

A MEASURE OF TOLERANCE:  
PUBLIC ATTITUDES ON SENTENCING ENHANCEMENTS  
FOR OLD AND JUVENILE PRIOR RECORDS

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## **Abstract**

*Sentencing policies routinely assign harsher sentences on repeat offenders, yet we know little about public attitudes toward recidivist sentencing premiums – beyond the predictable finding that people are more punitive when the offender is a recidivist. This article summarizes findings from a survey which explored public attitudes to prior record sentencing enhancements. The research addressed public reaction to two key inquiries (1) whether older priors should carry less weight at new sentencing hearings; and (2) whether juvenile priors should be counted at adult sentencing hearings. Many guidelines count all prior convictions forever, and juvenile priors are almost always included in the offender's criminal history score. Are these practices consistent with community views? Results indicate that in contrast to current practice in the U.S. guidelines jurisdictions, the public significantly discounts older priors, and favor disregarding at least some juvenile priors. The policy consequences for sentencing commissions are discussed.*

Keywords: public opinion; attitudes to sentencing; prior record enhancements

All jurisdictions impose harsher sentences on repeat offenders, although they do so in very different ways (see Roberts, 1997; O'Neill, Maxfield & Harer, 2004). Across the U.S., sentencing guidelines apply specific counting rules to determine an offender's criminal history score: in many states, repeat offenders are assigned points to reflect the number and nature of their prior convictions (see Frase, Roberts, Hester, and Mitchell, 2015). These scoring systems have been criticized for their mechanical approach which often counts past offenses, including juvenile offenses, in perpetuity (Tonry, 1996). Given the recent research which has found that criminal history enhancements exacerbate racial disparities and add to the problem of mass incarceration by imprisoning many aging, low-severity offenders (Frase, 2009; Frase et al., 2015; Tonry, 2015), the theoretical underpinnings of these enhancements are an important topic for study. To the extent that criminal history enhancements fail to align with recognized punishment purposes, policymakers could address disparities and prison populations by reducing sentences for older, non-violent offenders who are given longer prison sentences because of their prior crimes. The age of the prior crime represents an important issue for sentencing commissions and individual judges to resolve: How old must a prior crime be before it is considered irrelevant for purposes of enhancing the current sentence? Should an offender's sentence be enhanced if his prior convictions were committed when he was a juvenile, possibly decades earlier?

The justifications for record-based enhancements can be retributive or preventive in nature (or both). From a retributive perspective, repeat offenders may be deemed more culpable than first offenders convicted of comparable offenses (e.g., Lee, 2010; von Hirsch, 1976). The soundness of the retributive basis is unclear, however. Some retributive theorists assert that past crimes make one more blameworthy for the current offense (Lee, 2010). Others have argued that once an offender has been convicted and satisfied the sentence, what is in the past is irrelevant

for a current offense (Fletcher, 1978). Still others have argued that while having priors does not make one more blameworthy, there is a retributive basis for giving first-time offenders less than they deserve—a first offender discount (von Hirsch, 2010). In short, there is no consensus among retributive scholars that prior offending is relevant to sentencing for a new offense.

Preventive sentencing favors policies which rehabilitate, incapacitate, or deter the offender from re-offending. The idea is that prior offending is a predictor of future offending, so it is appropriate for guidelines to use past crimes to influence the current sentence. Critical to these risk-based approaches is the validation of the criminal history scoring system to predict risk. If punishment is enhanced in the name of prevention, then research should confirm that criminal history score categories make meaningful distinctions among offender risk levels. And research should also confirm that the additional punishment imposed to address risk somehow achieves a reduction in offending and harm (through deterrence, incapacitation, or some similar means). The only validation exercise reported in recent years was conducted by the U.S. Sentencing Commission. Under the federal guidelines an additional point was added to the criminal history score if one of the priors was “recent”—known as a “recency” premium. Empirical research demonstrated that this additional point added little to the predictive power of the criminal score, and the Commission ultimately dropped this component (see U.S. Sentencing Commission, 2010).

It is less clear how to “validate” the retributive justification for record-based sentencing enhancements. One approach is empirical in nature and involves measuring community reaction. If the public considers repeat offenders more blameworthy than first offenders (in addition to being a higher risk), it should be possible to demonstrate this effect empirically. In this respect, public views may serve as a proxy for retributivism. There are other reasons for exploring public

views. Most sentencing commissions are tasked with developing and maintaining a sentencing system that serves public safety. It would be helpful to commissions to understand whether the public believe criminal history enhancements are necessary to support that goal. Additionally, it has been argued that a significant discrepancy between sentencing and public opinion would undermine the legitimacy of the system and some authors have argued that this may ultimately undermine compliance with the law (Robinson, 2013). To date, the literature on validating criminal history enhancements has focused on utilitarian validation and largely overlooked the issue of public opinion. Beyond the well-established finding that members of the public impose harsher sentences on offenders with prior crimes (summarized below), we know little about levels of support for the specific enhancements imposed across the US.

This article reports findings from a US survey which explored public reaction towards two key dimensions of criminal history scores: the age of the prior crime, and whether the prior offense occurred when the offender was a juvenile. These dimensions were the focus of this research because both represent potential ways of addressing the problems that arise from criminal history enhancements, including exacerbating disparities, and increasing prison costs through the incarceration of aging, non-violent offenders (see Frase et al., 2015). Reducing the number of priors counted in a criminal history score – because they are too old to justify enhancement on preventive or on retributive grounds – would reduce admissions to custody, time served, and racial disproportionality in prison populations (Frase, 2009). Constraining the use of prior juvenile convictions would also contribute to these goals. But would the public support such changes to current sentencing enhancements? We put this question to the empirical test, exploring public reaction through policy questions and experimental sentencing vignettes. The study has implications for U.S. sentencing guidelines as these dimensions are employed in many

states and at the federal level (see Frase et al., 2015). Since most common law jurisdictions consider the same dimensions (albeit in different ways, see Roberts (2008) for discussion), the findings are also relevant to other countries.

### **Age and Nature of Prior Convictions in Sentencing Guidelines**

Guidelines in U.S. jurisdictions are relatively insensitive to the issue of the age of the prior conviction. While some guidelines operate “decay” or “gap” policies which result in prior crimes count offenses forever (Frase et al., 2015), a recent study found that of 18 guidelines jurisdictions surveyed, nearly half placed no limits on how far back in time a prior conviction must have occurred in order to be counted for criminal history enhancement purposes (Frase et al., 2015). This means that an offender will always receive a more severe sentence recommendation even if the offender is now in his or her fifties and the prior offense was committed decades earlier.

Aside from decay and gap policies, the aggravating effect of a prior crime could also be limited by underweighting older priors. However, almost all sentencing guidelines assign the same weight to prior felonies, regardless of their age, as long as the priors fall within the window of coverage (see Frase et al., 2015). Assigning the same weight to every prior felony without regard to its age assures consistency of application, yet at a significant cost in terms of calibrating the enhancement imposed to the offender’s actual level of risk. Other factors being equal, an offender with a nine-year-old prior crime is a lower risk to re-offend than one whose prior occurred a year before the current crime. Studies in both the U.S. and the U.K. have shown that the risk of offending for those with criminal records nears that of those without a record after a substantial period of time has passed (e.g., 7 to 10 years; see Kurlychek, Brame & Bushway,

2006, 2007; Soothill & Francis, 2009). Even if the offender is now convicted of a fresh crime, the old prior conviction is likely to be less predictive of future risk than one which occurred a year or so previously (see Piquero, Farrington, and Blumstein, 2007). Finally, from a desistance perspective, enhancing a sentence for an old conviction to the same degree as a recent prior interrupts the offender's attempts to desist (e.g., Bottoms & Shapland, 2011). Achieving desistance is a stop-and-start process, and the offender who has managed to avoid re-offending for a period of time (even if ultimately to have failed), should be acknowledged with a lesser enhancement (relative to another offender with a recent prior).

### **Juvenile Prior Offending**

With respect to juvenile priors, with the exception of North Carolina, every guidelines jurisdiction includes prior juvenile adjudications in their criminal history scores. (In North Carolina offenders are processed as adults at age 16, but juvenile adjudications are not included in the criminal history score calculation.) Seven jurisdictions treat prior juvenile adjudications the same as adult convictions, while the others assign less weight to juvenile convictions (see Frase et al., 2015). There are powerful reasons to discount or disregard some or most juvenile convictions once the individual becomes an adult. First, on risk-related grounds the juvenile prior is likely to be less probative of re-offending, simply through the passage of time (see earlier text). Second, from a retributive perspective, juveniles are universally deemed to be less culpable than adult offenders convicted of crimes of comparable seriousness. Indeed, the Supreme Court has found that juvenile defendants are “categorically less culpable than the average (i.e., adult) criminal” (e.g., *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v. Alabama*, 132 S.Ct. 2455 (2012)). Third, the transition to adulthood should offer

individuals an opportunity to shed their juvenile transgressions, unless these are clearly predictive of further offending.

### **Previous Research: Public Punishment Preferences**

A number of studies have examined levels of public support for the more extreme recidivist sentencing schemes – for example “3-Strikes” laws (e.g., Applegate et al., 1996). Our focus is on the role of prior record in sentencing more generally, and on this subject, there is little research beyond studies which simply ask people to sentence offenders with different criminal histories. Over the years, many studies have found that the public impose harsher sentences when the offender has prior convictions. This outcome has emerged from research across the U.S. and other nations including Canada, the United Kingdom, Australia, Japan, and Russia (e.g., Applegate et al., 1996; Doble & Klein, 1989; Roberts, 2008; Tufts & Roberts, 2002; Mande & English, 1989; Mattinson & Mirrlees-Black, 2000; Sanders & Hamilton, 1992; for a review of the research, see Roberts 2008, ch 8). For example, Doble and Klein conducted research in a number of states including Alabama, Oklahoma and New Hampshire. Across a wide range of offenses, support for imprisonment was higher when the offender had prior convictions. The percentage of respondents favoring imprisoning the offender rose from 31% to 68% when a burglar had a prior conviction for the same crime (1989: 37). However, these findings shed no light on the extent to which important dimensions of criminal history such as the age of the prior crime affect public sentencing preferences.

Given the current “era of equilibrium” with policymakers on the left and right voicing strong support for mitigating the excesses of mass incarceration (Tonry, 2015), policymakers may find instructive the public’s perspective on specific punishment policies. Views about

criminal history enhancements especially merit investigation since they have been shown to be problematic with regards to race disparities and prison space prioritization. Accordingly, we conducted a survey guided by the following three principal research questions:

1. When asked to sentence offenders, do members of the public “discount” or under-weight older prior convictions compared to recent priors?
2. Is there public support for “look-back” limits which exclude older priors from consideration?
3. Do the public support restricting the use of juvenile priors when the individual appearing for sentencing is now an adult?

## **DATA AND METHODS**

### **Survey and Sample**

We conducted an internet-based public survey with participants recruited through Amazon Mechanical Turk (MTurk) (see Mason & Suri, 2012, for an overview of using MTurk in social science research). Crowd-sourced survey panels are becoming increasingly common in academic public opinion research (e.g., Groenendyk, 2016; Keller et al., 2010; Messing, Jabon, & Plaut, 2016; Pickett & Roche, 2016; Roberts et al., 2012; Scurich & Monahan, 2016). We recruited 1,006 participants who were required to be U.S. residents, to be at least 18-year-old, and have at least an 85% acceptance rate on previous MTurk intelligence tasks (HITs). The survey was administered through the online software Qualtrics. When respondents accepted the survey task through the Amazon site they received a link to the Qualtrics survey. Once they completed the survey, they received a validation code which they then entered into the Amazon site to receive payment. The age of respondents ranged from 19 to 79 with a mean of 36. Forty-nine percent of respondents were male, 50% female, with 1% missing gender identify. The racial and ethnic makeup was 74% White, 8% African-American, 7% Hispanic, 8% Asian, and 2%

Other. Ten percent of respondents had a highest education level of high school or less; 28% had some college; 11% a 2-year degree; 38% a 4-year degree; and 12% an advanced degree.

We included an attention check (see Scurich & Monahan, 2016; Oppenheimer et al., 2009), which 124 participants failed, bringing the sample down to 882. Prior research has shown that MTurk samples are typically not representative of the US population but that these differences can be managed through methodological approaches such as survey weighting (Levy, Freese, and Druckman, 2016). For example, Scurich and Monahan (2016) applied post-stratification weights based on sex-age-race combinations in their research that explored how gender, age, and race should influence sentencing decisions. Consistent with prior MTurk findings, our unadjusted sample was more liberal than general population estimates: 53% of our participants identified as liberal, 26% as moderate, and 21% as conservative. In contrast, in the two most recent years of GSS data (2012 and 2014), 26% of respondents identified as liberal, 39% as moderate, and 34% as conservative. Accordingly, we applied post-stratification weights to adjust for political identification in all of the following analyses.<sup>1</sup>

### **Analytic Strategy**

We explored public reaction to old and juvenile priors in three ways. First, we presented respondents with several sentencing vignettes and asked them to assign an appropriate sentence.<sup>2</sup> We used several strategies with the vignettes. In two of the scenarios discussed below (hypothetical offenders “John Brown” and “Jay Williams”) we used a between-subjects experimental design which randomly assigned participants to view different versions of the vignette in which one of four prior record manipulations was used. One group was told the

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<sup>1</sup> Our weights were as follows: .52 for respondents who identified as liberals; 1.40 for moderates; and 1.66 for conservatives.

<sup>2</sup> A copy of the survey instrument is available from the authors upon request.

offender had no priors, a second group was told he had a prior conviction one year ago, a third group was told he had a 9-year old prior conviction, and the fourth group was told he had a 14-year-old prior conviction. Otherwise, the vignettes were identical.

While the experimental design with random assignment is arguably the best test of whether the public view differences on the basis of the age of prior record, we also included one within-subjects vignette (“Sam Davis”) for the age of the prior. Our concern was that the between-subjects questions were posed in a vacuum, while in practice, judges and other court actors continuously make comparative judgements. Court professionals may handle dozens of cases per day, and may implicitly or explicitly consider things like age of a prior for one offender compared to a different aged prior for another. For this vignette, we first presented a scenario in which Sam Davis had no priors and asked the respondents to sentence him. We then asked a sequence of three additional follow-up questions as to how their sentence would change if he instead had a year-old prior, then a 9-year-old prior, then a 14-year-old prior. For the vignettes, we varied both the current and prior offense among the vignettes: some identified a violent offense, others a drug, or property offense.

Next, we posed two policy questions which asked whether respondents would support hypothetical state laws. The first was a law that would no longer allow judges to consider old offenses at sentencing. The second was a law that would no longer allow consideration of prior juvenile offenses.

Finally, we concluded the survey with a question that asked respondents to indicate whether certain case or offender characteristics should lead to a sentence that was much higher, somewhat higher, slightly higher, unchanged, slightly lower, somewhat lower, or much lower than the average sentence otherwise would have been. The characteristics included that the

offender was under financial stress; had children; was employed; was a juvenile; needed substance abuse treatment; had no priors; had one misdemeanor prior; had a felony prior; had a ten-year-old prior; and had a juvenile prior.

Analyses were conducted using Stata 14. Currently the survey set command, which was used to employ the stratified weighting, does not support post hoc ANOVA tests, so we analyzed differences using simple regression models.

## RESULTS

### Older Offenses: Sentencing Vignettes

We first present the findings from the John Brown burglary vignette. All offenders were given the following scenario.

*John Brown is 38 years old and currently works in an auto factory. He is married and has two young children. He has just been convicted of burglary – breaking into a home when the occupants were away on vacation. The usual sentence for a crime of this nature is about 20 months in prison.*

They were then told the offender had pled guilty to the offense and asked what, if any, bearing the decision to plead guilty should have on the sentence. Next, we randomly assigned respondents into one of four groups, each receiving different information related to John Brown's prior record as follows: Group A: no prior convictions; Group B: one-year-old prior conviction for possession of stolen property; Group C: 9-year-old prior conviction for stolen property; and Group D: 14-year-old conviction for stolen property.

INSERT TABLE 1 ABOUT HERE

The pooled mean average sentence was 20.74 months in prison ( $SD = .27$ ). However, as reported in Table 1, there were statistically significant differences among some of the experimental groups. Compared to the repeat offender conditions, subjects were less punitive when the individual had no priors: the mean sentence length was 16.6 months in condition A, and above 20 months in all other conditions, with the differences being statistically significant (see Table 1, Model 1). Respondents were less punitive in the two older prior conviction conditions than were respondents for whom John Brown had a prior that was just a year old. With Group B serving as the reference group, Group A respondents would have imposed 7 months less, Group C would have imposed 2 months less, and Group D would have imposed almost 3 months less, all statistically significant differences (Table 1, Model 2). However, when Group C served as the reference group, the difference between Group C and Group D was not statistically significant (Table 1, Model 3).

### **Older Offenses: Sentencing Vignettes—Sam Davis, Stolen Property**

Next, we present the results of the Sam Davis sentencing vignette, which employed a within-subjects design that first asked respondents to sentence the offender under a scenario where they were told he had no previous convictions:

*Sam Davis is 45 years old and currently employed as an accountant. He is married and has one teenaged daughter. He has just been convicted of possession of stolen property. He bought some expensive electronic equipment knowing that it was stolen. The usual sentence for a crime of this nature is about 15 months in prison. Sam has no previous convictions of any kind. This is his first criminal conviction. Until now he has not been in any trouble with the law. What effect, if any, should the fact that this is his first conviction have on the 15-month sentence? Should it:*

- ☐ *Have no effect on the sentence*
- ☐ *Increase the sentence by \_\_\_\_ months*
- ☐ *Decrease the sentence by \_\_\_\_ months*

Once respondents gave an answer to this no-priors scenario, they were told to then assume Sam had a one-year-old auto theft conviction and were asked whether that should have no effect, increase, or decrease the sentence (and if an increase or decrease, by how many months). The question was then repeated two more times with the age of the prior auto theft changing to nine years and then fourteen years old. We coded the results to indicate the percentage of offenders who said they would increase the offender's sentence based on the information related to the prior record. As Figure 1 reveals, 56% would have increased Sam's sentence for the one-year-old prior, but that percentage fell to 21% and then 13% when the respondents were asked to assume the prior was 9 and 14 years instead. The public were less likely to aggravate the sentence on the basis of the prior as the age of the past offense increased.

INSERT FIGURE 1 ABOUT HERE

### **Older Offenses: General Policy Question**

After all of the vignettes, we posed the policy questions. On the issue of older offenses, respondents were asked the following question:

*Imagine your state is considering passing a separate new law related to criminal sentencing[...] [J]udges would not be allowed to count an offender's prior criminal convictions against him if the crimes were committed long ago. Those in favor of the policy argue that society shouldn't count past crime against a person forever. Those against it stress that even old crimes continue to be relevant for determining punishment for a newly committed offense. Which of the following best describe your position on such a proposal?*

- *I would be in favor of limiting the offenses used to increase punishment to more recent convictions.*
- *I would be in favor of allowing all offenses, new and old, to count against an offender.*

In response, 65% favored the policy to limit old offenses, while 35% preferred to count all offenses, regardless of the age of the prior conviction. Respondents who were in favor of a temporal limit were then asked how long they thought a prior conviction should remain to enhance subsequent sentences. The response options were 5, 10, 15 and 20 years, with an option for “other”. On this follow-up question, 23% of the sub-sample chose 5 years and a further 53% chose 10 years.

### **Juvenile Offenses: Sentencing Vignette**

We turn now to the questions directed at attitudes towards juvenile priors. Another experimental (between-subjects) design was employed to examine the combined effects of a juvenile offense and the age of the juvenile offense. All respondents were given the same basic facts about the case and then randomly assigned to receive different details about the offender’s prior record. All four groups read that the defendant had been convicted of a “minor robbery” when he was a seventeen. The groups then received different information about how long ago the robbery occurred (and the offender’s current age). The juvenile prior was described as occurring 23, 18, 13, or 8 years ago:

*Jay Williams is now [\_\_\_] years old. He has just been convicted of tax evasion. When filing his tax return he failed to report \$7,000 of extra income he had earned as a home renovator. The usual sentence for this crime is around 12 months in prison. At sentencing, his lawyer informed the court that although Williams has one prior conviction, it occurred [\_\_\_] years ago. When Williams was 17 years old and finishing high school he was convicted of a minor robbery. He was sentenced to a term of juvenile probation that he completed successfully. Since then, and until now, he has led a law-abiding life. Should this previous juvenile conviction from [\_\_\_] years ago affect the sentence that should be imposed now for this crime?*

- *No, the offense should not be considered for sentencing the current tax evasion offense because it was committed years ago when he was a minor.*
- *Yes, because of the prior juvenile offense, the current sentence should be increased by \_\_\_\_ months*

The object of the experimental design was to test whether the public would view a juvenile prior as less relevant the longer ago it occurred. Almost all respondents (between 93% and 97% in all conditions) opposed counting the prior conviction, and the overall logistic regression model (not reported) which used group assignment to predict the support outcome was not statistically significant ( $p = .11$ ).

### **Juvenile Offenses: General Policy Question**

We asked the following policy question aimed at assessing public attitudes to juvenile priors:

*Imagine your state is considering passing a new law related to criminal sentencing. Under the new law, judges would not be allowed to count an offender's prior criminal convictions against him if the convictions were committed while the offender was a juvenile. Which of the following would best describe your position on such a proposal?*

- *I would support the proposal that offenses committed as a juvenile should no longer count against an offender.*
- *I would not support the proposal; I believe judges should be allowed to increase punishment for offenders who committed crimes as juveniles.*

In response, 71% were in favor of such a policy restricting the use of sentencing enhancements for prior offenses committed while a juvenile, and 29% against.

### **Reactions to Different Sentencing Factors, Including Prior Crimes**

Finally, to further explore public reaction to older and juvenile priors, respondents were provided with a list of potential sentencing factors and asked whether, based on each given factor, a sentence should be much higher, moderately higher, slightly higher, unchanged, slightly lower, moderately lower, or much lower. The results are also shown in Figure 2. Factors like

financial stress, being employed, and having young children were associated with lower sentences. Having no priors and being a juvenile were the most important mitigating characteristics, while having a prior felony (age unspecified) was the strongest aggravator. Regarding prior convictions, it is significant that the ten-year-old prior was only just above the “no impact” mark with a mean of 4.3. This further supports the conclusion that the public are less punitive when the prior crime is old. And consistent with the last case study, having a prior juvenile offense did not merit a higher level of punishment.

INSERT FIGURE 2 ABOUT HERE

## **DISCUSSION**

Overall, these results clearly demonstrate public sensitivity to distinctions between prior convictions committed at different points in the past. In the eyes of the public, older prior convictions carry less weight than more recent priors: respondents were less punitive when the prior crime was older. For example, in the John Brown experimental vignettes, there were clear differences between the groups on the basis of no priors, a year-old prior, and an older prior (whether 9 or 14 years older did not appear to matter as the differences between means for these older groups was not statistically significant. The first-offender group gave John a considerable discount; the year-old prior group imposed the most aggravated sentences; and those who were assigned to an older priors group gave John a sentence that was lower than that imposed by the year-old group, and only slightly higher than what they were told was the average sentence of 20 months for this type of crime. The within-subjects vignette (see Figure 1) lends further support,

with respondents again demonstrating the greatest desire to increase punishment for more recent prior records.

In addition, on the policy question, there was substantial public support for operating look-back limits on counting prior convictions. Two-thirds of respondents were in favor of a policy that restricted judges from considering old offenses, and of those, three quarters believed that the limit should be set at ten years or less. The policy implication is clear: guidelines which assign the same weight to previous convictions regardless of their age are inconsistent with community values. In many states, all offenses count forever, and even in jurisdictions with a look-back limit, most offenses continue to count past ten years (Frase et al., 2015).

Taken together, these findings demonstrate public support for distinguishing between first offenders and different categories of repeat offenders at sentencing. As well, they reveal that the public is sensitive to the age of the prior offense. Older convictions attracted less punitive sentences than more recent convictions – in contrast to practice in most guidelines. Look-back limits vary considerably across the U.S., but this pattern of responses is more forgiving than most guideline systems and these responses demonstrate clear public support for “look-back” limits on prior crimes.

A second important finding is that for certain offenses at least, the public support disregarding prior crimes when they were committed when the offender, now an adult, was a juvenile. Although the most recent juvenile prior included in the experimental vignette was eight years old, most jurisdictions would still count this against the offender. For this offense at least, the public appear more forgiving of criminal juvenile misconduct in the context of adult sentencing. This finding could be based on intuition or could be a reflection of the public’s awareness of developments in research demonstrating the different cognitive functioning of

adolescents, which the U.S. Supreme Court has also recognized in several high-profile cases over the past few years (e.g., *Roper v. Simmons*, *Graham v. Florida* and *Miller v. Alabama*). As evidenced by those cases, there is a growing recognition that juveniles, for example, are more impulsive than adults (Cauffman & Steinberg, 2000; Spear, 2000; Steinberg, 2008), and perceive rewards and risks differently (Arnett, 1992; Casey, Jones, & Hare, 2008).

The principal conclusion we draw is that many U.S. guidelines are less forgiving of some forms of prior offending than the public by counting prior convictions which the public would overlook or discount. In addition, guidelines which count all priors no matter how old are inconsistent with the views of the majority of the public. The implication is that sentencing commissions which operate such policies could modify their counting rules, and generate cost savings in terms of prison capacity, without provoking public opposition.

### **Data Limitations and Future Research Priorities**

Several limitations need to be borne in mind when considering the implications of this research. First, as a preliminary investigation into the public's view of these issues we did not exhaust the potential variation in the relative seriousness of a range of prior crimes, or the number of priors, or the range of different longevities. That more comprehensive exploration awaits further research. It is likely, for example, that scenarios that presented very violent offenses, details of victimization, or a much more extensive criminal past might elicit different responses. We chose our current and prior offenses to provide what we believed were realistic examples of ordinary cases—burglaries, thefts, robberies. Certainly additional work should be done to investigate a variety of offense types and prior record profiles. Second, we employed an internet-based sample of respondents, the size and nature of which precluded comparisons between states or multivariate exploration of the influence of variables such as political

affiliation. In addition, as noted by prior research that has used MTurk, the crowd source internet sample may not be representative of the U.S. population. This concern is minimized where experimental designs are used, but our research included both experimental and non-experimental questions. We took some measure to account for this by weighting our sample according to political orientation, but we acknowledge the issue of generalizability of the sample, particularly with respect to the non-experimental results. These issues should be taken up by future researchers; for the present we have provided some evidence that for older offenses and crimes committed as a juvenile, the public may be less punitive than most U.S. sentencing guidelines.

As with almost all public opinion research, the current study asked people to make judgments based upon a limited amount of information about the offense, the offender and the sentencing system. Previous research has demonstrated that the provision of information about the issue changes the nature and strength of public attitudes. For example, Doble and Klein (1989) compared public sentencing preferences before and after people had been given information about prisons and alternatives. Two important findings emerged. First, support for imprisonment declined significantly in the post-test (“informed”) conditions. Second, the gap in custody rates between first and repeat offenders diminished greatly. The difference in the proportion sentencing the first and the second-time burglar to prison fell from 37% to 11% (Doble & Klein 1989: 37).

In the current context, it would be interesting to know whether public support for prior record enhancements would diminish if the public were made aware of the limitations on these enhancements and the data showing that the predictive power of prior convictions declines significantly over time (e.g., Kurlychek, Brame & Bushway, 2006). It also seems likely that

public support for record-based enhancements would diminish if people were made aware of the economic and human costs of record-based sentencing enhancements. Research has demonstrated that much of the racial disproportionality in sentencing arises from the practice of according considerable weight to an offender's prior crimes (Frase et al., 2015). This disproportionality arises because racial minorities tend to have longer criminal records and this triggers a higher probability of incarceration and for longer periods of time (see Frase, 2009). For all these reasons, it seems likely that public support for greater restrictions on the use of prior convictions would emerge if people were more informed about the issue. Finally, in light of the significance of race of defendant in the area of sentencing generally and prior record enhancements in particular, it would be interesting to manipulate this variable to see whether it interacts with public reaction to older or juvenile prior crimes.

This article represents a first step towards a more comprehensive understanding of public attitudes towards criminal history enhancements and many questions remain. We focused on two key dimensions of criminal history enhancements: the extent to which guidelines include all prior offending, even to the adult offender's juvenile transgressions. Public opinion regarding the degree of enhancement is another important issue. In some jurisdictions, the escalation in severity as the convictions mount is much more powerful than other states. For example, in Washington, Arkansas and Kansas the sentence length imposed on a repeat offender can be up to ten times longer than the sentence imposed on a first offender convicted of the same offense. In contrast, in North Carolina, Washington D.C. and the federal guidelines, the sentence "multiplier" for prior crimes is limited to approximately doubling the first offender's sentence (see Frase et al., 2015).

It seems unlikely that the incapacitative or deterrent efficacy of prior record enhancements varies across jurisdictions. Accordingly, differences in the magnitude of these enhancements must be justified by some theory other than crime prevention. Community attitudes (or perceptions of community attitudes) may have played a role in determining the level of enhancement. An important question then is whether the general public in states which apply a powerful criminal history premium are aware of this practice, and whether they actually support the level of severity in their state. If the public do not support a powerful enhancement, the recidivist premium in such States could be scaled back without public opposition. This would appear to be a way in which to reduce prison costs, the time offenders spend in prison, and as research has demonstrated, racial disproportionality in custodial populations.

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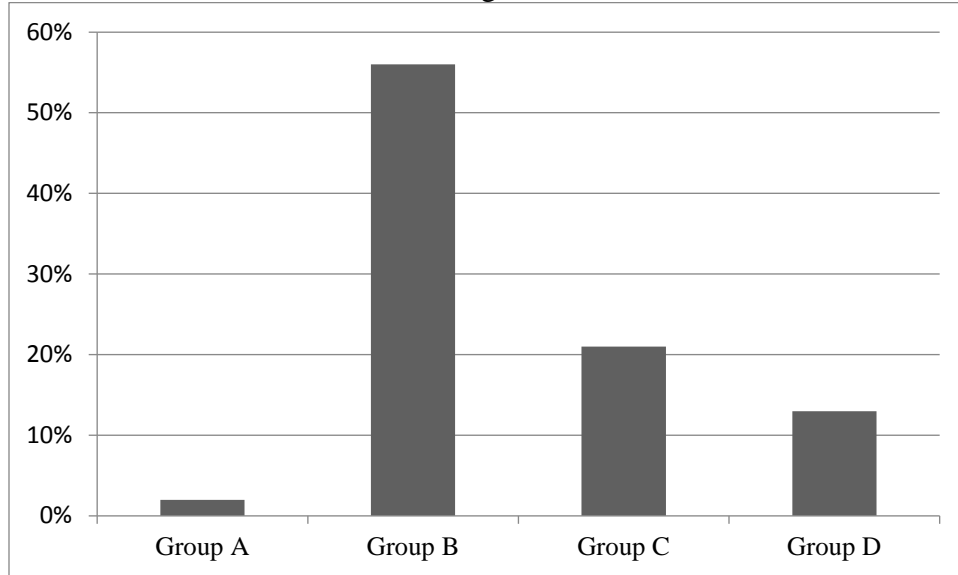
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**Table 1. OLS Regression Results for John Brown Sentencing Vignette**

	Model 1			Model 2			Model 3			Model 4		
	Coef.	SE	<i>p</i>	Coef.	SE	<i>p</i>	Coef.	SE	<i>p</i>	Coef.	SE	<i>p</i>
Group A	Reference			-7.19	0.89	0.000	-4.93	0.52	0.000	-4.38	0.49	0.000
Group B	7.19	0.89	0.000	Reference			2.26	0.88	0.010	2.81	0.86	0.001
Group C	4.93	0.52	0.000	-2.26	0.88	0.010	Reference			0.55	0.46	0.237
Group D	4.38	0.49	0.000	-2.81	0.86	0.001	-0.55	0.46	0.237	Reference		
N = 877												

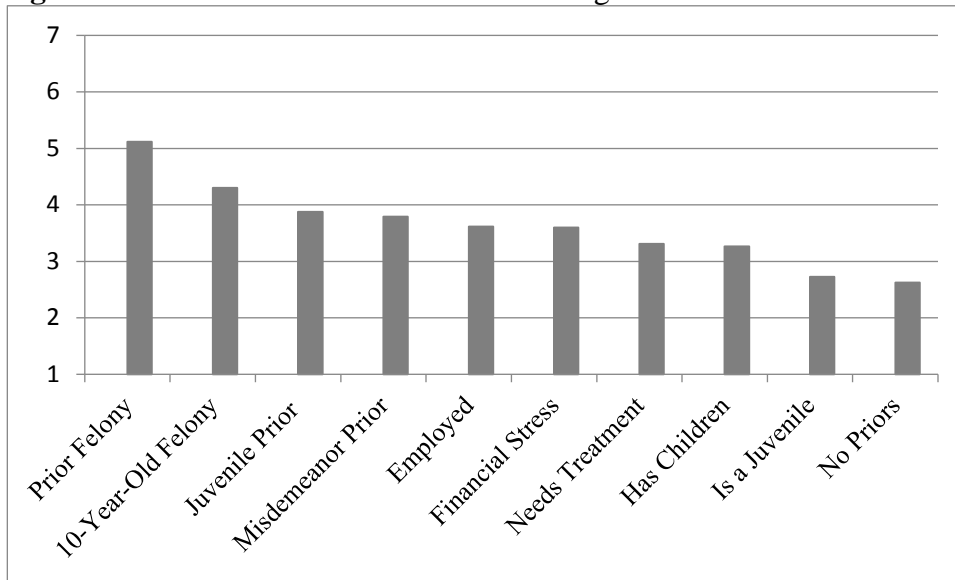
NOTES: All models were statically significant overall (Prob > F = .0000). Regressions based on stratified weighted sample. Group A = no priors; Group B = a one-year-old prior; Group C = a nine-year old prior; Group D = a fourteen-year-old prior.

**Figure 1.** Proportion of Respondents Indicating the Prior Record Should Increase the Sentence, Sam Davis Vignette



NOTE: Group A = no priors; Group B = a one-year-old prior; Group C = a nine-year old prior; Group D = a fourteen-year-old prior.

**Figure 2.** Public Attitudes Towards Sentencing Factors



NOTE: These questions asked whether, based on the given characteristic, the factor should lead to a higher sentence, a lower sentence, or leave the typical sentence unchanged. The responses were coded: 1 = much lower; 2 = moderately lower; 3 = slightly lower; 4 = unchanged; 5 = slightly higher; 6 = moderately higher; 7 = much higher. Thus 4 serves as the baseline of no difference; higher values indicate aggravated punishment, while values below 4 indicate mitigated punishment.