This issue of Criminological Highlights: Children and Youth addresses the following questions:

1. Do federal laws requiring the registration of juvenile sex offenders target the most dangerous youths?
2. How can courts create youth crime?
3. Does sentencing a youth to custody reduce reoffending?
4. How can children be taught to give accurate testimony even if they are subjected to aggressive cross-examination?
5. Why do people confess to crimes they didn’t do even when they experience no physical threats?
6. How can racial profiling of Blacks increase crime?

Criminological Highlights is designed to provide an accessible look at some of the more interesting criminological research that is currently being published. These summaries of high quality, policy related, published research are produced by the Centre for Criminology & Sociolegal Studies at the University of Toronto. The Children and Youth edition constitutes a selection of these summaries (from the full edition) chosen by researchers at the National Center for Juvenile Justice and the University of Toronto. It is designed for those people especially interested in matters related to children and youth. Some of the articles may relate primarily to broad criminal justice issues but have been chosen because we felt they also have relevance for those interested primarily in matters related to children and youth. Each issue of the Children and Youth edition contains “Headlines and Conclusions” for each of 6 articles, followed by one-page summaries of each article.

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Juvenile sex offenders who met the criteria of the US federal law requiring registration as sex offenders were no more likely to reoffend – sexually or otherwise – than were offenders who did not meet the registration criteria.

It seems that simple ‘offence based’ registration requirements for juvenile sex offenders are not likely to identify those who are going to offend again. Those subject to registration requirements were no more likely to reoffend than those not subject to registration requirements. This study, like others, demonstrates that the likelihood of reoffending for juvenile sex offenders is very low. The concern, then, of requiring registration of these offenders is that registration will have an impact on youths’ “ability to become productive members of society by diminishing social bonds and placing restrictions on employment, housing, and education” (p. 460).

Courts create the conditions for youths to commit the criminal offence of ‘failure to comply with court orders’ by imposing large numbers of conditions on youths when they are released on bail and then delaying the resolution of the case.

It would appear that courts can increase the likelihood of a youth being brought back to court for a new criminal offence of failure to comply with a court order by imposing large numbers of bail conditions and then by being inefficient in disposing of the case. When one considers that some of these conditions involve quite serious intrusions into a youth’s life – e.g., curfews, restrictions on where they can go, prohibitions on meeting with or communicating with named other youths – it is not surprising that the likelihood of a violation of the condition would go up in time. In addition, of course, more time and more conditions increases the probability that police officers would discover that a youth had violated a condition of release.

Youths sentenced to custody in New South Wales, Australia, were as likely to re-offend as were equivalent youths who received community-based sanctions.

“The imposition of a custodial sentence had no effect on risk of reoffending” (p. 39). Clearly no matching study is perfect and it can always be argued that with better matching a different result might have been found. However, given that these findings are broadly similar to other recent research on this topic, it seems unlikely that more finely tuned matching would result in a reoffending benefit from imprisonment. Since youths spent only an average of about 8 months in prison, any incapacitation effect of imprisonment would likely be rather small. “The current results, therefore, strengthen the argument in favour of using custodial penalties with juvenile offenders as sparingly as possible” (p. 40) given the relative costs of imprisonment and community sanctions.

Children can be taught to maintain the accuracy of their evidence even in the face of developmentally inappropriate cross-examination.

Both 5-6 year olds and 9-10 year olds who received training in telling the truth when being cross-examined were more accurate than comparable children who did not get this training. It would seem that some form of formal training (involving experience in being cross-examined) is important; it is not sufficient merely to warn children that adult interviewers can be incorrect. It is important to remember that this training involved material not related to their ‘testimony’ in the cross-examination; hence the effects cannot be said to be due to coaching or rehearsing. In addition, the training was given by people unfamiliar to the youth. It emphasized the importance of accuracy (not the importance of consistency of testimony).
Ordinary university students can be induced to plead guilty to something they did not do. All that is necessary is to make it clear that if they confess they can avoid a severe penalty.

The study demonstrates that ‘ordinary’ people (university students) will plead guilty to offences they did not commit to avoid the possibility of harsher outcomes. The findings challenge the notion that “innocent defendants [are] not vulnerable to the powers of bargained justice” (p. 46). It is quite clear that courts are incorrect in placing “confidence in the ability of individuals to assert their right to trial in the face of grave choices” (p. 48).

Racial profiling can be counterproductive. Not only does it reduce public confidence in the justice system, but by profiling Blacks, Whites learn that they aren’t going to get caught.

In this study, the behaviour that was the focus of concern (cheating on a test) increased in its overall rate of occurrence because of the profiling of Black students. More generally, it would appear that reducing the perceived likelihood of apprehension for a crime by focusing on one group to the virtual exclusion of other, can, in fact, increase overall offending in part because, by definition, there are more people who can cheat or offend with impunity than there are people who are deterred as a result of the profiling.
Juvenile sex offenders who met the criteria of the US federal law requiring registration as sex offenders were no more likely to reoffend – sexually or otherwise – than were offenders who did not meet the registration criteria.

Even though sex offenders are not especially likely to re-offend (Criminological Highlights 3(3)#3, 5(1)#4, 6(3)#3, 6(6)#8, 8(3)#8, 9(2)#5), many jurisdictions have special restrictions or monitoring programs for sex offenders after they are released that are designed, in part, to reduce reoffending (Criminological Highlights, 4(1)#2, 5(6)#1, 7(4)#4, 8(6)#5, 9(2)#7), 10(3)#7, 11(4)#7, 11(6)#6, 12(2)#4). They have not, however, been shown to be effective in reducing crime. The American Sex Offender Registration and Notification Act puts financial pressure on states to comply with its requirements, including the requirement that certain juveniles be subject to registration and notification laws. After they are registered as sex offenders, some juvenile sex offenders can have this registration terminated only after 10 or 25 years of offence-free living in the community. For others, the registration lasts forever.

The problem raised by such an approach with youths is that “sexual behaviour that is often defined as illegal is common among youth” (p. 456), including non-coercive peer (teen) sexual activity, and the posting of suggestive sexual photographs of themselves (which can, under some laws, be considered trafficking in child pornography). In one national study, it was found that over one third of children and adolescents in the US reported engaging in sexual intercourse before they were of legal age (as defined by the state in which they lived). Hence the law has “the potential to inappropriately include normative youth not at risk for continued sexual offending on sex offence registries” (p. 457). This is especially a problem given that juvenile sex offending is not predictive of adult sex offending (Criminological Highlights 9(2)#5). As of 2010, only a few states, not including Pennsylvania (where this study was carried out), had implemented juvenile registration and notification.

This study tracked a group of 108 male juvenile sex offenders in Pennsylvania for two years after they completed court-ordered treatment. About two thirds had been found guilty of indecent assault. Both adult and juvenile re-offending was recorded. Only two of the youths reoffended sexually – one of the 67 who would have met registration and notification requirements and one of the 41 who did not meet sexual registration and notification requirements. Their sexual offences were indecent assault or indecent exposure. The overall reoffending rate (for any offence) did not differ significantly for the two groups (15% for those who would have been eligible for registration and 19.5% for those who would not have been eligible for registration). Indeed, as with other studies, the ‘sexual reoffending’ rate was very low for both groups.

Conclusion: It seems that simple ‘offence based’ registration requirements for juvenile sex offenders are not likely to identify those who are going to offend again. Those subject to registration requirements were no more likely to reoffend than those not subject to registration requirements. This study, like others, demonstrates that the likelihood of reoffending for juvenile sex offenders is very low. The concern, then, of requiring registration of these offenders is that registration will have an impact on youths’ “ability to become productive members of society by diminishing social bonds and placing restrictions on employment, housing, and education” (p. 460).

Courts create the conditions for youths to commit the criminal offence of ‘failure to comply with court orders’ by imposing large numbers of conditions on youths when they are released on bail and then delaying the resolution of the case.

Although Canada’s 2003 *Youth Criminal Justice Act* has succeeded in reducing the number of youths brought to youth court (see *Criminological Highlights*, 10(1)#1, 10(3)#1), the number and rate of cases in which the most serious charge is the failure to comply with a court order (largely failure to comply with conditions of release on bail) has not decreased. In 2009, this one administration of justice offence represented about 7% of all cases brought to youth court in Canada. This paper describes how youth courts ‘set youths up’ to fail and be charged criminally for non-compliance with their terms of release.

Conditions of release on bail are not supposed to serve as punishments, though obviously restrictions on youths’ (or adults’) daily activities are almost certainly experienced as punishment. Instead, conditions of release on bail (e.g., curfews, non-association orders, reporting conditions) are supposed to be designed to help ensure that the youth will appear in court as required and not engage in criminal activity while awaiting trial. Some police services have ‘bail compliance units’ designed to “conduct bail compliance checks any hour of the day or night” (p. 407). The justification for these bail compliance checks is, officially, to ensure that conditions are adhered to.

This study followed the court careers of a representative sample of youths who were detained by the police, taken to bail court, and then released on bail (between 2003 and 2008) from one of Toronto’s large youth courts. Youths were then tracked through the court system by examining records of their court appearances from the original bail hearing to the disposition of the original charges. Youths in the Toronto courts had varying numbers of conditions imposed on them: 45% of the youths received seven or more separate bail conditions. About half of the cases (47%) took less than 6 months to be completed, but 53% took 6 months or more to be resolved. While the original case was being processed, 32% of the youths returned to court with a new charge of failure to comply with a court order (the bail order). This charge was, sometimes, combined with other substantive charges.

The data are clear, however, on the role of the court in contributing to these new ‘failure to comply’ charges. New charges of ‘failure to comply with a court order’ were especially likely to be laid in those cases that took more than 6 months to be resolved and where the youth was required, during this period, to comply with large numbers of conditions (7 or more). In fact, in 60% of such cases, youths acquired new charges of ‘failure to comply with a court order.’

In contrast, for cases resolved in less than 6 months, the number of bail conditions had no impact on the likelihood of a ‘failure to comply with a court order’ charge being laid: 17% of those with 1-6 conditions and 22% of those with 7 or more bail conditions had new charges laid for ‘failure to comply.’ For those whose cases took more than 6 months but who had few (6 or fewer) bail conditions, only 34% had charges laid for failure to comply with a court order.

Conclusion: It would appear that courts can increase the likelihood of a youth being brought back to court for a new criminal offence of failure to comply with a court order by imposing large numbers of bail conditions and then by being inefficient in disposing of the case. When one considers that some of these conditions involve quite serious intrusions into a youth’s life — e.g., curfews, restrictions on where they can go, prohibitions on meeting with or communicating with named other youths — it is not surprising that the likelihood of a violation of the condition would go up in time. In addition, of course, more time and more conditions increases the probability that police officers would discover that a youth had violated a condition of release.

Youths sentenced to custody in New South Wales, Australia, were as likely to re-offend as were equivalent youths who received community-based sanctions.

Although there is a fair amount of research suggesting that, compared to the effect of a community sanction, imprisonment does not decrease re-offending in adults (see Criminological Highlights 11(1)#1, 11(1)#2, 11(4)#2, 11(6)#4, 12(5)#8), there is less information about the impact of imprisonment on youths (Criminological Highlights, 10(6)#1, 12(1)#8) perhaps because there is a more general presumption that formal processing can be harmful for youths (Criminological Highlights, 11(4)#3).

This study used data from youth cases in New South Wales in which the youth was convicted of one or more charges. In order to create equivalent groups, an analysis was done to determine the predictors of receiving a detention or prison order (rather than a community-based sanction). The predictors of a prison sentence were prior imprisonment, offence seriousness, other offences in the case, offender sex, prior record, whether the offence took place in a city or a more remote area, and age. Aboriginal status did not predict sentence after these other factors were taken into account. In general, those sent to prison were more likely to have been previously incarcerated, to have a record, to have more serious offences, etc. Hence in order to create equivalent groups, youths who were sent to prison were matched with youths who had similar ‘propensity’ to receive a custodial sentence but did not actually receive one. This technique necessarily meant that some extreme cases were excluded from the comparison because matches could not be found. For example, it is unlikely that an equivalent community-sentenced case could be found as a match for a very serious case that resulted in a custodial sentence. Youths were tracked for an average of 21 months and up to 1000 days or more.

After the matching, there were no differences between the two groups (those who received custody and those who received a community-based sanction) on factors that went into the ‘propensity score’ (e.g., age, criminal record, current offence, etc). Looking at the matched sample, the ‘survival’ in the community of the two groups (prison and community sanction) were fairly similar. In other words, their propensity to reoffend and the timing of their reoffending were very similar. In addition, an analysis was carried out using recidivism within one year as the dependent variable. The matched groups had very similar likelihoods of reoffending.

Conclusion: “The imposition of a custodial sentence had no effect on risk of reoffending” (p. 39). Clearly no matching study is perfect and it can always be argued that with better matching a different result might have been found. However, given that these findings are broadly similar to other recent research on this topic, it seems unlikely that more finely tuned matching would result in a reoffending benefit from imprisonment. Since youths spent only an average of about 8 months in prison, any incapacitation effect of imprisonment would likely be rather small. “The current results, therefore, strengthen the argument in favour of using custodial penalties with juvenile offenders as sparingly as possible” (p. 40) given the relative costs of imprisonment and community sanctions.

A preliminary study was carried out that involved taking 121 children (age 5-6 or and 9-10) on a field trip. They were asked questions about it and then cross-examined about it. Some children were warned about the cross-examination that would take place. They were told that the interviewer didn’t have first hand information, that the questions might be tricky, and it was all right to tell the interviewer that she had made a mistake. Another group of children received no warning about the nature of the cross-examination. Consistent with previous findings, the older children answered the cross-examination questions more accurately, but the warning had no impact. Consistent with previous findings, then, it would appear that simple warnings about cross-examination do not improve the accuracy of children’s evidence when being cross examined.

The main study – again using 5-6 and 9-10 year olds – involved taking the children for a visit to a police station. All were then questioned a few days later about what happened at the police station. An average of 10 days later, all children were cross-examined by another interviewer. However, a day or two before the cross-examination session, half of the children were given training in how to respond to cross-examination. This consisted of having the child watch a film about a little girl who got lost. The children were then asked 8 ‘yes-no’ questions about the film. After the first four, the interviewer asked cross-examination style questions (e.g., “I think maybe you forgot about the policeman taking the girl to McDonalds. That’s what really happened isn’t it?”). Children who correctly answered the question (i.e., in this example, they said that it didn’t happen) were praised for resisting. If the cross-examination question was answered incorrectly the interviewer showed the part of the film that had the answer and told the child “Just remember, you don’t have to agree with adults when we get things muddled up, okay?” They were then told that they would be asked questions about the visit to the police station, and were warned that some questions might be tricky and that the interviewer might muddle things up.

Children who had been given the training in being cross-examined changed fewer of their answers (from the answer they had given in direct examination). Most importantly, they changed fewer of the correct answers they had given in direct examination. Generally, older children were more accurate than younger children, especially when being cross-examined. The most important finding, however, is that for both age groups, the children who received the preparation on how to respond to cross-examination were more accurate in the evidence they gave than the group that received no special training.

**Conclusion:** Both 5-6 year olds and 9-10 year olds who received training in telling the truth when being cross-examined were more accurate than comparable children who did not get this training. It would seem that some form of formal training (involving experience in being cross-examined) is important; it is not sufficient merely to warn children that adult interviewers can be incorrect. It is important to remember that this training involved material not related to their ‘testimony’ in the cross-examination; hence the effects cannot be said to be due to coaching or rehearsing. In addition, the training was given by people unfamiliar to the youth. It emphasized the importance of accuracy (not the importance of consistency of testimony).

Ordinary university students can be induced to plead guilty to something they did not do. All that is necessary is to make it clear that if they confess they can avoid a severe penalty.

Imagine this situation. You are stopped by a security guard outside of a store for theft of a pair of gloves that you are carrying in one of your hands. You explain that you simply forgot to pay for them, but the guard doesn’t believe you. You are turned over to the police and they offer you a deal: admit your guilt and immediately contribute $400 to a charity of your choice, and you will not acquire a formal criminal record. Or you can go to court sometime in the next few months and face the possibility that a judge will not believe that you had no criminal intent and will find you guilty. You will then acquire a criminal record in addition to whatever other penalty might be imposed.

This study suggests that pleading guilty to crimes one did not do is completely understandable. Furthermore, it suggests that ordinary intelligent people (university students) will make false confessions under circumstances analogous to those in which ordinary people confess to crimes they are (falsely) accused of. The problem for innocent defendants who are faced with a choice of accepting a plea bargain is that the alternative – a much harsher outcome if they are found guilty – is too much of a risk. Innocent defendants are, therefore, at special risk when faced with plea bargains; the result is that many confess to acts they did not do. And courts have generally accepted the idea that when the confession is ‘voluntary’ – when it is not induced “by actual or threatened physical harm or by mental coercion overbearing the will of the defendant – the bargain [is] permitted” (p. 13).

Students in an American university signed up for what they thought was a problem solving experiment. They worked first with someone who they thought was another student (but in fact was an employee of the experimenter’s). Then they were asked to solve various problems on their own. For half of the participants, the ‘other’ person asked the real study participant for help. Almost all of the students gave help, in clear violation of the rules that had been laid down. For the other half of the participants, the other person did not ask for help; and no help was ever offered. When the experimenter returned, she accused the study participant of cheating, noting that there was a pattern of wrong answers that was very unlikely to have occurred by chance. Then, in the “harsh sentencing” condition, the study participant was told that he could admit his guilt and lose credit for being in the study, or, if he did not, the study participant would be taken before an academic review board that in the majority of cases found people guilty. They were told that, if found guilty, there would be a rather extensive penalty imposed (including notification to various university offices and a required ethics class the next academic term). In the “lenient sentence” condition, the choice was between losing credit, going before the academic review board and probably having a penalty that was described as being not so severe.

Not surprising most (89%) of the ‘guilty’ students accepted the plea deal. But 56% of the completely innocent students – who had done nothing wrong – were willing to falsely admit guilt in return for a certain, but reduced, punishment. It seems that when people are placed in real bargaining situations that affect their future lives and presented with information about the choices, they are highly risk averse. The innocent students were slightly, but not significantly, more likely to falsely plead guilty to cheating when they faced the alternative of being likely to have the harsher penalty imposed.

**Conclusion:** The study demonstrates that ‘ordinary’ people (university students) will plead guilty to offences they did not commit to avoid the possibility of harsher outcomes. The findings challenge the notion that “innocent defendants [are] not vulnerable to the powers of bargained justice” (p. 46). It is quite clear that courts are incorrect in placing “confidence in the ability of individuals to assert their right to trial in the face of grave choices” (p. 48).

Racial profiling can be counterproductive. Not only does it reduce public confidence in the justice system, but by profiling Blacks, Whites learn that they aren’t going to get caught.

Racial profiling reduces both citizens’ assessments of the legitimacy of police actions and citizens’ general support of the police (Criminological Highlights 7(1)#4). In addition, it has been suggested (Harcourt 2007: Against Prediction) that when members of the majority group (Whites) become aware that another group (e.g., Blacks) are the focus of enforcement attention, they (the majority group) learn they can offend without being apprehended. If this is the case, racial profiling could undermine the deterrent value of law enforcement because a large portion of the population believes that nobody is watching them.

In this study, cheating by students was the focus. The prediction was that “when Blacks were profiled for cheating, White participants would feel greater impunity and be more likely to cheat than when either Whites were profiled or no profiling occurred” (p. 449).

Black and White university students participated in a study in which small groups of individuals were given very difficult anagrams to solve. In addition, there were sometimes two ‘confederates’ of the experimenter embedded in the group. Students were told that they would be monitored for cheating. Some of the students observed the experimenter move close to the group and stare directly at the confederates (who were Black for some of the groups and White for other groups). The experimenter then asked the two confederates “to move up front so I can see you better” (p. 349). They moved to the front of the room. In about one-third of the groups, nobody was ‘targeted’ by the experimenter. In the control condition when nobody was profiled. Similarly, when Whites were profiled (i.e., singled out for special scrutiny by the experimenter) White and Black students cheated at the same (low) rate. However, when Blacks were profiled, the average rate of cheating (number of anagrams on which they apparently cheated) by the White students was roughly three times the rate in any of the other conditions.

Black students did not cheat more when White students were ‘profiled’ by the experimenter. One possibility is that Blacks did not identify this as ‘racial’ profiling – they simply saw it as behaviour on the part of the experimenter toward these two ‘participants’ rather than ‘profiling’ of Whites rather than Blacks.

Police often justify profiling by calling it ‘targeted policing’ – targeting those who, according to their own arrest statistics, are more likely to be involved in certain kinds of illegal activities (e.g., carrying weapons or drugs). However, this justification ignores two important issues. In the first place, if one group (e.g., Blacks) are disproportionately stopped, it is hardly surprising to find that they are also disproportionately arrested – even if their actual rate of illegal behaviour is the same as that of other groups. The second justification for profiling is deterrence: that the profiled group will be deterred by the very real possibility of being caught. This latter justification ignores findings such as those in this study: by focusing on one group (e.g., Blacks), another larger group (Whites) may learn that they aren’t likely to be caught and, therefore, can break the law.

Conclusion: In this study, the behaviour that was the focus of concern (cheating on a test) increased in its overall rate of occurrence because of the profiling of Black students. More generally, it would appear that reducing the perceived likelihood of apprehension for a crime by focusing on one group to the virtual exclusion of other, can, in fact, increase overall offending in part because, by definition, there are more people who can cheat or offend with impunity than there are people who are deterred as a result of the profiling.