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THE INCAPACITATION OF THE CHRONIC THUG

STEVE VAN DINE,* JOHN P. CONRAD** AND SIMON DINITZ***

INTRODUCTION

"If I could get just 200 guys off my streets and keep them off," a metropolitan police chief once said, "I could cut the crime rate in half!"¹ His view has been echoed by many frustrated colleagues. It has become an article of faith that there exists a small, hard core group of chronic criminals who are responsible for a vastly disproportionate share of the serious felonies committed in our cities. However, while this notion may be plausible, it has never been proved. In this article, we shall attempt to show that although there may be some support for the idea, there is less support than is commonly believed. The question then becomes, how much crime can be prevented by incapacitating chronic criminals? To be as specific as possible, we will limit the term *incapacitation* to the custodial control of an offender for a protracted term during which he will be unable to commit a crime affecting the general public.

Some support for the notion of the chronic thug has been found in the landmark research of Wolfgang, Figlio, and Sellin.² In that study, the researchers reviewed the records of 9,945 boys who were "born in 1945 who resided in the city of Philadelphia at least from their tenth until their eighteenth birthday."³ Two-thirds of the cohort had no contact with the police. Of the remainder, 627 boys had five or more arrests before the age of eighteen. This number was only 6% of the cohort and 18% of the delinquent portion. But these boys committed over one-half of the recorded delinquencies and two-thirds of the violent offenses.⁴ Wolfgang and his associates avoided any policy

conclusions, but van den Haag⁵ thought that the finding justified the innovation of "post-punishment incapacitation." Wilson extended the Wolfgang findings to reach his conclusion that: "Wicked people exist. Nothing avails except to set them apart from innocent people."⁶

The expectation that the volume of crime can be reduced by incapacitation has begun to find administrative and legislative expression. The Law Enforcement Assistance Administration (LEAA) has sponsored a Career Criminal Program under which special units are set up in the offices of metropolitan district attorneys to expedite the prosecution of defendants accused of the repeated commission of major felonies. Mandatory sentences have been debated in most state legislatures in recent years, and have been statutorially authorized in many. Experimentation is beginning with the prosecution of repetitively violent juvenile offenders.

This shift of policy and practice calls for empirical scrutiny. Although there are numerous and complex questions to be answered, the fundamental issue of the potential effectiveness of incapacitation in the reduction of the volume of crime is open to study. In this article we shall report our explorations of this issue by considering the incapacitating effects of several different sentencing policies, all of them much more severe than any now in force. Early findings of our research were published in 1977.⁷ That study was limited to the effect of incapacitation as a crime reduction strategy when imposed on a universe of accused adult violent offenders. In the next section of this paper we shall summarize the findings in that report. In the remainder of this paper we will report the results of our most recent research and will relate it to the growing literature on incapacitation.

SUMMARY OF EARLIER WORK DONE

In *The Incapacitation of the Dangerous Offender: A Statistical Experiment*,⁸ we investigated the impact of

⁵ E. VAN DEN HAAG, PUNISHING CRIMINALS: CONCERNING A VERY OLD AND PAINFUL QUESTION 244 (1975).

⁶ J. WILSON, THINKING ABOUT CRIME 209 (1975).

⁷ Van Dine, Dinitz, & Conrad, *The Incapacitation of the Dangerous Offender: A Statistical Experiment*, 14 J. RESEARCH CRIME & DELINQUENCY 22 (1977).

⁸ *Id.*

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¹ *Prosecutor Zeroes in on Repeat Offenders*, Seattle Times, July 3, 1977.

² M. WOLFGANG, R. FIGLIO, & T. SELLIN, DELINQUENCY IN A BIRTH COHORT (1972).

³ *Id.* at 27.

⁴ Wolfgang, *Crime in a Birth Cohort*, in ALDINE CRIME AND JUSTICE ANNUAL 112 (1973).

severe and unvaried sentencing policies on a cohort of accused adult violent offenders. Each of the 342 members of the cohort was charged in 1973 by the various police departments in Franklin County, Ohio, with the commission of a violent felony. Each case was completed during that year by conviction on the original or a modified charge, by dismissal, or by a prosecutor's plea of *nolle prosequi*.

The distribution of these 342 defendants by offense charged is shown in Table 1. In Table 2, we show the total number of violent crimes reported to the Federal Bureau of Investigation in 1973, with clearance by arrest and by conviction, as found for the study cohort of 342.

The central question for our attention concerns the extent to which the 2,892 violent crimes reported to the FBI would have been reduced had a uniform sanction of incarceration been imposed at the time of the *last previous felony* conviction, thereby incapacitating the offender at the time of his 1973 crime. We are here substituting a hypothetical situation, in which severe and uniform sentences of imprisonment would have been administered, for the mixture of sanctions that was actually imposed.

Our universe consisted of all adults arrested in 1973 in Franklin County for violent crimes. The basic information was obtained from the Clerk of the Court of Common Pleas. Working with the Identification Bureau of the Columbus Police Department, we collected the FBI arrest histories and

background information. We particularly scrutinized the data to establish the following information as to each case:

- (1) Was there a previous felony conviction?
- (2) Were any such convictions for violent crimes?
- (3) When was the last felony conviction recorded prior to the 1973 conviction?
- (4) Would the imposition of a three to five year sentence for the earlier violation have prevented the 1973 offense?

The data for each case in the cohort were reviewed to establish the answer to each of these questions. By charting each criminal career in this manner, we could determine the effect of various hypothetical sentencing policies.

We compared the effects of several different sentencing policies. Mandatory sentences of three and five years were imposed retrospectively, with various contingencies in the defendants' records calling for the incapacitating sanction. The most stringent policy required that any person convicted of *any* felony, violent or not, would be sentenced to five full, or net, calendar years in prison. (None of our hypothetical policies allowed for early release for good time served, for parole, or for any modification of the sentence imposed except preconviction jail time.) We measured the effects of this policy using three different suppositions.

First, we assumed that the crimes on which the defendant was charged were correct and that he

TABLE 1
DISTRIBUTION OF 1973 ADULT COHORT BY CRIME CHARGED, NUMBER OF CRIMES CHARGED, CONVICTIONS RECEIVED,
AND NUMBER OF CRIMES CLEARED BY CONVICTION

	Persons Arrested	Crimes Charged, By Categories of Persons Arrested	Persons Convicted	Conviction- Counts
Murder/Manslaughter	36	45	18	20
Robbery	128	269	77	100
Sex Offenses (Violent)	79	111	23	24
Assault	49	66	28	30
Multiple Offense (Two of the Above)	50*	147**	20***	57****
Total	342	638	166	231

* Of the 50 persons, 22 were charged with robbery-assault offenses, 12 with robbery-sex offenses, 6 with murder/manslaughter-robbery offenses, 6 with murder/manslaughter-assault offenses, 3 with assault-sex offenses, and 1 with murder/manslaughter-sex offenses.

** The 50 persons charged with multiple offenses generated 147 charges, of which there were 17 murder charges, 55 robbery charges, 32 sex offenses, and 43 assault offenses.

*** Of the 20 persons with multiple offenses, 6 each were convicted for robbery-assault offenses and with murder/manslaughter-assault offenses, 5 for murder/manslaughter-robbery offenses, and 1 offender for each of three combinations: murder/manslaughter-sex offenses, robbery-sex offenses, assault-sex offenses.

**** The 20 offenders convicted on multiple offenses generated 57 conviction-counts, of which there were 14 murder conviction-counts, 20 robbery conviction-counts, 5 sex offense conviction-counts, and 18 assault conviction-counts.

TABLE 2
TOTAL RECORDED VIOLENT OFFENSES AND VIOLENT OFFENSES CLEARED, FRANKLIN COUNTY 1973**

	Reported Violent UCR Crimes Franklin County, 1973*	Cleared by Arrest		Cleared by Conviction	
		N	% of UCR	N	% of UCR
Murder/Manslaughter	65	62	95.4	34	52.3
Robbery	1,554	324	20.8	120	7.7
Sex Offenses (Violent)	326	143	43.9	29	8.9
Assault	947	109	11.5	48	5.1
Total	2,892	638	22.1	231	8.0

* UCR denotes Uniform Crimes Reports.

** The cohort is composed of all Franklin County adults charged with a violent felony whose case was completed in 1973. While the cases were completed in 1973, only about one-half of the crimes actually occurred in 1973, most of the rest occurring in 1972. Thus, we chose to use the UCR statistics listed above, representing an average between the 1972 and 1973 Franklin County statistics.

had been found guilty in every case. Accepting that supposition, we found that at least 111 violent crimes of the 2,892 reported in 1973 would have been prevented by the five-year sentence. That was a reduction of 3.8% in the volume of violent crime (see Table 5). These crimes were committed by sixty-three persons. Obviously, an unknown and unknowable fraction of the total number of crimes reported would have been prevented by the incarceration of these 63 offenders; the 111 crimes with which they were charged constitute the verified minimum number for which they were responsible. But there were 279 persons left in the cohort of 342 who could not have been prevented from committing either the crimes with which they were charged or those which they committed but on which they were not charged by the police. Whatever the total number of crimes that these 279 persons actually committed, none could have been prevented by an incapacitating sentence because none of these offenders had been convicted on a felony charge during the previous five years.

Second, we applied a more restrictive measure to the cohort. We proceeded on the supposition that we could be certain a crime was prevented only if the person charged was found guilty of the crime. Obviously, this is a more restrictive supposition than the one above, where we assumed that arrest implied guilt. By this yardstick, only 48 (or 1.7%) of the 2,892 crimes committed in 1973 would have been prevented. These forty-eight crimes were committed by thirty-six persons (see Table 5). Again, it is reasonable to suppose that these thirty-six persons must have been responsible for more than the forty-eight crimes with which they were charged in 1973, but we cannot know how many more.

TABLE 3
DISTRIBUTION BY NUMBER OF PRIOR VIOLENT AND NON-VIOLENT CONVICTIONS OF 342 ACCUSED ADULT VIOLENT OFFENDERS, FRANKLIN COUNTY, OHIO, 1973. PRIOR ADULT FELONY CONVICTIONS ONLY

Number of Prior Non-Violent Convictions	Number of Prior Violent Convictions				Total
	0	1	2	3	
0	232	18	2	1	253
1	47	7	—	1	55
2	18	3	—	1	22
3	6	2	—	1	9
4	1	—	—	—	1
5	2	—	—	—	2
Total	306	30	2	4	342

Third, we noted that of the 342 persons charged, 63 could have been prevented from the commission of whatever crimes they committed. This meant that a policy of incapacitation for five years would have reduced the number of persons charged in 1973 by 18.4%. The 111 crimes they committed constituted 17.4% of the 638 offenses with which our cohort of 342 was charged.

These three measures reflected various ways of calculating the reduction of crime attributable to an incapacitating sentence of five years imposed on all persons in the group who had been guilty of a previous felony during the period 1968-73. We concluded that these results did not justify the extraordinarily severe sentencing policy on which the experiment was based.

A sampling of a universe can never do more than approach a representation of reality. The reality which this experiment was designed to approach was the answer to the question of how many of the 2,892 violent offenses reported by the Franklin

County law enforcement agencies to the FBI might have been prevented had a five year sentence been imposed on their perpetrators at the time of their last previous conviction. This question is unanswerable. However, this study establishes some of the minimums and also establishes a reciprocal figure, the minimum number of offenses that could not have been prevented by this draconian sentencing structure.

OTHER INFERENCES, OTHER INTERPRETATIONS

Our earlier article had been preceded by a small but distinguished group of studies consisting of models constructed from speculative data. Studies by Ehrlich,⁹ Clarke,¹⁰ and Greenberg,¹¹ had converged on the position that incarceration, as presently implemented, made only a small reduction in the crime rate through incapacitation. But an analysis of New York City crime rates by Shinnar and Shinnar,¹² based on speculative estimates of the numbers of crimes committed by various classes of offenders and the velocity at which they are committed, concluded that much more severe policies than are now in force—mandatory sentences of five years for the violent index offenses and three years for burglary—would reduce the rate of commission of these "safety" offenses by as much as 80%.¹³ This study was the principal conceptual support for Wilson's advocacy of a policy of rigorous incapacitation.¹⁴

Our article¹⁵ made the essential point that if five year sentences were imposed on all members of the 1973 cohort at the time of their last previous felony arrest, only 3.8% of the violent offenses reported in 1973 could have been prevented. Our critics argued that this was much too low an estimate. For example, Boland¹⁶ and Palmer and Salimbene¹⁷ con-

⁹ Ehrlich, *Participation in Illegitimate Activities: A Theoretical and Empirical Investigation*, 81 J. POL. ECON. 521 (1973).

¹⁰ Clarke, *Getting 'Em Out of Circulation: Does Incarceration of Juvenile Offenders Reduce Crime?*, 65 J. CRIM. L. & C. 528 (1974).

¹¹ Greenberg, *The Incapacitative Effect of Imprisonment: Some Estimates*, 9 L. & SOC'Y REV. 541 (1975).

¹² Shinnar & Shinnar, *The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach*, 9 L. & SOC'Y REV. 581 (1975).

¹³ *Id.* at 607.

¹⁴ J. WILSON, *supra* note 6, at 200-02.

¹⁵ See Van Dine, Dinitz & Conrad, *supra* note 7.

¹⁶ Boland, *Incapacitation of the Dangerous Offender: The Arithmetic is Not So Simple*, 15 J. RESEARCH CRIME & DELINQUENCY 126 (1978).

¹⁷ Palmer & Salimbene, *The Incapacitation of the Dangerous Offender: A Second Look*, 14 J. RESEARCH CRIME & DELINQUENCY 130 (1978).

TABLE 4

DISTRIBUTION BY NUMBER OF PRIOR VIOLENT AND NON-VIOLENT CONVICTIONS OF 342 ACCUSED ADULT VIOLENT OFFENDERS, FRANKLIN COUNTY, OHIO, 1973. PRIOR ADULT AND JUVENILE FELONIES

Number of Prior Non-Violent Convictions	Number of Prior Violent Convictions				Total
	0	1	2	3	
0	181	15	3	1	200
1	41	7	1	1	50
2	32	8	3	1	44
3	12	9	2	2	25
4	7	2	1	1	11
5	3	3	—	—	6
6	2	1	—	—	3
7	1	1	—	—	2
8	1	—	—	—	1
Total	280	46	10	6	342

tended that we had ignored the large number of uncleared crimes in the total reported to the FBI. Instead of using the numbers of crimes as the point of departure in our analysis, they stated that we would have done better to stress the proportion of the individuals accused who would have been prevented by incapacitating sentences—which produces a figure of 17.4% of the 1973 charges that would have been prevented.

In our response to their criticism,¹⁸ we acknowledged that the rock-bottom figure of 3.8% was just that—a minimum. The sixty-three persons who would have been prevented from committing these crimes probably committed other crimes for which they were neither suspected, arrested nor charged. We went on to say that we were sure that the figure of 17.4% was too high an estimate of the fraction of the total number of violent offenses that could have been prevented. About one-fourth of the violent crimes reported in 1973 were committed by juveniles who could not have been subjected to the criminal sanctions we had suggested. We went on to observe that over one-half of the adults who had been previously arrested on felony charges were not found guilty of any offense. Clearly, an incapacitation policy could not be applied to them.

Since the presentation of our article, two new studies have been published addressing the effectiveness of incapacitation. Petersilia and Greenwood,¹⁹ using methods similar to ours, tried to

¹⁸ Van Dine, Dinitz, & Conrad, *Response to Our Critics*, 14 J. RESEARCH CRIME & DELINQUENCY 135 (1978).

¹⁹ Petersilia & Greenwood, *Mandatory Prison Sentences: Their Projected Effects on Crime and Prison Populations*, 69 J. CRIM. L. & C. 604 (1978).

TABLE 5

THE IMPACT OF OPTION I* ON THE AMOUNT OF CRIME PREVENTED, ARREST LEVEL, AND CONVICTION LEVEL, ADULT RECORDS ONLY

	Persons Arrested	Persons Prevented		Franklin Co., 1973 UCR, Violent Crimes	Counts Prevented			
		N	% of Arrested		Arrest Level		Conviction Level	
					N	% of UCR	N	% of UCR
Murder/Manslaughter	36	8	22.2	65	18	27.7	9	13.8
Robbery	128	35	27.3	1554	65	4.2	28	1.8
Sex Offenses (Violent)	79	8	10.1	326	22	6.7	5	1.5
Assault	49	1	2.0	927	6	0.6	6	0.6
Multiple Offenses (Two of the Above)	40	11	22.0	—	—	—	—	—
Totals	342	63	18.4	2892	111	3.8	48	1.7

* Option I: a five year net prison term imposed after any felony conviction; no violent felonies are required.

TABLE 6

THE IMPACT OF OPTION I* ON THE AMOUNT OF CRIME PREVENTED, ARREST LEVEL, AND CONVICTION LEVEL, ADDITIONAL PERSONS, ARRESTS, AND CONVICTIONS PREVENTED WHEN JUVENILE RECORDS ARE ADDED

	Persons Arrested	Persons Prevented		Franklin Co., 1973 UCR, Violent Crimes	Counts Prevented			
		N	% of Arrested		Arrest Level		Conviction Level	
					N	% of UCR	N	% of UCR
Murder/Manslaughter	36	3	8.6	65	3	4.6	3	4.6
Robbery	128	16	12.5	1554	39	2.5	17	1.1
Sex Offenses (Violent)	79	5	6.3	326	15	4.6	5	1.5
Assault	49	0	0	927	7	0.8	5	0.5
Multiple Offenses (Two of the Above)	50	6	12.0	—	—	—	—	—
Totals	342	30	8.8	2892	64	2.2	30	1.0

* Option I: a five year net prison term imposed after any felony conviction; no violent felonies are required.

estimate the effects of incapacitating sentences on a cohort of felony offenders in Denver during the period 1968-70. Their work differed from ours in two significant respects. The Denver cohort included persons found guilty of any charge, even a misdemeanor. Ignoring specific charges, they estimated the fraction of the cohort that would have been prevented from committing the 1968-70 crimes by the imposition of an incapacitating sentence at the last previous conviction. By their test, 31% of the Denver cohort would have been prevented from committing their 1968-70 crimes by the imposition of an incapacitating sentence of five years at the time of their last previous conviction. They reasoned that this policy would have prevented a similarly high percentage of the violent 1968-70 crimes, on the assumption that those apprehended are representative of those committing violent crimes.

Petersilia and Greenwood acknowledged that the cost of such a policy would be high. Their calculations suggested that the prison population would increase by 450% to effect a reduction in the violent crime rate of 31%. The same policies of incapacitation were relatively more successful at preventing property and less serious felonies. The authors calculated that mandatory imprisonment for five years would have prevented, through incapacitation, 42% of the burglaries and 47% of the other crimes in the study period.

Cohen²⁰ has written an elaborate review of the articles by Ehrlich, Greenberg, Clarke, and Shinnar and Shinnar. According to Cohen, Ehrlich understated the potential of incapacitation, but

²⁰ Cohen, *The Incapacitative Effect of Imprisonment: A Critical Review of the Literature*, in *DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON THE CRIME RATES* 187 (1978).

TABLE 7

THE IMPACT OF OPTION I* ON THE AMOUNT OF CRIME PREVENTED, ARREST LEVEL, AND CONVICTION LEVEL, ADULT RECORDS AND JUVENILE RECORDS**

	Persons Arrested	Persons Prevented		Franklin Co., 1973 UCR, Violent Crimes	Counts Prevented			
		N	% of Arrested		Arrest Level		Conviction Level	
					N	% of UCR	N	% of UCR
Murder/Manslaughter	36	11	30.6	65	21	32.3	12	18.5
Robbery	128	50	39.1	1554	104	6.7	45	2.9
Sex Offenses (Violent)	79	14	17.7	326	37	11.3	10	3.1
Assault	49	1	2.0	927	13	1.4	11	1.2
Multiple Offenses (Two of the Above)	50	17	34.0	—	—	—	—	—
Totals	342	93	27.2	2892	175	6.1	78	2.7

* Option I: a five year net prison term imposed after any felony conviction; no violent felonies are required.

** Table 7 is the total of Tables 5 and 6.

Shinnar and Shinnar inflated it. She noted that Shinnar and Shinnar had based their analysis on the diminished certainty of incarceration during the period 1940-70 to account for the rise in crime rates. This correlation over-simplified the reality and ignored other possible influences on the crime rate, including the possibility that the individual crime rate has increased. Cohen further suggested that if the prosecutors and courts in New York City are already overloaded, as the Shinnar team recognized, the changes that they proposed in the sentencing structure would increase the difficulty of gaining a conviction and prevent the increase in incapacitation that the Shinnars desire.

Cohen also commented on an unpublished Hudson Institute discussion paper by Marsh and Singer.²¹ Using hypothetical information on the rates at which a distribution of robbers committed their crimes, Marsh and Singer estimated that from 35-48% of New York robberies might be prevented through an extension of imprisonment by one year. Due to the very tentative nature of the study and the hypothetical data used, these results must be viewed with some skepticism. However, their calculations suggested that studies of the impact of incapacitation will inevitably underestimate the amount of crime prevented if the study uses only an average rate of the commission of crime. Cohen concurred with their analysis in this regard. The Greenberg and the Shinnar and Shinnar projections both were based on the use of an average crime rate.

While it did not focus on incapacitation, one other recent study did offer findings pertinent to

this study. Wolfgang²² reported on the work of Collins,²³ who followed until age thirty a 10% random sample from the Philadelphia birth cohort of 1945. Collins estimated that four or five index offenses might be prevented for each juvenile index offender placed into custody. He also concluded that each offender between the ages of eighteen and twenty-five who is incarcerated for a year would be prevented from committing three to three and one-half offenses. These figures are not used to project the overall effectiveness of a policy of incapacitation.

THE EXPANDED STUDY

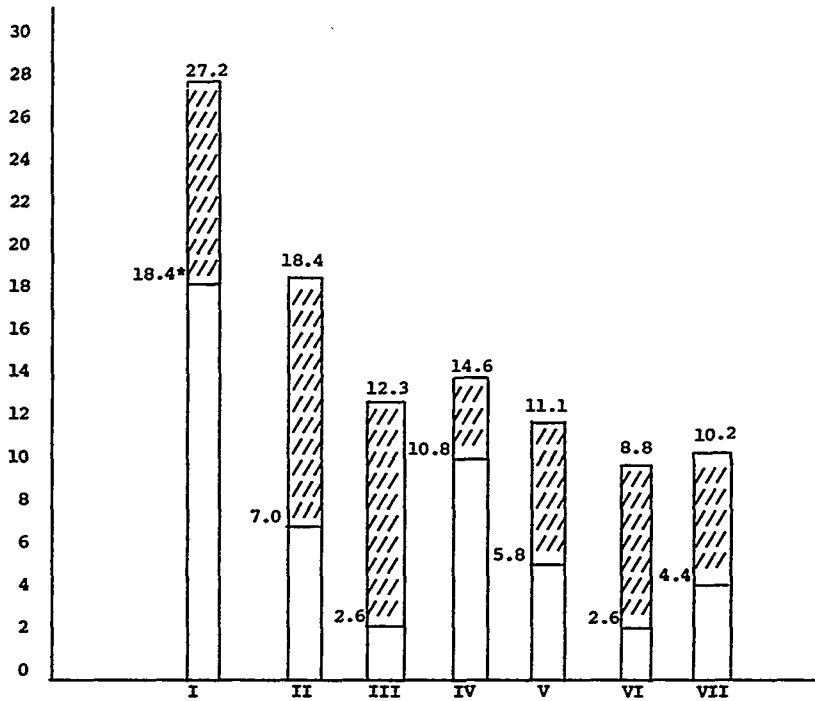
We shall now report the findings of further studies based upon our earlier work discussed in the first section of this article. At the conclusion of our earlier work several important questions were left unanswered. The most significant of these questions concerned the extent to which the crime rate would be affected if a policy of incapacitation were to be applied to juvenile offenders.

Review of juvenile records would resolve two problems. First, some of those adults charged with 1973 violent offenses were in the eighteen to twenty-three year old age range. An earlier felony could have been committed while the individual was still under juvenile jurisdiction. Had an incapacitation policy been imposed on these younger offenders, how many more of the 342 cohort members would have been prevented from the commis-

²² M. Wolfgang, *From Boy to Man—From Delinquency to Crime* (Sept. 19-20 1977) (paper presented at the National Symposium on the Serious Juvenile Offender).

²³ J. Collins, *Chronic Offender Careers* (Nov. 4 1976) (paper presented at the American Society of Criminology, Tucson, Ariz.).

²¹ Marsh & Singer, *Soft Statistics and Hard Questions* (1972) (Hudson Institute Discussion Paper HI-1712-DP).



PENALTY	5 yrs	5	5	3	5	5	3
# felonies required	1 felony	2	3	1	1	3	3
# violent felonies required.	0 violent	0	0	0	1	1	0

* The bottom light portion of each bar represents percent of population prevented with adult records only used. The upper shaded portion of each bar represents an additional portion of the cohort which would be prevented if juvenile felony records are used.

CHART 1

Proportion of 342 accused violent offenders prevented through seven sentencing policies. Adult records only, or with juvenile records added.

sion of their 1973 violent offenses? Second, some of the offenders responsible for violent crimes in 1973 were juveniles and therefore outside the original cohort, but responsible for a share of the 2,892 violent offenses reported to the FBI. If they had been incapacitated on the same basis as the adult offenders, how many of those reported offenses would have been prevented?

At this point we must disclaim advocacy of long terms of incapacitation for juvenile offenders of any kind. Nonetheless, such radical changes in the administration of justice have been urged, and our study would not be complete without an assessment of their potential consequences. It will be seen that our findings indicate that some further crime reduction would occur from such policies, but at a formidable social and economic cost.

The two studies described are not completely congruent temporally or geographically. The ju-

venile cohort added to the study is limited to persons committing their crimes in Columbus proper during 1973, whereas the original adult study drew on Franklin County records—of which Columbus criminal cases constituted about 90% of the total. For convenience, we shall join the two studies, but the reader must recognize that there is an undesirable though unavoidable fuzziness introduced.

Another problem encountered in creating the juvenile cohort arose from the informal procedures customarily used in the juvenile justice system. For example, it was not uncommon to find in the juvenile cohort an aggravated assault charge disposed of under the heading "Reprimand and Release." We counted it as a conviction and subject to an incapacitative sentence. That had the effect of increasing the impact of an incapacitation policy, but it was not technically a finding of guilty.

TABLE 8

DISTRIBUTION OF COHORT OF JUVENILES CHARGED WITH VIOLENT FELONIES IN COLUMBUS, OHIO IN 1973, BY CRIME OF INDICTMENT, NUMBER OF CRIMES IN INDICTMENT, JUVENILES CONVICTED, AND NUMBER OF CONVICTION-COUNTS

	Persons Arrested	Arrest Charges	Persons Convicted	Conviction-Counts
Murder/Manslaughter	2	2	1	1
Robbery	87	111	63	74
Violent Sex Offenses	16	18	10	11
Assault	18	23	16	20
Multiple Offense (Two of the Above)	3	—	1	—
Total	126	154	92	106

TABLE 9

TOTAL REPORTED VIOLENT OFFENSES, VIOLENT OFFENSES, CLEARED BY JUVENILE ARREST AND BY JUVENILE CONVICTION, COLUMBUS, OHIO, 1973

	Reported Violent UCR Crimes, Columbus, Ohio, 1973	Cleared by Arrest		Cleared by Conviction	
		N	% of UCR	N	% of UCR
Murder/Manslaughter	64	2	3.1	1	1.6
Robbery	1508	111	7.4	74	4.9
Sex Offenses (Violent)	295	18	6.1	11	3.7
Assault	755	23	3.0	20	2.6
Total	2622	154	5.9	106	4.0

Such decisions have to be made in most social research; we tried to be consistent in the direction in which they were made.

We now report on seven hypothetical sentencing policies. As in the study of the adult cohort, we applied each of these alternative policies to any juvenile offense committed before 1973:

- Option I: Five year prison term imposed for any felony conviction.
- Option II: Five year prison term imposed for the second and all succeeding felony convictions, whether violent or not. (On the first conviction the penalty structure is the same as in the existing law.)
- Option III: Five year prison term imposed for the third and any succeeding felony conviction, whether violent or not. (On the first two convictions the penalty structure is the same as in existing law.)
- Option IV: Three year prison term for any felony conviction, whether violent or not.
- Option V: Five year prison term for the first violent felony conviction. Further, a five year prison term imposed for each subsequent conviction of any felony, whether violent or not.
- Option VI: Five year prison term for the second felony conviction if one of the two previous convictions was for a violent

felony. Five year prison term for any subsequent violent or non-violent felony conviction. For offenders convicted of non-violent felonies only, the penalty structure is the same as in existing law.

- Option VII: Three year prison term for the second and any subsequent felony conviction. (On the first conviction the penalty structure is the same as in existing law.)

ADULT OFFENDERS WITH JUVENILE RECORDS

To make the necessary connections between the study of the adult records and the new study of the juvenile files, we reproduce in Tables 1 and 2 the data describing the original adult cohort of 342. Table 1 shows the cohort members distributed by the felonies with which they were charged and the number of counts pressed against them. The numbers of convictions are also shown. The low conviction rate for multiple offenders is misleading; some of those accused were convicted of only one crime and were reclassified as single offenders.

In Table 2, we present the number of violent crimes reported in Franklin County in 1973, and show the number of crimes in each category cleared by arrest and by conviction. Note that 22.1% of the crimes committed were cleared by arrest; this rate

is not unusually low when compared with that in other jurisdictions. The 8.0% rate of clearance by conviction is also consistent with that obtained in similar jurisdictions. The shrinkage must be attributed to plea bargaining, over-charging, or charges for which no conviction was obtained.

In Table 3, we summarize the adult felony records of the 342 cohort members, classifying the offenses by violent and non-violent felony convictions. In this cohort, 110, or 32.2% had prior adult felony convictions, of which thirty-six were violent. Only four of the 342 had three previous violent felony convictions; only two more had two such convictions. The most felonious member of the cohort had three violent and three non-violent convictions. Few of the 342 members of the cohort could have been incapacitated for the crimes they committed by an incapacitation policy focused on repetitive violence. Only six of the 342—1.8%—had more than a single violent conviction. By imposing life time incapacitation on all thirty-six members with records of a violent conviction, 10.5% of the cohort would have been prevented from the commission of their 1973 crimes. A policy of incapacitating all persons with any felony record would have reached 110 persons—32.2% of the cohort.

Table 4 presents the felony records of the 342 adult offenders when both adult and juvenile convictions are included. Almost half, 161 of the cohort of 342, or 47.1%, now show felony conviction records. In the group thus expanded, sixteen (4.7%) had two or more violent felony convictions, and sixty-two (18.1%) had at least one such conviction. Collectively, the cohort had 186 adult felony convictions, but there were 225 juvenile convictions on their records.²⁴

In Table 5, we show the impact of the most severe sentencing policy, Option I, when it is applied to adult convictions and records only. Tables 6 and 7 present the increased incapacitating effect

produced by applying Option I to the 342 while juvenile or adult. If it is assumed that all arrests should have resulted in convictions, the number of persons thus incapacitated rises from sixty-three to ninety-three, from 18.4% to 27.2% of the cohort. This level of incapacitation would have prevented 175 offenses—or 6.1% of the 2,892 violent crimes reported. If Option I is applied only to those convicted on the 1973 felony charge, only seventy-eight, or 2.7% of the reported offenses would have been prevented. Either way these results could only be achieved by drastic and costly changes in the criminal justice system, and by accepting a very large increase in the number of persons incarcerated. The assumptions of juvenile justice would have to be fundamentally changed.

Having demonstrated the effect of juvenile records on the application of Option I, we can turn to a graphic display in Chart I of the effects of this augmentation of information. The lower, unshaded portion of each bar represents the percentage of the cohort that would have been prevented from committing the 1973 offense by a consideration of the adult record only. The shaded upper portion of the bar represents the fraction of the 342 cohort members whose crimes would have been prevented if juvenile felony records had been used as a basis for the sentence. Note that while for Option I the number of offenders incapacitated would have been far greater than for any other policy, the increase in incapacitation is proportionately far greater in Options II and III when juvenile records are considered. More crime is prevented when juveniles are incapacitated like adults. This is a conclusion that poses several possible explanations. Is it because juveniles receive much shorter sentences—or no sentences at all? Or is it because the juvenile records of young adult offenders have been sealed? The answers are to be found in the application of the Options to the new information

TABLE 10
DISTRIBUTION BY NUMBER OF PRIOR VIOLENT AND NON-VIOLENT FELONY CONVICTIONS OF 126 ACCUSED JUVENILE VIOLENT OFFENDERS, COLUMBUS, OHIO, 1973

Number of Prior Non-Violent Convictions	Number of Prior Violent Convictions			Total
	0	1	2	
0	91	3	—	94
1	18	4	—	22
2	4	2	1	7
3	1	1	—	2
⋮	—	—	—	—
9	1	—	—	1
Total	115	10	1	126

²⁴ About three-fourths—or 254—of the cohort had a Columbus background. The rest had either lived elsewhere as juveniles, or the record was blank as to early residence. For offenders older than twenty-three at the time of the 1973 charge, a record of youthful criminality in another jurisdiction would be unimportant for the purposes of this study, since there is no national system for reporting juvenile offenses, and the existence of a previous juvenile offense could not be brought to the attention of the court. For the young adult offender between eighteen and twenty-three, a five year incapacitation sentence imposed anywhere would have prevented the 1973 Columbus offense. However, we doubt that our findings are seriously distorted by our inability to take this possibility into account.

TABLE 11

THE IMPACT OF OPTION I* ON THE AMOUNT OF CRIME PREVENTED, ARREST LEVEL, AND CONVICTION LEVEL, BASED ON COHORT OF 126 ACCUSED JUVENILE VIOLENT FELONY OFFENDERS

	Persons Arrested	Persons Prevented		1973 UCR, Violent Crimes	Counts Prevented			
		N	% of Arrested		Arrest Level		Conviction Level	
					N	% of UCR	N	% of UCR
Murder/Manslaughter	2	1	50.0	64	1	1.6	1	1.6
Robbery	89	25	28.1	1508	26	1.7	18	1.2
Sex Offenses (Violent)	18	2	11.1	295	4	1.3	3	1.0
Assault	20	3	15.0	755	4	0.5	5	0.7
Multiple Offenses (Two of the Above)	3	2	66.7	—	—	—	—	—
Totals	126	33	26.2	2622	35	1.3	27	1.0

* Option I: a five year net prison term imposed after any felony conviction; no violent felonies are required.

TABLE 12

SUMMARY OF THE IMPACT OF SEVEN SENTENCING OPTIONS ON 1973 COHORT OF 126 JUVENILES

Measure of Prevention	Persons Prevented	% of Cohort ¹	Arrest Charges Prevented	% of UCR ²	Conviction Counts Prevented	% of UCR ²
Sentencing Option Number						
I	33	26.2	35	1.3	27	1.0
II	14	11.1	14	0.5	13	0.5
III	6	4.8	6	0.2	5	0.2
IV	28	22.2	30	1.1	23	0.9
V	11	8.7	11	0.4	10	0.4
VI	8	6.3	8	0.3	8	0.3
VII	12	9.5	12	0.5	11	0.4

¹ The cohort consisted of 126 indictees.

² There was a total of 2622 violent felonies in Columbus in 1973.

Option I: One or more convictions, no prior violent felony, five year mandatory sentence.

Option II: Two or more convictions, no prior violent felony, five year mandatory sentence.

Option III: Three or more convictions, no prior violent felony, five year mandatory sentence.

Option IV: One or more convictions, no prior violent felony, three year mandatory sentence.

Option V: One or more convictions, one violent felony required, five year mandatory sentence.

Option VI: Two or more convictions, one violent felony required, five year mandatory sentence.

Option VII: Two or more convictions, no prior violent felony, three year mandatory sentence.

gained from inspection of the juvenile records for this study.

As expected, the thirty individuals whose offenses would have been prevented by the application of Options I had their most recent conviction while still juveniles. Under Option II, two recent felonies were required. Thirty-nine additional offenders had been incapacitated, of whom twenty-three had been most recently convicted as juveniles. The remaining sixteen persons had been incapacitated by a combination of one juvenile and one adult prior offense. In Option III, which required three previous felonies, only eight would still have been incarcerated because of juvenile offenses. The remainder, twenty-five offenders, would not have

qualified for Option III without the inclusion of both juvenile and adult convictions. It is clear that more 1973 violent offenses would have been prevented by terms of incapacitation for under-age offenders, and by counting juvenile convictions as prior convictions. As to the feasibility or the propriety of a policy which would treat juvenile offenders in this way for relatively modest gains, we decline to make a judgment at this point.

THE INCAPACITATION OF JUVENILES

We come now to a consideration of the volume of crime that would be prevented if our Options were applied to juvenile offenders just as they would be to adults. The reader is reminded that

this part of the study is not entirely congruent with the study of the adult cohort which was drawn from Franklin County statistics, since the juvenile augmentation was limited to Columbus data.

In Table 8 we show the distribution of all juveniles arrested in 1973 for a violent felony. Of the 126 persons in this cohort, over two-thirds were arrested for robbery. It will be observed that juveniles were arrested more frequently for robbery than were the adults, and less frequently for homicide. It will also be noted that they were charged with fewer offenses per person than were the adults. The reasons may be found in juvenile court procedures, which lead to decisions without formally introducing all charges against the individual. Of the 126 juveniles arrested, ninety-two, or 73%, were convicted of a violent offense. This contrasts with the conviction rate of 48.5% for the adults (see Table 1).

In Table 9, it is seen that of the 2,622 violent crimes reported in Columbus, 154 were cleared by the arrest of our 126 juveniles—not quite 6%. Turning to Table 11, we find that if we apply our most severe sentencing policy, Option I, to these 126 juveniles, thirty-three, or 26.2% of the total would have been prevented from committing their 1973 offense. That total compares closely with the figure of 27.2% of the adult cohort of 342 whose offenses would have been prevented, as shown in Table 7. But these thirty-three individuals were arrested for the commission of only thirty-five offenses, or 1.3% of the 2,622 violent offenses reported and convicted of twenty-seven, or 1.0%.

In Table 12, the seven options are applied to the juvenile data. Note that Option IV, calling for a three-year rather than a five-year incapacitation, reaches 22.2% of the cohort as compared with Option I, which would incapacitate 26.2%. Clearly, the slight difference between these two Options is attributable to the fact that most juvenile criminal activity is compressed into the later years of adolescence.

CONCLUSIONS

This study establishes the lower limits to the effectiveness of various policies of incapacitation—all of them far more stringent than any in actual use in this country. Considering Option I only, 3.7% of the 2,892 violent offenses would have been prevented, if we count as prevented only those offenses where any of our 342 adults or 126 juve-

niles were found guilty of the offense and where those convicted would have been subjected to the five-year incapacitation. If it is assumed that all those arrested in 1973 should have been convicted, then 7.1% of the violent crime could have been prevented.

Obviously these figures are too low. We cannot determine how many of those arrested or those convicted were responsible for an unknown number of additional crimes. We do know, however, that there were a large number of persons in both the adult and juvenile cohorts whose crimes could not have been prevented by any policy of incapacitation. At least 93 of the juveniles and 231 of the adults committed offenses for which a policy of incapacitation would have been ineffective. How many additional offenses these individuals were responsible for is also a matter for speculation. It is unlikely that these 342 adults and 126 juveniles committed all of the 2,892 violent crimes of 1973, but it is a fair guess that they committed more than their known share. Even if we assume that the incapacitated fraction of our two cohorts or persons like them with prior felony convictions committed four times as many violent offenses in 1973 than they were actually arrested for—surely a maximum assumption—only 28.4% of those 2,892 offenses would have been prevented.

The policy on which the effectiveness of incapacitation was tested is extreme and intended to catch as many recidivists as possible. The return is modest. The economic costs of its application—to say nothing of the social upheaval attendant on such a radical change in our system of criminal justice—are so great that we must conclude that incapacitation is not a reasonable course to adopt for the achievement of a reduction of violent crime.

As a proposed policy, incapacitation assumes the existence of a small number of chronic offenders who commit a disproportionately large volume of violent offenses. From the research presented here, it is clearly impossible to define the chronic offender in such a way that a practical basis for crime reduction can be structured. Our strongest test, Option I, really incapacitates all violators, not just the chronic offenders. If the second felony conviction is the criterion for chronicity, the prison population will explode, but the benefits will probably be very meager. Any more liberal criterion, such as two or more prior convictions will result in very few serious offenders being caught in the net which is spread.