

CURE-NY *Newsletter*

To Reduce Crime and Uplift Society

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Box 102, Katonah, NY 10536, cureny@bestweb.net, www.bestweb.net/~cureny

Merit Time Bill Amended

It's widely recognized that the reward of earlier-release, as an incentive for rehabilitation, is the key to successful reentry to society for many incarcerated persons. For example, the Catholic Bishops of the State of New York indicated in September of 2000 in *Restoring All to the Fullness of Life*, that "Motivation for effective rehabilitation depends on strong personal incentives. Early release is a powerful incentive and should be offered to most inmates conditioned upon their completion of major rehabilitation programs and demonstration of evident rehabilitation....The [Catholic] Conference supports an expanded use of merit time to include a greater number of inmates and a greater incentive for completion of specific rehabilitative accomplishments."

On the other hand, S.1701-B and A.3230-B recently introduced major restrictive amendments to Merit Time.

The original bill said that every person confined in an institution of the department serving an indeterminate sentence of imprisonment may receive merit allowances against the maximum and minimum terms or period of his or her sentence, except that no merit time allowance shall be credited to the maximum period of a person serving a sentence with a maximum term of life. This gave the possibility for an earlier appearance before a parole board, (and their risk-assessment) even for lifers.

Some key legislators reportedly felt that this was too broad, and that merit-time allowances should be more restricted. Some advocates suggested a compromise, which would deny merit time only to the most serious or habitual offenders. For example, one proposal was that: "No Merit Time allowance shall be credited to those convicted of level 3 sex offense, or those with multiple convictions of homicide, sex offense, kidnapping, or arson."

Instead, by the new amendments, the legislature goes much further and now proposes that every person serving an indeterminate or determinate sentence, except lifers and violent felony offenders, may receive merit time..

These overly restrictive amendments seem to assume that all levels of violent offenses are equally serious, and all types of violent offense are equally resistant to rehabilitation, assumptions which are obviously false and harmful.

(continued on page 5)

Interstate Calls from Prisons

Excerpts from MI-CURE NEWS February 2006

CURE has been working for some time with staff members from Congressman Bobby Rush's office to draft legislation that would address problems with interstate prison phone calls. Congressman Rush announced the introduction of the bill, H.R. 4466 at a public meeting in Chicago on Martin Luther King Day. Kay Perry of MI-CURE was among those speaking at the meeting. The following were some of her remarks:

"Because prisons are generally built far from population centers, phone calls are an important tool for sustaining relationships. In most prison environments, that is costly. Here are a few examples of the cost of a 15-minute call from:

Alabama to any other state:	\$14.15 plus taxes
Arizona to any other state:	\$17.77 plus taxes
Florida to any other state:	\$17.30 plus taxes
Ohio to any other state:	\$17.30 plus taxes

"The rates are high for two reasons:

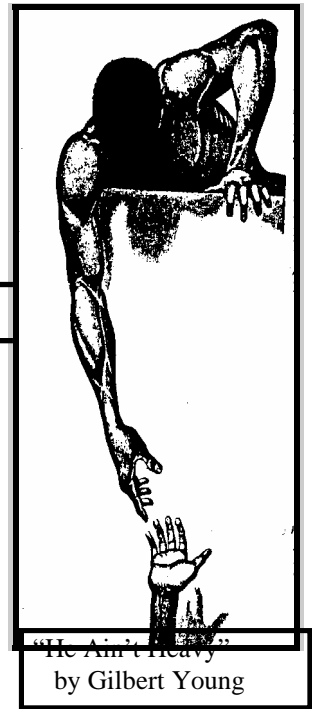
1. These states all restrict calls from prison to collect only.
2. The prison phone company pays the prison system a commission for each call. The commissions are generally in the range of 40-50%, but may be as high as 57.5%.

"At least 13 states have now introduced debit calling. The rate differences are striking as evidenced by the cost of these 15 minute debit calls from:

Colorado to any other state:	\$4.10 plus taxes
Maryland to any other state:	\$4.50 plus taxes
Minnesota to any other state:	\$5.10 plus taxes
South Dakota to any other state:	\$3.92 plus taxes

"Nebraska is the only state that accepts no commission. The rate for a 15-minute debit call from a Nebraska prison to any other state is \$3.00 plus taxes.

"Since at least 2000, some prison phone providers have been blocking collect calls to call recipients whose local carrier does not have a billing agreement with the prison phone company. (continued on page 5)



Does Prison Increase Crime?

Excerpts from a report by M. Keith Chen, Yale School of Management and the Cowles Foundation and James M. Shapiro, University of Chicago, July 30, 2005

In this paper we estimate the causal effect of prison conditions on recidivism rates. ... We find that harsher prison conditions are associated with significantly more post-release crime.

Prior to incarceration, every federal inmate is assigned a score intended to reflect his need for supervision. An inmate is then assigned to a prison security level depending on where his score falls relative to certain predetermined cutoff values. By comparing inmates on either side of the boundaries between different security levels, we estimate the effect on recidivism of being assigned to a higher security level. Since both the physical and social conditions of confinement vary dramatically with security level, this setting provides a quasi-experiment for identifying the effect of prison conditions on post-release outcomes.

We find that moving a prisoner over a cutoff that increases his assigned security level from minimum to low security roughly doubles his hazard rate of rearrest in a three-year follow-up window. We check our identifying assumptions by showing that similar discontinuities [sharp jumps] do not arise in a control population housed separately from other inmates, and that predetermined correlates of recidivism do not change discretely around score cutoffs.

Comparing prisoners in different security levels one would find that those housed in more secure facilities are exposed to more violent individuals with more serious criminal histories. Given the growing literature on peer effects and the intensity of contact co-housed prisoners experience, this alone would suggest large security-level effects on post-prison characteristics.

Figure 3 Security Custody Score and Rearrest Rates

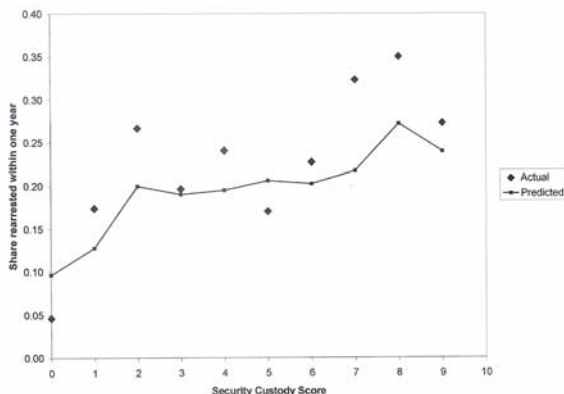


Figure 3 presents one year rearrest probabilities for each security custody score from 0 through 9. The figure also

presents the average probability of rearrest after one year as predicted by a probit model using predetermined inmate characteristics (age, education, race, gender, and employment and marital status) as independent variables. As the figure shows, *the relationship between actual recidivism and security custody score closely resembles the relationship between predicted recidivism and score, except around the change between score 6 and score 7... Inmates with a score of 7 are typically assigned to low security prisons, whereas inmates with a score of 6 are usually placed in minimum. The fact that actual recidivism, but not recidivism that is predicted based on predetermined characteristics, jumps up at this point is the basis for our approach to estimating the effect of security level on subsequent criminal behavior.*

An alternative approach is to examine a population with known scores that is not housed in accordance with the security guidelines of those scores. Inmates housed in "administrative" facilities, which are essentially prison hospitals, constitute just such a population. They are housed apart from the general population and are therefore not exposed to the variation in conditions of confinement.

There is no evidence of a discontinuous relationship between score and recidivism for these inmates. Moving an inmate housed in an administrative facility from minimum to low security designation in general has an insignificant *negative* effect on the probability of rearrest.

It is [also] important to ... ask how our effects depend on sentence length, since those with longer sentences are less likely to be released at any given point in time, and are therefore less likely to enter our sample. ...[Our data] shows the robustness of our results to weighting our estimates by total time in prison, and thus assigning more importance in the model to inmates who had relatively low probabilities of entering our sample. In general, the estimated effect of score cutoff becomes larger and statistically stronger. This suggests that our effects are not limited to inmates with short prison stays, and if anything may be more important for those who are incarcerated for longer periods.

Conclusions. To the degree that as an institution, prisons exist to reduce crime (both through deterrence and incapacitation) our estimates serve as counterpoint.

The deterrence effect of harsher sentences has been widely studied, and the incapacitation of criminals clearly reduces the immediate commission of crimes. Our results suggest these reductions may come at the cost of future crimes.

Editor's Note: If harsher prison conditions result in more post-release crime, does it not follow that longer sentences in these same conditions may cause still more post-release crime? But then there's the elderly (page 5).

'Dismantling Parole'

Parole Release Rates Plunge Under Pataki's Tough Policy

Excerpts and comments on an article by John Caher, NYS Law Journal, Jan. 31, 2006

Thousands of New York prison inmates sentenced at a time when parole release was a realistic prospect are now lingering behind bars as the Pataki Administration has dramatically restricted parole for violent felons, arguably going beyond anything authorized by the Legislature, a probe by the New York Law Journal reveals.

Through an administrative process subject to scant judicial review, Governor George E. Pataki's appointees to the New York State Board of Parole have evidently used their broad discretion to implement a gubernatorial policy to keep 'violent felons' behind bars as long as possible, notwithstanding the recommendations of sentencing judges guided by a different and more lenient legal, political and legislative framework.

Parole release rates have declined radically since Mr. Pataki, a Republican elected initially on a tough-on-crime platform, became governor in 1995 and as the board members appointed by his predecessor, Democrat Mario M. Cuomo, have all been replaced.

The results are telling: In fiscal year 1992-93, the state released **23 percent** of prisoners eligible for parole who had committed so-called A-1 felonies — murder, attempted murder, kidnapping and arson. By 2004-2005, that had plummeted to **3 percent**, just nine prisoners. At the same time, the release rate for other violent criminals who appeared for interviews before the parole board plummeted to **18 percent**, or 337 inmates, from **51 percent**.

Critics of the administration's parole practices say inmates convicted under prior regimes - especially inmates who plea bargained and had reason to expect that they would be freed after serving the lower end of an indeterminate sentence - are getting a raw deal.

"It's fine, a legitimate political decision to do things prospectively," said Alfred A. O'Connor, an attorney with the New York State Defenders Association in Albany. "It's quite a different matter when you are victimizing people who are in [prison] under a completely different set of circumstances, a set of assumptions about what would happen."

Although exact numbers were not available, a large portion of New York's 63,000 inmates were sentenced to indeterminate, parole-eligible terms, the 2004 New York State Statistical Yearbook suggests. Mr. O'Connor said those **convicts should be judged for parole purposes under the**

rules and protocols in effect when they were sentenced.

"The parole board is acting as a second sentencing court, imposing its own sentence in place of the sentence imposed by the judge," said Robert N. Isseks, a criminal defense attorney in Middletown. "That is particularly clear in those cases where the judge imposed a sentence less than the maximum [such as 15-years-to-life rather than 25-to-life]. Then, the parole board steps in and imposes a sentence that is twice as much."

Mr. Isseks recently filed a federal class action in the Southern District accusing the Pataki Administration of side-stepping the parole law in order to advance its agenda. Nine named plaintiffs who were sentenced to less-than-the-maximum for second-degree murder, but have been repeatedly denied parole, allege that the parole boards relied on the seriousness of their offense while paying little attention to other statutory criteria.

Some trial judges have overturned or challenged parole board determinations on the grounds that the appointed panel is following executive policy rather than the law, a charge the Division of Parole disputes. But even if a prisoner convinces a court to order a new hearing, his efforts may be for naught.

A review of scores of cases and records reveals a pattern: An inmate is denied parole, files and loses an administrative appeal, files and loses an Article 78 petition and appeals to an appellate panel. Since the courts can do nothing other than order a new parole hearing, and the inmate gets a hearing automatically every two years, by the time the matter gets to the appellate court, another hearing has been scheduled, and the whole court issue is moot.

Joy Pujas of Ulster County is active in the parole restoration movement. Her husband is doing time for a murder 24 years ago. He was sentenced to 20 years to life in New York City in 1982, came up for parole in 2002 and has been denied twice since then.

"If a judge can impose 25-to-life but instead imposes [20]-to-life, that indicates the judge thinks that under some circumstances [20] is sufficient," Ms. Pujas insisted. "But the parole board says it is not."

Inmates and their families say they are losing hope that parole decisions will be made based on the objective criteria of the law as written.

"You want to believe in a system, a system where there's righteousness, where people pay their dues and that it is all about correcting and rehabilitating and not only about punishment," said Ms. Pujas, who testified at Mr. Aubry's hearing. "We have come to the point where it is total punishment. Financially, it is devastating. Emotionally, it is crippling."

Sealing Criminal Records

Excerpts from "Memorandum In Support of 'Second Chance' Legislation" by the Legal Action Center.

Thousands of New Yorkers currently must deal with the stigma associated with having a criminal record for the rest of their lives as they seek employment and housing and strive to become productive members of society - even after they have fully paid their debt to society, and, in many cases, lived law-abiding lives for many years after completion of their sentences. The Legal Action Center has drafted a proposal that has the following key components:

- Provides for the sealing of different categories of non-violent convictions. An individual who has a drug felony conviction and is mandated into chemical dependence treatment can petition to have his or her record conditionally sealed upon completion of sentence; a person with a class D or E non-violent felony can petition for a conditional seal after 3 years of completion of sentence, and after 5 years after completion of sentence on a class B or C non-violent felony.

In all of these cases, individuals cannot have any other felony convictions and cannot have more than two other non-violent misdemeanor convictions. In some cases the petition is filed with the court, in other instances with an administrative tribunal.

Individuals with longer records of non-violent convictions can petition to have their records sealed 10 years after completion of sentence for the last conviction.

- Gives prosecutors in all cases notice of the petition and an opportunity to support or oppose the petition.
- Lists the factors that a court or administrative tribunal has to consider.
- Conditionally seals records. If an individual is subsequently arrested for a crime, the record is conditionally unsealed. If the arrest results in a conviction, the sealing order is vacated; if the case is dismissed, it is reinstated.
- Renders ineligible individuals whose records contain a conviction for a sexual offense defined in section 130 of the penal law.
- **Deems a conviction that has been conditionally sealed a nullity. An employer may only inquire about convictions of crimes that have not been sealed.**

Drug Offenders and College.

Excerpts from a note by Anita Marton of the Legal Action Center

In case you haven't heard, we and other advocates had a big victory in Washington D.C. There has been a major change in the student loan ban. As you probably know, under current law, students who had been convicted of drug crimes were ineligible for student loans until the passage of a certain period of time. Under the new changes, individuals with past drug convictions will be eligible to receive student loans; individuals convicted of drug crimes *while they are enrolled in school* and receiving federal financial assistance remain ineligible for one year for a first possession offense, two years for a second and indefinitely for a third, with harsher penalties for sales. It goes into effect on July 1, 2006. While we and many advocates had been pushing for a full repeal of the student loan ban, and will continue to push for repeal, this will make many thousands of individuals eligible for loans.

Modern Slavery

Excerpt from Memo in Support of NYS Bill S.5246

Trafficking in persons - including the use of force, fraud, or coercion to require individuals to engage in the commercial sex trade - is a form of organized crime.

600,000 to 800,000 men, women, and children are thought to be trafficked each year across international borders. The federal government estimates that nearly 18,000 persons are trafficked annually into this country, and the trade is growing. According to the Victims of Human Trafficking project at Florida State University, international trafficking victims have been identified in more than 20 states, with the majority located in Florida, New York, and California.

Unsuspecting targets, who aspire to improve their lives, are often attracted by the false promise of a well-paid job in another country or location. Upon a victim's arrival in the country or new destination, traffickers often confiscate passports or other travel or identity documents, rendering victims unable to leave the country or seek assistance. **The victims may then be forced through physical, psychological or sexual abuse and mistreatment into sexual exploitation or forced to work under harsh conditions without lawful compensation or decent living conditions. Such conditions can result in modern-day slavery.**

Victims may be restricted from any travel without the trafficker, and contacts with the outside world may be prohibited. Many victims are threatened with physical harm, or harm to their families, if they fail to engage in the required labors. Moreover, traffickers often confiscate money earned by victims to payoff inflated "debts" incurred through travel and charges for other expenses. In some cases, victims may be "sold" to others who will continue the exploitations.