
The State Factor

Jeffersonian Principles in Action

A PLAN TO REDUCE PRISON OVERCROWDING AND VIOLENT CRIME

“Conditional Post-Conviction Release Bond Act”

Introduction

The overcrowding of prisons and the breakdown of the parole and probation system has become a serious problem in America. Criminals released early from prison—in order to relieve overcrowding—are often poorly supervised and free to commit new crimes once they are back on the streets. In order to solve these problems lawmakers should consider a new and innovative program called “Conditional Post-Conviction Release Bonding.” This ALEC concept would allow for the early release of legislatively defined participants from prison—primarily non-violent and juvenile offenders—but require that they post a bond. The bond would be revoked if they did not meet all the requirements of the program like keeping gainful employment and staying off of drugs.

During the late 1980s and early 1990s, state and local governments got tougher on crime by passing legislation calling for mandatory sentences for repeat offenders, such as California’s “three strikes and you’re out” law. Cities like New York adopted the “Broken Windows” strategy that called for the arrest and prosecution of all crimes large and small. Because of the enactment of these policies the number of victims of violent crime in America has dropped from **620** per 100,000 in 1986 to **469** per 100,000 in 2005.¹

Unfortunately, one unintended consequence of America’s new tough stance on crime is that our prison system has become dangerously overcrowded, forcing prison officials to release violent criminals after serving only a fraction of their sentences.

Sadly, the current system used to relieve overcrowding has created a “revolving door” criminal justice system. The recidivism rate among those released early from state and county prisons is extremely high. In fact, a Department of Justice study found that 67.5 percent of criminals released from prison were rearrested for a felony or serious misdemeanor within three years.²

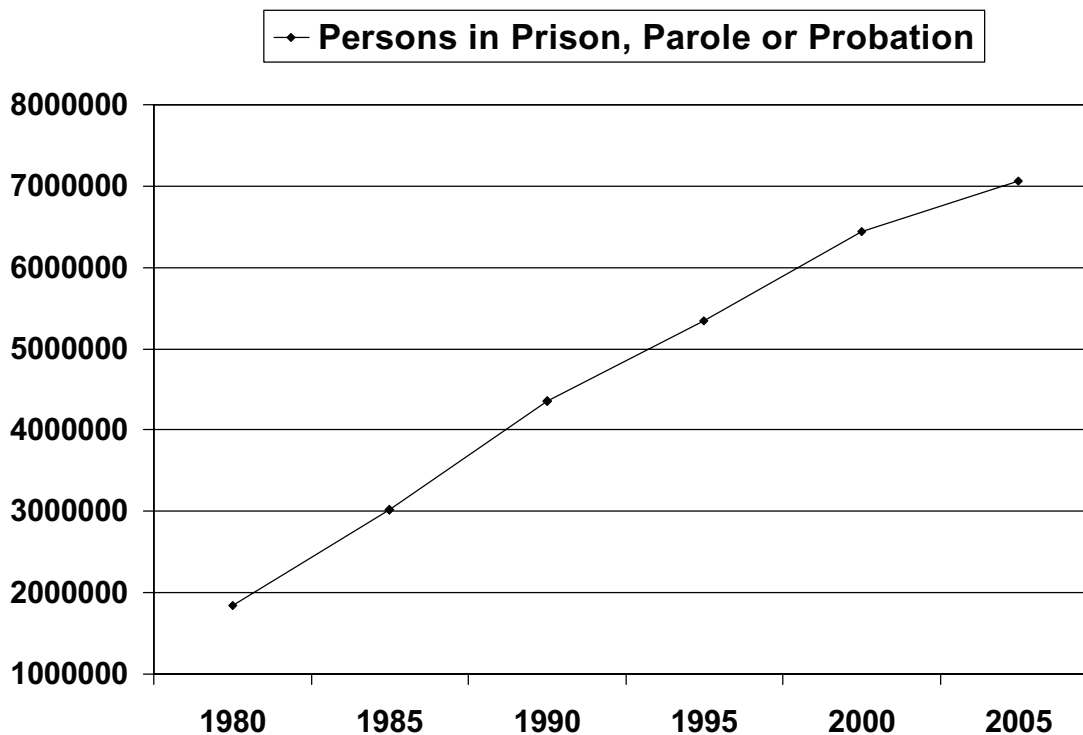
The evidence from previous studies is that incarceration works; however, there is currently not enough space in prisons for all convicted criminals to fully serve their sentences. In many cases, for every new criminal admitted to prison, another must be released on early parole in order to comply with federal court orders to reduce overcrowding.

In 2005, federal prisons operated at an average of 134 percent capacity and state prisons operated at an average of 107 percent above capacity.³ Prison overcrowding is so bad in California that Gov. Arnold Schwarzenegger recently declared a state of emergency. California lawmakers have crafted a plan to deal with prison overcrowding that will cost more than \$7 billion.

The dramatic rise in the number of criminals incarcerated has also impacted the parole and probation system. Currently, 10 percent of those on parole or probation simply disappear compared with only 3 percent of those released on private bail bonds.⁴ Furthermore, 15 murders a day are committed by people under government supervision⁵ and 53 percent of prison inmates were on probation, parole or pretrial release at the time of their incarceration.⁶

Lawmakers need to recognize that the current system is failing to adequately supervise criminals, and more importantly, failing to return them to custody upon inappropriate behavior. In most places what passes for supervision is less than adequate. Parole and probation officers meet with a criminal on average for as little as 5 to 20 minutes a month.⁷

Taxpayers are not well served by a broken and potentially dangerous prison and parole system. In order to properly protect American citizens, some immediate solution must be found to reduce prison overcrowding so those deemed most violent to society serve their full prison sentence.



Lauren E. Glaze and Thomas P. Bonczar. "Probation and Parole in the United States, 2005." U.S. Department of Justice. Washington D.C. January 18, 2007. NCJ215091.

Background

In 2005 more than 2.1 million people were held in state or federal prisons—an increase of more than 600,000 since 1995.⁸ To put the current number in perspective, in 1970 less than 200,000 people were housed in state or federal prisons.⁹ In part because of overcrowding, felons sentenced to state prisons in 2002 were likely to serve only 51 percent of their sentence or just 2.25 years.¹⁰

States face a dire need to increase the capacities of their prisons; however, as it will cost billions of dollars to build enough new prisons it seems unlikely that federal and state governments will be able to quickly allocate the needed funding. In the meantime, an immediate solution to the overcrowding problem must be found.

Government leaders must also recognize that the parole and probation system is overburdened and

under-funded. In 2005, almost 5 million Americans were on parole or probation, an increase of more than 1 million people since 1995.¹¹ This large increase has led to parole and probation officers having average caseloads of 258 to 337 criminals.¹²

An article in *Corrections Management Quarterly* described the current system this way: “When probation and parole officers lacking resources and plausible technique are made responsible for dispersed caseloads of individuals who proved themselves motivated offenders in the past, who are located where crime and vulnerable victims abound, and who are effectively anonymous because they are without formal or informal supervision for weeks on end, the agents are inclined to let nature take its course—to wait for police to arrest those offenders who, unsupervised, commit new crimes.”¹³

Not only do criminals commit new crimes while under government supervision, many choose to simply run away. Most times there is little effort by the government to track these runaways down. A report by the Manhattan Institute in conjunction with the American Probation and Parole Officers and the National Association of Probation Executives stated: “[N]ext to nothing is being done to apprehend these scofflaws, a number of whom are ‘hiding in plain view.’”¹⁴

A Solution

Any plan or program to provide a prompt and adequate solution to the overcrowding problem in state and local detention facilities should address the following issues:

- The detention facility population should be brought down to a level consistent with capacity so that the most violent offenders can serve out their full sentences.
- Juveniles and non-violent misdemeanor offenders should be the focus of rehabilitation and early release.
- Additional economic burdens should not be placed on taxpayers. To the greatest extent possible, the program’s costs should be borne by criminals.
- Supervision of those on parole and probation must be increased.
- Private companies should be utilized, and there should not be a sole reliance on the government-run parole and probation system. The private sector appearance bond system is a well proven workable model.¹⁵
- Finally, and most importantly, there should be assurances that under the program’s operation there would be no increase in recidivism. The solution must be capable of demonstrating in the early stages of implementation that no adverse impact upon community safety occurs.

Conditional Post-Conviction Release

Conditional Post-Conviction Early Release would rely on performance bonds and security or indemnity agreements to keep participants from committing new crimes and assure their prompt return to custody should they misbehave. The program would focus on the large number of incarcerated juveniles and

misdemeanor non-violent offenders and operate much like the current private bail bonds system, which has been successfully used to grant pretrial releases to individuals across the country. It would be a means for providing early release of non-violent offenders from state and local facilities in such a way as to reduce recidivism with no additional costs to taxpayers. Best of all, the program would rely on the proven success of the private bail bond industry, rather than the proven dysfunction of the government-run parole and probation system, by requiring families and communities to take some responsibility for future acts of the person who is displaying signs of trouble.

The Conditional Post-Conviction Release would work as follows:

- Legislatively defined participants would be chosen by parole officials at the penitentiary level and judges at the trial level (hereafter referred to as releasing authorities).
- Participants would be released from confinement under the terms and conditions of a performance bond. The bond would require a surety, (financial guarantor) by a qualified insurance company. The terms and conditions of the performance bond would have to be fully met at all times in order for the participant to remain in society.
- Failure of the releasee to meet numerous requirements such as house arrest, regular drug testing, recovery program involvement, mandatory check-in requirements, non-interference with witnesses or victims, maintenance of gainful employment, payment of restitution, and no subsequent arrests or any additional requirements would obligate the surety to promptly return the releasee to custody thus safeguarding the community. Failure to so perform would subject the surety to full financial penalty under the bond.
- Persons in the participant’s release environment, such as parents and guardians, would voluntarily sign “agreements of indemnity” whereby they, along with the individual would have a monetary incentive, as indemnitors to the surety, to encourage compliance by the participant. If there is a violation of the bond, the family as well as the offender would be drawn into the circle of responsibility.
- Upon the breach of any single condition of release, the bond could be revoked by the court, a warrant

issued and the participant re-incarcerated, and the surety required to pay a financial penalty to the state in the alternative.

The financial penalties of the bond would create strong incentives on the part of the surety and the indemnitors to see that the participant abides by all the releasing authority's conditions of release or else be promptly surrendered back into custody, thereby guaranteeing low recidivism. The program would require no additional staffing or administrative costs for state and local governments. Prison space would become available to ensure that violent offenders serve their full sentences. At the trial stage, this program would be a sentencing alternative. For those who operate prisons and jails, it would be a very tightly controlled early-release vehicle for selected, non-violent offenders.

The program would relieve overburdened parole and probation officers of many non-violent and juvenile offenders. Offenders would also perform better in the Conditional Release Program as compared to the current system because of the financial penalty subject to being imposed.

Conclusion

It is imperative that the use of limited prison space is maximized and that criminals are better supervised in order to reduce crime. Properly freeing inmates who are not threats to law-abiding citizens allows the justice system to ensure that those who are a threat remain incarcerated for the duration of their sentence.

This type of early release program is revolutionary because of its reliance on private entities instead of the government. This program would utilize the techniques that have made the private bail bond system superior to the government's "revolving door" justice system.

For many years, ALEC has educated its members on the benefits of enlisting the private sector in the effort to reduce crime. This new ALEC endorsed program would generate family and community support for rehabilitating offenders, particularly juvenile offenders; provide an alternative to the current parole and probation system; and promote the principle of local government and the private sector working together to overcome grave social ills. It would do this in a fiscally responsible manner with no new cost to state and local government.

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Endnotes

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