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The Trend of Juvenile Justice in the United States, England, and Ireland

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The Trend of Juvenile Justice in the United States, England, and Ireland

I. Introduction

On September 1, 1994, in Chicago, Robert Sandifer was found face down under a railroad viaduct with two bullets in the back of his head.¹ This eleven year old, nicknamed "Yummy" for his love of cookies, had a rap sheet listing twenty-three felonies.² Tragically, a week before his death Robert was suspected of spraying bullets from a semi-automatic pistol into two groups of youths.³ The Robert Sandifer saga is representative of the growing problem of juvenile crime in the United States today. In fact, the number of youths under age eighteen arrested for murder has more than doubled since the 1980s.⁴ In response, the U.S. legislature addressed the problem of juvenile crime in the Violent Crime Control and Law Enforcement Act of 1994 [hereinafter Crime Law].⁵

The United States is not alone in passing legislation affecting the issue of juvenile justice. England passed the Criminal Justice and Public

1. John McCormick & Peter Annin, *Death of a Child Criminal*, NEWSWEEK, Sept. 12, 1994, at 45. This tragedy occurred less than one month before the passage of the new crime bill. See *infra* note 5 and accompanying text.

2. McCormick & Annin, *supra* note 1, at 45.

3. *Id.*

4. Ted Gest & Dorian Friedman, *The New Crime Wave: A Teen Boom Will Fuel More Violence No Matter What Washington Does*, U.S. NEWS AND WORLD REPORT, Aug. 29/Sept. 5, 1994, at 26.

5. The Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 203-322, 42 U.S.C.A. § 13701 (West Supp. 1994) [hereinafter Crime Law]. Unfortunately, the provisions regarding juvenile crime prevention may already be obsolete. On January 4, 1995, the House of Representatives introduced a bill titled Taking Back Our Streets Act of 1995, H.R. 3, 104th Cong., 1st Sess. (1995) [hereinafter Taking Back Our Streets Bill]. Title IX of that bill repeals sections of the Crime Law beneficial to juveniles. See *infra* notes 41-56 and accompanying text.

Order Act of 1994 [hereinafter Criminal Justice Act],⁶ less than a year after the trial of Robert Thompson and Jon Venables, two eleven year olds charged with the infamous brutal murder of two-year-old Jamie Bulger.⁷ While there are no shocking stories of eleven-year-old murderers in Ireland, ten and eleven-year-olds already conduct a lucrative drug trade.⁸ In response to the drug trade and other problems associated with juvenile crime, the Republic of Ireland plans to present the Juvenile Justice Bill for debate this year.⁹

The manner in which we treat our youth has far-reaching implications. As such, this Comment analyzes the positions of the United States, England, and Ireland in their recent legislative efforts concerning juvenile justice. Part II briefly discusses the historical background of U.S. treatment of juvenile offenders before enactment of the current Crime Law. This Part then focuses on the new law's provisions that address juvenile justice, including the trend to treat juveniles as adults and the probable elimination of provisions in the Crime Law addressing prevention. Part II further addresses a unique program in Giddings, Texas that attempts to rehabilitate violent offenders. Part III assesses England's attempt to control juvenile crime, evaluating its harsher position on juvenile justice as reflected in the recently-passed Criminal Justice Act. Part IV then discusses Ireland and examines its long overdue proposal to replace an archaic juvenile justice system with a sweeping Juvenile Justice Bill.

A summary of each country's current position on juvenile justice is then provided in Part V. This Comment proposes that the elimination of crime prevention in the U.S. Crime Law disregards the best interests of the child and leaves little hope of either crime prevention or the rehabilitation of juvenile offenders. Further, by passing the Criminal Justice Act, England has acted too hastily to solve the complex problem of juvenile crime. Finally, this Comment contends that the Republic of

6. On November 3, 1994, the Criminal Justice and Public Order Bill received Royal Assent, which means that it was officially enacted after passing Parliament. Frances Gibb, *Bill on Criminal Justice Passed After Rough Ride*, THE TIMES (London), Nov. 4, 1994, (Home News). See Criminal Justice and Public Order Act, 1994 (Eng.) [hereinafter Criminal Justice Act].

7. *Two 11-Year-Olds Stand Trial in Toddler's Murder*, AGENCE FRANCE PRESSE Nov. 1, 1993, available in LEXIS, Nexis Library. The two boys were the youngest persons to be charged with murder in England in thirty years. *Id.* The boys abducted a two-year-old child, led him three kilometers away to a railway line, and bludgeoned him to death. Richard Ford, *Britain Anger Over Bulger Killers' Release Terms*, SOUTH CHINA MORNING POST, Jan. 28, 1994, at 17.

8. Marie O'Halloran, *Irish Judges Need to Take Part in Wider Dialogue for Penal Reform*, *Academic Says*, THE IRISH TIMES, Sept. 16, 1994, at 6.

9. See *supra* note 8 and accompanying text. See also *A Government of Renewal*, THE IRISH TIMES, Dec. 15, 1994, at 6.

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Ireland has made a positive effort toward combatting juvenile crime by preparing to draft the Juvenile Justice Bill. Although a positive step, even the Irish proposal is not without flaw. Until passage of the bill, the juvenile justice system remains outdated for the complexities of the modern day.

II. Overview of the Juvenile Justice System in the United States

In 1899, Illinois created the first juvenile court in order to avoid the harsh treatment of children in the adult criminal system.¹⁰ Although children under age seven could not be convicted of crimes under common law,¹¹ children between the ages of seven and fourteen could be shown to have the culpability to commit criminal offenses.¹² Startlingly, convicted children could be given long prison sentences and serve their time with hardened criminals.¹³ During the early part of the twentieth century, reformers became concerned with the underlying cause of delinquency and considered the adversarial system inappropriate for handling juvenile criminals.¹⁴ Thus, these reformers promoted a rehabilitative approach, suggesting that young offenders be dealt with "as a wise and merciful father handles his own child whose errors are not discovered by authorities[.]"¹⁵ Social workers and criminologists advised judges "on the appropriate individual cure" for the disease of juvenile delinquency.¹⁶

In 1967, the Supreme Court rejected the case-by-case rehabilitative approach that had dominated for half a century, according juveniles many of the same procedural protections found in adult criminal proceedings.¹⁷ Unfortunately, the trend in juvenile justice thereafter evolved to emphasize punishment rather than treatment.¹⁸ Consequently,

10. Victor L. Streib, *Death Penalty for Children: The American Experience with Capital Punishment for Crimes Committed Under Age Eighteen*, 36 OKLA. L. REV. 613, 614 (1983).

11. *Id.*

12. *Id.*

13. See *In re Gault*, 387 U.S. 1, 15 (1967).

14. MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY* 233 (1992).

15. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).

16. HORWITZ, *supra* note 14, at 233.

17. *Gault*, 387 U.S. at 1. The Court reversed the judgment of the Supreme Court of Arizona, which affirmed dismissal of a petition for writ of habeas corpus filed by the parents on behalf of their fifteen year-old son in an attempt to secure his release after being committed to a state industrial school as a juvenile delinquent. *Id.* at 1. The Court held that juveniles have the right to notice of charges, counsel, confrontation and cross-examination of witnesses, and privilege against self-incrimination. *Id.*

18. See Jennifer D. Tinkler, *The Juvenile Justice System in the United States and the United Nations Convention on the Rights of the Child*, 12 B.C. THIRD WORLD L.J. 469, 479 (1992).

since 1967, the term "juvenile" has been losing its significance in a system that was designed especially for a rehabilitative approach to guide young offenders away from a life of crime.

A. Recent Trend to Treat Juveniles as Adults

There has been strong public sentiment to require juveniles who have committed violent crimes to be treated as adults.¹⁹ Because this movement has strengthened in the last twenty years, the delineation between the juvenile justice system and the adult criminal system is becoming less apparent.²⁰ Without two distinct systems, juveniles receive disparate treatment. For example, the Supreme Court has granted juvenile offenders many of the same procedural rights as adults, yet juveniles do not always receive the right to a jury trial unless they are transferred into the adult criminal system.²¹ Also, juveniles have unfairly served longer sentences than adults who have committed the same offense.²² Moreover, juveniles have even served their time with adults,²³ a clear violation of international law.²⁴

19. Ira M. Schwartz et al., *Public Attitudes Toward Juvenile Crime and Juvenile Justice: Implications for Public Policy*, 13 *HAMLIN J. PUB. L. POL'Y* 241 (1992). Surveys showed that many people believe violent juvenile offenders should be sentenced in adult courts. *Id.* The majority of people surveyed did not feel non-violent juvenile offenders should receive the same sentence as adults or be sentenced to adult prisons. *Id.* However, this is exactly what occurs. *See infra* note 56 and accompanying text.

20. *See generally* Jan Costello, *Rejuvenation: How to Reform Juvenile Court*, Oct. *CAL. LAW.* 63 (1993). This author feels that the juvenile justice system should be reformed, not abolished. *Id.* Compare Costello's view with Janet E. Ainsworth, *Reimagining Childhood and Reconstructing the Legal Order: the Case for Abolishing the Juvenile Court*, 69 *N.C. L. REV.* 1083 (1991).

21. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543-548 (1976) (holding that extending the right to a jury trial to juveniles would make a separate juvenile system superfluous). *See Ainsworth, supra* note 20 at 1121, 1122 (stating that even in states where juveniles may opt for jury trials, they rarely occur). Juveniles who want to fight being transferred to the adult criminal system are faced with a dilemma: They have the burden to rebut the seriousness of the offense, but doing so can be taken as evidence that they lack remorse and are not amenable to rehabilitation. *See Costello, supra* note 20, at 65.

22. Mark Dowie, *When Kids Commit Adult Crimes, Some Say They Should Do Adult Time*, Oct. *CAL. LAW.* 55, 58 (1993). The average length of time served in the adult prisons was 16.2 months as compared to 26.1 months in the juvenile prisons. The adults are released early, but juveniles are not. *Id.* Justice routinely accorded juveniles is lower than that insisted upon for adults. *See Barry C. Feld, The Transformation of the Juvenile Court*, 75 *MINN. L. REV.* 691, 692 (1991).

23. Records indicate that juveniles have been admitted to adult prisons. Krisberg, *The Treatment of Violent Juvenile Offenders*, *NEWSL.* 1 (Div. of Child Youth and Fam. Serv., Am. Psychological Ass'n, Div. 37, 1988) *cited in* Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 323 (1991) (stating that the number of persons under 18 admitted to adult prisons increased from 1445 in 1981 to nearly 4000 in 1983). Krisberg was unable to obtain any more current statistics. *Id.* at 53. *See generally* Kristina H. Chung, *Kids Behind Bars: The Legality of Incarcerating Juveniles in Adult Jails*, 66 *IND. L.J.* 999, 1016 (1991).

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Another unfortunate effect of the trend is the execution of individuals who have committed serious crimes while under the age of eighteen.²⁵ The execution of individuals for juvenile crimes is not unusual, the first recorded execution having occurred in Massachusetts in 1642.²⁶ Presently, there are more juveniles in the United States on death row than any other country known to Amnesty International.²⁷ Such sentencing violates human rights treaties to which the United States is a party.²⁸ Moreover, President Clinton recently signed the U.N. Convention on the Rights of the Child, which not only prohibits capital punishment, but also any action that is not in the best interests of the child.²⁹ Still, the United States has made it clear that sentencing

24. See *infra* note 28 and accompanying text.

25. In *Stanford v. Kentucky*, 492 U.S. 361 (1989), *reh'g denied*, 492 U.S. 937 (1989), the defendant was seventeen-years-old when he was convicted of sodomy, murder, robbery, and receiving stolen property. The Court held that the U.S. Constitution does not prohibit the execution of juveniles who were age sixteen when they committed an offense. *Id.* at 380. Twenty-one states have lowered the age for receiving the death penalty to age sixteen for first degree murder, and four other states allow seventeen-year-olds to be eligible for capital punishment. Mark Curriden, *Hard Times for Bad Kids*, ABA J., February 1995, at 67.

26. John R. Frank, *Stanford v. Kentucky: Did the Court Bite the Constitutional Bullet?*, AKRON L. REV. 547, 548 (1990).

27. AMNESTY INTERNATIONAL, UNITED STATES OF AMERICA: THE DEATH PENALTY AND JUVENILE OFFENDERS 1 (1991).

28. Execution of juveniles violates article 6(5) of the International Covenant on Civil and Political Rights, Dec. 1990, 999 U.N.T.S. 171, 174 [hereinafter ICCPR]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, art. 68, 6 U.S.T. 3516, 3560, 75 U.N.T.S. 287, 330; and the Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1448.

29. Treating juveniles as adults violates provisions of the U.N. Convention on the Rights of the Child. President Clinton signed the Convention on February 15, 1995. See *U.S. Finally Signs Pact on Rights for Children*, SAN DIEGO UNION-TRIB., Feb. 17, 1995, at A12. The following provisions concern juvenile justice, as addressed in this Comment:

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons his or her age. [E]very child deprived of liberty shall be separated from adults unless it is considered in the child's best interest to do so.

Convention, supra arts. 37(a), 37(b), 37(c). The *Convention* further provides:

(1) State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human

juveniles as adults is acceptable. As such, the United States speaks with little authority concerning human rights abuses in other countries by its own blatant violation of children's rights.

*B. Juvenile Justice and the Violent Crime Control and Law Enforcement Act of 1994: Pre-Republican Take-Over of Congress*³⁰

The controversial Crime Law was finally passed September 13, 1994.³¹ This law exemplifies the controversy in dealing with juvenile offenders by containing provisions indicative of both the "just desserts" and rehabilitative approaches.³² The law appropriates funding for alternative means of traditional punishment³³ beneficial to young offenders, but only upon the state's assurance of severe punishment for violent juvenile offenders.³⁴ Consequently, the rehabilitation of young offenders takes a back seat to the punishment of violent offenders, and as such, is a serious mistake.

To illustrate, Judge von Kann, who has served as a Washington, D.C. Superior Court judge since 1985, expressed a legitimate concern of

rights and fundamental freedom of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

(2) (iii) Every child alleged as or accused of having infringed the penal law has at least the following guarantees: . . . [t]o have the matter determined . . . in the best interest of the child, in particular, taking into account his or her age or situation . . .

Id. arts. 40(1), 40(2)(iii).

30. See Alan Elsner, *U.S. Turns Right, Republicans Take Control*, The Reuter Library Report, Nov. 9, 1994, available in LEXIS, Nexis Library.

31. See Crime Law, *supra* note 5 and accompanying text.

32. See *supra* note 18 and accompanying text.

33. See Crime Law, 42 U.S.C.A. § 3796ee(a) (West Supp. 1994) (authorizing the Attorney General to make grants for the purpose of developing alternative methods of punishment for young offenders). "Young offender" is defined in section 3791(24) as "a non-violent first-time offender or a non-violent offender with a minor criminal record who is 22 years of age or younger (including juveniles)." 42 U.S.C.A. § 3791(2) (West Supp. 1994). It has been suggested that offenders be divided into three categories of offenders: adults, juveniles, and violent juvenile offenders. Judge Stephen A. Van Dyke, *Whose Children Are These? A Primer for Juvenile Court Practice*, 7 UTAH B.J. 31 (1994).

34. Section 13701(b) of the Crime Law reads:

Eligibility

To be eligible to receive a grant under this part, a State . . . shall submit an application to the Attorney General which includes-

(1) assurances that . . . violent offenders serve a substantial portion of the sentences imposed, that are designed to provide sufficiently severe punishment for violent offenders, including juvenile offenders, and that the prison time served is . . . for a period of time deemed necessary to protect the public.

Crime Law, 42 U.S.C.A. § 13701(b) (West Supp. 1994).

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the need to reach juvenile offenders early in their careers.³⁵ In a meeting of the board of directors of the Council for Court Excellence, he made the following insightful comment:

[I]f we drain the cesspool and rebuild the inner city, and if we develop effective ways of turning around juvenile offenders at an early age, we stand a good chance of having a rate of homicide and crime 10 years from now that is drastically less than that which we are now experiencing.³⁶

Judge von Kann's call to "drain the cesspool and rebuild the inner city" is beyond the scope of this Comment, but his remarks do express the clear need for crime prevention in the juvenile justice system.

Accordingly, the Crime Prevention Subchapter in the Crime Law³⁷ has the best chance of improving the abominable state of juvenile crime because it attacks the problem of juvenile delinquency at its core. Not only does it provide a grant program for prevention,³⁸ but it also focuses on the community setting, the family, and "at-risk youth," including potential gang members.³⁹ Targeting juveniles who are drawn into a life of crime because of their environments and providing them with an alternative to crime is essential to crime prevention.⁴⁰

Under the Crime Law in its current state, juveniles who have become involved in serious crime are "written off," with no emphasis

35. Curtis E. von Kann, *Draining the Cesspool: It Isn't the Job of the Criminal Justice System to Solve Crime Spawned Elsewhere in Society: The Conditions That Produce Crime Are Clearly Identifiable: Do We Have the Will to Cure Them?*, THE RECORDER, Dec. 22, 1993, available in LEXIS, LEGNEW, RECRDR File (commentary adapted, with permission, from Judge von Kann, Remarks at the Board of Directors Meeting of the Council for Court Excellence, (Dec. 6, 1993)).

36. *Id.*

37. Crime Law, 42 U.S.C.A. § 13741 (West Supp. 1994).

38. *Id.* § 13742. The funding makes available the following programs:

- (1) summer and after-school (including weekend and holiday) education and recreation programs;
- (2) mentoring, tutoring, and other programs involving participation by adult role models (such as D.A.R.E. America);
- (3) programs assisting and promoting employability and job placement; and
- (4) prevention and treatment programs to reduce substance abuse, child abuse, and adolescent pregnancy, including outreach programs for at-risk families.

Id.

39. *Id.* §§ 13791, 13801, 13881, 13921. The parts are titled Family and Community Endeavor Schools Grant Program, Assistance for Delinquent and At-Risk Youth, Family Unity and Demonstration Project, and Gang Resistance Education and Training. *Id.* Such programs may reach youths like Robert Sandifer. Police attributed Robert Sandifer's death to a gang-related incident. McCormick & Annin, *supra* note 1.

40. See Vince Bielski, *Bad to the Bone? The Question is No Longer Whether Criminal Behavior Is Born or Made, But How It Can Be Prevented*, 13 CAL. LAW. 72 (1993). See also *Roots of Crime to Be Analyzed*, PATRIOT-TIMES, Nov. 7, 1994, at A7.

given to their rehabilitation. However, the Legislature did attempt to balance the "just desserts" approach by appropriating funds for crime prevention, a more effective means of dealing with juvenile offenders by concentrating on deterrence. Now that the Republicans have taken control of Congress, the "just desserts" approach to juvenile justice will more than likely dominate.

*C. Comparison of Juvenile Justice under the Crime Law and the Taking Back Our Streets Act of 1995*⁴¹

The new Congress took very little time in making juvenile justice one of its main priorities. Just over one month after taking control of the Legislature, the House passed a bill titled Taking Back Our Streets Act of 1995.⁴² If it passes the Senate, the new law will repeal the entire Crime Prevention Subchapter in the Crime Law.⁴³

1. A Costly Mistake.—Republicans strategically eliminated all of the established prevention programs under the Crime Law by promulgating a block grant program.⁴⁴ They unfairly termed all juvenile crime

41. See Taking Back Our Streets Bill, *supra* note 5 and accompanying text.

42. *Id.* The bill passed the House on February 14, 1995. See Ana Puga, *US House Passes Bill to Gut Police Hiring Plan; 238-192 Tally Not Enough to Override Veto*, BOSTON GLOBE, Feb. 15, 1995, at 1.

43. Taking Back Our Streets Bill, *supra* note 5, tit. IX, sec. 902. Title IX refers to the Crime Prevention Subchapter as Title III. When the Crime Law was codified, it was reorganized and renamed Subchapter II-Crime Prevention. See Crime Law, 42 U.S.C.A. §§ 13741-13921 (West Supp. 1994).

44. Taking Back Our Streets Bill, tit. I, sec. 101(2). This section states:

Use.—Amounts paid . . . shall be used . . . for reducing crime and improving public safety, including but not limited to, one of the following purposes:

- (A) (I) Hiring, training, and employing on a continuing basis new, additional law enforcement officers and necessary support personnel;
- (II) Paying overtime to presently-employed law enforcement officers and necessary support personnel for the purpose of increasing the number of hours worked by such personnel; and
- (III) Procuring Equipment, Technology, and other material directly related to basic law enforcement functions.
- (B) Enhancing school security measures by
 - (I) Providing increased law enforcement patrols in and around schools, whether through the hiring of additional law enforcement officers or paying overtime to presently employed officers;
 - (II) Purchasing law enforcement equipment necessary to carry out law enforcement functions in and around schools;
 - (III) Equipping schools with metal detectors, fences, closed circuit cameras, and other physical safety measures; and
 - (IV) Gun hotlines designed to facilitate the reporting of weapons possessions by students and other individuals in and around schools.

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prevention programs "midnight basketball" and "pork" in justifying their actions.⁴⁵ If the bill passes the Senate, the funding of any crime prevention programs will depend upon supporters vying with law enforcement officials and schools for money.⁴⁶ The forced competition between schools and law enforcement officials is a Republican tactic to save money at the expense of youth. Of course, prevention of juvenile crime is expensive⁴⁷ and success cannot be guaranteed. Such "gloom and doom" speculation about the possible failure of a costly crime is inevitable,⁴⁸ but also inevitable is the drain of tax dollars to incarcerate juvenile offenders who may not have ever have become involved in crime.⁴⁹

Furthermore, juveniles who have succumbed to a life of crime, some of them committing serious acts of violence, are going to be placed into the adult criminal system without consideration of their human rights, or even whether they have the same culpability as adults.⁵⁰ The prosecution should therefore have to demonstrate that the juveniles did

(C) Establishing crime prevention programs that are organized, supervised by, or involve substantial participation of law enforcement officials and that are intended to discourage, disrupt, or interfere with the commission of criminal activity, including neighborhood watches and citizen patrols.

Id.

45. John M. Goshko, *Mayors Confront Congress: City Leaders Wary of GOP Proposals*, HOUSTON CHRONICLE, Feb. 11, 1995, at 9. See also Edwin Meese III, *Crime, Spending . . . and Misguided Kindness: Bloated in the Process*, WASH. TIMES, Aug. 19, 1994, at A19. Jerry Abramson, Mayor of Louisville Kentucky, expressed a completely view:

What many in Congress refuse to understand is that police chiefs and their departments are even more vehement than the mayors in their desire for prevention programs. Again and again, I have heard chiefs tell congressmen that the police would infinitely prefer to work with 6-year-olds in a gym or church rather than wait 10 years and have to fight them in an alley.

Meese, *supra* at A19.

46. Meese, *supra* note 45, at A19.

47. The Assistance For Delinquent And At Risk Youth subsection appropriates \$5,400,000 for fiscal year 1996 and increases funding to \$9,000,000 in the year 2000. Crime Law, 42 U.S.C.A. § 13802. The Gang Resistance Education And Training (GREAT) begins with an appropriation of \$9,000,000 in 1995 for the establishment of no less than 50 GREAT projects to be located in communities throughout the country, in addition to projects currently funded. *Id.* § 13921(b).

48. See Gest & Friedman, *supra* note 4, at 28.

49. In 1993, the yearly cost of incarceration per child in California was stated to be approximately \$22,000. Dowie, *supra* note 22, at 119.

50. See AMNESTY INTERNATIONAL, *supra* note 27, at 2. The international law community developed standards to recognize the death penalty - which denies any recognition of rehabilitation or reform- as wholly inappropriate for individuals who do not have full physical or emotional maturity at the time of the offense. *Id.* It is not the position of Amnesty International that juveniles accused of serious crimes should never be held criminally liable or subjected to severe penalties. *Id.* at 1-2.

not respond to any rehabilitative or preventative measures.⁵¹ Apparently, there should be support for programs that allow juveniles the opportunity to overcome dysfunction in their families,⁵² to have a safe place for recreation, to observe role models, and to receive counseling. The Legislature has addressed all of these juvenile needs in the Crime Prevention Subchapter of the Crime Law, which may soon be repealed.

2. *Violent and Non-Violent Offenders.*—The proponents of Taking Back Our Streets have deleted the language from the Crime Law that allows funding for alternative means of punishment for non-violent offenders.⁵³ They were not satisfied with the fact that funding for alternative means of punishment under the Crime Law is conditioned upon violent juvenile offenders receiving harsh prison sentences.⁵⁴ Neither were they satisfied with the reasoning behind the alternative means of punishment: “[To] free conventional prison space for the confinement of violent offenders.”⁵⁵ As a result, under the Taking Back Our Streets Bill, non-violent offenders are treated essentially the same as violent offenders, except that they serve time in separate prisons.

51. Section 5032 of the Crime Code permits 16 and 17 year olds to be tried and punished as adults for all federal offenses, but several factors must first be considered. 18 U.S.C. § 5032 (1988). Two of these factors are “the nature of past treatment efforts and the juvenile’s response to such efforts,” and “the availability of programs designed to treat the juvenile’s behavioral problems.” *Id.*

52. Robert Sandifer was placed in a foster home after being severely abused by his mother. See McCormick & Annin, *supra* note 1, at 45. See also *infra* part II.D.

53. Taking Back Our Streets Bill, *supra* note 5, tit. V, sec. 501(a) states:

In General.—The Attorney General is authorized to provide grants . . . to build, expand, and operate space in correctional facilities in order to increase the prison bed capacity . . . for the confinement of persons convicted of a serious violent felony and to build, expand, and operate temporary or permanent correctional facilities . . . for the confinement of convicted nonviolent offenders . . . for the purpose of freeing suitable existing prison space for the confinement of persons convicted of a serious violent felony.

In contrast, the Crime Law, states:

The Attorney General may make grants to . . . to construct develop, expand, operate or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free correctional prison space for the confinement of violent offenders, to ensure prison space is available for the confinement of violent offenders and to implement truth in sentencing laws for sentencing violent offenders.

Crime Law, 42 U.S.C.A. § 13701 (West Supp. 1994). Although the Taking Back Our Streets Bill does not specify that violent offenders include juvenile offenders as does the Crime Law, the current trend indicates that juveniles were intended to be included. See *supra* note 34 and accompanying text.

54. See Crime Law, 42 U.S.C.A. § 13701(b).

55. *Id.* § 13701(a).

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D. *The Giddings Capital Offender Program*⁵⁶

The strong movement to treat juveniles as adults by placing them into prison overshadows the success of programs such as The Capital Offender Program in Giddings, Texas.⁵⁷ In this unique program, juveniles who have been committed for homicide at the Giddings State Home and School receive intense treatment for sixteen weeks.⁵⁸ As part of their therapy, they are required to role play family relationships and accounts of their homicidal events.⁵⁹ The program has received national attention,⁶⁰ yet funding for other similar programs will probably not be appropriated because it is not a traditional form of punishment.

Until the voting public can look beyond the "just desserts" approach to juvenile justice, the juvenile crime rate in the United States will continue to escalate.

III. Juvenile Justice in England⁶¹

Before the enactment of the Criminal Justice Act of 1994, England administered the welfare, or "the best interests of the child" approach to juvenile justice.⁶² Internationally, England ratified the International

56. This program was established in 1988 to create a personal sense of responsibility among juveniles who have committed acts of homicide. Linda Brooks, A Group Treatment Program for Juvenile Capital Offenders: The Capital Offender Group Program at Giddings State Home and School (Aug. 4, 1993) (unpublished manuscript, on file with the Giddings State School). The three primary goals of the program are:

- 1) to foster empathy and remorse for having taken another person's life;
- 2) to help juveniles gain a sense of personal responsibility and identify alternative ways to cope with feelings when they encounter stressful situations; and
- 3) to teach juveniles how to express feelings verbally, rather than acting them out aggressively.

Id. at 24-25.

57. According to follow-up studies that track any offense for one year after release, students not in the program recede at a rate of 40%, whereas students who complete the program recede at 22%. See *infra* note 60 and accompanying text.

58. See Brooks, *supra* note 56, at 1. Some juveniles do not qualify for this program because they have been diagnosed as psychotic, mentally retarded, or with a pervasive developmental disorder. *Id.* at 15. This Comment does not deal with those particular groups of juveniles.

59. *Id.* at 31-32, 43-44.

60. *CBS Evening News Eye on America, ABC World News American Agenda, Victory Over Violence, 48 Hours, Swedish Broadcasting Corp., NHK Highly Enterprises, Inc., and British Broadcasting Corp.*, have all featured the program, as well as a variety of state-wide broadcasts and conferences. The program also made headlines in England. See Anna Blundy, *School for Killers*, *GUARDIAN*, March 8, 1994, at 8.

61. The legal system of England refers to both England and Wales. MODERN LEGAL SYSTEMS *CYCLOPEDIA* 3.230.7 (St. Mary's University School of Law) (1994).

62. Donald N. Duquette, *Child Protection Legal Process: Comparing the United States and Great Britain*, 54 U. PITT. L. REV. 239, 270 (1992). See also Pamela Cox, *A House Michael Howard Could Never Call Home; You Wouldn't Believe the Conservative Party's 1946 Plans for*

Covenant on Civil and Political Rights,⁶³ a treaty which confers several rights to juveniles when they are accused of a crime.⁶⁴ Furthermore, England participated in the World Summit for Children held on September 29-30, 1990.⁶⁵ England has signed the Convention on the Rights of the Child⁶⁶ and conforms more rigidly to the provisions of that treaty than Ireland or the United States.⁶⁷ However, it now appears that England has become disenchanted with the welfare approach in dealing with juvenile offenders.

A. *An Emerging Harsher View of Juvenile Justice*

Recently, England has taken a tougher position on juvenile crime, a reaction to not only the horrifying murder of Jamie Bugler,⁶⁸ but also to what is being termed "yob culture": the promotion of juvenile delinquency as a way of life.⁶⁹ England has not been overly harsh in its treatment of juveniles,⁷⁰ even in the recent past. For instance, not

Young Criminals, GUARDIAN, Sept. 16, 1994, at 22.

63. ICPR, *supra* note 28.

64. See ICCPR, *supra* note 28 and accompanying text. The following provisions address juvenile justice:

(10)(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

.....

(3) Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.

.....

(14)(1) In the case of juvenile persons, the procedure shall be such as will take account of their age and promoting their rehabilitation.

Id., arts. (10)(b), (10)(3), 14(1).

65. Paul Lewis, *World Summit for Children: World's Leaders Gather at U.N. for Summit Meeting on Children*, N.Y. TIMES, Sept. 30, 1990, at 1. See also Ann Fagan Ginger, *The Energizing Effect of Enforcing a Human Rights Treaty*, DEPAUL L. REV. 1341, 1372-1376 (1993).

66. See *supra* note 29.

67. Neither the United States nor Ireland strictly comply with art. 40(3) of the Convention, which states: the government "shall seek to promote the establishment of . . . authorities . . . specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law . . ." See U.N. Convention on the Rights of the Child, *supra* note 29, art. 40(3). England has established a specialized system in dealing with juvenile offenders. See Duquette, *supra* note 62 at 270-71 (describing the legal system for juvenile offenders). The system allows collaboration between solicitors and social workers to advocate for the child's best interests. *Id.*

68. See *supra* note 7 and accompanying text.

69. See Cox, *supra* note 62, at 22.

70. Some measures that have been imposed are as follows: (1) supervision orders (where a child or young person normally lives at home under the supervision of a social worker or probation officer); (2) orders to spend time at an attendance center for a number of hours; and (3) youth community sentences. JUSTICE AND THE LAW, FOREIGN & COMMONWEALTH OFFICE 41 (1993).

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long ago, the system was severely criticized when a teenager was sent on a holiday to Africa as part of therapy for committing burglary and other offenses.⁷¹

In response to criticism of its leniency in dealing with juvenile offenders, England has abruptly changed its position concerning juvenile justice. In the aftermath of the Thompson-Enables trial,⁷² the Home Secretary, Mr. Michael Howard, promised not to make any "snap judgments" in the law concerning juvenile justice.⁷³ Yet, by December, the Criminal Justice Bill was published, containing measures making significant changes in the juvenile justice system.⁷⁴ Amidst much protest, the bill became law less than one year later.⁷⁵

1. *The Provisions of the Criminal Justice Act and Its Repercussions.*—The major provisions of the Criminal Justice Act dealing with juvenile justice are few, but their impact is far-reaching. For instance, the maximum sentence of detention for fifteen to seventeen-year-old offenders has been doubled from twelve to twenty-four months.⁷⁶ Juveniles aged ten can be held accountable for an extended category of crimes.⁷⁷ By far, the most controversial provision is that

71. *Delinquent Given Own Home Went on Crime Spree*, STRAITS TIMES, Aug. 25, 1994, at 4.

72. See *supra* note 7 and accompanying text.

73. Mark Thomas et al., *Threats and Fear as Agony Goes On*, Press Ass'n Newsfile, Nov. 25, 1993, available in LEXIS, Nexis Library.

74. HOME OFFICE, NEWS RELEASE 296/93, CRIMINAL JUSTICE AND PUBLIC ORDER BILL PUBLISHED (Dec. 17, 1993).

75. Andrew Evans, *Howard's Law Reform Bill Faces Hostile Peers*, Press Ass'n Newsfile, Apr. 25, 1994, available in LEXIS, Nexis Library. The protests became more intense shortly before passage of the law. Jackie Burdon, *Mass Protest as Parliament Debates Justice Bill*, Press Ass'n Newsfile, Oct. 18, 1994, available in LEXIS, Nexis Library. Among the protestors' concerns was that children's rights will be violated. See Heather Tyrell, *New Jail Rules "Recipe for Child Abuse"*, Press Ass'n Newsfile, July 20, 1994, available in LEXIS, Nexis Library.

76. Part I of the Criminal Justice Act states:

(1) Section 1B of the Criminal Justice Act 1982 (maximum length of detention in young offender institution for offenders aged 15, 16 or 17 years) shall be amended as follows.

(2) In subsection (2)(b), for the words "12 months" there shall be substituted the words "24 months."

(3) In subsection (4), for the words "12 months" there shall be substituted the words "24 months."

(4) In subsection (5), for the words "12 months" in both places where they occur there shall be substituted the words "24 months."

Criminal Justice Act, 1994, s. 17 (Eng.).

77. *Id.* s. 16(3). This provision explains:

In subsection(2) . . . there shall be substituted the following—

(a) where a person of at least 10 but not more than 17 years is convicted on an indictment of—

(i) any offence punishable in the case of an adult with imprisonment of fourteen years or more, not being an offence for which is fixed by law, or

courts no longer have the option of placing offenders in local facilities.⁷⁸ Instead, the Criminal Justice Act allows courts to place persistent offenders, aged twelve to fourteen, at one of five secured training centers scattered throughout the country for a period of six months to two years.⁷⁹

-
- (ii) an offence under section 14 of the Sexual Offences Act 1956 (indecent assault on a woman);
 - (b) where a young person is convicted of-
 - (i) an offence under section 1 of the Road Traffic Act 1988 (causing death by dangerous driving), or
 - (ii) an offence under section 3A of the Road Traffic Act 1988 (causing death by careless driving while under influence of drink or drugs).

Id.

England retains the death penalty only for crimes under military law, see CHARLES HUMANA, *WORLD HUMAN RIGHTS GUIDE* 347 (3rd ed. 1992), but there have been no executions since 1964. *Id.* Recently, there has been talk of reinstating the death penalty for civilians. Nick Cohen, *Americans Stunned by Howard's Jail Policy*, *INDEPENDENT*, Oct. 17, 1993. Whether this has possible implications for juveniles charged with serious crimes is yet to be seen.

78. Stephen Goodwin, *Inside Parliament: Imprisoned MPs Vote to Lock-Up Children in Private Jails; "Kill the Bill" Demonstration Blocks Off Parliament-Howard Admits Private Secure Units Need Guaranteed Numbers to Be Viable*, *INDEPENDENT*, Oct. 20, 1994, at 9. The amendment allowing courts the choice of whether to send persistent young offenders to the secured training centers or to local secured units was overturned by a narrow vote of 298 to 272. *Id.*

79. Part I, s. 1 of the Criminal Justice Act states:

- (1) Subject to section 8(1) of the Criminal Justice Act 1982 and section 53(1) of the Children and Young Person's Act 1933 (sentences of custody for life and long term detention), where-
 - (a) a person not less than 12 but under 15 years of age is convicted of an imprisonable offence; and
 - (b) the court is satisfied of the matters specified in (5) below,
 the court may make a secure training order.
- (2) A secure training order is an order that the offender in respect of whom it is made shall be subject to a period of detention in a secure training centre followed by a period of supervision.

Id. s. 1.

Part I, s. 1(5) of the Criminal Justice Act explains:

- (5) The court shall not make a secure training order unless it is satisfied-
 - (a) that the offender was not less than 12 years of age when the offence for which he is to be dealt with by the court was committed;
 - (b) that the offender has been convicted of three or more imprisonable offences; and
 - (c) that the offender on this or a previous occasion-
 - (i) has been found guilty by a court to be in breach of a supervision order under the Children and Young Person's Act 1969, or
 - (ii) has been convicted of an imprisonable offence committed whilst he was subject to such a supervision order.

Id. s. 1(5).

Further, s. 1(3) of the Act specifies:

- (3) the period of detention and supervision shall be such as the court determines and specifies in the order, being not less than six months nor more than two years.

Id. s. 1(3).

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The privately run secured training centers have been criticized severely. For example, children will be taken out of the community and estranged from their families.⁸⁰ It has also been suggested that the potential for sexual abuse is great because juveniles will be hidden from outside public scrutiny.⁸¹ Furthermore, the United Nations criticized the new provision as not being in harmony with the Convention on the Rights of the Child.⁸² When faced with an increased problem with juvenile crime and criticisms of being too soft, the appropriate response for England was not to send young persistent juvenile offenders to secured training centers outside of the community, but to allow the newly implemented measures *within* the community to work.

Recently, The Home Office ensured tougher community service orders for young offenders aged ten to seventeen.⁸³ Whereas previously, juveniles could receive several warnings before the court imposed a sentence of community service, now they receive only two warnings.⁸⁴ The Home Office also gave courts greater discretion regarding how much of a community sentence is served under supervision by probation officers and how much is devoted to physical labor.⁸⁵ There was, however, no time to gauge the effect of these measures within the community before the imposition of the Criminal Justice Act.⁸⁶

Accordingly, it is not clear why the Criminal Justice Act contains a provision to send persistent offenders to secured training centers when they have failed to respond to community-based sanctions. Until recently, young offenders were not given sanctions to which to respond, and in the past, received several warnings before being required to appear in court. Thus, they were given more time to get into further trouble. Although the secured centers are mandated for persistent offenders who

80. See Tyrell, *supra* note 75.

81. *Id.*

82. Jon Hibbs, *UK: Britain Is Failing Children, Says United Nations*, DAILY TELEGRAPH Jan. 28, 1995, at 1. Some members of the government did not take the criticism well, as evidenced by this comment: "These supra-national groups stuffed full of meddling do-gooders would do better to turn their attention to countries in the Third World where child rights do not exist." *Id.*

83. Anthony Doran, *Parents Face Jail in Crackdown on the Yob Culture*, DAILY MAIL, Sept. 23, 1994, at 5. See also Alan Travis, *'Hard Labour for Children' Plan Irks JPS*, GUARDIAN, Sept. 15, 1994, (Home Page), at 3.

84. See Doran, *supra* note 83, at 5, and accompanying text.

85. George Jones, *Howard's Hard Labour Replaces Safari Trips for Yobs*, DAILY TELEGRAPH Sept. 14, 1994, at 1.

86. Additionally, the fact that parents will be fined if their children violate any court orders is not only unfair, but has proven to be ineffective because the court has no power to bring an adult into juvenile court. See Frances Gibb, *UK: Courts 'Powerless' to Enforce New Penalty on Parents*, The Reuter Library Report Feb. 13, 1995, available in LEXIS, Lexis Library.

have a more serious criminal record,⁸⁷ strictly enforced community sanctions may deter juveniles from getting entrenched in crime.

This is not to say that juveniles aged ten to seventeen should be given hard physical labor in violation of their rights. Juveniles need to be treated fairly and in regard to their best interests. By quickly enacting the Young Offender Section of the Criminal Justice Act, the Government did not take the time to consider whether the law is in furtherance of the best interests of the child.

2. *Prevention Ignored in the Act.*—Not only is the Criminal Justice Act untimely, it contains no provisions to address prevention, an essential component in tackling juvenile crime.⁸⁸ Even more frustrating is the statement made by Secretary Howard, that money spent on youth activities, such as the Youth Action Scheme,⁸⁹ will not necessarily reduce the juvenile crime rate. Mr. Howard has made such statements, though he has not allowed enough time for the program to prove successful in preventing juvenile crime.⁹⁰ This hasty decision unfortunately casts doubts on whether any more funding will be available for prevention in the future.

Moreover, the success of the five secured training centers has not been proven, yet the Government wants to put them into place. The centers have even been compared to other institutions with high recidivism rates.⁹¹ It seems the Government is more concerned about wasting money and effort put in these centers, than with reducing the juvenile crime rate. The secured centers will probably not be ready until late 1995-96.⁹² Meanwhile, the Government will have to provide funding for local authority accommodation anyway, increasing doubt as

87. See *supra* note 79.

88. See Alan Travis, *Parental Help "Cuts Crime,"* GUARDIAN, May 10, 1994, (Home Page), at 8. In a study led by Professor Farrington of Cambridge University, 411 working class boys were followed until age 32. *Id.* The study showed that potential persistent offenders can be identified by the following indicators: being troublesome at school; coming from low-income families with a one parent who had been convicted by the time the child turned ten years old; having parents with poor parenting skills; having low intelligence and attainment by age ten; and being labeled "daring at age eight." *Id.* The two boys convicted of the Bulger murder, see *supra* note 7, had very disturbed pasts of which the community had been well aware. See Gitta Sereny, *Re-Examining the Evidence,* INDEPENDENT, Feb. 6, 1994, at 4.

89. The Youth Action Scheme sponsors projects aimed at juvenile crime prevention. George Jones, *Howard Rejects Clubs and Cash Answer to Crime,* DAILY TELEGRAPH, Sept. 27, 1994, at 5.

90. *Id.*

91. Ben Adler, *The Government Knows Exactly What to Do with Persistent Young Offenders-Lock "Em Up,"* GUARDIAN, Aug. 26, 1994, at 14.

92. Richard Ford, *27-Point Plan Has Yet to Be Delivered,* THE TIMES (London), Oct. 13, 1994 (Home News).

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to the lack of power of the magistrates to keep juvenile offenders in the community.

Additionally, the Howard League for Penal Reform and the Prison Reform Trust maintain there are already enough places for persistent young offenders.⁹³ Therefore, the courts will need to supply enough offenders to fill the secured training centers or the plan will fail. Such a dilemma has frightening implications for young offenders.⁹⁴

B. Using the U.S. Example

Interestingly enough, Howard has indicated that the U.S. boot camps may be implemented in the juvenile justice scheme, although a similar alternative to traditional punishment was attempted and discarded in 1984.⁹⁵ There has also been some interest generated in the Capital Offender Program in Giddings, Texas.⁹⁶ Furthermore, it is even possible that the newly proposed provisions of the Criminal Justice Act will be reformed in the next few years. On May 9 and 10, 1994, juvenile justice experts from the United States and Britain held a conference to launch an eighteen month study to compare their juvenile justice systems and identify potential reforms.⁹⁷ The results of this study may prove to be beneficial to the systems of both countries.

England should continue to seek alternatives to traditional forms of punishment and put the best interests of the juvenile back at the forefront of juvenile justice, where it belongs.

93. See Adler, *supra* note 91, at 14.

94. See Goodwin, *supra* note 78. The provision mandating twelve to fourteen-year-old persistent offenders guilty of three or more imprisonable offenses, see *supra* note 79, has been criticized as not being clearly stated. John Harding & Bryan Gibson, *LAW: THE LOCK 'EM UP AND LET 'EM ROT SCHOOL; The Government's Plans to Jail 12-14 Year-Old Persistent Offenders in Secure Training Units Are Legally Flawed*, *GUARDIAN*, Apr. 19, 1994, at 19. John Harding is chief probation officer of Inner London and chairman of the Association of Chief Probation Officers young offender committee. *Id.* Bryan Gibson clerks for North West Hampshire magistrates and chairs the Justices' Clerks Society criminal law committee. *Id.* With no clear definition of imprisonable offences, offenders may be sent arbitrarily to the centers to fill the quota.

95. See Cohen, *supra* note 77. The idea is apparently being discarded in the United States. See *supra* note 53 and accompanying text.

96. See *supra* note 56 and accompanying text.

97. Grania Langdon-Down, *Anglo-American Conference to Probe Juvenile Crime*, Press Ass'n Newsfile, May 8, 1994, available in LEXIS, Nexis Library. In response to the lack of information available on the study of crime, Ireland formed the Irish Criminal Justice Research Institute late in 1992 to which criminal experts from England and the United States have given their support. Tom O' Malley & Dr. Ian O'Donnell, *Research into Crime*, *THE IRISH TIMES*, Feb. 25, 1993, at 11. Although O'Malley stated then that the advice from the experts would be "helpful," the following year he criticized Ireland for looking to the United States and Britain: "You couldn't possibly look for two worse models." See O'Halloran, *supra* note 8 at 6.

IV. Juvenile Justice in the Republic of Ireland

Juvenile justice in the Republic of Ireland⁹⁸ principally operates under the Children Act of 1908,⁹⁹ but that may change if the Juvenile Justice Bill is enacted.¹⁰⁰ Because the Children Act has served Ireland since its separation from Great Britain and Northern Ireland,¹⁰¹ the Act has been rightfully criticized as archaic.¹⁰² It would seem Ireland should be the last to be criticized, given that it experiences significantly less crime than other developed countries, including England and the United States.¹⁰³ On the other hand, there are several problems in the juvenile justice system that Ireland needs to address.

A. Misplacement of Juveniles

According to the Children Act, a "young person" is defined as follows:

"a young person"¹⁰⁴ shall not be sentenced to imprisonment for an offence or committed to prison in default of a fine, damages, or costs, unless the court certifies that the young person is of so unruly a

98. The Republic of Ireland will hereinafter be referred to as Ireland, not to be confused with Northern Ireland. For a brief history of the separation of the Republic of Ireland from the kingdom of Great Britain and Northern Ireland, see James T. Kelly, *The Empire Strikes Back: The Story of Joe Doherty*, 61 *FORDHAM L. REV.*, 317, 322-25 (1992).

99. The Children Act of 1908, 8 *Edw. 7, c. 67* (Ir.).

100. The bill should be proposed this year. Telephone Interview with Paul Murray, Principal Officer in the Law Division of Ireland's Justice Department (Oct. 27, 1994) [hereinafter Interview with Murray]. Mr. Murray researches and prepares the proposals that are presented to the government. *Id.* When the bill is proposed, it must be approved by the Dail and Seanad Eireann, the Houses of Irish Parliament, and signed by the President. JEAN DANE & PHILIP A. THOMAS, *HOW TO USE A LAW LIBRARY* 176 (2d ed. 1987). It will then become an Act when signed by the president, unless otherwise specified. *Id.*

101. Ireland separated from the United Kingdom in 1949. Ireland Act of 1949, 12, 13, & 14 *Geo. 6, c 41* (Ir.).

102. Eoin O'Sullivan, a member of the Streetwise National Coalition, called the juvenile justice system archaic in a letter to the editor of *The Irish Times*. *Juvenile Crime*, *THE IRISH TIMES*, Feb. 3, 1993, at 11. The Coalition represents all of the voluntary bodies dealing with homeless people in the Republic of Ireland. Padraig Yeates, *Dail Youth Crime Report Criticized*, *THE IRISH TIMES*, Oct 5, 1992, at 6. Billy Kelleher, Fianna Fail candidate for Cork North Central, commented on the outrageous legal provisions addressing juvenile crime, noting that they are rooted in the thinking of the 19th century. Dick Hogan, *Lynch Urges Cork Voters to Get Promises in Writing*, *THE IRISH TIMES*, Nov. 5, 1994, at 4.

103. PAUL O'MAHONEY, *CRIME AND PUNISHMENT IN IRELAND* 28-31 (1993).

104. The Children Act of 1908, 8 *Edw. 7, c. 67, s. 131* (Ir.). Under the Act, a young person was defined as a person 14 years of age or older but under the age of 16 years. Section 28 of the Children's Act of 1941, altered the definition of "young person" to "a person who in the opinion of the court before whom he is brought is of the age of fifteen years and under the age of seventeen years." The new Juvenile Justice Bill will define child as any person under the age of 18. Interview with Murray, *supra* note 100.

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character that he cannot be detained in a place of detention provided under this . . . Act, or that he is of so depraved a character that he is not fit to be detained.¹⁰⁵

The number of males under age twenty-one sent to prison is on the rise, as compared to the number of juveniles sent to detention.¹⁰⁶ According to Ireland's Prison Rules, juvenile offenders¹⁰⁷ sentenced to more than one month "shall be located in a prison in which accommodation is set apart for juvenile offenders."¹⁰⁸ Those sentenced for less than one month "shall be retained in the prison to which he has been committed, but be lodged in a part of the prison where he will be completely separated from the adult prisoners."¹⁰⁹ As with the violent offenders in the United States, those juveniles who are certified as "depraved" or "unruly" are given no attention in the proposed bill and will continue to serve prison sentences with no attention to their needs.

Presently in Ireland, adults are committed to prison, whereas juveniles are supposed to be sent to detention centers.¹¹⁰ The Legislature will not equate detention of juveniles with imprisonment, even though there is a deprivation of liberty in both cases.¹¹¹ The juvenile prisons are supposed to segregate young offenders from adults, yet the following dilemma results: A fifteen-year-old is committed to

105. The Children Act of 1908, 8 Edw. 7, c. 67, s. 102 (Ir.). Two fifteen-year-old females were sentenced to the adult prison at Mountjoy when the High Court ruled that there was ample evidence that "they were of so immoral and vicious a character that they were not fit to be detained in a place of detention provided under the Children Act." *J.G. and D.McD. v. The Governor of Mountjoy Prison*, 1991 I.R. 373 (Ir. High Ct. 1991) (Ir.). In *J.G.*'s case, there was evidence of 14 convictions, mainly for larceny and assault. *Id.* In *D.McD.*'s case, there was evidence of larceny and assault, as well as burglary and malicious damage. *Id.* One wonders how the High Court would view Robert Sandifer with 23 felonies by age 11. See McCormick & Annin, *supra* note 1 and accompanying text.

106. O'MAHONEY, *supra* note 103, at 100.

107. Rule 222 of the Rules for the Government of Prisons states that "[e]very prisoner under the age of 17 shall be classed as a juvenile offender." R. Gov't Prisons 222 (1947) (Ir.).

108. *Id.* at 223. Juveniles serving long sentences must be transferred to adult prisons after 10 years. Interview with Murray, *supra* note 100. Juveniles given long sentences are more likely to be committed to imprisonment, rather than detention. See also *supra* note 105 and accompanying text.

109. R. Gov't Prisons 223 (1947) (Ir.). Rule 224 provides: "A juvenile offender shall take exercise, receive school instruction, and be seated in chapel, apart from and, if possible, out of sight of adult prisoners, with whom he shall not, on any occasion, be permitted to come into contact." *Id.* Concerning education of offenders, juveniles under the age of 16 are to receive a full education in preparation for reintegration into society. Interview with Murray, *supra* note 100.

110. O'MAHONEY, *supra* note 103, at 88-92. The adult prisons are as follows: Mountjoy, Limerick, Portlaoise, Cork, The Training Unit, Shelton Abbey, Loughan House, Arbour Hill, Spike Island. The juvenile prisons are Shanganagh Castle and Wheatfield. *Id.* Wheatfield was intended to replace St. Patrick's, but because of overcrowding, the prison is still in use and being refurbished. *Id.* at 91. This discussion is only concerned with male offenders, unless otherwise noted.

111. *The State v. Connellan*, 1985 I.R. 597 (Ir. S.C. 1985) (Ir.).

Mountjoy, an adult prison, because the Health Board does not deal with unruly juvenile offenders¹¹² and he is too young to be sent to the prisons established to segregate young offenders.¹¹³ Even if the offender were sixteen years old, he still may be placed with adults because of prison overcrowding. Wheatfield, the newest facility designed for juvenile accommodation,¹¹⁴ detains a high proportion of adult offenders, including sex offenders.¹¹⁵

The misplacement of juveniles is a serious problem in Ireland's juvenile justice system. In one case, a nine-year-old boy was classified as a criminal in order to find suitable custodial facilities for him.¹¹⁶ In another case, a fifteen-year-old boy convicted of rape was released because there was no available custodial place for him.¹¹⁷ Moreover, the health boards cannot handle disruptive juveniles who need placement until they are prosecuted.¹¹⁸ Further, there are not enough secured places of accommodation for the number of remanded prisoners, and thus they are being sent to St. Michael's,¹¹⁹ Ireland's main assessment center, although it is not a secure unit for serious offenders.¹²⁰ The remanded juveniles are also being sent to special schools designed for young offenders already assessed by the court or board of health.¹²¹

112. See *infra* note 118 and accompanying text.

113. Pdraig Yeates, *Introducing Our Young Offenders to the Ways of Hardened Criminals: Despite the Child Care Act We Still Send 15-Year-Olds to Prison*, THE IRISH TIMES, June 24, 1994, at 12 [hereinafter *Ways of Hardened Criminals*].

114. O'MAHONEY, *supra* note 103, at 91.

115. Jim Cusack, *Young Offenders Are "Lumped Into" Adult Institutions*, THE IRISH TIMES, May 28, 1994, at 3. It is important to note that Ireland condemns "homosexuality and other unnatural sexual relationships." See J.A. Andrews, *The European Jurisprudence of Human Rights*, 43 MD. L. REV. 463, 505 (1984) Naturally, the placement of sex offenders with young men would be of serious concern.

116. "Criminal" Status for Boy (9), THE IRISH TIMES, Nov. 18, 1993, at 8.

117. Paul Majendie, *Release of Teenage Rapist Sparks Fury in Ireland*, The Reuter Library Report, July 18, 1991, available in LEXIS, Nexis Library.

118. According to the Child Care Act of 1991, the Health Boards are to provide children in their care with suitable accommodation and care. See *infra* note 158 and accompanying text. Patrick MacEntee SC, of the Eastern Health Board, stated that when the Board has disruptive boys in its care, it cannot provide suitable places of detention because under the criminal justice system, the institutions are licensed by the Department of Justice and run by the Department of Education. *EHB Hopes to Have Hostel Plan by September*, THE IRISH TIMES, July 30, 1994, at 4.

119. St. Michael's is one of the two centers that make up Finglas Children's Centres in Dublin. The other is St. Laurence's Special School. Pdraig Yeates, *Order to Withdraw from Finglas Children's Centres*, THE IRISH TIMES, Jan. 24, 1994, at 2 [hereinafter *Finglas*].

120. *Id.* The main purpose of St. Michael's is to help the judiciary decide the best provisions for youths. *Id.* It is created to accommodate only 20 juveniles, but it has been holding remand prisoners because there are no other secure accommodations. *Id.* The De La Salle Brothers, who have managed the school for twenty years, have quit because they feel that the misplacing of remanded offenders and those to be assessed is unjust for both. *Id.*

121. Oberstown and Trinity House, two of the secured special schools for those already assessed,

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Additionally, there exists a lack of child care services for children under age twelve who need to be placed in a secured facility as they await trial.¹²² Furthermore, although the number of teenage female criminals is on the rise, there are presently only eight centers where they can be detained.¹²³ The system is not working as it was intended because it is overloaded. As a result, juveniles are placed haphazardly without regard to their best interest or the nature of their offenses.

B. *The New Bill*

The problem of misplaced juveniles should be alleviated when the archaic Children Act of 1908 is repealed and replaced with the Juvenile Justice Bill.¹²⁴ The rationale behind the Juvenile Justice Bill is not to solve the problem of juvenile delinquency directly, but to provide the statutory framework to deal with every aspect of juvenile justice from the moment a crime is detected.¹²⁵ One of the main goals of the bill is to ensure the detention of only those juveniles who should be detained.¹²⁶ To achieve this goal, there will be more community-based sanctions and alternatives to punishment for first-time or non-violent offenders.¹²⁷ The proposed bill will also contain provisions for the role of the family,¹²⁸ including making parents accountable for the actions of their children, as provided for in the English system.¹²⁹

1. *Community-Based Sanctions.*—Unlike the Criminal Justice Act of England, the proposed Juvenile Justice Bill will concentrate on giving community-based sanctions to first-time offenders and juveniles who have a crime record for minor offenses.¹³⁰ Dealing with the offender within the community is a very sensible step in reducing juvenile delinquency.

are being filled with remanded offenders. *Ways of Hardened Criminals, supra* note 113, at 12. St. Laurence's Special School has further problems because it is not a secured unit. It is supposed to accommodate a maximum of 55 youths referred by the courts and health boards. *Finglas, supra* note 119, at 2.

122. A nine-year-old child was sent to the Oberstown special school, although most of the other children at the school are three or four years older. *Ways of Hardened Criminals, supra* note 113, at 12. Normally, such children are sent to industrial schools, but the nine-year-old was rejected by St. Joseph's because the school was not a secured facility. *Id.*

123. Liam Kelly, *Sister Gang Grab Post Office Cash*, THE IRISH TIMES, Aug. 12, 1994, at 2.

124. Interview with Murray, *supra* note 100.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. See *infra* part IV.B.3.

130. Interview with Murray, *supra* note 100. Hopefully, the needs of children under 12 will be included in these proposals. See *supra* note 122 and accompanying text.

Instead of spending time in a detention center away from their families or other positive influences in their lives, the young offenders will learn to become responsible citizens in their communities, where they may return after serving their time. The type of community sanctions to be imposed has not been decided because the Juvenile Justice Bill has not yet been presented for debate.¹³¹

One type of community sanction under consideration is the establishment of day centers for youths, apparently similar to the scheme England has used.¹³² Day centers would provide supervision without requiring the juveniles to leave their families.¹³³ Other proposals include the use of special foster families and probation hostels.¹³⁴ Whatever the ultimate sanctions are, hopefully they will keep more offenders out of special schools, and even more importantly, out of the adult prisons.

With more emphasis placed on community-based sanctions, youths who truly need placement in special schools will have this option. If the bill effectively ensures that first-time offenders and those with minor criminal records are kept within the community, additional space will become available in the detention centers so that no juvenile should be sent to the adult system arbitrarily.

It is uncertain whether the community-based sanctions will resolve the problem of the inappropriate mix of adults with juveniles sentenced to imprisonment. Any improvement of this situation is dependent upon whether section 102 of the Children Act, which allows prison sentences to be imposed on young persons certified as too unruly or depraved for detention, remains in force.¹³⁵ If section 102 is not repealed, the young offenders will continue to serve time in adult prisons because of being classified as too immoral for detention.¹³⁶ Conversely, if this section

131. Interview with Murray, *supra* note 100.

132. See *supra* note 70 and accompanying text. Since England has become dissatisfied with its current system of juvenile justice, perhaps it should consider examining how effectively the programs are being run. The problem may lie not with the concept, but its management.

133. Interview with Murray, *supra* note 100. The Dail Committee on Crime first made this proposal in 1992 after conducting a comprehensive study of juvenile crime. Paul O'Neill, *Radical Moves on Crime Urged; The Dail Committee on Crime Has Recommended Urgent Legislation to Tackle the Problem of Young Offenders*, THE IRISH TIMES, June 13, 1992, at 2 [hereinafter *Dail Committee*].

134. *Dail Committee*, *supra* note 133, at 2.

135. The Children Act of 1908, 8 Edw. 7, c. 67, s. 102 (Ir.).

136. According to the Rules for the Government of Prisons, young offenders sentenced to imprisonment can only be placed in the adult prison for one month at the most and then must be completely segregated from the adults. See R. Gov't Prisons 224 (1947) (Ir.). In *J.G. & D.McD. v. The Governor of Mountjoy Prison*, the female offenders claimed they were being unlawfully detained according to The Constitution of Ireland. See IR. CONST., art 40; *J.G. & D.McD.*, 1991 I.R.

is repealed and young persons are no longer sentenced to imprisonment, they should not have to be placed into the adult system because of overcrowding. The community-based measures should "free up" space in the detention centers because other less serious offenders will be kept out of detention.

2. *Alternatives to Punishment.*—A potential alternative to punishment being strongly considered in the proposed bill is one used by the local police, although not an official part of the current statutory framework. This alternative is the juvenile liaison officer system.¹³⁷ This system is a formal scheme run by the Garda Síochána to divert youngsters from crime.¹³⁸ The scheme involves a liaison between the juvenile, the parents, and the Junior Liaison Officers of the Garda.¹³⁹ Juveniles who have admitted some delinquent act are cautioned, but the police intervention is not recorded as a criminal conviction.¹⁴⁰

The published figures indicate that as many as ninety percent of those cautioned avoid later criminal convictions. However, some criticize the scheme, claiming that the liaison system focuses primarily on children who have committed very minor acts of delinquency.¹⁴¹ Those who commit more serious offenses and who do not have a support system, will be processed in the criminal system and not benefit from the alternative punishment system.¹⁴² If the system is put into place by statute, perhaps the Junior Liaison Officers will play a bigger role in the supervision of those juveniles who do not have the support of parents or guardians.

Another alternative to traditional punishment involves the use of regional special schools, with a strong emphasis on outdoor pursuits.¹⁴³ There have been other suggestions, such as the use of "wilderness hikes"¹⁴⁴ and sail-training ships for young offenders.¹⁴⁵ Outdoor

373 (Ir. H. Ct. 1991) (Ir.). The High Court ruled that the Governor of Mountjoy Prison did not violate the female offenders because he made special provisions for their segregation. *Mountjoy Prison*, 1991 I.R. 373 (Ir. H. Ct. 1991) (Ir.). Young offenders who are detained in an adult prison, but not properly segregated, may have a valid claim that their constitutional rights are being violated.

137. Interview with Murray, *supra* note 100.

138. *Id.* The scheme deals with a sizeable number of girls. O'MAHONEY, *supra* note 103, at 83.

139. O'MAHONEY, *supra* note 103, at 82.

140. *Id.*

141. *Id.* at 84.

142. *Id.*

143. *Dail Committee*, *supra* note 133, at 2.

144. Interview with Murray, *supra* note 100.

145. *Dail Committee*, *supra* note 133, at 2. Tom O'Malley, law professor at Galway, criticized the use of sailing ships as "mak[ing] the mind boggle." Pdraig Yeates, *Dail Youth Crime Report*

programs may instill discipline and a sense of accomplishment. If these measures are implemented, it would be beneficial to compare Ireland's results with the U.S. alternative measures to punishment.

3. *The Role of the Family.*—Although the provisions of the bill are not in place, the bill will certainly address the role of the family.¹⁴⁶ The bill will probably make parents responsible for the actions of their children, following England's approach.¹⁴⁷ The Government recognizes that there are dysfunctional families, but it is not clear yet how the bill will address the dysfunction.¹⁴⁸ The Minister has suggested that once the Juvenile Justice Bill becomes law, the courts will then interpret the legislation on a case-by-case basis,¹⁴⁹ taking into account the particular circumstances of each family. Because such an approach could lead to inconsistent results, it seems more appropriate for other departments, such as the Department of Health and Education, to handle the role of the family in juvenile delinquency.

4. *Potential Offenders Ignored.*—The Juvenile Justice Bill will not address the potential offender because other departments, mainly the Department of Education, are supposed to handle juveniles who exhibit preliminary signs of delinquency.¹⁵⁰ The three political parties of Ireland's government gave a detailed policy agreement for 1995, in part promising to "streamline the process of early intervention" in juvenile justice.¹⁵¹ The Department of Justice should enact legislation to ensure that all departments dealing with young persons coordinate their efforts to prevent juveniles from committing their first delinquent act.¹⁵² Since

Criticized, THE IRISH TIMES, Oct. 5, 1992, at 6 [hereinafter *Crime Report*].

146. Interview with Murray, *supra* note 100. The family includes not just parents but the extended family. *Id.* Apparently, the traditional two-parent home is also disappearing in Ireland.

147. The Minister for Justice, Geoghegan-Quinn, seems to be angry at parents who fail to take responsibility for their children. Michael Finlan, *Juvenile Justice Law Will Tackle Parental Roles*, THE IRISH TIMES, Nov. 7, 1993, at 3. Mr. Tom O'Malley has questioned this approach. *Crime Report*, *supra* note 145, at 6.

148. Interview with Murray, *supra* note 100.

149. Finlan, *supra* note 147, at 3.

150. Interview with Murray, *supra* note 100. Colm Brophy, chairman of the Fine Young Gael party's youth wing, suggested that "the links between educational difficulties, truancy and delinquency were undeniable." Deaglan De Breadun, *Reform of Law on Juvenile Crime Urged*, THE IRISH TIMES, Aug. 28, 1993, at 3.

151. See *A Government of Renewal*, *supra* note 9, at 6.

152. The Dail Committee on Crime has suggested that the Department of Justice, the Garda, the Director of Public Prosecutions and the Probation and Welfare Services be obligated to assign suitably trained personnel who will deal exclusively with policy and decision-making related to young people. *Dail Committee*, *supra* note 133, at 2.

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the whole juvenile justice system is going to be revised, it is imperative to consider prevention in the statutory framework.¹⁵³

First, there are numerous at-risk youth who can be identified at bed and breakfast facilities where homeless children and others who need emergency accommodations are placed by the health boards.¹⁵⁴ Furthermore, at-risk youth can also be identified through school misconduct.¹⁵⁵ Without preventative measures in place, these easily identifiable, at risk children will become part of an already overloaded juvenile justice system. Moreover, dealing with young offenders is costly.¹⁵⁶ A suggested reform to keep juveniles out of the costly criminal system is to incorporate the juvenile liaison scheme and preventative measures into the statutory framework.

C. *Pushing the Bill Forward*

Ireland has been anxiously awaiting an update of the juvenile justice system for several years now.¹⁵⁷ There must be a strong push for the new Juvenile Justice Bill to be enacted and implemented in order to prevent the repeat of what has occurred with the Child Care Act of 1991.¹⁵⁸ Although the government has promised to have the entire Child Care Act implemented by the end of 1995,¹⁵⁹ only seventeen of

153. The Minister for Justice, Mrs. Geoghegan-Quinn, has stressed the need for preventative measures. Jim Cusack, *Pounds 130,000 Promised to Community Projects; Aim Is to Combat Rising Youth Crime in Limerick*, THE IRISH TIMES, Mar. 5, 1994, at 5.

154. See *Ways of Hardened Criminals*, *supra* note 113, at 12.

155. *Id.* Father McVerry, states that in Ballymun, there are 25 children every night in bed and breakfasts without care or supervision. O'Halloran, *supra* note 8, at 4.

156. Two hundred eleven children attended special schools for young offenders in the 1992-93 school year, costing a total of £ 6,827,000. Paul Cullen, *Lusk Inmate Costs Pounds 68,156 Per Year*, THE IRISH TIMES, Sept. 9, 1994, at 11. Trinity House, with special staffing and security needs, costs nearly £ 70,000 annually for each of the 29 pupils attending. *Id.* Other available statistics are as follows: the cost per pupil at Finglas' Children's Centre, with sixty-five children enrolled, was £ 25,620; the cost of pupils at St. Joseph's, having seventy-five enrolled, was £ 21,845. *Id.* According to the figures supplied by the Department of Education to the National Education Convention in 1993, the costs of educating children in primary school averages £ 1,200 per pupil; at the second level the cost is £ 1,925; at the third level, the cost rises to £ 3,500 (the figures do not include capital costs). *Id.*

157. The Juvenile Justice Bill has been promised since at least 1977. *Juvenile Crime*, *supra* note 102, at 11.

158. There were 17 years of debate before President Mary Robinson finally signed the Child Care Act. Eoin O'Sullivan, *Sentencing for Rape*, THE IRISH TIMES, Mar. 29, 1993, at 13. The purpose of the Act is to "update the law in relation to the care of children who have been assaulted, ill-treated, neglected or sexually abused or who are at risk." *Id.*

159. Audrey Magee, *Dispute Delays New Child Care Act; The Eastern Health Board Says the Industrial Action by Social Workers over the Child Care Act Is in Breach of Their Contracts*, THE IRISH TIMES, March 2, 1994, at 5. Only one of the sections implemented assists children in need. O'Sullivan, *supra* note 158, at 13.

the seventy-nine sections have been implemented so far.¹⁶⁰ There are several compelling reasons why Ireland should not allow the same thing to occur with the Juvenile Justice Bill.

1. *Violation of Children's Rights.*—Ireland follows many of the standards of the international community with regard to children's rights. Namely, individuals who have committed serious crimes as juveniles will not be executed because Ireland abolished the death penalty in 1990.¹⁶¹ Moreover, Ireland has ratified the International Covenant on Civil and Political Rights and has signed the Convention on the Rights of the Child.¹⁶² It has also participated in the World Summit for Children held on September 29-30, 1990.¹⁶³

Even so, Ireland still does not entirely protect children's rights as defined by the international community. Ireland continues to allow juveniles to be placed in adult prisons. It assigns juveniles to special schools and detention without regard to their best interests, and it neglects youths who are at risk of becoming juvenile offenders. In fact, when the Prison Officers' Association became aware of young offenders being placed into the adult prison system because of lack of adequate detention facilities, it reported the issue to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment, resulting in the Committee's investigation of all places of detention in Ireland.¹⁶⁴

Ireland does not seem to be intentionally violating these human rights issues. The government stated it was committed to bringing human rights practices into conformity with the International Convention on Civil and Political Rights.¹⁶⁵ Ireland therefore knows there are serious problems with the juvenile justice system and plans to overhaul the system. Just as the United States adopted a rehabilitative approach for

160. O'Sullivan, *supra* note 158, at 13.

161. See HUMANA, *supra* note 77, at 155.

162. See ICPR, *supra* note 28; U.N. Convention on the Rights of the Child, *supra* note 28. The Convention on the Rights of the Child incorporates the rights given by the ICCPR, and among other rights, it "requires the establishment of a minimum age below which children should be presumed not to have the capacity to infringe the penal law." U.N. Convention on the Rights of the Child, *supra* note 28, art. 40(3)(a). The Dail Committee on Crime, after conducting one of Ireland's most comprehensive inquiries into juvenile crime, has urged the Government to raise the age of criminal responsibility from 7 to 12 in the new crime bill. *Dail Committee*, *supra* note 133, at 2.

163. See *supra* note 65 and accompanying text.

164. Cusack, *supra* note 115, at 3. See the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Nov. 26, 1987, 27 I.L.M. 1152 (1988). There is no report yet of the results of the visit.

165. Colm Boland, *AG Assures UN Body on Human Rights*, THE IRISH TIMES, July 13, 1993 at 1.

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some and “just desserts” for others in the Crime Law,¹⁶⁶ Ireland has followed the same approach in its proposal for the Juvenile Justice Bill. As previously noted, there will be no provisions for offenders those who are categorized as “depraved” or “unruly.” Even so, the reforms that are planned will have a beneficial effect on the juvenile justice system and need to be implemented as soon as possible.

2. *Increase in Drug and Gang-Related Problems.*—Because juveniles rarely commit murder in Ireland,¹⁶⁷ stories such as Robert Sandifer’s¹⁶⁸ do not exist. A foreboding increase in the number of crimes committed by juveniles to support their drug habits¹⁶⁹ does, however, signify another reason for the Juvenile Justice Bill to move forward. Although Ireland has laws to regulate the treatment of drug addicts,¹⁷⁰ opiate addiction has been a serious problem in Ireland.¹⁷¹ Not surprisingly, the rise in Ireland’s crime rate during the 1980s has been attributed to opiate addiction.¹⁷² In response, Ireland enacted legislation in 1984 which doubled the maximum possible sentence for selling illegal drugs.¹⁷³ Even with the threat of increased prison sentences, drug-dealers are taking root in the more depressed areas of Dublin.¹⁷⁴ The Garda have been seizing cannabis off the southern coast, but there has been criticism that the police should instead be concentrating on seizing heroine to combat the increasing drug problem.¹⁷⁵ With drug dealers beginning to infiltrate neighborhoods, Ireland will find itself having to handle more violent crime. Currently, Ireland is ill-prepared to handle an increase in violent crime.¹⁷⁶ As a result, more juveniles are going to be exposed to drugs and violence associated with their distribution.

166. See *supra* note 33 and accompanying text.

167. Interview with Murray, *supra* note 100.

168. See *supra* notes 1-3 and accompanying text.

169. Interview with Murray, *supra* note 100.

170. *Id.*

171. Mario Garavelli, *Drug Abuse in Italy and Europe in a Comparative Context*, 4 *IND. INT’L & COMP. L. REV.* 277 (1994). Opium is the only drug whose personal use is officially prohibited. *Id.*

172. O’MAHONEY, *supra* note 103, at 66.

173. *Id.* at 211.

174. Dermot Kelly & Michael O’Regan, *Dublin City Communities Intimidated by Drug Dealers*, *Says Gregory*, *THE IRISH TIMES*, Oct. 14, 1993, at 6.

175. Peter Thompson, *Council Critical of Efforts to Cut Crime in Dublin*, *THE IRISH TIMES*, July 27, 1994, at 5.

176. Kelly & O’Regan, *supra* note 174, at 6.

Also frightening is the formation of youth gangs who are terrorizing the elderly and causing problems in large housing estates.¹⁷⁷ These gangs are fledglings compared to the gangs of the United States. However, now that more drugs are being introduced to Irish communities, it is inevitable that there will be an escalation of violent gang-related crime. It is true that the Garda has now been given more power to deal with juveniles,¹⁷⁸ yet there needs to be a support structure in the community for juvenile offenders so that the drug dealers cannot take control of Ireland's youth.

3. *The Study of Mount Joy Prisoners and Implications for Juvenile Offenders.*—In June and July of 1986, a study of ninety-five prisoners at Mountjoy provided some interesting findings related to juvenile offenders.¹⁷⁹ A large majority of the prisoners left school before the legal age at which they were permitted to do so.¹⁸⁰ As such, very few were prepared to enter the work force because they lacked the necessary skills to be employed in the competitive job market.¹⁸¹ Most telling was the early start of the typical criminal career of the surveyed prisoners.¹⁸² A great many had served sentences of detention at St. Patrick's.¹⁸³ The findings of this study confirm what is generally known: Ireland has a high rate of recidivism among its youthful offenders.¹⁸⁴ There is obviously a great need for juvenile justice reform without further delay.

For Ireland to maintain its relatively low crime rate and, more importantly, the safety and welfare of its children, Ireland needs to follow through on its promise to rehaul the juvenile justice system.

177. Paul O' Neill, *New Garda Powers on Youth Gangs Considered*, THE IRISH TIMES, Sept. 9, 1992, at 3; see Interview with Murray, *supra* note 100.

178. Thompson, *supra* note 175, at 6.

179. Mountjoy prisoners were chosen because, among other things, it houses over one quarter of Ireland's total prison population and is the main committal and remand prison. O'MAHONEY, *supra* note 103 at 119-20. It houses all types of male prisoners recognized by the system, excluding members of subversive organizations. *Id.* For a discussion of female prisoners, see *id.* at 198-203.

180. *Id.* at 148. Specifically 57% left school before the age of 15.

181. *Id.* at 148-49.

182. Eighty percent of the sample had been convicted while still a teenager and 66% had been imprisoned while a teenager. O'MAHONEY, *supra* note 103, at 213.

183. *Id.*

184. In making its recommendations for juvenile justice reform, the Dail Crime Committee noted the high recidivism rate at the secured units. *Dail Committee*, *supra* note 133, at 2. John Harding and Bryan Gibson of England stated that there is evidence to show the reconviction rate for twelve to sixteen-year-olds leaving the secured training center in Dublin is 94%. See Harding & Gibson, *supra* note 94 and accompanying text.

V. Comparison of Three Distinct Juvenile Systems

The United States, England, and Ireland, all of whom share very similar cultures, also share in the problem of juvenile delinquency. The attention each country devotes to juvenile offenders in its current legislative effort reflects each country's position.

First, the United States offers hope to juveniles by appropriating funds to states for crime prevention and alternative means of punishment in the Crime Law.¹⁸⁵ However, the approach to juvenile justice is not entirely rehabilitative. The funding of alternative means of punishment depends upon assurance that violent juvenile offenders will serve substantial prison sentences. This approach follows the "just desserts" model.¹⁸⁶

Moreover, juveniles in the United States with the status of violent offenders will receive their "just desserts" and new adult label. Besides the continued imposition of the death penalty, juveniles will serve more prison time for juveniles in the adult system and any meaningful rehabilitation will be eliminated. It is doubtful this class of juveniles stand much chance of becoming productive members of society without rehabilitation designed for their age group.

Unfortunately, the Republicans are promoting the "just desserts" treatment of juvenile offenders in pushing through legislation that cuts crime prevention programs.¹⁸⁷ Republicans wrongly believe the cuts will save money. Crime prevention is essential. There may be some programs that eventually prove ineffective, but there will also be some that work. It is an unavoidable risk, and those who predict total failure should be ready to supply a method that will conclusively reduce the rate of juvenile crime. "Taking Back Our Streets" is not the answer.

In the recently passed Criminal Justice Law of 1994, England devotes very little attention to juvenile justice, indicating mainly that juvenile offenders should be sent away from their communities, detained longer, and be made criminally responsible at a younger age for more adult crimes.¹⁸⁸ Unlike the United States and Ireland, England's legislation concentrates strictly on punishment. This abrupt turnaround from the past welfare or rehabilitative approach to the treatment of juvenile offenders is too extreme when other measures within the

185. See *supra* note 5 and accompanying text.

186. See *supra* notes 32-34 and accompanying text.

187. See *supra* note 44-49 and accompanying text.

188. See *supra* notes 76-79 and accompanying text.

community have not been adequately enforced. Furthermore, this approach violates children's rights.

Obviously, when juvenile crime becomes more pervasive and violent, changes need to be made, but the changes should take into account consequences that may occur. For example, the most controversial change in England's juvenile justice system, the automatic placement of juvenile offenders in secured training units scattered throughout the country, shows little forethought. The enactment of this provision was fought at every turn, and rightfully so. By not focusing on local intervention, England will eventually be confronted with the same problems in juvenile justice that Ireland is confronting: overcrowded facilities, misplaced offenders, a high rate of recidivism, and increased costs of dealing with juvenile offenders.

England's frustration with persistent juvenile offenders is understandable, but the problem of juvenile delinquency is too complex to be solved in a few strict provisions of law. The fact that England has taken this position is a strong indication of where the future of juvenile justice lies: The best interests of the child will be ignored, unless the proposed study between the United States and Britain has some impact for reform.

Ireland's plan to enact a comprehensive Juvenile Justice Bill to deal with juvenile offenders in their first brush with the law has merit for two reasons. First, repealing the hundred year-old Children Act and replacing it with entirely new legislation will benefit many juveniles who are being wronged by the outdated system.¹⁸⁹ Also, confronting juvenile delinquency in the community is essential to reduce the number of offenders entering the juvenile justice system.

There are, however, two serious flaws with the proposal for the Juvenile Justice Bill. First, there are no set statutory regulations planned to deal with potential offenders, although the Government has promised to require coordination among the various departments that deal with youth.¹⁹⁰ One of the ultimate goals of the proposed legislation is to ensure that Ireland detain only juveniles who should be detained. This goal presupposes that all other efforts have failed to draw juveniles away from serious crime. Yet, without preventative measures implemented, juveniles' first brush with crime could easily be serious rather than minor because of the following factors: (1) the increase in drug-related crimes; (2) the emergence of gangs; and (3) the number of homeless youths

189. See Interview with Murray, *supra* note 100.

190. See *supra* part IV.B.4.

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running loose in the bed and breakfast hostels.¹⁹¹ Thus, first-time serious offenders could be sentenced without having received the same opportunities as those with minor criminal records, the same criticism given to the current juvenile liaison scheme.

The second flaw is the amount of time it is taking to get the Juvenile Justice Bill proposed, enacted, and implemented. Promises means nothing. Until Ireland acts, it continues to operate under a system that is indisputably inadequate to meet the needs of juvenile justice in modern society.

VI. Conclusion

Since young people are the future of every country, the United States, England, and Ireland would do well to communicate to each other the successes and failures of their new legislation. These three countries would also do well to heed the warning given by Justice Wright of the D.C. Circuit: "We cannot write these children off forever . . . [t]he kind of society we have in years to come will in no small measure depend on our treatment of them now."¹⁹²

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191. See *supra* parts IV.B.4, IV.C.2.

192. U.S. v. Bland, 472 F.2d 1329, 1349 (D.C. Cir. 1972) (Wright, J. dissenting), *cert. denied*, 412 U.S. 909 (1974).

