

# Top Ten Criminal Justice Reform Projects in Florida

(By J.J Daiak, Founder of Tough Enough On Crime.)

1. ✓ Amend the Florida Constitution through Amendment 4 to allow returning citizens (formerly known as ex-felons) to vote. DONE! (Thanks to the FRRC, Desmond Meade, Neil Volz, and the 5,148,926 Floridians who voted in favor of it.) And then deal positively with the problems in the law implementing it See “What’s In the Four Corners of Your “Sentencing Document”? If it does not include fines, fees, or restitution, you should be able to vote now in Florida.”
2. ✓ Amend the Florida Constitution through Amendment 11 to allow retroactive criminal statutes and re-sentencing laws. DONE! (Thanks to Senator Darryl Rouson, Greg Newburn, and the 4,680,526 Floridians who voted in favor of it.) And then use it to lobby for new laws to create instant serious criminal justice reform in Florida: see 3, 4, and 5 below.
3. Pass a law to amend the cap on prison sentence gain-time from 85% of the sentence length to 65% of the sentence length and apply it retroactively to all non-life prisoners This will increase the safety of Correctional Officers, maximize good behavior by prisoners, drop the prison population by up to 25,000 prisoners, and save many hundreds of millions of dollars a year in prison costs – all within one year. See “How 65% Gain-Time in Florida Would Both Improve Correctional Officers’ Safety and Quickly Shrink the Prison Population Significantly.”
4. Pass a new law to retroactively apply the July 1, 2016 amendment (SB 228) to the 10-20-Life law which deleted aggravated assault from the list of crimes subject to a 20-year mandatory minimum prison sentence to the 175 to 195 prisoners still serving a 20-year mandatory minimum prison sentence for an aggravated assault (and also unable to earn any gain-time). That SB 228 amendment was passed unanimously by both the Senate and the House in a bipartisan show of support in the 2016 Session. At that time the Savings Clause of the Florida Constitution prohibited the Legislature from making that law retroactive. However, Amendment 11, effective as of January 8, 2019, now allows the Florida Legislature to make an amendment to a criminal statute retroactive and so permits retroactive relief to this small number of prisoners.

Without a 10-20-Life sentence enhancement, an aggravated assault has a maximum sentence of up to 5-years, an appropriate sentence for a crime which by definition in Florida is only a threat to do violence, not any actual violence. Typically, a 20-year mandatory minimum sentence for an aggravated assault involved a warning shot fired in self-defense where no one was hurt.

The Florida Senate did pass exactly such a Bill (as a small part of SB 642) in the 2019 Legislative Session to provide retroactive re-sentencing relief for this very small group of prisoners, but it was not presented to the House. This 2020 Session is the time to finally provide relief to these prisoners and their families still doing 20-years for what is now a 5-year maximum crime. At least 25 Republicans that voted in favor of that 2016 amendment removing aggravated assault from 10-20-Life are currently House Representatives in this 2018-2020 Legislature, and should now also support a Bill granting retroactive sentencing relief to these prisoners.

5. Pass a law to repeal retroactively the crime degree of a “felony of the first degree, punishable by imprisonment for a term of years not exceeding life imprisonment” (commonly called “PBL” for Punishable By Life) which was passed in 1971, a perverse, dinosauric, unneeded, inbred cross between a first-degree felony (punishable by up to 30 years in prison) and a life sentence. But when the PBL degree was created in 1971, a life sentence always included the possibility of parole, while since 1995 all life sentences are natural life sentences

without any possibility of parole. There are at least nine crimes in Florida, including robbery and burglary, that still include this antiquated PBL crime degree and so allows (or requires if one is subject to the Prisoner Releasee Reoffender law) a life without parole sentence. The primary policy concern with a life sentence for robbers or burglars is that it strongly encourages the robber or burglar to kill the victim in order to eliminate the witness and get away with the crime— why not, since it would be the same life sentence anyway? A life sentence should be reserved for murderers, not for the 1,864 robbers and 1,163 burglars who are now serving a life sentence in Florida at the beginning of 2019. Get rid of this antiquated inbred PBL crime degree and make the crimes that now carry it either a first-degree felony or a life felony. See the discussion on this in “Repeal Retroactively All of Florida’s Mandatory Minimum and Enhancement Laws.”

6. It is widely accepted that sentences for certain crimes have gotten too long and too expensive over the last forty years, increasing sentences far above what the sentencing method of the current Criminal Punishment Code (CPC) code score called for. This is primarily due to the mandatory minimum sentence statutes (such as the 10-20-Life and the Prisoner Releasee Reoffender (PRR) laws) and the so-called enhancement statutes which reclassify and increase the degree and punishment of a crime (such as using a deadly weapon during a crime and the Habitual Felony Offender law) that were enacted over time. By now amending or repealing those statutes and applying them retroactively to prisoners previously sentenced, sentences could be lowered to what the CPC code score called for at the time of sentencing (without mandatory minimums or enhancements). See “Repeal all mandatory minimum and enhancement/reclassification laws and apply it retroactively to all current prisoners for resentencing.”

7. It’s Time for 12 Jurors in Florida. Pass a law to require 12 jurors at all felony trials just like everywhere else in America. It is statistically impossible to seat racially diverse juries when there are only six seats in a jury box, a dangerously unjust game of musical chairs. It is not soft on crime to require Florida prosecutors to prove their charges to 12 jurors at trial as prosecutors in all the other states and Federal courts do every day. The “presumption of innocence,” that long golden thread stitching together centuries of English and American jurisprudence, is dangerously frayed in Florida where the State only has to overcome the presumption of innocence before six jurors. Wouldn’t you really rather be tried by twelve (jurors) than be carried by six (pallbearers) in a self-defense (or any) case? See details at “Time for 12 Jurors.”

8. No more “Per Curiam Affirmed” (PCA) throwaway opinions from Florida’s District Courts of Appeals (DCA) in criminal appeals. With a PCA, you don’t know if the DCA even read the appellate briefs, much less reached the merits of the appeal. After the State pays for preparing the trial transcripts and case records, pays for the defense and State appellate attorneys to write the appellate briefs, and pays for the cost of prison, the DCA judges should at least be required to write a real opinion on the merits of each case, as other states require appellate judges to do. A DCA judge who doesn’t want to write opinions is in the wrong job. See “No more “Per Curiam Affirmed” (PCA) throwaway opinions from Florida’s District Courts of Appeals.”

9. Each Florida County should pay a fair share of prison costs for prisoners sentenced from that county. Locally elected judges and State Attorneys have an incentive to maximize prison sentences when the prison costs are paid for by the residents of the other 66 counties in Florida, every time they pay a sales-tax. At a minimum, all sentencing documents should also include an estimated prison cost to taxpayers for that sentence and be signed by both the judge and by the prosecutor to show that they are aware of the cost of each prison sentence, paid for primarily through sales-taxes paid by the residents of the other 66 counties in Florida.

10. Establish term limits for all State Attorneys, just like there are term limits for Florida’s Legislators. Prosecutors with Unlimited Discretion should not also be entitled to Unlimited Reelections.