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# An Analysis of Florida's Criminal Punishment Code

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# Table of Contents

Executive Summary.....	3
Introduction.....	5
History of Sentencing in Florida.....	6
Sentencing Guidelines Introduced in 1983 .....	6
Guidelines Replaced in 1994 and Revised in 1995.....	6
CPC Implemented in 1998.....	7
Purpose of the CPC .....	8
Sentence Calculation .....	9
Primary Offense.....	9
Additional Points and Enhancements .....	10
Point Totals.....	10
Data Overview and Process .....	12
General Trends in Fiscal Year 2018 Scoresheets.....	12
Data Findings .....	15
22 to 44 Point Scoresheets Account for a Significant Number of Prison Admissions.....	15
Severity of Primary Offense Does Not Correlate to Prison Sentence .....	16
Likelihood of Prison Sanction Varies Dramatically by Circuit and County .....	18
Sentences Significantly Exceed the Minimum.....	20
Crossing 44-Point Threshold Drastically Increases Likelihood of Prison Sanction .....	21
Summary of Findings .....	23
Research On Recidivism and Incarceration .....	24
Policy Considerations.....	25
Minnesota.....	25
North Carolina .....	26
Oregon.....	27
Key Guideline Characteristics for Policy Consideration by Florida.....	28
Conclusion .....	29

## EXECUTIVE SUMMARY

For over 20 years, the Criminal Punishment Code (CPC) has guided decision-making on criminal sentencing in Florida. Florida implemented the CPC in 1998 to ensure unbiased, uniform, and proportional sentencing decisions. While rehabilitation is considered a goal of the CPC, the primary purpose of sentencing, as articulated in Florida statute, is punishment.

Until recently, the CPC has undergone little analysis or assessment to understand its impact on Florida's prison and jail populations. With greater attention on Florida's sizeable prison population, the continued decline in crime rates statewide, and an abundance of research showing the harmful effects of long periods of incarceration on crime, recidivism, and rehabilitation, policymakers have begun to focus on the role and impact of the CPC. The Crime and Justice Institute (CJI) conducted this analysis to understand the CPC's impact on prison sentences and lengths of incarceration.

The CPC uses a complex formula that considers a number of factors related to the seriousness of the offense, aggravating circumstances, and prior criminal history. The final CPC score translates to a variety of outcomes: a required state prison sentence for cases exceeding 44 points, absent departure; a range of sanctions, including state prison, for those cases scoring greater than 22 and up to 44 points; and non-state prison sanctions, with some exceptions, for those cases scoring below 22 points.

This analysis focuses primarily on scoresheets receiving score totals from 22 to 44 points because this group represents a significant portion of overall CPC scoresheets in FY 2018 and the court has broad sentencing discretion in this range. Therefore, this particular category presents the opportunity to analyze variability in sentencing decisions over a large number of cases.

CJI's analysis of the data in Florida arrived at five key findings for FY 2018:

- Individuals with point totals in the 22 to 44 point range accounted for an estimated 4,500 admissions to prison, or more than 15 percent of overall admissions, in FY 2018;
- The severity of a primary offense in the CPC scoresheet does not correlate with the likelihood of a prison sentence within the 22 to 44 point group;
- The likelihood of a prison sanction for cases receiving 22 to 44 points varies dramatically by judicial circuit and county;
- Sentences in Florida significantly exceed the minimum required prison sentence within the 22 to 44 point group; and
- Exceeding the 44-point threshold drastically increases the likelihood of a prison sanction.

Since the implementation of the CPC in 1998, volumes of criminological research suggest that treatment and supervision, as opposed to incarceration, have a greater impact on reducing recidivism and victimization, and that public safety can be protected while reducing prison populations. Specifically, this body of research demonstrates that incarceration is not a panacea to public safety concerns and, in many cases, may actually contribute to crime.

Florida's sentencing policy has not changed for decades despite research indicating it may not be providing the public safety benefits envisioned, and, in fact, its emphasis on punishment may be in conflict with best practice for recidivism reduction. Moreover, the intended goals of the CPC, including proportionality, fairness, and economy, have proven to be elusive.

CJI's analysis shows an objective and a quantifiable basis for Florida to revisit the CPC's structure and limitations and to reconsider its goals with a clearer understanding of effective and efficient criminal sentencing policy.

CJI recommends that Florida consider the following policy changes:

- Rely on two primary factors in determining a sentence: criminal history and seriousness of current offense;
- Use a recommended sentence range with lower and upper limits to guide judicial decisions;
- Allow departure from a recommended range only on findings of aggravated or mitigated circumstances in writing and on the record;
- Shorten sentence lengths, given that the 85 percent time-served requirement is applied to all Florida inmates;
- Implement post-release supervision for appropriate defendants; and
- Create a meaningful right of appeal to a higher court for sentences that exceed specified ranges.

# INTRODUCTION

For over 20 years, the Criminal Punishment Code (CPC) has guided decision-making on criminal sentencing in Florida. Implemented in 1998, the CPC was designed to ensure fairness, proportionality, and uniformity in sentencing outcomes. Until recently, the CPC has undergone little analysis or assessment to understand its impact on state prison and county jail populations, or the extent to which it has met expectations. With greater attention on Florida's sizeable prison population, the continued decline in crime rates in Florida and nationwide, and an abundance of research showing the harmful effects of long periods of incarceration on crime, recidivism, and rehabilitation, policymakers have begun to focus on the role and impact of the CPC. This report examines the operation of the CPC and its effect on prison sentences and lengths of incarceration.

This analysis is the third report the Crime and Justice Institute (CJI) has prepared on Florida's criminal justice system since 2017. The first report, released in May 2017, was conducted for the Office of Program Policy Analysis and Government Accountability (OPPAGA).<sup>1</sup> *An Examination of Florida's Prison Trends* explored Florida sentencing and release policies and prison population trends over a 10-year period. The findings focused on the cause of Florida's static prison population, despite significant reductions in admissions to prison and a plummeting crime rate. The data indicated that the reduction in prison admissions was offset by a significant increase in both prison sentences and the amount of time served in prison.<sup>2</sup>

A subsequent analysis for the Florida Senate resulted in a second report, *Data-Driven Solutions to Improve Florida's Criminal Justice System*, published in February 2018.<sup>3</sup> Integrating current research on recidivism reduction and state examples, the report provided a comprehensive set of recommendations to hold offenders accountable, safely reduce Florida's prison population, and prioritize public safety.<sup>4</sup>

In this third report, CJI reviewed and analyzed the CPC, accompanying materials, and relevant data. The Florida Department of Correction (FDC) provided the data used in this analysis. In consultation with FDC, CJI cleaned and analyzed data detailing every admission to and release from state prison from 2006 to 2018, as well as data from an annual snapshot of Florida's prison population over the same time period. Finally, CJI cleaned and analyzed publicly available CPC scoresheets from fiscal years 2009 to 2018.

All felonies committed on or after October 1, 1998, except capital felonies, are sentenced according to the CPC. The CPC is a complex formula calculated with a scoresheet that integrates numerous factors incident to the crime and the defendant's history to produce a score tied to a particular sentence. These factors include, but are not limited to: seriousness of the current offense, prior criminal record, victim injury, legal status violation, use of a gun, prior serious felony, and enhancements for a number of types of crimes.<sup>5</sup> The CPC is not the first sentencing scheme used in Florida, and there have been significant changes to sentencing policy since 1983.

# HISTORY OF SENTENCING IN FLORIDA

Florida has seen several iterations of sentencing guidelines over the past 35 years. Before the enactment of sentencing guidelines in 1983, Florida utilized indeterminate sentencing.<sup>6</sup> Under indeterminate sentencing, the court wielded broad discretion to sentence defendants up to the statutory maximum, or up to five, 15, 30 years, or life for a 3<sup>rd</sup> degree, 2<sup>nd</sup> degree, 1<sup>st</sup> degree, or life felony, respectively.<sup>7</sup> Most inmates were also eligible for parole prior to 1983.<sup>8</sup> Critics contended that indeterminate sentencing led to sentencing disparity and, “while acknowledging that some sentencing variation was necessary, believed that fundamental fairness required uniformity in sentencing.”<sup>9</sup>

## Sentencing Guidelines Introduced in 1983

Sentencing guidelines in Florida first went into effect in 1983, limiting judicial discretion and abolishing parole for most offenses.<sup>10</sup> The guidelines classified offenses into nine categories and assigned points based on primary and additional current offenses, prior record, legal status, and victim injury.<sup>11</sup> The points translated to a score indicating a particular sentence and range, from which the court could depart with a written statement of explanation.<sup>12</sup> Departure sentences were appealable.<sup>13</sup> During the 1980s, a series of changes by the legislature increased the severity of the 1983 guidelines, “evinc[ing] the [l]egislature’s intent to ‘toughen’ the guidelines by enhancing punishments, increasing judges’ discretion to impose prison sentences, and narrowing the grounds for appeal of departure sentences.”<sup>14</sup>

## Guidelines Replaced in 1994 and Revised in 1995

After rising prison admissions and prison crowding prompted early release of prisoners and heightened public concern about crime, legislators created new sentencing guidelines with the Safe Streets Initiative of 1993, effective in 1994.<sup>15</sup> The 1994 Sentencing Guidelines separated non-capital felonies into 10 offense severity levels, with points assigned for the primary offense, additional offenses, and prior record in addition to other factors, including victim injury, legal status, and violations of supervision.<sup>16</sup> The point total translated to a sanction: non-state prison sentence (40 points or fewer), discretionary prison or non-prison sentence (greater than 40 but fewer than 52 points), or prison sentence (greater than 52 points).<sup>17</sup> However, if points did not reach the 40-point threshold, the court had discretion to increase points up to 15 percent.<sup>18</sup> Specific prison sentence lengths were calculated using the point total, with the court maintaining full discretion to increase or decrease the sentence by 25 percent.<sup>19</sup> Departures below or above the discretionary plus or minus 25 percent range required a written statement of reasoning by the judge.<sup>20</sup> Under these and prior guidelines, departure sentences were appealable.<sup>21</sup> Most mandatory minimum sentences were also repealed by this legislation.<sup>22</sup>

Critics of the 1994 guidelines argued that “they weren’t tough enough, especially regarding prior record; they were too complex; they gave judges little real discretion, such as imposing prison sentences on nonviolent offenders...; and they reduced sentencing to a mathematical computation.”<sup>23</sup> At the same time, lawmakers “were sensitive to a growing, though statistically unsupported, perception that crime in Florida was out of control.”<sup>24</sup> As such, the 1994 guidelines were altered significantly by the Crime Control Act of 1995, which raised point values for a number of crimes and provided increased sanctions.<sup>25</sup> Also in 1995, the legislature imposed an 85 percent time served requirement for all crimes committed on or after October 1, 1995.<sup>26</sup> Additional changes in subsequent years increased penalties and created longer periods of incarceration.<sup>27</sup> The guidelines faced criticism that it was difficult to increase sentences beyond the recommended term and that mitigated sentences were too prevalent.<sup>28</sup>

Although changes to the guidelines addressed some concerns, “what the critics really wanted were not changes to the guidelines but rather to be free of them.”<sup>29</sup>

### **CPC Implemented in 1998**

The prior guidelines were swept away with the enactment of Florida’s current sentencing scheme, the CPC, effective in 1998. Similar to the prior guidelines, the CPC uses offense severity ranking, assigns points for primary and additional offenses as well as criminal history, and employs enhancements.<sup>30</sup> However, rather than providing a sentencing range, the CPC calculates a lowest permissible sentence that serves as a floor for sentencing absent departure.<sup>31</sup> Downward departure from the lowest permissible sentence is permitted on a finding of mitigating circumstances, including a legitimate plea bargain.<sup>32</sup>

While the CPC determines a minimum term for state prison sentences, there is no recommended ceiling, allowing the court to impose up to the statutory maximum.<sup>33</sup> Therefore, both the prosecutor during plea negotiations and the court at sentencing have broad discretion in setting or imposing a sentence up to the statutory maximum for the offense. In addition, the threshold for a prison sentence was lowered to 44 points and the defendant’s right to appeal was largely eliminated.<sup>34</sup> The “cumulative effect of these changes has been to increase the severity of penalties and the length of prison sentences.”<sup>35</sup>



## PURPOSE OF THE CPC

The core principles of the CPC as envisioned by the legislature are embedded in Florida code. These principles emphasize fairness, proportionality, and uniformity. In creating the CPC, the legislature envisioned a system in which incarceration was prioritized for the most serious and chronic offenders, acknowledging limited state and local resources.

Florida code lays out a number of specific principles embodied by the CPC. First, sentencing must be unbiased and “neutral with respect to race, gender, and social and economic status.”<sup>36</sup> In addition, punishment in and of itself is paramount to the CPC, with Florida code noting that the “primary purpose of sentencing is to punish the offender” and “[r]ehabilitation is a desired goal of the criminal justice system but... subordinate to the goal of punishment.”<sup>37</sup> These principles underline proportionality with respect to the current offense and prior criminal history, with the “penalty imposed... commensurate with the severity of the primary offense and the circumstances surrounding the primary offense” and the “severity of the sentence increas[ing] with the length and nature of the offender’s prior record.”<sup>38</sup>

The CPC also emphasizes transparency and finality with respect to sentence length and sentencing practices. The sentence imposed should reflect “the length of actual time to be served,”<sup>39</sup> with at least 85 percent of a given sentence to be served in custody. The sentencing scheme was intended to grant authority to the court to sentence up to the statutory maximum for any offense and simultaneously limit downward departures from the lowest permissible sentence to situations in which there is reasonable justification in writing.<sup>40</sup> The CPC reflects a commitment to conclusiveness of sentencing, with limited appeals on very narrow grounds (e.g., below lowest permissible sentence, illegal sentence, and those exceeding statutory maximum sentence).<sup>41</sup>

Finally, the CPC acknowledges limited state resources and emphasizes that those resources should be used on the most serious and chronic offenders: the “[u]se of incarcerative sanctions is prioritized toward offenders convicted of serious offenses and certain offenders who have long prior records, in order to maximize the finite capacities of state and local correctional facilities.”<sup>42</sup>

Most of these principles remain largely unchanged since the creation of the CPC, and many were taken from earlier code (e.g., repealed Fla. Stat. § 921.001).<sup>43</sup> These principles were later adjusted to reflect the 85 percent time served requirement, among other small changes.<sup>44</sup>

## SENTENCE CALCULATION

The CPC uses a complex formula dictated by statute to arrive at a numerical value associated with a particular sentence. The CPC formula considers a number of factors related to the seriousness of the offense, aggravating circumstances, and prior criminal history. CPC scores totaling more than 44 points require a prison term absent a downward departure.<sup>45</sup> Unless there is a mandatory minimum sentencing requirement, options for those with 44 points or fewer include, but are not limited to: a discretionary prison sentence, a jail sentence, probation, or community control.<sup>46</sup>

Key components of the CPC that distinguish it from sentencing guidelines and formulas used by other states include the calculation of a lowest permissible sentence and authority to sentence up to the statutory maximum, in contrast to a permissible sentencing range or presumptive sentence and requirements for departure from that range or sentence. With numerous factors increasing a point total and no cap on the length of a sentence except the statutory maximum, the CPC appears to make Florida an outlier among jurisdictions with structured sentencing policies.

### Primary Offense

The CPC identifies a single “primary offense” as the offense that carries the most severe sanction of the defendant’s charges.<sup>47</sup> Offenses are ranked in terms of seriousness from level 1 (least serious) to level 10 (most serious) and assigned a particular point value based on that level.<sup>48</sup> For example, petit theft is a level 1 offense and receives four points as a primary offense, while 1<sup>st</sup> degree murder is a level 10 offense and receives 116.<sup>49</sup> The table below contains the three most common offenses in each severity level, per FY 2018 CPC scoresheet data.

**Table 1. Most Common Offenses by Offense Severity Level, FY 2018**

Level	Most Common Offenses	Level	Most Common Offenses
1	<ul style="list-style-type: none"> <li>• Driving with Suspended License</li> <li>• Petit Theft 3<sup>rd</sup> Conviction</li> <li>• Possession of Marijuana over 20g</li> </ul>	6	<ul style="list-style-type: none"> <li>• Aggravated Assault with No Intent to Kill</li> <li>• Felony Battery</li> <li>• Robbery with No Gun or Deadly Weapon</li> </ul>
2	<ul style="list-style-type: none"> <li>• Grand Theft, \$300-\$5,000</li> <li>• Utter Forged Instrument</li> <li>• Credit Card Fraud</li> </ul>	7	<ul style="list-style-type: none"> <li>• Burglary of an Occupied Dwelling</li> <li>• Aggravated Battery with Deadly Weapon</li> <li>• Sex Offender Fail to Comply with Conditions</li> </ul>
3	<ul style="list-style-type: none"> <li>• Possession of Cocaine</li> <li>• Possession of a Controlled Substance</li> <li>• Sale, Manufacture, Deliver Marijuana</li> </ul>	8	<ul style="list-style-type: none"> <li>• Burglary, Armed with Explosives or Weapon</li> <li>• Burglary, Assault Any Person</li> <li>• Sexual Battery with Victim Age 12-15</li> </ul>
4	<ul style="list-style-type: none"> <li>• Burglary of Unoccupied Dwelling</li> <li>• Grand Theft Auto</li> <li>• Battery of Law Enforcement Officer</li> </ul>	9	<ul style="list-style-type: none"> <li>• Robbery with a Gun or Deadly Weapon</li> <li>• Molestation of Victim Under 12</li> <li>• Trafficking Heroin 28g to 30kg</li> </ul>
5	<ul style="list-style-type: none"> <li>• Traffic in Stolen Property</li> <li>• Sale, Manufacture, Deliver Cocaine</li> <li>• Felon in Possession of Firearm</li> </ul>	10	<ul style="list-style-type: none"> <li>• 2<sup>nd</sup> Degree Murder</li> <li>• 1<sup>st</sup> Degree Murder</li> <li>• Home Invasion</li> </ul>

## Additional Points and Enhancements

Points are also assigned for “additional offenses” at various point values based on severity level, which are added to points for the primary offense. These offenses receive fewer points than primary offenses; a level 1 offense receives 0.7 points per count, and a level 10 receives 58.<sup>50</sup> Similarly, a defendant’s prior record is scored and assigned points based on severity level. A prior level 1 offense receives 0.5 points, and a level 10 receives 29 points.<sup>51</sup> Additional points are given for other factors including: legal status violations, such as escape, fleeing, or failure to appear; community sanction violations; use of particular types of firearms; and a prior serious felony.<sup>52</sup> These point totals are subject to a number of enhancements that, where supported by evidence, may multiply points by a particular factor (e.g., 1.5).<sup>53</sup> These enhancements include: drug trafficking, habitual grand theft of a motor vehicle, criminal gang activity, offenses related to law enforcement, and certain domestic violence and sex offenses.<sup>54</sup>

## Point Totals

When all points are tabulated, the total numerical value is associated with three penalty ranges: 0 to 22 points, greater than 22 points to 44 points, or greater than 44 points. These ranges are summarized in Table 2.

For 3<sup>rd</sup> degree felonies committed after a certain date with a score of 22 points or fewer, excluding certain types of felonies, the court is required to sentence the offender to a non-state prison sentence (e.g., probation or jail) unless the court finds that such a sentence could pose a danger to the public.<sup>55</sup> However, upward departures in these situations were called into question by a 2018 Florida Supreme Court Case, *Brown v. State*, which cited seminal U.S. Supreme Court cases *Apprendi v. New Jersey* and *Blakely v. Washington* and found this portion of the statute unconstitutional.<sup>56</sup> The court ruled that a jury, rather than a judge, must make a finding of dangerousness in this situation.<sup>57</sup>

For greater than 22 points to 44 points, the lowest permissible sentence is a non-state prison sanction, and the highest permissible sanction is the statutory maximum.<sup>58</sup> For the sake of clarity, the subset of scores greater than 22 to 44 points will hereinafter be referred to as “22 to 44 points.”

A score exceeding 44 points requires a prison sentence absent departure, and grounds for departure are specified on the scoresheet and in statute.<sup>59</sup> The lowest permissible prison sentence is calculated by a specified formula that provides a term of months.<sup>a, 60</sup> Any state prison sentence must be greater than one year.<sup>61</sup> Where there is a statutory mandatory minimum sentence, the mandatory minimum is applied when higher than the calculated lowest permissible sentence, and the lowest permissible sentence is applied when higher than the mandatory minimum sentence.<sup>62</sup>

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<sup>a</sup> The lowest permissible sentence in months is calculated by subtracting 28 from the total sentence points and multiplying by 0.75. For example, the lowest permissible prison sentence for someone scoring 52 points is 18 months.

**Table 2. CPC Point Ranges and Applicable Sentences**

<b>CPC Point Range</b>	<b>0-22</b>	<b>&gt; 22-44</b>	<b>&gt; 44</b>
<b>Required Sentence</b>	Non-state prison sentence*	Discretionary prison sentence*	Required prison sentence**

\*Excluding some felonies; and, for 0-22 points only, absent a finding of danger to the public

\*\*Absent departure or diversion for eligible offenders

Florida code provides mitigating circumstances for downward departure from the lowest permissible sentence, including, but not limited to: plea bargain; relatively minor participation in criminal conduct; substantially impaired capacity to appreciate criminal nature of conduct or conform conduct to law; need for restitution outweighing need for prison sentence; and victim provocation.<sup>63</sup> Florida code also authorizes the court to place defendants meeting certain statutory requirements in diversion, drug offender probation, or treatment-based drug court programming in lieu of prison.<sup>64</sup>

## DATA OVERVIEW AND PROCESS

FDC is authorized by law to collect and evaluate CPC scoresheets from judicial circuits statewide and is responsible for submitting reports on the information it gathers to the legislature.<sup>65</sup> To assess the impact of the CPC on prison sentences and lengths of stay, CJI requested and analyzed 10 years of data from FDC from FY 2009-2010 to FY 2017-2018.<sup>b</sup> CJI's analysis included 1,088,405 scoresheets from this 10-year period, representing all 20 circuits and 67 counties in the state.

In its review of over one million scoresheets, CJI found irregularities in the data indicating possible issues with reporting compliance that required further examination. A review of annual compliance rates revealed that there was significant variation from year to year, with submission rates as low as 69 percent in FY 2014.<sup>66</sup> Due to several years' data with low compliance rates, CJI could not verify the reliability of multiple years. As a result, CJI lacks full confidence that findings over the 10-year data collection period present a complete picture of sentencing and length of stay trends. However, CJI is far more confident in its analysis of data for FY 2018, where the statewide compliance rate exceeded 90 percent.<sup>67</sup> For this reason, much of CJI's analysis focuses on the FY 2018 scoresheets received by FDC. Areas in which the 10-year data cohort is analyzed is noted.

It should also be noted that these scoresheets include those from initial sentencing as well as additional scoresheets created for supervision violations before the court (e.g., probation). Therefore, cases and defendants may be represented on more than one scoresheet. Furthermore, defendants may be represented on multiple scoresheets by virtue of having more than one case.

### General Trends in Fiscal Year 2018 Scoresheets

CJI reviewed 126,797 scoresheets from FY 2018. As shown in Figure 1, scoresheets with primary offense severity level 3 were the most common, representing 27 percent of all scoresheets. Ninety-five percent of scoresheets had a primary offense severity level of 7 or below. For most common offense types by severity level, see Table 1.

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<sup>b</sup> FDC uses terminology referring to fiscal years over two years (e.g., FY 2017-2018). Heretofore the report will refer fiscal years by the later year (e.g., FY 2017-2018 as FY 2018).

**Figure 1. Primary Offense Severity Level 3 Most Common in FY 2018**

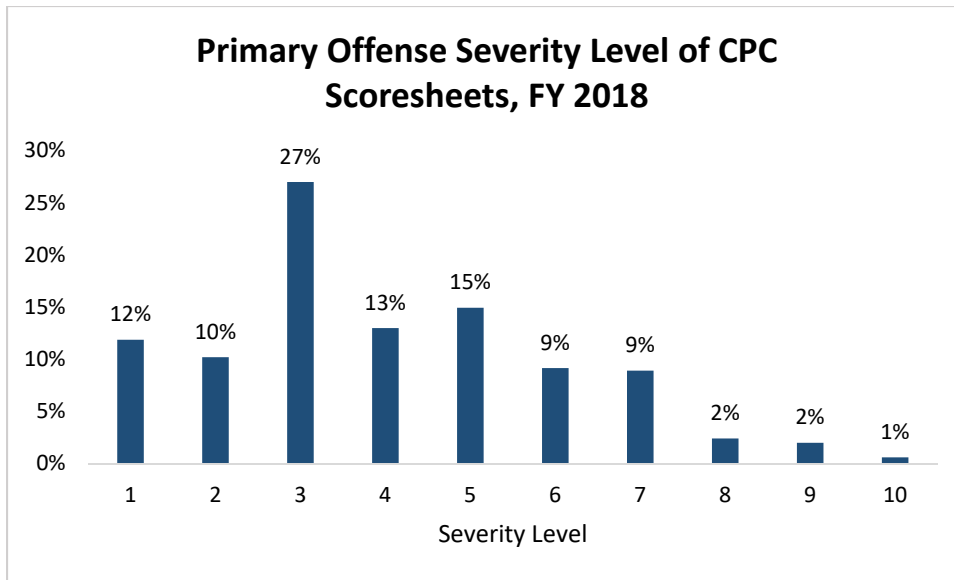


Table 3 shows the type of sanction received, the total number of scoresheets for each type of sanction, and the percentage of total sanctions for the 126,797 scoresheets in FY 2018. For instance, 51,508 scoresheets received a probation sentence, representing 40.6 percent of those collected by FDC in FY 2018. One quarter of all scoresheets received a state prison sentence, while another quarter received a county jail sentence.

**Table 3. Sanctions of FY 2018 Scoresheets**

Sanction	Total	Percentage of Total
State Prison	31,740	25.0%
Probation	51,508	40.6%
County Jail	33,562	25.5%
Community Control	7,482	5.9%
Other	2,505	2.0%

As discussed previously, 22 points and 44 points are major dividing lines in the CPC, with cases 22 points or under generally requiring a non-state prison sentence, and cases greater than 44 points requiring a prison sentence absent departure. Sixty points is an additional dividing line because point totals greater than 60 disqualify a defendant from treatment-based drug court programming notwithstanding the assessed degree of substance dependency or addiction history exhibited by the defendant.<sup>68</sup>

Given these dividing lines, CJI broke scoresheets into four groups based on major markers in the CPC: point totals of 22 or lower; greater than 22 to 44 points; greater than 44 to 60 points; and greater than 60 points. For the sake of clarity, since the CPC scoring system includes fractional points, the second group will be subsequently referred to as “22 to 44 points” even though it ranges from 22.1 to 44.0 points.

Figure 2 represents the distribution of scoresheets by point total for FY 2018. The majority of scoresheets in FY 2018 contained 44 points or fewer (65 percent), with just under 40 percent in the 22 to 44 point range.

**Figure 2. Majority of Scoresheets Contained 44 Points or Fewer in FY 2018<sup>c</sup>**

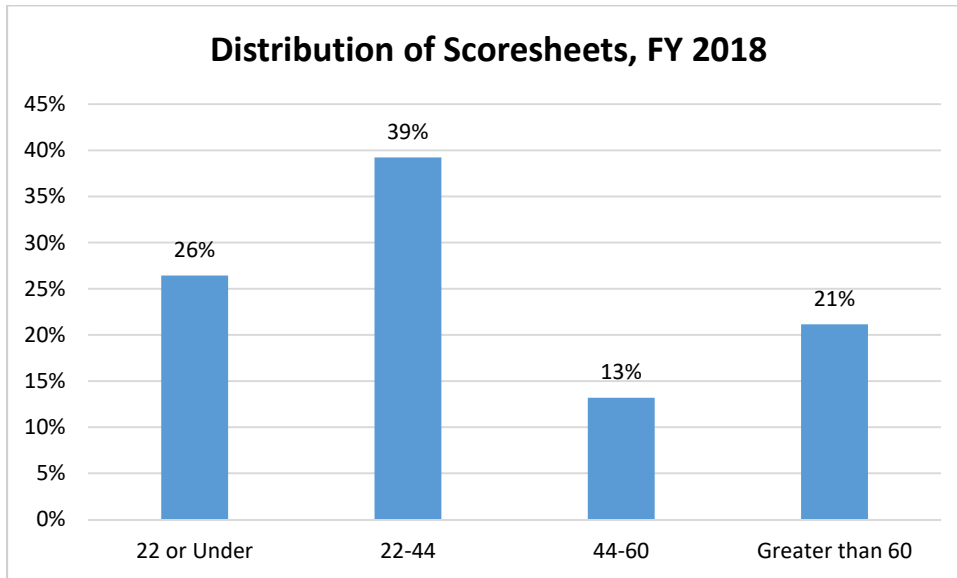
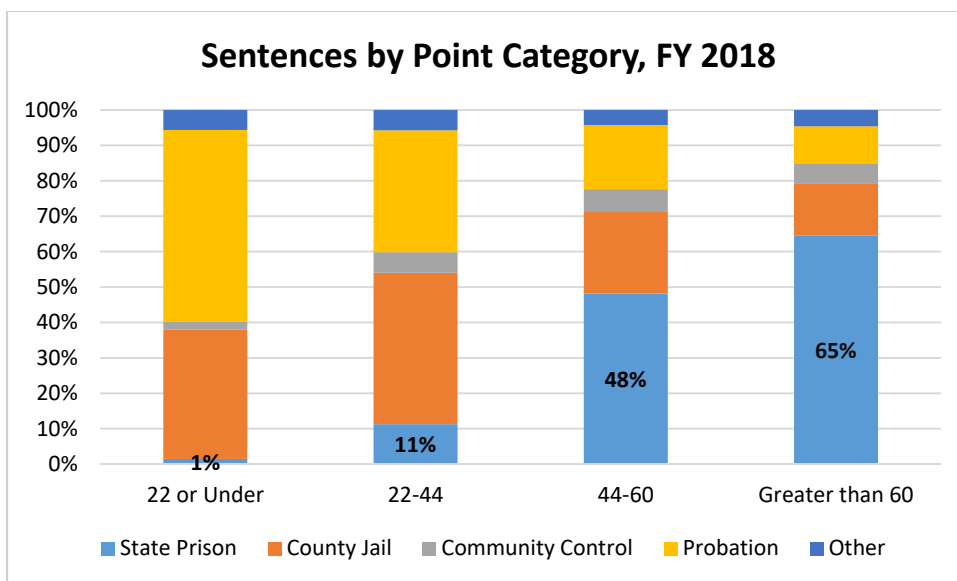


Figure 3 displays sentence distribution in each of the four point categories. Predictably, the percentage of scoresheets sanctioned to prison rises as point totals increase and, conversely, the percentage of scoresheets sanctioned to probation decreases.

**Figure 3. Percentage of Scoresheets Sanctioned to Prison Rises with Point Totals**



<sup>c</sup> Due to rounding of decimals, these numbers equal less than 100 percent.

## DATA FINDINGS

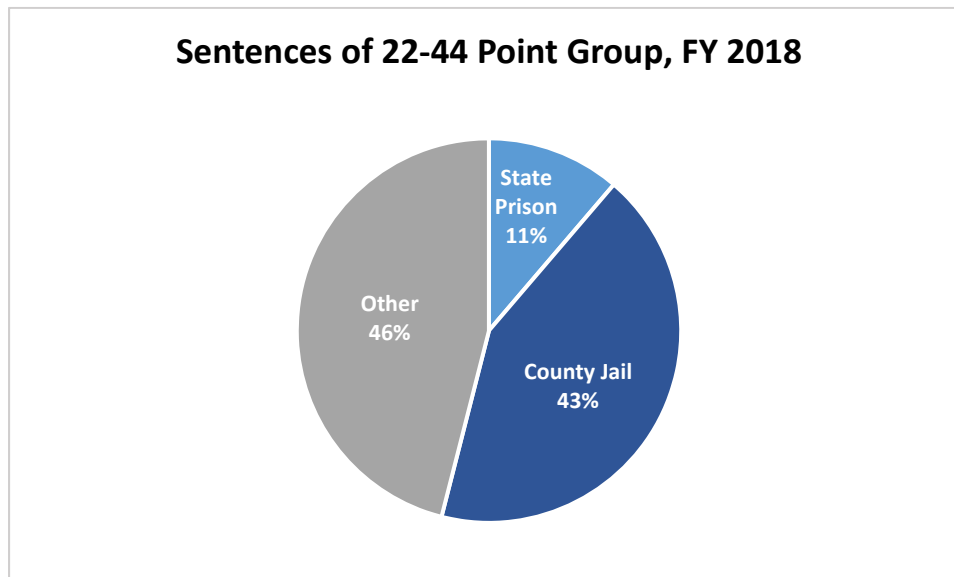
Based on these initial findings, CJI focused its primary analysis on scoresheets receiving score totals between 22 and 44 points. This category was chosen for a deeper analysis because:

- This group represents a significant portion of the CPC scoresheets from FY 2018;
- Unlike other CPC score ranges, the court has broad discretion to impose any sentence from a non-state prison sanction to a prison sanction up to the statutory maximum for this subset;
- This particular category presents the opportunity to analyze variability in sentencing decisions over a large number of cases; and
- Multiple alternatives to prison are available in this range, implying that the legislature regards this subset of offenders as lower-level offenders who do not require the most severe sanctions.

### 22 to 44 Point Scoresheets Account for a Significant Number of Prison Admissions

As discussed previously, for scores of 44 points or fewer, the defendant is eligible for a non-state prison sanction and the court has wide discretion in determining the sentence imposed unless there is a mandatory minimum term of incarceration. Figure 4 shows sanctions for 22 to 44 point scoresheets in FY 2018. Of scoresheets in this category, the majority received county jail sentences (43 percent) or other sentences (46 percent), such as probation or community control.

**Figure 4. 11 Percent of 22-44 Point Group Received Prison Sanction in FY 2018**



Despite broad discretion to impose an alternative to prison, 11 percent of 22 to 44 point scoresheets received a state prison sanction in 2018. Because of the volume of scoresheets in the 22 to 44 point category, the 11 percent receiving a prison sanction translates to a significant number of scoresheets and prison admissions. This 11 percent accounted for over 5,600 unique scoresheets, equating to an



estimated 4,500 admissions to prison in FY 2018 alone.<sup>d</sup> This group also represented more than 15 percent of the admissions to prison that year.<sup>e</sup>

### Severity of Primary Offense Does Not Correlate to Prison Sentence

One significant driver of point totals is the primary offense at conviction, which is weighted heavily in terms of overall score calculation. Due to the large number of points associated with the primary offense at each severity level, a score in the 22 to 44 range may result only from a primary offense with a severity level of 6 or below. In other words, a primary offense with a severity level greater than 6 would result in a point total exceeding 44 points, regardless of any other factors.

There are several paths leading to a CPC point total between 22 to 44 points. Scoresheets with primary offense severity levels of 4, 5, or 6 receive a score within the 22 to 44 range without other factors. For example, a primary offense in level 4 equates to 22 points, while a primary offense in level 6 equates to 36 points. Alternatively, scoresheets with lower primary offense severity levels (i.e., 1, 2, or 3) would need to accumulate additional factors to receive a score in the 22 to 44 range. These accumulating factors could include violations of supervision or prior criminal history. For example, a scoresheet with a primary offense in severity level 3 would receive 16 points, which could be pushed upward to 22 points with a prior record that includes an offense in level 5 (3.6 points) and multiple misdemeanor convictions (0.2 points each). In FY 2018, one third of 22 to 44 point scoresheets received points from a violation of supervision, and 80 percent of scoresheets received additional points from a prior conviction.

Among scoresheets in the range of 22 to 44 points in FY 2018, the likelihood of a prison sentence was not correlated with the severity of the primary offense, despite the fact that more serious offenses are represented in the higher numbered severity levels. As demonstrated in Figure 5, of the 22 to 44 point scoresheets receiving a prison sentence, those with primary offense severity level 2 were most likely to receive a prison sentence, at 18 percent, compared to just 10 percent of those with level 6.

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<sup>d</sup> It should be noted that one scoresheet with a state prison sanction does not directly translate to one prison admission. For example, an offender who violates their probation by committing a new felony offense could receive two scoresheets with a prison sentence, one for the violation of probation and one for the new conviction. With a separate admissions dataset provided by FDC, CJI used the sentencing date on the scoresheet and the unique identifier given to each offender to link scoresheets to prison admissions.

<sup>e</sup> Over the last 10 years, nearly 60,000 scoresheets in the 22 to 44 point category resulted in a state prison sentence. Due to the unreliable nature of the data and lower compliance rates in prior years, CJI cannot confidently attach a prison admission number to all 10 years of scoresheet data.

Figure 5. Likelihood of Prison Not Correlated with Primary Offense Severity Level

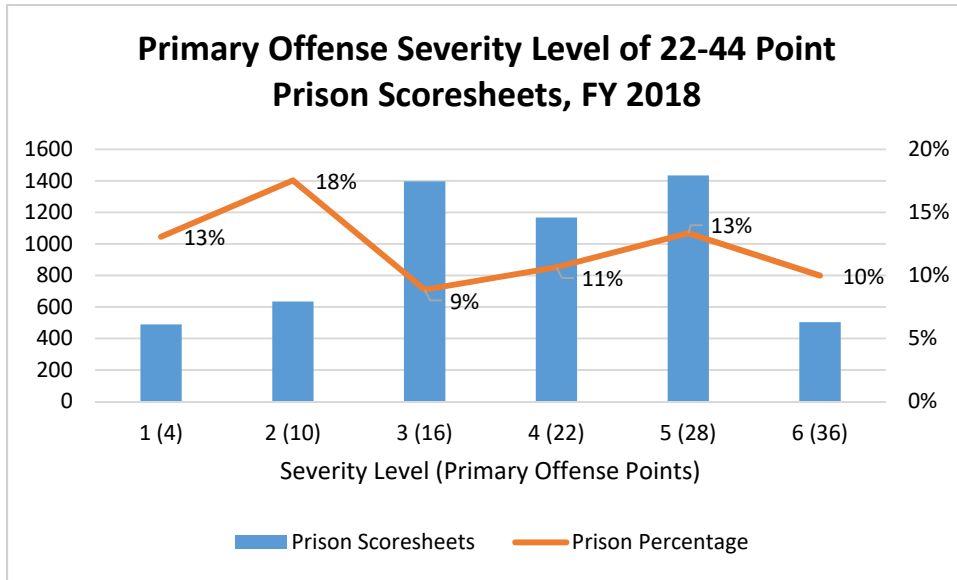
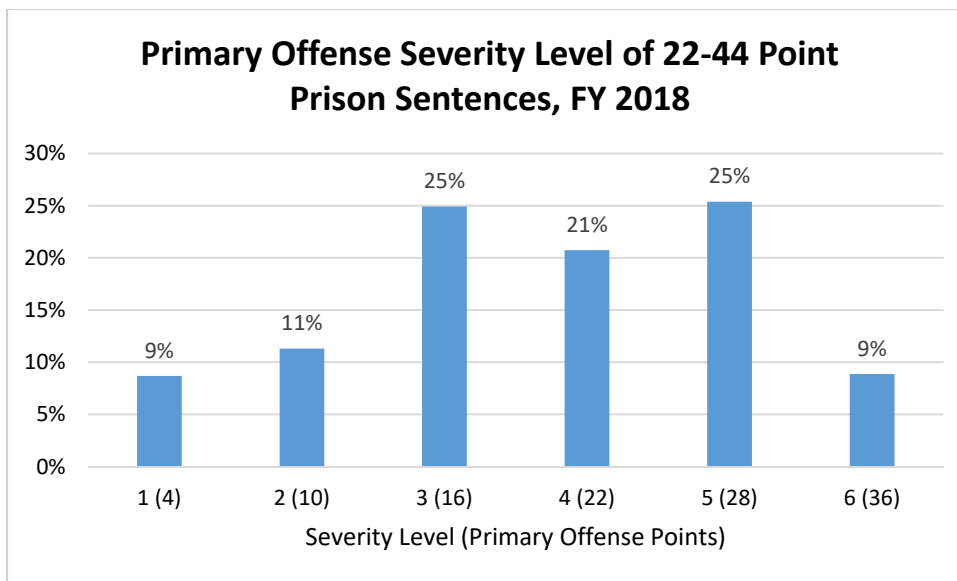


Figure 6 shows that those scoresheets with primary offense severity level 3 accounted for 25 percent of scoresheets in the 22 to 44 point range receiving a prison sentence. Of the 22 to 44 point group sentenced to prison, nearly half (45 percent) had a primary offense severity level of 3 or lower, which accounted for just over 2,500 scoresheets or approximately 1,900 prison admissions. Of this group, those with primary offense severity level 3 represented the largest portion of prison sentences, accounting for one quarter of the 22 to 44 point scoresheets sentenced to prison, or approximately 1,150 prison admissions in FY 2018.

Figure 6. Nearly Half of 22-44 Point Scoresheets Receiving Prison Had Severity Level of 3 or Lower



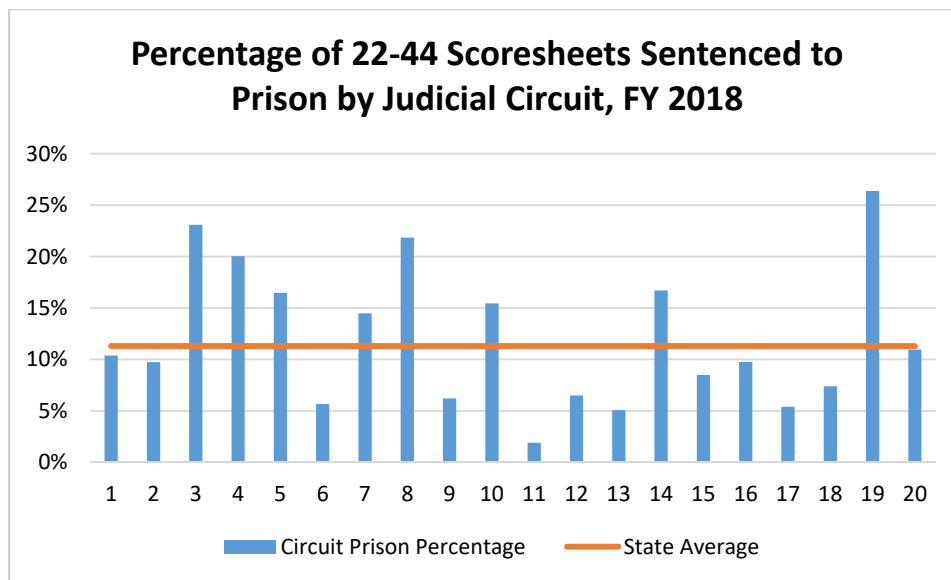
A drug possession conviction was the primary offense in 72 percent of 22 to 44 point scoresheets with severity level 3. In the past 10 years, over 9,100 drug possession scoresheets in the 22 to 44 point group

received a state prison sentence. In FY 2018 alone, these drug possession scoresheets resulted in nearly 1,000 prison sentences, which accounted for 18 percent of prison sentences in the 22 to 44 point prison scoresheets and approximately 800 admissions to prison.

### Likelihood of Prison Sanction Varies Dramatically by Circuit and County

One of the main principles of the CPC is neutrality with respect to race, gender, and social and economic status. Despite this stated goal of fairness, defendants with similar criminal conduct and criminal histories experience vastly different outcomes. One variable that appears to have a significant impact on the sanction received is the judicial circuit and county handling the scoresheet. Figure 7 represents the percentage of 22 to 44 point scoresheets in FY 2018 that received a prison sentence in each of Florida’s 20 judicial circuits. The horizontal line represents the state average, where 11 percent of 22 to 44 point scoresheets result in a state prison sanction.

**Figure 7. Wide Variation in Likelihood of Prison Sanctions Among Judicial Circuits**

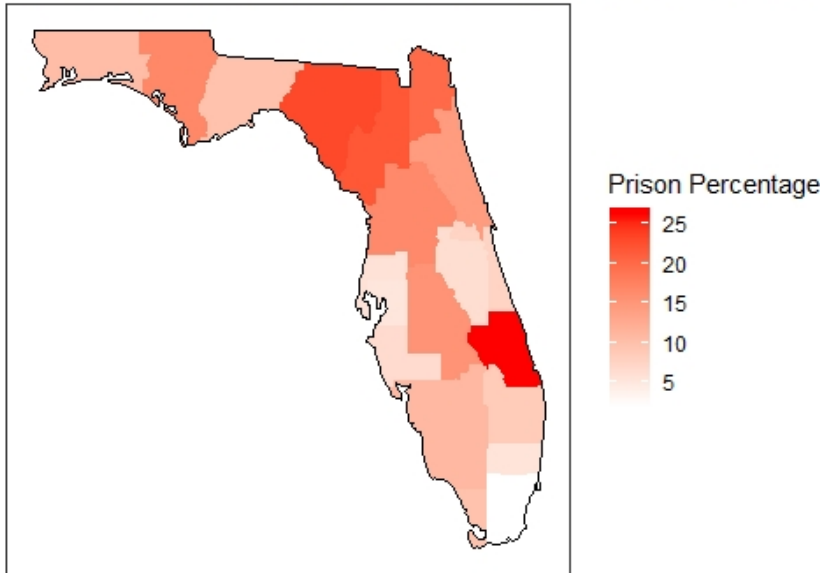


Across the state, there is significant variation in rates of prison sentences. In the 11<sup>th</sup> Judicial Circuit, which consists solely of Miami-Dade County, 2 percent of 22 to 44 point scoresheets received a prison sentence. In contrast, one in four scoresheets received a prison sentence in the 19<sup>th</sup> Judicial Circuit, which consists of multiple counties (Indian River County, Martin County, Okeechobee County, and St. Lucie County). Overall, eight of the 20 circuits sentenced scoresheets in the 22 to 44 point range to prison at a rate higher than the state average of 11 percent.

Figure 8 shows geographic variation in sentencing across all 20 judicial circuits in FY 2018. In some instances, neighboring judicial circuits differed greatly in terms of sentencing of scoresheets in the 22 to 44 point range. A scoresheet in this range almost never received a prison sentence in some parts of the state and, in other parts, one quarter received a prison sentence.

**Figure 8. Wide Variation in Prison Sentencing Among Judicial Circuits**

**Percentage of 22 to 44 Point Scoresheets Sentenced to Prison by Judicial Circuit, FY 2018**



Sixteen of the 20 judicial circuits are made up of multiple counties. Counties within a judicial circuit show even more variation. In FY 2018, 38 of the 67 counties in Florida imposed prison sentences for 22 to 44 point scoresheets at a higher rate than the state average of 11 percent. In Union County, 50 percent of 22 to 44 point scoresheets received a state prison sanction, but it is important to note this accounted for only 22 total scoresheets. Figure 9 examines these county-level trends. Just like judicial circuits, neighboring counties differed greatly in sentencing this group in FY 2018.

**Figure 9. Wide Variation in Prison Sentencing Among Counties**

**Percentage of 22 to 44 Point Scoresheets Sentenced to Prison by County, FY 2018**

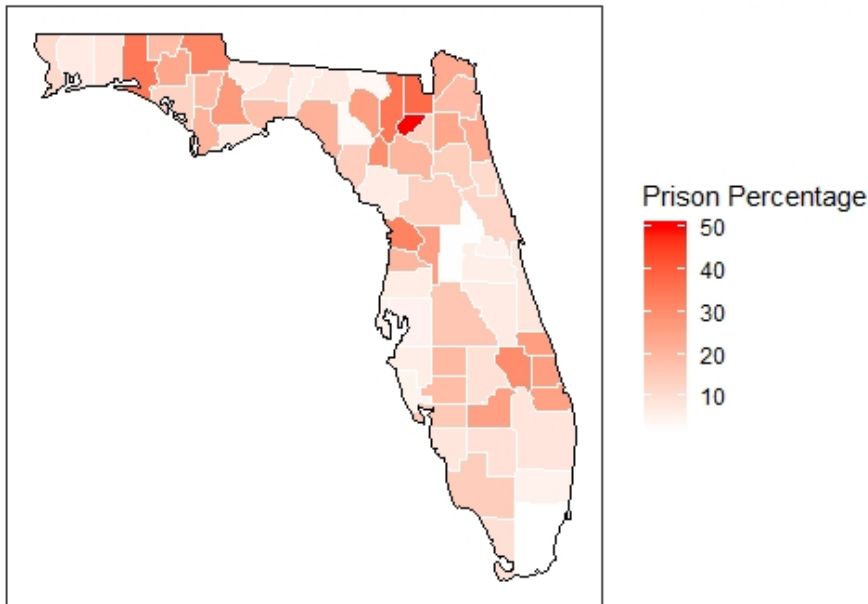
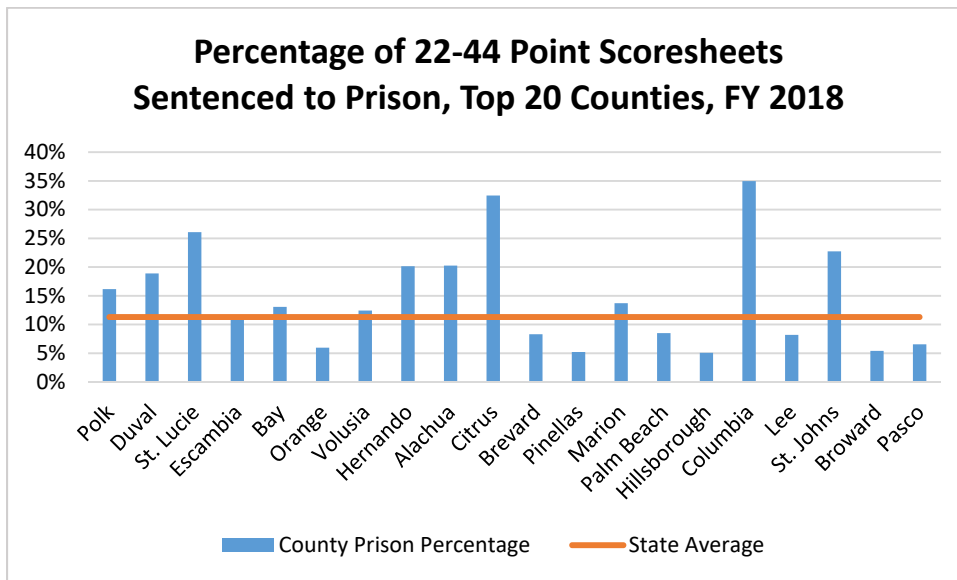


Figure 10 depicts the percentage of scoresheets receiving a prison sentence in the 20 Florida counties sentencing the greatest number of 22 to 44 point scoresheets to prison in FY 2018. The horizontal line continues to represent the state average of 22 to 44 point scoresheets resulting in a state prison sanction, or 11 percent. Among the top 20 counties with scoresheets resulting in prison sentences, there was wide variation in percentage of scoresheets receiving a prison sanction. Just 5 percent of scoresheets in Pinellas, Hillsborough, and Broward Counties were sentenced to prison, while that number jumped to 32 percent in Citrus County and 35 percent in Columbia County.

These top 20 counties represent both counties with lower volumes of scoresheets and higher percentages receiving prison sanctions as well as counties with higher volumes of scoresheets and lower percentages receiving prison sanctions. For example, Columbia County had only 409 scoresheets in the 22 to 44 point group, but 35 percent, or 143 scoresheets, received a prison sanction; a similar number in the 22 to 44 point group received a prison sanction in Pinellas County (164 scoresheets), but because it is a high-volume county, that equates to just 5 percent of its 3,138 scoresheets in that point range. Similarly, in Polk County, 387 of 2,394 (16 percent) of 22 to 44 point scoresheets received prison sentences, whereas in Orange County, 204 of 3,421 (only 6 percent) of scoresheets in that group received prison sentences.

**Figure 10. Wide Variation in Percentage Sentenced to Prison in Top 20 Counties**



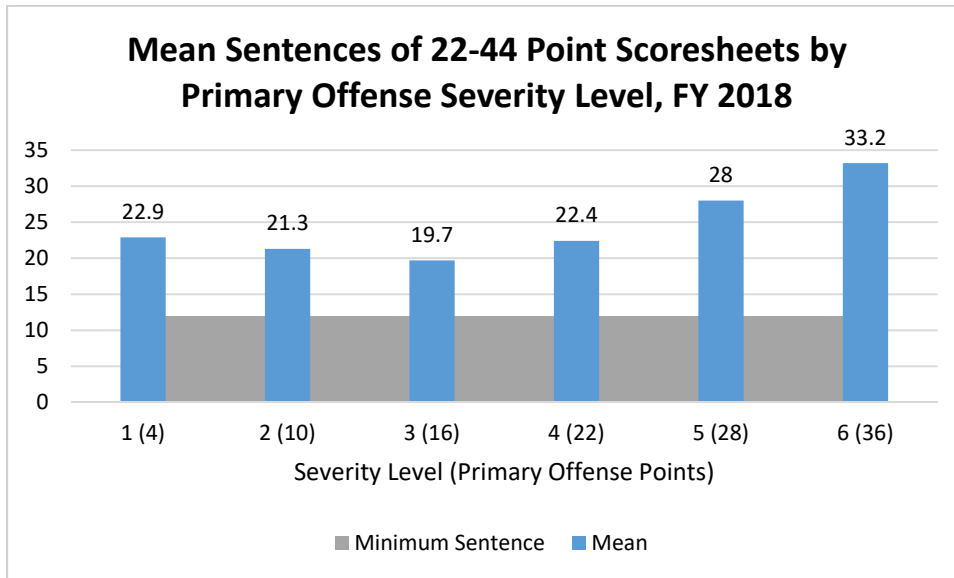
### Sentences Significantly Exceed the Minimum

As described above, all state prison sentences must be greater than one year.<sup>69</sup> Given that there are many alternatives to prison for cases in the point range of 22 to 44, and that no minimum sentence is required for cases with 44 points or under, one might expect that prison sentences would be at or close to the minimum sentence for these low-point cases. However, the data indicate otherwise. In FY 2018, mean sentence length for the 22 to 44 point range was 24 months, equivalent to the lowest permissible sentence for a CPC score of 60 points.<sup>f</sup>

<sup>f</sup> Calculated via the CPC formula: 60 minus 28, multiplied by 0.75.

Figure 11 shows mean sentence length by primary offense severity level in the 22 to 44 point range. Across all severity levels in this category, mean sentences were at least seven months longer than the statutory minimum. For example, sentences for scoresheets with severity level 3 offenses were nearly eight months longer than the statutory minimum and, for severity level 6 offenses, more than 21 months longer. As a comparison, the 33-month sentence length associated with level 6 offenses is equivalent to the lowest permissible sentence for a scoresheet with 72 points.

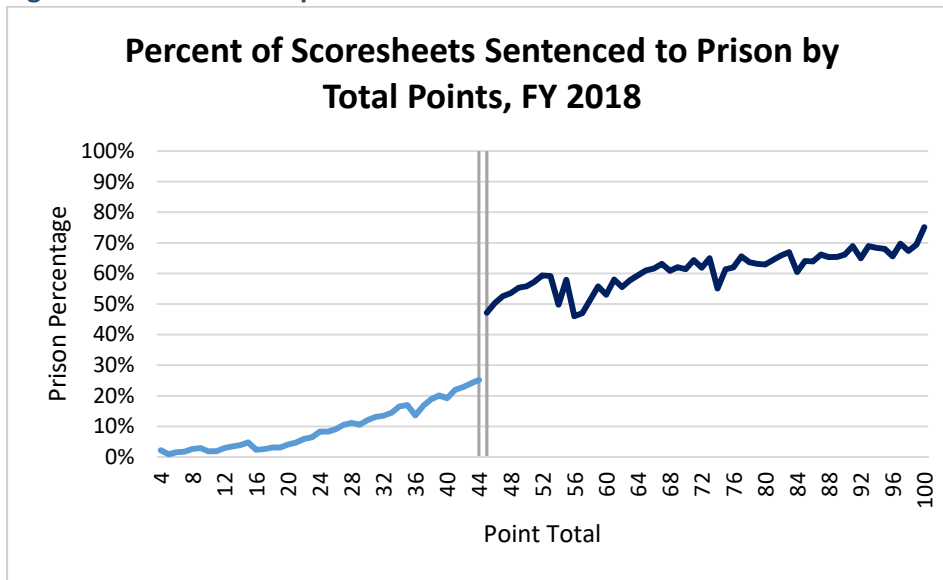
**Figure 11. Sentences Were Longer Than Statutory Minimum Across Severity Levels**



**Crossing 44-Point Threshold Drastically Increases Likelihood of Prison Sanction**

Based on FY 2018 data, the likelihood of a prison sentence drastically increases once a scoresheet exceeds 44 points. Figure 12 displays the percentage of scoresheets at each point total that received a state prison sanction. To the left of the vertical bar, which represents the 44-point threshold for prison sentences, percentages range from 2 percent at the low end to 25 percent of scoresheets at 44 points. Upon hitting 45 points, the likelihood of receiving a prison sentence increases to nearly 50 percent.

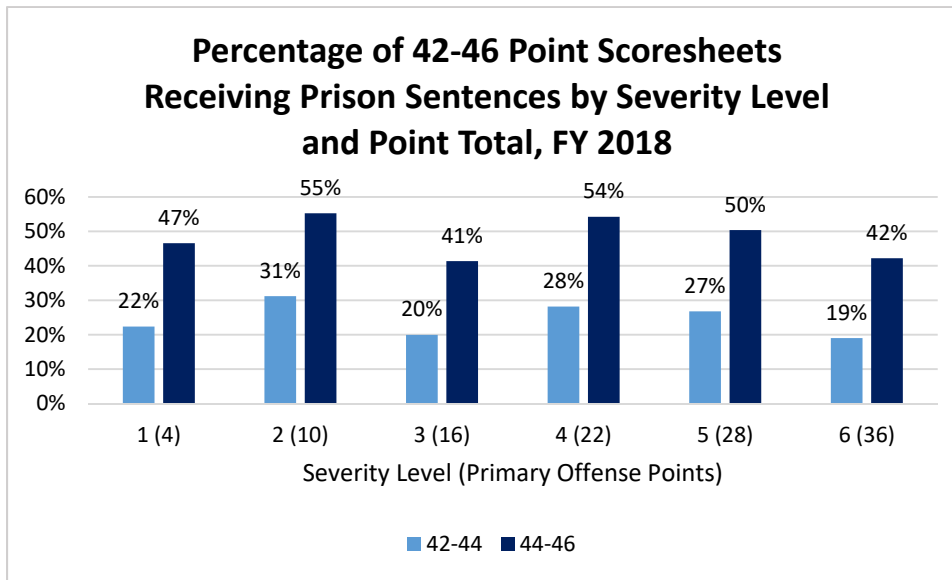
Figure 12. Dramatic Jump in Likelihood of Prison at 45 Points



Focusing on just the 44-point boundary, this trend becomes even more apparent. Figure 13 compares the percentage of scoresheets receiving a prison sentence across severity levels for groups within two points of the 44-point threshold: those at or below the threshold and those above.<sup>8</sup> For scoresheets at the same severity level, the only difference between the two groups is a small number of additional points, which could represent a legal status violation or an additional misdemeanor conviction. At the 44-point threshold, an additional point or two has tremendous impact, notwithstanding the severity level of the offense. As displayed in Figure 13, the 42 to 44 point scoresheets were much less likely to result in prison sentences than those in the 44 to 46 point range. For example, 27 percent of scoresheets with level 5 primary offenses received a prison sentence in the 42 to 44 point group, while this number jumps to 50 percent for the 44 to 46 point group despite the same primary offense level.

<sup>8</sup> The first group represented in Figure 13 are scoresheets with point totals ranging from 42 to 44. Because the CPC uses fractional points, the second group consists of those with scores between 44.1 and 46. For the sake of clarity, the latter group will be referred to as “44 to 46” in the text and in Figure 13.

Figure 13. Significant Variation in Likelihood of Prison Based on a Small Difference in Total Points



## Summary of Findings

CJI's analysis of the data arrived at five main findings for FY 2018:

- Individuals with point totals in the 22 to 44 point range accounted for an estimated 4,500 admissions to prison in FY 2018, or more than 15 percent of overall admissions in that time period;
- The severity of the primary offense in the CPC scoresheet does not correlate with the likelihood of a prison sentence within the 22 to 44 point group;
- The likelihood of a prison sanction for scoresheets receiving 22 to 44 points varies dramatically by judicial circuit and county;
- Sentences significantly exceed the minimum required prison sentence within the 22 to 44 point group; and
- Exceeding the 44-point threshold drastically increases the likelihood of a prison sanction.



## RESEARCH ON RECIDIVISM AND INCARCERATION

Since the implementation of the CPC in 1998, volumes of criminological research suggest that treatment and supervision, as opposed to incarceration, have a greater impact on reducing recidivism and victimization, and that public safety can be protected while reducing prison populations. Specifically, research demonstrates that incarceration is not a panacea to public safety concerns and, in many cases, can actually contribute to crime. Although it is tempting to credit reduction in crime rates solely to the use of incarceration, research shows the contrary. Researchers examining whether increased incarceration caused the crime decline beginning in the 1990s found that the crime-reducing effect of prison was small and that the size of the effect is diminished with the scale of incarceration.<sup>70</sup> Other factors had a greater influence on this trend, such as improved police strategies, technology, personal security habits, demographic shifts, and changes to drug markets.<sup>71</sup>

Moreover, research shows that incarceration is not more effective at reducing recidivism than non-custodial sanctions like problem-solving courts or community supervision and treatment interventions.<sup>72</sup> When comparing individuals sentenced to prison with those sentenced to non-custodial sanctions, researchers consistently find that prison has no impact on rates of re-arrest or re-conviction.<sup>73</sup> Furthermore, studies indicate that the specific deterrent effect of incarceration may be limited, as longer prison stays are no more effective at reducing recidivism than shorter stays.<sup>74</sup> Incarceration may increase recidivism for many lower-level offenders because it creates instability, reduces positive bonds in the individual's life, and increases contact with individuals with anti-social personalities.<sup>75</sup> Research confirms that incarceration has a more pronounced criminogenic (crime-producing) effect on drug offenders, technical violators, and first-time offenders.<sup>76</sup> While prison serves a valuable purpose in removing dangerous individuals from the community, incarceration, especially for non-violent offenders, is not as effective at changing behavior and encouraging prosocial interactions as other responses such as treatment and rehabilitation.<sup>77</sup>

Along these lines, research demonstrates effective and actionable models to prevent recidivism. Specifically, the Risk-Needs-Responsivity (RNR) model provides a framework for targeting the right individuals for the right types of treatment and implementing supportive interventions to reduce recidivism. The RNR model focuses supervision and services on individuals at the highest risk of recidivism and in need of intervention, rather than on low-risk individuals who may be made worse by incarceration and intervention.<sup>78</sup> Interventions target specific criminogenic needs and remove barriers to those interventions to promote success and to reduce the risk of future reoffending.<sup>79</sup>

This extensive research on recidivism reduction in the years since the CPC's creation indicates that Florida's approach to sentencing is an ineffective use of the state's limited resources and, more importantly, fails to promote effective public safety practices that reduce recidivism. To promote the goals of fairness, transparency, and economy, while most importantly protecting the public, policymakers should consider updating the CPC to reflect the overwhelming evidence showing what works to reduce recidivism.

## POLICY CONSIDERATIONS

As expressed in Florida code, the CPC was intended to be used primarily as a punishment tool and, while rehabilitation is a goal of the criminal justice system, it is subordinate to the goal of punishment.<sup>80</sup> At the same time, the CPC was designed around fairness and neutrality, in addition to the principle of economy within the criminal justice system. Florida law recognizes that prison is the most expensive response to criminal behavior and should be used on the most serious offenders.<sup>81</sup> Yet CJI's data findings reflect that the CPC, in practice, penalizes lower-level offenders more harshly than necessary and results in sentencing disparity for similar offenses and criminal history based on geographic location. Moreover, the primacy of punishment appears to be in conflict with public safety.

Other states with sentencing guidelines have chosen alternative models that provide more guidance for decision-makers in terms of appropriate sentence lengths by limiting incarceration sentences to discrete ranges and requiring reasoning for departures from recommended sentences. In considering how to revise Florida's sentencing scheme, the policies, practices, and outcomes of states with similar goals should be considered. Minnesota, North Carolina, and Oregon have similar systems that take into account offense seriousness and prior record to determine a particular sentence or sentencing range. All three jurisdictions also employ sentencing commissions in order to administer and review sentencing guidelines.

### Minnesota

Minnesota employs sentencing guidelines intended to provide "rational and consistent sentencing standards"<sup>82</sup> to promote public safety, decrease disparity in sentencing, and apply sanctions proportional to offense severity and criminal history. These guidelines underline the importance of consistency and uniformity in achieving fairness and maintaining reasonable prison populations. According to official commentary to the guidelines, "[t]he purposes of the Guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Sentencing disparity cannot be reduced if courts depart from the Guidelines frequently. Certainty in sentencing cannot be attained if departure rates are high. Prison populations will exceed capacity if departures increase imprisonment rates significantly above past practice."<sup>83</sup>

Minnesota's sentencing guidelines use a set of grids that reflect the severity of the current offense on the vertical axis and criminal history on the horizontal axis. On the standard grid, severity levels range from low (level 1) to high (level 11), with separate grids and severity levels for sex and drug offenses.<sup>84</sup> Each cell in the grid contains a fixed duration sentence and is associated with a particular sentence type: presumptive commitment (i.e., state imprisonment) or stayed sentence (i.e., non-prison sentence).<sup>85</sup> In addition, presumptive commitment sentences are associated with a sentencing range that is up to 20 percent higher and 15 percent lower than the fixed duration sentence.<sup>86</sup> Inmates sentenced to crimes committed on or after August 1, 1993 are subject to a period of incarceration for two thirds of their executed sentence plus a supervised release term for one third of their sentence.<sup>87</sup>

#### Minnesota Sentencing: Key Elements

- Grids reflect offense severity and criminal history
- Grid cells associated with sentence types (commitment or stayed sentence) and lengths
- Departures allowed on substantial and compelling circumstances, with written reasoning

Sentences calculated by Minnesota’s guidelines are “presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics.”<sup>88</sup> The court must apply a sentence within the given range unless there are “identifiable, substantial, and compelling circumstances to support a departure,”<sup>89</sup> and, where departure is made, provide written reasons for departure. Sample factors for departure, both mitigating and aggravating, are listed in the guidelines.<sup>90</sup>

It is important to note for states with mandatory sentencing guidelines that a departure above sentencing guidelines implicates a defendant’s Sixth Amendment right to a jury trial under *Blakely v. Washington*.<sup>91</sup> Therefore, in Minnesota’s system, any defendant has the right to a jury trial for aggravating factors to be proven beyond a reasonable doubt.<sup>92</sup> The sentence may also be reviewed on appeal and set aside if “the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact.”<sup>93</sup>

## North Carolina

North Carolina’s sentencing scheme, referred to as structured sentencing, is based on principles of: truthfulness, with time served close to the sentence; consistency of sentences for similar offenders; rationality and proportionality of a sentence with crime severity and prior criminal history; prioritization of violent and repeat offenders; and support by incarceration and non-incarceration resources.<sup>94</sup>

North Carolina uses a similar sentencing procedure as Minnesota, with a grid determining minimum sentences for felonies that contains offense seriousness on one axis and prior record on the other.<sup>95</sup> The grid specifies which type of sentence is authorized or required. Some cells authorize or require a prison sentence (“active”), while others authorize or require “intermediate punishment” (e.g., residential program, split sentence, intensive supervision) or “community punishment” (e.g., probation, outpatient treatment).<sup>96</sup> The court also retains discretion in some types of cases to override required prison sentences in extraordinary circumstances where certain findings, such as manifest injustice, are found.<sup>97</sup>

Each cell on the grid contains three sentence ranges representing possible minimum sentences: one for presumptive minimum sentence and two others for aggravated and mitigated.<sup>98</sup> In general, the court is authorized to impose any minimum sentence within the presumptive permissible range.<sup>99</sup> Departure from this range is authorized only: where aggravating circumstances are found by a jury, or, in certain cases, found by a judge; where aggravating circumstances have been admitted by the defendant; or mitigating circumstances are found by the court.<sup>100</sup> The court may impose an aggravated minimum sentence after finding aggravating circumstances outweigh any mitigating factors; likewise, the court may impose a mitigated minimum sentence after finding mitigating circumstances outweigh any aggravating circumstances.<sup>101</sup> As in Minnesota, the court must provide written reasons for aggravation or mitigation.<sup>102</sup> The sentencing code also requires certain minimum sentence enhancements (e.g.,

### North Carolina Sentencing: Key Elements

- Grids reflect offense severity and criminal history
- Grid cells associated with sentence types (active, intermediate, or community) and minimum lengths
- Maximum sentence set by court
- Departures allowed on finding of aggravating circumstances, with written reasoning

firearm or deadly weapon).<sup>103</sup> Appeals are permitted by both sides on several grounds, including by the defendant as to whether the evidence supports a sentence exceeding the presumptive range.<sup>104</sup>

Unlike Minnesota, the North Carolina court must set a maximum sentence, which is typically 120 percent of the minimum rounded up to the next highest number.<sup>105</sup> A defendant receiving a custody sentence may have their maximum sentence reduced through earned time credits but must serve at least the minimum sentence.<sup>106</sup> Although North Carolina eliminated parole in 1994, inmates with felony convictions are generally subject to post-release supervision from nine months for lower-level felonies up to 60 months for registerable sex offenses.<sup>107</sup>

## Oregon

The primary purposes of Oregon’s sentencing scheme are “to punish each offender appropriately and to insure the security of the people in person and property, within the limits of correctional resources provided by the Legislative Assembly, local governments[,] and the people.”<sup>108</sup>

Similar to Minnesota and North Carolina, Oregon employs a grid that utilizes crime seriousness on one axis and criminal history categories on the other to designate a particular presumptive sentence.<sup>109</sup> The grid contains a “dispositional line” dividing it into two sections. Sentences above the dispositional line lead to a presumptive sentence of imprisonment in the specified range. The sentencing court is advised by administrative rule to “select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.”<sup>110</sup> Specified periods of post-prison supervision are mandated for all felony offenders.<sup>111</sup> Sentences below the dispositional line lead to a presumptive sentence of probation or jail.<sup>112</sup> The court has authority to impose an optional probation sentence for certain grid blocks above the dispositional line if certain findings, including the need for and availability of a treatment program, are made.<sup>113</sup>

Departures from presumptive sentences are allowed on “substantial and compelling reasons” and require the court to state the reasoning on the record.<sup>114</sup> Administrative rule provides a non-exclusive list of mitigating factors relevant to departure, including but not limited to diminished mental capacity, minor or passive role in the crime, and amenability to and availability of treatment.<sup>115</sup> Administrative rule also provides a list of aggravating circumstances, including deliberate cruelty, use of weapon, and violence or threat of violence.<sup>116</sup> Case law holds that *Blakely* is implicated by upward departure from the guidelines.<sup>117</sup> With some exceptions, Oregon inmates are eligible for earned time credits up to 20 percent of their total term; parole also exists for certain categories of serious offenses and offenses committed before November 1, 1989.<sup>118</sup> There are several grounds for appeal of sentences.<sup>119</sup>

### Oregon Sentencing: Key Elements

- Grid reflects offense severity and criminal history
- Grid cells associated with sentence types (imprisonment or jail/probation) and presumptive range or duration
- Departures allowed for substantial and compelling reasons, with reasoning on record

## Key Guideline Characteristics for Policy Consideration by Florida

While each of the systems described is slightly different, they highlight characteristics that Florida may want to consider in revising its criminal sentencing scheme.

Policies Florida may want to consider include:

- Relying on two primary factors to determine a sentence: criminal history and seriousness of the current offense;
- Using a recommended sentence range with lower and upper limits to guide judicial decisions;
- Allowing departure from a recommended range only on findings of aggravated or mitigated circumstances in writing or on the record;<sup>h</sup>
- Shortening sentence lengths, given that Florida's 85 percent time-served requirement is applied to all inmates;
- Implementing post-release supervision for appropriate defendants; and
- Creating a meaningful right of appeal to a higher court for sentences that exceed specified ranges.

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<sup>h</sup> This practice must be consistent with the requirements of *Blakely*, as described previously.

## CONCLUSION

The CPC was developed in response to previous sentencing policies that were seen, at various times and depending on one's perspective, as either too restrictive or too lenient and without sufficient parameters. Additionally, the CPC was developed at a time when there was little research about the damaging effects of incarceration and its limited utility in reducing recidivism. In the intervening years, research has provided policymakers with abundant guidance. Study after study shows that incarceration may not be achieving the goals intended and that a punishment-focused sentencing model fixating on incarceration may actually increase the likelihood of recidivism, thereby increasing crime and victimization.

Florida's sentencing policy has not changed for decades despite research indicating it may not be providing the public safety benefits envisioned. Moreover, the intended goals of the CPC— fairness, neutrality and economy—have proven to be elusive.

CJI's analysis shows that there is an objective and a quantifiable basis for Florida to revisit the CPC's structure and limitations and reconsider its goals with a clearer understanding of the characteristics of an effective and efficient criminal justice system.

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- <sup>1</sup> Crime and Justice Institute. (2017). *An Examination of Florida's Prison Population Trends*. Retrieved from <http://www.cri.org/assets/2017/08/FL-state-report.pdf>
- <sup>2</sup> Ibid.
- <sup>3</sup> Crime and Justice Institute. (2018). *Data-Driven Solutions to Improve Florida's Criminal Justice System*, 6. Retrieved from [http://www.cri.org/assets/2018/01/FINAL\\_Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf](http://www.cri.org/assets/2018/01/FINAL_Data-Driven-Solutions-to-Improve-Floridas-Criminal-Justice-System.pdf)
- <sup>4</sup> Ibid.
- <sup>5</sup> FLA. STAT. § 921.0024; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>6</sup> Florida Office of Program Policy Analysis and Government Accountability. (2019). *Diverting Low-Risk Offenders From Florida Prisons, Report No. 19-01*. Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf>
- <sup>7</sup> Ibid.
- <sup>8</sup> Ibid.
- <sup>9</sup> The Florida Senate. (2005). *Interim Project Report 2006-12, 2-3*. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf)
- <sup>10</sup> Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>11</sup> Griswold, D. (1985). Florida's Sentencing Guidelines: Progression or Regression, 26. *49 Fed. Probation* 25.
- <sup>12</sup> Florida Office of Program Policy Analysis and Government Accountability. (2019). *Diverting Low-Risk Offenders From Florida Prisons, Report No. 19-01, 4*. Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf>; Griswold, D. (1985). Florida's Sentencing Guidelines: Progression or Regression, 26. *49 Fed. Probation* 25.
- <sup>13</sup> The Florida Senate. (2005). *Interim Project Report 2006-12, 3*. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf)
- <sup>14</sup> Ibid.; Crow, M. (2005). *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformations*, 20. Retrieved from <http://diginole.lib.fsu.edu/islandora/object/fsu:181204/datastream/PDF/view>
- <sup>15</sup> 1993 Fla. SB 26; The Florida Senate. (2005). *Interim Project Report 2006-12, 3-4*. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf); Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*, 7. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf); Florida Legislature. (1993). *1993 Summary of General Legislation*, 158. Retrieved from <https://fall.fsulawrc.com/collection/FISumGenLeg/FISumGenLeg1993.pdf>
- <sup>16</sup> Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>17</sup> Ibid.
- <sup>18</sup> Florida Legislature. (1993). *1993 Summary of General Legislation*, 158. Retrieved from <https://fall.fsulawrc.com/collection/FISumGenLeg/FISumGenLeg1993.pdf>
- <sup>19</sup> 1994 FLA. STAT § 921.0016
- <sup>20</sup> Ibid.
- <sup>21</sup> The Florida Senate. (2005). *Interim Project Report 2006-12, 4*. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf)
- <sup>22</sup> Florida Legislature. (1993). *1993 Summary of General Legislation*, 158. Retrieved from <https://fall.fsulawrc.com/collection/FISumGenLeg/FISumGenLeg1993.pdf>
- <sup>23</sup> The Florida Senate. (2005). *Interim Project Report 2006-12, 5*. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf)
- <sup>24</sup> Ibid.



- <sup>25</sup> 1995 SB 172; Crow, M. (2005). *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformation*, 24. Retrieved from <http://diginole.lib.fsu.edu/islandora/object/fsu:181204/datastream/PDF/view>; Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*, 8. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>26</sup> "Stop Turning Out Prisoners Act," 1995 HB 687; Crow, M. (2005). *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformations*. Retrieved from <http://diginole.lib.fsu.edu/islandora/object/fsu:181204/datastream/PDF/view>
- <sup>27</sup> Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*, 8. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>28</sup> Crow, M. (2005). *Florida's Evolving Sentencing Policy: An Analysis of the Impact of Sentencing Guidelines Transformations*, 25. Retrieved from <http://diginole.lib.fsu.edu/islandora/object/fsu:181204/datastream/PDF/view>
- <sup>29</sup> The Florida Senate. (2005). *Interim Project Report 2006-12*, 5. Retrieved from [http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim\\_reports/pdf/2006-112cj.pdf](http://archive.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-112cj.pdf)
- <sup>30</sup> Florida Office of Program Policy Analysis and Government Accountability. (2019). *Diverting Low-Risk Offenders From Florida Prisons, Report No. 19-01*, 4. Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf>
- <sup>31</sup> Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>32</sup> Ibid, 58.
- <sup>33</sup> Ibid, 13.
- <sup>34</sup> FLA. STAT. § 921.002; Florida Office of Program Policy Analysis and Government Accountability. (2019). *Diverting Low-Risk Offenders From Florida Prisons, Report No. 19-01*, 4. Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf>
- <sup>35</sup> Florida Office of Program Policy Analysis and Government Accountability. (2019). *Diverting Low-Risk Offenders From Florida Prisons, Report No. 19-01*, 4. Retrieved from <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1901rpt.pdf>
- <sup>36</sup> FLA. STAT. § 921.002
- <sup>37</sup> Ibid.
- <sup>38</sup> Ibid.
- <sup>39</sup> Ibid.
- <sup>40</sup> Ibid.
- <sup>41</sup> Ibid.
- <sup>42</sup> Ibid.
- <sup>43</sup> Ibid.; 1997 Fla. HB 241
- <sup>44</sup> 1997 Fla. SB 1522
- <sup>45</sup> FLA. STAT. § 921.0024; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 13-14. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>46</sup> FLA. STAT. §§ 921.0024, 921.187
- <sup>47</sup> Fla. R. Crim. P. 3.704; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 8. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>48</sup> FLA. STAT. § 921.0022 et seq.; Fla. R. Crim. P. 3.992(a); Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>49</sup> FLA. STAT. § 921.0024; Fla. R. Crim. P. 3.992(a); Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>50</sup> Ibid.
- <sup>51</sup> Ibid.



- <sup>52</sup> Ibid.
- <sup>53</sup> Ibid.
- <sup>54</sup> Ibid.
- <sup>55</sup> FLA. STAT. §§ 775.082, 921.0024; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 13. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>56</sup> Brown v. State, 260 So. 3d 147 (2018)
- <sup>57</sup> Ibid.
- <sup>58</sup> FLA. STAT. § 921.0024; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 13. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>59</sup> Ibid, 13-14; FLA. STAT. § 921.0024
- <sup>60</sup> FLA. STAT. §921.0024; See Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 25. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>61</sup> Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 14. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>62</sup> Ibid.
- <sup>63</sup> FLA. STAT. § 921.0026
- <sup>64</sup> FLA. STAT. § § 921.00241, 948.20; 397.334; FLA. STAT. § 921.002; Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*, 15, 25. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>65</sup> FLA. STAT. § 921.002; Florida Department of Corrections. (2018). *Florida's Criminal Punishment Code: A Comparative Assessment*, 10. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_code.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_code.pdf)
- <sup>66</sup> Florida Department of Corrections. (2018). *Sentencing Scoresheet Compliance Report*, 3. Retrieved from <http://www.dc.state.fl.us/pub/scoresheet/Compliance%20Report-FY17-18.pdf>
- <sup>67</sup> Ibid.
- <sup>68</sup> FLA. STAT. § 948.20; Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>69</sup> Florida Department of Corrections. (2018). *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 14. Retrieved from [http://www.dc.state.fl.us/pub/scoresheet/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/scoresheet/cpc_manual.pdf)
- <sup>70</sup> Travis, J. & Western, B. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. National Research Council. Retrieved from [https://johnjay.jjay.cuny.edu/nrc/NAS\\_report\\_on\\_incarceration.pdf](https://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)
- <sup>71</sup> Ibid.
- <sup>72</sup> Villettaz, P., Gillieron, G., & Killias, M. (2015). The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge. *Campbell Collaboration*. Retrieved from <https://pdfs.semanticscholar.org/50b6/23cf47b0bedaaca77d60f09c57427d5f60df.pdf>; Nagin, D. S., & Snodgrass, G. M. (2013). The effect of incarceration on re-offending: Evidence from a natural experiment in Pennsylvania. *Journal of Quantitative Criminology*, 29(4), 601-642.
- <sup>73</sup> Villettaz, P., Gillieron, G., & Killias, M. (2015). The Effects on Re-Offending of Custodial vs. Non-Custodial Sanctions: An Updated Systematic Review of the State of Knowledge. *Campbell Collaboration*. Retrieved from <https://pdfs.semanticscholar.org/50b6/23cf47b0bedaaca77d60f09c57427d5f60df.pdf>; Nagin, D., Cullen, F., & Lero Jonson, C. (2009). Imprisonment and Reoffending. *Crime and Justice: A Review of the Research*, ed. Michael Tonry, vol. 38, 115-200.
- <sup>74</sup> United States Sentencing Commission. (2014). *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*. Retrieved from [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf); Meade, et al. (2012). Estimating a Dose-Response Relationship Between Time Served in Prison and Recidivism. *Journal of Research in Crime and Delinquency*, 50(4), 525-550.; Nagin, D., Cullen, F., & Lero Jonson, C. (2009). Imprisonment and Reoffending. *Crime and Justice*, 38.

- <sup>75</sup> Spohn, C. & Holleran, D. (2006). The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders. *Criminology*, 40(2). Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2002.tb00959.x/abstract>; Drake, E.K., & Aos, S. (2012). Confinement for Technical Violations of Community Supervision: Is There an Effect on Felony Recidivism? *Olympia: Washington State Institute for Public Policy*.
- <sup>76</sup> Spohn, C. & Holleran, D. (2006). The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders. *Criminology*, 40:2. Retrieved from <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2002.tb00959.x/abstract>; Nieuwbeerta, P., Nagin, D., & Blokland, A. (2009). Assessing the Impact of First-Time Imprisonment on Offender's Subsequent Criminal Career Development: A Matched Samples Comparison, *Journal of Quantitative Criminology*, 25(3), 227-257. Retrieved from <http://link.springer.com/article/10.1007%2Fs10940-009-9069-7>
- <sup>77</sup> Nieuwbeerta, P., Nagin, D., & Blokland, A. (2009). Assessing the Impact of First-Time Imprisonment on Offender's Subsequent Criminal Career Development: A Matched Samples Comparison, *Journal of Quantitative Criminology*, 25(3), 227-257. Retrieved from <http://link.springer.com/article/10.1007%2Fs10940-009-9069-7>
- <sup>78</sup> Bonta, J., Wallace-Capretta, S., & Rooney, J. (2000). A Quasi-Experimental Evaluation of an Intensive Rehabilitation Supervision Program. *Criminal Justice and Behavior*, 27(3), 312-329.
- <sup>79</sup> Bonta, J., & Andrews, D.A. (2007). Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation. *Public Safety Canada*. Retrieved from <https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/rsk-nd-rspnsvty/rsk-nd-rspnsvty-eng.pdf>
- <sup>80</sup> FLA. STAT. § 921.002
- <sup>81</sup> Ibid.
- <sup>82</sup> Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 1. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>83</sup> Ibid, 40.
- <sup>84</sup> Ibid, 77-81.
- <sup>85</sup> Ibid.
- <sup>86</sup> Minn. Stat. § 244.09; Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 77-81. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>87</sup> Minn. Stat. § 244.101, § 244.05; Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 3. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>88</sup> Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 4. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>89</sup> Minn. Stat. § 244.10; Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 38. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>90</sup> Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 43-47. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>; See also Minn. Stat. § 244.10
- <sup>91</sup> *Blakely v. Washington*, 542 U.S. 296 (2004); Robina Institute of Criminal Law and Criminal Justice. (2015). *What is Blakely and Why is it so Important?* Retrieved from <https://sentencing.umn.edu/content/what-blakely-and-why-it-so-important>
- <sup>92</sup> Minnesota Sentencing Guidelines Commission. (2018). *Minnesota Sentencing Guidelines and Commentary*, 40. Retrieved from <http://mn.gov/msgc-stat/documents/NewGuidelines/2018/Guidelines.pdf>
- <sup>93</sup> Minn. Stat. § 244.11; Minn. R. Crim. P. 28.05, Subd. 2
- <sup>94</sup> North Carolina Sentencing and Policy Advisory Commission. (n.d.) *Structured Sentencing Training and Reference Manual*, 1. Retrieved from [https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QIXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QIXbSKybxUWGVt3v)
- <sup>95</sup> N.C. Gen. Stat. § 15A-1340.13; North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>96</sup> North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 78. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>97</sup> Ibid, 32.

<sup>98</sup> Ibid, 78.

<sup>99</sup> Ibid, 25.

<sup>100</sup> N.C. Gen. Stat. § 15A-1340.16; North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 19-25. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>101</sup> Ibid.

<sup>102</sup> Ibid, 34.

<sup>103</sup> N.C. Gen. Stat. § 15A-1340.16A; North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 26. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>104</sup> N.C. Gen. Stat. §§ 15A-1415(b), 15A-1441, 15A-1444, 15A-1445, 15A-1340.16A; North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 46. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>105</sup> North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 28. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>106</sup> N.C. Gen. Stat. § 15A-1340.13; Ibid, 34.

<sup>107</sup> N.C. Gen. Stat. § 15A-1368 et seq.; North Carolina Department of Public Safety. (n.d.). *Post-Release Supervision & Parole Commission*. Retrieved from <https://www.ncdps.gov/about-dps/boards-commissions/post-release-supervision-parole-commission>; North Carolina Sentencing and Policy Advisory Commission. (n.d.). *Structured Sentencing Training and Reference Manual*, 28, 36, 47. Retrieved from

[https://www.nccourts.gov/assets/documents/publications/sstrainingmanual\\_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v](https://www.nccourts.gov/assets/documents/publications/sstrainingmanual_14.pdf?aN9UXo5RrBFEdTL6QiXbSKybxUWGVt3v)

<sup>108</sup> OAR 213-002-0001

<sup>109</sup> OAR 213-004-0001

<sup>110</sup> OAR 213-005-0001

<sup>111</sup> OAR 213-005-0002

<sup>112</sup> OAR 213-005-0007

<sup>113</sup> OAR 213-005-0006

<sup>114</sup> OAR 213-008-0001

<sup>115</sup> OAR 213-008-0002

<sup>116</sup> Ibid.

<sup>117</sup> State v. Dilts, 337 Ore. 645 (2004); Robina Institute of Criminal Law and Criminal Justice. (2015). *Oregon Sentencing Case Law*, 3. Retrieved from

[http://sentencing.umn.edu/sites/sentencing.umn.edu/files/final\\_503291\\_oregon\\_case\\_law2.pdf](http://sentencing.umn.edu/sites/sentencing.umn.edu/files/final_503291_oregon_case_law2.pdf)

<sup>118</sup> ORS § 421.121; OAR 255-005-0005; Oregon Secretary of State. (2010). *Secretary of State Audit Report, Department of Corrections: Administration of Earned Time*, 9. Retrieved from

<https://sos.oregon.gov/Documents/audits/full/2010/2010-39.pdf>

<sup>119</sup> ORS §§ 138.020, 138.105, 138.115



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