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Smart on Sentencing, Smart on Crime:

An Argument for Reforming Louisiana's Determinate Sentencing Laws

by Lauren Galik and Julian Morris

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Executive Summary

Over the past several decades, Louisiana legislators have passed a number of determinate sentencing laws aimed at reducing crime and incapacitating certain types of offenders. Because these laws have been disproportionately applied to nonviolent crimes, nonviolent offenders now account for the majority of inmates and admissions to prison in the state. This has produced a number of unfortunate consequences, such as an increase in the state's prison population from 21,007 in 1992 to 39,709 in 2011 and a $315 million increase in correction expenditures during the same time period, from $442.3 million (in 2011 dollars) in 1992 to $757.4 million in 2011. Meanwhile, there is little evidence that the laws have done anything to reduce Louisiana's violent crime rate, which remains considerably above both the national average and the rates in its neighboring states. Today, Louisiana has the highest incarceration rate in the country, with 868 of every 100,000 of its citizens in prison.

Louisiana's citizens could benefit considerably from changes to the way in which convicted criminals are sentenced. As things stand, nonviolent offenders who pose little or no threat to society are routinely sentenced to long terms in prison with no opportunity for parole, probation or suspension of sentence. In most cases, this is a direct result of the state's determinate sentencing laws. These prisoners consume disproportionate amounts of Louisiana's scarce correctional resources, which could be better utilized to ensure that violent criminals are more effectively kept behind bars.

Among the more serious problems with Louisiana's determinate sentencing laws are:

- A large number of crimes that carry mandatory minimum prison sentences in Louisiana are drug-related and nonviolent in nature. Indeed, numerous violent crimes, such as negligent homicide, manslaughter, aggravated assault with a firearm, aggravated battery, simple rape and simple kidnapping carry no mandatory minimum sentences at all.
- Mandatory minimum sentences eliminate judicial discretion over sentencing by prohibiting judges from taking into account factors specific to the crime or offender when determining the sentence.
- Mandatory minimum sentences create arbitrary outcomes by drawing essentially trivial lines between degrees of criminal activity that can result in dramatic differences in punishment. This happens most commonly with sentences for drug crimes, where different weights or quantities of drugs carry varying degrees of punishment. For example, possession of 199.9 grams of cocaine carries a mandatory minimum sentence of five years of hard labor in prison and a $50,000 fine. However, possession of 200 grams of cocaine carries a mandatory minimum sentence of 10 years of hard labor in prison and a $100,000 fine—double the punishment for a negligible 0.1 gram more of cocaine.

- There are significant disparities between Louisiana's mandatory minimum sentences for drug offenses and similar mandatory minimums enacted at the federal level. Federal mandatory minimum sentences are generally targeted at drug kingpins, so there are no federal mandatory minimum sentencing statutes for the simple possession of any drug, for example. However, low-level offenders convicted of possession of a small amount of drugs are routinely sentenced to serve mandatory minimum sentences for several years in Louisiana.
- Mandatory minimum sentences, combined with restrictions on parole, probation and sentence suspension, can discourage prisoners from undertaking rehabilitation, which may explain why rates of recidivism for released drug and property offenders are much higher than for released violent offenders.
- Under the habitual offender law, a nonviolent offender convicted of a minor offense as a third-time habitual offender could be sentenced to serve the majority of his or her life in prison without the possibility of parole, probation or suspension of sentence. Such a sentence is grossly disproportionate and goes against a basic principle of criminal justice: that the punishment fit the crime.
- Determinate sentencing laws prevent correctional resources from being more efficiently and effectively used on criminals who pose a threat to public safety.

In recent years, Louisiana legislators have passed a series of modest sentencing reforms in an attempt to address these problems. These have included reducing the length of mandatory minimum prison sentences for nonviolent offenses, expanding parole eligibility for certain offenders sentenced to life in prison for nonviolent offenses, and limiting the scope of the habitual offender law's application.

Other states have gone further. In Maine, legislators passed safety valve provisions that allow judges to depart below mandatory minimum sentences in certain instances. In Rhode Island, legislators repealed mandatory minimum sentences for nonviolent drug offenses. These reforms have allowed Maine and Rhode Island to save prison space and resources for criminals who pose a real threat to society, while reducing corrections costs. Louisiana could benefit from similar changes to sentencing policy.

Going beyond the experience of Maine and Rhode Island, there are numerous potential reforms that might reduce the state's prison population and corrections expenditures without compromising public safety. Louisiana legislators could repeal mandatory minimum sentences for nonviolent offenses. They could also amend the habitual offender law so that it applies only to those convicted of two or more violent or sex offenses, and they could make both changes retroactively applicable. If state legislators made these changes, violent criminals would continue to be punished for their crimes, while nonviolent offenders would face sentences that were more proportional to their offenses. Moreover, it's likely that Louisiana would significantly reduce its prison population and corrections expenditures, which would enable it to invest more resources per prisoner, expand rehabilitation programs, reduce recidivism rates, and perhaps finally forfeit its dubious title, "highest incarceration rate in the nation."

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Part 1

Introduction

Louisiana incarcerates more of its citizens per capita than any other state in the country. Over the past 20 years its prison population has more than doubled, as have corrections expenditures. Recidivism rates are high; nearly 50 percent of inmates are returned to prison within five years of being released. Moreover, Louisiana has had one of the highest violent crime rates in the country for the past several decades, yet the majority of inmates are serving long prison sentences for nonviolent offenses and pose little to no threat to public safety.[1]

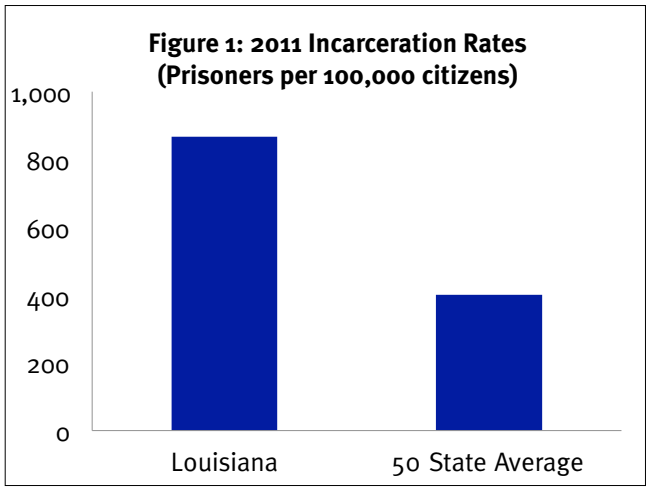
The purpose of this study is first, to explore the causes of this unfortunate state of affairs and, second, to discuss potential reforms that might at once reduce rates of violent crime, and decrease both the size of Louisiana's prison population and the state's expenditures on corrections.

The study begins with a discussion of the history of Louisiana's prison population, corrections expenditures and crime rates. It then considers the link between these phenomena and incarceration policies, paying particular attention to the state's mandatory minimum sentencing laws and habitual offender law. This study concludes with an assessment of prospective reforms.

Part 2

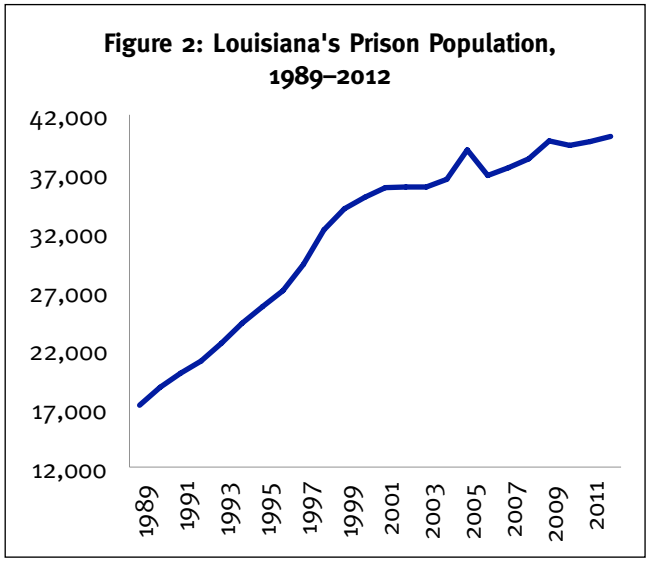
Louisiana's Crime and Incarceration Rates

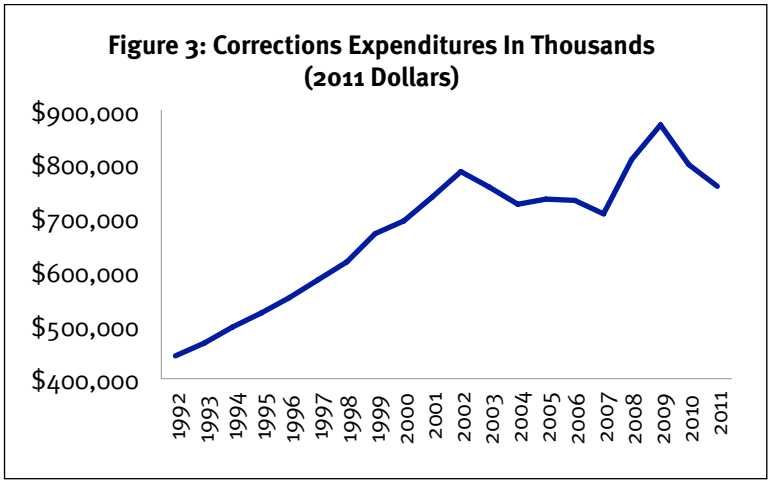
The United States imprisons a higher proportion of its citizens than any other country in the world, and Louisiana's incarceration rate far exceeds the national average.[2] With 868 out of every 100,000 of its citizens in prison in 2011, Louisiana's incarceration rate was more than twice the average incarceration rate of all 50 U.S. states (see Figure 1).[3]



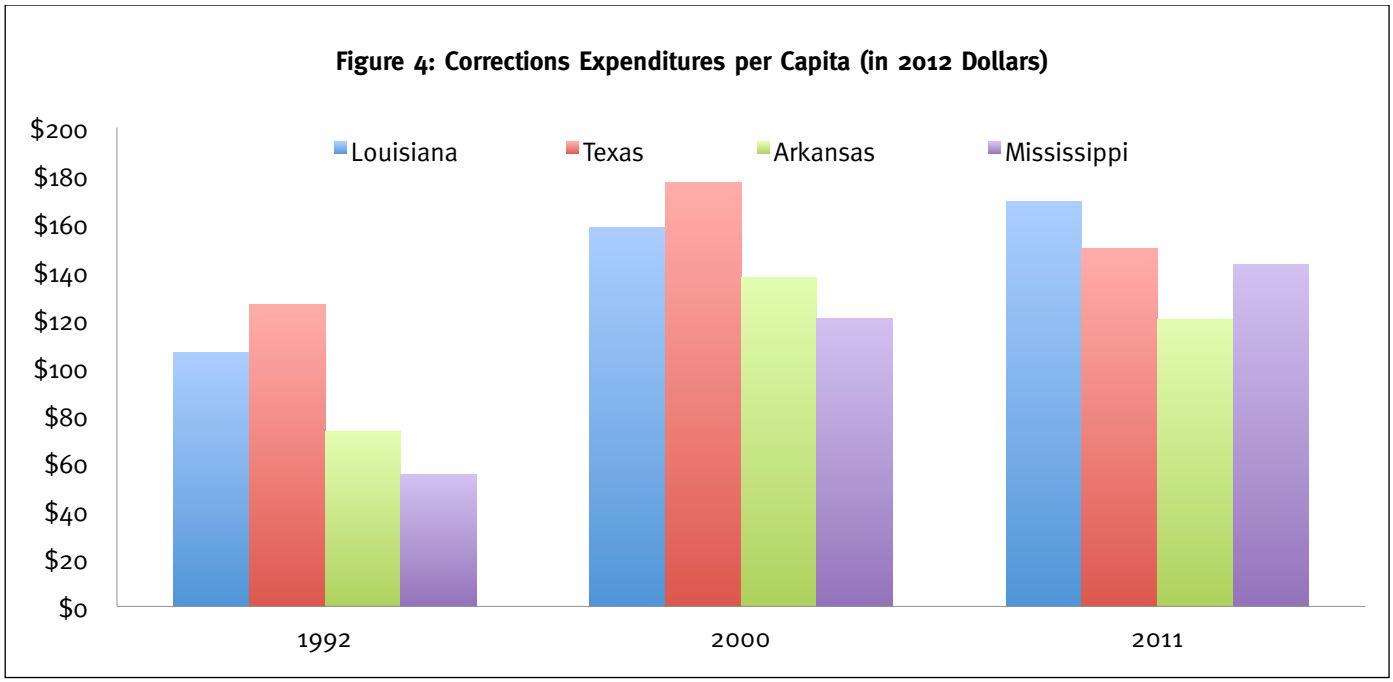
But as Figure 2 shows, Louisiana has not always incarcerated such a high proportion of its citizens. Over the past two decades, the state has seen a sharp increase in its prison population and incarceration rate that has cost its taxpayers billions of dollars. In 1990, Louisiana's prison population was 18,799 and its incarceration rate was 446 prisoners per 100,000 citizens. By 2012, the prison population had more than doubled to 40,170 inmates, while its incarceration rate had risen to 877 prisoners per 100,000 citizens.[4]

Figure 3 shows that corrections expenditures have also nearly doubled over the past two decades.[5] In 1992, Louisiana spent approximately $276 million on corrections, or $442.3 million in 2011 dollars (i.e. adjusting for inflation).[6] In 2011, Louisiana spent an astounding $757.4 million on corrections expenditures.[7]

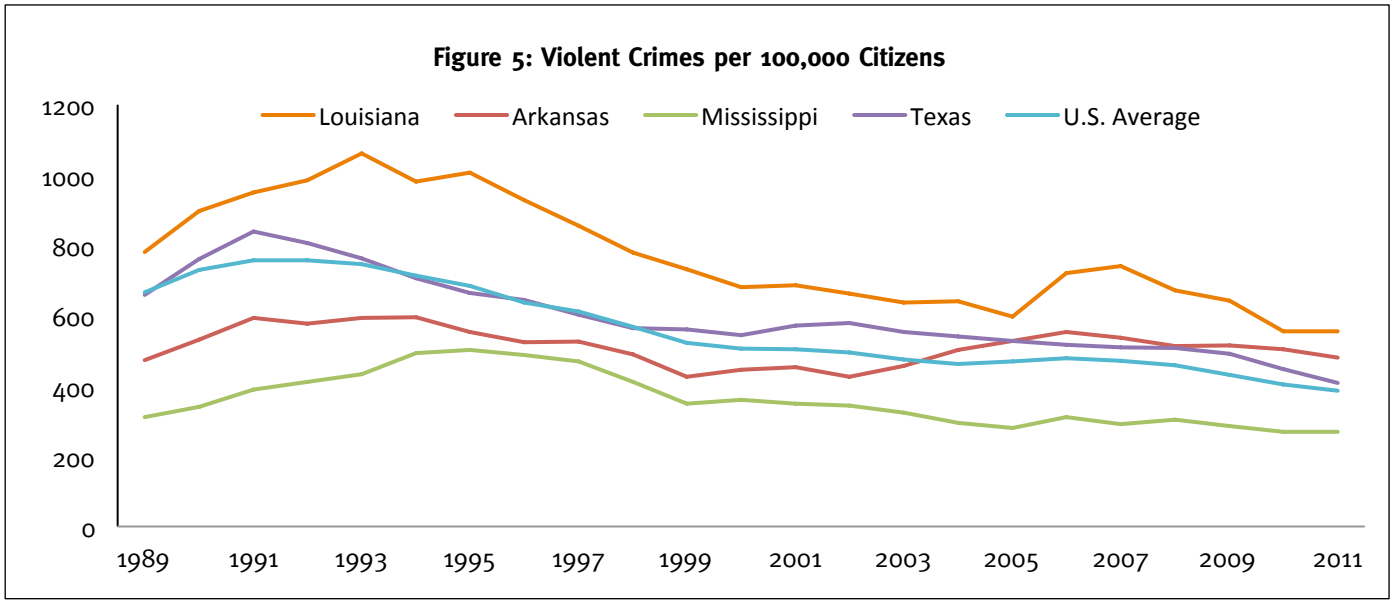




Moreover, Figure 4 shows that corrections expenditures per capita in Louisiana have been much higher than the majority of its neighboring states for the past two decades. In 2011, Louisiana's corrections expenditures per capita exceeded the per capita costs of *all* of its neighboring states.[8]

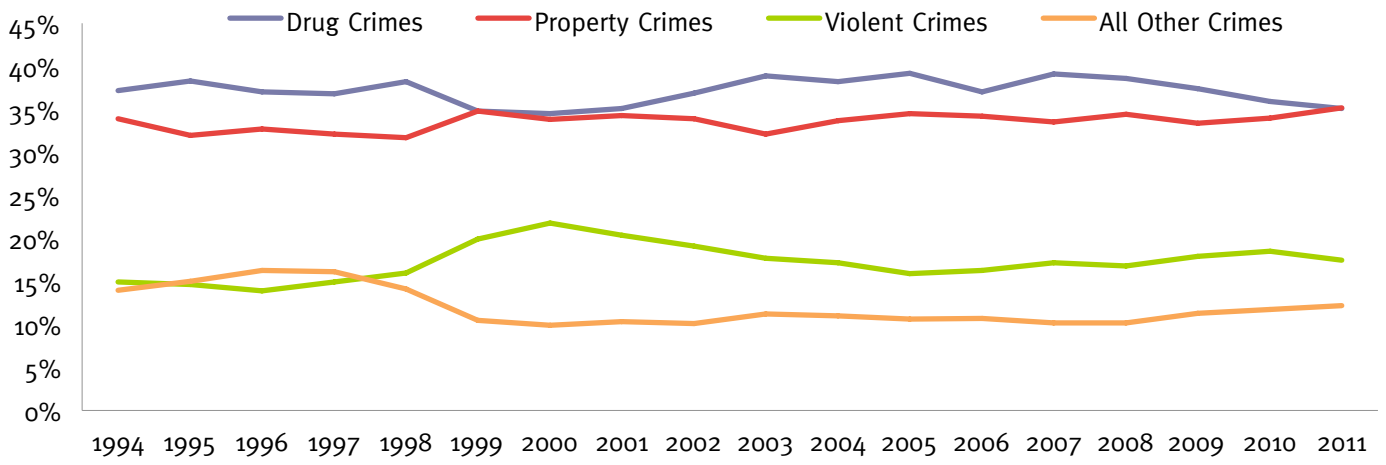


Despite having the highest incarceration rate in the nation, and higher corrections expenditures per capita as compared to its neighboring states, Louisiana's violent crime rate has remained consistently above those of its neighboring states, as well as the national average (see Figure 5).[9]



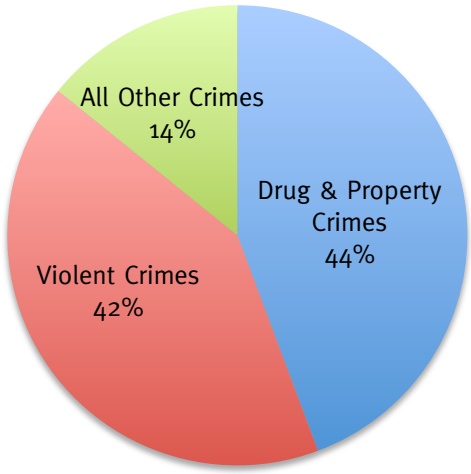
Why has this happened? Over the past two decades the percentage of offenders admitted to prison for violent crimes has remained consistently lower than the percentage of inmates admitted for nonviolent crimes, such as drug and property offenses, despite high levels of violent crime. As Figure 6 shows, between 1994 and 2011, violent offenders made up an average of only 17.3 percent of prison admissions in Louisiana; 37.1 percent of prison admissions were for drug offenses, and 33.6 percent for property offenses.[10] Between 1994 and 1996, during which time the state experienced some of its highest violent crime rates, the average percentage of inmates admitted to prison for violent crimes was 23 percent lower than those admitted for drug crimes, 18.4 percent lower than those admitted for property crimes, and 0.6 percent lower than inmates admitted for all other crimes.[11]

Figure 6: Adult Admissions 1994–2011 (Incarceration Only)

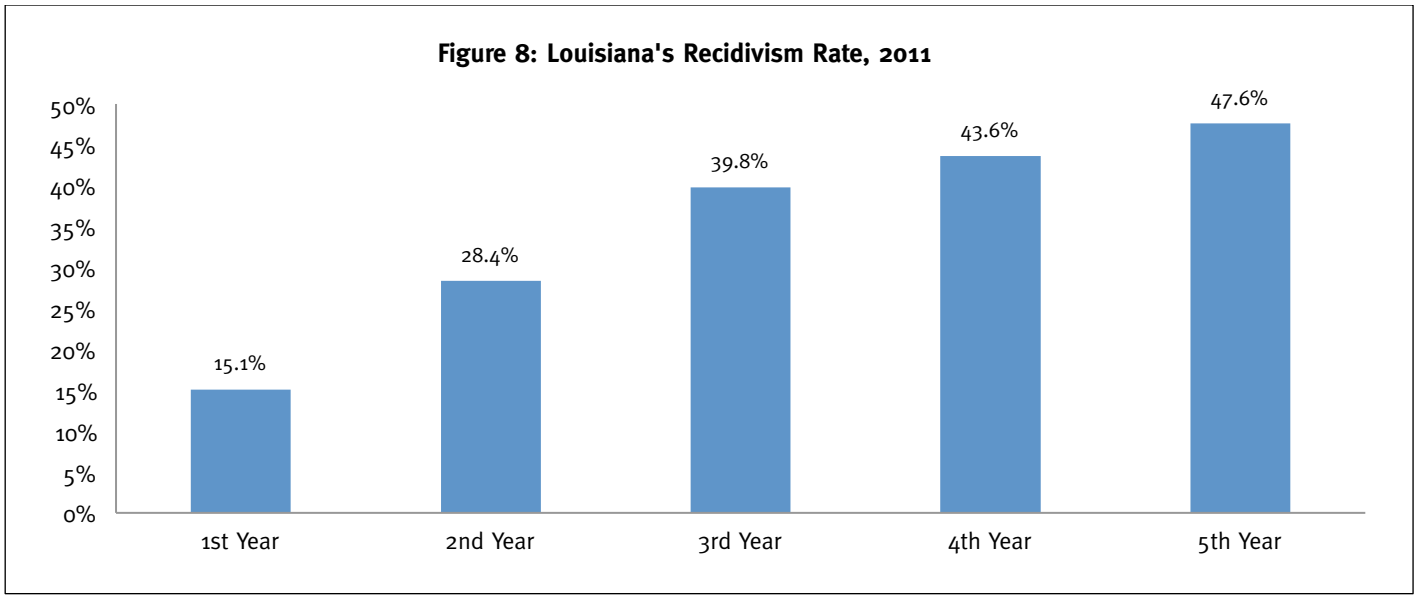


While violent offenders made up a higher proportion of offenders in prison at the end of 2012 (largely due to the longer incarceration periods for violent offenses), Figure 7 shows that at the end of 2012, more inmates were serving sentences for nonviolent drug and property crimes than for violent crimes.[12] As of December 31, 2012, 44.3 percent of inmates were serving sentences for nonviolent drug and property offenses, while only 41.5 percent of inmates were serving sentences for violent offenses. The remaining 14.2 percent of inmates were serving sentences for all other crimes.[13]

Figure 7: Louisiana Inmates Serving Sentences by Crime Type (December 2012)



Moreover, as Figure 8 shows, recidivism rates are high in Louisiana, and nearly half of all inmates are returned to prison within five years of release.[14] In 2011, 15.1 percent of inmates were returned to prison within a year of being released, 28.4 percent were returned within two years, 39.8 percent of inmates were returned within three years, 43.6 percent of inmates were returned within four years, and an astounding 47.6 percent of inmates were returned within five years.[15]



With nearly 50 percent of inmates returning to prison after five years, a violent crime rate well above its neighboring states, high corrections expenditures, and a majority of inmates incarcerated for nonviolent offenses, it makes one wonder whether Louisiana is effectively prioritizing its criminal enforcement expenditures. Might there be better ways to effectively cut rates of violent crime? To answer that question, we must better understand the underlying causes of the current incarceration rates.

This study examines three factors that seem likely to have had an effect: (1) mandatory minimum sentencing laws; (2) habitual offender law, and (3) their resulting effects on parole eligibility.

Part 3

Determinate Sentencing Laws

During the second half of the 20th century, both federal and state governments introduced various types of determinate sentences for specific offenses. This section briefly reviews the history of these sentences and discusses their consequences.

Mandatory Minimums

In 1971, President Nixon declared a "war on drugs" and described drug abuse as "public enemy number one."[16] Congress then proceeded to pass a number of mandatory minimum sentencing laws that sought to incapacitate high-level drug dealers and deter others from entering the illicit drug trade and/or consuming illicit substances. Many states followed suit by enacting their own mandatory minimum sentencing laws, Louisiana included.[17] These laws required judges to sentence those convicted of specific crimes to a minimum number of years of imprisonment.

In general, mandatory minimum sentencing laws were enacted across the country in various forms as an attempt to eliminate disparity in sentencing that came with judicial discretion, and ensure that proportional punishment was issued for different offenses and consistent punishment was issued for similar crimes.[18] Enacted with good intentions, state legislators and members of Congress believed that harsh, inflexible sentences would make punishment more certain and severe for offenders committing the type of crime they were seeking to eliminate.[19]

Instead of allowing judges to use their own discretion in determining the appropriate punishment for a defendant convicted of a particular crime, mandatory minimums establish fixed minimum terms of imprisonment for certain offenses that courts are forced to prescribe regardless of mitigating circumstances. Since the early 1970s, Louisiana has had some of the harshest mandatory minimum sentences in the nation. For example, offenders convicted of possessing a small amount of any Schedule I narcotic are subject to a mandatory minimum sentence of four years of hard labor in prison.[20] Likewise, offenders convicted of growing or selling any amount of marijuana are subject to serve a minimum of five years of hard labor in prison, as well as pay a fine of up to $50,000.[21]

Over time, Louisiana legislators expanded the number and type of crimes that carry mandatory minimum prison sentences, and have made reforms to others. However, Louisiana still carries some of the harshest mandatory minimum sentences for nonviolent offenses in the nation, overall.

Habitual Offender Law

Mandatory minimum sentences for repeat offenders, or "habitual offender" laws, were designed to counter criminal recidivism by making longer terms of imprisonment for each subsequent felony offense committed.[22] Louisiana's habitual offender law was introduced in 1956 and has been amended several times since then.[23]

Under Louisiana law, a person is considered a habitual offender if he or she is convicted of a second, third, fourth or higher felony offense within 10 years of completing his or her sentence for the prior felony conviction(s).[24] So, for example, if a defendant is convicted of a second felony as a habitual offender, both the current and prior felony offenses were not sex offenses, and a first conviction of the crime would be punishable by imprisonment for any term less than his or her natural life, he or she shall be sentenced to prison for not less than one-half of the maximum sentence for the crime, and not more than twice the longest possible sentence prescribed for a first conviction.[25]

If a defendant is convicted of a third felony offense under the habitual offender law, and the two prior felonies are either violent crimes, sex offenses with a victim less than 18 years old at the time of the offense, any crime punishable by imprisonment for 12 years or more, a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment of 10 years or more—such as possession of 200 grams (less than half a pound) of a Schedule I substance, such as cocaine or heroin, for example—or any combination of the above-listed crimes, he or she shall be sentenced to *life in prison* without benefit of parole, probation or suspension of sentence.[26]

If a defendant is convicted of a third felony offense under the habitual offender law, and the current felony and two prior felonies do not meet the above mentioned criteria, he or she shall be sentenced to prison for a minimum term of two-thirds of the longest possible sentence for a first conviction, and a maximum of twice the longest possible sentence prescribed for a first conviction.[27]

To see how this works, consider a defendant who is convicted of distributing or cultivating any amount of marijuana as a first offense. She will then be subject to serve a mandatory minimum sentence of five years of hard labor in prison.[28] If within 10 years of release, she is convicted for the same offense, she will then be required to serve a mandatory minimum prison sentence of 15 years, which is one-half the maximum sentence prescribed for a first conviction. If within 10 years of release for this second conviction, she is again convicted of distributing or cultivating any amount of marijuana a third time as a habitual offender, she will be subject to serve a mandatory minimum sentence of *22.5 years* of hard labor in prison, which is two-thirds the maximum sentence prescribed for a first conviction.[29] [30]

The Effectiveness of Determinate Sentencing Laws

In principle, longer sentences and higher incarceration rates might be expected to reduce rates of crime. Indeed, early research suggested that increased incarceration rates during the 1980s and early 1990s did reduce crime significantly. Unfortunately, most of these studies failed to account for the fact that increases in crime tend to result in an increase in prisoners (all else being equal).[31] One important study that corrected for this simultaneity was a 1996 paper by Harvard economist and *Freakonomics* author Steven Levitt, who found that a one percent *reduction* in the prison population, as a result of overcrowding litigation, resulted in an *additional* 15 crimes.[32]

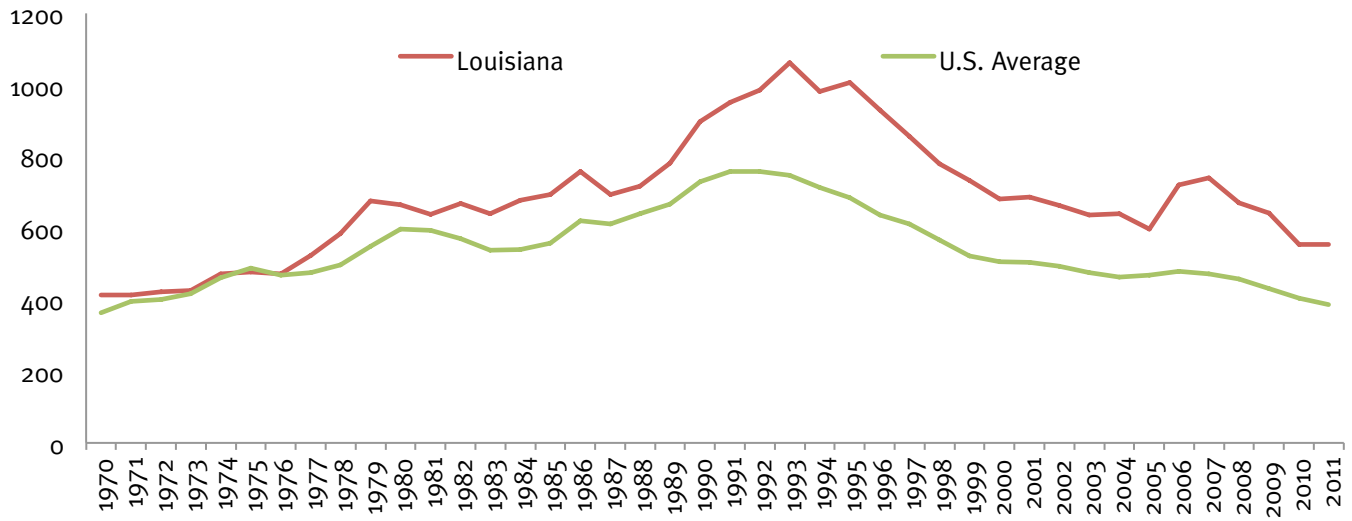
However, other more recent studies have found that as prison populations have continued to increase, the additional benefits to public safety have declined. [33] It may be worse: a 2012 study by Geert Dhont of the John Jay College of Criminal Justice, which used data for 50 states over 40 years, found that when the incarceration rate increased by one percent, as a result of introducing mandatory minimum sentences for marijuana and cocaine, violent crimes rose by 0.28 percent and property crimes rose by 0.17 percent. It should be stressed that Dhont's study has so far only been published as a working paper and has not been replicated. But if it holds up, the implication is that putting more non-violent drug offenders in prison actually increases the amount of crime.[34]

Pew Charitable Trust notes "most criminologists now consider the increased use of prison for nonviolent offenders a questionable public expenditure, producing little additional crime control benefit for each dollar spent."[35] Moreover, numerous

empirical studies have raised serious doubts about the efficiency of mandatory sentences for nonviolent offenses. A 1997 study published by RAND found that indeterminate sentencing was far more cost-effective, per dollar spent, than mandatory minimum sentences for drug offenses.[36]

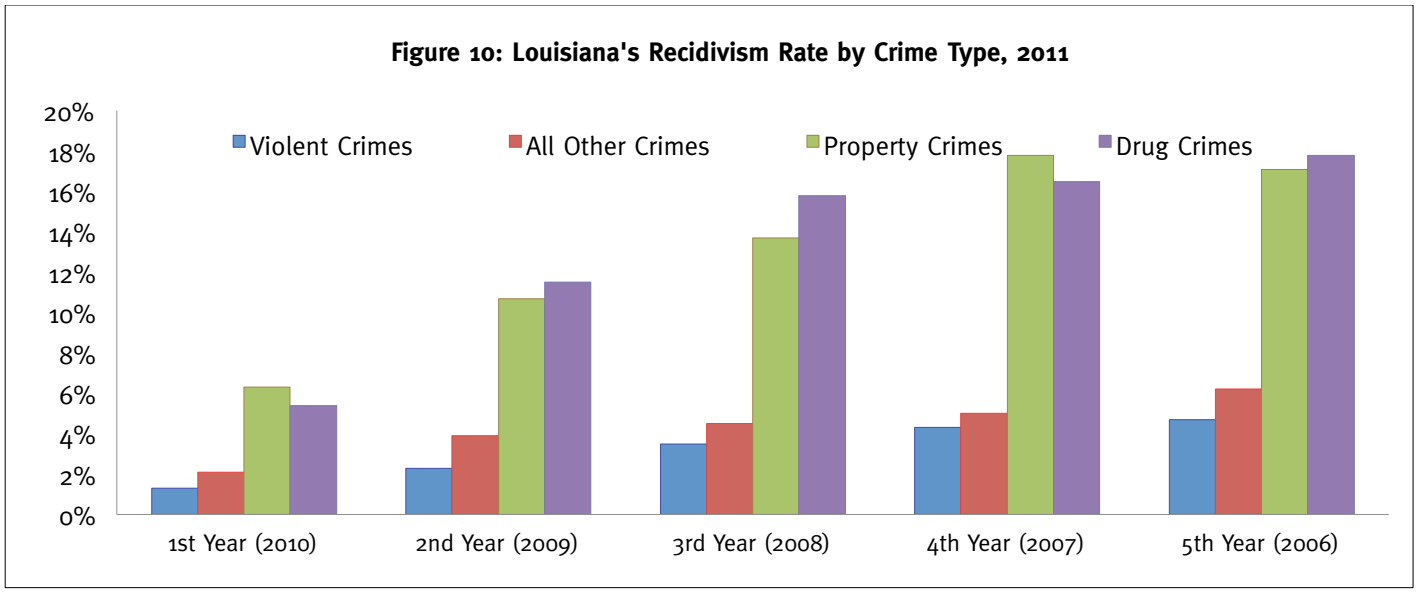
Louisiana's violent crime rate skyrocketed between the 1970s and 1990s, even after the enactment of many mandatory minimum sentencing laws (see Figure 9). The peak of violent crime in the state occurred in 1993, two decades after mandatory minimum sentences for certain offenses had been passed. Though the violent crime rate has declined since then, the state's crime rate in 2011 was still higher than it was in 1977.[37]

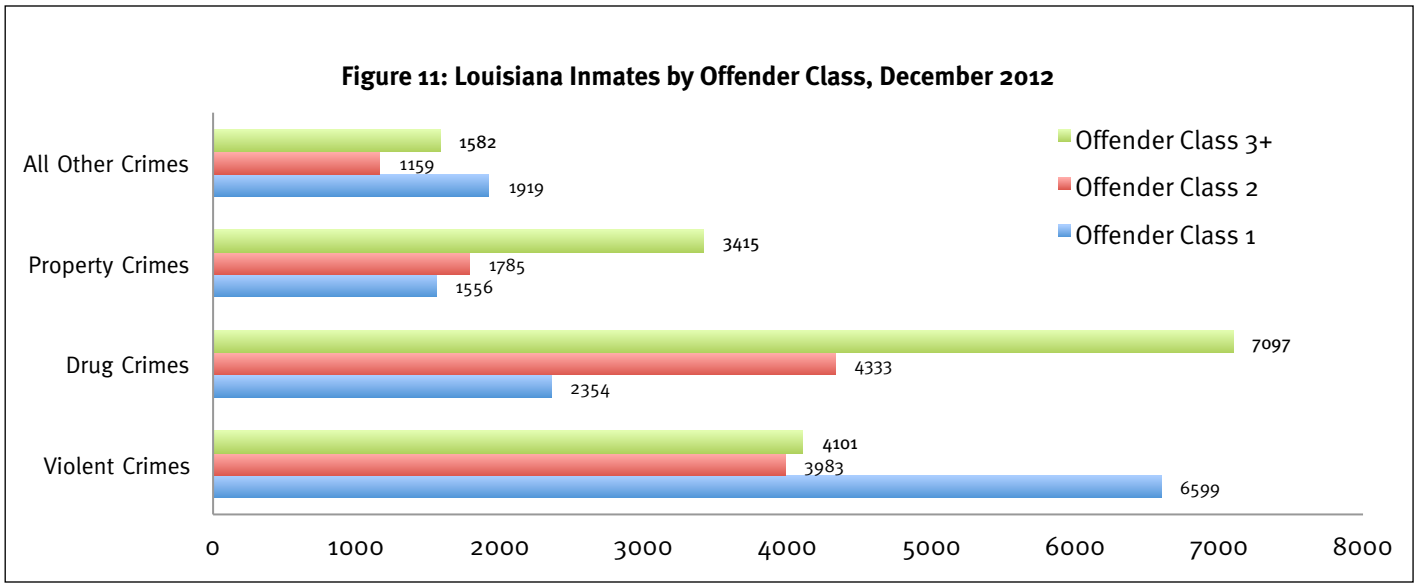
Figure 9: Louisiana vs. U.S. Average, Violent Crimes per 100,000 Citizens



There are many possible reasons why Louisiana's violent crime rates rose then fell, but it is beyond the scope of this study to go into all of these. It is even possible that violent crime rates would have been higher if the state had not had determinate sentencing laws.

Inmates in Louisiana who were released upon completing sentences for drug offenses are nearly four times as likely to recidivate within five years as those who were released upon completing sentences for violent offenses (see Figure 10).[38] In addition, the number of inmates in prison who were serving sentences for a second or third drug offense at the end of 2012 was much higher than those who were serving sentences for a first-time drug offense (see Figure 11).[39] Both figures suggest that mandatory minimum prison sentences for drug offenses are not very effective at deterring offenders from committing subsequent drug crimes in Louisiana.





At the end of 2012, the number of inmates serving sentences for a third felony drug crime was more than three times higher than the number of those serving sentences for a first felony drug crime, and almost double the number of inmates serving sentences for a second felony drug offense. Those who are convicted of a second or third felony drug offense serve sentences that are two to three years longer than those convicted of a first felony drug offense, on average. Similar to those serving sentences for drug crimes, the number of inmates serving sentences for a third felony property crime was more than double those who were serving a first and second felony property crime.[40]

Thus, Louisiana's mandatory minimum prison sentences appear to do little either to rehabilitate or to deter the criminal behavior they ostensibly target. Meanwhile, the high imprisonment and recidivism rates for nonviolent drug offenders have contributed substantially to the dramatic increase in Louisiana's prison population, and associated costs.

Problems with Mandatory Minimums

Conceptually, mandatory minimum sentences are problematic for a number of reasons. First, by eliminating judicial discretion, mandatory minimums prevent judges from using case-specific factors related to the crime and the offender when determining the sentence. They thus ignore individualized punishment in favor of obligatory, arbitrary lengths of incarceration that have been determined by legislators.[41]

Second, mandatory minimum sentences create arbitrary outcomes by drawing essentially trivial lines between degrees of punishment, which can carry huge consequences for offenders. For example, in Louisiana, a defendant convicted of simple robbery without a deadly weapon is not subject to a mandatory minimum prison sentence.[42] However, if that defendant is convicted of purse-snatching, which is defined essentially as simple robbery *of a purse* without the use of a deadly weapon, the defendant is instead subject to a mandatory minimum sentence of two years in prison with or without hard labor under Louisiana law.[43] Such arbitrary distinctions blur the boundary between proportionality and unnecessarily harsh punishment, and force some inmates to serve longer sentences than those convicted of similar crimes.[44]

Arbitrary boundaries are drawn with mandatory minimum sentencing laws for nonviolent drug offenses as well. Different weights or quantities of drugs carry varying degrees of punishment. For example, if a defendant is convicted of possessing between 28 and 199.9 grams of a Schedule II narcotic, such as cocaine, he or she will be subject to a mandatory minimum sentence of five years of hard labor in prison and a $50,000 fine under Louisiana law.[45] However, if a defendant is convicted of possessing 200 grams of cocaine, he or she is subject to a mandatory minimum prison sentence of 10 years of hard labor and a $100,000 fine—double the mandatory minimum sentence for a negligible 0.1 gram more of cocaine.[46]

Third, mandatory minimum sentences must be regarded as a major contributor to the state's increased prison population for several reasons.[47] By eliminating the court's ability to sentence certain defendants to serve alternate forms of punishment, such as probation or court-ordered drug treatment, mandatory minimums naturally increase the number of offenders who are sentenced to prison. In addition, mandatory minimum sentences require longer terms of imprisonment to be served than sentences without a fixed period of imprisonment, on average.

Fourth, Louisiana's mandatory minimums are often disproportionate. In Louisiana, a large number of crimes that carry mandatory minimum prison sentences are nonviolent in nature. Indeed, numerous violent crimes do not carry mandatory minimum sentences at all. Meanwhile, of the violent crimes that do carry mandatory minimum sentences, several of these sentences are equal to or much less severe than the majority of mandatory minimum sentences for nonviolent drug offenses.

For example, if a defendant is convicted of illegally possessing as little as one gram—less than the weight of a sugar packet—of a Schedule I narcotic, such as morphine, heroin or codeine, the defendant will be subject to serve a mandatory minimum sentence of four years of hard labor in prison.[48] Contrast this with a conviction for a violent crime such as negligent homicide, manslaughter, aggravated assault with a firearm, aggravated battery, second degree battery, simple rape, female genital mutilation, intentional exposure to AIDS, or simple kidnapping. All of these violent crimes carry no mandatory minimum sentences at all.[49]

Likewise, if a defendant is convicted of manufacturing or distributing *any* amount of marijuana, he or she is subject to serve a mandatory minimum prison sentence of five years of hard labor.[50] Contrast that with the consequences a defendant will face if convicted of forcible rape, second degree kidnapping, or vehicular homicide in Louisiana, which are all violent crimes that involve the injury or death of another individual. These crimes carry a mandatory minimum sentence of five years in prison, as well.[51] Thus, a person convicted of growing marijuana plants in his or her home is subject to the same mandatory minimum prison sentence as a person convicted of forcibly raping someone in Louisiana.

The intent of pointing out these disparities is not to urge Louisiana legislators to enact harsher mandatory minimum sentences for these violent crimes, but instead to emphasize that nonviolent drug offenders are often subject to equal or harsher punishment than those who have committed much more harmful offenses. Moreover, there appears to be a disparity between the purpose of Louisiana's mandatory minimums for drug offenses and similar mandatory minimums enacted at the federal level.

Federal mandatory minimum sentences for drug offenses are intended to apply to drug kingpins and larger dealers, not low-level offenders who are in possession of a small amount of drugs for personal use, like in Louisiana. While this hasn't necessarily always been the case in practice, there is still a minimum amount of drugs one must be in possession of and intend to distribute before a mandatory minimum sentence can be imposed at a federal level. There are no federal mandatory minimum prison sentences for simple possession.[52]

In Louisiana, possession of any amount of certain scheduled drugs can trigger a mandatory minimum prison sentence of several years. For example, a person who is found guilty of possessing *less than one gram* of a Schedule I narcotic, such as heroin, for personal use faces a mandatory minimum sentence of four years of hard labor in prison.[53] If the person is found guilty of intending to distribute that less than one gram, the mandatory minimum sentence is bumped up to five years of hard labor in prison, and he or she must serve five years of that sentence without the benefit of probation, or suspension of sentence.[54] On a federal level, a mandatory minimum sentence of five years in prison is triggered only when the person is found guilty of possessing between *one hundred and 999 grams* of heroin with intent to distribute.[55] There is no federal mandatory minimum prison sentence for simple possession of heroin, nor is there a mandatory minimum sentence for possession with intent to distribute any amount of heroin that is less than 100 grams.

Even naturally growing flowers, plants or fungi are targeted with mandatory minimum prison sentences in certain instances in Louisiana, making it a unique state in that regard. Possession of certain plants other than for aesthetic, landscaping or decoration purposes may land a person in prison for up to five years with or without hard labor.[56] But if a person is found guilty of owning these plants with the intention to produce, manufacture or distribute them for human consumption, he or she will face a mandatory minimum prison sentence of two years with or without hard labor, and could be sentenced to up to 10 years in prison with or without hard labor.[57] This slight interpretation of intention could have devastating consequences for those found guilty.

It is clear that the language of certain mandatory minimum sentences for nonviolent drug offenses in Louisiana does not target drug kingpins or high-level drug dealers whose activities more clearly inflict harm on society. Instead, they are applied to low-level, nonviolent offenders, whose crimes may not impact society in a significant way. However, judges in Louisiana are forced to hand out unnecessarily long prison sentences to low-level drug offenders, regardless of whether or not the punishment fits the crime, because of the state's mandatory minimum sentencing laws.

Fifth, by denying offenders the opportunity to become eligible for parole until they have completed the mandatory portion of their sentence, Louisiana's determinate sentencing laws discourage rehabilitation. Prisoners serving sentences with no mandatory minimum may have the opportunity to reduce their sentences or become eligible for parole at an earlier date in a variety of ways, which incentivizes them to rehabilitate. Forcing inmates to serve the entire duration of the mandatory minimum portion of their sentences without the possibility of parole, probation or reduction in sentence for good behavior decreases their incentive to rehabilitate while incarcerated, which makes them more likely to eventually recidivate after their release.

Prior to 2012, Louisiana law provided that all life sentences—whether for violent or nonviolent crimes—were ineligible for parole unless the sentence was commuted to a fixed term of years. Because of this, Louisiana has the highest percentage of its prison population serving life sentences without the possibility of parole in the nation.[58] Most offenders serving life sentences in Louisiana have been incarcerated for violent crimes, and their sentences likely reflect the seriousness of their offenses. Shockingly,

however, as of December 31, 2012, there were approximately 242 inmates serving life sentences without the possibility of parole for nonviolent drug and property crimes.[59]

Past Reforms of Louisiana's Determinate Sentencing Laws

Louisiana's determinate sentencing laws were enacted during a period of rapid expansion of criminal law nationwide, which was seen as a necessary solution to a rise in criminal behavior at the time. But many of these laws have come to be seen as excessive, and in recent years, Louisiana legislators have recognized the pervasive effects they have had on the size and scope of the state's prison population and corrections expenditures over time. In response, they have passed a number of reforms in an attempt to deal with these problems.

2001: Senate Bill 239/Act 403:

The most significant sentencing reform was passed more than 10 years ago. In 2001, Louisiana's then-governor, Murphy J. Foster, Jr., signed Senate Bill 239 into law, which then became Act 403.[60] This law reduced or eliminated a number of mandatory minimum sentences for various nonviolent offenses. It also introduced some reforms to the habitual offender law.[61]

The most sweeping changes were made to mandatory minimum sentences for drug offenses. While sentencing a person to life in prison without the possibility of parole, probation or suspension of sentence is usually reserved for criminals who have committed the most heinous of crimes, such as first degree murder, Louisiana law prior to 2001 required judges to assign life sentences to defendants convicted of selling a small amount of a Schedule I narcotic drug (such as heroin), even if it was a first-time offense.[62]

When Senate Bill 239 was signed into law as Act 403, a conviction for selling a small amount of a Schedule I narcotic drug was dramatically reduced from a mandatory life sentence to a mandatory minimum sentence of five years of hard labor in prison, at least five of which must be served without the benefit of parole, probation or suspension of sentence. While the changes made with this law were not retroactive, the law established a "risk review" process for early release of prisoners sentenced under the previous laws.[63]

In addition to reforming mandatory minimum sentences for possession of a Schedule I narcotic, Act 403 also cut minimum sentences for all drug trafficking offenses in half and restored the possibility of parole, probation or suspension of sentence for a number of other non-violent offenses.[64]

While Louisiana legislators should be commended for passing legislation that made such sweeping reforms to the extraordinarily harsh mandatory minimum sentencing laws for nonviolent offenses, analysis published in 2002 by The Institute on Crime, Justice and Corrections at The George Washington University found that the law would not result in a significant decrease in the prison population, because "the number of offenders affected by the [previous] laws comprises a relatively small portion of the incarcerated population."[65]

Since then, the law has continued to have little impact on reducing the number of inmates admitted to prison for drug offenses. In fact, the same percentage of adult offenders was admitted to prison for drug crimes in 2001 and 2011. In 2001, 35.1 percent of adult admissions, or 5,465 inmates, were admitted to prison for drug crimes. Ten years later in 2011, 35.1 percent of adult admissions, or 6,122 inmates, were admitted for drug crimes.[66]

Moreover, this law has not had an impact on the length of sentences served, on average, for drug offenses over time. According to an analysis by Pew Center on the States, drug offenders released from prison in Louisiana served longer sentences on

average in 2009 than in 1990. In 1990, released drug offenders served an average of 2.0 years in prison. In 2009, however, released drug offenders served an average of 2.1 years in prison, a seven percent increase from 1990.[67]

Act 403 also introduced reforms to Louisiana's habitual offender law.[68] Prior to the passage of this law, if a person was convicted as a habitual offender of a third felony offense, and the third felony *or either of* the two prior felonies was a violent crime, sex offense, a violation of the Uniform Controlled Dangerous Substances law punishable by imprisonment for more than *five* years, or a crime punishable by imprisonment for more than 12 years, he or she was sentenced to life in prison without the possibility of parole, probation or suspension of sentence.[69] It was conceivable, then, that a person could be sentenced to serve the remainder of his or her life in prison for a conviction of a third felony petty crime, if one of the prior felony convictions was a violation of the Uniform Controlled Dangerous Substances law punishable by five years or more in prison, such as manufacturing or distributing any amount of marijuana, for example.[70]

Act 403 reformed the habitual offender law so that a person convicted of a third felony offense could be sentenced to life in prison without the possibility of parole, probation or suspension of sentence only if the third felony *and* the two prior felonies were a violent crime, sex offense, a violation of the Uniform Controlled Dangerous Substances Law punishable by 10 years or more, any other crimes punishable by 12 years or more, or any combination of such crimes.[71]

Therefore, third felony habitual offenders could no longer be sentenced to life in prison for petty offenses. However, changes made to the law were not retroactive. The law included for the Louisiana Risk Review Panel to evaluate inmates sentenced under the prior habitual offender law as long as one or more of the crimes for which the person was convicted was not a violent offense.[72] Thus, some habitual offenders sentenced to serve life in prison without the possibility of parole, probation or suspension of sentence prior to 2001 for a third felony petty offense continued to serve their life sentences despite these reforms, as long as one of their prior felony offenses was violent.

Moreover, this law did not make any changes to the provisions of the habitual offender law for those convicted as a habitual offender of a second felony offense punishable by imprisonment for any term less than his or her natural life, nor were changes made to those convicted as a habitual offender of a third felony offense that was neither a violent nor sex offense. This means that those convicted of a second nonviolent felony offense as a habitual offender are still sentenced to a determinate term not less than one-half the longest term prescribed for a first conviction, and those convicted of a third nonviolent felony offense as a habitual offender would still be sentenced to a determinate term not less than two-thirds of the longest term prescribed for a first conviction.[73]

By continuing to allow for the habitual offender law to apply to offenders convicted of second and third nonviolent, non-sex offenses, a larger number of offenders will continue to be sentenced to serve much longer prison sentences than they otherwise would be assigned, which makes them more expensive to incarcerate.

To allocate prison resources more efficiently and reduce prison expenditures over time, Louisiana legislators should insist that the habitual offender law be applicable only to offenders convicted of multiple violent offenses, instead of offenders convicted of multiple offenses that are nonviolent in nature, and have little to no impact on public safety. By limiting habitual offender sentences to criminals who have committed multiple violent or sex offenses, Louisiana's habitual offender law would be more proportionate to the crime, and incapacitate the type of criminals who deserve to spend long periods of time behind bars.

In sum, Act 403 was a step in the right direction but it did not go far enough. Specifically, there are strong grounds for extending its key provisions so that they are retroactively effective. This would likely result in shorter sentences for a significant number of non-violent, non-sex offenders who pose no great threat to society and whose presence in prison is highly burdensome to Louisiana's taxpayers.

2012: House Bill 1068/Act 160:

In 2012, Governor Jindal signed House Bill 1068 into law, which later became Act 160. This law allows for the court to waive the assignment of mandatory minimum sentences in certain instances. Act 160 allows for mandatory minimum sentences to be reduced, or served with the benefit of parole, probation or suspension of sentence for certain nonviolent offenders, but only if one of the following requirements is met: 1) the defendant pleads guilty pursuant to a negotiated plea agreement with the prosecution and the court before trial, or 2) the prosecution, defendant and court enter into a post-conviction agreement.[74]

If such agreements are entered into between the prosecution and the defendant, the court cannot impose a lesser term of imprisonment, lesser fine, or lesser period of sentence served without the benefit of parole, probation or suspension of sentence than what is expressly provided for under the terms of the plea or post-conviction agreement.[75]

Instead of returning discretion to judges and allowing them to determine whether or not a defendant should be sentenced to below a mandatory minimum sentence, this law gives discretion to prosecutors. While a judge's approval is needed for a mandatory minimum sentence to be waived, he or she has no say in what the terms of the plea or post-conviction agreement will be, nor may he or she initiate the waiver. These agreements are determined by prosecutors, but may only be evoked if the defendant and judge agree to them. This means that if a prosecutor does not initiate a plea or post-sentencing agreement, a defendant has no opportunity to have his or her mandatory minimum sentence waived. Thus, under this law, prosecutors have much more power than they previously had.[76]

The passage of this law signifies that Louisiana legislators are aware that inflexible mandatory minimum sentences for nonviolent offenses do sometimes impose unnecessarily harsh sentences for certain offenders, and that there must be an opportunity to waive the harsh punishment when its application would be inappropriate. However, this law is not as far reaching as it needs to be, in that judicial discretion is still limited.

2012: House Bill 543/Act 401:

In 2012, House Bill 543 was signed by Governor Jindal and later became Act 401. This law allows for offenders who have been sentenced to life in prison without parole for certain nonviolent offenses to become eligible for parole after serving a definitive number of years in prison as well as fulfilling a number of other conditions for eligibility. This law merely allows certain inmates the chance of becoming eligible for parole after a certain period, and does not guarantee their release from prison.[77]

This law applies to: (a) Inmates who were between the ages of 18 and 25 at the time of sentencing, and have served 25 years of the sentence imposed; (b) inmates who were between the ages of 25 and 35 at the time of sentencing, and have served 20 years of the sentence imposed; (c) inmates who were between the ages of 35 and 50 at the time of sentencing, and have served 15 years of the sentence imposed; and (d) inmates who were 50 years or older at the time of sentencing, and have served 10 years of the sentence imposed.[78]

Beyond this, inmates who qualify must fulfill a number of requirements outlined in the law. These requirements include being labeled a low-risk inmate by the Louisiana Department of Public Safety and Corrections, not committing a disciplinary offense in the 12 consecutive months prior to the parole eligibility date, completing the mandatory minimum of 100 hours of pre-release programming (if available), completing substance abuse treatment (if applicable and available), and obtaining a GED credential, completing a literacy program, an adult basic education program, or a job skills training program while incarcerated.[79]

While this law is certainly a step in the right direction toward reforming parole eligibility for those unjustly sentenced to serve the remainder of their lives in prison for nonviolent offenses, it is not much of a solution. The law arbitrarily assigns parole eligibility according to the age of the offender, rather than the nature of the crime committed, and therefore fails to treat inmates in

an individualized manner. The law prescribes that those who were between the ages of 18 and 25 at the time of sentencing must serve 15 years more of their life sentence before becoming eligible for parole than those who were 50 years or older at the time of sentencing for the same offense, which is a completely arbitrary requirement.

2012: House Bill 1026/Act 159:

In an attempt to reduce the state's prison population by reducing the length of sentences of nonviolent offenders, Louisiana legislators passed a second bill in 2012 that made modest changes to Louisiana's parole system. House Bill 1026, which was signed by Governor Jindal and later became Act 159, allows for certain inmates convicted of a second felony offense to be eligible for parole after serving one-third of the sentence imposed. These provisions only apply to those sentenced after the Act was signed, as well as inmates who were not convicted of a violent crime, sex crime, sentenced as a habitual offender, or otherwise ineligible for parole, which includes inmates serving the mandatory minimum term of their sentence.[80]

Prior to the passage of the law, a person convicted of a second felony offense that did not carry a mandatory minimum term of imprisonment was eligible for parole consideration only upon serving 50 percent of the sentence imposed if the offense was neither a violent offense nor a sex offense, and the person was not sentenced as a habitual offender.[81] Indeed, this law will have applications for very few prisoners, for it is not retroactive, and only applies to those who were sentenced on or after August 1, 2012.[82]

While this law was passed with good intentions, it will have little impact on the swollen prison population and high corrections expenditures in the state in the long run, and does not provide the type of meaningful reform that Louisiana needs.

2013 Legislative Session

In an attempt to reduce the state's recidivism rate, two criminal justice bills were passed by the Louisiana legislature in the 2013 legislative session and were signed into law by Governor Jindal.

House Bill 442/Act 389

The first piece of legislation was House Bill 442, signed into law by Governor Jindal and enacted as Act 389. This legislation comprises two components. First, it allows a court to order eligible defendants to participate in a substance abuse probation program instead of incarceration or other sanctions if certain conditions are met. Those conditions are: the district attorney agrees that the defendant should be sentenced to substance abuse probation and the court finds that: a) the defendant suffers from an addiction to a controlled dangerous substance; b) the defendant is likely to respond to the substance abuse probation program; c) the program is appropriate to meet the needs of the defendant; d) the defendant does not pose a threat to the community, and; e) it is in the best interest of justice to provide the defendant with treatment as opposed to incarceration or other sanctions.[83] In this way, Act 389 somewhat resembles a safety valve measure.

An estimated 500 offenders are expected to avoid prison under the law in the 2013–14 fiscal year. According to the financial analysis of the bill, if 500 offenders are diverted into the substance abuse treatment program as an alternative to incarceration annually through the 2016 fiscal year, the state will see a total savings of $22 million for the next five years.[84]

Additionally, the law created an early release program for nonviolent drug offenders who are currently serving sentences for first or second offense charges for either drug possession or drug possession with intent to distribute. Those eligible for the program must have served at least two years of their sentence, have less than one year left in prison or jail, and complete an intensive 90-day inpatient substance abuse treatment program. If at any time the court finds the offender stops meeting these

requirements, or the district attorney disagrees, the offender would not be eligible.[85] The Department of Corrections estimates that approximately 527 offenders would be eligible for participation in this aspect of the program and could be released in July, and an additional 317 offenders would be eligible for release incrementally throughout the year. This early release program is estimated to save the state $3.45 million in the 2014 fiscal year and an additional $1.4 million in the 2015 fiscal year.[86]

Through Act 389, the Louisiana legislature openly addressed the fact that some offenders in the state may not benefit from incarceration and declared that it might not be in the best interest of justice to send certain nonviolent criminals to prison. However, Louisiana's prisons and jails will continue to be filled with nonviolent drug offenders who do not meet all of the many requirements necessary to become eligible for diversion or early release.

House Bill 59/Act 183

The second piece of legislation, House Bill 59, was signed by Governor Jindal and enacted as Act 183. This law increases the total number of credits that may be earned by certain inmates who voluntarily participate in certified treatment and rehabilitation programs including: basic education, job skills training, values development and faith-based initiatives, therapeutic programs and treatment programs. An inmate who participates in these programs may earn up to 90 days off his or her sentence for satisfactory participation in each approved program. Previously, inmates were only allowed to earn a maximum of 250 days off of their sentences, but this law extends the maximum credit inmates can earn to 360 days. Offenders convicted of a sex offense or a crime of violence are not eligible to earn credit by participating in these programs.[87]

The legislature projected that Act 183 would reduce the cost of housing for inmates eligible to earn the new maximum number of credits, and thus save the state an estimated $2,417 per offender housed in a local facility and $4,987 per offender housed in a state correctional facility.[88]

In Sum

Louisiana's mandatory minimum sentencing laws for non-violent offenses seem to have done little to deter criminal behavior, have resulted in disproportionate sentences for many criminals (both relative to other similar crimes and relative to federal sentencing mandates), have prohibited judges from applying sentences that might have been more effective in deterring future criminal behavior, have disincentivized rehabilitation, especially of non-violent offenders, and have resulted in a significant increase in Louisiana's prison population, with attendant costs to Louisiana's taxpayers. While Louisiana has introduced some modest reforms, more can be done to reduce the perverse effects of the state's determinate sentencing laws.

Part 4

Lessons from Other States

This section reviews the experience of two other states, Maine and Rhode Island, regarding reforms to determinate sentencing laws.

Maine

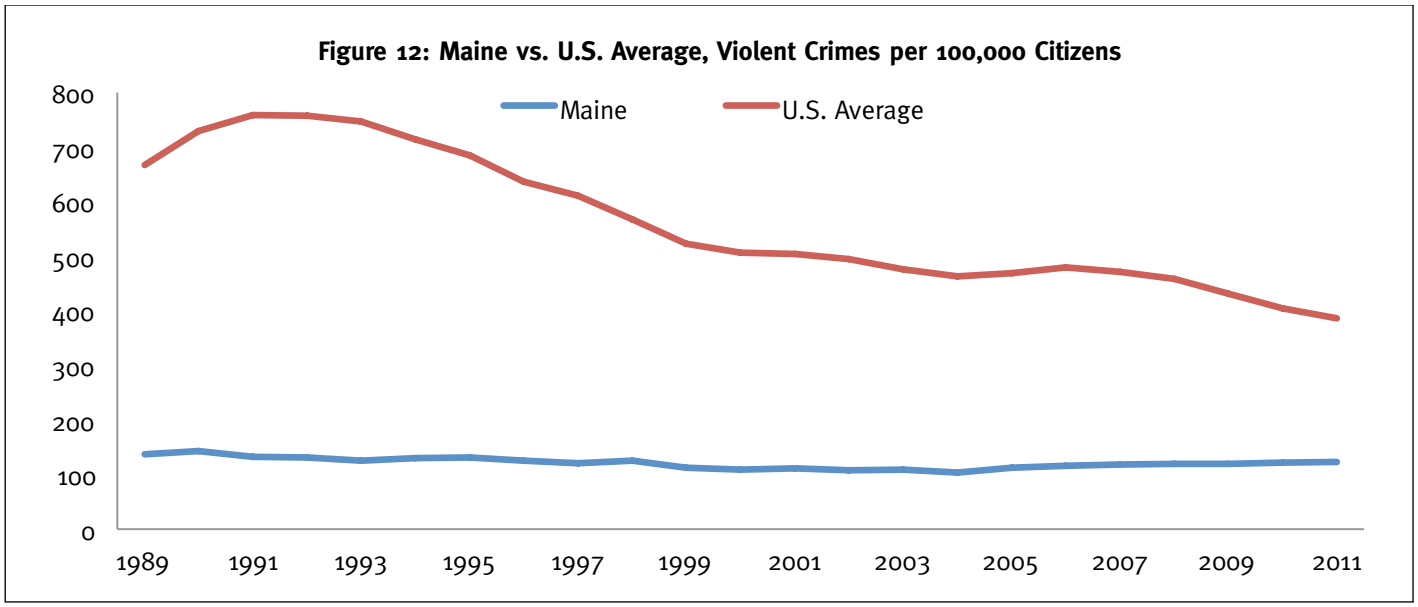
Maine has implemented a hybrid sentencing system regarding mandatory minimum sentences that should serve as a model for other states. With only 146 out of every 100,000 of its citizens in prison, Maine incarcerates 83 percent fewer of its citizens than Louisiana, and has the lowest incarceration rate in the country.[89]

Maine has mandatory minimum sentences for certain offenses, but, in 2003, Maine passed legislation commonly known as a safety valve provision, which allows courts to impose a sentence other than a minimum unsuspended term of imprisonment based upon the presence of several individual circumstances that are outlined in Maine's criminal code.[90]

In Maine, a court may impose a sentence other than a mandatory minimum prison sentence if it finds substantial evidence that (a) the imposition of a mandatory minimum prison sentence will result in substantial injustice to the defendant; (b) imposing a sentence other than the mandatory minimum prison sentence will not have an adverse effect on public safety; and (c) imposing a sentence other than a mandatory minimum prison sentence will not fail to deter others from committing aggravated trafficking, furnishing or cultivation of scheduled drugs. Additionally, the court must find that (a) the defendant is an appropriate candidate for an intensive supervision program in which he or she would otherwise be ineligible to participate if a mandatory minimum prison sentence were imposed; or (b) the defendant's background, attitude and prospects for rehabilitation, and the nature of the victim and the offense indicate that imposing a mandatory minimum prison sentence would fail to fulfill the general purposes of sentencing.[91]

In Maine, the general purposes of sentencing are (a) to prevent crime through the deterrent effect of sentences, rehabilitation of convicted persons, and the restraint of convicted persons in the interest of public safety; (b) to encourage restitution in cases where the victim can be compensated and other purposes of sentencing can be appropriately served; (c) to minimize correctional experiences that serve to promote further criminality; (d) to give fair warning of the nature of the sentences that may be imposed on the conviction of a crime; (d) to eliminate inequalities in sentences that are unrelated to legitimate criminological goals; (e) to encourage differentiation among offenders with a view to a just individualization of sentences; (f) to promote the development of correctional programs that encourage cooperation of convicted persons, and (g) to permit sentences that do not diminish the gravity of offenses.[92]

After Maine enacted safety valve provisions in 2003, it has consistently held the lowest violent crime rate in the country each year. Although Maine has seen a slight increase in its violent crime rate in recent years, it has remained far lower than any other state as well as the national average, as Figure 12 illustrates.[93] This indicates that Maine's safety valve provisions have not compromised public safety in the state.



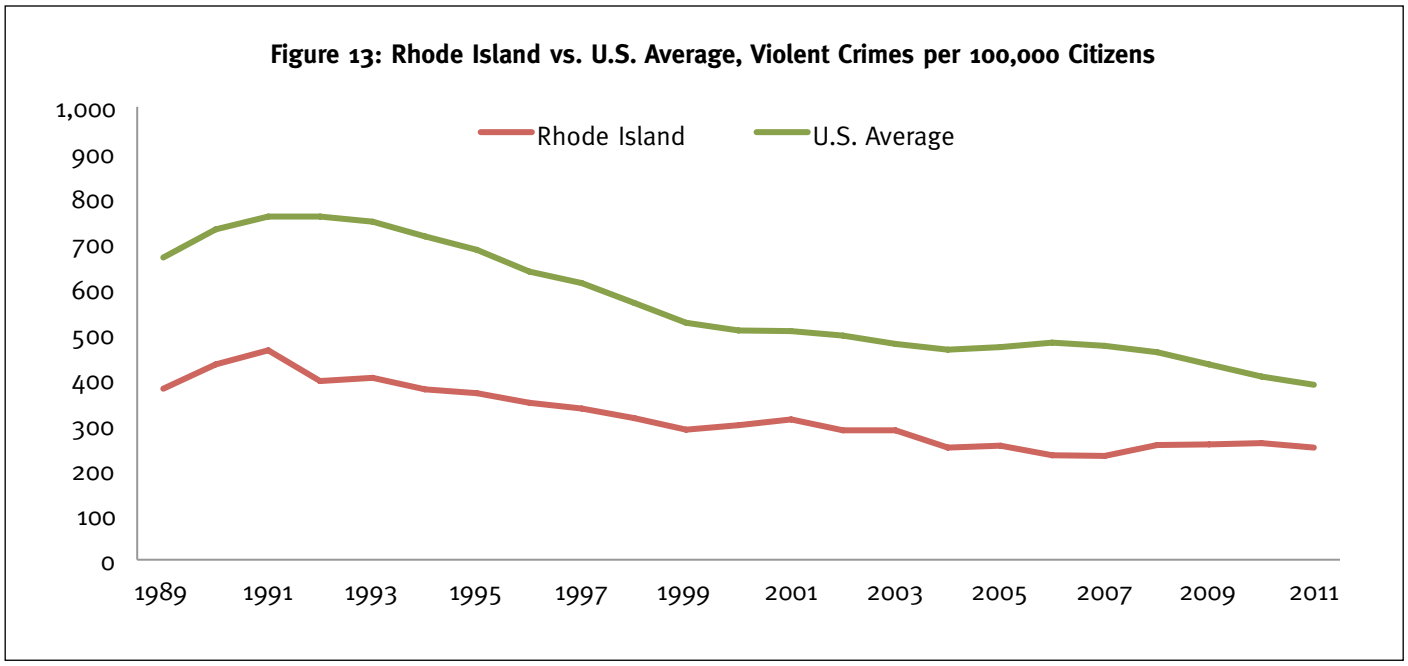
Maine's safety valve provisions have prevented many first-time nonviolent offenders from receiving mandatory minimum prison sentences that may not fit their crime or history. Moreover, these safety valve provisions have prevented prison overcrowding by returning discretion to judges who abide by the general purposes of sentencing without compromising public safety. Thus, judges in Maine are not forced to automatically prescribe long prison sentences for nonviolent drug offenders if imposing such a sentence would not be appropriate for the circumstances of the crime committed by the individual offender. Because of this, Maine saves prison space and resources for those criminals who pose a real threat to society. Furthermore, when a nonviolent drug offender is sentenced below a mandatory minimum prison sentence, he or she spends less time in prison, thus saving taxpayers on corrections costs.

Rhode Island

Like Louisiana, Rhode Island's prison population has more than doubled over the past two decades, due in part to the introduction of mandatory minimum sentencing laws for nonviolent offenses, which led to a modest increase in corrections expenditures as well. In 1992, Rhode Island spent $101 million on corrections expenditures or approximately $154 million in 2009 dollars (i.e. adjusting for inflation).[94] In 2009, corrections expenditures had risen to approximately $179.7 million.[95]

In 2009, Rhode Island legislators voted to repeal all mandatory minimum sentences for nonviolent drug offenses in order to reduce the number of nonviolent drug offenders sentenced to prison as well as the burden placed on taxpayers who pay for their incarceration. Prior to this, mandatory minimum sentences for nonviolent drug offenses in Rhode Island were extraordinarily harsh, and carried between 10- and 20-year mandatory minimum prison sentences, even for simple possession.[96]

After mandatory minimum sentences for nonviolent drug offenses were repealed in 2009, Rhode Island saw a significant decrease in its prison population. Between 2009 and 2010, Rhode Island's prison population decreased by 9.2 percent, which was the largest percentage decrease of all 50 states.[97] Moreover, the state saw a decrease in violent crime between 2009 and 2011—254.3 violent crimes per 100,000 citizens in 2009, and 247.5 violent crimes per 100,000 citizens in 2011. This decrease indicates that repealing harsh mandatory minimum prison sentences for nonviolent drug offenses had no negative impact on violent crime rates.[98]



If Louisiana wants to become smarter on crime while reducing its prison population and corrections expenditures, legislators should consider modeling reforms after changes made to sentencing laws in Maine and Rhode Island.

Part 5

Reform Options for Louisiana

Louisiana legislators undoubtedly enacted the state's mandatory minimum sentencing laws and habitual offender law with good intentions. Unfortunately, there is little evidence that these determinate sentencing schemes have reduced crime and considerable evidence that they have contributed to the state having the highest incarceration rate in the nation—an expensive title to hold. This section outlines some potential reforms that might reduce the perverse, unintended consequences of Louisiana's determinate sentencing laws.

Repeal Mandatory Minimum Sentences for Non-Violent Offenses

One cost-effective way legislators could reduce Louisiana's prison population without compromising public safety would be to enact legislation that repeals draconian mandatory minimum sentences for non-violent crimes and makes such changes retroactive in application.

If mandatory minimum sentences for nonviolent offenses were eliminated, judges would no longer be required to send an offender convicted of illegally possessing an amount of codeine less than the weight of a sugar packet to prison for a mandatory minimum of four years of hard labor, or send an offender convicted of growing or selling any amount of marijuana to prison for a mandatory minimum of five years of hard labor, for example. Instead, eliminating mandatory minimum sentences for nonviolent offenders would allow judges to use case-specific factors related to the crime and the offender when determining the sentence.

Repealing mandatory minimum prison sentences for nonviolent offenses would help restore proportionality in sentencing and reduce corrections costs tremendously, thereby allowing scarce prison space and scarce correctional expenditures to be reserved for violent offenders who pose a larger threat to society. In addition, nonviolent offenders would have greater incentives to undertake rehabilitation while incarcerated, thereby reducing recidivism.

Reform the Habitual Offender Law

Despite some reform, Louisiana's habitual offender law remains extraordinarily harsh, even for nonviolent offenders. Under the law, a third-time nonviolent drug offender could be sentenced to spend the majority of his or her life in prison without the possibility of parole, probation or suspension of sentence. The habitual offender law, like many other mandatory minimum laws, does not apply justice proportionately, and does not appear to have led to a decrease in violent crime. Instead, the habitual offender law has resulted in nonviolent offenders serving substantially longer sentences, which potentially prevents resources from being expended on criminals who have committed more serious offenses.

Instead of allowing the habitual offender law to apply to those convicted of two or more nonviolent felony offenses, legislators might consider passing legislation that would allow for the law to be applied only to those who pose a larger threat to public safety, such as those convicted of two or more violent crimes. That way, there would be no chance that nonviolent offenders would be sentenced to serve disproportionately longer sentences for crimes that have little to no effect on public safety, and prison space would be saved for offenders who threaten society the most. Such changes to the law should be made retroactive, as well. By limiting habitual offender sentences to criminals who have committed violent or serious felonies, and allowing such changes to be retroactive, Louisiana's habitual offender law would be more proportionate and operate as intended: to keep violent career criminals behind bars.

Enact "Safety Valves" for Mandatory Minimum Sentences

While repealing mandatory minimum sentences is the best option for Louisiana, enacting a safety valve provision that allows judges to bypass mandatory minimum sentences when appropriate, as in Maine, is an alternate approach Louisiana legislators could take in order to reduce the state's prison population and save taxpayers a substantial amount of money, without compromising on public safety. Such sentencing safety valves have many benefits. They would allow courts to depart below a mandatory minimum sentence only when doing so would fulfill the goals of punishment without adversely affecting public safety. They would neither eliminate mandatory minimum sentences, nor require judges to abandon the imposition of mandatory minimum sentences when doing so is appropriate. Instead, safety valves merely allow judges to craft a more appropriate sentence based upon a defendant's role in the crime as well as other relevant factors, thereby allowing for more proportional sentencing and reduced corrections expenditures.[99]

Parole Reform

As noted above, when inmates have no possibility of a reduction for their mandatory minimum prison sentences, they have little to no incentive to rehabilitate themselves while incarcerated, and will likely return to prison after their eventual release. If the Louisiana legislature were to reduce, or better yet remove these mandatory minimums for non-violent offenders, felons convicted of non-violent offenses would have a stronger incentive to rehabilitate themselves while incarcerated so that they might reduce their sentences and seek parole at an earlier date. However, there may also be merit in considering reforms to the system of parole, so that prisoners have greater clarity regarding the likelihood that their efforts at rehabilitation will be successful.

In Sum

The best, most cost-effective approach Louisiana legislators could take to reform the state's sentencing laws would be to repeal mandatory minimum sentences for nonviolent offenses, amend the habitual offender law so that it applies only to those convicted of two or more violent or sex offenses, and they should make both changes retroactive. A second, though less desirable approach would be to enact a safety valve measure that would allow for judges to depart below mandatory minimum sentences when it would be appropriate. Either of these changes would ensure that violent criminals continue to be punished for their crimes, while nonviolent offenders face sentences that are more proportionate.

Conclusion

This study has shown that Louisiana's citizens could benefit considerably from changes to the way in which convicted criminals are sentenced. Nonviolent offenders who pose little or no threat to society are routinely sentenced to exceedingly long terms in prison with no opportunity for parole, probation or suspension of sentence, in most cases as a direct result of the state's determinate sentencing laws. These prisoners consume disproportionate amounts of Louisiana's scarce prison resources, which could be better utilized in both rehabilitating prisoners and ensuring violent criminals are more effectively kept behind bars.

The study suggests a combination of either repealing mandatory minimum sentences for nonviolent offenses, amending the habitual offender law, and ensuring these applicable changes are made retroactive, or enacting a safety valve measure that would allow courts to depart below mandatory minimum sentences when appropriate, though this is a less desirable alternative. These reforms might be described as "smart on sentencing, smart on crime." An evaluation of similar reforms in Maine and Rhode Island suggests that by applying such changes, Louisiana would be able significantly to reduce its prison population and corrections expenditures, invest more resources per prisoner, expand rehabilitation programs, and reduce recidivism rates. It might only then forfeit its title of having the highest incarceration rate in the nation.

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[12] Data compiled from "Demographic Profiles of the Adult Correctional Population" Fact Sheet, Louisiana Department of Public Safety and Corrections. Published December 31, 2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2a.pdf

[13] Ibid.

[14] Data compiled from "Recidivism in Adult Corrections (Percent Returned)," Louisiana Department of Public Safety and Corrections. Published March 31, 2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2k.pdf. It is difficult to measure whether or not Louisiana's recidivism rates are higher than the national average. Recidivism data is notoriously tricky to compare across jurisdictions, because states measure recidivism differently. Some states count parole violations in their recidivism statistics, and some only count new felony offenses. Moreover, some states incarcerate those who have committed minor parole violations, such as missing a meeting or failing a drug test, whereas other states assign probation or alternate punishment for minor parole violations. There have only been two major studies on national recidivism rates, which were compiled by the U.S. Department of Justice Statistics in 1994, and the Pew Center on the States in 2011. The most recent analysis from the Pew Center on the States compares three-year recidivism rates among 33 states from 1999–2002 and 2004–2007. In the study, Louisiana has a lower recidivism rate than the national average, but higher rates than its neighboring states, Texas and Mississippi (Arkansas had higher recidivism rates than Louisiana). However, the study notes that when California's recidivism rates are removed from the average, the national average declines significantly. When California is removed, Louisiana's recidivism rates are higher than the national average. However, the Pew study points out a difficulty with comparing recidivism rates among states: "… any evaluation of recidivism data must include an understanding of this broader context and the larger policies and practices that drive the numbers." Therefore, analysis of state recidivism rates as compared to Louisiana is left out of this study. For reference: Pew Center on the States, "State of Recidivism: The Revolving Door of America's Prisons" April 2011. Available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

[15] "Recidivism in Adult Corrections."

[16] "Nixon Calls War on Drugs," *Palm Beach Post,* June 18, 1971: A6. Google News, Web, April 11, 2013. <http://news.google.com/newspapers?id=5IjAAAAIBAJ&sjid=RLcFAAAAIBAJ&pg=973,31915&dq=nixon+war+on+drugs&hl=en>. Audio available at: http://stash.norml.org/nixontapes

[17] "Mandatory sentencing was once America's law-and-order panacea. Here's why it's not working," Families Against Mandatory Minimums, Prison Policy Initiative, 2002. Available at: http://www.prisonpolicy.org/scans/famm/Primer.pdf

[18] Gary T. Lowenthal, "Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform," 81 Cal. L. Rev. 61(1993). Available at: http://scholarship.law.berkeley.edu/californialawreview/vol81/iss1/2

[19] Ibid.

[20] Louisiana Revised Statutes Title 40 Section 966(C)(1), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=98880

[21] Louisiana Revised Statutes Title 40 Section 966(B)(3), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=98880

[22] Lowenthal, "Mandatory Sentencing Laws."

[23] Habitual offender law enacted by Acts 1956, No. 312, §§1 to 4; Amended by Acts 1958, No. 469, §1; Acts 1978, No. 424, §1; Acts 1979, No. 199, §1; Acts 1982, No. 688, §1; Acts 1987, No. 774, §1; Acts 1989, No. 482, §1; Acts 1991, No. 405, §1; Acts 1993, No. 853, §1; Acts 1993, No. 896, §1; Acts 1994, 3rd Ex. Sess., No. 23, §1; Acts 1994, 3rd Ex. Sess., No. 85, §1;

Acts 1994, 3rd Ex. Sess., No. 144, §1; Acts 1995, No. 839, §1; Acts 1995, No. 1245, §1; Acts 2001, No. 403, §2, eff. June 15, 2001; Acts 2003, No. 1231, §1; Acts 2005, No. 218, §1; Acts 2010, No. 69, §1; Acts 2010, No. 911, §1; Acts 2010, No. 973, §1, eff. July 6, 2010. Louisiana Revised Statutes Title 15 Section 529.1. Text available at: http://www.legis.state.la.us/lss/lss.asp?doc=79154

[24] So, for example, if a person was convicted of a felony in 2000, released on parole in 2008 and finished parole in 2011, the 10 years will start in 2011, not the date of the original conviction. If this person commits a second felony in 2020 (20 years after conviction, or nine years after completing parole), he or she will be considered a habitual offender under Louisiana law. However, if the person is convicted of a second felony offense in 2022, 11 years after completing parole, he or she will not be considered a habitual offender. (Louisiana Revised Statues Title 15 Section 529.1 (C), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=79154)

[25] Louisiana Revised Statutes Title 15 Section 529.1(A)(1), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=79154

[26] Ibid, Section 529.1(A)(3)(b), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=79154

[27] Ibid, Section 529.1(A)(3)(a), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=79154

[28] Louisiana Revised Statutes Title 40 Section 966(B)(3), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=98880

[29] Ibid.

[30] Louisiana Revised Statutes Title 15 Section 529.1 (A)(1).

[31] See Steven D. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation," The Quarterly Journal of Economics, vol. 111(2), pages 319-51, May 1996 and references contained therein.

[32] Ibid.

[33] Pew Center on the States, "State of Recidivism: The Revolving Door of America's Prisons" (p. 5-6), April 2011. Available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf

[34] Geert Dhondt, 2012, *Evidence from Cocaine and Marijuana Mandatory Minimum Sentencing,* John College of Criminal Justice Working Paper 2012-03. Available at: http://www.jjay.cuny.edu/departments/economics/Geert-03(1).pdf

[35] Pew Center on the States, "Time Served: The High Cost, Low Return of Longer Prison Terms" (p. 7), June 2012. Available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Time_Served_report.pdf

[36] "Mandatory Minimum Drug Sentences, Throwing Away the Key or the Taxpayers' Money?" 1997 RAND study, available at: http://www.rand.org/content/dam/rand/pubs/monograph_reports/2006/MR827.pdf

[37] Uniform Crime Reporting Statistics, Crime—national or state level, state-by-state and national crime estimates by year(s), U.S. Department of Justice, Federal Bureau of Investigation. http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm?NoVariables=Y&CFID=91777&CFTOKEN=14352fe4f916fc0f-273AA481-EA75-2D41-DC50FFB4F1C85306

[38] Data compiled from "Recidivism in Adult Corrections (Total Population-Crime Type)" Louisiana Department of Public Safety and Corrections, March 31, 2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2x.pdf. Recidivism defined as: Return to custody following conviction for a new felony or technical revocation of supervision after having been released from incarceration through completed sentence, released on parole, conditional release, or split probation sentence. An offender may be released multiple times but is only counted once per release year. Offenders released to a detainer, released in error, deceased or transferred to another jurisdiction are not included in statistics. Statistics include state offenders released from adult institutions, local facilities and work release centers. Crime type is defined as the crime the offender served time for and then was released from incarceration, not as the type of new crime committed.

[39] Data compiled from "4th Quarter 2012 Current Population by Offender Class," Adult Incarceration Report. Louisiana Department of Public Safety and Corrections. December 31, 2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2bb.pdf

[40] Ibid.

[41] Public Hearing Before the United States Sentencing Commission, Mandatory Minimum Sentencing Provisions Under Federal Law, testimony of Erik Luna, Professor of Law, Washington and Lee University School of Law Adjunct Scholar, The Cato Institute. Delivered on May 27, 2010. Available at: http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20100527/Testimony_Luna.pdf

[42] Simple robbery punishment found in Louisiana Revised Statutes Title 14 Section 65(B), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=78602

[43] Purse snatching punishment found in Louisiana Revised Statutes Title 14 Section 65.1(B), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=78603&showback=

[44] Public Hearing Before the United States Sentencing Commission, Mandatory Minimum Sentencing Provisions Under Federal Law, testimony of Erik Luna, Professor of Law, Washington and Lee University School of Law.

[45] Louisiana Revised Statutes Title 40 Section 967 (F)(1)(a), Available at: http://www.legis.la.gov/lss/lss.asp?doc=98881&showback=Y

[46] Ibid, Section 967 (F)(1)(b), Available at: http://www.legis.la.gov/lss/lss.asp?doc=98881&showback=Y

[47] Louisiana's prison population has increased dramatically since the proliferation of mandatory minimum sentencing laws for nonviolent offenses four decades ago. However, it is important to note that determining the precise cause of this enormous expansion over time is difficult—many factors may have contributed to the increase in the number of citizens sentenced to prison and the length of their sentences. Changes in prosecutorial or investigative priorities, improved law enforcement and greater severity in sentencing laws in general are some factors that should be considered.

[48] Composition of Schedules, Louisiana Revised Statutes Title 40 Section 964; Punishments, Louisiana's Revised Statutes Title 40 Section 966(C)(1), available at: http://www.legis.la.gov/lss/lss.asp?doc=98880&showback=Y

[49] Negligent homicide punishments found in Louisiana Revised Statutes Title 14 Section 32 C(1), available at: http://legis.la.gov/lss/lss.asp?doc=78409; manslaughter punishments found in Louisiana Revised Statutes Title 14 Section 31(B), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78399; aggravated assault with a firearm punishments found in Louisiana Revised Statutes Title 14 Section 37.4 (C), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78482; aggravated battery punishments found in Louisiana Revised Statutes Title 14 Section 34(B), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78444; second degree battery punishments found in Louisiana Revised Statutes Title 14 Section 34.1(C), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78445; simple rape punishments found in Louisiana Revised Statutes Title 14 Section 43 (B), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78531; female genital mutilation punishments found in Louisiana Revised Statutes Title 14 Section 43.4(D), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78535; intentional exposure to AIDS punishments found in Louisiana Revised Statues Title 14 Section 43.5(E.1), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78536; simple kidnapping punishments found in Louisiana Revised Statutes Title 14 Section 45(B), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78540

[50] Louisiana Revised Statues Title 40 Section 966(B)(3), available at: http://www.legis.la.gov/lss/lss.asp?doc=98880&showback=Y

[51] Forcible rape punishments found in Louisiana Revised Statutes Title 14 Section 42.1(B), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78530; second degree kidnapping punishments found in Louisiana Revised Statutes Title 14 Section 44.1(C), available at: http://www.legis.state.la.us/lss/lss.asp?doc=78538; vehicular homicide punishments found in Louisiana Revised Statutes Title 14 Section 32.1(B), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=78410

[52] Simple possession sentences put forth in 21 U.S.C. 844. If convicted of a simple possession offense, the defendant is required, if able, to pay the "reasonable costs" of the investigation and prosecution of the offense. Penalties for simple possession are also applicable to distribution of a "small amount" of marijuana for no remuneration.

[53] Louisiana Revised Statutes Title 40 Section 966(C)(1), Available at: http://www.legis.la.gov/lss/lss.asp?doc=98880&showback=Y

[54] Ibid, Section 966(B)(1), Available at: http://www.legis.la.gov/lss/lss.asp?doc=98880&showback=Y

[55] Federal punishment for first offense of manufacturing, distributing or possessing with intent to distribute 1 kg+ heroin is 10 years mandatory minimum prison sentence (Found in 21 USC § 841(b)(1)(A)). Federal punishment for first offense manufacture, distribution or possession with intent to distribute, no death or serious bodily injury results, 100g+ heroin, found in 21 USC § 841(b)(1)(B).

[56] Louisiana Revised Statutes Title 40 Section 989.1 (B)(1), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=321523

[57] Ibid, Section 989.1 (A)(2), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=321523

[58] Based upon a state-by-state survey of inmates serving life sentences without parole in 2008 in "Throwing Away the Key: The Expansion of Life Without Parole Sentences in the United States," Federal Sentencing Reporter, Vol. 23, No. 1, pp. 27–32. October 2010. Available at: http://sentencingproject.org/doc/publications/inc_federalsentencingreporter.pdf

[59] "Demographic Profiles of LIFERS Adult Correctional Population," Fact Sheet, Louisiana Department of Public Safety and Corrections. December 31, 2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2f.pdf

[60] Senate Bill No. 239, Act No. 403 (Enrolled) from Louisiana's Regular Legislative Session 2001. Available at: http://www.legis.la.gov/Legis/ViewDocument.aspx?d=817069

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[64] Ibid.

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[66] Data compiled from "Adult Admissions 1994–2011 (Incarceration Only) Based Upon Most Serious Commitment Crime" Louisiana Department of Public Safety and Corrections. Published March 31.2012. Available at: http://doc.la.gov/wp-content/uploads/stats/2ff.pdf (Ibid 6)

[67] "Time Served."

[68] Senate Bill No. 239, Act No. 403 (Enrolled) from Louisiana's Regular Legislative Session 2001. Available at: http://www.legis.la.gov/Legis/ViewDocument.aspx?d=817069

[69] Ibid.

[70] Ibid.

[71] Ibid.

[72] Ibid.

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[74] House Bill 1068, Act 160 Enrolled. 2012 Regular Legislative Session. Text available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=803302

[75] Ibid.

[76] Ibid.

[77] House Bill No. 543, Act 401 Enrolled. 2012 Regular Legislative Session. Text available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=809819&n=HB543%20Act

[78] Ibid.

[79] Ibid.

[80] Louisiana House Bill No. 1026/Act No. 159, 2012 Regular Legislative Session. Text available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=803301&n=HB1026%20Act

[81] Louisiana Revised Statutes Title 15 Section 574.4(A)(1)(a), Available at: http://www.legis.state.la.us/lss/lss.asp?doc=79239&showback=

[82] Louisiana House Bill No. 1026/Act No. 159, 2012 Regular Legislative Session. Text available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=803301&n=HB1026%20Act.

[83] House Bill 442/Act 389. Available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=857741&n=HB442%20Act

[84] Fiscal Note on HB 442, Bill Text Version: Enrolled. Louisiana Legislative Fiscal Office. June 3, 2013. Available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=855302

[85] House Bill 442/Act 389. Available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=857741&n=HB442%20Act

[86] Fiscal Note on HB 442, Bill Text Version: Enrolled. Louisiana Legislative Fiscal Office. June 3, 2013. Available at: http://www.legis.la.gov/legis/ViewDocument.aspx?d=855302

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[89] Based on 2011 Statistics: Prisoner statistics taken from "Prisoners in 2011" U.S. Department of Justice Bureau of Justice Statistics, available at: http://bjs.gov/content/pub/pdf/p11.pdf; population statistics taken from 2011 Census Bureau Statistics.

[90] Maine Revised Statutes Title 17-A Section 1252(5-A)(B)-(C), Available at: http://www.mainelegislature.org/legis/statutes/17-a/title17-Asec1252.html

[91] Ibid.

[92] Maine Revised Statutes Title 17-A Section 1151, Available at: http://www.mainelegislature.org/legis/statutes/17-a/title17-Asec1151.html

[93] Uniform Crime Reporting Statistics, Crime—national or state level, state-by-state and national crime estimates by year(s), U.S. Department of Justice, Federal Bureau of Investigation. http://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm?NoVariables=Y&CFID=943604&CFTOKEN=fb6e9ff628473f89-2A84733C-A1D3-6B68-2D9BF28EB7D8E5EF

[94] Inflation adjustments calculated with United States Department of Labor, Bureau of Labor Statistics CPI (Consumer Price Index) Calculator. Available at: http://www.bls.gov/data/inflation_calculator.htm

[95] Rhode Island corrections expenditures taken from United States Census Bureau's "Annual Survey of State Government Finances, 1992." Available at: www2.census.gov/govs/state/92statess.xls and United States Census Bureau's "Annual Survey of State Government Finances, 2009." Available at: www2.census.gov/govs/state/09statess.xls

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