

Controlling Those Kids: Social Control and the Use of Pretrial Detention Among Youth in the United States of America: National Implications

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ABSTRACT

This analysis will identify the theoretical basis associated with the use of pretrial detention among youth in the United States. This article is designed to offer a comprehensive description of the use of pre-trial detention of youth. In addition, a theoretical discussion of this “crime-control” measure is identified. Policy implications are recommended. The primary purpose of this article is to investigate the various philosophical components as a basis for legal origins and the philosophical basis associated with the use of pretrial detention in the United States of America. The authors offer critical insights and explanations regarding the use of pretrial detention of youth from a theoretical perspective along with attempting to answer the question *why* pretrial detention is being used among youth within the juvenile justice system.

Introduction

The decision to detain a child in a secure detention facility at the pre-adjudicatory stage can be arbitrary given the rehabilitative foundation of the juvenile justice system. Despite efforts to extend due process rights to juveniles, the thrust of the juvenile justice system lies in the principle of *parens patrie*, which calls for the court to respond to troubled children with paternalistic protection, care, and assistance (Frazier & Bishop, 1985). In contrast, however, there only exist two general reasons, which support the use of secure detention: 1) to ensure appearance at pretrial hearings and 2) to minimize the risk of serious re-offending prior to disposition (Cohen & Kluegel, 1979). Despite the existence of clear guidelines, which govern the use of secure detention, research indicates that decision makers often use detention for storage, punishment, and protection of children (Bookin-Weiner, 1984; Frazier & Bishop, 1985). Subsequently, the discretion afforded to decision makers has led scholars to suggest that the decision to detain may be one of the greatest abuses of power in the juvenile justice system (Frazier & Bishop, 1985).

The purpose of this article is to investigate the various philosophical components as a basis for legal origins and the philosophical basis associated with the use of pretrial detention in the United States. We will offer critical insights and explanations regarding the use of pretrial detention of youth from a theoretical perspective. In others words, we are attempting to answer the question of *why* pretrial detention is being used among youth within the juvenile justice system.

What is Pretrial Detention?

In order to fully comprehend the magnitude of the subject of pretrial detention and youth, it would stand to reason that a definition of pretrial detention is identified. Research conducted by White et. al, (1995) indicate that according to the National Juvenile Detention Association, the definition of pretrial detention is as follows: “Juvenile detention is the temporary and safe custody of juveniles who are accused of conduct subject to the jurisdiction of the court who require a restricted environment for their own or the community's protection while pending legal action” (p. 404).

Philosophical Basis of Pretrial Detention – Incapacitation

Research reveals that the philosophical trend that supports the use of pretrial detention in the United States is known as incapacitation. Incapacitation is defined as philosophical crime-control approach, which serves as a primary purpose of protecting

the community. In order for incapacitative sentences to actually to protect the community, it must be the case that the offenders subject to such sanctions would have offended had they not been restrained (Bagaric, 2000). The shift towards the use of incapacitation stems from the lack of support for the "rehabilitative ideal" in the 1970s (Von Hirsch, 1985). Increasing rates of crime during the 1960s and 1970s (Maguire & Pastore, 1997) along with a "radical loss of confidence in American political and social institutions" (Allen, 1981) have been identified as factors contributing to the reshaping of the discourse associated with imprisonment. The rehabilitative paradigm also suffered a serious setback with the widely acclaimed declaration by a panel of researchers, after performing an extensive survey of rehabilitation strategies and programs that "nothing works" (Martinson, 1974). Subsequently, retribution and incapacitation have assumed a more prominent place in discussions of the purposes of punishment than rehabilitation.

With regards to the use of incapacitation and the juvenile justice system, Feld (1997) states that there currently exists a strong, nationwide policy shift both in theory and in practice away from therapeutic dispositions toward punishment or incapacitation of young offenders. This trend is characterized within the sentencing practices in the contemporary juvenile court (Feld, 1997). Feld (1991) argues that when the juvenile court system began to look more and more like the adult criminal system, and as the media and politicians began to focus more on juvenile crime, especially violent juvenile crime, the philosophy of the system began to shift (Feld, 1991).

The Legal Basis Associated with Pretrial Detention – Schall v. Martin (1984)

With respect to the idea of incapacitation and the pretrial detention of juveniles, research indicates that the legal premise associated with the use of pretrial detention stems from a Supreme Court ruling that authorizes a judge to confine a juvenile based on the likelihood of the juvenile committing another crime while on pretrial release (Schall v. Martin, 467; U.S.C., 1984). In addition, the Supreme Court stated that while juveniles do have a substantial interest in freedom from institutional restraints, that interest must be qualified by the recognition that children are always in some form of custody. The Court further stated, "children, by definition, are not assumed to have the capacity to take care of themselves." Thus, in certain cases, a child's liberty interest may be subordinated to the State's "parens patriae interest in preserving and promoting the welfare of the child." Thus, preventive detention for juveniles, it was reasoned, is necessary to protect children from themselves (Schall v. Martin, 467; U.S.C., 1984, p. 264).

The Court reasoned that juveniles, unlike adults, are always in some type of custody. The Court stated, "juveniles are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as parens patriae" (Bell & Lang, 1995). Worrel (1985) argues that the juvenile courts' treatment of accused minors who lack parental supervision highlights the link between the parens patriae doctrine and unconstitutional detention. Because the parens patriae doctrine is triggered by an individual's need for care and protection, the doctrine has particularly harsh effects

on those arrested juveniles whose parents are (or are suspected to be) unwilling or unable to supervise them until trial. This phenomenon is a key part of the juvenile detention problem: Many juveniles are detained solely because they lack a parent willing to take them home. Detention on the basis of inadequate parental supervision is a denial of equal protection not only because it is based on an irrelevant assumption of incompetence, but also because the remedy chosen--detention--is not adequately tailored to the problem of parental absence (Worrell, 1985).

Determinants Associated with Pretrial Detention – Legal & Extralegal Factors

With regards to the use of legal and extralegal factors in determining pretrial detention decisions, the research is inconclusive. Some studies indicate that no correlation exists between socio-demographic variables or important legal factors and detention decisions (Frazier & Bishop, 1985). Others indicate that legal factors (i.e., prior records, offense severity, etc.) are consistently found to be related to pretrial detention (Cohen & Kluegel, 1979). Many studies argue that both legal and extralegal factors are significant in determining pretrial detention of youth (Frazier & Cochran, 1986).

There exist an overwhelming amount of studies that suggest the exclusive use of extralegal factors is attributed to the overwhelming number of youth who detained in the U.S. For example, many studies indicate that a variety of extralegal factors such as race, gender, school behavior, custodial living arrangements, and the geographical location of the juvenile court are related to the pretrial detention of juveniles (Cohen & Kluegel, 1979; Agozino, 1997; Chesney-Lind, 1997; Demuth & Steffensmeier, 2004; Wordes et al., 1994; Bookin-Weiner, 1984; Conger & Ross, 2001; Feld, 1991)

Theoretical Basis of Pretrial Detention –The Social Control Theory

What is the Social Control Theory?

According to Agnew (2001) the control theory, unlike the strain and social learning theories, focuses on factors that restrain individuals from engaging in delinquent behavior. From this approach, a control theorist would argue that all people have needs and desires that are more easily satisfied through delinquency than through conventional (legal) channels. These theorists argue that rather than explaining why individuals engage in delinquent behavior, one should explain why they are not involved in such conduct. In support of this theory, many individuals indicate that the existence and commitment to various control mechanisms (i.e. relationships, future ambitions, respect for authority, etc.) serve as deterrents in relation to involvement in delinquent activity. In

other words, certain people deliberately choose to avoid engaging in delinquent behavior due to their loyalty of relationships with significant others, commitment to conventional values, or respect for formal authority. Their beliefs and fear of sanctions, then, act as restraints on their behavior (Agnew, 2001).

Despite its similarity to the social learning theory, which argues that delinquency is less likely when it is punished and when conformity is reinforced, the control theory claims that the motivation for delinquent behavior is equally strong for everyone. In other words, we all have unfulfilled desires that would more easily satisfied through delinquent behavior (Agnew, 2001). In the following examination, we will discuss the major components of the social control theory: 1) internal control and belief, 2) involvement and commitment to conventional activities, and 3) direct control.

Internal Control & Belief

This type of control refers to the juvenile's ability and effort to restrain him or herself from delinquent behavior. Internal control is considered a function of the juvenile's belief regarding delinquency and ability to exercise self-control (Agnew, 2001). Personality traits that define low self-control include impulsivity or shortsightedness, lack of persistence or tenacity, low tolerance for frustration, and a physical or a sensation-seeking disposition. These personality traits are assumed to remove the moral constraints that prevent crime. In addition, they also distort or compromise the calculus of decision making, and to increase, as a result, the probability that offences will be committed (Arneklev et al., 1993). This approach identifies the importance of respect towards authority figures and respect for the existence of law within society among youth.

To this end, some research suggests that a relationship exists between internal control and certain behaviors among youth. For example, Tremblay et al., (1995) conducted a follow-up study of 699 children up to their 16th birthday which revealed that juvenile delinquents within their research sample were more likely to be involved in accidents. The primary characteristic among such juveniles was low self-control. In addition, the juveniles were also found to be more accident-prone when compared to their counter-parts. Controlling for self-control traits, however, did not reduce the correlation between delinquency and accident proneness (Tremblay et al., 1995).

Involvement & Commitment

This type of control refers to various things (i.e. opportunities, goals, etc.) the juvenile might lose by engaging in delinquent activity. Juveniles with a lot to lose should be less likely to engage in delinquent behavior. The juvenile's stake in conformity is a

function of the juvenile's emotional attachment to conventional others and actual or anticipated investment in conventional activities (i.e. education, athletics, employment) (Agnew, 2001).

Paramount to this aspect of control is the idea of involvement and commitment. Involvement denotes the amount of time one devotes to positive, productive activities such as work, sports, recreation, and hobbies. Involvement directly relates to the opportunistic nature of certain forms of delinquency in that those students engaged in many activities are occupied and thus less likely to have the time to participate in deviance. Commitment describes investment in society in terms of education, career, and family. Academic competence, educational aspirations, and the importance of reputation all factor heavily in levels of commitment (Ventura, 2005).

Research indicates that the commission of certain offenses by juveniles is explained by the social control theory. According to Ventura (2005), who examined the occurrence of truancy among youth, suggest that truants are not attached to their school environments, facilitating the lack of interest, which often fuels chronic absenteeism. Moreover, he suggests that given the importance of parental intervention in preventing truancy, low levels of parent-child attachment has serious implications for students' attendance. Additionally, truants tend to be not particularly vested in their commitment to education and because of their lack of attachment to both school and home; they do not have particular regard for others' impressions or opinions of them. Subsequently, in order to effectively address truancy and other school-related problems, a comprehensive strategy targeting all aspects of the social bond should be implemented (Ventura, 2005).

Direct Control

This type of control refers to the efforts of others to directly control the behavior by setting rules, monitoring their behavior, sanctioning the juvenile for rule violation, and reinforcing juvenile conformity to conventional behavior (Agnew, 2001). One of the primary forms of direct control is parental supervision. This component of social control is more likely to be used in order to justify the use of pretrial detention among youth in the U.S.

Inadequate Parental Supervision

In an effort to support the measure of detaining youth, a multitude of research examines the relationship between parenting and delinquent behavior among youth. For example, research conducted by Ventura (2005) indicates that some parents, particularly single parents, work extended hours preventing them from adequately supervising children. In addition, many of the delinquent activities that take place among youth stem

from families with large numbers of children making it difficult for parents to know their children's whereabouts at all times. Further, substance abuse is an unfortunate reality for many families, incapacitating those who are afflicted and enabling those under their supervision to engage in various deviant and delinquent behaviors (Ventura, 2005).

In a similar fashion, research conducted by Steffensmeier et al., (2005) social control theories are in line with views proposing that family breakdown and ineffective mothering of young girls has hampered their development in ways that lessen their capacities (for example, poor supervision, low self-control) to avoid or better cope with interpersonal conflicts and stressful events. To this end, young girls are more likely to experience delinquent activity when compared to their counter-parts who experience effective parental supervision and management (Steffensmeier et al., 2005).

Studies conducted by Simons et al., (2005) using two waves of data from a sample of several hundred African American caregivers and their children revealed that authoritative parenting served to deter affiliation with deviant peers and involvement in delinquent behavior (Simons et al., 2005). Gottfredson and Hirschi (1990) indicate that that parents who effectively monitor and supervise their children, and who recognize and respond to their child's antisocial behavior will effectively instill self-control in that child. Parents who fail to engage in such management strategies and techniques will subsequently fail to help their children establish and develop the ability to resist situational temptations (Gottfredson & Hirschi, 1990).

Analyzing data from sixth-grade male students, Feldman and Weinberger (1994), explored the relationships among parenting practices and childhood self-control. Their results indicated that parental management was positively associated with higher levels of child self-restraint, yet did not have a direct effect on child misbehavior (Feldman & Weinberger, 1994). In a similar fashion, studies conducted by Gibbs et al. (1998) examined retrospective accounts of parental management practices on levels of self-control in a sample of college students. Their study results found tentative support for the role parents play in fostering low self-control. Gibbs et al. measured forty characteristics of parental management styles and another forty of low self-control. Through a series of path diagrams they found that parental management had a significant and direct effect on low self-control (Gibbs et al., 1998).

Likewise, Gibbs et al., (2003) performed another analysis on a sample of college students. Their findings paralleled those reported in their 1998 study. Parental management practices maintained a positive relationship with low self-control. Similar results were garnered in a study replicated by others (Gibbs et al., 2003; Higgins, 2002). Hay (2001) also examined the effects of parenting on low self-control in a sample of 197 urban high school students. Their analysis included two parenting measures monitoring and discipline-along with a self-report measure of low self-control in his analyses. The results provided partial support in favor of Gottfredson and Hirschi's theory. Hay's analyses revealed that parental monitoring, but not discipline, was significantly associated with child low self-control, even after controls were introduced for early childhood antisocial behavior (Hay, 2001).

More recently, Unnever et al., (2003) found evidence linking parenting practices to offspring low self-control. Data for their study came from 2,437 middle school students in Virginia. Similar to Hay (2001), Unnever and his associates employed

measures of parental monitoring and of consistent punishment. Their findings indicated that monitoring and consistent punishment is significantly related to low self-control, even when controlling for the child's level of ADHD (Unnever et al., 2003). These studies suggest that Gottfredson and Hirschi's theory on the development of low self-control (1990) is at least partly correct. Under the assumptions of the social control theory, parenting practices appear to have some influence on offspring low self-control.

Policy Implications: Custodial Measures

In terms of policy recommendations associated with the use of pretrial detention among youth, Shepherd (2001) suggests that youths should receive, at a very minimum, the same safeguards available to adults during any police investigation. In particular, statements made during the course of custodial interrogation in the absence of counsel and the youth's parent or parents should be carefully scrutinized, and such interrogation of a youth who has not reached his or her sixteenth birthday should not take place outside the presence of counsel. In addition, the agency should be equipped to assist youths to secure educational and residential services, if necessary, in addition to aiding in accessing social, legal, medical, and mental health services. An inquiry by the pretrial services agency into the facts relevant to pretrial release should be held prior to the youth's first appearance before a judicial officer, and that inquiry should include, but not be limited to, those factors peculiarly relevant to youths (Shepherd, 2001).

When youths are arrested and not released, they should appear promptly before a judicial officer. This appearance should not be delayed for police investigatory procedures. The requirement for a prompt appearance before a judicial officer should take into consideration the possible unavailability of a parent or custodian, but such unavailability should not unduly delay the appearance. At that appearance, the youth should be advised, in simple, age-appropriate language of the nature and possible penalty for the charge, of the privilege against self-incrimination, of the right to counsel, and the right to a trial by a judge and, where applicable, a jury. The youth should also be advised that parents may be present for the appearance, and the parents should be there, if practicable. The advice given to the youth at the appearance should also be given to the parents, if practicable (Shepherd, 2001).

If the decision is made that a youth should be detained, there should be a procedure for an expeditious review of that initial decision based on new or additional relevant information. The use of pretrial incarceration for preventive detention reasons should be used sparingly, and in no event should it be more of a consideration than for adults. To this end, youths should be held in separate facilities from adults during any pretrial detention. Young people who are placed in a jail or other secure facility are more vulnerable to psychological and physical harm than adults, and they are at greater risk for suicide. In any jurisdiction where separate housing does not presently exist, a well-thought-out classification system is critical to the effective segregation of youths from

adults, and of violent or threatening youths from other youths they may victimize. Youths in such a facility should not be mixed with adults in any common areas, and there should be sight and sound separation. Upon initial detention, whether in a juvenile or adult facility, youths should be evaluated for a risk of suicide and the need for a mental health assessment. If it is determined that a mental health assessment is needed, it should take place within 24 hours (Shepherd, 2001).

Among the custodial measures associated with the pretrial detention of youth are the expedited case-processing and reduced lengths of stay in detention. Various counties have made dramatic strides in eliminating unnecessary and expensive delays in juvenile cases and reducing the periods of confinement for youth initially placed into detention. In many jurisdictions, which implement such measures, probation staff is expected to meet with prosecution and defense attorneys as soon as possible after the arrest of the juvenile to resolve cases and/or find alternatives to locked detention for youth who posed few dangers (Gedeon, 2000).

In addition to expediting the case processing of youth, reducing inappropriate admissions to detention is considered a plausible measure. To this end, many juvenile probation agencies have developed objective risk-assessment instruments to measure which youth offenders are really dangerous or likely to skip their scheduled court hearings. These objective measures replaced haphazard screening processes that previously allowed many youth to sit in detention as punishment (which is unfair to youth who not yet been convicted) or because no guardian could be located (Gedeon, 2000).

Community-Based Programs and Detention Alternatives

With regards to alternative measures associated with the supervision of youth, counties within Washington, D.C. and Maryland are currently studying and debating new approaches to dealing with youth who are arrested and held pre-trial. Some of the measures include expanding the use of community-based programs and detention alternatives. Such measures will assist in the effort to reduce overcrowding. In addition, these counties are considering the use of standards promulgated by professional organizations (such as the American Bar Association and the Institute of Judicial Administration) before building youth detention facilities. These standards suggest smaller, community-based detention facilities are the best model to meet the needs of youth rehabilitation and public safety (Feldman et. al., 2001).

Some research suggests the use intermediate sanctions as an alternative method of pretrial detention of youth. For example, the New Castle County Detention Center, which is located in the state of Delaware, has implemented the use of electronic monitoring as a supervisory mechanism for youth. In a consolidated effort between state and county officials, this process allows the courts direct and immediate access to 40 electronic monitoring bracelets. Prior to this consolidated measure, the court committed youth to detention. This new partnership allows youth access to these services directly and more expeditiously (Department of Youth Rehabilitative Services, 2004). In certain

counties, an array of new detention alternative programs were implemented to supervise youth in the community while they awaited court hearings. These alternatives – including evening reporting centers, home confinement, community service work projects, and non-secure shelters – have succeeded with more than 90 percent of the youth assigned (Gedeon, 2000).

Concluding Remarks

In conclusion, despite the existence of various youth detention regulations and alternative supervision measures, there still lies the potential of net widening. To this end, we would suggest engaging in research that examines a cost/benefit analysis to determine the advantages and disadvantages associated with the different proposals associated with the pre-trial detention of youth. Keep in mind that with this argument, we could run the risk of taking a step in a circular direction unless we are willing to invest in the lives of our youth in the United States of America. In many cases, some policy makers have and continue to justify the use of pre-trial detention of youth at the expense of community safety and potential deviant behavior. If alternative pre-trial measures are not seriously considered, many of their politically and anxiety-based claims could become a reality.

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