maguire & Michael J. Hindelang, *Sourcebook of Criminal Justice Statistics, 1990*, at 605 table 6.56, Rate (per 100,000 resident population) of sentenced prisoners under jurisdiction of State and Federal correctional authorities on December 31: By region and jurisdiction, 1971-1989 (Hindelang Criminal Justice Research Center, 1991) (for 1972-1977); E. Ann Carson, *Imprisonment rate of sentenced prisoners under the jurisdiction of state or federal correctional authorities per 100,000 U.S. residents, December 31, 1978-2016* (Bureau of Justice Statistics, Corrections Statistical Analysis Tool) (for 1978-2016), at <https://www.bjs.gov/index.cfm?ty=nps> (visited May 24, 2020); E. Ann Carson, *Prisoners in 2018* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2017); E. Ann Carson, *Prisoners in 2019* (Bureau of Justice Statistics, 2020), at 11 table 7 (for 2018-2019).

Florida reached its peak prison rate during the national buildup period in 2009 at 561 per 100,000, which dropped to 444 per 100,000 in 2019. This is a net difference of -117 per 100,000, which was the 15th largest prison-rate drop of all states.

Figures 1 and 2 span two important periods in American criminal-justice history. From 1972-2007, the United States lived through 35 years of uninterrupted growth in the nationwide prison rate. This might be called the Great Prison Buildup. Since 2007, prison rates have been dropping in the average American state, although each state has charted its own course.

Organization of this report

This report is divided into four parts. Parts I through III describe the contours of Florida’s prison-release system in some detail, with extensive citations and statutory analysis. Part I surveys the prison-release rules that apply to most prisoners. Part II then covers a number of important subgroups of prisoners who are not subject to the general rules. Part III catalogues some additional prison-release mechanisms that exist in Florida but are infrequently used, such as medical release and the clemency power.

Part IV draws on the raw research in Parts I through III to analyze and model the degrees of indeterminacy that exist for the most important subgroups of prisoners who are serving different classes of sentences. Ultimately, if a large enough percentage of all prisoners are included, this allows for broad observations about the Florida system as a whole. The overarching goal of Part IV is to explore the relationship between the various forms of prison-release discretion in Florida and the size of the state’s prison population.

Terminology note

This report will refer to the Florida Commission on Offender Review as the “parole board.” The Florida Department of Correction will be referred to as the “department of corrections.”

1. General rules of prison release

Florida eliminated discretionary parole for the vast majority of prison sentences in 1983.³ Prisoners in Florida are released after serving their judicial maximum sentences minus “gain-time” deductions.⁴

Prisoners can earn three different types of gain time to be deducted from their judicial maximum sentences, establishing earlier dates of mandatory release if credits earned are not forfeited.⁵ Standard gain-time credits, if earned continuously their terms, would produce release dates as early as the 75-percent mark of prisoners’ maximum sentences.⁶ However, total deductions for all forms of gain time are capped by statute at 15 percent of judicial maximum sentences. Prisoners’ earliest possible release dates thus occur at the 85-percent mark of their maximum terms.⁷

Figure 3 shows the timeline for general-rules prisoners in Florida who earn enough credits to win the largest allowable deductions against their maximum terms. Such sentences are 85 percent determinate and 15 percent indeterminate. That is, 85 percent of the potential time served under such sentences is “determined” at the time of judicial sentencing. Only 15 percent of possible time-to-be-served is left undetermined by the court’s sentence, to be governed by back-end officials with prison release discretion. In this case, the only relevant decision makers at the back end of Florida’s prison-sentencing system are corrections officials who administer the state’s system of gain-time credits, including their award and forfeiture.

³ The state retains a parole board, the Commission on Offender Review, for offenders sentenced prior to October 1, 1983. As of May 2016, there were 4, 552 inmates still eligible for parole consideration. A few other offender categories remained parole-eligible until the 1990s. Examples include offenders convicted of first degree murders committed prior to May 25, 1994 and offenders convicted of murder of a law enforcement officer committed prior to January 1, 1990. See Fla. Comm. on Offender Review, *Release Types: Parole*, accessed Feb. 2, 2021, <https://www.fcor.state.fl.us/release-types.shtml>.

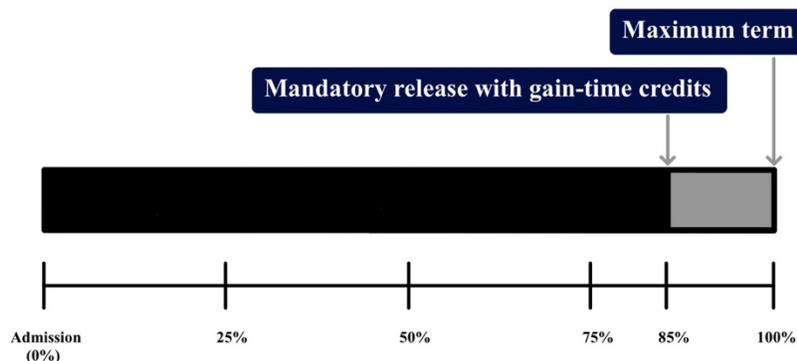
⁴ Fla. Stat. § 944.275(2)(a).

⁵ Prisoners found guilty of infractions of the laws of Florida or the rules of the department of corrections may have their gain-time forfeited. Fla. Stat. § 944.275(5).

⁶ Prisoners are eligible to earn gain time credits of 10 days per month in which “an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.” Fla. Stat. § 944.275(4)(b). Prisoners may also earn a one-time 60-day gain time reduction for completion of a high school equivalency diploma or vocational certificate. Fla. Stat. § 944.275(4)(d). Finally, a prisoner who performs “some outstanding deed,” such as saving a life or assisting in recapturing an escaped inmate, may be granted meritorious gain time of 1 to 60 days. Fla. Stat. § 944.275(4)(c).

⁷ Fla. Stat. § 944.275(4)(f).

Florida Figure 3. Prison-Release Timeline for General-Rules Prisoners with Full Gain-Time Credits



In this project, we use the term “population-multiplier potential” (or PMP) to express the amount of influence over prison population size that is ceded by law to back-end decision makers such as parole boards and prison officials. To give a simplified example, if all prisoners in a hypothetical jurisdiction were eligible for parole release after serving 25 percent of their maximum sentences, then the PMP attached to the parole board’s release decisions is 4:1. That is, if the parole board were to deny release to all prisoners for as long as legally possible (a *never-release scenario*), the resulting prison population would be four times as large as it would be if the board were to release all prisoners at their earliest allowable release dates (an *always-release scenario*).

The PMP for general-rules sentences in Florida is 1.18:1. That is, under never-release practices, the population of prisoners serving such sentences would eventually reach a size that is 18 percent larger than the same population under a regime of sustained always-release practices.

In the subjective ranking system created for this project, we classify Florida’s prison-sentencing system as one of *extremely high determinacy*. Alternatively, we could say it is

extremely low in indeterminacy. Florida is among the half dozen American jurisdictions with the most determinate systems.⁸

2. Life sentences

a. Adults

Prisoners convicted of a capital felony must be sentenced to life in prison without eligibility for parole (LWOP) if they are not sentenced to the death penalty.⁹ In current Florida law, all life sentences are LWOP sentences.

The Sentencing Project reported that, in 2016, Florida had 13,005 prisoners serving life sentences out of a total prison population of 99,938. That is, 13 percent of all prisoners were serving life sentences. The number serving LWOP sentences was 8,919, or nine percent of all prisoners.¹⁰

b. Juvenile life sentences

Prisoners convicted of capital felonies committed when they were juveniles may receive LWOP sentences following a separate sentencing hearing conducted by the court. The court must consider factors relevant to juvenile offenders' youth and attendant circumstances.¹¹

Some juvenile offenders sentenced to life imprisonment for capital felonies are eligible for review of their sentences after 25 years. Those convicted of the following offenses are ineligible for sentence review: murder; manslaughter; sexual battery; armed burglary; armed robbery; armed carjacking; home-invasion robbery; human trafficking for commercial sexual activity with a child under 18 years of age; false imprisonment; and kidnapping.¹²

⁸ See Maine, North Carolina, Oregon, Virginia, and the federal system.

⁹ Fla. Stat. § 775.082 (1)(a).

¹⁰ Ashley Nellis, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (The Sentencing Project, 2017), at 10 table 2.

¹¹ Fla. Stat. § 921.1401(1),(2).

¹² Fla. Stat. § 921.1402(2).

3. Infrequently used forms of prison release

a. Compassionate release

Prisoners determined by the department of corrections to be permanently incapacitated or terminally ill are eligible for conditional medical release.¹³ The parole board has discretionary authority to grant conditional medical release, and may require that additional medical evidence be produced or further medical examinations be conducted.¹⁴ If a releasee's medical condition improves so that they would no longer be eligible for conditional medical release, or if they violate a condition of release established by the parole board, they may be returned to the custody of the department.¹⁵

b. Clemency

The governor of Florida may grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for all offenses except treason and impeachment.¹⁶

c. Release during overcrowding emergencies

Florida does not have a law authorizing the emergency release of inmates due to prison overcrowding.

d. COVID releases

Florida reportedly released three inmates on conditional medical release in response to the COVID-19 pandemic.¹⁷ The Florida Department of Corrections Secretary Mark Inch has stated his belief that “accelerated early release creates significant risk,” and therefore has not pursued a policy of granting early prison releases in response to the pandemic.¹⁸

¹³ Fla. Stat. § 947.149(1).

¹⁴ Fla. Stat. § 947.149(3).

¹⁵ Fla. Stat. § 947.149(5)(a)-(b).

¹⁶ Fla. Const. Art. IV § 8(a).

¹⁷ Samantha J. Gross, “Florida prisons boss can’t release inmates amid COVID-19. But can he furlough them?” *Miami Herald* (May 8, 2020) <https://www.miamiherald.com/news/special-reports/florida-prisons/article242573521.html#storylink=cpy>.

¹⁸ Grace Toohey, “Advocates call for steps to release some Florida prisoners as COVID-19 spreads,” *Orlando Sentinel* (Aug. 14, 2020) <https://www.orlandosentinel.com/coronavirus/os-ne-coronavirus-lawmakers-concern-prison-cases-deaths-20200814-ctn7bdkwfcfjnpnu3pghpg22a-story.html>.

4. Overall assessment

Florida's prison-sentencing system is one of *extremely-high determinacy* overall. Florida has one of the nation's most unvarying determinate systems, with no parolable sentences of any kind in current law. All life sentences are LWOP sentences. Compassionate release is a parole function in Florida, but this affects only a small percentage of all prisoners.

Because there is no discretionary parole release, the only agency with substantial prison-release discretion across the bulk of prisoners is the department of corrections. The department's authority is exercised through decisions, largely at the prison level, concerning awards and forfeiture of gain-time credits. While the department is hegemonic in this domain, its total back-end authority reaches only a modest fraction of all potential time-to-be-served by prisoners. Its ability to affect total prison population size through the use of its releasing powers is modest compared to back-end processes in many other states.

Florida is somewhat unusual in the unitary nature of its prison-release formulas. The same basic rules apply to nearly the entire prison population. Unlike most other states, Florida has not created multiple tiers of sentence types that are governed by dramatically different rules of release. Unlike many other states, for example, Florida does not bifurcate nonviolent and violent offenders for purposes of release eligibility or credit earning rates.