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Examining the Myths of Federal Sentencing Reform

A Rebuttal to Common Critiques of Reducing Prison Populations and Policy Recommendations for Congress

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Key Points

- There is currently comprehensive criminal justice reform legislation being debated in both Houses of Congress.
- Although there is substantial bipartisan support for the legislation, several legislators and groups object to reforms that have already been shown to successful at the state level.
- Recent data suggests criticisms of federal criminal justice reform are misguided.

Introduction

At the end of 1980, the Bureau of Prisons listed the federal prison population as 24,640. In the early 1980s through the mid 90s, several pieces of legislation caused the federal prison population to more than double over the next decade (Bureau of Justice Statistics; James 4; Baumer, *et al.,* 2-3). This legislation removed the federal parole system, established many of the mandatory minimums that are used today, greatly reduced the use of "good time" credits, increased the length of existing penalties, and established "three strikes and you're out" provisions.

Today, there are 205,723 offenders under the jurisdiction of federal correctional authorities (Dept. of Justice, Bureau of Prisons 2016). In comparison to 1980, that is a federal prison population explosion of over 734 percent in 35 years, while the population of the United States has only increased by 40 percent over that same time period (U. S. Census Bureau).

Studies have shown this dramatic increase in incarceration likely had some effect (10-25 percent) on the decrease in crime rates in the 1980s and 1990s (Baumer, *et al.* 26). From 1993-2013, the federal violent crime rate dropped considerably. However, even while incarceration rates flattened in the 2000s, crime rates continued to drop (Bureau of Justice Statistics 2016). A 300-plus-page dissection of the large-scale incarceration policies by the Committee on Causes and Consequences through the National Research Council of the National Academies (NRC) concluded that while the reforms of the 1980s and 90s had some effect on crime rates, "the magnitude of the reduction is highly uncertain." This is especially true when examining policies that target low-level, nonviolent offenders. (Committee on Causes and Consequences of High Rates of Incarceration, 5-7).

In response to these policies, the Bureau of Prisons' budget increased by $173.2 million per year, adjusting for inflation, during that same time period—from $330 million in 1980 to $6.859 billion in 2014 (James, 4).

With indeterminate results and a multitude of negative societal and economic effects (National Criminal Justice Resource Center) there is a growing bipartisan consensus on Capitol Hill to reform many of the laws that have caused federal corrections to explode, specifically for nonviolent, low-level offenders. In fact, reforms have already resulted in a decline in the prison population, and it is projected to fall to 186,295 in 2017 (Bureau of Prisons).

There has also been opposition to changing the status quo. However, recent studies have shown fears are misguided. This paper will provide an overview of the federal criminal justice system, refute the more common critiques of criminal justice reform, and offer proposals to lawmakers.

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Composition of the Federal Prison System

The makeup of the federal population is dissimilar to that at the state level. In 2014, a slight majority (50.1 percent) of federal inmates are incarcerated for drug crimes, including trafficking, possession, and other drug offenses, compared to a 15.7 percent average of state jurisdictions. Only 7.3 percent of all federal inmates are incarcerated for violent offenses as their most serious offense, compared to 53.2 percent at the state level (Carson).

According the United States Sentencing Commission's (USSC) 2014 Sourcebook of Federal Sentencing Statistics, of those incarcerated for federal drug offenses, 48.6 percent were in the lowest criminal history category, with only zero or one criminal history points (USSC 2015a, Table 37). To put this in perspective, an individual will receive two points for any prior sentence exceeding 60 days and one point for any sentence less that 60 days, including fine-only sentences, probation, suspended sentences, or deferred sentences (USSC 2011). As a result, individuals with a Category I criminal history are either first-time offenders or previously committed one very low-level crime. The average sentence for drug trafficking offenders with a Category I criminal history was 53 months. (USSC 2015a, Table 14).

Only 16.2 percent of all individuals sentenced for drug crimes had a weapon involved in the offense and only 7.1 percent of drug offenders received an aggravating role adjustment, pursuant to § 3B1.1 of the USSC Guidelines Manual, for either being an organizer, leader, manager, or supervisor in the activity (USSC 2015a, Tables 39, 40). The average sentence for all drug offenders was 70 months.

Overview of Sentencing Procedures

Pursuant to the Comprehensive Crime Control Act of 1984, the USSC was created to "establish sentencing policies and practices for the federal courts." The Guidelines manual, a 588-page document created by the USSC, guides and sometimes obligates how judges sentence offenders (USSC 2015b).

In general, an individual's sentence is based primarily on two aspects: the current offense(s) and the individual's criminal history. Based upon the offense, the individual is designated an offense number from 1 to 43. For an offender's criminal history, a number value is assigned based upon severity and/or frequency of past convictions. The categories range from one to six, with six being the most severe criminal history (USSC 2015b). Then based upon the current offense, an individual is given a sentencing guideline range.

For example, assume a person is convicted of possession with intent to distribute five kilograms of a substance containing a detectable amount of cocaine; the substance does not have to be all cocaine. This places the individual at a base offense level of 30 for his or her current offense. If the defendant has little or no criminal history (zero to one points), the sentencing guidelines suggest a sentence between 97 and 121 months (USSC 2015b, 404). In 2014, individuals in Zone A, the lowest sentencing zone range (when taking into account current offense and criminal history) received prison with no probation 68.2 percent of the time, and only received probation 29.7 percent of the time (USSC 2015a, Table 16).

In 2005, the Supreme Court ruled in *United States v. Booker* that the sentencing guidelines were advisory and judges could sentence below or above the guidelines. Therefore the judge in this situation normally could decrease the sentence after considering several factors pursuant to 18 U.S.C. 3553. However, based upon the drug quantity, this individual would be subject to mandatory minimum sentence of 10 years.* If the defendant had one prior drug felony, he would be subject to a mandatory minimum of 20 years, and if he had two prior drug felonies, he would be subjected to life in prison, regardless of whether there was violence involved in the offense.

However, there are two ways an individual can avoid the sentencing requirements of certain mandatory minimums. First, the safety valve provision allows certain drug offenders convicted of an offense pursuant to Section 401, 404, or 406 of the Controlled Substances Act, or Section 1010 or 1013 of the Controlled Substances Import and Export Act, to be sentenced without regard to a mandatory minimum if all apply:

* *Assuming no mandatory minimum was imposed in this example, the judge would be required to send the offender to prison for at least one-half of the minimum term (48.5 months) with the other half to be supervised released (Chapter 5 Sentencing Guidelines).*

- Defendant does not have more than one criminal history point;
- Defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense;
- The offense did not result in death or serious bodily injury to any person;
- Defendant was not an organizer, leader, manager, or supervisor of others in the offense nor were they engaged in a continuing criminal enterprise;
- Defendant truthfully provided to the Government all information and evidence concerning the offense or offenses (18 U.S.C. 3553 f).

Second, upon a motion from the Government, the sentencing judge may impose a sentence below a mandatory minimum if the defendant provided "substantial assistance in the investigation or prosecution of another person who has committed an offense" (18 U.S.C. 3553 e).

Critiques of Criminal Justice Sentencing Reform

Some individuals and groups have raised concerns and opposition to the criminal justice sentencing reform movement. This section will highlight several of the prevalent critiques and the reasons that they are misguided and/or not supported by recent data.

Because the federal prison population has decreased since 2012, no sentencing reform is needed.

In July 2015, the National Association of Assistant United States Attorneys (NAAUSA) released a publication titled *Dangerous Myths of Drug Sentencing 'Reform,'* highlighting what it considers "myths" of federal drug sentencing reform. The NAAUSA paper argues, among other things, that the federal prison population is not exploding because 1) incarcerates have declined for two years in a row, and 2) several policy changes will reduce this population even further.

It is true that the federal prison population has been declining in the past three years. In 2012, the federal prison population stood at 217,815 inmates. In 2014, the population was 210,567 (BJS). Today, it is 195,933 (Bureau of Prisons). Several reforms are attributable to at least some of this reduction. For example, the USSC's Amendment 782, discussed in greater detail below, resulted in a decrease of approximately 6,000 inmates in the prison population on November 1, 2015. This reform will also have the potential to reduce the sentences of over 46,000 inmates.

The NAAUSA has argued that because the population has decreased, no further reform is needed (4-6). It is true that the federal prison population has been declining in the past three years. In 2012, the federal prison population stood at 218,687 inmates. In 2014, the population stood at 209,149. Today, it stands at 205,723 (DOJ 2015, 5). Several reforms are attributable to at least some of this reduction: specifically mentioned are USSC's Amendment 706, which lowered guideline sentencing ranges for certain crack-cocaine offenses; the Fair Sentencing Act of 2010 (FSA), which reduced the sentencing disparity between offenses for crack and powder cocaine; and Amendment 782, which reduced by two levels the offense level assigned to drug quantities that triggered mandatory minimum penalties (USSC 2014a).

These were much needed reforms that have reduced the federal prison population. However, this does not mean that the federal system is now fixed—far from it. First, Amendment 706 and the FSA have been in place for eight and five years respectively, and populations actually increased during the first few years of their enactments. Amendment 782, on the other hand, will be applied retroactively to potentially release early 46,376 inmates, yet this will only affect less than a quarter of the offenders currently in federal prison.

Second, Amendment 782 does not automatically reduce the sentences of the eligible inmate class. Judges must "consider the nature and seriousness of the danger to any person or the community that may be posed by such a reduction." Additionally, Amendment 782's enactment date was pushed back a year from its actual enactment (November 1, 2015), in order to allow time for courts to review each case thoroughly for a possible reduction, ensure all offenders released have the opportunity to participate in programs designed to promote successful reentry and decrease recidivism, and allow agencies responsible for supervision post-release to prepare for a larger population of offenders (USSC 2014b, 1-3).

Third, assuming Amendment 782 reduces all offenders' sentences retroactively, it will reduce the average sentence by only 18 percent, or from 133 months to 108 months on average. The vast majority of these offenders (71.4 percent) will come from the three lowest criminal history categories, with nearly half of these offenders not eligible for release until November 2018 (USSC 2014a, 3). Therefore, this amendment is only affecting a small portion of offenders for a small portion of their sentences that will, for almost half of the eligible pool, not trigger until three or more years from the effective date.

As will be discussed in a subsequent section, there are reforms that should be enacted by Congress that will increase safety, reduce incarceration rates, reduce corrections spending, and improve reentry outcomes, building upon previous actions of the USSC, Congress, and the White House.

Elimination or reduction of mandatory minimum sentencing undermines the ability of law enforcement to combat drug trafficking organizations.

The same NAAUSA paper claims that "slashing mandatory minimum sentences will undermine the ability of law enforcement officials to dismantle drug trafficking organizations" (10).

It also notes that 48.5 percent of drug trafficking defendants facing mandatory minimums prevented their application by providing information to law enforcement. Therefore, they argue that with no citation, the current mandatory minimum statutes encourage cooperation by offenders, which is imperative to take down drug trafficking organizations (10).

Yet recent data suggests mandatory minimums do not incentivize offenders facing lengthy sentences to give up information that they would otherwise hold back.

In August 2015, the USSC released a report on the impact of the Fair Sentencing Act (FSA) (USSC 2015c). The FSA, among other things, increased the quantities of crack cocaine that trigger mandatory minimum penalties for crack cocaine offenses from 5 grams to 28 grams for mandatory minimum of five years, and from 50 to 280 grams for a 10-year mandatory minimum. This changed the crack cocaine-to-powder cocaine ratio from 100-to-1 to 18-1. In other words, prior to the enactment of the FSA, it took 100 times as much powder cocaine as crack cocaine to receive the same mandatory minimum sentence (10). The FSA also removed the mandatory minimum for simple possession of crack cocaine (7).

As stated previously, offenders can receive relief from mandatory minimum sentences by the safety valve provision pursuant to 18 U.S.C. § 3553(f) if offenders truthfully provided all information and evidence they have concerning the offense. Also, offenders could be relieved of a mandatory minimum if they provided substantial assistance to the government. Following the logic provided in the NAAUSA article, there should have been a large drop-off in the amount of individuals whom received the "safety valve" provision or provided substantial assistance to the government due to the FSA, because offenders would be less inclined to cooperate with prosecutors due to the removal of simple possession mandatory minimums and the increase in drug quantity triggering the mandatory minimums.

But this has not been the case. First, the rate of sentences that were below the guidelines range due to substantial assistance to the government remained practically identical from 2005-2013, indicating offenders were just as inclined to provide information before and after the amendment (USSC 2015c 25).

Second, although there has been a slight decrease in individuals receiving the safety valve provision, the statistics show that it is likely not the cause of individuals being less amenable to cooperate with law enforcement. Prior to the enactment of the FSA, the percentage of individuals receiving the safety valve provision was trending downward from 14.2 percent in 2008 to 12.3 percent in 2009. It dropped again to 11.3 percent in 2010, then increased slightly to 11.6 percent in 2011 before falling back down to 10.9 percent in 2012, and 10 percent in 2013. Overall, there was a larger decrease in individuals receiving the safety valve provision in the year prior to the enactment of the FSA (2008-2009) than the three years subsequent to its enactment (USSC 2015c).

Further, increased conviction rates for crack cocaine offenders who were ineligible for safety valve provisions due to being a "career offender," receiving an aggravating role adjustment, or having an offense that involved weapons, all increased in some or all years since the FSA's enactment. This likely caused the slight decrease in the percentage of offenders receiving the safety valve provision, rather than any disincentive from the FSA's policies (USSC 2015c, 19).

Third, the rate of guilty pleas for drug offenses also has stayed consistent before and after the FSA and subsequent to other recent reforms, such as the attorney general's memorandum to U.S. attorneys on August 12, 2013, which directed them to decline to charge the quantity that would obligate the sentencing of the individual under mandatory minimum provisions if the defendant met certain criteria that would categorize the individual as a low-level offender (Holder).

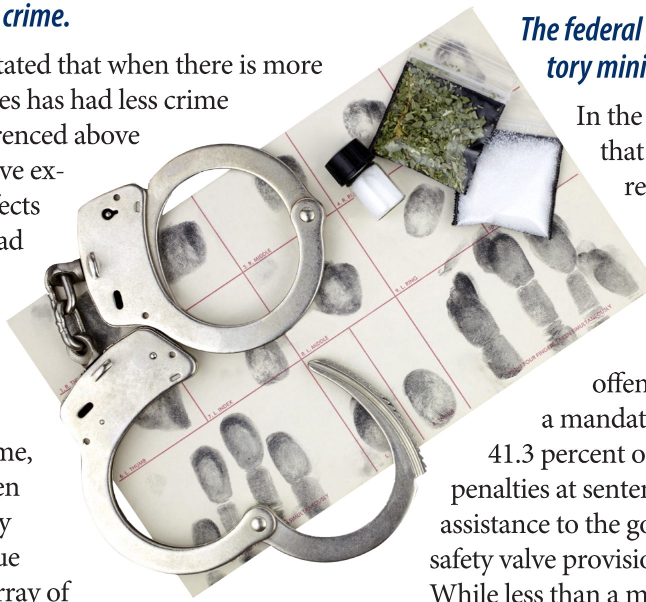
Since this directive, the use of mandatory minimums for drug offenses has decreased by 20.86 percent for mandatory minimums carrying a five-year penalty, and 18.31 percent for 10-year mandatory minimum offenses. However, guilty pleas for drug offenses have stayed consistent before the directive and after. In 2012, the rate of guilty pleas for drug trafficking offenses was 97 percent (USSC

2012); in 2013, the percent was 96.8 percent and for 2014, 97.4 percent (USSC 2015a). In other words, prosecutors are charging one-fifth less of mandatory minimums, but are still receiving the same rate of guilty verdicts.

In whole, this data suggests that mandatory minimums have little to no effect on defendants' decisions on whether to cooperate with the government and how to proceed with their case, greatly undermining the notion that mandatory minimums are critical tools to law enforcement to dismantle drug trafficking organizations.

More prison time equals less crime.

Some against reform have stated that when there is more prison time, the United States has had less crime (Otis). The NRC paper referenced above also released a comprehensive examination looking at the effects higher incarceration rates had on crime rates. The study concluded that while most researchers agree the incarceration policies of the 1980s and 90s had some effect on reducing crime, they are unlikely to have been large. Additionally, the study cautioned looking at the issue singularly due to the wide array of policies and their effectiveness at preventing crime. Legislative initiatives targeting highly dangerous and/or career offenders can be effective at preventing crime, while on the contrary, policies enacting overincarceration for low-level offenders will have very little positive effect on crime, and actually may cause more criminality post-release (NRC 131, 146-150,155). In sum, although higher incarceration rates have a correlation to crime rate, it is likely menial, and can have negative consequences if high incarceration policies are directed at low-level, nonviolent offenders.



Even more damaging to this theory is the results of criminal justice reform at the state level. A recent examination by Pew of each state's crime and incarceration rates shows the crime rate has declined more in states that have also decreased incarceration. In 33 states where imprisonment went down from 2008-2013, the crime rate fell an average of 13 percent. On the contrary, in the 17 states where imprisonment increased over the same time period, crime rates fell an average of 11 percent (Pew 2015).

On the same side of the coin that crime rates are reduced by higher incarceration rates is the argument that lengthy and definitive sentencing has a deterrent effect. While there is some evidence to suggest that there is a modest incremental deterrent effect to lengthy prison sentences, (Helland and Tabarrok), there is insufficient evidence to generally conclude that lengthier punishment has any measurable deterrent effects. (NRC 90; Cook, *et al.*). However, data does suggest that certainty, rather than severity, in sanctions has a much greater deterrent effect on crime (Hawken and Kleiman; Nagin and Pogarsky).

The federal prison population is not a result of mandatory minimums.

In the NAAUSA paper, the argument is made that the federal prison population is not a result of mandatory minimums, because a majority of drug offenders are not subject to mandatory minimums at the time of sentencing.

In 2013, 63.7 percent of all drug trafficking offenders were convicted of offenses carrying a mandatory minimum sentence. However, only 41.3 percent of those offenders were subjected to these penalties at sentencing either due to providing substantial assistance to the government (20 percent), eligible for the safety valve provision (28.5 percent) or both (10.2 percent). While less than a majority of the population, this still equates to a substantial amount of nonviolent, low-level offenders subjected to lengthy mandatory minimum sentences (USSC 2014c) and thus has a significant effect on the population.

But the true reach of mandatory minimums does not reflect the number of offenders who are actually sentenced to them, but rather on its effect on the system as a whole.

A 2011 report to Congress compiled by the USSC titled "*Mandatory Minimum Penalties in the Federal Criminal Justice System*" discusses in great detail the influence mandatory minimums have had on the sentencing guidelines overall. As directed by Congress, the USSC incorporated many of the mandatory minimums into the sentencing guidelines themselves. As the USSC explains, "the Commission generally has established guideline ranges that are slightly above the mandatory minimum penalty for offenders convicted of offenses carrying a mandatory minimum penalty […] The Commission historically has achieved this policy by setting a base offense level for Criminal History Category I offenders that corresponds to the first guidelines range on the sentenc-

ing table with a minimum guideline range in excess of the mandatory minimum. Therefore, the base offense level, before any enhancements, adjustments, or consideration of criminal history, produces a guideline range that is above the applicable mandatory minimum penalty." This means that mandatory minimums caused the guideline ranges to increase in sentence length, contributing to the federal prison population growth (53-54; James, 8).

Even offenders who were not directly affected by these mandatory minimums likely received increased sentences as a result of the adoption of mandatory minimums.

Policy Recommendations

Adjust mandatory minimum sentences for nonviolent offenders

Research shows longer sentences for low-level, nonviolent offenders do not improve public safety (NCJRS 134-140, 155-156). Yet onerous mandatory minimum sentences for these crimes remain on the federal books. This is not so for many states. Florida, Oregon, and Ohio are among the most recent states to eliminate mandatory minimum sentences for a number of low-level drug offenses.

Research shows longer sentences for low-level, nonviolent offenders do not improve public safety

Though it may be better to repeal mandatory minimums for nonviolent crimes entirely, political realities have often dictated the use of safety valves instead. The principal of the safety valve is the same—to give judges some degree of additional discretion—but it does so with certain conditions attached. A measure of control over sentencing is still maintained by the legislature, ensuring that its policy preferences are met.

As explained above, the federal sentencing system already includes a safety valve for low-level, first-time nonviolent drug offenders. (18 U.S.C. § 3553(f)). This safety valve is a strict test of five conditions that an offender must meet in order to be sentenced below the mandatory minimum, in which case judges will often follow the sentencing guidelines. (Gill 351).

Maryland is the most recent state to adopt this reform. House Bill 121, which became law in 2015, allows a court depart downward from the statutory mandatory minimum for some drug offenses (Md. Code, Crim. Law § 5-609.1). In Maryland, the mandatory minimums for these offenses ranged from 2 years to 40 years. (Md. Code, Crim. Law § 5-607-609) The downward departure is only permitted if imposing the minimum "would result in substantial injustice to the defendant," and if it is not necessary for public safety to maintain a mandatory minimum for that particular defendant.

Similarly, Georgia adopted a safety valve in 2013 applicable to drug offenses. Judges are permitted to depart downward in the interest of justice, as long as the defendant has had no prior felony convictions and was not a leader, did not possess or use a weapon while committing the crime, and death or serious injury did result to anyone who is not party to the crime (Ga. Code Ann. § 16-13-31(g)(2)(a); § 16-13-31.1(b)(1)).

Many other states have created solutions to restore a judge's discretion in sentencing. For example, Connecticut puts a burden on the defendant to show "good cause" for not applying the minimum sentence in drug offenses where there was no use or threatened use of force. On the other end of the spectrum, Oregon and Montana have safety valve provisions that allow for downward departure even in violent crimes, and the requirements are not as strict as the federal government and many other states (Gill).

Congress could expand the current safety valve and also add safety valves to address the sentencing of low-level, nonviolent offenders. There is no "best way" for this to be accomplished, but legislators should consider several options, including restricting by offender, by crime, and outlining particular standards that must be followed.

Sentence drug offenders based on their role in the drug trade

As a way to target drug kingpins—those who lead large drug dealing conspiracies—federal sentencing is based on drug quantities; the larger the quantity, the longer the sentence. Simply put, it was assumed that someone who ran a large drug operation likely would be caught with large quantities (USSC 1995).

In 1986, the Anti-Drug Abuse Act was passed, establishing mandatory minimum sentences based on this premise. The law considered the type of drug, as well as the quantity in assigning 10-year mandatory minimums to the highest level traffickers, and 5-year mandatory sentences to middle-level offenders. Senator Robert Byrd, a cosponsor of the bill, said

that the legislation was targeted to go after "the kingpins—the masterminds who are really running these operations— and they can be identified by the amount of drugs with which they are involved. We require a jail term upon conviction. If it is their first conviction, the minimum term is 10 years…." (USSC 1995).

Instead, the data now shows that of all the federal drug offenders, only a very small percentage fit the intended targets. The USSC took a sampling of offenders who entered into the system in a single year and found that a "courier," described as someone who "[t]ransports or carries drugs using a vehicle or other equipment," was the most common role, with 23 percent. Courier is the second-lowest level of culpability (USSC 2011, 165-167).

A better alternative is to assign a sentence based on the role the individual played in the drug trade. Long sentences must be targeted to go after leaders and traffickers. Congress should alter the Controlled Substances Act to reflect the intent to focus long mandatory minimum sentences on those with some type of enhanced role in the drug trade. Congress has the ability to tailor penalties based on roles or functions, eliminating the one-size-fits-all sentences that allow prosecutors to label anyone a drug trafficker for the sake of threatening a long mandatory minimum sentence.

Corrections should include rehabilitation

Prisons are supposed to be facilities of "corrections" where offenders serve time not only for punishment's sake, but to also be rehabilitated and hopefully become a contributing member of society upon release after serving an appropriate amount of time behind bars. The public believes that this is an essential function of the criminal justice system (Thielo, *et. al.*). Corrections reform must revolve around a few key principles: reducing recidivism, focusing resources on the most dangerous individuals, and maximizing public safety.

Use the proper tools for post-sentencing risk and needs assessments

Criminal sentencing by a judge or jury is not to be taken lightly. After careful consideration and consultation with guidelines and mandatory minimums, a decision is made to deprive offenders of their freedom for a time as punishment, deter others from committing the same crime, and to hopefully allow the imprisoned to be rehabilitated.

If this is the goal, then using the proper tools to assess the risks and needs of an inmate upon entering prison is the most important part of prison reform. States have found success in using standardized tools that allow the corrections system to develop individualized plans for inmates. This can be integrated into necessary programming. For example, reforms in Kentucky ordered several risk and needs assessments in the criminal justice process, including by corrections officials. In turn, the law also required that 75 percent of expenditures be used on evidence-based programming for inmates under community supervision (Pew 2011).

Congress should order the Department of Justice and the Sentencing Commission to develop a standard set of tools for assessing the risk and needs of inmates. This process allows the system to diverting lower risk offenders to alternative to incarceration.

Reduce time served in certain cases

Prisoners should have the ability to reduce time served for good behavior behind bars and for completing programming deemed useful for rehabilitation. Every state differs in the way good and earned time credits apply, both in regard to the type of offender and the amount of time that may be reduced. For example, Louisiana has set a good time standard where nonviolent offenders who did not commit sex crimes can earn one-and-a-half days of reduction for each day served.

The use of good time credit in the federal system has not always been ideal, due to the way it has been applied and understood. It generally no longer encouraged good behavior as "[t]he carrot thereby became an entitlement in a prisoner's eyes, which, when revoked, became an even more punitive stick" (Larkin, 11). Furthermore, a fix is needed to the current calculation of good time credit. Though the statute allows for up to 54 days per year, BOP calculates the time off based on actual time served, rather than on the sentence handed down, resulting in a maximum of 47 days per year (FAMM 2013a). This creative accounting does little to instill faith in our federal corrections system; therefore, a change should be made to reflect the original Congressional intent.

For aging prisoners, re-entry may not be top of mind. The reality is many inmates serving long sentences will likely spend their final days behind bars unless changes are made to the system. An attempted pilot program for elderly compassionate release wound up costing more than incarceration because of the contracts in place necessary for administering home confinement. Additionally, the federal system has recently altered the rules regarding compassionate early release following many reports of the underuse of the then-applicable standards (FAMM 2013b). These changes better defined the guidelines for medical and elderly release programs.

But there is more that can be done. Research regarding the "aging out" for criminal activity indicates the age threshold for elderly early release can be safely lowered in many cases. But no matter what guidelines may change, many of these decisions are left to prison officials, and much is left to their discretion. But by widening the eligibility, more inmates will be under consideration.

In many ways, this could be seen as only a temporary problem if appropriate changes are made to reforming mandatory minimum sentences, or even parole (Price).

Programming with Rehabilitation and Reentry in Mind

In order to encourage inmates to utilize good time and earned time credits, inmates need sufficient programming. It is critical to reducing recidivism that these programs are useful to prisoners and their rehabilitation. This is not always the case. According to Jeff Smith, a former Missouri lawmaker who spent time in federal prison for an elections law violation, "computer training" consisted of waiting around and then pressing a few computer keys for 15 minutes, without instruction (Smith).

For inmates dealing with substance abuse issues that may be contributing to their criminal behavior, the residential drug abuse program may be a key element to their future success. This could also enable Congress to recognize the same success of states and to consider alternatives to long terms of incarceration for low-level inmates who may be incarcerated due, in part, to their substance abuse issues.

It is also important to provide programming that addresses the educational and vocational needs of inmates. In the least, the BOP could do more to allow outside organizations to assist in programming. In Texas, the Prison Entrepreneurship Program is a nonprofit organization that is permitted into prisons to connect inmates with businessmen and businesswomen to develop job opportunities for themselves by writing a business plan. Other parts of the programming teach inmates about self-sufficiency and how to succeed in life outside the prison walls. The program, backed by a study performed by Baylor University, has shown promising reductions in recidivism (Johnson, *et al.*).

Conclusion

The myths of federal sentencing reform do not fare well when compared with the facts—criminal justice data from the federal and state level. For more than a decade, conservative states have shown that smart sentencing reforms can safely reduce prison populations while decreasing crime. It is time for members of Congress to come together on an issue that has support from both sides of the aisle and right-size our federal criminal justice system.

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