

American Justice

Research of the National Institute of Justice



Edited by
Larry J. Siegel

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Preface

The study of crime and criminal justice is a dynamic, everchanging field of scientific inquiry undertaken on hundreds of college campuses around the nation. Change in the field has been fueled by a steady flow of research data, some of which has challenged long-cherished beliefs about the nature and extent of crime and the processes of justice. No source of this data has been more important than efforts funded and guided by the federal government's major research arm—the National Institute of Justice (NIJ). The NIJ publishes a variety of reports, manuals, bulletins, summaries, and guides that contain the most critical and essential findings from the hundreds of research projects it sponsors. These reports represent the cutting edge of knowledge about crime and justice and are essential additions to the literature of the field. They include “Research in Brief,” “Research in Action,” “CrimeFile” series, “Construction Bulletins,” “Issues and Practices in Criminal Justice,” and “Perspectives on Policing.”

This text collects some of the most important and significant of these documents published in the past few years. It is the first systematic, comprehensive, and up-to-date collection of crime-related material published by NIJ.

Focus of the Text

This text is designed for use as a supplement in either criminology or criminal justice courses. Its content reflects the broad range of topics usually covered in the basic introductory course in these topic areas.

The book is divided into two basic parts: “Crime and Criminality” and “The Criminal Justice System.” The first part contains selections from NIJ research reports dealing with the causes of crime and delinquency, victims and victimization, and drugs and crime. The second part is devoted to operations of the criminal justice system: the police and law enforcement, the judiciary system, probation and alternative sanctions, and correctional institutions and practices. While the selections here are by no means exhaustive, they provide a good overview of the direction NIJ research has taken and illustrate some of the more important research efforts it has funded.

Points of view or opinions expressed in the individual articles are those of the author(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice or West Publishing Company.

This text could not have been produced without the close cooperation and encouragement of Paul Cascarano and Paul Estaver of the National Institute of Justice and Leslie Moore, Kristina Rose, Janet Rosenbaum, and the reference staff of the National Criminal Justice Reference Service.

The staff at West Publishing, Mary Schiller, the executive editor of this text, and I believe strongly that this material makes an important contribution to the understanding of crime and justice. It is this goal that motivates our work; therefore, all royalties accrued on this text are being donated to the National Center for Missing and Exploited Children, Arlington, Virginia.

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1

Introduction

The problems of crime and justice are significant social concerns. There is unprecedented interest in identifying the root causes of crime and devising policies to deal effectively with criminal activity. Governmental interest in the crime problem is often prompted by the public's concern about violence and drug use and fear of victimization. Consequently, criminal justice agencies are continually seeking ways to improve law enforcement operations, reshape the court system, create more efficient correctional treatment, and devise effective crime prevention strategies.

Efforts to study crime and translate findings into research and action began early in the twentieth century. In 1919 the Chicago Crime Commission, a professional association funded by private contributions, was created. This organization acted as a citizens' advocate group and kept track of the ongoing activities of local justice agencies. The commission still carries out its work today.

The pioneering work of the Chicago group was soon copied in a number of other jurisdictions. In 1922, the Cleveland Crime Commission provided a detailed analysis of local criminal justice policy and uncovered the widespread use of discretion, plea bargaining, and other practices then unknown to the public. The Cleve-

land survey is sometimes viewed as the first to treat criminal justice as a "people processing system," a view still widely held today. Similar projects were conducted by the Missouri Crime Survey (1926) and the Illinois Crime Survey (1929).

In 1931 then President Herbert Hoover appointed the National Commission of Law Observance and Enforcement, which is commonly known today as the Wickersham Commission. This national study group made a detailed analysis of the American justice system and helped usher in the era of treatment and rehabilitation in the United States correctional system. The Wickersham Commission is credited with identifying the complex rules and procedures that characterize the criminal justice system.

The modern era of criminal justice study began in 1967 when the President's Commission on Law Enforcement and Administration of Justice (the "Crime Commission"), which had been appointed by Lyndon Johnson, published its final report entitled "The Challenge of Crime in a Free Society." This group of practitioners, educators, and attorneys had been charged with creating a comprehensive view of the criminal justice process and providing recommendations for its reform. Concomitantly, Congress passed the Omnibus

Crime Control and Safe Streets Act of 1968, providing for the expenditure of federal funds for state and local crime control efforts. This act helped launch a massive campaign to restructure the justice system by funding the Law Enforcement Assistance Administration (LEAA), an agency that provided hundreds of millions of dollars in aid to local and state justice agencies. Federal intervention through LEAA ushered in a new era in research and development in the criminal justice system.

The Federal Mission Today

Today the federal government is still at the forefront in providing resources and support for development and implementation of criminal justice research and action programs. Federal efforts fall under the Office of Justice Programs (OJP), a branch of the Department of Justice created on 12 October 1984 when then President Ronald Reagan signed into law the Justice Assistance Act of 1984 as part of the Comprehensive Crime Control Act of 1984. This act amended the Omnibus Crime Control and Safe Streets Act, recreated criminal justice research and statistics units in the Justice Department, and ordered that financial and technical assistance be granted to local and state governments. The act established five independent yet interrelated bureaus or offices with an administrative structure headed up by an assistant attorney general:

1. The **Bureau of Justice Assistance (BJA)** administers grant programs to improve local and state criminal justice systems. For example, it provides assistance, through Subtitle K of the Anti-Drug Abuse Act of 1986, to support programs that improve the apprehension, prosecution, adjudication, detention, and rehabilitation of drug offenders.
2. The **Bureau of Justice Statistics (BJS)** collects, analyzes, publishes, and disseminates statistical information on crime, victims of crime, criminal offenders, and the operations of the criminal justice system at all levels of government.
3. The **Office of Juvenile Justice and Delinquency Prevention (OJJDP)**, established by the Juvenile Justice and Delinquency Prevention Act of 1974, helps state and local government agencies improve their juvenile justice services. Today OJJDP also provides financial assistance for research and action on the problem of missing and exploited children.

4. The **Office for Victims of Crime (OVC)**, mandated by the Victims of Crime Act of 1984, awards grants to the states from the Crime Victims Fund to compensate crime victims and create programs to provide direct service to victims. The fund is financed by fines and penalty assessments on all convicted federal defendants.
5. The **National Institute of Justice (NIJ)** conducts research to increase knowledge about criminal behavior and criminal justice. It evaluates the effectiveness of various demonstration programs in operation around the United States.

These bureaus retain independent authority to conduct and sponsor programs, yet as integral parts of a singular agency they retain the same basic goal: to improve the operations of the nation's justice system. Consequently, the actions of one office influence the operations of the others: for example, data collected by BJS prompts research by NIJ, which leads to new program initiatives by BJA and OVC.

The National Institute of Justice

The National Institute of Justice (NIJ) is the major research arm of the United States Department of Justice. Its mission is to identify the strategies most effective in the fight against crime by emphasizing problem-oriented research and experimentation programs.

The NIJ's research agenda addresses long-term problems that overlap the institutional boundaries of police, court, and correctional agencies: drugs and crime, career criminals, crime prevention, victim compensation, and violent crime. It also targets newly emerging problems such as the effect of AIDS on the criminal justice system. The NIJ stimulates innovation in research and problem solving through cooperative working arrangements with state and local practitioners in governmental, private, and academic agencies.

Currently, the NIJ is most concerned about policy-oriented research in the following target areas:

- the detection and tracking of drug use by criminal suspects;
- improving the capacity to make more informed judgments about whether individual defendants or offenders represent an unacceptable danger to the community;

providing policy makers with information about the most cost-effective and equitable policy options;

reducing the chances for the recurrence of violence against victims of spouse assault;

reducing the number of crime victims through new strategies for deploying police and strengthening police-community ties;

increasing the use of alternative sanctions for offenders such as fines, house arrest, and electronic monitoring;

measuring the effect of various crime control strategies and determining their "true cost benefits" to the American public;

educating criminal justice professionals about AIDS and its implications for those whose duties may put them in contact with individuals at high risk for developing the disease.

Since its inception, NIJ has continually funded research and evaluation efforts reflecting these areas of national concern. The resulting body of literature is one of the most important sources of information on the nature of crime and the operations of the criminal justice system. It includes a variety of publications, the most important of which are described as follows:

"Research in Brief"—summaries of key findings from research projects funded by the NIJ.

"Research in Action"—brief discussions of

emerging topics and practices targeted to criminal justice practitioners.

"CrimeFile"—background information and discussions about issues raised in the NIJ CrimeFile videotapes. This series is designed to stimulate discussion and raise awareness about recent research findings about crime and its control.

"Construction Bulletins"—a series designed to share information on innovative approaches to buildings and financing corrections construction.

"Issues and Practices in Criminal Justice"—presents the program options and management issues in a topic area, based on a review of research evaluation findings, operational experience, and expert opinion on the subject.

"Perspectives on Policing"—reports developed during meetings of police professionals and academic experts at the Kennedy School of Government at Harvard University. They inform Americans interested in policing of the development of information and perspectives formed at the Harvard meetings.

This text was motivated by the desire to make this information as accessible as possible to students of crime and criminal justice. The efforts of the National Institute of Justice to improve the operations of the justice system should always be kept in mind while reading the research reports contained in this volume.

2

Crime and Criminality

The Causes of Crime and Delinquency

1. *Repeat Offenders*—Lawrence Sherman
2. *Biology and Crime*—Richard Herrnstein
3. *Families and Crime*—Rolf Loeber
4. *TV and Violence*—J. Ronald Milavsky
5. *Jobs and Crime*—Richard McGahey
6. *Drinking and Crime*—James B. Jacobs
7. *Gun Control*—Franklin E. Zimring

Introduction

One of the most perplexing problems facing criminal justice practitioners and scholars is identification of the root causes of crime and delinquency. Without understanding why crime occurs it is difficult to plan effective strategies to control or eliminate its incidence.

Numerous theoretical models have been formulated that seek to explain why some individuals continually violate the law. Some view criminality as a matter of individual choice and decision making; others portray it as a consequence of biological and/or psychological traits; another view of crime focuses on environmental conditions; others consider socialization and the development of character as the key factor in criminality.

In the 1960s and into the 1970s it was generally agreed that crime was a social phenomenon. Most crime experts linked criminal activity to deteriorated

neighborhoods, families in turmoil, lack of jobs and economic opportunities, and other social factors. The prevailing view held that if environment and family life could be improved most criminals would forego law violations and become productive citizens. Federal and state governments funded numerous programs to improve conditions in the inner city and provide legitimate alternatives to crime.

While these views still hold sway today, there is no question that personal traits such as personality, diet, genetic makeup, mental state, and intelligence are now considered as variables associated with criminality.

One reason for broadening the focus of crime causation is the “discovery” of the chronic, or career, criminal by Marvin Wolfgang and his colleagues in a series of cohort studies conducted in Philadelphia. This term refers to a small group of offenders who are ar-

rested five or more times as juveniles. While most offenders "age out" of crime, chronic offenders continue their criminal careers as adults.

The existence of a career offender presents a dilemma for the social view of crime. Since most criminals live in the same environment but only a small group are responsible for almost all serious crimes, it follows that there must be some personal characteristic that sets chronic offenders apart from both noncriminals and nonchronic offenders. This conclusion has inspired a number of criminologists to suggest that while some individuals may be inspired to commit an occasional crime because of economic or social conditions, the cause of serious, persistent criminality is a function of some individual trait, physical characteristic, or mental condition. For example, research on adopted youth seems to indicate that there may be a genetic basis for criminality and other antisocial behaviors such as alcoholism. Preliminary findings from a number of research projects indicate that adopted children behave more like their biological than their adoptive parents.

How might this changing concept of criminality influence the justice system? It certainly may have an effect on the sentencing and treatment of convicted offenders. Correctional treatment philosophy that favors helping offenders alter their behaviors by provid-

ing them with marketable job skills, upgrading their educational levels, and providing counseling may not be adequate to deal effectively with chronic offenders who do not respond to such efforts.

The reports in this section focus on areas of particular concern to the study of the nature and causes of criminality. The first two reports look at individual factors associated with criminality. The first report, by Lawrence Sherman, discusses the concept of the chronic offender and how the criminal justice system has responded to the problems they present. Then biological factors linked to crime causation are overviewed by Richard Herrnstein. The next three reports were selected because they present evidence on the relationship between criminality and three critical social phenomena. The first, "Families and Crime," by Rolf Loeber, provides an overview of the role early socialization plays in the crime process and how families can be trained to help youth resist antisocial activity.

The second, by J. Ronald Milavsky, focuses on the effects of viewing violent television shows on antisocial behavior. Richard McGahey then reviews the evidence linking unemployment to the crime rate. Finally, James B. Jacobs discusses the effect of alcohol abuse on crime and Franklin E. Zimring analyzes the relationship between gun control and the violent crime rate.

National Institute of Justice**CRIME FILE****Repeat Offenders**

Lawrence Sherman, University of Maryland

1986

Who Are Repeat Offenders?

Repeat offenders are defined differently for different purposes. The law in many States, for example, prescribes stiffer penalties for people who have previously been convicted several times for specific offenses, such as drunk driving or burglary. Repeat offenders are defined more generally as people who commit serious criminal offenses at a high rate and over a long period.

Active repeat offenders tend not to specialize in one kind of crime but to take advantage of whatever opportunities arise. They are quite diverse in how much criminal activity they produce, with some far more active than others.

Even though repeat offenders are a small percentage of all criminals—about 15 to 20 percent, by one estimate—they commit the majority of serious, detected crimes. If these high-rate offenders could be identified and stopped from operating, the serious crime rate could be greatly reduced (assuming that other offenders would not take their places).

It has long been known that some people become habitual offenders, yet the proportion of crime committed by these people, and the policy implications of focusing criminal justice resources on them, have only recently been understood. Marvin Wolfgang and his colleagues at the University of Pennsylvania called attention to this issue in 1972 in a study of delinquency among boys born in Philadelphia in 1945. Of the boys ever arrested, 18 percent had five or more arrests and their arrests accounted for 52 percent of the arrests recorded for all boys studied.

Recent Rand Corporation studies further highlight the differences between ordinary offenders and high-rate offenders. In a survey of prison inmates, half of those who had been active robbers reported committing fewer than 5 robberies per year, but 10 percent of them

committed over 50 per year. Similarly, half of the inmates convicted for burglary had committed fewer than 5 burglaries per year, but 10 percent of them had committed more than 150 per year, with some reporting a rate in excess of 1,000 per year.

A number of attempts have been made to identify high-rate offenders at a point in their criminal careers when they are likely to continue committing crimes, but a number of difficulties must be resolved. First, there are ethical problems associated with focusing the attention of the criminal justice system—which is supposed to punish for past crimes—on individuals for the crimes they may commit in the future. Second, if these problems are resolved satisfactorily, there remain technical problems in distinguishing high-rate offenders from other offenders.

Should the Criminal Justice System Take Account of Future Crimes?

Since repeat offenders account for a disproportionate amount of crime, their identification and incarceration should prevent substantial numbers of crimes.

Many argue, however, that the criminal justice system exists to respond to crimes that have been committed by identifying offenders and imposing deserved punishments on them. This is the “retributive” purpose of the criminal justice system. From this perspective, the criminal justice system should not attempt to anticipate the offender’s future criminality but should focus on his past culpability and blameworthiness. Proponents of such a view could allow some account to be taken of an offender’s prior record because it may be more blameworthy to continue offending after

previous convictions and punishments. They would not agree that those with longer prior records should be penalized because they are likely to commit more crimes in the future.

Most academics and virtually all practitioners reject this position. They endorse the “utilitarian” objectives of the criminal justice system as important additions to the retributive ones. They argue that the criminal justice system may, and should, respond differently to offenders who have committed the same crime if one is believed especially likely to be a serious offender in the future. This view is reflected in “habitual offender” laws which permit “three-time losers” to be sentenced to life imprisonment or unusually long terms.

Objections to “punishment for future crimes” surely preclude punitive measures against individuals never convicted of a crime. Individuals convicted of a crime, however, are vulnerable to removal from the community. When that happens, the nature of the removal, including its duration, becomes a matter of discretion subject to other limits. Officials exercising that discretion often take into account the risk of subsequent offending.

Some predictions of future crimes inevitably will be wrong. Some will incorrectly predict that an individual will commit crimes in the future (a “false-positive” error). Some will incorrectly predict an individual will *not* commit crimes in the future (a “false-negative” error). The degree of concern to be accorded these errors depends on what actions will result from the prediction, the seriousness of the crimes sought to be prevented, and the degree of departure from “normal” sentences. From a civil liberties perspective, concerned with limiting governmental intrusions on individual liberty, false-positive errors are highly objectionable. From a crime-control perspective, concerned with preventing future crimes, false-negative errors are deplorable. Both civil liberties and crime control are important goals of government and a careful balance must be struck between them.

Even when predictions are highly accurate, their use is subject to constraints. For example, there are limits to how much sentences can be extended without becoming unjust. A first-time robbery conviction may warrant a choice between 1 and 2 years, depending on the prediction, but not between 1 and 10 years.

The use of some personal characteristics may be inappropriate. Eye color, for example, even if it were correlated with future criminality, has no theoretical link to crime and so is objectionable. Similarly, race,

even though it might be correlated with future criminality, lacks a theoretical basis and its use in deciding punishment is broadly viewed as unacceptable. Thus, even those who approve of reliance on predictions accept limits on their use.

How Can Repeat Offenders Be Identified?

There have been many attempts to distinguish serious repeat offenders from others, with only limited degrees of success.

One persistent problem is that factors that correlate with criminality in one setting may operate differently in other settings. For example, involvement in crime is greatest in the late teenage years. Yet while older persons are much less likely to be involved in crime than teenagers, older persons who *are* actively involved in crime are likely to continue criminal activity, and so the age variable—being older—that ordinarily distinguishes nonoffenders from offenders operates differently in distinguishing among persistent offenders.

The longest tradition of use of predictions to distinguish between higher and lower rate offenders has been in parole. The U.S. Parole Commission, for example, uses a “Salient Factor Score” to assess prisoners’ future likelihood of offending. The score is based on factors such as the number of prior convictions and prison commitments, the recency of criminal justice involvement, the prisoner’s age, and the history of drug use. This score, along with information on the seriousness of the prisoner’s offense, is used in deciding when a prisoner will be released.

There is much less experience with systematic police use of prediction devices as the basis for allocating police resources.

Police use a variety of methods to single out repeat offenders for special attention. Some methods are formal; they are based on an individual’s number of convictions or arrests for violent crimes in the previous year. Other methods are much more informal. The Washington Repeat Offender Project (ROP), for example, relies heavily on criminal informants and other sources of information about people who are currently active in crime. A Minneapolis program, by contrast, uses a mixture of formal and informal methods, reviewing “nominations” from many sources and relying on extensive information and established criteria in order to focus on a small group of offenders.

None of these methods has ever been scientifically validated to see if it identifies the most active offenders currently on the streets, or even if all of the targets picked are currently active, serious offenders. However, a Police Foundation evaluation of the targets selected by Washington's ROP found that all of the targets had serious criminal histories and that the majority had been arrested within the previous year.

How Do Police Apprehend Repeat Offenders?

Most police programs deal with repeat offenders only after they have been caught. These "reactive" programs maintain a list of serious criminals. When anyone on the list is arrested, extra personnel are assigned to conduct an especially intensive investigation in order to increase the chances of a conviction and a prison sentence.

In contrast, "proactive" programs in Minneapolis and Washington are designed to catch repeat offenders who would otherwise not be arrested. Both cities originally emphasized surveillance but found that surreptitious "tailing" of a repeat offender 24 hours a day was boring and rarely produced an observable crime that could lead to an arrest.

Other methods include getting enough information for a search warrant and then conducting raids on premises suspected to contain drugs and stolen property (as depicted in the program) and setting up opportunities for offenders to commit crimes in the presence of police (such as buying weapons or selling stolen goods).

What Rules Apply to These Methods?

The right to privacy is obviously jeopardized by ROP tactics. It is not clear what the U.S. Constitution intends with respect to putting people under surveillance in public places. Nor is existing case law clear on the degree to which the public should be protected from police acting as decoys or as seeming partners in criminal enterprises. These issues are much more ambiguous than, for example, our individual constitutional rights not to be searched or to have police enter our property, except under well-established rules and procedures. A zealous repeat offender program runs the risk that

individual officers will break the rules. Thus, careful supervision by police commanders and continued oversight by the courts are necessary both in making rules and in seeing that they are enforced.

One of the rules that may not be violated when following a repeat offender is "entrapment." Entrapment is not a crime in itself but is a legitimate defense to a criminal charge. A defendant who claims entrapment must generally show that he was "induced" by the police to commit the offense and would not otherwise have done so. It is not sufficient for the defendant to prove merely that the police provided the means and the opportunity to commit the offense, thereby creating a "trap"; this provides no legal defense.

The problem is in defining what constitutes inducement. Is merely planting or suggesting the idea of committing a specific offense an inducement? Or is it necessary for the police to persuade, pressure, coerce, or cajole the offender into committing the crime?

How Well Does Washington's ROP Work?

The Police Foundation's evaluation of the Repeat Offender Project in Washington, D.C., found that the targets of ROP attention were five times more likely to be arrested than were targets who were randomly assigned to a "control group" that ROP was barred from investigating. This means that, if the D.C. Police had no ROP, the offenders now targeted by ROP would be much less likely to be arrested, or to be arrested as often.

The Police Foundation evaluation also showed that ROP resulted in a decline in the number of arrests ROP officers made per year, compared with their productivity before they joined ROP. The benefit was that the officers in the program arrested people who, on average, had more serious criminal records and were probably more active offenders. Whether ROP actually reduced crime in Washington was impossible for the evaluation to determine.

Why don't more officers do ROP work? This question has an obvious answer to many critics of police crime control strategies. For a variety of historical and political reasons, police spend most of their resources answering emergency calls from citizens, or waiting to answer those calls. While there are many other things they could do which might reduce crime, police executives cannot risk diverting resources from reactive

radio patrol work. The idea of policing criminals, or confronting problems, or focusing on targets other than citizen calls for service may seem sensible, but diverting resources from citizen calls can create a political hot potato for any police chief.

How Do Prosecutors Select Repeat Offenders?

Prosecutors' criteria are more formal than those used by police. The Charlotte system assigns mathematically precise weights to such factors as alcohol or drug use, age, and length of criminal career. Other prosecutors confine their criteria solely to characteristics of past offenses, such as the use of violence or a weapon. Some prosecutors believe in punishment only for past offenses and oppose using any "extralegal" considerations (such as drug use), even if they predict crime.

Virtually all urban courts have caseloads too large for all cases to be brought to trial. The normal procedure is to bargain with the defendant to plead guilty without trial in exchange for a reduction in charges or for a reduced punishment. Most cases must be handled this way to keep the system going, but prosecutors make exceptions for repeat offenders.

"Selective prosecution" of repeat offenders means that plea bargaining can be refused and that the prosecutor will press for conviction on the most serious charge possible with the longest sentence possible. Whether the prosecutor succeeds depends on how strong a case the police and prosecutor prepare, and how the judge reacts to the case.

Despite the priority both police and prosecutors give these cases, the arrested offender may be freed on bail or, upon conviction, may receive a short prison sentence or no prison sentence at all. The reason for both these outcomes is concern for fairness. Judges often do not believe it is fair to deny bail to people or to impose unusually high bail, even though police or prosecutors have labeled the people repeat offenders. For that matter, police and prosecutors often disagree about who is or is not a repeat offender.

Nor is it likely that a repeat offender convicted of selling stolen property in an ROP trap will receive a sentence substantially longer than would be received by a person not labeled a repeat offender who was charged with the same offense. The checks and balances of the criminal justice system limit the impact of repeat offender programs adopted by a single agency.

What Are the Prospects for Repeat Offender Programs?

Repeat offender programs seem likely to expand and proliferate. With the scarce resources of modern criminal justice confronted by growing demands, policy-makers must increasingly establish priorities. The idea of focusing scarce resources on repeat offender programs—even with all the errors of prediction and ethical questions of such programs—provides an attractive basis for choosing which criminal justice course to take.

Discussion Questions

1. What does your community do about repeat offenders?
2. When is it legitimate to consider the likelihood of future crimes in deciding how to punish a past crime?
3. Does it make more sense for police to concentrate on repeat offenders or to maintain a rapid response time to citizen calls for assistance?
4. Should prosecutors establish a targeting committee with police so they can agree in advance about who will be treated as a repeat offender?
5. Should the juvenile justice system be altered to give special consideration to highly active repeat offenders? If so, how?

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