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Bad Incentives:

How Misguided Byrne Grants Contribute to Mass Incarceration and Do Not Make Communities Safer

Despite fear-mongering from presidential candidates, crime has generally fallen in the past few decades. The nationwide rate of murder and nonnegligent manslaughter is at its lowest point since the early 1960s, at 4.5 per 100,000 in 2014 (Robertson). Likewise, violent crime as a whole is down, despite its recent uptick in a handful of U.S cities (Robertson). How then, while crime was falling, did the problem of mass incarceration become so large? The United States has less than 5% of the world’s population but nearly *25%* of its prisoners, over half of whom are there for drug or nonviolent crimes (Chettiar, 3). Mass incarceration costs taxpayers a whopping $80 billion each year, but researchers estimate that the total cost—when factoring in other costs such as lost wages and healthcare for former prisoners—exceeds $1 trillion, not to mention the emotional costs to families and communities (Townes). This unprecedented phenomenon is financially unsustainable and has faced society with a new dilemma; How do we fairly and compassionately treat those in society who have made bad decisions? Our current, excessively punitive system is simply not working.

***What are Byrne Grants?***

Current funding structures exacerbate the problem of mass incarceration and need revision, namely, the Edward Byrne Memorial Justice Assistance Grants (JAG). JAG is the largest nationwide criminal justice grant program, dispersing $300-$500 million each year across all 50 states (Chettiar, 18). JAG dollars impact every aspect of the criminal justice program, including prosecution and court programs, prevention and education programs, and drug treatment and enforcement programs. Herein, however, we will focus on law enforcement programs responsible for the arrest of so many individuals in the first place. Between 2009 and 2011, 62% of JAG dollars were spent in this area and almost half of that amount went to drug and gang enforcement (Chettiar, 20).

JAG funds are initially passed on to state and local governments, which then disperse funds to an array of sub-recipients who must compete for the dollars locally (Chettiar, 19). JAG funds are crucial because they provide money for activities that states often do not (Chettiar, 19). For example, JAG is a primary funder of interstate task forces responsible for catching human traffickers who would be very hard to catch if not for the coordination of several jurisdictions (Stimson).

Byrne Grants also fund some innovative strategies such as Hawaii’s Opportunity Probation with Enforcement (HOPE) program. Instead of issuing long, arbitrary, and unfair sentences after multiple parole violations, violators are punished swiftly with brief stints in jail, usually counted in terms of days and weeks rather than months or years (Alm). Participants are 55% less likely to be arrested for new crimes than non-participants, largely because it is perceived as fair and objective by the offender (Alm).

***The Problem with Byrne Grants***

Clearly, Byrne Grants have the potential to do criminal justice well, as evidenced by the HOPE program. However, obtaining Byrne Grants is highly competitive and the basis on which they are awarded is often perverse. The DOJ-supplied JAG funding is accompanied by a quarterly report to be filled out by recipients, and police officers feel the need to show they are putting their grant dollars to good use by maximizing these metrics (Chettiar, 23). Current police measures include number of arrests, number of gun crime charges, and number of task force cases (Chettiar, 24). These metrics focus on increasing the volume of charges; they do not focus on outcomes. Better questions would include, “Did are our arrests make the public safer?” or “Were all the prosecutions warranted and successful?” (Chettiar, 24). Under the current system, police officers are incentivized to keep numbers up, not to keep the public safer. The criteria by which the quarterly report is assessed are not only irrelevant, “they drive policy by distorting [police] incentives” and contribute to mass incarceration by trying to maximize these metrics (Chettiar, 24).

These factors incentivize police officers to apprehend as many of the “easy targets” as possible, the low-level drug users (Alexander, 72-73). Catching a violent drug kingpin surely benefits the community more than catching someone abusing drugs in their basement, but on paper, the arrests of a kingpin and common drug user look the same. They are both simply one arrest. Consider the special task force created under the jurisdiction of the Oakland Housing Authority. Officers patrolled the streets “more or less like a wolfpack,” arresting gratuitously. Their sergeant, Daniel Broussard, regularly exhorted officers to keep their numbers up, as they were aware “that the [Byrne Grant] that funded their unit, and on which their jobs depended, was good for only eighteen to twenty-four months,” and shifts began with comments such as “Everybody goes to jail tonight for everything, all right?” (United States Court of Appeals). These cops were certainly responsible for their own unethical actions, but it was a perverse incentive structure that motivated them in the first place and diverted their attention from more important crimes.

While these officers were over-arresting, they also took assets through civil forfeiture, which is a seizure of private property from a criminal. Between 1988 and 1992, Byrne-funded task forces seized over $1 billion in assets, much of which surely came from the nation’s most vulnerable with no resources to contest their injustice (Alexander, 79). Nearly 40% of police agencies reported that civil forfeiture proceeds were a *necessary* budget supplement, and a report found that these proceeds account for roughly 14% of police budgets in Texas (Chettiar, 12). This fact is worrisome because seizures incentivize excessive arrests and targeting of criminals with greater assets, not necessarily the most dangerous ones.

Obviously if revenues from civil forfeiture ceased, the funds would have to come from another, better source for police departments to function efficiently. A bill proposed by the Brennan Center for Justice advocates offering “prize” money to agencies that achieve beneficial *outcomes* (as opposed to higher statistics). This money would come from a portion of the money that is saved while creating these outcomes. For example, California enacted laws that reward probation agencies with a share of prison cost savings when they revoke fewer probationers for violations, saving $278 million in prison costs and reducing revocations by about one-third (Chettiar, 15-16).

***Conclusion and Solutions***

Byrne Grants have become an integral part of the criminal justice system and deserve credit for providing funds for jobs that local police departments would not be able to provide. However, they lead to one big problem: *They incentivize producing impressive statistics rather than impressive results.* This leads to the over-arresting of relatively fewer harmful criminals while diverting resources away from more dangerous ones and creating dependence on immoral seizure of assets through civil forfeiture. Two solutions are apparent: One is to reframe the assessment survey so that it is based on outcomes rather than statistics, with continued funding based on how well those goals are met. Two would be to provide monetary incentives for good criminal justice work, such as the prize incentive mentioned above. These solutions would make our communities safer, save money, and facilitate ending the injustice of mass incarceration.

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