

Arguing in Favor of a Lesser Period of Post-Release Supervision

In the early days of resentencing under the 2009 DLRA we are finding that many judges are automatically imposing the maximum allowable post-release supervision. To avoid this judicial knee-jerk reaction, which seems to be predicated upon the assumption that the more supervision the better, we suggest the following argument that might challenge the judge to think about the purpose of supervision.

Two of the foremost authorities on the subjects of parole and reentry can be cited to support the argument that a range of between one and two years is the most appropriate and critical period of supervision. Both Joan Petersilia in her book *When Prisoners Come Home: Parole and Prisoner Reentry* and Jeremy Travis in his book *But They All Come Back: Facing the Challenges of Prisoner Reentry* look at the issue of recidivism after release from prison and help illuminate what is an appropriate period of supervision. In their respective books they both review the results of the Bureau of Justice Statistics study which is the largest recidivism study ever conducted in the United States. The report, *Recidivism of Prisoners Released in 1994* was written by Langan and Levin (2002) and is the first major recidivism study in more than a decade.

After reviewing the data Petersilia and Travis both conclude that the first six months to a year is the critical period for recidivism and the critical period for supervision. As Petersilia points out, “[r]isk of recidivism was highest during the year after release.” She further notes that the BJS “study also clearly documented that the first year after release from prison is the period when most recidivism occurs, accounting for nearly two-thirds of *all* the recidivism events in the first three years.” (p. 139-141). The first six months of release are the most critical. It is in this time period that almost 45% of the rearrests occurred out of all the arrest that occurred in the entire three year post-release period . (Langan and Levin (2002) p. 3).

While the first six months accounts for nearly half of all rearrests in the three year follow-up, the first two years account for vast majority of all the rearrests. It is within this first two years of release that fully 87% of all rearrests occur out of the 3 year follow-up. (Langa and Levin (2002) p. 3).

Petersilia takes note of the implications of the data from the BJS study.

The results also suggest that the most intensive services and surveillance should begin immediately upon release and be frontloaded in the first six months to the first year. These recidivism results also have important implications for reconsidering how long parole should last... (p. 153)

In light of research, supervision in the 1 to 2 year range seems to target the appropriate period, providing support services and surveillance during the most critical time. Although a simplistic judicial reaction might be to impose the maximum period of post-release supervision allowed under the law, it is neither a good use of resources nor sound sentencing policy.

Of course, it may be that your motion for resentencing is before a judge who is willing to impose a shorter determinate sentence in exchange for a longer period of post-release supervision. In such a case, it makes sense to use a longer period of post-release supervision to leverage your negotiations for a shorter determinate sentence.