

Reality Check T

Contributing to the factual knowledge of Canadians about crime and criminal justice.

THE JOHN HOWARD SOCIETY OF CANADA

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“Truth in Sentencing”

The claim:

There is no truth in sentencing. A sentence of X years incarceration does not mean that the offender will spend that X years in jail. A sentence of life without parole for 25 years does not mean that the offender will spend 25 years in jail. If there was truth in sentencing, people would spend the full time given by the court in jail.

The reality:

Sentences of incarceration in Canada have always included the possibility of release prior to the end of the sentence. This started over 100 years ago with *Penitentiary Act of 1868* which permitted the granting of up to 5 days per month remission of a definite or fixed length sentence for good behaviour. And the possibility for conditional release as part of a sentence of incarceration, including those for an indefinite term and life, is a well-established feature of most modern systems.

When a judge sentences an individual to a fixed length sentence of incarceration, he/she is well aware of the provisions in law with respect to the possibility of conditional release. Although in law judges are not supposed to take the possibility of early release into account when sentencing offenders, many, including the authors of a major study of sentencing in Canada in 1984, believe that judges will bear in mind the possibility of conditional release in assessing sentences and that sentences are in fact longer than they would be if conditional release did not exist.

In recent years, there has been much attention focused on judicial review or the so-called “Faint Hope Clause”. This refers to a process by which an offender serving life with a parole eligibility of greater than 15 years can apply, after he/she has served 15 years, for a reduction in the amount served before becoming eligible for full parole. This is a provision of the *Criminal Code* passed by Parliament in 1976.

Rather than, as it is often portrayed, as an attempt to find a slippery way to circumvent or undermine the law related to sentences for murder, the introduction of these judicial review provisions into the criminal law was a conscious decision by the legislators of the day to allow for the reconsideration of the parole eligibility set at the time of sentencing after a significant period of the sentence had been served. It was a recognition that they had substantially increased the parole ineligibility period at that time and that there should be some forum in which to take into account the possibilities of reformation and rehabilitation of the offender over the period. It is important to note that the decision is made by a jury and, due to recent amendments, the decision of the jury must be unanimous. The jury can only change the period of parole eligibility. It cannot change the sentence - it remains a life sentence and that person will be under the control of correctional authorities for the remainder of his/her life. And a decision to reduce the period of parole ineligibility does not guarantee release on parole - the offender still has to satisfy the National Parole Board that release is appropriate and warranted.

If we are interested not just in punishment but also in public safety, we would not be seeking to ensure that offenders serve every day of their sentence in prison or to limit the use of conditional release. A recent review of the research on the effect of prison sentences on re-offending found that harsher punishments (more vs. less time in prison) produced slight increases in re-offending, a finding that led the authors to conclude: “prison should not be used with the expectation of reducing criminal behaviour”. What has been found to be effective in reducing re-offending is the delivery of appropriate treatment and support services to the offender and that such services

delivered in the community produce even better results in reducing re-offending when they are delivered in the community. A system of conditional release provides such opportunities.

When one accepts that, while punishment is an objective of sentencing, it is not the only objective and that conditional release is legitimate and in fact, essential to achieving the rehabilitative objective of sentencing, truth in sentencing does exist.

Public confusion may be because the law is not clearly articulated when the sentence is imposed. This could be easily rectified by the requiring the judge to state clearly during the passage of the sentence that the offender is committed to correctional authority for a period of X years and at what period by law the person is eligible for conditional release.

Hollow phrases, such as “truth in sentencing” can only lead to the development of correctional policies that are mindless, inhumane and ineffective.

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