

Weekend Jail Sentences: A Good Alternative to Total Confinement Only If Imposed Properly and Fairly

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On August 21, 2015, a Delaware judge sentenced Molly Shattuck, a former Baltimore Ravens cheerleader, to two years of alternating weekends at a Sussex County probation center for the statutory rape of her son's fifteen-year-old friend.¹ Shattuck pled guilty to fourth-degree rape in June after she reached a deal with prosecutors, who agreed to drop other charges,² which included unlawful sexual conduct and providing alcohol to minors.³ While the judge's sentencing decision took into consideration Ms. Shattuck's three children, many victims' rights advocates have criticized the sentence, including Lisae Jordan of the Maryland Coalition Against Sexual Assault, who called it "totally inappropriate."⁴ Weekend jail sentences are commonly used for misdemeanor crimes, such as DUIs, petty theft, or failure to pay child support,⁵ but Shattuck's case raises several questions about the use of weekend jail sentences for more serious offenses and whether judges order such sentences in a discriminatory manner.

With the overcrowding of jails in the United States, weekend jail sentences are seen as a useful alternative to total confinement in a prison because they allow the offender to keep his or her job during the week while still being punished for the crime committed.⁶ However, states allow for judicial discretion in determining when weekend jail time is appropriate and whether a more lenient sentence is appropriate for felonies, or just for

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¹ Corey Johnson, *Weekends in Jail for Rape?: Why people get sentenced to "weekend jail,"* THE MARSHALL PROJECT (Aug. 28, 2015), https://www.themarshallproject.org/2015/08/28/weekends-in-jail-for-rape?ref=tsqr_stream.

² Ian Duncan, *Ex-Ravens cheerleader Molly Shattuck pleads guilty to rape*, THE BALTIMORE SUN (June 16, 2015), <http://www.baltimoresun.com/news/maryland/bs-md-shattuck-case-20150616-story.html>.

³ Julie Scharper & Jean Marbella, *Molly Shattuck charged with rape and sexual contact with minor*, THE BALTIMORE SUN (Nov. 5, 2014), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-shattuck-sentencing-20150820-story.html>.

⁴ Johnson, *supra* note 1.

⁵ There is no comprehensive list detailing which states allow for the use of "weekend jail" sentences, but many states allow for intermediate sentences, such as weekend jail. See CAL. PENAL CODE § 1203.1(f) (West, Westlaw through Ch. 391, except Ch. 359, of 2015 Reg.Sess.); N.Y. PENAL LAW § 85.00 (McKinney, Westlaw through L.2015); N.C. GEN. STAT. ANN. §§ 15A-1340.10-.33 (West, Westlaw through Chapter 237 of the 2015 Regular Session of the General Assembly); VA. CODE ANN. §§ 53.1-131.1 (West, Westlaw through End of the 2015 Reg. Sess.). Intermediate sentences typically include some form of a correctional program that is less severe than total confinement but more restrictive than probation. Michael Tonry, *Intermediate Sanctions in Sentencing Guidelines*, U.S. DEP'T JUST.: NAT'L INST. JUST. xi-xii (May 1997), <https://www.ncjrs.gov/pdffiles/165043.pdf>. Other examples of intermediate sentences include "intensive probation, house arrest, electronic monitoring, boot camps, day-reporting centers, and day fines." *Id.* at xii.

⁶ *Collateral Costs: Incarceration's Effect on Economic Mobility*, THE PEW CHARITABLE TR. 5 (2010), http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf.

misdemeanors.⁷ For instance, North Carolina’s Structured Sentencing program allows for felony offenders to receive an intermediate punishment, but Virginia’s Office of the Attorney General specifically noted that Virginia’s statute permitting weekend jail sentences should not be used for felony offenders.⁸ Alternatives to active jail time, including weekend jail, are necessary in the increasingly complex American criminal justice system. Allowing offenders to serve their time on weekends not only permits them to work during the week but also allows families to remain intact.⁹ The incarceration of a parent can have lasting effects on children who must learn to cope with the stigma of having a parent imprisoned and with the financial burden placed on the family.¹⁰ Concern for the children’s mental and physical wellbeing provides a strong incentive for judges to use their discretion when ordering a more lenient sentence, such as weekend jail.

But, as is asked of many sentencing decisions, how exactly does a judge take all of the mitigating factors into consideration? And when is a sentence too lenient? In cases like that of Molly Shattuck, critics are concerned that people view rape or sexual assault by female perpetrators against male victims as a less serious crime than when male perpetrators rape female victims.¹¹ Although male-perpetrated rape against female victims is more common,¹² it is necessary to recognize that women can be responsible for forcing sex on men. For the judge to reduce Shattuck’s sentence to a jail time every other weekend for two years minimalizes the emotional trauma the boy may feel and the seriousness of a statutory rape charge.¹³ Moreover, the typical mitigating factors that many believe to be at the heart of necessitating more lenient sentences—including the

⁷ See, e.g., LAURIE L. LEVENSON, LEVENSON ON CALIFORNIA CRIMINAL PROCEDURE § 25:38 (The Rutter Group), Westlaw (database updated December 2014); GARY MULDOON, HANDLING A CRIMINAL CASE IN NEW YORK § 22:29, Westlaw (database updated September 2015).

⁸ Compare N.C. GEN. STAT. ANN. § 15A-1340.13(g) (stating that in most instances the court may impose an intermediate punishment for an offender convicted of a felony), with Office of the Att’y Gen., Commonwealth of Virginia, Opinion on Applicability of Virginia Statute Permitting Weekend or Nonconsecutive Jail Time to Persons Convicted of Felonies (July 20, 2012), OFFICE OF THE ATT’Y GEN., COMMONWEALTH OF VIRGINIA, Opinion No. 12-062 (2012 WL 3060441).

⁹ THE PEW CHARITABLE TR., *supra* note 6, at 5; Jalila Jefferson-Bullock, *The Time Is Ripe to Include Considerations of the Effects on Families and Communities of Excessively Long Sentences*, 83 UMKC L. REV. 73, 108 (2014).

¹⁰ THE PEW CHARITABLE TR., *supra* note 6, at 18–21; Sarah Schirmer et al., *Incarcerated Parents and their Children: Trends 1991–2007*, THE SENTENCING PROJECT 6 (2009), http://www.sentencingproject.org/doc/publications/publications/inc_incarceratedparents.pdf.

¹¹ Alison Knezevich, *Molly Shattuck sentenced to 48 weekends in community corrections center in Del. rape case*, THE BALTIMORE SUN (Aug. 21, 2015), <http://www.baltimoresun.com/news/maryland/crime/blog/bs-md-shattuck-sentencing-20150820-story.html>; Keith Alexander, *Cases of sexual abuse of boys by women raise awareness of an uncommon crime*, THE WASHINGTON POST (Sept. 2, 2012), https://www.washingtonpost.com/local/crime/cases-of-sexual-abuse-of-boys-by-women-raise-awareness-of-an-uncommon-crime/2012/09/02/dc6eb51a-f06b-11e1-892d-bc92fee603a7_story.html.

¹² *Statistics about Sexual Violence*, NAT’L SEXUAL VIOLENCE RESOURCE CTR. (2015), http://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media_packet_statistics-about-sexual-violence_0.pdf.

¹³ In comparison to Shattuck’s sentence, former Delaware prosecutor, Daniel Simmons, was sentenced to eighteen months in jail and an additional six months of home confinement for having sex with a sixteen-year-old boy. Cris Barrish, *Prosecutor gets 18 months for raping teen boy*, USA TODAY (June 16, 2015), <http://www.usatoday.com/story/news/nation/2015/06/16/prosecutor-rape-sentence/28839361/>.

family's financial stability or leaving children with inadequate caretakers—are not present in Shattuck's case. An active jail sentence would undoubtedly have a psychological impact on her children. But Shattuck, who is often referred to as a "socialite,"¹⁴ is the former wife of a multimillionaire,¹⁵ and her ex-husband would presumably be able to take care of the children.¹⁶ Many of the financial burdens that experts cite when discussing the hardship of long sentences on families are not present in her case.¹⁷

Another concern is that state sentencing guidelines advise judges to force offenders to pay the costs of their weekend jail times if they have the financial means.¹⁸ While the offender's ability to pay may not be a formal consideration when determining the imposition of such a sentence, it may still play into the judge's decision to allow a more lenient sentence. As such, a judge's discretion may become discriminatory, ordering weekend jail sentences in a disparate manner, only for those who can afford that luxury.

In a 2014 article on weekend jail in Virginia Beach, it was noted that offenders serving weekend jail sentence were required to pay fifty dollars upfront, plus seven dollars per day they were incarcerated.¹⁹ Among those offenders serving time were a telecommunications worker, a financial services broker, an insurance agent, and other respectably employed offenders.²⁰ Each offender's situation is unique and cannot necessarily be judged without further details, but if weekend jail sentences are to be used as a method of reducing jail populations and keeping offenders in the workforce, legislators and judges need to ensure that even those who cannot afford to pay for the sentence are able to receive it. Otherwise, an entire segment of the population, arguably the segment most vulnerable to the economic hardship of incarceration, will be excluded from receiving the benefits of this type of sentence.

¹⁴ Duncan, *supra* note 2.

¹⁵ Brandy Zadrozny, *From Baltimore Ravens Cheerleader to Mrs. Robinson*, THE DAILY BEAST (Nov. 6, 2014), <http://www.thedailybeast.com/articles/2014/11/06/from-baltimore-ravens-cheerleader-to-mrs-robinson.html>.

¹⁶ I do not intend to dismiss the impact that a parent's incarceration can have on a child. It would certainly be difficult for Ms. Shattuck's children to see their mother in jail. But the Shattuck family would not be a family that would have to "scramble to make ends meet" because of her incarceration. *See* THE PEW CHARITABLE TR., *supra* note 6, at 18–21.

¹⁷ The Shattuck case is somewhat reminiscent of the 2013 Ethan Couch case, in which a well-off sixteen-year-old boy was sentenced to probation and time in a rehabilitation facility after killing four people while driving drunk. The court also ordered his parents to pay for his time in rehab. *See* Michael Mooney, *The Worst Parents Ever: Inside the story of Ethan Couch and the "affluenza" phenomenon*, D MAGAZINE (May 2015), <http://www.dmagazine.com/publications/d-magazine/2015/may/affluenza-the-worst-parents-ever-ethan-couch?single=1>; Dana Ford, *Judge orders Texas teen Ethan Couch to rehab for driving drunk, killing 4*, CNN (Feb. 6, 2014), <http://www.cnn.com/2014/02/05/us/texas-affluenza-teen/>. His attorney successfully argued that, having been raised thinking that wealth bought privilege, Couch could not be held fully accountable for his actions. *See id.*

¹⁸ *See, e.g.*, VA. CODE ANN. §§ 53.1-131.1 (West, Westlaw through End of the 2015 Reg. Sess.); LAURIE L. LEVENSON, LEVENSON ON CALIFORNIA CRIMINAL PROCEDURE § 25:38 (The Rutter Group), Westlaw (database updated December 2014).

¹⁹ Joanne Kimberlin, *Doing time part time: Weekend jail in Virginia Beach*, THE VIRGINIAN PILOT (June 16, 2014), <http://hamptonroads.com/2014/06/doing-time-part-time-weekend-jail-virginia-beach>.

²⁰ *Id.*

The U.S. criminal justice system is in need of alternatives to lengthy prison sentences that wreck havoc on families and communities, and weekend jail time is a valuable tool for relieving overcrowded jails and for appropriately punishing low-risk offenders. However, courts and state legislators need to ensure that judges adequately consider the severity of the crime, the harm done to the victim, and the reasons for needing to punish such a crime.

There are two principle theories for the justification of punishment: retributivism and utilitarianism. Retributivists believe that a person should be punished because he or she has committed a wrongdoing and as such deserves to be punished.²¹ Utilitarian theorists, on the other hand, argue that the primary purposes of punishment are: (1) deterrence such that the offender and others will not commit the crime, (2) incapacitation of the offender, and (3) reformation of the offender to make them a more productive member of society.²² Utilitarian theorists believe in accomplishing the most good for all of society and, thus, would argue that punishment may only be justified if it accomplishes enough good to outweigh the harm done by the punishment.²³

By incarcerating people for unnecessarily long periods of time, the current system of punishment in the United States is doing more harm than good.²⁴ As society begins to recognize the harm of long sentences for non-violent crimes on families and communities, alternatives like weekend jail and other forms of intermediate sentences may be vital to reforming the system. These sentences address the concern of retributivists who believe that criminals deserve to be punished, while ensuring that the punishment is not so severe that it does more harm than is necessary to the offender—and society as a whole. However, if weekend jail sentences are to be used as a viable alternative for *all* low-risk offenders, judges need to ensure that their decision to grant a weekend jail sentence is not inappropriately influenced by a person's ability to pay, allowing for the sentences to be imposed equally across racial and socioeconomic lines.

²¹ Kent Greenwalt, *Punishment*, 74 J. CRIM. L. & CRIMINOLOGY, 343, 347–48 (1983).

²² *Id.* at 350–53.

²³ *Id.* at 350.

²⁴ See John Tierney, *Prison and the Poverty Trap*, N.Y. TIMES (Feb. 18, 2013), http://www.nytimes.com/2013/02/19/science/long-prison-terms-eyed-as-contributing-to-poverty.html?pagewanted=all&_r=0 (discussing the link between lengthy incarcerations and systematic poverty); Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Oct. 6, 2014), <http://www.newyorker.com/magazine/2014/10/06/before-the-law> (detailing the imprisonment of a New York teenager for three years pending a decision on his case, which was ultimately dismissed, and noting the psychological impact of that time on the young man as he reentered society).