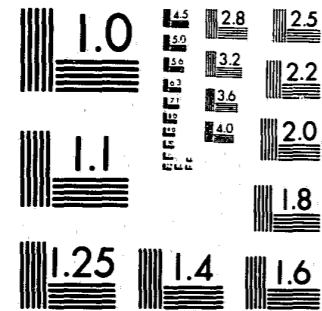


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**CRIME FILE**

# Repeat Offenders

A study guide written by:  
Lawrence Sherman, University of Maryland

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**Moderator: James Q. Wilson, Professor of Government,  
Harvard University**

**Guests: Peter Gilchrist, District Attorney,  
Charlotte, North Carolina  
Leslie Harris, Former Director, Washington  
Chapter, American Civil Liberties Union  
Edward Spurlock, Commander, Repeat  
Offender Project, Washington, D.C.,  
Police Department**

**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 stiffer penalties for people who have previously been convicted several times for specific offenses, such as drunk driving or burglary. In the discussion in this Crime File program, repeat 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 commit the majority of serious, detected crimes. If these high-rate offenders could be identified and stopped from operating, the serious crime rate could be greatly reduced (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. In a survey of prison inmates, half of those who had been active robbers reported committing fewer than 5 robberies per year, but 10 percent of them committed over 50 per year. Similarly, half of the inmates convicted for burglary had committed fewer than 5 burglaries per year, but 10 percent of them had committed more than 150 per year, with some reporting a rate in excess of 1,000 per year.

A number of attempts have been made to identify high-rate offenders at a point in their criminal careers when they are likely to continue committing crimes, but a number of difficulties must be resolved. First, there are ethical problems associated with focusing the attention of the criminal justice system—which is supposed to punish for past crimes—on individuals for the crimes they may commit in the future. Second, if these problems are resolved satisfactorily, there remain technical problems in distinguishing high-rate offenders from other offenders.

## Should the Criminal Justice System Take Account of Future Crimes?

Since repeat offenders account for a disproportionate amount of crime, their identification and incarceration should prevent substantial numbers of crimes.

This program brought to you by the National Institute of Justice. James K. Stewart, Director. The series produced by WETACOM through a grant to the Police Foundation.

Many argue, however, that the criminal justice system exists to respond to crimes that have been committed by identifying offenders and imposing deserved punishments on them. This is the "retributive" purpose of the criminal justice system. From this perspective, the criminal justice system should not attempt to anticipate the offender's future criminality but should focus on his past culpability and blameworthiness. Proponents of such a view could allow some account to be taken of an offender's prior record because it may be more blameworthy to continue offending after previous convictions and punishments. They would not agree that those with longer prior records should be penalized because they are likely to commit more crimes in the future.

Most academics and virtually all practitioners reject this position. They endorse the "utilitarian" objectives of the criminal justice system as important additions to the retributive ones. They argue that the criminal justice system may, and should, respond differently to offenders who have committed the same crime if one is believed especially likely to be a serious offender in the future. This view is reflected in "habitual offender" laws which permit "three-time losers" to be sentenced to life imprisonment or unusually long terms.

Objections to "punishment for future crimes" surely preclude punitive measures against individuals never convicted of a crime. Individuals convicted of a crime, however, are vulnerable to removal from the community. When that happens, the nature of the removal, including its duration, becomes a matter of discretion subject to other limits. Officials exercising that discretion often take into account the risk of subsequent offending.

Some predictions of future crimes inevitably will be wrong. Some will incorrectly predict that an individual will commit crimes in the future (a "false-positive" error). Some will incorrectly predict an individual will not commit crimes in the future (a "false-negative" error). The degree of concern to be accorded these errors depends on what actions will result from the prediction, the seriousness of the crimes sought to be prevented, and the degree of departure from "normal" sentences. From a civil liberties perspective, concerned with limiting government intrusions on individual liberty, false-positive errors are highly objectionable. From a crime-control perspective, concerned with preventing future crimes, false-negative errors are deplorable. Both civil liberties and crime control are important goals of government and a careful balance must be struck between them.

Even when predictions are highly accurate, their use is subject to constraints. For example, there are limits to how much sentences can be extended without becoming unjust. A first-time robbery conviction may warrant a choice between 1 and 2 years, depending on the prediction, but not between 1 and 10 years.

The use of some personal characteristics may be inappropriate. Eye color, for example, even if it were correlated with future criminality, has no theoretical link to crime and so is objectionable. Similarly, race, even though it might be correlated with future criminality, lacks a theoretical basis and its use in deciding punishment is broadly viewed as unacceptable. Thus, even those who approve of reliance on predictions accept limits on their use.

## How Can Repeat Offenders Be Identified?

There have been many attempts to distinguish serious repeat offenders from others, with only limited degrees of success. One persistent problem is that factors that correlate with criminality in one setting may operate differently in other settings. For example, involvement in crime is greatest in the late teenage years. Yet while older persons are much less likely to be involved in crime than teenagers, older persons who are actively involved in crime are likely to continue criminal activity, and so the age variable—being older—that ordinarily distinguishes nonoffenders from offenders operates differently in distinguishing among persistent offenders.

The longest tradition of use of predictions to distinguish between higher and lower rate offenders has been in parole. The U.S. Parole Commission, for example, uses a "Salient Factor Score" to assess prisoners' future likelihood of offending. The score is based on factors such as the number of prior convictions and prison commitments, the recency of criminal justice involvement, the prisoner's age, and the history of drug use. This score, along with information on the seriousness of the prisoner's offense, is used in deciding when a prisoner will be released.

There is much less experience with systematic police use of prediction devices as the basis for allocating police resources.

Police use a variety of methods to single out repeat offenders for special attention. Some methods are formal; they are based on an individual's number of convictions or arrests for violent crimes in the previous year. Other methods are much more informal. The Washington Repeat Offender Project (ROP), for example, relies heavily on criminal informants and other sources of information about people who are currently active in crime. A Minneapolis program, by contrast, uses a mixture of formal and informal methods, reviewing "nominations" from many sources and relying on extensive information and established criteria in order to focus on a small group of offenders.

None of these methods has ever been scientifically validated to see if it identifies the most active offenders currently on the streets, or even if all of the targets picked are currently active, serious offenders. However, a Police Foundation evaluation of the targets selected by Washington's ROP found that all of the targets had serious criminal histories and that the majority had been arrested within the previous year.

## How Do Police Apprehend Repeat Offenders?

Most police programs deal with repeat offenders only after they have been caught. These "reactive" programs maintain a list of serious criminals. When anyone on the list is arrested, extra personnel are assigned to conduct an especially intensive investigation in order to increase the chances of a conviction and a prison sentence.

In contrast, "proactive" programs in Minneapolis and Washington are designed to catch repeat offenders who would otherwise not be arrested. Both cities originally emphasized surveillance but found that surreptitious "tailoring" of a repeat offender 24 hours a day was boring and

rarely produced an observable crime that could lead to an arrest.

Other methods include getting enough information for a search warrant and then conducting raids on premises suspected to contain drugs and stolen property (as depicted in the program) and setting up opportunities for offenders to commit crimes in the presence of police (such as buying weapons or selling stolen goods).

## 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 in public places. Nor is existing case law clear on the degree to which the public should be protected from police acting as decoys or as seeming partners in criminal enterprises. These issues are much more ambiguous than, for example, our individual constitutional rights not to be searched or to have police enter our property, except under well-established rules and procedures. A zealous repeat offender program runs the risk that individual officers 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 means and the opportunity to commit the offense, thereby creating a "trap"; this provides no legal defense.

The problem is in defining what constitutes inducement. Is merely planting or suggesting the idea of committing a specific offense an inducement? Or is it necessary for the police to persuade, pressure, coerce, or cajole the offender into committing the crime? It 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 D.C. Police had no ROP, the offenders now targeted by ROP would be much less likely to be arrested, or to be arrested as often.

The Police Foundation evaluation also showed that ROP resulted in a decline in the number of arrests ROP officers made per year, compared with their productivity 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 was 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.

Virtually 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 seem likely to expand and proliferate. With the scarce resources of modern criminal justice confronted by growing demands, 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.

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### 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?

This study guide and the videotape, *Repeat Offenders*, is one of 22 in the CRIME FILE series. For information on how to obtain programs on other criminal justice issues in the series, contact CRIME FILE, National Institute of Justice/NCJRS, Box 6000, Rockville, MD 20850 or call 800-851-3420 (301-251-5500 from Metropolitan Washington, D.C., and Maryland).

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