



Crime & Punishment

James Alan Fox on criminal behavior and the justice system

COURTS AND SENTENCING , YOUTH VIOLENCE

New Year's Resolution on Punishing Kids

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The turn of the calendar always brings news about how crime levels have trended over the previous year. And like many cities around the country, Boston witnessed fewer crimes in 2011 than 2010, including a double-digit drop in homicide.

With crime rates at a 50-year low, this is a good time to re-examine our criminal justice policies, especially those measures implemented in a knee-jerk fashion when crime rates and higher levels of fear were peaking. We should begin in the areas that are a significant drain on the budget, such as our over-reliance on lengthy prison terms for juvenile murderers who, after decades of incarceration, no longer pose a danger to society. And this is hardly a left-wing, soft-on-crime idea, as even conservatives like Newt Gingrich have argued that we can't afford to continue pouring vast sums of tax dollars into prison systems.

Many people are surprised to learn that Massachusetts is one of the toughest places in the world in punishing juvenile murderers. Defendants as young as 14, who are charged with murder are automatically tried as adults. If convicted, they are automatically sentenced to life without the possibility of parole. No other state has this harsh and rigid combination, and several states, including ultra-conservative Texas, have recently abolished life without parole sentences for juveniles.

Punishment should fit the crime, but it should also fit the criminal. The worn-out slogan, adult time for adult crime, fails to recognize critical differences between juvenile and adults. While teens may look and act like adults, they lack impulse control and the ability to weigh fully all the risks to their behavior. Although knowing that killing is wrong, they do not appreciate the immense consequences for themselves, much less for their victims. Adolescents are also more apt to follow along down the wrong path for the sole purpose of gaining peer approval, no matter how harmful the outcome.

Not only does this lack of maturity sometimes lead to senseless episodes of violence, but it also diminishes the young defendant's capacity to understand and consider the wisest legal strategy. Reportedly, almost half of the offenders serving juvenile life without parole in Massachusetts had turned down a plea offer. In these cases, the prosecutor apparently believed that a second degree murder charge, carrying a sentence of life in prison with parole eligibility after 15 years, was sufficient. But these youngsters foolishly gambled on a trial and lost.

Such instances of poor legal strategy would be not quite so unfortunate were there to be a clear increase in public safety as a result of the harsher penalty imposed. However, a penalty of life without parole is no greater a deterrent to juveniles than a lengthy prison sentence, such as 15 or more years. For many teenagers, 15 years seems like a lifetime.

I have closely studied juvenile murder trends in Massachusetts and elsewhere across the county. Regardless of the juvenile sentencing policies in a state, murder by juveniles is down significantly. In fact, by the time we passed our draconian sentencing laws, the juvenile murder rate was already on a downward trajectory.

Pending state legislation (H.1346/S.672), would allow juveniles sentenced to life in prison to be eligible for parole after serving 15 years. Of course, any bid for parole could and should be denied if the offender failed to demonstrate significant change in attitude and behavior. Hardly a slap on the wrist, this is the same sentence currently imposed on adults convicted of 2nd degree murder and the plea deal offered by prosecutors to nearly half of the juveniles currently serving life without the possibility of parole.

Murder is tragic regardless of the age of the assailant. No matter how young the offender, a victim has lost his or her life, a family has lost a loved one and a community is forever changed. While such crimes are egregious, sentencing a young person to grow up, grow old and die behind bars without ever having a second chance deprives another family of its child, another community of its neighbor, and does so without making us any safer. Our laws should prescribe severe penalties to the worst offenders, but be flexible enough to respond more moderately to cases involving young offenders, especially first-timers, or instances involving substantial mitigating circumstances.

The change in calendar is a time not just for looking backward, but also for making changes for the future. Let's make juvenile law reform in Massachusetts a New Year's resolution for the better.