GOVERNOR’S COMMISSION ON YOUTH & URBAN VIOLENCE, APRIL 13, 2015
Remarks: Kim S. Buchanan

Associate Professor of Law and Gender Studies, University of Southern California
Visiting Associate Professor, UConn School of Law

You have asked me to discuss research addressing the causes or factors associated with youth and urban crime. Since my expertise is in law rather than social science, I will address research that illuminates some of the ways in which policy choices about legal rules shape our definitions of crime, and can inadvertently foster the lawbreaking that criminal punishment aims to deter.

Please note that, given the short time frame for preparation of this submission, it cannot be viewed as exhaustive. However, it does identify three main themes with respect to legal and policy choices that can have unintended consequences for public safety and for justice.

I. Incarceration does not deter crime, and may increase it

The available social science evidence counsels that we should be very cautious about the likelihood that crime and punishment can deter antisocial behavior or keep society safe.

Many social scientists have argued that arrest and incarceration may be criminogenic—that is, a youth or adult who commits one or more crimes is more likely to reoffend if he (or she) is arrested and imprisoned than if the crime goes unpunished. In a recent meta-analysis of the social science research on incarceration, deterrence and recidivism, criminologists Francis T. Cullen, Cheryl Lero Johnson, and Daniel S. Nagin concluded:

Three observations, based on the existing science, are possible:

- With some confidence, we can conclude that, across all offenders, prisons do not have a specific deterrent effect. Custodial sentences do not reduce recidivism more than noncustodial sanctions.

- With less confidence, we can propose that prisons, especially gratuitously painful ones, may be criminogenic. On balance, the evidence tilts in the direction of those proposing that the social experiences of imprisonment are likely crime generating.

• Although the evidence is very limited, it is likely that low-risk offenders are most likely to experience increased recidivism due to incarceration. From a policy perspective, it is essential to screen offenders for their risk level and to be cautious about imprisoning those not deeply entrenched in a criminal career or manifesting attitudes, relationships, and traits associated with recidivism.²

II. Youth and School Crime: Policy Choices

The public safety benefits of arrest and incarceration, if any, are largely unproven. Furthermore, while juvenile justice aspires to be a less punitive, more rehabilitative response to youthful lawbreaking, studies of juvenile justice interventions indicate that they, too, tend to increase recidivism, both in the short term and into adulthood.³ We should be cautious, then, about defining and punishing undesirable behavior by young people (and others) as “crime.”

According to self-report data, “most individuals self-report involvement in some form of delinquent or criminal behavior by early adulthood,” although relatively few experience any contact with the criminal justice system as a result of their self-reported delinquency.⁴ Most young people desist from lawbreaking by the time they reach their early 20s.⁵ A recent series of reports by the National Institute of Justice summarized the research into the causes and correlates of youthful offending.⁶

⁵ Id. See also Rolf Loeber et al, Bulletin 1: From Juvenile Delinquency to Young Adult Offending (NIJ, July 2013), available at https://ncjrs.gov/pdffiles1/nij/grants/242931.pdf.
⁶ Links to the NIJ Study Group reports and a summary of their findings and recommendations can be found on the NIJ website, here: http://nij.gov/topics/crime/pages/delinquency-to-adult-offending.aspx#reports.
Unfortunately, some current laws and educational policies encourage the punishment of noncriminal offenses as crimes when young people commit them. A recent study conducted by Voices for Children details the extent of this problem in Connecticut. For example, when school administrators rely on police officers to deal with school misconduct, middle- high- and even elementary-school students can be arrested for noncriminal behaviors such as swearing and insubordination. Policies that place police officers in schools can encourage arrest as a response to these behaviors when school disciplinary sanctions might be more appropriate.

Other forms of student misbehavior, such as fighting, stealing, and use of illegal drugs, may be crimes, but arrest and punishment may not be effective or appropriate ways to address them. Such behaviors do not usually indicate that a misbehaving student has embarked on a life of crime: most young people who break the law as teenagers desist from crime by their early 20s. Given the devastating effect of arrest and incarceration on a student’s family relationships and educational, employment and social prospects, the limited benefits to school order, and the criminogenic effects of arrest and incarceration, we should encourage noncriminal responses to student lawbreaking in schools.

We should be especially cautious about defining and punishing youthful misbehavior as “crime” when we know of the racially disparate impact of implicit (unconscious) racial bias. Experimental studies show that many people see identical behaviors as threatening when performed by black men, and as benign when performed by white men. The pattern identified in Connecticut school arrests is consistent with this general tendency: poorer, urban school districts tend to arrest students at much higher rates than more affluent suburban districts. Unsurprisingly, then, school arrests show a striking racial disparity. According to the Voices for Children study, 62% of Connecticut public school students are white, but 61.8% of the students arrested in 2011 were African-American or Hispanic.

Moreover, white and minority students, and the rich and poor, tend to be arrested for different offenses. While white children and children in richer school districts tend to be arrested for drug possession—a situation in which school authorities are required by law to involve the police—African-American and Hispanic children, and children arrested in low-income urban districts, tend to be arrested for behaviors for which arrest is discretionary: fighting (42% of arrests) and “physical/verbal confrontation/conduct unbecoming” (16%). Although it does not seem likely that fights and rudeness are absent among white

---

8 According to Esty, id. at 16, more than 156 elementary-school children were arrested in Connecticut during the 2011 school year, “including more than ten students in grades three and below and at least one kindergartener.” The children were often arrested for infractions that are fairly ordinary among young children: classroom disruptions, disrespect, and fighting.
9 Esty, at 21.
10 Esty, at 19-20 and 21-22 Fig. 15.
students or in wealthier public school districts, the wealthiest public school district grouping (in Fairfield County) saw no arrests for these behaviors. Such arrests are optional, and they can be stopped.

III. Criminogenic criminal justice practices

There are good reasons not to treat young offenders as though they were adults. Until their early 20s, young people are cognitively less developed and thus, on average, have weaker judgment and impulse control than mature adults.11 Furthermore, young people—teenagers and young men in their early 20s—who are incarcerated with adults are at elevated risk of physical and sexual victimization by older prisoners.12 Furthermore, young people who are tried and punished as adults are more likely to reoffend.13 Moreover, the cognitive differences between young offenders and adults are not equalized at age 18. The human prefrontal cortex (responsible, among other things, for judgment, reasoning, and impulse control) continues developing until the mid-20s. Thus “[t]he evidence from developmental neuroscience suggests that young adult offenders ages 18-24 are, in some ways, more similar to juveniles than to young adults.”14

Furthermore, for both young people and adults, harsh prison conditions—that is, incarceration in higher-security settings—increase the likelihood that a person convicted of a crime will reoffend after release.15 Harsh prison conditions are criminogenic.

In conclusion, the available evidence points toward reducing societal reliance on arrest and incarceration as means to secure public safety.

11 Summarizing this research, a recent NIJ report concluded that “some studies found that transferred youth were more likely to reoffend, reoffend more quickly and at higher rates, and commit more serious offenses following release from prison than those who were not transferred.” Greg Ridgeway & Robert L. Listenbee, Young Offenders: What Happens and What Should Happen, U.S. Dep’t of Justice, Office of Justice Programs, Justice Research (Feb. 2014) (summarizing Based on this research, the Supreme Court of the United States has held that people should not be sentenced to death or to life without parole for offenses committed before they turned 18 years old: Roper v. Simmons, 543 U.S. 551 (2005) and Graham v. Florida, 130 S.Ct. 2011 (2010).

12 See, e.g. Ashley Nellis, The Lives of Juvenile Lifers: Findings from a National Survey, (The Sentencing Project, March 2012), but see Allen J. Beck & Marcus Berzofsky, Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12 at 22 (U.S. Dep’t of Justice, May 2013) (finding that 16- and 17-year-olds incarcerated with adults reported rates of sexual victimization similar to their adult counterparts).

13 See note 11, supra.

14 See Ridgeway & Listenbee, supra note 11.