

Vermonters for Criminal Justice Reform

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www.VermontersforCriminalJusticeReform.org

Testimony on H.221

March 13, 2015

Overview

The most compelling arguments I've come across the last few years and why I care about this:

1. Prison is not a good place to be. I've spent many hours in Vermont's jails over the past two decades, and in the past two years I've received a couple hundred letters from inmates, both in and out of state. From this I've learned that for most people, prison is a profoundly dehumanizing place where you can be reminded on a daily basis of your worthlessness, which not surprisingly is not conducive to becoming a gentler, kinder person. It's not even a place where you can stay free of drugs, as inmates report that you can get any drug you want in jail. The rare person who says "Prison saved my life"—and there are some—is talking about the fact of intervention, being removed from his/her environment. In such cases, *any* different environment would do. Jail doesn't "correct" or encourage rehabilitation. What jail *is* guaranteed to do is to make you a better criminal. Often referred to as "crime school," without adequate opportunities for rehabilitation, the prison environment encourages people to figure out ways to break rules—that is, it develops exactly the kind of behaviors we would want to discourage.
2. Assuming that some people may need to be in jail for reasons of public safety, what about all the rest? As I got to know people in jail, I began to wonder. Then within the last 10 years, national groups started releasing data that now is familiar: the US has 5% of the world's population and 25% of the world's prisoners.—more than any other nation. We have 2.2 million people in prison—one out of 100 Americans—and many more millions have felony convictions that make them virtually unemployable, creating a permanent underclass of people who in some communities have literally no other economic options outside the underground economy. In Vermont since 1983 the incarceration rate has quadrupled (from just under 500 to just under 2000). This growth is unsustainable, both economically and socially.
3. Researchers have also let us all know the reasons for the growth in incarceration and the consequences. There's the famous War on Drugs started by Richard Nixon and furthered by Clinton with "three strikes" and mandatory minimums. In the 1980s, there was a crime wave, and the resulting fear led to harsher sentencing. (Ironically, crime has gone way down—is now at its lowest point since the mid-80s—but according to polls, most Americans don't know this.) And every year, legislatures (I'm sad to say I've been part of this) create new crimes. It's been pointed out nationally that in the US we've been trying to regulate social behavior with the criminal justice system, but it doesn't work. It doesn't work in Vermont either; we like to think making something illegal will prevent people from doing it—or that increasing penalties will reduce crime—but

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- it simply isn't true. Criminalizing behavior and making harsher penalties makes politicians feel like they're doing something but does nothing to reduce crime or keep our communities safer.
4. Finally, we have more information now about the effect of harsh criminal justice policies. Over the past few decades, we came to accept the idea that long sentences were appropriate responses to crime. In fact, the evidence suggests the opposite. It turns out that generally speaking, long sentences are counter-productive, in the end making our communities less safe. In fact, the shorter the sentence—i.e. the less exposure to the criminal justice system—the better the outcome, both for the individual and for society as a whole. (There are dozens of studies about this. The Sentencing Project studied three states that reduced their prison populations and noted that these states then experienced drops in violent crime that exceeded the national average.) How much of an outlier is the U.S.? No one locks up people for as long as we do. It's interesting to note that in other first-world countries, the typical sentence for murder, in Europe for example, is ten years. And then there are the collateral consequences of criminal conviction—that is, the permanent, lifelong restrictions on your behavior after you've paid your debt to society. We punish people for life. This week I learned the American Bar Association, which has been tracking collateral consequences nationwide, has now recorded 50,000 such limitations. The impact on the country of creating a huge underclass of people, especially people of color, who cannot get college loans, find a place to live or get a job, is becoming both increasingly obvious and staggeringly destructive to local communities and the country as a whole.

Why this bill now

The time is right. There is now a national consensus that our current approach to crime is unsustainable. If we were locking people up today at the rate we did in 1983, we would have \$28 more billion to spend on education and other programs that would create a strong economy. Large numbers of national groups, from the ACLU to the Koch Enterprises, the Ford Foundation and the anti-tax group Right on Crime... all have major initiatives to reduce the number of people in prison. How? Primarily by means of sentencing reform, decriminalizing certain behaviors and making changes to supervision practices—some of the large and small proposals in H.221.

H.221 was developed by representatives of Vermont Law School, the Prisoners' Rights Office, the Human Rights Commission, a retired member of the federal Judiciary, and others affiliated with Vermonters for Criminal Justice Reform. The pieces of it that would have the greatest impact, which I present as our priorities, are the following (I'm addressing only those that fall within the Judiciary Committee's jurisdiction):

1. Raise the amount that triggers a felony (in all categories of theft) to \$3,000, and the felony embezzlement trigger to \$500. States around the country are raising

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- their felony amounts. The point is not to minimize the seriousness of theft but to recognize that a felony conviction burdens you for life in a way that is disproportional to a low-level theft.
2. Require the Court [Corrections Committee: and DOC and parole board] to justify imposing restrictions on otherwise legal behavior when setting conditions of release. In theory, conditions of release must relate to the underlying crime. In practice, they are rattled off in court automatically, relevant or not, and “technical violations” of these conditions are major feeders back into jail. Technical violations are things like missing an appointment, having a beer, etc.—i.e. not new crimes. *Many* former offenders can speak to this. [Note: nationally, we know that re-incarceration for just parole violations accounted for 60% of the increase in prison population between 1992 and 2001, according to the Center on Budget and Policy Priorities. Between 2006 and 2011, when non-prison alternatives for technical violations were authorized, re-incarceration rates fell by 31%.]
 3. Reserve jail for violent offenders (30% of the women, 65% of the men) and require alternative, community-based treatment or sanctions for non-violent offenders—i.e. set administrative probation as the default and require justification for anything else. *Remember that for most people, the less contact with the c.j. system, the better the outcome. (And note: if incarceration worked, we’d have fewer people in jail every year, not more.)* This would reduce the numbers by 100-110 women and about 665 men.
 4. Limit monetary bail to those who pose a flight risk. (Violent offenders can be held for reasons of public safety.) In other words, for non-violent offenders, distinguish between non-appearance and risk of flight. Limit the “lookback” to 6 months or a year. There is broad recognition that monetary bail discriminates against poor people—which means most people in the system. (Only 5% of those in the c.j. system use a private attorney. 85% use a public defender, while 10% represent themselves.) Furthermore, “detainers” face significant bias: statistically you are much more likely to be found guilty if you come in from jail than if you enter the court on your own. *Vermont has been trying for years to reduce the number of detainers, typically about 400 on any given day. If reforming the bail statute is too complicated, set up a study committee to figure it out and make recommendations.*
 5. Finally, with respect to our drug laws: first, ensure that all juveniles charged with drug crimes are cited into Family Division of Superior Court. Second, if we’re truly going to treat drug addiction as a health issue and not a crime, then establish a study committee to determine what constitutes “personal use” for each of the restricted drugs and make recommendations to the legislature. *Why is methadone legal and heroin not? Drugs ruin lives. Drug convictions and prison time (where drug use can and does continue) ruin more lives. We need to re-think our approach.*

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Conclusion

I want to thank the committee for taking up the bill even at this late date. I hope that you will be able to investigate at least a few of its many parts. Releasing more people on their own recognizance would keep many detainees out of jail and increase the likelihood of a fair trial for those few going to trial. Getting rid of the possibility of technical violations would keep many more people out of jail (and eliminate the reports of excessively punitive, arbitrary behavior on the part of P&P officers, a perceived abuse of discretion that is not necessarily widespread but does exist). Diverting non-violent offenders would keep enough people out of jail that all the out-of-state inmates could be returned to Vt. (saving \$12 million). Keeping juveniles in Family Court of course would mean they're not branded for life as miscreants and would give them a much better chance to turn their lives around.

These are all changes that would save taxpayer dollars and increase public safety. Remember, what we're doing now doesn't work. Sending people to crime school makes better criminals, which makes us all less safe. It's also bad for the economy: it costs us all money and makes it much harder for people to make a decent living and contribute to their communities. So let's take a different approach, reserving jail for people for whom there are no other alternatives, and finding more constructive ways to hold people accountable in their communities.

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