

Understanding the Fall of Sentencing Credits in Michigan Prisons: How False Narratives of Crime & Violence Fueled Mass Incarceration

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Introduction

Much like the rest of the country, Michigan is ripe for policy reform that will significantly reduce reliance on incarceration. Attempts at reforms in the past have typically resulted in either making the problem of mass incarceration worse or have simply not been very effective. In the midst of a global pandemic and a racial justice reckoning it seems that there is more ‘mainstream’ discussion than ever before about what steps to take next. Through the national discourse and social reflection that is currently happening, one thing is clear: complex social problems call for holistic solutions that address root causes. This essay frames specific policy decisions in Michigan’s criminal legal system within the social contexts that wielded great influence over them. The hope is that reflecting on why and how sentencing credits were eliminated in Michigan will not only convince us that it’s time to bring them back, but also guide us to make humane and evidence-based policy decisions when moving forward with the question of what to do about our criminal legal system.

What are Sentencing Credits?

Sentencing credit systems vary from state to state and are often referred to as “good time” (GT), or sometimes “earned time.” They are policies whereby currently incarcerated individuals can reduce their sentences for exhibiting “good behavior” or participating in designated programs, including educational and vocational programs. Research shows that states with some form of sentencing credit are more likely to reduce recidivism along with prison population and costs.¹ Unfortunately, Michigan is one of just five states that does not use any form of sentencing credit, with very minimal exceptions.² Even the federal prison system uses a sentencing credit system.³ Some people, depending on their offense, that were convicted and sentenced before 2000 and are still in prison are eligible to receive some form of a past sentencing credit. But those people are few and far between.

The first law enacting GT in Michigan prisons passed in 1857,⁴ less than twenty years after the first prison in Michigan was built.⁵ While there were amendments to the law throughout time, it generally maintained its essence of an accelerated model for over 100 years: the longer a person remained in prison and maintained ‘good behavior’, the more time they were able to subtract from their sentence.⁶

¹ “Earned Time Credit,” *Prison Fellowship* (blog), 2018, <https://www.prisonfellowship.org/resources/advocacy/release/earned-time-credit/>.

² “Good Time and Earned Time Policies for State Prison Inmates” (National Conference of State Legislatures, 2016), https://docs.legis.wisconsin.gov/misc/lc/study/2016/1495/030_august_31_2016_meeting_10_00_a_m_room_412_east_state_capitol/memono4g.

³ “First Step Act: Frequently Asked Questions,” Government, Federal Bureau of Prisons, 2020, https://www.bop.gov/inmates/fsa/faq.jsp#fsa_good_conduct_time.

⁴ “Of Imprisonment for Offences and the Government and Discipline of Prisons,” *Compiled Laws of the State of Michigan 2* (1857): 1607.

⁵ “Experience Jackson’s Prison History,” Experience Jackson, 2020, <https://www.experiencejackson.com/things-to-do/arts-culture/prison-history>.

⁶ “Act 118 of 1893,” 800.33 § 33 (1893), [http://www.legislature.mi.gov/\(S\(mrkg150z552kiavvtcu1o3by\)\)/mileg.aspx?page=getObject&objectName=mcl-800-33](http://www.legislature.mi.gov/(S(mrkg150z552kiavvtcu1o3by))/mileg.aspx?page=getObject&objectName=mcl-800-33).

It was common knowledge, and still is in many states today, that having a GT ‘incentive’ for currently incarcerated people was an advantageous tool for at least three reasons. Perhaps the most important reason comes from the perspective of the incarcerated individuals themselves: GT provided an individual incentive to think before acting rashly and therefore contribute to a more peaceful, and therefore more ‘rehabilitative’ environment inside the prison walls. Above all else, incarcerated people who took advantage of GT saw it as a means to not only spend less time in prison but to spend that time in a way that proves they can make positive contributions to their communities and for their own well-being, despite their worst mistakes. The secondary reasons came from the perspectives of prison administrators: GT helped to keep the prison population within capacity, which in turn helped to keep costs down; and GT was considered a useful means of maintaining a more secure and productive environment among the prison population through the incentive of positive reinforcement via reduced sentence for exhibiting ‘good’ behavior. In short, it was a positive for both the people incarcerated and the people working in the carceral setting. Yet, today, it is rare, if not unheard of, for corrections staff to publicly support the reimplementing of sentencing credits in Michigan, despite our outlier status as one in only five states that no longer has any form of sentencing credit. The movement towards more and more tough on crime policies, fueled by racism and fear mongering, has created an environment in which policy decisions about the criminal legal system are made based on emotion, political ambition and misguided public sentiment, rather than the evidence and input from people who best understand the issues and will be most impacted by the decisions.

Eliminating Good Time

The process of eliminating GT began in the 1970s, fueled in large part by Oakland County prosecutor L. Brooks Patterson and his ability to mislead the public. Elected in 1973, Patterson was known for his tough-on-crime stance, a position and movement we know had much, if not everything, to do with racially coded politics and white fear of a changing American demographic.⁷ Patterson became well-known in Michigan over the years for criticizing the Michigan Department of Corrections and legislature for being ‘too lenient’ on people that committed crimes. Whenever a violent act occurred at the hands of someone who had been released on parole (which in fact was a relatively rare occurrence)⁸ Patterson seized the opportunity to criticize sentencing credits, arguing that these violent events never would have happened had the people involved not been released from prison before completing their minimum sentence due to accumulating GT credits.⁹ He launched a campaign to eliminate GT via ballot initiative in the 1978 election. With a self-proclaimed ‘army’ of thousands of volunteers, speaking arrangements all over the state, and the support of the media, Patterson’s

⁷ Elizabeth Hinton, *From the War on Poverty to the War on Crime, From the War on Poverty to the War on Crime* (Harvard University Press, 2017), <https://www-degruyter-com.proxy.lib.umich.edu/document/doi/10.4159/9780674969223/html>; Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *The Journal of American History* 97, no. 3 (2010): 703–34.

⁸ Perry Johnson, “Department of Corrections Statement from Director Perry Johnson,” June 3, 1977, Box 1221, William G. Milliken Papers, Bentley Historical Library, University of Michigan. “fewer than 5 percent of parolees are convicted of new violent felonies and fewer than 13 percent are convicted of any new felony while on parole”

⁹ Bert Useem and Peter Kimball, “Guards and Inmates in Conflict - Michigan Prisons (1981),” in *States of Siege: U.S. Prison Riots, 1971-1986* (Oxford University Press, 1989), 289, <http://hdl.handle.net/2027/dul1.ark:/13960/t84j8zd74>; L. Brooks Patterson, “Present Parole System Is Proving Deadly,” *Detroit Free Press*, April 11, 1978, General edition, sec. Opinion; Jane Briggs-Bunting, “Patterson Launches Tough Parole Drive: Violent Criminals Would Serve Longer,” *Detroit Free Press*, May 3, 1977.

ballot proposal passed.¹⁰ People who were convicted of any of the 80 (mainly assaultive) crimes listed under the legislation were no longer eligible to receive GT credits.¹¹

The main argument Patterson made repeatedly in support of eliminating GT was that people released from prison, especially those who were released ‘early’ (which was a misnomer that Patterson constantly used – people were not released early, their sentences were legally reduced due to GT, a subtle but important difference), were likely to go out into the community and commit violent crimes.¹² This was refuted again and again and again by prison officials, including Michigan Department of Corrections Director Perry Johnson.¹³ The reality is that an extremely low percentage of people who commit violent crimes go on to commit another violent crime after their release from prison; estimates typically range between 1-3%.¹⁴ Unfortunately, Patterson was thought to be a ‘crime expert’ by the public and media during the 1970s due to his status as a prosecutor; they believed and supported the false narratives he espoused. Reliance on prosecutors as experts was further fueled by the national trend of growing concern over violent crime, despite crime rates falling in Michigan.¹⁵ This trend was also deeply connected to the racism that has plagued U.S. culture since its inception; many tough on crime policies can be directly linked to racially-based motives.¹⁶

Amid Patterson’s ‘parole reform’ campaign to eliminate GT, other factors were also at play that contributed to this new era of mass incarceration in Michigan. The mid-to-late 1970s was a period of significant growth in the prison population, despite the fall in the crime rate, which led to overcrowding and subsequently unsafe and unhealthy conditions for people living and working within the prisons.¹⁷ Major drivers of this crisis were new laws that required longer mandatory sentences for drug and weapon-related crimes, the elimination of GT credits for people sentenced as ‘habitual offenders’,¹⁸ and an increase in state judges and prosecutors

¹⁰ Useem and Kimball, “States of Siege.”

¹¹ “Council Comments: 1978 State Ballot Issues” (Citizens Research Council of Michigan, September 27, 1978).

¹² L. Brooks Patterson, “L. Brooks Patterson to Gov. William G. Milliken,” February 5, 1975, Box 1221, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

¹³ Perry Johnson, “Prisons Only Part of Crime Deterrence: State Corrections Director Answers Criticism,” *Detroit Free Press*, April 17, 1975; Thomas Fox, “Parole Bills Worry Prison Authorities,” *Detroit Free Press*, April 7, 1975, sec. A.; Gov. William G. Milliken to L. Brooks Patterson, 11 February 1975, Box 1221, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

¹⁴ Barbara Levine and Elsie Kettunen, “Paroling People Who Committed Serious Crimes: What Is the Actual Risk?” (Citizens Alliance on Prisons and Public Spending, December 1, 2014), https://www.safeandjustmi.org/wp-content/uploads/2014/12/Paroling_people_who_committed_serious_crimes.pdf; J. J. Prescott, Benjamin Pyle, and Sonja B. Starr, “Understanding Violent-Crime Recidivism,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, May 1, 2020), <https://papers.ssrn.com/abstract=3571912>.

¹⁵ Stuart A. Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (Longman: New York & London, 1984), <http://hdl.handle.net/2027/mdp.39015008379516>.

¹⁶ Ava DuVernay, *13TH*, Documentary (Netflix, 2016), <http://www.avaduvernay.com/13th>; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (La Vergne, UNITED STATES: The New Press, 2020), <http://ebookcentral.proquest.com/lib/umichigan/detail.action?docID=5651869>.

¹⁷ Perry Johnson, “Director Perry Johnson to Governor Milliken,” August 15, 1977, Box 673, William G. Milliken Papers, Bentley Historical Library, University of Michigan; Peter Ellsworth, “Peter Ellsworth to Gov. William G. Milliken,” October 4, 1979, Box 673, William G. Milliken Papers, Bentley Historical Library, University of Michigan: letter to discuss solutions to overcrowding.

¹⁸ Barbara Levine, “Prison Expansion in Michigan: A Brief History” (Citizens Alliance on Prisons and Public Spending, 2013), https://www.safeandjustmi.org/wp-content/uploads/2013/03/Prison_expansion_in_Michigan_A_brief_history.pdf.

sentencing people to longer terms and handing out fewer plea bargains,¹⁹ incentivized financially by the U.S. Law Enforcement Assistance Administration.²⁰

In May of 1979, Gov. Milliken delivered an address to the legislature in which he proposed the state would need to spend roughly \$400 million to build new prisons and relieve overcrowding.²¹ The passage of Proposal B, even though it did not apply to everyone, had disastrous effects on the prison population given it was already overcrowded and sentences were relatively short; any lengthening of sentences had a profound impact.²² Milliken suggested a tax increase, assuming Michigan voters understood that more prisons would be necessary when they passed Proposal B.²³

Gov. Milliken was an unconventional republican. Unlike Patterson and many conservative (and some non-conservative) politicians throughout the 1980s and 1990s, Milliken discussed the need to invest more money into a prison system designed to rehabilitate rather than simply punish, given the fact that most people living in that system will return to society: “If we desire that they become productive citizens, then we must treat them as if we believe they have the potential to be just that.”²⁴ Most Republicans, at least initially, opposed spending on prisons for purely fiscally conservative reasons. Notably, Milliken also warned against reforms fueled by sentiment and bias, rather than evidence and science.

The 1980s – The Impact of Eliminating Good Time: Continued Overcrowding and Getting Tougher on Crime

In 1980, Gov. Milliken created the Joint Executive/Legislative Task Force on Prison Overcrowding. Their report made seven recommendations, including the Prison Overcrowding Emergency Powers Act (POEPA), which was meant to be used as a last resort.²⁵ Because the public voted down the tax increase to fund more prisons,²⁶ the legislature ended up implementing and utilizing the POEPA nine times between 1981 and 1984.²⁷

The 1980 Task Force report also warned that if immediate action were not taken to reduce the drastically increasing prison population there would be unrest within the prisons and federal intervention;²⁸ and they were right. Prior to federal courts intervening, Michigan activist and lawyer Zolton Ferency represented currently incarcerated individuals via the Human Rights Party when they filed suit against the Michigan Department of Corrections in 1977, citing due

¹⁹ “Capitol Commentary, Corrections General,” 1982 1978, Box 1221, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

²⁰ Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives” (Lansing, MI: Citizens Research Council of Michigan, June 2008), https://crcmich.org/publications/growth_corrections_system_historical_comparative_perspective-2008.

²¹ William G. Milliken, “Special Message to the Legislature on Corrections,” May 8, 1979, Box 2, William G. Milliken Papers, Bentley Historical Library, University of Michigan. Pg. 1-8

²² “Prisons: Milliken Faces the Issue, but Crim Has a Point,” *Detroit Free Press*, May 16, 1979, sec. In Our Opinion. Supra Note 15

²³ Milliken, “Special Message to the Legislature on Corrections,” May 8, 1979. Pg. 4

²⁴ Milliken. Pg. 1

²⁵ Jeffrey D. Padden et al., “Report of the Joint Legislative/Executive Task Force on Prison Overcrowding,” Legislative (Lansing, MI: University of Michigan Libraries, June 1980), <http://hdl.handle.net/2027/mdp.39015008729165>.

²⁶ “WDIV TV4 Editorial: Michigan Prison Riots” (WDIV TV4, May 28, 1981), 4, Box 673, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

²⁷ Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives.”

²⁸ Ellsworth, “Peter Ellsworth to Gov. William G. Milliken,” October 4, 1979.

process violations and cruel and unusual punishment as a result of overcrowding.²⁹ After 3 years of deliberations, the court ordered the state to reduce and place a cap on the prison population by January 1st, 1981.³⁰

Incarcerated individuals further took matters into their own hands when they filed a federal lawsuit against the MDOC in 1980, citing unconstitutional conditions at the State Prison of Southern Michigan due to the antiquated conditions of the prison exacerbated by overcrowding. A consent decree was entered in 1985, settling many of the issues brought forth: sanitation, safety, health care, fire safety, overcrowding, security, food service, management and operations, and mail, and setting aside other issues, such as access to courts, to be litigated later. Simultaneous litigation around SPSM conditions in Michigan's Eastern and Western District Courts eventually caused the lawsuit to be split in two, placing the enforcement of the consent decree's medical and mental health care provisions under the supervision of the Western District Court. Litigation continued well into the 1990s as plaintiffs pushed for enforcement of the consent decree and the state requested modifications. Judge Feikens from the Eastern District Court found the incarcerated plaintiffs to be the prevailing party and granted them attorney's fees, until his hands became tied with the Prison Litigation Reform Act of 1996, which made it exponentially harder for incarcerated individuals to file suit against states and capped the amount of fees available for plaintiff attorneys. With the passage of the PLRA, the state tried to get the consent decree (put in place to protect the basic constitutional rights and living conditions for incarcerated individuals) terminated, but they were denied. The case was officially closed and the decree terminated in 2003; in the Western District, the case would not be closed until 2015.

Meanwhile, in 1981, 'riots' erupted at three different prison locations. On May 22nd, just a month after it was officially recommended that Gov. Milliken declare a state of emergency and implement the POEPA, the first protest took place at the State Prison of Southern Michigan in Jackson. The news traveled to Ionia, where it spawned a second protest at the Michigan Reformatory. A second revolt took place at SPSM on May 26th, which then inspired an additional revolt at the Marquette Branch Prison. The cursory understanding of the cause of the initial uprising was resistance to a set of decisions and actions by a group of corrections officers; the officers were unhappy with their working conditions and took it upon themselves to threaten an unauthorized prison-wide lockdown, meaning no one would be allowed to leave their cell as they normally would.³¹ Many of the officers felt that they were not conducting enough shakedowns – searches of people's cells and bodies for weapons and other contraband – and threatened the lockdown in an effort to conduct more. The threat itself was enough to spark a revolt. While no one was taken hostage or killed, there were serious injuries among both the people living and working within the prisons, as well as millions of dollars in damage and indirect costs.³²

²⁹ Human Rights Party v. Michigan Corrections Commission, 76 Mich. App. 204, No. 30173 (Michigan Court of Appeals June 8, 1977).

³⁰ Useem and Kimball, "States of Siege."

³¹ Peter Ellsworth, "Peter Ellsworth to Gov. William G. Milliken," July 31, 1981, Box 673, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

³² Useem and Kimball, "States of Siege."

There were several reports to Governor Milliken and the public on what were called the ‘prison disturbances.’ All the reports discussed both the immediate impetus as well as the deeper-rooted and more complex stimuli at play.³³

The reports made clear the negative impacts of taking away GT in the 1978 election. “There was virtual unanimity among institutional administrators, all levels of staff and prisoners who appeared before the Committee that the repeal of the good time statute by Michigan voters in 1978 has had and continues to have a significant and negative impact on the peaceful and orderly operation of the prisons.”³⁴ At the time the report was written, just under 50% of people living in prison had been convicted after the repeal of GT took effect, a number that was only going to increase.³⁵

The reports, as many other legislators and politicians had predicted and would continue to emphasize in the years to come, tied the repeal of GT to the myriad issues caused by overcrowding (lack of treatment programs, understaffing, improper classifications/placements, inhumane conditions, etc.), in combination with other recent laws and trends mandating tougher and longer sentences. Further, prison officials admitted that disciplining poor behavior with punishment, such as placing someone in segregation (solitary confinement), as opposed to incentivizing good behavior through the accumulation of GT was significantly less effective at producing positive behavior.³⁶ While the authors of the report conceded that it is ‘improper’ to use GT to control overcrowding, they did recommend that the MDOC replace GT with some other reward to be able to ‘control prisoner behavior’, which was strongly supported by the MDOC.³⁷

Much like the Lindemer report, the Joint Committee report emphasized the effect of taking away GT: “There was not a single person interviewed by this Committee, be it prisoners, staff members or administrators, who failed to cite the lack of good time as a major, if not the major, cause of the disturbances.”³⁸ The Committee recommended that the 1978 referendum that passed be “modified in order to return to the Department its most effective management tool.” They suggested a system of ‘Disciplinary Credits’ (DC) that could be earned at a rate of five days reduction of a sentence per month.

In 1982 the legislature passed the Disciplinary Credits recommendation of the Joint Committee on Prison Disturbances. The amendment to Act 118 of 1893 (the law that codified

³³ “Preliminary Report on Disturbance in the Michigan Corrections Systems Occurring May 22, and 23, 1981,” Prison Disturbances 1981 Folder 3, n.d., Box 654, William G. Milliken Papers, Bentley Historical Library, University of Michigan; “Lindemer Report,” Prison Disturbances 1981 Folder 2, August 4, 1981, Box 654, William G. Milliken Papers, Bentley Historical Library, University of Michigan; “Report of the Joint Committee to Investigate the Prison Disturbances,” Special Committee on Prison Disturbances Folder 2, December 1981, Box 673, William G. Milliken Papers, Bentley Historical Library, University of Michigan.

³⁴ “Lindemer Report.” Pg. 18

³⁵ “Lindemer Report.” Pg. 19

³⁶ “Lindemer Report.” Pg. 16

³⁷ “Department of Corrections’ Response to the Report of the Governor’s Special Committee on Prison Disturbances,” September 18, 1981, Box 654, William G. Milliken Papers, Bentley Historical Library, University of Michigan. “We hope this does not signify a belief that good time allowances will never again be available. Whatever sanctions and rewards we may build into prison life itself, the most powerful incentive is getting out, and it is one we cannot afford to lose. If the legislature can be made aware of the fact that most judges always did sentence to the actual time they wanted served, taking good time into account, they would have to recognize that all Proposition B has done is weaken our control over prisoners without adding to the public protection. The record has become clear on that, so we recommend that the Legislature restore this powerful incentive.”

³⁸ “Report of the Joint Committee to Investigate the Prison Disturbances.” Pg. 19

GT) was approved in both the house and senate with more than the $\frac{3}{4}$ majority vote needed, due to the 1978 referendum on GT.³⁹ This policy change applied to people convicted after 1982 of the 80 assaultive offenses that were impacted by the 1978 referendum on GT. So now there were two systems of sentencing credits at play in multiple ways: DC for 80 assaultive offenses committed after 1982, GT for all other offenses committed after 1982, the all other offenses not included in the 80 that Proposal B applied to in between 1978 and 1982, and all offenses committed before 1978. DC were different from GT in that they did not apply on a graduated scale the longer someone remained imprisoned. The maximum reduction a person could receive was a flat rate of 7 days off their sentence per month for receiving no misconduct tickets (for ‘good behavior’).

The ease of its passage indicates that it was overwhelmingly supported by legislators; it was also known to be supported by the MDOC staff and administration as well as other law enforcement, including sheriffs and police chiefs.⁴⁰ The bill was unsurprisingly not supported by L. Brooks Patterson and his followers, however, who continued to mislead the public with false claims regarding causes and origins of crime.⁴¹ The implementation of disciplinary credits, the repeated use of the POEPA between 1981 and 1984, and record-high parole approval rates allowed the imprisoned population to remain stable, with little to no growth during those years.⁴²

This stability came to a halt, however, when a high-profile crime worked in Patterson’s favor to once again shock the public into a ‘tough-on-crime’ mentality.⁴³ An East Lansing police officer was killed in the line of duty by Wayne Harvey, a man who had been released from prison after eight years due to GT and a woman who had walked away from a halfway house before her sentence had completed. They were also charged with the killing of a housewife. There is no doubt that this was a tragedy that may have been preventable. The response from the media, public and legislature, however, was misguided at best and ultimately detrimental.

In September of 1985 the *Detroit Free Press* published the first of a week-long report on the current state of the criminal legal system titled ‘Revolving Door Prisons’.⁴⁴ This Sunday issue covered several stories based on a study they conducted to understand the impact of GT and DC, as well as halfway houses, on new crimes committed. Spawned by the two murders Wayne Harvey committed, the articles attempted to provide readers with the whole picture, but were clearly biased against GT, DC and halfway houses. Reporters repeatedly used the term ‘early release’, misleading their readers to believe that people were being released before they were legally allowed to be, despite GT and DC legally allowing the release of people before reaching their minimum sentence. The *Free Press* even claimed that the MDOC violated laws by reducing people’s sentences even more than they were legally allowed to through such programs, but only provided vague and circumspect examples. It is also important to note that the term ‘early

³⁹ “Good Time: The Senate Should Restore the Reward System in Michigan Prisons,” *Detroit Free Press*, December 16, 1982, sec. In Our Opinion; John Cooper, “The Good Time Bills Fact Sheet” (Safe & Just Michigan, 2018), https://www.safeandjustmi.org/wp-content/uploads/2018/05/The_Good_Time_Bills_Fact_Sheet.pdf.

⁴⁰ The Associated Press, “House OKs Restoring ‘Good Time’ Incentive,” *Enquirer and News*, December 10, 1982, sec. A.

⁴¹ L. Brooks Patterson, “‘Good Time’ Is Still Bad Idea,” *Detroit Free Press*, December 26, 1981, sec. A.

⁴² Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives.”

⁴³ Tom Grose, “Officer’s Widow Wants Good to Come Out of Bad,” *Lansing State Journal*, November 13, 1984, sec. Front Page.

⁴⁴ David Ashenfelter and Michael G. Wagner, “Out Early: A Deadly Cure,” *Detroit Free Press*, September 22, 1985, sec. A.

release' implies that people were released before they were intended to be; however, sentencing judges at the time understood how GT and DC worked and would take those sentence reduction possibilities into account when coming to their sentencing decision, calculating a length of sentence they deemed appropriate.

The articles in this *Free Press* issue highlighted the frustrations of prosecutors who supported the abolishment of any type of reward or incentive, which in turn helped to inflate the relatively small amount of harm resulting from GT, DC and halfway houses as regular occurrences. Of the 5,762 men and women they studied who were paroled in 1983, roughly 13% were reconvicted for new felonies, the vast majority of which were theft, robbery and burglary. Fourteen of those people committed a homicide during the time that they would have been in prison had they not been released due to a sentencing credit.⁴⁵ While any murder is one too many, it does not make sense to formulate policies and practices that apply to everyone based on a 0.2% exception rate. The reporters also painted sentencing credits as an unearned privilege, rather than an incentive for positive behavior, which only further ingrains the sentiment that people in prison are incapable of 'good' behavior.

It was articles like these from this *Detroit Free Press* that sensationalized relatively rare instances of violent crime committed by formerly incarcerated people, giving the impression that they were regular occurrences and the only solution was to become even more tough on people who commit crimes. Governor Blanchard, Milliken's successor, decided to stop using the POEPA in December of 1984 after Wayne Harvey was arrested; it was officially repealed in 1987.⁴⁶ His decision to stop using the POEPA was likely due, at least in part, to the political pressure from prosecutors and the public to be even tougher on crime. And yet an a study on the POEPA found that less than one percent (0.2%) of all arrests statewide were people who had been released due to the POEPA.⁴⁷

Additionally, this type of coverage of sentencing credits began to unify the public and legislators alike into thinking that the utilization of sentencing credits and halfway houses were deceitful to the public and specifically, survivors of crime, a theme that would be brought up repeatedly in the years to come. We now know that even with sentencing credits gone, most crime survivors feel their needs are not met through prosecution and the court system.⁴⁸ MDOC Directory Perry Johnson put it succinctly in a colloquium presentation in 1983:

"Although prison crowding is obviously a consequence of society's reaction to the problem of crime, it is not geared directly to the reality of crime. If reported crime is graphed against prison intake over any extended period you will find that the lines on the chart go in opposite directions almost as often as they go together..... *The point is that the public perception of crime and official reaction to that perception probably are more important than objective reality.*"⁴⁹(emphasis added)

⁴⁵ Ashenfelter and Wagner.

⁴⁶ David Ashenfelter and Michael G. Wagner, "The Image of Leniency Must Be Erased, Officials Agree," *Detroit Free Press*, September 27, 1985, sec. A; "Prison Overcrowding Emergency Powers Act," Act 519 of 1980 § (1980), [http://www.legislature.mi.gov/\(S\(uzcwri02q011qr5mnvtxvncz\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-519-of-1980](http://www.legislature.mi.gov/(S(uzcwri02q011qr5mnvtxvncz))/mileg.aspx?page=getObject&objectName=mcl-Act-519-of-1980).

⁴⁷ Dale K. Sechrest, Jonathan D. Casper, and Jeffrey A Roth, "Prison and Jail Crowding: Workshop Proceedings. Committee on Research on Law Enforcement and the Administration of Justice" (National Criminal Justice Reference Service, March 1987), <https://www.ncjrs.gov/pdffiles1/Digitization/106410-106413NCJRS.pdf>.

⁴⁸ "Crime Survivors Speak: Michigan Victims' Views on Safety and Justice" (Alliance for Safety and Justice, 2018), https://allianceforsafetyandjustice.org/wp-content/uploads/2018/07/ASJ_MichiganCrimeSurvivorBrief-F2-ONLINE.pdf.

⁴⁹ Perry Johnson, "Colloquium: The Prison Overcrowding Crisis: Responses," *New York University Review of Law & Social Change* 12, no. 1 (1984 1983): 249–52.

The impact of such attention given to high-profile acts of violence like that committed by Wayne Harvey led to Michigan's most dramatic surge in prison intake.⁵⁰ Parole approval rates dropped ten percent from 1984 to 1985 and continued to steadily decline into the early 2000s. By September 1985, the House had already passed a bill to completely remove GT for all new convictions and replace it with DC – the 'less lenient' option – the bill eventually passed the senate and became law in 1986.⁵¹ This now meant that there were more systems of sentencing credits at play: GT for everyone convicted before 1978, nothing for people convicted of the 80 assaultive offenses between 1978 and 1982, DC for people convicted of those same 80 assaultive offenses after 1982 and GT for most everyone else, and DC for most everyone convicted after 1986. One of the voices of dissent, lawyer Zolton Ferency, pointed out that the *Free Press's* reporting was lumping everyone into categories rather than considering individual cases and factors.⁵² But the media and prosecutors like L. Brooks Patterson continued urging the public and legislature to become even 'tougher on crime'. This call was heeded well by judges and prosecutors, who contributed to a 61% increase in felony dispositions between 1985 and 1989; drug-related prison commitments alone saw an increase of 482% in that same time period, no doubt influenced by the national 'war on drugs'.⁵³

Perhaps most importantly, though, was the absence of attention to the root causes of violence, incarceration, and the expanding carceral state among mainstream media, the general public and political dialogue regarding criminal legal 'reform' in the 70s, 80s and 90s. These root causes can be traced back to racism, poverty, patriarchal gender norms, and other socioeconomic inequities, all fueled by capitalism. This lack of a holistic discussion led to even tougher and longer sentences, culminating in the eventual abolishment of any type of sentencing credit in Michigan's prison system. Although we may be starting to have these long overdue discussions at a national and state level now (and must give credit to the people that have been conducting this dialogue for years, despite mainstream opposition),⁵⁴ the general lack of response to many or all of the social factors listed above has culminated in a criminal legal system that more often than not provides more injustice than justice.

The 1990s – The Truth about Truth in Sentencing

One such story of violence that was sensationalized by the media and politicians alike in Michigan, fueling the tough-on-crime agenda of the 90s, was the horrific acts committed by Leslie Allen Williams in 1992. Out on parole, Williams was convicted again after raping and killing four girls in Oakland County. There is no doubt that Williams actions were unconscionable, and he deserved to be held accountable. But the policies that followed were built upon a campaign that positioned criminal histories similar to Williams' as the norm, rather than the exception. One policy in particular, Truth in Sentencing, was designed to eliminate all forms of sentencing credits (Disciplinary and Good Time credits), in Michigan, based on the claim that

⁵⁰ Citizens Research Council of Michigan, "Growth in Michigan's Corrections System: Historical and Comparative Perspectives."

⁵¹ Ashenfelter and Wagner, "The Image of Leniency Must Be Erased, Officials Agree."

⁵² Ashenfelter and Wagner.

⁵³ Citizens Research Council of Michigan, "Growth in Michigan's Corrections System: Historical and Comparative Perspectives."

⁵⁴ Angela Y. Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003), <http://hdl.handle.net/2027/hvd.32044050117944>; Mariame Kaba, "Opinion | Yes, We Mean Literally Abolish the Police," *The New York Times*, June 12, 2020, sec. Opinion, <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>.

fewer crimes (in particular crimes such as Williams’) would be committed if people in prison did not have the opportunity to reduce their sentence as a reward for good behavior.

An example of how information was misrepresented to imply that the policies and practices in place were more detrimental than they were in fact, and how people are lumped together into categories – as Ferency argued against, is this sentence from a 1992 article in *The Detroit News*: “In a follow-up study of first-time parolees released in 1987, the Michigan Corrections Department noted more than one-third of 1,298 parolees who were released after serving time for crimes against persons either received new sentences for new crimes or violated the terms of their parole by absconding, failing to report or committing misdemeanor offenses.”⁵⁵ The article was about Leslie Allen Williams, and frequently made the argument that the horrible murders he committed could have been prevented if he had not been released ‘early’ from prison. This sentence highlights a common sentiment that was expressed in this article and others as a result of high-profile crimes like those committed by Williams: a significant proportion of people released from prison are dangerous and likely to commit really harmful, serious crimes again, which is simply not true. Despite recidivism rates fluctuating over time at rates higher than anyone would like, both nationally and in Michigan, a significant proportion of people are reincarcerated while on parole or probation for ‘technical violations’ (such as not showing up to an appointment),⁵⁶ and an extremely low percentage of people who recidivate are convicted of new crimes that are violent.⁵⁷

If we take a closer look at this claim about the ‘more than one-third...of parolees’ from the article, we must note that the author has grouped several ‘offenses’ together and did not provide specifics. For those that ‘received new sentences for new crimes’ – were these all assaultive or violent crimes? What is the breakdown of type of crime? How much of the ‘one-third’ is made up of those that absconded, failed to report or committed misdemeanor offenses? What kind of misdemeanor offenses? It is important to be clear about this type of detail because without the intricate understanding of our criminal legal system that very few people have, the average person likely focuses on the ‘one-third’ rate; with no clear delineation of which ‘crimes’ comprise what fraction of that one-third, they will likely assume that most of that one-third is made up of people who were sentenced for new crimes. They will also likely consider them to be assaultive and/or violent crimes, as that is what was listed first.

While thorough and unbiased reporting is necessary to keep the public informed, the very nature of newspaper articles often limits their ability to fully capture the depth and complexity of not just the criminal legal system, but the various factors that influence ‘criminal’ behavior, including the inequitable systems and structures that dictate what criminal behavior is and who gets to be branded as a criminal. And of course, the average reader is likely not going to take the time to pursue that level of understanding. That quandary, however, is not an excuse to frame information that is misleading to the public.

⁵⁵ “Parole: Reasonable Assurance?,” *The Detroit News*, June 7, 1992, sec. 2B, <https://www-proquest-com.proxy.lib.umich.edu/docview/1824101161?accountid=14667>.

⁵⁶ Amy L. Solomon, Gillian L. Thomson, and Sinead Keegan, “Prisoner Reentry in Michigan,” Research (Urban Institute, 2004), <https://doi.org/10.1037/e720272011-001>.

⁵⁷ Levine and Kettunen, “Paroling People Who Committed Serious Crimes: What Is the Actual Risk?”

While there was a slight uptick in the Michigan crime rate in the early 1990s, the general trend was that it continued to go down throughout the decade, as it had in the 1980s.⁵⁸ That fact did not deter politicians and legislators from continuing to push for tough-on-crime policies, fueled by media coverage of devastating, but rare, acts of violence and the voters who consumed this information. With little access to contradictory evidence, many of the people in Michigan gravitated towards believing that not only such acts of violence were a regular occurrence, but also that the best way to respond to violence was with incapacitation via incarceration. This observation merits at least two subsequent discussions. The first, that responding to violence with more violence (incarceration) is counterproductive to public safety, will be discussed in the next section. The second point an analysis is that criminal legal policy trends actually have very little to do with crime itself and much more to do with the public perception of crime, namely white fear.⁵⁹

Scholars and criminologists have researched and documented this disconnect between policy and reality in real time, but their research has largely been ignored (at least by most policymakers), until recently. Despite crime rates going down or remaining steady, research shows media coverage of crime stories tripled between 1991 and 1994 and the public largely believed this to be an accurate depiction of ‘the crime problem’.⁶⁰ Political scientist Stuart Scheingold analyzed the politicization of crime, examining how our cultural norms allow us to buy into the exaggerated and inaccurate portrayals of ‘typical’ crime and crime rates.⁶¹ When the media and politicians focus only on the worst instances of violence, such as rape and murder, combined with a lack of access to the correct information on rates and types of crime, we as a mass of people tend to believe that these depictions are the norm when in fact they are the exact opposite; due to the horrific nature of such violence, it makes sense that this belief invokes fear. And while fear and misperception of crime was not created by politicians, it has definitely been fueled and exploited by politicians. Viewing crime and violence as an uncontroversial moral issue to take a stance on, politicians lunged at the continued opportunity to take a ‘tough-on-crime’ or ‘law and order’ approach in their campaigns throughout the 90s.

Many scholars also emphasize the important connection between the increase in punitive policies and racism, particularly anti-Black racism. From Barry Goldwater’s explicitly racist presidential campaign in 1964 to the War on Drugs implemented by Nixon and Reagan, to Clinton’s 1994 crime bill, white fear of a ‘changing’ American demographic has been a highly influential, if not governing, factor of criminal legal policy. After the huge influx of European immigrants in the late 19th and early 20th centuries, the country largely responded with an increase in social reform policies aimed at providing housing, education, healthcare and other forms of welfare. In contrast, since the Great Migration of Black and brown people from the

⁵⁸ Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives.”, pg. 20

⁵⁹ Scheingold, *The Politics of Law and Order*; Jeremy Travis, Bruce Western, and Steve Redburn, “The Underlying Causes of Rising Incarceration: Crime, Politics, and Social Change,” in *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (National Academies Press, 2014), http://web.b.ebscohost.com.proxy.lib.umich.edu/ehost/ebookviewer/ebook?sid=5d74483b-85b6-46ff-babc-81e6a9a98ec8%40pdc-v-sessmgr01&ppid=pp_104&vid=0&format=EB.

⁶⁰ Thomas G. Blomberg, “Conservatism and Law and Order Punishment (1980s-1990s),” in *American Penology: A History of Control* (Walter de Gruyter, Inc., 2000), 169–88, http://web.b.ebscohost.com.proxy.lib.umich.edu/ehost/ebookviewer/ebook?sid=b41b58c5-e8ed-4096-90b6-af813dbad394%40sessionmgr101&ppid=pp_169&vid=0&format=EB.

⁶¹ Scheingold, *The Politics of Law and Order*.

south to the north of the U.S. during and after the Jim Crow era, as well as the increase in more immigrants of color making their way to the U.S. from all over the world (not just Europe), we have seen a steady decline of welfare programs and a sharp increase in punitive policies targeted towards those exact groups of people.⁶²

In 1992, Governor John Engler delivered an address specific to criminal legal reform titled ‘Opening a New Front in Michigan’s War on Crime’.⁶³ He utilized the fear rhetoric of high crime rates and people (i.e. white people) feeling unsafe in their neighborhoods and homes. He vowed to put people behind bars and not give them a second chance. He was known for his severely punitive stance on all things crime and social service-related.⁶⁴ In large part as a response to the Williams’ crimes, Engler signed into law a restructuring of the Michigan parole board, changing its makeup from civil servants, to appointees made by the Michigan Department of Corrections. This resulted in a much more punitive parole board that granted fewer releases.⁶⁵ Considered a good thing by those who did not believe people could be redeemed, this was one of the first of many policies Engler supported and signed into law contributing to Michigan’s mass incarceration era.

Among these ‘reforms’ explicitly meant to put more people in prison and for longer periods of time, truth in sentencing has been one of the most effective tools, in no small part because it marked the end of all sentencing credits. Like every other policy decision highlighted in this paper, support for truth in sentencing was largely fueled by false notions of crime rates and a strong belief in punishment over redemption.

After her husband was shot and killed during a robbery by five teenagers, Linda Clark began a petition campaign to implement truth in sentencing in Michigan, along with stricter sanctions for juvenile defendants. Clark repeatedly told the press the problem was that courts could not give survivors of crime a clear answer on how long the people who caused harm would be incarcerated. And yet, the 17-year-old who shot her husband was sentenced to life without parole; another one of the teenagers was sentenced to life with the possibility of parole (at the time only five of 4,000 people serving life with parole had been released in the previous five years and that was after serving an average of 19.5 years); the other three teenagers were sentenced to either 8-15 years or 25-50 years.⁶⁶ Clark traveled to Washington to testify before Vice President Gore, helping to influence the 1994 federal crime bill that included other punitive laws such as ‘three strikes’ and mandatory minimums, in addition to truth in sentencing. Michigan, like much of the rest of the country, was experiencing another ‘fear of crime’ wave,

⁶² Travis, Western, and Redburn, “The Underlying Causes of Rising Incarceration: Crime, Politics, and Social Change.”

⁶³ “Opening a New Front in Michigan’s WAR ON CRIME; Governor John Engler’s Criminal Justice Agenda for the 90’s,” April 19, 1992, Box 166, John Engler Papers, Bentley Historical Library, University of Michigan.

⁶⁴ Chris Chrisoff and Dawson Bell, “Wolpe, Engler Exchange Volley on Crime, Clinic,” *Detroit Free Press*, September 13, 1994, sec. B.

⁶⁵ Michigan Department of Corrections, “Five Years After: An Analysis of the Michigan Parole Board since 1992” (Michigan Department of Corrections, September 1997), https://www.safeandjustmi.org/wp-content/uploads/1997/01/Five_years_after_An_analysis_of_the_Michigan_parole_board_since_1992.pdf.

⁶⁶ Lori Montgomery, “State Woman Takes Sentencing Crusade to Gore,” *Detroit Free Press*, March 16, 1994, sec. A.

fueled by sensationalized stories presented as the norm.⁶⁷ The Victim's Rights Movement, which capitalized on experiences like those of Linda Clark and her family, cannot be left out of any discussion of tough-on-crime policies. While the rights and voices of crime survivors should no doubt be centered in the process of holding people who cause harm accountable, evidence shows that the advances made by victim's rights advocates disproportionately benefit white crime survivors over Black, Indigenous and other survivors of color.⁶⁸ This is not all together surprising, given the victim's rights movement was started by white men who opposed advancements made to protect due process rights for people charged with a crime in the 1960s and 70s.

In January of 1994, Governor Engler delivered his state of the state address, praising the tough on crime policies that had successfully passed in recent years, including the decision to place two people per cell in Michigan's prisons to get around the issue of overcrowding and save money. Expressing pride in the fact that Michigan was "on the verge of completing the biggest prison buildup in the country – 22 prisons", Engler urged the legislature to pass truth in sentencing.⁶⁹ The legislature did just that, but TiS was not implemented until 1998. This was because it was tied to legislative sentencing guideline bills that were not agreed upon until 1998, after a sentencing commission completed their review and provided recommendations to the legislature in 1997.⁷⁰ The guidelines included sentences that were more punitive for violent crimes, among other stricter sanctions, and are credited with the continued growth of Michigan's prison population, along with TiS and the restructuring of the parole board.⁷¹ One of the major critiques of the legislative sentencing guidelines is that they were based on legislative sentiment and agenda, rather than empirical evidence.⁷² Further exacerbating this problem, the sentencing commission that was created to monitor and evaluate the implementation and any changes to the guidelines was disbanded by the legislature in 2002, which has allowed for regular changes to the guidelines over the years with very little empirical oversight, if any.⁷³

⁶⁷ Retro Report, *The Making of the 'Three Strikes' Laws* (The New York Times, 2013), <https://www.nytimes.com/video/us/100000002579045/the-making-of-the-three-strikes-laws.html>; Ken Burns, David McMahon, and Sarah Burns, *The Central Park Five*, Documentary (Public Broadcasting Service, 2012), <https://www.pbs.org/kenburns/the-central-park-five/>.

⁶⁸ Jill Lepore, "The Rise of the Victims'-Rights Movement," *The New Yorker*, May 14, 2018, <https://www.newyorker.com/magazine/2018/05/21/the-rise-of-the-victims-rights-movement>. "In both capital and non-capital cases, victim-impact evidence has been shown to affect sentencing: that's why prosecutors introduce it. Research also suggests that, though victims of violent crime are disproportionately poor and nonwhite, white victims are twice as likely as black victims to make victim-impact statements. ... Jurors also report being less compelled by victim-impact statements made by black victims than by those made by white victims. And victim-impact evidence appears to amplify the commonly held prejudice that people with darker skin are more "deathworthy."

⁶⁹ John Engler, "Governor John Engler 1994 State of the State Address," Michigan.gov, January 18, 1994, https://www.michigan.gov/formergovernors/0,4584,7-212-96477_31303_31317-1987--,00.html.

⁷⁰ Sheila Robertson Deming, "Michigan's Sentencing Guidelines," *Michigan Bar Journal* 79, no. 6 (June 2000), <https://www.michbar.org/journal/article?articleID=92&volumeID=8&viewType=archive>.

⁷¹ Robertson Deming; Citizens Research Council of Michigan, "Growth in Michigan's Corrections System: Historical and Comparative Perspectives."

⁷² Robertson Deming, "Michigan's Sentencing Guidelines"; S Stuzky, "Sentencing Guidelines Revisions and Repeal Sentencing Commission, HB 5392, House Legislative Analysis, Second Analysis" (Michigan Legislature, November 5, 2002), <http://www.legislature.mi.gov/documents/2001-2002/billanalysis/House/pdf/2001-HLA-5392-b.pdf>.

⁷³ Anne Yantus, "Sentence Creep: Increasing Penalties in Michigan and the Need for Sentencing Reform," *University of Michigan Journal of Law Reform* 47, no. 3 (2014 2013): 645–96; Robertson Deming, "Michigan's Sentencing Guidelines."

In 1996 the federal government established the Violent Offender Incarceration and Truth-in-Sentencing Incentive (VOI/TIS) Grant program, which offered money to states to use towards prison construction and other criminal legal endeavors for implementing legislation that required people convicted of violent offenses serve at least 85% of their sentence. Michigan received roughly \$18 million annually between 1996 and 2001 as part of this program, even though Michigan was already meeting the grant criteria before enacting sentencing guidelines and truth in sentencing.⁷⁴

The average time served in Michigan in the late 90s was 88% of the minimum sentence (3% more than the 85% minimum required by the VOI/TIS grant),⁷⁵ but the legislature did not think that was enough. With the passage of truth in sentencing, people convicted of violent offenses after 1998 (typically defined as murder, rape, robbery and aggravated assault – this iteration of TiS also included felonious assault and fourth degree criminal sexual conduct)⁷⁶ and everyone sentenced to prison after 2000 were required to serve 100% of their minimum sentence.⁷⁷ Disciplinary credits no longer applied; instead, they were replaced with disciplinary time, which was a record of all misconducts committed by a person during incarceration provided to the parole board to review when considering release. This was essentially the end of all focus on positive reinforcement, signaling a firm shift towards emphasizing penalties. Another important part of the truth in sentencing laws was that they required the entire minimum sentence to be served in a secure facility. Prior to TiS, many people deemed as ‘low risk’ were permitted to serve the tail ends of their sentences in Community Residential Programs (halfway homes), which not only alleviated some of the overcrowding in the prisons, but also provided a smoother and more successful transition for people back into society as they were able to work and attend school.⁷⁸

It is important to note that the Michigan legislature’s decision to require everyone convicted of a felony to serve 100% of their minimum sentence makes Michigan’s TiS laws some of the harshest in the country. Most other states that have TiS laws apply them only to certain offenses and typically require 85% (or less) of the sentence be served before a person is eligible for parole, as opposed to 100%; many states also still offer disciplinary credit (sentence reduction) options, in conjunction with TiS laws.⁷⁹

Some states, like Mississippi, are beginning to learn from the negative impacts their TiS laws have generated. Like many states, Mississippi enacted TiS due to the federal VOI/TIS grants and like Michigan, they enacted TiS for ALL offenses, not only violent.⁸⁰ This contributed to their prison population doubling between 1995 and 2008. Legislators realized TiS was not

⁷⁴ Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives.”

⁷⁵ Barb Levine, “10,000 Fewer Michigan Prisoners: Strategies to Reach the Goal” (Citizens Alliance on Prisons and Public Spending, 2015), 000, https://www.safeandjustmi.org/wp-content/uploads/2017/10/10000_fewer_Michigan_prisoners.pdf.

⁷⁶ W Flory, “Sentencing Guidelines/Truth in Sentencing HB 5419 House Legislative Second Analysis” (House Legislative Analysis Section, September 23, 1998), <http://www.legislature.mi.gov/documents/1997-1998/billanalysis/House/pdf/1997-HLA-5419-B.pdf>.

⁷⁷ Yantus, “Sentence Creep.”

⁷⁸ CAPPs, “Former MDOC Director Urges Restoring Earned Credits, Earlier Entry to Community Programs,” *Citizens Alliances on Prisons & Public Spending: Consensus*, 2008.

⁷⁹ Citizens Research Council of Michigan, “Growth in Michigan’s Corrections System: Historical and Comparative Perspectives.”

⁸⁰ Marc Mauer, “Long-Term Sentences: Time to Reconsider the Scale of Punishment” (The Sentencing Project, 2018), <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

sustainable and passed a bill that retroactively reduced the 85% requirement to 25% for non-violent offenses in 2008.⁸¹ In 2014 the Mississippi legislature passed another bill that reduced the 85% requirement to 50% for certain violent offenses. Not only did their prison population decrease by 14% between 2008 and 2016 in large part because of these reforms, but violent and property crime rates also declined, proving that decarceration is possible while maintaining public safety.⁸²

Michigan, however, has a long way to go before learning this important lesson. Whether it's framed as 'repealing' or 'rolling back', getting rid of Michigan's TiS laws as they were enacted in 1998 would likely revert average sentence lengths back to 88% (which is what they were prior to TiS), instead of the current 100% requirement. Compared to Mississippi, which has a requirement of 25% and 50% for most offenses, this seems like it should be a relatively easy reform to convince the public and legislature to support, despite the negative impact we know TiS has contributed to in Michigan. Attempts to repeal or change TiS laws in the last 20 years however, have proven otherwise.

2000 to Present: Where Are We Now?

Despite the implementation of a 'double-bunking' policy in 1989, overcrowding in Michigan's prisons continued throughout the 1990s and into the early 2000s. This was due in large part to the combination of different tough-on-crime policies, such as TiS with the new sentencing guidelines.⁸³ The overcrowding prompted the Michigan Department of Corrections and the state to adopt changes, aimed at reducing the prison population. Many of these reforms were focused on reentry, the most notable of which was the implementation of the Michigan Prisoner Reentry Initiative in the early 2000s. In 2002, the state also retroactively repealed mandatory sentences for certain drug and low-level offenses.⁸⁴

The prison population did stabilize for the first few years of the 21st century, however it rose again and peaked between 2005 and 2007 as technical parole violations rose, parole approval rates dropped, and generally more people were admitted to prisons.⁸⁵ These reversions to stricter practices are believed to be strongly influenced by another high profile crime committed by someone released on parole.⁸⁶ No doubt attempting to curb this growth, and perhaps inspired by Mississippi's recent reforms to their own TiS laws, Michigan legislators attempted to reverse some of the policies they implemented in 1998.

In late 2009, state representative George Cushingberry proposed House Bills 4497-4499, which would have eliminated TiS and reimplemented good time credits (as they were prior to the

⁸¹ Justice Policy Institute, "Due South: Mississippi: Rolling Back 'Truth-in-Sentencing' Laws" (Justice Policy Institute, May 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/due_south_-_mississippi.pdf.

⁸² Nazgol Ghandnoosh, "The Next Step: Ending Excessive Punishment for Violent Crimes" (The Sentencing Project, 2019), <https://www.sentencingproject.org/publications/the-next-step-ending-excessive-punishment-for-violent-crimes/>.

⁸³ Abbey Frazier, "State Notes: Topics of Legislative Interest: Michigan Prison Closures and Prison Population Trends" (Senate Fiscal Agency, 2019), <https://www.senate.michigan.gov/sfa/Publications/Notes/2019Notes/NotesWin19af.pdf>.

⁸⁴ The Associated Press, "Michigan to Drop Minimum Sentence Rules for Drug Crimes (Published 2002)," *The New York Times*, December 26, 2002, sec. U.S., <https://www.nytimes.com/2002/12/26/us/michigan-to-drop-minimum-sentence-rules-for-drug-crimes.html>; Citizens Research Council of Michigan, "Growth in Michigan's Corrections System: Historical and Comparative Perspectives."

⁸⁵ Frazier, "State Notes."

⁸⁶ Citizens Research Council of Michigan, "Growth in Michigan's Corrections System: Historical and Comparative Perspectives."

1978 ballot initiative) and community placement opportunities.⁸⁷ The bills were supported by Governor Granholm, who also proposed a plan to shut down several prisons later that year. The Michigan Department of Corrections estimated reimplementing good time would reduce corrections spending by over \$100 million annually.⁸⁸ But the bills did not pass. They were strongly opposed by prosecutors, who have strong influence over the legislature and relied on the same claims that supported TiS in the 90s: lack of transparency in terms of how long someone would serve in prison and ‘public safety’.⁸⁹ Additionally, Linda Clark and her son testified, expressing strong opposition to repealing the laws she worked so hard to help implement.

Rep. Cushingberry’s bills were likely inspired by Michigan criminal legal analysts and professionals such as the Citizens Alliance on Prisons and Public Spending (CAPPS – now Safe & Just Michigan) and the State Bar of Michigan Prisons and Corrections Section. Both organizations emphasized the impact TiS has had on the growth of Michigan’s prison population, with little to no effect on public safety, and therefore believe its repeal to be an effective tool for safely reducing the prison population and spending on corrections.

In the summer of 2009, the State Bar newsletter, *Prison and Corrections Forum*, explained their support for implementing an ‘earned credit’ system in Michigan.⁹⁰ They cited studies from other states that showed allowing sentence reduction credits poses no risk to public safety and in some cases, longer sentences may actually increase recidivism. To address the concern over transparency to survivors of crime, the article referred to what some of these other states that utilize earned credits do: the sentencing judge can easily state on the record how much time reduction the convicted person may be eligible for, if they are awarded the credits. Finally, the article focused on the positive benefits sentencing credits provide towards fostering rehabilitation.

In the Spring of 2008, CAPPS also published an article highlighting the need to end TiS in their *Consensus* newsletter, focused on a recent conference aimed at brainstorming and presenting methods for safely reducing Michigan’s prison population. The article on repealing TiS focused on former MDOC Director Robert Brown, Jr.’s views. Like the State Bar article, Brown, Jr. referred to New Jersey’s law requiring the sentencing judge to declare the time that may be served in light of any sentencing credit reduction. He also compared Michigan to most other states in the country that use a sentencing credit system, as well as Michigan’s 83 counties, whose sheriffs all use sentencing credits to incentivize good behavior and prevent overcrowding in county jails: “Brown questioned why a system that is honest enough for county jail sentences is too dishonest for state prison terms.”⁹¹

⁸⁷ Marilyn Peterson, “Legislative Analysis: Allow Good Time Credits and Community Placement for Prisoners” (House Fiscal Agency, November 17, 2009), <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/House/pdf/2009-HLA-4497-1.pdf>.

⁸⁸ Christine Homan, “Lawmakers Debate Bringing Good Time Back for Prisoners,” news, Capital News Service, February 12, 2010, <https://news.jrn.msu.edu/2010/02/lawmakers-debate-bringing-good-time-back-for-prisoners/>.

⁸⁹ 6abc, “Debate Over Prison Sentences in Michigan Is Getting Emotional,” news, 6abc.com, February 24, 2010, <https://6abc.com/archive/7295655/>; The Associated Press, “Michigan Lawmakers Hear Debate on Inmate Release Plan,” news, mlive.com, February 24, 2010,

https://www.mlive.com/news/2010/02/michigan_lawmakers_hear_debate.html; Homan, “Lawmakers Debate.”

***Interestingly, many analysts of truth in sentencing have argued that proponents never actually claimed it would make our communities safer, but focused more on the issue of transparency and incapacitation. However, these news articles and quotes indicate otherwise.

⁹⁰ Michael J Marutiak, “Statement of the Prisons & Corrections Section: Restoration of Earned Sentence Credits for Prisoners,” *Prison and Corrections Forum*, Summer 2009.

⁹¹ CAPPS, “Former Director Urges Restoring Credits.”

What these two articles misrepresented, however, is the claim that increasing public safety was not an aim of supporters of TiS. As we saw in the news articles covering Rep. Cushingberry's bills, the articles covering L. Brooks Patterson's campaign to eliminate sentencing credits, and the several speeches and articles highlighting Linda Clark's campaign to implement TiS (along with other articles covering high profile crimes), enhancing public safety by means of incapacitation and deterring crime through imposing longer sentences was a typical talking point among TiS/anti-sentencing credit supporters. Perhaps addressing concerns about 'public safety' once and for all is the necessary missing piece to repealing TiS.

It is worth noting that how we define and accomplish public safety as a society has traditionally been delegated to law enforcement, disaster first responders and other government-based institutions like the U.S. Department of Homeland Security. What all of these response systems lack is apparent in their very nature – they are designed to respond more often than they are to prevent and respond in a way that perpetuates systemic inequities such as classism, racism, and heteronormativity. It seems that now more than ever, there is mainstream discussion on why creating and maintaining public safety cannot be accomplished without addressing the root causes of these systemic inequities, which is something the criminal legal system simply does not do.⁹² In reality, many policy decisions that have created the mass incarceration system we have today, such as TiS, do more to detract from rather than enhance public safety, which is discussed further in the next section.⁹³ For this reason, reimplementing a sentencing credit system in MI prisons is one small piece in the much larger puzzle of creating a more just and equitable society.

In the last decade there has been continued support for repealing TiS. In 2015, CAPPS published a research report on effective strategies to safely reduce the prison population by 10,000 people.⁹⁴ One of the strategies was reintroducing sentencing credits. In 2018, state representatives LaGrand and Howlyrak introduced house bills 5666 and 5665 to reimplement good time sentencing credits.⁹⁵ Although they did not pass, the bills helped to prompt a grassroots campaign to repeal TiS via ballot initiative in 2020.⁹⁶ This campaign was also unsuccessful, but it did succeed in raising awareness around the need to repeal TiS and many of the same organizers are planning on trying again in 2022 if there are no successful bills in the 2021 legislative season. The question is, will it be possible to convince enough people, particularly legislators and other key stakeholders that it's the right thing to do?

It's Time to Bring Back Sentencing Credits

Because of these historically high incarceration rates in the 2000s, with little to no evidence that they deter crime, let alone address the root causes of crime, the past decade has seen a resurgence of criminal legal 'reform'. It is generally agreed upon in the political and social world, at least superficially, that mass incarceration is not a good thing and we, as a

⁹² "A Roadmap for Re-Imagining Public Safety in the United States," Human Rights Watch, August 12, 2020, <https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states>.

⁹³ Mauer, "Long-Term Sentences."

⁹⁴ Levine, "10,000 Fewer Michigan Prisoners: Strategies to Reach the Goal."

⁹⁵ David LaGrand and Martin Howlyrak, "An Act to Revise and Consolidate the Laws Relative to State Prisons, to State Houses of Correction, and Branches of State Prisons and Reformatories, and the Government and Discipline Thereof and to Repeal All Acts Inconsistent Therewith," Pub. L. No. 5666 (2018), [http://www.legislature.mi.gov/\(S\(sffn53znanubg25qby0tjw5s\)\)/mileg.aspx?page=GetObject&objectname=2018-HB-5666](http://www.legislature.mi.gov/(S(sffn53znanubg25qby0tjw5s))/mileg.aspx?page=GetObject&objectname=2018-HB-5666).

⁹⁶ "Michigan Prisoner Rehabilitation Credit Act," mprca, 2020, <https://www.mprca.info>.

nation, need to reduce our reliance on incarceration, at the very least.⁹⁷ While there is strong evidence to support the benefits and necessity of decarceration, (particularly brought to light in the age of a global pandemic),⁹⁸ there is still debate and uncertainty over what types of reforms are best. The most common reforms are what scholars and experts are increasingly calling ‘low-hanging fruit’; typical sentence reduction and alternatives to incarceration policies relate only to drug-related and non-violent crimes because they are more likely to gain public and political support. But more and more voices are speaking up and pointing out that we will not make significant gains toward mitigating the effects of mass incarceration (or eliminating it all together) until we radically change how we respond to violent crimes.⁹⁹

While violent offenses do not make up the majority of arrests or prison commitments (which is the message we often get from the media and popular TV shows), they do comprise the majority of offenses in prison on any given day, given how long people convicted of violent crimes remain in prison compared to those with non-violent offenses.¹⁰⁰ Michigan is a leader in the nation when it comes to doling out long sentences. So even though our prison population has seen a small decline in recent years, the number of people serving long sentences is growing.¹⁰¹ This means that the response to mass incarceration must involve efforts to reduce sentence length, if the intention is to truly reduce the number of people in prison.¹⁰²

Furthermore, ample research has shown that the growth in prison populations across the country, including Michigan, has largely been due to policy change that increase sentence length (such as the implementation of TiS), as opposed to increases in crime rates.¹⁰³ In fact, Michigan’s violent crime rate has been steadily declining since the early 1990s.¹⁰⁴ And yet, recent research from Safe & Just Michigan has estimated that the average length of stay for people currently serving time in Michigan state prisons is just over 10 years; and the percentage of people serving sentences of 20 years or longer increased from 18.3% to 31.7% between 1998

⁹⁷ Naomi Murakawa, “Mass Incarceration Is Dead, Long Live the Carceral State!,” *Tulsa Law Review* 55, no. 2 (2020): 12.

⁹⁸ Emily A. Wang et al., “Decarcerating Correctional Facilities during COVID-19: Advancing Health, Equity, and Safety” (The National Academies of Sciences Engineering Medicine, 2020), <https://doi.org/10.17226/25945>; Natalie Holbrook et al., “I Don’t Want to Die In Prison” (American Friends Service Committee - Michigan Criminal Justice Program; University of Michigan Carceral State Project, 2020), <http://www.endingperpetualpunishment.org/covid-19/4595038610>.

⁹⁹ John Pfaff, *Locked In: The True Causes of Mass Incarceration-and How to Achieve Real Reform* (Basic Books, 2017); Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton University Press, 2016); Danielle Sered, *Until We Reckon: Violence, Mass Incarceration, and a Road to Repair* (La Vergne, UNITED STATES: The New Press, 2019), <http://ebookcentral.proquest.com/lib/umichigan/detail.action?docID=5632941>; “Long Prison Terms — Justice Policy Institute,” 2020, <http://www.justicepolicy.org/Long-Prison-Terms.html>.

¹⁰⁰ “Michigan Department of Corrections 2017 Statistical Report,” 2019.

¹⁰¹ Susan K Urahn et al., “Time Served: The High Cost, Low Return of Longer Prison Terms,” Public Safety Performance Project (Pew Center on the States, 2012).

¹⁰² “Long Prison Terms — Justice Policy Institute.”

¹⁰³ Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C., UNITED STATES: National Academies Press, 2014), 21, <http://ebookcentral.proquest.com/lib/umichigan/detail.action?docID=3379314>; Doris L Mackenzie, “Sentencing and Corrections in the 21st Century: Setting the Stage for the Future” (National Criminal Justice Reference Service, 2001), <https://www.ncjrs.gov/pdffiles1/nij/189106-2.pdf>.

¹⁰⁴ Julie Mack, “When Did Crime Peak in Michigan? A Look at Trends since 1960,” news, mlive.com, September 26, 2017, https://www.mlive.com/news/2017/09/michigan_crime_trends_since_19.html.

and 2017.¹⁰⁵ While locking people up who commit violence for long periods of time may seem like a natural response, evidence shows that long sentences are actually counterproductive.¹⁰⁶ In The Sentencing Project’s 2018 publication *Long-Term Sentences*, Marc Mauer lays out why “unduly long prison terms are counterproductive for public safety and contribute to the dynamic of diminishing returns as the prison system has expanded.”¹⁰⁷

Criminologists have been researching deterrence for decades, and it is well known that increasing the length of a sentence does not deter crime.¹⁰⁸ We also know that people who commit seriously violent crimes are the least likely to recidivate.¹⁰⁹ This is in large part because people ‘age out’ of crime; tendencies to commit crimes usually peak in the early 20s.¹¹⁰ Socioeconomic factors such as poverty, lack of access to education and healthcare, racism, classism and sexism, contribute to all different types of crime, too.¹¹¹ And yet spending long periods of time in prison (some would argue spending any amount of time in prison) does nothing to address those factors and in many cases worsens them. Despite the Michigan Department of Correction’s attempts to provide educational and employment support, most people leaving prison return to similar circumstances that contributed to their incarceration in the first place, often with more mental and physical health concerns. All the above evidence supports the increasingly presented argument that we should be protecting public safety by centering community needs, which includes safely reducing prison populations by decreasing sentence lengths. Some states, such as Mississippi and Maryland, have even stronger evidence, as they have already taken steps to do reduce long sentences and public safety has not been risked.¹¹²

While it will take more than just reimplementing sentencing credits in Michigan prisons to alleviate the negative impact of long sentences, it is a good place to start. Eliminating sentencing credits in Michigan with the implementation of TiS in 1998 bound the book on tough-on-crime policies. Sentencing credits were a manifestation of the idea that people have the capacity to be redeemed, no matter how heinous their crime. Michigan lawmakers were very clear when they implemented TiS that they did not believe redemption is possible for everyone, even for most people. Rather, the premise behind TiS in Michigan is that the only way a person can be redeemed is through serving their entire minimum sentence. Even then, the parole board

¹⁰⁵ Barbara Wieland, “The Long Haul: Why Long Sentences Hurt Everyone in Michigan,” *Safe & Just Michigan* (blog), February 27, 2019, <https://www.safeandjustmi.org/2019/02/27/the-long-haul-why-long-sentences-hurt-everyone-in-michigan/>.

¹⁰⁶ Mauer, “Long-Term Sentences.”

¹⁰⁷ Mauer.

¹⁰⁸ “Five Things About Deterrence” (Office of Justice Programs, National Institute of Justice: U.S. Department of Justice, May 2016), NIJ.gov.

¹⁰⁹ Prescott, Pyle, and Starr, “Understanding Violent-Crime Recidivism”; Levine and Kettunen, “Paroling People Who Committed Serious Crimes: What Is the Actual Risk?”; “The Ungers, 5 Years and Counting: A Case Study in Safely Reducing Long Prison Terms and Saving Taxpayer Dollars” (Justice Policy Institute, November 2018), http://www.justicepolicy.org/uploads/justicepolicy/documents/The_Ungers_5_Years_and_Counting.pdf.

¹¹⁰ Dana Goldstein, “Too Old to Commit Crime? Why People Age Out of Crime, and What It Could Mean for How Long We Put Them Away.” Nonprofit Journalism, The Marshall Project, March 20, 2015, <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime>; Jeffrey Todd Ulmer and Darrell J. Steffensmeier, “The Age and Crime Relationship: Social Variation, Social Explanations,” *The Nurture Versus Biosocial Debate in Criminology: On the Origins of Criminal Behavior and Criminality*, January 1, 2014, 377–96, <https://doi.org/10.4135/9781483349114.n23>.

¹¹¹ Beth E. Richie, *Compelled to Crime : The Gender Entrapment of Battered Black Women* (Routledge, 2018), <https://doi.org/10.4324/9781315656557>; Alexander, *The New Jim Crow*; Gottschalk, *Caught*.

¹¹² Ghandnoosh, “The Next Step”; “The Ungers, 5 Years and Counting.”

doesn't always agree: Michigan is known for its relatively high rates of denying parole.¹¹³ An 'objective' parole amendment was passed in 2018 with the goal of increasing parole rates, but where that goal has been achieved is yet to be determined. And once a person is released back into society, we know that they continue to face significant barriers, indicating the rest of society does not believe in their redeemability either.¹¹⁴ But this lack of belief in redemption is starting to change, however slowly. So, what can we do to continue to push this cultural shift in the direction of redemption?

As we saw through the analysis of the fall of sentencing credits and rise of TiS, we know that these tough-on-crime policies that contributed to mass incarceration actually had relatively little to do with rising crime rates and much more to do with social beliefs. The events of the past four years, especially this year, have shone a light on the dark underbelly of American society. Racism and capitalist beliefs have continuously allowed those in power (mostly white, wealthy men) to target and assault people of color, particularly Black people, and poor people. Black people in Michigan make up 14% of the general population, yet they comprise 49% of Michigan's incarcerated population.¹¹⁵ This assault is often 'justified' (whether explicitly or implicitly) by the false narrative that Black, Indigenous and People of Color, poor people, and essentially anyone who isn't cisgender, heterosexual, white and male, are to blame for all our societal problems. But that justification doesn't hold up to scrutiny.

More and more experts and community-based organizations are calling for justice responses that work towards addressing and healing the intricate and deeply ingrained social inequities that contribute to crime.¹¹⁶ Restorative and transformative justice practices are increasingly popular in schools, courts and communities.¹¹⁷ Research is showing such practices are far more effective than punitive policies such as TiS that contribute to over incarceration and long sentences.¹¹⁸ The moral and logical arguments for reimplementing sentencing credits are strong: long sentences are illogical and our criminal legal system disproportionately impacts poor people and people of color, manifesting and perpetuating systemic racism and classism. The

¹¹³ "Michigan Department of Corrections Parole Board Decisions Report, 1st Quarter" (Michigan Department of Corrections, January 2021).

¹¹⁴ "Types of Consequences," Resource, Collateral Consequences Resource Center, 2020, <https://ccresourcecenter.org/resources-2/state-specific-resources/michigan-2/>.

¹¹⁵ Prison Policy Initiative, "Michigan Profile," Michigan Profile, accessed November 19, 2019, <https://www.prisonpolicy.org/profiles/MI.html>.

¹¹⁶ Al Letson, "The Uprising," Reveal, accessed March 28, 2021, <https://revealnews.org/podcast/the-uprising/>; Kaba, "Opinion | Yes, We Mean Literally Abolish the Police."

¹¹⁷ Kate Hamaji et al., "Freedom To Thrive: Reimagining Safety & Security in Our Communities" (The Center for Popular Democracy; Law for Black Lives; Black Youth Project 100, 2017), <https://populardemocracy.org/sites/default/files/Freedom%20To%20Thrive%2C%20Higher%20Res%20Version.pdf>; Erin Glasco et al., "#NoCopAcademy The Report" (No Cop Academy, April 2018), <https://nocopacademy.com/wp-content/uploads/2020/06/NCAReportFinal2018.pdf>.

¹¹⁸ John Braithwaite, "Special Issue: Evidence for Restorative Justice," *The Vermont Bar Journal*, no. Summer 2014 (2014): 22; Robert Wood Johnson Foundation, "Common Justice: New Solutions for Violent Crimes," Program Results Report (Robert Wood Johnson Foundation, October 20, 2014), <https://www.rwjf.org/en/library/research/2014/10/common-justice--new-solutions-for-violent-crimes.html>; "The Case for Violence Interruption Programs as an Alternative to Policing" (Data for Progress; The Justice Collaborative Institute, June 2020), <https://www.filesforprogress.org/memos/violence-interruption.pdf>; Daniel W. Webster et al., "Evaluation of Baltimore's Safe Streets Program: Effects on Attitudes, Participants' Experiences, and Gun Violence" (Johns Hopkins Center for the Prevention of Youth Violence; Johns Hopkins Bloomberg School of Public Health, January 11, 2012), <https://cvg.org/wp-content/uploads/2019/09/Safe-Streets-full-evaluation-1.pdf>.

people who are directly impacted by the criminal legal system tend to agree that over-incarceration is ineffective and counterproductive.

While it may seem backwards or insensitive to some to correlate the perspectives of both people who have survived and caused crime, along with people who work in the prisons, the reason for doing so is simple: these three groups of people are the most directly impacted by the criminal legal system and people who are directly impacted by the problems should always be a part of, if not creating, the solutions. Furthermore, it is a well known fact among those that study crime that there is very often an overlap among people who survive crimes and people who commit crimes.¹¹⁹ More often than not they come from the same communities and in many cases are one in the same person. Therefore, it is only logical that the experiences of ALL people directly impacted by the criminal legal system, and the outcomes of those experiences, be at the forefront of evidence that influences criminal legal policy changes.

Both currently and formerly incarcerated people with whom I have discussed this issue agree across the board that some sort of sentencing credit system should be reimplemented in Michigan.¹²⁰ They not only see it as a way to reduce the prison population, but also as a mechanism to foster a more humane environment that offers hope, reinforces positive behavior and provides opportunities to acknowledge and prove one's worth and redeemability. While reimplementing sentencing credits will not be enough to end mass incarceration, there is consensus among those directly impacted by the criminal legal system that it will be a significant first step. Other necessary steps include:

- improving the quality of and increasing access to educational and vocational programs inside the prisons
- Increasing access and improving quality of health services, mental as well as physical, for both incarcerated people as well as the staff
- increasing the wages people are paid when they work while incarcerated,
- making further changes to the way the parole board operates to increase releases, such as mandating that all long-term sentences are reviewed for parole after 10 years
- Improving the quality and quantity of food people are served
- Restoring Pell Grants
- Creating oversight for the grievance process so that people's complaints are actually taken seriously
- And many more¹²¹

When it comes to implementing a sentencing credit system, a common concern is that the system needs to actually be incentivizing, not just look good on paper. This would entail providing enough of a sentence reduction to actually make a dent in a person's sentence, and perhaps most importantly, providing the necessary oversight to eliminate bias when awarding and taking away reduced time. Everyone I spoke to agreed that the current TiS practice does nothing to motivate rehabilitation, and instead imbues a sense of hopelessness and indifference towards self and

¹¹⁹ Jennifer Reingle Gonzalez, "Victim-Offender Overlap," 2014, 3, <https://doi.org/10.1002/9781118517390.wbetc139>.

¹²⁰ During March of 2021 I spoke with 9 people, five currently incarcerated and four formerly incarcerated, to discuss their views on sentencing credits and truth in sentencing. Thank you Roman Barajas-Brazil, Shon Hopwood, Eric Rackard, Ronald Simpson-Bey, Nathan Southwell, Harold Thomas, and the others that preferred to remain anonymous. Your thoughtful insight has been immensely helpful.

¹²¹ Full responses from four of the people I spoke with can be found here: <https://sites.lsa.umich.edu/dcc-project/repeal-truth-in-sentencing/>

community. Which begs the question, if we truly want to maintain community health and public safety, why would we create any environment that undermines that very goal? The impact of truth in sentencing on a person's mental state, as well as their loved ones', combined with the fact that most people will return to society – which means we will all be impacted in some way – indicates that truth in sentencing in fact has a negative effect on public safety.

While it is much harder to ascertain the current views of the people working within Michigan's prisons, the previously-cited views of the past indicate most corrections officers and prison staff would welcome the reimplementation of sentencing credits given the positive impact it has on the prison environment. We know that incentivizing positive behavior in prison significantly reduces the number of infractions (violent or otherwise), making a more positive environment overall.¹²² Who wouldn't want to make their workplace as amenable as possible, especially when it's one that is highly stress-inducing?

Surveys of crime survivors also indicate they are in favor of reimplementing sentencing credits. A forthcoming Safe & Just Michigan report discusses the results of a survey they conducted showing that 84% of Michigan voters overall would support bringing back a 'system of time off for good behavior', and 82% of Michigan crime survivors would support the same system.¹²³ This supports prior research conducted by the Alliance for Safety & Justice that focused on what crime survivors in Michigan need and want; the vast majority said they prefer shorter sentences, emphasis on rehabilitation, and more investment into communities and crime prevention rather than prisons.¹²⁴ With such overwhelming support, there is no reason for Michigan to delay reimplementing sentencing credits any longer.

If these arguments are not enough to persuade the Michigan legislature, one would hope that at the very least the fiscal savings that sentencing credits would generate would be enough of an incentive. Trying to calculate exactly how much money would be saved if TiS were rolled back or repealed and sentencing credits were to be reimplemented is more complicated than it may seem. It involves estimating how big of a reduction to the prison population is necessary to have a significant impact on the overall budget (not just the daily or yearly cost per incarcerated person) as well as accounting for the various factors that influence prison admission rates (such as arrest, prosecution and conviction rates), which can vary from county to county and depend on many decisions which inevitably involve bias. With all that said, however, House Bills 4497-4499 from 2009 which proposed reintroducing Good Time credits estimated they would save the state \$107 million annually.¹²⁵ While the amount of savings will certainly depend on what type of sentencing credit is implemented, and how, there is no doubt it will save the state, and taxpayers, money. And yet saving taxpayer dollars should be a secondary motive when it comes to reforming the criminal legal system. When dealing with something as impactful as imprisonment, the main motive for policy changes to our criminal legal system should be public safety, community health, and respect for human life.

When asked why we still have not reimplemented sentencing credits in Michigan, whereas several other states have, most experts on the subject will point to the power prosecutors hold over the legislature, as well as the public. It is confusing that many prosecutors today (and

¹²² William D. Bales and Courtenay H. Miller, "The Impact of Determinate Sentencing on Prisoner Misconduct," *Journal of Criminal Justice*, The Prison Experience, 40, no. 5 (September 1, 2012): 394–403, <https://doi.org/10.1016/j.jcrimjus.2012.06.006>.

¹²³ Dr. Anne Mahar and Sophie Ordway, "Changing the Narrative" (Safe & Just MI, Forthcoming).

¹²⁴ "Crime Survivor's Speak."

¹²⁵ Peterson, "Allow Good Time."

many lawmakers influenced by the jurisdiction of prosecutors) still oppose sentencing credits, despite their claim that they also agree public safety is of the utmost importance and the connection we now know exists between public safety and reducing sentence length. However it is not all that surprising, given what we know about prosecutors' attitudes towards truth in sentencing and their desire to be tough on crime, even if they no longer use that phrase. It is also worth noting that the Michigan Department of Corrections has refused to take a stance on sentencing credits in the recent attempts to bring them back, despite its history of supporting a sentencing credit system.¹²⁶ The solution, then, must lie in the power of the people to hold their elected officials accountable.

The growing movement within Michigan to bring back sentencing credits, combined with the recent data provided by Safe & Just MI shows that the majority of Michigan voters would likely support a sentencing credit system. The tasks now are to educate the public and the legislature on why this issue is so important and urgent and then come to an agreement on what type of sentencing credit should be implemented and how. Part of that responsibility falls to the research and community-based organizations that advocate for criminal legal policy changes. Another part of that responsibility also falls to journalism. We have seen how easy it is to spread misinformation and the role the media has played in creating and sustaining mass incarceration.¹²⁷ It is time everyone, politicians, the media and the general public alike, does the work to truly learn why and how tough on crime policy decisions like truth in sentencing have negatively impacted all of us. And then take action to find the best solutions for all of us.

¹²⁶ While this paper has documented several instances throughout history when DOC staff and directors have verbalized their support for sentencing credits, the current and recent DOC administrations have been reluctant to make a public comment on truth in sentencing or sentencing credits. Their support would likely go a long way.

¹²⁷ Matt Ferner, "Irresponsible Journalism Fuels Mass Incarceration," *The Point by the Appeal*, January 29, 2021, <https://theappeal.org/the-point/irresponsible-journalism-fuels-mass-incarceration/>.