

Key Takeaways about USSC's Length of Incarceration and Recidivism Report (2022)

Prepared by Federal Public and Community Defenders 8/1/2022



What the Commission says:
Sentences greater than 60 months have a specific deterrent effect.

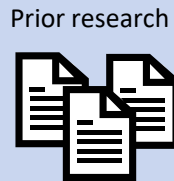
What defense attorneys need to know to critically analyze the Report:
Errors and missing information can influence the interpretation of the results.¹



1

Results Unsupported by the Literature

In the broader field of relevant literature, the conclusion that long terms of imprisonment act as a specific deterrence is an outlier.



The Report fails to accurately represent broad trends of the prior research on sentence lengths.

The Report also omits relevant, but contradictory, prior research on the effects of sentence length on recidivism.

EXAMPLE QUOTES FROM THE LITERATURE

Rhodes et al. (2018)
(former USSC research dir., studying federal sentences)

"From a policy perspective, prison length of stay can be reduced with no effects on recidivism."

Snodgrass et al. (2011)

"[N]o evidence is found that longer periods of incarceration alter the rate of future conviction."

Nagin et al. (2009)

"[T]he great majority of studies point to a null or criminogenic effect of the prison experience on subsequent offending."

The Report does not address the conflict between the current results and previous USSC research. From a 2017 USSC publication:

"[A]mong all offenders sentenced to one year or more of imprisonment, there was no clear association between the length of sentence and the rearrest rate."²

2

Use of Flawed Variables

Recidivism is defined in the Report as any new arrest within 8 years of release which is a flawed proxy to actual crime. "Recidivism" includes:

- Technical violations
- Minor offenses
- Erroneous arrests

As arrests are known to be racially biased, this definition will also be biased.

Under this definition of recidivism, these two scenarios are treated as equal recidivism:



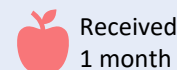
Immediate arrest for serious offense(s)



Arrest for a technical violation 7 years after release

Comparison groups were defined as any individual with a sentence length shorter than the study group. This introduced different sentencing length ranges for each comparison group.

Under this design, the model for >120-month sentences allows for the comparison between the following individuals:



Received 1 month



Received 160 months

The study group with >24–36-month sentences were compared to individuals with ≤24-month sentences, while the study group with >120-month sentences were compared to individuals with ≤120-month sentences.



Correlation ≠ Causation

The most this type of study can suggest is correlation.

The Report cannot place any emphasis on the length of incarceration as the sole, or even prominent, predictive factor.

The Report did not control for many predictors of recidivism external to sentence length. These include differences in prison experiences and events that intervened following release that are relevant to recidivist outcomes.

PREDICTOR

Prison term and release



PREDICTORS NOT INCLUDED



Health



Mental health



Neighborhood



Addiction



Employment opportunities



Stable/safe housing

OUTCOME

Rearrest



Misleading Results

The Report presents its findings in a misleading and exaggerated way using “odds ratios.”

The Report provides comparisons in odds rather than percentages. The difference in actual recidivism rates is far less than the difference between odds.

The Report states that odds of recidivism compared to those with shorter sentences were (a) 18% lower for those sentenced between 60-120 months; and (b) 29% lower for those sentenced over 120 months. However, differences in odds are not differences in percentages.

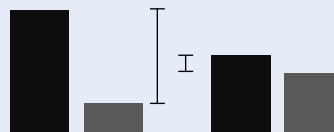
Data needed for calculating percentage differences are not provided. To demonstrate that odds ratios can exaggerate much lower percentage differences, below is an illustration using a 50% recidivism rate found in another USSC publication:³

Example exaggerated results

	>60-120	>120
Hypothetical base recidivism rate	50%	50%
Odds difference given in Report	18%	29%
Calculated percentage difference (based on hypothetical recidivism rate)	5%	8%

Differences for >120

Odds: 29% Percent: 8%



RESULTS THAT WERE MINIMIZED

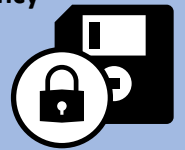
The Report does not equally emphasize the null effects on recidivism from 0 to 60 months. This finding suggests sentences below 60 months can be reduced with no effect on recidivism.

Neither enhancements from weapons adjustments nor reductions from safety valve significantly influenced recidivism.

Lack of Transparency

The Report raises serious transparency concerns.

Independent evaluation of the Report is impossible without underlying data, which USSC has not released.



The Report indicates a 30% loss of data due to exclusion criteria, leading to a biased sample. The groups most likely to be impacted by the loss of data are both the 60-120 and the >120 months cohorts.

Contextual information about recidivist events would have been useful: offense type, severity, frequency, and imminence.

Inconsistent with ethical norms in research, the Report did not acknowledge important limitations to consider when interpreting its conclusions.

Endnotes

¹ A full critique of this report is available here: https://www.fd.org/system/files/sentencing/incarcerati_on_and_recidivism_factsheet_2022_0.pdf.

² USSC, *The Effects of Aging on Recidivism Among Federal Offenders 3* (2017).

³ USSC, *Recidivism of Federal Drug Trafficking Offenders Released in 2010 36* (2022).