


Summer 1980

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Recommended Citation

Kristen M. Williams, Selection Criteria for Career Criminal Programs, 71 J. Crim. L. & Criminology 89 (1980)

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SELECTION CRITERIA FOR CAREER CRIMINAL PROGRAMS

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There are three important ways in which a career criminal program in a prosecutor's office could have an impact on crime within a community. One method would be through concentration of more criminal justice resources on the most active offenders, thereby increasing the rate of conviction and incarceration. This method would reduce crime through incapacitation; offenders in jail or prison cannot commit crimes. A second method would be to increase either the probability of prison sentences or their length. This method is also an incapacitation strategy, but one that is not completely within the control of the prosecutor. A third method by which a career criminal program might influence crime is by deterring other offenders. When career criminals learn that there is a special program to convict and incarcerate them, they might decide that committing crimes is not worth the risk.

This paper will consider only the first method of crime reduction—selective incapacitation. The success of this strategy rests on the extent to which certain criminals are much more active than others, and there is considerable evidence indicating the existence of such criminals.¹ Given the existence of this type of criminal, the main problem becomes how to identify and convict them. The first section of this paper will discuss the importance of selection criteria in terms of reducing crime. The second section will suggest some criteria for use in the selection process.

* Research Associate, Institute for Law and Social Research. The author wishes to thank Brian Forst, William Hamilton, William Rhodes, and Jean Shirall for helpful comments on earlier drafts of this article and Arthur Gelman for his help in preparing the article for publication in *The Journal of Criminal Law and Criminology*.

¹ In the Philadelphia birth cohort study, 18% of the juveniles accounted for 52% of the juvenile crimes. M. WOLFGANG, R. FIGLIO & T. SELLIN, *DELINQUENCY IN A BIRTH COHORT* 88 (1972). In Washington, D.C., 7% of the adult arrestees accounted for 24% of the adult arrests. K. WILLIAMS, *THE SCOPE AND PREDICTION OF RECIDIVISM* 6 (PROMIS Research Project Publication No. 10, 1979). Also, research by the RAND Corp. identified two groups of offenders: the "intensives" and the "intermittents." J. PETERSILIA, P. GREENWOOD & M. LAVIN, *CRIMINAL CAREERS OF HABITUAL FELONS* (1977).

I. THE IMPORTANCE OF SELECTION CRITERIA

The importance of selection criteria can be illustrated by simulating the potential crime reduction that might be achieved through the use of a career criminal program in a particular jurisdiction. This study was able to use criminal history data from the District of Columbia.² Similar analyses, focusing on sentencing rather than prosecution, have been done by others.³

The data used permitted the study to address the following question: What would the impact on future arrests have been if there had been a career criminal program in the District of Columbia in 1972 and 1973? The criminal behavior of a representative group of offenders during this time period was established by tracing the criminal histories of 4,703 adult defendants arrested in the District of Columbia during the last two months of 1972 or the first two months of 1973. The prior arrests for the sample defendants were recorded for a period reaching back to January 1, 1971, while records were also assembled for all subsequent arrests up to August 31, 1975. This provided a cohort of defendants whose criminal histories in the District of Columbia were known for a fifty-six-month period during which a career criminal program was not in effect. The time of incarceration for the

² For a technical description of this material, see K. Williams, *Estimates of the Impact of Career Criminal Programs on Future Crime* (September 1979) (unpublished paper).

³ See, e.g., Petersilia & Greenwood, *Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations*, 69 J. CRIM. L. & C. 604 (1978). See also Clarke, *Getting 'Em Out of Circulation: Does Incarceration of Juvenile Offenders Reduce Crime?*, 65 J. CRIM. L. & C. 528 (1975); Shinnar & Shinnar, *The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach*, 9 LAW & SOC'Y REV. 581 (1975); Van Dine, Dinitz & Conrad, *The Incapacitation of the Dangerous Offender: A Statistical Experiment*, 14 J. RESEARCH CRIME & DELINQUENCY 22 (1977); Van Dine, Dinitz & Conrad, *The Incapacitation of the Chronic Thug*, 70 J. CRIM. L. & C. 125 (1979). For a review of other studies of general (as opposed to selective) incapacitation, see Cohen, *The Incapacitative Effect of Imprisonment: A Critical Review of the Literature*, in *DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES* 187 (1978).

4,703 defendants was established for the period of time between the initial arrest during the four-month period and August 31, 1975.⁴

The official criminal behavior (arrests, convictions, etc.) of the group of defendants and the time they were incarcerated were combined to calculate "a crime rate" or, more precisely, an "arrest rate" for each of the defendants. These rates were computed as:

$$\frac{\text{Number of Arrests}}{\text{Time on the Street}}$$

It would have been ideal to know the actual criminal behavior of the cohort of defendants. Instead, it had to be assumed that an individual's arrests reflect the actual number of crimes he had committed.

This information was used to calculate the reduction in arrests—which one must assume to be reflective of the reduction in actual crimes—that possibly could have been achieved with a career criminal program. The question then was posed that if a career criminal program had been able to convict some of the defendants who were not already convicted, what difference would this have made in the crime rate?

The study allowed three characteristics of this hypothetical career criminal program to be varied. First, there was the issue of the size of the target group. The question arose as to how much more incapacitation could be achieved by increasing the number of defendants processed by the career criminal program. Three possible sizes of the career criminal program were considered: 5%, 10%, or 15% of the initial arrests.

A second important issue was the method of choosing participants for the program. If the most active criminals were chosen, the incapacitative effect would be larger. Four alternative approaches were considered. First, the defendants who actually turn out to be the worst offenders could be identified in advance. This is not a practical alternative, but it was included to put an upper bound on the possible crime reduction that could be achieved. It reflects the amount of crime that could be prevented if by revelation or clairvoyance one could have perfect knowledge of whom the worst offend-

⁴ Time incarcerated before trial was hand collected for anyone who was not released on his or her own recognizance at arraignment. If an incarceration sentence was given, the defendant was assumed to have served the minimum sentence, because this is the common release time in the District of Columbia.

ers would be. This is, therefore, an optimal figure which is not likely to be achieved. A second option was the selection of defendants on the basis of a score that measured their propensity to recidivate. This score, which was developed in a prior study, will be described in the second section of this paper. The third option was to choose the defendants on the basis of the criteria for career criminal selection established by the Law Enforcement Assistance Administration. These criteria state that the defendant must have been arrested for one of the following felonies: homicide, assault, forcible sexual assault, robbery, or burglary. In addition, the defendant also must have at least one prior conviction. Since the data used in this study only included conviction information for the two years prior to the arrest during the sample period, it was not possible to choose defendants based exactly on these criteria. An approximation, however, was possible. For the 15% and 10% groups, a sample was used consisting of persons who had been arrested for one of the target offenses and who had an arrest record. For the 5% group, the study chose all persons arrested for one of the target offenses who had a conviction in the past two years and then sampled persons who were arrested for one of the target crimes and had an arrest record in order to obtain 5% of the arrestees.⁵ The fourth alternative method considered, in order to have a control group, was the selection of defendants at random.

The third issue considered was the conviction rate that could be achieved with the cases assigned to the career criminal unit. Some of the cases that were assigned to the hypothetical unit in the analysis were convictions anyway. Since the goal was to measure the increase in incapacitative effect, the study only counted cases in which a conviction had not been obtained. A test was then made of the effects of a 100% conviction rate for those not already convicted, a 67% conviction rate (close to the actual rate for the District of Columbia's career criminal program), and a 50% conviction rate.

While these three parameters were varied, several others were held constant. Since it could not be determined on what charge somebody would have been convicted because, in reality, they were not convicted, it was necessary to have a uniform sentencing scheme. Persons convicted were assumed to serve the minimum sentence (one-third

⁵ This technique was used because there were not enough persons who had a conviction in the past two years and an arrest for one of the target offenses.

TABLE 1
 POSSIBLE PERCENTAGE REDUCTION IN SERIOUS ADULT ARRESTS, ACCORDING TO CONVICTION RATE, SIZE OF TARGET GROUP, AND METHOD OF SELECTION FOR SPECIAL PROSECUTION:
 WASHINGTON, D.C.

Conviction Rate ^a	Size of Target Group											
	15%				10%				5%			
	Actual Worst	Score Selection ^b	LEAA Selection	Random Selection	Actual Worst	Score Selection ^b	LEAA Selection	Random Selection	Actual Worst	Score Selection ^b	LEAA Selection	Random Selection
100%	19	10	9	4	15	8	6	2	9	4	3	1
67%	12	7	6	3	9	6	4	1	6	3	2	1
50%	10	6	5	2	8	4	3	1	4	3	2	1

^aBased on those cases for which a conviction had not been obtained.

^bCalculated for felony defendants only.

of the maximum) on the most serious charge brought in the case.⁶

Table 1 shows the expected percentage reduction in adult arrests,⁷ which were weighted by seriousness, under the four conditions mentioned above.⁸ The results vary from 19% to 1%. Obviously, the higher the conviction rate, the more crime reduction that can be achieved. For example, if the size of the career criminal program is 10% of the case load of the office, and the defendants are selected by a score, an 8% reduction in adult arrests is achieved if the conviction rate is 100%, whereas only a 4% reduction is achieved if the conviction rate is 50%. Increasing conviction rates is not easy, but it does seem to have a clear payoff in terms of its impact on crime reduction possibilities.

The criteria for selecting persons for the career criminal program also appear to be quite important. If targeting procedures could be improved in order to incapacitate the worst recidivists, the ef-

fects appear to be fairly sizable. Choosing the defendants based on either the LEAA criteria or a predictive device appears to have approximately the same impact—one-half that of choosing the actual worst. However, these criteria produce considerably better results than simply choosing defendants at random.

The question was posed as to whether it would be more effective to select recidivistic offenders regardless of whether they were arrested for felonies or misdemeanors. Although many persons arrested for misdemeanors turn out to be among the worst recidivists, it still appeared to be more efficient to include only defendants arrested for a felony, since the maximum potential incarceration period for misdemeanants is only one year.

These results for the District of Columbia may not be representative of the results that would be achieved in other jurisdictions. Without further research, it is difficult to generalize the findings. Even though the District of Columbia did not have a career criminal program until after the study period, table 2 demonstrates that they were convicting recidivists at a higher rate than other offenders. Incarceration, either pretrial or postconviction, was already being used for 28% of the arrestees in the study group. Moreover, there is evidence that it was the most active recidivists who were incarcerated, certainly in part because the criminal justice system consciously diverts first offenders. Another analysis of the same population in the District of Columbia indicates that past criminal history is considered in the bail decision.⁹ Whether the effect is intentional or not, the system

⁶ Since, undoubtedly, there would be charge reduction before conviction in some cases, and since many persons receive probation, this would tend to overestimate the sentence served. However, since some persons would serve more than the minimum sentence, this would tend to underestimate the sentence. Hopefully, these two effects would balance each other, leading to a reasonable estimate of actual time served. Insofar as career criminal programs might increase time served, our results would be underestimated.

⁷ An estimate of the reduction of all arrests could be obtained by taking 85% of the figures in the table. Juvenile arrests are 15% of the total arrests in the District of Columbia.

⁸ The percentages in the table are not the percentage reductions in arrests, weighted by seriousness, of the cohort; these percentages are higher. However, even if we could eliminate all crimes committed by recidivists, there still would be first offenders. Since 55% of the arrests are due to recidivists, the original figures were adjusted by this percentage.

⁹ See J. ROTH & P. WICE, PRETRIAL RELEASE AND MISCONDUCT IN THE DISTRICT OF COLUMBIA (PROMIS Research Project Publication No. 16, 1979).

TABLE 2
ACTUAL CONVICTION RATES IN PANEL CASE* FOR THE WORST RECIDIVISTS:
WASHINGTON, D.C.

Target Group	Conviction Rate in Panel Case*	
	In Target Group	Not in Target Group
The Actual Worst 15%	35% (706)	28% (3,997)
The Actual Worst 10%	38% (471)	28% (4,232)
The Actual Worst 5%	46% (235)	28% (4,468)

*Refers to the first case during the tracking period.

seems to be realizing a lot of its potential for incapacitation. Given this situation, any attempts to increase the incapacitative effect through increasing convictions would tend to be limited. However, this analysis is limited to the District of Columbia, and insofar as other jurisdictions are not realizing much of their incapacitative potential, there would be more room for a career criminal program to have an impact.

II. DEVELOPING SELECTION CRITERIA

To develop selection criteria that will enable a career criminal program to have an effect on future crime, research must be done on the factors that predict recidivism. There are several recent studies, completed in different geographical areas, that have implications for selection criteria. The studies have varying strengths and weaknesses, but together they present a picture of career criminals that is relatively consistent.

Four studies will be included in this discussion. The first is the analysis discussed in Section I.¹⁰ The strength of this analysis is that it was based on adult arrestees, which is the relevant group from which career criminal programs must select. In addition, it utilized information readily available to a prosecutor at screening. Its major weaknesses were the lack of information on the juvenile criminality of the adults and on their unofficial criminal behavior. The second study to be discussed was conducted in Honolulu by the *Honolulu Advertiser* in conjunction with social science researchers.¹¹ This

¹⁰ See note 2 & accompanying text *supra*.

¹¹ The articles were published in the *Honolulu Advertiser* between Sept. 10 and 20, 1978. Gene Kessebaum, who coauthored the articles with Michael Keller, is revising them for publication in the academic literature.

study has the same strengths as the District of Columbia study and has the added advantage of having had access to juvenile histories.

The RAND Corp. has conducted several studies based on California offenders that are relevant to the development of selection criteria.¹² The studies by RAND involve self-reports of criminality, rather than relying only on recorded criminality, and they have information on juvenile criminality as well. By only studying persons who were incarcerated, the RAND studies are limited to differentiating among persons who are all at the more serious end of the criminal spectrum.

The final study that will be mentioned is Lazar Institute's analysis of the bail decision, a study which has looked at the problem of pretrial crime.¹³ The findings of this study were based on California, Maryland, and Kentucky arrestees. It was limited to pretrial recidivistic activity.

The first question to be asked is what factors were associated with recidivism in more than one study? Prior criminal contact with the criminal justice system is an important predictor of future contact. This was found to be true in all the studies. However, prior convictions do not seem to be very good predictors by themselves. This is caused, in part, by the interaction of age with criminality. By the time a person is old enough to have several prior convictions, he is old enough to have reduced his propensity toward crime. The District of Co-

¹² See J. PETERSILIA, P. GREENWOOD & M. LAVIN, note 1 *supra*; M. Peterson, H. Braiker & S. Polich, *Doing Crime: A Survey of California Prison Inmates* (1980) (RAND Corp. research to be published).

¹³ Sorin, Toborg & Pyne, *The Outcomes of Pretrial Release: Preliminary Findings of the Phase II National Evaluation*, 2 PRETRIAL SERVICE ANN. J. 141 (1979).

lumbia study found that the recency of arrests made a difference. Each arrest in the past couple of years increased the likelihood of recidivism more than arrests further in the past did. The RAND studies and the Honolulu study found that the existence of a juvenile record was a very important predictor of recidivism. There are practical difficulties in incorporating a juvenile record into selection criteria, however, particularly in jurisdictions in which juvenile records are sealed. Nevertheless, it seems that adults with a juvenile arrest history are good candidates for career criminal programs.

In general, property crimes seem to be better predictors of future criminality than violent crimes with no property motivation. The District of Columbia study found that of the persons arrested for all the different types of felonies, robbery and burglary defendants were the most likely to recidivate in the future. The Honolulu study found robbery defendants to be the most frequent recidivists, and the RAND studies found property crimes to be more frequent among the criminals who were most active.

Several other factors were evident in more than one study. Unemployment, or the lack of a steady work history, was associated with recidivism in all four of the studies discussed here. In addition, the Lazar bail study found that being on public assis-

tance was associated with pretrial crime. Drug use and alcohol abuse were also factors that were associated with recidivism in several studies. The RAND studies found both factors to be important, as did the Honolulu study. In the District of Columbia study, only drug use was predictive of criminality. Finally, the factor of age has recently received a lot more attention in the literature. In each of the studies, younger persons were more active recidivists.¹⁴

Taken together, these studies suggest a profile of a career criminal: a young person in his late teens or early twenties, arrested for robbery or burglary, or a series of property crimes, with a juvenile record and a long criminal history given only a few years on the street, who is unemployed and uses drugs.

More research is needed in many different types of jurisdictions before one can conclude that selection criteria should be based on results from the studies cited here. However, the success of career criminal prosecution units in reducing crime, to a large degree, rests on the ability of the units to select career criminals. Effort expended to improve our knowledge of the most active recidivists would not be wasted.

¹⁴ This finding is discussed in Boland, *Fighting Crime: The Problem of Adolescents*, 71 J. CRIM. L. & C. 94 (1980).