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The truth about truth in sentencing

The costly law should be repealed

BY **MICHAEL CUMMINS 10 6 24**

For most of its history, the United States had a tradition of releasing qualified prisoners before their nominal sentences were complete. But in the 1990s, a bipartisan "tough-on-crime" frenzy led state after state to implement so-called truth in sentencing (TIS) laws. These laws severely weakened early-release opportunities for inmates.

Wisconsin passed a particularly comprehensive truth-in-sentencing law in 1998, virtually eliminating parole as an institution. The Legislature softened the law a bit the following decade, before reinstating it in full in 2011.

At one time, the law made complete sense to me. That perpetrators often served less than half their sentences struck me as a cruel hoax, especially on their victims. But like many viscerally appealing government policies, the law is fraught with latent side effects.

Though widely perceived as a mere gratuity to offenders, parole and other criteria-based early-release programs are fundamental to rehabilitation. As a matter of fact, early release is among the very few carrots that our stick-oriented corrections system has to offer.

Convicts enter prison in a bad state of mind. But at least 95 percent of them will eventually rejoin society, whether we like it or not. Encouraging them to start thinking more positively, to make good use of their time behind bars, is in our interest. Prisoners who know that their deeds, bad and good, will eventually be scrutinized by a parole board are far more likely to chart a constructive course.

I met David Carlson of Eau Claire through his defense lawyer. Carlson knows firsthand that having someone to impress is an indispensable component of rehabilitation. Several years ago, he was sent to prison for burglary. He is now out on extended supervision, which is a kind of mandatory post-incarceration probation.

Carlson will soon petition for a sentence modification to shorten his supervision. Just getting in front of a judge will be a long-shot, but he has geared his life toward the possibility. He will be fully prepared to demonstrate that he has taken the initiative in his own rehabilitation.

Something interesting happened to Carlson as he began working toward this goal. His transformation, he insists, took on a life of its own. “I started improving myself for myself.” Getting his sentence reduced has become but a secondary motive.

Carlson contrasts his newfound inspiration with the languor he witnessed in lock-up. “I have seen how detrimental TIS is to people who are incarcerated.” He believes that the promise of a parole hearing, however far in the future, would give inmates “something to work for, rather than just sitting complacent. If you put that carrot in front of someone, they will work extra-hard to get it.” Absent that, “they just sit. They have no objective to work toward.”

Study after study backs up Carlson’s observations. The corrections administrations of both New York and Washington have established that the availability of criteria-based early-release programs lowers recidivism. And a 2012 study by Florida State University showed that inmates subject to early release commit fewer rule infractions.

Democrats in Wisconsin, by and large, no longer believe that truth in sentencing serves us well. My assembly representative, Chris Taylor (D-Madison), advocates its full repeal. Conservative attitudes toward criminal justice reform are changing, too. Taylor’s Republican opponent this fall, Jon Rygiewicz, also wants Wisconsin to abandon truth in sentencing. “Our sentencing laws effectively target minorities and the impoverished,” he says. “I have a whole criminal justice reform package geared toward a rehabilitation mindset.”

Rygiewicz, a fiscal conservative, adds that Wisconsin’s old parole-based system “was definitely more cost effective.” That’s putting it mildly.

Truth in sentencing was originally sold as a cost-neutral proposition. Backers insisted that, upon implementation, judges would start reducing sentences to account for the impossibility of early release. But while the crime rate fell in the years following the 1999 implementation of the law, continuing a nationwide trend, Wisconsin’s prison population and corrections costs climbed. And though the prison population began to dissipate in 2008, its decline has not kept pace with the continuing drop in crime.

By the 2011-2013 biennium budget, spending on corrections had overtaken spending on the UW System, thanks in large part to the TIS boondoggle.

Since the early 2000s, states across the country have been pulling back on the more punitive measures they passed in the 1980s and 1990s. They

have revised mandatory minimum guidelines, overturned “three strikes” laws, and instituted a wide range of diversion programs.

But despite the new consensus that sometimes “less is more,” when it comes to imprisonment, truth in sentencing remains the elephant in the room. With its uniquely pernicious effect on rehabilitation, the law must now become the primary target for those who are serious about fixing our criminal justice system.

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