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A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime

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A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime

The U.S. incarceration rate today exceeds both its own historical norms and the rates of all other developed countries. The current U.S. incarceration rate is roughly three times its rate in 1980, and six times the rate of a typical developed country. This high incarceration rate has generated momentum for reform of incarceration policy at the federal and state levels.

Incarceration reform naturally raises concerns about its potential impact on crime; there are trade-offs that must be seriously considered. There is little disagreement about the social benefits of imprisoning the most dangerous, violent offenders. However, a national debate persists around whether incarcerating low-risk, nonviolent criminals—such as many of those convicted of petty theft or low-level drug activity—provides better returns than alternative forms of punishment, such as enhanced parole. On the other hand, fewer offenders behind bars could translate into higher crime rates, especially if fiscal savings from reduced incarceration are not funneled into other crime-reduction programs.

Incarceration imposes heavy fiscal costs on government budgets, and on state and local budgets in particular. The United States spent over \$80 billion on corrections expenditures in 2010, with the bulk of the cost borne by state and local governments. These costs translate into higher tax burdens for American workers and diminished funding for other fiscal priorities. Savings on these expenses could potentially be used for other, potentially more-effective crime-fighting strategies, such as increased police funding.

High rates of incarceration can also have devastating effects on families and communities. Incarceration hampers employment and marriage prospects among former prisoners, increases poverty depth and behavioral problems among their children, and amplifies the spread of communicable diseases among disproportionately impacted communities. These effects are especially prevalent among those demographic groups that are more likely to face incarceration, namely young minority males. For nonviolent criminals and those who are unlikely to offend again, there are serious questions as to whether the benefits of incarceration outweigh its associated costs.

In a new Hamilton Project discussion paper, Steven Raphael of the University of California, Berkeley and Michael A. Stoll of the University of California, Los Angeles suggest that there

is substantial room to reduce U.S. incarceration rates without significantly impacting crime rates. Drawing on evidence from recent policy experiences, the authors offer proposals to reform sentencing practices and alter fiscal incentives. Specifically, their proposal has three parts: (1) reforms to state truth-in-sentencing laws that lengthen sentences, (2) revisions to federal and state mandatory minimums that can result in unduly harsh prison stays, and (3) the creation of fiscal structures that require localities to share the cost of incarceration with state governments.

Raphael and Stoll assert that effective, evidence-based sentencing reform can spur broad-based economic growth by improving opportunities for social mobility, enhancing family stability for the children of the incarcerated, and limiting skill depreciation among inmates.

The Challenge

The incarceration rate in the United States is now at an unprecedented level, far above the rates typical of other developed countries. Though lengthy sentences and large-scale imprisonment reduce crime by removing offenders from society and by deterring individuals from criminal behavior, recent increases in the prison population have resulted in considerably less crime reduction than in years past. If American incarceration is now so vast that the marginal cost of incarceration exceeds its marginal benefit, the challenge becomes finding effective alternatives to incarceration that, combined with more-efficient uses of public funds, can maintain or lower crime rates, and lower the social and economic costs of incarceration.

Incarceration rates in the United States were not always as high as they are today. For much of the twentieth century, the U.S. prison population per capita closely mirrored the rates currently seen in Europe. For example, pre-1980 U.S. incarceration rates were close to those seen in European Union countries in recent years—roughly 60 to 160 inmates per 100,000 residents. In the 1980s, however, more-stringent sentencing guidelines led to increased prison admission rates and longer average prison sentences. For instance, between 1984 and 2009 the number of annual admissions to state prison for drug crimes increased from 9 to 47 per 100,000 residents. Furthermore, the expected time served in state prisons for convicted persons increased by roughly five years for murder, three years for sexual assault,

eighteen months for robbery, and six months for burglary. These policy shifts, in turn, resulted in a swelling of the U.S. incarceration rate.

Raphael and Stoll suggest that the crime-reduction gains from higher incarceration rates depend critically on the incarceration rate itself. When the incarceration rate is low, marginal gains from increasing the incarceration rate are higher because when prisons are used more sparingly, they are reserved for the highest-risk, most-serious offenders. By contrast, when the incarceration rate is high, the marginal crime-reduction gains from further increases in incarceration tend to be lower since the offender on the margin between incarceration and an alternative sanction tends to be less of a threat. In other words, the crime-fighting benefits of incarceration diminish as the scale of the prison population increases.

We can clearly see these diminishing marginal returns from incarceration when comparing the experiences of Italy and California. In 2006, with Italian prisons filled to 130 percent of capacity, Italy's Parliament passed the Collective Clemency Bill, which reduced the sentences of most prison inmates by three years. The effect of the collective pardon was clearly visible in the sharp decline in incarceration rates; the effect on crime was also clearly visible, with a corresponding sharp increase.

Italy's experience contrasts sharply with reforms in California in 2011; the state's reforms halted the practice of revoking the paroles of individuals and sending them back to prison for technical violations, and diverted many less-serious offenders to county jails or to some form of community corrections. Although not as sudden as the reduction in Italy's prison population from the Collective Clemency Bill, the reduction in California's prison population from its reform was larger in magnitude. In California, the reforms resulted in 20,000 individuals who would have otherwise been in prison being on the streets.

Raphael and Stoll find little evidence of an increase in violent crime associated with the reduction in the state's prison population. They argue that there was little increase because California is stricter than Italy in terms of who is sent to prison and for how long. The prereform incarceration rate in Italy stood at roughly 103 per 100,000 residents; in California, the prereform incarceration rate was between 425 and 430 per 100,000, more than four times that of Italy. Consequently, the average prereform inmate in California was less criminally prone than the average inmate in Italy, where prison is used more sparingly.

In summary, Raphael and Stoll find that incarceration significantly lowers crime rates when incarceration rates are low, but these effects diminish rapidly with scale. They therefore conclude that a new approach to incarceration is called for in the current context of mass incarceration in the United States.

A New Approach

Raphael and Stoll lay out a three-part proposal to reform state truth-in-sentencing laws, revamp federal and state mandatory minimum sentencing policies, and incentivize local authorities to reserve prison only for those who pose the greatest risk. They argue that these policies would reduce incarceration while keeping U.S. crime rates near their historic lows.

Reform Truth-in-Sentencing Laws

State truth-in-sentencing laws extend prison time served by requiring that offenders convicted of certain types of crimes serve a minimum proportion of their sentence. Starting in 1984, states began adopting truth-in-sentencing laws requiring that inmates serve a specified proportion of their sentences. In the mid-1990s, state take-up of these laws accelerated with a federal provision tying grants for state correctional facilities to a minimum 85 percent time-served threshold for serious violent crimes. By 2008, twenty-eight states had truth-in-sentencing laws. However, truth-in-sentencing laws also reduce the discretion of parole boards, keeping some inmates who seem unlikely to recidivate behind bars. Evidence suggests that parole boards can effectively discriminate between high- and low-risk inmates; these laws prevent them from exercising their judgment and releasing prisoners who pose a relatively low recidivism risk and show signs of having reformed their behavior.

Raphael and Stoll propose that states strengthen the discretion of parole boards by weakening the impact of these laws or abandoning truth-in-sentencing practices entirely. States could relax the constraints these laws impose by lowering the fraction of a sentence that an inmate is required to serve from 85 percent down to a lower portion, reducing the scope of the crimes that are subject to these constraints, or applying the regulations only to repeat offenders. Any of these approaches would increase the discretion of parole boards. An additional benefit of this added discretion is that it incentivizes inmates to reform their behavior: if a parole board has discretion to release an inmate early, that inmate has an incentive to behave well in prison and engage in behavioral reforms that demonstrate readiness for release.

Revise Mandatory Minimum Sentencing Practices

Raphael and Stoll also propose that states and the federal government reevaluate the legislatively mandated minimum sentences that tend to limit discretion over whether an offender should be sentenced to prison and over the amount of time that an offender sentenced to prison must serve. Between 1975 and 2002, every state and the District of Columbia adopted some form of mandatory minimum sentencing targeted at a specific offense. Likewise, federal law is riddled with mandatory minimum sentences, with the most prominent of

these likely being the mandatory minimums for the possession or distribution of crack cocaine.

Raphael and Stoll argue that repeat offender laws that impose minimum sentences based on an individual's prior criminal record also require more scrutiny. By tying the hands of judges, these laws result in sentences that are often disproportionately and unjustifiably harsh given the offense committed. In California, for example, "three strikes" legislation can result in sentences of twenty-five years to life for an offense of petty theft. These laws deserve, at a minimum, careful scrutiny across a number of dimensions; in certain cases, they should be eased and even outright repealed.

Raphael and Stoll propose that states and the federal government take inventory of their mandatory minimum sentencing laws and ask the following questions on a statute-by-statute basis:

1. Does existing state or federal law (not inclusive of the mandatory minimum in question) already allow for the incarceration of offenders convicted of the targeted offense?
2. Does the mandatory minimum introduce horizontal inequity in sentencing for offenders convicted of similar crimes?
3. Are the specified sentences disproportionate to the offense?
4. Does the law often result in a prison sentence for relatively low-risk offenders?

An answer of yes to any or all of these questions, they suggest, indicates a sentencing statute may be unnecessary, indefensibly harsh, and/or not particularly cost-effective.

At the federal level, there is already movement under way to modify mandatory minimums with the passage of the Fair Sentencing Act of 2010, which amended the mandatory minimum sentences for drug offenses involving crack cocaine. There is also bipartisan movement in both the House and the Senate for additional sentencing reforms.

Better Align Incentives Faced by Counties

States and localities play very different roles in the criminal justice system. Local police tend to make arrests and local courts tend to generate jail admissions, but state governments are typically responsible for the costs of incarceration. If, however, counties were forced to bear some portion of the costs generated by each prison admission, local officials might become more selective in their use of incarceration as punishment for criminal behavior. Changes in state policy that ensure that counties have some "skin in the game" would likely motivate efforts at the local level to be more sparing in the use of incarceration, especially for low-risk offenders. Raphael

Roadmap

- States take a hard look at the truth-in-sentencing laws that now prevent the lowest-risk prisoners from exiting incarceration and returning to society. If they decide to reform these laws, they can do so by decreasing the fraction of a sentence that a prisoner must serve in order to meet the "truth" threshold, narrowing the scope of crimes covered by these statutes, or modifying the statutes so that they cover only repeat offenders. State parole boards would then be able to use their expertise to sort through high- and low-risk inmates, releasing those who no longer pose serious threats to society.
- States take inventory of their mandatory minimum sentencing policies and ask four questions: (1) Does existing state law already allow for the incarceration of offenders for the targeted offense? (2) Does the mandatory minimum introduce horizontal inequity in sentencing for offenders convicted of similar crimes? (3) Are the specified sentences disproportionate to the offense? (4) Does the law often result in a prison sentence for relatively low-risk offenders? An answer of yes to any of these questions indicates a sentencing statute may be unnecessary, indefensibly harsh, and/or not particularly cost-effective.
- The federal government continues to reevaluate mandatory minimum sentences. In particular, the federal government will reassess the mandatory minimum sentencing guidelines for nonviolent drug offenses. If it finds that those guidelines violate criteria for efficacy and equity (as laid out in the preceding bullet), the schedule will be amended to allow for more measured sentencing.
- States offer incentives to counties so that local officials become more selective in deciding who is sent to prison and for how long. There are at least two conceivable ways this fiscal structure could be achieved: (1) A block grant could be combined with an incarceration tax: a state would transfer a fixed amount of funds to each county for criminal justice and safety expenditures and, at the same time, levy an annual tax for each county resident admitted to the state prison system. (2) States could assign each county an incarceration rate based on demographic characteristics and state prison capacity. As counties incarcerate at or below that target rate, they receive fiscal rewards; as they incarcerate above that rate, they pay a tax.

Learn More about This Proposal

This policy brief is based on The Hamilton Project discussion paper, “A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime,” which was authored by:

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and Stoll consequently suggest the possibility of a block grant combined with an incarceration tax. Under such a system, a state would transfer a fixed amount of funds to each county for criminal justice and safety expenditures and, at the same time, levy an annual tax for each county resident admitted to the state prison system.

A variant of this approach would be to assign a target incarceration rate to each county based on existing state prison capacity, past crime rates, age structure, and other demographic characteristics deemed important and appropriate. Counties would be permitted use of the state prison system free of cost within some narrow band around the target. Counties that come in below the target would be rewarded; counties that overshoot the target would be taxed.

Costs and Benefits

Raphael and Stoll’s proposed reforms would reduce the U.S. prison population through a multipronged proposal to strengthen judicial discretion, moderate sentences for less-serious offenses, and change the incentive structure faced by county governments for sending offenders to prison. Based on evidence from the reforms in California, the authors estimate that their proposed reforms, if implemented nationally, would reduce the national incarceration rate by roughly 21 percent. This reduction would lower the incarceration rate from about 700 incarcerated people per 100,000 residents to approximately 550.

The proposal carries two primary benefits. First, by reducing the population of low-risk inmates, states and localities could better target their criminal justice spending toward more-effective crime-reduction strategies, such as additional policing and innovative programs (e.g., Hawaii’s Opportunity

Probation with Enforcement program) that monitor ex-felons and make parole more effective; this strategy can result in lower crime. Second, reducing the incarceration rate from unprecedented levels could limit the negative social impacts of incarceration, such as the impacts of incarceration on the children of the incarcerated and the depreciation of prison inmates’ labor skills.

A lower incarcerated population, if not met with corresponding increases in other crime-reduction programs, can result in slightly higher crime rates. Drawing from empirical evidence, Raphael and Stoll acknowledge that, according to one estimate, violent crime could increase by up to 13 percent and property crime could rise by up to 7 percent. However, another set of estimates—believed by the authors to be more accurate than those just described—shows that there would be no increase in violent crime and just a 4 percent increase in property crime as a result of such reform. When these estimated changes in crime rates are translated into the monetary benefits of incarcerating criminals, the authors estimate that each prison year served generates between \$11,000 and \$48,000 in terms of crime-prevention benefits.

The costs of incarceration-reduction strategies must be weighed against their potential benefits. The lower bound of the estimated annual social benefits of incarceration (\$11,000) is below the average annual cost of incarceration in every state in the country; the upper-bound (\$48,000) is even below the average cost of incarceration in a handful of states, including California. Moreover, government savings from incarceration reform could potentially be used to enhance alternative crime-fighting strategies, such as increased policing, which could limit or reverse any increase in crime attributable to lower incarceration. Finally, these estimates do not take full inventory of the social costs of incarceration, which would make these proposed reforms seem even more appealing.

Conclusion

Economists, criminologists, and policymakers have noticed the extremely high rate of incarceration in the United States and the tremendous social and economic costs that it imposes on families, communities, and local economies. As such, they have begun to reevaluate the U.S. approach to corrections while remaining mindful of rational concerns about crime.

Incarcerating nonviolent criminals for low-level offenses can impose high costs on taxpayers, former inmates, the families of the incarcerated, and the communities and local economies from which they come. At the same time, the incarceration of low-level criminals has little or no impact on crime rates. By enacting policies that use prison beds more efficiently and send only those who pose genuine threats to society behind bars, these reforms limit the social and economic costs of incarceration while maintaining historically low rates of crime.

Questions and Concerns

1. Are political constraints insurmountable?

Historically, it has been much easier politically to be tough on crime than it has been to be deliberative and judicious. Raphael and Stoll note a widespread belief that this asymmetric politicization of criminal justice policy has led to drastic changes in sentencing practices in the United States. However, the authors sense a change in the political landscape. There is currently bipartisan support for deemphasizing the use of incarceration and for enhancing efforts to rehabilitate criminal offenders while still holding them accountable for their actions.

This shift in politics is also evident in the results of recent policy debates. California voters over the past decade have passed several state initiatives to scale back the use of incarceration. At the federal level, the Fair Sentencing Act of 2010 amended the mandatory minimum sentences for drug offenses involving crack cocaine. All of these reforms would have been unthinkable in the political climate of the 1990s.

2. Is there an evidence base for alternative interventions?

Yes. The most obvious policy tool with the strongest research base regarding impacts on crime concerns the expansion of local police forces. Considerable empirical evidence from a range of studies consistently finds relatively large effects on local crime rates of expanding a city's police forces. One estimate finds that the benefits in terms of reduced crime of hiring an additional police officer exceed \$300,000 per year in several cities. A more-conservative estimate finds that each dollar spent on policing generates \$1.60 worth of crime reduction.

There is also growing evidence that more-targeted and more-moderate use of incarceration can be as—if not more—effective in preventing crime than a policy regime that relies on long sentences. For example, Hawaii's Opportunity Probation with Enforcement program entails the careful monitoring and frequent drug testing of those on probation, coupled with targeted service provisions for those with the most serious substance abuse problems. A randomized control evaluation found large reductions in the likelihood of a probation violation and much less incarceration among those treated in Hawaii's program.

Highlights

In a new Hamilton Project discussion paper, Steven Raphael of the University of California, Berkeley and Michael Stoll of the University of California, Los Angeles offer innovative reforms to reduce incarceration without significantly increasing crime. These proposals would lower the fraction of the U.S. population behind bars while maintaining historically low rates of crime.

The Proposal

Reduce the scope and severity of state truth-in-sentencing laws for low-risk inmates. Not all inmates have the same probability of committing a crime once they are released, and the social cost of crimes committed varies considerably. Yet truth-in-sentencing laws prevent parole boards, which evidence suggests are effective at discriminating between high- and low-risk inmates, from releasing those who are least dangerous and less likely to offend again.

Rework—and in some cases even abandon—mandatory minimum sentencing policies at state and federal levels. Mandatory minimums impose sentences that are disproportionately harsh for certain individuals and constrain the ability of judges to assign appropriate sentences. Limiting the role of mandatory minimum sentences would allow for better targeting in the justice system.

Create fiscal incentives for local governments to consider the cost of incarceration. Local governments are largely responsible for generating prison admissions, but bear little of the cost of housing convicted criminals in a state prison. If local governments paid some of the cost of incarceration or were rewarded for more-selective incarceration policies, they would be incentivized to more-selectively choose between prison and alternatives to incarceration. Such an arrangement can benefit both state and local governments.

Benefits

Incarcerating nonviolent criminals for low-level offenses can impose high costs on taxpayers, former inmates, the families of the incarcerated, and the communities and local economies from which they come. At the same time, the incarceration of low-level criminals has little or no impact on crime rates. By enacting policies that use prison beds more efficiently and send only those who pose genuine threats to society behind bars, these reforms limit the social and economic costs of incarceration while maintaining historically low rates of crime.



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