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# IS STRICTER GUN SENTENCING THE SOLUTION TO CHICAGO'S RISING MURDER RATE?

*by* MARJORIE KENNEDY

When 15-year-old Hadiya Pendelton was shot and killed on January 29, 2013, less than a week after she performed at President Obama's second inauguration, Chicago's murder rate and gun laws received national attention. On the day her suspected killers were arrested, Chicago Mayor Rahm Emanuel called for stricter sentencing of gun crimes in Illinois.<sup>1</sup>

Pendelton's story is one of many. Chicago's murder rate rose 16% from 2011 to 2012.<sup>2</sup> In 2012, Chicago recorded more than 500 gang-related deaths and the seizure of over 800 guns in the first six weeks of 2013.<sup>3</sup>

## CURRENT GUN SENTENCING IN CHICAGO

The current jail sentence for unlawful use of a weapon conviction is at minimum, one year.<sup>4</sup> There is currently no limit on the days of “good time,” or days taken off a sentence for good behavior, available to a person incarcerated for unlawful use of a weapon can receive. According to State’s Attorney Anita Alvarez, who supports stricter sentences for gun crimes, “gun offenders in Chicago sometimes get one-year sentences and may serve only about half their sentences or maybe even less.”<sup>5</sup> Mayor Emanuel described the Illinois prison system as a “revolving door” and that law enforcement personnel are “chasing the same people.”<sup>6</sup>

## PROPOSED CHANGES & REACTION TO THE BILL

On February 11th, 2013, Mayor Emanuel called on state lawmakers to pass legislation to combat gun violence in the city.<sup>7</sup> He proposed a higher mandatory minimum sentence for gun crimes and a requirement that those convicted serve the majority of their prison sentences.<sup>8</sup> Four days later, State Representative Michael Zalewski introduced HB2265, proposing those same legislative changes.<sup>9</sup> This bill would require persons convicted either of unlawful use of a weapon or a second offense of possession of an unlicensed weapon to serve a sentence of no less than three years.<sup>10</sup> The bill also limits the “good time” for these sentences to 4.5 days per month served, effectively requiring those sentenced to serve a minimum of 85% of the sentence.<sup>11</sup> In addition, the bill restricts the availability of probation as an alternative sentence for certain gun crimes.<sup>12</sup>

Supporters of the bill point to the reduction of gun violence in New York City in the early 2000’s.<sup>13</sup> In 2006, New York raised the mandatory sentence for possession of an unlawful weapon from 1 year to 3.5 years.<sup>14</sup> As a result, homicides fell.<sup>15</sup> Chicago currently has approximately three times as many murders per capita as New York City.<sup>16</sup>

One of the men suspected in Hadiya Pendelton’s shooting was convicted last year of unlawful possession of a weapon and received probation.<sup>17</sup> Had he been sentenced to the proposed three years in jail, he would still have been incarcerated on January 29 when Pendelton was killed. Chicago Police Super-

intendent Garry McCarthy states that “[i]n 2013 alone there have been 47 shootings and murders that could’ve been prevented if the offenders were still incarcerated with longer sentences.”<sup>18</sup>

Matthew Munoz, a Chicago gang member, was arrested in 2011 for possessing an illegal firearm and received probation. He too supports stricter sentencing for gun crimes, stating “[s]ome people need prison to learn their lesson. I wish I got sent to prison a long time ago. I kept getting probation for this and that . . . Chicago is getting out of control with the gang violence. They should send those guys to prison—even guys like me.”<sup>19</sup>

Those in opposition argue that stricter sentencing is not the answer to Chicago’s gun violence problem. A Northwestern University research study noted that politicians favor tough penalties because they are inexpensive and psychologically reassuring.<sup>20</sup> However, the study concluded that in practice, harsh penalties may make violence worse.<sup>21</sup> Harsher penalties may cause criminals to “up the ante” because they know they will receive a harsh sentence anyway.<sup>22</sup> In response to the argument that New York’s murder rate fell as a result of stricter gun sentences, critics contend that gun violence was already falling when the law took effect.<sup>23</sup>

John Maki, Executive Director of the prison watchdog group the John Howard Association, states that the bill “embodies why Illinois—and the U.S.—has such a large prisoner population.”<sup>24</sup> He states that the desire for harsher penalties is understandable, because there is a visceral gut reaction to violent crime, like the Pendelton shooting.<sup>25</sup> Everyone wants to do something and “prison feels right.”<sup>26</sup> According to Maki, however, this bill will clog jails, clog courts, and create a mess for the justice system.<sup>27</sup>

Opponents also point to the stress this bill would put on the Illinois prison system.<sup>28</sup> The Department of Corrections note attached to the bill states that “[t]he total impact of HB 2265 would result in an increase of 3,860 inmates, with additional operating costs of \$701,712,300 and construction costs of \$263,130,300 over ten years.”<sup>29</sup> If new prisons must be opened to house these inmates, the cost of building and staffing new prisons may push the total over \$1 billion.<sup>30</sup>

Illinois has one of the most crowded prison systems in the country, with 49,000 inmates in a system designed to house 33,000.<sup>31</sup> Opponents of the bill

argue that stricter sentencing may bring Illinois to the level of overcrowding that led the Supreme Court to rule California's prison system unconstitutionally overcrowded in 2011.<sup>32</sup>

#### CONCLUSION

While the idea of stricter sentencing for gun violence is a seemingly rational reaction to violent crime, the concerns about its implementation may outweigh the proposed impact on gun violence. Overcrowding is a serious issue in Illinois prisons and the added stress on the prison system must be addressed before the legislation can be implemented. According to Maki, "if prison was the answer, mankind would have solved violence a long time ago."<sup>33</sup>

#### NOTES

1 Monica Davey, *Chicago Mayor Seeks More Prison Time for Gun Crimes*, THE NEW YORK TIMES, (Feb. 11, 2013), [http://www.nytimes.com/2013/02/12/us/mayor-emanuel-urges-lawmakers-to-raise-minimum-sentences-for-gun-crimes.html?\\_r=0](http://www.nytimes.com/2013/02/12/us/mayor-emanuel-urges-lawmakers-to-raise-minimum-sentences-for-gun-crimes.html?_r=0) [hereinafter "*More Prison Time*"].

2 Monica Davey, *In a Soaring Homicide Rate, a Divide in Chicago*, THE NEW YORK TIMES, (Jan. 2, 2013), [http://www.nytimes.com/2013/01/03/us/a-soaring-homicide-rate-a-divide-in-chicago.html?\\_r=0](http://www.nytimes.com/2013/01/03/us/a-soaring-homicide-rate-a-divide-in-chicago.html?_r=0).

3 *More Prison Time*, *supra* note 1.

4 720 ILCS 5/24-1.6.

5 *More Prison Time*, *supra* note 1.

6 Erica Demarest, *Mayor Rahm Emanuel: Hails Have Become a 'Revolving Door'*, DNAINFO, (Apr. 1, 2013), <http://www.dnainfo.com/chicago/20130401/pullman/mayor-rahm-emanuel-jails-have-become-revolving-door> [hereinafter "*Revolving Door*"].

7 *More Prison Time*, *supra* note 1.

8 *Id.*

9 Bill Status, HB2265, 98th Gen. Assembly (IL 2013) available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2265&GAID=12&DocTypeID=HB&LegID=74043&SessionID=85&SpecSess=&Session=&GA=98> [hereinafter "Bill Status"].

10 HB2265, 98th Gen. Assembly (IL 2013) available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=85&GA=98&DocTypeId=HB&DocNum=2265&GAID=12&LegID=74043&SpecSess=&Session=>

11 *Id.*

12 *Id.*

13 John Byrne and Ray Long, Emanuel pushes for stricter gun sentences, THE CHICAGO TRIBUNE, (Feb. 12, 2013), [http://articles.chicagotribune.com/2013-02-12/news/ct-met-emanuel-alvarez-gun-laws-20130212\\_1\\_gun-possession-gun-crimes-gun-violence](http://articles.chicagotribune.com/2013-02-12/news/ct-met-emanuel-alvarez-gun-laws-20130212_1_gun-possession-gun-crimes-gun-violence).

14 *Id.*

15 *Id.*

16 Frank Main, *Emanuel, cops, prosecutors aim for stiffer sentences for gun possession*, CHICAGO SUN-TIMES, (Mar. 12 2013), <http://www.suntimes.com/18108089-761/emanuel-cops-prosecutors-aim-for-stiffer-sentences-for-gun-possession.html> (hereinafter "*Stiffer Sentences*").

17 *More Prison Time*, *supra* note 1.

18 *Revolving Door*, *supra* note 6.

19 Main, *supra* note 16.

20 *Id.*

21 *Preventing Crime Waves*, KELLOGG INSIGHT, (Jan. 1, 2011), [http://insight.kellogg.northwestern.edu/article/preventing\\_crime\\_waves](http://insight.kellogg.northwestern.edu/article/preventing_crime_waves).

22 *Id.*

23 Byrne, *supra* note 13.

24 Telephone interview with John Maki, Director, John Howard Association (Apr. 4, 2013) [Hereinafter "Maki Interview"].

25 *Id.*

26 *Id.*

27 *Id.*

28 John Maki, *Longer Prison Time Won't Help*, CHICAGO SUN-TIMES, (Mar. 8, 2013), <http://www.suntimes.com/news/otherviews/18722773-452/john-maki-longer-prison-time-wont-help.html> [hereinafter "Longer Prison Time"].

29 Bill Status, *supra* note 9.

30 Longer Prison Time, *supra* note 28.

31 *Id.*

32 *Id.* Edmund G. Brown v. Marciano Plata, 131 S.Ct. 1910 (2011).

33 Maki Interview, *supra* note 24.