



The Recession's Effect on Federal Prison Sentences

March 7, 2011

On March 2, 2011, Jeff Ifrah, founder of Ifrah Law, and Jeffrey Hamlin, an associate in the firm, published the following article in the *Los Angeles Daily Journal*.

Prison inmates in the United States may have reason to thank Wall Street for the 2008 recession. The bloated federal deficit is forcing agencies to tighten their budgets, including the U.S. Department of Justice. According to its budget for 2012, the Department of Justice proposes to offset budget increases with cost-cutting measures that include a revision to the way good-time credits are calculated for federal prison inmates.

We think the Department of Justice is on the right track. Giving well-behaved inmates more good-time credit will reduce prison terms and save money, both desirable outcomes. But a close look at the department's proposal suggests that projected savings may be overstated, if not altogether illusory. And if the country were not heading into the 2012 election cycle, one might wonder why the department decided to advocate for timid cuts at the periphery over fundamental and much-needed change.

On Feb. 14, the Department of Justice released its 2012 budget request for \$28.2 billion. The proposal represents a 1.7 percent increase over annualized



spending levels under the 2011 continuing resolution. Additional funding in the budget will be used to strengthen national security; preserve the department's traditional work (e.g., investigation, litigation, and immigration enforcement); maintain correctional facilities; and assist state, local, and tribal law enforcement.

The department plans to offset these increases with \$2 billion in program decreases and rescissions, including "component-unique" program savings of \$300.9 million. Its "component-unique" cuts include the proposed elimination of the Drug Enforcement Agency's Mobile Enforcement Teams (saving \$39.1 million), reductions to the National Drug Intelligence Center (saving \$19.2 million), and revisions to the number of good-time credits federal inmates can earn (saving \$41 million). To put the numbers in perspective, savings from changes to the good-time credit policy represent 13.6 percent of all "component-unique" savings, 2.1 percent of total offsets, and 0.15 percent of the department's entire budget for 2012.

With respect to good-time credits, the Department of Justice's fiscal 2012 strategy paper explains: "The Administration will transmit legislative proposals to amend the statutes governing federal inmate good conduct time credit. The proposed legislation will continue providing inmates with incentives for good behavior as well as to participate in programming that is proven to reduce the likelihood of recidivism. The proposed sentencing reforms include (1) an increase in the amount of credit an inmate can earn for good behavior, and (2) a new sentence reduction credit, which inmates can earn for participation in education and vocational programming. If enacted before FY 2012, these changes could result in significant cost avoidance, potentially up to \$41.0 million in FY 2012, by slowing the rate of the federal inmate prison population growth."



The department's proposal to advocate for a more liberal policy with respect to good-time credits makes good sense. For one, it will help bring the United States in line with other developed nations by shaving time off of prison terms. It is no secret that the United States incarcerates more people and for longer periods of time than any other nation. According to some estimates, over 1 percent of the adult population in the United States is in prison. Although the United States is home to less than 5 percent of the world's population, it is home to approximately 23 percent of the world's prison population. Revising the good-time credit policy could help to improve these numbers.

A more liberal policy for good-time credits will also save money, although it seems unlikely that the Department of Justice's legislative proposals will result in cost savings of \$41 million in 2012. First, the department's projection rests on a number of questionable assumptions: that Congress will enact legislation at least as favorable as its proposal; that Congress will enact legislation early enough in 2012 for the department to implement changes and realize cost savings; that a sufficient number of federal inmates will qualify for immediate release; and that shorter sentences for existing inmates will not be offset by higher incarceration rates, which could result from the department's increased expenditures to strengthen national security, prosecute financial fraud, and enforce immigration laws, for example.

To show how unlikely it is that a revised good-time credit policy will save the Department of Justice \$41 million next year, a little context is needed. First, a recent BOP report shows that federal prisons house roughly 210,000 inmates. The average prison term is about five years. Each prisoner costs the system about \$24,000 per year or \$65.75 per day.



Under the BOP's current policy, prisoners are eligible to receive 54 good-time credits for every 365 days of good behavior. The department's plan to revise the good-time credit policy reportedly would qualify about 4,000 federal convicts for release — which represents about 1.9 percent of the federal prison population — and another 4,000 convicts over the next 10 years. Data are not available to show the projected cost savings, but a little number crunching provides a rough estimate.

Under the current policy on good-time credits, a five-year sentence may be reduced by an average of 47 days per year. If Congress were to increase the maximum number of annual good-time credits by 50 percent, the average sentence would be reduced by an additional 18 days, which results in savings of roughly \$1,183.50 per prisoner per year. If the new policy qualifies 4,000 prisoners to be released 18 days earlier next year, the maximum immediate savings would be approximately \$4,734,000 — about 11.5 percent of the department's projected savings. Approximately 35,000 inmates — 16.7 percent of the federal prison population — would have to qualify for an 18-day reduction in order for the department to realize savings of \$41 million.

If Congress enacts the proposed legislation in 2012, the Department of Justice will probably save a fraction of the projected \$41 million. It's better than nothing. But to really make a dent in federal spending — not to mention our outrageous incarceration rates — the department could support more fundamental changes to our penal system. If voters are really behind these spending cuts, they will urge their representatives to consider major revisions to our criminal justice system — like changes to the sentencing framework for nonviolent offenders and decriminalization of 'victimless' conduct that, if regulated, would provide much-needed tax revenue. At minimum, more lenient or alternative sentencing options for nonviolent drug offenders would achieve



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far greater spending reductions than those the department has projected. At maximum, legalization and regulation of increasingly accepted conduct, like online gambling or use of non-addictive 'soft' drugs, would not only result in cost savings to the Department of Justice, it might help to replenish the public fisc.

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The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

