

Coping with a Limited Capacity to Punish: A Replication

Jennifer M. Miller, PhD Student
Department of Criminal Justice
University of Arkansas at Little Rock
2801 South University Drive
Little Rock, Arkansas 72204
jmmiller@ualr.edu
501-247-5731
Corresponding Author

James W. Golden, Professor
Department of Criminal Justice
University of Arkansas at Little Rock
2801 South University Drive
Little Rock, Arkansas 72204
jwgolden@ualr.edu

Abstract

This project replicated a study by Farnworth, Golden and Tester in 1991 to determine if alternate sentencing practices, such as charge reductions and probation, were being used to decrease prison populations and lessen the burden on the criminal justice system as a whole. The previous article sought to support earlier findings that asserted that prison overcrowding caused an increase in the use of charge reductions and felony convictions, but found this to be untrue [1]. They actually found decreased use of charge reductions during the decade under study even as the prison population continued to rise. The current study analyzed data during the period of 1990 to 1999 from Pulaski County, Arkansas in the context of Pontell's [2] concept of "a limited capacity to punish." The Arkansas data analyzed also demonstrated a decrease in charge reductions as the prison population for the state grew thus supporting the previous research on the topic.

1. Introduction

Governmental push to deter crime has increased incarceration rates since the 1970s in the United States [1], [2]. The criminal justice system has become inured in a trend of increasingly strained law enforcement agencies who have increased their numbers and their efforts to strictly enforce the law [3], [4], [2]., and even more since the "War on Drugs" began in the 1980s [5], [6], [7]. For African American inmates alone, the "War on Drugs" increased incarceration for drug offenses by over 700 percent between 1970 and 1996 [8]. For women, incarceration rates in 1996 were thirteen times what they were in 1970 [8].

Due to increased strain on the criminal justice system, the processing of offenders between arrest and sentencing could take an excessive amount of time and limit the effectiveness of the criminal justice system in controlling crime [2]. Farnworth, Golden, and Tester [1] explored this issue in Harris County, Texas and found continued adherence to strict enforcement by way of incarceration rates continuing to rise. This was inconsistent with findings of previous studies [9], which argued alternative sentencing methods were on the rise to limit incarceration rates.

The current study replicated the analyses conducted by Farnworth, Golden, and Tester [1] in Pulaski County, Arkansas. This decade (1990 to 1999) was chosen because it was a decade of peak violence in the capital city of Arkansas. The researchers hypothesized that more plea bargaining and charge reductions would be found for non-violent crimes and non-drug offense crimes, because drug offenses and violent crime increased dramatically in Pulaski County during this time period.

2. Literature Review

The United States' prison population doubled during the period of the original study [1]. In fact, prison populations had been steadily rising since 1972 until there was a 0.6 percent decrease from 2009 to 2010 [10]. Nationally, the average daily population of state prisons increased from 894,138 in 1995 to 1,090,176 in 2000 (22 percent) [11]. Between 1990 and 1995, that same population increased by 17 percent (N = 282,814); however, the capacity for housing inmates increased by 6.9 percent (N = 259,308) [12]. In 2000 alone, the national prison population rose another 198,399 (18 percent) [11]. By 1998, the national prison and jail populations were roughly equal to the population of Houston, Texas at 1.7 million people incarcerated [8]. This has been a continuing problem since the 1970s, inspiring the work of Pontell [2] regarding the criminal justice system's "limited capacity to punish." "When the criminal justice system grows, so does the crime problem" [2]. Legislative action based on public reaction to crime is the driving force behind growth in the criminal justice system [8]. The inherent problem is that the larger the system, the greater the opportunity for recording and reporting data on crime statistics. So does crime increase, or does crime reporting increase? The system definitely increases [2]. Because of this circular mechanism, the criminal justice system acts much like many Americans – it lives beyond its means.

The United States is a reactive country. For example, each time there is a school shooting, citizens clamoring for stricter gun control are shown constantly on the news for weeks. In 2013, select schools in Arkansas armed their faculty with backing from State Legislators. Each time legislation is created requiring harsher punishments, the criminal justice system must act accordingly [2]. Pontell [2] opined society in the United States is "marked by increasing suspicion, anxiety, and paranoia over the fear of being criminally victimized." This translates into harsher sentencing to make the public feel safe.

In the 1970s, conservative ideologies disrupted the 1960s' process of fighting crime by fighting the social causes of crime. These conservatives focused far more on punishing criminals than on what caused the criminal behavior. This was seen as more expedient and cost efficient; however, with the tremendous increase in prison populations since this shift in ideologies, the results have been less than ideal [2]. Pontell [2] criticized the conditions in the penal system and opined that, while the public may feel safe with criminals being locked away, those criminals will eventually be released from poorly run institutions without being rehabilitated.

Though the body of research regarding prison overcrowding and/or warehousing prisoners is quite large, there is limited mention of a theory related to efforts to fix the problem. There are references to deterrence [13] and to incapacitation [14] as justifications for mass incarceration. Researchers have blamed poverty and social disorganization for the increase in prison populations.

Pontell [2] argued against political perceptions for crime and for a sociological approach. This perspective grew from a dissertation regarding the criminal justice system's capacity to punish. Pontell [2] named three assumptions for this perspective:

- Crime is more a function of diverse social-psychological and social-structural phenomena than it is of legal sanctions
- Crime levels affect criminal justice practices just as much if not more than such practices affect levels of crime.

- Punishment is most likely to be effective in deterring crime when it is needed the least – where crime rates are already low.

The first assumption, Pontell [2] argued has been proven repeatedly through research findings of many valid perspectives for analyzing causes of crime, and that these perspectives are often in direct conflict with one another. In fact, Pontell [2] hypothesized, based on the second assumption, that the higher the crime rate, the less consistent the punishment simply because the system is overburdened. The third assumption stated when the criminal justice system experienced higher crime rates was also the point at which the system was the most overwhelmed and unable to carry out this duty [2].

While the current criminal justice system is, in theory, built on deterring criminal behavior, Pontell [2] illustrated a need for arrangements to lessen the burden on the system. These arrangements included plea bargaining and alternative sentencing, which could lessen the deterrent effects of punishment [2]. Because the system's resources have been saturated, consistent incarceration rates have declined across crime types [2]. These resources became saturated between 1975 and 1989 when lawmakers and courts got "tougher" on crime through the use of harsher sentencing and sentence-enhancing laws such as three strikes enhancements [8].

Pontell [2] argued it was difficult to measure the criminal justice system's general capacity to arrest, convict, and punish criminal individuals, because this capacity depended upon resources and workload. Capacity had a positive relationship with resources, and a negative relationship with demands [2]. Continuing to use lengthy prison sentences was no longer a viable option to control crime [15]. Workload incorporated how many cases an individual court must complete in a given timeframe, which was directly affected by due process and the right to a speedy trial [2]. Besides workload for the court, the workload of other agencies within the system (such as police departments and prosecutors) had tremendous bearing on the system's capacity to punish [2]. Kleiman [15] argued there would always be more criminal offenses than punishment capacity.

Aside from system overload on resources and workload, crime rates influence the severity of sanctions [2]. While police departments may have received additional funding when crime rates fluctuated up, most other agencies did not receive extra funding during the regular fluctuation of crime rates [2]. Prosecutors had more actual influence on the courts' workload, though [2]. Primarily concerned with speed, prosecutors possessed much latitude in negotiating how individuals move through the criminal justice system after arrest [2]. This was especially true when one considered that many prosecutors were elected and needed to maintain a high conviction rate to be reelected; therefore, pleading cases out was an expedient way of keeping up conviction numbers [2].

Pontell [2] found areas in which police forces had high resources per capita also had less consistent sanctioning. Therefore, the more offenders arrested and entering the system, the less effective that system becomes [2]. Pontell [2] argued the system should be reconfigured to allow for less incarceration to provide greater crime control.

Strain on the courts is a reasonable side effect of overpopulated prisons [1]. The courts' efficiency has been threatened as much as prison populations because, although arrests have increased, prison space has not increased at an equal rate [1]. Sentencing minimization for some offenses and reducing the frequency of parole violations by raising the threshold has been one way the criminal justice system in Arkansas has attempted to minimize the overload [10]. To decrease court strain, it is reasonable to expect increased use of charge reduction and plea bargaining [1].

3. Background

Prison overcrowding was publicized in Texas during Ruiz v. Estelle [16] when the Texas Department of Correction was found unconstitutional. Improved conditions and increased staffing were ordered [16], and

state law was passed to limit admissions to the state prisons to 95 percent of actual capacity [17]. Texas is not alone with respect to overcrowding issues. While Arkansas is smaller in scale, Pulaski County serves as the primary feeder for inmates in the Arkansas prison system much like Harris County as seen in the study by [1]. Pulaski County is located in central Arkansas and is the location of the state capital, Little Rock. It is the most populous county in Arkansas, and, thus, sends the most convicted felons to the Arkansas Department of Correction. In 1990, Pulaski County had a total population of 349,660 [18], and in 2000, it had a total population of 361,474 [19]. In 1990 and 2000 respectively, Harris County had a total population of 2,818,199 and 3,400,578. Compared to Harris County, Texas, Pulaski County, Arkansas is a much smaller jurisdiction; however, the effects of an overtaxed system were expected to be the same. As illustrated below (see Table 1), both Arkansas and Texas experienced steady increases in their prison populations during the decade of study.

Table 1: Comparison of Prison Populations for Arkansas and Texas (1990 to 1999)

Arkansas		Texas	
1990	7,346	1990	45,558
1991	7,681	1991	46,784
1992	8,373	1992	48,715
1993	8,911	1993	60,457
1994	8,808	1994	91,875
1995	9,378	1995	127,559
1996	9,760	1996	130,904
1997	10,455	1997	138,641
1998	10,890	1998	143,803
1999	11,827	1999	146,930

Increased strain on the court could reasonably lead to lengthier amounts of time between arrest and sentencing. To avoid speedy trial conflicts, prosecutors could easily offer more plea bargains and/or alternative sentencing to reduce the number of offenders awaiting admission to the Arkansas Department of Correction. The researchers hypothesized these routes will increase for offenses not considered violent or drug related, which should result in increased numbers of offenders on probation or parole. Ultimately, lessened guarantees of incarceration to alleviate court and prison strain results in self-defeating outcomes in a tough on crime system.

4. Methods

This research seeks to replicate and extend the Farnworth, Golden, and Tester [1] study. Because Arkansas experienced a tremendous amount of growth in population, crime rate, and gang violence during the 1990s, this put an increasing strain on the Arkansas prison system within Pontell’s [2] paradigm of a limited capacity to punishment. Under Pontell’s [2] paradigm, overcrowding in the prison system causes stagnation in the court system and, when taken to its fullest, stops police officers from making felony arrests due to limited inmate housing.

The primary research question was whether alternative practices (such as plea bargaining or probation) were used during the period of 1990 to 1999 to reduce incarceration rates from Pulaski County, Arkansas. Specifically, there are five research questions:

- 1 – Can a limited capacity to punish explain variation in the rates at which felonies are docketed with the courts?
- 2 - Can a limited capacity to punish explain variation in the rates at which felonies result in convictions?

3 - Can a limited capacity to punish explain variation in the rates at which felonies result in charge reductions?
 4 - Can a limited capacity to punish explain variation in the rates at which felonies result in probation instead of incarceration?

5 - Can a limited capacity to punish explain variation in the length of time between docketing and disposition?
 Data from the Administrative Office of the Courts (AOC) does not contain socioeconomic information and contains limited demographic information on offenders rendering complex statistics difficult, if not impossible.

The data for this analysis were obtained from the Administrative Office of the Courts (AOC) for Arkansas, and the data is entered into a spreadsheet by various court personnel regarding all felonies charged in adult court. Data on charges were extracted from the AOC data for Pulaski County, Arkansas. The data were categorized into the following: crimes against persons, crimes against property, drug offenses, felony DWI convictions, and other. The original study did not include an “other” category; however, the researchers felt it necessary to include public disorder crimes and other unspecified crimes. The data were then examined to identify any trends in state use of probation, charge reductions, sentencing to county jails or state prisons, and how long individual cases took to process between arrest and sentencing. Cross tabulations were used to delineate the information regarding offenses by year charges were filed, and all cross tabulations were put into graphic representation.

5. Results

Increasing crime rates and greater enforcement by police and the courts has coincided with a sustained increase in cases docketed for Pulaski County, Arkansas (Table 2). This is consistent with the findings regarding Harris County, Texas [1]. The total number of docketed cases increased by 54 percent, from 3,556 to 5,484. Increases were not evenly distributed across all categories (again like Farnworth, Golden, and Tester [1]).

Table 2: Felony Cases Docketed in Pulaski County, AR (1990 to 1999)

Year	Offense Types					All Types
	Against Persons	Against Property	Drug Offenses	Felony DWI	Other	
1990	825	1531	811	164	225	3556
1991	908	1602	1020	207	277	4014
1992	900	1530	1198	176	247	4051
1993	896	1354	966	173	244	3633
1994	958	1813	1015	205	315	4306
1995	944	1600	1089	203	293	4129
1996	866	1636	1151	192	367	4212
1997	1112	1975	1255	212	382	4936
1998	1340	2034	1264	200	460	5298
1999	1285	2066	1406	191	536	5484
Totals	10034	17141	11175	1923	3346	43619
Change Since 1989						
Absolute	+460	+535	+595	+27	+311	1928
Percent	56%	35%	73%	17%	138%	54%

Excluding the “other” category for nonspecific descriptions, the drug offenses category showed the greatest increase at 73 percent, which is far lower than the increase in Harris County at 329 percent [1]. The second

largest increase was in crimes against persons at 56 percent, compared to 91 percent in Harris County [1]. Crimes against property and felony DWIs had the smallest increases at 35 and 17 percent respectively; however, felony DWIs only constituted 4.4 percent of all docketed cases. While the proportion of felony DWIs is consistent with Harris County [1], neither of the smallest increases is consistent with previous findings. The number of cases docketed was also used in the current study to analyze the incarceration rates across time and crime type.

5.1 Convictions

Exactly as found before [1], [2], conviction trends mirror docketing trends, but tend toward lower numbers overall. The absolute number of convictions of all types in Pulaski County increased by 53 percent.

Table 3: Felony Conviction Rates in Pulaski County, AR (1990 to 1999)

Year	<i>Offense Types</i>					
	<i>Against Persons</i>	<i>Against Property</i>	<i>Drug Offenses</i>	<i>Felony DWI</i>	<i>Other</i>	<i>All Types</i>
1990	58.42	72.11	72.99	56.71	57.33	67.49
1991	58.04	72.97	68.14	50.24	52.35	65.77
1992	56.89	71.96	70.53	56.25	55.47	66.5
1993	61.16	73.12	70.81	57.8	61.48	68.04
1994	58.04	70.82	70.44	57.07	58.1	66.3
1995	53.92	71.38	67.86	49.75	50.85	63.94
1996	52.66	67.54	68.98	52.08	59.13	63.44
1997	58.9	70.43	74.02	59.91	61.78	67.63
1998	61.04	73.25	70.89	54	63.04	67.99
1999	61.63	70.86	70.62	57.07	57.65	67.122
Totals	58.35	71.41	70.66	55.02	58.13	66.47
Change Since 1989						
Absolute	+3.21	-1.25	-1.37	+0.36	+0.32	-0.37
Percent	5%	-1.73%	-1.88%	0.63%	55.00%	-0.55%

Cases docketed showed a 54 percent increase, amplifying the mirrored results of previous research. Rates of conviction, calculated by dividing the number of convictions by the number of docketed cases (see Table 3) decreased by 0.55 percent throughout the years analyzed, indicating an overall increase in alternative sanctioning such as early dismissals, acquittals, and probation. Prosecutors have the discretion to dismiss charges if there is not enough evidence to proceed, or if evidence indicates the charge does not fit the crime. For example, if a prosecutor determines that a homicide was actually self-defense, he or she may decide to dismiss the charges. Acquittals, of course, occur when a defendant is found not guilty. Finally, probation may be used as a sanction instead of incarceration for cases in which it is the offender’s first offense or it is not a serious crime. This lessens the burden on the prison system for those offenders convicted of less serious crimes. The results herein suggest these alternatives experienced an increase in use through the decade studied.

5.2 Charge Reductions

Plea bargains, charge reductions, and probation have been used as avenues for states to reduce incarcerated populations [9]. These procedures have the benefit of reducing stress on the courts [1]. Exactly as found by

Farnworth, Golden, and Tester [1], charge reductions sharply declined in Pulaski County; contradicting Champion’s [9] assertion of southern states using these avenues. The absolute number of docketed cases increased by 54 percent while the number of charge reductions decreased by 99 percent. Charge reduction rates (see Table 4), calculated by dividing reductions by convictions, decreased by 100 percent in crimes against persons and crimes against property. The rate of cases docketed in Pulaski County during the period under study increased by 12.3 per 100,000 people. In Harris County, this increase was 9.9 per 100,000 people.

Table 4: Felony Charge Reduction Rates in Pulaski County, AR (1990 to 1999)

<i>Year</i>	<i>Offense Types</i>					
	<i>Against Persons</i>	<i>Against Property</i>	<i>Drug Offenses</i>	<i>Felony DWI</i>	<i>Other</i>	<i>All Types</i>
1990	40.46	18.39	23.65	3.23	13.18	23.25
1991	40.04	15.23	26.91	6.73	11.72	22.73
1992	32.81	14.62	23.55	7.07	28.47	21.31
1993	30.11	12.93	27.49	5	32.67	21.64
1994	12.23	6.78	10.91	0.85	10.93	8.9
1995	0.98	1.23	0.54	0	3.36	1.06
1996	0.22	0.09	0.13	0	0.46	0.15
1997	0.46	0.29	0.97	2.36	0	0.57
1998	0.24	0.13	0.78	0.93	0	0.33
1999	0	0	0.1	0.92	0.65	0.11
Period	13.97	6.36	10.31	2.65	7.71	8.93
Change Since 1989						
Rate	-40	-18	-24	-2	-13	-23
% Rate	-100%	-100%	-0.99%	-0.72%	-0.95%	-100%

Crimes against persons, or violent crimes, saw a 100 percent decrease in the use of charge reductions. This indicates decreased tolerance for violence in a decade of violence in Little Rock, Arkansas. Gang activity exploded during the 1990s, which increased violent crimes greatly. Crimes against property also had a 100 percent decrease in charge reduction, and the reason for this is less clear. This could be explained with lowering tolerance for gang activity or those involved in gangs, but that information is not available in the data. Charge reductions also decreased for drug offenses; however, drug laws were tightened nationally in the 1980s and so, were already severe. The decrease here is small due to there being little range for reducing drug charges.

5.3 Probation

Only recently in Arkansas have the probation and parole systems were expanded to allow alternative sentencing on the front end and early release mechanisms on the back end [20]. Therefore, the researchers expected to find increases in probation numbers during the period under study, but increases found were staggering (see Table 5).

Table 5: Felony Probation Rates in Pulaski County, AR (1990 to 1999)

Year	Offense Types					
	Against Persons	Against Property	Drug Offenses	Felony DWI	Other	All Types
1990	100.00	436.00	144.00	0.00	24.00	704.00
1991	116.00	473.00	219.00	0.00	28.00	836.00
1992	124.00	576.00	395.00	3.00	36.00	1134.00
1993	186.00	589.00	389.00	5.00	59.00	1228.00
1994	178.00	733.00	407.00	1.00	93.00	1412.00
1995	222.00	762.00	460.00	0.00	70.00	1514.00
1996	216.00	763.00	568.00	0.00	103.00	1650.00
1997	295.00	986.00	651.00	2.00	120.00	2054.00
1998	458.00	952.00	650.00	1.00	144.00	2205.00
1999	418.00	926.00	688.00	0.00	153.00	2185.00
Period	2313.00	7196.00	4571.00	12.00	830.00	14922.00
Change Since 1989						
Rate	+32	+24	+44	0	+31	+30
% Rate	+154%	+60%	+181%	+113%	+166%	+102%

Mirroring national trends in probation [21], [22], [12], [24], [11], Pulaski County showed sharp increases in the use of probation, including a 154 percent in crimes against persons, 60 percent in crimes against property, 181 percent in drug offenses, and 113 percent in felony DWI cases. Arkansas actually increased the use of probation by 102 percent overall during the years studied.

5.4 Time in Processing

Farnworth, Golden, and Test [1] found an increase in length of processing (from docketing to disposition) during their period of study. In 1980, cases requiring longer than four months to process comprised 27 percent of all studied cases [1]. This increased to 65 percent by 1988 [1]. In Pulaski County, the trend was somewhat different. At the beginning of the analyzed time period (1990), nearly 31 percent of cases took longer than four months (see Table 6).

Table 6: Cases Requiring More Than Four Months to Disposition

Year	N	Percent of Cases Disposed
1990	1085	30.51%
1991	1152	28.70%
1992	1132	27.94%
1993	775	20.78%
1994	712	16.54%
1995	278	6.73%
1996	653	15.50%
1997	911	18.46%
1998	1095	20.67%
1999	1253	22.85%
Average, 1990-1994 = 24.89%		
Average, 1995-1999 = 16.84%		

There was a steady decline until 1995 when only 6.7 percent took longer than four months. “Lengthy” dispositions began rising again in 1996 (15.5 percent) and continued to rise through the end of the studied period to 22.9 percent in 1999.

6. Conclusion

While some of the findings of the current study supported findings of Farnworth, Golden, and Tester [1], other findings did not. For example, findings regarding cases docketed, conviction rates, and charge reductions in Pulaski County during the 1990s followed the same trends as Harris County during the 1980s. There were more cases docketed, more convictions, and fewer charge reductions in both counties. Research questions one and two are answered in the affirmative as all three of these outcomes had a negative relationship with the limited capacity to punish. As capacity declined, the rates of docketing and convictions increased. Research question three is answered with a positive relationship between charge reductions and the limited capacity to punish; as capacity decreases, so does the use of charge reductions. Champion’s [9] findings that Kentucky, Tennessee, and Virginia illustrated increased use of charge reduction were not supported by either the Harris County study [1] or the current study. Pulaski County lends support to this finding in southern states.

The current research promotes further research into charge reductions and the impact they may have on public safety. For example, what factors impact the use of charge reductions? Demographic variables were not within the scope of the current study; however, socioeconomic status, race/ethnicity, and prior criminal history might all impact charge reduction usage [24]. Another avenue of study could be to analyze what impact, if any, cases in which charge reduction was used have on public safety. There is little to no previous literature regarding this, though there is research regarding the impact on public safety when offenders are released from prison early through parole. Does reducing a charge, such as 1st degree battery to 3rd degree battery, increase or decrease crime rates?

Pulaski County mimicked national probation rates in increase of use, while Harris County actually reduced the rate at which probation was used in lieu of incarceration. In other words, research question four was answered with another positive relationship: the more limited the capacity to punish, the less probation was used instead of incarceration. Probation is another platform for future research. Does the increased use of probation decrease public safety? It would be interesting to analyze how many probationers convicted of violent crimes continue to offend in a violent manner. This is another area in which there is little recent literature, though there are some older studies available [25], [26].

Case processing time in Harris County showed an overall increase throughout the period of study, and Pulaski County demonstrated a continuous decrease in processing time until 1995 followed by a continuous increase until 1999. While the most glaring difference between the original study and the replication, this answer research question five. Pulaski County actually sped processing time in response to court stress, resulting in a negative relationship between the limited capacity to punish and length processing times between docketing and disposition. This is an important issue in the criminal justice system as longer processing times result in increased jail populations. Those offenders who are ineligible for bail or unable to post bail must wait in county jail for trial. An in-depth analysis of Arkansas jails, comparing those awaiting trial and those awaiting transfer to prison, could provide more illumination regarding how much jail populations are impacted by processing times.

Arkansas needs to develop more diversionary programs to combat incarceration on the front end. Drug crime policies, not only to better balance severity, but need to account for individuals with substance abuse problems. Treatment instead of incarceration could not only decrease the flow of state prison inmates, it

could help reduce drug crimes. Treatment must be made a priority. New Jersey reduced prison populations by 20 percent over a decade by eliminating mandatory sentences for selling drugs near schools; however, this policy change did not necessarily change drug sales or use [27]. California has saved over one billion dollar between 2000 and 2006 by offering rehabilitative services over incarceration for drug crimes [27]. Future research could include analyzing whether specialty courts, such as drug courts, have influenced or could be used to a greater extent to decrease prison populations. Because drug crimes were significant in the current study, an expansion in this direction would be natural for future research.

Though less sophisticated statistical analyses were used, several policy implications quickly became evident. The catch when changing policies or laws regarding alternative sentencing programs is this: "public policy makers need to be smart investors: some programs work, some do not, and careful analysis is needed" [28]. Another alternative sentencing program that should be enhanced is probation. Increasing resources and staff for probationers' supervision and community-based programs could reduce incarceration rates significantly. Nationally, probationers have a high rate of failure due to limited resources and large caseloads [29].

Politicians, guided by constituents, have alternated between demands for harsher punishment or for greater rehabilitation efforts [8]. Overall, the general public seems to believe in the ideas of "keep dangerous criminals off the street," and, "teach them a lesson" [1]. A national decrease in crime rates beginning in the 1990s has been attributed by some to increased incarceration usage [30]; but the current study with increased probation use does not seem to support this proposition.

The current research is important as it demonstrates a continuing trend in mass incarceration. Researchers have realized for decades that continuing to build prisons is not the answer to this country's crime control problem or inmate management. The United States has, proportionally, one of the largest prison populations in the world. Research like the current study is needed to demonstrate to policymakers how little has changed in the last 20 years other than increasing numbers and strain on the criminal justice system as a whole. It is also important for determining what specific avenues of research should be pursued.

10. References

- [1] Farnworth, Margaret, James Golden, and Kimberly Tester. 1991. "Felony Court Processing in an Urban County: Coping with a "Limited Capacity to Punish"." *Journal of Criminal Justice* 19: 421-438.
- [2] Pontell, Henry N. 1984. *A Capacity to Punish: The Ecology of Crime and Punishment*. Bloomington, IN: Indiana University Press.
- [3] Alexander, Michelle. 2010. "The War on Drugs and the New Jim Crow." *Race, Poverty, and the Environment* 17: 75-77.
- [4] Drucker, Ernest. 2013. *A Plague of Prisons: The Epidemiology of Mass Incarceration in America*. New York, NY: The New Press.
- [5] Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York, NY: New Press.
- [6] Gray, James P. 2001. *Why Our Drug Law Have Failed and What We Can Do About It: A Judicial Indictment of the War on Drugs*. Philadelphia, PA: Temple University Press.
- [7] Stanberry, Artemesia, and David Montague. 2011. *Travesty of Justice: The Politics of Crack Cocaine and the Dilemma of the Congressional Black Caucus*. Dubuque, IA: Kendall Hunt Publishing Company.
- [8] Currie, Elliot. 2013. *Crime and Punishment in America*. New York, NY: Picador.
- [9] Champion, Dean J. 1988. "Felony Plea Bargaining and Probation: A Growing Judicial and Prosecutorial Dilemma." *Journal of Criminal Justice* 17: 253-263.
- [10] Porter, Nicole. 2012. *The State of Sentencing in 2011: Developments in Policy and Practice*. Washington DC: The Sentencing Project.

- [11] Stephan, James J., and Jennifer C. Karberg. 2003. *Census of State and Federal Correctional Facilities, 2000*. Washington DC: U.S. Department of Justice.
- [12] Stephan, James J. 1992. *Census of State and Federal Correctional Facilities, 1990*. Washington DC: U.S. Department of Justice.
- [13] Zimring, Franklin E., and Gordon Hawkins. 1995. *Incapacitation: Penal Confinement and the Restraint of Crime*. New York, NY: Oxford University Press.
- [14] Nagin, Daniel S. 1998. "Criminal Deterrence Research at the Outset of the Twenty-First Century." *Crime and Justice* 23: 1-42.
- [15] Kleiman, Mark A.R. 2009. *When Brute Force Fails: How to Have Less Crime and Less Punishment*. Princeton, NJ: Princeton University Press.
- [16] *Ruiz v. Estelle*. 1980. 503 F. Supp. 1265 (United States District Court for the Southern District of Texas)
- [17] Crouch, Ben M., and James W. Marquart. 1990. "Resolving the Paradox of Reform: Litigation, Prisoner Violence, and Perceptions of Risk." *Justice Quarterly* 7: 103-123.
- [18] Forstall, Richard L. 1995. *Population of Counties by Decennial Census: 1900 to 1990*. Washington DC: US Bureau of the Census.
- [19] U.S. Census Bureau. 2012. *State and County QuickFacts*. Washington DC: U.S. Census Bureau.
- [20] Choate, Laura. 2013. *Prison Reform in The Encyclopedia of Arkansas History and Culture*. Accessed October 14, 2013. <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=4159>.
- [21] Li, Xiao, Julie Taylor, Wesley T. Church II, Sabrina Thomas, and Tracy Wharton. 2011. "Exploring the Potential for Race and Gender Bias in Violations of Probation Petitions." *Journal of Forensic Social Work* 1: 124-131.
- [22] Phelps, Michelle S. 2013. "The Paradox of Probation: Community Supervision in the Age of Mass Incarceration." *Law and Policy* 35: 51-80.
- [23] Stephan, James J. 1997. *Census of State and Federal Correctional Facilities, 1995*. Washington D.C.: Bureau of Justice Statistics.
- [24] Holmes, Malcolm D., Howard C. Daudistel, and Ronald A. Farrell. 1987. "Determinants of Charge Reductions and Final Dispositions in Cases of Burglary and Robbery." *Journal of Research in Crime and Delinquency* 24: 233-254.
- [25] Petersilia, Joan, Susan Turner, James Kahan, and Joyce Peterson. 1985. "Executive Summary of Rand's Study, "Granting Felons Probation: Public Risks and Alternatives"." *Crime and Delinquency* 31: 379-392.
- [26] Hudson, Barbara. 2001. "Human Rights, Public Safety and the Probation Service: Defending Justice in the Risk Society." *The Howard Journal of Criminal Justice* 40: 103-113.
- [27] King, Jaquelyn. 2012. "It's All Political, But Public Policy is Irrational." *Pepperdine Policy Review* 5: Article 7.
- [28] Drake, Elizabeth K., Steve Aos, and Marna G. Miller. 2009. "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State." *Victims and Offenders* 4: 170-196.
- [29] Durlauf, Steven N., and Daniel S. Nagin. 2011. "Imprisonment and Crime: Can Both be Reduced?" *Criminology and Public Policy* 10: 13-54.
- [30] Zimring, Franklin E. 2007. *The Great American Crime Decline*. New York, NY: Oxford University Press.