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Sentencing and recidivism: The probable lack of success of the Safe Streets and Communities Act (Bill C-10)

Simone C. Cunningham*

This paper provides a brief summary of the existing literature on sentencing, intervention strategies and recidivism in Canadian offenders, and challenges the reasoning behind the Safe Streets and Communities Act. There is a wealth of research suggesting that harsher sentences are associated with an increased risk of recidivism, and that community-based sentences may play a role in the reduction of re-offending, especially in young offenders. Despite this, the recently introduced Safe Streets and Communities Act introduced policy that will lead to increased sentences for many offenders. This could result in a reversal of the declining Canadian crime rate.

In 2012, the Canadian government passed Bill C-10, now known as the Safe Streets and Communities Act. The stated purpose of the Act is to re-introduce comprehensive law-and-order legislation to combat crime and terrorism (Government of Canada, 2011). The means of achieving this goal include: legislation to hold criminals 'more accountable' for their actions, increasing penalties and enforcing harsher sentences, increasing the use of minimal sentencing, and limiting conditional leaves and parole opportunities. This is assumed to deter an offender from re-offending and be sufficiently intimidating to deter other individuals from committing new criminal offenses (Government of Canada, Department of Justice, 2011). While the legislation has positive goals and aims to protect Canadian citizens by keeping streets and communities safer, many experts believe there are disadvantages of the Act that outweigh its potential value. Specifically, the Act goes against a wealth of research, which has found that an over-reliance on incarceration does not reduce recidivism (Caldwell, Skeem, Salekin, & Van Rybroek, 2006; Gendreau, Goggin,

Cullen, & Andrews, 2001; Pozzulo, Bennell, & Forth, 2012; Wooldredge, 1988). Moreover, the Act may have especially negative consequences for young offenders. For example, the Bill has increased the range of situations in which a minor can be tried as an adult, introduced harsher sentencing for many offenses (including drug-related offenses), and made it legal to publicly name young offenders who have committed serious crimes (Government of Canada, Department of Justice, 2011). Experts believe this is counter-productive and that, in many cases, simply imprisoning offenders may not be as effective as other options such as community-based treatment programs (Gendreau et al., 2001). The aim of the current review was to survey literature relevant to the tenants of the Safe Streets and Communities Act. In doing so, this paper makes the substantiated conclusion that changes in sentencing and treatment of young offenders are not as effective as intended by Bill C-10, and that long-term outcomes may be better without attempts to make sentencing harsher.

General Problems With The Act

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In 2010, Canada's crime rate was the lowest it had been since 1973 (Statistics Canada, 2011). Not only were overall crime rates decreasing, the rates of severe and violent crime were also down (Statistics Canada, 2011). Included in this decline were youth crime rates, which had been steadily decreasing since 2000 apart from a small spike between 2007 and 2008 (Statistics Canada, 2011). The drop in youth crime followed the introduction of the Youth Criminal Justice Act, which was adopted by Canada in 2003. The Youth Criminal Justice Act aimed to reduce reliance on incarcerating young offenders and instead, sought options that would encourage rehabilitation and take more deeply rooted, systemic factors into account, such as childhood experiences and home life (Canadian Minister of Justice, 2013). Prior to this Act, Canada had a much higher rate of youth incarceration (Tibbetts, 2009). After its introduction in 2003, the youth crime rate dropped 36 percent by 2008 (Statistics Canada, 2009). Although many other factors can be involved in the reduction of crime rates, policy makers noted that there was a strong correlation between the decline and the introduction of legislation that attempted to avoid incarceration. Of concern is that The Safe Streets and Communities Act has introduced legislation that not only may undo this decline, but also may produce the opposite effect (Government of Canada, Department of Justice, 2011). It is too soon to be able to detect significant trends or changes in crime rates from statistical data. However, by creating legislation that appears to value longer incarceration over sentences that focus on rehabilitation and maintaining links with the community to reduce recidivism, the

government runs the risk of counteracting the recent positive outcomes of the Youth Criminal Justice Act.

A number of researchers have found that harsher and longer sentencing is associated with increased (not decreased) recidivism in offenders (Caldwell et al., 2006; Gendreau et al., 2001; Pozzulo et al., 2012; Wooldredge, 1988). For example, Gendreau et al. (2001) examined the association between community-based sentences and recidivism compared to time spent incarcerated and recidivism. Results of the study indicated that offenders who were sent to prison for either shorter or longer periods of time had slightly higher recidivism rates compared to other options like community-based sentences (Gendreau et al., 2001). There was also no significant decrease in recidivism for offenders who were given longer punishments in an institutional setting (Gendreau et al., 2001). The lack of a significant decrease in recidivism associated with incarceration and the increased societal costs that arise when a person is incarcerated suggest that community sentencing may be a better option from a social and financial perspective (Gendreau et al., 2001).

Harsh sentencing may not be an effective deterrent for committing future crime. One explanation for this, noted by a number of researchers, is that federal prisons generally have gang activity, violence, and substance use problems, all of which are risk factors for engaging in criminal activity (Canadian Journal of Mental Health, 2004; Jurgens, Ball, & Verster, 2009; Liu, 2011; Wood, Moir, & Mark, 2008). One study reported that gangs were present in 60 percent of American federal prisons (Camp &

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Camp, 1985). While this research is outdated, current research finds that these rates have not declined, and that prison gangs are associated with bullying and violence (Wood et al., 2009). In fact, bullying appears to be a common occurrence in prisons even when not associated with gang activity (Wood et al., 2009). This contributes to a stressful environment that is not conducive to mental health (Canadian Journal of Public Health, 2004; Wood et al., 2009). This, in turn, is a risk factor for an individual becoming more violent (Bania, 2009; Liu, 2011) and being more likely to reoffend.

An anonymous article in the Canadian Journal of Public Health (2004) reviewed the existing research and data on the impact of incarceration on an inmate's mental health. The author(s) of the article discussed the results of the 1995 National Inmate Survey (Correctional Service Canada, 1995) with regards to the separation of inmates from their family, friends, and communities that occurred while individuals were incarcerated. Based on the results of this survey, the author(s) of the article concluded that separation was associated with significant stress, and that this was related to a number of mental health issues that were hypothesized to potentially create long-lasting difficulties for offenders once released from prison. For example, the author(s) were concerned that if an offender is cut off from their previous social support network, they may be more likely to turn to the acquaintances they met in prison once they are released. This may lead to the individual being surrounded by other offenders, which could create an environment that produces a higher risk for recidivism

(Canadian Journal of Public Health, 2004).

In addition to problems with violence and isolation from social supports, high rates of illicit drug use have continued to be a serious concern in Canadian federal prisons (Jurgens et al., 2009; Small, Kain, Laliberte, Schechter, O'Shaughnessy, & Spittal, 2005). Research conducted within Canadian federal prisons has estimated that illicit drug use may be as high as 40 percent (Correctional Service Canada, 1995; Small et al., 2005). People who have used illicit drugs prior to incarceration often continue to use while in prison; in addition, people without a previous history of drug abuse may begin to use drugs in prison as a mechanism of coping with stress (Jurgens et al., 2009). This can pose additional serious health hazards such as HIV because of shared needles to inject drugs (Jurgens et al., 2009; Martin, Gold, Murphy, Remple, Berkowitz & Money, 2005; Small et al., 2005).

A concern then is that harsh sentencing involving incarceration may initiate a vicious cycle where drug addiction can begin or become worse and where one may experience violence or become involved with gang activity (Canadian Journal of Public Health, 2004; Small et al., 2005; Wood et al., 2009). These are all risk factors for engaging in criminal behaviour and recidivism (Gendreau, Little, & Goggin, 1996; Liu, 2011). As a result, some experts have recommended that long-term incarceration should be a last resort and reserved for offenders who pose a significant ongoing risk to the community and are likely to reoffend. A concern is that The Safe Streets and Communities Act will not differentiate

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among these groups and will enforce harsher sentencing regardless of circumstance (Government of Canada, Department of Justice, 2011).

Problems With the Act That Are Specific to Youth

Wooldredge (1988) conducted a meta-analysis examining the association of juvenile court sentences with recidivism rates. The study found that when young offenders were sentenced to shorter stays in correctional institutions and were more involved with community services they were significantly less likely to reoffend (Wooldredge, 1988). This association remained significant even among youth with more severe antisocial histories (Wooldredge, 1988). Caldwell et al. (2006) examined recidivism in adolescents who had high scores on the Hare Psychopathy Checklist: Youth Version (PCL:YV). Interestingly, they found that violent recidivism rates were twice as high at two-year follow-up for youth who were incarcerated and received treatment in a correctional facility compared to youth in other types of treatment centres. Importantly, evidence does not support this finding for adult offenders who meet criteria for psychopathy. Rice, Harris, and Cormier (1992) found that adult offenders identified as psychopathic showed poorer responses to treatment and even showed worse recidivism rates after receiving intensive treatment.

A variety of risk factors have been identified for offending at a young age: low socioeconomic status, lack of social support, a stressful home environment, experiencing childhood maltreatment, experiencing poor parenting styles, and parental mental health problems (Bania, 2009;

Cummings, Davies, & Campbell, 2000; Dekovic, 1999). Additionally, adolescents and young adults who commit crimes have been found to have poorer judgment, decision-making skills, impulse control and executive functioning, and are more susceptible to peer influences than adolescents and young adults who have not committed crimes (Farrington, Loeber, & Howell, 2012; Howell, Feld, & Mears, 2012; Scott & Steinberg, 2008). On a more positive note, younger offenders who have received appropriate treatment, intervention, and sentencing may be less likely to reoffend in the future because they are not as engrained in their antisocial habits (Farrington et al., 2012). Therefore, adolescence may be a key time to introduce interventions that can make a significant impact on future offending. Findings regarding youth treatment success also support arguments that youth should not be treated as adults in the context of court and sentencing procedures (Farrington et al., 2012).

Intervention

Prevention, intervention and treatment programs for young offenders can be categorized as being primary, secondary or tertiary intervention strategies (DeMatteo & Marczyk, 2005; Mulvey, Arthur, & Reppucci, 1993; Pozzulo et al., 2012). Primary strategies have the goal of preventing any violent or criminal behaviour from occurring and are typically implemented as early as possible. Secondary strategies attempt to decrease violence and offending, whereas the goal of tertiary strategies is to prevent recidivism (Pozzulo et al., 2012).

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There is evidence that some primary intervention strategies may have an impact on reducing future criminal and violent activity (Pozzulo et al., 2012; Webster-Stratton & Hammond, 1997). For example, parent-focused interventions focus on helping parents recognize the warning signs of future violent and criminal activity, and helping parents develop appropriate techniques for managing difficult behaviour (Mulvey et al., 1993; Pozzulo et al., 2012). This is important because, as mentioned previously, early home life may introduce several risk factors for criminal behaviour (Bania, 2009; Liu, 2011). Parent-focused interventions have been associated with positive outcomes when combined with social skills training and/or cognitive-behavioural therapy that focuses on conflict resolution, anger management, and adjusting overly-aggressive social perceptions (Lochman, Whidby, & Fitzgerald, 2000; Pozzulo et al., 2012; Webster-Stratton & Hammond, 1997).

Secondary intervention strategies, such as youth diversion programs, may also reduce the likelihood of future problematic behaviour in youth who have already been in trouble with the police or at school, but who have not been convicted or sentenced to a correctional or treatment institution (Kazdin, 1996; Pozzulo et al., 2012). Diversion programs essentially operate on the principle that treatment in the community will do less harm than institutionalization (Pozzulo et al., 2012). Finally, tertiary strategies such as those previously described, support the idea that interventions are more effective when served in a community setting as opposed to within a correctional

institution (Gendreau et al., 2001; Pozzulo et al., 2012; Wooldredge, 1988).

Another critical component of interventions should be to address any substance use disorders as early as possible and especially within a young offender population. As mentioned previously, substance abuse is highly prevalent among offender populations and is also a risk factor for youth to become offenders (Liu, 2011; Small et al., 2005). However, there is evidence that cognitive-behavioural therapy and therapeutic interventions have had significant positive impacts on substance abuse even in a forensic setting (De Leon & Wexler, 2009; Hiller, Knight, & Simpson, 2006; McHugh, Hearon, & Otto, 2010). Hiller et al. (2006) examined recidivism rates of offenders over a two-year period after taking part in mandated residential substance abuse treatment program (i.e., a therapeutic community). The results indicated that individuals who did not complete the program were far more likely to be arrested for committing a serious felony within the two-year follow-up period.

These intervention strategies have shown some success in preventing and deterring youth and offenders from engaging in violence and criminal activity, but research has shown that the overall effects for many are only small to moderate. More research is needed to continue to improve the effectiveness of the strategies aimed at prevention, intervention, and treatment. That being said, community and prevention-based interventions are far more likely to reduce recidivism than the changes mandated by The Safe Streets and Communities Act, which promotes harsher and incarceration-centered methods of handling young offenders

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(Gendreau et al., 2001; Pozzulo et al., 2012; Wooldredge, 1988). While new intervention improvement options are being researched, criminal law should utilize the correctional methods that are likely to lead to the best outcomes. Based on available empirical research, these methods should not include an increase in restrictive and harsh punishment.

Future Directions and Concluding Statements

The primary goal of The Safe Streets and Communities Act is to make Canada safer overall and to reduce crime and victimization. However, as this paper has attempted to demonstrate, policies that recommend providing appropriate intervention techniques that involve rehabilitation and community-based treatment as a means to decrease criminal activity and recidivism are more beneficial. Incarceration is unlikely to deter offenders and others from committing crimes. The most beneficial system is one in which primary interventions are put into action as early as possible, secondary intervention strategies continue to provide supportive solutions instead of punitive measures, and tertiary interventions do not involve excessively harsh sentencing but instead, promote rehabilitation. Research examining existing intervention programs, as well as the design of novel programs, must continue. Efforts to increase the efficacy of these programs are promising in terms of impact, and may lead to a decline in overall crime rates and less reliance on incarceration. While the effect sizes of many programs are small to moderate, they are significantly more effective than harsh sentencing and punitive measures (Gendreau et al., 2001; Pozzulo et al.,

2012; Wooldredge, 1988). Given this, there remains considerable concern that this new legislation will not effectively promote a safer society in the long-term.

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