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Parole, Sentencing Guidelines, and Supervised Release

Since the 1980's, questions have arisen surrounding sentencing guidelines and the release of offenders from prison. In 1984, the Federal Comprehensive Crime Control Act was passed. Within the Act, the Sentencing Reform Act (SRA) of 1984,¹ created a new sentencing structure for those found guilty of violating a Federal statute.² The SRA set out to standardize sentencing guidelines to "emphasize fairness, consistency, punishment, incapacitation and deterrence in sentencing."³ Furthermore, sentencing guidelines also encouraged a sentencing environment free of bias of race, gender, and socioeconomic status.⁴ The United States Sentencing Commission, established under this Act, would set minimum and maximum penalties for felonies, misdemeanors, and infractions. The SRA eliminated the parole system requiring offenders to serve their full sentences.⁵ However, the SRA "allows the court to include a term of supervised release after their imprisonment."

United States v. Booker

The sentencing guidelines created under the Comprehensive Crime Control Act included mandatory minimums as well as a maximum term for sentences imposed by the federal judiciary. However, several Supreme Court decisions, culminating with *United States v. Booker*⁶ (*Booker*), have called into question the efficacy and constitutionality of the Act. Two conclusions were drawn by the Supreme Court's decision in *Booker*. The Court found that an enhanced sentence imposed by a judge alone, without the finding of fact by a jury, violated a

¹ The Sentencing Reform Act is Title II of the Comprehensive Crime Control Act.

² *Comprehensive Crime Control Act of 1984*, HR 35-36, 98th Cong., 2nd sess., accessed February 20, 2013
<https://www.ncjrs.gov/pdffiles1/Digitization/123365NCJRS.pdf>.

³ United States Department of Justice, "Fact Sheet: The Impact of *United States v. Booker* on Federal Sentencing," last modified March 15, 2006, accessed February 14, 2013,
http://www.justice.gov/opa/documents/United_States_v_Booker_Fact_Sheet.pdf.

⁴ United States General Accounting Office, "*Sentencing Guidelines: What Is Their Potential Impact On Federal Prisons And Should Their Implementation Be Delayed?*" accessed February 14, 2013,
<http://www.gao.gov/assets/110/101813.pdf>.

⁵ United States General Accounting Office, "*Sentencing Guidelines: What Is Their Potential Impact On Federal Prisons And Should Their Implementation Be Delayed?*"

⁶ *United States v. Booker* 543 U.S. 220 (2005).

defendant's Sixth Amendment right. The Court's second conclusion held that the question of the guidelines' constitutionality could be remedied if they were made advisory rather than mandatory. Thus, the Court's decision in *Booker* reaffirms judicial discretion in determining sentences, notwithstanding the Comprehensive Crime Control Act.⁷

The United States Justice Department has identified three problematic trends as consequences of the Court's decision in *Booker*. In 2003, Congress passed the PROTECT Act, which sought to reassert consistency and fairness in federal sentencing, particularly involving cases of the sexual exploitation of children. The Act aimed to lengthen sentences in cases involving abusive sexual contact. Since *Booker*, sentences have fallen below the increased recommended guidelines.

A second problematic trend of the decision has been a departure from the federal sentencing guidelines in judge-made decisions. In 2005, only 62% of all federal sentences fell within the sentencing guidelines.⁸ Finally, the Justice Department has found that post *Booker* there have been increased sentence discrepancies based on race and geography. *Booker* appears to have a "race effect" whereby black offenders receive sentences five percent higher than white offenders. This trend has led the Justice Department to believe that we need to return to a system of colorblind sentencing. There is also evidence that highlights discrepancies between sentencing based on geographic placement.⁹

Federal Parole

The parole of prison inmates in the United States dates back to June 1910. Between 1930 and 1972, there was a single parole board based in Washington D.C., the Board of Parole. The United States Attorney General selected the Board's members. In 1972 re-organization of the Board of Parole began and was completed in 1976. Thus, the Board of Parole was re-named the United States Parole Commission ("USPC") and membership was re-structured to consist of nine members. The President of the United States appoints the members, serving for six-year terms.¹⁰

Since the implementation of the Comprehensive Crime Control Act of 1984, the United States government has renewed the Parole Commission a total of six times. In 1990, the government passed the Judicial Improvements Act, extending the life of the Parole Commission through November 1997. In 1996, the Parole Commission Phase-out Act was created to renew the Parole Commission through November 2002. In mid-2002, the federal government passed the 21st Century Department of Justice Appropriations Authorization Act to extend the life of the USPC through November 2005.¹¹ The United States Parole Commission Extension and

⁷ Congressional Research Service, "Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options," last modified June 30, 2007, accessed February 14, 2013, <http://www.fas.org/sgp/crs/misc/RL32766.pdf>.

⁸ United States Department of Justice, "Fact Sheet: The Impact of *United States v. Booker* on Federal Sentencing."

⁹ United States Department of Justice, "Fact Sheet: The Impact of *United States v. Booker* on Federal Sentencing."

¹⁰ Peter B. Hoffman, "History of the Federal Parole System: Introduction," United States Department of Justice, last modified May 2003, accessed February 14, 2013, <http://www.justice.gov/uspc/history.pdf>, pp. 5-7.

¹¹ Peter B. Hoffman, "History of the Federal Parole System: Introduction," p. 5.

Sentencing Commission Authority Act of 2005 lengthened the Parole Commission's existence through November 2008. In 2008, the United States Parole Commission Extension Act was passed, allowing the Parole Commission to exist through November 2011. Most recently, the United States Parole Commission Extension Act of 2011 has allowed for the continuation of the USPC through November 2013.¹²

Presently, the USPC is still a functioning body. As an entity, it possesses jurisdiction over inmates who committed offenses prior to November 1987; persons who committed an offense in the District of Columbia prior to 2000; persons eligible for parole under the United States' fundamental military law, the Uniform Code of Military Justice (UCMJ); and persons who have had prison sentences established by foreign nations but who are serving such a sentence in United States territory. Additionally, the USPC has a supervisory (but not adjudicatory) role over persons who committed an offense in the District of Columbia after August 2000, and all persons who have been placed into probation or parole as part of the Federal Witness Protection Program.¹³

Federal Imposition of Supervised Release

The Sentencing Reform Act of 1984 attempted to eliminate parole and establish supervised release. Thus, offenders must serve their entire sentence at which time they may be given a period of supervised release. "Supervised release is a 'unique' type of post-confinement monitoring that is overseen by federal district courts with the assistance of federal probation officers, rather than by the United States Parole Commission."¹⁴ Similar to parole, supervised release aims to assist the offender's transition back into the community and fulfill, "rehabilitative ends, distinct from those served by incarceration."¹⁵ However, supervised release is a completely different action than parole. Unlike parole, offenders do not serve a supervised release in lieu of a portion of their incarceration. Rather, supervised release is a period instituted ex post facto of the offender's sentence.¹⁶ Supervised release is mandated in less than half of all federal statutes; however, it is an option in most statutes. Thus, the Court instituted a term of supervised release in 99.1% of all cases wherein statute provided for its imposition.¹⁷

¹² *United States Parole Commission Extension Act of 2011*, HR 2944, 112th Cong., 1st sess., accessed February 14, 2013.

¹³ United States Parole Commission, "Mission," United States Department of Justice, last modified August 10, 2006, accessed February 14, 2013, <http://web.archive.org/web/20060806011117/http://www.usdoj.gov/uspc/mission.htm>.

¹⁴ *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991), last modified February 19, 1991, accessed February 20, 2013, <http://www.law.cornell.edu/supct/html/89-7370.ZO.html>.

¹⁵ *United States v. Johnson*, 529 U.S. 53, 59 (2000), last modified March 1, 2000, accessed February 20, 2013, <http://www.law.cornell.edu/supct/html/98-1696.ZO.html>.

¹⁶ United States Sentencing Commission, "Federal Offenders Sentenced to Supervised Release," last modified July 2010, accessed February 20, 2013, http://www.lb9.uscourts.gov/webcites/11documents/Apodaca_SupervisedRelease.pdf, p. 2.

¹⁷ United States Sentencing Commission, "Federal Offenders Sentenced to Supervised Release," p. 69.

Since supervised release was institutionalized in the 1980's, nearly one million offenders have been given a condition of supervised release.¹⁸ Federal statistics note that two-thirds of those imposed with supervised release have successfully completed their period of supervision. Moreover, 18% of offenders who successfully completed their supervision were released early based on compliance with the court terms. However, a third of those imposed with supervised release have had their terms revoked, and consequently sent back to prison.¹⁹

Eliminating Parole at the State Level

States began the process of eliminating parole in the 1970's when research suggested that early release on parole had no effect on reducing recidivism. Recidivism can be defined as the return to crime.²⁰ Several states followed suit in the 1980's during a time of increasing favor for "determinate sentencing and mandatory supervised release."²¹ By 1989 seven states had abolished parole; eight more abolished their parole boards throughout the 1990's.²²

According to the U.S. Department of Justice, "by the end of 2000, 16 [15 currently, one since repealed] states had abolished discretionary release from prison by a parole board for all offenders." The 15 states include – Arizona, California, Delaware, Illinois, Indiana, Kansas, Maine, Minnesota, Mississippi, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin.²³ Therefore, by abolishing the parole board, the system of parole was eliminated in the aforementioned states. However, Connecticut, Colorado, and Florida, three states that had previously abolished their parole boards, have since reestablished systems similar to parole boards. Connecticut reinstated parole after finding that, "persistent overcrowding...required the re-institution of parole in 1990."²⁴ In 2011, 744,000 offenders were serving parole at the state level. However, only 109,100 offenders are on federal parole.²⁵

Legislation in Vermont

No legislation on the complete removal of parole has been introduced in Vermont; however, there have been several bills, as well as reports, that have had some level of relevance to the topic. The majority of these bills have been introduced since 2008, including: Act 179 from the

¹⁸ United States Sentencing Commission, "Federal Offenders Sentenced to Supervised Release," p. 3.

¹⁹ United States Sentencing Commission, "Federal Offenders Sentenced to Supervised Release," p. 4.

²⁰ National Center for Policy Analysis, "States are Abolishing Parole," last modified January 13, 1999, accessed February 20, 2013, http://www.ncpa.org/sub/dpd/index.php?Article_ID=12601.

²¹ Bureau of Justice Statistics, "Trends in State Parole 1990-2000," last modified September 2001, accessed February 20, 2013, <http://bjs.ojp.usdoj.gov/content/pub/ascii/tsp00.txt>.

²² Bureau of Justice Statistics, "Trends in State Parole 1990-2000."

²³ Bureau of Justice Statistics, "Trends in State Parole 1990-2000."

²⁴ Connecticut General Assembly, "What is Causing Prison Overcrowding?" April 11, 2000, accessed February 27, 2013, <http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/whatiscausingprisonovercrowding.pdf>.

²⁵ Bureau of Justice Statistics, "Probation and Parole in the United States 2011," last modified November 2012, accessed February 20 2013, <http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus11.pdf>.

2008-2009 session,²⁶ which authorized furlough 180 days before completing a minimum sentence for DUI offenders; Act 157 from the 2009-2010 session,²⁷ which had the goal of reducing both the recidivism rate of offenders as well as the overall number of detained citizens in Vermont; and, Act 041 from the 2011-2012 session (also known as “The War on Recidivism Act”), which altered existing legislation regarding medical furlough, treatment furlough, and home confinement furlough.²⁸ The act also notes that there is not a standard national criterion for defining “recidivism,” and therefore statistics and rates vary with the time frame given.

Conclusion

Under the Sentencing Reform Act (SRA) of the Comprehensive Crime Control Act of 1984 Congress eliminated parole at the federal level, introduced supervised release, and provided for mandatory sentencing guidelines. However, in 2005, the Supreme Court’s decision in *Booker* made the sentencing guidelines advisory rather than mandatory in order to preserve their constitutionality. The United States Parole Commission still exists and has jurisdiction over inmates who committed offenses prior to November 1987 and individuals who committed an offense in the District of Columbia prior to 2000. Supervised release is different from parole whereby the offender serves the entire sentence before applicability of supervised release conditions. Thus, prior to supervised release, offenders could be released before the entire length of their sentence was served under parole conditions. Notwithstanding statute mandated supervised release, courts have imposed a term of supervision in 99.1% of cases wherein statute allows. Since imposition in the 1980’s nearly one million offenders have been given a term of supervised release. Federal statistics show that nearly two-thirds of those completed their term whereas the latter third have had their term of supervised release revoked. By 2000 15 states have, at some level, eliminated parole. No bills directly related to the elimination of parole or establishment of supervised release have been introduced in Vermont.

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²⁶ Vermont State Legislature, “No. 179. An act relating to increasing substance abuse treatment, vocational training, and transitional housing for offenders in order to reduce recidivism, increase public safety, and reduce corrections costs,” accessed February 21, 2013, <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2008/acts/ACT179.HTM>.

²⁷ Vermont State Legislature, “No. 157. An act relating to term probation, the right to bail, medical care of inmates, and a reduction in the number of nonviolent prisoners, probationers, and detainees,” accessed February 21, 2013, <http://www.leg.state.vt.us/docs/2010/Acts/ACT157.pdf>.

²⁸ Vermont State Legislature, “No. 41. An act relating to effective strategies to reduce criminal recidivism,” accessed February 21, 2013, <http://www.leg.state.vt.us/docs/2012/Acts/ACT041.pdf>.

Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.