

**Subcommittee on Health and Human Services**  
**Government Efficiency Task Force**

401 Senate Office Building

May 11, 2012

9:00 a.m. – 11:00 a.m.

- 1) Call to Order
- 2) Roll Call
- 3) Presentation on Criminal Justice  
Robert Weissert, Vice President for Research, Florida TaxWatch
- 4) Member discussion of Criminal Justice
- 5) Adjourn



# Florida Government Efficiency Task Force

*Subcommittee on Health and Human Services*

*Background Brief*

**Subject Matter:** Criminal Justice

**Subcommittee Members:** Bob Rohrlack (Chair), Frank Attkisson, Larry Cretul, Julie Fess, and Bob Stork

## ISSUE SUMMARY

### **Risk and Needs Assessment Instruments**

- Florida's sentencing policies use items such as nature of the primary offense and any additional offenses, prior criminal history, and injury to the victim to calculate a recommended sentence for the offender using a sentencing scoresheet.
- Actuarial risk and needs assessment tools use data about past cases to identify the indicators most closely associated with the likelihood of future criminality. At sentencing, risk and needs assessments are intended to assist judges by providing information on risk management and reduction. Costs of different sentencing options may also be included in results.
- A 2010 survey by the Vera Institute of Justice found that over 60 community supervision agencies in 41 states reported using an actuarial assessment tool.

### **State and Local Incarceration**

- In Florida, defendants whose sentences include incarceration for one year or less are incarcerated in local prisons. The county in which the individual is incarcerated pays the costs of incarceration in local facilities. If a defendant is sentenced to incarceration for a year and a day or longer, the individual is placed in a state facility and the state pays the costs of incarceration.
- At the time of sentencing, many offenders have already served a portion of their sentence in jail, pending disposition of the case. If the prisoner is then sentenced for a term of incarceration longer than a year, he or she is transferred to a state facility. Each prisoner transferred to a state facility is first transported to a reception center.
- Because of the higher cost of reception centers, the overall cost of a sentence just over a year in length, which requires transferring the prisoner to a state facility, may be more per inmate than a sentence just under a year, which is served in a local facility only.
- Several states provide incentives to localities for successfully supervising offenders in the community instead of sending them to state prison.

### **Electronic Monitoring**

- In Florida, electronic monitoring (EM) by location tracking devices is primarily used by the Department of Corrections (DOC or department) to provide an extra measure of security for high-risk offenders under some form of community supervision, particularly sex offenders.
- EM systems mainly consist of two types: radio frequency (RF) or global positioning system (GPS).
- In 2011, Florida's RF monitoring cost was \$1.97 per day per monitored offender, and the GPS monitoring cost was \$8.94 per day per monitored offender.
- Research has shown that EM reduces supervision failures and the likelihood that an offender will not successfully complete community supervision, but may have negative consequences to offenders' relationships and ability to obtain and maintain employment.

## FULL ISSUE(S) ANALYSIS

### I. BACKGROUND

#### A. Risk and Needs Assessment Instruments

##### *Florida's Sentencing Policies*

Florida's sentencing policies use items such as nature of the primary offense and any additional offenses, prior criminal history, and injury to the victim to calculate a recommended sentence for the offender. This type of determinant sentencing is put forth in the Criminal Punishment Code.<sup>1</sup> Section 921.002(1)(b), F.S., provides, "The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system but is subordinate to the goal of punishment."<sup>2</sup> To this end, the Criminal Punishment Code provides that sentences should be commensurate with the severity and circumstances of the primary offense, increase with the length and nature of the offender's prior record, and prioritize incarceration toward offenders of serious offenses and those with long prior records.<sup>3</sup>

A sentencing scoresheet must be completed for each felony defendant prior to sentencing.<sup>4</sup> The offender's score determines the lowest permissible sentence, with upward discretion to the statutory maximum sentence. Florida's sentencing guidelines scoring system has been shown to serve as a valid indicator of offender seriousness.<sup>5</sup> The weighted score produced by this system takes into account an offender's primary offense and all additional offenses, his or her prior record and the seriousness of prior offenses, and other circumstances of the criminal event (victim injury, weapon use, supervision violation, etc.). A study by Padgett, Bales, and Blomberg stated that "In the absence of risk scores derived from psychological or other such inventories, this indicator of offender seriousness is the best available quantitative measure of the risk an offender poses to public safety."<sup>6</sup>

##### *Sentencing Tools*

Actuarial risk and needs assessment tools use data about past cases to identify the indicators most closely associated with the likelihood of future criminality. After validation through testing on a known correctional population, this data is applied to individual offenders to produce recommendations based on offender characteristics, criminal history, and severity of current offense.

Once used largely by probation and parole departments to help determine the best supervision and treatment strategies for offenders, use of risk and needs assessment tools is expanding to inform decisions at other points in the criminal justice process. At sentencing, risk and needs assessments are intended to assist judges by providing information on risk management and reduction. Costs of different sentencing options may also be included in results. Judges consider this information in balancing the many purposes of sentencing, including punishment, rehabilitation, deterrence, restitution, recidivism, and public safety.

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<sup>1</sup> See s. 921.002, F.S.

<sup>2</sup> Section 921.002(1)(b), F.S.

<sup>3</sup> Section 921.002(1), F.S.

<sup>4</sup> Section 921.0024(7), F.S. The Florida Criminal Punishment Code worksheet is provided in s. 921.0024(1), F.S.

<sup>5</sup> Burton, Susan E., et al., "Applying a Crime Seriousness Scale to Measure Changes in the Severity of Offenses by Individuals Arrested in Florida," *Justice Research and Policy* 6/1, 2004.

<sup>6</sup> Padgett, Kathy G., William D. Bales and Thomas G. Blomberg, "Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring," *Criminology & Public Policy* 5/1, February 2006, p. 68, <http://ccoso.org/undersurveillance.pdf> (last accessed 05/08/2012).

## *Application of Risk and Needs Assessment Instruments*

According to the National Center for State Courts' National Working Group on Using Risk and Needs Assessment Information at Sentencing, risk and needs assessment tools are effective in determining:

- Public safety and risk management;
- Amenability to probation, community supervision, and intermediate sanctions;
- Effective behavioral treatment options;
- Suspension of all or part of a sentence; and
- Effective conditions of probation and responses to violations.<sup>7</sup>

The Pew Center on the States has found that “whether a particular offender is an appropriate candidate for recidivism reduction cannot accurately be assessed relying solely on the type of offense committed and the offender’s prior criminal history. Individual offender characteristics must also be taken into consideration.”<sup>8</sup> Pew recommends providing sufficient flexibility to consider recidivism reduction options and that state sentencing rules should avoid mandates that prohibit judges from granting probation.<sup>9</sup>

Alabama, Oregon, California, Arizona, Idaho, South Carolina, Utah, Washington, and Wisconsin have implemented evidence-based sentencing or declared recidivism reduction a goal of sentencing in recent years. Studies have found that actuarial risk and needs assessment tools that use data on prior cases to identify the likelihood of future criminality can be as accurate as human judgment in predicting risk of recidivism, but recommend use of both a third-generation actuarial tool and professional judgment.<sup>10</sup>

The first state supreme court decision to discuss the use of risk and needs information at sentencing was in Indiana in *Malenchik v. State*.<sup>11</sup> In the decision, the Indiana Supreme Court distinguishes use of risk and needs assessment for sentencing alternatives for risk and recidivism management from sentencing as a punishment for criminal behavior. The *Malenchik* decision provides that risk and needs “evaluations and their scores are not intended to serve as aggravating or mitigating circumstances nor to determine the gross length of sentence, but a trial court may employ such results in formulating the manner in which a sentence is to be served.”<sup>12</sup>

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<sup>7</sup> Casey, Pamela M., Roger K. Warren, and Jennifer K. Elek, “Using Offender Risk and Needs Assessment Information at Sentencing,” National Center for State Courts, 2011, <http://www.ncsc.org/~media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/Sentencing%20Probation/RNA%20Guide%20Final.ashx> (last accessed 05/02/2012).

<sup>8</sup> Pew Center on the States, “Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Cost,” May 2009, p. 2, <http://cdpsweb.state.co.us/cccj/pdf/june%202009/pew%20arming%20the%20courts%20with%20research.pdf> (last accessed 05/02/2012).

<sup>9</sup> *Id.* at p. 2.

<sup>10</sup> See Andrews, D.A. James Bonta, and J. Stephen Wormith, “The Recent Past and Near Future of Risk and/or Need Assessment,” *Crime and Delinquency* 52, January 2006; Gendreau, Paul, Tracy Little and Claire Goggin, “A Meta-Analysis of the Predictors of Adult Offender Recidivism: What Works!” *Criminology* 34/4, 1996.

<sup>11</sup> *Malenchik v. State* 928 N.E.2d 564 (Ind. 2010).

<sup>12</sup> *Id.* at 575.

## *Risk and Needs Assessments in Other States*

A 2010 survey by the Vera Institute of Justice found that over 60 community supervision agencies in 41 states reported using an actuarial assessment tool.<sup>13</sup> Of the survey respondents, 82 percent assessed both risk and need, and the remaining 18 percent assessed only risk.<sup>14</sup>

As of 2010, the Level of Service Inventory-Revised (LSI-R) was the most commonly used assessment tool and was utilized by at least 16 states.<sup>15</sup> LSI-R is used to predict recidivism across a range of correctional settings and assists determining the necessary level of supervision, sentencing, program or institutional classification, and release from custody. The tool consists of a 54-item scale in the areas of prior criminal history, education, employment, financial situation, family relationships, use of leisure time, companions, alcohol or drug use, mental health, and criminal attitudes.<sup>16</sup>

Other assessment tools include: the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) and the Level of Service/Case Management Inventory (LS/CMI).<sup>17</sup> Several states use state-specific assessment tools, including Ohio, Arizona, Wisconsin, Virginia, and California.

Virginia implemented a risk assessment instrument created by a state Sentencing Commission in 2003.<sup>18</sup> Since that time, Virginia judges have used the tool to successfully divert 25% of Virginia's nonviolent offenders who would have otherwise been incarcerated to alternative sanctions programs.<sup>19</sup> Beginning in 2013, Kentucky will include risk and needs assessments in presentence reports, allowing judges to review a defendant's likelihood of future criminal behavior when considering sentencing options.<sup>20</sup>

Missouri's Sentencing Commission developed the Recommended Sentencing Application (RSA), a web-based sentencing tool that provides extensive information about sentencing options and the risks and costs associated with each alternative.<sup>21</sup> RSA calculates recommended sentences, risk assessments, and recidivism projections using gender, prior felony convictions, prior misdemeanors, prior incarcerations, revocations, time since last conviction/release, recidivist offense, education, employment, substance abuse, escapes, and age. Also included in results are the estimated costs of incarceration, supervision, and community-based alternatives, allowing the judge to weigh projected results with estimated costs of sentences.<sup>22</sup>

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<sup>13</sup> Responses were received from 72 agencies across 41 different states. Agencies included probation, parole, and releasing authorities. Vera Institute of Justice Center on Sentencing and Corrections memo to Illinois Risk, Assets and Needs Assessment Task Force, May 27, 2010, p. 1, [http://www2.illinois.gov/idoc/Documents/National\\_Information\\_Offender\\_Assessments\\_PartII\\_Memo.pdf](http://www2.illinois.gov/idoc/Documents/National_Information_Offender_Assessments_PartII_Memo.pdf) (last accessed 05/02/2012).

<sup>14</sup> Nearly all responding probation agencies conduct their assessments in the pre-sentence phase. Releasing authorities were more likely to assess only risk. *Id.* at p. 1-2.

<sup>15</sup> *Id.* at p. 1.

<sup>16</sup> Watkins, Ian, "The Utility Level of Service Inventory – Revised (LSI-R) Assessments within NSW Correctional Environments," Corrective Services NSW Research Bulletin No. 29, January 2011, p. 2,

[http://143.119.253.176/\\_data/assets/pdf\\_file/0018/302526/utility-of-level-of-service-inventory-.pdf](http://143.119.253.176/_data/assets/pdf_file/0018/302526/utility-of-level-of-service-inventory-.pdf) (last accessed 05/08/2012).

<sup>17</sup> Vera Institute of Justice Center on Sentencing and Corrections memo to Illinois Risk, Assets and Needs Assessment Task Force, May 27, 2010, p. 1, [http://www2.illinois.gov/idoc/Documents/National\\_Information\\_Offender\\_Assessments\\_PartII\\_Memo.pdf](http://www2.illinois.gov/idoc/Documents/National_Information_Offender_Assessments_PartII_Memo.pdf) (last accessed 05/02/2012).

<sup>18</sup> See Section 17.1-803(5,6), Code of Virginia.

<sup>19</sup> Target populations for diversion include property and drug offenders. Warren, Roger K. "Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy," *University of San Francisco Law Review* 43, 2009, p. 608.

<sup>20</sup> NCSL Sentencing and Corrections Work Group, "Principles of Effective State Sentencing and Corrections Policy," August 2011, p. 4, <http://www.ncsl.org/documents/cj/pew/WGprinciplesreport.pdf> (last accessed 05/02/2012).

<sup>21</sup> The Missouri Sentencing Advisory Commission Model can be accessed at [www.courts.mo.gov/rs/](http://www.courts.mo.gov/rs/) (last accessed 05/02/12).

<sup>22</sup> See [www.courts.mo.gov/rs/](http://www.courts.mo.gov/rs/) (last accessed 05/02/12).

## Correctional Integrated Needs Assessment System

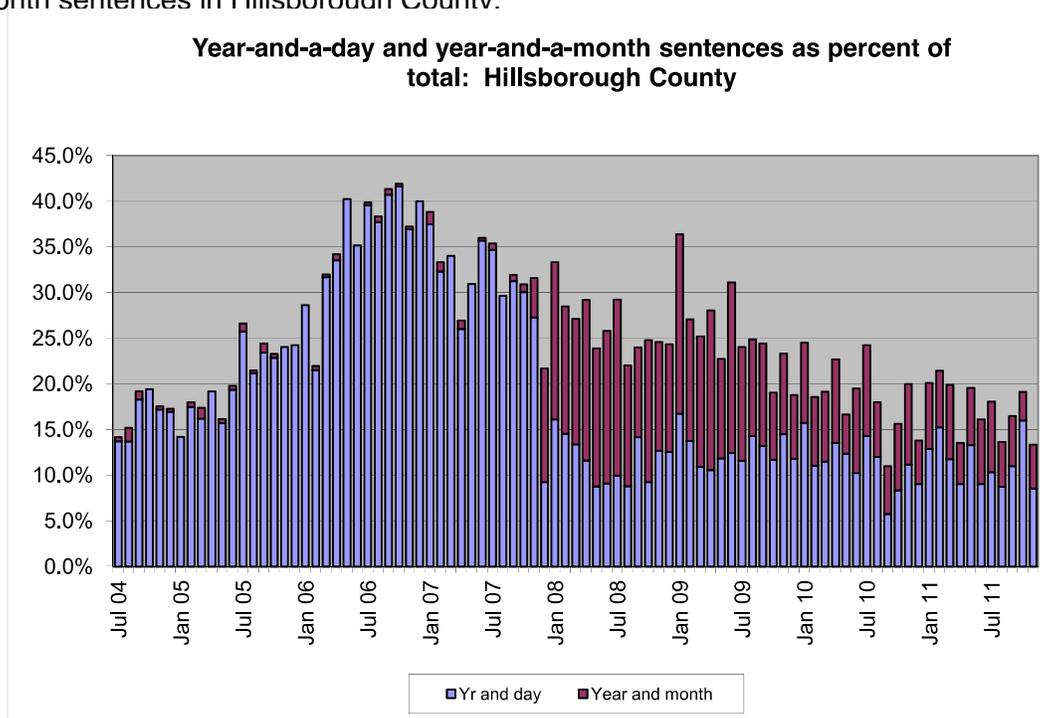
The Florida Department of Corrections (DOC or department) assesses inmates and places them into programs using the Correctional Integrated Needs Assessment System (CINAS), which is based on the “Risk-Needs-Responsivity” (RNR) principle. The RNR principle refers to predicting which inmates have a higher probability of recidivating and providing appropriate programming and services to higher risk inmates based on their level of need. Services are focused on criminogenic needs, which are factors associated with recidivism that can be changed, such as education level, substance abuse, criminal thinking, and marketable job skills. CINAS is designed to develop and implement programs that increase the likelihood of successful reentry and is administered at time of institution.<sup>23</sup>

### B. State and Local Incarceration

#### State and Local Incarceration in Florida

In Florida, defendants whose sentences include incarceration for one year or less are incarcerated in local prisons. The county in which the individual is incarcerated pays the costs of incarceration in local facilities. If a defendant is sentenced to incarceration for a year and a day or longer, the individual is placed in a state facility and the state pays the costs of incarceration.<sup>24</sup>

Year-and-a-day commitments rose to a peak of 17.7% of all new sentences in FY 2006-2007.<sup>25</sup> Attempts to reduce year-and-a-day commitments resulted in a decrease to 8.4% of all new sentences in FY 2010-2011.<sup>26</sup> It has been suggested that this reduction reflects a shift to year-and-a-month sentences, rather than shorter sentences resulting in local incarceration, as demonstrated in the graph below comparing year-and-a-day and year-and-a-month sentences in Hillsborough County.<sup>27</sup>



<sup>23</sup> See <http://www.dc.state.fl.us/reentry/faq.shtml> (last accessed 05/08/2012).

<sup>24</sup> See s. 944.17(3), F.S.

<sup>25</sup> “Criminal Justice Trends,” Criminal Justice Estimating Conference, December 14, 2011, p. 35, <http://edr.state.fl.us/content/conferences/criminaljustice/trends.pdf> (last accessed 05/02/2012).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at p. 37.

At the time of sentencing, many offenders have already served a portion of their sentence in jail, pending disposition of the case. If the prisoner is then sentenced for a term of incarceration longer than a year, he or she is transferred to a state facility. Each prisoner transferred to a state facility is first transported to a reception center.<sup>28</sup>

For FY 2010-2011, the department reported an average per diem of \$53.35 for all facilities, \$42.36 for adult male custody facilities, \$63.12 for male youthful offender custody facilities, and \$69.74 for adult and youthful female custody facilities.<sup>29</sup> Reception centers average a higher per diem of \$96.90.<sup>30</sup> Because of the higher cost of reception centers, the overall cost of a sentence just over a year in length, which requires transferring the prisoner to a state facility, may be more per inmate than a sentence just under a year, which is served in a local facility only.

### *Incentives for Local Incarceration*

California, Colorado, Illinois, Kansas, and Texas provide incentives to localities for successfully supervising offenders in the community instead of sending them to state prison.<sup>31</sup> Under these arrangements, local correctional agencies receive state funding and other assistance to implement community-based programming with the goal of reducing recidivism and supervision violations that result in probation revocations.<sup>32</sup>

In Illinois, the Crime Reduction Act<sup>33</sup> established the Adult Redeploy Illinois program, which provides financial incentives to local jurisdictions for designing and utilizing community-based programs to treat offenders instead of sending them to state facilities. Texas utilizes a grant program for counties to implement a system of progressive community-based sanctions.<sup>34</sup> California provides funding to counties for implementing community-based sanctions for probation and parole violations in lieu of prison.<sup>35</sup> In the first year of implementation of a law providing funding to counties for implementing community-based sanctions, Arizona experienced a 14.5 percent decrease in probation revocations to prison.<sup>36</sup>

A potential issue with incentive programs is that data reported by localities may not accurately reflect true diversion from state facilities. In order to receive incentive funds, localities may improperly report diversions of individuals who would have been sentenced to local jails or community-based alternatives without the incentives in place.

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<sup>28</sup> See s. 944.17(3), F.S.

<sup>29</sup> Department of Corrections, "2010-2011 Annual Report," 2011, p. 7, <http://www.dc.state.fl.us/pub/annual/1011/pdfs/AR1011-Final.pdf> (last accessed 05/02/2012).

<sup>30</sup> *Id.*

<sup>31</sup> National Conference of State Legislatures (NCSL), "Innovations in Community Corrections," 2010, p. 2, <http://www.ncsl.org/documents/cj/pew/innovations.pdf> (last accessed 05/02/2012).

<sup>32</sup> *Id.*

<sup>33</sup> See 730 ILL. COMP. Stat. 190 (2012).

<sup>34</sup> See TEX. CODE ANN. §509.0017 (2011).

<sup>35</sup> See CAL. PENAL CODE §1228-1233.8 (2012).

<sup>36</sup> See ARIZ. REV. STAT. ANN. §12-270 (2011) (repealed 2011). The law was first implemented during FY 2009-2010. Due to state budget shortfalls, the Arizona Legislature suspended reinvestment of savings in communities for FY 2010-2011. National Conference of State Legislatures (NCSL), "Innovations in Community Corrections," 2010, p. 2, <http://www.ncsl.org/documents/cj/pew/innovations.pdf> (last accessed 05/02/2012).

## Cost Comparisons

### *Florida TaxWatch*

In its report for FY 2012-2013, the Florida TaxWatch Government Cost Savings Task Force recommended that Florida should reward counties for sentencing low-level nonviolent offenders to community-based alternatives. The Task Force noted that on a per-bed basis, the first six weeks of a state prison sentence incur the highest costs. Based on 2009 data, the Task Force cited the average per-diem at a reception facility at \$85.94, as compared to the average male state facility per-diem rate of \$42.31.<sup>37</sup> Assuming the average of new commitments sentenced to a year-and-a-day at 14 percent and that many of the individuals sentenced to year-and-a-day sentences would receive alternative sentences under an incentive program, the Task Force estimated that expanding state prison diversion would result in \$4.7 million to \$93 million in savings from FY 2011-2012 to FY 2013-2014.<sup>38</sup> Assuming an annual decline in year-and-a-day sentences of 9 percent, the Task Force estimated savings of \$2.6 million to \$51.3 million from FY 2011-2012 to FY 2013-2014.<sup>39</sup>

### *Department of Corrections*

The department recently entered into contracts with county jails for housing and supervision of inmates under DOC authority. The department subsequently determined that it was more cost effective to place the offenders in a state facility and discontinued the contracts. According to DOC, the per diem for the county jail contracts was \$33.60, and the per diem rate for these inmates if returned to a state facility was \$14.01.<sup>40</sup>

## **C. Electronic Monitoring**

Electronic monitoring (EM) by location tracking devices can be used as an aid in supervising pre-trial releasees and sentenced offenders who are not incarcerated. In Florida, electronic monitoring is primarily used by DOC to provide an extra measure of security for high-risk offenders under some form of community supervision, particularly sex offenders. In recent years there have been proposals to reduce corrections costs by replacing all or part of a term of incarceration of low-risk offenders with less expensive community supervision, including EM. In addition to reducing costs, it has been suggested that use of EM may support successful reentry into the community by providing for a period of supervision before release from custody.

### *Requirements for Electronic Monitoring in Florida*

Chapter 948, F.S., permits a sentencing court to order EM for offenders placed on probation or community control.<sup>41</sup> The Florida Parole Commission may also use EM as a condition of post-release supervision.<sup>42</sup> In some cases, the court is required to order EM due to the offender's current or past offenses.<sup>43</sup> The most stringent requirement is found in s. 948.012, F.S., which requires a minimum 25-year prison sentence followed by lifetime supervision with electronic monitoring for any adult offender who commits lewd or lascivious

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<sup>37</sup> Florida TaxWatch Government Cost Savings Task Force, "Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2012-13, 2011, p. 14, <http://www.floridataxwatch.org/resources/pdf/Report%20GCSTF%20for%20FY2012-13.pdf> (last accessed 05/08/2012).

<sup>38</sup> *Id.* at p. 15.

<sup>39</sup> *Id.*

<sup>40</sup> Correspondence on file with Government Efficiency Task Force staff.

<sup>41</sup> Section 948.101(1)(d), F.S., specifically provides that a court may order electronic monitoring as a condition of community control for any offender. Section 948.03(2), F.S. authorizes a sentencing court to order special conditions of probation not specifically set forth in statute.

<sup>42</sup> The Parole Commission's discretionary authority is authorized by s. 947.18, F.S., (parole), s. 947.1405, F.S., (conditional release), and s. 947.149, F.S., (conditional medical release).

<sup>43</sup> For example, *see* ss. 775.082(3), 947.1405, 948.012, and 948.30(3), F.S.

molestation against a child under 12 years of age.<sup>44</sup> EM is a required condition for offenders placed on sex offender probation for certain sex offenses, but can only be ordered “when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the Department of Corrections.”<sup>45</sup>

Apart from the statutory authority given to the courts, DOC has discretion under s. 948.11(1), F.S., to place a community controllee on EM. The department does not exercise this discretion based on case law that an offender’s failure to submit to EM ordered by the department cannot be a basis for revocation of community control.<sup>46</sup>

As of February 29, 2012, the department was actively supervising 114,761 offenders on some form of supervision in the community.<sup>47</sup> Of those offenders, 2,984 were being electronically monitored, with the majority (2,981) monitored by global positioning system (GPS) and the remaining 3 by radio frequency (RF) systems.<sup>48</sup> Of the monitored offenders, 1,934 were sex offenders or sexual predators.<sup>49</sup>

### *Electronic Monitoring Systems and Costs*

EM systems mainly consist of two types: radio frequency (RF) monitoring or global positioning system (GPS) monitoring. Early EM systems used RF technology to alert or record an instance when the offender left a restricted area. These systems were typically used to monitor individuals under house arrest and do not provide information about the offender’s location when the offender moves outside the range of the receiver.

In 2011, Florida’s RF monitoring cost was \$1.97 per day per monitored offender, making RF the least expensive form of electronic monitoring. RF system limitations and laws requiring use of monitoring with location tracking technology for sex offenders have led to reduced use by the department.<sup>50</sup>

GPS technology allows tracking of an offender’s location even when he or she moves away from a fixed location using satellite positioning. Active GPS monitoring provides real-time reporting of an offender’s location by incorporating a cell phone into the equipment in order to transmit location coordinates to a monitoring station. The monitoring station alerts the probation officer when the offender either leaves an area to which he or she is restricted or enters an area from which he or she is barred. An active GPS monitoring system includes a Mobile Tracking Device (MTD) that receives, stores, and transmits the location data as well as displays messages and instructions from the monitoring station or probation officer. In 2011, Florida’s GPS monitoring cost was approximately \$8.94 per day per monitored offender.

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<sup>44</sup> See s. 800.04(5)(b), F.S.

<sup>45</sup> Section 948.30(2)(e), F.S. The Jessica Lunsford Act, Ch. 2005-28, L.O.F., made significant changes to Florida’s electronic monitoring program. Among the provisions of the Act were requirements for electronic monitoring of certain sex offenders. Before passage of the Jessica Lunsford Act, the only statute mandating the sentencing court to require electronic monitoring was found in s. 948.101(1)(b), F.S., and applied only to offenders placed on criminal quarantine community control for criminal transmission of HIV. No offenders were ever placed on this form of community supervision and it was removed from the statutes in 2010.

<sup>46</sup> See *Carson v. State*, 531 So. 2d 1069 (Fla. 4<sup>th</sup> DCA 1988) and *Anthony v. State*, 854 So. 2d 744 (Fla. 2d DCA 2003).

<sup>47</sup> Another 30,768 offenders were in active-suspense supervision status, meaning that the offender was unavailable for direct supervision for reasons such as incarceration or hospitalization, but was still being monitored by a probation officer. Additionally, the department was monitoring 6,520 offenders whose supervision had been transferred out of state, and 29,342 offenders had absconded from supervision. Florida’s Community Supervision population Monthly Status Report, February 2012, Department of Corrections, p. 3, <http://www.dc.state.fl.us/pub/spop/2012/02/0212.pdf> (last accessed 05/02/2012).

<sup>48</sup> *Id.* at p. 2.

<sup>49</sup> Florida’s Community Supervision population Monthly Status Report, February 2012, Department of Corrections, p. 2, <http://www.dc.state.fl.us/pub/spop/2012/02/0212.pdf> (last accessed 05/02/2012).

<sup>50</sup> The Jessica Lunsford Act requires the department to use “a system that actively monitors and identifies the offender’s location and timely reports or records the offender’s presence near or within a crime scene or in a prohibited area or the offender’s departure from specified geographic limitations” for any court-ordered EM of a probationer, community controllee, or conditional release who has a conviction for a violent or sexual offense. See s. 948.11(6), F.S.

Section 948.09, F.S., requires the monitored offender to pay the full cost of the electronic monitoring services. The department has authority to exempt the offender from all or part of the payment under certain circumstances, such as inability to find a job.<sup>51</sup> Willful failure to pay non-exempted monitoring costs is grounds for the court to find a violation of the conditions of supervision. Few offenders have the financial resources to pay this amount on top of restitution, court costs, supervision fees, and other fees that have priority for payment.

### *Impact of Electronic Monitoring on Supervision*

In 2010, researchers from the Florida State University College of Criminology and Criminal Justice submitted a report to the United States Department of Justice that addressed whether EM is “an effective and cost efficient correctional strategy that increases the level of monitoring and supervision of high-risk offenders while maintaining public safety.”<sup>52</sup> The study found that:

- Overall, EM reduces the likelihood that an offender will not successfully complete community supervision by approximately 31% relative to the supervision failure rate of offenders who are not subject to it.<sup>53</sup>
- EM significantly reduces the failure rate for all types of offenders, but has less of an impact on violent offenders than on offenders who committed sex, drug, property, or other types of crimes.<sup>54</sup>
- Offenders who were monitored by use of active GPS monitoring had a 6% improvement rate in the reduction of supervision failures relative to offenders who were on RF monitoring.<sup>55</sup>

The study also noted drawbacks of EM, including:

- Offenders believe EM has negative consequences on their relationships with their spouses, significant others, and children, and a large proportion felt shame and were stigmatized by others disproportionate to their actions as a result of being on EM.<sup>56</sup>
- Offenders and officers were nearly unanimous in stating that EM is a detriment to ability to obtain and maintain employment.<sup>57</sup>

A previous study conducted by researchers at Florida State University found significant reductions in absconding and in revocations for technical violations or new offenses among electronically monitored offenders as compared to those who were not electronically-monitored. The study also found that electronic monitoring was effective across a range of violent, property, and drug offenders.<sup>58</sup>

The National Conference of State Legislatures Sentencing and Corrections Work Group provided that the value of intermediate sanctions, including EM, “depends upon policies that target resources effectively and focus the highest-level supervision on the highest-risk offenders. Creating more intensive supervision for lower-risk offenders usually does not help meet corrections goals, affect cost control, or reduce reoffending.”<sup>59</sup>

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<sup>51</sup> Section 948.09(2) and (3), F.S.

<sup>52</sup> Bales, Bill, et al, *A Quantitative and Qualitative Assessment of Electronic Monitoring*, The Florida State University College of Criminology and Criminal Justice, Center for Criminology and Public Policy Research, January 2010, p. 5, <https://www.ncjrs.gov/pdffiles1/nij/grants/230530.pdf> (last accessed 05/02/2012).

<sup>53</sup> *Id.* at p. 64.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at p. xi.

<sup>57</sup> *Id.*

<sup>58</sup> Padgett, Kathy G., William D. Bales and Thomas G. Blomberg, “Under Surveillance: An Empirical Test of the Effectiveness and Consequences of Electronic Monitoring,” *Criminology & Public Policy* 5/1, February 2006, <http://ccoso.org/undersurveillance.pdf> (last accessed 05/08/2012).

<sup>59</sup> NCSL Sentencing and Corrections Work Group, “Principles of Effective State Sentencing and Corrections Policy,” August 2011, p. 11, <http://www.ncsl.org/documents/cj/pew/WGprinciplesreport.pdf> (last accessed 05/02/2012).

When used in lieu of incarceration, the Work Group noted that EM can benefit offenders by allowing them to continue working, attend treatment, support their families, and remain in their residences.<sup>60</sup>

The Office of Program Policy Analysis and Government Accountability (OPPAGA) found that in addition to offender costs for EM, logistical problems may occur in monitoring homeless persons lacking a permanent residence and ability to recharge the unit for eight hours each day. Additionally, in rural areas offenders may be unable to acquire cellular signal for GPS monitoring, and offenders may not meet land-line telephone requirements for RF monitoring.<sup>61</sup>

### *Application and Estimates of Savings*

#### *OPPAGA*

In a 2010 report, OPPAGA found that increased use of intermediate sanctions, including community supervision with electronic monitoring, could reduce prison costs, but also has both positive and negative considerations.<sup>62</sup> OPPAGA determined that although the majority of persons on EM were sex offenders (70%), non-violent offenders with a Criminal Punishment Code score sheet total in the 45-60 point range are another population that may be effectively sanctioned with EM.<sup>63</sup> EM could be used as a sentencing alternative for persons driving with suspended licenses.<sup>64</sup> OPPAGA estimated potential savings of \$1.2 million in the first year for every 100 offenders diverted from prison to EM supervision.<sup>65</sup>

#### *Florida TaxWatch*

The Florida TaxWatch Government Cost Savings Task Force recommended expanding EM as an alternative to incarceration either at sentencing or as part of a reentry program. Florida law currently requires offenders to serve at least 85% of their sentence.<sup>66</sup> Based on potential savings, the Task Force recommended that savings could be realized by releasing non-violent offenders prior to 85% served and utilizing EM for the remainder of their sentences. For FY 2012-2013, savings estimates varied from \$1.14 to \$11.4 million if EM were utilized for the final 20% of sentences and \$4.4 to \$43.8 million per year if EM were utilized for the final 35% of sentences.<sup>67</sup>

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<sup>60</sup> *Id.* at p. 12.

<sup>61</sup> OPPAGA, Report 10-27, "Intermediate Sanctions for Non-Violent Offenders Could Produce Savings," March 2010, p. 5 <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1027rpt.pdf> (last accessed 05/02/2012).

<sup>62</sup> *Id.* at p. 2.

<sup>63</sup> Section 921.0024, F.S., provides a score sheet for determining the lowest permissible prison sentence under the Criminal Punishment Code. The lowest permissible sentence for an offender with 45 or 60 points is 12 or 24 months, respectively. *Id.* at p. 4.

<sup>64</sup> This sanction already exists within the state corrections system but is not commonly used by judges at sentencing. OPPAGA, Report No. 08-12, "Several Alternatives Could Be Used to Reduce Increasing Imprisonment of Persons Driving with Suspended Licenses," March 2008, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0812rpt.pdf> (last accessed 05/02/2012).

<sup>65</sup> This assumes that 75% of diversions will result in successful outcomes. Savings estimate includes expanding the number of probation officers employed by DOC to serve additional offenders. OPPAGA Report No. 10-27, "Intermediate Sanctions for Non-Violent Offenders Could Produce Savings," March 2010, p. 3-5, <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1027rpt.pdf> (last accessed 05/02/2012).

<sup>66</sup> Section 944.275(4)(b)3., F.S., requires that every inmate sentenced for an offense committed on or after October 31, 1995, must serve at least 85 percent of the sentence imposed by the sentencing judge. This provision is reiterated in s. 921.002(1)(e), F.S., as part of the Criminal Punishment Code.

<sup>67</sup> Savings were calculated using a cross section of DOC inmate population as of July 1, 2010. Estimates were based on release of non-violent inmates without any prior commitment to the state prison system. An average per diem cost of \$52 was used for inmates housed in public institutions and \$45.53 for inmates housed in private institutions. Average per diem cost for EM was \$8.94. Estimates do not include costs to administer the EM program or any potential increase of workload for DOC patrol officers or other law enforcement officers. Florida TaxWatch Government Cost Savings Task Force, "Report and Recommendations of the Florida TaxWatch Government Cost Savings Task Force for Fiscal Year 2012-13, 2011, p. 18-9, <http://www.floridatxwatch.org/resources/pdf/Report%20GCSTF%20for%20FY2012-13.pdf> (last accessed 05/08/2012).

# Select Cost-Saving Recommendations for the Criminal and Juvenile Justice System

From the 23 Justice Reform recommendations in the Report and Recommendations of the Government Cost Savings Task Force for FY 2012-13

Robert Weissert, VP for Research, Florida TaxWatch

To the Government Efficiency Task Force

May 11, 2012



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# Government Cost Savings Task Force

- 2012-13 Recommendations
  - 135 cost-saving ideas
  - Worth more than \$4 billion
- Chapter 1- Criminal and Juvenile Justice



# Why Justice/Corrections Reform?

- Large Growth
  - 1980-2011
    - Prison population increased more than 5-fold
      - 19,692 inmates in 1980; 102,319 inmates in 2011)
    - Corrections spending up by nearly 5-fold
      - \$169.7 million DOC appropriations in 1980 (approximately \$475 million in current dollars); \$2.2 billion DOC appropriations in 2011
    - Total population in Florida only doubled
      - 9.75 million residents in 1980; 19 million residents in 2011



# Prison Population Drivers

- Elimination of parole and lengthened sentences
- Widespread use of short state prison sentences
- State prison incarceration for probation violations for adults and juveniles
- Recidivism



# What To Do?

- Florida's antiquated policies have pushed inmate populations to more than 100,000
- More effective, less costly, evidence-based policies
- Policy decisions must be driven by data

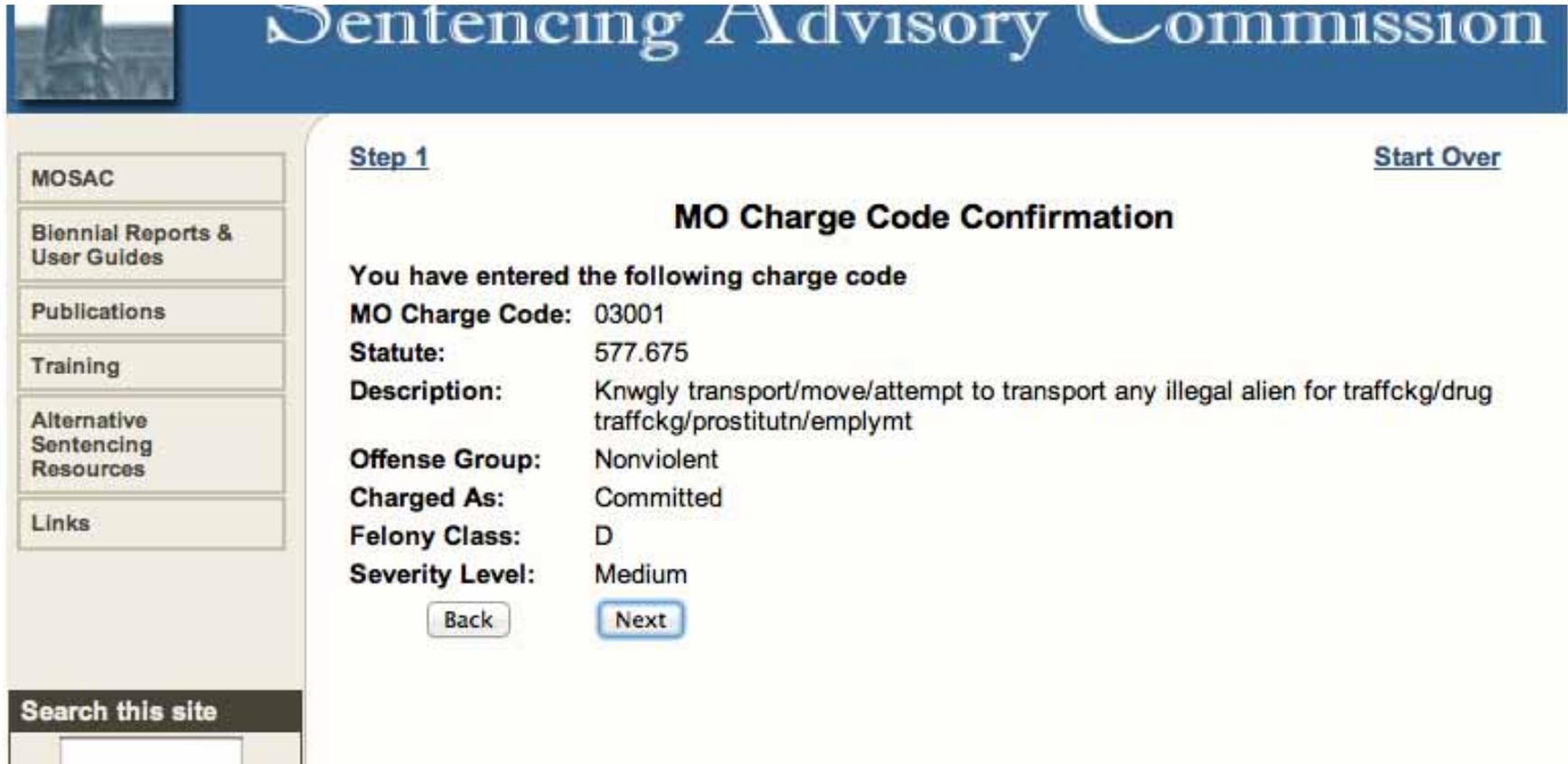


## Recommendation #3

- Develop risk/needs assessment and cost-analysis tools to be used at the time of sentencing
  - Establish recidivism reduction as explicit goal
  - Give judges sentencing flexibility
  - Use risk/needs assessment in sentencing
- Create web-based sentencing tool (MO Model)



# MO Sentencing Advisory Commission Model (Input)



The screenshot displays the MO Sentencing Advisory Commission website interface. At the top, a blue banner features the text 'Sentencing Advisory Commission' in white serif font. Below the banner, the page is divided into a left sidebar and a main content area. The sidebar contains a vertical menu with the following items: 'MOSAC', 'Biennial Reports & User Guides', 'Publications', 'Training', 'Alternative Sentencing Resources', and 'Links'. At the bottom of the sidebar is a search bar with the text 'Search this site'. The main content area is titled 'Step 1' and 'MO Charge Code Confirmation'. It includes a 'Start Over' link in the top right corner. The main text reads: 'You have entered the following charge code'. Below this, the following information is displayed: 'MO Charge Code: 03001', 'Statute: 577.675', 'Description: Knowgly transport/move/attempt to transport any illegal alien for traffckg/drug traffckg/prostitutn/emplymt', 'Offense Group: Nonviolent', 'Charged As: Committed', 'Felony Class: D', and 'Severity Level: Medium'. At the bottom of the main content area are two buttons: 'Back' and 'Next'.

**MO Charge Code Confirmation**

You have entered the following charge code

**MO Charge Code:** 03001

**Statute:** 577.675

**Description:** Knowgly transport/move/attempt to transport any illegal alien for traffckg/drug traffckg/prostitutn/emplymt

**Offense Group:** Nonviolent

**Charged As:** Committed

**Felony Class:** D

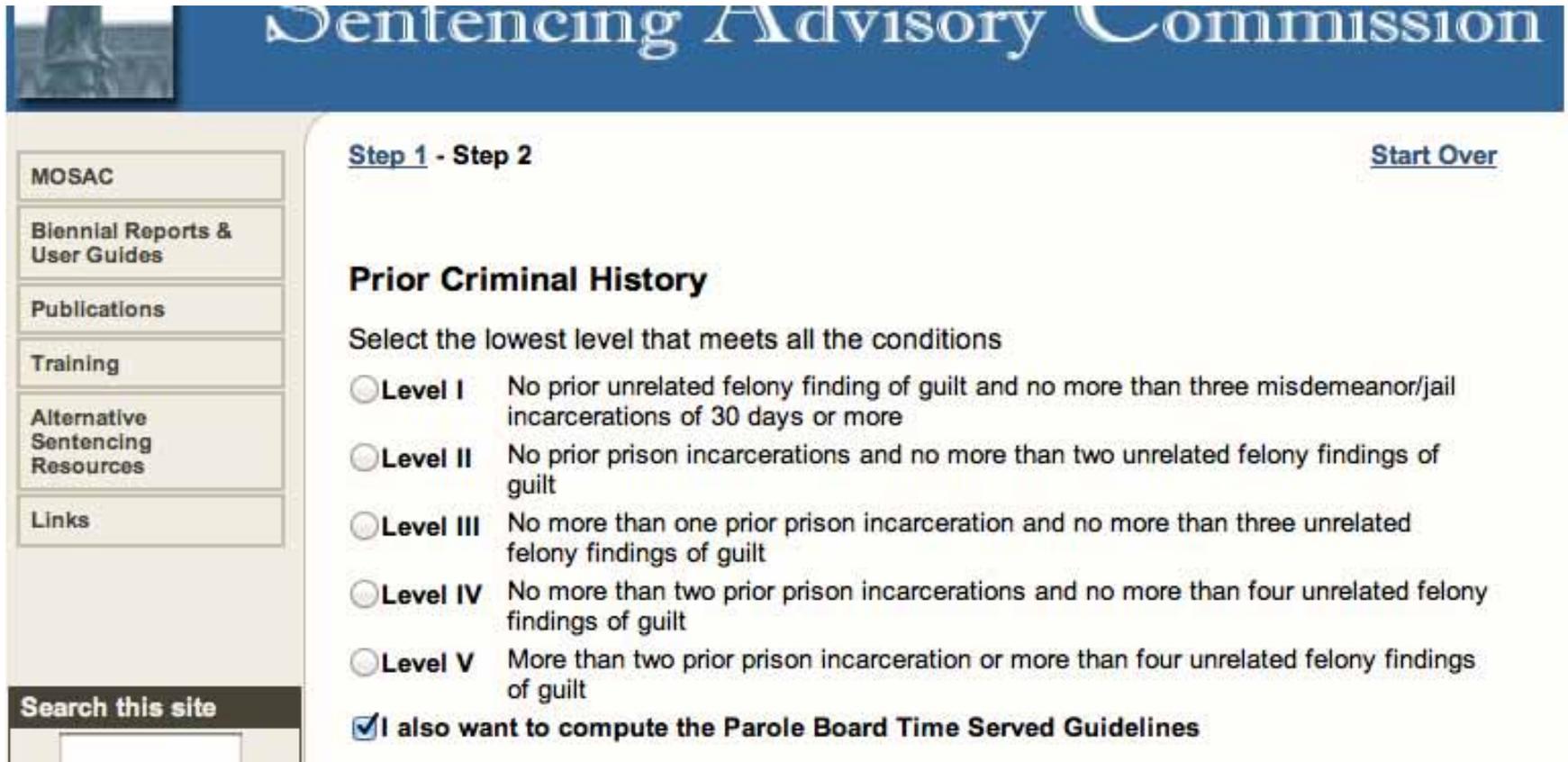
**Severity Level:** Medium

[Back](#) [Next](#)



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# MO Sentencing Advisory Commission Model (Input)



The screenshot shows the MO Sentencing Advisory Commission website. At the top, there is a blue header with the text "Sentencing Advisory Commission" in white. Below the header, on the left side, there is a vertical navigation menu with the following items: "MOSAC", "Biennial Reports & User Guides", "Publications", "Training", "Alternative Sentencing Resources", and "Links". At the bottom of this menu is a "Search this site" button. The main content area is titled "Step 1 - Step 2" and has a "Start Over" link in the top right corner. The section is titled "Prior Criminal History" and contains the instruction "Select the lowest level that meets all the conditions". There are five radio button options for different levels, each with a description of the conditions. The "Level V" option is selected, and there is a checked checkbox for "I also want to compute the Parole Board Time Served Guidelines".

**Step 1 - Step 2** [Start Over](#)

### Prior Criminal History

Select the lowest level that meets all the conditions

- Level I** No prior unrelated felony finding of guilt and no more than three misdemeanor/jail incarcerations of 30 days or more
- Level II** No prior prison incarcerations and no more than two unrelated felony findings of guilt
- Level III** No more than one prior prison incarceration and no more than three unrelated felony findings of guilt
- Level IV** No more than two prior prison incarcerations and no more than four unrelated felony findings of guilt
- Level V** More than two prior prison incarceration or more than four unrelated felony findings of guilt

I also want to compute the Parole Board Time Served Guidelines



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# MO Sentencing Advisory Commission Model (Input)

[Step 1](#) - [Step 2](#) - [Step 3](#) [Start Over](#)

### Offender Risk Variable

<b>Gender</b>	<input type="text" value="--Select--"/>
<b>Prior unrelated misdemeanor/jail sentences 30+days</b>	<input type="text" value="--Select--"/>
<b>Prior unrelated felony findings of guilt</b>	<input type="text" value="--Select--"/>
<b>Prior prison incarcerations</b>	<input type="text" value="--Select--"/>
<b>Five years without finding of guilt/incarceration</b>	<input type="text" value="--Select--"/>
<b>Revocations of probation or parole</b>	<input type="text" value="--Select--"/>
<b>Recidivist related present offense</b>	<input type="text" value="--Select--"/>
<b>Age</b>	<input type="text" value="--Select--"/>
<b>Prior escape</b>	<input type="text" value="--Select--"/>
<b>Substance abuse</b>	<input type="text" value="--Select--"/>

**MO SAC**

Biennial Reports & User Guides

Publications

Training

Alternative Sentencing Resources

Links

**Search this site**

Search



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# MO Sentencing Advisory Commission Model (Input)

[Step 1](#) - [Step 2](#) - [Step 3](#)

[Start Over](#)



Sorry, we were unable to process your request.  
Please review your entries and make a selection in the highlighted areas.

## Offender Risk Variable

Gender	Male
Prior unrelated misdemeanor/jail sentences 30+days	Three or less
Prior unrelated felony findings of guilt	None
Prior prison incarcerations	None
Five years without finding of guilt/incarceration	Yes
Revocations of probation or parole	No
Recidivist related present offense	--Select--
Age	Please make a selection.
Prior escape	--Select--

Present offense OR unexpired sentence offender is still serving at the time report completed, related to Burglary 1st/2nd, Robbery 1st/2nd, Pharmacy Robbery, Stealing/tampering with Motor Vehicle. Includes attempts, conspiracy or accessory charges.

MOSAC

Biennial Reports & User Guides

Publications

Training

Alternative Sentencing Resources

Links

**Search this site**

Search



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# MO Sentencing Advisory Commission Model (Output)

## Advisory Sentence

Statutory Restrictions:

Mitigating Sentence: Probation

Typical Sentence: Probation

Aggravating Sentence: Community-Structured Sentencing

## Offender Risk Assessment

Gender: Male

Risk Category: Good - - Score(4)

The risk of the offender committing new offenses or other violations of supervision while on probation or parole. GOOD is the lowest risk, POOR is the highest risk.

Unless there are aggravating circumstances, the Sentencing Commission's typical sentence will be the mitigating sentence when the risk score is Good (low risk). Alternatively, when the risk score is Below Average or Poor (high risk) and there are no mitigating circumstances, the Sentencing Commission would advise the aggravating sentence. In instances where the risk score is Average or Above Average (medium risk) and there is no mitigating or aggravating circumstance the Sentencing Commission would advise the typical sentence.



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# MO Sentencing Advisory Commission Model (Output)

## Expected Time Served

If similar risk level determined by prison based factors

### Applied Statutory Restrictions:

Parole Release Guideline:	15% of sentence
Actual Time Served in FY11:	26% of sentence (excludes special statutory sentencing provisions)

## Recidivism after two years

Recidivism based on:	Nonviolent Felony Class C/D at Prior Criminal History Level I
Probation/CSS:	20.8%
120-Day Shock Probation or Institutional Drug Treatment:	45%
Prison:	48%

## Costs of Incarceration and Supervision (FY11)

Mitigating Sentence:	Probation - 5 years probation @ \$1,836 per year. Total Cost = \$9,180
Typical Sentence:	Probation - 5 years probation @ \$1,836 per year. Total Cost = \$9,180
Aggravating Sentence:	Community Structured Sentence - 5 years enhanced probation @ \$2,884 per year. Total Cost = \$14,420



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# MO Sentencing Advisory Commission Model

- Tool publicly available @
  - <https://www.courts.mo.gov/rs/>



## Recommendation #5

- Incentivize localities to reduce their rates of state incarceration and increase local alternatives
  - It is estimated that expanding state prison diversion would result in \$4.7m to \$93m in savings over the next three years

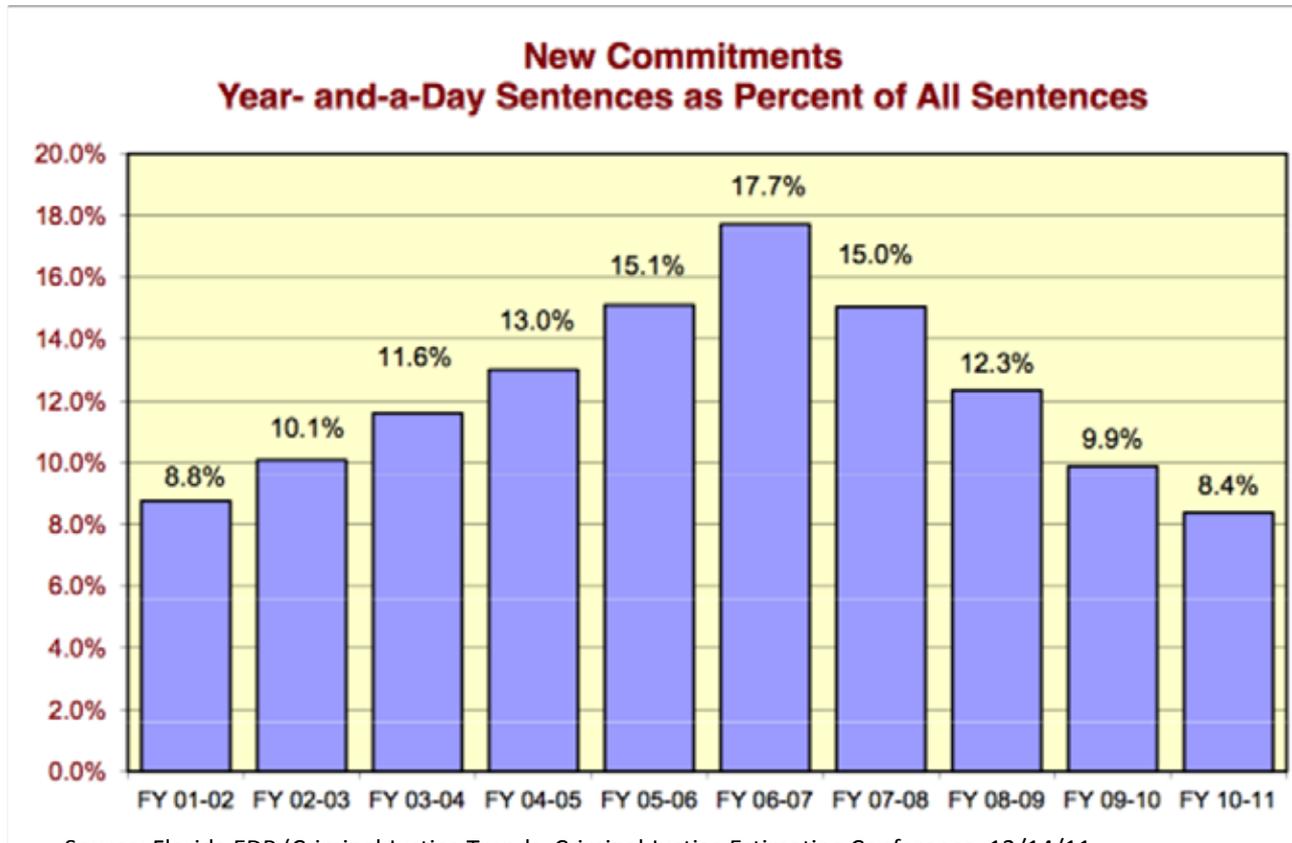


# Year-and-a-day Sentencing

- Year-and-a-day sentencing by year
  - FY00-01 2,371
  - FY03-04 3,667
  - FY04-05 4,157
  - FY07-08 6,089
  - FY08-09 4,777
  - FY09-10 3,601
  - FY 10-11 2,879



# Year-and-a-day Sentencing

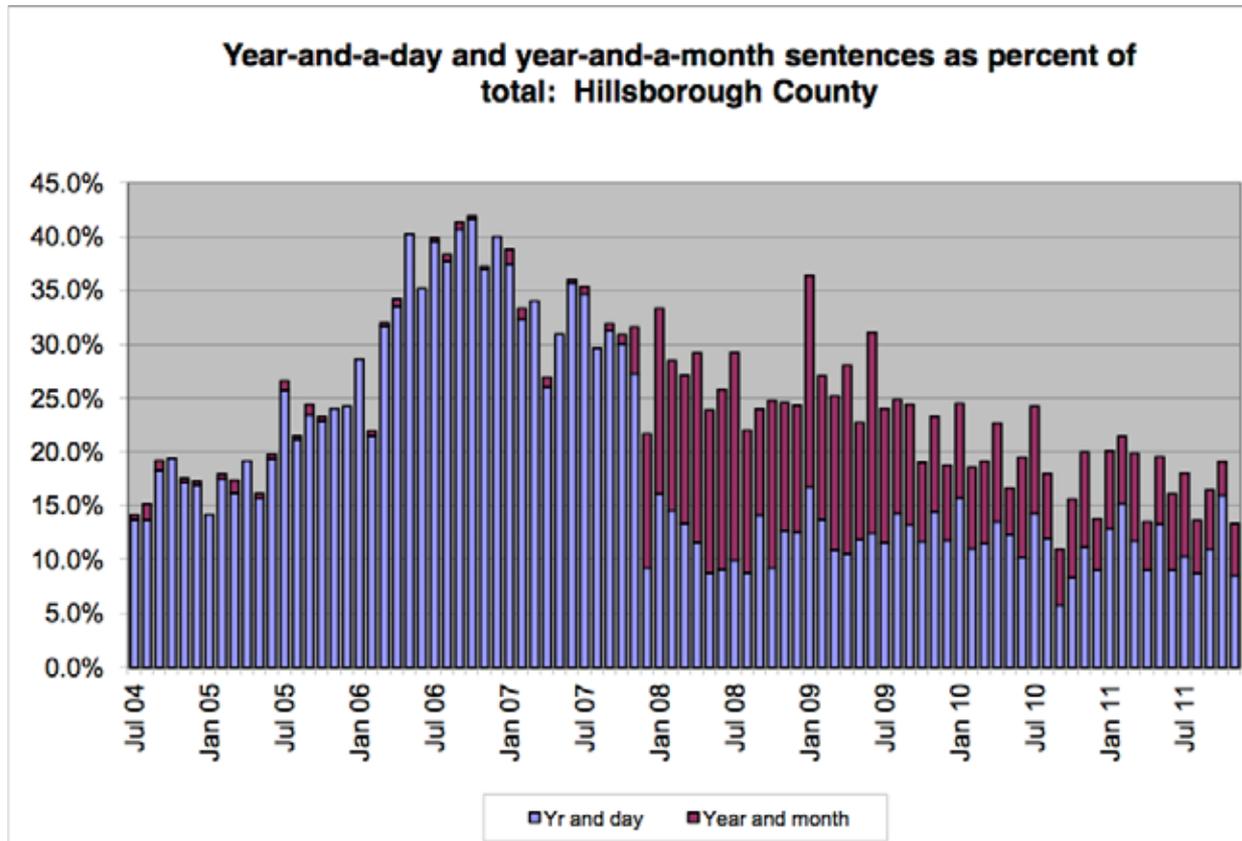


Source: Florida EDR (Criminal Justice Trends, Criminal Justice Estimating Conference, 12/14/11)



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# Year-and-a-day to Year-and-a-month

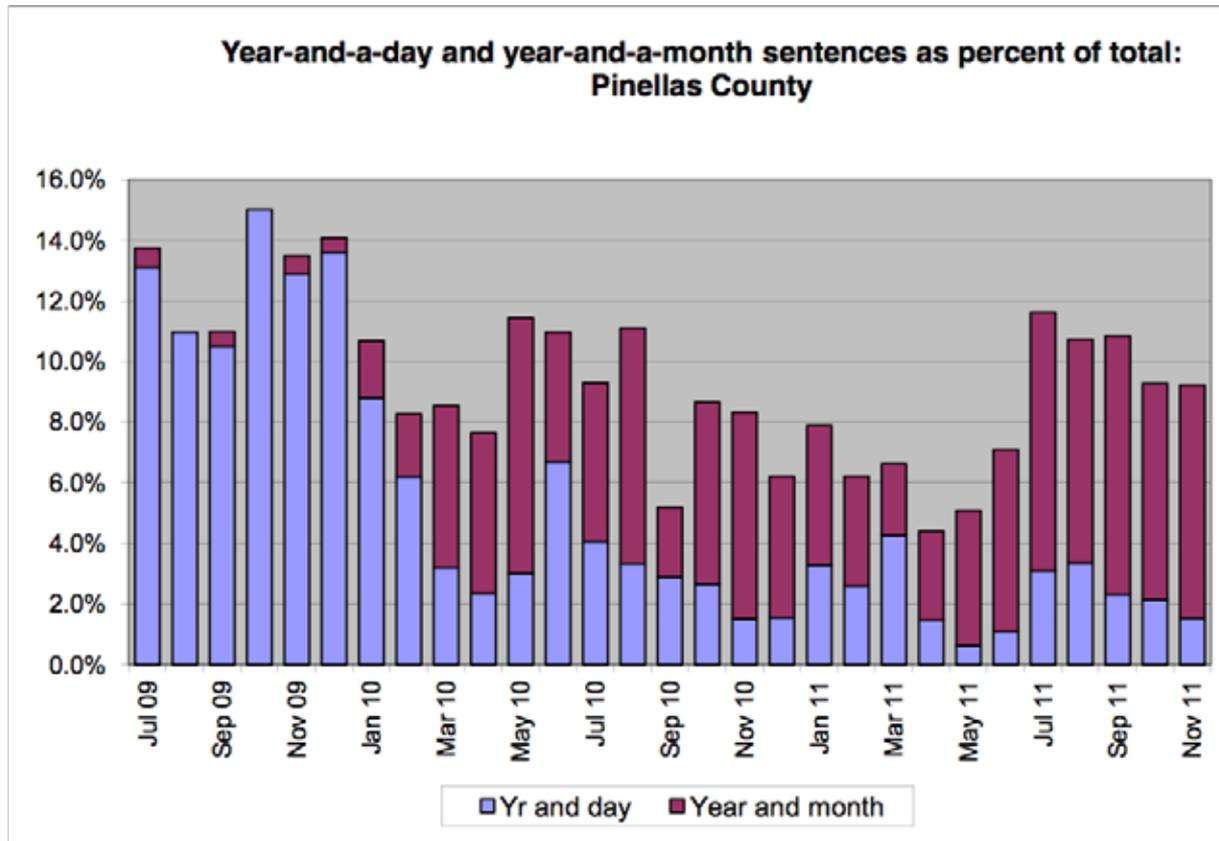


Source: Florida EDR (Criminal Justice Trends, Criminal Justice Estimating Conference, 12/14/11)



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# Year-and-a-day to Year-and-a-month



Source: Florida EDR (Criminal Justice Trends, Criminal Justice Estimating Conference, 12/14/11)



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## Recommendation #9

- Expand electronic monitoring as an alternative to state prison sentences
  - Would apply to *nonviolent* inmates
  - The state could save between \$4.4m and \$43.8m if electronic monitoring is used for the last 35% of the sentence.



# Thank You

- For more information
  - Government Cost Savings Task Force Report
    - <http://bit.ly/IUK2IG>
  - [www.floridataxwatch.org](http://www.floridataxwatch.org)
  - Office- 850.222.5052

