

# Court Practices as Drivers of Growth in Long Prison Sentences

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# PROSECUTORS AND LONG SENTENCES

- The Power of the Prosecutor
  - Broad discretion over myriad decisions (Davis, 2017)
    - Initial charges, enhancements, plea offers, sentence recommendations
  - Negotiating guilty pleas
    - >95% of convictions result from guilty pleas (Reaves, 2013)
      - Strong incentives for prosecutors, judges & defendants
      - Efficiency, evidence, responsibility, court dockets, reduced sentences
    - Charges are commonly altered during plea bargaining
      - Kutateladze (2019); Metcalf & Chiricos (2018); Holmes et al. (1987)
    - Charge decisions shape sentence options and outcomes
      - Johnson & Larroulet (2019); Wright & Engen (2005); Piehl & Bushway (2007)
    - Application of mandatory minimums → long sentences
      - Schulhofer & Nagel (1989); Ulmer et al. (2007); Johnson et al (2021)
  - Plea data on “long sentences” are very limited

# JUDGES AND LONG SENTENCES

- Sentencing is a complex, multifaceted task
  - Balance competing goals of punishment (Hogarth, 1971)
    - Incomplete information on future behavior
  - Offense severity and criminal history = strongest predictors
    - Mitchell (2005); Steffensmeier et al. (1998); Ulmer (2012)
  - Other predictors of long sentences
    - Guidelines and “anchoring” effects (Bennet, 2014)
    - Trial conviction (King et al. 2005)
    - Victim factors (Curry et al. 2004)
    - Firearms (Johnson et al. 2010)
  - Few studies focus specifically on “long sentences”
    - Homicide sentencing and life sentences
      - Auerhahn (2006); Glaeser & Sacerdote (2003); Johnson et al. (2021)

# RATIONALES FOR LONG SENTENCES

- Incapacitation
  - Removing individuals from society
    - Ensures public safety while incarcerated
    - Some individuals may be beyond capacity for reform
  - Selective incapacitation of “career criminals” (Wolfgang et al. 1972)
    - Potential for large crime reduction effects
- Empirical evidence (Travis et al. 2014)
  - Incapacitation estimates vary widely (Stemen, 2007)
    - False positive rates, non-replacement &  $\lambda$  (Auerhahn, 2006)
    - Diminishing returns with increased scale (Donohue, 2009)
    - The “Age-Crime” curve (Farrington, 1986)

# RATIONALES FOR LONG SENTENCES

- Criminal Deterrence
  - Severe, certain and swift penalties → lower crime
    - Long sentences “send a message” that crime will not be tolerated
  - Evidence for Deterrence (Nagin, 2013)
    - Negative relation between perceptual risks and offending
      - Apel & Nagin (2011); Nagin (2013); Loughran et al. (2012)
      - Certainty (of apprehension) matters more than severity
    - Marginal deterrent effects for long sentences are limited
      - Cognitive biases (Kahneman, 2011)
        - “Overconfidence” & “Discounting”
        - Knowledge hurdles and “irrational” crime

*“One of our most important conclusions is that the incremental deterrent effect of increases in lengthy prison sentences is modest at best”*

~Travis et al. (2014)

# RATIONALES FOR LONG SENTENCES

- Rehabilitation and Redemption
  - Long sentences may be needed to reform people
    - Indeterminant sentencing systems
- Empirical Research
  - Little or no marginal benefit of longer sentences for recidivism
    - Green & Winik (2010); Loughran et al. (2009); Mears et al. (2016)
  - Longer terms may be less conducive to rehabilitation
    - Offender services often limited for “long termers” (Nellis, 2017)
    - Disincentivized program participation (Kuziemko, 2013)
  - Reentry and reintegration often more difficult for “long termers”
    - Nellis (2017); Seeds (2021); Courtney et al. (2017)
  - Limited research focusing specially on “long sentences”

# RATIONALES FOR LONG SENTENCES

- Retribution and Justice
  - Just Deserts (Steffensmeier et al. 1998)
    - Sentences should reflect culpability and harm
      - Wrongfulness and harmfulness of action
      - Likelihood and severity of future offending
      - Lack direct measures of judicial rationales (Lynch, 2019)
    - Limited retributivism and parsimony (Frase, 2003)
  - Proportionality
    - Ordinal scale of sentence severity
    - Relative-judgement bias and ceiling effects (Leibovitch, 2016)
  - Accountability
    - Long sentences may hold people accountable for serious crimes
    - But sentence length and accountability are distinct (Courtney et al. 2017)

# KEY TAKEAWAYS

- Long prison terms are increasing steadily in most states
  - Reflects key policy shifts that shape judge and prosecutor decisions
- Most convictions are the result of plea negotiations
  - More research is needed on the role of prosecutors in long sentences
- Strongest predictors = offense severity & prior record
  - Mandatory minimums, trial conviction, victim injury, & firearms
  - Limited research specifically on “long sentences”
- Long sentences reflect various punishment rationales
  - Almost certainly some (unknown) incapacitation effect
  - Evidence for marginal deterrence is limited
  - Sentence lengths unrelated to post-release recidivism
  - “Just deserts” vs. principle of “parsimony”



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