Doing Time: “Unfair” Delays Lead to Harsher Sentences

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Quick Take

- Third parties support longer sentences and larger fines the longer a transgressor goes unpunished, even if the delay is caused by factors outside of the defendant’s control.
- Assuring participants that a judge has already accounted for time delays when deciding on a sentence can help assuage perceptions of unfairness, eliminating support for additional fines and jail time.
- Delayed punishment may be as effective as immediate retribution at deterring future wrongdoings due to the “dread of uncertainty” that transgressors experience.
- Faster trials could lead to lighter sentences and increase recidivism—but the human rights issues related to inefficient criminal-justice systems could justify the risk.
The wheels of justice may turn slowly, but they don’t turn down the same path for everyone. The longer it takes for a criminal case to be resolved, the more likely a defendant is to receive a lengthy sentence. In fact, psychological research shows that defendants face more severe sentences even when the criminal-justice system itself is responsible for the delays.

Victims of criminal activity support less severe punishments over time, studies suggest, but judges, case review boards, and other third parties show the opposite response, said behavioral scientist Timothy G. Kundro (The University of North Carolina at Chapel Hill) in an interview with the Observer.

“Based on prior theory, our intuition was that time delays would lead to more severe punishment, but our studies from archival and experimental data were able to provide important evidence of this effect,” said Kundro. “Our work has implications for those responsible for making punishment decisions—especially when the time delay is not the fault of the transgressor.”

Kundro’s research suggests that third parties recommend harsher sentences the longer a transgressor goes unpunished because they view the “unfair” delay as another wrong that must be corrected.

This finding is particularly troubling because many United States courts lag well behind their own standards for case processing times. For example, a 2020 report by the National Center for State Courts found that although state courts aim to resolve 75% of felony cases within 90 days, just 30% of cases were resolved within this timeframe between 2016 and 2018. Similarly, though national standards suggest that 98% of cases should be resolved within a year, just 83% met this expectation.

Kundro and coauthors Samir Nurmohamed (University of Pennsylvania), Hemant Kakkar (Duke University), and Salvatore J. Affinito (Harvard University) began studying the effects of time delays on sentencing by analyzing two datasets of real-world punishment decisions made in response to misconduct by 150,392 civilians and 10,380 police officers.

The civilian dataset from Cook County, Illinois contained cases in which a judge reached a sentencing decision in 2010 to 2021 for felonies committed from 1980 to 2020. The researchers limited the sample to cases in which the defendant pleaded or was found guilty, and excluded cases that resulted in death-penalty sentences that the state banned in 2011.

The police dataset concerned cases involving New York City police. In those cases, resolved by May 2021, a Civilian Complaint Review Board found officers guilty of violations committed between 1984 and 2020.

In both cases, Kundro and colleagues found that the more time that had passed since the crime was committed (for civilian cases) or reported (for police cases), the harsher the sentence assigned by the judge or review board. This effect remained significant when the researchers controlled for the type of crime and the defendants’ demographic information, among other factors.

“Evaluators often believe that crimes should be swiftly followed by an appropriate punishment that will provide transgressors their just deserts,” Kundro and colleagues wrote. “Time delays could lead to
increases in punishment severity because people interpret time delays—more specifically the process that led them to occur—as unfair.”

The researchers further explored this hypothesis through a series of experimental studies. In the first of these experiments, Kundro and colleagues had 450 online participants read about a hypothetical shoplifting incident in which the perpetrator, “Jamie,” stole thousands of dollars’ worth of electronics. Thanks to the store’s security cameras, police were able to identify and arrest Jamie within either 24 hours or 30 days.

Based on this scant information, participants who read that Jamie was apprehended within 24 hours suggested an average sentence of 10 months in prison, while those who read that Jamie remained at large for 30 days suggested an average of just over 12 months in prison.

Although participants in both groups reported similar levels of moral outrage and belief that other people needed to be deterred from committing a similar crime, those in the 30-day condition reported perceiving the time delay as significantly more unfair. Furthermore, only one of these factors influenced participants’ sentencing recommendations: the more unfair participants perceived the time delay to be, the longer their suggested punishment.

In a pair of subsequent studies, Kundro and colleagues sought to rule out alternative explanations by tweaking the details of Jamie’s story. When participants read that the time delay was caused by a technical error related to the security cameras, making it clear that Jamie was not responsible for the delay, their sentencing recommendations didn’t change. Participants were also unmoved when informed that Jamie did not commit any additional crimes before being apprehended.

The researchers then tried changing the nature of Jamie’s crime: This time, 815 participants read that Jamie had stolen $1,000 from a charity to make a payment on a new car. While Jamie was arrested immediately after making the payment, half of the participants read that the judge had the court seize the car the same day the trial ended and the other half read that, because of a court backlog, the car would remain with Jamie for 6 months before being confiscated.

When participants were asked to recommend an additional fine of up to $10,000, those who read that the car was seized immediately suggested an average fine of $3,150, and those who read that Jamie would have use of the car for an additional 6 months suggested an average fine of $4,910.

Similarly, when 900 participants were informed that Jamie had vandalized public property, those who read that Jamie would be sent to prison the next day suggested an average fine of $2,010, while those who read that Jamie would be sent to prison in 6 months owing to overcrowding suggested an average fine of $2,580. As in the previous studies, the severity of participants’ suggested punishment increased alongside how unfair they perceived the procedural delay to be.

Kundro and colleagues have identified some ways to potentially mitigate these perceptions of unfairness, however. In their final study, 3,062 participants received the same information about Jamie’s act of vandalism, for which Jaime would be sent to prison either the next day or in 6 months’ time. But this time, half of the participants in each group were informed that the judge was unaware of the overcrowding issue. The remaining participants were told that the judge knew about the overcrowding
and had accounted for the time delay when deciding on the length of Jamie’s sentence.

Participants who believed the judge was unaware of the delay suggested fines similar to those in the previous study: an average of $900 for the short delay and $2,550 for the longer delay. When participants were assured that the judge had accounted for the delay caused by overcrowding, their recommended fines dropped to an average of $790 and $840 respectively.

“We found that the effect of time delays on punishment was dampened when the time delay was accounted for explicitly,” Kundro and colleagues wrote.

Kundro said that he plans to further investigate the effects of different kinds of time delays, as well as the boundary conditions in which delays may not increase punishment.

“For example, if someone is sentenced for a crime they committed 50 years ago, but society no longer views the crime as morally problematic, I’m not sure that the time delay would increase punishment severity,” Kundro said. “In fact, time may have the opposite effect relative to if the transgressor was sentenced right away.”

He is also interested in investigating how transgressors’ understanding of time delays impacts their decision-making when they have the option to speed up the criminal-justice process, Kundro added. Research suggests that transgressors often dread delayed punishment, which could motivate them to resolve matters more quickly when they have the ability to do so, he noted.

In a 2021 study in the *Journal of Risk and Uncertainty*, for example, Johannes Buckenmaier (University of Zurich) and colleagues found that a group of 296 participants were least likely to cheat in a card game when they knew that they would either be punished immediately or when the threat of potential punishment hung over them for several rounds of the game.

During each of 28 rounds of the game, participants were tasked with guessing which card had been drawn from a deck. While they always had the option to make an honest guess, in some rounds they also had the opportunity to cheat by uncovering the card before submitting their answer. Cheating can be risky, however, and in this case, there was a 25% chance that their dishonesty would be detected, leading them to lose in-game currency and to be suspended from the game for one round.

In order to test the effects of uncertainty, Buckenmaier and colleagues varied the punishment for players who were caught cheating along two dimensions so that 1) cheating was detected immediately or after a two-round delay and 2) cheaters were punished immediately upon being detected or after a two round delay. Through analyzing players responses to these conditions, the researchers found that participants were least likely to cheat in subsequent rounds of the game when detection and punishment were delayed, somewhat less likely to cheat again when they were detected and punished immediately, and most likely to cheat again when immediate detection was followed by delayed punishment or when they were detected after a delay and punished immediately.

“From a policy perspective, our results suggest that to improve deterrence mechanisms, punishment should either be swift or delayed and paired with the psychological dread of uncertainty,” Buckenmaier and colleagues wrote.
A punishing process

Speeding up court procedures would require careful consideration to avoid unintended side effects, Kundro said.

“There are obviously challenges in making sure that swiftness doesn’t have unintended consequences,” he said. “For example, I don’t necessarily think that anyone would advocate that organizations or courts prioritize swiftness at the cost of accuracy or thoroughness.”

Salt Lake City’s Early Case Resolution (ECR) Court offers an eye-opening example of how well-intentioned efforts to reduce case processing time can backfire. The city’s Third District Court created the ECR in 2011 to help resolve misdemeanor and low-level felony cases quickly, free up resources for higher-level felony trials, and reduce recidivism, researchers University of Utah researchers wrote in a 2018 Criminal Justice Policy Review article on the program. To do so, the ECR provided its own team of lawyers, judges, and case managers devoted to trying cases in which the defendant pleaded guilty.

Deterrence theory suggests that punishment can discourage transgressors and the public from committing future crimes “only if the penalty is swift, certain, and proportionately severe for the crime,” the researchers explained. But analysis of the ECR program suggests that deterrence theory may be too simplistic to explain the reality of criminal activity, they added. In fact, speedier trials, although guaranteed by the U.S. Constitution, may increase guilty defendants’ likelihood of reoffending.

The researchers, including psychological scientist Kort Prince, analyzed the effectiveness of this program by comparing 726 ECR cases with 361 regular cases tried in Salt Lake City’s Third District Court. Cases were propensity score matched in order to compare cases in which the defendant’s age, gender, race, type of charge, previous offenses, and history of treatment for substance abuse were as similar as possible.

In line with previous research, the researchers found that ECR cases were resolved significantly faster, spanning just 27 days from filing to disposition, versus 147 days for non-ECR cases. Defendants in ECR cases were found to reoffend within Salt Lake County 48% sooner than non-ECR defendants, however. They also had a 50% probability of reoffending within 250 days, compared to a 50% probability within 600 days for non-ECR defendants.

This increase in recidivism ultimately resulted in the ECR program being shut down, as the well-meaning effort to reduce case processing time may have inadvertently increased reoffending. Berkeley Law Professor Malcom Feeley foretold this type of result in his 1979 book, The Process Is the Punishment. In this title, Feeley suggests that the time, money, and opportunity cost of becoming involved in the legal system may be a more effective punishment than any formal sentence, the researchers explained.

“The idea that the court process is, in and of itself, a penalty for committing crime is not novel,” the University of Utah researchers wrote. “It is therefore plausible that, far from reducing recidivism, accelerating case processing too much may actually reduce the impact on the offender and inadvertently increase subsequent offending.”
Nonetheless, the researchers added, there remains a compelling human rights case for reducing processing time: Not only do court delays contribute to the overpopulation of correctional facilities, but many defendants are detained prior to trial, curtailing their basic freedoms before they have been convicted of any crime at all.

“Given the stakes, it stands to reason that courts would aim to reduce case processing time, whether or not recidivism is reduced in the process,” they wrote.

As researchers continue to uncover the relationship between time and punishment, the wheel of justice keeps on turning.

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References


