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The Impact of Public Policy Decisions on Juvenile Recidivism in the United States: A Retrospective Examination

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Abstract

Juvenile delinquency and recidivism is a major issue that affects communities throughout the United States. During the 1990s, legislation was passed in many states and at the federal level with the purpose of “getting tough” on juvenile crime. Now many years later, there is concern that some of these programs that were intended to help curb the crime rate, such as boot camps, have been largely ineffective and may actually be counterproductive. Results indicate that public officials must pay particular attention to institutional factors, which are directly under their control, and implement policies that coincide with empirical findings.

Keywords: United States, Juvenile delinquency, Recidivism, Crime, Public policy.

Introduction

Juvenile justice presents a unique problem for public officials and criminal justice system administrators across the United States. Public opinion regarding the treatment of minors for criminal offenses varies widely and juvenile crime policies are implemented at the state level according to diverse standards. The types of policies and programs instituted by state governments are not uniform, and different types of programs for youths have been established with varying levels of success. Many studies have found that some of these programs and policies are actually detrimental given their correlation with increases in rates of juvenile criminal recidivism among minors. While there are other important social and cultural factors that also increase the probability that an individual will become a repeat offender, these are less likely to be abated by statute alone. In fact, one may argue that social and cultural norms have a larger impact on the law than the other way around. This paper focuses on the impact of public policies on juvenile recidivism since these are under the direct control of public officials.

It has been found that there are reliable predictors for identifying those minors who are most likely to become repeat offenders and criminals in adulthood. The characteristics are not limited to demographic factors, but also the type of institutional framework that is in place to deal with juvenile delinquency. There is considerable evidence that legislators

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should remove programs such as boot camp and “Scared Straight” programs from their juvenile justice codes because they increase the likelihood of recidivism rather than reduce it. States should focus on more individual rehabilitation of juvenile offenders. It has also been found that juveniles who are tried as adults and spend time incarcerated among adult populations are more likely to become repeat offenders. Therefore, minimum-age laws and policies regarding detention should be revisited on a state-by-state basis.

1. Criminal Recidivism and Juvenile Offenders

Preventing criminal recidivism is a cardinal motivation for establishing a criminal justice system through courts. The goal of criminal justice is to reduce and prevent all criminal behavior, and when it does occur, to see that those who commit crimes do not follow the same route again. Recidivism is a concern for several reasons. First, increases in criminal recidivism in all age groups are indicative of a failure of society to rehabilitate and reform criminals. Second, in various studies, repeat offenders have been shown to be responsible for large percentages of all criminal behavior (Rhyne et al. 2008; Oregon Youth Authority 2004). In other words, preventing a person from becoming a repeat offender will more than likely prevent a number of crimes from occurring in the future. Third, sentences for repeat offenders are usually longer, therefore there are greater costs associated with processing repeat offenders rather than first-time offenders. Fourth, increases in criminal recidivism are indicative of an increase in citizens choosing crime as a lifestyle. Fifth, recidivism among juveniles and the concentration of criminal recidivism in certain communities indicates a breakdown of the social order that begins early in life and has a lasting impact on these communities.

Juvenile crime is special in the criminal justice system because of the legal status accorded to youths with respect to criminal behavior and because young offenders are more likely to become repeat offenders than their adult counterparts (Rosenfeld, 2003). In addition, studies have shown that “chronic offenders” are responsible for a large share of criminal activity among minors. One Oregon study from 1998 through 2002 indicated that “chronic offenders were involved in 50.7% of new crimes” (Oregon Youth Authority, 2004).

Juvenile justice is administered at the state level, and every state draws distinctions between juvenile and adult offenders. The difference in treatment of adult and youth criminals is reflected in the different types of sentences handed down by courts to juveniles and adults and the length of the sentences for the same crime. All fifty states have established laws regarding juvenile prosecution and the treatment of juvenile offenders (OJJDP, 2006). While each state does have a provision for such prosecution, all fifty states also provide methods of allowing juveniles to be tried as adults in criminal court. The most common means to this end are judicial waivers (Government Accountability Office, 1995). Pennsylvania’s Act 33 of 1996 followed in the same vein. This act expanded the number of crimes for which a juvenile would be tried as an adult to include crimes beyond murder, including rape, aggravated assault and robbery (Kalist & Lee, 2009).

States’ respective laws regarding juvenile justice vary with respect to the age of offenders and the severity of the crimes (OJJDP, 2006). Thus, the definition of juvenile criminal recidivism will vary along with the legal authority under whose jurisdiction juvenile offenders fall. It is therefore important to look at both state and national level statistics in determining the effects of the criminal justice system itself on the probability of

whether or not a juvenile offender will continue to commit crimes into the future. If there are institutional differences among the fifty states that are responsible for increases or decreases in juvenile recidivism, the citizens of each of the states whose systems foster criminality might be interested in discontinuing whatever programs and policies are responsible for inducing the criminal lifestyle in juvenile offenders.

In terms of academic research, the non-uniformity of standards regarding juvenile offenses and definitions of juvenile crime makes the comparison of studies in various legal jurisdictions more difficult than a study of juvenile crime in just one jurisdiction. For example, if juvenile crime is defined as crime below age fifteen in a certain state, and it has been consistently been found that fifteen to seventeen year olds commit a large proportion of crimes for the age group of ten year olds to seventeen year olds, then a study of juvenile crime in that state might underreport the prevalence of crimes committed by young people. This lower rate of juvenile criminal behavior, including recidivism, will not be comparable in a meaningful way to the rates for states that include the mentioned age cohort. In addition, the definition of different programs and policies instituted in the various states with respect to juvenile crime will be different in each state and even in different regions within a given state. Misdemeanor crimes are often prosecuted at the county level, therefore the punishments and sentences given to juvenile offenders will vary even within a state's borders.

2. Factors Used to Predict Juvenile Recidivism

Various factors have been consistently mentioned in the literature as predictors of juvenile recidivism in an individual juvenile offender. In other words, certain characteristics of offenders and the legal systems in which they are prosecuted have been found to have statistically significant correlations with criminal recidivism (Grunwald et al., 2010; Minor & Hartmann, 1997). Among these are:

- Demographic factors such as age, race, and sex.
- Personal factors such as family environment and psychological factors.
- The type of first offense a juvenile commits.
- The disposition of courts and length of exposure to the criminal justice system.
- Whether a juvenile's arrest ultimately leads to prosecution.
- The type of sanctions and sentences handed down against juvenile offenders.
- Whether a juvenile spends time in an adult incarceration facility.
- The length of time since previous offenses.

It is obvious from the above list that juvenile recidivism is not a simple matter. There are various factors that increase or decrease a juvenile offender's chances of again committing crimes (Grunwald et al. 2010; Minor & Hartmann, 1997). Thus, it is important from a public policy perspective to understand what may be done on an institutional level to reduce the instances of criminal recidivism among young offenders.

There are cultural or economic factors that indicate a higher risk of recidivism for certain groups, and it is certainly the responsibility of legislators to confront these issues as they implement policy to respond to juvenile crime. While the focus of this paper is on the policies associated with juvenile justice, it should be noted that policy responses, no matter how successful, will be impacted by the social and cultural composition of the citizens in each state and across the entire United States.

3. Demographic and Personal Factors

The age of repeat offenders follows a consistent distribution. In one North Carolina study, the lowest rate of recidivism was for six to nine year olds but then increased until it maximized for twelve and thirteen year olds and then decreased again for fourteen and fifteen year olds (Calhoun et al. 2009). The recidivism rate in Missouri was highest for the thirteen and fourteen year old age groups, with the rate declining gradually as the individuals in the sample were younger or older (McElfresh et al. 2009). Yet the same study did show that older age groups accounted for a large proportion of overall recidivism. Indiana's 2008 Juvenile Recidivism Report only reported information for minors between the ages of thirteen and eighteen years of age (Garner, 2008). This study also reported the highest recidivism rates for fourteen and fifteen year olds for the sample. Several other studies and researchers have confirmed this trend (Kalist & Lee, 2009; Sentencing Guidelines Commission: Washington, 2008).

Different state studies, as well as scholars, have indicated higher recidivism rates for minorities, especially African-American and Hispanic offenders, both adult and juvenile (Garner, 2008; Kalist & Lee, 2009; Sentencing Guidelines Commission: Washington, 2009; Michigan Dept. of Human Services, 2007; Marbley & Ferguson, 2005). However, the literature on the subject is far from having a consensus. Mbuba (2005) performed a study in which the conclusion was there was no correlation between race and recidivism. Yet even in his own literature, he cites several authors and studies that link race to juvenile recidivism and overall criminal recidivism.

While there is no consensus on the reliability of race as a predictor of juvenile recidivism, empirical studies and academics agree that males are generally more likely to commit repeat offenses than females, and males account for a larger proportion of overall crime than females. Indiana's 2008 Juvenile Recidivism Report indicated that males and females had nearly identical recidivism rates for the first year after release, but that female recidivism dropped off significantly two to three years after release (Garner, 2008). Males in Indiana recidivate for longer periods of time after their initial release. This was likewise the case in Washington State, where recidivism by gender was relatively the same (Sentencing Guidelines Commission: Washington, 2009). In Missouri, on the other hand, males recidivated at a rate of 29% within the first year of release whereas females recidivated at a rate of only 19% (McElfresh et al., 2009).

The home environment and personal situation for repeat offenders are also predictive of future criminal recidivism. Those juvenile offenders coming from homes where they are exposed to abuse and violence was found to double the likelihood of being involved in crime (Currie & Tekin, 2006). It also has been found that minors living with single mothers in Pennsylvania are more likely to recidivate (Kalist & Lee, 2009).

In addition, as is the case with adult recidivism, offenders with mental illnesses or other psychological problems are more likely to commit crimes as well as fall into criminal recidivism. The New York Times reported on August 9, 2009, that two-thirds of juvenile inmates in the United States suffer from at least one mental illness (Moore, 2009). The likelihood of recidivism among mentally ill minors is higher than for other groups. Thomas Grisso of the University of Massachusetts (2003) has pointed out that there is much research that indicates certain types of antisocial and aggressive behavior are associated with mental illness, and such behavioral problems account for continued criminal activity among the mentally ill. A large amount of literature regarding the

prevalence of psychological problems among juvenile offenders is included in other research as well (Teplin et al., 2002). Noted is the special importance of mental illness to public officials in the context of juvenile justice. Since the mentally ill are guaranteed proper treatment under the Constitution, public policy must address the overwhelming problem of psychiatric issues among young offenders (Teplin et al., 2002).

While many demographic factors may be beyond the ability of public officials to correct, addressing mental illness is one area where public officials have failed. Several studies have shown that many juvenile offenders suffering from mental illnesses are not getting the services they need through the juvenile justice system (Grisso, 1998; Calhoun et al., 2009; Moore, 2009; Greenwood, 2008; Lepler et al., 2007). Further evidence has been given indicating detention centers have been used to house youths awaiting mental illness health services (Carothers, 2004). Given the nature of these centers, it is hard to imagine a mentally disturbed youth entering such a place and not becoming a criminal. Any successful battle against juvenile recidivism will have to address the lack of attention and resources committed to rehabilitating mentally ill juvenile offenders.

4. Institutional Factors

While institutional factors may seem to stand apart from demographic factors in determining recidivism rates, this is only conceptually. It may be the case that institutional problems may exacerbate the recidivism rate among a certain section of the population. For instance, racial profiling may produce higher rates of recidivism for minorities than whites, which would produce skewed results regarding the criminal makeup of the juvenile population.

Yet it is difficult to say whether or not the results of police work are due to racial profiling or legitimate investigations, and therefore it is difficult to ascertain whether investigations of minorities should be scaled back in an effort to create equilibrium in recidivism rates. In other words, if minorities or males or the mentally ill are actually at a higher risk of recidivating, then the differentials in police attention are warranted. By rerouting resources to ensure equalized recidivism rates, police may end up not investigating actual criminal activity for the sake of dropping the rates among certain groups.

Thus, when considering policies and programs, it is important to ascertain whether they have different impacts on various demographic groups. Yet this is made difficult by the inability of determining whether institutional or demographic groups are specifically responsible for certain activities. But there is research that shows evidence that some policies and programs either increase or decrease recidivism across all demographic groups.

The type of first offense a juvenile commits is correlated with later criminal behavior in several studies. In Missouri, youths who committed public order offenses (harassment, unlawful use of a weapon, etc.) had the highest rate of recidivism. The second most likely to recidivate was those who committed property offenses, and after that group was those who had committed violent crimes (non-sex related assault, theft). Least likely to recidivate were sex offenders, and after them were substance abusers (McElfresh et al., 2009). The state of Washington had similar results, with those who had committed gross misdemeanor and misdemeanor offenses recidivating at a higher rate than other offenders. The same study indicated those individuals who committed gross misdemeanor and property offenses were more likely than their peers to commit the same type of offense as their initial offense (Sentencing Guidelines Commission: Washington, 2009). In other

words, thieves were more likely to steal than sex offenders were to commit another sexual assault. An Indiana study showed the similar results, with recidivism being highest for what are deemed serious, non-violent crimes. While the variation in state laws makes it difficult to categorize types of juvenile crime, it is clear that certain types of crime, i.e. serious, non-violent, non-sexual behavior, are associated with recidivism at higher rates than others.

The disposition of courts and the amount of time a juvenile spends within the criminal justice system also has an impact on whether he or she will commit future crimes. There are several stages within the juvenile justice system, each of which finds itself in most states' statutory requirements. North Carolina's system illustrates many features shared by other states. The stages of processing begin with the intake process, which involves a court counselor determining whether an individual case should be brought to court. If not, the case is marked *closed*. If the case is not deemed worthy of the court but that something should still be done, which could be counseling or some other community resource, the case is marked *divert*. If the complaint against the juvenile is deemed by the counselor as worthy of the juvenile court, it is sent to the court for adjudication (Calhoun et al., 2009). The adjudicatory process will end with a judge determining whether the complaint should be *dismissed* or whether it should be marked as *adjudicated*. If it is the latter, sanctions are handed down to the juvenile offender at a dispositional hearing (Calhoun et al., 2009).

Several studies have shown that the longer a minor remains in the juvenile justice system, the greater chance her or she will become a repeat offender (Calhoun et al., 2009; N. Carolina, 2004; Garner, 2008; Kalist & Lee, 2009). This presents a big problem for public officials. On the one hand, something should be done about juvenile crime; on the other hand, it seems greater involvement with the criminal justice system makes it more likely that an offender will repeat his or her criminal activity. Accordingly, whether a juvenile's arrest ultimately leads to successful prosecution is correlated with higher rates of recidivism. Yet this correlation does not prove a clear direction of cause and effect between involvement with the juvenile justice system and recidivism. Several studies showed a positive correlation between severity of crimes and recidivism, and more severe crimes lead to court proceedings rather than the closing of cases before the court stage. Furthermore, parolees have been shown to have higher rates of recidivism, which may be an effect of continual supervision rather than behavioral differences.

Some types of sanctions and sentences handed down against juvenile offenders also correlate positively with recidivism. As would be expected from the above information, minors who are tried as adults in criminal court and who spend time in adult incarceration facilities are more likely to recidivate (OJJDP, 1997; Dickey, 1996). These conclusions call into question the movement in the 1990s to lower minimum-age requirements for trying minors as adults and to increase penalties for juvenile delinquents. If minors are less likely to become repeat offenders when processed through the juvenile justice system, then it seems it would be more appropriate to allow for the prosecution of minors in that system.

If a juvenile is not tried in North Carolina as an adult, but has his or her case adjudicated, there are three levels of disposition available to the juvenile court with each level increasing in severity (Calhoun et al., 2009). The first level is known as community disposition, which may include low amounts of community service, curfew, probation and other less restrictive options. The second level is known as immediate disposition, which may include group home placements, intensive probation, and regimented training

programs. Both levels of disposition may include a temporary stay at a detention center, which is contrasted with the third level, otherwise known as commitment disposition. This third level includes detention at a “secure residential facility authorized to provide long-term treatment” (Calhoun et al., 2009). Confinement of any form was found to be positively correlated with recidivism in a juvenile offender’s adult years.

The findings in North Carolina were similar to those in Missouri, where minors whose cases had been adjudicated were more likely to become repeat offenders, either as juveniles or as adults (McElfresh et al., 2009). An Indiana study showed that the length of incarceration for juvenile offenders was also positively correlated with later recidivism (Garner, 2008).

For juvenile offenders who are not incarcerated, there are programs that include wilderness training, boot camps and scared straight programs. These programs become popular in the mid-1990s after the intense increase in juvenile crime during the 1980s and early 1990s (N. Carolina, 2004). Fifteen years has passed since then and a large body of literature exists on the subject. Other literature evidences the fact that such programs are positively correlated with recidivism and the popular get tough attitude toward juvenile crime of the early and mid-1990s might have had unintended detrimental effects on juvenile crime rates (Petrosino et al., 2003; OJJDP, 1997).

Other studies have found that community-oriented and rehabilitation approaches for dealing with juvenile offenders do in fact reduce recidivism among minors. In a recommendation report to former Governor Martin O’Malley of Maryland, several researchers indicated vocational training and mentoring were successful at decreasing recidivism rates (Blusiewicz et al., 2007). Community-based programs are those that leave rehabilitation and prevention to the community rather than institutions, which might include detention centers. Other programs include increasing the number of social workers and other professionals who deal with juvenile offenders on a case-by-case basis. Instead of trying to use a one-size-fits all policy for reducing juvenile recidivism, research has found a more supervisory, non-custodial form of juvenile justice best prevents criminal recidivism. New York State’s Director of Probation and Correctional alternative, however, pointed out that increasing supervision of non-serious offenders will actually increase the likelihood of recidivism for that group, which means allocating sanctions and resources based on individual cases is a better method for reducing recidivism than a get tough policy that treats all juvenile offenders the same (Maccarone, 2008).

Lastly, the amount of time a juvenile offender spends away from incarceration and the juvenile justice system is positively correlated with preventing juvenile recidivism (Michigan Dept. of Human Services, 2007; Garner, 2008; McElfresh et al., 2009; Kalist & Lee, 2009; Pate, 2007). In other words, as the length of time increases from when a juvenile offender has committed his or her first offense, the less likely he or she will be to break the law again. Hence, it is important to keep minors away from activities and environments conducive to law breaking for as long as possible.

Conclusion

According to available data, scholarship and government reports, it appears the panacea for “get tough” programs in the 1990s has actually been responsible for increased rates of juvenile recidivism. While there are other factors associated with recidivism, those directly under the control of public officials are the policies implemented by the state

governments to prevent juvenile crime. Given this information and other research, six recommendations can be made to states regarding their juvenile justice systems:

- The lack of resources for mentally ill or psychologically disturbed juveniles should be confronted immediately.
- Boot camps, scared straight and wilderness programs have been proven to be ineffective and even detrimental in preventing juvenile recidivism.
- Some demographic factors such as race, age, and sex have been correlated with recidivism. As such, policies should be molded toward certain groups in an effort to reduce overall recidivism.
- The juvenile justice system is preferable to the adult criminal justice system and juveniles should be tried in the former rather than the latter.
- Programs that promote individual rehabilitation, skills training, community settings, mentoring and school success are preferable to others.
- Keeping juvenile offenders away from situations that might lead them to commit crimes is paramount in the first few months after their first offense.

Given these findings, public officials should implement policy that coincides with empirical findings. The “get tough” movement of the 1990s has been shown to be ineffective based on empirical studies. Public officials should respond in two ways given this information. First, more funding should go to studying the effects of various institutional responses to juvenile crime. Second, programs that promote personal rehabilitation should replace those that focus on deterrence and punishment.

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