

“Tough on Crime” Reforms: What Psychology Has to Say About the Recent and Proposed Justice Policy in Canada

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The direction of recent and proposed justice policy in Canada is characterised by more criminal offences and longer periods of incarceration. This policy is based on the rationale that crime in Canada is increasing and the perception that Canadians are not safe. This article reviews whether there is empirical support for the rationale of this policy and the related assumption that this policy will reduce crime and better protect the public. From the existing literature, it seems clear that (1) crime is not on the increase in Canada, (2) it is unlikely that the reforms will lower crime rates, and (3) there is a large financial and human cost of the recent and proposed criminal justice policies. We conclude that “tough on crime” policies are not supported by the scientific literature (e.g., Smith, Goggin & Gendreau, 2002; Stalhlskopf, Males, & Macallier, 2010). Psychology would argue for evidenced-based justice policy; specifically, that early intervention, prevention, and rehabilitation are more beneficial in reducing crime in the long-term and more cost-effective (e.g., Aos, Phipps, Barnoski, & Lieb, 2001; CPPRG, 2010). Policy implications from the field of psychology are discussed.

Keywords: justice policy, reforms, Canada, Tough on Crime, public safety

The recent and proposed direction of criminal justice policy in Canada has been characterised by changes that have or will result in an increase in the number of individuals incarcerated as well as longer periods of incarceration. The policy reforms have been referred to as “tough on crime” (Geddes, 2009; Prime Minister of Canada, 2011). This article reviews empirical support for the rationale underlying this policy and its intended aim to reduce crime and better protect the public.

The Crime Reforms

Since 2006, several significant criminal justice reforms have been proposed or passed in Canadian law. Due to the nature of legislation (i.e., changes in bills, consolidation of bills), this article does not include a comprehensive list of the crime reforms in the last 5 years; rather, several significant bills that have been proposed or adopted will be outlined (Parliament of Canada, 2010).

Bill C-2, An Act to Amend the Criminal Code and to Make Consequential Amendments to Other Acts (“Tackling Violent Crime Act”)

Bill C-2 was enacted in 2008. This bill included five separate bills, some of which had previously failed in legislative process,

and involved several changes to the Criminal Code. The bill created mandatory minimum sentences (MMS) for serious firearm offences, reversed the onus for those with a serious firearms offence seeking conditional release, made it easier to declare someone a dangerous offender by decreasing the threshold required, made changes to driving while impaired laws that included creating new offences, and raised the age of consent from 14 to 16. The MMS for serious firearms offences include, for example, a minimum 3-year sentence for those in possession for the first time of a prohibited firearm that is loaded or near readily accessible ammunition; this minimum increases to 5 years if it is a second offence.

Bill C-16, An Act to Amend the Criminal Code (“Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act”)

Bill C-16 is currently in the House of Commons. If enacted, this bill would restrict the availability for the conditional release of house arrests for all offences (including nonviolent crimes) with a maximum sentence of 14 years or life, and for certain offences persecuted by indictment with a maximum sentence of 10 years (e.g., result in bodily harm, involve the use of a weapon). The clauses of this bill emphasise the maximum sentence applicable to these offences.

Bill C-25, An Act to Amend the Criminal Code (Limiting Credit for Time Spent in Presentencing Custody; “Truth in Sentencing Act”)

Bill C-25 was enacted in 2010. This bill eliminated the 2 for 1 credit allocated for time served in a pretrial facility. The

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original 2 for 1 credit was not automatic, but often used because days in pretrial are not included when calculating parole eligibility and the challenging conditions (e.g., overcrowding, no treatment) inmates experience while in pretrial custody (Casavnat & Valiquent, 2009). This bill replaced 2 for 1 credit with 1 for 1 credit. Judges can impose a maximum of 1.5 for 1 credit under extenuating circumstances; this exception however, cannot be applied if an individual is being detained because of a criminal record or a breach of conditions. This change was made because it was believed that individuals were stalling their adjudication to spend increased time in pretrial in order to serve less time incarcerated once sentenced. The legislative summary of this bill notes that there is no evidence to support this belief, but acknowledges that the bill will “probably” result in individuals serving longer prison sentences.

Bill C-39, An Act to Amend the Corrections and Conditional Release Act and to Make Consequential Amendments to Other Acts (“Ending Early Release for Criminals and Increasing Offender Accountability Act”)

Bill C-39 is currently in the House of Commons. This bill aims to increase offender accountability and make stricter rules for eligibility dates for parole/statutory release. For example, it would require offenders to actively participate in their correctional plan and that decisions regarding offenders, including conditional release, will consider an offender’s progress in his or her correction plan. It also eliminates accelerated parole reviews, extends the amount of time individuals convicted of additional offences spend in prison before being eligible for parole, and eliminates statutory release for a number of crimes (e.g., breaking and entering to steal a firearm). This bill also aims to increase public safety by, for example, requiring offenders with restricted access to victims or areas (e.g., schools) to wear monitoring devices as a condition for release. Lastly, this bill aims to expand victim’s rights by amending the definition of victims to include anyone who has custody of or is responsible for a dependent of a victim and, for example, allowing victims to know the corrections programming in which their perpetrator has participated.

Bill C-4, An Act to Amend the Youth Criminal Justice Act and to Make Consequential and Related Amendments to Other Acts (“Sébastien’s Law”)

Bill C-4 was passed on first reading on 16 March 2010 and the second reading on May 3, 2010. The bill would amend provisions of the Youth Criminal Justice Act (YCJA). The amendments would modify presentence rules to facilitate the pretrial detention of youth accused of property crimes punishable by a maximum sentence of 5 years or more, authorize the use of prison sentences for youth previously subjected to extrajudicial sanctions, but prohibits the imprisonment of youth in adult prisons; requires the Crown to consider seeking adult sentences for youth who are 14–17 years of age and convicted of certain violent crimes; and facilitates the publication of the names of young offenders convicted of violent offences.

What We Know

Internationally, the fields of psychology, criminology, and other social sciences have developed a substantial body of research examining criminal and youth justice policy. As a result, we have the ability to inform our practice with scientific research. In addition, we have the opportunity to inform policy with 30 years of research specifically on these types of reforms because other countries (e.g., United States of America, Australia, South Africa) have enacted similar “tough on crime” policies. From the existing literature we know that (1) there is not an increase of crime in Canada, (2) the reforms will likely not work, and (3) there is a large financial and human cost of the current criminal justice policies. Evidence-based criminal justice policy would alternatively incorporate early intervention, prevention, and rehabilitation to reduce crime.

Crime in Canada Is Declining

Crime in Canada is not on the rise. Crime rates are declining and have been for 20 years. According to Public Safety Canada (2010), the crime rate has been declining since 1991, and in 2009 was the lowest recorded in the last 25 years. Similarly, Statistics Canada (2010) reported that police-reported crime continues to decline in Canada and noted that this downward trend had been seen for the last decade. Homicide rates, perhaps the most important indication of the level of crime in Canada, have similarly been fairly stable for the last 10 years (Statistics Canada). It was also reported that the Crime Severity Index, which measures the seriousness of crime, declined 4% from 2008, and was 22% lower than in 1999 (Statistics Canada). This decline is also evidenced in violent crimes, with 2009 having the lowest numbers recorded since 1989 (Public Safety Canada). Violent crime, however, has not evidenced as steep of decline as the general crime rate (Statistics Canada). A similar pattern is found for youth crime. The 2008 Uniform Crime Reporting Survey shows a decline in violent and nonviolent crime committed by individuals 12 to 17 years of age (Statistics Canada, 2008). Any crime committed by youth dropped 5% in 2008 as compared with the previous year, and violent crime dropped 3% during the same period. Overall, the youth crime rates have been fairly steady since 2000, suggesting that there is no increase in crime for more than a decade.

These statistics suggest that crime rates, including violent crime, appear to be stable or declining. The data appear to be at odds with the government position that the proposed changes will “beat back the epidemic of guns, gangs and drugs that is plaguing our streets” (Harper, 2006, Mandatory Minimum Sentences section, para. 2). Canadians share the perception of crime rates in Canada. In a recent poll of Canadians ($N = 1004$) on crime and punishment, almost half of respondents felt that the prevalence and severity of violent crime was rising (Makin, 2010).

They Do Not Work

The recent crime reforms proposed or implemented in Canada are similar to the types of reforms that have been implemented and empirically evaluated in a number of countries. This research, from both psychology and criminology, provides evidence that

these reforms are not effective. The current reforms increase prison sentences, but increased prison sentences do not decrease recidivism. This finding is demonstrated by two meta-analyses conducted in Canada. Gendreau, Goggin, and Cullen (1999) analysed 50 studies involving more than 300,000 offenders. The authors found that increased prison sentences were associated with increased recidivism, prison sentences resulted in an increase in recidivism as compared with community sanctions, and there was a tendency for low-risk offenders to be more negatively affected by prison than high-risk offenders. A follow-up analysis conducted by Smith et al. (2002), to update and expand their previous findings, examined 117 studies with more than 440,000 offenders. The authors found indications that increased lengths of incarceration were associated with slight increases in recidivism. Unlike the previous study, there were no differential effects of incarceration on the risk level of offenders, nor were there differential effects of prison on juveniles, females, or minority groups on their outcome measures.

“Tough on crime” policies are also ineffective at deterring individuals from committing crimes. Durlauf and Nagin (2011) argued that imprisonment is ineffective for both specific deterrence and general deterrence of crime. Several studies demonstrate this finding. For example, one study conducted by Wagenaar et al. (2007) provided evidence that mandatory jail policies had little effect on deterrence of driving under the influence (DUI) offences in the United States.

The current justice policy is also increasing or introducing MMS for a larger number of crimes; however, MMS are not effective in reducing crime and, as evidenced later in this article, are discriminatory. Hartley (2008) conducted a review of the types of sentencing for drug offences in the United States. As part of his analysis he reviewed the literature on MMS and concluded that MMS were ineffective. For example, Hartley presented evidence that prosecutors often did not file charges with MMS even when the evidence was present and that sentences were often rigid and individuals who were not a threat to society were incarcerated. Similar trends have been evidenced in South Africa. Terblanche and Mackenzie (2008) reviewed the literature on the impact of the introduction of MMS in South Africa and concluded that MMS resulted in overcrowding of prisons and bad sentencing practices. The authors stated the MMS in South Africa focused on long prison sentences rather than explicit sentencing practices, increased the acceptable length of imprisonment, and resulted in disproportional prison sentences to offences committed.

This evidence also addresses the “justice” or “just desserts” argument for “tough on crime” policies. Justice, to some, would require that the punishment fit the crime. As evidenced above, there is inconsistent application of MMS and other “tough on crime” policies (Hartley, 2008); mandatory sentences have become disproportional to the crime committed (e.g., Terblanche & Mackenzie, 2008), and are often discriminatory (see section “The Human Cost”). Waller (2008) argued that “tough on crime” policies result in a loss of justice because the focus is on offenders, for example, police end up focusing on catching more criminals and judges aim for more decisions, instead of on helping the victims of the crimes.

The Financial Cost

There is a significant cost of the crime reform bills. Estimates suggest that the crime reforms could cost billions of dollars. An example of the financial costs was demonstrated in a report by the Office of the Parliamentary Budget Officer (2010) that estimated the cost of Bill C-25 “Truth in Sentencing Act.” The report stated that this bill alone would, for a “sample year,” result in an additional 159 days to the average time spent in custody, adding 3,754 more inmates to those already in custody, requiring 4,189 new cells. The estimated cost was \$2.8 million per year and \$1.8 billion over 5 years to build new prisons.

According to Mallea (2010), the cost to Canadians was likely underestimated because the government has not released estimates of the total cost of the justice policy reforms, nor do the estimates account for the additional costs of police, lawyers, and judges to manage the influx of individuals entering into the criminal justice system. The Speaker of the House of Commons recently ruled that the Conservatives breached parliamentary privilege by withholding information on the financial costs of the crime reform bills and tax cuts (Bryden, 2011). Further, the British Columbia Provincial Court released a report that indicated there is a lack of judges and prosecutors to handle the increase of individuals charged with crimes (Dickson & Woo, 2010). As a result, many cases have been dropped. This report also indicated that there is limited funding to hire enough judges to support the increasing need at the front end of the criminal justice system (Dickson & Woo).

There have also been considerable costs evidenced as a result of related “tough on crime” policies in the United States. Waller (2008) stated that in the last 20 years, the United States more than doubled spending on police and tripled spending on incarceration. The Justice Policy Institute (2010) reported that in the United States from fiscal year 2005 to fiscal year 2009 the amount spent on corrections increased by 25%. This increase was larger than any other state expenditure (e.g., higher education, Medicaid, transportation).

Although there is a large financial cost, some proponents suggest that minimising the number of Canadian victims is worth the cost. For instance, Canada’s Minister of Public Safety argued, “the cost of a safe and secure society is an investment” (Correctional Service Canada, 2010, par. 1). However, evidence suggests that the large financial investment is disproportional to the small impact on public safety. Waller (2008) reported that in 2003, as a result of the 300% increase in the incarceration rate, taxes spent on incarceration in the United States increased by \$43 billion dollars to \$61 billion dollars annually. The 300% increase was matched by a 27% decrease in crime. While this decrease is substantial, Waller estimates that alternative methods are more cost effective and can also serve to reduce recidivism. For example, he noted that to achieve a 10% decrease in crime in California, it would cost taxpayers 7 times as much to incarcerate an individual (\$220.00 of the average family’s tax dollars) over helping at-risk children complete school (\$30.00). Given that dropping out of school is a risk factor, prevention programs such as this one reduce crime in the long term.

Johnson (2011) highlights that the government has finite resources and as a result there are restrictions in how many ways the “pie can be cut.” It is essential to determine how to best allocate our limited resources to get the greatest crime reduction for the

least amount of money in an ethical and practical way. These current changes in crime policy put substantial resources into combating crime and managing offenders after crimes have been committed. Prevention programs, on the other hand, put resources into early interventions, with the goal of preventing delinquent and criminal behaviour. Through these types of alternative methods we can likely match or obtain greater decreases in crime than incarceration and do so at a lower cost. We will discuss these alternative early intervention and prevention programs later in this article.

The Human Cost

General. In addition to the financial cost, there is a human cost. Recently, Sapers (2010) raised concerns about the trend of a punitive approach in Canadian prisons in his annual report as the Corrections Investigator. Sapers noted that use-of-force incidents were on the rise in federal prisons, “double-bunking” inmates increased because of overcrowding, and there are more segregation-like units which have limited offenders’ access to rehabilitation programs. According to the report, as compared with the general public, inmates in Canada experienced increased rates of both mental health and physical health concerns. Sapers concluded that the needs of offenders were not being met. Inmates had limited access to programs when in prison. For example, less than 25% of the prison population in Canada was enrolled or engaged in a “core” correctional program that targeted criminogenic needs. These programs have been shown to be effective in reducing recidivism, but there are not enough programs offered in a timely manner for inmates to be able to access them.

Koch (2010) reported that Sapers’ (2010) findings alarmed academic and social justice experts who argued that the enlarged prison system that will result from recent federal legislation will exacerbate these conditions. This argument was largely based on trends evidenced internationally. Mandatory sentences have been adopted by the United States, England, Australia, and South Africa (Haney, 2008; Roberts, 2003; Terblanche & Mackenzie, 2008). Hartley (2008) reported that MMS for drug offences in the United States have resulted in a significant increase in the prison population. He noted that narcotic offenders made up over half of the increase in the U.S. federal prison population since 1995, who in 2006 accounted for 56% of the prison population. Haney (2008) has referred to the effects of mandatory sentences and other “tough on crime” policies in the United States as the “War on Prisoners” noting that these policies have resulted in significant negative consequences, including discriminatory application. Terblanche and Mackenzie found that MMS in South Africa resulted in overcrowding with a 142% increase in the prison population.

Aboriginal people. The human cost will also be disproportionately weighted on Aboriginal people, mentally ill offenders, and juveniles. Sapers (2010) reported that Aboriginal people currently comprise 4% of the Canadian general public, but make up 20% of the prison population. He adds that Aboriginal people tend to be released later in their sentences and are overrepresented in segregated populations. Koch (2010) stated that as a result, Aboriginal inmates would suffer the negative effects of changes to sentencing laws more than non-Aboriginal inmates. More specifically, Chartrand (2001) argued that MMS would result in systematic discrimination of Aboriginal people, thus increasing the overrepresentation of Aboriginal people currently seen in Canada’s crim-

inal justice system. Discrimination of Aboriginal people has been evidenced in other countries, such as Australia, that have imposed similar MMS. Chartrand argued that the Supreme Court of Canada ruled against the discrimination of Aboriginal people in *R. v. Gladue* (1999). This decision requires that unique considerations be taken into account when sentencing Aboriginal peoples. In addition, discrimination is against both the Criminal Code of Canada that requires attention be paid to Aboriginal offenders and the Charter of Rights and Freedoms, namely Section 12 (cruel and unusual punishment) and Section 15 (substantive equality). However, at least one of the crime reform bills, Bill C-15, “An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other acts,” does specify that judges can exempt Aboriginal peoples from MMS.

This trend has been evidenced in the United States for Black and Hispanic offenders (for a review see Haney, 2008). A study by Ulmer, Kurlycheck, and Kramer (2007) examined the factors associated with the application of optional MMS in Pennsylvania for cases from 1998 to 2000 ($N = 4,534$). Among the variables, the authors examined the effect of race/ethnicity on the use of a MMS. The results indicated that overall there was some differential treatment as Blacks received MMS more than Whites, but this effect was not significant. The results also indicated that there was significant differential treatment for Hispanics as compared with Whites. Hispanics were approximately two times more likely to receive a MMS than Whites. Although these results cannot be directly generalised to Aboriginal people in Canada, they do provide evidence for the ethnic/racial disparities that may result from MMS.

Mental illness. Similar to Aboriginal people, individuals with mental illness are also disproportionately represented in prison populations, and this disparity has increased in recent years (Sapers, 2010). There are large numbers of both jail and prison inmates who have a mental illness, supporting this trend of the criminalization of the mentally ill (Johnson, 2011; Roesch, 1995). According to Olley, Nicholls, and Brink (2009) there can be up to three times as many mentally ill inmates in Canada than those with mental illness in the general population. In the United States, it is estimated that 16% to 50% of inmates have a mental illness (Ditton, 1999; James & Glaze, 2006). According to Slate and Johnson (2008), the three largest providers of psychiatric care in the United States are correctional institutions (Rikers Island Jail, NY; Cook County Jail, IL; and the Los Angeles Jail, CA), not psychiatric facilities.

Sapers reported that the number of mentally ill offenders in custody in Canada currently exceeds the capacity of Corrections Canada. Olley and colleagues (2009) summarised the challenges evidenced for managing mentally ill inmates: individuals with mental illness enter into the justice system in large numbers, they can pose a risk for harm to self or others, and there are obstacles (e.g., liability, lack of interview space and other practical limitations) in the management and treatment of their mental illness. MacDonald, Hucker, and Hébert (2010) argued that the court system is unable to address the complex needs of mentally ill inmates. MacDonald and colleagues reported that the Mental Health Commission of Canada proposed a framework for addressing mental illness in Canada, which includes empirically based person-centered treatment programs for offenders. Olley and colleagues similarly presented a model for managing the large num-

ber of mentally ill individuals involved in the criminal justice system through collaboration between corrections and mental health systems (for a review see Olley et al., 2009; see also Nicholls, Roesch, Olley, Ogloff, & Hemphill, 2005). Evidence also suggests that despite similar offence rates, individuals with a low-income are more likely to experience mental illness and are more likely to end up in the justice system (Hudson, 2005). The crime reforms may disproportionately affect individuals with mental illness, and will likely continue to strain Corrections Canada in meeting the needs of mentally ill offenders.

Youth. The criminal justice reforms also specifically target youth. Bill C-4, “Sébastien’s Law,” would require the Crown to consider adult sentences for youth ages 14–17, which would increase prison sentences for some youth (Parliament of Canada, 2010). There is research that suggests that the use of adult sentences may be used in a discriminatory manner. For example, Males and Macallair (2000) found that minority youth charged with violent offenses were more than twice as likely to be transferred to adult court as compared with White youth charged with violent crimes.

A large body of literature suggests that there are unique characteristics evidenced in youth that may limit the ability of youth to understand or benefit from the criminal justice system or incarceration. For example, youth demonstrate developmental limitations that can impair successful involvement in the justice system, including such issues as their capacity to understand arrest rights and their competence to stand trial (Geraghty, 1997; Penner, Roesch, & Viljoen, in press; Roesch, McLachlan, & Viljoen, 2007; Viljoen, Penner, & Roesch, in press). Gender differences among youth are also important to consider in this population. Baerger, Lyons, Quingley, and Griffin (2001) examined mental health needs in a stratified random sample of 473 juveniles adjudicated from 1995 to 1996 in the United States. The results indicated that female and male youth had unique mental health considerations. As compared with males, females had higher levels of anxiety and depression, higher suicidal risk, greater histories of abuse, and more psychological disturbances as a result of their abuse. The males had higher levels of conduct disorder and learning disabilities, as well as more extensive criminal histories than the females.

Incarceration does not reduce youth crime. Stahlkopf, Males, and Macallier (2010) recently conducted a review of incarceration and crime rates over the past 50 years in California. The study included data both before and after the implementation of several state laws that promoted youth imprisonment. The results demonstrated that increased juvenile incarceration did not result in reduced crimes rates. On the other hand, research suggests that alternative methods are more effective for youth than incarceration. For example, Beelmann and Raabe (2009) analysed 26 reviews and meta-analyses and found that several prevention programs had effects in reducing antisocial behaviour and crime in childhood and adolescence, especially when applied to high-risk individuals. Another study conducted by Henggeler, Melton, and Smith (1992) indicated that community-based multisystemic therapy was more effective (e.g., reduced aggression with peers) than usual services for serious juvenile offenders. The cost of the program per youth was considerably less (\$2,800 USD) as compared with the cost of incarceration (\$16,300 USD).

These findings are supported by reviews of studies conducted in many countries. Lipsey (2009) analysed 548 independent study

samples internationally from 1958 to 2002 on juveniles and later delinquency. Lipsey found that effective programs with high-risk offenders were therapeutic in nature, had a high quality of implementation, and incarceration was not effective in reducing recidivism. This research suggests that alternative programs can provide effective means of rehabilitating youth over incarceration.

The subset of Bill C-4 (“Sébastien’s Law”) that prohibits imprisonment of youth in adult correctional facilities is in line with research. For example, youths incarcerated in adult facilities evidence higher rates of mental health symptoms than those housed in juvenile correctional facilities (Murrie, Henderson, Vincent, Rockett, & Mundt, 2009). These youth are also more likely to be physically and sexually abused. According to a 1997 report of the National Criminal Justice Association, “youth incarcerated in adult institutions are five times more likely to be sexually assaulted, twice as likely to be beaten by staff, and 50% more likely to be attacked with a weapon than their counterparts in a juvenile facility” (National Criminal Justice Association, 1997, p. 47).

Recommendations

Research supports alternative methods for evidence-based criminal justice policy that have been absent from the recent crime reforms. For instance, rehabilitation is an effective strategy as evidenced by 40 meta-analyses that demonstrated the effectiveness of treatment to reduce recidivism (McGuire, 2004), and that prevention is effective in limiting antisocial behaviour and crime (e.g., Beelmann & Raabe, 2009). Similarly, Waller (2008) argued for “less law, and more order,” suggesting that we would achieve reduced rates in crime when politically we focus on prevention and focus police practices on solving the causal risk factors of crime (p. xvi). Durlauf and Nagin (2011) argued for “certainty-based policies” rather than “sanction-based policies.” Based on their review, the authors suggested that “certainty-based policies” will be more effective in reduce crime through clear consequences of committing crimes and the quick and certain implications of these consequences rather than lengthy or severe prison terms.

A report by the Justice Policy Institute (2010) presented recommendations based on empirical evidence on the importance of social investment for reducing incarceration and crime. The recommendations included: (1) focus law enforcement on individuals committing serious offences; (2) aim to reduce and eliminate discriminatory practices against different races/ethnicities and those with low income; (3) invest in education and other programs for youth; (4) more mental health and substance abuse treatment into the community rather than in the criminal justice system; and (5) provide programs to increase employability for individuals who have been involved with the criminal justice system, have low socioeconomic status, and youth. In addition, a comprehensive report by the Smart on Crime Coalition (2011) details specific recommendations from leading criminal justice organisations in the United States on a variety of key issues, including juvenile justice, improving the prison system, reentry, and victim concerns. The 318 page report includes recommendations that have been based on five principles: fairness, accuracy, efficacy, evidence bases, and cost efficiency.

The recommended prevention programs are largely in existence. The Fast Track Project is one prevention program for high-risk youth that has shown positive effects. For example, Conduct

Problems Prevention Research Group (CPPRG; 2010) reported findings from an ongoing examination of this long-term, comprehensive, prevention program for high-risk youth on arrest outcomes. Participants included 891 high-risk youth at four sites in the United States randomly assigned to either the intervention condition ($n = 445$) or a control group ($n = 446$). The intervention began in 1990 and lasted for 10 years from Grade 1 to Grade 10. The program targeted multiple domains, including relationships with peers, parenting and socialization, academic achievement, by working with the families and within the schools with additional programming for skills development (e.g., friendship groups). According to court records and self-report measures of delinquency, the Fast Track intervention program prevented juvenile arrests through age 19 as compared with the control group. The program was expensive, estimated at \$58,283 USD per participant. However, according to a cost-benefit analysis, it was cost-effective for the children at the highest risk of delinquent behaviour (Foster, Jones, & CPPG, 2006). Specifically, an incremental cost-effectiveness ratio analysis indicated that the probability for the intervention to be cost effective was 99% for the outcomes of conduct disorder, index crime committed, and interpersonal violence in the high-risk group (Foster et al., 2006).

Aos, Phipps, Barnoski, and Lieb (2001) conducted a cost-benefit analysis of over 400 intervention programs in North America. The programs ranged from early childhood prevention program to adult offender programs. The authors found that some programs were beneficial and some were not. For example, the author indicated that multisystemic therapy for juvenile offender results in savings of \$31,661 to \$131,918 USD per participant. In prison nonresidential substance use treatment for adults resulted in a savings of \$1,672 to \$7,748 USD per participant. Surveillance-oriented intensive supervision of adult offenders resulted in a cost of \$384 to \$2,250 USD per participant. For a full review see Aos and colleagues (2001; see also Cohen & Piquero, 2009).

Discussion

Policy Implications

Based on this review, the current and proposed policies are both expensive and ineffective. Although empirical evidence does not support “tough on crime” policies, evidence does support preventive policies as an alternative approach to managing crime in Canada. Haney (2002) developed a contextual model of justice that supports a preventive model grounded in a contemporary and empirically based view of human nature. He stated that an individual’s behaviour, including his or her criminal behaviour, must be viewed in relation to the context in which it occurs. Behaviour is impacted by multiple contextual factors, such as cultural and economic environments, and both intimate and nonintimate relationships with others. Haney’s model contrasts the current direction of crime reform in Canada that emphasizes uniform sentencing through MMS and stiffer incarceration with minimal community involvement.

Based on his model, Haney offers recommendations that directly inform the policy implications related to the criminal justice reforms recently enacted or proposed in Canada. First, Haney recommends that the criminal justice system should be centered on proactive and preventive law. He argues that a reactive system,

similar to the direction of Canada’s current system, is rarely effective. He based this argument on several lines of evidence: that most crimes are not reported to the police, the legal system reactively addresses reported crime on a case-by-case basis while failing to address larger determinants of the crime, and the numerous limitations and costs of a reactionary approach. In line with Haney’s recommendations, the current review suggests that preventive methods result in a bigger payoff, both financially and in reductions in crime, than reactive methods (e.g., Beelmann & Raabe, 2009). Effective programs could target education, job training, and community treatment for mental health and substance use problems (e.g., Justice Policy Institute, 2010).

Second, Haney recommends that the criminal justice system should recognise the importance of contextual factors in addition to individual factors for understanding the determinates of crime. This could include expanding courtroom inquiry beyond the “what” of behaviour to the “why.” Specifically, he suggests that justice system should consider motivation and external situational factors that promote criminal behaviour. He suggests that in addition to individual change, efforts should be made to address the underlying causes of behaviour through contextual change. This could include a shift in attributing legal responsibility and sentencing to include situational factors, such as racism and discrimination.

Haney recommended that contextual factors also be taken into consideration as targets for effective crime management. An example of this approach is the use of sanctions or interventions that involves the community in reducing crime, such as restorative justice or multisystemic therapy. This would include assessing contextual determinates of behaviour routinely in forensic risk assessments to effectively manage an individual in the community. To some extent, this method is currently practiced. For example, most opinions of risk assessments of sex offenders who have offended against children would recommend against employment at an elementary school to minimise access to their known target population.

Conclusion

The literature does not support the rationale for a “tough on crime” policy. Canadians do not need to fear an “epidemic,” as crime is declining in Canada. The current direction of more criminal offences and increased incarceration will likely not reduce crime or better protect the public. In addition, the justice policies come at a substantial financial and human cost, and will expend resources that could be more productively directed at a range of early intervention prevention-focused programs.

Despite efforts by Canadians to disseminate empirical evidence within parliament and to the public, there is a continued disconnect from policy, correctional practice, and public opinion. Geddes (2009) quoted the Prime Minister’s former Chief of Staff, Ian Brodie, at a public policy gathering at McGill University that captured the current trend:

Every time we proposed amendments to the Criminal Code, sociologists, criminologists, defense lawyers, and Liberals attacked us for proposing measures that the evidence apparently showed did not work. That was a good thing for us politically, in that sociologists, criminologists, and defense lawyers were and are all held in lower repute than Conservative politicians by the voting public. Politically it

helped us tremendously to be attacked by this coalition of university types. (para. 8)

Further, public opinion continues to have mixed support for harsher punishments for criminals among the voting public. Makin (2010) reported that 65% of Canadians moderately or strongly agreed that MMS sends a tough message to criminals.

Although there are several barriers, there are continued efforts to push toward implementing empirically based justice policies. The Supreme Court of Canada has already developed case law to give judges the ability to give lower than MMS under exceptional circumstances (*R. v. Nasogaluak*, 2010). Psychologists are examining ways to facilitate the use of psychological research in correctional practice. For example, Dvoskin, Skeem, Novaco, and Douglas (2011) attempt to increase collaboration between academia and decision makers through the dissemination of accessible and practical information on many of the key issues discussed in this article. Other recent efforts include an open letter signed by over 500 Canadians in health care, research, and academia that urges the government to reject Bill S-10, “Penalties for Organized Drug Crime Act,” and MMS for drug offences (Addiction & Urban Health Research Initiative Team, 2011). National media has published about the aforementioned open letter to government and has continued to publish articles that evidence both the cost and ineffectiveness of the Prime Minister’s agenda.

The solution to the problem outlined in this article is not a simple task, but we suggest that it does not require a complete restructuring of the current criminal justice reforms. There are several benefits interwoven into the recently enacted or proposed reforms (e.g., Sébastien’s Law would prohibit juveniles from serving sentences in adult correctional facilities). We argue that psychology can better inform justice policy through the application of knowledge on both individual and contextual determinates of behaviour and preventive methods of crime management. Psychology has the same goal as the Canadian government—we want Canadians to be safer. Based on the research available to us, we would work toward that goal, not by building more prisons and incarcerating more Canadians and other residents, but through prevention and treatment. The current reforms are primarily passive reaction to crimes after they have been committed. Psychological research suggests that active or early intervention is more beneficial in preventing crime in the long term and more cost effective.

Résumé

Les changements proposés récemment à la politique judiciaire du Canada se caractérisent par un nombre accru d’infractions criminelles et de plus longues périodes d’incarcération. Ils ont pour fondement la hausse de la criminalité au Canada ainsi que la perception que la population n’est pas en sécurité. L’article se penche sur les données empiriques justifiant cette orientation et sur la supposition connexe que la nouvelle politique conduira à une baisse de la criminalité et à une meilleure protection du public. Selon la littérature actuelle, trois constatations se dégagent clairement : la criminalité n’est pas à la hausse au Canada; il est peu probable que la réforme proposée entraîne une baisse de la criminalité; les coûts financiers et humains des changements proposés récemment à la politique judiciaire sont considérables. Il est conclu

que les politiques « de fermeté à l’égard des crimes » ne trouvent pas appui dans la littérature scientifique (par ex., Smith, Goggin & Gendreau, 2002; Stalhlskopf, Males & Macallier, 2010). Le domaine de la psychologie privilégierait une politique judiciaire s’appuyant sur des faits et mettrait de l’avant qu’à long terme, une intervention précoce, la prévention et la réadaptation contribuent davantage à réduire la criminalité, et ce, à moindres coûts (par ex., Aos, Phipps, Barnoski & Lieb, 2001; CPPRG, 2010). Les répercussions de la politique sont examinées du point de vue de la psychologie.

Mots-clés : politique judiciaire, réformes, Canada, politique de fermeté à l’égard du crime, sécurité du public.

References

- Addiction and Urban Health Research Initiative (2011). *The evidence is clear: Bill S-10 will result in expensive, ineffective sentencing*. Retrieved from the British Columbia Centre for Excellence in HIV/AIDS website: <http://www.cfenet.ubc.ca/news/releases/evidence-clear-bill-s-10-will-result-expensive-ineffective-sentencing>
- Aos, S., Phipps, P., Barnoski, R., & Lieb, R. (2001). *The comparative costs and benefits of programs to reduce crime* (No. 04–07-3901). Olympia, WA: Washington Institute of Public Policy.
- Baerger, D. R., Lyons, J. S., Quigley, P., & Griffin, E. (2001). Mental health service needs of male and female juvenile detainees. *Journal of the Center for Families, Children, and the Courts*, 3, 21–29. Retrieved from <http://www.courts.ca.gov/>
- Beelmann, A. & Raabe, T. (2009). The effects of preventing antisocial behaviour and crime in childhood and adolescences: Results and implication of research reviews and meta-analyses. *European Journal of Developmental Science*, 3, 260–281.
- Bryden, J. (2011, March 9). Harper government makes history for record number of parliamentary breaches. *The Canadian Press*. Retrieved from <http://new1130.com>
- Casavnat, L. & Valiquet, D. (2009). *Legislative summary bill C-25: Truth in sentencing act*. Retrieved from the Parliament of Canada website: <http://www.parl.gc.ca>
- Chartrand, L. N. (2001). Aboriginal peoples and mandatory sentencing. *Hall Law Journal*, 39, 449–467.
- Cohen, M. A. & Piquero, A. R. (2009). New evidence on the monetary value of saving a high risk youth. *Journal of Quantitative Criminology*, 25, 25–49. doi:10.1007/s10940-008-9057-3
- Conduct Problems Prevention Research Group (CPPRG). (2010). Fast track intervention effects on youth arrests and delinquency. *Journal of Experimental Criminology*, 6, 131–157. doi:10.1007/s11292-010-9091-7
- Correctional Service of Canada (2010, November 29). *Toews: A safe and secure society is worth the cost* (Pacific Region News Release). Retrieved from Correctional Service Canada website: <http://www.csc-scc.gc.ca>
- Dickson, L. & Woo, A. (2010, December 17). B. C courts face crisis with lack of judges: Report. *The Vancouver Sun*. Retrieved from <http://www.vancouversun.com>
- Ditton, P. M. (1999, July). *Mental health and treatment of inmates and probationers* (NCJ Publication No. 174463). Washington, DC: U.S. Department of Justice. Retrieved from <http://www.ojp.usdoj.gov/bjs/>
- Durluaf, S. N. & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology and Public Policy*, 10, 13–54. doi:10.1111/j.1745-9133.2010.00680.x
- Dvoskin, J., Skeem, J. L., Novaco, R. W., & Douglas, K. (Eds.). (2011). *Applying social science to reduce violent offending*. New York, NY: Oxford University Press.
- Foster, E. M., Jones, D., & Conduct Problems Prevention Research Group.

- (2006). Can a costly intervention be cost-effective? An analysis of violence prevention. *Archives of General Psychiatry*, 63, 1284–1291. doi:10.1001/archpsyc.63.11.1284
- Geddes, J. (2009, November 9). Are we really soft on crime? *McCleans*. Retrieved from <http://www.mcleans.ca>
- Gendreau, P., Goggin, C., & Cullen, F. T. (1999). *The effects of prison sentences on recidivism*. Ottawa, Canada: Corrections research and development and Aboriginal policy branch, Department of Solicitor. Retrieved from <http://www.prisonpolicy.org>
- Geraghty, T. F. (1997). Justice for children: How do we get there? *The Journal of Criminal Law and Criminology*, 88, 190–241. doi:10.2307/1144077
- Haney, C. (2002). Making law modern: Toward a contextual model of justice. *Psychology, Public Policy, and Law*, 8, 3–63. doi:10.1037/1076-8971.8.1.3
- Haney, C. (2008). Counting causalities in the war on prisoners. *University of San Francisco Law Review*, 43, 86–138.
- Harper, S. (2006, April 19). *Notes for an address by the Prime Minister on the government's commitment to get tough on crimes involving weapons, gangs, and drugs*. Retrieved from the Prime Minister of Canada website: <http://pm.gc.ca>
- Hartley, R. D. (2008). Sentencing reforms and the war on drugs: An analysis of sentence outcomes for narcotics offenders adjudicated in U.S. district courts on the Southwest Border. *Journal of Contemporary Criminal Justice*, 24, 437–461. doi:10.1177/1043986208323264
- Henggeler, S. W., Melton, G. B., & Smith, L. A. (1992). Family prevention through multisystemic therapy: An effective alternative to incarcerating serious juvenile offenders. *Journal of Consulting and Clinical Psychology*, 60, 953–961. doi:10.1037/0022-006X.60.6.953
- Hudson, C. G. (2005). Socioeconomic status and mental illness: Tests of the social causation and selection hypotheses. *American Journal of Orthopsychiatry*, 75, 3–18. doi:10.1037/0002-9432.75.1.3
- James, D. J. & Glaze, L. E. (2006, September). *Mental health problems of prison and jail inmates* (NCJ Publication No. 213600). Washington, DC: U.S. Department of Justice. Retrieved from <http://www.ojp.usdoj.gov/bjs/>
- Johnson, W. W. (2011). Rethinking the interface between mental illness, criminal justice, and academia. *Justice Quarterly*, 28, 15–22. doi:10.1080/07418825.2010.493527
- Justice Policy Institute (2010). *Money well spent: How positive social investments will reduce incarceration rates, improve public safety, and promote the well-being of communities*. Washington, DC: Author. Retrieved from <http://www.justicepolicy.org>
- Koch, D. (2010). *No room in the warehouse: Canada's prison system growing: Prisons expand despite drop in crime rate; federal "punishment agenda the real culprit*. Retrieved from the Media Co-Op website: <http://www.mediacoop.ca>
- Lipsey, M. W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A meta-analytic overview. *Victims and Offenders*, 4, 124–147. doi:10.1080/15564880802612573
- MacDonald, N., Hucker, S. J., & Hébert, P. C. (2010). The crime of mental illness. *Canadian Medical Association Journal*, 182, 1399. doi:10.1503/cmaj.100405
- Makin, K. (2010, January 21). Canadians' views on crime are hardening, poll finds. *The Globe and Mail*. Retrieved from <http://www.theglobeandmail.com>
- Males, M. & Macallair, D. (2000). *The color of justice: An analysis of juvenile adult court transfers in California*. San Francisco, CA: The Center on Juvenile and Criminal Justice. Retrieved from <http://www.cjcj.org/colorofjustice/>
- Mallea, P. (2010). *The fear factor: Stephen Harper's "tough on crime" agenda*. Retrieved from Canadian Centre for Policy Alternatives website: <http://www.policyalternatives.ca>
- McGuire, J. (2004). *Understanding psychology and crime: Perspectives on theory and action*. Berkshire, U.K.: Open University Press.
- Murrie, D. C., Henderson, C. E., Vincent, G. M., Rockett, J. L., & Mundt, C. (2009). Psychiatric symptoms among juveniles incarcerated in adult prison. *Psychiatric Services*, 60, 1092–1097. doi:10.1176/appi.ps.60.8.1092
- National Criminal Justice Association (1997). *Juvenile justice reform initiatives in the states: 1994–1996*. Rockville, MD: National Institute of Justice. Retrieved from <http://www.ncjrs.org/pdffiles/reform.pdf>
- Nicholls, T. L., Roesch, R., Olley, M. C., Ogloff, J. R. P., & Hemphill, J. F. (2005). *Jail Screening Assessment Tool (JSAT): Guidelines for mental health screening in jails*. Burnaby, BC: Mental Health, Law, and Policy Institute, Simon Fraser University.
- Office of the Parliamentary Budget Officer (2010). *The funding requirement and impact of the "Truth in Sentencing Acts" on the correctional system in Canada*. Retrieved from <http://www2.parl.gc.ca>
- Olley, M. C., Nicholls, T. L., & Brink, J. (2009). Mentally ill individuals in limbo: Obstacles and opportunities for providing psychiatric services to corrections inmates with mental illness. *Behavioral Sciences and the Law*, 27, 811–831. doi:10.1002/bsl.899
- Parliament of Canada (2010). *LEGISinfo*. Retrieved from <http://www2.parl.gc.ca>
- Penner, E., Roesch, R., & Viljoen, J. (in press). Juvenile offenders: An international comparison of mental health assessment and treatment practices. *International Journal of Forensic Mental Health*.
- Prime Minister of Canada (2011). *Prime Minister Stephen Harper*. Retrieved from <http://pm.gc.ca/eng/pm.asp>
- Public Safety Canada (2010). *Corrections and conditional release statistical overview-2009*. Retrieved from <http://www.publicsafety.gc.ca>
- Roberts, J. V. (2003). Public opinion and mandatory sentencing: A review of international findings. *Criminal Justice and Behavior*, 30, 483–508. doi:10.1177/0093854803253133
- Roesch, R. (1995). Mental health interventions in pretrial jails. In G. M. Davies, S. Lloyd-Bostock, M. McMurrin, & C. Wilson (Eds.), *Psychology, law and criminal justice: International developments in research and practice* (pp. 520–531). Berlin, Germany: De Gruyter.
- Roesch, R., McLachlan, K., & Viljoen, J. L. (2007). The capacity of juveniles to understand and waive arrest rights. In R. Jackson (Ed.), *Learning forensic assessment* (pp. 265–289). New York, NY: Routledge.
- R. v. Gladue, 1 S.C. R. 688 (1999).
- R. v. Nasogaluak, S.C. R. 206 (2010).
- Sapers, H. (2010). *Annual report of the office of the correctional investigator 2009–2010*. Retrieved from the Office of the Correctional Officers website: <http://www.oci-bec.gc.ca>
- Slate, R., N., & Johnson, W. W. (2008). *Criminalization of mental illness: Crisis and opportunity for the justice system*. Durham, NC: Carolina Academic Press.
- Smart on Crime Coalition (2011). *Smart on crime: Recommendations for the administration and Congress*. Retrieved from the Smart on Crime website: <http://www.besmartoncrime.org/>
- Smith, P., Goggin, C., & Gendreau, P. (2002). *The effects of prison and intermediate sanctions on recidivism: General effects and individual differences*. Ottawa, Canada: Department of Solicitor General Canada, Ottawa. Retrieved from <http://www.ccso.org>
- Stahlkopf, C., Males, M., & Macallair, D. (2010). Testing incapacitation theory: Youth crime and incarceration in California. *Crime & Delinquency*, 52, 253–268. doi:10.1177/0011128707307227
- Statistics Canada (2008). *Uniform crime reporting survey*. Retrieved from <http://www.statcan.gc.ca>
- Statistics Canada (2010). *Police-reported crime statistics*. Retrieved from <http://www.statcan.gc.ca>
- Terblanche, S., & Mackenzie, G. (2008). Mandatory sentences in South

- Africa: Lessons for Australia. *Australian and New Zealand Journal of Criminology*, 41, 402–420. doi:10.1375/acri.41.3.402
 - Ulmer, J. T., Kurlychek, M. C., & Kramer, J. H. (2007). Prosecutorial discretion and the imposition of mandatory minimum sentences. *Journal of Research on Crime and Delinquency*, 44, 427–453. doi:10.1177/0022427807305853
 - Viljoen, J., Penner, E., & Roesch, R. (in press). Competence and criminal responsibility in adolescent defendants: The role of mental illness and adolescent development. In B. Feld & D. Sound (Eds.), *Oxford handbook on juvenile crime and juvenile justice*. New York, NY: Oxford University Press.
 - Wagenaar, A. C., Maldonado-Molina, M. M., Erickson, D. J., Ma, L., Tobler, A. L., & Komro, K. A. (2007). General deterrence effects of U.S. statutory DUI fine and jail penalties: Long-term follow-up in 32 states. *Accident Analysis and Prevention*, 39, 982–994. doi:10.1016/j.aap.2007.01.003
 - Waller, I. (2008). *Less law more order*. Ontario, Canada: Manor House Publishing.
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