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The Case for Clemency: Reducing Lengthy Federal Prison Sentences and Advancing Public Safety

While there has been meaningful progress over the past decade in turning the tide on mass incarceration and the racial disparities that define it, there is still so much more to do. One in eight people in prison in the U.S. is serving time in the federal system, making it the largest prison system in the country.¹ Over half of people in federal prison are serving sentences over 10 years,² and many are languishing on decades-long sentences for crimes that would result in a shorter sentence if they were convicted today. Legislative efforts to address these issues have stalled. There's an urgent need for President Biden to use his executive clemency power expansively to safely reduce the federal prison population and give people a second chance.

Data from past efforts to reduce lengthy federal sentences, along with a growing body of criminal justice research, demonstrate that President Biden can use the executive clemency power to reduce federal sentences through commutations in the final months of his presidency without compromising public safety. These past efforts have taken different forms—from legislative changes to retroactive applications of amendments to the Federal Sentencing Guidelines—but share similar successful results, providing clear evidence that a robust clemency effort can decrease federal incarceration and advance public safety.

Retroactive Application of Federal Sentencing Guideline Changes

Over the last decade, the U.S. Sentencing Commission (“the Commission”) has adopted and implemented a number of large-scale retroactive sentencing guideline reductions that have safely reduced sentences for thousands of people in federal prison, allowing them to reunite with their families and communities, sometimes years before their original release date. Evaluations of these retroactive guidelines applications have consistently found no difference in the recidivism rate of people released early from prison after having received a reduced sentence and people who served their full sentence. These findings provide the clearest evidence that broad use of sentence commutations can reduce the federal prison population without compromising public safety.

2007 Crack Cocaine Amendment

In 2007, the Commission reduced the recommended sentences for crack cocaine offenses across the board and made the changes retroactive, allowing incarcerated people to petition courts for a reduced sentence. As of June 2011, federal courts had granted 16,511 motions for retroactive sentence reductions; on average, sentences were reduced by 26 months.³ When the Commission evaluated the recidivism rate of people who received a reduced sentence, it found that it was similar to the rate for people who had been released before the amendment was adopted.⁴

FSA Guideline Amendment

The Commission amended the Guidelines soon after in 2010 to incorporate the reduced statutory penalties for crack cocaine offenses in the Fair Sentencing Act of 2010. In the years following the adoption of the FSA Guideline Amendment, courts granted 7,748 retroactivity motions, resulting in an average sentence reduction of 30 months.⁵ The Commission estimated that retroactive application of the FSA Guideline Amendment saved 14,333 bed-years.⁶ These reductions in sentences did not compromise safety: the Commission found that the recidivism rate was nearly identical among people who were released early through the retroactive application of the FSA Guideline Amendment and those who served their full term.⁷

Drugs Minus Two Amendment

Following these successful retroactive guideline applications, the Commission adopted the Drugs Minus Two Amendment in 2014, reducing sentencing guideline ranges for drug trafficking offenses by two levels and making the changes retroactive. As of July 2020, federal courts had granted 30,852 retroactivity motions, resulting in an average reduction in incarceration of 25 months⁸ – saving 64,275 years in prison. A study conducted by the Commission yet again found that people who were released early as a result of the Drugs Minus Two Amendment were not any more likely to recidivate than a comparable group who served their full sentence.⁹

First Step Act and CARES Act Home Confinement

President Biden can also look to legislative efforts like the First Step Act and the CARES Act that have led to early release from federal prison for thousands of people. As in the case of the retroactive changes to the Federal Sentencing Guidelines, evaluations of these legislative efforts show that early releases from federal prison did not jeopardize public safety. Indeed, the studies show that, in many cases, people released under the First Step Act and the CARES Act actually had lower rates of recidivism than similarly situated people who served their full original sentence.

First Step Act

According to the Federal Bureau of Prisons (BOP), as of January 2023, 29,946 individuals had been released earlier than their original release date under the First Step Act, which was signed into law in 2018.¹⁰ The recidivism rate among people released early under this law was 12.4%,¹¹ much lower than the one, two, and three-year general recidivism rates among everyone released from the BOP in FY 2018.¹² One study even found that the recidivism rate was 37% lower among people released under the First Step Act than a comparable group with similar risk levels who were released before the law was enacted.¹³

CARES Act Home Confinement

Soon after the First Step Act, Congress passed the CARES Act in 2020 in response to the COVID-19 pandemic. Among many other measures, the CARES Act authorized the BOP to place individuals who met certain eligibility criteria in home confinement earlier in their sentence than previously allowed. Since March of 2020, 13,204 people have been released to home confinement; 99.8% had not been rearrested for any new offenses as of May 2023.¹⁴ The BOP's own study found that people released to home confinement earlier under the CARES Act were actually less likely to recidivate one year after release from custody when compared to similar individuals released to home confinement without the CARES Act.¹⁵

Conclusion

The examples above are in line with the growing body of research that suggests that incarceration does not reduce the chances of future reoffending and may increase the likelihood that people will return to prison in the future.¹⁶ President Biden has a tremendous opportunity to use the unique power of the presidency to launch a robust clemency effort, meaningfully reducing the federal prison population and making the federal criminal justice system fairer. And, as prior successful efforts make clear, he can do so while protecting and advancing public safety.

Notes

- 1 Bureau of Justice Statistics, "Prisoners in 2022 – Statistical Tables," November 2023, <https://bjs.ojp.gov/library/publications/prisoners-2022-statistical-tables>
- 2 Bureau of Prisons, "Inmate Statistics – Sentences Imposed," Accessed August 2024, https://www.bop.gov/about/statistics/statistics_inmate_sentences.jsp
- 3 U.S. Sentencing Commission, "Preliminary Crack Cocaine Retroactivity Data Report," p.4, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/2007-crack-cocaine-amendment/20110600_USSC_Crack_Cocaine_Retroactivity_Data_Report.pdf
- 4 U.S. Sentencing Commission, "Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment," p.3, May 2014, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf
- 5 U.S. Sentencing Commission, "Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment," p.1, March 2018, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328_Recidivism_FSA-Retroactivity.pdf
- 6 U.S. Sentencing Commission, "The Fair Sentencing Act of 2010 Policy Profile," https://www.ussc.gov/sites/default/files/pdf/research-and-publications/backgrounders/profile_FSA_2010.pdf
- 7 U.S. Sentencing Commission, "Recidivism Among Federal Offenders Receiving Retroactive Sentence Reductions: The 2011 Fair Sentencing Act Guideline Amendment," p.3, March 2018, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2018/20180328_Recidivism_FSA-Retroactivity.pdf
- 8 U.S. Sentencing Commission, "Retroactivity & Recidivism: The Drugs Minus Two Amendment," p.5, July 2020, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf
- 9 Id.
- 10 U.S. Department of Justice, "First Step Act Annual Report," p.40, April 2023, <https://www.ojp.gov/first-step-act-annual-report-april-2023>
- 11 Id., p. 41
- 12 National Institute of Justice, "2022 Review and Revalidation of the First Step Act Risk Assessment Tool," p.12, March 2023, <https://www.ojp.gov/pdffiles1/nij/305720.pdf?first-step-act>
The one-, two-, and three-year general recidivism rates of people released from BOP custody in FY 2018 were 28.5%, 40.6%, and 46.2%, respectively
- 13 Council on Criminal Justice, "First Step Act: An Early Analysis of Recidivism," August 2023, <https://counciloncj.foleon.com/first-step-act/fsa/>
- 14 Senator Cory Booker, "CARES Act Home Confinement Three Years Later," p.4, June 2023, https://www.booker.senate.gov/iCARES Act Home Confinement Policy Briefmo/media/doc/cares_act_home_confinement_policy_brief1.pdf
- 15 Federal Bureau of Prisons, "CARES Act: Analysis of Recidivism," March 2024, https://www.bop.gov/resources/research_projects/published_reports/recidivism/202403-cares-act-white-paper.pdf
- 16 Damon M. Petrich, et al., "Custodial Sanctions and Reoffending: A Meta-Analytic Review," Crime and Justice, September 2021, <https://doi.org/10.1086/715100>