

Prison term policy

[Law](#), [Criminal Justice](#)



Prison Term Policy Recommendation As a Criminologist Advisor to the State Legislature, I have been chosen to provide a prison term policy on armed robbery. Currently the legislature will soon be voting on a bill that would double the maximum prison term for anyone convicted of armed robbery. First I would like to define what the legal definition of armed robbery is as defined by the Black's Law Dictionary which is: an aggravated form of robbery in which the defendant is armed with a dangerous weapon, though it is not necessary to prove that he used the weapon to effectuate the robbery. The taking of property from person or presence of another by use of force or by threatening use of force while armed with a dangerous weapon (Black's Law Dictionary, 6th Edition). Before I render my decision to support the bill or not to support the bill, I must examine the disparity as it relates to prison sentencing within our judicial system. Sentence disparity is a term used to describe the variations and inequities that result when defendants convicted of the same crime receive varying sentences; may refer also to varying sentences from state to state. An example of sentencing disparity is if a three-time offender in one jurisdiction receives 5 years for armed robbery, whereas a three-time offender in another jurisdiction receives 15 years for the same offense (Anderson, 2003). In my opinion sentencing disparity is unfair. I believe that there should be equal time for the same crime. The justice system should create a sentencing score to go by when handing down sentences. The score should be the same for all jurisdictions in all states and should be followed exactly as written. Judges have too much authority when it comes to sentencing. All judges are not fair and we as realistic citizens can not expect them to be because that would be unrealistic. So, therefore when

it comes to sentencing the people or the race that a particular judge may be prejudice against does not receive fair sentencing, whereas others that the judge may not be prejudice against and may even know does get fair treatment. Judges jobs are to make decisions based on what they hear in court, but just like all people judges also have bad days meaning that one day one person may receive 15 years with the possibility of parole for armed robbery and the next day another person may receive 25 years without the possibility of parole. This is unfair to the people who commit crimes because they are not treated equally by the criminal justice system (Anderson, 2003). In the long run this could cause the criminal justice system money because of the appeals that inmates may come back with after figuring they have not treated equally by the criminal justice system. If I had a chance to become a Judge I would pass because it comes with too many stipulations and it is also a dangerous job. Sometimes the same crime could be committed under different circumstances such as murder. For instance, a woman could have killed a man in self-defense but was unable to prove that in court and was found guilty of murder in the first degree even though it wasn't or better yet she could not prove it wasn't and another woman could have planned to kill her boyfriend because she was tired of him cheating on her which means had planned this and had thought about and the court finds her also guilty of murder in the first degree. Some people would consider this unfair sentencing and maybe even sentencing disparity, but this occurs everyday and the court has no way of knowing what really happened and why it happened so they have so judge on what the courts can prove. It is argued that it is not the severity of the sentencing laws that is the problem, but that

these laws essentially remove judicial discretion, and run counter to theories of both sentencing and punishment as well as to the very nature of judicial decision making that the judicial process requires. Mandatory sentencing legislation demonstrates that the legislature has fundamentally misunderstood what is involved in the process of judging. It also has misunderstood what is required to ensure the continued integrity of the judicial and continued public confidence in the judiciary. The sentencing regime is costly and unlikely to work in the manner originally intended and that the penalties are unfair and unjust. Mandatory sentences deny judges the right to exercise discretion in sentencing, based on an evaluation of the life history and circumstances of the offender. When hearing a case, a judge must consider all aspects of the stories of the participants (Anderson, 2003). In the mid eighties, Congress dramatically changed the federal sentencing system. The changes followed widespread discontent with the old sentencing system, and they ultimately led to the passage of the Federal Sentencing Guidelines in 1987. In the old system, judges determined criminal sentences. They considered the facts of each particular case including the circumstances of the offense and the life history of the offender and chose a sentence they considered fair. The only requirement was that the sentence is within a statutory range, and the ranges were often extremely broad. Statutes typically authorized sentences like not more than five years, not more than twenty years, or in some cases, any term of years or life. Judges had authority to impose any sentence within the statutory range. The imposition of the sentence was only the beginning. Once the person was in prison, the parole board determined the actual date of release. The parole

board considered circumstances like the person's conduct in prison and efforts towards rehabilitation, and it released people to parole supervision when it thought they were ready often after just half the sentence. If the person misbehaved after release, parole could be revoked and the person could be incarcerated for the remainder of the sentence. In the 1970s this practice fell into disfavor because it permitted too much disparity between cases (Anderson, 2003). Different judges sentenced similar offenders differently, and parole boards became too powerful. If two identical offenders were each convicted of a crime carrying a sentence of not more than twenty years, one might spend three years in custody and the other might spend fifteen. Evidence accumulated that the system led to arbitrary decision making and sometimes discrimination against poor people and minorities. In 1984 Congress addressed these concerns by creating the United States Sentencing Commission and ordering the promulgation of the Federal Sentencing Guidelines (Anderson, 2003). The new system sharply curtailed parole and confined judicially imposed sentences into narrow ranges. Congress enacted the Guidelines into law in 1987, and in 1989 the Supreme Court held that the effort was constitutional. Guidelines use standardized worksheets to calculate the sentence. The worksheet is complex and intricate, but in theory it guides everybody to the same conclusions. Guidelines operate by assigning an offense level to every crime low offense levels for minor crimes and high levels for major crimes. At the same time, the guidelines direct the calculation of the criminal history of each defendant. A person with a clean record starts with zero criminal history points, and points are added for every subsequent offense (Anderson, 2003).

The task of the judge is to look up on a grid the spot where the offense level intersects the criminal history. The grid assigns light sentences to people with low criminal histories who commit lesser crimes, and stiff sentences to people with long criminal histories who commit severe crimes. The Sentencing Guidelines, which promised to bring order and rationality to sentencing, have instead brought inconsistency and disproportionality. Serious crimes sometimes lead to minor sentences, while minor crimes sometimes lead to many years in prison. Judges have lost the ability to tailor the sentence to fit the circumstances of each individual case. One size does not fit all. The Guidelines are one cause of the dramatic growth in the federal justice system. A system intended to streamline and simplify the sentencing process has instead created a far more complex system that has clogged the courts with appeals over Guidelines' applications. Furthermore, the federal Guidelines are not simply guidelines, as the name suggests: they are mandatory. Judges are required to follow them, no matter how inappropriate the result (Anderson, 2003). The loss of flexibility makes it impossible to tailor the punishment to fit the crime and the criminal. Another particularly urgent problem is the shift of sentencing power to the prosecutor's office. Prior to the Guidelines, prosecutors charged people with crimes, and then judges sentenced people for those crimes. The two tier system created checks and balances that left neither party with too much power. Under the Guidelines, however, the charging decision becomes for all practical purposes the sentencing decision. A prosecutor who opts to charge a person with one crime rather than another determines the base offense level and thus for all practical purposes the sentence (Anderson, 2003). Because there

are thousands of offenses in the federal criminal code and because individual crimes often violate more than one section of the code, the prosecutor's decision about which section to charge under, or how many counts to bring, effectively determines the sentence. The concentration of power into a single party invites distortion in the system. Another reason power shifts to the prosecutor is that only the prosecutor can reward suspects for providing information on other suspects. The judge cannot initiate the process and has only the smallest oversight. Unfortunately, many crime kingpins have substantial information to trade for lesser charges; whereas the low level participants have little information to trade. That is one reason our prisons are filled with low grade drug offenders while kingpins sometimes get off easy. The Coalition for Federal Sentencing Reform determined that they would examine a variety of issues relating to the operation of the Federal Sentencing Guidelines, and seek to make recommendations for reform (Anderson, 2003). The Coalition expects to examine whether the Guidelines: are excessively complex and lead to excessive litigation, should be mandatory or advisory, should incorporate conduct that was acquitted after trial or could have been charged at trial, but was not, have reduced disparity and successfully balanced the goals of uniformity and proportionality, have disrupted the balance of power between the courts and the prosecution, should be expanded to include non-custodial sentences, should grant judges added flexibility to take into account human elements such as family responsibility, employment history, or physical and mental condition. In addition, the Coalition has examined larger issues relating to the role of the United States Sentencing Commission and the scope of the Guidelines

(Anderson, 2003). These issues have included the relationship between the Guidelines and mandatory minimums, whether the Guidelines structure should be constrained by the capacity of the federal Bureau of Prisons, how the widespread dissatisfaction of federal judges can be developed into recommendations for reform, whether the proceedings and deliberations of the Sentencing Commission should be opened to increased public scrutiny and input, whether good time credit should be increased for certain classifications of prisoners, such as first time non-violent offenders, and whether the Sentencing Commission is carrying out the statutory mandate described in the legislation that created it. My recommendation would be "no" on the passing on the bill that will double the maximum prison term for armed robbery. Understanding that this would be an unpopular stand to embark upon, but also believing that doubling the sentence is not the answer for reducing would be armed robbers. I believe if this bill is passed, this will only produce an even more disparity in sentencing within our judicial system. I would recommend that we establish an Independent Judicial Boards for each state that work closely with judges to help review each case to help maintain equitable and fair sentencing that fit the actual crime. This will ensure reducing the disparity gaps within our judicial system as it relates to sentencing. Reference: James M. Anderson (2003) "Measuring Inter-Judge Sentencing Disparity –Before and After the Federal Sentencing Guidelines" website: Updated on February 23, 2006 Retrieved on November 4, 2006, from SBC Yahoo. com at <http://www.nber.org/~kling/interjudge.pdf#search='Disparity%20Sentencing'>