

VULNERABILITY SCENARIOS

Driver Forecasts #8: Criminality & Corrections

July 2010

Background

The two decades leading to 2010 saw shifts in patterns of crime that experts found difficult to explain. The U.S. murder rate, for example, rose to 9.8 per 100,000 inhabitants in 1991 before falling to 5.5 in 2000 and holding roughly steady through 2009 at levels not seen since the 1960's. As crime increased, the U.S. responded by expanding the definition of criminality and enacting harsher policies to address it. As a result, in 2010, the U.S. incarcerates more people than any other country – more than one in every 100 American adults.¹ One in ten of those is serving a life sentence.² An additional one in every 45 adults is under community supervision by the criminal justice system.³

These high rates of incarceration and supervision result from decades of policy decisions – such as “three-strikes” laws, “truth-in-sentencing” requirements, and mandatory minimum sentences. These policies have led to the incarceration of many non-violent drug offenders and have extended prison terms for habitual offenders. “Zero tolerance” policies for parole violations have also driven prison growth, with parole violations accounting for more than one-third of prison admissions.⁴ At the same time, the corrections system has proven largely ineffective in “correcting” the behavior of inmates so that they can reenter society; a majority of released offenders return to prison within three years.⁵

High recidivism rates suggest a pattern of self-sustaining criminality within specific populations. Comparing different communities, high rates of incarceration are correlated with poor housing, low income, inadequate education, and poor health. Two-thirds of prisoners serving life sentences are Latino or black.⁶ One in nine black men aged 18 to 34 are in prison⁷, and one in three black males will spend some time in prison during his life. Based on these correlations, the Children’s Defense Fund has described what it calls the “cradle to prison pipeline” – a process by which poor and minority children are effectively funneled into the criminal justice system. For example, the U.S. in 2010 spends three

¹ Warren, J., Gelb, A., Horowitz, J., and Riordan, J. (2009), *One in 100: Behind bars in America 2008*, The Pew Center on the States, Washington, DC, p. 4.

² Moore, S. (2009), “Number of life terms hits record”, *The New York Times*, July 23.

³ The Pew Center on the States (2009), *One in 31: The long reach of American corrections*, March, available online at: http://www.pewcenteronthestates.org/uploadedFiles/PSPP_1in31_report_FINAL_WEB_3-26-09.pdf

⁴ Scott-Hayward, C.S. (2009), *The fiscal crisis in corrections: Rethinking policies and practices*, Vera Institute of Justice, New York, p. 7.

⁵ Warren, J., Gelb, A., Horowitz, J., and Riordan, J. (2009), *One in 100: Behind bars in America 2008*, The Pew Center on the States, Washington, DC, p. 4.

⁶ Moore, S. (2009), “Number of life terms hits record”, *The New York Times*, July 23.

⁷ Warren, J., Gelb, A., Horowitz, J., and Riordan, J. (2009), *One in 100: Behind bars in America 2008*, The Pew Center on the States, Washington, DC, p. 3.

times as much on each prison inmate as it spends on each public school pupil.⁸ The prevalence of specific groups among prison populations stemmed not just from policy but also from the prevalence of criminality in many communities, driven in part by the idea that violence is an acceptable means of conflict resolution. This criminality grew out of – and contributed to – the poverty and vulnerability of people living in those communities.

While the causes of crime are unclear, experts dismiss the notion that crime will necessarily increase due to the recession that began in 2008. Crime was low during the Great Depression and during major economic downturns of the 20th century. In fact, violent crime was 5.5% lower and property crime was 4.9% lower in 2009 than in 2008. Experts suggest that this may be because during a recession more people move in with their parents or spend more time at home. Sociologist Robert Sampson and criminologist John Laub have presented a theory of crime as an emergent property of a system comprised of a socioeconomic environment, individual human agents, interactions between the two, and even random developmental noise.⁹ This view further undermines any simple causation between a weak economy and increased crime. They write that “we hardly believe that all bad actors would simply desist from crime if they were given jobs”¹⁰; the converse – that people do not *become* bad actors just by losing their jobs – is likely true as well.

The most significant effect of a slow economy is on the criminal justice system itself. State budgets are straining under the weight of overcrowded prisons. State general fund expenditures on corrections have increased by over 120 percent (in 2007 dollars) since the late 1980’s, crowding out other budget priorities such as education and health care. Due to the recession, police departments have been seen their budgets cut, forcing difficult choices in the conduct of law enforcement. While fiscal pressures have enabled consideration of a broader range of policy options, such as parole reform and alternatives to incarceration, the operational ramifications of budget cuts could be felt for years to come through reduced prison capacity, fewer cops on the beat, and consolidation of police precincts. Exacerbating the situation, many states have also cut programs for reentry and community supervision that have been effective in reducing recidivism in recent years.

As the U.S. strives for a more sustainable approach to criminality and corrections, many new issues may emerge in the public debate. The cost of imprisoning non-violent drug offenders may give new momentum to efforts to legalize marijuana.¹¹ States may privatize a greater share of their prison systems, reducing costs (particularly union-related) but removing some aspects of prison operations from public scrutiny.¹² Gun rights may emerge as a topic of public debate in the context of getting guns off the street, as a substitute for reduced policing, or through an emerging paradigm that sees violence

⁸ Children’s Defense Fund (2007), *America’s Cradle to Prison Pipeline*, Washington, DC, October, accessed on May 27, 2010 at <http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-report-2007-full-highres.pdf>.

⁹ Sampson, R.J., and Laub, J.H. (2005), “A life-course view of the development of crime”, *The Annals of The American Academy of Political and Social Science* 6(1), pp. 12-45.

¹⁰ Sampson, R.J., and Laub, J.H. (2005). A life-course view of the development of crime. *The Annals of The American Academy of Political and Social Science* 6(1), p. 38.

¹¹ Pew Research Center for the People and the Press (2010), “Broad public support for legalizing medical marijuana”, April 1, accessed 5/10/10 at <http://pewresearch.org/pubs/1548/broad-public-support-for-legalizing-medical-marijuana>.

¹² Steinhauer, J. (2009), “Arizona may put state prisons in private hands”, *The New York Times*, October 24.

as a public health issue. The choices society makes in the coming two decades regarding these issues will have profound implications for vulnerable populations.

Forecasts

The Alpha forecasts represent expectable or “most likely” futures, the Beta forecasts envision challenging possibilities (e.g., what could go wrong), and the Delta forecasts represent visionary or surprisingly successful futures that would have a positive impact on reducing vulnerability.

Alpha Forecast – Criminality and Corrections 2030

Crime rates held steady throughout the 2010's, with the national murder rate hovering between 5.5 and 6.5 per 100,000 inhabitants. The spike in violent crime during the 1980's, which had inspired a slew of harsh criminal justice policies, was deemed to have resulted specifically from the introduction of crack cocaine. However, violent crime did increase significantly in selected areas, such as border states like Texas and Arizona which suffered from the bleed-over of the Mexican drug war.

Facing budget shortfalls, many states changed parole and sentencing rules so that low-level non-violent drug offenders could be released,¹³ particularly after marijuana was legalized in 2014. Mandatory minimum sentences were repealed and alternatives to incarceration proliferated, in part by leveraging new technologies (e.g. GPS tracking and video surveillance of public areas) to track those who had been released. Unfortunately, weakness in the economy left many unskilled parolees unemployed, uninsured, and even homeless. Also, the release of older inmates simply moved their growing health care expense from the corrections system to Medicare and Medicaid.

Some states reduced funding for alternatives to incarceration and for recidivism reduction programs during a period of broad budget cuts. However the measured benefits of these programs, as well as the surge in recidivism in places where recidivism reduction programs were cut, prompted a new surge of investment in these areas after 2015. Evidence of these programs' high benefits relative to cost also provided political cover for politicians wary of being seen as “soft on crime.” Government and foundation funding also expanded for violence prevention, reentry, and early education programs at the community level.¹⁴

Throughout the 2020's, U.S. law enforcement agencies and corrections departments developed greater understanding of criminal behavior, allowing for enhanced “predictive policing” as well as more accurate determination of the most appropriate sanction when crimes did occur. A more holistic perspective provided more insights into the factors that promote crime in communities and in individuals. The result has been a redefinition of criminality as both an individual failing and as a social problem to be addressed by multiple agencies working across the areas of education, health, housing, etc.

¹³ Archibold, R.C. (2010), “California, in financial crisis, opens prison doors”, *The New York Times*, March 23.

¹⁴ See the the UNITY Initiative of the Prevention Institute (<http://www.preventioninstitute.org/initiatives/unity.html>) and the CeaseFire program (<http://www.ceasefirechicago.org/>).

In 2030, while the U.S. still locks up a higher percentage of its population (0.7%) than European countries, it is less likely to “throw away the key” than it was in 2010. Fewer than 8% of inmates are serving life sentences in 2030, compared to 10% in 2010. Empirical data on alternatives to incarceration have altered the public’s perception of crime, which in turn has made it more palatable for politicians to advocate policy reform. Cries such as “three strikes and you’re out” to many have come to seem overly simplistic and even inhumane. While law enforcement and corrections budgets have increased during periods of economic growth, greater focus has been placed on housing, education, and other programs to reduce crime.

Beta Forecast – Criminality and Corrections 2030

Spreading gang and drug-related violence, combined with less policing by cash-strapped law enforcement agencies, pushed the national murder rate from 5.7 per 100,000 inhabitants in 2010 to 10.2 in 2020, outstripping the rates seen at the height of the crack cocaine epidemic. As a result, the public clamored for “law and order” and politicians found it increasingly difficult to reform the parole and sentencing laws that had swelled the prison population over the previous three decades. Social programs for reentry, recidivism reduction, and violence prevention went unfunded. Many states optimized their limited funds by outsourcing their prison systems to private companies with greater flexibility in building and staffing new prisons, with some of those prisons even located outside the U.S. Without public scrutiny, these prisons became even less “corrective,” more industrial, and less humane.

Prison health care services were particularly hard hit. Despite a Supreme Court precedent that required a minimum standard of health care to inmates¹⁵, prison operators were able to hide behind the poor health of inmates before they had been incarcerated. The resources that private contractors did make available for health care went disproportionately to prisoners over the age of 50, leaving little for younger inmates or disease prevention. Among the broader prison population, diseases such as HIV and hepatitis-C ran rampant, and inmates were particularly vulnerable to outbreaks of infectious disease.

In the 2020’s, many states further reduced costs by replacing parole officers with new technologies, such as GPS tracking, biometrics, and social media, to track parolees’ whereabouts and activities, removing the human interaction that in some cases supported a healthy reentry into society. The public availability of much of this data has made it increasingly difficult for those who have been convicted of crimes to escape their pasts and begin a new life. At the same time, violent crime has become more prominent among previously non-violent offenders who have been paroled after several years in the “graduate school of crime” provided by prison environments. Many politicians now feel that, in the case of these jailed non-violent offenders, “we have the wolf by the ear, and we can neither hold him, nor safely let him go”¹⁶.

¹⁵ See *Estelle v. Gamble* (1976), where the Supreme Court ruled that prisons must provide a “community standard” level of health care.

¹⁶ Jefferson, T. (1820), *Letter to John Holmes (discussing slavery and the Missouri question)*, Monticello, April 22.

Delta Forecast – Criminality & Corrections to 2030

Despite widespread concern that a weak economy would lead to increased crime, crime rates declined during the 2010's as limited resources forced an evolution of thinking about criminality and corrections. Greater public attention to abuses by vested interests within the "prison-industrial complex," such as unions, suppliers, bail bondsmen, prison operators, ancillary business interests, and even corrupt judges,¹⁷ also accelerated this evolution. Just as the Great Depression prompted a shift in values resulting in the New Deal, the financial woes of the early 2010's initiated a period of exploration of the role crime plays in the life of individuals and communities. While public security remained a prominent concern, the public increasingly recognized the social determinants of crime and accepted broader reforms in employment, housing, and education to address the prominence of violence and criminality within specific populations.

The first step in this process was to reduce the number of inmates whose threat to society did not warrant incarceration. By eliminating mandatory minimum sentences and harsh laws governing parole violations, state governments were able to redirect many would-be inmates to drug treatment and community supervision programs that had already proven successful in pilot projects. These efforts benefited from the legalization of marijuana, as well as the recognition by national leaders that the "war on drugs" had been a failure.

Advances in technology provided new knowledge to guide more complex thinking about crime. Police departments recruited tech-savvy "digital natives," who used data mining and social media to identify unhealthy social patterns before they erupted in criminal forms. Leveraging community policing, simulations of neighborhood dynamics, and ubiquitous video surveillance of public spaces, law enforcement agencies developed evidence-based predictive policing programs. New forms of community engagement, as well as online transparency of police activities, generated greater trust between police officers and the communities in which they worked.

New knowledge of the factors that promote crime made the simple distinction between "guilty" and "not guilty" less satisfying, leading policymakers to explore new strategies to offset these factors in individuals and in communities. Research suggested that while some criminals were clearly unfit for life in society, in other circumstances crime had simply provided the context for expressing normal developmental urges – e.g., just as children in one community joined soccer teams, children elsewhere might join a gang. Seeing communities as complex systems in which crime can emerge allowed policymakers to alter conditions in ways that would channel behavior away from crime and toward healthy social interaction. These conditions included greater restrictions on the availability of guns, expansion of sports clubs and other non-crime activities for youth, and a "smart" social services infrastructure that could effectively and efficiently intervene whenever necessary throughout an individual's life course.

But not all crimes were prevented, and some people still went to jail. However, rather than practicing "isolation and incapacitation,"¹⁸ prisons were reconfigured as "boot camps" where inmates learned how to cooperate and interact with others in society. Internet technologies and virtual reality allowed

¹⁷ See Wilson, T. (2010), "Ex-judge pleads guilty in Luzerne 'kids-for-cash' scandal", *The Philadelphia Inquirer*, April 30; and Sullivan, L. (2010), "Bail burden keeps U.S. jails stuffed with inmates", National Public Radio, January 21, accessed May 10, 2010 at <http://www.npr.org/templates/story/story.php?storyId=122725771>.

¹⁸ Moore, S. (2009), "Number of life terms hits record", *The New York Times*, July 23.

inmates to attend school, develop job skills, earn an income, and in many cases demonstrate their fitness for reentry into society. Prisons were designed to reflect the world beyond the walls and to minimize the isolation felt by inmates and their disorientation upon release. Given the success of these reforms, spending on now more-genuine “corrective system” came to be seen as an appropriate investment in society’s well-being. While crime is still a part of life, the factors that promote it have been substantially reduced, and crime rates have fallen. In the late 2020’s, the national murder rate has hovered around 2.0 per 100,000 inhabitants. Having seen the consequences of allowing pockets of poverty and criminality to fester, Americans appreciate the value of investing in vulnerable communities across the country.