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Rep. Emily Kinkead, Chair

Hearing on

Crime Deterrence and Community Safety

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Testimony of

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Crime Reduction through Deterrence: What Works? What Doesn't?

Chair Kinkead and Chair Rigby and members of the Subcommittee, thank you for your invitation to testify at this hearing today. I am grateful for the opportunity to tell you about the place of deterrence in ensuring the safety of all members of the public. The University of Pittsburgh School of Law prioritizes teaching and research that serves the public, and it is in that spirit that I offer my testimony today.

The Goal: Public Safety for All

The overall goal of this hearing is to attempt to find the answers that will get all of us to the same worthy goal: a safe and peaceful place for all citizens of our Commonwealth to live, to learn, to work, and to thrive. Wherever one lives in our state, all of us deserve to live a life free of crime and violence. The question is what laws, policies, and decisions by our government will do the most to get us there. It is, in many ways, the most important question this body can ask.

The central question in this session bears directly on the issue of public safety for all: what is the place and function of deterrence in criminal law and law enforcement? Since deterrence is one of the central justifications for the use of criminal punishment, how can we use deterrence effectively to make ourselves safe? Over the last four decades, legislatures in the U.S. have responded to the desire for public safety by increasing the severity of punishment, usually in the form of longer sentences. The question for us, at this hearing, is whether moves toward

longer sentences deter people from committing crime. If criminal behavior is deterred, less crime is committed, and public safety for everyone improves. Thus we ask: what creates or increases deterrence?

Fortunately, considerable research in criminology and criminal law based on rigorous data analysis and study can now provide the answers we seek today. The bottom line: *increasing the severity of sentences does not create any noticeable deterrent effect. But increasing the chances of getting caught, with the right kind of police work, can deter crime.*

The Four Purposes of Punishment

The criminal law prohibits certain actions that harm others or the general welfare. These acts do harm that we consider so serious that the state pursues them, not private parties seeking damages as in civil suits. People found responsible for these actions are found guilty of criminal behavior, not just liable for damages in civil court. If a judge or jury finds a defendant guilty, this allows the imposition of punishment. Because punishment inevitably includes some limits on individual freedom – our most cherished value – any system of criminal law must supply a *justification* for punishment. There are four main justifications to explain why we punish the guilty and limit their freedom. In any individual case, some or all may apply.

- 1) **Retribution** – We may punish someone as retribution for what they have done. This is sometimes called giving the guilty person their “just deserts.” Retribution looks backward, to the criminal act itself, regardless of whether it will reduce crime in the future. With retribution, we consider the punishment to be deserved, *whether or not it will reduce crime.*

If retribution looks backward, the other three justifications look forward, to whether there will be a social benefit – generally, the reduction of crime.

- 2) **Incapacitation** – Incapacitation describes the fact that when someone is sentenced to prison, this means the person cannot commit crimes against members of society. They are no longer capable of victimizing people outside of prison.
- 3) **Rehabilitation** – Rehabilitation concerns efforts to reform or improve the person punished, during the course of that punishment. This could include participation in education while sentenced to incarceration. Education while in prison is the single most effective way to reduce recidivism after release; it reduces jail and prison populations, and helps those released from prison (and 95 percent of all of those imprisoned are eventually released) to get and maintain employment after prison. Crime is therefore reduced going forward.
- 4) **Deterrence** – Deterrence is the idea that punishment should convince people not to commit crime, now and in the future. If punishment deters crime, crime is directly reduced. Our streets, workplaces, homes and schools are safer and better with less crime, and everyone benefits. This is the justification often given for increasing the length of

sentences, adding sentence enhancements, and creating new crimes where existing offenses actually cover the conduct already. By facing a greater punishment, or a mandatory minimum sentence, for example, the potential criminal thinks twice and decides not to commit the act. Thus longer sentences, new crimes, and the like are believed to move us toward greater public safety.

Deterrence: Longer or Enhanced Sentences Do Not Increase Deterrence or Reduce Crime

Increasing Severity of Sentences Does Not Deter Crime. Over the last four decades, legislators and policy makers at all levels of government have often responded to crime by increasing the severity of punishment that judges can, or must, impose on those convicted. This comes in the form of longer sentences, mandatory minimum sentences, sentencing enhancements, or new, specialized criminal statutes.

The idea behind all of these legislative actions: they increase the potential penalty that a convicted criminal would suffer. Some potential criminals, now at risk of a harsher penalty than before, may reconsider their course of action, and decide not to commit the crime. The greater penalty deters them, and therefore reduces crime.

But this reasoning is based on a faulty premise.

There is no evidence – none – that potential offenders are even aware of the sentences for specific crimes. In fact, the evidence is all to the contrary: criminals know little or nothing at all about the sentences they might receive for their actions. In fact, a great number of criminal actions come about impulsively, as individuals come across “targets of opportunity” and thoughtlessly jump into criminal conduct. A great many crimes are also the product of the insatiable cravings of addicted persons for drugs, for which addicted people need fast money from the theft of cash or goods that can be sold for cash. Consideration of possible (unknown) penalties, plays no role; usually there is no planning or consideration of any kind. According to the National Institute of Justice, the totality of the research on deterrence suggests that short sentences may be a deterrent; but the research consistently shows that “increases in already lengthy sentences produce *at best* a very modest deterrent effect” (emphasis added).

Others researchers have argued that more severe sentences will have a “chastening effect” on offenders, causing them to reflect upon their criminal conduct and the increased “price” (in the form of more severe punishment) that society has imposed for these actions. This, the thinking goes, will deter some people, reducing crime. Unfortunately, this too finds no support in the evidence. Again, *there is no evidence – none – for the existence of any “chastening effect” of individuals convicted of crimes.*

Greater use of prison sentences does not effectively reduce crime. When we when we lengthen existing prison sentences or use prison sentences as punishment more often, there is no evidence we create a deterrence effect that would reduce crime. In fact, increased use of prison may actually increase crime – the opposite of what we want.

Prison sentences may increase recidivism. Sentences of incarceration – particularly long sentences – may not reduce crime; they may produce the opposite effect. *Prison is criminogenic.*

Longer prison sentences may create more effective criminals, because those inclined toward criminal behavior have the opportunity to learn better crime strategies from one another. And time spent in prison may desensitize those incarcerated to the threat of future imprisonment. The longer the sentence is, the greater this criminogenic effect may be. A large body of research tells us that most offenders “age out” of criminal activity at roughly 35 years old, making sentences that extend far beyond that point unnecessary and potentially more criminogenic. Thus for all of those released from our Commonwealth’s prisons – and 95 percent of all of those people incarcerated will be released, at some point – longer prison sentences make them more likely to re-offend, making our already dismal recidivism statistics (two-thirds of all of those released returning to prison within three years) even worse.

Further, recall the earlier discussion of the four purposes of punishment, two of which are incapacitation and deterrence. It is important to make a distinction between these two ideas. Incapacitation refers to putting someone in prison means so that they do not have the capacity to inflict harm on society; deterrence means convincing people not to commit crime, now or in the future, *before* the crime happens. The difference between these two ideas is often confused, but it is quite real. A person in prison *may not have the current capacity* to commit crimes against society while in prison, but *is not necessarily deterred in any way*. After all, the threat of prison was already present when the offense was committed. Therefore, increasing the magnitude of the threat of prison by increasing its length would likely not deter, either.

It is also critical to understand that the idea of prison as incapacitation only goes so far. It protects those of us outside the walls of the prison from criminal conduct by those incarcerated inside. It does little or nothing to protect those who are also inside prisons. And those inside prisons include civilians: correctional officers, administrators, counselors, teachers, medical service providers and many others, along with other people convicted of crimes.

What DOES Deter: Increased Certainty of Being Caught

None of what is said here should be understood to say that deterrence does not matter, or cannot be used to shape behavior. On the contrary: *deterrence is and should be a goal and a central purpose of the criminal legal system*. We absolutely must aspire to do everything we can to reduce crime and increase public safety for all, especially for those of us who live in areas of our towns and cities with higher rates of crimes. But we cannot do this by relying prison or lengthening sentences – the back end of the criminal legal system. Rather, we must work at the front end of the system.

Strong evidence exists that *the certainty of being caught is a much more powerful way to deter the commission of crime than increasing the punishment for that crime*. The research on this point is clear and virtually unequivocal: according to the National Institute of Justice, “it is the certainty of being caught that deters a person from committing crime, not the fear of being punished or the severity of the punishment.” It is in the moment that a crime is contemplated or about to happen, when the potential criminal sees that he or she will likely get caught, that there is a good chance for deterrence to prevent crime. When this happens, the difficulties and

expenses of a crime, victimization, arrest, court proceedings and punishment are all avoided. According to the best work in the field, increasing the chance of getting caught is much more effective as a deterrence than even the threat of a draconian punishment.

Therefore, the actions of police can have a critical impact on whether a deterrent effect arises or increases. If we deploy police officers in ways that strengthens criminals' perception that they will be caught, fewer of them will attempt criminal acts. For example, one way of deploying police, called "hot spot" policing, positions police in areas that see considerable or regular criminal offending: transit corridors, gathering spots outside of liquor stores, or open-air drug markets, for example. "Hot spots," identified through rigorous analysis of the most current data on reported crimes, make ideal places to increase potential offender's perception of the risk of apprehension. Real deterrence thus created brings real reduction in crime, benefitting all.

Of course, by definition, not every place is a hot spot of crime; and even using "hot spots," police cannot be everywhere all at once. They cannot be on every corner to offer visible deterrence to every crime, let alone to deter crimes occurring behind the closed doors of homes or workplaces. Nor would we want to live in a society in which police were everywhere. But when policing is carried out correctly, with an emphasis on respect and sensitivity to the communities they serve, police need not be everywhere to have a strong deterrent effect. Research (in addition to bedrock principles of community-based policing) supports the idea that policing done in partnership with the community – policing not done *to* the community, but policing done *with and for* the community – will create (or help re-create) bonds of trust between police and those that they serve. When a police department adopts an approach that treats every person in every neighborhood not as a potential offender or a threat, but instead as a full citizen deserving of respect, a positive dynamic is created: a dynamic of mutual respect. When officers ask communities to become their partners in meeting the priorities of the residents in these neighborhood – priorities as determined by those residents – real service replaces catch-as-catch-can response. When this happens, people can begin to rely on the police for their personal safety, and residents may over time become the eyes and ears and allies of the police. This creates real, sustainable deterrence.

Thank you for the opportunity to offer this testimony today.

Sources:

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