

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/letter-to-the-tennessee-task-force-to-address-sentencing-and-recidivism/>

## Public Facing Advocacy Writing

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August 3, 2015

### Re: Groups Support Tennessees Task Force to Address Sentencing and Recidivism

Dear Commissioner Gibbons and Commissioner Schofield:

On behalf of the undersigned organizations, representing faith leaders, criminal justice reform groups, and civil and human rights advocates, we urge you to support and advance criminal justice policy changes aimed at meaningfully addressing the primary drivers of incarceration growth and unsustainable costs in the Tennessee prison system.

No one answer will address the states substantial growth in incarceration, as no one factor contributed to that increase. According to the U.S. Department of Justices Bureau of Justice Statistics, Tennessees imprisonment rate has grown 256 percent, from 171 in 1981 to 438 in 2013.<sup>1)</sup>E. Ann Carson, Prisoners in 2013 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014, NCJ 247282), 7; Stephanie Minor-Harper, Prisoners in 1981 (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 1982, NCJ 82262), 2. A recent study by the Tennessee Department of Correction found in a study of recidivism that 46 percent of persons released from incarceration returned to prison or jail within three years.<sup>2)</sup>Mary Karpos, Tennessee Department of Correction Recidivism Study Felon Releases 2001-2007 (Nashville, TN: Tennessee Department of Correction, 2010), 4. The Tennessee Department of Correction (DOC) budget has increased significantly over the past decade, reaching its current level of \$949 million in FY 2014,<sup>3)</sup>Derrick D. Schofield, Tennessee Department of Correction Annual Report 2014 (Nashville, TN: Tennessee Department of Correction, 2014), 4. an increase of 74% since FY 2004.<sup>4)</sup>Gabrielle L. Chapman, Tennessee Department of Correction Fiscal Year 2003-2004 Annual Report (Nashville, TN: Tennessee Department of Correction, 2003-2004), 32.

Proposals under consideration in Tennessee include contracting with the Corrections Corporation of America for additional prison capacity to address population concerns at a newly-constructed prison in Hartsville, Tennessee in Trousdale County.<sup>5)</sup>Corrections Corporation of America, Announcing a New CCA Facility in Tennessee (Nashville, TN: Corrections Corporation of America, July 7, 2015). According to reports, the medium-security prison would have a capacity of more than 2,500 beds for male prisoners. This proposal moves Tennessee in the wrong direction. In recent years, states like Texas and Kentucky have reduced their prison populations and terminated contracts with for-profit prison companies.<sup>6)</sup>Nicole D. Porter, On the Chopping Block 2013: State Prison Closures (Washington, DC: The Sentencing Project, 2013).

### Evolving Consensus on Criminal Justice Policy and Practice

The Task Forces interest in addressing ways to hold justice-involved persons accountable while working to reduce crime and improve public safety is part of a recent trend by states and the federal government in undertaking similar efforts. For more than a decade the political environment shaping criminal justice policy has been evolving in a direction emphasizing smart on crime and evidence-based approaches to public safety. This has involved growing bipartisan campaigns at both the federal and state levels to promote more strategic sentencing and reentry policies, and to address the unprecedented growth and cost of the corrections system created over the past several decades.

At the state level, 29 states have adopted reforms designed to scale back the scope and severity of their mandatory sentencing policies over the past decade.<sup>7)</sup>Ram Subramanian & Ruth Delaney, Playbook for Change? States Reconsider Mandatory Sentences (New York, NY: Vera Institute of Justice 2014). State changes have modestly impacted prison populations. The number of people incarcerated in state prisons has declined for three years since 2010, and in 2012 (the most recent year for which data are available), 27 states

experienced a reduction in their prison populations. While these trends are encouraging it is also important to note that the overall scale of change has been quite modest.

States like Texas have achieved prison population reductions, too. During 2012 Texas experienced a reduction of nearly 6,000 people in its prison population. This shift built on bipartisan initiatives designed to reduce parole revocations and enhance treatment programming. But even with this recent population reduction the states incarceration rate declined only to 601 per 100,000 a dramatic rate of imprisonment even by the standards of a nation of mass incarceration. Such an observation does not diminish the significance of these changes or suggest that changing a political climate on criminal justice policy is a simple matter, but it does tell us that there is potential for more substantial change in many states.

### **Building on Bipartisan Consensus**

We urge you to build on this bipartisan momentum by supporting criminal justice reforms that embrace the following principles: 1) prioritize certainty over severity in sentencing practices; 2) promote and adequately fund recidivism reduction and reentry programming; and 3) authorize a second look post-conviction review for any prisoner who has served 15 or more years. We believe these principles will effectively address growing prison costs and populations while protecting public safety.

#### Prioritize Certainty over Severity in Sentencing Practices

According to recent reports, the Task Force closely examined the states sentencing structure and found that it led to confusion among various participants in the justice system. To address this confusion the Task Force is considering revising the structure to achieve greater certainty and transparency at the time of sentencing. This change in policy and practice would end discretionary parole release except for those sentenced under prior law whose sentences have not expired.

The Task Forces consideration of this approach should prioritize the certainty of punishment as an underlying principle in maintaining public safety, rather than harsh prison terms resulting in longer sentences. Criminological research over several decades and in various nations generally concludes that enhancing the certainty of punishment produces a stronger deterrent effect than increasing the severity of punishment. Micro-level studies on deterrence have assessed the likelihood of individuals engaging in crime and found that people who perceive that sanctions are more certain tend to be less likely to engage in criminal activity. Scenario-based research using self-reports that examine the effect of certainty of punishment on individual behavior has shown that as the perception of the risk of arrest for petty theft, drunk driving, and tax evasion increases, individuals report they would be less likely to offend.<sup>8)</sup>Valerie Wright, Deterrence in Criminal Justice Evaluating Certainty vs. Severity in Punishment (Washington, DC: The Sentencing Project, 2010).

Additionally, studies have been conducted on harsh sentencing structures and the subsequent impact on public safety. A series of studies have examined the public safety effects of imposing longer periods of imprisonment. Ideally, from a deterrence perspective, the more severe the imposed sentence, the less likely offenders should be to re-offend. A 1999 study tested this assumption in a meta-analysis reviewing 50 studies dating back to 1958 involving a total of 336,052 offenders with various offenses and criminal histories. Controlling for risk factors such as criminal history and substance abuse, the authors assessed the relationship between length of time in prison and recidivism, and found that longer prison sentences were associated with a three percent increase in recidivism. Offenders who spent an average of 30 months in prison had a recidivism rate of 29%, compared to a 26% rate among prisoners serving an average sentence of 12.9 months. The authors also assessed the impact of serving a prison sentence versus receiving a community-based sanction. Similarly, being incarcerated versus remaining in the community was associated with a seven percent increase in recidivism.<sup>9)</sup>Paul Gendreau, The Effects of Prison Sentences on Recidivism (Ottawa, Ontario, Canada: Public Works and Government Services Canada, 1999).

#### Promote and adequately fund recidivism reduction and re-entry programming

We note the importance of supporting initiatives that aim to assist in effective recidivism reduction and re-entry programming as well as provide opportunities for early release for individuals in prison. Ninety-five percent of incarcerated individuals will return to our communities, and in the interest of public safety, we must ensure that they are on a path for successful reintegration back into society while in prison and upon their release. It is a smart investment to implement expanded re-entry programming, given that evidence-based programs, job-training, and education can reduce recidivism and lead to better outcomes for individuals returning to their families and neighborhoods.

#### Authorize a Second Look Post-Sentencing Review

Determinate sentencing structures have been considered by criminal justice practitioners concerned with certainty and transparency at sentencing. In recent years, states that have adopted determinate sentencing structures include Mississippi and Wisconsin.

**Mississippi** Lawmakers passed a harsh truth in sentencing (TIS) policy that contributed to a ballooning prison population, and sentences served increased for drug and nonviolent offenders, but actually decreased slightly for violent and sex offenders, contrary to the stated goals of truth in sentencing policy.<sup>10)</sup>Peter Wood and Gregory Dunaway, Consequences of Truth-in-Sentencing: The Mississippi Case (Mississippi State University 2003). Following the implementation of TIS in Mississippi, prison populations in the state increased far beyond previous expectations. In 2000, five years after the measure went into effect the population was expected to increase to 13,104 (up from 8,869 in 1991), but the actual prison population exceeded 18,000.

In 2008, Mississippi rolled back TIS to 25% for nonviolent offenders, making 12% of the population immediately eligible for parole.<sup>11)</sup>[Mississippi Senate Bill 2136](#). 2010. Between 2008 and 2009, Mississippis prison population decreased by 5.4 percent.<sup>12)</sup>Pew Center on the States. Prison Count 2010: State Population Declines for the First Time in 38 Years (Washington, DC: Pew Center on the States, 2010). After this reduction the state reduced correctional spending by \$10 million. Crime rates in Mississippi continued to fall after the roll back of truth in sentencing.<sup>13)</sup>Justice Policy Institute. Due South: Mississippi: Rolling

Back Truth-in-Sentencing Laws (Washington, DC: Justice Policy Institute, 2011).

**Wisconsin** Lawmakers authorized a 1998 law requiring all persons sentenced to prison (not just violent offenders) to serve the entirety of a judge-imposed confinement sentence, followed by an additional period of supervision.<sup>14</sup>TJ Hammer, *The Long and Arduous Journey to Truth-in-Sentencing in Wisconsin* (2002). Faculty Publications. Paper 136.

Analysis by the *Milwaukee Journal Sentinel* in 2004 predicted that truth in sentencing would cost Wisconsin \$1.8 billion by 2015, due to increased prison and supervision time and aging prison populations.<sup>15</sup>Mary Zahn and Gina Barton, \$1.8 billion: The price of truth in sentencing, *Milwaukee Journal-Sentinel* (2004). Judges interviewed by the *Journal Sentinel* noted that the rise of truth in sentencing has eliminated the ability to assess the rehabilitation of inmates and exercise early release in cases of positive change.<sup>16</sup>Mary Zahn and Gina Barton, *Door on Early Release Closes Tightly Milwaukee Journal-Sentinel* (2004).

States that have adopted determinate sentencing structures and abolished parole are now exploring new policy options to address concerns of fairness in these sentencing systems. Recently, Virginia's governor established a statewide commission to explore post-incarceration sentencing practices, including restoring parole and authorizing sentencing judges to review incarcerated persons under a second look policy.<sup>17</sup>Jenna Portnoy, Laura Vozzella and Matt Zapotosky, McAuliffe creates commission to study bringing parole back to Virginia, *The Washington Post* (2015).

The nonpartisan American Law Institute found that determinate sentencing systems lacked critical elements essential for ensuring fair sentences and determined there must be some possibility of mid-course correction where a substantial portion of a particularly lengthy sentence has been served. Second look policies authorize a judge or judicial panel to revisit the sentence of any prisoner who has served 15 or more years in prison and to decide whether, under present circumstances, the sentence originally imposed or a different sentence better serves the purposes of sentencing.<sup>18</sup>American Law Institute (October, 2010). Model penal code: Sentencing: Council draft No. 3. Philadelphia: American Law Institute.

We believe the principles outlined above will help improve the effectiveness and fairness of Tennessee's justice system. Our continued progress toward meeting the economic and societal challenges posed by the current prison system and establishing a smarter, fairer criminal justice system depends on a broad-based approach to reform, grounded in this framework. We encourage you both, through the Task Force, to build upon this framework.

Sincerely,

African American Ministers in Action  
Ella Baker Center for Human Rights  
Grassroots Leadership  
In the Public Interest  
Justice for Families  
LifeLine to Success  
Micah Leadership Council  
Nation Inside  
National Association of Criminal Defense Lawyers  
Prison Policy Initiative  
Southern Center for Human Rights  
Southern Poverty Law Center  
Students for Sensible Drug Policy  
The Sentencing Project

cc: Task Force members

Footnotes[+]

Increase in U.S. jail & prison population in the last 40 years

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