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The Hidden Problem of Time Served in Prison

ASSESSING THE POLITICAL AND CULTURAL FORCES BEHIND THE unprecedented increase in the use of incarceration in the United States in the late decades of the twentieth century is a complex undertaking. If we are to some day reverse these trends and move toward a more humane and constructive response to interpersonal conflict, it behooves us to both transform the political climate in which policies are developed and to identify the particular policy changes necessary to move toward decarceration. This essay attempts to address the latter point, and to address an area of sentencing policy—time served in prison—that has received far too little attention.

At its essence, the size of a prison system is a function of how many people are admitted to prison and how long they remain there. Policymakers and reformers who have been concerned about rising prison populations have been far more focused on the admissions side of the equation. Areas of concern in this regard have included such factors as: the availability of alternatives to incarceration; sentencing policies that restrict judicial discretion; the rise in incarceration of drug offenders; and in recent years, probation and parole revocations as a growing source of admissions.

These are clearly all important areas of attention and indeed, there is evidence of some impact on diverting offenders from prison. Such examples include drug courts and other treatment-oriented diversion structures, sentencing guideline mechanisms that encourage commu-

nity-based sanctions for nonviolent offenses, and the development of graduated sanctions for parole violations that avoid lengthy new prison terms. One can argue that many of these policies encourage or result in a net-widening effect as well, but there is nonetheless reason to believe that there have been at least modest successes in reducing admissions to prison in some jurisdictions.

Despite these successes, the prison population continues its inexorable rise. Of particular note here is that the increase in the prison population has far outpaced the rise in the number of felony convictions in recent years. Between 1992 and 2002, the number of people in state prisons increased by 59 percent, compared with an 18 percent rise in the number of felony convictions. And with virtually no change in the likelihood of receiving a prison term upon conviction during this period, neither of these dynamics provides the bulk of the explanation as to why prison populations have continued to climb.

One part of the explanation, as was noted, is the increasing rate of parole violators sent back to prison. But the other contributing factor, much less the focus of policymaker attention, is the increasing length of time served in prison, particularly since the 1990s.

Time served in prison has been the focus of some attention at the extremes of the policy. The spate of “three strikes and you’re out” policies that were enacted in the 1990s in half the states have resulted in a truly distorted use of correctional resources in states such as California. That state now has 8,000 people serving sentences of 25 years to life, nearly half of whom were convicted of a property or drug crime as their third strike. Similarly, federal mandatory penalties have resulted in such cases as the 55-year prison term given to Weldon Angelos, a 24-year-old record producer convicted of three marijuana sales. Because Angelos possessed a weapon during the transactions—which he did not use or threaten to use—the sentencing judge was obligated to impose this draconian sentence. Upon doing so, Judge Paul Cassell noted that “The Court believes that to sentence Mr. Angelos to prison for the rest of his life is unjust, cruel, and even irrational.”

While these policies have justifiably been critiqued, their promi-

nence tends to overshadow the rise in time served for all offenses since 1990. The most recent Department of Justice analysis of these issues documents that the mean time served in state prison before first release rose from 22 months to 29 months from 1990 to 1999. While a seven-month increase may not strike some as dramatic, note that this represents a 32 percent rise in average time served.

To provide some context for these trends, it is important to note that time served in prison for many offenses is considerably greater than in other industrialized nations. Individuals sentenced to prison for burglary, for example, spent an average of 16.2 months in prison in the United States, compared with 5.3 months in Canada and 6.8 months in England/Wales. For high-end drug crimes, a US conviction in federal court for selling a kilogram of heroin yields a mandatory 10-year sentence, compared with six months in prison in England.

From a public safety point of view, addressing the issue of time served is quite significant for several reasons:

- ▶ *Time served is a significant component of the rising prison population.*

Looking at the state prison population of 1.2 million, we can calculate what the scale of incarceration would be today if time served had not increased since 1990. Given the 32 percent increase noted above, this would have resulted in nearly 400,000 fewer prisoners overall even absent any change in the number of people sentenced to prison.

- ▶ *Time served does not influence recidivism.* One might speculate that increasing time served in prison would have an effect on reducing recidivism, either through individual deterrence or rehabilitation. But the most comprehensive data on recidivism from the Department of Justice demonstrate that while recidivism rates are high—two-thirds of released prisoners are rearrested within three years of release—there is no significant difference among people spending anywhere from one to five years in prison. Only after five years do recidivism rates begin to decline somewhat, but this is no doubt due to the aging process and not to any inherent effect of

incarceration. And lest anyone suggest that we could reduce recidivism by requiring five- or ten-year stays in prison for all offenders, recall that this would represent a doubling or quadrupling of what is already a world record prison population. Keeping people in prison longer has a delaying effect on recidivism, but not an overall reducing effect.

- ▶ *Increasing time served does not contribute to general deterrence.* One of the rationales offered for adopting mandatory and longer prison terms is that they will “send a message” to potential offenders that crime will be punished harshly. Theoretically, this would cause some people to refrain from committing a crime due to a cost-benefit calculation of the consequences of doing so. Unfortunately, such logic conflicts with a long line of criminological research that demonstrates that any deterrent effect of the criminal justice system is achieved primarily by certainty of punishment, not severity. That is, if the odds of apprehension are increased—such as stationing more state troopers on the highway during a holiday weekend to stop speeders—some people will engage in such reasoning to avoid being caught (in this example, driving under the speed limit). But merely increasing the scale of punishment has little effect on deterrence since most offenders do not expect to be apprehended anyway. Thus, the “message” that lawmakers try to send is not heard very distinctly.
- ▶ *Time in prison is expensive.* As a corollary of potential reductions in prison populations through changes in time served, state governments could realize significant cost savings. In rough terms, at a cost of \$25,000 a year to house a person in prison, a 32 percent reduction in time served, would yield savings of more than \$150 million a year for a state prison system of 20,000 inmates.
- ▶ *Longer prison terms erode community ties.* Given high rates of recidivism, it is essential to enable people in prison to maintain ties to family and community that can aid in the reentry process after leaving prison. Increasing the length of prison terms only contributes to a fraying of those ties because of the difficulties involved

in visiting and communicating with incarcerated family members. In addition, lengthy terms of imprisonment result in financial and emotional burdens on the family members left behind, further disadvantaging many low-income neighborhoods.

Enacting change in the time served in prison can come from several quarters, and can be accomplished either through front-end or back-end reforms. At the level of sentencing policy, such changes could take place through the actions of a state sentencing commission or a legislative body. Areas of focus would need to include mandatory sentencing provisions, “truth in sentencing” statutes that increase time served, parole eligibility policies, and the creation of a range of sentencing options.

Longer stays in prison, though, are not just a function of sentencing policy, but also result from sentencing decisions by judges. In this regard, we can view sentencing practice as determined in part by the political and cultural environment in which it takes place. Since sentencing practices for similar offenses are more punitive in the United States than in other nations, we need to attempt to understand why the prevailing climate in the United States leads to such outcomes and how we might begin to engage in political debate and public education that could alter those dynamics in favor of a more rational approach to sentencing policy and practice.

Such a change in the climate is clearly not one that will happen overnight, but there are at least some signs of a change in the public perception of issues of crime and punishment. In the area of public policy, increasing numbers of states have enacted sentencing reforms in recent years, including diverting drug offenders to treatment programs and scaling back mandatory sentencing terms. Similarly, the prison reentry movement has rapidly gained bipartisan political support focusing on practical, and not ideological, approaches to reducing recidivism. It remains to be seen whether the reentry model—providing services and support to reduce reoffending—can be translated to the sentencing stage as well, but that would clearly be a logical next connection.

Overall, we need to begin to reverse the mechanistic approach to sentencing that has characterized much of the determinate sentencing movement of recent decades and recall that since human behavior is complicated and individualized, our approach to sentencing needs to respond to the uniqueness of each individual as well.