



# DEALING WITH VIOLENT CRIME AND RECIDIVISM

Unless society finds alternatives for long prison terms for many who commit violent crimes, incarceration rates will remain high.

**C**alling for reductions in prison populations by greater use of alternative sentences for people convicted of “nonviolent” crimes is an idea that draws wide support. But the fact is that, even if implemented, such steps would reduce the number of incarcerated individuals only by a relatively modest amount. To cut what some call “mass incarceration” more substantially, new approaches would need to be taken for dealing with “violent” criminals. Marquette Law Professor Michael O’Hear convened a symposium on violent crime and recidivism last year, bringing researchers from around the country to Eckstein Hall. The papers presented were published in the spring 2020 issue of the *Marquette Law Review* and are excerpted here.

## LEGAL RESPONSES TO VIOLENT CRIME:

### Does Research Support Alternatives to Long-Term Incarceration?

By *Michael O’Hear*, professor, Marquette University Law School.

America’s historically high incarceration rate has drawn sustained criticism from across the political spectrum. Whether motivated primarily by considerations of cost-effectiveness or of social justice, dozens of states have in recent years adopted a multitude of reforms intended to reduce excessive incarceration. Yet the national imprisonment rate remains more than four times higher than historic norms. Reforms to date have been hampered by their tendency to focus on reducing the incarceration of “nonviolent” offenders. Such a strategy offers little hope of returning the United States to the levels of imprisonment that prevailed a generation ago, for most state prisoners have been convicted of violent offenses. In truth, a

genuine reversal of mass incarceration cannot occur without changes in the way that the criminal justice system responds to violence.

But are reforms even feasible? The system’s current severity as to criminal violence doubtlessly owes much to a fear of recidivism. Intuitively, a person once convicted of a violent offense seems to present a troubling risk of committing more violence in the future—and the stakes are undeniably high. A large proportion of those prisoners classified as violent have committed murders and rapes. A repetition of such crimes would be a terrible price to pay for reforms that proved overly lenient. Moreover, even those who are serving time for less-serious violent crimes often have records that suggest a trajectory toward ever-greater mayhem if they are allowed to return to free society. The specter of Willie Horton inevitably looms large over any consideration of more-lenient responses to violent crime—and not entirely without justification.



Yet, even acknowledging that a particular caution must attend reforms in this area, there may still be some ability to extend the new approaches that have been transforming legal responses to drug and other nonviolent crimes in recent years. These new approaches sometimes go under the label “evidence-based decision-making,” or EBDM. The National Institute of Corrections describes EBDM as

“a strategic and deliberate method of applying empirical knowledge and research-supported principles to justice system decisions made at the case, agency, and system level. . . . [T]he EBDM framework . . . posits that public safety outcomes will be improved when justice system stakeholders engage in truly collaborative partnerships, use research to guide their work, and work together to achieve safer communities, more efficient use of tax dollars, and fewer victims.”

EBDM thus emphasizes the use of systematic research on what works, with a particular eye to reducing both costs to taxpayers—read, utilization of expensive jail and prison cells—and rates of criminal victimization. Typically, this entails the deployment of research-based, individualized risk-assessment techniques and therapeutic interventions designed to address individually determined risk factors. Rejected are the blunderbuss, one-size-fits-all penal strategies of the late twentieth century, emphasizing stern deterrent messages and the long-term incapacitation of repeat offenders—best exemplified by the harsh three-strikes-and-you-are-out laws that were broadly adopted in the 1990s. Although violent crimes may inspire a particular horror, there are otherwise no stark, categorical differences between the human beings

who have been convicted of violent crimes and the human beings who have been convicted of other sorts of offenses. If individually focused, research-based approaches can lead to reduced incarceration and reduced victimization as to the nonviolent offenses, why not also as to the violent?

It was this question that motivated “Responding to the Threat of Violent Recidivism: Alternatives to Long-Term Confinement,” a two-day conference hosted by Marquette Law School in June 2019 and generously supported by the Charles Koch Foundation.

#### GROWING UP BEHIND BARS:

### Pathways to Desistance for Juvenile Lifers

By *Laura S. Abrams*, professor and chair of social welfare at the UCLA Luskin School of Public Affairs; *Kaylyn Canlione*, a master’s student at the Luskin School; and *D. Michael Applegarth*, a Ph.D. student at the Luskin School.

*The authors provided detailed profiles of 10 men in California who were sentenced to life in prison or comparable terms for murders they committed while they were juveniles, but who made major changes and were eventually released.*

The second major finding is that all participants converged in regard to the major themes of moral reckoning, making meaning, finding hope, and proving worth. Getting to the point of reckoning with the crime appeared to entail a blend of maturation as well as major internal contemplation, all while having scant hope for release and experiences of parole denials and other setbacks. These findings lend support to the notion that desistance, at least for those in harsh conditions, is in many ways more of an internal process than an external

one. In other words, desistance did occur with maturation (albeit sometimes well into the thirties), yet without the presence of many opportunities to fulfill adult roles and responsibilities or with external hooks for change. Without abundant external reinforcements, narratives were consistent that the internal process of taking responsibility for the pain they caused others and reckoning with the past, including personal traumas, was a critical part of self-transformation. Moreover, the spiritual and moral transformation that many described emerged without the assistance of structured programs, and instead through a connection they forged with prison peers, focused self-contemplation, and a will to make a better life. These themes are similar to other research on life imprisonment that finds faith and moral development to be a consistent growth experience.

It is also important to note that all of these men had to first earn their standing in the prison over the course of many years in order to enroll in rehabilitation programs. Education, religion, and victim impact programs all had a potent effect on facilitating long-lasting desistance but were withheld for major periods of time on account of their sentence, prison yard interactions, and often, behavior. It is conceivable that many could have reached the second part of the journey (hope, meaning, and moral reckoning) even earlier with the help of those supports that they were systematically denied. Thus, one practical implication of this study is that in order to prepare youth convicted of violent felonies for parole and/or release, these programs ought to be accessible far earlier in the imprisonment process.

## The Impact of Incarceration on the Risk of Violent Recidivism

By *Jennifer E. Copp*, associate professor, College of Criminology and Criminal Justice, Florida State University.

With respect to the question of incarceration and violent recidivism, that there is no difference in the risk of violent recidivism between those sentenced to incarceration and those sentenced to probation suggests that incarceration is not an effective method of reducing violent recidivism. Further, that there was no difference across these two alternatives for those convicted of violent and nonviolent offenses suggests that there is no need to treat violent offenders differently from a recidivism standpoint. Understandably, recidivism is not the only consideration, and other factors (e.g., retribution) figure into sentencing decisions and broader policies.

The above reinforces the need to depoliticize the word *violent*. With few exceptions, offenders often commit a mix of violent and nonviolent offenses . . . . Thus, researchers should be careful not to reinforce the false dichotomy between violent and nonviolent offenders that has so permeated public discourse on policy reform. Indeed, there is considerable

evidence to suggest that the current wave of criminal justice reforms is not comprehensive, but rather focuses on a particular “class” of offender. The (un)intended consequence of this focus is that the policies and practices with respect to the sanctioning of individuals convicted of serious and violent offenses will not be downgraded and may actually be stepped up. Given the increasing support for “evidence-based” decision-making, criminologists can play a role in conversations with correctional policy makers. Accordingly, how we research specific topics, and how we interpret what the evidence says, can help guide these important discussions.

Finally, we have a tendency to view community supervision as a lesser alternative to prison, and one reserved for those convicted of less-serious offenses. There is quite a bit of research that demonstrates, however, that community supervision is not necessarily “getting off easy.” In fact, some of this work has documented offenders’ preference for custodial sentences in lieu of intensive supervision. And although we tend to focus on probation as an option for certain low-risk offenders, a potential counterargument is that it may actually be more beneficial to offer noncustodial, community-based alternatives to high-risk populations in order to “soak them in services” that may not otherwise be available in the prison setting. Recognizing the concerns associated with transferring our overreliance on incarceration to an overreliance on probation, there may nevertheless be circumstances in which probation presents a more efficient alternative for certain offenders who have been identified as too high-risk for less restrictive sanctions.

## VIOLENCE RISK ASSESSMENT: Current Status and Contemporary Issues

By *Sarah L. Desmarais*, professor of psychology and director of the Center for Family and Community Engagement at North Carolina State University, and *Samantha A. Zottola*, postdoctoral research scholar, Center for Family and Community Engagement, North Carolina State University.

Violence risk assessment instruments represent the current state-of-the-art approach to forecasting the likelihood of violent recidivism. Our review of the scientific evidence supports their continued use to inform criminal justice decision-making and failed to find substantial benefits associated with the application of new technologies, such as machine learning. Further, and in contrast with much of the current narrative surrounding risk assessment, we found relatively limited evidence of predictive bias and disparate impact, instead finding more evidence of predictive parity and, even, reductions in racial disparities in rates of restrictive placements. However, continued discussion and research are needed to clarify points of debate, including the definitions of fairness and proxies for race, and, ultimately, to establish whether the use of violence risk assessment

instruments reduces or exacerbates racial disparities in the criminal justice system. In the end, the implementation of a violence risk assessment instrument will not improve criminal justice outcomes in and of itself. Their results must be used in meaningful ways to inform criminal justice practices.

### PREVENTING SEXUAL VIOLENCE:

## Alternatives to Worrying About Recidivism

By *Eric S. Janus*, professor of law, Mitchell Hamline School of Law, and director, Sex Offense Litigation and Policy Resource Center.

The foundational myth of modern regulatory prevention policy holds that almost all people convicted of a sex offense will, when allowed back in society, commit another sex offense. In reality, the opposite appears to be true: almost all people convicted of a sex offense refrain from reoffending sexually. In a recent Bureau of Justice Statistics (BJS) study of sex offenders released from prison, 92.3 percent of the individuals were not rearrested for a new sex offense in the nine-year follow-up period. Even that statistic is likely to overstate the re-arrest rate for the entire class of sex offenders. The BJS study was confined to individuals released from prison. Thus, it does not include individuals who were convicted of a sex offense but not sent to prison. This non-prison group would include people sent to a local jail or placed on probation and is almost certainly less risky than the group sent to prison. So, the recidivism rate for the entire group of sex offenders is likely less than the 7.7 percent detected in the BJS study.

Of course, the fact that recidivism rates are much lower than asserted in the “frightening and high” meme is not support for the assertion that sexual violence is not an important problem in the country. In fact, sexual victimization is relatively widespread. The rate of rape and sexual assault annually for persons over 12 for example, is 1.4/1000 people, and the lifetime prevalence of sexual victimization among women is 18.2 percent. But the focus on recidivism suggests that recidivistic offending is the core of the problem. In fact, as demonstrated below, it is not. . . .

The likely consequences of current policies have been thoroughly described in other sources. We can summarize as follows: civil commitment programs are exceedingly expensive and have no demonstrable effect on the incidence of sexual violence and a very small effect on recidivistic sexual violence. The latter effect arises from the brute fact of incapacitation; the former most likely because the effect on recidivism is very small, and recidivism itself is a small fraction of sexual offending. Largely unexplored are the resource-allocation consequences of civil commitment programs. Their cost nationwide is estimated to be in excess of half a billion dollars annually, exceeding the amount budgeted (or requested) for all programs under the Violence Against Women Act

nationally in fiscal year 2020. There is strong evidence that these programs do not achieve their articulated goal of confining only the “most dangerous.” They over-commit initially and extend confinements unnecessarily. These factors add to the likelihood that alternative uses for the billions spent over the years would have more effective prevention effects.

## Labeling Violence

By *Cecelia Klingele*, associate professor, University of Wisconsin Law School.

Labels matter: they affect self-identity and alter human behavior in ways consistent with the labels themselves. That is why it is important to consider who deserves to be called “violent,” and for how long that label and its attendant stigma should last. Lying is a ubiquitous vice, for example, but rarely does the telling of a falsehood result in the lifelong stigma of being labeled a liar, or even an “ex-liar.” While lying is a vice, it is not ordinarily considered identity-defining. By contrast, labels such as “felon,” “ex-felon,” and “offender” are usually inescapable once imposed, regardless how minor or idiosyncratic the underlying criminal behavior may have been.

Studies show that individuals charged with felony offenses who are placed in diversion programs that allow them to avoid felony conviction recidivate at rates far lower than those who proceed to formal conviction (and who consequently bear the label “felon”). Being labeled a felon causes two types of re-entry problems: first, the legal restrictions that flow from felony conviction have a lasting effect on economic opportunity. Second, people often internalize the label itself, making it a part of their self-identity and reinforcing a narrative of social failure that often drives behavior consistent with that narrative. By inference, the label “violent felon” may well do extra damage by signaling not only that a person has transgressed the law, but also that violence has somehow become a petrified component of his or her character, defining not only past conduct but also future behavior.

If, however, violence (along a continuum) is actually normative—and research suggests that it is—then periodic or isolated examples of violence—even those that lead to criminal conviction—are not necessarily indicators of persistent, escalating, or enduring danger that must be aggressively controlled in perpetuity. Instead, violent conduct—like any other deficit, such as poor interviewing skills or dishonesty or blaming others—should be met with opportunities to identify the driver of the conduct and build skills to improve the quality of future interactions, whether by reducing impulsivity, improving distress tolerance, increasing empathy, or altering home and work environments to improve safety.

Ample research included elsewhere in this symposium issue confirms that most people convicted of violent crime are no less responsive to intervention than nonviolent criminals, or

than people in the general population. Just as people outside the justice system benefit from dialectical-behavioral therapy groups, mindfulness classes, and planned respites from life stressors, so too would people with criminal convictions of all kinds, if they were given access to them. Instead of restricting the ability of people convicted of violent crime to access rehabilitative programs, community and institutional corrections officials should provide robust opportunities to build core stress and conflict management skills to all individuals who have shown deficits in these areas. They should do so not because these individuals are intrinsically dangerous or different, but because managing aggression is an important human competency that can be mastered with practice.

The more we are honest about aggression as a shared human trait, the more we will eschew unhelpful labels that literally and figuratively place those convicted of violent crime in a box they cannot escape. And if we are honest about the degree to which violent impulses are commonly experienced and imperfectly muted, we will be more inclined to devise and implement interventions and supports for convicted individuals similar to those we seek out for ourselves and our loved ones when anger management or impulse control becomes life impairing.

## REDUCING RECIDIVISM IN SERIOUS AND VIOLENT YOUTHFUL OFFENDERS:

### Fact, Fiction, and a Path Forward

By *Megan Kurlychek*, professor in the Department of Sociology and Criminology at the Pennsylvania State University, and *Alysha Gagnon*, a Ph.D. student at the School of Criminal Justice at the University of Albany, SUNY.

Perhaps most important for the current narrative is the fact that even when youth exhibit chronic, serious, and violent behavior, it is not time to give up on them. In fact, research shows that interventions can be highly effective with the juvenile population. . . .

The kid is a kid.

This simple but perhaps often overlooked fact is driven home in a recent review of the history of juvenile justice by noted legal scholar Barry Feld in his most recent book, *The Evolution of the Juvenile Court: Race, Politics, and the Criminalizing of Juvenile Justice*. The fact behind the “the kid is a kid” comment is that youth are indeed different from adults and thus remanding a youth to adult punishments is folly. This concept has been evidenced through history, from medical and psychological science, and most of us know this from common sense. However, this common sense and reliance on empirical evidence are often left behind when political rhetoric and media campaigns of fear create a moral panic. Somehow, in this panic, individuals forget the simple fact that kids are just kids, and assume that something must

be different about a kid who can commit such a violent act, resulting in adult punishments. In a way, something is different; this kid most likely exhibited early signs of trouble and has many risk factors and needs that have not been addressed. However, what isn’t wrong is that they are not somehow more mature and calculated than other youth and therefore should be subject to adult punishment. At best, evidence suggests such a course only leads to more recidivism and crime, with worse life outcomes for the youth.

## COMMUNITY SUPERVISION AND VIOLENT OFFENDERS:

### What the Research Tells Us and How to Improve Outcomes

By *Edward J. Latessa*, professor and director of the School of Criminal Justice at the University of Cincinnati, and *Myrinda Schweitzer*, a senior research associate and deputy director of the University of Cincinnati Corrections Institute.

Despite the research supporting the value of incorporating RNR (the risk-need-responsivity model) into community supervision, even for violent offenders, there are still advocates for more punitive policies such as increased use of incarceration or simply increasing control and monitoring if the offender is supervised in the community. Those advocating such strategies of crime control do so based on the often-interrelated goals of punishment: retribution, deterrence, and incapacitation. These advocates are challenged by others who argue that we must address the underlying causes of crime and criminal behavior and provide programs and services to address the needs of the offender, especially for those returning to the community. So, can we achieve the goal of public protection and meet the dual needs for punishment and rehabilitation? Punishment is an inherent part of the correctional system and is often justified simply because a person has broken the law. This is especially true for those who commit a violent offense.

Society demands that certain offenders be punished and expects our elected officials to see that offenders be held accountable. The problem is the belief that somehow punishment alone will deter offenders from continuing to break the law in the future. The underlying assumption of deterrence is that the offenders are aware of the sanction, they perceive it as unpleasant, they weigh the cost and benefits of their criminal conduct, and they assess the risk and, in turn, make a rational choice to break the law (or not). The problem is that most street-level criminals act impulsively; have a short-term perspective; are often disorganized and have failed in school, jobs, and relationships; have distorted thinking; hang around with others like themselves; use drugs and alcohol; and are not rational actors. In short, deterrence theory collapses. Incapacitation, which attempts to limit offenders’ ability to commit another crime (usually by locking them up), can have

some effect, but as many have found out, simply locking up offenders and “throwing away the key” has proven to be a very expensive approach to crime control. This strategy is also limited, since the vast majority of offenders return to society. Without treatment, many will return unchanged at best and, at worst, with many more problems and intensified needs for services. Even if one supports incapacitation, one must ask, “What should be done with offenders while incarcerated?” This leads us to rehabilitation. With this approach, the offender chooses to refrain from committing new crimes rather than being unable to do so. So, what works in changing offender behavior?

Most researchers who study correctional interventions have concluded that without some form of human intervention or services, there is unlikely to be much effect on recidivism from punishment alone. If you do not believe that, just look at the number of offenders who have been incarcerated in our jails repeatedly. While the origin of the quote is unknown, it is commonly said that “the sign of insanity is doing something over and over again and expecting a different outcome.” Unfortunately, not all correctional treatment programs are equally effective; however, considerable research has demonstrated that well-designed programs that meet certain conditions can appreciably reduce recidivism rates for offenders. Effective programs have many characteristics, and space does not allow elaboration; however, two are particularly noteworthy. First, it is important to target crime-producing needs that are highly correlated with criminal conduct. The most effective programs are centered on the present circumstances and risk factors that are contributing to the offender’s behavior. Antisocial attitudes, values, beliefs, and peer associations; lack of anger control; substance abuse; lack of problem-solving skills; and poor self-control are some of the more important targets for change for offenders. Second, effective programs are action oriented rather than talk oriented. In other words, offenders do something about their difficulties rather than just talk about them. These types of programs teach offenders new prosocial skills to replace the antisocial ones (e.g., use of violence). Interventions based on these approaches are very structured and emphasize the importance of modeling and behavioral rehearsal techniques that engender self-efficacy, challenge cognitive distortions, and assist offenders in developing new prosocial skills. So, should we hold offenders accountable for their behavior? Absolutely. Nevertheless, punishment and treatment need not be incompatible, and doing one without the other is not likely to achieve long-term public safety.

## IMMIGRATION AND VIOLENT CRIME:

### Triangulating Findings Across Diverse Studies

By *Michael T. Light*, associate professor of sociology and Chicano/Latino studies, University of Wisconsin-Madison, and *Isabel Anadon*, Ph.D. student in sociology, University of Wisconsin-Madison.

Our overarching goal in this article was to gather insight across multiple literatures that heretofore had been connected only indirectly. Taken together, we find very little evidence that immigration increases violent crime, and the fact that we see similar results using different routes to answer interrelated questions gives us confidence that this finding is robust. At the very least, the convergence on the lack of findings suggestive of a positive relationship between immigration (legal or otherwise) and violence seriously undermines arguments that immigration jeopardizes public safety. For this reason, our inquiry has important implications for crime policy moving forward.

Although violent crime has fallen sharply in the United States since the early 1990s, violence remains a serious problem for many American communities, especially lethal violence. Indeed, the U.S. homicide rate is seven times higher than other high-income countries. Our review suggests that for policy makers serious about reducing the burden of violent crime in the United States, greater immigration enforcement is unlikely to achieve this end.

### Focused Deterrence Violence Prevention at Community and Individual Levels

By *Edmund F. McGarrell*, professor, School of Criminal Justice, Michigan State University.

Study of the community-level impact of focused deterrence does not directly address the question of impact on individual-level violent recidivism. Having said this, it is worth noting that an overall impact on community levels of violence is likely to have an indirect effect on violent recidivism. At a basic level, each reduction in fatal and non-fatal shootings is likely to reduce the number of individuals incarcerated for serious gun violence. That reduces violent recidivism at a macro level. Beyond this effect, the claim of an indirect effect is based on several research-based characteristics of violent crime. First, much violent crime is episodic and related to lifestyles that put people in risky situations. Violence demonstrates patterns of contagion, and being involved in shooting networks greatly elevates the risk for all network members of being involved in future violence. If overall levels of violence in the community decline, it would seem to reduce the likelihood of violent recidivism through the reduction in risky contexts that can lead to violent incidents among high-risk individuals.

More directly, the limited findings of focused deterrence re-entry efforts at the individual level suggest promise for



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reducing violent recidivism. This is most apparent in Chicago's parolee forums that used the focused deterrence call-in strategy with high-risk parolees returning to the community. Although the research findings are limited, the positive results support continued experimentation and testing, particularly given the related research indicating violence reduction at the community level.

Finally, the evidence of the gang/group-focused deterrence strategy at the individual level is very mixed. Although there is no evidence of "backfire" effects, several studies have found no evidence of reduced re-offending at the individual level. On the other hand, several studies have found reduced levels of re-offending when the comparison group appears to be of equivalent risk. Given the consistent finding of impact at the community level, there appears to be reason to continue to study patterns of violent recidivism at the individual level. In pursuing this research, several questions arise. These include the consistency with best practices in corrections, better understanding of how these strategies are perceived by the individuals affected by the strategies, and whether short-term effects are sustained over time.

## Violent Offending, Desistance, and Recidivism

By **Daniel O'Connell**, senior scientist at the Center for Drug and Health Studies and assistant professor in the Department of Sociology and Criminal Justice at the University of Delaware; **Christy Visher**, professor of sociology and criminal justice and director of the Center for Drug and Health Studies, University of Delaware; and **Lin Liu**, assistant professor in the Department of Criminology and Criminal Justice, Florida International University.

The world is not a safe place. We tell our children this and hope they heed the lesson in order to survive when they walk out the door. People die and are maimed on our highways every day, and other harrowing accidents and tales of human misfortune fill our news programs every night. While we mourn, we accept these tragic circumstances as an unfortunate cost of living on the planet as we hope the next tragedy does not involve ourselves or our loved ones. But crime is different, and violent crime brings forth an emotional reaction that other tragic situations do not. This is largely due to the sense of injustice felt when a person is harmed at the hands of another. And unlike accidents, violent crimes leave us with a villain in the form of the person who caused the harm. Our literature and media engrain our consciousness with a determination to punish evil and praise good, and our legal system is designed to find fault, ascribe blame, and protect us from harm. All of this leads to a framework designed to punish wrongdoers, often to the fullest extent possible, and to attempt to avoid all harm by insulating ourselves from those who cause harm. Our overflowing prisons are the result of this approach as people languish for years repaying their debt, instilling in us a sense

that justice has been done and ensuring that those who are incarcerated cause us no more harm.

Our punitive approach may have worked or at least been acceptable when the scale of the problem was smaller and populations and crime rates did not require the construction of prison after prison to house those whom we have deemed unfit to live among us. We now live in an era associated with mass incarceration in which approximately two million people are residing behind bars on any given day. The price of this approach is growing, and policy makers are seeking ways to reduce prison populations without impacting public safety.

Knowing that people generally age out, or desist from offending as they age, and that the majority of violent offenders do not go on to commit violent crimes after release, it may be time to reconsider our approach toward imprisonment, recidivism, and what we are asking from our prison systems. While we call our prison agencies "departments of correction," expecting these agencies to correct what has led people to them is an undue expectation. By the time someone gets to prison, especially for a violent offense, virtually every other social system has failed, from our families, schools, and communities to our economic systems. Expecting our prisons to correct long-standing individual problems is unreasonable. Releasing enough individuals to have an impact on prison populations cannot be accomplished without accepting some amount of risk. Research suggests that releasing many of them can be accomplished by accepting a low to moderate amount of risk.

The tolerable level of risk is what needs to be reconsidered when addressing the possibility of violent recidivism. In the United States, we have essentially set the bar near zero, as evidenced by the Willie Horton incident in which a prisoner released on furlough who subsequently committed assault, rape, and robbery in another state was influential in affecting the presidential aspirations of Governor Michael Dukakis in 1988. These types of events have made both politicians and the prison system overly risk averse. But Horton was one of approximately 600,000 people released that year. If the reaction to a tragic car accident were akin to what happened after the Horton case spread through the media, the speed limit would be ten miles per hour, clearly not a speed that would allow society to function. What is needed is agreement on a reasonable and broadly accepted level of recidivism that does not try to prevent all harm by keeping tens of thousands of people incarcerated.

A lesson might be learned from traffic engineers who make recommendations for speed limits. The goal is not to prevent all accidents but to find the speed that keeps traffic flowing while creating the safest roads possible. In the United States, engineers follow the 85th percentile rule, which actuates to the speed at which 85 percent of drivers travel at or below the speed limit. They do not attempt to set the limit at a range

that creates the fewest accidents, recognizing that accidents are going to happen. A similar approach to developing an “acceptable” level of recidivism might involve setting a baseline rate. For example, in the federal recidivism study mentioned earlier, 24.5 percent of released violent offenders committed a violent offense within three years under current release strategies. Were states to make policy changes that shortened sentences, relaxed release conditions, created medical exceptions to sentences or other mechanisms, and the three-year rates remained within an acceptable margin relative to the 24.5 percent base rate, the changes might be considered successful. If recidivism rates were to increase by a margin of, say, 10 percent to 29 percent, the policy changes might need to be scaled back.

## **VIOLENT CRIME AND MEDIA COVERAGE IN ONE CITY: A Statistical Snapshot**

By *Michael O’Hear*, professor, Marquette University Law School. O’Hear analyzed a year of crime coverage in the Milwaukee Journal Sentinel and on the website of WTMJ-TV, two major news outlets in Milwaukee, Wisconsin.

Despite other differences between the *Journal Sentinel* and WTMJ.com, violent crime clearly predominated in the crime coverage of both outlets, far overshadowing property and other nonviolent crime. This reverses the actual prevalence patterns of violent and nonviolent crime as reflected in police data, and complements similar observations of crime coverage made by other scholars. To the extent that individuals make judgments about the relative importance of different crime threats on the basis of media coverage, there may be a tendency for people to overestimate the threat of violent crime, underestimate the threat of nonviolent crime, or both. Moreover, even within the category of violent crime, there was a sharp skewing toward homicide relative to lesser forms of violent crime, which also reverses the actual prevalence of these offense types and raises parallel concerns about potential misjudgments regarding crime risk.

... [A]lthough the newspaper more commonly provided contextualizing/humanizing information than the [television] website, such information was hardly included as a matter of course in the crime coverage of either outlet. To be sure, contextualizing/humanizing information is not apt to be available to reporters for the first story that initially reports the occurrence of a crime, and there is not apt to be any follow-up coverage if the perpetrator was not apprehended. Yet, even if understandable, a lack of contextualizing or humanizing information still seems an important aspect of crime coverage that may contribute to perceptions of crime as random and incomprehensible, and criminals as depraved monsters.

... [A] sizable share of the Milwaukee crime coverage focuses on cases with victims who are female or youthful.

... [A]s with other types of skewing in the crime coverage, disproportionate reporting of these crimes may lead to an overestimation of some risks or an underestimation of others. Moreover, when media coverage focuses particularly on crimes that provoke especially high levels of public outrage, it may be more difficult for policy makers to adopt crime policies that would be most effective in relation to more-common, less intensely disturbing types of victimization.

How concerned should we be about unrepresentative crime coverage? As noted earlier in this article, the research literature does not provide consistent support for the expectation that news consumption always tends to enhance fear and punitiveness. ...

Still, while not without its inconsistencies and limitations, the research literature does point to a likelihood of links between fear of crime, support for punitive criminal-justice policies, and consumption of at least one particular type of crime coverage—that which is provided on the local TV news. To the extent that local TV news actually drives fear and punitiveness, the dynamic may be related to the tendency of TV news to provide relatively superficial crime coverage with little contextualizing/humanizing information. Similar tendencies seem apparent with the news website coverage analyzed in this article.

If fear of crime and public punitiveness are thought to be excessive in the United States today, there are reasons to wish for deeper media coverage of crime that routinely seeks to reveal the context in which crimes occur and the background of the individuals who commit crimes.

## **VIOLENT CRIME AND PUNITIVENESS: An Empirical Study of Public Opinion**

By *Michael O’Hear*, professor, Marquette University Law School, and *Darren Wheelock*, associate professor, Marquette University Department of Social and Cultural Sciences.

Research increasingly makes clear that long prison sentences are not normally necessary from a public-safety perspective for individuals who have been convicted of violent crimes. Yet, such sentences remain common in practice. Given the dynamics of democratic accountability in the United States, we suspect that official V-punitiveness [a term the authors use for attitudes of punitiveness toward perpetrators of violence – ed.] may result in part from public V-punitiveness. Reformers who wish to moderate punishment for violent crime may thus need to take into account the existence, intensity, and sources of public V-punitiveness.

Our findings, based on surveys conducted through the Marquette Law School Poll, suggest several lessons for such reformers. First, our respondents did seem to recognize violent crime as a qualitatively distinct crime category, most starkly in relation to first-time offenses. Although members of the public may be willing to indulge property offenders with second



chances, public preferences seem to run in the opposite direction when it comes to those who have been convicted of violent offenses.

Second, although we suspect that V-punitiveness may result in part from a tendency to associate “violent crime” with some of its most outrageous forms, such as murder and predatory rape, we did not find any evidence that public preferences change when policy questions are explicitly framed by reference to less extreme forms of violence.

... [W]e found little reason to think that V-punitiveness may be moderated through public education about the actual risk levels of violent offenders and research on the most effective ways of reducing violent crime. Public education on such topics might be a promising reform strategy if V-punitiveness were fundamentally instrumental in character—that is, if people supported punitive policies out of a belief that such policies would alleviate their risk of violent victimization. To the extent that is a mistaken belief, correcting the belief would presumably change the connected policy preferences. However, we did not find an association between V-punitiveness and our primary measure of fear of violent victimization, that is, perceived safety when walking alone at night. Nor did we find an association between V-punitiveness and a respondent’s past personal experiences with victimization, which would presumably tend to increase the respondent’s fear of future victimization. Nor did we find an association between V-punitiveness and county-level crime rate or crime trends. Nor did we find support for the hypothesis that V-punitiveness is related to a desire for stronger formal social controls in order to compensate for weak collective efficacy.

Our only finding that suggests an instrumental basis for V-punitiveness was the relationship between these policy preferences and a respondent’s perception that violent crime was a “major problem” in his or her area of residence. However, the overall weight of the evidence indicates that V-punitiveness is grounded less in instrumental than in symbolic considerations, particularly insofar as support for these policies is seen as a way of expressing a broader set of beliefs about social organization, individual responsibility, and perceived group differences.

The latter observation points to a final lesson: in order to change the minds of people who are currently skeptical of reform, it may be necessary for reformers to ensure that alternatives to long prison terms are not seen as symbolically undercutting perceived traditional moral values like individual accountability for wrongdoing. This may be quite challenging at a time when life and near-life sentences have become such a normalized feature of our criminal-justice system—in this context, non-incarcerative sentences, and even some years-long prison terms, may seem merely a “slap on the wrist.”

## WHAT THE NUMBERS SAY ABOUT HOW TO REDUCE IMPRISONMENT: Offenses, Returns, and Turnover

By *Pamela Oliver*, professor of sociology at the University of Wisconsin-Madison.

The analysis of returns to prison for those released 2007–2016 showed that, in recent years, the majority of people released from prison the first time have not gone back, contrary to past research from the height of the drug war when people were cycling in and out of prison on short sentences. It has shown that those who do go back to prison mostly enter on technical violations, not new crimes, and that the new crimes are more often nonviolent than violent, even for people who were imprisoned for violent crimes.

The analysis of time in prison and expected time to release showed that nearly 60 percent of prisoners are projected to be released within five years, meaning significant prison downsizing is possible from reforms focused on sending many fewer people to prison so that those released from prison are not replaced.

The analysis also called attention to possibilities for reducing prison populations from reducing time served for those who are sent to prison, both by shortening sentences to those found in some states and by increasing the use of parole or other early-release mechanisms.

The overview also emphasized the huge variations between the U.S. states in their overall imprisonment rate, their recent history of increasing or decreasing incarceration rates, their mix of offenders, their sentence lengths by offense, and their patterns of return to prison after release. National summaries obscure these variations. This means that patterns that are true in one state may not be true in others, and reforms that create large reductions in incarceration in one state may have little impact in another. It also means that national-level summaries often obscure the details of what is happening in different places.

The rise of mass incarceration was a political process that began in the 1960s with a concern about controlling the Black urban poor and built on early twentieth-century discourses that portrayed Black people as inherently criminal. This impulse became intertwined with the high crime rates of the 1960s and 1970s, feminist-influence victim’s rights, and other movements that fed the punishment boom. A politically motivated and racially targeted “war” on crack cocaine in the Reagan–Bush years, initially centered in Black urban areas, drove up both total incarceration and the Black/white disparity in incarceration in the late 1980s and early 1990s. A politically motivated “war” on violent crime and “three strikes” laws in the Clinton years fueled further increases in overall incarceration from the mid-1990s to the mid-2000s and spread mass

incarceration into predominantly white rural areas and small cities, thus lowering the racial disparity in incarceration and changing the offense mix of prisoners. The manifest racial disparities in imprisonment became a major wedge for pushing back and challenging the injustice of the system. Black imprisonment rates began to fall in the late 2000s even as white rates continued to rise.

There are consequences of past policies that have contributed to current problems. The aforementioned extreme racial disparities in imprisonment sent a large fraction of a generation through prison and are still having indirect consequences in Black communities. There is evidence that a police focus on drug enforcement increased homicide and violent crime. The drug war incentivized police to focus on drug enforcement rather than other activities, through both federal funding initiatives and forfeiture laws, leading to gross injustices, including even in extreme cases to “plant” evidence and falsely accuse people of drug dealing; it also has led to a reliance on informants coerced by the threat of high penalties that has led to false accusations and a general erosion of the social fabric that would otherwise prevent crime. In addition, the decades of mass incarceration plus the decline in wages for jobs in the bottom half of the income distribution have had impacts on children and families that have increased economic instability and contributed to substance abuse and violence.

#### HIGH RISK, NOT HOPELESS:

### Correctional Intervention for People at High Risk for Violence

By **Jennifer L. Skeem**, professor of public policy and Mack Distinguished Professor of Social Welfare at the University of California, Berkeley, and **Devon L. L. Polaschek**, professor of psychology at the University of Waikato in New Zealand.

People at high risk for violence are relatively likely to be confined as part of their criminal sentences. Compared to community-based programs, services in institutions tend to be more oriented toward harsh punishment, which tends to have an adverse effect on recidivism. This need not be the case. First, CBT (cognitive behavioral therapy) programs that implement evidence-based principles can be—and sometimes are—offered in jails and prisons. This is particularly true in other countries. Second, RNR (risk-need-responsivity) programs and principles are applicable to high-risk people in custodial settings. Third, many of the promising programs reviewed earlier for people with psychopathic traits were provided in institutions. Finally, meta-analyses illustrate that effective principles of correctional intervention can be applied in custodial settings—even if they often are not. After controlling for participant and intervention characteristics, the supervision setting (institution vs. community) did not moderate the effect of CBT on recidivism. As Lipsey and his colleagues concluded, good programs “can be

effective within institutional environments where there is more potential for adverse effects.”

When high-risk people are serving long sentences, institutional settings arguably provide an opportunity to deliver intensive doses of good treatment, and ideally follow up this investment with careful release planning. As explained earlier, treatment dose matters—as the number of sessions completed increases, so does the effect of treatment on recidivism.

... [C]urrent justice reform efforts need to accommodate this perspective of high-risk people as one that can promote both client welfare and public safety. Dealing effectively with high-risk people is one of the most important goals of the justice system. These people represent more than a serious threat to the social order that must be contained—they also present important opportunities for correctional systems to maximize risk reduction by reallocating resources to evidence-informed programs tailored to address their wide-ranging needs. Limited perspectives on what community and institutional services can provide to these people have historically been barriers to this approach. But, as we suggested earlier, lawmakers have become more receptive to programs with crime-reduction potential. What is needed is recognition that this pragmatic approach is particularly effective with high-risk people.

### Violence Reduction Using the Principles of Risk-Need-Responsivity

By **Faye S. Taxman**, University Professor at George Mason University. She is a health service criminologist.

An emphasis on programming should also acknowledge some of the barriers that affect program participation, including the social determinants of health, socioeconomic status, and behavioral health factors. For the most part, programming does not recognize these issues, and even the curriculums tend to reflect a more Caucasian focus and do not recognize the communities or lives that the actual clients confront. This results in alienation from the program due to the presentation of the “ideal self” or “reformed citizen” as being from another racial or economic status. That is, given the over-representation of individuals of lower economic needs in the justice system, the social determinants of health have an impact on the behavior of individuals and communities. More emphasis needs to be placed on coping, survival, and stress management instead of the traditional RNR (risk-need-responsivity) framework’s emphasis on criminogenic needs or the drivers of human behavior. The issues that affect human frailty (i.e., food deprivation, housing instability, economic pressures, etc.) influence how culpable a person is in the decisions that are made, behaviors engaged in for survival purposes, or problems with participation in programming. Given the prevalence of the conditions of human frailty, these conditions are important to consider in determining which programs and services to

offer to different individuals based on their configuration of individual risks, needs, and stability (or instability) factors. This means that programming content needs to address the real work situations of individuals. . . .

Finally, a dearth of programming means that programs cannot be a protective factor in a community. Examining the number of programs and the capacity of the programming illustrates that if an individual has a need for a program, it is unlikely that the service will be available—and it is even more unlikely that an appropriate service will be available. Taxman, Pattavina, and Perdoni documented the gaps in service for substance abuse treatment and found that when services were available, they were typically of the lowest dosage and level of care. Few services exist that are intensive or of the high level of care. Moreover, the programs may not be in the communities that are accessible to individuals who need the programs. . . .

Essentially, the recommendations are to build a resilient service delivery system that can be useful to reduce the high rates of violence and to prevent crime. That is, to build a service delivery system that has a clear mission that includes addressing the social determinants that affect the health and well-being of citizens and improves the quality of life in higher-risk communities.

## Robbery, Recidivism, and the Limits of the Criminal Justice System

By **Richard Wright**, *Regents' Professor of Criminal Justice and Criminology in the Andrew Young School of Policy Studies at Georgia State University*; **William J. Sabol**, *Second Century Initiative Professor of Criminal Justice and Criminology in the Andrew Young School*; and **Thaddeus L. Johnson**, *a Ph.D. candidate in criminal justice and criminology in the Andrew Young School*.

The threat of legal sanctions rests on an assumption that would-be offenders perceive themselves as having freedom to choose whether or not to commit any given crime. This assumption flies in the face of what we know about the immediate context in which robbers “decide” to offend, with most of them believing that their desperate need for cash cannot be deferred or met through more conventional means. This is not to say that such offenders are unmindful of the risk of arrest and prosecution, but rather that the perceived urgency of their immediate situation serves to attenuate the link between law-breaking and potential sanctions. Convinced they have no realistic alternative to doing a robbery, offenders consciously employ various cognitive techniques to neutralize the power of threatened sanctions to deter the contemplated offense. Most commonly this involves simply refusing to dwell on the possibility of being caught, which obviously precludes the need to worry about the contingent risks of prosecution and punishment.

“[The risk of getting caught is] just a reality. I know it’s a possibility. But I try not to think about that because, if I dwell on it too much, I may talk myself or scare myself out of doing [the robbery].”

Whereas some offenders reportedly find it easy to avoid thinking about getting caught, others clearly have to work hard to keep such thoughts out of their minds.

“I try to keep [thoughts about getting caught] out of my mind. I look at it more on a positive side: getting away. A lot of times it enters my head about getting caught, but I try to kill that thought by saying I can do it; have confidence in pulling the job off.”

Some offenders go so far as to drink or use drugs before an offense in a deliberate attempt to dull the impact of threatened sanctions, thereby allowing them to proceed without worrying about the potential consequences.

. . . Although in the minority, some would-be robbers do think about the possibility of getting caught but proceed anyway. Why does an awareness of this risk fail to deter them from offending? Here again, a large part of the answer can be found in their financial desperation, which encourages them to discount danger and concentrate instead on the anticipated reward. An active armed robber interviewed by Wright and Decker explained his lengthy prison record this way: “[I always think about the possibility of apprehension, but] I guess the need is greater than the fear of getting caught.”

Even offenders who, during their crimes, are attuned to the possibility of arrest and prosecution tend to regard that risk as so small for any given offense that it easily can be discounted in the face of their pressing need for quick cash—a process made easier still by the fact that many of them have an overblown opinion of their skill at avoiding detection.

“Definitely! It depends. I don’t know. What I’m really trying to say [is that] if you good at what you doing, you don’t care too much cause you figure nine times out of ten you not gonna get caught.”

Whether one-in-ten odds of getting caught are good or bad is open to debate, but surely it depends in part on the perceived severity of the resultant sanction—a calculation shaped by the individual’s current circumstances and prospects. Most persistent robbers know full well that their law-breaking is going to land them in prison sooner or later. Yet they carry on despite the mounting risk of apprehension. Recall that most such offenders experience themselves as locked into a grim cycle of events that is leading them nowhere. Against that backdrop, the prospect of a stint in prison may come to be seen almost as a welcome break from the emotional turmoil and physical danger that are part and parcel of life on the street. ■