

MEMORANDUM

TO: Kathy Saltmarsh
FROM: Samantha Gaddy
RE: Truth in Sentencing
DATE: August 20, 2013

The History of Truth-in-Sentencing

The early 1990s were ripe with sentencing reform. The previous decade and a half were filled with policies to toughen the country's penal policies and strengthen the nation's criminal justice system (Green, 2002). During this period, the public seemed to be outraged in learning that offenders were serving less than half¹ of the time in prison that the judge had sentenced them to—after all possible good behavior and day-for-day credits were calculated. The sentiment, at least in Illinois, was that keeping offenders off of the streets would increase public safety and restore public satisfaction with the criminal justice system. The belief was that the incapacitation of offenders would result in less crime and therefore less money needed to operate the criminal justice system (Olson, 2009).

Truth-in-sentencing (TIS) is reflective of the type of public policy designed in this 1990s "Get Tough on Crime" period. This policy, although not new, was reintroduced to the public in an effort to reduce the disparity between offenders' court imposed sentence and the amount of time that offenders were spending in prison. The goal was to ensure that particularly violent offenders were actually serving a greater proportion of the time in prison that the judge sentenced them to serve (Olson, 2009).

A Call for Implementation

In 1991, William Barr was appointed United States Attorney General under President George H.W. Bush. The New York Times reported that he was a conservative who "reversed a longstanding Justice Department policy by promising to help states fight court-ordered limits on prison overcrowding. The shift highlighted a central theme of Mr. Barr's tenure...: his contention that violent crime can be reduced only by expanding Federal and state prisons to jail habitual violent offenders" (Johnson, 1992, para 22).

Barr called for the nation to further toughen its criminal justice system, convening a large meeting of state criminal justice officials in Washington, D.C. to ask them to step up their efforts in incarcerating repeat violent offenders because the states had fallen behind the in the last decade where public safety was concerned (Green, 2002). With his focus on public safety, Barr authored two specific reports on behalf of the Department of Justice that would set the stage for near nationwide implementation of Truth-in-Sentencing. The first report, *Combating Violent Crime: 24 Recommendations to Strengthening Criminal Justice*, laid out a series of policy proposals that Barr believed would improve the criminal justice system. The report noted that a typical criminal offender at the time was only serving an average of 37% of his or her sentence in prison. Furthermore, he pointed to research from the 1988

¹ On average, offenders nationally were spending 38% of their imposed sentence in prison and offenders in Illinois were serving 20-50% (Olson, 2000).

Bureau of Justice Statistics (BJS) study of prison release practices in 36 states and the District of Columbia (Green, 2002) that stated that 30% of murders in the United States were committed by offenders on bail, probation, or parole (Chen, 2000). In this report, Attorney General Barr recommended that the states adopt a provision similar to one previously adopted by the federal government requiring federal inmates to serve a minimum of 85% of their court imposed sentences in prison under the *Sentencing Reform Act of 1984* (Sabol et al., 2002). The second report, *The Case for More Incarceration*, had three major conclusions: Prisons work; we need more of them, and; inadequate prison space costs money (Chen, 2000).

In 1994, the Attorney General went to work for the governor of Virginia – heading *The Commission on Parole Abolition and Sentencing Reform*. The Commission recommended an 85% time to serve policy for violent offenders in Virginia. The Commission’s other recommendations included doubling the average time served by violent offenders, increasing the time spent by repeat offenders from serving 300% to 700% of the sentence given for a first-time offense, and limiting good time credits. The price tag for the recommendations would be \$850 million, a \$200 million increase. However, Barr and others thought the cost was necessary to protect public safety (Chen, 2000).

The Safe Streets Alliance², whose primary objective was to promote TIS proposals nationwide, became a strong supporter and advocate for the Virginia Commission’s proposal before lobbying in support of TIS in Congress. The National Rifle Association’s CrimeStrike Program also worked to help pass TIS laws in Arizona, Mississippi, and Virginia. Other proponents included the Heritage Foundation, the RAND corporation, and many others who all cited the lack of “making violent criminals do their time” for the murders of Polly Klass and the father of famed basketball star Michael Jordan (Green, 2002).

However, despite its growing popularity, not everyone was in support of adopting a TIS proposal (Chen, 2000). Many, particularly in Illinois, believed that inmate assaults and other rule violations would increase if there was less incentive to behave through taking away of good time credits. The Illinois Department of Corrections raised concerns about both cost and behavior of inmates and the safety of staff without behavior incentives (Olson, 2009). However, many (including Illinois state Senators who were vocal about this in floor debate) believed that IDOC’s fiscal impact projection was exaggerated and that the “...logic of longer lengths of stay in prison [were] flawed” (Olson, 2009 p.3).

There was also a great concern about financial burdens to the state if more inmates would be spending an increased amount of time in prison than before TIS policies. Conversely, some practitioners held the belief that judges would alter their sentencing so that the time served would be equal to time served before the implementation of TIS (Olson, 2009).

Crime Control Act of 1994

Both of the reports that Barr authored while Attorney General received some criticism for their empirical findings, however, both the data and anecdotes from the reports were frequently cited for the

² The Safe Streets Alliance played a strong role in the Polly Klass murder trial, a precursor for the national three strikes and habitual offender laws movement (Chen, 2000).

next few years in Congressional proceedings. In 1994, Congress passed the *Violent Crime Control and Enforcement Act of 1994* (Crime Control Act). Under this Act, states could apply for grants to help them build the capacity and operations to house violent offenders. However, funding was not appropriated until nearly two years later. The *Department of Justice Appropriations Act* (Sabol et al., 2002) authorized up to \$10 billion in grant funding for states to increase prison and jail capacity to ensure the incapacitation of violent offenders. This could be done by either building or expanding prison or jail facilities (U.S. Gen Acct Office, 1998). The award amount was calculated through a formula as a percentage of each eligible state's portion of its average number of violent crimes for the previous three years, as reported to the FBI. According to the BJS, with the passage of state TIS laws, prison populations throughout the country were expected to increase due to incarcerating more offenders for longer. As a result of this anticipated increase, the government would offer grants were offered as incentives to help increase prison bed space for the oncoming population growth (US Bur of Just Stat, 1999).

As amended in 1996³ the Crime Act provides, among other things, incentive grants to states under two qualifying programs; Violent Offender Incarceration (VOI) and Truth-in-Sentencing (TIS). To receive VOI funding, states needed only to declare that they had or intend to implement policies that would ensure that violent offenders serve a substantial portion of their court imposed sentences, made punishments for violent offenders more severe, and ensured that the time an offender served was sufficiently related to their criminal history. Increasing the severity of sentences for violent offenders allowed states to seek the maximum grant funding available under the VOI portion of the Crime Control Act. In 1996, all states received at least some portion of VOI funding for their state criminal justice system (Sabol et al., 2002).

The TIS portion of the grant required that states demonstrate the development and intended enactment of specific legislation for sentencing violent offenders (Sabol et al., 2002). This portion mandated states to have TIS laws requiring violent offenders to serve at least 85% of their court imposed sentences (Chen, 2000 & Sabol et al., 2002) and requiring states to show that they've been working to increase punishment for violent offenders in recent years, particularly working to require serious and repeat violent offenders and drug offenders to serve 85% of their imposed sentences. The original 1994 Crime Act only allowed states with determinate sentences to qualify, however the 1996 trailer bill expanded the VOI/TIS program to include both indeterminate and determinant sentencing states. States were required to calculate only time spent in the actual custody of a correctional facility, including, any sentencing reductions or credits or "population control releases" (U.S. Gen Acct Office, 1998, p. 3). Time served on probation or parole was also to be excluded from the calculation, however, time served in jail, transitional housing, or community reintegration placements could be calculated as part of the 85% (U.S. Gen Acct Office, 1998).

State Adoption

Before TIS became a popular reform option amongst the states, many states already had time-to-serve provisions in their criminal codes. However, looking back at 1975, there were nine states that had absolutely no constraints on when an offender could be released from prison. In those states

³ The eligibility criteria for grant funding in the original *Violent Offender and Crime Control Act of 1994* was changed significantly in the 1996 amendment, making the qualifications less rigid (Sabol et al., 2002).

(Colorado, Hawaii, Idaho, Iowa, Kansas, Minnesota, North Dakota, Oregon, and Washington), most offenders were eligible for release at any time after they walked into the prison. As late as 2002, three states still maintained open sentencing provisions (Hawaii, Iowa, and North Dakota) (Stemen et. al, 2005).

The federal TIS grant requires the sentences of violent offenders to be served in prison for 85% of the court imposed sentence in order to be eligible for grant funding. States have crafted their own requirements ranging from 25% time-to-serve TIS policies (that are not eligible for federal funding) to a 100% policy. By 1998, 27 determinate and non-determinate sentencing states had 85% TIS laws in place. There are still many states that do not meet the 85% requirement – for various reasons. Massachusetts, for example, requires up to 70% of the minimum-term to be served whereas Indiana, Maryland, Nebraska and Texas require 50% and Montana requires 25% of the court imposed sentence to be served in prison. Arkansas mandates some offenders to serve 70% of their sentence in prison while Colorado makes it mandatory that violent offenders with one prior conviction for a crime of violence to serve 56% in prison and 75% for two prior convictions for crimes of violence. Some states, like Utah for example, do not have a codified TIS statute; however their policies still qualified Utah for grants under VOI/TIS (US Bur of Just Stat, 1999 & Sabol et al., 2000).

In 1997 Congress asked the United States General Accounting Office (GAO) to determine the number of states that had enacted TIS statutes that meet the federal grant program’s qualifications and whether the issuance of grants influenced TIS lawmaking in these states. Congress also asked the GAO to determine why other states had not enacted TIS laws that would meet the federal requirements for grant funding (US. Gen. Acct Office, 1998). The GAO found that federal TIS grants were not a factor in the passage of the TIS legislation in 12 states, were a partial factor in 11 states, and were a key factor in 4 states. By 1999, 42 states and Washington, D.C. had some form of policies in place that regulate the amount of court imposed sentence that violent offenders will serve, though many of these states do not have policies that meet the federal VOI/TIS grant criteria (Sabol et al., 2002).

Truth in Sentencing in Illinois

Illinois passed its Truth-in-Sentencing Act in 1995 (P.A. 89-404, SB1187). The bi-partisan supported bill, sponsored by Senator Kirk Dillard with input from Senator John Cullerton, required offenders convicted of first degree murder to serve 100% of their court imposed sentence. Offenders with convictions for various violent crimes that resulted in great bodily harm would be required to serve at least 85% of their imposed sentence. Prior to the August 20th, 1995 effective date of this Act, offenders sentenced to prison for murder and criminal sexual assault served an average of less than 40% of their court imposed sentences in Illinois as a result of accumulation of all of the sentencing credits that could be applied (Armstrong, 1999 & Olson, 2000). However, following the federal TIS model would remove the ability to apply such a vast amount of credits.

In November of 1995, the General assembly passed an initiative of Governor Edgar that created the offense of Predatory Criminal Sexual Assault of a Child, and required persons convicted of this offense to serve 85% of their court imposed sentence in prison (Illinois SB 0721). This would be the first of many additional crimes to be added to the list of TIS offenses in Illinois over the next two decades, only some of which involved great bodily harm.

Truth-in-Sentencing Commission

SB1187 also created the Truth in Sentencing Commission that was charged with developing and monitoring TIS legislation. The 13-member Commission was also charged with reviewing the funding portion of the federal VOI/TIS Crime Act to determine “what is required to receive maximum funding” (Final Rpt, 1998). The Commission issued its final report in April of 1998 (Olson, 2002).

In its final report, the commission offered a plethora of recommendations, including;

1. Providing a consistent and rational plan for the crimes that were to receive enhanced penalties under the TIS law. Recognizing that by limiting the enhancement of penalties only to crimes involving great bodily harm has produced some uncertainty. Crimes similar in seriousness, yet without a finding of great bodily harm, should also be subjected to enhanced penalties.
2. Retaining the 100% time-to-serve level for murder but expanding the 85% category to include all violent non-probationable felonies.⁴
3. Sustaining the ideal that changes to TIS legislation in Illinois’ should be driven by those factors that prompted drafting of the original legislation, including:
 - a. Increasing public confidence in the criminal justice system , and
 - b. Incarcerating the most dangerous offenders
4. Adding 29 offenses to the 85% requirement list to preserve the legislative intent that the IL is punishing the most serious violent offenders.
5. Resurrecting the Commission in the next 5 years to continue the study of the newly implemented TIS law or the enactment of a full time commission to perform a comprehensive study of all of the Illinois Criminal laws since they have not been fully examine in more than 30 years.

(Illinois Truth in Sentencing Commission, 1998).

In its final report, the commission noted that they were not recommending for the state to support an expansion of offenses for the purpose of being eligible for federal funds. Given the relatively small amount of funding available from the federal government, the fiscal impact on IDOC to meet all of the requirements would dramatically exceed the federal funds received (Final Rpt, 1998).

Grant Funding

Illinois applied for and was awarded \$16,362,634 in VOI/TIS grant funding in 1996, the amount being just behind California, New York, and Florida. However, Illinois did not receive an award in 1997 because federal grant officials determined that Illinois’ TIS law did not fit the required federal grant provisions by only requiring violent offenders to serve 85% of their sentence if there was a finding that great bodily harm was done to the victim. However, the state was awarded grant funding in 1996 with the understanding that this definition would need to expand to include other Part 1

⁴ In 1998, IDOC projected that the cost to expand TIS to all non-probationable violent felonies would exceed \$500 million over the next 10 years (Olson, 2009).

violent crimes, as defined by FBI's *Uniform Crime Reporting Act*, to receive any subsequent funding. Illinois failed to amend its TIS statute and therefore did not reapply for funding in 1997 or other subsequent years. In agreement with the Truth-in-Sentencing Commission, a main reason for failure to change its statute to comply with the VOI/TIS grant requirements and not applying for a subsequent grant was due to prison construction and/or operation costs being too high. In an interview with the US General Accounting Office, state officials⁵ noted that federal grant money would only cover a small portion of the state's prison construction and operating costs. Similarly, Vermont, a state that decided against implementing new time-to serve requirements, cited that implementation of a new TIS law would cost several millions of dollars and the mere \$80, 000 in grant money that they could receive would not ultimately be worth the costs (US General Accounting Office, 1998, p. 10).

Illinois Supreme Court

In 1999, the Illinois Supreme Court struck down Illinois' TIS statute, declaring it unconstitutional due to a violation of the single subject rule in the Illinois Constitution.⁶ In anticipation of the court's ruling, the General Assembly crafted and passed a new TIS statute in 1998, a year prior to the court's ruling. However, the new legislation was not retroactive to the original statute. As a result, the *Chicago Tribune* reported that 18 inmates had to be immediately released from the Illinois Department of Corrections and the sentences of 2,570, of the 43,000 inmates in custody, were expected to be affected. This would amount to nearly 6% of the total population that were serving sentences under TIS four years after its passage, 654 for First Degree Murder (Armstrong, 1999).

Results

A relatively small amount of research on the impact of TIS has been conducted in the last decade. The majority of the research was published in the late 1990s when state laws were fairly new and the impact was less apparent. At the time, it appeared to many that TIS generally was having the intended results. For example, Grimes and Rodgers (1999) found that TIS laws requiring inmates to serve at least 85% of their sentence in Mississippi actually reduced prison admissions and therefore prison population growth. However, an obvious explanation for this was not evident at the time (Stemen et al., 2005).

Washington adopted TIS laws long before other states and before the incentivized passage of TIS through the federal VOI/TIS legislation. As a result of their TIS legislation, Chen (2000) found that there have been fewer short stays by violent offenders and more long stays over time. Chen (2000) and Olson (2000 & 2009) also found that TIS had little or no effect on the number of people sentenced to prison but a greater effect on the length of stay due to postponed release dates. However, both acknowledge that judges were not required to maintain the base sentences for crimes. When Stemen et al. (2005) looked at the impact of incarceration policy over a 30 year period, they found that states that had separate time to serve requirements for violent offenders had higher incarceration rates than states that did not have these policies.

Though some states began discussing and/or implementing time-to-serve type laws as early as the 1980s, they received little research attention until the 1990s. Little assessment has been done since

⁵ GAO interviewed a Grant Specialist at the Illinois Criminal Justice Authority.

⁶ SB721 included 12 amendments from various bills, many that were unable to pass as stand-alone bills.

the implementation of TIS laws across the states, particularly in the last 10 years. However, because sentencing structures vary greatly from state to state (e.g. indeterminate vs. determinate, presumptive/grid guidelines vs. no guidelines, mandatory minimums, etc.) there is no uniform TIS structure. Given the plethora of sentencing practices results on the effectiveness of TIS vary from state to state (Olson, 2009).

Though, a study by Sabol, et al. (2002) found that TIS had a larger impact on prison populations than did other factors like demographic characteristics or offense-type resulting in a prison sentence in seven states, including Illinois (Olson, 2009).

As for the hypothesis that persons serving sentences under TIS would receive more disciplinary infractions, the results are mixed. For example, in 1998 the North Carolina Research Analysis Center found that those sentenced under TIS had a weighted disciplinary infraction rate of nearly 20% more than those serving non-TIS sentences, also having a shorter time-to-infraction where Olson (2009) and others looking at the incidents of disciplinary infractions found that taking away of sentencing credits does not appear to have influenced the type or severity of disciplinary infractions in Illinois' prisons (Olson, 2009).

As for population increases, BJS examined a cohort from 1990 through 1997 and found that violent offenders accounted for more than 50% of the total increase in State prison inmates and drug offenders comprised about 19% of the growth (US Bur of Just Stat, 1999). However admissions have only increased 17% nationwide. They also found that parole violators represented an increased portion of prison admissions. Arrests for almost all violent crimes, save aggravated assault, declined between the time period examined yet new court commitments increased for violent offenses between 1990 and 1996 around the time that TIS was being implemented in several states. As of the time of their report, BJS states that 7 in 10 violent offenders are in a state that requires 85% of their sentence to be served. Under a truth in sentencing law with 85 percent, violent offenders could be expected to serve an estimated 15 months longer than the projected average minimum time to be served by offenders entering prison in 1996. Under a 75 percent requirement, violent offenders would serve about 10 months less than the 85% group. Time served in prison for violent offenders increased in 38 states between 1993 and 1997 and on average, black offenders served 2 months longer than white offenders. However whites spent nearly 4 months longer in prison for murder (US Bur of Just Stat, 1999).

Impact on Illinois

Approximately 1500 inmates per year are subject to TIS in Illinois. Slightly over 25% of inmates currently in the Illinois Department of Corrections were sentenced under TIS, however TIS accounts for only 6% of admissions. This is contrary to the thought that many practitioners had, believing judges would adjust their sentencing so that offenders required to serve 85% of their sentence would still be serving the same amount of time that they did prior to the implementation of TIS. However, nearly 15 years after its implementation, Olson (2009) reached the general conclusion that the length of court-imposed sentences changed relatively little as a result of Illinois' TIS law, despite the earlier thought of practitioners. As a result, the length of time that will be served by offenders sentenced under TIS has dramatically increased, noting that a much larger proportion of inmates serving sentences for murder than ever before would not be released until after they reached the age of 75 or died in prison (Olson, D., 2013 April 26, SPAC meeting). Many inmates are now serving up to twice as long as they did prior

to TIS. However, the projected age of release for sex offenders did not change substantially, in part, because they are generally required to serve less time than those serving sentences for murder (Olson, 2009).

For an historical overview of TIS in IDOC, see IDOC's Annual Statistical Presentation, now discontinued, that provided information on how many inmates are serving sentences under TIS each year, the average time they have served, and the amount of time left to serve.

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Timeline

- **1984** - The federal government adopted an 85% TIS provision for federal inmates
- **1990** - Washington implements TIS legislation with an 85% requirement
- **1991** - Attorney General Issues two reports about the need for more incarceration
- **1994** - Passage of VOI/TIS
- **1995** - Illinois General Assembly passes SB1187 and creates the Commission on Truth and Sentencing
- **1998** - Twenty-seven states have adopted TIS provisions. The General Accounting Office issued a special report saying that “[T]his [VOI/TIS] grant was a key factor in implementation in at least 4 states and a partial factor in 11 more states.”The constitutionality of Illinois’ PA. 89-404 is pending before the state supreme court, in anticipation of a negative outcome; the general assembly passes a second piece of TIS legislation.
- **1999** - The Illinois Supreme Court declares Illinois’ version of TIS unconstitutional for a violation of the single subject rule