

Evaluation of Kentucky's Early Inmate Release Initiative: Sentence Commutations, Public Safety and Recidivism¹

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THE PRISON SYSTEM is one of the most expensive and largest public systems in the nation. With more than 1.5 million prison inmates in 2008 (Sabol, West and Cooper, 2009), corrections costs American taxpayers more than \$63 billion annually (Hughes, 2006). With this continued growth on both fronts (Hughes, 2006; West and Sabol, 2009), handling this escalation is one of our nation's most pressing public policies. The size and expense of American corrections, coupled with the fact that criminal sentences in the United States are among the longest and harshest in the world, means that controlling increases in populations and expenses may require a paradigm shift in how we view and use prison space.

Two general approaches exist for how to address the need of limiting or reducing correctional populations and costs—limiting the number of offenders who go to prison and limiting the time inmates stay in prison. With no significant movement apparent for controlling the sentencing of offenders to prison, it may be most beneficial to look for ways to control the size of inmate populations using a backdoor approach—limiting the time inmates are incarcerated and managing populations through more effective release policies and practices. However, such an approach is often considered dangerous for both policy makers and the public. With the public and policy-makers concerned that limiting periods of incarceration will lead to more and more quickly occurring recidivism, it is important to examine whether there is a threat to public safety from managing prison populations through a backdoor approach. This is the goal of the current study: to examine whether there are public safety dangers associated with correctional officials

moving inmates back to the community prior to the expiration of their sentences. Through an assessment of the recidivism patterns of a cohort of prison inmates released through sentence commutations and a matched control group of inmates not released, this study examines whether sentence commutations can be done without a threat to public safety.

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Recidivism of Former Inmates

Rates of Recidivism

According to national statistics, within three years of release from prison fully 67.5 percent of all felons are rearrested, 46.9 percent are reconvicted of a criminal offense and 25.4 percent are returned to prison for a new offense (Langan and Levin, 2002). Additionally, more than one-half (51.8 percent) of all released offenders are returned to prison for some reason (a new conviction or technical violation of release conditions). Recidivists account for just over one-third (35.6 percent) of individuals admitted to prison in 2007 (West and Sabol, 2008).

Recidivism rates vary in important ways across types of offenders. According to national statistics, offenders with the highest rates of reincarceration are property offenders (56.4 percent), followed by drug offenders (49.2 percent), violent offenders (48.8 percent) and those convicted of public order offenses (48.0 percent). Among specific offenses, the highest rates of reincarceration are for those possessing/selling stolen property (62.1 percent), larcenists (60.0 percent) and motor vehicle thieves (59.1 percent) (Langan and Levin, 2002). Sex offenders, contrary to popular belief, tend to have some of the lowest rates of reincarceration (rape, 43.5 percent; other sexual assaults, 36.0 percent). Recidivism also tends to occur soon after release from prison. National statistics show that 29.9 percent of released offenders are rearrested within 6 months of release and within two years more than one-half (59.2 percent) are rearrested. Return to prison comes slightly later (as criminal justice processing can take a lengthy period of time); only 5 percent of released felons are reincarcerated within 6 months and 18.8 percent are reincarcerated within two years (Langan and Levin, 2002).

Specialization of Offenses

Scholars debate whether criminal offenders specialize in one particular criminal offense (or particular type of criminal offense), or whether offenders are generalists who engage in a variety of criminal offenses. Evidence to support both positions is available, with research suggesting that the distinguishing factor between specialists and generalists is age. Adult offenders display a greater likelihood of specializing in one particular type of offense (Blumstein, Cohen, Das and Moitra, 1988; Brennan, Mednick and John, 1989; Britt, 1996; Lo, Kim and Cheng, 2008). Juveniles, on the other hand, are more likely to display a pattern of opportunistic offending, engaging in a wide range of types of offenses (Farrington, Snyder and Finnegan, 1988; Tracy, Wolfgang and Figlio, 1990). It is important, though, to consider how specialization is defined and how it is measured, for different analytic approaches can suggest different outcomes (Sullivan, McGloin, Ray and Caudy, 2009). Armstrong (2008: 218) focused on the relationship between specialization and age and showed that specialization does occur, and “the influence of age on trends in specialization across offenses is particularly important for property offenses and violent offenses.”

However, even recognizing that adult offenders have a greater likelihood of specialization and that specialization (at least for violent and property offenses) may be related to an offender's age does not mean that offenders only engage in one particular type of offense (Langan and Levin, 2002). According to national statistics on recidivism (measured as reincarceration), property offenders (46.3 percent) are the most likely to commit a same/similar offense leading to reincarceration (Langan and Levin, 2002). Among other types of offenders, 41.2 percent of drug offenders returned to prison are reincarcerated for a subsequent drug offense, 31.2 percent of reincarcerated public order offenders are reincarcerated for another public order offense, 21.6

percent of violent offenders returned to prison are returned for a subsequent violent offense, and only 2.5 percent of reincarcerated rapists are returned to prison for a subsequent rape (Langan and Levin, 2002). In the end, there is not a clear indication that offenders restrict their criminal activities to only one specific type of offense, although a significant minority of adult recidivists do return to prison for offenses similar to those for which they were previously incarcerated.

Correlates of Recidivism

When looking at correlates of recidivism, there are a number of demographics, personal experiences, and criminal history issues that have been shown to be related to increased rates of recidivism. Among the wide range of demographic variables shown to be important in predicting recidivism are age, race, gender, family structure, and educational achievement. National statistics suggest that African-Americans have higher recidivism rates (54.2 percent; whites, 49.9 percent; other races, 49.5 percent) (Langan and Levin, 2002). Regarding age, few differences in rates of recidivism are seen, except for offenders aged 45 or older at release, who have lower (40.9 percent) rates than others (50 percent to 56 percent). The clearest demographic differences are seen for gender, with 53 percent of men and 39.4 percent of women returned to prison within 3 years. Related to education, employment post-release is a well known and repeatedly established important predictor of desistance from offending (Visher, Winterfield and Coggeshall, 2005). Offenders who leave prison with at least a high school equivalence level of achievement are less likely to be reincarcerated (Gendreau, Little and Goggin, 1996; Zgoba, Haugebrook, and Jenkins, 2008).

Among personal experiences, mental illness and psychological impairment are frequently identified as among the most important predictors of recidivism and re-incarceration (Messina, Burdon and Hagopian, 2006). Similarly, substance abuse is commonly linked with criminal recidivism. Evidence for the link of substance abuse and recidivism has been shown in numerous studies, including a meta-analysis of 45 studies of the impact of substance abuse on recidivism. This meta-analysis, which examined studies published between 1950 and 1998, revealed that a combined alcohol and drug abuse problem has the highest mean effect size of assessed possible influences (Dowden and Brown, 2002). However, what is important is the actual abusive use of alcohol and drugs, not whether an offender has a record of substance abuse offense convictions (Dowden and Brown, 2002).

Other personal experience and demographic variables have defied logic and been shown not to be linked with increased likelihood of recidivism. These non-significant predictors of recidivism, as shown through a meta-analysis of 131 studies published between 1970 and 1994, include intellectual functioning and measures of personal distress and socioeconomic status (Gendreau, et al., 1996).

Perhaps the most logical and (according to at least some research) most effective predictor of criminal recidivism is an offender's criminal history (Gendreau, Little and Goggin, 1996; Nilsson, 2003; Stalans, Yarnold, and Seng, 2004). Some scholars and policymakers hold to the idea that criminal behavior may be especially difficult to modify, and believe that incarceration (through a deterrent effect) may be the most beneficial way to stem criminality. One large national study of more than 38,000 offenders released from prison in 1994 shows that over the first three years of return to the community, fully 56 percent of offenders show a deterrent effect of incarceration (Bhati, 2006); however, others (Langan and Levin, 2002) suggest that length of time incarcerated is only related to (a lower) likelihood of recidivism for those serving 5 years or more of incarceration. Community supervision apparently had no significant effect upon recidivism rates. However, another study (Nilsson, 2003) reported contradictory results. The amount of time previously spent in prison was a more significant predictor of recidivism than post-prison living conditions (education, employment, financial status, social relations, and health). As Nilsson (2003: 57) concludes, "a prison term appears to reduce ex-offenders' opportunities to lead a conventional life with a legitimate income, and thus supports marginalization and social exclusion in society."

Studies of Commutations and Early Release

A limited body of literature examines the impact of early release from incarceration upon recidivism rates. In their meta-analysis of 50 such studies, Gendreau, Goggin and Cullen (1999) found that persons who were incarcerated rather than receiving a sentence of either community corrections or an intermediate sanction had higher rates of recidivism. This finding was especially true for lower-risk offenders. In fact, lower-risk offenders display higher rates of recidivism when serving longer periods of time in prison.

A second study of time to recidivism (measured as reincarceration) for groups of violent, sex and drug specialized offenders showed that offenders who served at least 50 percent of their original sentence had significantly lower rates of recidivism and a longer time period to recidivate than offenders who served less than 50 percent of their sentences (Kunselman, 2000). However, offenders who served 60 percent or more of their sentences had lower survival probabilities than offenders who served between 50 and 60 percent of their sentences. Drug and sex offenders showed significantly longer time to recidivism than violent offenders when serving at least 50 percent of the original sentence.

These findings suggest three very important policy implications. First, a sentence of incarceration by itself may be a facilitator of criminal recidivism. Second, inmates (especially those deemed low risk initially) who serve longer proportions of sentences may be at increased risk of recidivating. Third, there is questionable value to long-term public safety in keeping offenders incarcerated for longer periods of time. In fact, at least for low-risk offenders and drug and sex offenders, longer periods of incarceration may have a negative effect on public safety/recidivism. In effect, early release can be a crime prevention mechanism.

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The Present Study: Evaluating Kentucky's Commutation Initiative

Kentucky is a uniquely situated jurisdiction for assessing the viability of releasing prison inmates earlier than called for in current sentences. Kentucky is a mid-sized system, ranking 25th among states in the number of prison inmates (Sabol, West and Cooper, 2009). It is also a correctional system experiencing rapid growth. According to the Bureau of Justice Statistics (Sabol, West and Cooper 2009), between 2000 and 2007 Kentucky experienced the largest growth in the imprisonment rate of all American jurisdictions. Kentucky experienced an increase of 139 inmates for every 100,000 residents, a rate 5 times higher than the national increase of 28 per 100,000 (Sabol, West and Cooper, 2009). Although the 2007 inmate population did not exceed the operational capacity of Kentucky prisons, fully 95 percent of all prison beds in the state were occupied (Sabol, West and Cooper, 2009).

In an effort to partially address a state budget shortfall, Kentucky Governor Paul Patton announced an initiative to commute the sentences for nearly 900 inmates in December 2002. Only class C and D felons (the lowest two felony levels in the Commonwealth of Kentucky) convicted of non-violent offenses were considered for release. The 883 offenders who were released “early” were all within 120 days of the expiration of their sentences. The commutation initiative was projected to lead to a savings of \$1.3 million immediately and perhaps as much as \$3 million within one year. However, shortly following release, four inmates were arrested for new offenses and received significant state-wide media coverage. As a result, Governor Patton suspended the program in January, 2003. To date, no systematic evaluation of the initiative has been completed.

This commutation initiative is important to evaluate. It can inform public policy decisions designed to address possible ways to control the rapidly increasing populations and costs of corrections. If the initiative is shown to pose no threat to public safety, then policymakers would be wise to consider shortening the length of time served by felons. Such a move would save millions of dollars, while presenting no greater threat to public safety than the expenditure of saved dollars on lengthier incarceration. Or, if the initiative is shown to contribute to increased

rates of recidivism, policymakers will be armed with data to determine a bearable financial cost to offset the costs of victimization via maintaining inmates in prison.

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Methods

The data for this study came from the Kentucky Department of Corrections (KDOC). The KDOC provided data from their inmate database for two groups of inmates: those whose sentences were commuted and a matched comparison group. To clarify, all members of the cohort of inmates who had their sentences commuted (i.e., were released “early”) were identified (N=866). The KDOC then created a comparison group of inmates not granted commutations (N=866). KDOC used the following variables to match the commuted and comparison groups: age, race, sex, and original offense.

The variables used in the analysis include offender sex, race, age, county of commitment, original conviction offense, the inmate's last custody level while incarcerated, and whether the offender was reincarcerated within five years and if so, the offense(s) for which the offender was reincarcerated. In the data, males were coded as 1 and females were coded as 0. Whites were coded as 1 and non-whites were coded as 0. Blacks were coded as 1 and 0 for non-blacks. Age is a continuous variable representing the offender's age at time of release. The offense location was coded to reflect urban (1) or rural (0) county. The individual's custody level was coded so that 1 = minimum, 2 = medium, and 3 = community. The offense (i.e., original or new) for which the offender was (re)incarcerated was coded as (1 = Drug offense, 2 = Violent Offense, 3 = Property Offense, 4 = Theft, and 5 = Other).

[Table 1](#) presents the demographic attributes of the Commuted and Comparison groups. The two groups are comparable and almost identical with regard to the proportions of each group in terms of race, sex, and mean age at first incarceration. However, there were statistically significant differences between the two groups in terms of their original offense. The Comparison Group had a greater proportion of violent offenders (9.6 percent vs. 2.1 percent) than the Commuted Group. The Commuted Group had a slightly higher proportion of offenders in every other category (Drugs, Property, Theft and Other). The Commuted Group had a statistically significantly higher proportion of offenders from urban counties (67 vs. 58 percent). The last statistically significant difference was expected—the Commuted Group served 237.5 fewer days incarcerated than the Comparison Group (583 vs. 821).

The analysis focuses on assessing the reincarceration percentages for both the cohort of commuted sentence inmates and the comparison group, as well as identifying specific subgroups based on demographics (race, sex, age, county of origin, and last custody designation while incarcerated) and the original and reincarceration offenses (drugs, violent, property, theft, and other offenses).² In addition, analysis focuses on the cost savings associated with sentence commutations.

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Findings

Reincarceration: Percentages and Offense Patterns

In [Table 2](#), we see that the reincarceration percentages for both groups were roughly the same: Commuted Group (40.0 percent) and Comparison Group (38.7 percent). Additionally, this table also presents the reincarceration percentages for subgroups (based on demographics and original offense) within the Commuted and Comparison Groups. Our focus is the statistically significant differences in reincarceration for these groups.

In regards to demographics, there are statistically significant differences in reincarceration

likelihood for subgroups based on race, age, sex and last custody level of incarceration. Regarding race, in both groups black releasees (Commuted: 44.5 percent, Comparison: 47 percent) had statistically significant higher percentages of reincarceration than white releasees (Commuted: 40.3 percent, Comparison: 36.4 percent). Younger releasees (age 18-26) were reincarcerated at statistically significant greater percentages in both groups (Commuted: 52.6 percent, Comparison: 48.3 percent). Regarding sex, male releasees (42.8 percent) in the Commuted Group were reincarcerated more frequently than females (22.5 percent); however, no statistically significant difference is seen on the variable of sex for the comparison group. Finally, releasees from both groups who were last held at Medium security levels were more likely to be reincarcerated than either Minimum or Community levels of custody (Commuted: 47.5 percent, Comparison: 42.3 percent).

When examining types of offenders based on offense for which originally incarcerated, only one statistically significant difference is seen. Offenders originally incarcerated for Property offenses were reincarcerated at statistically significantly higher percentages than other types of offenders in the Comparison Group (46.8 percent).

[Table 3](#) presents a breakdown of reincarceration likelihood across both groups in terms of their new offense. Here there are no differences between the two groups that are statistically significant. However, the modal category for both groups was a new drug offense (Commuted: 32.8 percent, Comparison: 37 percent).

A second important aspect of such an effort is to examine whether such a move produces significant cost savings. At the time that the commutation initiative was implemented, the total daily cost of incarceration for both groups in 2002 was \$56,550.88. Therefore, by releasing the commuted sentence inmates there is a cost savings of \$13,430,834.³

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Conclusion

The findings of this analysis demonstrate that inmates released prior to the expiration of their sentences (no more than 120 days early) posed no greater threat to public safety than those inmates who did not received commuted sentences. This suggests that the commutation initiative was an effective method of reducing the size and cost of the prison population while generating recidivism percentages (Commuted: 40 percent, Comparison: 38.7 percent) that were not statistically significantly different.

In total, the results of this study indicate that Kentucky's commutation initiative was successful. There are few statistically significant or meaningful differences between the two groups regarding the likelihood of reincarceration, and the initiative generated a substantial cost savings. Arguably, the comparison group offenders could also have been released when the Commuted Group had their sentences commuted, thereby generating a greater cost savings with little or no additional threat to public safety.

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Table 1.

Demographic Attributes of the Commuted and Comparison Groups

Attribute	Committed Group	Comparison Group
Race¹		
White	591 (71.3%)	590 (70.5%)
Black	238 (28.7%)	247 (29.5%)
Sex²		
Male	746 (86.1%)	746 (86.1%)
Female	120 (13.9%)	120 (13.9%)
Original Offense³		
Drugs	255 (30.2%)	252 (29.2%)
Violent	18 (2.1%)	83 (9.6%)
Property	179 (21.2%)	171 (19.8%)
Theft	220 (26.0%)	195 (22.6%)
Other	173 (20.5%)	162 (18.8%)

Offense Location⁴		
Urban	580 (67.0%)	502 (58.0%)
Rural	286 (33.0%)	364 (42.0%)
Mean Age⁵	33.64	33.24
Mean Days Served⁶	583.84	821.40
1. Chi-square value: 0.129, degrees of freedom: 1, significance level: .719 2. Chi-square value: 0.00, degrees of freedom: 1, significance level: 1.000 3. Chi-square value: 43.715, degrees of freedom: 4, significance level: .000 4. Chi-square value: 14.983, degrees of freedom: 1, significance level: .000 5. t-value: 0.915, degrees of freedom: 1730, significance level (2 tailed): .360 6. t-value: 5.509, degrees of freedom: 1722, significance level (2 tailed): .000		

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Table 2.		
<i>Reincarceration: Commuted and Comparison Groups</i>		
Attribute	Commuted Group	Comparison Group
Reincarcerated?¹	Reincarceration Percentage	Reincarceration Percentage
Yes	346 (40.0%)	335 (38.7%)
No	531 (60.0%)	531 (61.3%)
TOTAL	866	866
Race^{2 3}	Reincarceration Percentage	Reincarceration Percentage
White	238 (40.3%)	215 (36.4%)
Black	106 (44.5%)	116 (47.0%)
Age^{4 5}	Reincarceration Percentage	Reincarceration Percentage
18–26	120 (52.6%)	113 (48.3%)
27–32	89 (43.8%)	86 (41.0%)
33–39	72 (37.9%)	64 (33.7%)
40 & Older	65 (26.5%)	72 (31.0%)
Sex^{6 7}	Reincarceration Percentage	Reincarceration Percentage
Male	319 (42.8%)	297 (39.8%)
Female	27 (22.5%)	38 (31.7%)

Last Custody Level^{8 9}	Reincarceration Percentage	Reincarceration Percentage
Medium	121 (47.5%)	83 (42.3%)
Minimum	29 (44.6%)	37 (37.4%)
Community	73 (34.1%)	71 (30.0%)
Original Offense¹⁰	Reincarceration Percentage	Reincarceration Percentage
Drugs	96 (37.6%) ¹¹	87 (34.5%) ¹²
Violent	5 (27.8%) ¹³	28 (33.7%) ¹⁴
Property	72 (40.2%) ¹⁵	80 (46.8%) ¹⁶
Theft	94 (42.7%) ¹⁷	78 (40.0%) ¹⁸
Other	67 (38.7%) ¹⁹	62 (38.3%) ²⁰
County^{21 22}	Reincarceration Percentage	Reincarceration Percentage
Urban	108 (37.8%)	142 (39.0%)
Rural	238 (41.0%)	193 (38.4%)

1 Chi-square value: 0.293, degrees of freedom: 1, significance level: 0.588
2 Commuted: Chi-square value: 1.27, degrees of freedom: 1, significance level: .259
3 Comparison: Chi-square value: 8.06, degrees of freedom: 1, significance level: .005
4 Commuted: Chi-square value: 35.29, degrees of freedom: 3, significance level: .000
5 Comparison: Chi-square value: 17.29, degrees of freedom: 3, significance level: .001
6 Commuted: Chi-square value: 17.69, degrees of freedom: 1, significance level: .000
7 Comparison: Chi-square value: 2.89, degrees of freedom: 1, significance level: .089
8 Commuted: Chi-square value: 8.76, degrees of freedom: 2, significance level: .013
9 Comparison: Chi-square value: 7.27, degrees of freedom: 2, significance level: .026
10 Commuted: Chi-square value: 35.29, degrees of freedom: 3, significance level: .000
11 Commuted: Chi-square value: 0.82, degrees of freedom: 1, significance level: .371
12 Comparison: Chi-square value: 2.59, degrees of freedom: 1, significance level: .107
13 Commuted: Chi-square value: 1.37, degrees of freedom: 1, significance level: .287
14 Comparison: Chi-square value: 0.95, degrees of freedom: 1, significance level: .330
15 Commuted: Chi-square value: 0.007, degrees of freedom: 1, significance level: .934
16 Comparison: Chi-square value: 5.89, degrees of freedom: 1, significance level: .015
17 Commuted: Chi-square value: 0.95, degrees of freedom: 1, significance level: .331
18 Comparison: Chi-square value: 0.18, degrees of freedom: 1, significance level: .668
19 Commuted: Chi-square value: 0.14, degrees of freedom: 1, significance level: .713
20 Comparison: Chi-square value: 0.01, degrees of freedom: 1, significance level: .905
21 Commuted: Chi-square value: 0.86, degrees of freedom: 1, significance level: .355
22 Comparison: Chi-square value: 0.28, degrees of freedom: 1, significance level: .866

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Table 3.

New Offense at Reincarceration: Commuted and Comparison Groups

New Offense ¹	Commuted Group	Comparison Group	Total
Drugs	113 (32.8%)	124 (37.0%)	237 (34.9%)
Violent	47 (13.6%)	45 (13.4%)	92 (13.5%)
Property	50 (14.5%)	55 (16.4%)	105 (15.4%)
Theft	70 (20.3%)	49 (14.6%)	119 (17.5%)
Other	65 (18.8%)	62 (18.5%)	127 (18.7%)
1. Chi-square: 4.42, degrees of freedom = 4, significance level: .352			

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supervised release who are under the supervision of the U.S. Probation Office, District of Delaware. We use the term probationer to refer to both groups of participants.

3. A note about statistical significance: For this study we use a cutoff value of $p < .10$. This allows us to be fairly confident in generalizing the findings from this sample. There are several instances where there is a large percentage difference between two groups but the relationship is not statistically significant. While there may appear to be a relationship between two variables in this sample, we are limited by the small sample size in this pilot study and cannot confirm that the relationship would be present in a different sample.
4. Probation revocation is being considered as recidivism in this sample because the revoked participants had multiple, serious non-compliance events which resulted in incarceration.
5. Arrests made by local as well as state and other federal agencies were included in this measure. All traffic-related arrests were excluded, with the exception of driving while intoxicated.
6. To obtain these services participants needed to participate in a special workshop or they received individual assistance from the Community Resource Specialist (CRS). Often probationers who were unemployed for several months or had not been actively searching for employment were mandated to attend these workshops or meet with the CRS. Individuals who received interview skills training and resume building training were not different from those who did not, based on their prior employment history or risk level. However, they may have been more non-compliant prior to receiving these services, which then led to them being mandated to attend the workshops or individual sessions by their probation officer.
7. Among those who recidivated, statistically similar proportions were rearrested and revoked in both the Delaware and the comparison groups (27 percent vs. 42 percent revoked; 73 percent vs. 58 percent rearrested, respectively).

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1. The Kentucky Department of Corrections participated in this research and provided access to all data. However, the Kentucky Department of Corrections disclaims approval or endorsement of the findings and interpretations of this study. All views expressed herein are those of the authors and the authors alone.
2. Please note that in the following Tables, when the group total for the variable presented is less than 866 for each group (when total figures for subgroups do not equal the original subtotal), there were missing data for the variable under consideration.
3. This figure was calculated using the percentage of inmates held at each custody level for each group and multiplying that figure times the daily cost of incarceration for those levels (figures obtained in 2008 dollars from the Kentucky Department of Corrections). The total daily figure was then adjusted to be measured in the value of 2002 dollars (the year that the Commuted Group was released). This figure was then multiplied by 237.5 days, the average difference in time served between the Commuted and Comparison groups.

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