



**The 1994 Crime Bill
Legacy and Lessons**

Part One: Impacts on Prison Populations

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ABOUT THE COVER

The cover design was created by adults in custody working at Oregon Corrections Enterprises (OCE). The mission of OCE, in partnership with the Oregon Department of Corrections, is to promote public safety by providing adults in custody with work and training opportunities in a self-sustaining organization.

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Key Findings

- Many states already had enhanced sentences for people convicted of violent offenses by the time the 1994 Crime Bill was enacted, and few states appear to have changed their sentencing and release policies in order to secure federal prison funding once it became available.
- Congress appropriated \$3 billion in funding for grant programs to expand prison capacity; the funding supported the construction of about 50,000 prison beds, representing about 4% of state prison capacity at the time.
- The rate of state prisoner growth slowed from about 7% annually in the years preceding the Crime Bill's incentive funding to less than 3% annually while such funding was available and during the years that followed.

Federal Incentives for Prison Expansion

Enacted in the wake of historic peaks in violence and public fear of crime, the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill)¹ included provisions to directly and indirectly affect the size and composition of state and federal prison populations. Among these were measures that expanded the federal death penalty to cover roughly 60 offenses, authorized federal adult prosecution of persons age 13 and older charged with certain violent crimes, required mandatory life imprisonment without the possibility of parole for people in the federal system with three or more convictions for serious violent felonies or drug trafficking crimes (“three-strikes” cases), required registration of sexually violent offenders upon their release from state prison, and authorized funds to reimburse states for incarcerating illegal criminal aliens.

The provisions most directly related to state prison populations were those authorizing the creation of the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) Incentive Grant Programs. These provided funds to states and U.S. territories to increase their

capacity to incarcerate people convicted of violent offenses.² The VOI/TIS programs were based largely on two crime control ideas: that a large gap between imposed sentences and actual time served undermined the deterrent effects of imprisonment, and that actual time served for violent offenders was not long enough to adequately punish or incapacitate them.

Belief in the need for and efficacy of more incarceration of people convicted of violent crimes and greater certainty in sentencing was widespread in the run-up to the Crime Bill. These ideas may have been rooted in “law and order” responses to civil disorder of an earlier decade,³ but national political discourse in the early 1990s strongly advocated harsher punishments for violent offenders. Members of Congress of both parties advocated taking more violent offenders off the streets for longer periods of time, by “locking them up and throwing away the key.” Terms such as “superpredators,” coined by academics but used by politicians to evoke fear of, particularly, young, black men, were used to support the view that more incarceration was

essential to produce greater public safety. The clear message from the federal government that accompanied the launch of the VOI/TIS programs was that incapacitating violent offenders for longer and more certain prison terms was a necessary and effective crime control strategy.

The VOI/TIS grant programs, therefore, aimed to support the expansion of prison capacity. Under VOI/TIS, grants were awarded to states to enable them to incarcerate more violent offenders for longer periods, either by building or modifying facilities. The programs also permitted the use of funding for alternative facilities, such as boot camps, if their construction or expansion freed up conventional prison space for people sentenced for violent crimes.

The VOI/TIS grants were both need-based and merit-based.⁴ States could receive funding through either one or both of the programs, and both used formulas based on violent crime rates to set grant amounts. Because of the need base of the programs, more populous, higher crime states generally received more funding than smaller states. For example, a state with a high rate of violent crime that did not adopt TIS legislation could receive more funding than a smaller or even comparably sized state that adopted TIS legislation.

To receive VOI grants, states were not required to demonstrate that people serving prison terms for violent crimes served a specific percentage of the imposed sentence. Instead, states were required to provide assurances that they had implemented, or would put in place, policies ensuring that violent offenders served a substantial portion of their “sufficiently severe” imposed sentences, and that prison time served was “appropriately related” to the person and long enough to protect the public.

By contrast, under the TIS program states could receive grants only if they enacted – or already had adopted – laws or policies that either required people convicted of violent offenses to serve 85% of their court-ordered sentences or that had the same result.⁵ For states with an indeterminate sentencing structure, the 1996 Appropriations Act defined the baseline for determining the 85% of sentence served as the “prison term established under the state’s sentencing and release guidelines.”⁶

The remainder of this paper examines the observable effects of the federal funding on state prison populations. The extent to which the political rhetoric of national leaders shaped attitudes, policies, and practices in the states in ways that affected their responses to VOI/TIS, and their sentencing and corrections policies more generally, is not discussed in this report. It is plausible that, being aware of national-level debates, state legislatures enacted laws in anticipation of the VOI/TIS provisions and funding. On the other hand, it is plausible that congressional deliberations reflected sentiments and practices already in place in the states and found their rhetorical safe spaces within the confines of the tougher sentencing laws that already had been enacted.

Many States Had Adopted Tougher Sentencing Standards Prior to Crime Bill Enactment

By limiting grants to states with sentencing laws incorporating an 85% rule, the TIS program was designed to encourage states to increase the percentage of imposed sentences to be served by violent offenders. The extent to which the TIS grant program influenced states to adopt TIS sentencing laws appears to be limited. One reason for this is that from the mid-1980s through the mid-1990s, sentencing reforms in the states already had focused

on increasing the certainty and severity of sentencing, and many states had adopted or were adopting such reforms before or at the time the Crime Bill was passed:⁷

- According to a RAND Corporation evaluation of the TIS program, 24 of the 31 jurisdictions receiving TIS funding between 1996 and 1999 had enacted “TIS-qualifying” legislation in the years prior to the grant program’s launch in 1996. Thirteen of these enacted TIS legislation before or during 1994, 11 in 1995, and seven in 1996 or later.⁸
- An Urban Institute study showed that 34 states had some form of TIS provisions in place by 1994, the year the Crime Bill was passed. Some of these states made modifications to their statutes to align them more closely with TIS’s 85% rule. The study also found that nine additional states introduced TIS legislation after 1994, but some of these launched their legislative efforts before the Crime Bill’s enactment.⁹
- Based on its survey of the 27 states that had received TIS funding by the second year of the grant program (1997), the Government Accountability Office (GAO) reported that four states said that the federal grant funds were a major factor in passing TIS laws. Twelve states reported that the grant program was not a factor; in these states, TIS laws were enacted before 1995 or the legislative activity resulting in their TIS law began before the Crime Bill. Eleven of the TIS-funded states described the TIS grant program as a partial factor, but not the major factor.¹⁰ States that had not received funding by 1997 reported that high prison construction and operating costs, along with existing sentencing practices that were working well, were the primary reasons they had not sought TIS grants.

The state legislative activity occurred during a period of increasing crime and at a time when more than half of Americans ranked crime as the nation’s most pressing challenge. The public concerns, coupled with the rising crime rates of the late 1980s and early 1990s, were reflected in “get tough” pronouncements emanating from the Clinton Administration, messages that reinforced the political context in the states.

Most states that received TIS funding had passed their TIS legislation before the Crime Bill or had already begun legislative activity to modify their sentencing laws. The grant program contributed to legislative changes in some states, but where it was a partial contributor, it was not reportedly the primary reason for changing legislation. In a minority of states, the grant program provided the inducement to change sentencing laws and align them with the federal TIS provisions.

The VOI/TIS Grant Programs Were Funded at a Lower Level Than Authorized

The Crime Bill authorized \$9.7 billion for VOI/TIS, but funding ultimately fell well short of that mark. Between 1996 and 2001, Congress appropriated \$3 billion – less than one-third of the authorized amount – for the two grant programs, and the Corrections Program Office (the administering agency) awarded VOI/TIS grants totaling \$2.7 billion, or 28% of the authorized amount. No funds were appropriated for the VOI/TIS programs after fiscal year 2001.¹¹

It is not unusual for actual appropriations to fall below authorized amounts in federal programs, and the difference can be viewed as an indication of congressional and executive branch priorities. By this measure, the VOI/TIS programs were considered a lower priority

than other Crime Bill programs, such as the State Criminal Alien Assistance Program and grants under the Violence Against Women Act. For these two programs, appropriations exceeded 100% of originally authorized amounts.¹² VOI/TIS also was funded at lower levels than another comparably sized Crime Bill program, the Community Oriented Policing Services (COPS) program. COPS was authorized at \$8.8 billion for the years 1996 through 2000, and by year 2000, more than \$7.6 billion – or 86% of the authorized amounts – had been awarded.¹³

After peaking at \$795 million in FY 1997, the second year of the grant programs, the annual amount of VOI/TIS funds awarded declined annually, with \$435 million awarded in 2001, the final grant year. By the time VOI/TIS funding ended,¹⁴ half of the monies were allocated for VOI grants and the other half covered TIS awards.

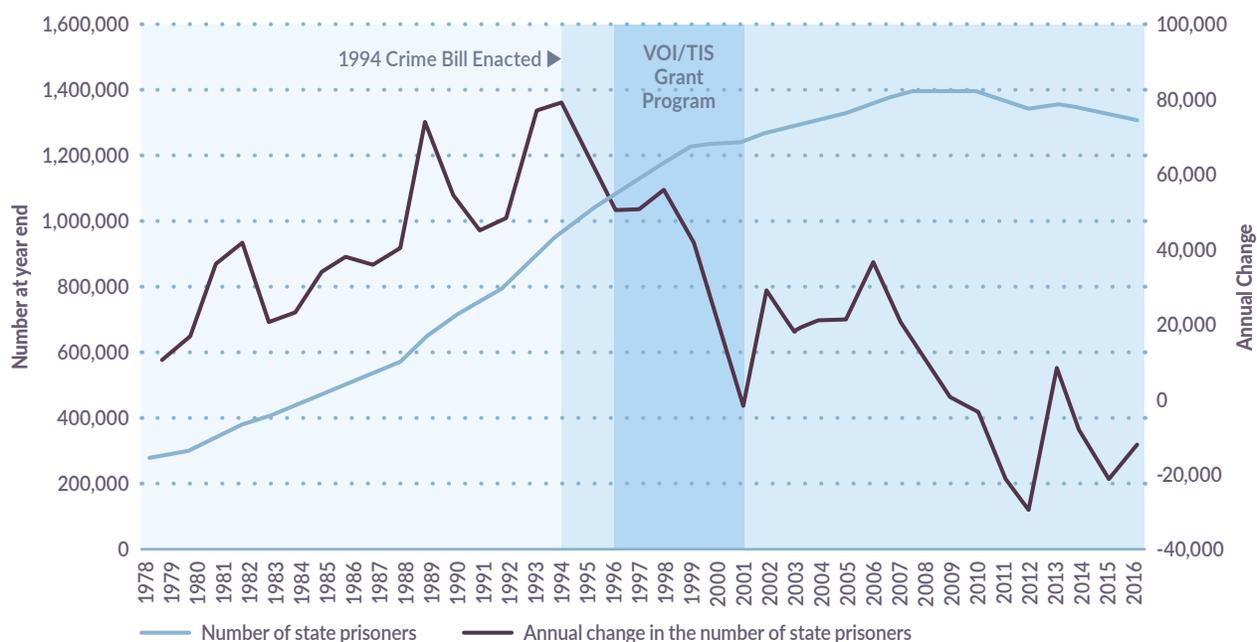
In total, VOI/TIS funding accounted for about 1.5% of total state corrections expenditures between 1996 and 2001. The VOI/TIS programs funded about 50,000 additional

prison beds,¹⁵ and about 25,000 were still under construction at the time the RAND evaluation of VOI/TIS was completed.¹⁶ Bureau of Justice Statistics estimates put state prison capacity at between 1 million and 1.2 million beds in 2001. Assuming the beds under construction came on line by 2001, VOI/TIS funding would have contributed about 4% to state prison capacity. In its TIS evaluation, RAND found that in more than half of the states receiving VOI/TIS funding, capacity increased by less than 4%. Larger percentage increases occurred in states with smaller prison populations and lower capacity.

Following the VOI/TIS Grant Programs, Growth in State Prison Populations Slowed

The Crime Bill and VOI/TIS grant programs came at the end of the most rapid period of growth in state prison populations. Immediately following the enactment of the Crime Bill and during the VOI/TIS grant period, growth in the number of people in state prisons slowed (Figure 1). The most

Figure 1: State Prison Growth Slowed Following Crime Bill Funding Incentives



rapid increase in state prison populations occurred during the early 1990s. Between 1990 and 1996, the number of state prisoners increased by more than 60,000 per year on average (more than 7% growth annually), up from about 39,000 per year on average during the 1980s. The pre-Crime Bill growth in state prison populations reflected the increasing severity of state sentencing laws for violent offenders and the escalation of enforcement of drug laws dating back to the 1970s, a trend that intensified in the 1980s and 1990s.¹⁷

During the period of the VOI/TIS grant programs, the average annual change in state prison populations fell to about 30,000 per year (less than 3% growth annually), and it continued to drop in subsequent years. The state prison population peaked in 2009 and at year-end 2017 there were about 1.3 million people in state prisons, 100,000 below the peak.¹⁸

The change in the growth rate of state prisoners at the time of and during the Crime Bill grant programs does not mean nor imply that the Crime Bill caused the growth rate to slow. It is not known what the prison population would have been without the VOI/TIS grant programs. Rather, the change in state prison populations before and after the Crime Bill suggests that, in general, states already had begun to implement more severe sentencing laws that increased both admissions and length of stay, and that by the time of the Crime Bill and its grant programs, those state reforms had begun to have their biggest impacts on prison population growth.

Impacts of the TIS Grant Program on Time Served

The TIS grant program was intended primarily to increase the percentage of the imposed sentence that violent offenders served in prison. TIS states had a higher percentage of prison admissions for violent crimes than

did non-TIS states. Although tracing the effects of TIS grants on prison populations is complicated, TIS funding appears to be associated with increases in the time that people sentenced for violent offenses spend behind bars. RAND's nationwide assessment in 2001, for example, revealed that while violent offenders in TIS states were locked up for longer periods between 1993 and 1997, the months served in non-TIS states dropped slightly.¹⁹

However, separating out the effects of the VOI/TIS grants on length of stay is complicated by several factors. These include increases in length of stay due to states' passage of TIS laws before the Crime Bill;²⁰ spillover effects of TIS that led to increases in sentences for TIS-ineligible misdemeanor violent crimes;²¹ and other state sentencing reforms, such as sentencing guidelines and three-strikes laws implemented during the 1990s.²² Efforts to account for the contribution of several stages of the criminal justice process to growth in imprisonment show that increases in time served accounted for most of the growth in the prison population from 1980 to 1996,²³ a period prior to the availability of VOI/TIS grant funds. Since 2000, however, time served has not significantly increased and its contribution to prison growth has been modest.²⁴

Conclusion

The VOI/TIS grant programs were intended to increase the severity of punishment by increasing the percentage of sentence served by people incarcerated for violent offenses. While isolating the impact of the programs is difficult, available research and data indicate that the extent to which the programs incentivized states to adopt TIS laws was limited at best. Political appetite for funding states to expand prison capacity waned,

as Congress did not fully fund the VOI/TIS programs; hence, their impact on prison expansion was smaller than if it had been fully funded. But, because of the matching financial obligations associated with TIS funding, it is unclear whether states would have applied for additional TIS funds had they been available. Further, while it is difficult to assess the extent to which states may have adopted tougher sentencing laws in anticipation of future federal funding, the available evidence suggests it is unlikely that many did.

The state prison population growth rate fell by half in the immediate aftermath of the Crime Bill's enactment, and the growth rate continued to decline during the period the VOI/TIS grant programs were active and in the following years as well. The VOI/TIS grant

programs were intended to encourage states to increase the amount of prison time served by those incarcerated for violent crimes. But the major impact of such increases on prison population growth occurred prior to the implementation of the grant programs. This reflects the fact that many states, likely encouraged by national-level rhetoric about the wisdom of "tough-on-crime" legislation, adopted their own TIS sentencing reforms prior to the Crime Bill.

In sum, the VOI/TIS programs reinforced policy trends regarding sentencing severity, especially for violent crimes, that existed prior to its launch. More than spurring state-level changes, the programs appear to have aligned federal policy with what states already were doing on their own.

Notes

- ¹ Violent Crime Control and Law Enforcement Act, H.R. 3355 (1994).
- ² U.S. Department of Justice, Bureau of Justice Statistics, *Truth in sentencing in state prison*, by Paula M. Ditton, and Doris James Wilson, (Washington, DC, 1999).
- ³ Jeremy Travis, Bruce Western, and Steve Redburn, eds., *The growth of incarceration in the United States: Exploring causes and consequences*, (Washington, DC: National Academies Press, 2014). Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: The New Press, 2010.
- ⁴ RAND Corporation, *National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program*, by Susan Turner et. al, (Washington, DC: Washington, DC: US Department of Justice, National Institute of Justice, 2001), 53.
- ⁵ Violent Crime Control and Law Enforcement Act (1994).
- ⁶ Omnibus Consolidated Rescissions and Appropriations Act, Pub. L. 104–134 (1996).
- ⁷ Travis, Jeremy, Bruce Western, and Steve Redburn, eds., *The growth of incarceration in the United States: Exploring causes and consequences*, (Washington, DC: National Academies Press, 2014).
- ⁸ RAND Corporation, *National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program*. See table 5.3. The 31 jurisdictions included 30 states plus the District of Columbia.
- ⁹ William J. Sabol et al., *Influences of Truth-in-Sentencing reforms on changes in states' sentencing practices and prison populations*, (Washington, DC: The Urban Institute, 2002).
- ¹⁰ General Accounting Office, *Truth in Sentencing: Availability of federal grants influenced by laws in some states*, (Washington, DC: U.S. General Accounting Office, 1998).
- ¹¹ Bureau of Justice Statistics, *Truth in sentencing in state prison*.
- ¹² RAND Corporation, *National evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program*, 45.
- ¹³ RAND Corporation, cited above.
- ¹⁴ Although 2001 marks the end of appropriations, some jurisdictions continued to spend remaining funds through 2009. See U.S. Department of Justice, Bureau of Justice Assistance, *Report to Congress: Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program*, (Washington, DC, 2012).
- ¹⁵ Susan Turner et al., "An evaluation of the federal government's violent offender incarceration and truth-in-sentencing incentive grants," *The Prison Journal*, 86, no. 3 (2006).
- ¹⁶ Bureau of Justice Statistics, *Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program*.
- ¹⁷ Travis, et al. 2014 (previously cited).
- ¹⁸ U.S. Department of Justice, Bureau of Justice Statistics, *Prisoners in 2017*, Jennifer Bronson, Ph.D., and E. Ann Carson, (Washington, DC, 2019).
- ¹⁹ RAND Corporation, *National evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program*.
- ²⁰ Joanna Shephard, "Police, prosecutors, criminals, and determinate sentencing: The truth about truth-in-sentencing laws," *The Journal of Law and Economics*, 45, no. 2 (2002).
- ²¹ Emily G. Owens, "Truthiness in punishment: The far reach of Truth-in-Sentencing laws in state courts," *Journal of Empirical Legal Studies*, 8 no. S1 (2011).
- ²² Zhang, Yan & Maxwell, Christopher D. & Vaughn, Michael S., 2009. The impact of state sentencing policies on the U.S. prison population. *Journal of Criminal Justice*, Vol. 37, pp. 190-199.
- ²³ Alfred Blumstein and Allen J. Beck, 1999. Growth in U.S. prisons. *Crime and Justice*, Vol. 26, pp .17-61.
- ²⁴ Jeremy Travis et al., 2014. (Previously cited.) Chapter 2. John Pfaff, 2013. The micro and macro causes of prison growth. 28 *Georgia State Univ. Law Rev* (2013); and John Pfaff, 2017. *Locked In*. New York: Basic Books.