Repeat Offenders

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Your discussions will be assisted by your knowing some of the facts about repeat offenders and some of the arguments over what we should do about them.
Who Are Repeat Offenders?

Repeat offenders are defined differently for different purposes. The law in many States, for example, prescribes different sentences for those who have already been convicted several times for specific offenses, such as drunk driving or other crimes. The discussion in this Crime File program repeats offenders are defined more generally as people who commit serious criminal offenses at a high rate and over a long period.

Active repeat offenders tend not to specialize in one kind of crime but to take advantage of whatever opportunities arise. They are quite diverse in how much criminal activity they produce, with some far more active than others. Even though repeat offenders are a small percentage of all criminals—about 15 to 20 percent, by one estimate—they account for a majority of detected offenses. If the precise figures are correct, 3 percent of all high-rate offenders could be identified and stopped from operating, while 30 percent could be greatly reduced in activity (assuming that other offenders would not take their places).

It has long been known that some people become habitual offenders, yet the proportion of crime committed by these people, and the policy implications of focusing criminal justice resources on them, have only recently been understood. Marvin Wolfgang and his colleagues at the University of Pennsylvania called attention to this issue in 1972 in a study of delinquency among boys born in Philadelphia in 1945. Of the boys ever arrested, 18 percent had five or more arrests and their arrests accounted for 52 percent of the arrests recorded for all boys studied.

Recent Rand Corporation studies further highlight the differences between ordinary offenders and high-rate offenders. Of the 193 persons who had been active robbers reported committing fewer than 5 robberies per year, but some reportedly a rate in excess of 1,000 per year.

What Rules Apply to These Methods?
The right to privacy is obviously jeopardized by ROP tactics. It is not clear what the U.S. Constitution intends with respect to putting people under surveillance. Prior law is existing case law on the degree to which the public should be protected from the tracking of individuals suspected of criminal enterprises. These issues are much more complex when the constitutional rights are not to be searched or to have police enter an individual’s home, both found, and what is the procedure. A realistic repeat offender program must the right that individual offenders will break the rules. Thus, careful supervision by police commanders and continued oversight by the courts are necessary both in making rules and in seeing that they are enforced.

One of the rules that may not be violated when following a repeat offender is “entrapment.” Entrapment is not a crime in itself but is a legitimate defense to a criminal charge. A defendant who claims entrapment must generally show that he was “induced” by the police to commit the offense and would not otherwise have done so. It is not sufficient for the defendant to prove merely that the police provided the occasion or opportunity to commit the act, thereby creating a “trap”; this provides no legal defense.

The problem is in defining what constitutes inducement. Is the inducement, for example, a series of questions and answers, a “control” device that the police could use to elicit a specific offense an inducement? Or is it necessary for the police to pose a question, make a request, and then commit the crime? This is, as Ms. Harris comments in the film, “a very fine line.”

How Well Does Washington’s ROP Work?
The Police Foundation’s evaluation of the Repeat Offender Project in Washington, D.C., found that the targets of ROP attention were five times more likely to be arrested than were targets who were randomly assigned to a “control group” that ROP was barred from investigating. This means that, if the U.S. Constitution intends with respect to putting people under surveillance, prior law is that ROP would be a violation of privacy. Other courts have held that ROP methods are similar to search warrants and that the constitutional rights of those targeted are protected; thus, ROP is a methods to search for other criminal activities.

The Police Foundation evaluation also showed that ROP resulted in a decline in the number of arrests ROP officers made per week, compared to the number they made before they joined ROP. The benefit was that the officers in the program arrested people who, on average, had more serious criminal records and were probably more active offenders. Whether ROP actually reduced crime in Washington is impossible for the evaluation to determine.
Why don’t more officers do ROP work? This question, raised by moderator James Q. Wilson in the program, has an obvious answer to many critics of police crime control strategies. For a variety of historical and political reasons, police spend most of their resources answering emergency calls from citizens, or waiting to answer those calls. While there are many other things they could do which might reduce crime, police executives cannot risk diverting resources from reactive radio patrol work. The idea of policing criminals, or confronting problems, or focusing on targets other than citizen calls for service may seem sensible, but diverting resources from citizen calls can create a political hot potato for any police chief.

How Do Prosecutors Select Repeat Offenders?

Prosecutors’ criteria are more formal than those used by police. The Charlotte system, discussed in the film, assigns mathematically precise weights to such factors as alcohol or drug use, age, and length of criminal career. Other prosecutors confine their criteria solely to characteristics of past offenses, such as the use of violence or a weapon. Some prosecutors believe in punishment only for past offenses and oppose using any "extralegal" considerations (such as drug use), even if they predict crime.

Numerically all urban courts have caseloads too large for all cases to be brought to trial. The normal procedure is to bargain with the defendant to plead guilty without trial in exchange for a reduction in charges or for a reduced punishment. Most cases must be handled this way to keep the system going, but prosecutors make exceptions for repeat offenders.

"Selective prosecution" of repeat offenders means that plea bargaining can be refused and that the prosecutor will press for conviction on the most serious charge possible with the longest sentence possible. Whether the prosecutor succeeds depends on how strong a case the police and prosecutor prepare, and how the judge reacts to the case.

Despite the priority both police and prosecutors give these cases, the arrested offender may be freed on bail, or upon conviction, may receive a short prison sentence or no prison sentence at all. The reason for both these outcomes is concern for fairness. Judges often do not believe it is fair to deny bail to people or to impose unusually high bail, even though police or prosecutors have labeled the people repeat offenders. For that matter, police and prosecutors often disagree about who is or is not a repeat offender.

Nor is it likely that a repeat offender convicted of selling stolen property in an ROP trap will receive a sentence substantially longer than would be received by a person not labeled a repeat offender who was charged with the same offense. The checks and balances of the criminal justice system limit the impact of repeat offender programs adopted by a single agency.

What Are the Prospects for Repeat Offender Programs?

Repeat offender programs are likely to expand and proliferate. With the scarce resources of modern criminal justice systems devoted to both crime control and punishment, policymakers must increasingly establish priorities. The idea of focusing scarce resources on repeat offender programs—even with all the errors of prediction and ethical questions of such programs—provides an attractive basis for choosing which criminal justice course to take.

References


Discussion Questions

1. What does your community do about repeat offenders?

2. When is it legitimate to consider the likelihood of future crimes in deciding how to punish a past crime?

3. Does it make more sense for police to concentrate on repeat offenders or to maintain a rapid response time to citizen calls for assistance?

4. Should prosecutors establish a targeting committee with police so they can agree in advance about who will be treated as a repeat offender?

5. Should the juvenile justice system be altered to give special consideration to highly active repeat offenders? If so, how?