ASSESSMENT OF THE LIKELY ECONOMIC IMPACT OF HB 1/SB 484: PART I

EXPANDED AND UPGRADED CRIMINALITY AND ENHANCED SENTENCING

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Introduction

This study presents an assessment of the likely economic impact to Floridians were the legislation presented in HB1/SB484 (now PCS for HB1) to become law. The bill is far-ranging in its impacts and the following paragraphs lay out the likely effects of the upgrading and expanding of criminal charges proposed in the bill. However, the likely economic impacts of the bill, if passed, are not limited to these costs, and will include substantial costs to municipalities via elimination of sovereign immunity for some events and a loss of public safety budget control. The proposed exemption from civil liability for counter-protesters provides a perverse incentive that will likely encourage property damage during public protests.

The following analysis and opinions are the responsibility of Rick Harper, Ph.D. and do not necessarily represent the opinions of the project sponsor.[1]

Executive Summary

If implemented, the expanded definitions, increased criminality, and enhanced sentencing changes to current Florida law that are proposed in HB 1/SB 484 and substitute bills would have substantial impacts on prison expenditures and on personal costs to protesters. The proposed changes mean that prison expenditures would increase substantially, eroding the gains of more than $1.5 billion that lawmakers have obtained for taxpayers since FY2008-09. The expanded and enhanced criminal definitions, along with more lengthy sentencing, will increase the costs to those charged with crimes related to public protest. While the number of additional years that would be served is uncertain, extrapolating from state estimates we project that 270 – 720 additional prison beds at any given time will be occupied by persons incarcerated under the new and enhanced charges, with an associated incarceration cost to Florida taxpayers of $6.6 - $17.5 million per year.[2]

These changes will result in more time out of the workforce for those that are convicted, reducing incomes both while incarcerated and for the years and decades following their incarceration. If incarcerated individuals had participated in the labor market at a normal rate, had been earning the Florida average wage, had normal household spending patterns, and were affected in ways predicted by the scholarly literature, then the loss in household income in Florida would be from $15.9 to $42.4 million annually, assuming the bill results in an additional year of incarceration per individual relative to previous law.

While longer incarceration periods provide a benefit of increased incapacitation of potential offenders, they also are associated with increased criminality and consequent costs to society upon release from prison. Here we use Mueller-Smith estimates of both of these effects for people whose sentence increased from an assumed six months (under prior law) to an assumed two years (under new law). The changes in the law imply increased net costs to Floridians of some $2.7 to $7.2 million annually based on the assumed number of additional incarcerated individuals and assuming the bill results in an additional year of incarceration per individual relative to previous law.

The annual reductions will result in lower standards of living for Floridians, both for those convicted and for their families, but also for the broader Florida economy due to lower household incomes, lower consumer spending, and lower revenue to state and local coffers. As has been shown in the scholarly literature, longer incarceration is associated not just with lessened economic self-sufficiency due to lower subsequent labor market participation and wages. Longer periods of incarceration are also associated with higher criminality for offenders following release, increased criminality in peer groups, and higher reliance on public assistance programs.[3] Taken together, higher state spending for incarceration and decreased economic self-sufficiency for individuals following incarceration are expected to result in $25.1 million to $67.1 million in lower income and increased taxes. These costs represent the worsened economic outcomes to the community and the state from HB1 / SB484.

The economic impact of expanded and upgraded criminality and enhanced sentencing

In the following sections we break out the impact on state outlays and on costs to offenders. Florida Department of Corrections expenditures are a substantial part of the state budget and the bill will reverse the progress that legislators have made in recent years in reducing those expenditures. Offenders convicted under the new law would face much greater personal costs in terms of time served, in terms of eroded workplace skills, and in terms of access to the labor market.

What does the bill change?

Due to expanded definitions of who can be charged during a public gathering, many participants would be subject to felony charges who would not previously have been subject to arrest, while others who might have been arrested under existing Florida statutes would be subject to increased penalties. A basic framework of expanded or increased incarceration penalties is as follows:

* Zero to 5 years:
    - New Arrests due to expanded definition of riot (0 to 5 years)
    - New Arrests due to new offense of mob intimidation (0 to 5 years)
* 6 months to 1 year:
    - Assault sentences extended (6 months to 1 year)
* 1 year to 5 years:
    - Battery sentences extended (1 year to 5 years)
    - Damaging memorials (1 year to 5 years)
* 5 years to 15 years:
    - Agg Riot sentences extended (5 years to 15 years)
* 1 year to 15 years:
    - Destroying or pulling down memorials (1 year to 15 years)

Thus, arrests and charges under the proposed new law carry expanded sentences of anywhere from six months (in cases where penalties under existing law would have been six months and are expanded to 12 months under the new law), to 14 years (where the old penalty had been one year and is expanded to 15 years under the new law). It seems likely that some of the most dramatic impacts in prison beds and consequently in offender costs, would come from the charge of destroying or pulling down memorials.

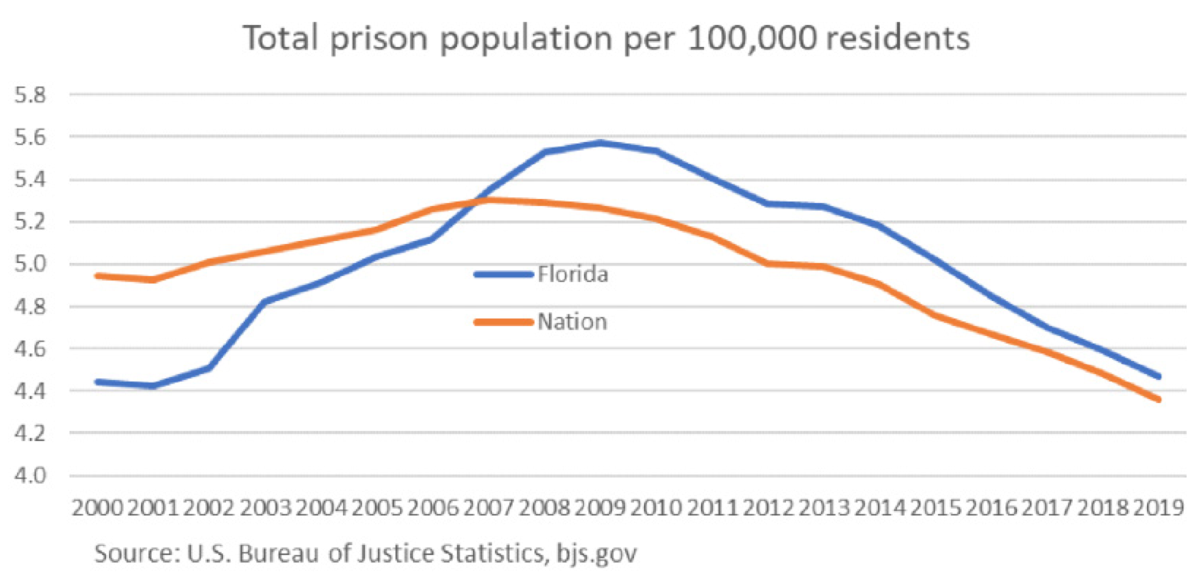
The incarceration effect of upgraded criminality

This proposed upgrade in criminality will result in additional jail time to be provided at the expense of the Florida taxpayer. The February 15, 2021 Criminal Justice Revenue Estimating Conference (REC) evaluated the foreseeable fiscal impact of HB1, concluding that passage of the bill into law "may increase the prison population by an indeterminate amount by modifying and creating new felony offenses relating to public disorder." The participants in that conference identified five separate features of the bill that they scored as increasing likely expenditures. Discussion around reaching a consensus estimate resulted in accepting a range on one of the five provisions (the enhanced charges for defacing a monument) that had a midpoint expectation of 18 additional prison beds per year. The remaining four categories were scored as having an indeterminate but positive impact on the number of prison beds occupied. If the additional four categories were to carry the same realized incarceration outcome, then the annual impact would total 90 prison beds per year, with that figure increasing as new prisoners arrived while previously incarcerated individuals each completed terms as long as 15 years. If that rate persisted as a steady state, with an average increase in sentence of 3 to 8 years, the net impact would be some 270 (i.e., 90 x 3 years) to 720 (i.e., 90 x 8 years) additional prison beds occupied at any given time as a result of the increased time to be served. Using current per bed costs this would imply over $6.6 million to $17.5 million every year in additional incarceration costs to the taxpayer.[4]

These changes will reverse a decade of progress in incarceration expenditures

Florida has made substantial strides in the last decade in reducing incarceration. The number incarcerated in state prisons has declined in absolute numbers from a high of 104,306 in 2010 to a low of 96,009 in 2019, which is the most recent year for which comprehensive data from the Bureau of Justice Statistics (bjs.gov) are available.[5] Prison population is reported to have declined still further in 2020 with part of that decline due to inactivity of the courts in the face of the pandemic, leading the Secretary of the Florida Department of Corrections to warn legislators to expect a substantially larger than usual influx of incarcerated individuals in 2021 and beyond as courts reopen and work through the caseload backlog.[6]

These changes caused the state prison population (for sentences of more than one year) per 100,000 Florida residents to fall from 5.6 in 2009 to 4.5 in 2019, while the nation (excluding Florida) has fallen from 5.2 to 4.4 over the same period. This has enabled the legislature to cut the Criminal Justice and Corrections budget from $6.39 billion in FY2008-09 (measured in inflation-adjusted 2020 dollars) to $4.86 billion in FY2019-20, for a savings to the Florida taxpayer of some $1.53 billion. It is these taxpayer savings that would be diminished by the expanded and upgraded sanctions proposed in HB1. At a time when



the state is facing particularly tough choices in order to balance the pandemic-affected budget, Florida can ill afford an immediate and continuing upward bump in incarceration expense.

Effects on individuals convicted under the proposed new standards

The negative economic consequences of upgraded criminality and enhanced penalties are particularly important to individual Floridians who would be at risk of arrest and sentencing under the proposed new law. Existing research has shown that incarceration has long-lasting effects that include restriction of employment by ten to thirty percent, reduction earnings by ten to forty percent, along with decreased labor market participation, particularly among minority males.[7] Even arrest without subsequent conviction may have negative labor market impacts.[8]

Here we are interested in the possible additional impact of stiffer penalties, such as the upgrading of misdemeanors to felonies for that same behavior, or incarceration for individuals who were merely present when criminal behaviors occurred elsewhere during the same gathering and were themselves adjudged under the proposed new law to have committed criminal behavior. To assess the impact of upgraded penalties here we rely on estimates presented in Mueller-Smith of the causal effects of incarceration itself on recidivism, employment, and wages after statistically controlling for type of crime, gender, first time offender status, age, and race, and for different prosecutors and judges.[9]

When using aggregated data it is difficult to disentangle the relative impact of individual characteristics and punishment severity on both criminal activity and on labor market outcomes. People with poor labor market skills may be more inclined towards illegal activities and vice versa. Mueller-Smith overcomes some of these disadvantages by using a database of over 8 million records from the Harris County, Texas (Houston) administrative records providing case-specific information from booking records, and associated court records. Individual-specific wage and employment information was obtained from state unemployment insurance records for those persons. These data, along with judge-specific sentencing variation, allows estimation of the labor market impacts of an additional quarter of incarceration, after controlling for type of crime and other variables. Thus, he is able to distinguish between individuals who were arrested but not prosecuted, as well as by type of charge, conviction, and sentence, as well as those who appear in the data with multiple arrests and convictions.

Because infraction definitions, possibility of prosecution, conviction, and sentencing already exist for most of the crimes enumerated in HB 1, we are interested in isolating the impact of longer sentences separate from the criminal behavior. Mueller-Smith finds "...clear evidence of lasting negative effects on economic self-sufficiency. Each additional year behind bars reduces post-release employment by 3.6 percentage points. Among felony defendants with stable pre-charge earnings incarcerated for one or more years, post-release employment drops by at least 24 percentage points. These results are paralleled by an increased take-up of Food Stamps and cash welfare. Whether through reduced tax revenue or increased public assistance spending, the findings imply that public finance is affected in ways that extend beyond the direct administrative per-bed costs."[10]

The Mueller-Smith analysis finds that some 40 percent of individuals that had above poverty-level earnings and a stable employment history prior to being charged failed to reintegrate into the labor market after release from prison. The effect is more than doubled as time in prison increases from six months to two years.[11] This deterioration in labor market participation and performance is matched by an increase in usage of taxpayer-financed social programs.[12] The wage records used in this analysis cover a period of five years following release, with future costs brought to present money value using a five percent discount rate.

Here we adjust the Mueller-Smith estimates to account for the lower budgetary cost of incarceration in Florida as well as for inflation to obtain estimates for Florida for 2021. These estimates represent the discounted net benefit to society attributable to several different factors and include the period of incarceration and the five years following release from prison. The factors include the societal benefit due to incapacitation of a potential offender during the period of incarceration (i.e., crime avoided while the individual is incarcerated), the budgetary cost to the taxpayer of incarceration, the cost to society of the increased criminality upon release for five years (whether due to behavior learned in prison or to diminished economic prospects upon release), and the direct cost to the incarcerated individual due to lessened labor market participation and lower wages. Incarcerating an individual for six months who would not have been incarcerated under current law is estimated to have an additional net cost of between \$65,125 and \$75,232 per incarceration.[13]

Using these same baseline calculations, moving from a six-month incarceration to a two-year incarceration is estimated to have an additional net cost of between \$146,509 and \$165,306 per individual over the period that includes time served and a five-year period following release.[14] Thus, if HB1 were to become law and resulted in a sentencing shift from 6 months to an enhanced sentence of 2 years for an individual, it would result in an excess net cost to society of \$81,384 to \$90,074 dollars, with costs to the individual and society outweighing incapacitation benefits by almost a ten to one ratio. Assuming a sentencing shift from 6 months to an enhanced sentence of 2 years for 100 individuals, while incorporating the spending multiplier, yields an excess net cost to society of \$8.1 million to \$9 million.

The lost income from employment is captured in these estimates and is based on the actual earnings history of individuals prior to incarceration thus reflecting their productivity in the workplace. It is appropriate to apply standard economic spending multipliers to the earnings component of losses. Because those individuals are not earning, then they are not doing the spending that would have driven additional economic activity spread throughout the economy. The executive summary of this report provides dollar values for the impacts of incremental incarceration time of one year per individual for the number of additional individuals expected to be incarcerated if the new bill becomes law.

These estimates are likely to be conservative

There are several reasons these estimates are likely to be conservative. One is that the calculation window extends forward only five years beyond time of release and thus does not count possible subsequent labor market impacts for each individual that continue farther into the future. This would increase future damages.[15] Guvenen, et al, examine the labor market impact associated with not working for an extended period (of one year).[16] They find that regardless of the cause, long-term unemployment leaves a very persistent scarring effect on the future earnings of displaced workers. They find long-term earning losses of 35 – 40 percent after ten years, and that those losses are largest for low-earning workers and for those previously in the top five percent of the income distribution. While much of that loss is associated with continued nonemployment, those who were employed

10 years after the initial one-year job loss had earnings losses on the order of 8 – 10 percent.

A second reason the estimates are conservative is that protestors have likely have different motivations and demographic characteristics than most other criminal justice system-involved individuals represented in the eight million plus observations used to derive these estimates. Research suggests that higher education increases participation in protest, as do political engagement factors such as reading news materials, being interested in politics, and being registered to vote.[17] These factors may also be correlated with higher income, so that the loss of income associated with a term of incarceration may be higher than is typical of justice system-involved individuals.

Conclusion

These effects mean that the cost to the State, the taxpayers, and the individuals arrested in connection with the proposed increased sanctions is relatively large. This is true even though Florida today spends well below the national per-person average on incarceration cost and also because the upgraded penalties associated with these offenses will be more likely to result in felony convictions that carry onerous penalties relative to misdemeanors, both in terms of time spent incarcerated and in terms of post-release negative outcomes. These budget outlays and losses to offenders are also unlikely to provide the deterrent effect that might have otherwise been obtained by devoting those resources to better policing and parole and probation monitoring systems.

Many communities particularly across the northern tier of the state, have historically been eager to benefit from the employment impacts of construction and operation of a state prison facility. However, as the state economy grew and wage prospects improved over the last decade, it became increasingly difficult to staff prisons at current wages. HB1 would put upward pressure on capacity utilization at Florida prison facilities, exacerbating pressures in a system perhaps already in crisis. Now is not the time to put additional pressure on that system.

In summary, economic analysis suggested that the expanded and upgraded criminality proposed by HB1 and its related bills will be unlikely to achieve a public safety solution that improves the well-being of Floridians. Instead, the bill, if passed and signed into law, will impose costs to the taxpayer and to those arrested that far exceed the possible benefits of the increased sanctions.

About the author

Rick Harper received his BA in Economics from Guilford College in 1978, and an MA in 1986 and a PhD in 1989, both in Economics from Duke University. Rick worked as a professional economist from 1980 – 1984 at Research Triangle Institute in Research Triangle Park, NC, and at the University of West Florida (UWF) from 1989 until retiring in 2017. From 1996 – 2011 (except sabbatical and other time away) he served as Director of UWF's Haas Center for Business Research and Economic Development, conducting numerous studies of the local, regional, and state economies and economic sectors. He served as the Senior Policy Advisor for Economic Affairs for the Florida Senate from 2012 until 2014 and as the economic expert for the State of Florida from inception until completion in its economic damages litigation with BP.

Endnotes

[1] In March 2021, the Florida Campaign for Criminal Justice Reform (CCJR), contracted with Economic Consulting Services, Inc. for an independent assessment of the likely economic impacts of HB 1 /SB 484. This study is the result of that assessment.

[2] Using current average costs per inmate. See fn3 below.

[3] Mueller-Smith, Michael. "The Criminal and Labor Market Impacts of Incarceration," unpublished working paper, Department of Economics, University of Michigan, 2015.

[4] Average cost to house an inmate in a Florida State prison taken from Florida Department of Corrections Strategic Plan and Annual Report, FY19 – 20, p65.

[5] Federal statistics for states are available at the Bureau of Justice Statistics website at bjs.gov6 First Name Last Name, "Name of the Article" Magazine Name (Illinois: Associated Press, 2017), 35.

[6] Testimony of Secretary Mark S. Inch to the Senate Criminal Justice Subcommittee on Appropriations, February 2021.

[7] Pager, Devah. 2003. "The Mark of a Criminal Record." American Journal of Sociology 108(5): 937–75. Apel, Robert, and Gary Sweeten. 2010. "The Impact of Incarceration on Employment during the Transition to Adulthood." Social Problems 57(3): 448–79. Western, Bruce. 2002. "The Impact of Incarceration on Wage Mobility and Inequality." American Sociological Review 67(4): 526–46. Western, Bruce. 2006. Punishment and Inequality in America. New York: Russell Sage Foundation. Raphael, Steven. 2007. "Early Incarceration Spells and the Transition to Adulthood." In The Price of Independence: The Economies of Early Adulthood, edited by Sheldon Danziger and Cecilia E. Rouse. New York: Russell Sage Foundation.9 Author Name, "Title of Work" Publication Name (State Name: Publisher, 2017), 50.

[8] Jeffrey Grogger, "The effects of arrests on the employment and earnings of young men," Quarterly Journal of Economics, February 1995. Grogger finds that after controlling for sociodemographic correlates that the effect of arrest is relatively modest and short-lived if a conviction does not follow. Robert Apel and Kathleen Powell find similar results in "Level of criminal justice contact and early adult wage inequality," RSF: The Russell Sage Foundation Journal of the Social Sciences, 2019.11 Author Name, "Title of Work" Publication Name (State Name: Publisher, 2017), 50.

[9] Mueller-Smith, Michael. "The Criminal and Labor Market Impacts of Incarceration," unpublished working paper, Department of Economics, University of Michigan, 2015.

[10] Ibid, p3

[11] Ibid, p31.

[12] Ibid, p30.

[13] This range would instead be $44,578 to $54,686 if we did not include the ripple effects of the lost consumer spending by individuals who would likely have been working based on their pre-incarceration work history.

[14] The difference between these two figures reflects the difference between Mueller-Smith's estimated lower and upper bounds for the impacts of increased criminality.

[15] Mueller-Smith provides lower and upper bound estimates for the deleterious impact of post-release criminal behavior. This study is conservative in using the lower bound as the expected cost.

[16] F Guvenen, et al, "Heterogeneous scarring effects of full-year nonemployment," American Economic Review: Papers and Proceedings 2017, 107(5): 369-373.

[17] Alan Schussman and Sarah Soule, "Process and protest: accounting for individual protest participation," Social Forces 84(2): 1083-1108, December 2005.

[18] While the Mueller-Smith data do not allow calculation of a deterrent effect, there is at least some consensus among researchers that the duration of punishment is not nearly as effective as the certainty of punishment. This suggests that Florida's proposed enhanced sentences at the expense of other budget priorities are likely a step in the wrong direction. "[crime rate] reduction may be achieved by shifting resources from incarceration via reducing sentence severity and shifting these resources to policing and parole and probation monitoring systems." Steven N. Durlauf and Daniel S. Nagin, "The Deterrent Effect of Imprisonment," in Controlling Crime: Strategies and Tradeoffs, Philip J. Cook, Jens Ludwig, Justin McCrary, editors, University of Chicago Press, p44, 2010.

[19] DOC Secretary Inch at his February 17 testimony (see note 1 above) responded to Senator Brandes' question as to whether the prison system was "in collapse" by saying that the system is "in crisis" due to staffing shortages.