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Addressing Florida's Parole System

Key Points

- Florida is 1 of 16 states without a parole system.
- Florida's gaintime structure puts Florida in the minority of states that requires non-violent offenders to serve the same percentage of time as violent offenders.
- Parole provides an incentive for individuals to rehabilitate, potentially reducing future crimes.
- Reinstating parole should be approached gradually and incrementally, perhaps starting with only minor offenses. Another option is to create specific 85% crimes, which are not eligible for parole, and 60% time served eligibility for non-violent crimes.

Introduction

In 2019, an estimated 878,900 were on parole and 1 in 59 of all adults were under some form of community supervision in the U.S. ([Oudekerk & Kaeble, 2021](#)). In Florida, only individuals incarcerated prior to 1983 are eligible for parole following the state abolishing the practice, unless one has committed a sexual offense or is court ordered. ([Office of Program Policy Analysis and Government Accountability \[OPPAGA\], 2019](#)). Today, the Florida Department of Corrections (FDC) has only four mechanisms for the release of incarcerated populations: conditional release, conditional medical release, addiction recovery supervision, and control release. Conditional release requires mandatory supervision for those sentenced to specified violent crimes, those who have committed a prior felony, or those deemed a habitual offender. Conditional medical release, although seldom used, allows for discretionary release of those FDC deems terminally ill or permanently incapacitated. Addiction recovery supervision is used for offenders who have a history of substance abuse. Lastly, controlled release is used by the department to maintain prison population between 99% and 100% of its total capacity. Since Florida is a "truth in sentencing" state, meaning an offender must serve at least 85% of their sentence before they are released ([Florida Statute Ch. 944 Sec. 275](#)), many of the individuals who are incarcerated will return to Florida's communities. But what happens to offenders after they are released? More importantly, how do we help ensure an offender does not recidivate?

A thorough review of rehabilitation and restoration programs is necessary to ensure a lower recidivism rate and reassure Florida communities. Ensuring a successful reentry outside the walls is as important, if not more, as providing resources behind the walls.

What Is Parole?

Parole is the release of an inmate prior to the termination of their court-appointed sentence with a period of supervision ([National Institute of Corrections, n.d.](#)). Parole originated in 1840 with English Captain Alexander Maconochie, who implemented a similar system within one of the penal colonies located on the continent of Australia ([Law Library – American Law and Legal Information, n.d.](#)). Near the end of World War II, all U.S. states had some form of parole or release statute. Beginning in the 1970s and continuing into the 21st century, 16 states reverted to pre-WWII measures by abolishing discretionary parole, including Florida ([Renaud, 2019; Rhine et al., 2018](#)).

While parole eligibility does not guarantee early release, it does offer certain incarcerated individuals a chance at redemption. State parole systems are not

uniform, as many have different requirements for release. A deeper look into the parole process for the state of Florida will offer a glimpse into a judicial system without parole. In addition to Florida, other states like Texas, Tennessee, Louisiana, and Oklahoma will offer different approaches to the same issue. As advocates in Florida and other states seek real parole reform, it is the intent of this paper to offer differing perspectives from similar states in size, politics, and perspective on the criminal justice system.

Parole in Florida

Florida's parole system has not existed in its entirety since 1983, when sentencing guidelines were enacted and parole was abolished for offenders sentenced to crimes after 1983 ([Florida Commission on Offender Review \[FCOR\], n.d.](#)). To put it simply, Florida does not parole offenders unless they committed a crime prior to 1983 or parole was court appointed for serious offenses. However, inmates whose crimes were committed prior to October 1, 1983, are still eligible for parole consideration.

Florida's parole commission, called the Florida Commission on Offender Review (FCOR), is made up of three commissioners appointed by the governor. The commission is tasked with making determinations on parole for those sentenced prior to 1983, approving conditional release, providing addiction recovery supervision, and conducting revocation hearings for post-release supervision violators ([FCOR, n.d.](#)).

Florida requires every post-1983 inmate to serve at least 85% of each sentence imposed, and every inmate is issued a tentative release date. Gaintime is earned with good behavior and applied to shorten the offender's sentence but may shorten it by less than 85%. The OPPAGA (2019) explains that, "for example, at a rate of 10 days per month, an inmate could earn approximately 913 days (2.5 years) of gaintime when serving a 10-year sentence. However, due to the requirement that at least 85% of the sentence be served, only 548 days (1.5 years), could be applied to the release date" (p. 3). Florida's gaintime structure puts Florida in the minority of states that require non-violent offenders to serve the same percentage of time as violent offenders. According to the Florida Department of Corrections (n.d.), the offender population consisted of 60.9% violent offenders and 39.1% non-violent offenders (p. 21). It is important to note that gaintime is not only an incentive for inmates but also a tool for FDC to promote good behavior, which creates a better work environment behind prison walls. If offenders are limited in their ability to earn early release, offenders may become stagnant.

In addition to limited parole, Florida provides conditional release and addiction recovery supervision. Both are non-discretionary release programs in which inmates are granted release to mandatory post-prison supervision after serving their sentence ([Florida Statutes Chapter 947 Section 13](#)). While more inmates are released under these programs, the programs are limited to inmates with violent or habitual criminal histories or with a substance abuse history. Florida should be focusing on rewarding conditional release and addiction recovery supervision to non-violent, low-level offenders who have demonstrated good behavior and excelled in various programs.

Parole Elsewhere

A unique aspect of America's political and legal system is the relationship between state and federal governments. As the federal government operates to ensure constitutional protections are maintained, states are given the authority to determine how best to operate under the parameters of constitutional law. Florida's decision to abolish parole is not unique as it is 1 of 16 states that have abolished it since 1976. The remaining 34 states operate with some form of parole system. One form of parole system is the use of standard for eligibility. According to the U.S. Department of Justice, parole eligibility is determined by the sentence given from the court via a parole eligibility date ([U.S. Parole Commission, 2015](#)). Unless the court determines a minimum time of sentence the offender is required to serve, eligibility occurs following one-third of the sentence. However, there is no one set standard for eligibility, as each parole commission varies in statutorily required number and duties. Florida operates under the 85% of time served and 10 days per month of earned time credit for sentence reduction. Texas, on the other hand, has a much lower threshold for when an individual is eligible for parole, meaning an offender can be eligible earlier. The states studied below were chosen based on size, similar politics, and similar approaches to criminal justice.

The mission of Texas' Parole Division is to "promote public safety and positive offender change through effective supervision, programs, and services" ([Texas Parole Division, n.d.](#)). In Texas, most inmates are eligible for parole "when the inmate's actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less" ([Texas Government Code, Section 508.145\(f\)](#)). Those convicted of consecutive felony sentences may not be released until they are eligible for parole on the last sentence imposed. Inmates who have not been convicted of sexual or violent crimes may be given a potential parole date ([Texas Penal Code Chapter 12](#)). Texas' parole commission consists of seven members appointed by the governor.

Texas boasts the second largest population of any state in America, after only California. Recent numbers estimate that 251,000 individuals are incarcerated in various forms in Texas ([Prison Policy Initiative, n.d.](#)). Texas does have a parole system operated by the Texas Board of Pardons and Paroles (TBPP) whose primary mission is laid out by the Texas Constitution. The board determines who is eligible, what conditions are needed for their release, and whether revocation is needed, and reviews any requests for clemency by the governor ([TBPP, 2017a](#)). Incarcerated individuals can achieve parole eligibility by two different methods ([TX Government Code Sec. 508.145\(f\)](#)). One, the individual is eligible following the completion of 25% of their sentence combined with good conduct time. The second method is when the individual completes 15 years of their sentence, but in each case, the lesser of the two methods is acceptable. However, the lesser of the two methods does not account for those convicted of consecutive felony sentences. They may not be released until they are eligible for parole on the last sentence imposed.

The sister state of Texas, Tennessee, offers a different approach to parole eligibility. Similar to Texas, Tennessee's parole is operated by the Board of Parole (BOP) as an independent commission responsible for deciding the eligibility of felony offenders for parole ([TN Board of Parole, n.d.](#)). The Parole Board consists of seven members, with preference given to candidates with a background in the criminal justice system, law enforcement, corrections, medicine, education, social work, or behavioral sciences ([Tenn. Code Ann. 40-28-103](#)). Eligibility ranges from 35%-85% time served, and violent offenses are not eligible ([Tenn. Code Ann. 40-35-501](#)). A unique feature of the Tennessee Board of Parole is in cases where an incarcerated individual has never been paroled or granted parole before completing

their sentence, mandatory parole must be granted to the incarcerated ([Rules of TN Board of Parole, 2019, p 2](#)). This mandatory parole ensures some form of supervision is provided prior to release to ensure both the parolee and the community are protected. Probationary parole may be provided if the offender has an employment offer, but not more than six months before the date of eligibility.

Similarly, Louisiana ranges in eligibility from 25%–85% time served based on the offense. For a first-time felony offense for a non-violent, non-sexual offender not sentenced as a habitual offender, the offender will become eligible after 25% of the sentence has been served. If the offender commits a crime of violence with no prior violence or sex offense conviction, the offender will become eligible after 65% of the sentence has been served ([Louisiana Statutes Chapter 574 Section 4](#)). Louisiana is statutorily mandated to use a risk assessment before releasing an offender on parole. The assessment includes various risk factors such as age, revocations, arrest history, employment history, custody level, and mental status. Like Texas and Tennessee, Louisiana's Committee on Parole comprises seven members appointed by the governor. Members possess experience in various related fields such as corrections, law enforcement, sociology, law, education, or medicine. The warden of an offender's current facility serves as an ex officio member with non-voting rights ([Louisiana Statutes Chapter 574 Section 2](#)).

In Oklahoma, an offender must serve one third (33.33%) of their sentence before they are eligible for parole, unless an offender is serving time for a specified 85% crime (violent, sexual crimes and other crimes with statutorily required penalties; [Oklahoma Statutes Title 21 Chapter 13 Section 1](#)).

Table 1
States, Number of Parole Board Members, and Parole Eligibility Percentages

State	Number of parole board members	Parole eligibility Minimum percentage to be served
Florida	3	No parole (except for those who have committed an eligible offense prior to 1983)
Texas	7	25% or 15 years, whichever is first (except for violent or sexual offenders)
Tennessee	7	35%–60%
Louisiana	7	25%–85%
Oklahoma	5	33.33% of sentence completed (except for specified 85% crimes)

For example, an individual sentenced to ten years (non-85%) would serve a little over three years. A ten-year sentence for an 85% crime would make an individual eligible in eight and a half years. There shall be no recommendations made to the governor for parole unless the Pardon and Parole Board considers victim impact statements (if presented to the jury), or the judge in the event a jury was waived. Oklahoma's Parole Board consists of five members, three appointed by the governor, one by the chief justice of the Oklahoma Supreme Court, and one by the president judge of the Court of Criminal Appeals ([Oklahoma Pardon and Parole Board, n.d.](#)).

Benefits and Risks of Parole

The daily average cost for housing an inmate behind walls is \$76.83 per day, and only \$7.18 (with no electronic monitoring) and \$11.69 (with electronic monitoring) for those under community supervision ([FDC, n.d., p. 42; FDC, personal communication, May 19, 2022](#)). Not only does it cost less to supervise an offender in the community, but it also allows probation and parole officers to help offenders connect with services in the community and find housing and employment assistance. Correctional institutions across the country have started to change their dialogue because their purpose is to "correct" or "reform" behavior. Parole provides a safeguard to returning citizens.

Parole gives individuals an incentive to rehabilitate, potentially reducing future crimes. It reduces incarceration rates, as well as prison costs, and provides a bridge back into the community. Rather than straight release, parole provides a step-down approach for reentry back to society, which improves public safety.

Not everyone deserves parole, especially those with habitually violent records. Parole should not be a "one size fits all," and just because someone is eligible for parole does not mean they should be released. Providing eligibility for those who have non-violent offenses could be a potential first step in implementing parole. Risk assessment is also a great resource for determining parole eligibility.

Florida currently provides no supervision unless determined by a judge. Most inmates are given \$50 and a bus ticket; although there is an effort to help provide official identification, it is not required. Supervising offenders post-release helps keep communities safe. Parole provides not only the requirement of "checking in" but also resources for housing, employment, and other aspects of reentering society.

New facts to an offender's case may become known, including rehabilitation of the offender while incarcerated and changing views of society. Parole offers an opportunity for a second chance, especially to those who have served a sizable portion of their sentence and made valiant efforts to better themselves behind bars.

Recommendations for Florida

A more comprehensive parole commission should accompany an expanded parole system. Florida should consider expanding its current parole commission to include a victim and a formerly incarcerated individual, both appointed by the governor. Since Florida currently only has three board members, two former assistant state attorneys, and one former law enforcement officer, expanding the current makeup will provide a unique perspective on the challenges both victims and offenders face. In addition to expanding the parole commission, Florida's system should mirror some of its state counterparts by excluding certain offenses from parole eligibility. In the case of Tennessee, violent offenses, including sexual and child-related crimes, are ineligible for parole, and these offenders must serve the entirety of their sentence. The decision to exclude violent offenses like rape and murder from eligibility provides assurance to Florida communities that the most dangerous individuals are unable to be released early and potentially risk the well-being of Floridians.

Risk and cost analysis of re-instating parole deserves consideration, but the benefits of parole are far too great to ignore. A moderate reintroduction of parole is long overdue, and modifying Florida's truth in sentencing thresholds, even gradually, will provide incentive for productive behavior and supervision. Non-violent offenses' parole eligibility could potentially start at 60%, still higher than many other states, but would be a significant reform for Florida. Another way Florida could expand its parole eligibility would be to limit eligibility by offense or scale eligibility by the date of the offense. Similar to Oklahoma, Florida could limit parole eligibility by specifying specific 85% crimes, such as violent and sexual offenses. Expanding discretionary release options for medical or compassionate reasons such as physical deterioration or imminent death should also be considered.

Recommendations

Add two additional parole commission members:

- Formerly incarcerated individual,
- Victim or victim advocate.

Create specified 85% crimes (example: violent, sexual offender, etc.).

Allow parole eligibility to range from 60% to 85% for specified non-violent offenders.

Conclusion

Parole functions as an incentive for those who really wish to seek redemption and return to the fold. It allows the incarcerated to participate in the available correctional programming rather than simply buying their time until their sentence expires. Reinstating parole could help with our overcrowded prisons and staffing shortages while still providing some form of supervision that can potentially lower recidivism.

Reinstating parole is comprehensive, but with such a substantial change to the current system, it should be approached gradually and incrementally, perhaps starting with only minor offenses. Another option is to create specific 85% crimes, which are not eligible for parole, and 60% time served eligibility for non-violent crimes. Implementing a scaled approach will allow Florida to study the results and perhaps other jurisdictions, and then adjust accordingly. Adding two appointments (specifically one incarcerated individual and one victim) to the parole commission would create a more robust committee.

Former FDC Secretary Mark Inch has stated in his weekly letters to correctional staff that “the staff at FDC is excellent; our system is not. If we continue to improve at a steady pace, we are two or three years away from achieving a solid ‘satisfactory.’ Then and only then, will we have the discussion on just how excellent we want our system to become” (M. Inch, personal communication, 2020). As Floridians, we should demand more for our public safety. Parole has far too many benefits, and Florida’s criminal justice system has far too many problems for policymakers to keep ignoring this potentially valuable tool. ☆

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