

RESEARCH THAT MATTERS

---

# HIV CRIMINALIZATION IN FLORIDA

Length of Incarceration  
and Fiscal Implications

July 2021

---

Nathan Cisneros  
Brad Sears

## EXECUTIVE SUMMARY

The Williams Institute previously examined the enforcement of Florida's HIV criminal laws in October 2018.<sup>1</sup> In that report, which analyzed data from 1986 through the end of 2017, we identified 614 people who had been arrested, and 308 arrest incidents that resulted in convictions for HIV-related offenses.<sup>2</sup> In this update, we provide additional details on those who have been incarcerated in Florida prisons for HIV-related crimes with new data on sentence length that continues through the end of calendar year 2020. Those incarcerated for HIV crimes in Florida are a subset of those convicted of HIV crimes.

Our new analysis confirms previous findings—including the disproportionate impact of the enforcement of HIV criminal laws on Black people and women.<sup>3</sup> Moreover, it reveals that enforcement of HIV crimes in 2018 and 2019 was the highest seen in Florida in a decade, but that enforcement virtually stopped during the 2020 COVID-19 pandemic. We estimate that incarceration in prisons related to HIV crimes has cost Florida's taxpayers \$12.0 million in the last two and a half decades.

## KEY FINDINGS

- There have been at least 358 separate convictions for HIV-related offenses in Florida since 1986.
- Between 1997 and 2020, at least 154 people were incarcerated in Florida prisons for HIV-related offenses.
  - Those 154 people received 205 separate convictions for HIV-related offenses that resulted in a prison sentence.
  - Six in ten of these HIV-related convictions were connected to sex work.
- Sex work convictions predominate in Florida's enforcement of HIV criminal laws until 2010, after which such convictions drop to an average of only one per year.
- The number of new prison sentences was higher in 2018 and 2019 than any other year since 2007.
- In 2020 there was only one new prison sentence, the lowest since at least 1997.
- Black people made up 45% of Florida's people living with HIV (PLWH) in 2018, but 56% of people with prison sentences for HIV-related crimes.
- Women were 27% of PLWH in Florida in 2018, but 51% of those with HIV-related prison sentences.
- The median prison sentence length for HIV convictions was 2.5 years. The mean sentence length was 3.4 years.
- On average, people served 70% of their prison sentence for HIV offenses.

---

<sup>1</sup> Amira Hasenbush, The Williams Institute, University of California Los Angeles School of Law, *HIV Criminalization In Florida: Penal Implications For People Living With HIV/AIDS* (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-FL-Oct-2018.pdf>.

<sup>2</sup> *Id.*, pg. 8, 14.

<sup>3</sup> *Id.*, pg. 16-19.

Using this updated incarceration data, we estimate the total cost of incarceration for HIV-related offenses in Florida *prisons* over the past 23 years. We find that:

- The average annual cost-per-person incarcerated in prison between 1997 and 2020 in Florida, adjusted for inflation, was \$23,552.
- The total cost of incarcerating people for HIV crimes in Florida's prisons during this period was \$12.0 million. These costs do not include costs related to HIV crimes for policing, prosecuting, probation, parole, etc.
- As a more conservative measure for the cost of incarceration in Florida's prisons, we estimate the marginal cost of incarceration for HIV crimes in Florida for the same period to be \$1.4 million.

We also include new estimates on the number of jail sentences and the cost of incarceration in Florida's jails in an appendix at the end of this report. The supplemental analysis reveals an additional \$3.2 million to the overall incarceration cost estimate. All told, the cost of incarceration associated with Florida's HIV criminalization laws totals \$15.2 million.

## BACKGROUND

HIV criminalization is a term used to describe statutes that either criminalize otherwise legal conduct or that increase the penalties for illegal conduct based upon a person's HIV-positive status. While only one HIV criminalization law can be found in federal law, approximately two-thirds of states and territories across the United States have enacted their own HIV criminal laws. Some HIV criminal laws do not require transmission of HIV, and in some states, these laws criminalize conduct that poses a negligible risk of transmission, such as spitting or biting.

Florida criminalizes people living with HIV and other sexually transmitted diseases in the contexts of sex work (Fla. Stat. Ann. § 796.08), donation of blood and other bodily products (Fla. Stat. ann. §381.0041), and consensual sex without disclosure (Fla. Stat. Ann. § 384.24).<sup>4</sup> Florida additionally includes a penalty enhancement for certain nonconsensual sex offenses where the defendant has a previous positive HIV test (Fla. Stat. ann. § 775.0877).<sup>5</sup> The first three laws were added in 1988, just two years after the virus itself was named. The law creating penalty enhancements was passed in 1993, two years before the first effective combination treatment was introduced. None of Florida's HIV-specific criminal laws require actual transmission of HIV or the intent to transmit HIV.<sup>6</sup> All of them are broad enough to cover conduct that cannot, in fact, lead to transmission of the virus.<sup>7</sup> People can be incarcerated in Florida for HIV-related offenses even where no transmission occurred and there was no possibility of transmission.

In 2018, the Williams Institute examined the penal implications of Florida's HIV criminalization laws using criminal history data from the state of Florida.<sup>8</sup> In that study we found 874 HIV-related arrests in Florida from 1986 to 2017. We also found that:

- About 35% of HIV-related arrests resulted in a conviction for an HIV-related crime.
- Over half of all individuals arrested under an HIV-related offense were women, and more than four in ten people arrested under an HIV-related offense were Black.
- There appeared to be almost no enforcement before 1993, after which, on average, there were 36 HIV-related arrests annually. In 2003, arrests reached a record high, with 52 arrests occurring that year.

In this update we concentrate on prison incarcerations for HIV-related offenses using data from the Florida Department of Corrections, which oversees the state's prison system.<sup>9</sup> (See section "Data and Methods" below for more detail on data sources.) Incarcerations are a subset of convictions, which are in turn a subset of arrests. For example, incarcerations here do not include those arrested but not charged or convicted, or those convicted but only sentenced to probation or parole. Incarcerations

<sup>4</sup> *Id.*, pg. 6.

<sup>5</sup> *Id.*, pg. 6.

<sup>6</sup> *Id.*, pg. 2.

<sup>7</sup> Brad Sears and Shoshana Goldberg, The Williams Institute, University of California Los Angeles School of Law, *HIV Criminalization In Florida: Evaluation of Transmission Risk* (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Crim-Transmission-FL-Mar-2020.pdf>.

<sup>8</sup> *Supra*, note 1.

<sup>9</sup> Florida Department of Corrections, *Offender Based Information System (OBIS)*, available at: [http://www.dc.state.fl.us/pub/obis\\_request.html](http://www.dc.state.fl.us/pub/obis_request.html). The analysis in this report uses the OBIS data archive for 1 April 2021.

in county jails for a period of less than one year are also excluded in our primary analysis. (See “Appendix” below for incarceration and cost estimates for HIV offenses resulting in jail sentences.) When compared to our prior report, the new incarceration and sentencing data from Florida extend the time window for our analysis from January 2018 through the end of calendar year 2020. The new data also allow us to compare sentence length and time served, information which was not available in the original analysis.

We also provide new estimates for the average per-person cost of incarceration, and an estimate of the total cost of incarceration to the state of Florida for HIV-related offenses since 1997, when reliable prison data become available.<sup>10</sup> Florida incurs additional costs related to the enforcement of its HIV-related criminal statutes—including for policing, prosecution, parole, and probation—that are not included in this cost estimate.

---

<sup>10</sup> Florida Department of Corrections, “Frequently Asked Questions,” available at: <http://www.dc.state.fl.us/pub/OBIS/FAQ.pdf>.

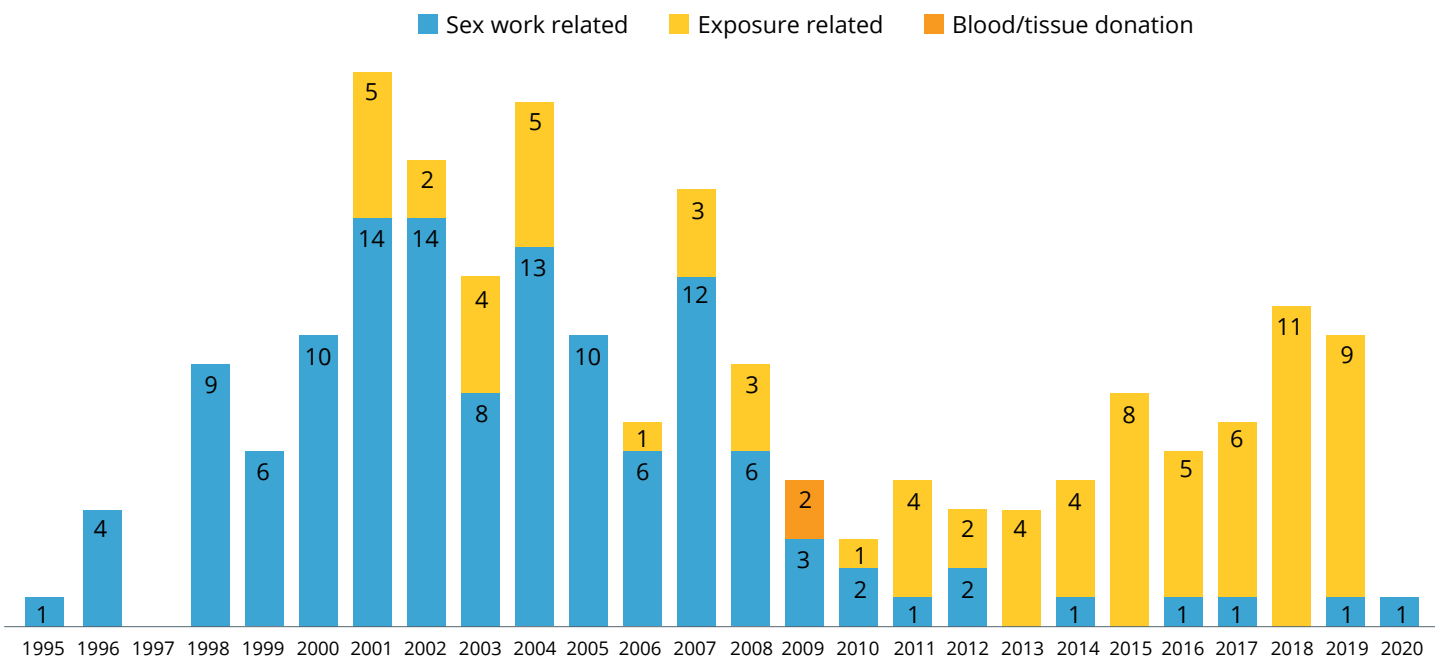
## MAIN FINDINGS

### NUMBER OF PEOPLE AND NUMBER OF PRISON SENTENCES

We identified 154 people who have been convicted of an HIV-related crime, and combined total of 205 unique HIV offenses that resulted in conviction and a prison sentence of at least one year.<sup>11</sup> These numbers do not include convictions that resulted in no prison sentence, or convictions that resulted in a jail sentence of less than one year. Among the offenses that resulted in convictions with a prison sentence, we identified 125 convictions (61%) as likely originating in Florida's HIV sex work crime law ("sex work crime"), and 80 convictions as likely connected to Florida's other HIV crime laws ("exposure crimes"). (See section "Data and Methods" below for more detail classifying sex work crimes and exposure crimes.)

The peak year of enforcement was 2001; that year saw 19 new HIV-related prison sentences. Enforcement increased steadily throughout the 2010s; 2017 and 2018 saw more prison sentences than any other year since 2009. However, new sentences fell off sharply during the COVID-19 pandemic in 2020. Until 2011, most prison sentences were for Florida's HIV sex work crime law, after which sentences for Florida's HIV exposure crime laws predominated. Indeed, there are no prison sentences for HIV exposure before the year 2000; by 2013 they constituted the overwhelming majority of cases.

Figure 1. Number of HIV-related prison sentences in Florida by year and offense type



<sup>11</sup> A person can be convicted for more than one HIV-related offense. The mean number of convictions per person is 1.33. The maximum number of convictions per person is six.

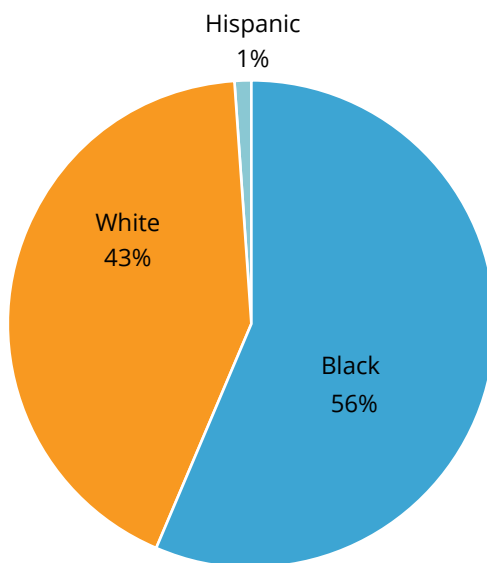
## NEW ESTIMATE OF TOTAL NUMBER OF CONVICTIONS FOR HIV-RELATED CRIMES

Our 2018 report identified 308 HIV-related incidents that resulted in a conviction from 1986 through 2017. Of those, 16% did not have a sentence, or there was no sentence reported.<sup>12</sup> The rest (84%) were evenly split between jail sentences (less than one year), and prison sentences (more than one year). Using these figures as a baseline, we estimate that there were 50 new HIV-related convictions from 2018 through 2020: 22 each with a prison or a jail sentence, and an additional six without a sentence.<sup>13</sup> The 50 new convictions since 2018 brings our estimate of Florida's total number of HIV-related convictions since 1986 to 358. Using the prisons data again as a baseline to estimate the average number of convictions per person (1.33), we further estimate that 270 people have been convicted of an HIV-related offense in Florida.

### Race and Sex

Of people incarcerated in Florida prisons for HIV-related offenses, 56% were identified as Black, while 43% were white. Just over half (51%) of people with an HIV sentence were identified as women. We were unable to identify individuals' gender identity—in particular, whether the person identifies as cisgender or transgender—from the Florida Department of Corrections data.

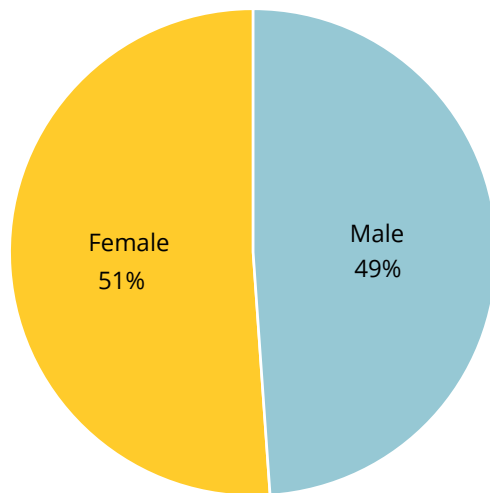
Figure 2. Percent of individuals incarcerated by race



<sup>12</sup> Sentence here refers to a period of confinement in a correction facility (county jail or state prison).

<sup>13</sup> We observed 22 new prison sentences between 2018 and 2020 in the Florida Department of Corrections data, which implies an additional 22 jail sentences and 6 convictions without a sentence. The average annual number of convictions in the 2018 report was about 22, which is in line with this new estimate.

Figure 3. Percent of individuals incarcerated by sex



### Disproportionality of HIV-Related Sentences

Women and Black people were disproportionately represented among those with prison sentences in Florida. In 2018, 27% of PLWH in Florida were women. In contrast, 51% of people with HIV-related prison sentences in Florida were women. Likewise, Black people were 45% of PLWH in Florida in 2018, but 57% of HIV-related prison sentences.

We are unable to assess the proportionality of convictions among Florida's white and Hispanic populations. Hispanic individuals accounted for only 1% of HIV-related convictions, but 24% of PLWH in Florida are Hispanic.<sup>14</sup> Likewise, only 4% of all people in the Florida Department of Corrections data are identified as Hispanic, while 26% of the state population as a whole identifies as Hispanic.<sup>15</sup> We therefore suspect that the Florida Department of Corrections does not consistently classify individuals as either Hispanic or white.<sup>16</sup>

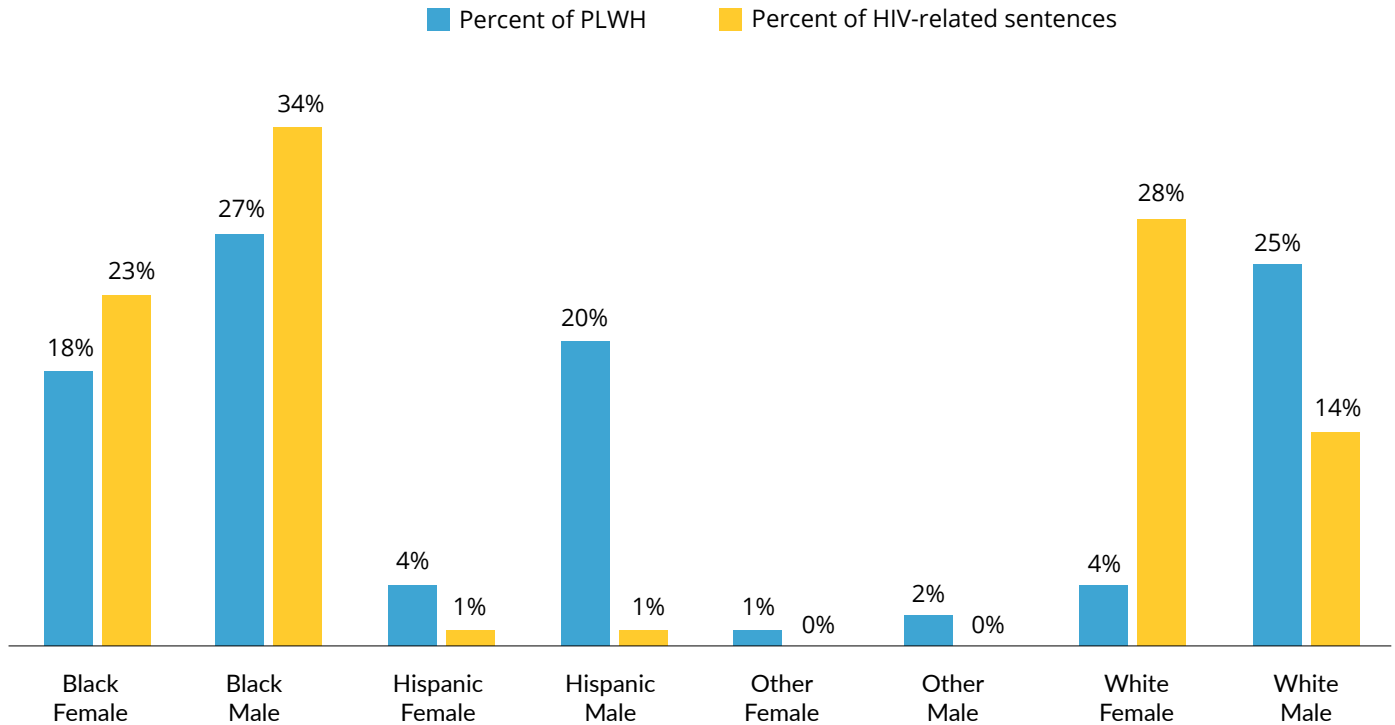
<sup>14</sup> Florida Department of Health, "Epidemiology of HIV in Florida" (2019), <http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/epi-slide-sets.html>.

<sup>15</sup> United States Census Bureau, "Quick Facts: Florida," <https://www.census.gov/quickfacts/FL>.

<sup>16</sup> The United States Census Bureau uses "Hispanic or Latino" as an ethnicity, not a racial group. The Florida Department of Corrections data simply include a "race" category, which can be one of the following: All others / Unknown, American Indian or Pacific Islander, Asian or Pacific Islander, Black, Hispanic, or White. We suspect that many people who would identify as "Hispanic or Latino" are classified as white by the Florida Department of Corrections.



Figure 4. Demographic profile of people living with HIV in Florida and HIV-related prison sentences



Strong differences by sex were observed between the two offense categories—women accounted for a little more than eight in ten HIV-related sex work convictions (82%), while men accounted for close to nine in ten exposure convictions (88%).

Moreover, there exist racial disparities between the two conviction categories. Black women accounted slightly more HIV-related sex work convictions than white women (44% compared to 38%), yet Black men accounted for eight times more HIV-related sex work convictions than white men (16% to 2%).

Likewise, Black men accounted for 53% of HIV exposure convictions, while 34% of exposure convictions were white men. In contrast, white women accounted for three times more exposure convictions than Black women (10% to 3%).

Figure 5. Exposure-related sentences by race and sex

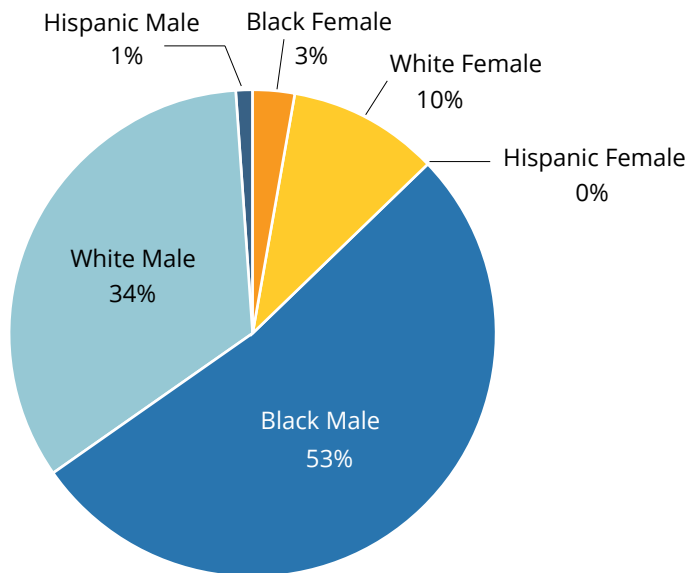
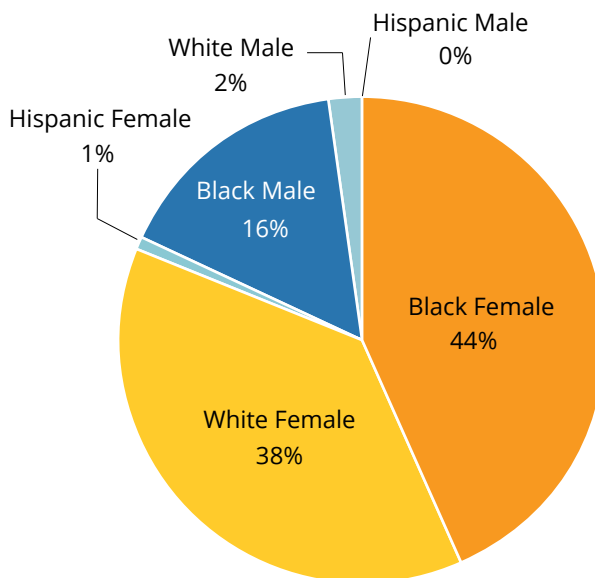


Figure 6. Sex work-related sentences by race and sex



## Sentence Length and Time Served

The Florida Department of Corrections data allow us to directly measure both sentence length and time served for each HIV-related conviction.

**Sentence length:** The 205 convictions for HIV crimes in Florida have a combined sentence length of 702.4 years. This is a 41% increase over the total sentence length in our previous report.<sup>17</sup> The median

<sup>17</sup> *Supra* note 1, pg. 15: (46.2 months /12) \* 67 people + (15.1 months /12) \*191 people = 498.3 prison years. The

sentence length for HIV all convictions in Florida was 2.5 years. The mean sentence length was 3.4 years, and the maximum sentence length was 30 years.

Total time served: Total actual time served as of April 1, 2021, was 510.2 years across all 205 sentences, including sentences not yet completed. Of sentences completed, 371.3 years were served on 484.8 years of combined prison sentence. Twenty-one people were still incarcerated in Florida for HIV offenses on 26 separate convictions for HIV offenses.

**Figure 7. Total sentences and total years served for HIV offenses in Florida for those who completed their sentence**



Percent of sentence served: To assess how much time people spent in prison on an HIV-related sentence, we looked at: 1) individuals who completed their sentence, where 2) the HIV-related sentence was the longest or only sentence, and 3) any additional sentences were served concurrently. There were 165 such sentences. The combined percent of sentence served was 70%.

## Economic Cost

To estimate the economic cost of incarceration for HIV-related offenses, we multiplied the total number of years served in prison by the annual cost of incarceration per incarcerated person in Florida.

Total number of years served: Total time served for all HIV prison sentences in Florida as of April 1, 2021, was 510.2 years.

Per-person cost of incarceration: The Florida Department of Corrections provides an average annual cost-per-person incarcerated in each of its Annual Reports from 1997 (when reliable sentencing data

---

difference is mainly driven by the number and sentence length for exposure offenses. This report identifies 80 likely exposure offenses, with a mean sentence length of 5.6 years. Our 2018 report identified only 67 exposure offenses, with a mean sentence length of 3.9 years using a slightly different data source.

become available) through 2019, the latest report year available.<sup>18</sup> We use the mean of these cost figures, adjusted for inflation, to find an overall average annual cost-per-person of \$23,552 in 2020 dollars. (See “Data and Methods” section below for more details on cost estimates.) For comparison, the Vera Institute of Justice estimated the annual cost-per-person incarcerated in Florida at \$19,069 in 2015 (\$20,707 in 2020 dollars).<sup>19</sup> Using our above figures for the number of years served (510.2 years), and average annual cost-per-person incarcerated (\$23,552 in 2020 dollars), we estimate the total cost of incarceration in prison for HIV crimes to be \$12.0 million.

---

<sup>18</sup> Florida Department of Corrections, *Annual Report*, (1997-1998 to 2019-2020), available at: <http://www.dc.state.fl.us/pub/> and <https://web.archive.org/web/20130521122257/http://www.dc.state.fl.us/pub/index.html>.

<sup>19</sup> Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010-2015*, Vera Institute of Justice (2017), <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf>.

## DATA AND METHODS

### DATA SOURCE

In this update we use data from Florida’s Offender Based Information System (OBIS), which is administered by the Florida Department of Corrections. OBIS provides the sentencing history of individuals who enter Florida’s prison system or community supervision programs after a conviction in Florida state court. OBIS includes individuals’ demographic information (date of birth, race, and sex), information on current and prior convictions—including sentence length—for which a prison sentence was given, as well as incarceration history. In general, OBIS records begin in 1997.<sup>20</sup>

The OBIS data provide short descriptions of offenses rather than a criminal code citation, so matching offenses is imprecise. We identified four offense descriptions clearly related to HIV: one for tissue donation, two for exposure involving a sex act, and one that appears to be associated with sex work.<sup>21</sup>

### COST OF INCARCERATION

The Florida Department of Corrections publishes an annual department report, available online back to 1997, when the OBIS data begins. The annual reports include a per-inmate average cost of incarceration per person incarcerated for the whole prison system for the year, or a per-day cost-per-person incarcerated, which we converted to an annual cost. Florida’s fiscal year begins on July 1, so we use a two-year moving average to calculate the average calendar year cost. Fiscal year 2019 is the latest year available.

The average annual cost-per-person incarcerated was then adjusted for inflation using the U.S. Bureau of Economic Analysis Gross Domestic Product Implicit Price Deflator.<sup>22</sup> The average of the annual cost in 2020 dollars is \$23,552.

**Table 1. Average per-person cost of incarceration in Florida’s prison system by year**

YEAR	ANNUAL PER-INMATE COST	INFLATION CORRECTION	PER-INMATE COST IN 2020 DOLLARS
1997	\$17,956	65.5	\$27,404
1998	\$18,520	66.3	\$27,950
1999	\$18,316	67.2	\$27,249
2000	\$18,075	68.7	\$26,302

<sup>20</sup> In a few cases, there are sentences before 1997, but these account for less than 1% of all sentences.

<sup>21</sup> In this report, we only count the following OBIS designations as HIV-related convictions: “TISSUE DONATION/HIV PER”, “HIV-POSITIVE HAS SEX”, “HIV-POS.HAS SEX 2+ VIOLATIONS”, “CRIM. TRANSMISSION HIV”. Because the criminal transmission of HIV description often appears with a sex work conviction, we believe that it corresponds to the statute related to sex work. We are unable to determine if the criminal transmission charge also includes the penalty enhancement for nonconsensual sex, as there is often not an underlying conviction also reported in the OBIS data. If there is not a systematic coding for the penalty enhancement, then we may be missing some HIV-related sentences, and the analysis here is likely an undercount of the total number of HIV-related prison sentences.

<sup>22</sup> Available through the St. Louis Federal Reserve’s online Federal Reserve Economic Data (FRED) interface: <https://fred.stlouisfed.org/series/GDPDEF>.

YEAR	ANNUAL PER-INMATE COST	INFLATION CORRECTION	PER-INMATE COST IN 2020 DOLLARS
2001	\$17,845	70.2	\$25,409
2002	\$17,427	71.3	\$24,428
2003	\$17,445	72.7	\$24,009
2004	\$17,854	74.6	\$23,928
2005	\$18,553	76.9	\$24,113
2006	\$19,155	79.3	\$24,163
2007	\$19,708	81.4	\$24,211
2008	\$19,544	83.0	\$23,549
2009	\$19,225	83.6	\$22,990
2010	\$19,471	84.6	\$23,017
2011	\$18,747	86.4	\$21,708
2012	\$17,680	88.0	\$20,087
2013	\$17,701	89.6	\$19,764
2014	\$18,458	91.2	\$20,235
2015	\$19,215	92.1	\$20,865
2016	\$19,972	93.1	\$21,463
2017	\$21,055	94.8	\$22,210
2018	\$22,216	97.1	\$22,884
2019	\$23,477	98.8	\$23,759
<b>Average</b>			\$23,552

The Vera Institute of Justice reports a similar number for Florida in their 2015 report *The Price of Prisons*.<sup>23</sup> Vera found an average annual cost-per-person incarcerated of \$19,069 in Florida in 2015, which is \$20,707 in 2020 dollars. We prefer our method because it averages all available observation years. However, we note that it is in line with the widely used Vera Institute number.

Although often used, average cost of incarceration may overstate actual cost of incarceration.<sup>24</sup> An alternative measure is marginal annual cost.<sup>25</sup> Marginal cost focuses on the additional expenses—food, healthcare, and the like—of housing an additional person, and excludes fixed expenses, such as the cost of building and maintaining facilities. We were unable to locate a marginal annual cost of incarceration estimate for Florida. However, others have attempted to estimate marginal costs across state prison systems as a percent of average cost, and have found marginal cost to be 12% of the average annual cost of incarceration.<sup>26</sup> Accordingly, we estimate the marginal cost of incarceration for HIV crimes in Florida for the same period to be \$1.4 million.

<sup>23</sup> *Supra* note 19.

<sup>24</sup> *Id.*

<sup>25</sup> Christian Henrichson & Sarah Galgano, *A Guide to Calculating Justice-System Marginal Costs*, Vera Institute of Justice (2013), [https://www.vera.org/downloads/Publications/a-guide-to-calculating-justice-system-marginal-costs-1/legacy\\_downloads/marginal-costs-guide.pdf](https://www.vera.org/downloads/Publications/a-guide-to-calculating-justice-system-marginal-costs-1/legacy_downloads/marginal-costs-guide.pdf).

<sup>26</sup> Elizabeth Pelletier, Bryce Peterson, and Ryan King, "The Prison Population Forecaster Methodology and Appendixes," Urban Institute (2018), [https://apps.urban.org/features/prison-population-forecaster/prison\\_population\\_forecaster-methodology.pdf](https://apps.urban.org/features/prison-population-forecaster/prison_population_forecaster-methodology.pdf).

Table 2. Average and marginal cost estimates of incarceration in Florida prisons for HIV crimes

	AVERAGE ANNUAL COST	AVERAGE COST METHOD	MARGINAL COST METHOD
This report	\$23,552	\$12,016,230	\$1,441,948
Vera report	\$20,707	\$10,564,711	\$1,267,765

## AUTHORS

Nathan Cisneros, M.S., is the HIV Criminalization Analyst at the Williams Institute.

Brad Sears, J.D., is the David Sanders Distinguished Scholar of Law and Policy and Founding Executive Director at the Williams Institute.

### ABOUT THE WILLIAMS INSTITUTE

The Williams Institute is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media, and the public. These studies can be accessed at the Williams Institute website.

### FOR MORE INFORMATION

The Williams Institute, UCLA School of Law  
Box 951476, Los Angeles, CA 90095-1476  
[williamsinstitute.law.ucla.edu](http://williamsinstitute.law.ucla.edu)

RESEARCH THAT MATTERS





## APPENDIX

### ESTIMATING THE COST OF INCARCERATION IN FLORIDA'S JAILS

People who receive a sentence of one year or less enter Florida's county jails and are therefore excluded from the Florida Department of Corrections' OBIS data.<sup>27</sup> However, our 2018 report found that about half of all people sentenced after an HIV-related conviction were incarcerated in a jail.<sup>28</sup> (See also "Main Findings" above for information on the total number of convictions for HIV-related crimes.) In this appendix, we estimate both the number of convictions that resulted in a jail sentence in Florida for HIV-related crimes and the cost of that incarceration. We find that:

- Since 1986, 151 convictions for an HIV-related criminal offense resulted in a jail sentence in Florida.
- The average annual cost-per-person incarcerated in Florida's jails in 2014 was \$53,884, adjusted for inflation.
- The total cost of incarcerating people for HIV crimes in Florida's jails during since 1986 was \$3.2 million. These costs do not include costs related to HIV crimes for policing, prosecuting, probation, parole, etc.
- As a more conservative measure for the cost of incarceration in Florida's jails, we estimate the marginal cost of incarceration for HIV crimes in Florida for the same period to be \$0.4 million.

### Number of People Incarcerated in Jail

Our 2018 analysis revealed that of 308 HIV related convictions, about 84%, had a known sentence, which were evenly split between state prisons and county jails (129 each). In this report, we find an additional 22 prison sentences, from which we inferred an additional 22 jail sentences – for a total of 151 jail sentences for HIV crimes.<sup>29</sup>

### Average Sentence Length and Time Served

We cannot use the OBIS data for information on jail sentence length, however, our 2018 analysis included information on jail sentences. For those with a known jail sentence, the average sentence length was 205 days. Using the average percent of sentence served from our current analysis of prison data (70%), the estimate average amount of time served in jail per sentence 144 days (0.4 years).

### Average Annual Cost of Incarceration

We were unable to locate cost figures for either Florida's county jails, or for county jails nationally. However, in 2015, the Vera Institute of Justice published the results of a 2014 survey of 35 jails around the United States, including three in Florida (Miami Dade, Palm Beach, and Volusia).<sup>30</sup> Each respondent

<sup>27</sup> *Supra* note 9.

<sup>28</sup> *Supra* note 1, pg. 15.

<sup>29</sup> We could likewise use the 205 prison sentences identified in this report to infer 205 jail sentences, but use the more conservative number here.

<sup>30</sup> Christian Henrichson, Joshua Rinaldi, and Ruth Delaney, *The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration*, Vera Institute of Justice (2015), <https://www.vera.org/downloads/publications/price-of-jails.pdf>.

provided an average annual cost per person detained. The mean cost per person for the three Florida jails was \$53,884 (\$49,142 in 2014 dollars). For comparison, the mean cost for all 35 respondents was \$51,598 (\$47,057 in 2014 dollars).

## Total Cost of Incarceration in Jails

### Average Cost Method

Using the number of jail sentences (151) and the average amount of time served per jail sentence (144 days) results 21,744 days (59.6 years) of total jail time for HIV-related convictions.

Using the average cost method yields a total cost of jail incarceration of \$3.2 million.

We thus estimate the total cost of incarceration in both prisons and jails for HIV crimes in Florida to be \$15.2 million dollars using the average cost method.

### Marginal Cost Method

The Vera report on jails notes that the majority of county jails did not provide answers that would allow for a marginal cost calculation, however, one jail in Hampden County Massachusetts (Springfield) provided both average and marginal per-inmate costs (\$52,457, and \$5,840 respectively).<sup>31</sup> These figures give an 11% ratio of marginal to fixed costs. Likewise, in a 2013 report on marginal costs Vera provided average and marginal cost numbers for Washington State's prison and jail systems.<sup>32</sup> Again, the ratios are on the order of 12% plus or minus one percent. The Massachusetts and Washington figures provide us with a ballpark marginal cost estimate in line with the 12% figure used to calculate marginal costs for prisons. We therefore retain the 12% figure from our analysis of marginal prison costs here.

Using the 12% figure to translate from average to marginal cost of incarceration yields a total marginal cost of jail incarceration of \$3.2 million \* 12% = \$384,000.

We thus estimate the total cost of incarceration in both prisons and jails for HIV crimes in Florida to be \$1.8 million dollars using the marginal cost method.

<sup>31</sup> "The Price of Jails – Survey Data" (2015), <https://www.vera.org/downloads/publications/price-of-jails-survey-data.xls>.

<sup>32</sup> *Supra* note 23.