

1-1-1995

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Recommended Citation

Wootton, James (1995) "Truth in Sentencing—Why States Should Make Violent Criminals Do Their Time," *University of Dayton Law Review*. Vol. 20: No. 2, Article 23.

Available at: <https://ecommons.udayton.edu/udlr/vol20/iss2/23>

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TRUTH IN SENTENCING—WHY STATES SHOULD MAKE VIOLENT CRIMINALS DO THEIR TIME

James Wootton*

I. INTRODUCTION

More and more state legislators are coming to realize that America's criminal justice system is failing, and that too many Americans literally are dying from a severe case of bad public policy.

ITEM: Consider a heinous crime that has shocked the nation. Twelve-year-old Polly Klaas of Petaluma, California, was abducted from her home during a sleepover with two friends on October 1, 1993. During the abduction, both of Polly's friends were gagged and bound by the assailant. Little Polly, forcibly taken into the night, was later murdered. Richard Allen Davis, the alleged assailant, already had been sentenced to sixteen years in prison for kidnapping, but was released on June 27, 1993, after serving only eight years of that sentence.¹

ITEM: James Jordan, the fifty-six-year-old father of basketball star Michael Jordan, was fatally shot in the chest on Interstate 95 in North Carolina on July 23, 1993. Charged in the murder of James Jordan were Larry Martin Demery and Daniel Andre Green. Demery had been charged in three previous cases involving theft, robbery, and forgery. Green had been paroled after serving two years of a six-year sentence for an assault in which he had hit a man in the head with an axe, leaving his victim in a coma.²

ITEM: Sister Mary Ann Glinka, aged fifty and a member of the Franciscan Sisters of Baltimore Motherhouse in Baltimore, Maryland, was strangled to death at the convent. Baltimore police concluded that Sister Mary Ann was murdered during a robbery at the convent. On March 21, 1993, Melvin L. Jones was arrested and subsequently charged with robbery and the murder of Sister Mary Ann. The alleged assailant had been sentenced in North Carolina in 1979 to eighteen to twenty years in prison for voluntary manslaughter, but had escaped on November 27, 1986. In 1989, Jones was arrested again in Baltimore for three burglaries, but let out on parole in 1990. In 1991, the North Carolina judiciary sentenced Jones to a year in jail on the escape charge, and contacted Maryland

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1. Press Release, Representative Jim Chapman (D-TX), December 6, 1993.

2. Michael Tackett & Bob Sakamoto, *Suspects in Jordan Slaying Have Previous Records, The Two Teenagers Charged in the Killing of Michael Jordan's Father Were Arraigned on Monday*, CHICAGO TRIB., Aug. 17, 1993, at D1.

officials in December 1991 to arrange for Jones to be paroled in Maryland.³

Not surprisingly, Americans are increasingly alarmed at news stories of violent crimes committed by individuals who had received long sentences for other crimes and yet were released after serving only a small fraction of their time. This alarm is legitimate, because a high proportion of such early-release prisoners commit serious crimes after being released. If crime is to be reduced in America, this trend needs to be reversed. Experience shows clearly that the first step in fighting crime is to keep violent criminals off the street. Keeping violent criminals incarcerated for at least eighty-five percent of their sentences would be the quickest, surest route to safer streets, schools, and homes.⁴

Government statistics from 1988 on release practices in thirty-six states and the District of Columbia show that although violent offenders received an average sentence of seven years and eleven months imprisonment, they actually served an average of only two years and eleven months in prison or only thirty-seven percent of their imposed sentences.⁵ The statistics also show that, typically, fifty-one percent of violent criminals were discharged from prison in two years or less, and seventy-six percent were back on the streets in four years or less. Consider the median sentence and time served in prison for those released for the first time in 1988:⁶

OFFENSE	MEDIAN SENTENCE	MEDIAN TIME SERVED
Murder	15 years	5.5 years
Rape	8 years	3 years
Robbery	6 years	2.25 years
Assault	4 years	1.25 years

When these prisoners are released early, a high percentage commit more violent crimes. A three-year follow up of 108,850 state prisoners released in 1983 from institutions in eleven states found that within three years sixty percent of violent offenders were rearrested for a felony or serious misdemeanor, forty-two percent were reconvicted, and thirty-seven percent were reincarcerated. Of the violent offenders, thirty-five percent were rearrested for a new violent crime. Among nonviolent prisoners released, nineteen percent were rearrested within three years for a new violent crime.

As a result of these lenient early-release practices and the high percentage of crimes committed by criminals released early, Americans are suffering from a fearful epidemic of violent crime. Studies indicate that over twenty-five percent

3. Jason Grant, *Parolee Charged in Slaying of Baltimore Nun*, WASH. TIMES, Mar. 22, 1993, at B1.

4. See Bureau of Justice Statistics, U.S. Department of Justice, National Corrections Reporting Program, 1988, table 2-7 (1992).

5. See *id.* at table 2-4.

6. See *id.* at table 2-7.

of all males admitted to prison were being reincarcerated after a new trial for a new offense before the prison term for the first offense had expired. Since 1960, the compounding effect of these crimes by prisoners or early release prisoners has driven the violent crime rate up by over 500 percent. Now eight out of ten Americans are likely to be victims of violent crime at least once in their lives,⁷ at a total of \$140 billion.⁸

Not surprisingly, the fear of violent crime is intensifying. Polls indicate a growing loss of public confidence in their personal safety and the safety of their streets and neighborhoods. Some ninety percent of Americans think the crime problem is growing, and forty-three percent say there is more crime in their neighborhood than there was a year ago.⁹ The reason: despite rising arrest rates and prison overcrowding, 3.2 million convicted felons are out on parole or probation rather than in prison. Studies show that within three years, sixty-two percent of all prisoners released from prison are rearrested,¹⁰ and forty-three percent of felons on probation are rearrested for a felony.¹¹

The public understandably wants individuals who have committed serious crimes to be off the streets, serving full prison terms. A recent survey for *Parade* magazine finds that ninety-two percent of Americans want repeat serious offenders to serve all of their sentence without being paroled.¹² This finding is consistent with an earlier Gallup poll showing that eighty-two percent of Americans favor making it more difficult for those convicted of violent crimes like murder and rape to be paroled.¹³

The federal government and the states have begun in recent years to address the problem. Toward the end of the Bush Administration, for example, Attorney General William Barr issued a report making twenty-four specific recommendations to the states to help reduce violent crime.¹⁴ The second recommendation was to institute truth-in-sentencing laws that restrict the ability of parole boards and prison officials to release a prisoner before a specified percentage of his sentence has been served. As of 1987, the federal system required prisoners to serve eighty-five percent of their sentences before they can be released. In 1993, Arizona passed a similar restriction on early release. In November 1993, Governors-elect George Allen of Virginia and Christine

7. See Bureau of Justice Statistics, U.S. Department of Justice, *Lifetime Likelihood of Victimization*, technical report, Mar. 1987.

8. See U.S. Department of Justice, *The Case for More Incarceration*, 1992, at 16.

9. See CNN/Gallup Poll, cited in USA TODAY, Oct. 28, 1993, at 1A.

10. See Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Recidivism of Prisoners Released in 1983*, Apr. 1989.

11. See Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Recidivism of Felons on Probation*, Feb. 1992.

12. See Mark Clements, *Findings from Parade's National Survey on Law and Order*, PARADE, Apr. 18, 1993, at 4-7.

13. See George Gallup, Jr., *The Gallup Report*, Report No. 285 (Princeton, N.J.: The Gallup Poll, June 1989) at 29, 30.

14. See U.S. Department of Justice, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, July 1992. For an excellent discussion of these recommendations, see Mary Kate Carey, *How States Can Fight Violent Crime: Two Dozen Steps to a Safer America*, HERITAGE FOUNDATION STATE BACKGROUND, No. 944/S, June 7, 1993.

Whitman of New Jersey promised full support for enactment of truth-in-sentencing legislation in their respective states. The time is right for the introduction of truth-in-sentencing legislation in the states where violent criminals are being released before serving the bulk of their sentences.

At the same time, state legislators should get substantial help from Congress. Representative Jim Chapman, the Texas Democrat, and Representative Don Young, the Alaska Republican, have sponsored "The Truth in Sentencing Act of 1993," which would encourage states to adopt truth-in-sentencing legislation and would help fund truth-in-sentencing programs. Instead of tax increases to finance the enforcement of truth-in-sentencing initiatives, including prison construction, funding would come from reduction of the size of the federal bureaucracy and cuts in federal spending.

II. HIGH RECIDIVISM: THE FAILURE OF PAROLE

Releasing violent criminals from prison before they have completed their sentences is justified by proponents for one of three reasons: first, prisons are overcrowded and it is too costly to build more prisons; second, "good time" credits, which have the effect of reducing sentences, are and should be given to well-behaved prisoners; and third, prisoners sometimes can be rehabilitated, and so should be paroled. The problem is that the evidence seriously questions the second and third rationales, and shows the first to be very short-sighted.

Recidivism among violent criminals is high. Consider a three-year follow-up of 108,850 state prisoners released in 1983 from institutions in eleven states, conducted by the Bureau of Justice Statistics.¹⁵ The study, the conclusions of which are consistent with those of other such studies, found that within three years some sixty percent of violent offenders were rearrested for a felony or serious misdemeanor and forty-two percent of all violent offenders released were reincarcerated. Of all the violent offenders released, thirty-six percent were rearrested for a violent crime. Among nonviolent prisoners released, nineteen percent were rearrested within three years for a violent crime.

The prisoners in the study accounted for over 1.6 million arrest charges for the time before they had entered prison and for the three years afterwards. These included nearly 215,000 arrests for violent crimes before going to prison and 50,000 violent crimes within three years after release. They were arrested for:

- 14,467 homicides
- 7,073 kidnappings
- 23,174 rapes or sexual assaults
- 101,226 robberies
- 107,130 assaults

15. See Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1983*; see also Bureau of Justice Statistics, U.S. Department of Justice, Special Report, *Examining Recidivism*, Feb. 1985.

III. THE PROBLEMS OF DETERMINING PAROLE

The U.S. Parole Board uses a sophisticated Salient Factor Score (SFS) to guide it in deciding who will be paroled. Unfortunately for law-abiding Americans, the Parole Board turns out to be over-optimistic. Of those classified by the Parole Board staff as “good risks” for parole, the Parole Board assumes that eighteen percent will be rearrested and again sentenced to prison for over one year within five years of release. In addition, the Parole Board expects that twenty-nine percent of “fair risks” who are paroled will be resentenced to over a year in prison within five years of release.¹⁶

Considering the anxiety felt by the government and the American people about risk, this parole policy is remarkable. Where else would such a high failure rate be tolerated, when it results in the death, rape, or injury of ordinary Americans? The Federal Aviation Administration certainly does not allow airplanes to fly with critical parts that fail twenty-nine percent of the time, and the Food and Drug Administration does not allow drugs on the market that have dangerous side effects eighteen percent of the time.

Twenty years ago, James Q. Wilson, then a professor of government at Harvard University, asked a basic question about rehabilitation:

If rehabilitation is the object, and if there is little or no evidence that available correctional systems will produce much rehabilitation, why should any offender be sent to any institution? But to turn them free on the grounds that society does not know how to make them better is to fail to protect society from those crimes they may commit again and to violate society's moral concern for criminality and thus to undermine society's conception of what constitutes proper conduct. [Because the correctional system had not reduced recidivism], we would view the correctional system as having a very different function—namely, to isolate and to punish. It is a measure of our confusion that such a statement will strike many enlightened readers today as cruel, even barbaric. It is not. It is merely a recognition that society at a minimum must be able to protect itself from dangerous offenders and to impose some costs (other than the stigma and inconvenience of an arrest and court appearance) on criminal acts; it is also a frank admission that society really does not know how to do much else.¹⁷

Until there are dramatic improvements in the techniques of rehabilitation and identifying those who can safely be paroled, state legislators would be wise to follow Professor Wilson's admonition: society must protect itself from dangerous offenders and impose real costs on criminal acts. As Douglas Jeffrey, executive vice-president of the Claremont Institute observes: “We need to put justice back into the criminal justice system by putting convicted criminals

16. See Peter B. Hoffman and James L. Beck, *Recidivism Among Released Federal Prisoners: Salient Factor Score and Five Year Follow-Up*, 12 CRIM. JUSTICE & BEHAVIOR, Dec. 1985, at 501-07.

17. See J.Q. Wilson, *If Every Criminal Knew He Would Be Punished If Caught*, N.Y. TIMES MAG., Jan. 28, 1973, at 52-56.

behind bars and keeping them there for appropriate periods of time.”¹⁸ If state legislators were to adopt that simple mission, today’s unacceptable risks to law-abiding Americans would be reduced.

IV. INCARCERATION SAVES MONEY

While full sentences may mean more spending on prison, lawmakers and taxpayers need to understand that early-release programs cost dollars rather than save them. A 1982 Rand Corporation study of prison inmates found that the average inmate had committed 187 crimes the year before being incarcerated.¹⁹ When criminals are released early, many commit a similar volume of crimes when back on the streets.

CRIMES COMMITTED BY FELONS NOT INCARCERATED

ONE CRIMINAL	CRIMES PER YEAR
Burglar	76-118 Burglaries
Robber	41-61 Robberies
Thief	135-202 Thefts
Auto Thief	76-100 Auto Thefts
Forger	62-98 Frauds
Conman	127-283 Frauds
Drug Dealer	880-1,299 Drug Deals

The cost of crimes committed by these early-release criminals is both direct and indirect. Taxpayers must finance the criminal justice system. Householders and businesses must buy private protection such as lighting, locks, dogs, fences, and alarm systems. They must also buy insurance. The victims lose property and wages, and often incur heavy hospitalization costs.

In addition to direct costs, there is the hidden cost of crime. Businesses, for instance, pass on to customers some of their costs for security and stolen merchandise. Households also must “pay” for crime by altering their behavior and life style.²⁰ It has been estimated that crime increases in the early 1980’s caused

18. Editor’s note, Joseph M. and Anne Nutter Bissette, *Ten Myths About Crime and Justice* (Claremont, Calif.: The Claremont Institute, Mar. 1992).

19. See generally Peter Greenwood et al., *Selective Incapacitation*, Report R-2815-NIJ, The Rand Corporation, Santa Monica, Calif. (1982).

20. Edward Zedlewski, *Costs and Benefits of Sanction: A Synthesis of Recent Research*. Unpublished paper, National Institute of Justice, June 1992.

150,000 more New Yorkers to take taxis instead of public transportation; some 140,000 more New York City households sacrificed trips rather than leave their apartments unprotected. 50,000 [New Yorkers] put bars on their windows and 40,000 bought weapons. Even more difficult to assess are the costs of 'urban blight' such as abandoned buildings, unsafe schools, and inner city unemployment. Quite possibly the costs we can't count exceed the ones we can.²¹

It is easy for policy makers to underestimate the tremendous cost of crime, particularly the cost of injuries and deaths of victims. Mark Cohen, a researcher at the U.S. Sentencing Commission, broke new ground in this area in 1988 by using jury verdicts in personal injury cases to estimate the value of injuries to victims. As the table below indicates, the cost to society of each rape is \$51,058, each robbery \$12,594, each assault \$12,028. These costs are invisible to all but the victims who are randomly burdened by society's failure to keep repeat offenders in prison.²²

PER CRIME COST OF CRIME TO VICTIMS (1985 DOLLARS)

CRIME	DIRECT LOSSES	PAIN & SUFFERING	RISK OF DEATH	TOTAL COST
Rape	\$4,617	\$43,561	\$2,880	\$51,058
Robbery	\$1,114	\$7,459	\$4,021	\$12,594
Assault	\$442	\$4,921	\$6,685	\$12,028
Larceny	\$179	\$0	\$2	\$181

Three years ago, David Cavanagh and Mark Kleiman of BOTEC Analysis Corporation, a Cambridge, Massachusetts consulting firm, performed an even more ambitious and complex cost-benefit analysis of incarceration. The analysis includes as many indirect, societal costs and benefits as possible. Cavanagh and Klein estimate the most plausible range of the cost of incarceration of one inmate per year at \$34,000 to \$38,000. But the total benefits occurring from incarcerating that one inmate for a year, eliminating the cost of the individual's probable crimes, could run between \$172,000 and \$2,364,000.²³ In a recent paper, Cavanagh and Kleiman computed a range of benefit-over-cost ratios from 3 to 1 to as high as 17 to 1.²⁴ The high ration was computed by Edward W. Zedlewski of the National Institute of Justice.

21. William W. Greer, *What Is The Cost of Rising Crime?* N.Y. AFFAIRS, Jan. 1984, at 6-16.

22. See Mark Cohen, *Pain, Suffering, and Jury Awards: A Study of the Cost of Crime to Victims*, 22 LAW & SOC'Y REV. (1988).

23. See generally David P. Cavanagh and Mark A. R. Kleiman, *A Cost Benefit Analysis of Prison Cell Construction and Alternative Sanctions* May 1990 (prepared under contract with the National Institute of Justice).

24. *Id.*

The 1982 Rand Corporation study finds that the average robber commits between 41 and 61 robberies a year. Mark Cohen estimates that the actual cost to society of each robbery is \$12,569.²⁵ Assuming the cost to society of keeping a robber in prison is Cavanagh and Kleiman's high estimate of \$37,614 a year, from a strictly financial point of view it makes sense to incarcerate a robber if that individual commits three or more robberies each year.

V. INVESTING IN SAFETY

The imprisonment rate is higher in the United States than it is in other Western democracies mainly because Americans commit crime at a higher rate. The homicide rate in the United States is five times as high as in Europe; the rape rate is more than six times as high; and the robbery rate is four times as high.²⁶

Given the higher crime rates in the United States, and the benefits to society of incarcerating criminals, state and federal officials have underinvested in public safety. According to one estimate, more than 120,000 additional prison beds were needed across the nation at the close of 1990.²⁷ Some might argue that not all inmates belong in prison, and that space should be reserved for hardened criminals. However, ninety-five percent of Americans in prison are repeat or violent offenders.²⁸ Despite this enormous need for additional prison space, spending on corrections remains a very small percentage of state and local budgets. In fiscal year 1990, only 2.5 percent of the \$975.9 billion in total expenditures by state and local governments went for corrections (about \$24.7 billion). Investment in new prison construction is only a fraction of that figure.²⁹

The experience of the following states shows the folly of trying to save money by reducing prison budgets, and the benefits of increased prison construction:

MICHIGAN: In the late 1970s, Michigan's state legislators and voters refused to build new prisons. The state was soon forced to deal with severe overcrowding. Governor William G. Milliken granted emergency releases to 20,000 inmates over four years, some more than two years early. The violent crime rate for Michigan, as reported by the FBI, soared twenty-five percent from 1978 to 1986 amid mounting public outrage. Starting in 1986, a crash prison-building program doubled the inmate population in five years. Michigan's crime rate dropped. By 1990, robbery and burglary rates each fell more than twenty percent. In Detroit, burglaries went down thirty-two percent, and robberies fell thirty-seven percent.

25. Cohen, *supra* note 22.

26. *International Crime Rates*, NCJ-110776, May 1988.

27. See BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONERS IN 1990, table 9 (1991).

28. See BUREAU OF JUSTICE STATISTICS, U.S. DEPARTMENT OF JUSTICE, PRISONS AND PRISONERS IN THE UNITED STATES (1992), at 16.

29. See BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, GOVERNMENT FINANCES: 1989-90 (1991), at 2.

CALIFORNIA: Since 1982, Californians have approved \$3.7 billion in bonds to build prisons. From 1980 to January 1991, the inmate population quadrupled from 22,600 to 87,300. By 1990, murder rates fell almost twenty-four percent from their 1980-1982 peaks, rape fell nearly twenty-eight percent, and burglary rates were down thirty-eight percent. This translates as an annual reduction of nearly a thousand murders, 16,000 robberies, and a quarter of a million burglaries.³⁰

ILLINOIS: In 1980, the state released 21,000 prisoners three months before completion of their sentences, in an effort to reduce the cost of detention. But while the state saved \$60 million, those prisoners committed twenty-three murders, thirty-two rapes, 262 acts of arson, 681 robberies, 2,472 burglaries, 2,571 assaults, and 8,000 other crimes in the three months following their release.³¹

VI. WHY TRUTH IN SENTENCING HELPS

Truth in sentencing will increase the length of time convicted violent criminals are incarcerated. Currently violent criminals are serving thirty-seven percent of the sentence that has been imposed. If required to serve at least eighty-five percent of their sentences, violent criminals would serve 2.3 times longer than they do now.

If the fifty-five percent of the estimated 800,000 current state and federal prisoners who are violent offenders were subject to serving eighty-five percent of their sentence, and assuming that those violent offenders would have committed ten violent crimes a year while on the street, then the number of crimes prevented each year by truth in sentencing would be 4,400,000.³² That would be over two-thirds of the 6,000,000 violent crimes reported in the National Criminal Victims Survey for 1990.³³

A. Targeting Hardened Criminals

Truth-in-sentencing laws would require state prison officials to retain more prisoners, at a higher cost to the state. But research shows that these prisoners are generally society's most dangerous predators.³⁴ In a landmark study, University of Pennsylvania criminologist Marvin Wolfgang compiled arrest records up to their thirtieth birthday for every male born and raised in Philadelphia in 1945 and 1958. He found that just seven percent of each age

30. See Eugene H. Methvyn, *An Anti-Crime Solution: Lock Up More Criminals*, WASH. POST, Oct. 27, 1991, at C1. Mr. Methvyn is a Senior Editor of Reader's Digest and served on the President's Commission on Organized Crime from 1983 to 1986.

31. See James Austin, *Using Early Release to Relieve Prison Crowding: A Dilemma in Public Policy*, 32 CRIME & DELINQUENCY 480-81 (1986).

32. The median number of crimes reported in the Rand Study was 15. See Greenwood et al., *supra* note 19.

33. See U.S. DEPARTMENT OF JUSTICE, CRIMINAL VICTIMIZATION IN THE UNITED STATES 4 (1990).

34. Methvyn, *supra* note 30.

group committed two-thirds of all violent crime, including three-fourths of the rapes and robberies and virtually all of the murders. Moreover, this seven percent not only had five or more arrests by age eighteen, but they went on committing felonies. Wolfgang and his colleagues estimate these criminals got away with about a dozen crimes.³⁵ Their studies suggest that about 75,000 new, young, persistent criminal predators are added to the population every year. They hit their peak rate of offenses at about age sixteen.³⁶

In response to these findings, Alfred Regnery, who was Administrator of the Office of Juvenile Justice and Delinquency Prevention at the Justice Department from 1982 to 1986, funded projects in cities in which police, prosecutors, schools, and welfare and probation workers pooled information to focus on the "serious habitual offender." The program had a significant effect in many cities. Thanks to this Justice Department program, for example, Oxnard, California was able to place the city's thirty most active serious habitual offenders behind bars, and violent crimes dropped thirty-eight percent in 1987, more than double the drop in any other California city. By 1989, when all thirty of the active serious habitual offenders were behind bars, murders declined sixty percent compared with 1980, robberies dropped forty-one percent, and burglaries fell twenty-nine percent.³⁷

Thus, in conjunction with a criminal justice system that convicts and incarcerates the hardened criminals, a truth-in-sentencing policy will reduce crime by keeping these serious and habitual offenders in prison longer.

B. How Truth in Sentencing Deters Criminals

Incarceration incapacitates violent criminals, and directly benefits law-abiding Americans, by protecting families and also by yielding greater financial savings from reduced crime than the cost of incarceration itself. But stepped-up imprisonment also deters crime. Criminologist Isaac Ehrlich of the University of Chicago estimated that a one percent increase in arrest rates produces a one point decrease in crime rates, and a one percent increase in sentence length produces a one percent decrease in crime rates, for a combined deterrent and incapacitation effect of 1.1 percent.³⁸ Observed trends seem to support Ehrlich's broad conclusion and hence the claim of deterrence. When the rate of imprisonment per 100 crimes began dropping in the early 1960s, for instance, the rate of crime per 100 population began to climb steeply.

A recent report by the Dallas-based National Center for Policy Analysis, written by Texas A&M economist Morgan Reynolds, makes a strong case for the deterrence value of longer sentences. According to Reynolds:

35. See P.E. Tracy, M.C. Wolfgang, & R.M. Figlio, *DELINQUENCY CAREERS IN TWO BIRTH COHORTS* 279-80 (New York: Plenum Press, 1990).

36. *Id.*

37. Methvyn, *supra* note 30.

38. See Isaac Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, J. POL. ECON., May/June 1973, at 521-64.

Crime has increased as the expected costs of committing crimes has fallen. Today, for a burglary, for example, the chance of arrest is 7 percent. If you are unlucky enough to be one of the 7 percent arrested, relax; only 87 percent of arrestees are prosecuted. Of those, only 79 percent are convicted. Then only 25 percent of those convicted actually go to prison. Multiplying out all these probabilities gives your would-be burglar a 1.2 percent chance of going to jail.³⁹

So, too many criminals do not go to jail for the crimes they commit. Reynolds points out that

once in prison, a burglar will stay there for about 13 months, but since more than 98 percent of burglaries never result in a prison sentence, the average expected sentence for each act of burglary is only 4.8 days. Similar calculations yield an expected punishment in 1990 of 1.8 years for murder, 60.5 days for rape, and 6.7 days for arson. Thus, for every crime, the expected punishment has declined over the decades. The decline continues between 1988 and 1990. When punishments rise, crime falls.⁴⁰

In short, Reynolds's argument is that raising expected punishment deters crime. Expected punishment is a function of the risk of being caught and convicted multiplied by the median time served. Therefore, everything being equal, increasing the length of sentence increases expected punishment, and hence a criminal is more likely to be deterred when the sentence is longer.

Reynolds also finds that since 1960, the expected punishment for committing a serious crime in Texas has dropped by more than two-thirds, while the number of serious crimes per 100,000 population in Texas has increased more than sixfold.⁴¹ While this data does not separate out the deterrent effect of longer sentences from the incapacitation effect, it is clear that longer sentences can generally be expected to reduce crime rates.

VII. OBJECTIONS TO TRUTH-IN-SENTENCING LAWS

State truth-in-sentencing laws have great potential to combat violent crime. While academics and legislators in Washington and the states often focus on long-term solutions to the crime problem, such as social or economic conditions or the "root causes" of crime, the special merit of the truth-in-sentencing approach is simply that it keeps violent criminals off the streets while citizens, legislators, and professionals debate the merits of differing approaches in relative safety. In spite of its appeals to common sense, opponents of truth-in-sentencing legislation often make invalid objections. Some argue that truth in sentencing simply costs too much. But such an objection overlooks the opportunity cost of

39. See Morgan O. Reynolds, *Why Does Crime Pay?* National Center for Policy Analysis Backgrounder No. 110 (1990), at 5.

40. *Id.*

41. See Morgan O. Reynolds, *Crime in Texas*, National Center for Policy Analysis Report No. 102 (1991), at 4.

not keeping dangerous offenders in prison.

For example, the cost of incarcerating a criminal is approximately \$23,000 per year, but the cost of the criminal on the street is \$452,000 per year. Some financial estimates are much higher. And, of course, for the families and victims of violent crime, such as James Jordan and Polly Klaas, the human cost is beyond calculation. Others argue that the already large numbers of persons in American jails is an international scandal. While there are indeed more criminals in America who serve more time than criminals in other countries, the fact remains that the violent crime rate in America is proportionately higher than in virtually all other countries. And if there is any scandal, it is the perpetuation of a failing criminal justice system that allows convicted rapists, kidnappers, and armed robbers back on the streets, ignoring the concerns of an American public that desperately needs security from predatory, violent criminals.

Beyond the questions of cost and the higher percentage of individuals being incarcerated, another objection to the enactment of truth-in-sentencing laws is that they ignore the "root causes" of crime. These "root causes" are often discussed in terms of persistent poverty, poor education, and deteriorating families. Liberal academics, of course, are not alone in addressing these maladies; and conservative social criticism, including recent analyses by scholars from the Heritage Foundation, have enriched the growing national debate on America's failing criminal justice system.⁴² But an academic focus on "root causes," whatever its long-term impact on public policy, should not ignore the fact the violent crime itself immediately aggravates these social problems.

Beyond these general reservations, there are several other objections to truth-in-sentencing laws:

Objection #1: Truth in sentencing interferes with other policies. Truth in sentencing does not. For instance, it does not affect *habeas corpus*, mandatory minimum sentences, the exclusionary rule, the death penalty, or gun control. Moreover, truth in sentencing is no threat to existing programs designed to divert criminals from jail or prison, such as community-based corrections, intensive probation, house arrest, restitution, or boot camps for first-time offenders. A judge or jury sentencing a convicted criminal to any of these alternatives would not be in conflict with truth in sentencing. But if a judge or jury imposes a prison sentence on a criminal with such a law on the books, another governmental official cannot later amend the sentence and send that person to an alternative program not involving incarceration. If a judge or jury feels comfortable permitting alternatives to prison for a criminal after listening to the evidence, learning the criminal's background, and hearing from the victim, then truth-in-sentencing requirements would be satisfied.

42. For an excellent summary of the relationship between crime and the deterioration of family life, particularly in urban areas, see Robert Rector, "A Comprehensive Urban Policy: How to Fix Welfare and Revitalize America's Inner Cities," Heritage Foundation *Memo to President-Elect Clinton* No. 12, Jan. 18, 1993; see also Carl F. Horowitz, *An Empowerment Strategy For Eliminating Neighborhood Crime*, HERITAGE FOUNDATION STATE BACKGROUNDER No. 814, Mar. 5, 1991.

Objection #2: Truth in sentencing discriminates against minorities. Some critics argue that the criminal justice system discriminates against black Americans, and so truth-in-sentencing rules will unfairly hit those inmates. On their face, the raw statistics are indeed disturbing. Blacks comprise only twelve percent of the population, but constitute 48.9 percent of state prisoners and 31.4 percent of federal prisoners. The impact of truth-in-sentencing law would depend on whether blacks or whites are disproportionately convicted of crimes covered by the laws, and whether parole currently favors blacks or whites. However, these laws would be even-handed. All convicted offenders, regardless of race, would have to serve eighty-five percent of their sentences before being eligible for parole. A more significant question is whether the higher percentages of blacks in prison are the result of racial bias or of higher rates of crime. A number of studies have been conducted to answer that question and appear to demonstrate that it is higher rates of crime among blacks, and not bias, that accounts for their disproportionate representation in America’s prisons.

Example: Alfred Blumstein, Professor of Urban and Public Affairs at Carnegie-Mellon University, in a 1982 study, concluded that about eighty percent of the observed racial disparity in prison population was the result of differential involvement in crime. He acknowledged, however, that the decision to arrest could be affected by bias.⁴³

Example: Patrick A. Langan, a statistician at the Bureau of Justice Statistics, attempted to test whether bias in arrests might be a factor in the rates of imprisonment. He analyzed the racial composition of lawbreakers from victims’ reports to derive an estimate of what the prison composition should be, and then compared that with the actual percentage of black prison admissions. As the adjacent table shows, the estimated percentage was only a few points below the actual percentage.⁴⁴

ESTIMATE OF PRISON ADMISSIONS FROM VICTIMS’ REPORTS
COMPARED WITH THE ACTUAL ADMISSIONS

Year	Estimated Black %	Actual Black %
1973	48.1	48.9
1979	43.8	48.1
1982	44.9	48.9

Furthermore, a 1990 Rand Corporation study concludes that it is possible to predict with eighty percent accuracy whether an offender will be sentenced to

43. Alfred Blumstein, *On the Racial Disproportionality of United States’ Prison Populations*, 73 J. CRIM. LAW & CRIMINOLOGY 1259 (1982); U.S. Department of Justice, *The Case for More Incarceration*, 1992, at B4.

44. Patrick A. Langan, *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 J. CRIM. LAW & CRIMINOLOGY 666 (1985).

probation or prison.⁴⁵ Adding the offender's race to the equation does not improve the accuracy of the prediction. Race also is unrelated to the length of prison term imposed.

VIII. CONCLUSION

The time has come for states to enact truth-in-sentencing laws. There are few viable alternatives that protect citizens from the immediate threat of violent crime. Parole, for example, is a failed experiment. The American people deserve better.

The task before America's state legislators and governors is to pass truth-in-sentencing legislation that would require violent criminals to serve the bulk of their sentences—eighty-five percent is a good benchmark—and to provide the resources it will take to implement such laws. The federal government can encourage this commonsense approach. One such initiative is the Truth in Sentencing Act of 1993, H.R. 3584, introduced by Representatives Jim Chapman and Don Young. This bill would encourage each state to adopt truth-in-sentencing laws and would fund assistance to the states, amounting to \$10.5 billion over five years, to help them implement such laws, including the building and operating of prisons. Trimming the federal bureaucracy, not tax increases, is the financing mechanism for these efforts.

The cost of doing nothing is unacceptably high. Crime is a leading concern for Americans. Political leaders and state legislators who can focus the public's attention on a common sense reform like truth in sentencing will be setting the terms of the national debate.

45. *Race and Imprisonment Decisions in California* (1990).