



The Causes of Recidivism in the Criminal Justice System and Why It Is Worth the Cost to Address Them

by: Kristen Bailey

It's not only a question of cost. It's also a question of sound social policy.

The question is: What are the goals, policies and values of the criminal justice system, are they the correct ones, and are the programs in place to see that they are actualized to their fullest potential?

There are four major schools of thought in criminal justice theory. The retributivist school, commonly summed up with the phrase "an eye for an eye," sees prisons as strictly penal, and uses punishment to restore "the moral order that has been breached by the original wrongful act."¹ The second school, sees prison as a deterrent to criminal activity, and relies upon the utilitarian idea that future consequences are material to present decisions. The third, incapacitation, seeks to take away from the offender the power to do injury. Finally, there is the school of rehabilitation. This theory rejects the idea that the offender is inherently depraved, and seeks to study the motive which produced the offense and applies punishment which tends to weaken that motive.

The Tennessee Department of Correction ("TDOC") claims that its goal is the rehabilitation of the offender.² It is true, arguably, that rehabilitation is the goal most consistent with social mores of the day, and it is even good fiscal policy in that, by definition, a rehabilitated criminal is less likely to re-offend, and is more likely to contribute as a productive member of society, thus saving the taxpayer dollars that would otherwise go to pay for his re-incarceration.

However, statistics do not show that convicted criminals are getting the rehabilitation that they need to reintegrate into society without reverting to criminal activity after release.

Statistical Background

Tennessee's fifteen prisons are home to over 19,000 felony inmates. According to the Tennessee Department of Correction, 14,319 prisoners and local jail inmates were released completely (i.e., not on parole or probation) and 3,536 were released on parole during the Department's 2004/2005 fiscal year. As of March of the 2005/2006 fiscal year, 11,201 prisoners

have been released completely, and 2,963 have been released on parole. Of those prisoners who are released each year, if history is any indication, 21% will return to prison within one year; 35% will return within two years; and 42% will return within three years.³ These “failure rates,” as the TDOC calls them, reflect the incidence of recidivism among the population of former inmates. Recidivism is defined as “a permanent return to incarceration in any TDOC facility or local jail after being released from a TDOC facility or local jail,” and “permanent” movements include parole revocations, new convictions, and court-ordered returns to facilities. They do not include new arrests which only result in temporary incarceration.⁴

While the “failure rates,” or recidivism rates, in Tennessee are below the national average,⁵ the question persists: Why do so many convicted felons relapse into patterns of criminal behavior upon being released from their prison terms?

The answer lies in several factors, all of which can be addressed and remedied by increased attention to prison conditions which tend to alienate and dehumanize the inmate such that, upon release, he finds himself unable to conform to the rules and social constructs by which the rest of us—those of us who have not had the misfortune of seeing the inside of a prison cell—abide without much thought. The result is a population of individuals who are ill-equipped to deal with the strictures of a non-penal society, and thus end up on the fringes of the community and more likely to re-offend. This article will focus upon two of the main culprits in an inmate’s relapse into patterns of criminality: prison violence and rape, and insufficient participation in prison educational programs.

1. Prison Violence and Rape

It has become cliché, a joke even—“Don’t drop the soap,” we say—but only because

the incidence of rape and sexual assault in male and female prisons has become so prevalent, almost expected, that those of us who exist outside the prison walls have become desensitized to it and what it means for the victimized inmate. The fact is, however, that prison rape occurs on a major scale in prisons throughout the country, and it has a severe emotional effect on both the victims and the victimizers.

According to the Human Rights Watch, rape in prison “can be almost unimaginably vicious and brutal,” and can include gang assaults wherein the victims are left “beaten, bloody and, in the most extreme cases, dead.”⁶ Those are the rapes that we all imagine—swift and violent. But there are other ways in which prison predators find and subdue their victims, including procurement of sexual subjugation through threats of violence or “bargaining” drugs, money, or protection for sexual favors. The victim is forced to agree to the act and does not put up a fight, but it is a violation of the worst kind, nonetheless.

While we may like to believe that this sort of behavior does not happen close to home, Tennessee prisons are no different. Consider the following:

What is more prevalent at TCIP [Turney Center Industrial Prison and Farm in Only, Tennessee] ... is best called “coercion.” I suppose you have an idea what these engagements entail. The victim is usually tricked into owing a favor. Here this is usually drugs, with the perpetrator seeming to be, to the victim, a really swell fellow and all. Soon, however, the victim is asked to repay all those joints or licks of dope—right away. Of course he has no drugs

or money, and the only alternative is sexual favors. Once a prisoner is “turned-out,” it’s pretty much a done deal. I guess a good many victims just want to do their time and not risk any trouble, so they submit.... The coercion-type abuses continue because of their covert nature. From the way such attacks manifest, it can seem to others, administrators and prisoners, that the victims are just homosexual to begin with. Why else would they allow such a thing to happen, people might ask.⁷

This sort of predatory behavior is not exclusive to men’s prisons. Women in prison suffer sexual assault and rape on a constant basis, not only at the hands of other inmates but, largely, at the hands of the prison guards. The Department of Justice’s Bureau of Justice Statistics reports that, in 2004, allegations of staff sexual misconduct were made in all but one state prison and in 41% of local and private jails and prisons. Nationally, 70% of the guards in federal women’s correctional facilities are male, and often they subject female inmates to various indignities, including watching the inmates undress, observing them in the showers and toilets without reason, performing unnecessary and inappropriate body searches, and even committing sexual extortion and rape.⁸

Not only do these attacks, often carried out with astonishing violence, have the obvious effect of the transmission of HIV/AIDS and other sexually transmitted diseases, but they also have keen psychological effects that persist even after the inmate has been released. The victim often harbors intense anger which mani-

Continued on Page 16 ➔

fest itself in a cycle of violence directed toward the victimizer, the prison officials who regarded the attacks with indifference, and even beyond that toward society as a whole.⁹ In the case of male rape, this anger, in addition to the acute shame and emasculation that the victim experiences, leads to depression and increasingly violent behavior. This learned violence continues the cycle of harm even after the victim is released from prison. Indeed, “[f]eelings of rage can be suppressed until release, when survivors may engage in violent, antisocial behavior and the aggressive assertion of their masculinity, including the commission of rape on others.”¹⁰

This culture of rape and other forms of sexual exploitation of prisons, and the indifference with which it is met, tends to dehumanize both the victim and the predator. The perpetrator becomes emotionally immune to the suffering that he inflicts on his victims. The victim takes note of the disregard with which such behavior is treated, and begins to believe that the behavior is tolerated, and even accepted. As each one leaves prison, he places a lesser value upon the lives and dignity of others, and himself.

In addition to sexual violence, inmates must also face the constant threat of

physical violence as, each year, as many as 70% of inmates are physically assaulted by other inmates. These assaults, as much as the sexual violence, contribute to a culture of fear and violence that can have a similar dehumanizing effect on the inmates, thus rendering them more likely to re-offend.¹¹

2. Education

The United States Department of Justice reports that “the typical offender is undereducated, unemployed and living in poverty before incarceration.”¹² Education, therefore, plays a crucial role in the successful rehabilitation of incarcerated felons because, indeed, in most cases, it is the lack of education that was likely a major contributor to any given inmate’s criminal behavior. Despite this correlation between under-education and criminal activity, educational and vocational programs are underutilized in the Tennessee prison system as well as in other jurisdictions, which directly affects recidivism rates.

In 1997, the Correctional Education Association conducted “The Three State Recidivism Study” for the United States Department of Education.¹³ The study, released in 2001 after following a select

cohort of former inmates for three years after their release from prison, used inmate education as a major variable, and concluded that if an inmate attends school while incarcerated, he is 29% less likely to return to prison after his release.¹⁴ This information stands to save individual states a great deal of money, as “[e]ducation provides a real payoff to the public in terms of crime reduction and improved employment of ex-offenders.” Indeed, “[i]nvestments in correctional education programs have been confirmed as a wise and informed public policy.”¹⁵

The TDOC agrees that, “[w]ith additional education and training, ex-felons are less likely to re-offend than those who do not learn a skill or trade while incarcerated.”¹⁶ While that has been shown to be true, however, only 20% of the inmate population that is eligible to take part in the Department’s educational and vocational programming is actually enrolled.¹⁷

Both adult and juvenile facilities alike fail to take full advantage of the power of educational programs in the prison system. In at least one Tennessee juvenile detention facility, the inmates spend only about one hour a day in class. If educational programs are not made available to these inmates during their incarceration, or if they

Summary of Rates of Re-incarceration (Failure Rates) January 1993-December 2002

TDOC Releases		Total			Parole			Probation			Expiration		
		Returned Rate			Returned Rate			Returned Rate			Returned Rate		
Calendar	Total	1 yr	2 yr	3 yr	1 yr	2 yr	3 yr	1 yr	2 yr	3 yr	1 yr	2 yr	3 yr
1993	3,591	18%	36%	45%	21%	41%	50%	18%	37%	46%	6%	6%	23%
1994	2,751	19%	33%	43%	25%	42%	53%	18%	32%	44%	5%	14%	21%
1995	3,242	22%	38%	47%	28%	46%	56%	22%	43%	55%	6%	15%	21%
1996	3,832	21%	38%	46%	27%	47%	56%	23%	43%	50%	7%	14%	21%
1997	4,374	23%	40%	47%	30%	49%	56%	24%	44%	53%	7%	15%	22%
1998	4,026	19%	32%	40%	27%	42%	50%	22%	40%	49%	6%	14%	21%
1999	4,104	16%	31%	39%	22%	41%	50%	23%	39%	48%	5%	13%	19%
2000	4,861	17%	33%	41%	23%	42%	51%	28%	46%	53%	5%	12%	18%
2001	4,597	18%	33%		24%	41%	0%	26%	47%	0%	6%	14%	0%
2002	4,522	16%			23%			28%			5%		

do not take advantage of such programs, they will be released into the community as unskilled and as undereducated as they were when they were first convicted, and, left with no other options, will be more likely to fall back into those behaviors which initially landed him in prison.

The TDOC does offer a wide array of educational classes, including adult basic education programs, GED preparation, volunteer literacy programs and vocational programs, but George Little, the Commissioner of the TDOC, declined to offer any insight into the issues raised by this article, so it is not clear why so few of the inmates participate in the educational programs offered in the state's prisons. What is clear, however, is that it is not enough simply to offer the programs to the inmates. They must be actively encouraged to attend the classes. Not only would the inmates gain skills that will be marketable in the workplace when they are released, but they would also enjoy increased self-esteem at the prospect of contributing as valuable and valued members of society and, as a result, become less likely (29% less likely, to be precise) to feel as if they have no other option than to return to crime as a means of making a living.

Conclusion

While rehabilitation has the potential to be the most effective method of criminal justice, conferring a benefit upon both the inmate and the community as a whole, it requires a great deal of planning and an awareness of the causes behind the criminal behavior, as well as the needs of the individual inmates. Increased attention should be paid to stemming the tide of violence and sexual abuse that is so common in prisons today, and a concerted effort should be made to increase inmate participation in educational and vocational programming. While this article focused only on these two aspects of prison conditions, the availability of drug addiction rehabilitation and re-en-

try preparation programs are also highly important factors in an inmate's ability to re-integrate into society without the desire, or need, to re-visit the criminal tendencies that he once harbored.

In answer to the question posed at the beginning of this article, then, the goals of the TDOC appear to be the rehabilitation of the inmate, but the programs have not been in place to ensure the realization of that goal. If the programs were in place, they were not being utilized to their full potential, as is evidenced by the rate of recidivism in this state. Nevertheless, the Tennessee Department of Correction, which, indeed, is to be commended for having a recidivism rate that is lower than the national average, has responded to these failure rates during the 2005/2006 fiscal year by such means as implementing two transition communities designed to gradually prepare offenders to live successfully in free society and implementing a new GED curriculum.

To be sure, humanitarian reasons for paying more attention to the needs of the prison population are countless, but at an annual cost of \$19,830.45 per inmate,¹⁸ we can no longer afford not to take the steps necessary to rehabilitate offenders and help them become contributing members of society. To continue to ignore them would be to turn our backs on ourselves, as a prison system targeted toward rehabilitation of the inmate means lower recidivism rates and, in turn, a safer and more productive community. ■



Kristen Bailey is an attorney with Baker Donelson Bearman Caldwell & Berkowitz, PC. She practices in the areas of healthcare litigation and business and commercial litigation, with a concentration in state and federal procurement law and government contracts.

(Footnotes)

¹ KENT GREENAWALT, PUNISHMENT, IN 4 ENCYCLOPEDIA OF CRIME AND JUSTICE 1336 1338 (Stanford H. Kadish ed., 1983).

² Tennessee Department of Correction, www.tennessee.gov/correction.

³ TDOC Research Brief Update: TDOC Release Trends and Failure Rates Felon Releases 1999-2003 (released Apr. 27, 2005), available at <http://www.state.tn.us/correction/pdf/Recidivism%20Brief%20Update.pdf>.

⁴ *Id.*

⁵ According to a study performed by the U.S. Department of Justice Bureaus of Justice Statistics in 1994 (the most recent of such studies), 46.9% of inmates released from prison were re-convicted for a felony or serious misdemeanor within three years of release. This study was performed on a sample of fifteen states. Criminal Offenders Statistics, <http://www.ojp.usdoj.gov/bjs/crimoff.htm#recidivism> (last revised Sept. 6, 2006).

⁶ Human Rights Watch, *No Escape: Male Rape in U.S. Prisons (Part 5)*, www.hrw.org/reports/2001/prison/report5.html#_I_31.

⁷ Letter from J.S. to Human Rights Watch (Sept. 5, 1996), available at <http://www.ojp.usdoj.gov/bjs/crimoff.htm#recidivism>.

⁸ Amnesty International USA, *Stop Violence Against Women: Women in Prison*, <http://www.amnestyusa.org/women/womeninprison.html>.

⁹ Human Rights Watch, *No Escape: Male Rape in U.S. Prisons (Part 6)*, www.hrw.org/reports/2001/prison/report6.html#_I_41.

¹⁰ Stop Prisoner Rape, *The Basics on Rape Behind Bars*, www.spr.org/en/factsheets/basics.asp.

¹¹ ENCYCLOPEDIA OF AMERICAN PRISONS 379 (Marilyn D. McShane & Frank P. Williams III, eds.) (1996).

¹² Tracy & Johnson, *Review of Various Outcome Studies Relating to Prison Education to Reduced Recidivism*, State of Texas, Windham School System (June 1994).

¹³ Stephen J. Steurer, Linda Smith & Alice Tracy, *The Three State Recidivism Study*. Correctional Educational Assoc., Lanham, MD, (Sept. 30, 2001) available at <http://www.ceanational.org/documents/3StateFinal.pdf>.

¹⁴ *Id.* at 49.

¹⁵ *Id.*

¹⁶ Tennessee Department of Correction, <http://state.tn.us/correction/inmateprograms/programs.html>.

¹⁷ *Id.*

¹⁸ Tennessee Department of Correction, *Frequently Asked Questions*, <http://state.tn.us/correction/faq.html>.