

THE MYTH OF PUNITIVE DETERRENCE

The theory of punitive deterrence (also known as general deterrence) posits that if you make penalties harsh enough, they will deter people from breaking the law. Illinois politicians have used “tough-on-crime” rhetoric to get elected for decades, claiming harsher prison sentences are the only way to deter crimes, and legislators frequently pass laws increasing sentencing in the name of deterrence.¹ This facilitated abolishing parole, enacting juvenile transfer laws, Truth-In-Sentencing laws, the Habitual Criminal Act, firearm enhancements, Life-Without-Parole sentences, and increased sentencing ranges for nearly every crime imaginable. Additionally, Illinois law authorizes judges to increase an individual’s sentence if the judge *believes* it will deter others? **This is the only aggravating factor that isn’t based on any fact,** such as location of crime, personal characteristics of victim, or actions of defendant.



Nearly every reputable study show that this type of punitive deterrence is **largely a myth.**³ Even Craig Findley, Chairman of the Illinois Prisoner Review Board, noted that after interviewing over 25,000 incarcerated men and women, he has learned “that long sentences are not a deterrent to crime.”⁴

For punitive deterrence to work, the person must:

1. Know the consequence;
2. Believe he or she will be caught and face that consequence; and
3. Have the time and mental capability to rationally weight the costs and benefits of committing the crime compared to abstaining from doing so.

But...



Deterrence doesn't work because...

1. The person almost never knows the consequence (Not only are the vast majority of people unaware of what our complicated sentencing system stipulates,⁵ but no one can foresee what charge they will be convicted of or what sentence they will receive until after they are caught, convicted, and sentenced.)⁶
2. The person almost never thinks they will be caught, so they don't think they will ever have to face any consequence
3. The person is almost never a rational actor (not only are 40% of people who commit “violent” crimes juveniles or young adults with immature prefrontal lobes,⁷ but many are either under the influence of drugs or alcohol,⁸ many are mentally ill,⁹ and most crimes of violence occur in the heat of the moment out of anger).

What is never mentioned when arguing for more severe sentences to deter crime is the inhumanity of the practice itself. Punitive deterrence-based sentencing literally inflicts more punishment than is penologically justifiable. Each person who has their prison sentence increased (and their life, as well as the lives of his or her family, increasingly destroyed) to allegedly deter others is irrationally being held accountable for the potential crimes of people they don't even know. Increasing the pain and suffering of one individual to try to coerce the behavior of another is morally repugnant. If the State truly wished to deter crime, it would work to ensure universal access to quality education, economic opportunity, and healthcare.

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1. See e.g. "House Transcript for 01/14/76, 79th General Assembly 16 (1976) (Statement of Gov. Dan Walker) ("The would-be criminal must know: he will be punished. He will serve 8 years or 10 years or life, depending on the crime. Then and only then, will we deter and reduce crime.") -- "Categorically Less Culpable: Children Sentenced to Life Without Possibility of Parole in Illinois," Illinois Coalition for Fair Sentencing of Children (Feb. 2008), p. 31 -- *People v. Rodriguez*, 2018 IL App (1st) 141379-B, ¶ 80, citing *People v. Butler*, 2013 IL App (1st) 120923, ¶ 36 -- Michael Tonry, "Sentencing Matters" (Oxford Univ. Press, 1996), p. 3 ("every state since 1980 has enacted laws mandating minimum prison sentences based on the premise that harsher penalties will reduce crime.") -- Walter S. DeKeseredy and Martin D. Schwartz, "Contemporary Criminology" (Wadsworth Publishing Company, 1996), p. 268 ("One nice thing about claiming that the system is not harsh enough is that, no matter how harsh it becomes, there is no way of proving that it isn't harsh "enough." If getting harsher does not seem to have any important effect on crime, there is always room for people to argue that we need to get harsher still.") -- and Building a Safe Chicago, "Calling for a Comprehensive Plan" (Nov. 3, 2016), p. 2 (Since 2000, Illinois has "increased penalties for firearm possession six times, instituting new mandatory minimum sentences." This seemingly had little deterrent effect as "arrests remained flat.").
2. 730 ILCS 5/5-5-3.2(a)(7)(Thompson West, 2003 ed.).
3. See e.g. Kevin C. Kennedy, "A Critical Appraisal of Criminal Deterrence Theory," 88 Dick L. Rev. 1 (1983-1984), p. 11 ("Little proof, if any, can be mustered to support the proposition that punishment has ever deterred potential criminals from committing crimes") -- National Research Council, (1978) "Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates" Washington, D.C. (No evidence death penalty deters) -- National Research Council (2012) "Deterrence and the Death Penalty," Eds. D.S. Nagin, J.V. Pepper, Washington, D.C. (same) -- Elizabeth S. Scott and Laurence Steinberg, "The Future of Children" Vol. 18, No. 2, Juvenile Justice (Fall 2008), p. 26 (harsh sanctions and juvenile transfer laws don't deter) -- Brennan Center for Justice of New York Univ. School of Law, "What Caused the Crime Decline?"
4. Remarks at Subject Matter Only Hearing on Parole, Nov. 8, 2018 at James R. Thompson Center, Chi., IL (Transcript).
5. Gregory H. O'Reilly, "Truth-In-Sentencing Adds Yet Another Layer of Reform to Its Complicated Code of Corrections," 27 Loy. U. Chi. L. J. 985, 1026 (1996) ("Illinois' sentencing system. . . has become so complicated and confusing that few lawyers - not to mention the public or the accused - can understand what specific legal consequences flow from specific criminal conduct.").
6. Assembly Comm. on Criminal Procedure, "Public Knowledge of Criminal Penalties" In "Perception in Criminology" 74, 78 (Richard L. Henshel & Robert A. Silverman, eds., 1975) ("Penalties cannot act as deterrents since these are unknown until after a person has committed a crime or become a prisoner.").
7. Urban Institute, "A Matter of Time: The Causes And Consequences Of Rising Time Served In America's Prisons" (July 2017), p. 11. -- Selen Siringil Perker, Lael E. H. Chester, and Vincent Schiraldi, "Emerging Adult Justice in Illinois: Towards an Age-Appropriate Approach" Columbia Justice Lab (January 2019), p. 5, 10.
8. William R. Kelly, Ph.D., "Why Punishment Doesn't Reduce Crime: Evidence demonstrates why punishment does not change criminal offending" (Apr. 25, 2018) (80% "have a substance use disorder").
9. Ibid. (60% have a mental illness; 50-60% have had at least one traumatic brain injury).