

American University

Taking a Chance on Change: D.C. Juvenile Incarceration

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Introduction

One of the largest issues in the juvenile justice system is incarceration, and the legislation surrounding this issue varies significantly across the nation. Washington, DC has taken action to combat this issue, but their actions are not solely in agreement with current social science. The Comprehensive Youth Justice Amendment Act of 2016 created new standards for the juvenile justice system in DC, including providing more opportunity for juveniles to be released on parole through the Incarceration Reduction Amendment Act. Since this act has been implemented in 2016, the DC City Council has continued to devise new solutions to juvenile incarceration issues and introduce new bills. The Incarceration Reduction Amendment Act is a step in the right direction for juvenile justice in DC, but it is a relatively new law. Its impacts on the community and the incarcerated juveniles that it applies to are largely unknown. This unknown aspect creates an opportunity for legislators to create new policy that is directly in line with social science research. With specific attention to the social science, legislators can attempt to ensure the most positive results possible for the Incarceration Reduction Amendment Act.

Law Section

The Comprehensive Youth Justice Amendment Act of 2016 (D.C. Law 21-238) contains a host of different provisions relating to juvenile incarceration and rehabilitation in Washington, DC. Title III Section 301 is called the Incarceration Reduction Amendment Act of 2016 (“IRAA”), addresses individuals who were given lengthy sentences as juveniles. The law states that the Attorney General has to develop a pilot program, in collaboration with community partners, to provide victim-offender mediation as an alternative to sentencing juveniles in cases deemed appropriate (Code of the District of Columbia). Both the victim and the incarcerated juvenile must voluntarily participate in the mediation. It also creates a procedure for juveniles

who have been sentenced for District of Columbia (“DC”) Code offenses, have served 20 years in prison, and have not already come up for parole to petition to the DC Superior Court to have their sentence reviewed (Code of the District of Columbia). They can file a sentence modification motion and have a new sentence hearing where mandatory minimums do not apply.

In an IRAA hearing, there are specific factors that the court must take into consideration when determining whether or not to reduce a sentence. The court must consider the defendant’s age at the time of the offense, the “history and characteristics” of the defendant, whether they have completed “any educational, vocational, or other program” in prison, if they have any “physical, mental, or psychiatric examinations”, the defendant’s “family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system” and the lowered culpability of juveniles as compared to adults (Code of the District of Columbia). Due to the fact that this law allows for a new sentencing hearing, the defendant has the “right to counsel” granted by the 6th Amendment 9 (Code of the District of Columbia).

In February 2019, a new amendment to this law was introduced to the DC Council called the Second Look Amendment Act of 2019. This bill would raise the requirement of being 18 when you committed the crime to 25 in order to be eligible for an IRAA hearing (Second Look Amendment Act of 2019). The purpose of raising the age was to be in line with majority of juvenile justice changes and standards across the country. Additionally, the bill would require that all individuals be brought back to DC from the Bureau of Prisons to be housed in the Department of Corrections Correctional Treatment Facility for their IRAA hearing (Second Look Amendment Act of 2019). This bill is currently being reviewed and has not yet been passed.

The basis of all three of these amendments is to place protections against lengthy sentences for juveniles based off of their circumstances and their developing brains. The Incarceration Reduction Amendment Act means that juveniles can have a chance at life on the outside again. If they have already served for a number of years with many more to go and have demonstrated that they have the capability to change and to reintegrate into society then their sentence can be reduced.

This law does not take into consideration the type of crimes committed by the juvenile. It is solely focused on their sentence length and the years they have served. It emphasizes the unique ability of juveniles to change, and it highlights their immaturity and undeveloped brains. Ultimately, it strives to take a number of factors into consideration and reduce sentences for juveniles.

Social Science Section

A study conducted in California titled “A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions” examines the question of whether state parole boards provide a constitutionally sound opportunity for the release for juvenile lifers (Bell 459). The Supreme Court Case *Graham v. Florida* stated that aside from rare cases, it is unconstitutional under the 8th amendment’s protection from cruel and unusual punishment to sentence a juvenile to life without parole without a meaningful opportunity for release (*Graham v. Florida*). This opportunity is based on their maturity and rehabilitation.

As states are passing laws that allow for this meaningful opportunity for release, the decision of whether or not to grant release sometimes falls on the parole board. A large number of juvenile lifers are incarcerated in the state of California, and legislation has provided many of these lifers with the possibility of parole hearings. Specifically, the Youth Offender Parole Law

enacted in 2013 creates “specialized ‘youth offender parole hearings’ for people serving adult sentences longer than fifteen years on the basis of offenses committed before the age of eighteen” (Bell 457). In 2017, the act was amended to extend to people serving life with parole and long determinate sentences for crimes committed when they were age 25 or under. This study looks at all 465 parole hearings that were contested in California for juveniles who were sentenced to life without parole from when the law took effect January 1, 2014 until June 5, 2015 (Bell 257).

The researchers used quantitative methods to collect data about variables impacting the parole hearing, apply statistics, and analyze how consistent parole decisions were with the measure of rehabilitation. The researchers were analyzing whether or not parole boards were consistent with their decisions to grant release. The collected data from those in the study who were granted release regarding whether or not they violated parole. They also took into consideration outside factors that affected the individual. They ultimately looked at how consistent the parole board was in their decision to grant parole depending on the factors affecting the individuals. They collected data based on two variables.

The first variable was outcome measures such as, whether or not parole was denied and for how long and the reason for denial. The second variable was the factors hypothesized to influence whether parole was denied such as, considerations identified by the law, what attorneys hypothesize have an influence, and factors deemed significant to parole in other studies. The study takes into consideration a number of different identifiers including race, gender, crime, age, living arrangements, mental illness, and time served. The data revealed many different outcomes in relation to these identifiers and whether or not the juvenile was granted parole. Most significantly, they found that the higher their education, general programming, and clean time

while incarcerated the more likely they were to be deemed rehabilitated and eligible for parole. They also found that the parole decisions were being influenced by factors such as race and the ability to hire a private attorney that were unrelated to rehabilitation (Bell 527). Finally, the study found that parole hearings spent significant time focusing on the offense committed by the juvenile rather than other factors such as their age or rehabilitation (Bell 528).

Overall, this study concluded that even if the parole process is reformed to provide a meaningful opportunity for release it should not take away the responsibility of courts to determine whether mandatory sentences imposed on juveniles are disproportionate to a given individual's culpability (Bell 536). This is particularly relevant because the Incarceration Reduction Amendment Act in DC is arguably another reiteration of meaningful opportunity for release without determining whether the sentence was valid considering the individual's culpability. It is a law similar to the one in California. This study reveals that the law does not directly address the issue of incarcerating juveniles without the possibility of parole just like the one in DC.

Another study that is relevant to the DC law is "The Hazards of Premature Release: Recidivism Outcomes of Blended-Sentenced Juvenile Homicide Offenders." This study addresses recidivism as a result of premature release. IRAA is directly related to release based on an amount of time served, and therefore needs to be analyzed in terms of recidivism. IRAA should reflect the findings of this study in order to address recidivism. The study looks at a blended sentencing structure. Blending sentencing combines the juvenile and adult system by providing juvenile offenders with juvenile based punishment, but also with the potential for adult punishment if the rehabilitative juvenile justice system does not provide positive results (Caudill and Trulson 220). The blended sentencing structure takes into consideration social and

delinquent background of juveniles before they were incarcerated and their institutional behavior and the recidivism outcomes.

The methodology is a longitudinal study over a period of 10 years of 221 juvenile homicide offenders who were released after being sentenced in Texas under this blended structure. The researches were looking for serious recidivism that they classified as a felony arrest. They found that over a half of the incarcerated juveniles recidivated for a serious offense within the 10 years post incarceration. Assaultive behavior with staff while incarcerated was correlated with higher recidivism, and increased time served protected against recidivism (Caudill and Trulson 220).

Recidivism is a very important risk to take into consideration when creating policy for releasing incarcerated individuals, and specifically those with more serious offenses. The Incarceration Reduction Amendment Act does not take into consideration the nature of the crime, but it does create a standard for the number of years served before release. This study gives more insight into the possible effects of releasing juveniles who have committed more serious offenses prematurely.

Additionally, a study titled “Estimating the Crime Effects of Raising the Age of Majority” is highly relevant to juvenile sentencing reduction laws because it shows that juveniles do not have full psychosocial maturity until after adolescence (Loeffler and Chaflin 120). It finds that juveniles continue to mature well into their twenties. The methodology is an empirical study in Connecticut where they raised the age of majority from 16 to 17 in 2010 and then from 17 to 18 in 2012 for the most serious offenses. They used two methodological approaches to produce triple-difference estimates of the effect of Connecticut’s age raise. To test the age raise, they used synthetic controls to compare juveniles arrested in Connecticut compared to in other states.

They found that there was no apparent effect of raising the age on crime or juvenile crime. Although there was some evidence of changes in the number of arrests by age, the change in the age of majority did not decline juvenile crime rates. Also, the change in age of majority did not stop any preexisting decline in the rates (Loeffler and Chafin 46).

Although they did not find any change in juvenile offending, the major finding was of the development of juvenile brains. The suggestion to raise the age of majority due to immaturity is directly in line with the reasoning for the Incarceration Reduction Amendment Act to apply to individuals who committed crimes up to age 25.

Another study that is relevant is titled “Getting Tough on Juvenile Crime: An Analysis of Costs and Benefits” (Fass and Chung-Ron Pi). This study is important because it takes economics and finances into consideration to give an overview of the costs of incarcerating juveniles. It highlights an emphasis on the ways that society holds juveniles accountable for their actions. It points to punishment, accountability, and the protection of public safety as factors taken into consideration when incarcerating juveniles. These goals have led to determinate sentencing, extended jurisdiction statutes, and mandatory minimum sentences; and the relaxation of obstacles to transferring juvenile offenders to adult criminal court.

The study utilized a cost-benefit analysis to in the Dallas County Juvenile Department to explore the question “what are the likely effects, first in terms of differences in numbers of reoffenses and associated relocations and then in terms of differences in monetary values, of expending extra resources on harsher sanctions?” (Fass and Chung-Ron Pi 367). The study took data from 13,144 individuals who were referred to the department from 1994 to 1997. They looked at people with initial disposition events that ranged from the mildest sanction, deferred prosecution, to the harshest, Texas Youth Commission placement. They compiled data on these

individuals with all dispositions to determine costs of juvenile detention centers correlating with the length of stays and the losses to victims.

The study concluded that the monetary losses to victims in felony cases is \$57,000, while Texas is spending \$2,565,000 incremental investments in incarceration to prevent felonies (Fass and Chung-Ron Pi 385). It also concluded that closer supervision, detected more reoffenses than deferred prosecution. This accounted for the increase in numbers of technical and status offenses in the first year after incarcerated juveniles were released, and a decrease in the second year when probation substitutes for deferred prosecution (Fass and Chung-Ron Pi 371). Although there are many limitations with this study, it does point to a significant loss in funds for incarceration. This is very important to note when looking at laws that reduce incarceration like the Incarceration Reduction Amendment Act. A financial analysis of reducing juvenile sentences can reveal a lot of benefits.

Finally, a study that analyzes factors contributing to juvenile delinquency is very helpful in providing an overview of juvenile development and brain capacity as it relates to crime. "A Study of Factors Affecting Juvenile Delinquency" is important for sentencing and sentencing provisions. The study examines biological, psychological, and social environmental factors that contribute to delinquency. The methodology is a cross-sectional descriptive-analytical study of more than 250 subjects. It included 200 male juveniles and 50 female juveniles aged 9-18 years. They had subjects take a 38-question survey regarding personal and identity information, and then they ran the data through SPSS software to find trends (Nourollah, Fatemeh, and Farhad 26).

The study found a number of different correlations in relation to the biological, psychological, and social environmental factors, but perhaps the most notable is that there was a

direct relationship between parental addictions and juvenile addictions, and that inappropriate relationships and friendships along with economic poverty showed a crime producing effect (Nourollah, Fatemeh, and Farhad 27). Overall, juvenile delinquency is rooted in a number of different outside influencing factors. These factors are very important when it comes to legislation that seeks to give juveniles a second chance.

Discussion Section

Some of the studies from above support the changes that were made to the Comprehensive Youth Justice Amendment Act of 2016 to create the Incarceration Reduction Amendment Act of 2016. On the other hand, some of the other studies conflict with the Incarceration Reduction Amendment Act of 2016 and support the proposed Second Look Amendment Act of 2019, which provides more changes.

The study titled “A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions” helps to reveal some downfalls of the Incarceration Reduction Amendment Act. The results of this study show inconsistency in parole decisions for juvenile lifers. The inconsistency is in relation to rehabilitation and whether or not they received a “meaningful opportunity for release.” Out of the 465 parole hearings examined, (Bell 473) found that those who were granted parole had more education, programming, and clean time while they were incarcerated. The article argues that a parole system can fail when the release decisions are not consistent with levels of rehabilitation (Bell 457). These findings suggest that IRAA does not reflect all the factors that contribute to rehabilitation, and it does not incorporate a mechanism to control for consistency in release.

The law is not necessarily in conflict with the study, but the study does highlight some shortcomings in the law and areas for improvement. The law should take into account clean time

while incarcerated. It should also consider not just participation in programming, but the types of programs that are available to the individual in their facility. Due to the fact that those who are eligible for parole under IRAA were sentenced in D.C., which is not a state, they were sent to facilities across the nation. This means that these individuals were not always afforded equal opportunities while incarcerated. A lot of them were sent to facilities across the country and often times quite far from their family. Their access to adequate rehabilitation programs may vary based on the facility they were in, and it is important that the law attempts to control for consistency in outcomes by looking at these differences.

Another important concept to take into consideration is recidivism. The D.C. law does not align with the results of the social science study, “The Hazards of Premature Release: Recidivism Outcomes of Blended-Sentenced Juvenile Homicide Offenders.” The study found that over half of incarcerated juveniles who were part of the study recidivated within 10 years for a serious offense. Additionally, the more time the incarcerated juveniles served the less likely they were to recidivate (Caudill and Trulson 220). The Incarceration Reduction Amendment Act outlines a minimum number of years served in order to be eligible, but it does not have any standards related to the type of crime that the individual committed. There are various types of serious offenses that can give a juvenile a life without parole sentence, and the social science study suggests that it is important to take into consideration the nature of the crime and how it can affect recidivism. Considering the results of this study that show that longer time served leads to less recidivism for juveniles incarcerated for serious offenses, it is important to take into consideration the nature of the offense in conjunction with the amount of time they have served. This is a relatively new law and the effects of it are hard to see right now, but similar to this

study, in the 10 years that follow it will be crucial to look at the recidivism rates of those who were released under this law.

The final study that slightly conflicts with the Incarceration Reduction Amendment Act is the study titled “A Study of Factors Affecting Juvenile Delinquency.” This study reveals factors that lead to juvenile delinquency that IRAA fails to take into consideration. The social science shows that biological, psychological, and social environmental factors all play a role in juvenile delinquency. IRAA outlines parole hearing standards that are related to outside factors, but it does not explicitly account for these factors that could have affected the juvenile’s actions. Considering how important outside factors are in influencing juveniles, a law focusing on juvenile crimes should reflect these factors.

In terms of the social science that relates to juvenile immaturity and age, the science is in agreement with IRAA. The results of social science study titled “Estimating the Crime Effects of Raising the Age of Majority” indicates that until post-adolescence, juveniles do not obtain full maturity. The research used in the study suggests that juveniles, most specifically males, do not obtain psychosocial maturity until age 20 (Loeffler and Chalfin). These results offer a great deal of support to the Incarceration Reduction Amendment Act, and even more so to the Second Look Amendment Act of 2019.

One of the most important elements of IRAA is its consideration for culpability of juveniles based on their age. Therefore, it is highly important that the law reflect the social science related to the age of maturity of juveniles. The science reveals immaturity in juveniles until the age of 20, therefore offering support for raising the age requirement in the Incarceration Reduction Amendment Act. In order to be eligible for parole under IRAA, you must have committed the crime before you were 18, and the Second Look Amendment Act would raise this

age to 25 in order to be eligible. Therefore, this study does align with the law, but also offers evidence for the importance of the expansion of it through the Second Look Amendment Act. Allowing those who committed crimes under the age of 25 who meet the other criteria to be eligible for parole keeps the law up to date with the social science.

In terms of the financial implications of the law, the law remains in line with the study related to the cost of incarceration. The study, "Getting Tough on Juvenile Crime: An Analysis of Costs and Benefits" reveals a shocking cost-benefit analysis of incarceration of juveniles for a long period of time. Based on their calculations that determined that the monetary cost to victims of juvenile felony cases was significantly lower than the cost of incarceration for the juveniles with felony offenses. This suggests that incarceration, especially when it is for life without the possibility of parole, is not cost-effective. The D.C. law seeks to diminish this cost burden by allowing individuals, who would not previously be eligible, the possibility to be released. Although reducing the costs of incarceration is not a primary goal of IRAA it is always important, and the law does help with the issue of incarceration costs.

Considering the studies consistent with the Incarceration Reduction Amendment Act, along with those that conflict with it, I think that the law is a great step in the right direction. It should however, be reformed slightly in order to be fully consistent with contemporary social science research. I think that the Second Look Amendment Act should be passed because it expands IRAA to make it more consistent with contemporary social science research in terms of the age of maturity. The age should definitely be raised to 25 in order to allow more people to be eligible for parole considering the science that they are still considered immature until well into their twenties.

This law should be changed even more to be totally consistent with the social science. The law should include a provision that requires the parole hearing to analyze the availability of programs at the incarcerated juvenile's facility. It should not simply look at whether or not the individual participated in programs, but what programs they participated in, and what programs they were offered. This is particularly important because the individuals coming up for parole under this law come from a number of different facilities across the nation and they might not all have the same opportunities and access to proper programs. In order to avoid inconsistent parole decisions in IRAA cases the law should account for these differences.

I also think that the law should be expanded to account for psychological, biological, and social environmental factors that contributed to the juvenile's crime and even their time while incarcerated. The law currently outlines very basic standards to be met for parole eligibility, but does not offer enough standards for the parole hearings themselves. I think that in addition to the questions that are already outlined by the law for the parole hearing, there should be questions related to factors such as poverty, family stress, trauma, etc. These factors can also carry over to the correctional facility and continue to impact the juvenile and their rehabilitation while incarcerated. Therefore, the law should account for this in regard to the guidelines for the parole hearings.

Finally, the law should also take into consideration the nature of the crime committed by the juvenile. The law as it is merely outlines simple criteria in order for juveniles to become parole eligible, but this does not take into account the nature of the most heinous or serious crimes. Although the law is intended to provide a meaningful opportunity for release and it should be expanding to help those who deserve to benefit from it, it still is important to consider that it has the possibility to lead to high recidivism. Therefore, it might be helpful for the law to

incorporate a different minimum number of years served based on the nature of the crime before someone is eligible. Considering the study that showed that for serious offenses recidivism was much higher when individuals were released earlier, I think that the law should have different standards for how long the individual should serve before they are eligible.

Conclusion

Juvenile incarceration, specifically when it is not accompanied by an opportunity for release, can be detrimental to a juvenile's well-being and their family. The practice of handing lengthy sentences to juveniles at such a young age before their brain is developed is contested by social science research. Policy does not always reflect this research. As a result, juvenile incarceration can have many policy implications involving issues regarding finances and taxes, education, and community safety. Washington, DC in particular has made great strides in their effort to reform juvenile incarceration. IRAA is grounded in social science research but with some more developments and specifics it has the potential to be much more effective.

Works Cited

- "Graham v. Florida." Oyez, www.oyez.org/cases/2009/08-7412. Accessed 11 Dec. 2019.
- "Code of the District of Columbia." D.C. Law Library - § 1–301.81. Duties of the Attorney General for the District of Columbia.,
<https://code.dccouncil.us/dc/council/code/sections/1-301.81.html>.
- "Second Look Amendment Act of 2019." B23-0127 - Second Look Amendment Act of 2019, lims.dccouncil.us/Legislation/B23-0127?FromSearchResults=true.
- Bell, Kristen. "A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions." *Harvard Civil Rights-Civil Liberties Law Review*, vol. 54, no. 2, Summer 2019, pp. 455–548. EBSCOhost, search.ebscohost.com/login.aspx?direct=true&db=aph&AN=138217062&site=ehost-live&scope=site.
- Caudill, Jonathan W., and Chad R. Trulson. "The Hazards of Premature Release: Recidivism Outcomes of Blended-Sentenced Juvenile Homicide Offenders." *Journal of Criminal Justice*, vol. 46, Sept. 2016, pp. 219–227. EBSCOhost, doi:10.1016/j.jcrimjus.2016.05.009.
- Fass, Simon M., and Chung-Ron Pi. "Getting Tough on Juvenile Crime: An Analysis of Costs and Benefits." *Journal of Research in Crime & Delinquency*, vol. 39, no. 4, Nov. 2002, pp. 363–399. EBSCOhost, doi:10.1177/002242702237285.
- Loeffler, Charles E., and Aaron Chalfin. "Estimating the Crime Effects of Raising the Age of Majority." *Criminology & Public Policy*, vol. 16, no. 1, Feb. 2017, pp. 45–71. EBSCOhost, doi:10.1111/1745-9133.12268.

Nourollah, Mazinani, Mazinani Fatemeh, and Jafari Farhad. "A Study of Factors Affecting Juvenile Delinquency." Biomedical & Pharmacology Journal, vol. 8, 2015, pp. 25-30.

ProQuest,

<http://proxyau.wrlc.org/login?url=https://search.proquest.com/docview/2123601834?accountid=8285>.