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Deterrence theory and bullying: An assessment of policies and practices aimed at deterring youth bullying

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Abstract

Bullying can cause serious short and long-term social, psychological, physiological, and educational harm hindering positive youth development. Given the detrimental impacts, a range of legislative, policy, and programmatic efforts have been enacted to deter and address the problem of youth bullying. Deterrence theory suggests that sanctions or the threat of sanctions prevents delinquent behavior. Moreover, the theory posits that humans are rational actors who will consider the consequences of their behavior before engaging in it. Using a deterrence theory framework, this paper provides a synthesis of policies and programs enacted in the United States and Canada that are aimed at deterring bullying behavior including school anti-bullying policies and mandates, and bullying sanctions aimed at youth and parents. This is followed by a discussion on the effectiveness of these efforts and the paper ends with considerations of evidence-based approaches to advance anti-bullying practice and policy.

Keywords: Bullying prevention, Deterrence theory, Bullying sanctions, Anti-bullying policy

Introduction

The act of bullying is multifaceted and includes a range of behaviors such as physical, verbal, racial, sexual, and cyber bullying. It is often characterized as being intentional, repetitive, hurtful, and about power [1]. Rates of bullying vary across studies, with numbers ranging from nine percent to as high as 98 percent [2]. Additionally, data from the Cyberbullying Research Center show that the percentage of individuals who have experienced cyberbullying has almost doubled from 18 percent to 34 percent from 2007-2016 [3], and studies have found that those who are cyberbullied are also likely to be bullied offline [4, 5].

Bullying can cause serious short and long-term social, psychological, physiological, and educational harm hindering positive youth development. Increased likelihood of depression [6], psychosomatic problems [7], lower educational attainment [8], increase in substance use [9], suicidal ideation [10], and poor general health [11] are some of the negative outcomes that have been associated with bullying victimization. Given these detrimental impacts, numerous legislative, policy, and programmatic efforts have been enacted, many of which are grounded on the idea that the threat of punishment will deter and address the problem of youth bullying. Deterrence theory, which has been the cornerstone of many criminal justice policies, assumes that people will rationalize the costs and benefits of their behavior and will desist from delinquent behavior if the cost or punishment is too high [12]. Using a deterrence theory framework, this paper provides a synthesis of policies and programs enacted in the United States and Canada that are aimed at deterring youth bullying through schools, youth, and parents. This is followed by a discussion on the effectiveness of these efforts and the paper ends with considerations of evidence-based approaches to advance anti-bullying practice and policy.

Theoretical framework: Deterrence Theory

Deterrence theory suggests that sanctions or the threat of sanctions prevents delinquency and crime. There are two types of deterrence: general and specific. General deterrence aims to make sure society as a whole is discouraged from committing a crime. Witnessing an individual offender get punished should deter the general public from committing the crime themselves; the lesson for one being the lesson for all [13]. Conversely, specific deterrence is about discouraging a specific individual from re-offending again in the future. Their punishment is the deterrent; having experienced the negative consequence of their criminal activity will make them unwilling to re-offend again [14]. Deterrence theory is anchored on

three variables: certainty, severity, and celerity/swiftness. There has to be certainty about the likelihood of getting caught, the punishment has to be severe enough to deter the behavior, and the punishment must be imposed swiftly after an offense [15]. Accordingly, the theory assumes that humans are rational actors who will consider the consequences of their behavior before engaging in it.

School Policies and Mandates to Deter Bullying

Educational personnel are viewed as *in loco parentis*, a Latin legal term which means “in place of a parent;” they serve as stand-ins for a student’s parental figure in an educational setting [16,17] and have a legal duty of care to protect students from undue harm and injury and to provide a safe learning and teaching environment. In all U.S states except for Montana, anti-bullying laws mandate schools to have a formal policy that outlines bullying behavior and discuss the formal or informal disciplinary responses that follow [18] . Similarly, in Canada, all provinces and territories have legislation or policies that mandate formal definitions of bullying behavior and outline the reporting and investigative requirements if bullying occurs [19]. About a third of U.S. states and a handful of Canadian provinces also include language that allows schools to discipline students for off-campus behavior that could impact the school learning environment [18,19].

The most common provisions in anti-bullying policies include investigating and reporting bullying, disciplinary actions for students engaged in bullying, staff training, and prevention efforts [20,19]. One study examining anti-bullying strategies across U.S. schools reported that most target the individual bully and victim as opposed to more system-wide interventions [21]. The most commonly implemented strategies included having staff talk to bullies after an incident, disciplinary actions such as suspension and expulsion, increased supervision in less structured areas, and individual counseling with bullies and victims [21]. Disciplinary policies for bullying also vary across states and provinces. Cornell and Limber [20] note that three-quarters of U.S states require or encourage schools to discipline youth bullies; some include general language about disciplinary action, while others include more punitive consequences. Canadian provinces also vary in their approach with some provinces taking a progressive discipline approach where responses are based on each situation and include a range of options including supports and consequences, while others have less defined disciplinary guidelines [19]. Zero tolerance is one of the most widely implemented school discipline policies. These policies utilize one-size-fits-all punishments regardless of the situation or context, which often include severe and punitive measures such as suspension or expulsion

from school [22]. Anchored on the tenets of deterrence theory, this approach assumes that the severity and certainty of the punishment would deter youth from engaging in bullying [23].

Bullying Sanctions against Youth

Depending on the circumstance, youth can be held responsible for their bullying behavior in various ways. As noted above, school policies can impose disciplinary actions against youth for bullying committed both on and off school property. Policies such as zero-tolerance policies can also impose strict and punitive measures including expulsion and suspension. Most bullying behaviors do not amount to criminal conduct, however, some forms of bullying are considered illegal and criminal charges can be brought against youth who commit the crime. There are no federal statutes in the U.S. that explicitly target bullying behavior, however, all U.S. states have criminal laws that can be applied to bullying behavior. Some states have also modified existing criminal or juvenile codes to address bullying behavior or have created new crimes to specifically target bullying behavior [24]. Sanctions range from school suspension to jail time. Similarly, in Canada, there are also no specific provisions within the Criminal Code for bullying. Instead, depending on the nature of the activity, several Criminal Code offenses may be applied to instances of bullying such as criminal harassment, uttering threats, intimidation, unauthorized use of computers, extortion, indecent or harassing telephone calls, defamatory libel, and incitement of hatred [25].

Jurisdictions in the U.S and Canada have also started to include amendments with explicit references to electronic forms of bullying. To date, 44 states include criminal sanctions for cyberbullying [18]. One example is David's Law in Texas, which amended the Texas Penal Code and made cyberbullying a Class B misdemeanor punishable by up to 180 days in jail and a maximum \$2000 fine. If the bully has a previous conviction for cyberbullying or the offense was committed against a minor with the intent that the minor commit suicide or causes serious bodily injury, it becomes a Class A misdemeanor punishable by up to a year in jail and a maximum \$4000 fine [26]. Likewise, California's penal code also holds individuals accountable for bullying "by means of an electronic communication device," and consequences include a misdemeanor punishable by up to a year in county jail, a fine of not more than \$1000, or both [27]. Nova Scotia's anti-cyberbullying law, the Intimate Images, and Cyber-protection Act provides broad remedies for cyberbullying victims and their parents, including getting protection orders to stop the bullying activity, requesting removal of online content, prohibiting contact, and seeking compensation [28].

Several municipalities in Canada have also passed municipal codes such as ordinances or by-laws to address the issue of bullying and related behaviors. These are a collection of laws passed by a local governing body such as a county, city, or township, and provided that it does not conflict with the laws of the state or province, the municipal codes have the “force and effect of law” in the specified municipality [29]. In 2006, the city of Regina in Saskatchewan was one of the first Canadian cities to implement an anti-bullying bylaw prohibiting bullying behavior in public spaces through written or electronic communication. The bylaw imposes fines up to \$2000 and in addition, or as an alternative to a fine, may order the person, or the minor and their legal guardian, to attend an anti-bullying course [30]. Defaulting on the payment of a fine may be liable to a term of imprisonment of up to ninety days. The city of Edmonton in Alberta has a bylaw that prohibits bullying of any person under 18 in public spaces and imposes a fine of \$250 for bullying behavior [31]. Airdrie, Alberta also passed a by-law amendment in 2013 which imposes a fine of \$500 for the first offense and \$1000 for a subsequent offense. The fine for the first offense can be reduced to \$125 if the offender completes an approved anti-bullying counseling session(s) or education program [32]. Similar anti-bullying bylaws have also been implemented in Eston [33], and Grenfell in Saskatchewan [34], and Grand Prairie, Alberta [35].

Bullying Sanctions against Parents

A growing number of jurisdictions are also sanctioning and holding parents responsible for their child’s bullying behavior. In the U.S., parents of bullies can be named as defendants in bullying litigation cases and “strict liability,” where parents are financially responsible for the damage caused by their children “just because they are parents,” may be imposed on parents of bullies [36]. Similarly, parents in Canada can be held legally responsible for their child’s bullying behavior under the Parental Responsibility Act of 2000. The act states that a parent or legal guardian is responsible for the actions of their child unless they can prove to the court that “he or she was exercising reasonable supervision over the child at the time the child engaged in the activity that caused the loss or damage and made reasonable efforts to prevent or discourage the child from engaging in the kind of activity that resulted in the loss or damage” or, that the behavior was not intentional [37].

Pennsylvania law states that “any parent whose child is found liable or is adjudged guilty by a court of competent jurisdiction of a tortious act shall be liable to the person who suffers the injury” and will be liable for up to \$1,000 per person harmed and limited to \$2,500 per bullying act [38]. Delaware statutes note that “the parents or guardians of any minor under the

age of 18 years, living with the parents, who shall intentionally or recklessly destroy or damage property, real, personal or mixed” are held liable for damages not to exceed \$10,000 [39]. Likewise, New Jersey statutes stipulate that parents or guardians of minors are liable for damages of any amount if the child damages school property [40]. In 2017, Texas passed SB 179 or “David’s Law,” a cyberbullying law that allows victims to issue an injunction against not just the cyberbully, but also against the bully’s parents requiring them to take action to stop their child from cyberbullying [26].

City ordinances or by-laws also apply to parents of bullies. In North Tonawanda, New York parents of bullies can be subject to a fine of \$250 or imprisonment of not more than 15 days, or both [41]. Several cities in Wisconsin have implemented similar by-laws. The Village of Plover holds parents liable for their children’s bullying behavior by writing a warning letter to parents for the first offense and, should the child be involved in another act of bullying within 90 days, the parents are fined \$124 [42]. In the same way, the city of Shawona also issues a written warning to parents for their child’s first offense and they have 90 days to address the behavior. If the child continues to engage in the behavior, the parents are issued a fine of \$366 and two offenses in one year will result in a \$681 fine [43]. In February 2019 after the story of a seventh-grade girl who was bullied through handwritten notes calling her “fat,” “ugly” and to “Go kill yourself,” went viral on social media, the City of Wisconsin Rapids promptly looked into assessing their anti-bullying policy [44,45]. By June, the city council passed an anti-bullying ordinance that held parents liable for the bullying behavior of children under 18. The parents would receive a written warning before a citation is issued, followed by a penalty of \$50 plus court costs for the first offense, \$100 plus court costs for the second offense, and \$250 plus court costs for subsequent offenses [46].

Discussion

As reviewed above, efforts to deter bullying behavior have led to the implementation of anti-bullying programs, creation of new legislation, and sanctions imposed through state laws and municipal ordinances which aim to discourage youth from engaging in bullying either through general deterrence or specific deterrence approaches. Research on the empirical status of deterrence theory suggests limited support for the key variables of certainty, severity, and celerity [12,13,47]. A meta-analysis of the deterrence literature conducted by Pratt et al. [12] found that the relationship between crime/deviance and the deterrence variables is modest to

negligible, especially within studies that had rigorous research designs. The study also indicates that certainty had the most empirical support; however, it was primarily limited to white-collar type offenses. Relatedly, Nagin's [12] review of the literature also implied that the certainty of punishment is a stronger deterrent compared to the severity of the crime. This suggests that increasing the severity of the crime will do little to deter it and points to the limited impacts of incarceration and formal sanctions. Instead, the certainty of knowing that they will be caught and punished rather than the punishment itself seems to have a deterrent effect. As aptly summed up by Paternoster's [47] review of the deterrence literature "The safest conclusion from the literature thus far would be that the perception of certain legal and extralegal sanctions does seem to act as a modest deterrent factor, but that the perceived severity and celerity of punishment do not appear to be effective deterrents to crime, and we know virtually nothing about celerity" (p.818). So, how effective are the deterrence efforts related to bullying behavior?

While most schools in the U.S and Canada have anti-bullying policies or programs, an examination of the literature on the effectiveness of school anti-bullying programs shows that they have limited impact and, in some cases, may even be counterproductive. Several meta-analyses of anti-bullying programs have found only small to moderate effects on reducing bullying victimization [48-51]. Moreover, a meta-analysis by Yeager et al [52] even suggests that while anti-bullying programs may be effective for those in grade seven and below, after eighth grade and into the high school years, the programs may have reduced efficacy for older teens resulting in no effects or a negative effect with an increase in bullying instead. Another study also found similar results, with elementary students exposed to anti-bullying programs reporting a reduction in bullying but among older teens, there was no reduction in victimization or aggression [53].

Introducing city ordinances and bylaws may signal a strong message that jurisdictions are taking the issue of bullying seriously, but they also require appropriate and timely implementation. In 2015, nine years after the city of Regina's bylaw was originally implemented, two teenagers were sentenced for the first time under their anti-bullying bylaw. A 16 and 17-year old were charged for filming a 14-year old boy with Down syndrome as he was getting dressed for gym class and then sharing it via social media. One of the teens pled guilty to the charge and was fined \$300, while the other attended an anti-bullying program [54]. In 2019, Plover Wisconsin's police chief reported that his department had not fined anyone in the four years since the ordinance was passed, and they had issued fewer than a

dozen written warnings [44]. The effectiveness of Airdrie, Alberta's anti-bullying bylaw has also been questioned by community members who point out that since its adoption in 2013, no charges have been laid. Additionally, while the city had originally set aside approximately \$20,000 each year to provide education and counseling, the amount was reduced to \$1,000 in the 2016 budget and only someone charged under the bylaw could access the funds available for counseling [55]. Often an issue for cities like Airdrie and Plover is the limitation of the language that defines bullying and the challenges that occur if the behavior does not fit the criteria. Mayors from both cities have also stated that the bylaws are meant to be more of an educational tool rather than something with punitive consequences [44,55].

Similar to city ordinances, state-wide and provincial legislation may be well-meaning in its intention but are frequently triggered and enacted in response to high-profile bullying tragedies and also pose restrictions in defining and interpreting bullying. The suicide of Phoebe Prince in 2010 led to the creation of the Massachusetts Anti-Bullying Law, which at the time was the most comprehensive anti-bullying law in the U.S. More than ten years later, critics question the effectiveness of the ambitious legislation and point out that the legislation is broad and leaves grey areas which have proven difficult to enforce [56,57]. Statistics from the Centers for Disease Control and Prevention show that in 2017, approximately 15% of the one million Massachusetts K-12 students reported being bullied [58], and yet according to Massachusetts Department of Education statistics during the same school year, only 915 students or .09% of students were disciplined for bullying [59].

The parents of Mallory Grossman also found themselves in a similar position where the interpretation of bullying as defined by state law posed significant problems. Mallory Grossman was a 12-year old student who endured both in-person and online bullying at her middle school in Rockaway Township, New Jersey, and took her own life on June 17, 2017. Despite evidence showing that Mallory had been bullied online on Snapchat, in the classroom, and the lunchroom at school, and had made several bullying complaints to school officials, after completing their criminal investigation into Mallory's death, the Morris County Prosecutor's Office did not file any criminal charges [60]. The New Jersey anti-bullying law, recognized as one of the toughest in the U.S., declares that to classify behavior as bullying, schools must identify a "distinguishing characteristic," either real or perceived, which led the victim to be targeted [61]. The definition set out in the law leads to an issue of how judges are interpreting the law and results in overturning findings of bullying for lack of a distinguishing characteristic. According to the law's definition, school officials in Rockaway Township

never concluded that Mallory was a victim of bullying [62]. Likewise in 2013, in response to the death of Rahteah Parsons, the province of Nova Scotia put into place the Cyber-Safety Act, the first law in Canada aimed at protecting victims of online harassment [63]. However, it was struck down by the Supreme Court of Nova Scotia claiming that the legislation's definition of cyberbullying was too broad and a "colossal failure" and that it violated Canadian freedom of expression as guaranteed by the Charter of Rights and Freedom [64]. The Nova Scotia Legislation has since redrafted the law and introduced the Intimate Images and Cyber-protection Act in its place [28].

Another equally important aspect to consider is whether these policies are viewed as a deterrent by youth engaging in bullying. A 2016 study by Patchin and Hinduja [65] suggests that the threat of punishment by the police does not have much impact in deterring youth from committing both school bullying and cyberbullying. Instead, the findings indicate that the perceived likelihood of punishment from parents and schools has a greater influence implying that the use of informal social controls rather than formal sanctions, may be more effective in helping shape and direct youth bullying behavior [65]. Additional literature examining the effect of formal sanctions on youth further supports the limited deterrent effect. The Pathways to Desistance study, a longitudinal study of serious juvenile offenders found that the threat of more severe punishment such as institutional placement and longer stays in juvenile facilities did not reduce reoffending. The authors posit that "greater sanction risks are not likely to deter offenders who do not deem such threats credible in the first place" [66, page 10]

Likewise, a meta-analysis of 117 studies dating back to 1958, found that there were no differential effects of prison and community sanctions in reducing offending among juveniles [67]. Moreover, the efforts to criminalize and formally sanction youth for their bullying behavior may not only have a limited deterrent effect, but they may also cause more harm to the youth. Criminalizing bullying behavior may reinforce and perpetuate the School-to-Prison pipeline, where the use of punitive measures increases youth contact with the juvenile justice system [68]. Studies suggest that punitive sanctions such as those related to zero-tolerance policies including suspension and expulsion, can lead to a higher likelihood of delinquency, criminal behavior, and substance abuse [69] and juvenile incarceration increases the likelihood of adult incarceration rates, including violent crime [70]. Furthermore, an analysis conducted by [71] found that incarcerating young offenders might expose them to more serious offenders and increase the probability of reoffending upon release.

While fining and penalizing parents may assign accountability to them, no empirical evidence exists on the deterrent effect of holding parents liable for their child's bullying behavior. The extant literature supports the important role that parents can play in preventing and managing bullying behavior. A meta-analysis of parenting behavior and the risk of becoming a bully and a victim found that high parental involvement and support, warm affectionate relationships, and good family communication and supervision were most likely to protect youth against peer victimization [72]. But experts such as Dr. Justin Patchin, who serves as the co-director of the Cyberbullying Research Center caution that a potential unintended consequence that could arise from penalizing parents for their child's bullying behavior is a weakened relationship between parent and child since they are pitted against each other when the child misbehaves [73].

The discussion thus far suggests that imposing formal sanctions and fines for bullying behavior may have limited deterrent effects and even result in unintended consequences. It supports the broader implications made by Pratt et al. [12], Nagin [13], and Paternoster [47] that the decision-making process for criminal and deviant behavior is far more complex than simply weighing out the costs and benefits of the behavior. Pratt et al. [12] also suggest that perhaps deterrence theory should be viewed in more limited terms and one that may only explain a small range of behavior, rather than using it to explain offending and deviance more generally. Relatedly, there may also be other factors that explain the limited deterrent effect of sanctions on youth. Research on adolescent brain development implies that during the teenage years the human brain is only about 80 percent developed and the frontal lobe which is responsible for cognitive processes including reasoning and judgment is not fully formed until the late '20s [74]. Thus, the assumption that youth are rational actors who can appropriately weigh the consequences of their actions may not be accurate.

Formal sanctions and program efforts can still be one aspect of the fight against bullying, it just cannot be the only approach to addressing the issue. Efforts need to be made to understand the root causes of the behavior and prevent future acts of bullying. Research suggests that there is no single variable that leads someone to engage in bullying or that reduces their likelihood of victimizing others. Instead, a combination of school factors, parenting characteristics, individual antecedents, and peer influences may all contribute to the onset and desistance of bullying. School climate plays a pivotal role. It has been found that students who believe that their teachers disapprove of bullying behavior are less likely to engage in it [75] and students want their teachers to take a proactive role in helping them

manage bullying problems [76]. Schools, where rules are fair and consistently enforced, where students report a high level of support, with higher student participation and positive student-teacher relations, can reduce bullying perpetration [75, 77, 78].

In addition, bullying prevention programs and curriculum that include social-emotional learning (SEL) components where youth are taught about empathy, how to communicate, problem-solve and develop prosocial skill development, have also been found to reduce bullying engagement [79]. Findings from Sherer and Nickerson [21] further indicate that school-wide positive behavior support, modifying space and schedule, and immediate responses to bullying incidents are perceived as the most effective anti-bullying strategies. Anti-bullying legislation can also be strengthened to reduce bullying behaviors. A study evaluating the effectiveness of anti-bullying legislation in 25 states, found that three particular components – details, specificity, and clarity for school administrators – were associated with decreases in bullying and cyberbullying. Specifically, a statement of scope describing where the legislation applies and the circumstances under which the school has authority to take action, clearly specifying and defining prohibited behaviors, and clarity on specific requirements for school districts to develop and implement, all led to reductions in bullying behavior [80]. Additionally, including language that explicitly prohibits bullying based on a student’s sexual orientation, gender identity, and/or gender expression have been found to improve school safety for LGBTQ students [81], who are often at increased risk of being bullied compared to their heterosexual counterparts [82].

In the end, despite limited evidence to support its effectiveness, formal sanctions and legal recourse against bullies and their parents will likely remain as they provide a level of protection for bullying victim and their families. However, it is important to note that if society is to effectively address bullying, the threat of legal action and punishment is only one part of a multipronged approach that should be taken to prevent and deter future incidents of bullying. Schools, parents, policy-makers, and the youth themselves all have an active role to play in reducing, preventing, and eliminating bullying behavior.

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