

**THE
OFFENDER REENTRY PROGRAM
AMENDMENT
MANIFESTO**

(Rev. 7/2020)

**Citizen Initiative 19-04 for a Proposed
Florida Constitutional Amendment**

THE
OFFENDER REENTRY PROGRAM
AMENDMENT

Citizen Initiative 19-04 for a Proposed
Florida Constitutional Amendment

A Criminal Justice Reform
by Roger C. Cassidy

Sponsored by:

Floridians for Redeemable People
P.O. Box 520337
Longwood, Florida 32752
ffrp@mail.com
(407) 576-2649

<https://www.facebook.com/FloridiansForRedeemablePeople/>
<https://www.floridiansforredeemablepeople.org>

Table of Contents

	<u>Page</u>
Table of Contents	ii
Executive Summary	iv
<u>Part 1—Why ORPA is Necessary: A Description of Problem Areas</u>	
No Review Mechanism for Florida’s Incarcerated	2
Lack of Sufficient Programs Offered in the FDC	5
ORPA’s Purpose	7
How ORPA Will Work	7
<u>Part 2—ORPA Overview, Key Features, and Function</u>	
ORPA Overview	11
Key Features	11
Reasonable requisites	11
Ineligibility of certain offenders	12
Requirement that the Commission annually place a minimum of 3% of offenders on Reintegration Status	13
Purpose of Reintegration as opposed to Parole	13
ORPA’s Function.....	14
ORPA will transform Florida’s criminal justice system from the bottom up by creating demand for educational and rehabilitative programming	14
ORPA will restore families and parity in Florida’s criminal justice system	14
ORPA will safely decrease the prison population by 27% in ten years	15

Part 3—ORPA Preliminary Financial Impact Statement

Preliminary Financial Analysis	17
Front-end costs	17
Back-end savings	17
Back-end revenue	18
Conclusion	18
Notes	19

Appendices

Appendix A—Johnny: A Case Study	28
Appendix B—The Author’s Biography.....	32
Appendix C—Initiative 19-04 Petition	37
Appendix D—ORPA Text	39

Executive Summary

The Offender Reentry Program amendment (**ORPA**) is a proposed Florida Constitutional Amendment sponsored by *Floridians for Redeemable People* and introduced via Ballot Initiative 19-04 for the 2022 general election. Florida's prisons are toxic environments where individuals live in conditions that offer little hope of successful reentry. For example, current corrections policies provide inadequate educational and rehabilitative programming opportunities, in general, but especially for individuals serving lengthy sentences. Further, current statutory law offers no incentives for participation in rehabilitative programming and no review mechanism for early release under any circumstance. Such an approach to criminal justice fosters an oppressive and hopeless prison culture, contributing to a myriad of complications inside Florida's prisons such as mental health issues, violence, drug use, death by drug overdose, and suicide. Moreover, these policies have resulted in minority disenfranchisement, sky-high recidivism rates, a prison population ballooning from 20,000 in 1980 to nearly 100,000 in 2019—a five hundred percent increase—, and a growing corrections budget approaching 3 billion dollars annually.

ORPA was designed to address Florida's decades long tough on crime criminal justice policies which have led to the mass incarceration of nearly one out of every hundred of its citizens. **ORPA** is a check on Florida's criminal sentencing where length of sentence oftentimes depends more on demographics and race than on fairness and seriousness of offense. **ORPA's** purpose is two-fold: (1) to foster a prison culture conducive to rehabilitation, and (2) to provide a review/release mechanism that incentivizes self-betterment.

ORPA will add to Article IV, section 8 of the Florida Constitution, a subsection (c): "Offender Reentry Program." This subsection will extend the authority of the Florida Commission on Offender Review (the Commission) to review incarcerated individuals currently

ineligible for parole for a new form of supervised release termed "Reintegration." **ORPA's** impact on the FDC's population, allowing for supervised release of the required minimum 3% of the FDC's population annually, after five years will be a decrease of 14% from approximately 96,000 to 81,500, and after ten years a decrease of 27% to 70,015.

ORPA's financial impact on the state, by releasing the minimum 3% of the FDC's population annually, will result in a net savings of approximately \$80 million in the first year while creating job opportunities for 105 new Reintegration examiners and field officers at the high end of the average salary spectrum. As the required 3% is *a floor and not a ceiling*, this figure will increase with increased releases and will compound year over year with additional individuals placed on Reintegration. After five years, **ORPA** will save the state \$364,230,000 and create revenue in the amount of \$9,712,800, for a total back-end savings of \$373,942,800.

ORPA is in line with the professional opinion of a growing number of policy experts, along with a growing segment of Americans, calling for a substantial decrease in the prison population with a greater focus on public safety. **ORPA** is a safe and sustainable way to decrease the prison population that can be varied by rate up or down by the Commission according to the FDC needs, changing societal standards of decency, and **ORPA's** success.

What follows is a brief explanation of why **ORPA** is necessary (Part 1), an overview and key features (Part 2), and a preliminary financial impact statement (Part 3). A case study is attached at Appendix A, the author's biography is attached at Appendix B, Initiative 19-04 is attached at Appendix C, and **ORPA's** text is attached at Appendix D.

Part 1

Why **ORPA is Necessary: A Description of
Problem Areas**

No Review Mechanism for Florida's Incarcerated

Florida is one of only a handful of states in the nation that has no sentence review mechanism or active parole system, but has the third largest prison population in the country.¹ In general, Florida provides no sentence review mechanism or parole for ANY offender under ANY sentence under ANY circumstance for offenses committed after October 1, 1983.² The Florida Commission on Offender Review³ (the Commission) exists primarily for the purposes of reviewing for parole consideration those individuals who remain incarcerated for offenses committed prior to October 1, 1983 (approx. 4,500 remaining offenders out of nearly 100,000, *see n. 2*) and supervising those previously incarcerated individuals who are on parole.⁴

Over the past few decades, the Florida Legislature has steadily increased general penalties for crimes, removed sentencing discretion from judges by creating numerous minimum mandatory sentencing schemes, and decreased the amount of gain time incarcerated individuals can earn thereby removing incentives for program participation. The result is more individuals are spending more time incarcerated under very long sentences⁵ with no legal mechanism to provide them an opportunity for early release.⁶ The Florida Department of Corrections (FDC) has further exacerbated these circumstances by providing minimal opportunities for self-betterment and rehabilitation, especially for individuals serving lengthy sentences. The effects are an oppressive prison culture and dire system of punishment that churns out a twenty-five to thirty percent inmate recidivism⁷ rate,⁸ while keeping those serving lengthy sentences in a hopeless state of repression.

The trend in criminal justice policies focused on increasing the punitive nature of sentencing can be traced back to the opioid scare of the late 1970s and the crack cocaine epidemic of the 1980s. In efforts to combat the drug crises, the Florida Legislature declared a

“War on Drugs,” a policy of enhanced penalties for drug possession,⁹ generally, and harsh mandatory minimum sentences for specific drug offenses under the so-called “drug trafficking” law.¹⁰ The Florida Legislature, in 1982, created the Sentencing Commission, which developed the Florida Sentencing Guidelines that became effective on October 1, 1983.¹¹ Prior to the Guidelines, “courts sentenced in accordance with provisions of law that permitted a wide range of judicial discretion in the sentencing decision.”¹² Judges, upon sentencing defendants, were permitted to “not impose a sentence of imprisonment *unless, after considering the nature and the circumstances of the crime and the prior criminal record, if any, of the defendant, the court [found] that imprisonment [was] necessary for the protection of the public because. . .*”¹³ of various circumstances.¹⁴ After the Guidelines went into effect, judges’ authority to exercise their discretion in the length of sentence to impose was generally limited within a range provided for by a scoresheet contained in the Guidelines.¹⁵ Judges could impose a departure sentence either downward or upward *only* under specific delineated reasons.¹⁶ The Legislature, simultaneously with the implementation of the Guidelines, abolished parole for defendants whose offenses occurred on or after October 1, 1983.¹⁷ When these changes occurred there were approximately 20,000 inmates in Florida prisons.¹⁸

During the 1990s, the Florida Legislature—following the lead of the Federal government and then-President Bill Clinton’s campaign for increased sentencing and mandatory minimum laws through the Violent Crime Control Act (of 1994) and decreased access to federal court review of federal and state convictions and sentences via the Anti-Terrorism and Effective Death Penalty Act (of 1996)—took a more rigid “tough on crime” stance, enacting policies creating mandatory minimum sentencing schemes under catchy labels such as “The Reoffender Act,”¹⁹ “10-20-Life,”²⁰ and “Three Strikes,”²¹ and by decreasing the amount of gain time incarcerated

individuals could earn under any other sentence.²² During its 1997 session, the Florida Legislature further ratcheted up the punitive nature of sentencing by implementing a new sentencing policy titled “the Criminal Punishment Code” (CPC). At the time the CPC took effect, the prison population had already increased to approximately 70,000 inmates²³—a three hundred and fifty percent increase over 1983’s total. The CPC replaced the sentencing Guidelines²⁴ and took effect on October 1, 1998. The CPC remains the current sentencing policy in place and states, “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.”²⁵

Over the past four decades, the wholesale increase in general penalties, the passage of mandatory minimum sentencing schemes, and the decrease in the amount of gain time incarcerated individuals may earn coupled with the abolishment of parole, coincide with the increased sentences being served, the explosion of the prison population, and the overall hopeless situation many individuals find themselves in within Florida’s correctional system.²⁶ These overly punitive and antiquated sentencing laws implemented decades ago do a disservice to both those individuals under sentence and the State of Florida in general. Such sentencing policies are not geared toward the betterment of individuals or the community at large, but to the “goal of punishment,” and neither reflect the needs or values of today’s society nor heed current criminological studies that show most people age out of criminal behavior and do not pose the same risks to public safety as they grow older.²⁷ Some of the practical effects of such harsh policies are: the FDC’s incarcerated population ballooned from approximately 20,000 in 1980 to nearly 100,000 in 2019—a *five hundred percent increase*²⁸—and Florida subsequently expanded the FDC’s prison-industrial complex by building 46 new prisons and 34 new smaller facilities

between 1987 and 2011,²⁹ totaling of 143 facilities statewide,³⁰ resulting in a current FDC fiscal budget of over 2.7 billion dollars.³¹

Lack of Sufficient Programs Offered in the FDC

It is difficult for incarcerated individuals to enter existing educational and rehabilitative programs within the FDC, when they can be found at all. The reason for this is two-fold: (1) well-meaning individuals and organizations too often encounter difficulties in bringing programs into the FDC, and (2) there is a severe shortage of state funds or will to support such programs.

For example, the Horizon Communities in Prison Faith and Character Base program³² is offered at Tomoka Correctional Institution (TCI) in Daytona Beach, Florida. Designated program dormitories are set up within the institution where visiting community volunteers teach courses and classes on topics such as victim impact, anger management, drug and alcohol counseling, character development, employability, and personal finance. The program has 260 available beds within the 1,300-bed TCI. The program has for years attempted to expand, not only inside TCI, but also to other institutions. In the twenty years of Horizons' existence, it has been successful in expanding into only four other institutions in the state with a total bed space for approximately 700 inmates.³³

Another example is the Community Education Project (CEP)³⁴ at TCI sponsored by Stetson University in Deland, Florida. Professors at Stetson University created and brought the CEP to TCI in 2015. The CEP, after much work, now offers college credit-bearing courses to TCI students. The CEP currently has a student body of 20 students at TCI—20 out of the hundreds of individuals at Tomoka and thousands of others across the state who would benefit from similar programs.³⁵ This particular higher education in prison program was brought about solely by the

dedication of Stetson University's CEP professors, and the accreditation was made possible by both Stetson University and a monetary grant provided by the Laughing Gull Foundation.³⁶

The overarching problem is that the FDC does not seek out such programs or generally provide such programming opportunities to incarcerated individuals, especially for those serving lengthy sentences,³⁷ even while studies consistently show that providing incarcerated individuals education opportunities, rehabilitative programs, and marketable job skills drastically decrease recidivism rates³⁸ and benefit society in common sense ways such as reuniting the family unit and paying taxes. Moreover, most programs offered within the FDC are developed and geared toward incarcerated individuals with three years or less remaining on their sentence. I argue that educational and rehabilitative programming should be available to all individuals regardless of length of sentence remaining so that the benefits may be absorbed into the prison culture.

Programs such as those mentioned above struggle to gain or retain a foothold in the FDC because the FDC has been legislatively sanctioned to foster a punitive atmosphere of punishment and repression, not rehabilitation and redemption. (*See* n. 25 and accompanying text.) The overall oppressive and hopeless nature of Florida corrections can, thus, be attributed to there being no current review/release mechanism in place for those serving non-parolable sentences and the lack of educational and rehabilitative opportunities. The interconnectedness of these two problems areas—the lack of hope of any type of early release and the lack of opportunities for educational and rehabilitative programming—cannot be overstated, as they go hand-in-hand. Such deeply engrained problems are of a structural dimension and require a "bottom-up" approach to correct, thus validating the appropriateness of this citizen initiative.³⁹ A Florida Constitutional Amendment is necessary both to bring about the needed change that has not been and is not being addressed

sufficiently by the Florida Legislature and to ensure that such problems do not again overtake the corrective processes of Florida's criminal justice system.

ORPA's Purpose

As stated, **ORPA's** purpose is two-fold: (1) to foster a "prison culture" conducive to education and rehabilitation by *creating a demand* for such opportunities, and (2) to provide a safety-valve to allow review and the supervised release of individuals, including juveniles, who have both served significant portions of their sentences and proven themselves worthy of a second chance through prolonged and sustained participation in educational and/or rehabilitative programming. These purposes may be achieved by extending the authority of the Commission to review eligible incarcerated individuals, including juveniles, sentenced to non-parolable terms, and to release on Reintegration those who qualify by meeting certain requisites.

ORPA follows in the footsteps of Florida Constitutional Amendment 4, the Voting Restoration Amendment, which Floridians recently voted into law in November 2018. Whereas Amendment 4 restores voting rights to ex-offenders, **ORPA** seeks to educate and rehabilitate individuals while they are incarcerated. **ORPA** is a bottom-up approach to fulfilling the top-down change to criminal justice policy that many law makers and judges in this state agree needs to be done—safely decrease the prison population, lower recidivism rates, and lessen the burden on tax payers due to excessive and very long sentences.

How ORPA Will Work

ORPA will incentivize individuals to seek out betterment opportunities while incarcerated. This, in turn, will create a demand for more educational and rehabilitative programming in the FDC, which will be in line with the FDC's stated vision of "Inspiring success by transforming one life at a time."⁴⁰ The FDC will be obligated to come up to speed

with societal standards—there will be a need for new programs to fill the demand of the incentivized individuals. Sponsors of educational and rehabilitative programs will no longer struggle to provide such programming opportunities, but will be welcomed to implement those programs within carceral spaces. Incarcerated individuals will be incentivized to "clean up their act" by having real opportunities for redemption, motivating many individuals to take responsibility for their actions and moving them to participate in available programs. By focusing on these positive endeavors, incarcerated individuals will develop the knowledge, skills, habits, and self-confidence necessary to successfully reenter and reintegrate into society—positive habits become lifestyle. These positive habits will be developed not only for use in society, but also will be reflected within the penitentiary setting, creating an atmosphere that will facilitate positive influences on other individuals just arriving in prison.

This positive atmosphere will have an even further reaching and secondary effect of helping to alleviate those hopeless conditions that lead to violence and drug use, which are the primary factors contributing to the many deaths recently occurring in Florida prisons.⁴¹ Moreover, those hopeless conditions that contribute to the development or continuation of negative personality characteristics that affect incarcerated individuals and prison officials alike⁴² will be reconciled with new incentives and the implementation of educational, vocational, and rehabilitative programs geared toward the individual's release, resulting in a less dangerous and stressful "prison culture"—hope fosters motivation, determination, and change.

Nearly every year, individual senators in Florida who are privy to the problem of mass incarceration draft and sponsor proposed legislative bills to address the issue.⁴³ The Legislature thereafter displays a cursory concern and minimal effort toward this problem—a problem recognized by prominent Florida judges⁴⁴—by leaving these proposed bills wrapped up in

legislative committees without a vote, or by the end of the debate over House and Senate versions of bills, they are gutted so that they are but shells of the original bills and miss the original intent.⁴⁵ The yearly regular legislative sessions end with no action taken or the enactment of a shell bill. It is the inaction of the Florida Legislature on the issues of meaningful criminal justice reforms addressing overly punitive sentencing, no review/release mechanism, and the corresponding mass incarceration problem that has made necessary ORPA's movement to create incentivized programming and a right to review for those individuals who meet certain requisites.

When we speak of efforts at criminal justice reform we need to be aware of who is the focus of such efforts and cognizant of the realities these individuals face. One in every one hundred Florida citizens is incarcerated (the current incarceration rate in Florida is over 833 per 100,000),⁴⁶ and the recidivism rate of the FDC's releases is nearly one-third. These are our mothers and fathers, sons and daughters, our childhood friends. What they face and what is at stake is what every incarcerated individual deals in: Time. Time is the most precious resource in humanity's existence that cannot be renewed or replenished. Sand cannot be put back into the hourglass, and if lawmakers could be made to understand that incarcerated individuals will strive to obtain some of their precious time back, and those lawmakers give a time incentive for the completion of certain qualifying educational and rehabilitative programming to earn some of it back, it would change from within the entire dynamic of Florida corrections and the current "prison culture." However, as it is, many lose hope in Florida's current broken system that primarily warehouses people and throws away the key. We can give incarcerated individuals a fighting chance for redemption and restoration, but we must go about it wisely.

Part 2

ORPA Overview, Key Features, and Function

ORPA Overview

ORPA will add to Article IV, section 8 of the Florida Constitution, a subsection (c): "Offender Reentry Program." This subsection will extend the authority of the Florida Commission on Offender Review (the Commission) to review/release individuals currently ineligible for parole pursuant to a new form of supervised release, termed "Reintegration." This was necessary because the Commission already has its rules and procedures for paroling those who were sentenced prior to October 1, 1983—procedures that are unfair and inequitable. However, if **ORPA** only extended "parole" to those who are ineligible, it would have extended such an "act of grace" and not a "right" to review. Moreover, had **ORPA** included those who are under the old parole system, it would have necessarily forced the Commission to rewrite its rules and procedures to comply with it. This would "substantially alter or perform the function of multiple branches of government" so as to possibly run afoul of the Florida constitution's "single subject" requirement for initiative-based changes in law.¹ Thus, that scenario was avoided by creating the new term Reintegration and leaving it up to the Commission to create the procedures by which they must carry out the new constitutional mandate. That said, **ORPA** does include specific language essential for the Commission to actually review and release individuals on Reintegration.

Key Features

Reasonable requisites

Subsection (c)(2) Applicability, includes the requirement that

The Florida Commission on Offender Review *shall* make available to *all* eligible offenders a reentry program and *shall place all qualifying offenders* on Reintegration Status. The Florida Commission on Offender Review *shall* annually place *a minimum of three percent of the total* of the Florida Department of Corrections' offender population on Reintegration Status.

Proposed subsection (c), Article IV, section 8, *Florida Constitution* (emphasis added). In addition, in subsection (c)(4)b., the term “Qualifying Offender” is defined as “A person who has met both the eligibility requirement and the reasonable requisites of the Florida Commission on Offender Review.” These requirements, taken together, will mandate the Commission to set “reasonable” requisites that incarcerated individuals can actually attain in order for the Commission to meet that mandate. That said, if the Commission were to ONLY release the required 3% yearly, that number would be roughly 2,850 and would decrease slightly year over year. Still, the FDC’s population would be decreased by roughly 27% in ten years. We’re talking significant savings to State of Florida (taxpayers) when you consider it costs the state \$27,000/yr. average to house someone in the FDC allowing the state to allocate the funding to other important areas of concern such as public schools, infrastructure, and etc. Moreover, the Commission could use this amendment as a safety valve at any time to decrease the overall prison population to whatever level it or other authority deems necessary or desirable.

Incarcerated individuals will be required to serve a minimum of half of their court-imposed sentence—in many cases a significant amount of time.² However, those individuals will have a real and obtainable opportunity for release that they otherwise would not have.

Ineligibility of certain offenders

(c)(4)a. Eligible offender. Individuals under “a sentence of death or a sentence for capital sexual battery” are ineligible for Reintegration. This is due to the fact that society generally frowns upon individuals with such sentences. It was the bare minimum necessary to omit from eligibility in order to appeal to the masses to vote **ORPA** into law. As for not going further and excluding those individuals convicted of murder, it is because there are many people incarcerated for such offenses (whether premeditated, felony murder, murder in principle), and to deny them

all a chance for Reintegration would both decrease the support from within the fences and their families and supporters and, just as importantly, create a tension within the prisons between eligible and ineligible individuals. Such tensions could lead to violence for those who are eligible. Sustainability had to be considered and sensibility used in recognition of real people with real lives at stake in a hopeless situation.

Requirement that the Commission annually place a minimum of 3% of offenders on Reintegration

(c)(2) Applicability. Subsection a. This provision mandates the Commission to “annually place a minimum of three percent of the total of the Florida Department of Corrections’ offender population on Reintegration.” The logic behind this provision is simple: the Commission will not be able to put off indefinitely individuals who qualify. It was the only way to provide a guarantee that the amendment will be an effective review/release mechanism. Meaning, the Commission cannot set qualifications so stringent that no one can meet them and the Commission will actually be required to release those who meet the qualifications they set.

Purpose of Reintegration as opposed to Parole

The Commission has rules and procedures in place for parole qualification, review dates, presumptive parole release dates, supervision, etc.³ Had **ORPA** required the Commission to change these, it would have created the possibility that the Florida supreme court, upon issuing its advisory opinion, would find that **ORPA** ran afoul of the “single subject” inquiry. The single subject requirement disallows a constitutional amendment by initiative to either “encompass more than one subject” or “substantially alter or affect multiple branches of government.”⁴ To be safe, **ORPA** neither creates a new division of the Commission nor imposes requirements necessitating the Commission to rewrite its existing rules and procedures. It will be up to the Commission to write its own rules and procedures to comply with **ORPA**.

ORPA is primarily for those who are not eligible for parole under the old system, including juveniles. That said, there may be Equal Protection challenges down the road from those under the old parole system concerning the "new" constitutional right to review being applicable to them as well; such a successful challenge would be welcomed as those persons under the old parole system would then be eligible for Reintegration. It is, by design, a way to replace the old broken parole system without directly challenging it or doing away with it—it's an upgrade.

ORPAs Function

ORPA will transform Florida's criminal justice system from the bottom up by creating demand for educational and rehabilitative programming

One of **ORPA's** most important aspects is that it will create the demand for educational and rehabilitative programming within the FDC. **ORPA's** passage into law will create a demand for programs to be implemented within the FDC. By shifting the focus from mass incarceration warehousing of human beings to that of educational and rehabilitative opportunities it will transform the criminal justice system from one of retribution and oppression to one of rehabilitation and redemption. Providing such opportunities to incarcerated individuals with a real chance of release will help alleviate hopeless situations, which result in violence, drug use, and high recidivism rates.

ORPA will restore families and parity in Florida's criminal justice system

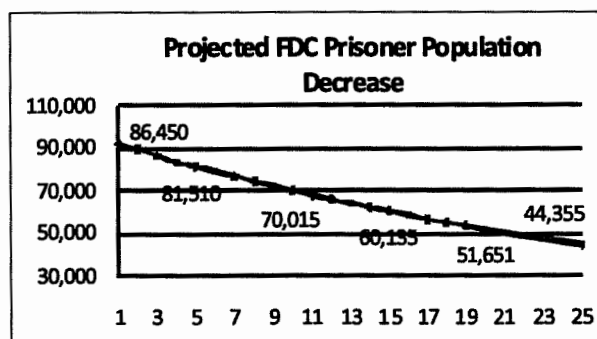
By providing rehabilitated individuals a chance for redemption, it will foster successful reintegration and restoration of the family unit, leading to closer family ties and strengthening communities. Moreover, **ORPA** will help to enfranchise those who otherwise would have no voice. Recent studies show that bias is a real and credible threat to the fair dispensing of sentencing in Florida and, in many instances, a person's ZIP code or racial makeup is more a determining

factor in the length of sentence imposed than the seriousness of the crime.⁵ **ORPA** will level the playing field by offering each and every incarcerated individual the opportunity to stand on their own merit of rehabilitation to earn supervised release on Reintegration.

ORPA will safely decrease the prison population by 27% in ten years

ORPA is a safe and sustainable way to decrease the prison population. Releasing on Reintegration *only* the required 3% of the inmate population annually will equate to 2,850 the first year (based on a current inmate population of 95,000), and will gradually decrease year over year. By the Commission releasing only the minimum 3%, after five years the total inmate population will be decreased by 14% to 81,500 and after ten years by 27% to 70,015. (See

Illustration, at right). **ORPA**'s projected decrease of the FDC's population is in line with a growing number of policy experts and advocacy organizations, as reported by the Sentencing Project,⁶ calling for a substantial



decrease in the prison population, and a recent article in the *Tampa Bay Times*, in which Mark Inch, Secretary, Florida Department of Corrections, was reported as expressing concern over the conditions in Florida's prisons being compared to that of New Mexico Santa Fe's penitentiary in 1980, when it was overtaken by inmates, and scores of officers and inmates alike were injured and killed. Moreover, the Commission could at any time adjust this mechanism to decrease the prison population to a level it or other authority deems necessary or safe.

In sum, **ORPA** is a safe and sustainable way to decrease the prison population that can be varied by rate up or down by the Commission according to the needs of society and **ORPA**'s success.

Part 3

ORPA Preliminary Financial Impact Statement

Preliminary Financial Analysis

Financial considerations pertaining to new staffing responsibilities of the Commission are analyzed based on the Commission's requirement of releasing 2,850 incarcerated individuals in the first year,¹ caseload standards for parole and probation officials, and current salaries. It is recommended, although not mandated, that the Commission create a new division within its existing structure, which could be named the Florida Division of Offender Reintegration ("the DOOR").

Front-end costs

ORPA will require the release of approximately 2,850 incarcerated individuals in the first year, decreasing slightly year-to-year, and create a supervisory responsibility of the Commission requiring a budgetary commitment on the front-end, estimated as follows:

- 75 new hires:²
 - 60 added parole examiners (ideally, one assigned to each major correctional facility)
 - 45 added supervisory and supportive staff

@ \$60,000 (avg. annual salary w/benefits)³

$$105 * \$60,000 = \$6,300,000$$

- Additional office space and equipment \$680,000

Total front-end costs \$5,000,000

Back-end savings

The 2,850 individuals released the first year on Reintegration will create a back-end savings of \$27,000 per individual⁴ resulting in savings of

- 2,850 individuals placed on Reintegration
 - @ \$27,000/year housing (cost savings) \$76,950,000

<i>Back-end revenue</i>	+	
➤ @ \$720/year (current rate of supervision)		\$2,052,000
<u>Total back-end savings</u>		<u>\$79,002,000</u>

As these figures suggest, by releasing the minimum required 3% of the incarcerated population annually, even with 105 new parole examiners and field officers at the high end of the average salary spectrum, would result in a net savings to the State of Florida of \$80 million in the first year. This figure, dependent upon the total number of individuals the Commission releases, will compound exponentially year over year with additional individuals placed on Reintegration. After five years, **ORPA** will have saved the state \$364,230,000 and created revenue in the amount of \$9,712,800, for a total back-end savings of \$373,942,800.

Conclusion

ORPA is a workable solution to the growing threat of mass incarceration and is in line with reforms suggested by leading studies on Florida's criminal justice system. **ORPA** will offer a time incentive to Florida's incarcerated population and encourage prolonged participation in betterment programming. The demand for betterment programs will transform the FDC from breeding grounds of violence and drug use into a place of rehabilitation. **ORPA** will provide the opportunity for individuals to stand on their own merit to demonstrate rehabilitation and bring parity to Florida's criminal justice system. **ORPA** can be adjusted up or down by the Commission based on the qualifiers; however, the Commission cannot set requisites for supervised release so high that they are unattainable. Finally, **ORPA** is a safe and cost-effective way to decrease the prison population.

Notes

Part 1—Why **ORPA** is Necessary: A Description of Problem Areas

¹ Cyrus O'Brien, "Florida Criminal Justice Reform: Understanding the Challenges and Opportunities" (2017), *Project on Accountable Justice*, Ed. Deborah Brodsky, Florida Institute of Government, Florida State University, 3; 12. <<http://projectonaccountablejustice.org>>. Accessed 10 July 2020.

² Due to a convoluted legislative body of criminal law, there are exceptions to the general rule of no parole, as follows: Any offender who (1) committed a first-degree murder, a felony murder, or the crime of making, possessing, throwing, projecting, placing, or discharging a destructive device (or the attempt of) prior to May 25, 1994; (2) committed any other capital felony prior to October 1, 1995; (3) committed a continuing criminal enterprise prior to June 17, 1993; (4) any inmate who committed a murder of a law enforcement officer (or any other specified officer) prior to January 1, 1990; (5) committed a murder of a justice or judge prior to October 1, 1990; (6) elected to be sentenced outside the guidelines for felonies committed prior to July 1, 1984; and (7) received a habitual felony offender sentence prior to October 1, 1988. As of May 31, 2016, there were approximately 4,552 offenders eligible for parole. *What is Parole?*, Florida Commission on Offender Review 2014. <<https://www.fcor.state.fl.us/>>. Accessed 10 July 2020.

³ In 1996, the Florida Parole Commission was renamed the Florida Commission on Offender Review.

⁴ The Commission's responsibilities are framed as such: "The Commission on Offender Review performs a vital role in Florida's criminal justice system by preserving the autonomy needed in post-release decisions affecting inmates and ex-offenders. The Commission functions as a quasi-judicial, decision-making body. Commissioners preside over approximately 36 meetings annually at the central office in Tallahassee and at various locations throughout the state as required by statute. During these public proceedings, the Commission make a variety of determinations regarding parole and other releases." <<https://jobs.myflorida.com>>. Accessed 10 July 2020.

⁵ The *Project on Accountable Justice* defines very long sentences as twelve years or longer. ("Most people currently in prison are serving very long sentences.") O'Brien, at 5.

⁶ For an in-depth report and fact-based analysis of Florida's Correctional System and contrast with other state's correctional systems, See O'Brien, "Project on Accountable Justice." <<http://projectonaccountablejustice.org>>

⁷ The FDC defines "inmate recidivism" as a return to prison, as the result of either a new conviction or a violation of post-release supervision, within three years of their prison release date. In 2009, inmate recidivism was 27.6%, and in 2015, 24.7%. "Florida Prison Recidivism Report: Releases from 2010 to 2017." Florida Department of Corrections, Mark S. Inch. Office of Strategic Initiatives. June 2019. Available at <<https://www.dc.state.fl.us/>>. Accessed 10 July

2020. It is worth noting that a leading national study (that included Florida) used a model for recidivism based solely on arrests for new offenses regardless of whether they resulted in a new prison sentence, and the numbers were 63.5% and 60.2% in 2011 and 2015, respectively. “2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014).” U.S. Department of Justice, Office of Programs, *Bureau of Justice Statistics*. Mariel Alper, Ph.D., and Matthew R. Durose, BJS Statisticians Joshua Markman, former BJS Statistician. May 2018.

⁸ Statistics taken from “Corrections Foundation Annual Report: Fiscal Year 17-18.” <<http://www.correctionsfoundation.org>>. Accessed 10 July 2020. For more information regarding the FDC’s recidivism tracking, see the “Recidivism Report.” Available at <<https://www.dc.state.fl.us>>.

⁹ The Legislature has increased penalties for drug offenses in 1987, 1989, 1992, 1994, and on other occasions. For the legislative history, see generally, chapter 893, *Florida Statutes*. For a fuller description of Florida’s War on Drugs and the increasingly punitive nature of its criminal justice system, see Heather Schoenfeld, “The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States,” *The Journal of Gender, Race and Justice* (April 2012), 315-352.

¹⁰ Section 893.135(3), *Florida Statutes* (1979)(Trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.)(“ . . . any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. *A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. 947.149, prior to serving the mandatory minimum term of imprisonment.*”)(emphasis added)

¹¹ “The Sentencing Guidelines Commission [] proposed a rule of criminal procedure to implement sentencing guidelines in order to comply with the action of the Legislature in its passage of section 921.001, *Florida Statutes* (1983). . . . The purpose of sentencing guidelines is to establish a uniform set of standards to guide the sentencing judge in the sentence decision-making process. The guidelines represent a synthesis of current sentencing theory and historic sentencing practices throughout the state. Sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-and offender-related criteria and in defining their relative importance in the sentencing decision.” *In re Rules of Criminal Procedure (Sentencing Guidelines)*, 439 So.2d 848; 1983 Fla. LEXIS 3193 No. 63962 Sep. 8, 1983.

¹² William H. Burgess, III, *Florida Sentencing*, 2018-19 ed. (2019), §2:1.

¹³ Section 921.005(1)(a), *Florida Statutes* (1983).

¹⁴ Sections 921.005(1)(a)1-2, (b)1-9, *Florida Statutes* (1983).

¹⁵ See Rules 3.988(a)-(i), *Florida Statutes* (1983).

¹⁶ Section 921.0016, *Florida Statutes* (1988); Rule 3.701(d), *Florida Rules of Criminal Procedure* (1983).

¹⁷ “By its terms, Chapter 947 of the Florida Statutes (providing for parole) did not apply to offenders sentenced pursuant to the guidelines. §921.001(10), Fla. Stat. (1987). However, the sentencing guidelines also expressly provided that the guidelines did not apply to first-degree murder (and other “capital felonies”) committed after October 1, 1983. §921.001(4)(a), Fla. Stat. (1987).” *Lawton v. State*, 109 So.3d 825, 827 (Fla. 3d DCA 2013)(parentheticals in original).

¹⁸ U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in State and Federal Institutions on December 31, 1980*.

¹⁹ Section 775.082(9), *Florida Statutes* (1997)(Mandatory minimum sentences for certain offenders previously released from prison).

²⁰ Section 775.087(2), *Florida Statutes* (1999)(Mandatory minimum sentences for those in possession of a firearm during Commission of offense).

²¹ Section 775.084(3)(c), *Florida Statutes* (1999)(Mandatory minimum sentences for those with two prior convictions classified as violent).

²² Florida’s history of gain time is complex. For purposes herein, it is sufficient to note that pursuant to the “Stop Turning Out Prisoners Act” of 1995, the Legislature required all offenders whose offenses occurred on or after October 1, 1995, must serve a minimum of eighty-five percent of their sentence. For an understanding of the complexities of Florida’s gain time past and present, see sections 944.275, 944.278, 944.28, 944.281, 944.291, *Florida Statutes* (2018).

²³ *Florida Almanac 2000-2001* (Pelican Publishing Company, Inc. 2000), 280.

²⁴ For a thorough history of Florida sentencing pre- and post-Guidelines and CPC, see William H. Burgess, III, *Florida Sentencing*, §§2:1-2:33; 3:1-3:40.

²⁵ Section 921.002(b), *Florida Statutes* (1998).

²⁶ For an in-depth report and fact-based analysis of Florida’s Correctional System and contrast with other state’s correctional systems. O’Brien, “Florida Criminal Justice Reform: Understanding the Challenges and Opportunities.” Available at: <http://projectonaccountablejustice.org>. See also John Pfaff. “Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform.” New York: Basic Books. 2017.

²⁷ “In general, as people age, they are much less likely to engage in crime.” O’Brien, at 12. Moreover, incarcerating an aging population makes little penological sense. Those aged 50-64 have far lower recidivism rates than the national average: 7% compared to 43.3%. And those over 54 have just a 4% recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released. Anthony N.

Doob and Cheryl Marie Webster, Sentencing Severity and Crime: Accepting the Null Hypothesis, in Michael Tonry, ed., *Crime and Justice: A Review of Research*, vol. 30, 187 (2003)(reviewing over thirty years of deterrence studies and concluding, “[w]e could find no conclusive evidence that supports the hypothesis that harsher sentences reduce crime through the mechanism of general deterrence.”)

²⁸ While Florida’s resident population increased from 9,739,982 to 20,612,439 between 1980 and 2016, an increase of just over one hundred percent, the FDC offender population increased by five hundred percent during the same time period. Figures pulled from U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in State and Federal Institutions on December 31, 1980*; *Florida Almanac 2000-2001* (Pelican Publishing Company, Inc. 2000), 280; *The World Almanac and Book of Facts 2018* (infobase November 2017), 568.

²⁹ Figures taken from O’Brien, “Florida Criminal Justice Reform: Understanding the Challenges and Opportunities.” <<http://projectonaccountablejustice.org>>. Accessed 10 July 2020.

³⁰ “Florida Department of Corrections.” <<https://en.m.wikipedia.org>>. Accessed 10 July 2020.

³¹ Florida Department of Corrections 2018-2019 Budget Overview. <<https://www.dc.state.fl.us>>. Accessed 10 July 2020.

³² The Horizon Communities in Prison is paid for and sponsored by outside volunteers. Ike and Mickey Griffin founded the program based on a program model in Brazil and implemented the program at TCI in 1999.

³³ At present, Wakulla, Everglades, and Lowell Correctional Institutions are the only other institutions to offer the Horizon Communities program. Each institution has one designated dormitory designed to hold between 132 and 158 offenders apiece.

³⁴ Stetson University/Community Education Project. “Our Mission: The Community Education Project is a non-profit multi-disciplinary college in prison program at Stetson University committed to offering quality liberal arts education and learning opportunities in Florida prisons. Access to a liberal arts education offers incarcerated individuals meaningful opportunities for personal growth and intellectual engagement, which benefits our community as a whole.” <<https://stetson.edu/other/cep/>>. Accessed 10 July 2020.

³⁵ The only other program in the FDC similar to the CEP is a partnership between FDC and Florida Gateway College (FGC) at Columbia Correctional Institution. On May 20, 2019, the FDC announced “the first class of [47] college graduates from the Florida Gateway College (FGC) Second Chance Pell Program . . . The first of Florida’s graduates participated in a traditional graduation ceremony at Columbia Correctional Institution Annex in Lake City, Florida on May 17. . . . The Second Chance Pell Pilot Program offers Pell Grant eligibility to inmates selected and supervised by FDC who are eligible for upcoming release *within the next five years*.” “FDC Held Groundbreaking Inmate College Graduation.” <www.dc.state.fl.us/comm./press/2019/05-20-Graduation.html>. The CEP and the Horizons Communities are two rare examples of programs

within the FDC that do not limit participation to individuals with short sentences; however, these programs are severely limited in their financial capabilities to provide opportunities for many participants. (See nn. 32, 33 above, and accompanying text.)

³⁶ In 2018, the Laughing Gull Foundation awarded the CEP a \$230,000 grant over a three-year period. One of the Laughing Gull Foundation's aims is to increase incarcerated students' access to higher education in prison. <https://www.laughinggull.org>. Accessed 10 July 2020.

³⁷ Section 944.7065, *Florida Statutes* (2018) "Transition course for inmates" states: "In an effort to ensure that inmates released from the Department of Corrections successfully reenter the community, beginning December 1, 2002, each inmate released from incarceration by the department must complete a 100-hour comprehensive transition course that covers job readiness and life management skills." Said ex-Secretary of FDC Julie Jones, "The more prepared our inmates are for release, the more likely they will gain employment and become contributing members in their local communities." The FDC, on June 18, 2017, launched the COMPASS 100. According to the information provided on NorthEscambia.com, "COMPASS 100 is an integrative curriculum for inmates nearing release, allowing them to develop targeted and personalized life skills in combination with their current educational courses and substance abuse treatment." "Florida Department of Corrections Launches Compass 100." June 18, 2017. <http://www.CenturyNorthEscambia.com>. Accessed 10 July 2020.

The COMPASS 100 textbook states, "*COMPASS 100* is a 100-hour, comprehensive, individualized community readiness course that covers job readiness and life management skills for all residents releasing from the Florida Department of Corrections

"Individuals within three (3) years of release are eligible to participate in COMPASS 100 and it is *mandatory* that *COMPASS 100* be completed prior to EOS." COMPASS 100-Hybrid Navigator's Guide 2016 Florida Department of Corrections, 2 (emphasis in original). As the workbook states, the curriculum focuses on individuals within three years of release; however, it should be noted that the failure of an individual to complete, or even participate in, the program will not stop them from being released at their end of sentence date. From my experience, it is the individuals with longer sentences who are more open to participation in such programs. I argue that programs offered in the FDC should be available to *all* individuals to create a restorative prison culture and positive habits and individuals will develop into positive lifestyles and facilitate their successful reintegration back into the community.

³⁸ Education's role in recidivism reduction is substantial. "In 2016, the RAND Corporation produced a report that showed that individuals who participate in any type of educational program while in prison are 43% less likely to return to prison. In addition to reducing recidivism, education can improve outcomes from one generation to the next." Cathleen Bender, March 2, 2018. "Education Opportunities in Prison Are Key to Reducing Crime." <https://www.americanprogress.org/issues/education-k-12/news/2018/03...> Accessed 10 July 2020. According to a report by PRIDE (Prison Rehabilitative Industries and Diversified Enterprises), only 9.89% of PRIDE's former workers recidivate. PRIDE is an FDC sponsored corporation that provides training in diversified fields such as garment and apparel, furniture manufacturing, vehicle restoration, and metal fabricating. PRIDE utilizes a labor force of approximately 3,000, mostly low and medium custody, inmates for contracted jobs and pay

begins at twenty cents/hour and tops out at fifty-five cents/hour. <http://www.pride-enterprises.org>. Accessed 10 July 2020.

³⁹ Florida's state criminal justice system is divided in a 3-tiered order of authority that can be compared to a pyramid. First (the top tier), is the state Constitution, second, legislation in the form of statutes, and third, court opinions that interpret and apply those authorities to the specific facts of individual cases. Those court opinions then take on the force of law (precedent) and are applied to subsequent cases containing the same or similar factual circumstances. All law and authority flows from the Constitution and all legislation and court opinions must adhere to the fundamental principles contained in the Constitution. Citizen initiatives, however, are "grassroots" movements for the people by the people, which, by definition, are bottom-up approaches to changes in the law.

⁴⁰ On the FDC's website, at the very top of the page these words hang over all else. <http://dc.state.fl.us>. Accessed 10 July 2020.

⁴¹ "More inmates died in Florida prisons last year than in any other year on record . . . [t]he tally, 427 inmate deaths in 2017 . . . showed a 20 percent increase over previous years." Howard Simon, executive director of the Florida American Civil Liberties Union, said, "Florida prisons are full of addicts and drug offenders, due to Florida's mandatory sentencing laws." John Rivera, executive director of the union representing prison guards, said, "You have inmates that have nothing to look forward to, very little hope." Sarah Blaskey. January 21, 2018. "Record number of inmates died in Florida last year. And they died younger than past years." <https://www.miamiherald.com/news/local/community/miami-dade/article195837959.html>. Accessed 10 July 2020.

⁴² As reported in the *Tampa Bay Times*, FDC Secretary Mark Inch was recognized as being aware of FDC's "cultural issues," and comparing the conditions in Florida's prisons to that New Mexico State Penitentiary at Santa Fe in 1980, where 12 correctional officers were taking hostage and 33 inmates were murdered. The *Times* reports that Mark Inch, during a meeting in his conference room in Tallahassee's Farris Bryant building, "point[ed] to a white board on the wall and a graph that show[ed] how Florida's prison system had 'gone from excellence, to satisfactory to marginal'—just as New Mexico's did." Moreover, "At a recent training for lieutenants and captains in the officer corps, the instructor asked them to do some self-reflection and write down three negative personality characteristics they have developed since taking [] leadership position[s]. He read down the list of answers: 'low regard toward humanity and the world,' 'inability to vent or relieve stress,' 'started drinking,' 'short tempered,' 'no sleep,' 'attitude change at home almost caused my divorce.'" Mary Ellen Klas. Dec. 1, 2019. "Florida prisons can't go on like this, new chief says." *Tampa Bay Times*. <https://www.tampabay.com/florida/politics/buzz/2019/12/01/florida-prisons-can-t-go-on-like-this-new-chief-says/>. Accessed 10 July 2020. These are real examples of how criminal justice policies affect the prison culture and, in turn, those working in the correctional field and society at large.

⁴³ For examples of proposed legislative bills that have failed to garner a vote in the last decade, visit our Facebook page at Floridians For Redeemable People.

⁴⁴ For examples of cases requiring mandatory minimum sentences, which include sentencing judges' opinions as to propriety of such sentences, visit our Facebook page at Floridians For Redeemable People.

⁴⁵ "It costs the state about 22,000 each year for each inmate" Gloria, Cat. May 1, 2019. "Legislators Drop Proposal that Would Reduce Prison Terms for Nonviolent Offenders." *WUFT News* <<https://www.wuft.org/news/2019/05/01/legislators-drop-proposals-that-would-reduce-prison-terms-for-nonviolent-offenders/>>. Accessed 10 July 2020. In February, 2019, there was a push from the Florida Senate through the Public Safety Bill 642 to increase the amount of gain-time nonviolent offenders could earn, which would have required nonviolent offenders to serve a minimum of two-thirds of their sentences instead of 85%, as is the current law. However, the House refused to allow the provision in their final version, HB 7125, which covered such various acts as redacting mandatory minimum sentences for selling horse meat and reducing the offense severity of certain crimes relating to keeping a gambling house or possessing certain gambling apparatuses. The Senate gain-time provision would have cut the prison population by 7,596 non-violent offenders in the first year, which would have amounted to \$167,112,000 in savings to the state. In the 2020 Legislative session, every criminal justice reform bill affecting sentence length that was introduced died in committees.

⁴⁶ Figure taken from Jarmusz, T.S. 5/8/2019. "Stetson Professors Venture to Prison to Educate Inmates." *Daytona Beach News Journal online*. <<https://www.newsjournalonline.com/news/20190508/stetson-professors-venture-to-prison-to-educate-inmates>>, citing a prisonpolicy.org report. Accessed 10 July 2020.

Part 2—ORPA Overview, Key Features, and Function

¹ "Article XI, section 3, of the Florida Constitution provides that any proposed citizen initiative amendment 'shall embrace but one subject and matter directly connected therewith.' Art. XI, 3, Fla. Const. 'In evaluating whether a proposed amendment violates the single-subject requirement, the Court must determine whether it has a 'logical and natural oneness of purpose.'" *Advisory Op. to Att'y Gen. re Amend. to Bar Gov't from Treating People Differently Based on Race in Pub. Educ.*, 778 So.2d 888, 891-92 (Fla. 2000)(quoting *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984)). This single-subject rule prevents a proposal 'from engaging in either of two practices: (a) logrolling; or (b) substantially altering or performing the functions of multiple branches of state government.'" *Advisory Opinion to the Attorney General Re Use Of Marijuana for Debilitating Medical Conditions*, 181 So.3d 471, 477 (Fla. 2015)(quoting *Advisory Op. to Att'y Gen. re Water & Land Conservation*, 123 So.3d 47, 50 (Fla. 2013)).

² ORPA's requirement of individuals serving half of their court-imposed sentence coincides with the Rules of Executive Clemency for those serving mandatory minimum sentences, and is even more stringent than the requirement for individuals serving a standard term-of-years sentences, which is the completion of one-third of their court-imposed sentences. See [Rule 8\(A\), Rules of Executive Clemency](#) (Commutation of Sentence).

³ See generally section 947, [Florida Statutes](#) (2019).

⁴ See Part 1, n. 1, above.

⁵ A recent study conducted by Florida State University on criminal justice reveals sentencing disparities based on race within Florida's 18 judicial circuits, specifically finding that "In Florida's criminal justice system, your ZIP code and the color of your skin can sometimes matter more than your behavior." O'Brien, at 8. The disparities reported are profound: "When racial and jurisdictional differences compound, the disparities can be astounding. Black adults in the 19th Circuit (Okeechobee) are 110 times more likely to be incarcerated for drugs than white adults in Palm Beach. Put another way, if the general populations were equivalent, for every white prisoner incarcerated for drugs from Palm Beach there would be 110 black prisoners from Okeechobee." O'Brien, at 9.

⁶ "The growing recognition of the scale and urgency of mass incarceration is now voiced by leaders as diverse as Sen. Corey Booker and former House Speaker Newt Gingrich. A growing number of policy experts and advocacy organizations are now calling for a 50 percent cut in the U.S. prison population within the next 15 years. These include the UCLA, the #Cut50 initiative led by Van Jones, and Just Leadership USA—a national group led by formerly incarcerated individuals But the sobering reality is that at the pace of decline since 2009, it will take until 2093 to cut the U.S. prison population by 50%." Nazgol Ghandnoosh, Ph.D. March 8, 2018. "Can We Wait 75 Years to Cut the Prison Population in Half?: Expediting the end of mass incarceration will require accelerating the end of the Drug War and scaling back sentences for serious crimes." Available at <sentencingproject.org>. Accessed 10 July 2020.

Part 3—ORPA Preliminary Financial Impact Statement

¹ Costs are based on ORPA's requirement of three percent of the total FDC population estimated at 2,850 being released in the first year on Reintegration. (Proposed) Article IV, section 8(2)(c), *Florida Constitution*.

² Staffing considerations were calculated using the "Caseload Standards for Parole and Probation (September 2006)." Bill Burrell. Temple University (citing "The American Probation and Parole Association (1991). *Issue Paper on Caseload Standards*). <https://www.appa-net.org/eweb/docs/APPA/stances/ip_CSPP.pdf>). Adult caseloads for parole officers is estimated based on evidence-based practice under an administrative/low risk/moderate to high risk/intensive model. 200 cases seem to be the median number of cases under this model of spectrum of risk.

³ The average parole officer salary in Florida is \$54,533 as of November 25, 2019, and ranges between \$48,439 and \$60,628 depending on location and other various factors. <<http://www.salary.com>> Accessed 10 July 2020.

⁴ Cost estimates based on figures taken from the Florida Commission on Offender Review Annual Report: 2016-17.

Appendix A

Johnny: A Case Study

Johnny: A Case Study

The following depicts the profile of the average Florida prisoner¹:

Johnny was nineteen years old when he got caught in an armed trafficking offense and was sentenced to twenty-five years in state prison. He has two young children, four years and three years old, and, unfortunately, the children's mother was also arrested while he faced his charges before trial. The children were held in custody of the Department of Children and Families, awaiting a court order for termination of parental rights to be placed in permanent foster homes. Johnny scores out with a ninth grade education, but has no practical knowledge or skills besides street life and dope dealing. Johnny's dad is in prison, and now he's in prison at the front-end of a fresh twenty-five year sentence. When Johnny initially arrived to his permanent institution, his first roommate was a middle-aged man serving a life sentence who had been down for twenty-one years with no hope of being released. He lives the gang life within prison, sells dope, and robs old and vulnerable inmates for their canteen and property now and again. He's back and forth to confinement, but it's all "part of the game." Johnny saw how his roommate lived, that he made some money, and fell easily into the same lifestyle. Johnny will one day be released back into the community likely with, still, no practical or job-related skills, but hardened by a thug mentality and lifestyle that is not conducive to living in society. Will he become another statistic, a recidivist? Who will become his victim(s)? What about his children? *How do we break this cycle?*

Now, imagine this scenario: Johnny goes to prison and sees his roommate working a program, involved in his family's life, and receiving the necessary education and skills training to live a lawful life outside of prison. The same roommate, the same life sentence, but the difference: there's a policy in place that has given the incarcerated individual an incentive to

rehabilitate—a chance for early release. His whole outlook has changed. He strives. Over the days and years, his positive habits have become his lifestyle that he can take with him back into society. And his actions are noticed by those around him. He's a good influence on his roommate—Johnny or any other young adult just coming into the system—and now that young person falls in line with that influence. By having a release mechanism in place—by offering HOPE to incarcerated individuals—we can imagine the contrast between these two scenarios and the ripple effect that such policies would create: costs to society becoming benefits that carry over to subsequent generations.ⁱⁱ

Real examples like this are what the general public need to hear about and policy makers need to understand: We need to connect the dots between no hope in our state prisons to the violence inside that spills over into society, to all the recent deaths by drug overdoses in Florida's prisons, to broken families in society from a cyclical system that churns out an extremely high recidivist rate.

ORPA is a Beacon of Hope for those who want a better life, a second chance. Our nation was built upon second chances by those tired, poor, huddled masses yearning to breathe free. Our states were created in that image. Our communities are bound by this common thread: the fostering of hope and the opportunity of redemption and second chances for those who diligently seek them. This movement gives voice to those many incarcerated individuals trying to find or hang onto hope and who would thrive under hopeful circumstances. Mass incarceration, oppression of individuals, and a reflection of moral disregard for the lives of those who seek better is neither what our society was built upon nor what we as a society are about. Initiative 19-04 moves to action our cause to remedy the situation in Florida where the government's function to address our concerns over unviable criminal justice policies remains unaddressed. This is the

way our society evolves in the face of governmental oppression: We the People put a "check" on that system. By ORPA's passage into law, we will be putting the "correction" into Florida's criminal justice system and the Florida Department of Corrections that has too long been missing.

ⁱ O'Brien points out that the profile of the average Florida prisoner serving a very long sentence is not only an individual with property or drug offenses, but is designated as "violent" as well. This profile makes up 83% of the prison population. O'Brien, at 11.

ⁱⁱ Julian Savulescu, a world-renown geneticist, has argued that environment can profoundly affect biology, and that these genetic changes may be passed on to the next generation. *See* Savulescu, Julian. "Genetic Interventions and the Ethics of Enhancement of Human Beings." *The Oxford Handbook of Bioethics*. Ed. Bonnie Steinbock (Oxford University Press 2007). pp. 521-535. *See also* "It Can't Be Fixed Because It's Not Broken." *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*. "When people get out of prison, many leave with what has been termed 'Post-Incarceration Syndrome' (PICS), which are understandable responses to living in oppressive, restrictive, violent, and dehumanizing environment. [Terrence] Gorski defines PICS as a cluster of symptoms that are usually present in prisoners and ex-prisoners caused by long periods of incarceration. Prolonged incarceration where there is a lack of education and no job training or "rehabilitation," coupled with punishment, ensures that people coming out of prison are worse off than when they went into prison." p. 171.

Appendix B

The Author's Biography

The Author's Biography

My name is Roger Cassidy and I wrote **ORPA** contained in Initiative 19-04. I created this initiative because right now there is no parole or other review/release mechanism in Florida for incarcerated individuals sentenced after October 1, 1983 (*see* n. 17), and that, coupled with the lack of sufficient educational and rehabilitative opportunities within the FDC, especially for those with lengthy sentences, creates the oppressive and hopeless atmosphere reflected in the prison culture, which carries over into society—I have seen it and I have lived it for nearly twenty years. The primary purpose I wrote **ORPA** is to provide a safety valve to the criminal justice system to allow for the review/release of incarcerated individuals who have both served a significant portion of their sentence and successfully participated in extensive betterment programming, which will give them the skills, tools, and confidence necessary to successfully reenter society.

I became addicted to drugs at the age of nineteen. For the next three years, my life was a series of ups and downs, but the weight of addiction finally throttled my positive efforts and I crashed into an abyss. In June 1998, at the age of twenty two, I was charged with multiple non-violent property crimes. One of the burglary offenses was of a pawn shop, and recorded footage from a Sheriff's helicopter was televised and showed me on the roof in the middle of the morning while under the influence of drugs and alcohol. During my sentencing hearing, I requested that the court and the state prosecutor allow me to enter into and complete a drug rehabilitation program of the court's choice. The court, following the prosecutor's recommendation, denied my request and subsequently sentenced me to twenty-seven months incarceration pursuant to a plea deal my public defender arranged with the state prosecutor. The

court, however, recommended in its written judgment that I be classified to the "Tier" drug treatment program within the FDC.

In October 1998, upon my initial screening into the FDC, I also requested to be sent to the Tier program, which is no longer offered. After interviews by a psychologist and drug counselor, I was recommended for the Tier Four program—the longest and most intensive program offered. Instead of being placed in the program, I was classified to a work camp where I worked Monday through Friday for the Department of Transportation (FDOT) on an odd assortment of jobs. Through the use of contracted FDOT inmate labor crews, I worked on roadways and in parks cutting down and clearing bush, mowing, and essentially helped provide an income for the FDC. During these daily excursions into the public, inmates had contacts drop off drugs; mostly marijuana and crack cocaine. I personally had random people throw money and dope to me while working on the side of a roadway more times than I can count. During my time in the FDC while working on the FDOT inmate labor crews, there was hardly a day I did not have dope or access to it.

On January 7, 2000, I received a disciplinary report for a random drug urinalysis that I tested positive for marijuana and cocaine. I spent sixty days in "the box" and then was sent back to work on the FDOT inmate labor crews. At every six-month classification review, I renewed my request to be placed in the Tier program. Each time, I was informed bed space was not available. I was released from the FDC in September 2000, still a drug addict with virtually no clean time under my belt and no personal betterment achieved.

Subsequently, in July 2001, at the age of twenty five, I was arrested for robbing a convenience store with a pocketknife while under the influence. The victim was not touched, but a verbal threat was made. I was charged with robbery with a deadly weapon for taking 61 dollars

for drug money. I'd never before been charged with a violent crime. The state prosecutor, Thomas Hastings, Jr., offered no plea deal and I was put to trial. After the jury returned a verdict of guilty as charged, Mr. Hastings successfully sought to have me sentenced pursuant to the Prison Releasee Reoffender Punishment Act (PRRPA). The PRRPA is a mandatory minimum sentencing statute where the judge's authority to exercise sentencing discretion by considering the specific facts of a case and imposing an informed and appropriate penalty is removed.

The PRRPA is an exceptionally harsh sentencing statute, as it completely removes sentencing discretion from the judicial branch of government (judge) and places it in the executive branch (prosecutor), as it mandates that

(a)

3. If the state attorney determines that a defendant is a prison releasee reoffender . . . the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is *not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:*

- a. For a felony punishable by life, by a term of imprisonment for life;
- b. For a felony of the first degree, by a term of imprisonment of 30 years;
- c. For a felony of the second degree, by a term of imprisonment of 15 years; and
- d. For a felony of the third degree, by a term of imprisonment of 5 years.

(b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

Section 775.082(9)(a)3, *Florida Statutes* (2001)(emphasis added)

The court sentenced me to life without the possibility of parole. I am now within the nineteenth year of my walking death sentence.

During my time of incarceration, I have struggled to find betterment opportunities.

Program availability is the main issue. The lack of bed space prioritizes those incarcerated

individuals with short sentences. I have, however, been able to earn certificates as Peer Health Counselor, Master of Wellness, and Inmate Teaching Assistant (for GED students). After many requests over an extended period of time, I was able to enter and complete a Faith and Character Base Reentry Program. Currently, I work during the day as a certified Inmate Law Clerk and attend college credit bearing courses through Stetson University's Community Education Project. My most important accomplishment, however, is being drug free.

I was fortunate during my time of need to have someone who cared about my well-being and brought hope to me when I had none. They took the time to convince me that I could overcome my drug addiction and not be defined by my circumstances. They told me something that has stuck with me ever since: everyone they ever knew who had been addicted to drugs, particularly crack cocaine, ended up either in prison or dead. That statement had a profound effect on me. I realized I had a choice to live clean or die an addict in prison. I made a promise to that person and to myself that I would never use drugs again. As of February 14, 2020, I am sixteen years drug free.

I have also come to realize that no matter what good I do or how reformed I become within the fences, there is no further hope for redemption in Florida's current criminal justice system. By my sentence, I have been discarded as irredeemable, not fit for society. There is no review mechanism in the current system to deem me otherwise. I'd always heard the saying, "Be the change you want to see in the world." I want to help bring hope into a hopeless place. To make a difference in the lives of others who are not as fortunate as I was to have someone on their side in their time of need. And to provide a mechanism for review of those incarcerated individuals who prove themselves rehabilitated. By creating a right to review mechanism to apply to everyone—*everyone* will have a chance to become redeemable.

Appendix C

Initiative 19-04 Petition

CONSTITUTIONAL AMENDMENT INITIATIVE PETITION FORM – VOLUNTEER

Amendment Information

Ballot Title: Offender Reentry Program Amendment

Ballot Summary: Extends the Florida Commission on Offender Review's authority to develop a standardized offender reentry program, to place on supervised release (reintegration status) all qualifying offenders, including juvenile offenders, who have both served minimum sentence requirements and demonstrate an ability to live lawful, productive lives in society, and to terminate reintegration status of offenders who meet all obligations. Capital sexual offenders and death sentenced offenders are ineligible.

See separate document for the full text of the proposed constitutional amendment.

Date Approved 3/12/2019

Serial Number 1904



Sponsor's Information

Sponsor Name: Floridians for Redeemable People

Sponsor Address: Post Office Box 520337 Longwood, FL 32752

Voter's Information

I am a registered voter of Florida and hereby petition the Secretary of State to place the above proposed amendment to the Florida Constitution on the ballot in the general election.

Name - Last _____ **First** _____ **Middle** _____

Address _____

City _____ **Zip** _____ **County** _____

☐ Change the address on my voter registration record to the above address (check box, if applicable)

Voter Registration Number **or Date of Birth** / /

Voter's Signature _____ **Date** / /

Petition Circulator's Information



This petition form is only to be collected by a volunteer or directly by the voter him or herself.

A paid petition circulator must use the DS-DE 155B version of the form. Forms for paid petition circulators can be obtained from the Division's Paid Petition Circulator website.

Visit <https://dos.elections.myflorida.com/InitiativePetitions/> for more information.

Attention

- This form becomes a public record upon its filing with the Supervisor of Elections.
- It is a first degree misdemeanor to knowingly sign the same petition more than once. [§104.185, F.S.]
- Failure to complete the form as required may invalidate the form.

Appendix D

ORPA Text

BALLOT TITLE: Offender Reentry Program Amendment

BALLOT SUMMARY: Extends the Florida Commission on Offender Review's authority to develop a standardized offender reentry program, to place on supervised release (reintegration status) all qualifying offenders, including juvenile offenders, who have both served minimum sentence requirement and demonstrated an ability to live lawful, productive lives in society, and to terminate reintegration status of offenders who meet all obligations. Capital sexual offenders and death sentenced offenders are ineligible.

ARTICLE AND SECTION BEING CREATED OR AMENDED: Amends Article IV, section 8.

FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:

SECTION 8. Clemency.—

(a) Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(b) In cases of treason the governor may grant reprieves until adjournment of the regular session of the legislature convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise the sentence shall be executed.

(c) There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law.

(1) Offender Reentry Program. The Florida Commission on Offender Review shall develop a standardized offender reentry program for all eligible offenders and shall place on reintegration status all qualifying offenders, including juvenile offenders, who have both served the minimum sentence requirement and demonstrated an ability to live lawful, productive lives in society as determined by the Florida Commission on Offender Review and consistent with the objectives of rehabilitation.

(2) Applicability.

a. The Florida Commission on Offender Review shall make available to all eligible offenders a reentry program and shall place all qualifying offenders on reintegration status. The Florida Commission on Offender Review shall annually place a minimum of three percent of the total of the Florida Department of Corrections' offender population on reintegration status.

b. Eligibility. An offender who meets the definition of eligible offender as defined in this section shall have the right to qualify for reintegration status. Offenders who are eligible for parole prior to the effective date of this amendment shall not be eligible for reintegration status.

c. Qualification. An offender who meets both the eligibility requirement and the reasonable requisites of the Florida Commission on Offender Review shall qualify for reintegration status and shall have the

right to be placed on reintegration status. Qualifying offenders shall be placed on reintegration status within a reasonable time or not later than six months after meeting the reasonable requisites.

d. Notice. An offender who may meet the eligibility requirement shall be given notice in writing of the reasonable requisites for qualification as determined by the Florida Commission on Offender Review and no later than two years before meeting the eligibility requirement, when practicable due to length of sentence remaining. Offenders may complete the reasonable requisites at any time during their court-imposed sentence.

(3) Termination of reintegration status. An offender on reintegration status shall remain thereon for the remainder of their court-imposed sentence unless terminated by proper authority. The Florida Commission on Offender Review shall terminate reintegration status of offenders who have met all obligations of their supervised release, and paid all fines, fees, restitution, or other costs, as determined by the Florida Commission on Offender Review.

(4) Definitions. For purposes of this section, the following terms shall have the stated meanings:

a. Eligible offender. Regardless of any mandatory minimum court-imposed sentence: a person under sentence or cumulative sentences totaling 40 years or less for any non-capital offense(s) who has served one half of the court-imposed sentence; a person under sentence or cumulative sentences totaling more than 40 years for any non-capital offense(s) who has served 20 years of the court-imposed sentence; a person under sentence for life or for life and a term of years for any non-capital offense(s) who has served 20 calendar years of the court-imposed sentence; or a person under any sentence for a capital felony except a sentence of death or a sentence for capital sexual battery who has served 25 calendar years of the court-imposed sentence.

b. Qualifying offender. A person who has met both the eligibility requirement and the reasonable requisites of the Florida Commission on Offender Review.

c. Reintegration status. The state of a person on supervised release from the Florida Department of Corrections under the terms and conditions set by the Florida Commission on Offender Review.

(5) This amendment shall take effect one year from the date it is voted into law.