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## **CONGRESSIONAL TESTIMONY**

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**Statement of  
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**Before the Subcommittee on Crime, Terrorism, and  
Homeland Security of the United States House of Representative  
Committee on the Judiciary**

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### **Introduction**

My name is David Muhlhausen. I am Senior Policy Analyst in the Center for Data Analysis at The Heritage Foundation. I thank Chairman Robert C. Scott, Ranking Member Louie Gohmert, and the rest of the subcommittee for the opportunity to testify today regarding the reauthorization of the U.S. Parole Commission. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

### **Determinate Sentencing Reform**

The concern over high crime rates and a failed rehabilitative model of corrections led federal and state governments to reform their correctional systems. In 1984, the U.S. Congress passed the Comprehensive Crime Control Act.<sup>1</sup> Included within the Comprehensive Crime Control Act was the Sentencing Reform Act. The Sentencing Reform Act made major changes to federal sentencing and parole policies by replacing indeterminate sentences with determinate sentences—definite terms of imprisonment. Early releases through parole were abolished and replaced with “supervised release.”

The wide and seemingly arbitrary indeterminate sentences of judges were replaced with determinate sentencing guidelines created by the U.S. Sentencing Commission. The new sentencing system took effect on November 1, 1987. Offenders sentenced for crimes committed on or after November 1, 1987, are administered under the determinate

sentencing system and are not eligible for parole.<sup>2</sup> For individuals convicted of offenses that occurred prior to November 1, 1987, their sentences are indeterminate. These pre-sentencing guideline cases or “old law” cases are eligible for parole. Once these old law cases run out, the original mission of the U.S. Parole Commission will have expired.

As a result of the implementation of determinate sentencing, offenders sentenced to prison were required to serve at least 85 percent of their sentences with possibility of early release for the remaining 15 percent of the sentence for good behavior.<sup>3</sup> This 85 percent requirement became known as “truth-in-sentencing.” Upon completion of at least 85 percent of their prison sentences, offenders may be returned to society on supervised release. Supervised release lasts from one to five years with the offender returning to the community under the supervision of Federal Probation Officers.<sup>4</sup> Before determinate sentencing, federal offenders only served, on average, 58 percent of their prison sentences.<sup>5</sup>

The switch to determinate sentencing was intended to set in motion the eventual termination of the U.S. Parole Commission. While the planned phase-out of the commission has yet to take place, Congress has extended the life of the commission several times.<sup>6</sup> Not only has the life of the commission been extended, but its responsibilities have been extended as well. Today, the U.S. Parole Commission has jurisdiction over the following:

- Old law cases,
- Transfer-treaty cases,
- State probationers and parolees in Federal Witness Protection Program,
- District of Columbia Code offenders, and
- Uniform Code of Military Justice offenders.<sup>7</sup>

The majority of the U.S. Parole Commission’s workload concerns District of Columbia offenders.<sup>8</sup> In fiscal year 2006, the commission was responsible for over 5,600 District of Columbia offenders being overseen in the community.<sup>9</sup> However, the authorization of the commission is set to expire on October 31, 2008. While the role of the commission has greatly diminished, the commission still performs important functions that must continue. Therefore, reauthorization of the U.S. Parole Commission is warranted. While reauthorization is recommended, a return to the old indeterminate system is not justified.

### **Reasons to Support Determinate Sentencing**

Determinate sentencing can be justified for several reasons. First, long prison terms for serious crimes are just. Second, incapacitation and deterrence works. Third, determinate sentencing reduces disparity in sentencing by treating offenders equally.

*Longer prison terms for serious crimes are just.* Indeterminate sentencing granted parole boards too much discretion in release decisions. This discretion all too often came at the expense of public safety. Determinate sentencing made incarceration terms more meaningful by ensuring that offenders actually served most of their sentences. Determinate sentencing helped restore the credibility of courts by making sentencing

more uniform and ensuring that offenders actually served almost all of their original sentences.

*Incapacitation and deterrence works.* During the 1970s and 1980s, federal and state officials recognized that the rehabilitative model of corrections did not work. Correctional systems no longer focused on the ideal of rehabilitation at the expense of public safety. Rehabilitation programs were deemed ineffective.<sup>10</sup> Deterrence and incapacitation became the primary mission of correctional systems. Thus, federal and state governments adopted such reforms as determinate sentencing, “truth-in-sentencing,” and increased sentence lengths.

The switch to determinate sentencing and increased sentence lengths prevents crime through the effects of incapacitation and deterrence. The incapacitation effect reduces crime because offenders confined in prison from the rest of society are unable to harm innocent citizens. Criminals in prison simply cannot harm society.

In addition, determinate sentencing, combined with increased sentence lengths, produces greater levels of deterrence than occurred under the rehabilitative model. Deterrence theory supposes that increasing the risk of apprehension and punishment for crime deters individuals from committing crime. Nobel laureate Gary S. Becker’s seminal 1968 study of the economics of crime recognized that individuals respond to the costs and benefits of committing crime.<sup>11</sup> In short, incentives matter.

Over the years, several studies have demonstrated a link between increased incarceration and decreases in crime rates. After controlling for socioeconomic factors that may influence crime rates, research based on trends in multiple jurisdictions (states and counties) over several years indicates that incarceration reduces crime significantly.<sup>12</sup>

Professor William Spelman of the University of Texas at Austin estimates that the drop in crime during the 1990s would have been 27 to 34 percent smaller without the prison buildup.<sup>13</sup> In another study, Professor Spelman analyzed the impact of incarceration in Texas counties from 1990 to 2000.<sup>14</sup> The most significant factor responsible for the drop in crime in Texas was the state’s prison expansion.

Professor Joanna M. Shepherd of Clemson University found that truth-in-sentencing laws, which require violent felons to serve up to 85 percent of their sentences, reduced violent crime rates.<sup>15</sup> These laws reduced county murder rates per 100,000 residents by 1.2 incidents. Assaults and robberies were reduced by 44.8 and 39.6 incidents per 100,000 residents, respectively. Rapes and larcenies were reduced by 4.2 and 89.5 incidents per 100,000 residents.<sup>16</sup> Professor Steven Levitt of the University of Chicago found that for each prisoner released from prison, there was an increase of almost 15 reported and unreported crimes per year.<sup>17</sup>

Two studies by Thomas B. Marvell of Justec Research in Williamsburg, Virginia, and Carlisle E. Moody of the College of William and Mary support these findings of the effects of incarceration. In a 1994 study of 49 states’ incarceration rates from 1971 to

1989, Marvell and Moody found that about 17 crimes (mainly property crimes) were averted for each additional prisoner put behind bars.<sup>18</sup> In a study using national data from 1930 to 1994, Marvell and Moody found that a 10 percent increase in the total prison population was associated with a 13 percent decrease in homicide, after controlling for socioeconomic factors.<sup>19</sup>

*Reducing Disparity.* Determinate sentencing reduces disparity by treating offenders equally. Indeterminate sentencing and parole decisions were criticized for placing too much discretionary power in the hands of judges and parole boards. The wide discretion given decision makers led to the perception of an arbitrary sentencing system that treated similar offenders in an all too often unequal manner.

### **Conclusion**

The Sentencing Reform Act replaced the wide and seemingly arbitrary indeterminate sentences of federal judges with determinate sentences. While this reform greatly diminished the responsibilities of the U.S. Parole Commission, the agency still performs important functions, such as overseeing federal old law cases and offenders from the District of Columbia. Congress should reauthorize the commission, but avoid any temptation to revive indeterminate sentencing and parole at the expense of public safety.

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<sup>1</sup> For a historical review of the policy changes regarding sentencing and parole, see A. Keith Bottomley, “Parole in Transition: A Comparative Study of Origins, Developments, and Prospects for the 1990s,” *Crime and Justice*, Vol. 12, (1990), pp. 319-374 and Joan Petersilia, “Parole and Prisoner Reentry in the United States,” *Crime and Justice*, Vol. 26, Prisons (1999), pp. 479-529.

<sup>2</sup> U.S. Department of Justice, U.S. Parole Commission, *History of the Federal Parole System*, May 2003, p. 2, at <http://www.usdoj.gov/uspc/history.pdf> (July 14, 2008).

<sup>3</sup> Carol P. Getty, “Twenty Years of Federal Criminal Sentencing,” *Journal of the Institute of Justice and International Studies*, Vol. 7 (2007), pp. 117-128.

<sup>4</sup> *Ibid.*

<sup>5</sup> U.S. Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, November 2004.

<sup>6</sup> U.S. Department of Justice, U.S. Parole Commission, *History of the Federal Parole System*, May 2003, at <http://www.usdoj.gov/uspc/history.pdf> (July 14, 2008).

<sup>7</sup> *Ibid.* and U.S. Department of Justice, United States Parole Commission, *Report of the United States Parole Commission: October 1, 2005-September 30, 2006*, undated document, at [http://www.usdoj.gov/uspc/commission\\_reports/annual-report-100105-093006.pdf](http://www.usdoj.gov/uspc/commission_reports/annual-report-100105-093006.pdf) (July 15, 2008).

<sup>8</sup> William E. Moschella, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, letter to the Honorable J. Dennis Hastert, Speaker, U.S. House of Representatives, November 30, 2004.

<sup>9</sup> U.S. Department of Justice, United States Parole Commission, *Report of the United States Parole Commission: October 1, 2005-September 30, 2006*, undated document, p. iii, at [http://www.usdoj.gov/uspc/commission\\_reports/annual-report-100105-093006.pdf](http://www.usdoj.gov/uspc/commission_reports/annual-report-100105-093006.pdf) (July 15, 2008).

<sup>10</sup> Douglas Lipton, Robert Martinson, and Judith Wilks, *The Effectiveness of Correctional Treatments and What Works: A Survey of Treatment Evaluation Studies*, (New York: Praeger, 1975). In recent years, reviews of the scientific literature indicate that a few correctional programs appear to reduce recidivism for at least some offenders. See Doris Layton MacKenzie, “Reducing the Criminal Activities of Known Offenders and Delinquents: Crime Prevention in the Courts and Corrections” in *Evidence-Based Crime Prevention*, eds. Lawrence W. Sherman, David P. Farrington, Brandon C. Welsh, and Doris Layton MacKenzie, (London: Routledge, 2002), pp. 330-404. However the majority of rehabilitative programs have little to no effect on recidivism, See David Farabee, *Rethinking Rehabilitation: Why Can't We Reform Our Criminals?* (Washington, D.C.: The AEI Press, 2005).

<sup>11</sup> Gary S. Becker, “Crime and Punishment: An Economic Approach,” *Journal of Political Economy*, Vol. 76, No. 2 (1968), pp. 169–217.

<sup>12</sup> Steven D. Levitt, “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation,” *The Quarterly Journal of Economics*, May 1996, pp. 319–351; Thomas B. Marvell and Carlisle E. Moody, Jr., “Prison Population Growth and Crime Reduction,” *Journal of Quantitative Criminology*, Vol. 10, No. 2 (1994), pp. 109–140; Thomas B. Marvell and Carlisle E. Moody, Jr., “The Impact of Prison Growth on Homicide,” *Homicide Studies*, Vol. 1, No. 3 (1997), pp. 205–233; Joanna M. Shepherd, “Police, Prosecutors, Criminals, and Determinate Sentencing: The Truth About Truth-In-Sentencing Laws,” *Journal of Law and Economics*, Vol. 45 (October 2001), pp. 509–534; William Spelman, “The Limited Importance of Prison Expansion” in *The Crime Drop in America*, eds. Alfred Blumstein and Joel Wallman, (Cambridge: Cambridge University Press, 2000), pp. 97–129; William Spelman, “Jobs or Jails?: The Crime Drop in Texas,” *Journal of Policy Analysis and Management*, Vol. 24, No. 1 (2005), pp. 133–165.

<sup>13</sup> Spelman, “The Limited Importance of Prison Expansion,” pp. 123 and 125 (footnote 8).

<sup>14</sup> Spelman, “Jobs or Jails?: The Crime Drop in Texas.”

<sup>15</sup> Shepherd, “Police, Prosecutors, Criminals, and Determinate Sentencing: The Truth About Truth-In-Sentencing Laws.”

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<sup>16</sup> *Ibid.*

<sup>17</sup> Levitt, “The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation.”

<sup>18</sup> Marvell and Moody, “Prison Population Growth and Crime Reduction.”

<sup>19</sup> Marvell and Moody, “The Impact of Prison Growth on Homicide.”