

Consequences of truth-in-sentencing

The Mississippi case

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Abstract

Like many other states, in the mid-1990s Mississippi responded to growing public fear of crime and mounting dissatisfaction with its criminal justice system by implementing a series of 'get tough' measures designed to control crime. Perhaps the primary vehicle for reform has been the enactment of 'truth-in sentencing' legislation. Truth-in-sentencing (TIS) does not imply a specific correctional policy, but covers a variety of reforms designed to improve the delivery of proportionate punishments and promote stability and predictability in administering criminal justice. In 1995 Mississippi implemented a TIS law which mandated that felons sentenced to prison must serve at least 85 percent of their sentence. Mississippi's TIS law is unique compared to those passed in other states in that the 85 percent requirement applies to all groups of offenders, including non-violent offenders. The comprehensive nature of Mississippi's TIS law has had a dramatic impact on the state's criminal justice system – particularly its correctional component. This article examines both the direct effect of TIS on correctional populations, as well as the unanticipated impact of TIS on patterns of judicial decision making and political and economic dynamics related to prison construction in rural counties.

Key Words

judicial decision making • sentencing reform • truth-in-sentencing

INTRODUCTION

Perhaps no single social issue garners as much public attention as crime and crime-related topics. Public opinion polls consistently indicate that Americans rate crime, violence and drugs as top social problems facing our society. The proliferation of crime-related television programs underscores the public's fascination with criminals and crime control, and it is clear that this is a growth industry in many ways. A major feature of society's concern about crime control involves the rapid growth of prison populations

and correctional budgets over the past 10–15 years. Recent trends in crime control policy represent a more punitive approach, as evinced by longer sentences, mandatory sentencing, expansion of police powers, increase of capital offenses and executions, ‘three strikes and you’re out’ legislation and ‘truth-in-sentencing’ legislation. The ‘Get Tough on Crime Movement’ has tremendously impacted corrections both directly and indirectly – with the most obvious effect being an explosion in correctional populations and budgets.

The state of Mississippi has not been different than most states with regard to implementing aggressive and more punitive crime control policies as a response to citizens’ concerns about crime. And like many other states, a cornerstone of Mississippi’s crime control initiative has been to enact truth-in-sentencing legislation. To date, some 30 states (including Mississippi) have implemented a version of TIS legislation. Mississippi’s version, however, is unique in its scope in that it applies an 85 percent rule to all offenders rather than just violent and/or sex offenders. This article examines several consequences, anticipated and unanticipated, since its enactment in July 1995, and offers a glimpse of the political and economic dynamics surrounding the implementation of TIS.

MISSISSIPPI’S TRUTH-IN-SENTENCING LAW

A comment on ‘truth-in-sentencing’ seems appropriate. It should be stressed that truth-in-sentencing is a general concept that does not imply a specific correctional policy, but which does imply a desire to improve the delivery of proportionate punishments and which emphasizes stability and predictability in the criminal justice system. ‘Truth-in-sentencing is generally meant to describe a close correspondence between the sentence imposed on those sent to prison and the time actually served prior to prison release’ (Beck and Greenfeld, 1995: 1). Many states have enacted a truth-in-sentencing law that requires offenders to serve a substantial portion of their sentence, and which reduces the discrepancy between the sentence imposed and actual time served in prison. Such discrepancies were significant across the USA prior to the passage of TIS laws. For example, based on admissions data for 1992 to 1994, violent state prisoners had an average sentence of about 10 years and were expected to serve slightly less than five years on average. Overall, the percentage of sentence to be served rose from 44 percent to 48 percent between 1992 and 1994, though the percentage varied significantly by jurisdiction (Beck and Greenfeld, 1995). In addition, a 1991 survey of inmates in state prisons indicated that prisoners expected to serve about 46 percent of the sentence they received (Beck and Greenfeld, 1995), while in 1996, prisoners released from state prisons served on average 30 months in prison and jail – about 44 percent of their sentence (Ditton and Wilson, 1999).

States have strived to achieve a measure of truth-in-sentencing in various ways – with more or less success. Typically, states have passed laws that apply a maximum percentage of a court-imposed sentence to violent, sex and/or habitual offenders and a lesser percentage to other groups of offenders (property, white-collar, drug, etc.). Some states have included provisions for a structured sentencing policy, a continuum of community-based sanctions and/or an emphasis on resource-based strategies for managing the growth of the correctional system. And some states have implemented guidelines for managing private prisons. By 1998, 27 states and the District of Columbia met the

Federal Truth-In-Sentencing Incentive Grant Program eligibility criteria. Eleven states (including Mississippi) adopted truth-in-sentencing laws in 1995, just one year after the US Congress authorized funding for additional state prisons and jails through the Violent Crime Control and Law Enforcement Act of 1994. Whatever the combination of legislation or policies, the move toward truth-in-sentencing generally aims to gain increased control over the growth of correctional populations and budgets while preserving or enhancing the degree of justice delivered by the system.

In early 1995 Mississippi passed a truth-in-sentencing law that required all felony offenders – violent and non-violent – sentenced after 1 July 1995 to serve at least 85 percent of their prison sentences. TIS in Mississippi was passed without an impact statement, with minimal discussion and with only marginal consideration of the effect the law might have on state resources or correctional populations. It seems several primary issues came together to provide the impetus for the passage of TIS.

- (1) There was an apparent increase in legislative dissatisfaction with the state Parole Board. The Parole Board was generally thought to be too reactive to public opinion, shifting from granting an excessive number of paroles in one period to granting too few in another. Concern increased whenever a paroled inmate reoffended in the community, and the victimization of constituents and their families influenced the Board to reduce the number of paroles granted. This gradually brought more pressure on legislators for the Board to grant more paroles. Over time there developed considerable doubt about the ability of the Board to function in a stable fashion. TIS would serve eventually to nullify or phase out parole. In 1995, along with TIS, Mississippi abolished discretionary Parole Board release for offenses committed after 1 July 1995.
- (2) There developed a strong desire on the part of legislators as well as corrections and law enforcement to compete for Federal Crime Bill money. In order to qualify for Crime Bill dollars, Mississippi had to demonstrate it was taking a tough stance on crime and punishment. Passage of TIS – and making it apply to all felonies, both violent and non-violent – was a major step in this direction.
- (3) The perception developed that crime was becoming a worse problem in Mississippi. In the years leading up to TIS (1990–5), there was increased white flight from Jackson, MS and increased urban crime rates in the capital city. In one of those years Jackson was cited as having the highest murder rate in the nation. Further, crime throughout the state rose during the period prior to the enactment of TIS. In a 10-year period from 1986 to 1995 (the year TIS was passed) the index crime rate rose 35 percent and the violent crime rate rose 83 percent. Enhanced media coverage of crimes in the state and in Jackson fed the perception that the state was in the midst of a violent crime wave, and helped convince many that something decisive should be done to gain control over crime. A review of Mississippi crime rate trends reveals a gradual and steady increase through 1993, but a significant across-the-board decline in both violent and property crime rates from 1994 to the present. There was also a general perception that the public's fear of crime had increased (though no research exists to support this claim). Taken together, the various impressions of increasing crime rates and fear of crime encouraged broad-based legislative support for TIS – despite the fact that no impact statement on TIS had been presented.

TIS legislation was debated briefly during the winter of 1994–5 legislative session and implemented in summer 1995. There was little consideration of the complexity of enacting such a law, and legislators did not dwell on possible unforeseen consequences. Unfortunately, they also did not research the impact or implementation of TIS legislation in other states, which would have been instructive. Nor, apparently, did they consider the possible impact of TIS on judicial sentencing behavior. We provide prison population projections taking TIS into account that reveal a dramatic predicted increase in inmate numbers through 2006. However, due to changes in judicial sentencing behavior, actual counts through 2001 appear to fall well short of these projections.

CONSEQUENCES: CHANGES IN POPULATION AND LENGTH OF STAY

Pre-TIS projections generated by the National Council on Crime and Delinquency (NCCD) in August 1991 (see Table 1) show the Mississippi inmate population increasing from roughly 8400 in January 1991 to a projected 13,104 by December 2000. In reality, as a consequence of truth-in-sentencing legislation, by December 2000 the inmate population exceeded 18,000 (Table 1), and the state has had to find room for some 5000 new inmates over the past five years.

The initial projections were done prior to passage of TIS. In August 1995 new projections were run by NCCD to estimate the impact of TIS on the inmate population through 2005. The new projections assumed no change in judicial sentencing behavior (offenders would continue to receive the same sentences) and that each new admission – regardless of offense category – would serve 85 percent of the court-imposed sentence as mandated by TIS. The 1995 TIS-based projections indicated that the inmate

TABLE 1 1991–2001 Mississippi prison population projections before TIS, compared to actual prison populations in December of each year (TIS was implemented in July, 1995)

YEAR	PROJECTED PRISON POPULATION ^a	ACTUAL PRISON POPULATION ^b
1991	9036	8869
1992	9562	8893
1993	10,046	9887
1994	10,488	11,049
1995	10,986	12,474
1996	11,333	13,263
1997	11,827	14,254
1998	12,256	15,374
1999	12,669	16,705
2000	13,104	18,005
2001	NA	18,905

Notes:

^a *Source:* Mississippi Department of Corrections prison population projections, NCCD (1991).

^b *Source:* Mississippi Department of Corrections Monthly Fact Sheet for December of each period (2001b).

TABLE 2 Mississippi prison population projections: Impact of truth-in-sentencing 1995–2005

YEAR	JUNE'S POPULATION
1995	12,294
1996	13,346
1997	15,090
1998	17,321
1999	19,727
2000	22,150
2001	24,534
2002	26,377
2003	28,097
2004	29,904
2005	31,031

Source: Mississippi Department of Corrections inmate population projections, NCCD (1995).

population would increase to over 21,000 by December 2000, and to nearly 32,000 by December 2005 (see Table 2).

Again, this prediction was based on the application of TIS to all crimes, both violent and non-violent, and it assumed there would be no change in judicial sentencing behavior as a consequence of the passage of TIS. As can be seen by comparing the actual prison population counts in Table 1 with the projected counts in Table 2, the actual increase in prison population is significantly less than that expected due to TIS (i.e. the actual count of 18,905 in December 2001 is far less than the projected count of 24,534 in June 2001).

Projections conducted by NCCD in spring 1997 examined the actual impact of TIS on judicial sentencing behavior since July 1995 (the date TIS was implemented), and the effect of actual changes in judicial sentencing on the projected prison population. The analysis of inmates admitted during FY 1996 (July 1995–June 1996) shows that court-imposed sentences in each major offense category declined by an average of 29 percent over pre-TIS levels. Further, inmates admitted to prison for sex and violent crimes evidence the largest sentencing declines – average sentences for sex offenders declined from 136.7 months to 76 months, and for violent offenders from 133.7 months to 76.1 months – sentences have decreased by more than 40 percent for these crime categories (see Table 3). Though the effect of TIS is mixed depending on the crime category in question, all crime categories register a decrease in length of sentence. Despite initial claims that TIS would not influence their sentencing behavior, judges have clearly reacted to the passage of TIS by reducing the sentences they impose on convicted felons. The courts are aware that all prison-bound offenders will now serve 85 percent of their sentences, and have apparently responded by imposing lesser sentences that make allowances for such a requirement. In 1994 the average length of sentence for all offenses was 7.3 years, a figure that dropped to 5.9 years in 1997 – a decline of more than 25 percent over the three-year period.

A 1997 BJS report estimated that 42 percent of all violent offenders admitted to prison

TABLE 3 Impact of truth-in-sentencing (TIS) on length of sentence and length of stay in prison. Based on FY 1996 prison admissions (1 July 1995–30 June 1996) under TIS

INMATE GROUP	OLD LAW SENTENCE (MONTHS)	TIS-BASED SENTENCE (MONTHS)	DIFFERENCE BETWEEN OLD SENTENCE AND TIS SENTENCE		OLD LAW ESTIMATED LOS ^a (MONTHS)	TIS ESTIMATED LOS ^a (MONTHS)	DIFFERENCE BETWEEN OLD LAW LENGTH OF STAY AND TIS LENGTH OF STAY	
	MEAN	MEAN	NUMERIC	% CHANGE	MEAN	MEAN	NUMERIC	% CHANGE
Drugs	77.6	65.6	-12.0	-15.5	36.9	53.9	17.0	46.0
Female	80.8	72.2	-8.6	-10.6	38.6	59.6	21.0	54.4
Habitual	140.6	127.7	-12.9	-9.2	122.9	105.0	-17.9	-14.6
Mandatory	150.5	109.7	-40.8	-27.1	114.0	89.8	-24.2	-21.2
Non-violent	61.5	49.6	-11.9	-19.3	32.0	39.8	7.8	24.4
Sex	136.7	76.0	-60.7	-44.4	65.0	61.3	-3.7	-5.7
Violent	133.7	76.1	-57.6	-43.1	63.3	61.1	-2.2	-3.5

Note:

^a LOS = length of stay.

Source: Mississippi Department of Corrections inmate population projections 1996–2006 (revised), NCCD (1997a).

were actually sentenced under a TIS law requiring that at least 85 percent of the sentence be served in prison (Ditton and Wilson, 1999). Interestingly, the pattern noted earlier in Mississippi – that of declining average sentence lengths – mirrors the national trend. Similar to Mississippi, the average sentence length imposed on offenders entering prison decreased from 72 months in 1990 to 68 months in 1996. The average imposed sentence for violent offenders decreased from 107 months in 1990 to 104 months in 1996. And both the average sentence length and the minimum time to be served in prison decreased for rape offenders admitted between 1990 and 1996. In contrast, offenders admitted to prison were expected to serve two months longer in prison, even though their average sentence declined by six months between 1990 and 1996 (Ditton and Wilson, 1999).

While the average sentence declined for all crime categories in Mississippi after TIS became operational, due to TIS some crimes still register an increase in expected length of stay (LOS). One result of the unanticipated change in judicial sentencing is to increase significantly the expected LOS for drug offenders by approximately 46 percent and for non-violent offenders by 24.4 percent. In a bizarre twist, the expected LOS for sex and violent offenders actually declined by 5.7 percent and 3.5 percent, respectively. In addition, since the bulk of female offenders are convicted of drug and non-violent offenses, the average LOS for females is projected to increase by nearly 55 percent (from an average of 38.6 to 59.6 months).

Implementation of TIS along with unanticipated changes in judicial sentencing result in dramatic projected increases in female, drug and non-violent offender populations, and smaller increases in sex and violent offender populations. Specifically, Table 4 shows that should TIS remain unchanged and judges continue to impose reduced sentences between 1997 and 2006, the female inmate population is predicted to increase from under 1000 in 1996 to over 1700 by 2001 and to nearly 2500 by 2006. This represents an increase of 205.1 percent in the female inmate population from 1996 to 2006. The drug offender population is projected to increase by 146.5 percent, from 2243 to 5530, and the non-violent population is projected to increase by 86.5 percent (3277 to 6113). The two inmate categories with the smallest predicted increases are the sex offender population (a 31.3 percent increase) and the violent offender population (a 44.0 percent increase) (NCCD, 1997a).

The cumulative impact of TIS in combination with the unanticipated changes in judicial sentencing behavior is that the greatest projected increases in future bed needs in Mississippi Department of Corrections (MDOC) facilities will be for female inmates, drug offenders and male inmates with property or non-violent convictions. These are precisely the populations that are better suited for community-based alternatives to incarceration, which would reserve needed bed space for the expected increases in violent and dangerous offenders. Thus, one unanticipated consequence of TIS in Mississippi is that violent and sex offenders – those most deserving of sentencing reform that increases certainty and severity of punishment – actually do less time behind bars than before TIS was passed, while offenders who pose less threat to the community will do much more. The changes in judicial sentencing behavior also result in a much reduced inmate population projection of just under 25,000 by the end of 2006, compared to initial estimates of the effect of TIS (see Table 2). This represents a decline of nearly 7000 inmates compared to the initial TIS-based projection conducted in August 1995, which assumed no change in judicial sentencing behavior.

TABLE 4 Revised population estimates (1997–2006) based on TIS and unanticipated changes in judicial sentencing

INMATE GROUP	JUNE 1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	TOTAL INCREASE	% INCREASE
Drugs	2243	2520	2847	3197	3627	3996	4322	4658	4968	5187	5530	3287	146.5
Female	803	982	1143	1318	1523	1729	1902	2041	2213	2316	2450	1647	205.1
Habitual	990	1035	1106	1153	1222	1305	1360	1440	1489	1538	1597	607	61.3
Mandatory	988	1081	1264	1264	1362	1434	1508	1571	1641	1686	1753	765	77.4
Non-violent	3277	3487	3810	4119	4461	4811	5174	5461	5681	5919	6113	2836	86.5
Sex	772	809	827	854	891	909	950	972	995	985	1004	242	31.3
Violent	2408	2463	2596	2655	2773	2921	3024	3157	3273	3356	3467	1059	44.0
Total	13,331	14,715	15,933	17,074	18,508	19,829	21,058	22,211	23,261	24,090	24,963	11,632	87.3

Source: Mississippi Department of Corrections inmate population projections 1996–2006 (revised), NCCD (1997a).

Projections generated in May 1997 provide a scenario where TIS (the 85 percent requirement) is applied only to violent, drug and sex offenders, with other offender groups subject to pre-TIS punishments. Under this model the revised inmate population projection for 2006 is reduced to 20,784 (NCCD, 1997b). This amounts to nearly 12,000 fewer inmates than the initial TIS-based estimate of some 32,000 by the end of 2005. The state legislature has voiced its reluctance to implement this version of TIS.

In sum, TIS in Mississippi has generated a significant increase in prison inmates, but not nearly what was expected under the new law. And similar to the national trend, though there was a decline in the average sentence imposed, the 85 percent rule results in an average increase in actual time served. Overall, TIS in Mississippi has reduced the discrepancy between sentence imposed and time actually served, a primary goal of TIS legislation.

SENTENCING REFORMS AND SENTENCING BEHAVIOR

State legislatures began discarding the rehabilitative model in the late 1970s to embrace a punitive response to criminal behavior, changing the direction of sentencing reform in the USA in favor of deterrence and incapacitation. By 1983, 49 states included mandatory sentences for certain crimes, and by 1995 every state had adopted some type of sentencing reform (Wicharaya, 1995). The primary objective of sentencing reform is uniform application of imprisonment for serious offenses such as felonies committed with firearms and repeat or habitual violent, sex and property offenders. And the means to actual and effective truth-in-sentencing is closely tied to the control of judicial sentencing behavior.

Judicial sentencing behavior is the most proximate influence over the type and degree of criminal sanctions, and increases in the certainty and severity of sanctions are usually achieved by restricting sentencing discretion on the part of the criminal court judge. But recent work points to the intransigence of the 'court community' and to problems that policy makers confront in altering judicial sentencing behaviors (Wicharaya, 1995; Ulmer, 1997). Reforms are passed in legislative session and imposed on the courts, but it is the courts themselves – and those who work there – who are responsible for implementing them. In the end, it is up to the criminal court to convert reform policies into actions. In practice, the principal actors in the court community (judges, prosecutors and defense counsel) work closely together to determine the outcome of cases (Ulmer, 1997). These courtroom 'work groups' exercise their discretion in each case, and certain adjustments are made to arrive at a proper punishment – usually through plea negotiations and by bending rules work groups see as inappropriate or ill conceived. They exercise considerable latitude in selecting what they view as an appropriate sanction through a process that may alter the intended consequences of sentencing reforms. There seems no guarantee that reform policies crafted in legislatures will be implemented as proposed at the local level. And it appears that reforms are particularly likely to be altered when legislation fails to establish sentencing guidelines that provide clear sentence durations as a function of crime severity and prior record, thereby limiting judicial discretion to a significant degree. In Mississippi, court communities have apparently tried to account for the impact of the 85 percent law, with sometimes unexpected results.

In their recent review of sentencing reform in California, specifically the implementation of three-strikes laws, Zimring et al. observed that:

The power of criminal justice officials to moderate and negate even mandatory legislation means that the support of powerful functionaries within the criminal justice system is an important predictor of the degree to which radical changes in legislative pronouncements are reflected at street level. (2001: 172)

Prosecutors, they say, are 'free to avoid the mandatory provisions of any penalty', and the success of prosecutors and judges in circumventing reforms they disagree with '... reflect[s] the extreme vulnerability of mandatory legislative ambitions to the discretionary powers of criminal justice officials' (2001: 173). In Mississippi, in response to TIS, the court community – represented by judges, prosecutors and public defenders – has adjusted its sentencing behavior to maintain what is seen as proportionality in punishment in the face of a mandatory sentencing policy passed at the legislative level. In this manner, court officials in Mississippi have succeeded in diluting what was seen as a direct challenge to the traditional discretionary authority of prosecutors and judges. Not surprisingly, there is substantial variation in enforcement of TIS across jurisdictions in Mississippi, reflecting 'sharply different degrees of fidelity to the language of the statute' (Zimring et al., 2001: 219). As in California, TIS in Mississippi '... has been absorbed and accommodated in the criminal justice system in ways that appear to compromise the systemic ambitions of a statute dedicated to distrust of the exercise of discretion by government officials' (Zimring et al., 2001: 220).

POLITICAL AND ECONOMIC CONSEQUENCES

It is difficult to measure the success of policy when its implementation generates negative or unintended consequences. Truth-in-sentencing legislation typically aims to increase the certainty and severity of punishment, and this seems to have been achieved to some degree in Mississippi if measured by the rapid growth in the prison population. It is also true that crime rates have fallen since the implementation of TIS, though it remains unclear whether this has much to do with sentencing reform – particularly since the decline began well before TIS was implemented. On the other side of the equation, sentencing reform in Mississippi has placed heavy financial and administrative burdens on the correctional system, and has generated a good deal of speculation on the relationship between reforms and prison crowding. In the Mississippi case, the fall-out from the passage of TIS continues, and several outcomes related to sentencing reform are worthy of discussion.

In spring 2001, Mississippi joined Texas and Louisiana as the only states to register incarceration rates over 700 per 100,000 in the general population in a country that now boasts the highest incarceration rate in the world (MDOC, 2001a). To help manage the dramatic increase in state inmates, five private prisons in Mississippi now house over 3000 inmates, and 10 new county-based regional correctional facilities house over 2000 more, while up to 10 more county-based correctional facilities are planned. Mississippi is currently realizing the complexities of implementing TIS, and is wrestling with a corrections budget that has become the fastest growing portion of the state budget. In

1992 the Mississippi corrections budget was approximately \$83 million. By 1998 the MDOC budget exceeded \$200 million. The fiscal year 2000 budget was \$263 million. Since the passage of TIS in 1995, the annual MDOC budget has increased from \$119 million to over \$260 million (www.mdoc.state.ms.us, 2001b). In addition, in just six years (FY 1996–2002) payments to regional and private prisons grew from \$0 to nearly \$67 million as the number of inmates in these facilities rose from 0 to over 5500 between 1995 and December 2001.

Regional correctional facilities, initially designed to house up to 250 inmates each, are particularly attractive to local legislators who seek to ‘bring home the bacon’ to their constituents and hopefully promote economic development in their local communities, which are primarily rural. ‘Unlike sweet potatoes or furniture, they are recession-proof’, observed Chickasaw County Board of Supervisors President Lonnie Whitt (*The Clarion-Ledger*, 9 April 2001). ‘Many people don’t look at it that way, but it certainly provides economic development’, said George County Development Foundation Executive Director Sue Wright. Wright noted that jobs will be created during construction as well as service and supply jobs once the facility is in operation. The regional facility is expected to employ up to 70 people when completed. In Chickasaw County, Houston Mayor Bill Smith opined, ‘We think it will be another industry for our community.’ George County Supervisor Henry Cochran said the goal was to get a new county prison without having county taxpayers pick up the local cost. With a regional facility, income from state inmates would help pay for the prison (*The Clarion-Ledger*, 9 April 2001). It appears that counties are highly motivated to attract new prisons to their locales.

The original agreement between the state and the counties where regional prisons were built included a provision to house a minimum of 200 state inmates in each county-level facility, and for the state to pay counties a daily fee for housing each state inmate. The construction of new regional facilities in addition to new private prisons required that MDOC transfer hundreds of state inmates to those facilities. In spring 2001, state legislators passed a bill mandating that the state provide each county facility with at least 230 inmates (up from 200). The bill noted that should the state not transfer an additional 30 inmates to each facility, it would have to pay the counties for the non-existent inmates (termed ‘ghost inmates’ by the Governor, who vetoed the bill – only to have his veto overridden by the state legislature). Interestingly, it costs more to house an inmate in the new regional facilities than in state prisons, and the additional cost to the state is estimated to exceed \$6 million per year for these ‘ghost inmates’. At the same time, two new regional facilities are awaiting construction in Chickasaw and George Counties and the state legislature voted to build yet another prison in Washington County. It also approved a 25-year contract with the state to house state inmates in the yet-to-be-built prison in Washington County. It is worth noting that the Commissioner of the Department of Corrections, MDOC Deputy Commissioners and state prison administrators all supported the Mississippi Governor’s veto of the legislation in question, though state legislators immediately overrode the Governor’s veto and the prison legislation passed. Correctional professionals strongly disagree with state legislators on many issues related to correctional policy.

There are several obvious economic incentives for counties to attract prisons housing state inmates. First, new regional facilities are expected to promote economic development in the local area. Second, the counties charge the state for each inmate/day that a

state inmate is housed at the county-level facility. Third, counties use minimum-security inmates for municipal and public work in that county. For many counties the majority of municipal and public work is conducted by state inmate work crews. The expense of local municipal services (trash removal, construction work, road maintenance, etc.) is significant, and can be offset by requiring that inmates do it as part of their sentence at no cost to the county. Counties therefore gain in two direct ways; they charge the state to house state inmates, and they use inmates to perform services in the county.

Similar to the regional facilities, private prison projects over the past few years have been located in economically distressed areas. In Mississippi, private facilities have been sited in some of the poorest counties in the entire nation (Mattera et al., 2001). Communities like these are desperate for jobs, and see prisons as their economic salvation. In 1996, both Wackenhut and CCA opened 1000-bed prisons in Mississippi, and until recently have enjoyed a constant supply of some 990 inmates each. But due to the construction of three more private prisons and 10 new regional facilities, the supply of inmates has started to dry up. Wackenhut recently signed a two-year contract renewal for its 1000-bed prison with a guarantee of at least 871 inmates, but is likely to appeal to legislators next year for more inmates (*Wall Street Journal*, 6 September 2001). A worst-case scenario is provided by the CCA facility in Tallahatchie County in Mississippi. Built to house a mix of 1100 state, out-of-state and federal prisoners, after the state of Wisconsin transferred over 300 inmates to a Minnesota prison in early 2001, CCA laid off most of its employees. The prison currently houses only 100 local inmates in a deal with the county.

Prison expansion in Mississippi has spawned a new and powerful coalition of vested interests with stakes in keeping prisons full and building more of them. These interests include private prison companies and their lobbyists, state legislators with prisons in their districts, counties that operate their own prisons and sheriffs who covet convicts for local jails. The result has been a financial and political bazaar with prisoners as the prize. Mississippi now ranks third behind Texas and Louisiana in per capita incarceration. However, over the past year or two Mississippi's prison population growth has slowed, while the prison system continues to expand. This means that many prisons that depend on inmates (and Mississippi's payments to house them) do not have enough to turn a profit. Since the state does not have enough prisoners to go around, private and regional prisons are demanding that the state meet their contract agreements by giving them inmates previously housed in state prisons. In January 2001, state Representative Linda Coleman, vice-chairwoman of the House Penitentiary Committee, lobbied Robert Johnson, the Mississippi DOC Commissioner, on behalf of the regional facility in Bolivar County, which had suffered severe tornado damage and had to transfer most of its inmates to other facilities. She pleaded that the prison needed repairs and more inmates so the county would not default on \$7.8 million in upcoming debt payments. Johnson has noted that 'Everybody wants inmates, I can't help them' (*Wall Street Journal*, 6 September 2001: A1). However, due to the unintended consequence of the prison construction binge in Mississippi and contract agreements between the state and regional and private prisons, Mississippi DOC has been forced to transfer hundreds of inmates to these new facilities, resulting in 2145 empty beds in state prisons as of 5 September 2001. The initial projections of overcrowding in Mississippi prisons which led to the rapid construction of new facilities has now created an

artificial demand for inmates to fill thousands of empty prison beds. An 11th county-operated regional prison is scheduled to open in spring 2002, with space for 250 state inmates. According to a contract he signed before so many beds became empty, Mr Johnson must find 200 inmates for that prison, too (*Wall Street Journal*, 6 September 2001).

Yet another consequence of this process is that the rapid increase in the correctional budget has required commensurate cuts in education, both K–12 and in the state university system. FY 2001–2 witnessed an 8.3 percent cut in the higher education budget (more than \$80 million) and an additional \$80 million cut is planned for 2002–3. Preliminary estimates project significant cuts in higher education over the next three years in order to meet budget shortfalls, which many attribute partly to the rising costs of corrections. Some would claim that state legislators are enriching their local communities and counties at the expense of the state's educational and health care systems (Medicaid is projecting a \$124 million cost overrun in 2002–3). The battle between correctional administrators and the Governor on one side and state legislators on the other side is far from over, and will likely be revisited in future legislative sessions. Meanwhile, Mississippi's educational and health care systems are in dire need of attention.

CONSIDERATIONS FOR FUTURE REFORM

Mississippi is clearly seeking a way to manage the consequences (anticipated and unanticipated) of implementing TIS. Mississippi opted to apply TIS to all new admissions – most other states have adopted a TIS law that applies primarily to violent offenders. Yet further complicating things, Mississippi did not couple TIS with a structured sentencing system that, while limiting judicial discretion, builds more stability and predictability into the system.

Mississippi may not be finished with sentencing reform. In March 1998, concerned legislators proposed a reduction in TIS for non-violent offenders – down to 65 percent of the court-imposed sentence. This initiative was not well received by hard-liners, and the motion to revise TIS was tabled indefinitely. Finally, in 2001, the state legislature revised the 1995 TIS law so that first-time non-violent offenders would serve only 65 percent of their court-imposed sentences. However, this affects only a small minority of felony offenders in Mississippi.

Over the last seven years Mississippi has embarked on an ambitious plan to build 20 new 250-bed prisons (designed for future expansion to 500 beds each), 10 of which are now in operation. These new facilities – targeted almost exclusively for rural counties throughout the state – call for a cooperative state/county financing scheme that places significant long-term debt on taxpayers. A recent study of 60 large private prisons in 19 states by the Institute on Taxation and Economic Policy noted that the state that has made the most use of public financing for private prison facilities is Mississippi, where five bond issues were made with a total value of \$155.6 million (Mattera et al., 2001). Nevertheless, county legislators compete with one another to 'win' these facilities with the expectation that their construction and operation will stimulate economic development at the local level. It remains to be seen, however, whether the construction and operation of regional and private prisons has the effect of increasing local employment,

stimulating additional economic activity and expanding the tax base. In their study, Mattera et al. asked local officials in each locality whether a formal economic impact study had been conducted after the private prison was completed: 'Not a single one of dozens of officials we interviewed reported that any such study had been done, either by the government agency itself or by another party such as a university professor' (2001: 46). They concluded that local officials have no information on whether these facilities are doing any good for the local community.

It is troubling to some that Mississippi has turned to the prison-industrial complex to promote local economic development, particularly when there is little evidence supporting such an outcome. By instituting TIS, the steady stream of incoming prisoners serving longer sentences provides a built-in demand for new facilities, which – it is claimed – will serve as economic development catalysts for underdeveloped counties across the state. State legislators from these localities are naturally eager to promote the construction of prisons in their counties. Whether by design or mishap, Mississippi's legislature appears to have pursued an economic development strategy that hinges on an increase in inmate populations as a consequence of TIS, which in turn creates the demand for more prison construction at the local level.

There seem at least two positions with regard to the growth of the Mississippi prison system. On the one hand, fueling economic development by orchestrating an increase in demand for more prison space seems counterproductive. A larger and larger proportion of the state population winds up being incarcerated, removing them from productive activities and reducing the potential tax base. Further, funding for other state agencies is likely to suffer given the demands for more correctional dollars. And such a strategy seems morally bankrupt to many observers. Mississippi DOC Commissioner Johnson notes that, 'The sole focus for many people is economic development: "We can make money off of inmates"'. That's just gotten a little too skewed for my liking' (*Wall Street Journal*, 6 September 2001: A8). On the other hand, rural counties view the prospect of prison construction as a plus, bringing jobs and salaries to their areas and providing a shot in the arm for local retail and housing industries. Interestingly, state inmates are no longer considered 'unemployed workers', and as their numbers grow, it is possible that the state unemployment rate will decline – which is generally seen as an indicator of economic growth and expansion. Legislative opinion regarding the wisdom of the prison construction boom is divided, and continues to generate heated debate among law makers.

If one takes the view that more state inmates is not necessarily a good thing, one could easily envision modification of current correctional policy in a way that reduces future inmate populations below what might be expected with the current across-the-board TIS law. Such modifications could draw on the experience of other states that have addressed the same issues in corrections and criminal justice that Mississippi now confronts. Those states have generally pursued correctional reforms that ensure that:

- (1) expensive prison resources are spent only sparingly on misdemeanants and non-violent felons;
- (2) there is a significant and predictable flow of non-dangerous felons into a variety of intermediate sanctions (house arrest, electronic monitoring, intensive supervision probation, etc.);

- (3) judges have sufficient discretion to tailor sentences to the requirements of individual offenders;
- (4) the number of offenders serving prison terms does not exceed the state's authorized prison capacity.

To achieve these goals would require movement toward a comprehensive state correctional policy that will protect the public, provide some degree of predictability with regard to future correctional populations and gain some degree of control over escalating costs associated with corrections. A good first step would be to revise the current TIS law to emphasize prison terms for violent offenders while at the same time reducing the impact of TIS on drug and non-violent offenders (i.e. apply a 65 percent requirement for all non-violent and property offenders). It would also mean a system that provides for moving more drug and non-violent offenders into community-based sanctions. To achieve this Mississippi might consider a structured sentencing system similar to what has been developed in other states in combination with an expanded community correctional component (Parent, 1988). While this would place limits on judicial discretion with regard to sentencing, it would ensure proportionate punishment to offenders and allow more accurate population modeling – critical to estimating future costs. Finally, Mississippi would benefit by establishing a State Sentencing Commission as a permanent state agency that draws members from MDOC, the state legislature, district attorneys, judges, law enforcement, academic researchers, victims groups and other interested parties. As in other states, such a Commission would serve to spearhead Mississippi's plan to improve the manner in which it delivers criminal justice.

Acknowledgements

This research was supported by funds from the Mississippi Department of Corrections and by grant number 4 D1A RH 00005-01-01 from the Office of Rural Health Policy of the Department of Health and Human Services through the Rural Health, Safety, and Security Institute, Social Science Research Center, at Mississippi State University. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Office of Rural Health Policy. Appreciation goes to Gregory Morris and Willie Lawson for their able assistance, and to the personnel of MDOC who provided their help and expertise in this effort.

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