

Time and Money: An Examination of Crime, Sentencing and Corrections Budgeting Issues

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America continues to recover from its most recent recession, and the impact on social problems will reverberate for years. In one respect, though, it appears we can breathe easier: the crime wave that many thought to be inevitable did not occur. Crime has remained fairly stable and, in many states, has even declined since the start of the recession, a fact not entirely surprising among criminologists. While many people assume it is inevitable that crime rises when the economy is suffering, an examination of historical trends reveals this is not the case. While violent and property crime did increase during the Great Depression, throughout the remainder of the 20th century and into the 21st, the relationship between crime and the economy has been inconsistent. Deeper analysis reveals a complex relationship in which community-level variables may trump macro-level conditions, and different social policies may either push the crime rate up or help constrain it. Yet the criminal justice system suffered repercussions from the recession. The immediate future regarding how the current economic climate may affect correctional policy and practice is discussed in this article. These projections are discussed within the context of what history has revealed regarding crime rates, sentencing practices, and recidivism. Finally, some strategies for long-term investments to reduce crime are presented.

Over half of U.S. states had their corrections budgets reduced as a result of the fiscal crisis.¹ While it is

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¹ Christine S. Scott-Hayward, “The Fiscal Crisis in Corrections:

fortunate we did not experience a jump in criminal activity that would have placed greater demands on the system, we are in hardly in a position in which we can ignore the problem. We cannot simply cap crime until the coffers are replenished. Correctional agencies strapped for cash are not able to turn away newly sentenced offenders. With little control over crime rates and sentencing practices, correctional systems must continue to accommodate new offenders, while simultaneously meeting the needs of existing populations in ways that do not compromise public safety.

States have coped with a variety of adaptations. These include layoffs, hiring and wage freezes, cutting programs, eliminating or limiting non-essential services, and—either through consolidating populations or early release mechanisms—closing institutions.² The impact of these actions is diverse, diffuse, and not easily measured. A state-by-state comparison of corrections budget appropriations for the 2009-2010 fiscal year, determined when the recession was still underway, reflected some of the uncertainty regarding the immediate economic future. Missouri saw just a 1.48 percent reduction in its corrections budget during that fiscal period.³ Seven of the states for which fiscal data were available that year experienced cuts in excess of 10 percent, although the budgets in eleven states actually grew or remained stable.

Missouri has adapted to these cuts while continuing to make significant investments in a platform of programs and partnerships designed to ensure successful reintegration of offenders. The 2010 fiscal year budget included an additional \$3 million to be allocated towards a major reentry initiative,

Rethinking Policies and Practices,” Vera Institute of Justice, updated July 2009, accessed November 1, 2013, http://www.vera.org/files/The-fiscal-crisis-in-corrections_July-2009.pdf.

² Ibid.

³ Ibid.

supplementing grant funding the state had received.⁴ This initiative is still underway, with the sixth round of funding, exceeding \$1.8 million, awarded to selected community agencies in 2013.⁵ Increased program spending in the midst of a fiscal crisis is not as counter-intuitive as it may seem. Indeed, such initiatives, that have been termed “reinvestments of justice,” hold considerable promise for long-term cost-efficient measures to lessen crime.

Factors influencing corrections growth and spending

Predicting the future of corrections and project spending needs is fraught with challenges. Certainly, the demand for prison beds is largely impervious to the availability of funds. Corrections expansion and spending are inextricably tied to sentencing practice. Sentencing changes that result from legislation mandating prison terms have fairly predictable impacts. For example, the three-strikes-you’re-out and truth-in-sentencing statutes that became popular in the late 1980s and 1990s fueled the prison boom and resulting expenditures. (However, increasing the capacity to lock up criminals for longer periods has had mixed results, as discussed later in this article.) But broad trends are largely a product of discretionary practices, and these are notoriously difficult to predict. Sentencing has a great deal to do with how individual actors in the system behave. Prosecutors and judges are politically motivated and responsive to a variety of factors, both at the local level and in regard to individual cases. It can be argued that their behavior is, in large part, swayed by public perceptions about crime control. In light of the unpredictability of sentencing practices, projection of prison populations and budgetary needs is quite complicated.

⁴ Ibid.

⁵ Christine Arment, Emily Johnson, and Sean Nicholson-Crotty, “Missouri Department of Corrections Reentry Funding, Round 5, 2012-2013 Final Report,” Institute of Public Policy, Truman School of Public Affairs, University of Missouri-Columbia, Accessed December 20, 2013, <http://doc.mo.gov/Documents/mrp/2012FinalEvaluation.pdf>.

Of course, crime rates affect sentencing trends, and therefore *should* be predictive of corrections spending. But they are no longer as important as they once were. For most of the 20th century, sentencing trends were a proximate reflection of changing crime rates; that is, we tended to incarcerate more offenders as crime rose and fewer when crime fell. But things changed when a crime wave broke out in the 1960s, gaining momentum in the late 1970s, continuing through the 1980s and early ’90s. In 1960, the violent crime rate in America was 160.9, by 1991 it peaked at 758.1 (the rate is computed per 100,000 people).⁶ It has further been observed that the “punishment index,” which is the probability an offender will be arrested combined with the length of time he will serve, declined in the late 1960s and ’70s.⁷ This suggests that crime was a consequence of a lax criminal justice system that was soft on crime. While criminologists do not discount this, they also offer a plethora of other explanations for the change in the rate. These include baby boom-induced changes in the age structure of the population, crumbling urban cores, and the illicit drug trade (particularly crack cocaine), among others.

The precipitous increase in the crime rate led to a series of sentencing reforms designed to keep certain groups of offenders behind bars for longer periods. Prison populations skyrocketed in the 1980s and 1990s, slowly stabilizing in the 2000s. From 1990-2000, this country experienced an 81 percent increase in its incarceration capacity in state prisons, with the construction of 351 new adult facilities, an expansion reaching to over half a million new prison beds.⁸ Prior to the crime wave, the U.S. imprisonment rate had held steady for nearly a century. From 1880 to 1970, it hovered around 100-200 persons per 100,000. The rate began to

⁶ “United States Crime Rates 1960–2012,” The Disaster Center, accessed December 12, 2013, <http://www.disastercenter.com/crime/uscrime.htm>.

⁷ James Q. Wilson and Joan Petersilia, eds., *Crime and Public Policy*, (San Francisco, CA: Institute for Contemporary Studies, 1995), 449.

⁸ Allen J. Beck and Paige M. Harrison, “Prisoners in 2000,” *Bureau of Justice Statistics Bulletin*, NCJ 188207 (August 2001): 9.

accelerate quite dramatically by the 1980s, and the nationwide decline did not begin until 2009.⁹ On the face of it, then, the burgeoning prison populations of the late 20th century reflected nothing more than a rational response to the climbing crime rates. Yet in the last decade and a half, the two trends began to diverge. The crime rate began to decline in the mid-1990s, with the violent crime rate peaking at 758.1 in 1991, and has more or less leveled off in the 21st century, with some minor year-to-year fluctuations. By the close of 2012, the violent crime rate was 386.9.¹⁰

Missouri's incarceration trend has followed the national trend of lagging behind the crime trend. As crime slowed, we continued to lock up offenders in greater numbers, gradually stabilizing *over a decade after crime began to fall*. The state's index crime rate¹¹ fell 26 percent between 1992-2012, yet the prison population nearly doubled during this same timeframe, expanding from 16,181 state prisoners in 1992 to 31,517 in 2012.¹² Missouri was hardly unusual in this regard. While crime rates fell in 48 states between 1998 and 2012, only nine of these experienced a decline in incarceration rates.¹³

Fear equates to continued support for expansive use of incarceration. Fear of crime, which is largely attributable to excessive media attention to violent crimes, has not fallen commensurate with actual crime.¹⁴ Thus, while sentencing does not appear to

be *entirely* independent of crime rates, the trend is not wholly rational and is a function of not simply actual crime rates, but perceptions of these.

The high price of the incarceration boom is reflected in the quadrupling of state corrections budgets in a 20-year period. Though inflation plays a role, the significance of this increase is evident when we compare it to other forms of public spending. Only Medicaid grew more during this period.¹⁵ While approximately 30 percent of states' correctional population is locked up, prisons consume 88 percent of the budgets.¹⁶ Thus, for over a quarter of century, America sent more people to prison in the face of falling crime rates, at greater cost. Only recently, in perhaps the last five years, has the tide begun to turn.

Punishment and Politics

In mid-2010, Missouri's Sentencing Commission made headlines around the state with the release of a matrix that provides criminal court judges information regarding the relative costs of sentencing options. The matrix offers straightforward cost comparisons between prison and probation sentences.¹⁷ The media coverage and accompanying rhetoric suggested that judges were being encouraged to save money by unleashing dangerous offenders into the community. While a purely dollars-driven approach to justice is unsettling, the guidelines are considerably more sophisticated. Judges are also given risk prediction information based on an actuarial method of determining who is likely to re-offend, a practice that some prominent criminologists consider a promising means of reducing crime.¹⁸ Reactions from the criminal justice community have been

<http://www.gallup.com/poll/144272/nearly-americans-fear-walking-alone-night.aspx>.

¹⁵ "One in 31: The Long Reach of American Corrections," Pew Center on the States, March 2009,

http://www.pewstates.org/uploadedFiles/PCS_Assets/2009/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf.

¹⁶ *Ibid.*

¹⁷ Heather Ratcliffe, "Missouri judges get penalty cost before sentencing," *St. Louis Post-Dispatch*, September 13, 2010.

¹⁸ Alfred Blumstein, "Approaches to reducing both imprisonment and crime," *Criminology & Public Policy* 10 (February 2011): 93–102.

⁹Heather C. West, William J. Sabol, and Sarah J. Greenman, "Prisoners in 2009," *Bureau of Justice Statistics Bulletin*, NCJ 231675 (December 2010): 1.

¹⁰"United States Crime Rates 1960–2012," The Disaster Center, <http://www.disastercenter.com/crime/uscrime.htm>.

¹¹ "Index crimes" is the term the FBI uses to describe the eight most serious crimes in its annual Uniform Crime Reports. Index crimes are: Murder, Non-negligent Manslaughter, Forcible Rape, Robbery, and Aggravated Assault, and the property crimes of Burglary, Larceny-theft, and Motor Vehicle Theft.

¹² Missouri Department of Corrections, accessed December 14, 2013, <http://doc.mo.gov/Census.php>.

¹³ "Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety," Justice Policy Institute, May 2009, accessed December 1, 2013, http://www.justicepolicy.org/uploads/justicepolicy/documents/09_05_rep_pruningprisons_ac_ps.pdf.

¹⁴ "Nearly 4 in 10 Americans Still Fear Walking Alone at Night," Gallup, accessed May 15, 2011,

mixed, with some lawyers pointing out the merits of a risk-based decision tool, while others have decried it as an attempt to put a “price tag on justice.”¹⁹ Yet the reality is that criminal justice system resources are finite, and there are opportunity costs associated with every decision to confine a low-risk offender. Cost alone should not drive sentencing, but cost does still matter, both in the sense of good fiscal policy *and* public safety.

Given their politically sensitive positions, judges and prosecutors who perceive that the public prefers tougher sentences may opt to ignore data suggesting that low-risk offenders could be safely supervised in the community. They also have power to adjust sentencing decisions downwards, despite guidelines created by sentencing commissions and legislative mandates.

These kinds of guidelines have constrained discretion but have not been completely taken discretion out of the equation. For example, sentencing reforms introduced in the 1990s were designed to limit discretion, and increase the time certain offenders would spend behind bars. However, these laws did not consistently produce that effect. In some jurisdictions, judges and prosecutors simply altered practices (for instance, through plea bargaining) so as to reduce the number of offenders subject to these laws.²⁰ Such adjustments are not inherently negative and represent an attempt to allocate correctional resources more efficiently or a response to perception that strict application of the law results in some unjust sentences. Presumably, too, these reflect recognition that individual-level factors may be more useful in determining an optimal sentence than the nature of the offense. The combination of discretionary practices and political pressures make

¹⁹ Ratcliffe, “Missouri judges get penalty cost before sentencing.”

²⁰ Peter B. Wood and R. Gregory Dunaway, “Consequences of Truth-in-Sentencing: The Mississippi Case,” *Punishment & Society* 5 (2003): , 39–154.; Caroline Savello, “Manipulating the Truth: The Unintended Consequences of Truth-in-Sentencing Laws on Sentencing Behavior in California, 1992-1996.” Paper submitted to Inter-University Consortium for Political and Social Research. (2008).

it difficult to make accurate predictions regarding how changing crime rates will influence corrections growth.

Superficial analysis of these trends suggests this is a cause-and-effect relationship, and that the incarceration experiment succeeded and did in fact, deter. However, a state-by-state analysis carried out by the Sentencing Project shows it is not this simple. Between 1991 and 1998, those states that had a slower growth in incarceration saw greater declines in crime rates than states that had higher than average growth rates.²¹ From 1998 through 2004, twelve states whose imprisonment rates either held steady or declined experienced a crime rate decline equivalent to the national rate.²²

Perhaps the most important fact about sentencing and corrections that is overlooked by the American public concerns the transitory nature of incarceration. Missouri reports that, on average, 97 percent of imprisoned offenders will return to society at some point.²³ A review of release data nationwide from 1980-2002 revealed a community reentry rate of 95 percent.²⁴ This is a sobering reality that seems lost on those who stubbornly cling to the belief that we can incarcerate our way out of the crime problem. Every corrections dollar is spent not to just to contain criminals, but rather to contain criminals *who in all likelihood will re-enter society*.

Just how punishment affects recidivism is largely misunderstood by system outsiders. Support for spare and harsh conditions of confinement is concomitant with the “get tough” and “lock ’em and throw away the key” perspective. The notion that

²¹ Jenni Gainsborough and Marc Mauer, “*Diminishing Returns: crime and Incarceration in the 1990s.*” Washington, DC: The Sentencing Project, p. 10. (2000).

²² Ryan King and Marc Mauer, “Incarceration and Crime: A Complex Relationship,” The Sentencing Project (2005): 3.

²³ “Missouri Reentry Process,” Missouri Department of Corrections, accessed March 2, 2011, http://doc.mo.gov/documents/mrp/mrp_brochure_duplex.pdf.

²⁴ Timothy Huges and Doris J. Willson, “Reentry Trends in the United States: Inmates Returning to the Community after Serving Time in Prison,” Bureau of Justice Statistics, last updated April 14, 2004, accessed October 24, 2011, <http://www.bjs.gov/content/pub/pdf/reentry.pdf>.

tough punishment serves as a deterrent derives from rational choice theory, which holds that crime is controlled through fear of punishment. This is often confused with the idea that harsher punishments equate to less crime. In fact, Cesare Beccaria, whose classical criminology theory was the forerunner for modern rational choice theory, did support uniformly harsh penalties, but rather that the punishment fit the crime. Excessive punishment, Beccaria maintained, is unnecessary and inefficient.

While there is evidence that some crime can be deterred with appropriate application of penalties, criminal behavior is far too complex a phenomenon to be encompassed with this single theory. The fact that brutal penalties do little to deter has long been accepted as conventional wisdom by criminologists and seasoned correctional practitioners. History abounds with examples of the failure of even the most horrific punishment to deter. The Ancient Romans bundled up parricidal offenders into a bag with a serpent, a dog, rooster, and primate and tossed the lot into the sea.²⁵ ²⁶ Despite seeing their countrymen come to this painful end, Romans continued to murder family members. Nor did other forms of torture and execution that were common to ancient societies, such as impalement, mutilation or the Athenians' method of slowly roasting criminals inside a bronze bull (known as a "brazen bull"),²⁷ take an appreciable bite out of crime.

Though more recent endeavors to scare offenders away from crime have also not proven effective, many Americans still embrace this idea. Such support can be evidenced in the popularity of the six-term sheriff of Arizona's Maricopa County, Joe Arpaio. Arpaio, who oversees the county's jail, has been widely praised for his use of tents to house offenders in desert conditions exceeding 100 degrees, distribution of pink underwear, and chain

gangs. Yet despite Arpaio's campaign claims, these harsh conditions and attempts to demean offenders have not been shown to affect recidivism. A study comparing offenders released from the Maricopa County Jail under Arpaio's administration with those released under the previous administration found no significant differences in the recidivism rates.²⁸

Public support for hard time is also reflected in the rise of super-max facilities, which house unruly offenders who fail to conform to rules at other prisons. Typically, offenders in these facilities are confined to their cells twenty-three hours a day. Examination of recidivism rates for these facilities offers further support that hard time does not deter criminal behavior. A study of inmates released from Washington state's super-max facility found that those released directly from super-max confinement actually returned to prison at a faster rate than a comparable group that had served time in traditional facilities.²⁹ When researchers examined recidivism of the comparison group and that of super-max offenders who were sent to a lower security facility after leaving super-max pre-release, they found that recidivism rates between the two groups did not differ. A Florida study reached similar conclusions. Inmates released from super-max confinement had higher rates of violent recidivism than did a comparable group of inmates who had served time at lower security facilities, though there was no relationship between timing of the super-max experience, release, and recidivism.³⁰ Nor are offenders deterred by the experience of lengthy incarceration. In fact, a meta-analysis of studies that had tested the relationship between sentence length and recidivism revealed a small positive correlation. In other words, the longer the sentence, the higher the recidivism rate.³¹ A comprehensive review of the

²⁵ Noral Morris and David J. Rothman, eds., *The Oxford History of the Prison: The Practice of Punishment in Western Society* (New York, NY: Oxford University Press, 1995), 18-19.

²⁶ Historical records vary as to the precise mix of animal companions, with some accounts suggesting the doomed offender was accompanied by a dog or rooster, but not both.

²⁷ Daniel Diehl and Mark P. Donnelly, *The Big Book of Pain: Punishment and Torture Through History* (Stroud, UK: The History Press, 2008), 39.

²⁸ John R. Hepburn and Marie L. Griffin, "Jail recidivism in Maricopa County," final report submitted to the Maricopa County Sheriff's Office. Phoenix, AZ, 1998.

²⁹ David Lovell, L. Clark Johnson, and Kevin Cain, "Recidivism of Super-max Prisoners in Washington State," *Crime & Delinquency* 53 (2007): 633-656.

³⁰ Daniel Mears and William Bales, "Supermax Incarceration and Recidivism," *Criminology* 47 (2009): 1131-1166.

³¹ Paul Gendreau, Claire Goggin, and Francis Cullen, "The Effects of Prison Sentences on Recidivism," Public Works and Government Services Canada, 1999, <http://www.prisonpolicy.org/scans/e199912.htm>.

research found that, in general, offender behavior is not deterred through use of harsh penalties.³²

But imprisonment has other goals. One could argue that the function our corrections system most effectively achieves is incapacitation. It is nearly impossible to refute that by removing offenders from the community we constrain their illegal activity, if only temporarily. If the period of incarceration corresponds to the peak years of adult criminal activity (late teens through late 20s), the impact on crime can be substantial. Empirical evidence does indicate that meaningful benefits accrue if we can contain the most prolific career criminals for relatively long periods of time.³³ Economist Stephen Levitt examined how mandated caps on prison overcrowding affected the crime rate, and concluded that for every person incarcerated, there were 15 fewer crimes.³⁴ This finding would support prison expansion. Levitt has tempered these findings by noting it is primarily property crimes, not violent ones, that were averted.³⁵ An estimated 25 percent drop in violent crime has been attributed to the 1990s incarceration boom.³⁶ While not the impact hoped for from sentencing reforms, when one considers the impact in raw numbers, 25 percent less violent crimes is meaningful. However, it is not clear that indiscriminately sentencing all violent offenders to lengthy sentences, which was the intent of truth-in-sentencing (TIS) legislation, is a smart, cost-efficient policy.

³² Daniel S. Nagin, “Criminal Deterrence Research at the Outset of the Twenty-First Century.” In M. Tonry, (ed.) *Crime and Justice: A Review of Research, Volume 23* (Chicago, IL: University of Chicago Press, 1998): 1-42.

³³ Alfred Blumstein, Jacqueline Cohen, Jeffrey A. Roth, and Christy A. Visher, *Criminals and Career Criminals, Volume II*, (1986); Jacqueline Cohen, “The Monetary Value of Saving a High-Risk Youth,” *Journal of Quantitative Criminology* 14, no. 1 (1998): 5-33.

³⁴ Steven Levitt, “The Effect of Prison Population Size on Crime Rates: Evidence from Overcrowding Litigation,” *The Quarterly Journal of Economics* 111 (1996): 345.

³⁵ Steven Levitt, “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not,” *Journal of Economic Perspectives* 18 (2004): 163-190.

³⁶ William Spelman, “The Limited Importance of Prison Expansion,” in Alfred Blumstein and Joel Wallman, eds., *The Crime Drop in America* (Cambridge, UK: Cambridge University Press), 97-129.

One problem with long mandatory is that we limit our ability to lock up the next generation of offenders who are at large in the community.³⁷ This returns us to the earlier point about opportunity costs. There is a tipping point at which resources are over-allocated into imprisonment, and we sacrifice opportunities to address the newly emerging generation of offenders. Under the TIS laws in many states, violent offenders must serve 85 percent of their sentence. Prisons are now home to a larger proportion of offenders who are past middle age (and well past their peak offending years) than has been the case in the past.³⁸ This situation will clearly worsen over time. The Missouri Department of Corrections’ percentage of incarcerated offenders over the age of 50 doubled between 2000-2010.³⁹

These older offenders require more costly medical services in an era in which medical costs are rising — in fact, it is estimated that elderly offenders’ healthcare costs are three times that of younger offenders.⁴⁰ Many aging offenders are serving lengthy sentences for drug crimes, a consequence of America’s “war on drugs” that resulted in lengthier sentences. This crusade had its most profound impact on federal prison populations, although state prisons have been affected as well.

In the two decades since the sentencing reforms were ushered in, we have seen both intended positive consequences and unintended impacts, including the cost of prison expansion. Imprisonment was among the factors augmenting the decline of crime in the late 20th and early 21st century, though processes beyond tough sentencing and expanded capacity also played an important role. Collectively, the evidence

³⁷ Marc Mauer, “The Truth About Sentencing,” *Corrections Today*, 58 (February 1996): 1-8.

³⁸ “Old Behind Bars: The Aging Prison Population in the United States,” Human Rights Watch, 2012, accessed December 20, 2013, http://www.hrw.org/sites/default/files/reports/usprisons0112webcover_0_0.pdf.

³⁹ Missouri Department of Corrections, “Annual Report 2010,” accessed November 1, 2013, <http://doc.mo.gov/Documents/publications/AR2010.pdf>.

⁴⁰ William E. Adams and William E. Adams Jr., “The incarceration of older criminals: Balancing safety, cost, and humanitarian concerns,” *Nova Law Review* 19 (1995): 465-486.

points to the value of allocating prison space selectively. In order to advance this goal, states need to revisit legislation that requires lengthy mandatory sentences and consider mechanisms for releasing offenders previously sentenced under these laws. Indeed, many states have already begun this process and have repealed mandatory sentencing statutes. Also, sentencing commissions should promote more consistent use of actuarial tools for determining which offenders present the greatest risk to re-offend. These should allow for more precise targeting than did the typical sentencing reforms of the late 1980s and '90s, which were directed at broad categories of offense types.

It would be remiss to discuss the functions of our corrections system without noting that for many Americans, sentencing is seen as a means for achieving retribution. None of the above discussion should be construed to diminish the right of citizens in a democratic society to demand retribution if that is what they deem important. Retribution is an abstract, emotionally-laden concept and does not fit neatly into a treatise on cost-efficiency and other pragmatic concerns. In this sense, justice is not about reducing future crime, and operates independently of deterrence. Justice is compromised if we structure sentences so that the risk of recidivism outweighs the nature of the act. Thus, the model of selective incapacitation should be applied not only to the group at high-risk for violent and chronic offending. It may also be used to achieve retribution for those cases in which the crimes are most egregious and damaging, regardless of risk propensity.

Because states have begun backing away from mandatory sentencing laws, discretion has been returned to judges in recent years. If judges increase their reliance on statistically-derived risk assessment tools we can achieve a balance between excessive use of discretion and tight mandates.⁴¹ These assessment tools, like the aforementioned Missouri matrix, can be quite valuable in the sentencing process. Judges are not adverse to making risk-driven decisions, and often make subjective risk

assessments which play a substantial role in how they sentence offenders. Yet such subjective assessments have found to be only modestly valid.⁴² Repeatedly, actuarial risk tools have been found to have superior predictive ability to the subjective prediction of even seasoned criminal justice practitioners.⁴³

Maximizing long-term outcomes

If we do begin investing a lesser share of public expenditures in our nation's prison systems, we need to "reinvest" in measures that can successfully reduce crime. The body of literature that addresses "smart on crime" policies calls for a three-pronged approach: selective incapacitation of high-risk violent offenders, rehabilitation and *reintegration of lower risk non-violent offenders*, and primary prevention initiatives.

The day-to-day of prison operations is largely out of public view, and as a result, taxpayers are not familiar with the needs of a typical prison community and the issues administrators face in managing budgets. The importance of daily prison life to rehabilitation and re-entry is misunderstood and under-appreciated by the public. Even if we endeavor to focus on incarcerating only the most violence-prone offenders, we cannot abandon the practice of operating prisons as full communities. The experience of incarceration and therefore how corrections dollars are allocated is critical to public safety. In recent decades, Americans have been supportive of correctional expenditures related to expansion but little else.

⁴² Don M. Gottfredson, "*Effects of Judges' Sentencing Decisions on Criminal Careers*,"

National Institute of Justice (Series: Research in Brief), November 1999.

⁴³ Don M. Gottfredson, "Comparing and combining subjective and objective parole predictors," *Research Newsletter 3*, Vacaville: California Medical Facility (1961); T.R. Holland, N. Holt, M. Levi, and G.E. Beckett, "Comparison and combination of clinical and statistical predictions of recidivism among adult offenders," *Journal of Applied Psychology*, 68, no. 2 (1983): 203-211; Christopher Baird and Dennis Wagner, "The relative validity of actuarial- and consensus-based risk assessment system," *Children and Youth Services Review* 22, no. 11-12 (November-December 2000): 839-871.

⁴¹ "Innovations in Community Corrections: Controlling Crime, Prison Populations and Cost," National Conference of State Legislatures, 2010, <http://www.ncsl.org/documents/cj/pew/innovations.pdf>.

Media coverage on the costs of corrections tends to focus on two dimensions of corrections spending: the construction costs, and amenities such as exercise equipment and cable television. Yet corrections is far more than bricks and mortar. A functional prison requires the typical costs of any residential community, such as utilities, healthcare, food, and maintenance. Staffing needs go well beyond custodial positions (“guards,” more commonly referred to today as correctional officers), and includes food service, maintenance and clerical personnel, administrators, medical and mental health professionals, teachers, and staff trainers. Labor costs can be offset with the much cheaper inmate labor, but nevertheless, a typical 1,000 bed facility may have 200-300 paid employees.

Furthermore, the perceived “frills” found in American prisons have minimal impact on budgets. The media accounts of these luxuries often infuriate the public and feed hyperbolic political rhetoric, which in turn fuels support for harsher conditions. Yet most of these costs are not borne by the taxpayer. In Missouri, for example, inmates pay a mark-up on items purchased in prison commissaries, and this overage is diverted into a fund from which inmates may purchase cable packages, or new weight machines.⁴⁴ Those recreational and vocational activities that are supported by tax dollars are generally not costly and have little impact on the overall budget. When corrections budgets are cut, administrators cannot solve the problem simply by scaling back the amenities. Furthermore, long-term correctional employees realize the value in keeping inmates occupied and can leverage amenities to minimize disruptions. This results in a safer environment for staff and prisoners while minimizing opportunities for criminal activity.

If we expect to return offenders to society at lower risk, we would do well to cultivate correctional communities that offer opportunities for self-improvement and foster skills necessary for successful reintegration. Currently, there is a good deal of confusion among not just the general public, but even criminal justice practitioners, regarding the

status of research on rehabilitation. In 1974, Robert Martinson published “What Works?”, a famous, oft-quoted and often misrepresented meta-analysis of correctional rehabilitative effort.⁴⁵ Martinson’s work cast a long shadow on the future of rehabilitation. The popular interpretation was “nothing works,” even though a number of weaknesses in his work have emerged over the years. For one, Martinson defined “rehabilitation” over-broadly, and included studies of programs with very different structures, target clientele, and of widely varying intensity and duration. Many of the studies had no measure of “treatment integrity,” which concerns the duration and intensity of treatment programs, as well as the frequency with which offenders engage in the intervention. Offender participation in a rehabilitative program was operationalized in different ways in the studies he included. In some cases, participation meant *some* contact with program staff. In other words, in some cases, the offenders did not need to meet any criteria for program completion in order to be included in one of the studies in the analysis. In the years since “*What Works?*” was published, researchers challenged Martinson’s conclusions, reanalyzed his data and carried out further analysis of rehabilitative efforts. The efforts resulted in identification of many types of treatment interventions that *do* work, and that can significantly reduce re-offense and re-incarceration rates. This body of literature is perhaps best summarized in Paul Gendreau and Robert Ross’s survey of over 200 studies. They concluded:

“Our reviews of the research literature demonstrated that successful rehabilitation of offenders had been accomplished, and continued to be accomplished quite well . . . reductions in recidivism, sometimes as substantial as 80 percent, had been achieved

⁴⁵ Robert Martinson, “What Works, Questions and Answers about Prison Reform,” *The Public Interest* 35 (1974): 22-54. Though this is the familiar quoted piece, the full study was conducted by Martinson and colleagues: D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* (New York: Praeger Publishers Inc, 1975).

⁴⁴ Missouri Revised Statutes: Section 217.195

in a considerable number of well-controlled studies.”⁴⁶

While rehabilitative efforts occurring in prison settings had lower success rates than those in the community, these nevertheless have had positive impacts. Gendreau and Ross also noted that these results were not short-lived, as many studies had two years of follow-up, with some exceeding even this standard.

Yet empirical evidence often takes a backseat to perceptions, and fear of crime translates into reduced support for rehabilitation. As fear builds, rehabilitative efforts are framed as sympathetic to offenders and anti-public safety, a political strategy popular after the Martinson study was published. Support for rehabilitation has never returned to pre-Martinson levels. Certainly, the crime surge of the late 20th century did not help matters. It is perhaps surprising, then, to find that rehabilitation efforts are underway in most of America’s prisons. Substance abuse treatment and vocational training/educational activities are most prevalent. Most facilities also offer facilitated self-help programs, and therapy directed at special groups of offenders. The intensity and quality of these efforts varies greatly, though. Many do not adequately match the criteria laid out in the literature that are critical in order to produce positive results. When these programs fail, they erode support even further.

A full agenda for change, while ambitious, requires an investment in high-quality, rigorous, evidence-based programs that carefully target offenders and match treatment to offender needs. Ideally, this involves replicating programs with proven track records. While limited grant funding is available to launch such programs, states need to commit to long-term funding to not only maintain treatment, but to periodically engage in outcome evaluations of these efforts.

If we are to reap the benefits of rehabilitation that begins behind bars, we must continue strengthening practices for managing offenders post-release. In the

long run, releasing offenders into society without a safety net only serves to maintain the status quo, with the tradeoff of high recidivism rates or costly incapacitation. And, as noted earlier, for most offenders, the crime reduction achieved by incapacitation is only temporary. Successful reintegration strategies hold promise for reducing future offending, which means not only *cost* benefits but even greater benefits in reduced victimization. Moreover, these strategies can realize cost savings through more efficient means for handling parole violations. Violations may signify offenders falling into criminal patterns again, but also may reflect inadequate support systems, lack of job skills, and other adjustment difficulties. With supervision and support, many of these offenders can remain safely in the community and not burden taxpayers.

Community support for parole and reintegration programs has waxed and waned throughout corrections history. Public discomfort with parole in part comes from failure to recognize that in the vast majority of cases denial of parole delays release, but does not prevent it. In the vast majority of cases, offenders denied parole do not spend the rest of their lives behind bars. Media coverage regarding new crimes by paroled offenders often suggests that the crime would not have occurred had the offender not been paroled. While it is indisputable that any one *particular* crime that happens when an offender is on parole could have been avoided, delaying release may not decrease the overall likelihood that an offender will eventually return to crime.

Yet, today, and in the past, measures that result in offenders serving less time are often misrepresented as liberal, naïve approaches to pamper criminals and reduce accountability. But those who have worked in the trenches of corrections historically have been among the staunchest supporters of minimizing use of imprisonment and more expansive and creative use of community supervision, and have long struggled to counter public perceptions. Indeed, some of the most revered figures in corrections history have championed early release. Lewis Lawes, the renowned penologist who helmed the New York state penitentiary, Sing Sing, from 1919-1942 crusaded zealously for greater use of

⁴⁶ Paul Gendreau and Robert Ross, "Revivification of Rehabilitation: Evidence from the 1980s," *Justice Quarterly* 4:3 (1987): 349-407.

indeterminate sentencing.⁴⁷ In a piece for *Harper's Monthly Magazine* written in 1938, Lawes refuted the then-popular view that supervised release coddles prisoners and argued strenuously for its value in promoting public safety.⁴⁸ The situation Lawes encountered is quite similar to that nearly a full century later, with criminal justice scholars and system professionals advocating policy responses that are rejected by the public.

An unexpected upside of budget shortfalls is a willingness to consider new directions, or expand into directions that may not be politically popular, but that can have positive fiscal impacts. In 2003, the Vera Institute and National Conference of State Legislatures convened a roundtable discussion with legislators from nine states to address the budget crisis they were facing. Among the practices that were reported to be underway were the repeal of mandatory minimum laws, adjusting release mechanisms to spur earlier release, and expanded use of diversionary programs, probation, and treatment for drug offenders.⁴⁹ The discussion was tempered with the recognition that the public may not embrace such changes, and that politicians themselves had often played to public fear by promulgating the get-tough approaches. As Sen. Don Redfern (R-Iowa) noted:

“We’re going to have to convince them that the kinds of things we’re doing are not going to jeopardize public safety, but make cost-effective sense — plus prepare someone, because most of our prisoners eventually get out.”⁵⁰

In the past decade, the Council of State Governments has been vigorously extolling the benefits of re-entry programs, cataloguing and evaluating state initiatives.⁵¹ The catchphrase “reinvestment in

justice” is gaining increasing popularity with the judiciary and correctional administrators, as well as elected officials. States are exploring crime reduction through use of evidence-based practices to strengthen community supervision, which includes providing access to services to assist offenders reentering the community. The array of services extends to securing stable housing, mental health and drug and alcohol treatment, job training and placement, and parenting classes. Collectively, these approaches are intended to aid offenders in establishing a stake in the community and building support systems.

States are faced with the choice of trying to forge ahead under fiscal pressure or cutting programs to achieve short-term gains, and many are moving forward. In 2002, Missouri’s Department of Corrections (MDOC) began implementation of a massive initiative to reduce crime through more effectively transitioning offenders back into society. The Missouri Reentry Process is working to leverage costs through engaging other state agencies in the initiative, along with non-profit service providers, higher education institutions, churches, and other faith-based groups. Even Texas, legendary for its tough-on-crime stance, has bowed to pragmatism in recent years. The Lone Star State began exploring alternatives to long-term incarceration and refined its core mission. A pivotal point was when the legislature faced a projected \$2 billion in construction costs over a five-year period if they were to keep up the pace of incarceration.⁵² In 2007, the state instead opted to sink \$241 million on diversion sentencing and other treatment programs.

Primary prevention falls outside the scope of corrections spending, but an argument can be made that in the long run, we can reduce the toll of crime if we invest in programs that start long before

⁴⁷ Ralph Blumenthal, *Miracle at Sing Sing: How One Man Transformed the Lives of America’s Most Dangerous Prisoners*, New York: St. Martin’s Press (2004): 96-98.

⁴⁸ *Ibid*, p. 247.

⁴⁹ “Legislators’ Views on Prisons, Punishment, and the Budget Crisis. Dollars and Sense,” The Vera Institute of Justice. July 2003.

⁵⁰ *Ibid*, p. 13.

⁵¹ “Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community,”

Council of State Governments. Reentry Policy Council. New York: Council of State Governments, January 2005, http://www.reentrypolicy.org/resources/jc_resources.

⁵² Marc Levin, “Thinking Outside the Cell: Texas Prison System Innovations,” Texas Public Policy Foundation, accessed October 23, 2011, <http://www.texaspolicy.com/sites/default/files/documents/2011-TxIndigentDefenseSummitPPT-CEF.pdf>.

criminal behavior emerges. The reward and cost savings, of course, will not be reaped for several years. Evidence-based practices include early interventions designed to produce changes in participants' lives throughout their life spans. One example is Michigan's famed High/Scope Perry Preschool Project, an intervention stunning in its simplicity. The program consisted of a high-quality preschool program for at-risk African-American children living in an impoverished community. Program staff offered 2.5 hours daily of educational activities and weekly home visits to encourage healthy development in participants for up to three years. In addition to myriad other social benefits, subjects randomly assigned to the project were significantly less likely to be arrested for violent, property and drug crimes from various life stages beginning in adolescence up to age 40. They were also less likely to spend time incarcerated, with 28 percent of the preschool group and 52 percent of the controls being sentenced to jail or prison.⁵³ Results of a cost-benefit analysis suggest savings of \$68,584 to the potential victims of crimes never committed, and \$15,240 in savings from costs of dispensing justice.⁵⁴ Other programs described in the "what works" literature take a similar approach in targeting established risk factors and helping those at-risk to develop protective factors and competencies to improve a range of life outcomes.

Organizations representing front-line crime fighters increasingly are realizing the value of preventing crime in the early years. The International Association of Chiefs of Police, the National Sheriffs' Association, and the National District Attorneys Association, have all put forth official resolutions supporting the efforts of *Fight Crime: Invest in Kids*. This national, non-profit group promotes awareness of the tremendous cost savings and public safety benefits that can be reaped through

enhanced investment in programs such as pre-schools, after-school programs — in short, programs that can be implemented at relatively low cost to taxpayers yet have far-reaching impacts on community safety and the cost of fighting crime.⁵⁵

Prognosis

Clearly, crime is a complex, multi-causal phenomenon to which there are no simple solutions, and no single method for reducing it. As stated in the introduction, the direction of corrections and the impact on state budgets is never easy to predict. Judging from how prison populations grew in the last part of the 20th and early 21st century, it is not likely that corrections costs will drop significantly in the near future. In fact, as the demographic shifts so that a larger percentage of the population is between the ages of 15-30, we may experience another crime surge in the next decade.

The optimal balance of fiscal responsibility and public safety may best be achieved through (a) abolishing most mandatory sentences, and supporting legislation that allows states to release offenders committed under these laws who present as low-risk; (b) expanded use of empirically-generated, risk-based sentencing tools to capture the benefits of selective incapacitation; and (c) investment in evidence-based practices in the areas of prevention, rehabilitation and re-entry.

Our communities will continue to struggle to dole out penalties in a manner that is both just and cost-effective. At this juncture, the national trend towards "smart sentencing" and reinvestments in long-term gains can be seen as promising, though how long these efforts are sustained remains to be seen.

⁵³ Lawrence J. Schweinhart, Jeanne Montie, Zongping Xiang, W. Steven Barnett, Clive R. Belfield, and M. Mores, "Lifetime Effects: The High/Scope Perry Preschool Study Through Age 40," High/Scope Educational Research Foundation, 2005.

⁵⁴ Clive R. Belfield, Milagroes Nores, W. Steve Barnett, and Lawrence J. Schweinhart, "The High/Scope Perry Preschool Program: Cost-Benefit Analysis Using Data from the Age-40 Follow-up," *Journal of Human Resources*, 4 (Winter 2006): 162-190.

⁵⁵ <http://www.fightcrime.org>, accessed, May 21, 2011.