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## REFORM AND BLOWBACK

*A bad economy spurs more lenient sentencing.  
And warnings about its consequences.*

By *Julius (Jay) Wachtel*. As governments reel from sharp declines in revenue they have increasingly turned to progressively-minded prescriptions that promise to maintain and even enhance public safety for a lot less dough. Last month [we described recommendations](#) by two economists that aggressive law-enforcement practices such as hot-spots policing can scare criminals straight without incurring the expenses of incarceration or, in many cases, the need to make an arrest.

Of course, there are always those who refuse to be deterred. Three reports released this year – one from the [National Summit on Justice Reinvestment and Public Safety](#), the others from the [Smart on Crime Coalition](#) and the [Pew Center](#) – suggest how we can deal with pesky evildoers in a way that won't break the bank. Smart on Crime's remarks pretty well summarize the reformist agenda:

There is no doubt that our enormous prison populations are driven in large measure by our sentencing policies, which favor incarceration over community-based alternatives or rehabilitation. We spend enormous amounts of money keeping people in prison; money that in many cases would be better spent treating addiction or funding community-based programs to reduce recidivism.

Indeed, there's no doubt that sentencing has grown harsher during the past decades. Between 1990 and 2006 the [imprisonment rate](#) climbed from 447 to 503 per 100,000. During this period [the time actually served behind bars](#) also increased, 29 percent for property crime and 39 percent for violent crime. [Meanwhile crime plunged](#), by about one-third.

Whether more punishment "caused" the crime drop is a matter of endless contention (for our earlier discussions click [here](#) and [here](#).) On one side are traditionalists, including prosecutors, police and many economists, who say that imprisonment deserves much of the credit. On the other side are reformers who insist that the relationship between punishment and crime is mostly spurious. Even the few who concede the value of incarceration point out that imprisonment has been cranked up as far as it can go, and that budgetary constraints make current levels impossible to maintain over the long term.

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Sustainability looms large in the National Summit report. But it's not all about saving money:

Despite the dramatic increase in corrections spending over the past two decades, reincarceration rates for people released from prison remain unchanged. By some measures, they have worsened. National data show that about 40 percent of released individuals are re-incarcerated within three years. And in some states, recidivism levels have actually increased during the past decade.

Experts argue that our present system fails badly at preventing recidivism. To get there, and do so affordably, the National Summit recommends several approaches. One, "risk assessment," seeks to identify the subset of criminals most likely to reoffend, thus making it economically feasible to provide them the supervision, counseling and other services they need. Another, "justice reinvestment," proposes to shift spending from prisons to communities. A frequently-given example is Texas, which slashed the costs of imprisonment by reducing sentence length. To enhance oversight parole caseloads were also capped, supposedly leading revocations to plunge a steep 29 percent. Perhaps Texas' way of watching over parolees is a smashing success. Or perhaps the steep decline is due to other, less measurable factors, such as internal pressures to avoid revoking parolees in the first place.

Like other reform organizations, Pew seizes on the lever of economics to press its agenda. On the one hand it concedes that imprisonment might work. (It cites William Spellman, the reluctant punisher who estimated that prison expansion [cut violence by 27 percent](#).) On the other it argues that there are cheaper ways to get to the same place:

Finally, if prisons helped cut crime by at most one-third, then other factors and efforts must account for the remaining two-thirds of the reduction. And because prisons are the most expensive option available, there are more cost-effective policies and programs. For example, it costs an average of \$78.95 per day to keep an inmate locked up, more than 20 times the cost of a day on probation.

First, considering just how much crime there is – 1,318,398 violent offenses [were reported to the FBI in 2009](#) – preventing up to one-third of offending (659,199 violent crimes, calculated from a projected 1,977,597) sure seems like a worthy accomplishment. Pew may also be comparing apples and oranges. Prisons are expensive and popular precisely because they offer the ultimate form of deterrence – incapacitation. One cannot compare its cost-effectiveness vis-à-vis say, probation without including that certainty in the calculation.

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It's in measures of effectiveness where much of the difficulty in the reformist agenda lies. "Evidence-based" strategies, that new pot of gold at the end of the criminological rainbow, virtually demand that researchers measure the immeasurable. For example, the National Summit report buttresses its conclusions by citing a meta-analysis of adult and juvenile justice programs in the state of Washington. Their cost-effectiveness (programs ran the gamut from prison-based education to post-release family counseling) was calculated by reducing injuries and deaths to dollar amounts. Whether doing so was appropriate was quickly glossed over:

Some victims lose their lives; others suffer direct, out-of-pocket personal or property losses. Psychological consequences also occur to crime victims, including feeling less secure in society. The magnitude of victim costs is very difficult – and in some cases impossible – to quantify. National studies, however, have taken significant steps in estimating crime victim costs...In [one] study [its measures were adopted by this article] the quality of life victim costs were computed from jury awards for pain, suffering, and lost quality of life; for murders, the victim quality of life value was estimated from the amount people spend to reduce risks of death.

Keeping people locked up is expensive. But as these recent examples demonstrate, predicting who deserves lenient treatment is fraught with risk:

- California: [A registered sex offender](#) who was kept on parole despite a host of "technical" violations went on to rape and murder a teen. Her killing has led to harsher sentencing measures.
- Illinois: [The State corrections chief](#) resigned after an early-release program saved money but saw many prisoners quickly return to crime.
- Massachusetts: [A paroled murderer](#), 60, killed a convenience store clerk, just like he did the first time around. Another, released after serving three "life" terms, [shot and killed a police officer](#) while fleeing from a department store robbery (see above video clip.) That led to the firing of all members of the parole board.
- New Jersey: [The arrest of two released inmates for murder](#) led the governor to move to repeal a recently enacted law that offered "worthy" inmates a six-month early out.
- Washington: [A three-time loser](#) doing time for a drug conviction was released early thanks to good time credits. Two years later he murdered a State trooper.

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One could go on and on. What reformers miss is that their calculus of costs and benefits may be fundamentally flawed, if not methodologically, then from a public policy perspective. Failure to identify a dangerous person, what would in science be called a Type 2 error, carries far more weighty political implications than its reciprocal, the Type 1 error of overestimation. Bottom line – politicians, police and the public can tolerate a lot of surplus incarceration for the sake of saving one innocent life. And that's a reality that's sure to continue.