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FIGHTING CRIME: THE PROBLEM OF ADOLESCENTS

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Crime rates are high not because large numbers of people commit one or two crimes in a lifetime but because a relatively small number of people are habitual offenders. This commonly recognized fact about crime is beginning to provide a major impetus for devoting extra police and prosecutorial resources to apprehending, prosecuting, and incarcerating the "worst" recidivist offenders. In the past five years, one hundred district attorneys have initiated formal programs to deal with adult habitual offenders. Many rely heavily on prior criminal records to designate individuals as career offenders. There is little doubt that in the end such a strategy punishes most severely the most hardened criminals. But this strategy will not result in the incarceration of the most active offenders. Most crime is committed by offenders when they are young, either as juveniles or young adults. Currently, the criminal justice system is not organized to restrain active young offenders.

If the idea of focusing on career criminals is to incapacitate or to deter, as well as to punish, the system may be incarcerating the wrong people. This problem is not unique to specialized career offender programs. The criminal justice system is more likely to punish an older and often wornout offender than a young and very criminally active one. Studies now show that while individual crime rates decrease with age, the severity of official sanctions rises. As a consequence, significant punishment does not occur for many offenders until they reach their middle twenties, when they are at or near the end of their criminal careers.

AGE AND CRIME

Joan Petersilia and her colleagues at RAND have made a detailed study of the criminal careers of fifty habitual offenders. Their study found that the most active period in those criminal careers occurred roughly between the ages of sixteen and twenty-two. However, the greatest punishment came at considerably later ages. Specifically, the offenders they studied (all of whom were serving a second prison term for armed robbery in a California state prison) committed between eighteen and

forty felonies—including drug sales—per year of "street time" between the ages of sixteen and twenty-two. Between the ages of twenty-two and thirty-two, their average offense rates fell to about eight per year of "street time." Conversely, the amount of time these offenders spent in jail increased from 30% between the ages of sixteen and twenty-two to 80% between the ages of twenty-two and thirty-two. The increasing time in prison occurred, in part, because judges gave increasingly stiffer sentences as the offenders' official records grew longer; however, offenders were also more likely to be arrested and then convicted as they grew older.¹

James Collins has reported findings very similar to those of the RAND study in a reanalysis of data that Marvin Wolfgang previously collected from a large sample of offenders arrested in Philadelphia.² Collins examined the careers of those offenders, termed chronics, who had at least five contacts with the police. The chronics accounted for only 18% of all the persons who committed serious crimes, but they committed 52% of the offenses. Although most of them had criminal careers that spanned a considerable number of years (at least ten), their rate of committing serious crimes against persons and property peaked at age sixteen. But the greatest chance that the criminal justice system would apprehend, convict, and punish them did not occur until offenders were in their early twenties.

The decline in crime rates exhibited by young men as they grow older is an established criminological fact that practitioners have long acknowledged and scholars have sought to explain. A question that has not been examined systematically is why official sanctions are likely to be more lenient at a time when offenders are young and crime rates at a peak and more severe when offenders are older and their behavior has begun to improve. To understand how this happens, it is first necessary to understand how the court system is organized to handle juvenile and young adult offenders.

¹ J. PETERSILIA, P. GREENWOOD & M. LAVIN, *CRIMINAL CAREERS OF HABITUAL FELONS* 34-38 (RAND Corp. R-2144-DOJ 1977).

² J. COLLINS, *OFFENDER CAREERS AND RESTRAINT: PROBABILITIES AND POLICY IMPLICATIONS* (1977).

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HOW THE TWO SYSTEMS WORK

When juveniles commit crimes, their acts fall under the jurisdiction of the juvenile court. Since its beginning at the turn of the century, the juvenile court has not been viewed as, nor was it intended to be, a formal court of law whose duty was to establish guilt and decide punishment. Rather, it has been viewed as a special kind of social service agency whose motive is benevolence and whose goal is to help children, including large numbers who have not committed any crime. Thus, the procedures of the court have been intentionally nonadversarial, the terminology intentionally non-criminal, and its powers intentionally vast.

One radical difference between the juvenile and criminal court system that affects the outcome of many cases is the manner of determining in which cases a prosecution should be initiated. When an adult is arrested, the police bring him to a prosecutor who reviews the facts surrounding the arrest to determine if the legal evidence warrants prosecution and, if so, what the charge should be. When a juvenile is arrested, he is not brought to a prosecutor, or even a lawyer, rather, he is seen by a probation officer, who often works directly for the juvenile court. In making a decision as to how a case should be handled, the probation officer, like the prosecutor, should consider the facts of the particular case. But the probation officer is also authorized to weigh the child's social and family background. Given both the legal and social factors, he may decide to drop or "adjust" the complaint or to file a petition, the juvenile court equivalent of prosecution. The decision to adjust rather than petition a case in juvenile court does not necessarily mean that the facts are insufficient to support a prosecution; it may mean that under the particular circumstances some kind of informal assistance, such as counseling or referral to a social agency, or no intervention at all, is thought to be a more appropriate disposition.

It is a matter of considerable significance that probation officers, charged with a social mission, rather than prosecutors, charged with a legal responsibility, handle the crucial function of screening in the juvenile court. Prosecutors are lawyers whose duty is to enforce the law according to a set of predetermined legal rules. Probation officers are social workers whose primary task is to help people in trouble. They are more concerned with analyzing and dealing with human situations and tend to deemphasize the legal technicalities of assessing guilt and convictability. When questioned about their work, probation officers are likely to assert

that decisions concerning individual delinquents cannot be made according to a given set of rules. Proper handling, according to probation personnel, requires intuition or "feel."³

Given the organizational structure of the juvenile court, it is not surprising that a large number of cases fall out at probation intake and that little relationship has been found between the way in which the case is handled and the seriousness of the offense. One national study of intake decisions found that roughly the same proportion (approximately two-thirds) of status offenses, misdemeanors, and felonies involving property were either dropped or adjusted at intake. Violent crimes against persons were somewhat less likely to be adjusted, but still only 50% resulted in a formal petition.⁴ Another recent study in New York City reported that the rate of adjustment for violent crimes (54%) was only slightly lower than the rate for property crimes.⁵

Even if a determination is made to file a petition, it does not necessarily mean that a formal sanction will follow. In many jurisdictions a judge may decide, regardless of the legal facts of the case, that a formal finding of delinquency is not in the best interest of the child, and at the judicial hearing, he would then decide that the case should be "adjusted." Even in those cases where a "finding" results from the hearing, the most common disposition is probation with a suspended sentence or release subject to future incarceration. A Vera Institute study of juvenile violence in three counties around New York City illustrates the infrequency with which juveniles actually are incarcerated in a juvenile facility. Fewer than 9% of violent juveniles "adjudicated delinquent" by the court eventually were placed in a juvenile facility. This 9% represented only 2% of the juveniles arrested for violent crimes.⁶

GRADUATION TO ADULT COURT

At approximately the age of eighteen,⁷ when criminal offenders graduate from the juvenile to the adult system of justice, one might expect to

³ Office of Children's Services, Probation: Problem Oriented—Problem Plagued (undated unpublished report).

⁴ Creekmore, *Case Processing: Intake, Adjudication, and Disposition*, in *BROUGHT TO JUSTICE? JUVENILES, THE COURTS, AND THE LAW* (1976).

⁵ P. STRASBERG, *VIOLENT DELINQUENTS* 90 (1978).

⁶ *Id.* at 96-98.

⁷ The age varies from state to state. In New York state, for example, the age is sixteen. N.Y. JUD. LAW—FAMILY COURT ACT § 712 (McKinney 1975).

TABLE 1
OFFENSE RATES BY PRIOR RECORD AND AGE

	Number of Adult Felony Convictions				
	0	1	2	3	4 or More
<i>Offenders Age 18-25</i>					
Number of offenders	847	434	139	32	19
Felonies/year/offender	4.5	5.5	10.5	15.0	17.5
<i>Offenders Age 25-30</i>					
Number of offenders	295	242	88	56	43
Felonies/year/offender	1.5	2.5	4.0	7.0	8.5
<i>Offenders Age 30 and Over</i>					
Number of offenders	561	337	210	147	219
Felonies/year/offender	0.5	1.0	2.0	2.5	5.0

Source: Federal Bureau of Investigation's computerized history file. The sample includes all adults arrested in the District of Columbia in 1973 for an index crime (except larceny) with at least one prior arrest. Offenders with at least one prior arrest represent 70% of all adults arrested. An average annual offense rate was computed for each offender by dividing all arrests (index or felony) before 1973 by the number of years between age 18 and age just prior to the 1973 sampling arrest, less time in prison. Each arrest was presumed to represent five crimes. A modified version of this table appeared in Boland & Wilson, *Age, Crime and Punishment*, 51 PUB. INTEREST 22 (1978).

find a greater correspondence between the seriousness of criminal behavior and the seriousness of sanctions. Ultimately, this is the way the adult court system operates. However, offenders are likely to discover that at the outset, as in juvenile court, little happens when they are caught committing serious crimes. Although witness and evidentiary problems are significant factors, they form only part of the explanation. An important influence on the operation of a criminal court is the existence of a prior criminal record for the accused. The defendant's prior record has been found to be an important factor that enhances convictability, although it is not clear exactly how a prior record enters into the prosecutor's decisions.⁸ In addition, numerous studies of sentencing have found that a defendant's prior criminal record is one of the most important factors in predicting the severity of his sentence.⁹

While the existence of a prior criminal history is an important factor for a court to consider, the question is why do courts consider only the adult portion of an offender's criminal record? Because of the separation, both in theory and in practice, of the juvenile and the adult court, there are no

formal mechanisms for tracking an offender's entire career. The confidential nature of juvenile records follows from one of the central tenets of the juvenile court system: because of juveniles' immaturity, their offenses should not be considered criminal. It is thought that maintaining the secrecy of juvenile records is one way of minimizing the aftereffects of juvenile crime. As a result of this, when an offender turns eighteen (or whatever age adult status is obtained), the adult criminal justice system considers him a first-time offender, even though he may be at the peak of his criminal career.

The figures in table 1 illustrate the significant consequences this discontinuity has for crime control. The figures show the annual rate at which criminals commit serious crimes—when they are free—by the age of the offender and the number of prior adult convictions. The youngest group of offenders, controlling for prior record, has the highest offense rates. In fact, young offenders with fewer than two convictions have higher offense rates than most of the older offenders with two or more prior convictions. Consequently, offenders with fewer than two adult convictions commit 80% of the crimes. In general, most crime is committed by offenders who are young and who have not had time to acquire an extensive record of adult convictions.

The result of this system is that an offender's incarceration rarely will reflect the degree of his current criminal activity. When a criminal begins his career as a juvenile, his first few offenses rarely

⁸ Forst & Brosi, *A Theoretical and Empirical Analysis of the Prosecutor*, 6 J. LEGAL STUDIES 177 (1977).

⁹ See, e.g., VERA INSTITUTE OF JUSTICE, FELONY ARRESTS: THEIR PROSECUTION AND DISPOSITION IN NEW YORK CITY'S COURTS (1977); L. WILKINS, J. KRESS, D. GOTTFREDSON, J. CALPIN & A. GELMAN, SENTENCING GUIDELINES: STRUCTURING JUDICIAL DISCRETION (1977).

will result in a penalty. The penalties he does receive frequently are imposed for reasons related to the child's social or family background as opposed to the seriousness of the crime. Later, when the criminal turns eighteen and is theoretically a responsible adult, he can expect leniency the first, and perhaps the second, time he is convicted in an adult court. The fact that he has had considerable criminal experience and is now in the most productive stage of his criminal career either is not known or is considered a matter of little consequence. Ironically, it is only when an offender nears the end of his career and has begun to shift his energies from illegitimate to legitimate pursuits, sometime in his mid-twenties, that courts begin to impose severe prison sentences for crimes that were overlooked in the past.

WHAT THE PROSECUTOR CAN DO

To improve the way the criminal justice system handles adolescent offenders, in general, and career criminals, in particular, one must be able to identify, convict, and incarcerate them at the peak, rather than the end, of their careers. To reach this goal, improvements must first be made in the juvenile court system.

Although traditionally the prosecutor has played a minor role or none at all in the juvenile court, district attorneys can be influential in juvenile court reform. This is illustrated by the recent sequence of events in Washington. The former prosecuting attorney in King County (Seattle), Christopher Bayley, believed that the seriousness of the juvenile crime problem dictated the need for vigorous prosecution. Even without formal statutory authority, he found he was able to involve his office in the juvenile court process. With the cooperation of the police, his office was able to establish a system to monitor police referrals to probation case workers. The case workers could, and the prosecuting attorney's office thought they frequently did, adjust cases involving serious crimes. Under the new system, prosecutors were able to spot and act on serious cases about which nothing was being done. Once the position of the office was established firmly in the juvenile court (after about four

years), the office was able to institute a juvenile career criminal program. The office even began to act as an advocate at disposition hearings, recommending sentences based on guidelines they developed. In enacting the state's new juvenile code in 1977,¹⁰ the state legislature formalized many of the informal reforms that the King County office initiated.

Prosecutors also can improve the criminal justice system by making greater use of juvenile records in adult court screening. This is especially true for career criminal cases. Although most state statutes prohibit public inspection of juvenile court records, juvenile court judges generally have the discretionary power to make these records available. The RAND Corp. is conducting a study of the role juvenile records play in adult court processing. Preliminary results reported by Peter Greenwood at the Career Criminal Workshop suggest that some form of juvenile record is generally available to the prosecutor, but that prosecutors rarely take advantage of the availability of these records.¹¹

An exception to this situation is the career criminal program in Dallas, Texas. Last year District Attorney Henry Wade and the director of the Career Criminal Program, Robert Whaley, switched the program's emphasis to young offenders at the intensive point of their careers. Accordingly, they established routine procedures for obtaining juvenile records from the probation department. As a result, the average age of the offenders in the career criminal program dropped from about twenty-nine to about twenty-two.

Devising better ways to handle young offenders is a complex problem. The current system has been in place for at least three-quarters of a century. But that does not mean that immediate improvements are impossible. The evidence currently available indicates that for short-term improvements, the prosecutor, more than any other public official, can have the greatest impact.

¹⁰ WASH. REV. CODE ANN. §§ 13.04.005-13.04.278 (Supp. 1978).

¹¹ Greenwood, *Career Criminal Prosecution: Potential Objectives*, 71 J. CRIM. L. & C. 85 (1980).