SENTENCING AND THE PREVENTION OF YOUTH CRIME: A MULTI-DISCIPLINARY, MULTI-INSTITUTIONAL APPROACH

SANJEEV S. ANAND

A thesis submitted to the Faculty of Graduate Studies in
partial fulfillment of the requirements
for the degree of
Doctor of Jurisprudence

Graduate Programme in Law
York University
Toronto, Ontario

July 1999

Sentencing and the Prevention of Youth Crime: A Multi-Disciplinary, Multi-Institutional Approach

by Sanjeev Anand

a dissertation submitted to the Faculty of Graduate Studies of York University in partial fulfillment of the requirements for the degree of

DOCTOR OF JURISPRUDENCE

ABSTRACT

This dissertation argues that effective youth crime prevention requires the reform of government youth justice policy. In order to determine which policies need reforming, what form they should take, and how they should be implemented, an interdisciplinary approach is taken.

Chapter One is a literature review of the material available on young offender sentencing and crime prevention. This review provides the reader with a context for the thesis and allows him/her to appreciate not only what has been done in the field but specifically what contribution this dissertation makes to the subject area.

Chapter Two presents an historical account of changes in juvenile justice from its origins in the common law about 1300 to the present day. This historical analysis reveals a number of facts pertinent to modern day reformers, such as which forces have repeatedly influenced reform and are therefore likely to do so again, and which factors have become more prominent in the reform process of late.

Chapter Three reviews the latest research findings concerning youth crime prevention programs and philosophies that operate in or focus on the criminal justice system, the community, the family, the school, and the labor market. This knowledge is then used to assess the wisdom of the recent government initiatives in the youth crime prevention area and to ascertain what steps need to be taken to increase youth crime prevention effectiveness and knowledge. An important part of this chapter deals with an empirical analysis of different sentencing policies for young offenders.

In Chapter Four, one of the key topics addressed is the appropriate sentencing policy for young offenders and how it can be implemented. Through an analysis of the statutory provisions and caselaw under Canada's current juvenile justice legislative regime, the appropriateness of applying certain sentencing principles to youths is re-assessed with a view to determining whether any of them can be supported by the legislation's statutory framework.

Finally, this dissertation ends with a summary of specific government recommendations dealing with young offender sentencing and youth crime prevention. The proposals made deal with both legislative and broader youth justice policy reform because truly effective youth crime prevention cannot be achieved through an exclusive focus on youth crime prevention programs within the criminal justice system and legislative amendment.

The key recommendations made in this dissertation address the fact that current government youth justice policy is not based on empirical evidence. Instead, Canadian juvenile justice policy is largely shaped by interest group lobbying and public opinion, much of which is uninformed. In fact, this dissertation reveals that, to date, relatively little is known about which programs truly work at preventing youth crime. As a result, effective youth crime prevention programs and policies have not been implemented.

ACKNOWLEDGEMENTS

Although the credit for writing a dissertation is attributed to a single person, the reality is that its production is a collaborative effort involving many individuals. Indeed, several people have contributed in various ways to the work contained in the pages that follow.

First, I would like to thank the members of my supervisory committee. Anyone familiar with the reputations and records of Professors Alan Young, Douglas Hay, and Jamie Cameron of Osgoode Hall Law School know that that they are scholars of the highest caliber. But as many graduate students can attest, great scholars do not always make great supervisors. What made the members of my supervisory committee so special was not simply their expertise, but their patience, humanity, and commitment to teaching. All three of them found time in their busy schedules to consult with me on the progress of my thesis and, when I had questions or concerns, they were quick to respond in a timely and thorough fashion. In particular, I wish to thank my supervisor Professor Alan Young for being a caring and helpful mentor.

Individuals other than those in my supervisory committee also had a significant impact on this dissertation. Specifically, I would like to thank Professor Jim Robb of the University of Alberta's Faculty of Law, Professor Sherifa Elkhadem of Osgoode Hall Law School, Professor Susan Houston of York University's Department of History, Dean Kent Roach of the University of Saskatchewan's College of Law, Allison Cunningham of the London Family Court Clinic, and Jack Watson, Q.C., Appellate Counsel with the Alberta Department of Justice. I would also like to express

my sincere gratitude to the selection committees for the Harley D. Hallett Graduate Scholarship, the Dean's Academic Excellence Scholarship, and the Osgoode Society Book Prize in Legal History.

My family has been invaluable to me throughout the writing process. I would like to thank my sister, Anju, for her many counselling sessions and my father, Virinder, for his unwavering confidence in my abilities. But in the moments when I needed courage, my thoughts turned to my mother, Savinder. When I began my doctoral work, my mother was finishing her chemotherapy. I will always remember the bouts of extreme nausea, hair loss, and fatigue that she endured during her cancer treatments. It is her bravery and resolve that inspired me in my moments of greatest doubt.

The person who most influenced this dissertation, however, has not yet been mentioned. Were it not for my wife, Nicholette, this thesis would never have been written. She unselfishly agreed to sell our house and move from the green pastures of Edmonton to the concrete jungles of Toronto so that I could pursue my dream of obtaining a doctorate in law. When we arrived in Toronto, Nicholette provided the financial and emotional support needed for me to accomplish this goal. Moreover, her editorial assistance enhanced the thesis immeasurably. But more important than her support and assistance was the example she set. It was her tireless pursuit of excellence in her own work that encouraged me day in and day out to explore the bounds of my own possibilities. For these things and for her love, I am eternally grateful.

TABLE OF CONTENTS

INTRODUCTION 1

CHAPTER ONE REVIEW OF THE LITERATURE 8

CHAPTER TWO CATALYST FOR CHANGE: THE HISTORY OF CANADIAN JUVENILE JUSTICE REFORM 24

I. INTRODUCTION 24
II. THE DOCTRINE OF *DOLI INCAPAX* 26
III. ESTABLISHMENT OF A SEPARATE CANADIAN JUVENILE JUSTICE SYSTEM, THE *JDA* 31
A. Segregation of Adult and Juvenile Prisoners 31
B. Critique of the Reformatory 39
C. Final Road to the JDA 43
D. Critique of the Child-Savers 57
IV. CHANGING OF THE GUARD, THE *YOA* 59
A. Report of the Department of Justice Committee on Juvenile Delinquency 59
B. Bill C-192 67
C. Final Road to the YOA 73
V. RECENT DEVELOPMENTS AND REFORMS 78
VI. CONCLUSION 88

CHAPTER THREE PREVENTING YOUTH CRIME: WHAT WORKS, WHAT DOESN'T, AND WHAT IT ALL MEANS FOR CANADIAN JUVENILE JUSTICE POLICY 90

I. INTRODUCTION 90
II. THE CRIMINAL JUSTICE SYSTEM AND YOUTH CRIME PREVENTION 98
A. Introduction 98
B. Rehabilitation 100
C. Incapacitation 111
D. Deterrence 114
E. Boot Camp Programs 119
III. COMMUNITY-BASED YOUTH CRIME PREVENTION 124
A. Introduction 124
B. Gangs and Community-based Youth Crime Prevention 124
C. Community-based Mentoring Programs 131
D. Community-based Recreation Programs 134
IV. FAMILY-BASED YOUTH CRIME PREVENTION 136
A. Introduction 136
B. Home Visitation Programs 136
C. Parent Training Within School and Clinical Settings 140

D. Multisystemic Therapy *143*
V. SCHOOL-BASED YOUTH CRIME PREVENTION 150
A. Introduction *150*
B. Rule Setting *151*
C. Innovative Teaching Methods *153*
D. Regrouping Students *156*
E. Law-Related Education *157*
F. Substance Abuse Education *159*
G. Violence Prevention Education *161*
H. Peer Group Counselling *163*
VI. LABOR MARKETS AND YOUTH CRIME PREVENTION 164
A. Introduction *164*
B. Subsidized Employment Programs *165*
C. Short-Term Training Programs *167*
D. Intensive Residential Programs *168*
VII. CONCLUSION 169

CHAPTER FOUR SENTENCING, JUDICIAL DISCRETION, AND CANADA'S JUVENILE JUSTICE SYSTEM 175

I. INTRODUCTION 175
II. PRINCIPLES AND PROBLEMS PERTAINING TO SENTENCING UNDER THE *YOA* 176
A. Introduction *176*
B. Dispositional Options Under the YOA *177*
C. The Declaration of Principle *179*
D. Evidence of Disparity *180*
E. J.J.M. and the Principles of Young Offender Sentencing *186*
F. J.J.M. – the Comprehensive Analysis *189*
G. Legislative Attempts to Provide More Guidance to Young Offender Sentencing – Post J.J.M. *199*
H. Dispositional Issues in Need of Resolution *202*
III. WAYS TO STRUCTURE DISCRETION AND MOVE TOWARD UNIFORMITY IN YOUNG OFFENDER SENTENCING 203
A. Introduction *203*
B. Appellate Court Sentencing Guidelines *204*
C. Legislative Sentencing Guidelines *214*
IV. CONCLUSION 225

CONCLUSION 226

APPENDIX: LIST OF RECOMMENDATIONS 231

TABLE OF CASES 233

TABLE OF STATUTES AND BILLS **237**

BIBLIOGRAPHY **239**

INTRODUCTION

To work in the youth justice system is to work in an interdisciplinary milieu. The presence and participation of social workers, probation officers, psychologists, and psychiatrists in youth court proceedings is common place. As a result, in order to be effective advocates for their clients, lawyers who practice young offender law must be well acquainted with the disciplines upon which these professions are based.

Just as the practice of young offender law requires lawyers to delve into subjects other than law, legal scholars who research and write in the juvenile justice field must conduct much of their work in areas other than law. Thus, it should come as no surprise that this dissertation has a multidisciplinary focus. The purpose of this thesis is, while keeping in mind the historical and contemporary forces and obstacles that face reformers, to suggest reforms to Canada's youth crime prevention and sentencing policies based on the results of an examination of their empirical and legal bases.

Although every chapter of this dissertation examines legislation and caselaw, as well as incorporating the work found in journal articles, theses, and books, the multidisciplinary focus of this dissertation has led to the employment of methodologies that differ depending on the topic discussed. For instance, some of the historical research is based on material I found in the National Archives of Canada in Ottawa and the Archives of Ontario in Toronto. Other historical research I conducted for this dissertation consists of newspaper research in which I examined every issue

published by certain newspapers during relatively narrow time periods. All of the newspaper research carried out in this fashion and relied on in this dissertation was done using the microfiche resources at Scott Library of York University in Toronto. The newspapers relied on are named in the thesis, as are the time periods examined.

Another example of the use of differing methodologies involves my evaluation of youth crime prevention programs. In my analysis of these programs, I utilize a three level scale for rating the strength of each crime prevention study. This scale is a modified version of the scale used in a recent report issued by the United States Department of Justice.[1] The writers of this report used a five level scale, with levels one and two consisting of crime prevention studies that failed to use any type of control group. Because of the limited value of studies that do not utilize a control group, these studies are not included in this dissertation. Thus there is only the need for a three level scale. Moreover, the United States Department of Justice report does not require a crime prevention study to employ statistical significance tests in order for it to be labeled as a level three, four, or five study. Both British research[2] and my inquiries of Canadian authorities[3] indicated the importance of including statistical

---

[1] See L.W. Sherman *et al.*, *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, D.C.: Office of Justice Programs, U.S. Department of Justice, 1997).

[2] See J. Vennard, D. Sugg & C. Hedderman, *Changing Offenders' Attitudes and Behaviour: What Works?* (London, U.K.: Home Office Research and Statistics Directorate, 1997).

[3] These inquiries mainly consist of my conversations with Allison Cunningham of the London Family Court Clinic.

significance tests in any evaluation of crime prevention programs. As a result, the level one, two, and three scientific methods scale used in this thesis roughly correspond to levels three, four, and five of the United States Department of Justice scale, but with one essential difference. In order to be included within this dissertation, crime prevention studies have to employ statistical significance tests.

In order to appreciate the contribution this dissertation makes to the area of youth crime prevention and sentencing, it is necessary to provide a literature review of the subject matter. It is this literature review which forms the substance of Chapter One.

Chapter Two presents an historical account of changes in juvenile justice from its origins in the common law about 1300 to the present day. It discusses the doctrine of *doli incapax*, which initiated the differential treatment of young and adult offenders. It then examines the forces that led to the enactment of the *Juvenile Delinquents Act*[4] and later the *Young Offenders Act*.[5] Finally, the history of legislative change since the coming into force of the *YOA* is recounted.

The historical analysis of Canadian juvenile justice reform reveals a number of important facts. First, the factors that have influenced reform in the past include foreign influences, demographic changes, interest group lobbying, federal/provincial relations, economic concerns, and advances in criminological/legal theory. Because

---

[4] *Juvenile Delinquents Act*, R.S.C. 1970, c.J-3 [hereinafter *JDA*]. The *JDA* was first assented to 20 July 1908, S.C. 1908, c.40.

[5] *Young Offenders Act*, R.S.C. 1985, c.Y-1 [hereinafter *YOA*].

many of these factors have stimulated change to Canada's youth justice system in more than one time period, it is asserted that there is a strong likelihood they will continue to influence reform today and in the future. However, each time period has also had unique transforming agents. For example, although interest group lobbying has been instrumental in juvenile justice reform throughout the years, the interest groups driving reform have been different depending on the time span examined. In the late 1800s and early 1900s the child savers were the predominant interest group, between the 1960s and the early 1980s mental health professionals played an increasing role in the reform movement, and in more recent times, victims' rights groups and police associations have become heavily involved in the reform debate. From the evidence examined, it cannot be concluded that the origins of youth justice in the 1300s, and youth justice reform from the 1830s to 1982, was heavily influenced by public opinion. But since 1982, public opinion has strongly affected juvenile justice reform. Indeed, at present there is widespread public concern regarding the amount and seriousness of youth crime.

There are a number of reasons for including a chapter in this dissertation that deals with the history of Canadian juvenile justice reform. As previously mentioned, the historical analysis reveals certain factors that act as recurrent catalysts for change throughout history, while other factors are unique agents of youth justice policy reform. These factors, and particularly those unique transforming agents that have been influential relatively recently, need to be taken into account by those wishing to formulate and implement contemporary changes to Canada's juvenile justice policy

because they may be influential today. Chapter Two's recount of the history of legislative reform in the youth justice area is also vital because it is through an examination of the legislative history of the *YOA* that the sentencing policy which can best be supported by the statutory framework of this legislation is discovered. This subject is discussed at greater length in Chapter Four of the thesis.

Ascertaining which sentencing policy is best supported by the legislative framework of the *YOA* does not end the inquiry into which sentencing policy should be made paramount by Canada's youth justice legislation. If empirical data demonstrates that the appropriate youth sentencing policy should be different than the one which is most compatible with the current juvenile justice legislative regime, a completely new statutory framework would be required. To determine whether a new statutory framework should be adopted or whether the existing statutory framework is sufficient (and all that is required are a few amendments to the *YOA* so that the sentencing policy it currently best supports is implemented more effectively), a review of the empirical data is necessary. This review is the subject of Chapter Three of the dissertation.

Chapter Three reviews the latest research findings concerning youth crime prevention programs that operate in or focus on the criminal justice system, the community, the family, the school, and the labor market. This knowledge is then used to assess the wisdom of recent government initiatives in the youth crime prevention area and to examine the empirical basis of different youth sentencing policies.

My examination of the research data concerning youth crime prevention programs illustrates that, while some of the recent government initiatives to prevent youth crime are supported by the data, others are not. There have been at least promising results for youth crime prevention programs delivered in each of the above noted five institutional settings. Nevertheless, the review of impact evaluations yields only a handful of conclusions as to what works and what doesn't in youth crime prevention. Consequently, it is argued that the effectiveness of most youth crime prevention strategies will remain unknown until the nation invests more in evaluating them. Also, the results from studies of programs and policies conducted within the criminal justice system suggest that neither rehabilitative, incapacitative, nor deterrent strategies have proven efficacious enough to warrant making any one of them the basis for youth sentencing policy.

In Chapter Four, one of the key topics addressed is the appropriate sentencing policy for young offenders and how it can be implemented. Through an analysis of the legislative provisions and caselaw under the *YOA*, the appropriateness of applying certain sentencing principles to youths is re-assessed with a view to determining whether any of them can be supported by the legislative framework of the *YOA*.

I argue that the principle of proportionality, tempered by consideration of the developmental stages of youth, should be the guiding principle of young offender dispositions. Proportionality is the only major sentencing principle that does not have a dubious empirical basis. In fact, it is the only sentencing principle that does not have utilitarian objectives. With little conclusive evidence of effective youth crime

prevention programs, proportionality would at least make youth sentencing more consistent. Since disparity breeds disrespect for the criminal justice system, a fair, consistent scheme of sentencing is vital to the administration of youth justice. Moreover, sentencing young people on the basis of a modified principle of proportionality is consistent with the structure and legislative history of the *YOA*. In order to successfully implement such a sentencing policy, the manner in which rehabilitation is recognized in the *YOA*'s Declaration of Principle must be altered. The federal government should amend the Declaration of Principle so it explicitly states that a modified principle of proportionality shall guide young offender dispositions. Parliament should also pass regulations under the *YOA* that establish presumptive sentencing guidelines. If these steps are taken, the *YOA* will better be able to live up to its promise of reduced discretion and enhanced uniformity in sentencing.

Finally, this dissertation ends with a summary of specific government recommendations dealing with young offender sentencing and youth crime prevention. The proposals made deal with both legislative and broader youth justice policy reform because truly effective youth crime prevention cannot be achieved through an exclusive focus on youth crime prevention programs within the criminal justice system and legislative amendment.

CHAPTER ONE

REVIEW OF THE LITERATURE

Scholars who have published on the topic of young offender sentencing tend to focus on legislative and jurisprudential interpretation and reform. Although some of these authors base their analysis on empirical data emanating from crime prevention studies, most do not.[6] Academics who do deal with youth crime prevention programs, both within and outside the criminal justice setting, often fail to state the implications of their research findings to legislative or policy reform.[7] This dissertation seeks to fill in these apparent lacunae by linking the topics of young offender sentencing, youth crime prevention, and juvenile justice policy reform.

Although the great bulk of literature relevant to this dissertation does not simultaneously address young offender sentencing, youth crime prevention, and juvenile justice policy reform, and although it does not rely on empirical results to substantiate its conclusions, there is material that meets these requirements. One such study is that conducted by Janine Denney-Lightfoot.

---

[6] Professor Nicholas Bala, often referred to as Canada's foremost authority on young offender law, falls into this latter category. His latest textbook on the subject contains no reference to youth crime prevention studies or their results (see N. Bala, *Young Offenders Law* (Concord, Ontario: Irwin Law, 1997)).

[7] See, for example, P. Gendreau & R. Ross, "Success in Corrections: Programs and Principles" in R.R. Corrado, M. LeBlanc & J. Trepanier, eds., *Current Issues in Juvenile Justice* (Toronto: Butterworth & Co. (Canada) Ltd., 1983) 335.

Janine Denney-Lightfoot's thesis attempts to achieve objectives similar to those of this dissertation, but on a smaller scale.[8] Her aim is to propose a new model of juvenile justice sentencing based on the results of crime prevention program studies conducted within the criminal justice system. Unlike my dissertation, hers does not examine youth crime prevention programs outside the criminal justice system or suggest juvenile justice policy reforms that go beyond statutory amendment of the current youth justice legislative regime.

Denney-Lightfoot contends that current empirical research data supports the efficacy of rehabilitation programs administered through the criminal justice system. Thus, rehabilitation should guide young offender sentencing. In order to better implement this sentencing philosophy, she recommends that the *YOA* be amended to include a new form of disposition: participation in a treatment program.[9] Under her model, when a young person is found guilty of an offence, the youth court judge would direct a short assessment to determine whether or not the young person requires treatment. If the young person does require treatment, the disposition imposed would be participation in a treatment program. If the young person does not require treatment, he or she would be given one of the other dispositions available under the *YOA*.

---

[8] J. Denney-Lightfoot, *Redirecting Canadian Juvenile Justice Policy: Rehabilitation and Hope for the Future* (LL.M. Thesis, University of Toronto, 1995) [unpublished].

[9] *Ibid.* at 107-108.

There are many problematic features of Denney-Lightfoot's analysis. The one that goes to the core of her argument pertains to the manner in which she relies on the research studies of youth crime prevention programs. She simply accepts the conclusions of many researchers who state that their findings point to effective treatment programs for young offenders. Denney-Lightfoot makes little attempt to evaluate the methodology or results of these researchers. Indeed, when I examined the methodology and results of many of the same studies referred to by Denney-Lightfoot in Chapter Three of this dissertation, my conclusions regarding the efficacy of youth crime prevention programs within the criminal justice system were much more pessimistic than those she reached.

Even if we were to assume that Denney-Lightfoot is correct in concluding that some young offender treatment programs achieve sufficient crime prevention results reliably enough to warrant creating the new treatment disposition she advocates, she leaves too many questions and concerns surrounding this new dispositional option unanswered. For instance, Denney-Lightfoot does not address the real possibility that forcing young offenders to undergo a treatment program infringes their rights under the *Canadian Charter of Rights and Freedoms*.[10] Although she acknowledges that young offenders' due process rights have to be respected so as not to infringe their constitutional rights, she is under the mistaken perception that the *Charter* only applies up to the adjudication stage of proceedings. It does not. The *Charter* also applies to the

---

[10] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 [hereinafter the *Charter*].

sentencing process. Drafters of the *YOA* were aware of this and of the likelihood that forced treatment would infringe the *Charter*. Thus, when the *YOA* was first enacted, ss.20(1)(i) and 22 allowed youth courts to order that a youth be detained for treatment, instead of being placed in custody, only if the youth consented.[11]

Under Denney-Lightfoot's new model of juvenile justice sentencing, those found likely to benefit from treatment would be placed in a treatment program. However, exactly how this new dispositional option would work is not fully addressed by her. Among the questions she leaves unanswered are: (1) what criteria should be used to ascertain when a young person is not likely to benefit from treatment, (2) how should the length of the treatment disposition be determined, and (3) what sentencing philosophy would inform sentencing decisions for those young offenders deemed unlikely to benefit from treatment?

Finally, Denney-Lightfoot ignores the potential non-legal obstacles that would face her suggested reforms. Because she does not undertake an historical review of juvenile justice reform in Canada, she overlooks many of the factors that have affected

---

[11] In 1995, the *YOA* was amended and these sections were repealed. While reviewing Bill C-37, the Bill that repealed ss.20(1)(i) and 22 of the *YOA*, Nicholas Bala stated:

> These types of [treatment] orders were very rarely made, in part because youths were unwilling to consent to being placed in mental health facilities, but probably more due to lack of suitable facilities. It will, of course, continue to be possible for provinces to provide substantial treatment services in custody facilities, subject only to general provincial laws about not imposing medical treatment (*i.e.* drugs, electro-shock) on unwilling, competent individuals. However, there remains some scepticism about whether the provinces will actually provide the necessary level of services (N. Bala, "The 1995 *Young Offenders Act* Amendments: Compromise or Confusion?" (1994) 26 Ottawa L. Rev. 643 at 668).

change in the past and, perhaps more importantly, the recent past. There is a strong likelihood that these factors could affect contemporary reform and, therefore, they must be taken into account when suggesting changes to the youth justice system. This is one of the reasons that an historical analysis is included in this dissertation. Without an historical context, a person writing in the area of youth justice reform would not, for example, be cognizant that their reform proposals should include some means by which to garner public and interest group support.

Most historical accounts of Canadian juvenile justice reform deal with discrete time periods of short duration. For example, Professor Houston's doctoral dissertation focuses, in part, on the changes to the youth justice system in Ontario between 1850 to 1875.[12] Leon's emphasis is on the ten years leading up to the enactment of the *JDA* in 1908,[13] and Challen's thesis is limited to an examination of youth justice changes from 1960 to 1982, the year the *YOA* was passed.[14] By resorting to archival and newspaper

---

[12] S.E. Houston, *The Impetus to Reform: Urban Crime, Poverty and Ignorance in Ontario 1850-1875* (Ph.D. Thesis, University of Toronto, 1974).

[13] J.S. Leon, "The Development of Canadian Juvenile Justice: A Background for Reform" (1977) 15 Osgoode Hall L.J. 71.

[14] R.D. Challen, *The Reform of Canada's Juvenile Justice System, 1969 to 1982: Ontario's Role in Co-operative Federalism?* (Ph.D. Thesis, University of Toronto, 1996) [unpublished]. The key contribution made by Challen's dissertation is its demonstration of the pivotal role played by the province of Ontario in passing the *YOA*. Challen's central thesis is that Ontario's initial reluctance concerning Parliament's proposals to replace the *JDA* with new youth justice legislation was due more from outstanding financial rather than philosophical issues. In Chapter Two of my dissertation, I accept Challen's argument that Ontario played an important part in the reform process that led to the enactment of the *YOA*, and that the province was principally concerned about outstanding financial issues pertaining to implementation

research, my dissertation bridges many of these discrete time periods and fills some of the gaps between them.

I am not the first to examine juvenile justice changes over long time spans. Other authors, notably Dorothy Chunn, have also analyzed youth justice reforms over extended periods of time. Chunn's book on the history of family courts in Ontario between 1880 and 1940 is helpful not only because of the large time period it examines but because, unlike most historical work pertaining to family and juvenile courts, it portrays these institutions as being aimed at more than just the welfare of children.[15] As noted by Chunn:

> [S]ocialized tribunals . . . reproduced, or attempted to reproduce, desired class and gender relations in deviant families. Juvenile and family courts formed the carceral core of an emergent private, technocratic justice system in which non-lawyer experts, particularly social workers, worked to 'normalize' intrafamilial relations among the marginal, using socialized legal coercion rather than direct repression. The major effect of the new system was to extend state control over a greater number of the working and dependent poor than was previously possible, albeit sometimes with the cooperation and to the benefit of those who were 'done to.' Thus, socialized justice turned out to be a more effective way of policing the underclass in twentieth-century liberal democracies.[16]

---

of the new youth justice legislation. Moreover, I provide further support for Challen's position by referring to archival evidence collected from the National Archives of Canada and the Archives of Ontario.

[15] The following discussion is based on D.E. Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940* (Toronto: University of Toronto Press, 1992).

[16] *Ibid.* at 167.

Chunn's work provided much of the basis for the critique, contained in Chapter Two of this dissertation, of the child-savers, an influential interest group whose efforts led to the enactment of the *JDA*.

Bolton *et al* provide another historical examination of Canadian juvenile justice reform that spans a lengthy time period.[17] Their coverage begins at the end of the nineteenth century and ends in 1982. However, it is clear that Bolton *et al*'s most comprehensive analysis is reserved for the period 1960-1982, the transitional period between the *JDA* and the *YOA*. Their examination of the years leading up to the enactment of the *JDA* are cursory at best and do not contain the details of Leon's account of these years. Completely missing from Bolton *et al*'s work is a description of the beginnings of differentiation between adult and juvenile offenders in British common law. No longitudinal historical work could be found that dealt with this topic.

Yet this subject has been the focus of scholarly attention. Kean's article, "The History of the Criminal Liability of Children," is particularly informative.[18] He discusses how and why the common law began to treat the criminal liability of children differently than that of adults in the 1300s. He also describes the establishment, in the seventeenth century, of fixed age-lines upon which the absolute immunity and conditional responsibility of young people for their criminal acts

---

[17] J. Bolton *et al.*, "The *Young Offenders Act*: Principles and Policy - the First Decade in Review" (October 1993) 38 McGill L.J. 939.

[18] A.W.G. Kean, "The History of the Criminal Liability of Children" (1937) 53 L.Q. Rev. 364.

depended. One of the contributions made by my dissertation is to include these early developments in English common law in my discussion of the history of Canadian juvenile justice reform.

An account of the history of youth justice reform since 1982 is another important contribution of this dissertation. Both Bolton *et al* and Challen stop their examination of juvenile justice reform at 1982. In fact, almost no published articles deal with the period from 1982 to 1999. The one exception is Nicholas Bala's discussion of the 1995 *YOA* amendments, in which he provides the legislative history and historical context for these amendments.[19] Fortunately many government reports were conducted after the enactment of the *YOA* and they shed light on the forces that caused and continue to cause legislative change during the period 1982 to 1999.[20]

Although Bolton *et al*'s work suffers from the deficiencies previously mentioned, it does demonstrate how legislative history can be used to construe the *YOA*, a theme that I expand upon in Chapter Four of this dissertation. After recounting the fact that the *YOA* was enacted, in part, due to due process concerns and the rejection of the rehabilitative ideal,[21] Bolton *et al* argue that sentencing under the *YOA* should not be guided by rehabilitative concerns:

---

[19] N. Bala, *supra* note 11.

[20] The most recent example is Canada, House of Commons, *Thirteenth Report of the Standing Committee on Justice and Legal Affairs: Renewing Youth Justice* (Ottawa: Canada Communications Group-Publishing, Public Works and Government Services Canada, 1997).

[21] J. Bolton *et al.*, *supra* note 17 at 957-961, 968-969.

> [T] he *YOA* was not designed to support rehabilitative or child welfare goals. The accountability of youth is one of the cardinal principles of the *YOA*, and, as a corollary, youths are guaranteed full enjoyment of the rights guaranteed in the . . . Act. As well, the *YOA* stipulates that all sentences must be determinate and that treatment under the Act cannot be ordered without the consent of the young person. Moreover, the judge sentencing a young offender has limited control over the provision of treatment, as he or she does not have the power to designate the institution in which the young persons will be placed. Thus, rehabilitative and welfare goals are more problematic to achieve under the current young offenders system, and therefore constitute ill-suited sentencing goals under the Act.[22]

Although Bolton *et al* assert that rehabilitation should not guide young offender sentencing, they do not indicate what sentencing principle should inform young offender dispositions.[23]

One year after the Bolton *et al* paper was published, someone attempted to answer the question that they left unanswered. Ostensibly, Paul Riley advocated that proportionality should be the guiding principle in formulating young offender dispositions.[24] From the title of his article, one would expect that Riley is arguing for proportionality to guide young offender sentencing. However, he makes clear his real position, that proportionality and rehabilitation should be guiding factors in determining young offender dispositions. In Riley's view rehabilitative concerns can

---

[22] *Ibid.* at 981.

[23] It should be noted that the Bolton *et al* article was published two years prior to the coming into force of the 1995 amendments to the *YOA*, one of which resulted in the explicit recognition of rehabilitation in the statute's Declaration of Principle.

[24] P. Riley, "Proportionality as a Guiding Principle in Young Offender Dispositions" (Fall 1994) 17 Dalhousie L.J. 560.

substantiate a departure from proportional sentencing only if these concerns would result in a less severe disposition for the young person:

> This is affirmed by the *YOA*'s Declaration of Principle, which specifies that young persons are to be held accountable only in a limited sense (paragraph (a)) and that young persons have special needs (paragraph (c) and (f)). Thus, dispositions under the *YOA* may deviate from the principle of proportionality where consistent with the needs of the young offender. . . The problem . . . is that the "needs of the young offender" have been interpreted to include the "need" to be incarcerated in order to facilitate rehabilitation. This interpretation is by no means demanded by the *YOA* itself. The Declaration should have been interpreted to implicitly limit departures from proportionality. Given the emphasis placed on the rights of the young person in paragraph (e), the inclusion of the principle of least interference in paragraph (f), and the recognition of parental responsibility in paragraph (h), the *YOA* should be interpreted so as not to permit deviations from proportionality which would permit a more onerous disposition than would otherwise be the case. The . . . model of justice which the *YOA* represents should allow the court to reduce the severity of a disposition. It should not allow the court to increase the severity of dispositions, either in the interests of the protection of society or in the interests of the needs of the young offender. The principle of least interference should preclude more onerous dispositions. Moreover, the role of the parents should not be usurped by the state through the criminal law. The best way to deal with concern over the adequacy of parental supervision is through family law and provincial child protection legislation.[25]

Riley states, without providing any evidence, that rehabilitative measures have uncertain effects.[26] But if this is so, why should they affect young offender sentencing at all? He fails to address this point.

Moreover, Riley's reliance on the Declaration of Principle to support what he sees as the appropriate sentencing philosophy for young offenders is controversial.

---

[25] *Ibid.* at 575-576.

[26] *Ibid.* at 579.

Commentators have remarked that the *YOA*'s Declaration of Principle "is, in fact, a set of eight propositions that are not prioritized, are often qualified and consequently unclear, and often seem incompatible with each other."[27] Thus, the soundness of Riley's conclusion that the Declaration of Principle can and should be interpreted so as to mandate proportional sentencing (with a rehabilitative discount) is unclear. In fact, Bala and Kirvan, who provide an extensive examination of the Declaration of Principle in their article "The Statute: Its Principles and Provisions and their Interpretation by the Courts," suggest that there is substantial ambiguity within the Declaration but that this is not a fault that needs to be remedied. Instead, they argue that the Declaration of Principle simply reflects the fact that no single philosophy accommodates all types of young offenders in all situations, given their varied backgrounds and needs:

> While it may not be inaccurate to suggest that the Declaration of Principle reflects a certain societal ambivalence about young offenders, it is also important to appreciate that it represents an honest attempt to achieve an appropriate balance for dealing with a very complex social problem. The YOA does not have a single, simple underlying philosophy, for there is no single, simple philosophy that can deal with all situations in which young persons violate the criminal law . . . The underlying philosophical tensions in the YOA reflect the very complex nature of youthful criminality. There is no single, simple philosophy and no single type of program that will 'solve' the problem of youthful criminality. Judges and the other professionals who work with young persons who violate the criminal law require a complex and balanced set of principles like those found in the YOA.[28]

---

[27] R. Corrado & A. Markwart, "The Prices of Rights and Responsibilities" (1988) 7 Can. J. Fam. L. 93 at 97.

[28] N. Bala & M. Kirvan, "The Statute: Its Principles and Provisions and their Interpretation by the Courts" in A.W. Leschied, P.G. Jaffe & W. Willis eds., *The*

What Bala and Kirvan fail to understand is that it is not uncommon for youth court judges to pronounce sentence on young offenders without the benefit of a presentence report (called a predisposition report in youth court) and without extensive submissions by counsel, which would give the court insight into the young person's needs and circumstances. Even when youth court judges are handing down dispositions for virtually identical offences committed by young people with the same backgrounds and needs, the dispositions are often disparate because of the ambiguity contained in the Declaration of Principle. In Chapter Four of this dissertation, I describe and cite studies that substantiate this claim.

Riley makes his case for proportional sentencing with rehabilitative discounts in two other ways as well. First, he suggests that a gradual shift in the philosophy of young offender sentencing is occurring across North America. Because this shift is toward proportional sentencing, he argues that dispositions under the *YOA* should also be more driven by proportionality.[29] Then he examines the other sentencing principles that could be applied to young offender sentencing and finds fault with them.[30]

Riley's assertion that sentencing under the *YOA* should be more proportional, because a number of American states are moving to a more proportional model of young offender sentencing, seems to be without merit. The connection between

---

Young Offenders Act: A Revolution in Canadian Juvenile Justice (Toronto: University of Toronto Press, 1991) 71 at 81.

[29] P. Riley, *supra* note 24 at 565.

[30] *Ibid.* at 575-582.

statutory reform in foreign jurisdictions and legislative interpretation of a domestic statute seems tenuous at best. Certainly no known principle of statutory interpretation would support such an approach. Moreover, it is uncertain whether there is a North American movement to more proportional young offender sentencing. In their recently published paper, Hemmens, Fritsch & Caeti examine the Declarations of Principle of the American juvenile justice statutes.[31] They found that most U.S. states still purport to follow what they call the "traditional approach" to youth sentencing, which is the rehabilitative approach.[32] In addition, they make no mention of a trend toward amending state juvenile justice purpose clauses to reflect more proportional young offender sentencing.

Nevertheless, Riley's mention of juvenile justice legislation in the United States did provide me with the idea of looking to statutes south of the border as possible models upon which to base legislative reform proposals of the *YOA*. In fact, as can be seen in Chapter Four of this dissertation, many of the recommendations that

---

[31] C. Hemmens, E. Fritsch & T.J. Caeti, "Juvenile Justice Code Purpose Clauses: The Power of Words" (1997) 8 Crim. Just. Pol'y Rev. 221.

[32] *Ibid.* at 237. It should be kept in mind that unlike Canada, where young offender transfers to adult court are judicially determined, in many American states it is within the prosecutor's discretion as to whether a young person will be tried in adult or juvenile court. In other American states, young people charged with certain types of offences are automatically tried as adults (see A.V. Merlo, P.J. Benekos & W.J. Cook, "Waiver and Juvenile Justice Reform: Widening the Punitive Net" (1997) 8 Crim. Just. Pol'y Rev. 145). This may help to explain why, despite the fact that most states retain a rehabilitative stance in their juvenile justice statutes, they continue to have high juvenile incarceration rates and youth sentences of lengthy duration.

I make for legislative change are based on the juvenile justice statute in Washington State.

The manner in which Riley eliminates competing sentencing philosophies is problematic. When he considers the propriety of utilizing general deterrence as a guiding factor in young offender dispositions, Riley states that "[t]here is an abundance of literature which questions the efficacy of imposing harsh custodial terms in order to deter the general population from committing crime."[33] He does not refer to any of this literature; however, his analysis of general deterrence is more comprehensive than his consideration of specific deterrence. All Riley states about the use of this sentencing principle in the young offender context is:

> [I]t is submitted that the use of disproportionately severe sanctions in an effort to show the young offender that his or her contraventions will result in a significant curtailment of personal liberty should be discouraged.[34]

Finally, Riley explores the possibility of sentencing young offenders on the basis of incapacitation. Because juvenile offenders have markedly better opportunities to be re-integrated into society, he finds it inappropriate to use incapacitation as a primary objective of young offender sentencing.[35] Again, Riley provides no evidence for his assertion that young offenders have markedly better opportunities for societal re-integration than adults.

---

[33] P. Riley, *supra* note 24 at 577.

[34] *Ibid.* at 578.

[35] *Ibid.*

It is apparent that Riley's analysis would have benefited from an examination of youth crime prevention studies. He may have chosen not to include them in his paper because of the difficulty associated with interpreting their results. Nevertheless, he could have bolstered his arguments by referring to the easily comprehensible youth crime statistics contained in Statistics Canada publications.

Statistics Canada plays a vital role in the collection and publication of youth crime statistics in this country. This government department asks police from major police forces to report various characteristics pertaining to the young people charged by them. These statistics are then published annually under the heading Uniform Crime Reports by a branch of Statistics Canada called the Canadian Centre for Justice Statistics. The publication in which these statistics first appear is called *Juristat*. Statistics Canada also asks youth courts from around the nation to collect data for them. These statistics are also published annually in *Juristat* under the heading Youth Court Survey. Finally, victimization surveys are carried out by Statistics Canada every five years. The results from these surveys are published in the *Juristat* and in separate Statistics Canada documents.

Although Statistics Canada has done a commendable job at making Canadian youth crime statistics accessible and comprehensible, getting an overall picture of the nature and extent of youth crime is difficult. This is because the Uniform Crime Reports, Youth Court surveys, and victimization surveys do not measure crime but instead measure imperfect indicators of crime. Doob, Marinos and Varma explain why this is so:

> Victimization surveys have made it quite clear that not all crime is reported to the police. For example, in the 1993 Statistics Canada survey it was found that 68% of assaults and 32% of actual or attempted household break-and-enters were not reported to the police. Clearly, if crimes are not reported to the police they cannot be counted by them. But even if a crime is reported, the police do not always find someone whom they believe committed the offence. If the police don't have a suspect, we do not know whether or not the crime is a "youth crime" . . .[Moreover,] the police . . do not charge all people whom they suspect of committing crimes [sometimes people are just given a warning].[36]

This is not to say the juvenile justice statistics are unimportant. They do provide an indicator of what members of the public have reported to the police, the clearance rate of matters by the police, and the results of matters taken to court. For certain crimes, and homicide in particular, crime statistics are likely to be a very good measure of the number of crimes that have occurred. However, crime statistics do have their limitations and these limitations must be kept in mind when examining the statistics in this dissertation.

The foregoing literature review of young offender sentencing and youth crime prevention reveals that what is required, and has been absent thus far, is a multi-disciplinary, multi-institutional analysis of the subject. It is this analysis that is provided in the pages that follow.

---

[36] Canada, Department of Justice, *Youth Crime and the Youth Justice System in Canada: A Research Perspective* (Working Document 1995-1e) by A.N. Doob, V. Marinos & K. Varma (Toronto: University of Toronto Centre of Criminology, 1995) at 5-6.

CHAPTER TWO

CATALYST FOR CHANGE: THE HISTORY OF CANADIAN JUVENILE JUSTICE REFORM

I. INTRODUCTION

By the year 2000 it is expected that Canada will have a new youth justice legislative regime in place. Although this development is significant, it is not the first time our nation has undergone such a process. Indeed, Canada has a long history of juvenile justice reform.

This chapter presents a longitudinal historical account of Canadian juvenile justice reform in order to achieve two objectives. The first objective is to discover whether juvenile justice reform has always been and currently is a matter of great public concern. The second objective is to determine what factors, other than public concern, influence youth justice reform. The factors causing transmutation are ascertained by examining the different eras of change in juvenile justice. It is postulated that many of these elements, especially those that affected change in multiple time periods, will continue to prompt reform.

The chapter is divided into four parts. The first section discusses the initiation of differential treatment between young and adult offenders through the development of the doctrine of *doli incapax*. The second part outlines the movement toward a completely separate justice system for youth that culminated in the enactment of the *JDA*. The third portion considers the replacement of one juvenile justice regime with

another by tracing the development of the *YOA*. The fourth and final segment examines the history of legislative change since the enactment of the *YOA*.

The doctrine of *doli incapax* developed at a time when the focus of criminal law was shifting from the objective harm caused by the offence to the subjective characteristics of the offender. Consequently, I assert that the emergence of this long-established common law doctrine was influenced, at least in part, by the broader changes in criminal law that were occurring at the time. I then turn to the subject of the significant forces affecting juvenile justice change in the nineteenth century. Some of these forces include demographic shifts, foreign influences, advances in social science, and interest group lobbying. Through the combined influence of these factors, the *JDA* was enacted. I assert that the repeal of the *JDA* and the enactment of the *YOA* came about as a result of these same factors coupled with concerns relating to federal/provincial relations, finances, and due process. From the evidence examined it cannot be concluded that the origins of juvenile justice in the 1300s, and youth justice reform from the 1830s to 1982, was heavily influenced by public opinion. However, since 1982 there is ample evidence that the reform process has been impelled by public opinion. I also argue that demographic change, advances in social science, and interest group lobbying have stimulated reform since 1982 and continue to do so in the present day.

II. THE DOCTRINE OF *DOLI INCAPAX*

English common law prior to the early 1300s did not differentiate between young children, adolescents and adults. All were subject to criminal prosecution and the full weight of state punishment upon conviction.[37] The rationale for equal treatment of offenders regardless of their age was that criminal prosecution was grounded in vengeance – harm is harm and should be paid for.[38] In these early times, concepts of deliberateness, involuntariness and diminished responsibility were not part of the lexicon of criminal law.

These concepts began to mitigate the harsh consequences of criminal conviction in the 1300s. Those convicted of homicide, who established what today would be known as the defences of accident and self defence, were regularly granted pardons.[39] Similarly, in a case in 1302, Spigurnel J. held that a young child of seven, convicted of murder, ought not to suffer punishment for his crime.[40] It was clear that until they were of full discretion, children convicted of crimes would be pardoned.

---

[37] W.W. Buckland & A.D. McNair, *Roman Law and Common Law* (Cambridge, Great Britain: Cambridge University Press, 1952) at 46-47.

[38] F. Pollock & F.M. Maitland, *The History of English Law*, vol. 2 (Cambridge, Great Britain: Cambridge University Press, 1968) at 475.

[39] A.W.G. Kean, "The History of the Criminal Liability of Children" (1937) 53 L.Q. Rev. 364 at 365.

[40] Y.B. 30-31 Edw. I, 511-3 (R.S.). Cf. Eyre of Kent, S.S. vol. 24, 109. This case is also cited and discussed in A.W.G. Kean, *supra* note 39 at 366.

In cases of accident or self defence, courts used the mechanism of the pardon after the accused was convicted instead of dismissing the charges because, upon conviction, an accused would forfeit his chattels to the Crown. Since forfeiture of chattels was the reason for utilizing the pardon approach, it is not surprising that by the fifteenth century in the case of the chattel-less child, judges began to dispense with pardons and dismiss the case at the trial.[41]

But what factors determined when a child was too young to be subject to the criminal process? From the 1300s to the 1600s, the criminal liability of children was generally decided by the onset of puberty. Through a physical examination of the child, it was determined if puberty had been reached. If it had, the child was subject to the full rigours of criminal law. A child who had not achieved puberty was only punished if malice was proven. As is done in modern day trials, where there was evidence of malice, it was often found in the circumstances of the case. For example, in 1488, a nine-year-old child[42] confessed to killing another child of the same age. It was found that when the accused child had killed his victim, he had concealed the body. When initially questioned about the incident, the accused lied, stating that the blood on his clothes was from a nosebleed. In actuality, the blood on the accused

---

[41] A.W.G. Kean, *supra* note 39 at 366. Forfeiture of chattels upon conviction was not abolished until 1828 (9 Geo. 4, c.31, s.10).

[42] Presumably the age of the offender was determined by the oral evidence of his parents.

emanated from his victim. The court held that the accused was guilty of the homicide because the concealment of the body indicated apparent cunning.[43]

The reason that the courts did not use fixed age lines to delineate when children would be liable to criminal prosecution was that no system of birth registration existed at the time. Parish registers for baptism began in the reign of Henry VIII and were regulated by a 1603 canon.[44] Thus, no reliable documentation existed regarding the births of children in England before this time. Moreover, oral evidence as to the age of the accused would be suspect because persons present at the birth would likely hold the accused in great affection.[45]

In the 1600s, different jurists attempted to fix specific ages that could be used to determine when children would be held criminally responsible. A consensus was reached early on that any child less than seven years of age would not be held criminally liable under any circumstances. It is unclear exactly how and why this particular age was chosen. One possibility is that this age line was appropriated from the Ancient Romans. With the Renaissance came the rediscovery by the English of much of the knowledge of this civilization. By 407 A.D., the Romans had developed

---

[43] Y.B. Hil. 3 Hen. VII, f.1, pl. 4. Cf. Y.B. Mich. 3 Hen. VII, f. 12, pl. 8. This case is also cited and discussed in A.W.G. Kean, *supra* note 39 at 367.

[44] R. Phillimore, W.G.F. Phillimore & C.F. Jemmett, *The Ecclesiastical Law of the Church of England*, vol. I, 2d ed. (London: Sweet & Maxwell, 1895) at 157.

[45] D. O'Mahony, *The Use of Chronological Age in the Development of Legislation Affecting Young People in Canada, 1799-1985* (M.A. Thesis, University of Ottawa, 1987) [unpublished] at 29.

the *infantia* rule that prohibited the criminal prosecution of children under the age of seven.[46] Thus, it can be argued that the English simply adopted the *infantia* rule of the Ancient Romans. However, it has also been suggested that the acceptance of the age of seven as the limit of absolute immunity was due to the fact that criminal behaviour below this age was infrequent.[47] The coupling of the discovery of the Roman law with the infrequency of criminal acts by offenders below the age of seven probably led to the prompt acceptance of this age line.

The English approach to applying criminal law to children was based not only on an age of absolute immunity but also on an age of conditional responsibility. If a child was above the age of absolute immunity but within the age of conditional responsibility, he or she could be punished only if malice could be proved.

Although jurists quite quickly came to a consensus as to the age of absolute immunity, the same could not be said for the age of conditional responsibility. Different judges held the age of conditional responsibility to be twelve, thirteen,

---

[46] W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, 2d ed. (Cambridge, England: Cambridge University Press, 1932) at 157. It is uncertain how the Ancient Romans proved the age of offenders. It was difficult to find information on the *infantia* rule and its application because many historians who study Roman law pay scant attention to this legal concept. For example, see the cursory discussion of the *infantia* rule in H.F. Jolowicz & B. Nicholas, *Historical Introduction to the Study of Roman Law*, 3d ed. (Cambridge, England: Cambridge University Press, 1972) at 121.

[47] F.J. Ludwig, "History of Significance of Immaturity for Responsibility from Youth and the Law" in S. Fox, ed., *Modern Juvenile Justice* (St. Paul, Minnesota, West Publishing, 1981) 428 at 433.

fourteen and fifteen.[48] It was Sir Edward Coke, writing in the seventeenth century, that settled the matter. He contended that the decisions of the Middle Ages yielded fourteen as the age of conditional responsibility. Although the results of the medieval court cases in fact did not yield a consensus on the age of conditional responsibility, subsequent lawyers and judges accepted Coke's interpretation of the law.[49]

These age lines and their ramifications came to be known as the *doli incapax* doctrine. Up to the age of seven it was presumed that children were incapable of criminal intent and could not be held personally responsible for violations of the law; between the ages of seven and fourteen they were presumed immune from criminal conviction unless the prosecution proved their ability to discern between good and evil; thereafter they were fully responsible.

The doctrine of *doli incapax*, being part of English common law, was accepted in Canada as well.[50] It was to be the first and only special accommodation made for

---

[48] A.W.G. Kean, *supra* note 39 at 367-368.

[49] D. O'Mahony, *supra* note 45 at 29. Hale accepted fourteen as the age of conditional responsibility and advocated for the recognition of yet another age-line. Hale thought that for children less than twelve years old, the burden of proof of malice should be greater than for those young people between twelve and fourteen years of age. Nevertheless, Hale's age-line of twelve never gained widespread acceptance (A.W.G. Kean, *supra* note 39 at 369-370).

[50] In fact, Canada's first *Criminal Code* expressly incorporated this doctrine as part of Canadian criminal law. See ss.9 and 10 of the *Criminal Code, 1892,* S.C. 1892, c.29. In 1890 George Burbidge, the former Deputy Minister of Justice and a Justice of the Exchequer Court, published *A Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890). Burbidge was one of the principal drafters of Canada's first *Criminal Code,* and he borrowed heavily from his digest in drafting the statute (see D.H. Brown, *The Genesis of the Canadian Criminal Code of 1892*, 2d ed. (Toronto:

children accused of crime in Canada until the mid-nineteenth century. Until then, those children for whom the *doli incapax* presumption did not provide immunity were subject to the same punishments as adults in the same institutions as adults.[51]

III. ESTABLISHMENT OF A SEPARATE CANADIAN JUVENILE JUSTICE SYSTEM, THE *JDA*

A. Segregation of Adult and Juvenile Prisoners

In the 1830s, most Canadians considered the reform of prisoners, both adults and youths, to be of secondary or even negligible importance.[52] In the view of the legislative select committee studying the penitentiary proposal in 1831, "punishment is

---

University of Toronto Press, 1990) at 276-283). On the title page of his digest, Burbidge wrote that his work was based on Sir James Fitzjames Stephen's digest of English criminal law published in 1877. Articles 26 and 27 of Sir James Fitzjames Stephen's digest were codified versions of the doctrine of *doli incapax* (see J.F. Stephen, *A Digest of the Criminal Law*, 1st ed. (London: Macmillan, 1877) at 20). Thus, it can be argued that ss.9 and 10 of the *Criminal Code, 1892*, S.C. 1892, c.29 were adopted from Stephen's formulation.

[51] For example, corrections records indicate that in 1846 at the Kingston penitentiary, men, women and children were all caged together. The records show that sixteen children were imprisoned along with eleven adult murderers and ten adult rapists. (M.M. Bowker, "Juvenile Court in Retrospective: Seven Decades of History in Alberta (1913-1984)" (1986) 24 Alta. L.R. 234 at 235.) However, it should be noted that in the 1850s, measures were adopted to make things better for young people in the penitentiary. For instance, children aged seven to eleven were no longer beaten in front of the entire prison population (although corporal punishment of youths in the penitentiary continued) and, for a brief period, special school instruction was provided to the young people within the penitentiary (see P. Oliver, *Terror to Evil-Doers: Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998) at 242-243).

[52] J.J. Bellomo, "Upper Canadian Attitudes Toward Crime & Punishment" (1972) LXIV Ontario History 11 at 19.

meant to deter not to reform."[53] Thus, when the Kingston provincial penitentiary opened in June, 1835, its purpose was clear.

However, there were voices arguing that reform should replace revenge as the principal objective of sentencing. One of these voices belonged to Dr. Charles Duncombe. In his 1835 Report on Prisons, he contended that the largest obstacle to the reformatory influence of imprisonment was the lack of classification among prisoners, particularly "the indiscriminate assemblage of persons of all ages" in prisons to the extent that these institutions have "acquired the appellation of schools and colleges of crime."[54] The solution to this problem lay in the establishment of reformatories for young offenders where the influence and abuse of adult offenders could not be felt. The penal philosophy espoused by Duncombe and others was not well received by the public or politicians of the time but it would later serve as the basis for the penal reform movement of the 1840s.[55]

---

[53] "Report of a Select Committee on the Expediency of Erecting a Penitentiary," *Journals of the Legislative Assembly* (1831) at 211.

[54] "Report of the Commission on the Subject of Prisons etc.," *Journals of the Legislative Assembly*, No. 71 (1836) at Appendix p.3.

[55] Among the others who thought that reform should replace revenge as the principal objective of sentencing were John Robinson, the Chief Justice of Upper Canada, and John Macaulay, a prominent Upper Canadian Tory who was also a commissioner appointed to oversee the construction and establishment of the penitentiary (see R. C. Smandych, "Tory Paternalism and the Politics of Penal Reform in Upper Canada, 1830-34: A Neo-revisionist Account of Kingston Penitentiary" (1991) 12 Criminal Justice History 57 at 69-71). It has also been contended that the first warden of the penititiary, Henry Smith, felt that reformation was the prime purpose in the management of prisoners and that his reformist recommendations were rebuffed year after year by the government, which had only two ideas concerning the provincial

What was it about Canada of the 1840s that stirred the call to cease housing adult and juvenile offenders in the same institutions? One factor involved the deluge of Irish immigrants escaping the Irish Potato Famine and the circumstances surrounding their immigration. This influx of poor, landless immigrants into the country created concern that the newcomers would be a source of crime and instability.[56] Because many of the adult immigrants did not survive the voyage to Canada, a considerable number of children arrived as orphans or with one parent.[57] This fact served to highlight concerns about juvenile crime.

The Census of Upper Canada, taken in the early 1840s, revealed another fact that drew attention to youth in Canada. Over half the population of the province was under sixteen years of age.[58] Certainly the large number of young people in Upper

---

penitentiary: the need for harsh punishment and economical administration (P. Oliver, *supra* note 51 at 171). Smith expressed his revulsion at the presence of children in the penitentiary and attempted to persuade the government to make other provisions for youthful offenders because he felt that housing children in the penitentiary, thereby bringing them into contact with hardened offenders, would injure not reform them (P. Oliver, *supra* note 51 at 177). For more information about those who supported a rehabilitative approach to sentencing and corrections during this time period, see R. Baehre, "Origins of the Penitentiary System in Upper Canada" (1977) 69 Ontario History 185.

[56] The Irish did, in fact, contribute a disproportionate share to the criminal population in Upper Canada in the 1840s. See J.J.Bellomo, *supra* note 52 at 13.

[57] D.O. Carrigan, *Crime and Punishment in Canada, A History* (Toronto: McClelland & Stewart Inc., 1991) at 205.

[58] *Censuses of Canada, 1665-1871*, vol. IV (Ottawa: Queen's Printer, 1876) at 128.

Canada at this time brought youth issues, including juvenile delinquency, to the forefront.

While these factors may have brought attention to juvenile crime, they did not shape the form that juvenile justice reform was going to take. The influence of reforms from abroad would do that.

For example, events in Britain proved to be significant to Canadian juvenile justice reform. The Home Office Returns first provided information on the age of offenders in 1834.[59] In 1839, using these statistics and others, Dawson, the first Secretary of the London Statistical Society, demonstrated that criminal activity began early in life and reached a peak between the ages of sixteen and twenty-five.[60] Studies of prison records and inquiries among offenders themselves confirmed that the problem of adult criminality was rooted in the progressive career of the delinquent child.[61] Moreover, the idea that adult offenders provided an atmosphere of moral contagion for young offenders was discussed as early as the eighteenth century in Britain.[62] These considerations strongly influenced the British Parliament to pass legislation establishing reformatory schools for convicted juvenile offenders in 1854.[63]

---

[59] M. May, "Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century" (Sept. 1973) 17 Victorian Studies 7 at 15.

[60] *Ibid.* at 17.

[61] *Ibid.* at 19.

[62] See J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986) at 541-545, and the lengthy comment on this point by J. Innes & J.

The American debate on juvenile reformation virtually duplicated the English one with a single important difference. At least initially, the American reforms not only separated adult and juvenile offenders but also created an omnibus institution to

---

Styles, "The Crime Wave: Recent Writing on Crime and Criminal Practice in Eighteenth-Century England" (1986) 25 Journal of British Studies 380 at 403. Also see D. T. Andrew, *Philanthropy and Police: London Charity in the Eighteenth Century* (Princeton, N.J.: Princeton University Press, 1989) at 182-186.

[63] *An Act for the better Care and Reformation of Youthful Offenders in Great Britain* (U.K.), 17 & 18 Vict. c.86. This legislation was very similar to the 1857 legislation establishing reformatories in Canada. Both pieces of legislation empowered judges and magistrates to sentence children under sixteen to reformatories if they had been given prison sentences of at least fourteen days. A thorough account of English juvenile correctional practice, laws, and institutions from 1850 to 1877 can be found in S. McConville, *A history of English prison administration*, vol. I, *1750-1877* (London: Routledge & Kegan Paul, 1981) at 333-339. For an interesting discussion as to why the late eighteenth and early nineteenth centuries were a time of great transition in terms of English attitudes to, and policies toward, young offenders, see P. King & J. Noel, :"The Origins of the Problem of Juvenile Delinquency: The Growth of Juvenile Prosecutions in London in the Late Eighteenth and Early Nineteenth Centuries" (1993) 14 Criminal Justice History 17. King and Noel assert that, prior to the late eighteenth century, juvenile delinquency was not considered a major social problem in England. But then this perception changed. Many criminologists and historians theorised that this perception changed because of a real rise in the level of juvenile crime that, in turn, was due to various economic, social, and demographic changes. However, King and Noel argue that the increased formal prosecution of apprehended young offenders led to the view that juvenile delinquency was becoming a major social problem. King and Noel maintain that there began to be more reluctance to use informal sanctions for juveniles because new statutes brought a substantial rise in the amount of expense payments to prosecutors and these payments encouraged them to prosecute more offenders. In addition, the reward system, whereby police officers were given monetary rewards for apprehending criminals accused of serious matters, ended. As a result, constables were no longer motivated to overlook the activities of juveniles in favour of concentrating on the activities of the (usually more serious) adult offenders. Finally, King and Noel contend that victims of juvenile offenders were more likely to pursue formal prosecution of them because of the declining use of capital punishment in general, the increased occurrence of pardoning (especially for juveniles convicted of capital crimes), and the growing idea that imprisonment could be used to reform the young.

encompass both neglected and criminal children.[64] The first such House of Refuge was established in 1824 in New York City. Its legislative mandate was "to receive and take . . . all such children as shall be taken up and committed as vagrants, or convicted of criminal offences in the said city."[65]

Evidence that the reform measures from abroad influenced Canadian reformers can be gleaned from the 1848-49 Royal Commission Report on the Penitentiary.[66] The commissioners wrote that they had "earnestly turned towards the reform systems in operation in other countries with a view to culling the best portions of each and adopting them to the conditions and requirements of our own land."[67]

---

[64] The early American blurring of the distinction between neglected and criminal children foreshadowed the approach that Canadian reformers would take to juvenile justice at the turn of the century.

[65] *An Act of Incorporation and Laws Relative to the Managers of the Society for the Reformation of Juvenile Delinquents in the City of New York* quoted in R.S. Pickett, *House of Refuge: Origins of Juvenile Reform in New York State, 1815-1857* (Syracuse: Syracuse University Press, 1969) at 58.

[66] "First Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B. and "Second Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B. [hereinafter collectively referred to as the 1849 Report]. For an excellent account of the factors leading to the creation of the Commission of Inquiry, see C.R. Adamson, "The Breakdown of Canadian Prison Administration: Evidence from Three Commissions of Inquiry" (October 1983) 25 Can. J. Crim. 433.

[67] "Second Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B..

The 1849 Report proved to be the final inducement needed to establish separate correctional institutions for juvenile offenders in Canada. It documented a number of examples of extreme cruelty in relation to juvenile inmates. For example, a ten-year-old boy, committed on May 4, 1845, for a seven-year term, was lashed fifty-seven times in the space of eight and a half months for staring and laughing.[68] An eight-year-old boy admitted on November 7, 1845, for a three-year term, received the lash within the first week of his arrival and was similarly punished forty-seven times over a nine-month period.[69] A fourteen-year-old girl was whipped seven times in four months.[70]

The commissioners observed that harsh treatment was not the way to achieve the reformation of juvenile offenders. They stated that "[i]n waging war, there is no department so satisfactory, so encouraging, as the rescue and reformation of the young; and there it is the battle should be fought with utmost warmth."[71] As a result, the commissioners recommended the immediate erection of Houses of Refuge for the reformation of juvenile delinquents.

---

[68] "First Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B..

[69] *Ibid.*

[70] *Ibid.*

[71] "Second Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B..

Finally, in 1857, the government acted. *An Act for establishing Prisons for Young Offenders – for the better government of Public Asylums, Hospitals and Prisons, and for the better construction of Common Gaols*[72] was passed. It provided for two reformatories to be built, one in Upper Canada, the other in Lower Canada. It also allowed courts to sentence any person twenty-one years of age or younger to the reformatory, provided that the sentence given by the judge was at least six months and no more than five years. Persons convicted of a summary conviction offence under the age of sixteen years could also have been sentenced to the reformatory provided that they were given gaol sentences of at least fourteen days. The minimum sentence such an offender would have had to serve in the reformatory was six months and the maximum was two years. The *Reformatory Act* also allowed for the governor of the colony to remove anyone who appeared to be under twenty-one years of age from the penitentiary and place them in the reformatory for the remainder of their sentence.[73]

---

[72] *An Act for establishing Prisons for Young Offenders – for the better government of Public Asylums, Hospitals and Prisons, and for the better construction of Common Gaols,* Statutes of the Province of Canada, 2nd Session, Fifth Parliament of Canada, 1857, c.28 [hereinafter the *Reformatory Act*].

[73] The other legislative action taken by the government in 1857 was to pass *An Act for the More Speedy Trial and Punishment of Young Offenders,* Statutes of the Province of Canada, 2nd Session, Fifth Parliament of Canada, 1857, c.29 [hereinafter *Summary Procedure Act*]. This *Act* was designed to shorten or avoid long pre-trial imprisonment for juvenile offenders through the utilization of summary trial procedures for juveniles who were under sixteen and charged with simple larceny offences. The *Act* could also be used to dismiss the accused if the judge thought the offence was not proven or if punishment proved inexpedient. The *Summary Procedure Act* was modelled on *An Act for the More Speedy Trial and Punishment of Juvenile Offenders, 1847* (U.K.), 10 & 11 Vict., c.82.

B. Critique of the Reformatory

The first of the two reformatories opened in 1858 at Isle aux Noix on the Richelieu River in Lower Canada. Unfortunately, the humane blueprint for juvenile reformation represented by the reformatory idea did not translate well in practice at this location. Two problems immediately arose. The first pertained to the age span of the offenders sent to the reformatory. The reformatory at Isle aux Noix had inmates as young as ten and as old as twenty-one years of age. It was difficult to reform persons in their late teens who already had served some time at the provincial penitentiary. Moreover, their presence in the reformatory was thought to have a negative impact on the younger children. Thus, the problem of classification was transferred from the gaol and penitentiary to the reformatory for the distance between ten and twenty-one could be as great as that between fifteen and forty.[74] The warden and his staff spent much of their time and energy trying to prevent these older inmates from escaping and to punish them for misbehaviour. As a result, reports of mass escapes and excessive brutality began to surface.

Scandal of a sexual nature also arose. The reformatory at Isle aux Noix accepted both boys and girls. In 1859, Francis Johnson was appointed to inquire into complaints that the warden had attempted to seduce the matron of the reformatory and

---

[74]S.E. Houston, *The Impetus to Reform: Urban Crime, Poverty and Ignorance in Ontario 1850-1875* (Ph.D. Thesis, University of Toronto, 1974) at 124.

her sister.[75] Johnson found that the evidence supported the charges. Consequently, in May, 1860, the warden was relieved of his duties.

Those who established the Upper Canadian reformatory at Penetanguishene sought to avoid such scandal by making the institution exclusively for boys. While Penetanguishene did avoid the sex scandal of Isle aux Noix, soon it too had its critics.

Warden Kelly's philosophy was

> based upon keeping up a constant employment for mind and body, and endeavouring by kindness to awaken the moral susceptibilities of the prisoners, by impressing upon them that the training to obedience, regularity, strict discipline and industry, they are obliged to submit to, are intended for their ultimate benefit, and to enable them when they again enter into the world to take their stand as useful members of society.[76]

Kelly sought to implement his penal philosophy through the establishment of the reformatory's regime. The routine in the winter was as follows: up and dressed by 7:15, prayers then school till 8:15, breakfast then work until 11:45, dinner and play until 1:00, work until 3:00, supper at 5:00, followed by prayers and lock-up with light for study until 7:30.[77]

Kelly's attitude concerning the education of the inmates mirrored those of the Roman Catholic chaplain of the penitentiary in Kingston. Chaplain McDonell, anticipating the establishment of juvenile reformatories, wrote in 1855 that "care

---

[75] R.B. Splane, *Social Welfare in Ontario, 1791-1893* (Toronto: University of Toronto Press, 1965) at 149-150.

[76] Canada, Legislative Assembly, "Warden's Report" in *Sessional Papers* (1861) no. 24.

[77] S.E. Houston, *supra* note 74 at 134-135.

ought to be taken not to allow one's self to be carried away by the fanciful theories of certain individuals who would attempt to cram their [juveniles'] minds with knowledge unsuited to their station and prospects in life."[78] Thus, when the inmates of the reformatory were fortunate enough to actually receive any schooling,[79] it consisted of industrial training for labour-driven occupations.

Warden Kelly also believed in punishing misbehaviour. By 1866, out of a population of 161 juveniles, twenty percent of whom were under the age of thirteen years, 122 were mildly punished with 987 meals of bread and water and 73 inmates received a total of 900 lashes with the birch.[80]

Closer public scrutiny of the reformatory's procedures came with the 1867 appointment of J.W. Langmuir as the first Inspector of Prisons, Asylums and Public Charities for Ontario. The crux of his critique of the reformatory was that it had become indistinguishable from an adult prison.

Warden Kelly maintained that his approach produced salutary results and refused any suggestion of reform. It was not until the retirement of the warden in 1879 that Langmuir was able to successfully agitate for change. The new warden implemented Langmuir's suggestions regarding improvement of the physical structure

---

[78] "Roman Catholic Chaplain's Report," *Journals of the Legislative Assembly* (1856) at Appendix 10.

[79] The schooling of boys was frequently interrupted by the demand that they participate in the construction of the reformatory facilities.

[80] S.E. Houston, *supra* note 74 at 144.

of the reformatory, most notably the substitution of dormitories in place of individual cells and the provision of adequate bathing and heating facilities.[81] Moreover, greater stress was placed on the boys' education, although this education still consisted mainly of industrial training.

Despite these changes the reformatory came under renewed criticism in the Report of the Commission of Inquiry into the Prison and Reformatory System of Ontario.[82] The reformatory for boys was characterized as a "great mistake . . . The new structure was but a more commodious prison."[83]

The commissioners preferred industrial schools, which first appeared in 1887 in Ontario, to the reformatory.[84] Exactly why they preferred the industrial school design is perplexing. The schools did operate on a slightly different organizational scheme than that of the reformatory. While the reformatory used dormitories, the industrial schools used a cottage system. The inmates lived in a cottage home under

---

[81] A. Jones, "Closing Penetanguishene Reformatory: An Attempt to Deinstitutionalize Treatment of Juvenile Offenders in Early Twentieth-Century Ontario" in R.C. Macleod, ed., *Lawful Authority: Readings on the History of Criminal Justice in Canada* (Mississauga: Copp Clark Pitman Ltd., 1988) 277 at 279.

[82] Ontario, *Report of the Commissioners Appointed to Enquire into the Reformatory System of Ontario* (Toronto: Warwick, 1891) [hereinafter 1891 Report].

[83] *Ibid.* at 87-88.

[84] *An Act Respecting Industrial Schools*, S.O. 1874, 37 Vict., c.29. Originally, industrial schools were only used to house neglected children. In 1884, the mandate of industrial schools expanded to include being correctional facilities for children convicted of criminal offences. See *An Act to amend and consolidate the Acts respecting Industrial Schools*, S.O. 1884, 47 Vict., c.46.

the care of a matron and a guard who were supposed to act as a mother and father to them. However, these cottages were designed to accommodate fifty boys so the expectation that a family atmosphere could be achieved appears unrealistic. Moreover, the programme of the industrial schools was basically identical to that used in the boys' reformatory.[85] Notwithstanding these facts, the 1891 Report greatly accelerated the closing of the reformatories and the concomitant expansion of the industrial schools.

C. Final Road to the JDA

The closure of Canada's reformatories was the first, although not the most significant, consequence of the 1891 Report. The commission recommended the separate trial and detention of all children and the use, where possible, of suspended sentences.[86] In addition, the commissioners advocated the development of a system of probation and the wider use of the indeterminate sentence.[87] These recommendations would be the basis of the reforms to follow.

To understand why the commission made many of these recommendations, the criminological theories and movements prevalent in the nineteenth century must be explored. The criminal legislation that applied to both juvenile and adult offenders until the late nineteenth century was predicated upon the classical school in

---

[85] R.B. Splane, *supra* note 75 at 253.

[86] 1891 Report, *supra* note 82 at 214-218.

[87] *Ibid.*

criminology. According to the classical school, crime is due to the deliberate choice of the offender, and the offender is presented as a responsible being who freely decides to engage in crime because it has greater advantages than disadvantages.[88]

In the late 1880s, new theories of the state began to emerge, and these new theories had implications for the manner in which offenders were dealt with. Specifically, a phenomenon known as the birth of the penal-welfare state occurred. Wiener asserts that in the latter part of the nineteenth century technological and economic advances extended the scale and complexity of life. Simultaneously, the natural sciences were putting forth new deterministic models for understanding the human world. These factors weakened the image of the autonomous individual.[89] Wiener further notes that

> This shifting perception of human nature was accompanied by a corresponding shift in the view of the role of the state. Individual moral improvement remained the goal of nearly all reformist intervention, but many felt it increasingly unlikely to be produced . . . by

---

[88] The definitive articulation of this view can be traced to 1764 and C. Beccaria, *On Crimes and Punishments,* (Indianapolis: Bobbs-Merill, 1963). Also, see T. Hobbes, *Leviathan*, (London: Penguin, 1981) at 189-90 and I.R. Taylor, P. Walton & J. Young, *The New Criminology: For a Social Theory of Deviance*, (London: Routledge & Kegan Paul, 1973) at 1-7.

[89] M.J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990) at 12, 159-184. Wiener is writing about England but it is contended that many of the forces at work there would have been applicable to the Canadian situation. Indeed the birth of the penal-welfare state was not a phenomenon limited to Great Britain; it occurred simultaneously in Canada and the United States as well. For more information on the birth of the penal-welfare state in Canada and the rise of positivism (a theory discussed on the next page of this dissertation) to inform young offender sentencing and correctional policy, see P. Oliver, *supra* note 51 at 463-499.

> the discipline of adversity. Indeed, adversity might crush rather than stimulate the individual's moral energies. Reformers increasingly argued that adversity must be scaled, if necessary by state intervention, to what ordinary human beings could manage . . . moral improvement was becoming a question of "reforming the framework in which the individual functioned." Reforming the framework meant more direct, if less moral, intervention in the social environment and within the individual himself, than the pattern of Victorian reform had normally allowed.[90]

This new, interventionist state manifested itself in criminological thought, law reform, and correctional practice.

In particular, positivism, a new criminological theory, became more prominent. There were three main tenets of positivist criminology. First, criminal behaviour was determined by factors that could be discovered by the scientific method. Second, people were impelled to commit crime by constitutional and environmental forces beyond their control and, therefore, were not responsible for their actions. Consequently, treatment rather than punishment was the appropriate legal response. The third tenet was that offenders were fundamentally different from law-abiding citizens.[91] In order to achieve positivism's treatment goals, mechanisms such as the indeterminate sentence were required.

Although positivism influenced the administration of criminal law and corrections for both adults and juveniles in England, positivism's effect was predominantly limited to the young offender sphere in Canada. Unlike Great Britain,

---

[90] M.J. Wiener, *supra* note 89 at 187.

[91] V. Bailey, "English Prisons, Penal Culture, and the Abatement of Imprisonment, 1895-1922" (July 1997) 36 Journal of British Studies 285 at 290.

where, in 1908, Parliament passed habitual offender legislation that authorized indeterminate sentences for serious recidivist adult offenders, Canada did not pass such legislation at this time.[92] In Canada, the classical school of criminology continued to inform sentencing and correctional decisions for adults. Adults were seen as willing individuals who chose to do wrong. The correction of young offenders was different since it involved the imperfect wills of individuals who were not yet fully responsible.

The child-savers' movement further bolstered the positivist approach to juveniles. This movement grew in response to a perceived expansion in juvenile crime and vagrancy and the harsh treatment of children in correctional institutions.[93] The child-savers saw that social facilities set up to deal with juvenile crime were inadequate, and they were concerned that children who were not properly socialized would grow up to become dangerous criminals. In the opinion of the child-savers, there was little distinction between the neglected and the delinquent child because the

---

[92] P. Oliver, *supra* note 51 at 314. Despite the enactment of habitual offenders legislation in Great Britain, it was rarely utilized. This fact and others have caused historians like Bailey to question the generally accepted view, promulgated by Wiener and Garland, that positivism replaced the classical school of criminology and was responsible for the penal reform measures in that nation in the late nineteenth and early twentieth centuries. See M.J. Wiener, *supra* note 89, D. Garland, *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985), and V. Bailey, *supra* note 91 for more on this point.

[93] J.S. Leon, "The Development of Canadian Juvenile Justice: A Background for Reform" (1977) 15 Osgoode Hall L.J. 71 at 84-86.

distinction related only to whether the child was potentially or actually criminal.[94] Thus they advocated for the state to play an increased role in the lives of a greater number of deviant, although not necessarily criminal, youths.

The Canadian child-savers movement began in earnest shortly after the 1891 Report was released. At this time, J.J. Kelso, along with the commission's chairman, Langmuir, founded the Toronto Children's Aid Society and Fresh Air Fund. Their goal was to have the government implement the reforms recommended in the 1891 Report.

The first item on the Canadian child-savers agenda was to obtain legislative recognition of the need for separate trials for young persons. In 1892, Kelso organized a reception for Sir John Thompson, the Federal Minister of Justice, who was visiting Toronto. Kelso's delegation met with Thompson and convinced him to pass the required legislation.[95] Thus, the first *Criminal Code* of Canada included a section providing for the *in camera* and separate trial of persons under the age of sixteen if it was "expedient and practicable" to do so.[96] Because most judges found it inexpedient and impractical to grant separate trials to juveniles, Kelso conducted an active

---

[94] J. Bolton *et al*, "The *Young Offenders Act*: Principles and Policy – the First Decade in Review" (October 1993) 38 McGill L.J. 939 at 946.

[95] I. Bain, *The Role of J.J. Kelso in the Launching of the Child Welfare Movement in Ontario* (M.S.W. Thesis, University of Toronto, 1955) [unpublished] at 72-76.

[96] See s.550 of the *Criminal Code, 1892,* S.C. 1892, c.29.

campaign to make the provision mandatory.[97] In 1894, the *Criminal Code* was amended and it was made compulsory that juveniles be tried separately from other accused persons and without publicity.[98] The amending legislation also provided for separate pre- and post-trial custody for young offenders. However, the remainder of the recommendations contained in the 1891 Report, most notably the development of a system of probation and indeterminate sentences for juveniles, called for more extensive reforms than could be achieved through modest amendments to the *Criminal Code*.

To effect the large scale changes to juvenile justice administration that the child-savers wanted, a politically powerful advocate was required. That advocate was W.L. Scott, the principal draftsman of the *JDA*. Scott was the Local Master at Ottawa for the Supreme Court of Ontario and president of the Ottawa Children's Aid Society.

In May of 1906, Scott received a circular urging his attendance at the forthcoming National Conference of Charities and Corrections in Philadelphia. At this time, a new juvenile court and probation system, inaugurated in Chicago in 1900, was being adopted in several large cities around the United States. Scott returned home to

---

[97] J.S. Leon, *supra* note 93 at 88.

[98] See *An Act respecting Arrest, Trial and Imprisonment of Youthful Offenders* S.C. 1894, 57-58 Vict., c.58.

Ottawa determined to reform the Canadian juvenile justice system based on the American model.[99] In a letter to J.J. Kelso, Scott wrote:

> I was, I must confess, very sceptical as to the likelihood of our obtaining at the conference any new ideas, that would warrant the expense of the trip. The meetings, however, proved a veritable revelation to us. The subject of the juvenile court and probation system for children, which none of us in Ottawa had ever heard of, was in everyone's thoughts and was set forth in paper after paper. We were particularly taken with this system of juvenile probation, and we secured copies of a folder on the subject, for future reference.[100]

Scott's first step was to enlist the aid of his father, R.W. Scott, who was then Secretary of State. The elder Scott was quite enthusiastic in his support for new juvenile justice legislation, but perhaps he should have somewhat tempered that enthusiasm. R.W. Scott inserted mention of "a bill to make better provision for dealing with juvenile delinquents"[101] within the 1906 speech from the throne without consulting the Minister of Justice, Mr. Aylesworth. The proposed bill was under the jurisdiction of Aylesworth and he was insulted at the fact that Parliamentary protocol had been breached. Cognizant of the fact that the support of the Minister of Justice

---

[99] That the American models of juvenile justice heavily influenced Scott's drafting of the *JDA* is indicated in his correspondence with Kelso. Scott stated that in drafting an early version of the *JDA* he "followed the Colorado and Illinois Acts . . . and . . . adopted from the Pennsylvania Act and from a bill now before the New York Legislature." (National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to J.J. Kelso, 23 Nov 1906.) In conducting my research for this chapter, I examined the W.L. Scott Papers from the period 1906-1908.

[100] National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to J.J. Kelso, 4 June 1906.

[101] *House of Commons Debates* (23 November 1906) at 5.

was required in order to pass his Canadian juvenile justice legislation, W.L. Scott wrote to Aylesworth and requested meetings, which Aylesworth refused. In January of 1907, Scott wrote to Kelso in dismay:

> I regret to say that Mr. Aylesworth seems to be dead set against the proposed bill and his objection appears to be an unreasonable one which cannot be got at by argument. Moreover he apparently does not wish to be convinced despite his earlier promise.[102]

Scott was quite aware that Aylesworth's hostility to the bill emanated from the elder Scott's failure to consult him,[103] and yet there seemed nothing that the younger Scott could do to ameliorate the situation.

Under pressure from Governor General Lord Grey, Aylesworth eventually agreed to the introduction of the bill in the Senate. However, the bill was introduced with the explicit understanding that it would not go beyond second reading and would not commit Aylesworth in any way. Although the bill was received favourably in the Senate, opposition began to grow against it.

The first opposition group was more cautionary than critical. They were concerned that the new juvenile justice system did not respect the due process rights of youths. For example, Mr. Justice Anglin questioned the wide and largely discretionary

---

[102] Letter of W.L. Scott to J.J. Kelso (January 1907) reprinted in M.G. Williams, *Canadian Youth Justice: Moral Panic or Respectable Fears?* (M.A. Thesis, Carleton University, 1994) [unpublished] at 48.

[103] In a letter to Mrs. Schoff of the Philadelphia Children's Aid Society, Scott wrote, "[i]n the matter of the failure to consult him, he [Aylesworth] was, however entirely right and he had, therefore an excellent excuse for his hostility to our proposal." (Letter of W.L. Scott to Mrs. Schoff (January 1907) reprinted in M.G. Williams, *supra* note 102 at 48.)

powers of judges and probation officers under the new legislation.[104] While Scott acknowledged these concerns, he emphasized that

> Neither the Courts nor the probation officers will be anxious to take in hand cases where the child does not seem to be going wrong. Still it is desirable to have the definition wide enough to enable the Court to take hold of any case where the intervention of the Court seems desirable.[105]

The other opposition group was comprised mostly of high ranking police officials. Leon argues that these groups advocated a more punitive approach to juvenile crime than that provided by the proposed bill.[106] While some police officials argued that the new legislation required judges to "kiss and coddle a class of perverts who require the most rigid discipline and corrective methods to ensure the possibility of their reformation[,]"[107] it can be contended that the leniency of the proposed legislation was not the only thing that concerned the police. An examination of the correspondence between the Chief Constables Association and the Minister of Justice serves to bolster this latter argument. The Secretary of the Chief Constables Association, writing on behalf of the Association, stated it was an error to separate the police from preventive or probationary work and only 'wheel them in' when the

---

[104] National Archives of Canada, W.L. Scott Papers, vol. 6, Mr. Justice Anglin to W.L. Scott, 7 Feb. 1907. The bill's provisions were virtually identical to those of the *JDA*. I provide a brief outline of the *JDA*'s provisions further on in this chapter.

[105] National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to Mr. Justice Anglin, 8 Feb. 1907.

[106] J.S. Leon, *supra* note 93 at 95.

[107] D. Archibald, *Report on the Treatment of Neglected Children in Toronto* (Toronto: Arcade, 1907) at 5.

probation system failed, as that would invariably lengthen the distance between urban police and their working-class clientele and hamper the rescue mission which the new initiatives sought to promote.[108]

However, it is possible that the police merely adopted the rhetoric of the child-savers in order to stop the passage of the new juvenile justice legislation. It can be argued that because the police knew members of the federal government were favourably disposed toward the child-saving movement, they thought that the best way to attack the bill was on the basis that it creates obstacles to the rehabilitation of young people. Indeed, Marquis cites evidence demonstrating that, although members of the Chief Constables Association accepted the importance of crime prevention and police social work, their real concern was crime control and lenient sentencing.[109]

In the face of this opposition, Scott, Kelso, and others who believed in the new juvenile justice legislation mounted a successful campaign to build support for the bill. Information and copies of the bill were distributed and petitions were circulated. Leon notes a number of individuals and organizations that took action to indicate their approval of the proposed legislation.[110] From this evidence, Leon concludes that there

---

[108] National Archives of Canada, RG 13 A2 acc 86-87/84 v.69 file 764/1908 Wm. Stark, Secretary of the Chief Constables Association, to Aylesworth, Minister of Justice, 29 Aug. 1907.

[109] G. Marquis, "Canadian Police Chiefs and Law Reform: The Historical Perspective" (1991) 33 Can. J. Crim. 385 at 388-390.

[110] J.S. Leon, *supra* note 93 at 94.

was considerable support among the public for the *JDA*.[111] However, a review of prominent Canadian newspapers of that time period reveals that there were very few articles written about the new bill or the reform process.[112] This is strong evidence that juvenile justice reform was not a priority for the public at this time. Nevertheless, what is clear is that the child-savers were a powerful, well organized interest group.

Because of their incessant lobbying, Aylesworth sponsored the bill, thus assuring its smooth passage through Parliament. The bill's passage was so smooth that it drew only a ten-minute debate in the House of Commons. During this short debate, a lone Member of Parliament expressed reservations about the bill. Mr. Lancaster, an Ontario lawyer, focused on the lack of due process provisions for youth in the bill. He noted the failure to provide for the defence of children by counsel[113] and objected to the deprivation of the inherent right to trial by jury for young people.[114] Despite the

---

[111] *Ibid.*

[112] The time period examined was 1906-1908 and the newspapers reviewed were *The Toronto Star* (then known as *The Toronto Daily Star*), *The Winnipeg Free Press* (then known as *The Daily Free Press*), and *The [Montreal] Gazette*. Fewer than ten articles per paper could be found that dealt with youth crime, legislation, or reform during this period.

[113] *House of Commons Debates* (18 July 1908) at 12402.

[114] *Ibid.* at 12403-05. There is evidence that, by this time, jury trials had become more rare in the adult context. See, for example, N. Parker, "Swift Justice and the Decline of the Criminal Trial Jury: The Dynamics of Law and Authority in Victoria, BC, 1858-1905" in H. Foster & J. McLaren, eds., *Essays in the History of Canadian Law*, vol. 6, *British Columbia and the Yukon* (Toronto: University of Toronto Press, 1995) 171. In her doctoral dissertation, Parker has conducted a much more comprehensive analysis of the decline of the jury trial in British Columbia, Ontario, and Nova Scotia. This dissertation has been successfully defended but, at the time of writing, has not yet

fact that due process concerns would form a significant critique of the *JDA* in the years to follow, at the time of its enactment Lancaster's position found no further support and the bill was passed.

The social reformers finally succeeded in obtaining legislation that reflected positivist beliefs regarding the malleability and treatment of delinquent juveniles. Through the enactment of the *JDA*, a separate youth justice system was established complete with distinct courts, probation services and correctional facilities. Under the *JDA*, the juvenile court's approach was modelled on the *parens patriae* jurisdiction of the English Chancery Court.[115] As a result, the juvenile delinquent was to be considered not as a criminal but "as one in a condition of delinquency and therefore requiring help and guidance and proper supervision."[116]

In order to achieve the treatment goals of the *JDA*, a highly informal and discretionary system was established. In order to be brought within the ambit of the *JDA*, young people did not have to commit acts contrary to the *Criminal Code*.[117] The

---

been deposited (personal communication, Professor Douglas Hay of York University, PhD supervisor to Nancy Parker).

[115] *Parens patriae* literally means "father of the country" and the principle was first stated in *Eyre* v. *Shaftsbury* (1772), 24 E.R. 659. However, perhaps the best articulation of the definition of *parens patriae* is contained in *R.* v. *Gyngall* (1893), 2 Q.B. 232 at 248, where the court stated that "the jurisdiction . . . is essentially a parental jurisdiction and the description of it involves that the main consideration to be acted upon in its exercise is the benefit or welfare of the child."

[116] See s.3(2) of the *JDA*.

[117] *Criminal Code*, R.S.C. 1985, c. C-46 [hereinafter *Criminal Code*].

positivist- inspired *JDA*'s aim was to cure those young persons who were actually or potentially criminal. As a result, the *JDA* provided for a single, all-encompassing offence of "delinquency." Section 2(1) of the *JDA* defined a "juvenile delinquent" as any child who violated any provision of the *Criminal Code* or any provincial statute, municipal by-law, who was guilty of any sexual immorality or any similar form of vice, or who was uncontrollable, incorrigible or unmanageable.[118]

It is not surprising that the drafters of the *JDA* adopted such a sweeping definition of "delinquency." In the late nineteenth and early twentieth centuries, criminal legislation applicable to adults was also highly discretionary and wide in scope. For instance, in 1869, an *Act Respecting Vagrants* was enacted.[119] Among those defined as vagrants by the 1869 statute, and subject to imprisonment for a term not exceeding two months, were all idle persons not having a visible means of maintaining themselves, those able to work who wilfully refused employment, those begging or receiving alms without a signed certificate indicating that they were deserving of charity, those who loitered in the streets and caused a disturbance, and all common prostitutes, nightwalkers, keepers, and frequenters of houses of ill-fame unable to give

---

[118] "Immoral" and "incorrigible" behaviours that would subject youths to criminal sanctions under the *JDA* were known as status offences. No reported decisions could be found that discussed what acts constituted "immoral" and "incorrigible" behaviour. However, historians have found juvenile court files and youth institution committal records to substantiate the claim that judges did little to reduce the wide ambit of the *JDA*. See, for example, C. Strange, *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995) at 133-139.

[119] *An Act Respecting Vagrants*, S.C. 1869, c.28.

a satisfactory account of themselves. Thus, it can be argued that the wide ambit of the *JDA* was not unprecedented in terms of criminal legislation at this time. However, since the *JDA*'s wide ambit remained intact until its repeal in 1982, long after the scope of adult criminal legislation had been reduced, the *JDA* became viewed as an exceptional piece of criminal legislation. Moreover, from the time of its enactment, the *JDA* not only had a wide scope but judges were given sweeping dispositional powers under it, and it is contended that this coupling made the *JDA* unique among Canadian criminal statutes of the early twentieth century.

Since treatment of the offender was the *JDA*'s paramount goal, and since one cannot predetermine the length of time needed for rehabilitation, the *JDA* gave judges a number of dispositional options, including the indeterminate sentence.[120] Thus, sentencing disparities were an intended outcome of the *JDA*'s welfare model, which focused on the treatment needs of individual youths.[121] Moreover, under the *JDA* children had no explicit right to counsel, had limited appeal rights and had no right to a public trial.[122]

---

[120] See s.20 of the *JDA*, which clarifies that the indeterminate sentence applicable to juveniles was not a fully indeterminate sentence. Custodial sentences given to young people under the *JDA* were terminated at or before they reached the age of twenty-one.

[121] R.R. Corrado & A. Markwart, "The Evolution and Implementation of a New Era of Juvenile Justice in Canada" in R.R. Corrado, N. Bala, R. Linden & M. Le Blanc, eds., *Juvenile Justice in Canada*, (Toronto and Vancouver: Butterworths Canada Ltd., 1992) 137 at 225.

[122] See ss.12(1) and 37(2) of the *JDA*.

The exercise of such due process rights would inevitably delay or prevent the court from ordering a disposition upon a young person. It was thought that any delay in treatment would hinder the rehabilitative process for juveniles. In any event, as the court was helping rather than punishing the young person, the need for due process rights was felt to be minimal. Consequently, the regime established under the *JDA* was not one that respected the due process rights of young offenders.

D. Critique of the Child-Savers

It is widely believed that the *JDA* arose from a liberal, enlightened social reform movement that was initiated and guided by a compassion for children.[123] It is true that child-savers like Scott regarded industrial schools and reformatories as "no more than a necessary evil."[124] Accordingly, they wished to use them sparingly and only when all other alternatives had proved futile. However, the child-savers did not seek to address the curriculum of industrial schools, which stressed shoemaking, bricklaying, carpentry, cabinetmaking, and other labour-driven occupations. Thus,

---

[123] See, for example, the comments made in D.L. Moore, *Juvenile Justice: Rhetoric, Reality and Prospects for Change* (M.A. Thesis, York University, 1981) [unpublished] at 10, Canada, Ministry of the Solicitor General, *Young Persons in Conflict with the Law* (Ottawa: Communication Division, 1975) at 3 [hereinafter *YPICL*] and N. Bala. & M. Kirvan, "The Statute: Its Principles and Provisions and their Interpretation by the Courts" in A.W. Leschied, P.G. Jaffe, & W. Willis eds., *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, (Toronto: University of Toronto Press, 1991) 71 at 71.

[124] W.L. Scott, "The *Juvenile Delinquents Act*" (1908) 28 Can. Law Times and Rev. 892 at 897.

these institutions served a class-confirming role that ensured inmates were not able to compete with the upper and middle classes.

The expansion of probation, which Scott identified as the principal advancement of the *JDA*,[125] was also not driven purely by humanitarian concern over neglected and criminal children. Kelso and Scott wanted to replace the volunteers who had performed as probation officers with paid professionals drawn from the educated classes.[126] Thus, the expansion of probation brought on by the *JDA* provided economic opportunities for the upper and middle classes. Consequently, while the child-savers movement was, in part, motivated by humanitarian concerns, some of the motives of the founders of the juvenile court were less than altruistic. The *JDA* allowed a socio-economic elite to hold the lower classes in their places and professional child-savers, drawn from the middle and upper classes, to protect and expand their careers.[127]

Nevertheless, the idea of the child-savers' benevolent motives persisted. This perception resulted in a critical vacuum surrounding the *JDA*. There was little concern

---

[125] Public Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to Judge Winchester, 11 June 1907.

[126] A. Doerr, *The State and the Reproduction of Social Control: A Study of the History of Canadian Juvenile Justice Practices* (M.A. Thesis, University of Windsor, 1996) [unpublished] at 46.

[127] For a revisionist perspective on the history of family courts in Ontario from 1880-1940 see D.E. Chunn, *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940* (Toronto: University of Toronto Press, 1992). Although Chunn's analysis focuses on how family law was used to regulate the lives of the lower classes, she also discusses how juvenile courts, under the *JDA*, attempted to reproduce desired class and gender relations in deviant families (see D.E. Chunn, *supra* note 127 at 166-190).

about the *JDA* despite the fact that from 1891 to 1971 rates of conviction per capita for juvenile offenders increased in a more or less linear progression.[128] This critical vacuum allowed the *JDA* passed in 1908 to remain largely unchanged until its repeal in the 1980s. It was not until the 1960s that the call for reform began to be heard once again.

IV. CHANGING OF THE GUARD, THE *YOA*

A. Report of the Department of Justice Committee on Juvenile Delinquency

On November 6, 1961, the federal government established a committee of the Department of Justice to study the problem of juvenile delinquency in Canada and to suggest reforms.[129] Many explanations have been suggested as to why the government commissioned a report of this kind at this time.

---

[128] L. Tepperman, *Crime Control: The Urge Toward Authority* (Toronto and Montreal: McGraw-Hill Ryerson Limited, 1977) at 217. Although the 1930s were a time of markedly heightened conviction rates for adult offenders, based on the existing statistics the same could not be said for young offenders (L. Tepperman, *supra* note 128 at 216). However, the accuracy of these juvenile delinquent statistics is questionable in light of the findings of the Department of Justice Committee on Juvenile Delinquency. The Committee found that there was not, nor had there ever been, a central clearing-house for juvenile justice statistics in Canada and that the statistics in existence were inaccurate and incomplete. (Department of Justice, *Report of the Department of Justice Committee on Juvenile Delinquency* (Ottawa: Queen's Printer, 1965) at 3.)

[129] Department of Justice, *Report of the Department of Justice Committee on Juvenile Delinquency* (Ottawa: Queen's Printer, 1965) [hereinafter Report]. The Department of Justice Committee on Juvenile Delinquency was composed of five members: Allen J. MacLeod, Commissioner of Penitentiaries, L. Philippe Gendreau of the Penitentiaries Service, Mary Lou Lynch of the National Parole Board, Edwin W. Willes, an inspector with the Royal Canadian Mounted Police, and Ronald R. Price, federal Department of Justice, Criminal Law Section.

It has been proposed that the Report was initiated in response to a perceived increase in juvenile crime in the years leading up to the 1960s.[130] However, there are a number of reasons why it is doubtful that a growing awareness of juvenile crime was a real impetus for reform. A review of major Canadian newspapers from these years reveals few articles and editorials concerning juvenile crime.[131] Consequently, it appears the public was not very interested in this issue. Further evidence of a lack of perceived increase in juvenile crime is found in the Report itself. If there was a perceived increase in juvenile crime under the welfare-oriented *JDA*, it would be logical for the public, fearing for their safety, to advocate harsher punishment of juvenile offenders. Yet, the Report endorsed the treatment philosophy of the *JDA* and eschewed a juvenile justice model based on increased accountability of young offenders.[132] Moreover, there was no public uproar regarding this aspect of the Report. It is suggested that if the public was really concerned about an increase in juvenile crime and if this concern drove the federal government to establish the Department of Justice Committee on Juvenile Delinquency, the Report would have recommended a tougher approach to juvenile offenders.

---

[130] See, for example, R.D. Challen, *The Reform of Canada's Juvenile Justice System, 1969 to 1982: Ontarios's Role in Co-operative Federalism?* (Ph.D. Thesis, University of Toronto, 1996) [unpublished] at 139 and A. Doerr, *supra* note 126 at 87.

[131] The time period examined was 1957-1961 and the newspapers consulted were *The Toronto Star*, *The Winnipeg Free Press*, *The* [*Montreal*] *Gazette*, and *The Vancouver Sun*. Fewer than ten articles per paper could be found that dealt with youth crime, legislation, or reform.

[132] Report, *supra* note 129 at 106.

A close examination of the Report discloses the real reasons for its production. The Report explicitly states that one of the rationales for the inquiry was concern over the increasing proportion of young people in the general population.[133] In 1956, 38% of Canada's population was nineteen years old or younger, but by 1961 that figure had risen to 42%.[134] There were more teenagers in Canada at this time than in any previous period. It was felt that unless the problem of juvenile delinquency was effectively dealt with, there would be a huge increase in the number of adult prisoners.[135]

The Report also shows that the Department of Justice Committee on Juvenile Delinquency was aware of evaluations of juvenile justice systems that were

---

[133] *Ibid.* at 2.

[134] *Ibid.*

[135] In 1961, the Correctional Planning Committee of the Department of Justice made the following statement:

> The development of a correctional program along the lines that we recommend will not solve the basic problem of crime in Canada but will only serve to prevent the problem from becoming increasingly more acute. The federal system can only operate in relation to persons who have committed at least a first offence. The best way to prevent crime is to eradicate those influences that produce criminals. There should, therefore, be an organized, integrated approach in Canada to the problem of juvenile delinquency in order to discover, at an early stage, those children who are in danger of becoming delinquent and to correct their maladjustments at that time. Unless this is done there is no real hope of stopping the flow of an ever increasing number of young adult offenders through the criminal courts and into Canadian prisons.

(Department of Justice, *Report of the Correctional Planning Committee* (Ottawa: Queen's Printer, 1961) at 5-6.)

concurrently occurring in the United Kingdom and the United States.[136] Thus, it can be argued that the federal government was influenced to appoint a committee to study juvenile delinquency when it did because other nations were doing so.

While these foreign studies were critical of their respective juvenile justice systems, their recommendations for reform varied radically. In England and Scotland, the Ingleby and Kilbrandon Committees recommended the abolition of juvenile courts and the transfer of the juvenile court function to a welfare agency, while the American national study recommended a tightening of procedural safeguards.

Advances in social science guided the direction of many of the reform proposals contained within the Report. During the 1960s, labelling theory emerged. This theory postulates that processing young offenders through the criminal justice system effectively labels the young people as criminals.[137] The effect of this label on young people is that they subsequently behave in accord with the label. In other words, they act like criminals. Ironically, the system designed to cure delinquency was being blamed for reinforcing it.

---

[136] Report, *supra* note 129 at 42, 46, and 255. The evaluations of foreign juvenile justice systems mentioned by the Committee were eventually reported in U.K., *Report of the Committee on Children and Young Persons* (Ingleby Committee) (London: H.M.S.O., 1960), U.K., *Children and Young Persons: Scotland* (Kilbrandon Committee) (Edinburgh: H.M.S.O., 1964) and President's Commission on Law Enforcement and Administration of Justice, *Juvenile Delinquency and Youth Crime* (Washington: U.S.P.O., 1967).

[137] See H.S. Becker, *Outsiders: Studies in the Sociology of Deviance*, (New York: Free Press, 1963) and E.M. Lemert, *Human Deviance, Social Problems and Social Control*, (Englewood Cliffs, NJ: Prentice-Hall, 1967).

In its 1963 brief to the Department of Justice Committee on Juvenile Delinquency, the Canadian Corrections Association proposed a possible solution to the stigmatizing effect of the juvenile justice system.[138] The Association suggested that the scope of the juvenile justice system be reduced.[139] It noted that the wide wording of "delinquency" did not distinguish between offences in violation of the *Criminal Code*, violations of municipal by-laws and status offences. Each child found delinquent was liable to the same range of dispositions. The *JDA* cast an indiscriminate label over all forms of deviant youth behaviour. Consequently, one of the recommendations of the Report was that the offence of "delinquency" be replaced by specific criminal offences.[140]

Advances in the field of developmental psychology also had a profound impact on Canadian juvenile justice policy reform. The 1960s work of psychologists Piaget and Kohlberg that pointed to a moral and cognitive differentiation between stages of youth development was of particular interest.[141] These psychologists posited that

---

[138] The Canadian Corrections Association was the national voluntary co-ordinating body in Canada in the fields of corrections and criminology. It discharged its functions by providing facilities and a channel for the exchange of information and ideas for the interdisciplinary study of problems associated with crime and delinquency. The Association was a division of the Canadian Welfare Council.

[139] Canadian Corrections Association, *The Child Offender and the Law* (Ottawa: Canadian Welfare Council, 1963) at 5-7.

[140] Report, *supra* note 129 at 40, 68.

[141] J. Piaget, *The Moral Judgment of the Child*, (New York: Free Press, 1965) and L. Kohlberg, "Moral Development" in *International Encyclopedia of Social Sciences*, vol. 10 (New York: MacMillan, 1968) 483 at 490.

young offenders' understanding of responsibility is circumscribed in light of their limited experience and maturity. While theorists disagreed about the borderline ages at which children developed a sense of justice, they all agreed that general categories of development could be described. Based on the work of these psychologists, it was recommended that the minimum age for juvenile court jurisdiction be raised to ten and that a maximum age of seventeen be uniformly applied across all provinces.[142]

While advances in social science provided the theoretical basis for many of the reforms recommended in the Report, the most influential force guiding the direction of the proposals was the due process movement. It is likely that the United States Supreme Court decisions of *Kent* v. *United States,*[143] *In Re Gault,*[144] and *In Re*

---

[142] Report, *supra* note 129 at 284. Political and administrative convenience played a large role in changing the age lines recommended in the Report. The *YOA*'s minimum age for youth court jurisdiction was set at twelve and its maximum age was set at eighteen. As the Solictor General of Canada said in the Justice and Legal Affairs Committee: "If there had been nine out of ten provinces agreeing on the maximum age, I would have picked it whatever it was. With the minimum age of twelve, it seems reasonable to me, and since nine out of ten provinces favour it, I thought that it was the right thing to do." (House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* (9 February 1982) at 68:49.)

[143] *Kent* v. *United States*, 383 U.S. 541 (1966) [hereinafter *Kent*]. In *Kent*, the trial judge failed to hold a hearing and did not confer with the child, his parents or his lawyer before transferring him to adult court. Moreover, the trial judge gave no reasons for his ruling. The United States Supreme Court overturned the trial court decision on the ground that the judge had not accorded the child due process. Although the Supreme Court did not state that juveniles were entitled to all the due process rights of adults, the court did mandate that young persons be given a hearing and that counsel for young persons be given access to all the documentary material upon which the judge relies.

[144] *In Re Gault,* 387 U.S. 1 (1967) [hereinafter *Gault*]. In *Gault*, a boy had been arrested for making obscene phone calls. A hearing was held in the judge's chambers

Winship[145] helped to prompt the Report's due process orientation. While all of these cases post-dated the release of the Report, they were being litigated at the time the Report was being written. This litigation attracted attention to juvenile due process concerns.

Another reason why the call for rights-based reforms to the juvenile justice system arose in the 1960s has to do with the social and political climate of that decade. Prominent political issues of the time, especially in the United States, were minority rights and women's rights. Thus, there was an abundance of rights discourse at the time when juvenile justice reform was being considered.

Moreover, it is likely that American academics influenced the writers of the Report. In the late 1950s and early 1960s, a series of articles in American law journals and books began to raise questions about the lack of procedural rights for juveniles.[146]

---

without the boy's parents who had not been contacted. There were no witnesses and no transcript or record of the hearing was kept. The Supreme Court held that the boy had been denied fundamental due process rights. In particular, the court held that juveniles have the right to counsel, notice, confrontation, and cross examination. Moreover, the privilege against self-incrimination was held to be as applicable to youths as for adults.

[145] *In Re Winship,* 397 U.S. 358 (1970) [hereinafter *Winship*]. In this case, the United States Supreme Court decided that before criminal sanctions can be imposed on a juvenile, there must be proof beyond a reasonable doubt that the youth committed the alleged offence.

[146] See, for example, M.J. Beemsterboer, "The Juvenile Court-Benevolence in the Star Chamber" (1960) 50 J. Crim. L., Crim. & Pol. Sci. 464, P.W. Tappan, "Treatment without Trial" in S. Glueck, ed., *The Problem of Delinquency* (Boston: Houghton Mifflin, 1959) 290, and C.J. Autieau, "Constitutional Rights in Juvenile Courts" (1961) 46 Cornell L.Q. 387.

Indeed, when the Department of Justice Committee on Juvenile Delinquency expressed its concerns about due process rights for Canadian juveniles, it cited some of these American articles.[147]

Members of the Canadian due process movement saw parallels between the American situation and the Canadian one. The lack of explicit due process guarantees in the *JDA* was widely recognized, and while some Canadian judges attempted to read in such guarantees, others did not.[148]

The main argument made by due process activists was that children are particularly vulnerable to state power and should be accorded more, not less, due process protection than adults. This argument made a deep impression on the Department of Justice Committee on Juvenile Delinquency, as is evident in the Committee's recommendations, which included the replacement of the indefinite sentence with definite custodial sentences of a maximum term of three years with annual reviews and judicially authorized early release; the addition of explicit procedural safeguards respecting the taking of statements from youth by police; the

---

[147] Report, *supra* note 129 at 147-150, 159-160.

[148] For instance, in *R.* v. *B.* (1956), 19 W.W.R. 651 (B.C.S.C.), the court held that juveniles had the right to make full answer and defence. Whereas, in *R.* v. *Gerald X* (1958), 25 W.W.R. 97 (Man. C.A.), the court found that juveniles did not possess the right against self-incrimination. The uncertainty of the due process guarantees within juvenile courts in Canada led many judges to transfer serious cases to adult court as a protection for juveniles. See, for example, *Re Cline* (1964), 45 W.W.R. 184 at 189 (B.C.S.C.), where the court stated that a juvenile court could not appreciate the "fine points of defences available to persons accused of manslaughter[.]" Consequently, the court transferred the youth to adult court in order to give him a fair trial.

requirement that accused juveniles be informed of their right to counsel; and the inclusion of broadened appeal rights.[149] While the Committee believed that juvenile justice legislation should be based on a welfare model, it did not maintain that such a model necessitated a lack of civil liberties for young offenders:

> It does not follow, of course, that acceptance of what has been called the "rehabilitative ideal" means that the question of civil liberties can be safely ignored. So beguiling, in fact, is the language of therapy that all the more care must be taken to ensure the protection of these liberties.[150]

B. Bill C-192

On November 16, 1970, Bill C-192,[151] a bill that incorporated many of the recommendations of the Report, was introduced in the House of Commons. However, as a result of opposition from the provinces and interest groups, the federal government was persuaded to allow the proposed legislation to die on the Order Paper in 1972.

The province of Ontario was not in favour of the Bill. Ostensibly, the provincial government took this position because it felt that, despite the Bill's stated intention,[152] it had moved too far away from a philosophy that promoted the

---

[149] Report, *supra* note 129 at 283-299.

[150] *Ibid.* at 87-88.

[151] Bill C-192, *An Act Respecting Young Offenders and to Repeal the Juvenile Delinquents Act*, 3d Sess., 28th Parl., 1970 [hereinafter Bill C-192].

[152] Section 4 of Bill C-192 set out the proposed legislation's philosophy:

> This Act shall be liberally construed to the end that where a young person is found . . . to have committed an offence, he will be dealt with as a misdirected and misguided young person requiring help,

rehabilitation of juvenile offenders.[153] Allan Grossman, the Ontario Minister of Correctional Services, was particularly critical of the determinate sentencing scheme of Bill C-192. Grossman stated that the most regressive feature of the Bill was the failure of the federal government to understand that it was impossible to forecast the extent of care, training, treatment, supervision, or discipline that a child required.[154]

While the government of Ontario publicly opposed the Bill on ideological grounds, there were also other reasons, that had little to do with correctional philosophy, for Ontario's resistance to the proposed legislation. Ontario's stated position was that indeterminate sentences were more conducive to rehabilitation than were determinate sentences. However, a substantial amount of empirical evidence was being produced at this time which supported the assertion that indeterminate dispositions act as a disincentive to offender rehabilitation.[155] Moreover, Ontario's stance on determinate sentencing was not consistent during this time period. Bill C-192 established a determinate sentencing structure for all offences except those

---

> guidance, encouragement, treatment and supervision and to the end that the care, custody and discipline of that young person will approximate as nearly as may be that which should be given by such a young person's parents.

[153] National Archives of Canada, RG 73 acc 80-81/039 box 57 file 8-2 (part 1) News Release, December 9, 1970 by Hon. Allan Grossman, Minister, Ontario Department of Correctional Services. Statement by the Minister regarding Federal Bill C-192 – An Act Respecting Young Offenders.

[154] *Ibid.*

[155] A. Doerr, *supra* note 126 at 67.

meriting a minimum of life imprisonment or the death penalty in the adult system. For these latter type of offences, the young offender, upon conviction, would be placed in an industrial school and then resentenced at the age of twenty-one in adult court.[156] As a result, under Bill C-192, an indefinite sentence could be given to these young offenders. Ontario opposed these provisions of Bill C-192, in part, on the basis that there would be significant negative effects on the mental and emotional state of juvenile offenders subjected to resentencing due to the uncertainty of the final disposition that they would serve.[157]

Thus it is argued that Ontario's opposition to Bill C-192 stemmed more from outstanding financial rather than philosophical issues. Under the *Canada Assistance Plan,*[158] the federal government provided 50% cost sharing for provincial health and social service programs if these programs met *CAP* criteria. Under the *CAP*, the federal government paid fifty percent of all provincial costs regarding *JDA* rehabilitation and treatment programs for young people. However, the administration of the rehabilitation programs had to be instituted by the provincial social welfare ministry. If the administration of juvenile justice programs were under the provincial Attorney General or under a correctional authority, *CAP* cost sharing was strictly

---

[156] See ss.30(1) and (4) of Bill C-192.

[157] Archives of Ontario, RG 60-61, acc 27227 box 5. Director's Files: Paul Siemens. Letter, dated February 8, 1971 to The Honourable Jean-Pierre Goyer, Solicitor General of Canada from Allan Grossman, Minister of Correctional Services.

[158] *Canada Assistance Plan*, R.S.C. 1970, c.C-1 [hereinafter *CAP*].

prohibited. In Ontario, the administration of juvenile justice programs was the responsibility of the corrections department, and a shift of responsibility for these programs to the provincial social welfare ministry would have been very costly. Accordingly, Ontario refused to change the structure of its program administration and it did not receive significant funds from Ottawa for its juvenile justice programs.[159]

Since the implementation of the *CAP* in 1966, several discussions between the federal government and the provincial government in Ontario had failed to resolve the issue of *CAP* funding of juvenile justice programs. This cost sharing issue had not been dealt with to Ontario's satisfaction at the time Bill C-192 was introduced.

Because the federal government refused to cost-share Ontario's juvenile justice programs, Ontario declined to give its support to Bill C-192. Before Ontario's provincial government would commit to an additional outlay of funds to implement the new juvenile justice system, it had to be assured that its existing programs would be partially funded by the federal government. The federal government recognized that Ontario's opposition to Bill C-192 stemmed largely from the cost-sharing issue. In a draft memorandum to Cabinet dated May 4, 1971, J.H. Hollies, legal counsel with

---

[159] R.D. Challen, *supra* note 130 at 294, 296-297. It should also be noted that New Brunswick administered its juvenile justice programs through its corrections department. Thus, it too lost significant *CAP* funding. While New Brunswick also opposed Bill C-192 due to outstanding financial issues regarding juvenile justice funding, most of the archival evidence from the National Archives of Canada focus on the province of Ontario's concerns. This demonstrates that the federal government perceived the position of the Ontario government as the most significant obstacle to its proposed juvenile justice legislation. For this reason, I limit my discussion of provincial opposition to Bill C-192 to the concerns raised by the government of Ontario.

the Department of the Solicitor General, suggested that a carefully worded public announcement indicating the federal government's readiness to introduce cost-sharing legislation could help to defuse Ontario's opposition to the proposed legislation.[160] Despite the recommendation made in the draft memorandum, the federal government did not move on the cost sharing issue and the concomitant result was a provincial government in Ontario entrenched in its opposition to Bill C-192.

Interest groups also played a significant role in the demise of Bill C-192. The Canadian Psychiatric Association (CPA) and the Canadian Mental Health Association (CMHA) objected to the imposition of limited dispositions, as they felt that this type of sentencing would impede rehabilitation.[161] These organizations maintained their position in the face of empirical evidence to the contrary because under the *JDA*, if judges gave custodial dispositions, the dispositions were of an indefinite nature. Juvenile offenders were released from industrial schools when correctional officials felt that rehabilitation had been effected. In turn, the correctional officials' decisions were based largely on the opinions of mental health professionals.[162] As a result, under the *JDA*'s indeterminate sentencing scheme, mental health professionals enjoyed a

---

[160] National Archives of Canada, RG 73 acc 80-81/039 box 58 file 8-2 (part 5) Draft Memorandum to Cabinet dated May 4, 1971 by J.H. Hollies, Legal Counsel, Legal Services, Department of the Solicitor General.

[161] House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* (16 September 1971) at 28:6 and 31:23.

[162] Studies in the seventies threw doubt on the claim that institutional staff were capable of diagnosing the appropriateness of release of jailed offenders (A. Doerr, *supra* note 126 at 67).

great deal of power and influence over correctional decisions. Within a determinate sentencing structure like that proposed under Bill C-192, the power of mental health professionals would have been reduced. It has been argued that mental health professionals saw such due process-oriented dispositional schemes as a threat to their treatment programmes.[163]

The interest groups' criticisms of Bill C-192 were not limited to the determinate sentencing issue. The CMHA characterized the Bill as a "children's criminal code that employed language which labelled young people as offenders and inmates and was in part barbarously punitive in its measures."[164] At the same time, due process activists felt that the rules regarding legal representation did not go far enough because they did not guarantee the young person legal aid. Without legal aid, it was argued that the right to counsel was illusory for most children, who could not afford to retain counsel.[165] Facing opposition from various quarters, federal officials allowed the Bill to die prior to third reading.

---

[163] G. Parker, "The Century of the Child" (1967) 45 Can. Bar. Rev. 741 at 756.

[164] National Archives of Canada, RG 73 acc 90-91/039 box 57 file 8-2 (part 1) Memorandum from George J. McIlraith, Solicitor General, dated December 18, 1970, to all members of the House of Commons and Members of the Senate regarding the CMHA Brochure. Copy of the CMHA Brochure attached to the memorandum.

[165] House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* (16 September 1971) at 28:7-8.

C. Final Road to the YOA

A few years after the demise of Bill C-192, the federal Solicitor General released the *YPICL* report. This report was followed by draft legislative proposals in 1977 and 1979.[166] In slightly altered form, these proposals were introduced in 1981 as Bill C-61[167] and passed with all party support in 1982 as the *YOA*.

The opposition to Bill C-192, which was so strong in 1970, had diminished greatly by 1982. This is all the more surprising given the fact that, unlike Bill C-192, Bill C-61 did not explicitly adopt the *JDA*'s welfare-oriented philosophy. Instead, Bill C-61 emphasized greater young offender accountability and responsibility.

It has been argued that this change in correctional philosophy occurred without overwhelming opposition because of social scientific research that called into question the effectiveness of correctional treatment programs.[168] Particular importance has been attributed to the work of Martinson and his analysis of 231 studies concerning the effectiveness of rehabilitation programs in different countries from 1945 through 1967.[169] He found that the data gave very little reason to hope that a reliable way had

---

[166] Ministry of the Solicitor General, *Highlights of the Proposed New Legislation for Young Offenders* (Ottawa: Ministry of Supply & Services, 1977) and Ministry of the Solicitor General, *Legislative Proposals to Replace the Juvenile Delinquents Act* (Ottawa: Solicitor General, 1979).

[167] Bill C-61, *Young Offenders Act*, 1st sess., 32d Parl., 1981 [hereinafter Bill C-61].

[168] R.R. Corrado & A. Markwart, *supra* note 121 at 154-155.

[169] R. Martinson, "What Works? – Questions and Answers About Prison Reform" (1974) 35 The Public Interest 22.

been found to reduce recidivism through rehabilitation programs.[170] If rehabilitation did not work, then the treatment administered to delinquents, especially in custodial settings, really amounted to a kind of misguided benevolence that masked real punishment.

However, reports documenting the ineffectiveness of rehabilitative programs existed well in advance of Martinson's study. Dating back to the 1930s, a number of social scientists demonstrated that rehabilitation programs did not affect recidivism rates any more than simple incarceration.[171] But unlike these social scientists, Martinson did not suggest the need to redouble rehabilitative efforts in the face of such pessimistic results. Consequently, people began to wonder whether a rehabilitation-oriented youth justice system was prudent.

Nevertheless, it is unlikely that the lack of opposition to a more punishment-oriented juvenile justice system was due solely to Martinson's revelations. It is clear that by June of 1973 the cost sharing issue, concerning the province of Ontario's juvenile justice programs, had become a priority for the federal government. In a letter to Syl Apps, Minister of Correctional Services for Ontario, Marc Lalonde, the federal Minister of National Health and Welfare, wrote:

---

[170] *Ibid.* at 49.

[171] See, for example, S. Glueck & T. Eleanor, *Five Hundred Criminal Careers* (New York: Alfred Knopf, 1939), E. Powers & H. Witmer, *An Experiment in the Prevention of Delinquency: The Cambridge-Somerville Youth Study* (New York: Columbia University Press, 1951), and A.N. Weeks, "The Highlights Project and Its Success" in N. Johnston, L. Savitz & M.E. Wolfgang, eds., *The Sociology of Punishment and Correction* (New York: John Wiley & Son, 1962) 43.

> [O]ur review, in consultation with the Department of Justice, of the situation regarding federal sharing in juvenile correctional services in your province has confirmed the information previously given you that such sharing is not possible under the present Canada Assistance Plan legislation. Since exclusion of correctional services and institutions is in the Act itself, an amendment to the Regulations will not overcome the problem. I would like to assure you, however, of my intention to pursue a solution with my Cabinet colleagues. In particular, officials of this department are examining with officials of the Department of the Solicitor General what legislation would provide the most appropriate vehicle for sharing in your services.[172]

As a result, a cost sharing agreement was reached between the federal government and Ontario in April of 1975.[173] It is contended that the resolution of the cost-sharing issue served to dissolve much of Ontario's resistance to new juvenile justice legislation.

Many of the reforms contained within Bill C-61 addressed the criticisms of interest groups concerning Bill C-192. The harshness that was attributed to Bill C-192 was not present in Bill C-61 because of the latter Bill's recognition of the need for diversion. Diversion is a broad term encompassing community absorption plans, police screening, pre-trial diversion and alternatives in sentencing, including restitution, fines and probation.[174] Bill C-61 incorporated a plethora of sentencing

---

[172] National Archives of Canada, RG 73 80-81/039 box 81 file 8-93-3 (part 1) Letter, date stamped June 6, 1973, from Marc Lalonde, Minister of National Health and Welfare to Syl Apps, Minister of Correctional Services for Ontario.

[173] On April 29, 1975, cost sharing agreements were signed between the government of Canada and the governments of Ontario and New Brunswick. (National Archives of Canada, RG 73 acc 80-81/039 box 81 file 8-93-3 (part 1) Internal departmental memorandum from the Deputy Solicitor General, Mr. Roger Tasse, to the Solicitor General, and VOTE 45B-Income Security and Social Assistance.)

[174] Law Reform Commission of Canada, *Diversion* (Working Paper No. 7) (Ottawa: Queen's Printer, 1975) at 1.

options for judges, including absolute discharges, restitution and fines.[175] Bill C-61 also allowed for formal pre-trial diversion programs that took the juvenile offender out of the formal criminal justice system altogether.[176] These reforms pleased many labelling theorists, many of whom, in the seventies, felt that the best way to deal with juvenile crime was through "radical non-intervention . . . leaving kids alone whenever possible."[177]

Moreover, Bill C-61 addressed some of the concerns of due process activists. Most notably, Bill C-61 bolstered the due process protections contained in Bill C-192 by providing for the right of young people, who cannot afford counsel or qualify for legal aid, to have court appointed counsel for any hearing, trial or review.[178]

It was becoming clear that the federal government's Charter Entrenchment Project, announced in July, 1967, required juvenile justice reform.[179] Therefore, the

---

[175] See s.20 Bill C-61.

[176] See s.4 Bill C-61.

[177] E. Schur, *Radical Nonintervention: Rethinking the Delinquency Problem* (Englewood Cliffs, N.J.: Prentice-Hall, 1973) at 155.

[178] See s.11 Bill C-61.

[179] Canada's centennial was the year that Pierre Trudeau became federal Justice Minister and officially inaugurated the Charter Entrenchment Project, which was announced in the House of Commons in July by Prime Minister Lester Pearson in these words:

> The other matter mentioned by my right hon. friend was also of a constitutional nature, regarding the desirability of enshrining in our constitution a bill of rights which would have both federal and provincial application. . . We are ourselves federally examining the problem through

government made cost-sharing a priority with Ontario and attempted to placate many of the special interest groups that successfully prevented the passing of Bill C-192. It was in the 1970s that the substantive portions of the *Canadian Charter of Rights and Freedoms*[180] began to be drafted and analyzed. In the course of examining the draft *Charter*, it became clear that the lack of due process rights in the *JDA* meant that it could not withstand a *Charter* challenge.[181] It is no mere coincidence that the *YOA* was given Royal Assent in 1982, the same year as the *Charter* was enacted.

> a special section of the Department of Justice, as has been announced to the house, and are developing our own ideas. This matter will subsequently be dealt with also in parliament. (*House of Commons Debates*, July 6, 1967: 2299-2300.)

For more information on the Charter Entrenchment Project, see M. Mandel, *The Charter of Rights & the Legalization of Politics in Canada*, Revised, updated and expanded ed. (Toronto, Thompson Educational Publishing Inc., 1994) at 20-27.

[180] The *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 [hereinafter the *Charter*].

[181] Of particular concern were the provincial disparities in treatment of juveniles permitted under the *JDA*, especially in regard to differing minimum and maximum ages. For instance, in Manitoba a sixteen-year-old would be tried as a juvenile delinquent, whereas in Saskatchewan the same person committing the same act would be tried in adult court. At times, different age limits had applied to males and females. (J.H. Hylton, "Get tough or get smart? Options for Canada's youth justice system in the twenty-first century" (July 1994) 36 Can. J. Crim. 229 at 244.) The differing minimum and maximum ages for youth court jurisdiction under the *JDA* were considered likely to infringe s.15 of the *Charter*, which guaranteed equality before the law.

V. RECENT DEVELOPMENTS AND REFORMS

Since the *YOA* was proclaimed in force on April 2, 1984, the public has taken an active interest in youth crime, the youth justice system, and juvenile justice reform. A comprehensive study pertaining to media representation found that Canadian newspaper articles about these topics were prevalent between 1984 and 1987.[182] Over a two-month period in 1995, 113 stories dealing with youth crime, legislation and reform appeared in three Toronto newspapers.[183] Public opinion polls conducted since the mid 1980s suggest that the majority of the public want tougher new laws for dealing with young offenders, and that these laws are considered a high priority.[184] The public's intense interest in youth justice is also demonstrated by the high profile this topic received during the 1993 federal election campaign. For the first time in Canadian history, juvenile justice was a federal campaign issue, with the Liberal,

---

[182] See R. Veitch, *The Young Offenders Act: A Panacea for Violent Youth Crime in Canada?* (M.A. Thesis, Acadia University, 1994) [unpublished] at 71-85. Between 1984 and 1987, there were over 500 articles in total, drawn from three Toronto newspapers, on youth crime, legislation, or reform.

[183] Canada, House of Commons, *Thirteenth Report of the Standing Committee on Justice and Legal Affairs: Renewing Youth Justice* (Ottawa: Canada Communications Group-Publishing, Public Works and Government Services Canada, 1997) at 20 [hereinafter *Renewing Youth Justice*].

[184] A.N. Doob, V. Marinos & K.N. Varma, *Youth Crime and the Youth Justice System in Canada: A Research Perspective* (Toronto: Centre of Criminology, University of Toronto, 1995) at 4-6.

Conservative, New Democratic, and Reform parties all calling for more of a "get tough" approach.[185]

Federal politicians have responded to the public's demand for juvenile justice reform with more than just campaign rhetoric. Since the *YOA* was proclaimed in force it has undergone three major amendments - in 1986, 1992, and most recently in 1995.[186] Many of the changes brought about by these amendments respond to the public's request for a more punitive approach to young offenders. For instance, in the fourteen years since the *YOA* was proclaimed, the maximum sentence for murder in youth court has twice increased and it can be argued that the burden required to transfer juveniles to adult court has been twice reduced.[187]

---

[185] J.H. Hylton, *supra* note 181 at 237.

[186] See *An Act to Amend the Young Offenders Act, the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act*, S.C. 1986, c.32, *An Act to Amend the Young Offenders Act and the Criminal Code*. S.C. 1992, c.11, and *An Act to Amend the Young Offenders Act and the Criminal Code*, S.C. 1995, c.19.

[187] The *YOA*, as originally enacted, stipulated that transfer was to occur if, upon application, a youth court was satisfied that this was "in the interest of society . . . having regard to the needs of the young person." In order to clarify the meaning of this vague standard, the 1992 amendments to the *YOA* made the primary test for transfer the "interest of society" which "includes the protection of the public" and "the rehabilitation of the offender." This provision specifies that if these latter two objectives cannot be reconciled by the youth remaining in the youth justice system, then "protection of the public shall be paramount" and the youth shall be transferred. Under both the original statute and the 1992 amendments, the party applying for the transfer (invariably the Crown) bears the burden of proof on the transfer hearing. The 1995 amendments to the *YOA* make clear that for youths 16 and 17 years old and charged with murder, attempted murder, manslaughter, and aggravated sexual assault, the cases are presumptively dealt with in adult court. Thus, at first glance the amendment process has made it easier to transfer young people from youth court to adult court. However, there is still wide judicial discretion in the way the transfer

On May 12, 1998, the federal government announced it would replace the *YOA* with new juvenile justice legislation,[188] and on March 11, 1999, the federal Justice Minister tabled the legislation in the House of Commons.[189] The *Youth Criminal Justice Act* will, among other things, expand the group of offenders to whom the presumptive transfer from youth court to adult court will apply.[190] One of the reasons given by the federal Justice Minister for the new legislation is that "the public believes that the *Young Offenders Act* and youth court judges are too lenient on youth and

---

provisions are interpreted. For an excellent account of the history and jurisprudence surrounding the transfer provisions in the *YOA*, see N. Bala, "The 1995 *Young Offenders Act* Amendments: Compromise or Confusion?" (1994) 26 Ottawa L. Rev. 643.

[188] A. McIlroy, "Plan aims to jail fewer youths - But repeaters face crackdown" *The [Toronto] Globe and Mail* (12 May 1998) A1.

[189] Bill C-68, *Youth Criminal Justice Act*, 1st Sess., 36th Parl., 1999 (1st reading 11 March 1999) [hereinafter the Bill].

[190] At present, sixteen and seventeen-year-olds who commit murder, attempted murder, manslaughter or aggravated sexual assault are subject to adult sentences unless they can convince a judge that public protection and rehabilitation can be achieved by youth court sentences. The new legislation will expand this group of offenders to include repeat young offenders who have a pattern of convictions for serious violent offences. In addition, the age limit will be lowered to include fourteen- and fifteen-year-olds. It should also be noted that, under the new statute, transfer hearings are to take place after the trial, as opposed to the current practice, which requires the question of transfer to be answered before the trial begins (see Canada, Department of Justice, *Youth Justice Strategy* (visited August 19, 1998) <http://canada.justice.gc.ca> [hereinafter *Youth Justice Strategy*]).

questions the ability of the youth justice system to provide meaningful penalties proportionate to the seriousness of offences."[191]

What has caused this relatively sudden surge in public concern over youth justice issues? Numerous studies show that it is not that youth crime in Canada has increased in prevalence or seriousness since the enactment of the *YOA*.[192] Nicholas Bala postulates that recent demographic changes could be the cause of the escalation of public concern over juvenile justice issues. He suggests that

> [f]ears about youth crime may also be fuelled by the aging make-up of the population and by the insecurity felt by many in the face of accelerating social and economic change. Some of the fear may also have unarticulated elements of racism, as reflected in certain expressions of concern about crimes committed by [the increasing number of visible minority]

---

[191] Canada, Department of Justice, *A Strategy for the Renewal of Youth Justice* (Ottawa: Canada Communications Group-Publishing, Public Works and Government Services Canada, 1998) at 6 [hereinafter *A Strategy for the Renewal of Youth Justice*].

[192] See, for example, A.N. Doob, V. Marinos & K.N. Varma, *supra* note 184 at 20-26 and A.N. Doob & J.B. Sprott, "Is the Quality of Youth Violence Becoming More Serious?" (April 1998) 40 Can. J. Crim. 185. Recently released youth court statistics provide further evidence that, especially in the last six years, youth crime has not increased in prevalence or seriousness. For instance, the rate of youth court cases per 10,000 youths declined by 9% from 1992-93 to 1997-98. Moreover, in each of the years from 1992-93 to 1997-98, the rate of property crime cases among young offenders decreased annually, and dropped 25% over this whole period. In contrast, the rate of violent crime cases increased by 4% since 1992-93. This increase is mainly attributable to a rise in the number of the most minor assaults. The escalation of minor assault charges may reflect the adoption of zero tolerance policies by school authorities and others, more than any real upsurge in youth violence. Another statistic of note is that the trends in police and court counts closely correspond and that their figures show decreasing involvement of youths in the criminal justice system over the period 1992-93 to 1997-98. For a full discussion of these statistics, see D. Hendrick, Canadian Centre for Justice Statistics, *Juristat*, "Youth Court Statistics 1997-98 Highlights" (March 1999) vol. 19, no. 2.

immigrant[s].[193]

Another significant factor stimulating juvenile justice reform since the mid 1980s has been interest group lobbying. The interest groups that seem to have had the most influence on the reform process in the 1980s and 1990s have been victims' rights groups and police associations. When the Ontario Crime Control Commission announced, in June of 1998, its position that the *YOA* should only cover those young people between ten and fifteen-years-old, victims' rights groups and police associations supported the proposal.[194] Although the federal government's proposed new youth justice legislation does not alter the age jurisdiction of youth court,[195] it does address additional or alternate ways to involve victims in the youth justice system, including providing victims with information about proceedings against young people so that they have an opportunity to participate.[196] Moreover, the proposed legislation responds to some police association concerns by reducing the requirements

---

[193] N. Bala, *Young Offenders Law* (Concord, Ontario: Irwin Law, 1997) at 11.

[194] J. Rusk, "Tory panel wants to crack down on Ontario's youth crime" *The [Toronto] Globe and Mail* (2 June 1998) A7. The Ontario Crime Control Commission is a three-member committee consisting of Progressive Conservative backbencher MPPs appointed by Ontario Premier Mike Harris to look at a number of crime-related issues. The members of the Commission are Jim Brown, Gerry Martiniuk, and Bob Wood.

[195] It should be noted that the Standing Committee on Justice and Legal Affairs did recommend that the age jurisdiction of Canada's youth courts be changed to encompass ten- and eleven-year-olds alleged to have committed offences causing death or serious harm, but the federal government decided not to adopt this recommendation (see *Renewing Youth Justice*, *supra* note 183 at 59-61 and ss.2 and 14 of the Bill).

[196] *Youth Justice Strategy*, *supra* note 190 and ss.3(1)(d)(iii) and 12 of the Bill.

police have to meet in order for statements they take from young people to be admissible in court.[197]

Since the coming into force of the *YOA*, advances in social science have been instrumental in guiding juvenile justice reform. In particular, the work of Andrews et al. and Lipsey in the early 1990s disputed the "nothing works" conclusion drawn by Martinson in regard to youth rehabilitation programs.[198] These researchers found that certain types of youth rehabilitation programs work, at least some of the time and to some extent. Such findings may have been partly responsible for the 1995 amendment to the *YOA*, which explicitly recognised rehabilitation as a guiding youth justice principle. Thus, some of the 1995 amendments to the *YOA* seem to be more retribution oriented, like the new murder and transfer provisions, while others seek to be more rehabilitation oriented, like the inclusion of rehabilitation in the Declaration of Principle.

---

[197] *Youth Justice Strategy, supra* note 190. Under the *YOA*, all the requirements of s.56 of the *Act* must be complied with before a statement made by a young person can be deemed admissible in court. Section 56 contains a number of substantive and procedural requirements, and failure by the police to strictly comply with all of them leads to the automatic exclusion of the statement. The new legislation will allow for judicial discretion to determine whether voluntary statements should be admitted into evidence despite noncompliance with the requirements in s.56. Where to do so would not bring the administration of justice into disrepute, the statement will be admitted into evidence (see s.145(6) of the Bill).

[198] See D.A. Andrews *et al.*, "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis" (1990) 28 Criminology 369 and M.W. Lipsey, "Juvenile Delinquency Treatment: A Meta-Analytic Inquiry into the Variability of Effects" in T.D. Cook *et al.*, *Meta-Analysis For Explanation: A Casebook* (New York: Russell Sage Foundation, 1992) 83.

The new juvenile justice legislation designed to replace the *YOA* is very similar to its predecessor in this respect. The new statute will also recognize rehabilitation as a guiding youth justice principle.[199] In fact, the Bill recently tabled by the federal Justice Minister, makes youth crime prevention and rehabilitation the guiding principle of the new statute.[200] Moreover, the *Youth Criminal Justice Act* will provide for more community-based sentencing options and diversion opportunities. Yet, it will also relax the rules regarding publication bans of young offenders' names, increase the number of youths subject to the presumptive transfer to adult court, make subsequent periods of probation mandatory for those youths given custodial sentences, limit access to legal aid for youths whose parents can afford to retain counsel for them, and provide for a special sentencing option with respect to violent high risk youth, whereby youth court judges can subject these young people to prolonged periods of custody.[201]

---

[199] *A Strategy for the Renewal of Youth Justice*, *supra* note 191 at 18.

[200] More precisely, s.3 of the Bill states:

> 3.(1) The following principles apply in this Act:
> (a) the principal goal of the youth criminal justice system is to protect the public by
> (i) preventing crime by addressing the circumstances underlying a young person's offending behaviour,
> (ii) ensuring that a young person is subject to meaningful consequences for his or her offence, and
> (iii) rehabilitating young persons who commit offences and reintegrating them into society[.]

[201] The new community-based sentencing options are found in s.41 of the Bill and include judicial reprimanding of the young person, and subject to the agreement of the provincial director, ordering the young person into an intensive support and

The youth justice strategy announced in 1998 by the federal Minister of Justice stresses the importance of "effective programs that guide and assist a young person's return to the community[.]"[202] But who will pay for the new rehabilitation programs that will be required under the *Youth Criminal Justice Act*? To support the implementation and administration of the *YOA*, the federal government had entered into cost-sharing agreements with the provinces. The federal government reimbursed the provinces for fifty percent of the programs and services that needed to be established or expanded as a result of the enactment of the *YOA*. However, federal funding was frozen in 1989. Consequently, the overall federal share of eligible

---

supervision program or to attend a facility offering an approved program for not more than six months. The expanded diversion measures are found in ss.4 to 22 of the Bill and include police cautioning and family group conferencing. The rules regarding publication of young offender names are found in ss.109-128 of the Bill. Under the *YOA*, except for limited circumstances in which publication of a young offender's name is necessary because of administrative, treatment, or public danger reasons, the only time a young person's name can be published is if he or she is transferred to adult court. Under the new *Act*, young people who are less than fourteen years of age and therefore cannot be transferred to adult court but are found guilty of committing murder, attempted murder, manslaughter, aggravated sexual assault, or a serious violent offence and they have two previous findings of guilt for serious violent offences, can have their names published. Young offenders who are older than fourteen and have been found guilty of one of these offences can also have their names published even when a youth court judge decides that they should not be subject to an adult sentence. The new transfer provisions are found in ss.61 to 80 of the Bill and have been described earlier. Section 41(2)(n) of the Bill ensures that all young offenders would be forced to serve a mandatory period of probation equal to half their custodial sentence. The rules governing the appointment of counsel for young people are found in s.25 of the Bill. Finally, the special sentencing option for violent high risk youth is found in s.41(2)(q) of the Bill. It provides for an intensive rehabilitative custody and supervision order whose length depends upon the type of offence committed by the young person.

[202] *A Strategy for the Renewal of Youth Justice, supra* note 191 at 14.

provincial costs with respect to youth justice has fallen to approximately thirty percent.[203] Understandably, there is a great deal of tension between the provinces and the federal government because the new *Act* will require even more services and programs. At present, negotiations are being conducted in order to secure additional federal funding.[204]

Developments in social science continue to play a significant role in the process of youth justice reform. In 1995, the federal Standing Committee on Justice and Legal Affairs was asked to review the social science evidence pertaining to the cognitive differences between youths and adults. They were then to recommend whether these differences support the continuation of a separate youth justice system.[205]

Recent studies in the area of developmental psychology suggest that there continues to be a strong rationale for a separate youth justice system, and the Standing Committee on Justice and Legal Affairs recommended that a separate juvenile justice

---

[203] *Ibid.* at 10.

[204] In the February 1999 federal budget, the Justice Department received $206 million over the next three years to help the provinces pay for the new rehabilitation programs that will be required under the *Youth Criminal Justice Act*. Federal officials will start negotiating the division of that money at the end of March, 1999, but there are already reports that the provinces are concerned that the new funding is insufficient to implement the new system (see E. Anderssen, "Crime bill aims to reduce rate of incarceration" *The Globe and Mail* (12 March 1999) A4).

[205] *Renewing Youth Justice*, *supra* note 183 at 5.

system be maintained in Canada.[206] Many psychologists have concluded that adolescents, because of their age, grandiosity, and impulsiveness, tend to be greater risk takers than adults.[207] Moreover, compared to adults, young people have little ability to think about the long-term consequences of their actions and, as a group, are highly susceptible to negative peer influences.[208] There is also recent and substantial evidence that most teenagers engage in some form of criminal conduct and that desistance from antisocial behaviour seems to be a predictable component of the maturation process, with only a relatively small group of young offenders persisting in a life of crime.[209] Finally, current research warns that delinquent adolescents are more likely to implicate themselves (sometimes falsely) and waive their due process rights

---

[206] *Ibid.* at 5-7.

[207] See, for example, T. Grisso, "Society's Retributive Response to Juvenile Violence: A Developmental Perspective" (1996) 20 Law & Hum. Behav. 229, E.S. Scott *et al.*, "Evaluating Adolescent Decision Making in Legal Contexts" (1995) 19 Law & Hum. Behav. 221, and L. Steinberg & E. Cauffman, "Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making" (1996) 20 Law & Hum. Behav. 249.

[208] See B.C. Feld, "Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy" (1997) 88 J. Crim. L. & Criminology 68 at 102-111, S.J. Morse, "Immaturity and Irresponsibility" (1997) 88 J. Crim. L. & Criminology 15 at 30 and E. Cauffman & L. Steinberg, "The Cognitive and Affective Influences on Adolescent Decision-Making" (1995) 68 Temp. L. Rev. 1763 at 1787.

[209] See, for example, E. Mulvey & J. La Rosa "Delinquency Cessation and Adolescent Development" (1986) 56 American Journal of Orthopsychiatry 212, T. Hirschi & M. Gottfredson, "Age and the Explanation of Crime" (1983) 89 American Journal of Sociology 552, and T. Moffitt, "Adolescent-Limited and Life Course Persistent Antisocial Behavior: A Developmental Taxonomy" (1993) 100 Psychology Review 674.

when they are given the same type of warnings and assistance as are given to adult accused, and that this tends to happen more to youth who are younger than fourteen years old.[210] All of these characteristics differentiating juveniles from adults are due to the transient developmental stage of adolescence. Thus, a categorical response to juveniles through a regime of diminished responsibility and greater protection of due process rights, as compared to adults, is appropriate.

VI. CONCLUSION

The process of Canadian juvenile justice reform has been influenced by a number of factors. Some of these factors include foreign influences, demographic changes, interest group lobbying, federal/provincial relations, economic concerns, and advances in criminological/legal theory.

The preceding examination of the history of juvenile justice reform has demonstrated that many of the forces stimulating the metamorphosis of Canada's youth justice system in one time period have also done so in other time periods. For instance, it has been shown that demographic changes, foreign influences, and interest group lobbying have been major agents for reform in the late 1800s to early 1900s, early 1960s to early 1980s, and mid 1980s to the present day.

Despite the common themes running through many eras of youth justice reform, each time period has also had unique transforming agents. For example,

---

[210] See E.S. Scott & T. Grisso, "The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform" (1997) 88 J. Crim. L. & Criminology 137 at 169.

although interest group lobbying has been instrumental in juvenile justice reform throughout the years, the interest groups driving reform have been different depending on the time span examined. In the late 1800s and early 1900s the child savers were the predominant interest group, between the 1960s and the early 1980s mental health professionals played an increasing role in the reform movement, and in more recent times, victims' rights groups and police associations have become heavily involved in the reform debate.

One of the key new developments in juvenile justice reform has been the emergence of widespread public concern regarding the level and seriousness of youth crime. From the evidence analysed it cannot be concluded that the origins of youth justice in the 1300s, and juvenile justice reform from the 1830s to 1982, was heavily influenced by public opinion. However, this consideration will undoubtedly continue to be as significant a catalyst for change in Canadian juvenile justice reform in the future as it has been in the recent past.

CHAPTER THREE

PREVENTING YOUTH CRIME: WHAT WORKS, WHAT DOESN'T, AND WHAT IT ALL MEANS FOR CANADIAN JUVENILE JUSTICE POLICY

I. INTRODUCTION

There have been a number of recent government initiatives dealing with the prevention of youth crime. Some of these initiatives aim to prevent young people who have already committed crimes from committing future offences, while others seek to avert initial criminal behavior by youth.

Of late, the level of government that has received the most attention for its crime prevention efforts has been the federal government. In 1995, it recognized the importance of youth crime prevention and rehabilitation by including these concepts in the Declaration of Principle of the *YOA*. Sections 3(1)(a) and (c.1) read as follows:

> 3.(1) It is hereby recognized and declared that
> (a) crime prevention is essential to the long-term protection of society and requires addressing the underlying causes of crime by young persons and developing multi-disciplinary approaches to identifying and effectively responding to children and young persons at risk of committing offending behaviour in the future;
> . . .
> (c.1) the protection of society, which is a primary objective of the criminal law applicable to youth, is best achieved by rehabilitation, wherever possible, of young persons who commit offences, and rehabilitation is best achieved by addressing the needs and circumstances of a young person that are relevant to the young person's offending behavior.

In April of 1997, the Standing Committee on Justice and Legal Affairs released its report reviewing Canada's youth justice system. They recommended that s.3(1)(a) and (c.1) should constitute the fundamental purpose of the *YOA* and of the youth justice

system.[211] As indicated in Chapter Two, the Justice Minister has introduced her youth justice Bill in the House of Commons and s.3 of the Bill does indeed contain a fundamental purpose section that reflects the recommendation of the Standing Committee on Justice and Legal Affairs.

Legislative amendments and proposals do not constitute the only recent federal government action in the area of youth crime prevention. On June 2, 1998, the Minister of Justice and the Solicitor General of Canada released details of a $32-million-a-year national crime prevention program aimed at developing community-based responses to crime, with particular emphasis on children and youth, women and aboriginal people.[212] This $32 million annual investment is phase II of the National Strategy on Community Safety and Crime Prevention. As part of phase I of the National Strategy, which began in 1994, a number of community-based crime prevention studies were created and implemented.

Lately, provincial and municipal governments have also taken a more active interest in youth crime prevention. For example, acting on the recommendations of a task force which concluded that boot camps prevent youth crime by instilling a sense of discipline in young offenders,[213] the provincial government opened Ontario's first

---

[211] *Renewing Youth Justice*, *supra* note 183 at 12.

[212] National Crime Prevention Centre, News Release, "$32-million-a-year Community-based Crime Prevention Program Launched" (2 June 1998).

[213] See Ontario, Solicitor General, *Recommendations from the Task Force on Strict Discipline for Young Offenders* (Toronto: Queen's Printer, 1996).

youth boot camp in 1997.[214] On July 28, 1998, Mayor Mel Lastman, spurred on by the idea that employed young people are less likely to become young offenders, announced the commencement of a $1 million pilot project to get Toronto's street kids and other at-risk youth full time jobs in the private sector.[215]

Many of these government initiatives have been launched without an assessment of their empirical basis. It is the objective of this chapter to review the latest research findings concerning youth crime prevention programs, use the data to evaluate the recent government action in this area, and suggest appropriate measures that should be adopted to increase youth crime prevention effectiveness and knowledge. In order to accomplish these tasks, this chapter is divided into the following five parts which correspond to the five institutional settings in which crime prevention practices operate: (1) The criminal justice system and youth crime prevention, (2) community-based youth crime prevention, (3) family-based youth crime prevention, (4) school-based youth crime prevention, and (5) labor markets and youth crime prevention.

At the outset, it is necessary to describe the ambit and methodology used in this chapter. Every effort has been made to ensure that all significant published program impact evaluations, that meet minimal standards of scientific rigor, have been

---

[214] J. Rusk, "Old prison farm to be used as boot camp, Runciman says," *The [Toronto] Globe and Mail* (12 February 1997) A6.

[215] "Lastman launches program for street youth" *The [Toronto] Globe and Mail* (28 July 1998) A7.

included. However, it should be noted that a recent review of the crime prevention evaluation literature by two prominent English criminologists concluded that the field "was dominated by . . . self-serving unpublished and semi-published work that does not meet even the most elementary criteria of evaluative probity."[216] Many crime prevention evaluations omit measures of crime and simply describe how the programs work and the services they provide. The few evaluations that do attempt to measure crime prevention often lack the basic scientific elements needed for inferring cause and effect. For example, if crime prevention programs attract only those who are already highly motivated to give up their lives of crime, the programs may not be the cause of these people's lower subsequent crime rates. Indeed, crime prevention projects can only be effectively assessed if they are designed to eliminate alternate theories about why crime was reduced. While control groups can be used to eliminate those other possibilities, many evaluations fail to use them. Even when they are used, the comparison groups chosen are often too dissimilar from the target groups given the program. As a result, the control groups fail to demonstrate what would have happened without the program.

In order to make sense of the varying strength of evidence concerning crime prevention programs, a scale for rating the strength of each study is required. The scale developed and used in this chapter to evaluate programs in one institutional

---

[216] P. Ekblom & K. Pease, "Evaluating Crime Prevention" in M. Tonry & D.P. Farrington, eds., *Building a Safer Society: Crime and Justice*, vol. 19 (Chicago: University of Chicago Press, 1995) 585 at 585-586.

setting is exactly the same scale with the same criteria used to evaluate programs in other institutional settings.[217] In general, to be included within this chapter, a study had to earn a scientific methods score of one to three, with three representing studies reflecting the strongest scientific evidence. To reach level one, a study had to employ some kind of control or comparison group to test and refute the rival theory that crime would have had the same trend without the crime prevention program. It also had to attempt to control for obvious differences between the groups, attend to quality of measurement and attrition issues, and employ statistical significance tests in reaching program effectiveness conclusions. If comparisons were made to more than a small number of matched or almost randomized cases, the study was given a score of two. If comparisons were made to a large number of comparable units selected at random to receive the program or not, the study was scored as a level three because random assignment offers the most effective means of eliminating competing explanations for whatever outcome is observed.[218]

As mentioned in the Introduction to this dissertation, the three level scale is a modified version of a five level scale used by the United States Department of Justice

---

[217] There is one institutional setting in which the criteria used for evaluating crime prevention effectiveness is markedly different than the criteria used in the other four settings. This exceptional institutional setting is the criminal justice system and the reasons for its disparate treatment are discussed in the part of this chapter which deals with that setting.

[218] L.W. Sherman *et al.*, *Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, D.C.: Office of Justice Programs, U.S. Department of Justice, 1997) at 2-18.

in its recent evaluation of American crime prevention programs. In the United States Department of Justice report, levels one and two consist of studies that do not utilize any type of control group. Because of the limited value of studies that fail to use control groups, these studies are not included in this thesis. Hence, there is only the need for a three level scale. However, this does not mean that this dissertation's level one, two, and three studies correspond to the United States Department of Justice's levels three, four, and five studies. Although both British and Canadian researchers maintain that statistical significance tests are required to effectively test the efficacy of crime prevention programs, the United States Department of Justice does not make statistical significance tests a prerequisite for their level three, four, and five studies. Because of the importance of statistical significance tests in evaluating crime prevention programs, only those studies that incorporate such tests are included in the thesis. Aside from that important additional element, the level one, two, and three scientific methods scale used in this dissertation has the same characteristics as the level three, four, and five scientific methods scale used by the United States Department of Justice.

The three level scale is instrumental in determining which programs work, which do not, which are promising, and which are not. In order to conclude that a program does prevent youth crime, at least two evaluations of the program must exist, each with a minimum level one rating. In order for a program to be described as one that works, both evaluations of the program must include juveniles as part of the sample population. If either or both evaluations consist solely of adults, the program

will be coded as promising. If more than two evaluations of the program meet the minimum standards to be included in this chapter, the preponderance of the evidence must support the two positive evaluations in order for the program to be labelled as one that works. Programs will be considered not to work if there are at least two evaluations, each with a minimum level one rating, showing the ineffectiveness of the approach, neither of the evaluations deal only with adult populations, and the majority of the evaluations support the pessimistic conclusion. If either of the two negative evaluations consist solely of adults, the program will be coded as unpromising. Promising approaches are those that have one positive level one or higher evaluation, while unpromising approaches are those that have one negative level one or higher evaluation. Any program which is not coded as either working, not working, promising, or unpromising is defined as having unknown effects.

But what constitutes a positive evaluation of a crime prevention program? Often a crime prevention program is said to have positive results when recidivism among the treatment group subjects is reduced. However, the term recidivism is defined in a variety of ways. Thus success for some studies is achieved when an offender stops committing offences completely, while for others it is reached when the number of offences committed by an offender is reduced, and for still others, it is obtained when the severity of an offender's crimes is reduced. Published reports of crime prevention studies often do not indicate what criteria for success or definition of recidivism they are relying upon. Nevertheless, this dissertation does reveal such information when the studies, in turn, provide it.

Arguably, it would have been ideal if this chapter's scope was limited to an examination of crime prevention studies conducted solely with Canadian subjects. Different nations have different criminal cultures that may influence the efficacy of crime prevention programs. However, limiting the ambit of this chapter to Canadian crime prevention studies would leave very little upon which to base conclusions. In addition, even within nations, especially nations like Canada that contain ethnically diverse populations, crime prevention program effectiveness may vary with the culture of the different subject groups. Within the same country and ethnic group, identical crime prevention programs may have differential effects because of variability in the socio-economic status of the subjects involved. Most crime prevention studies do not contain details of their subjects' socio-economic status, racial or cultural backgrounds, or even, sometimes, nationality. While these factors may have significant consequences for the efficacy of the youth crime prevention programs examined in this dissertation, the lack of information about them makes it impossible to assess their effect.

With these caveats and qualifications in mind, my examination of the empirical data concerning youth crime prevention reveals that, to date, neither rehabilitative, incapacitative or deterrent strategies have proven efficacious enough to warrant making any one of them the basis for youth sentencing policy. However, there have been at least promising results in each of the five institutional settings. Because some of the recent government initiatives to prevent youth crime are supported by the existing data while others are not, the track record of various levels of government in

Canada in this area is a mixed one. Since my review of impact evaluations yielded only a handful of conclusions as to what works and what doesn't in youth crime prevention, the central conclusion of this chapter is that the effectiveness of most crime prevention strategies will remain unknown until the nation invests more in evaluating them. Moreover, I assert that what is needed is more large scale studies which are able to achieve high standards with regard to sampling and design, are carefully evaluated, and have the potential for replication in different settings.

II. THE CRIMINAL JUSTICE SYSTEM AND YOUTH CRIME PREVENTION

A. Introduction

While youth crime prevention efforts in other institutional settings may be directed at those who are not yet involved in crime, the criminal justice system deals solely with those who have already committed offences. As a result, this portion of the chapter deals with correctional programs and sentencing philosophies that focus on reducing the future criminal activities of identified offenders. These programs and philosophies can be classified as falling into one of the following three categories: (1) Rehabilitation, which is treatment aimed at changing an offender's criminal attitudes and behavior, (2) incapacitation, which deprives an offender of the capacity to commit further offences through his or her detention in prison, and (3) deterrence, which is punishment that is so repugnant that neither a punished offender (specific deterrence) nor others (general deterrence) will commit the crime in the future. After considering the place of each of these three categories within the criminal justice system, I re-

examine them in the context of the most recent correctional experiment, the boot camp. Boot camps use physically and mentally stressful experiences to either change an offender in a positive way or to deter him or her from committing future criminal acts.

Unique characteristics associated with youth crime prevention efforts within the criminal justice system mandate that the methodology for assessing these efforts vary significantly from the approach used in the other institutional settings. Most studies of the criminal justice system and youth crime prevention utilize a small number of juvenile subjects.[219] Because the number of subjects in these studies is small, even reports with strong experimental designs will be unable to detect statistically significant differences. Consequently, a method of combining results from these small-scale studies, in order to obtain statistically significant findings, is required.

Such a technique exists and is known as meta-analysis. Perhaps the most comprehensible description of meta-analysis is the one offered by Jule Vennard, Darren Sugg and Carol Hedderman:

> [T]his technique [meta-analysis] involves reducing the characteristics of individual studies into a number of summary statistics, such as number of offenders, the type of treatment given, and recidivism rates (however measured) after treatment. The summary statistics are then analyzed to produce an overall effect size statistic which represents the amount of difference in recidivism that exists between the intervention pro-

---

[219] L.W. Sherman *et al.*, *supra* note 218 at 9-5.

gramme and the respective control programme.[220]

Some crime prevention strategies within the criminal justice system do not inherently lend themselves to evaluation using the three level scale. For instance, incapacitation research requires complex statistical models for estimating the number of crimes prevented by various policy decisions.[221] As a result, literature reviews, which utilize these complex statistical models, are required to assess the research on incapacitation programs.

Because special problems are posed by youth crime prevention within the criminal justice system, three methods are used to evaluate the research within this institutional setting. The three approaches relied on are the three level scientific methods scale, meta-analysis and literature reviews.

B. Rehabilitation

The first widely publicized study reporting on the efficacy of correctional treatment with adults and juveniles was the 1974 report by Robert Martinson.[222] As was mentioned in Chapter Two, Martinson assessed 231 evaluations of treatment programs conducted between 1945 and 1967. From this research he concluded that

---

[220] J. Vennard, D. Sugg & C. Hedderman, *Changing Offenders' Attitudes and Behaviour: What Works?* (London, U.K.: Home Office Research and Statistics Directorate, 1997) at 9-10.

[221] L.W. Sherman *et al.*, *supra* note 218 at 9-4.

[222] R. Martinson, "What Works? - Questions and Answers About Prison Reform" (1974) 35 The Public Interest 22.

"[w]ith few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."[223]

Numerous critics argued against this conclusion and instead contended that it was impossible to draw any conclusions from the research studies analyzed by Martinson because of the poor research methodology used in the studies and the poor implementation of the studies.[224] Many of these same critics pointed to literature reviews that demonstrated that rehabilitation programs can effectively change offenders. For example, Palmer's literature review concluded that 48% of the correctional treatment services he studied showed positive evidence of treatment effectiveness, while Lab and Whitehead, Logan, Bailey, Kirby, and Gendreau and Ross respectively came up with figures of 47%, 50%, 59%, 75% and 86%.[225]

---

[223] *Ibid.* at 25.

[224] See P. Gendreau, "Treatment in Corrections: Martinson was Wrong" (1981) 22 Canadian Psychology 332, P. Gendreau & R.R. Ross, "Correctional Potency: Treatment and Deterrence on Trial" in R. Roesch & R. Corrado, eds., *Evaluation Research and Policy in Criminal Justice* (Beverly Hills: Sage Publications, 1981) 35, P. Gendreau & R.R. Ross, "Revivification of Rehabilitation: Evidence from the 1980's" (1987) 4 Justice Quarterly 349, M.R. Gottfredson, "Parole Guidelines and Reduction of Sentence Disparity" (1979) 16 Journal of Research in Crime and Delinquency 218, F.T. Cullen & K.E. Gilbert, *Reaffirming Rehabilitation* (Cincinnati, OH: Anderson Publishing Co., 1982), P. Greenwood & F.E. Zimring, *One More Chance: The Pursuit of Promising Intervention Strategies for Chronic Juvenile Offenders* (Santa Monica, CA: Sage Publications, 1985), S. Halleck & A.E. Witte, "Is Rehabilitation Dead" (1977) 23 Crime and Delinquency 372, T. Palmer, "The Effectiveness Issue Today: An Overview" (1983) 46 Federal Probation 3, and S. Van Voorhis, "Correctional Effectiveness: The High Cost of Ignoring Success" (1987) 51 Federal Probation 56.

[225] T. Palmer, "Martinson Revisited" (1975) 12 Journal of Research in Crime and Delinquency 133, S.P. Lab & J.T. Whitehead, "An Analysis of Juvenile Correctional

The increased use of meta-analysis in social science research in the 1980s and 1990s encouraged criminologists and psychologists to apply this technique to the study of youth crime prevention within the criminal justice system. A team of psychologists, led by Professor Don Andrews of Carleton University, conducted a meta-analysis of 154 studies, the majority of which dealt with juvenile programs. Overall they found an effect size of 0.21 for the treatment programs reviewed.[226] Using the formula developed by Rosenthal and Rubin for translating effect sizes into percentage differences,[227] this effect size is converted to a reduction in recidivism of 10.5%. It should be noted that for Andrews *et al*, recidivism was deemed reduced when the number of offences committed by treated offenders was reduced compared

---

Treatment" (1988) 34 Crime and Delinquency 60, C.H. Logan, "Evaluation Research in Crime and Delinquency: A Reappraisal" (1972) 63 Journal of Criminal Law, Criminology and Police Science 378, W.C. Bailey, "Correctional Outcome: An Evaluation of 100 Reports" (1966) 57 Journal of Criminal Law, Criminology and Police Science 153, B.C. Kirby, "Measuring Effects of Treatments of Criminals and Delinquents" (1954) 38 Sociology and Social Research 368 and P. Gendreau & R.R. Ross, "Effective Correctional Treatment: Bibliography for Cynics." (1979) 25 Crime and Delinquency 463.

[226] D.A. Andrews *et al.*, "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis" (1990) 28 Criminology 369 at 381.

[227] See R. Rosenthal & D.B. Rubin, "A Simple, General Purpose Display of Magnitude of Experimental Effect" (1982) 74 Journal of Educational Psychology 166. In essence, Rosenthal and Rubin demonstrate that effect sizes can be converted for ease of interpretation into equivalent percentage differences by simply dividing the effect size figure by two and multiplying by one hundred. The resulting number represents the relative percentage difference in success (or failure) rates between the experimental and control groups. Please note that throughout this chapter, when converting from effect sizes to percentage differences, the Rosenthal and Rubin formula will be used.

to control group offenders. Thus the 10.5% reduction of recidivism that Andrews *et al* found meant that treated offenders committed 10.5% fewer offences than control group offenders. Next, Andrews *et al* used a number of principles to classify the studies as "appropriate" or "inappropriate." They then reviewed the efficacy of the studies they thought had "appropriate" characteristics. To be labeled as "appropriate," rehabilitation programs have to be organized so that the intensity of service corresponds to the intensity of risk (the higher the chance an offender will recidivate, the more intense his or her treatment should be), they must be implemented as planned and designed, they have to address dynamic criminogenic factors (characteristics that can be changed in an offender and are directly tied to his or her criminal behavior), and they must be carried out in a mode that corresponds to the learning styles and abilities of offenders (more effective programs follow a cognitive behavioural approach rather than nondirective relationship-oriented or insight-oriented counselling).[228] The effect size for "appropriate" treatment programs was 0.63 which corresponds to a reduction in recidivism of 31.5%. Moreover, 69% of "appropriate"

---

[228] D.A. Andrews *et al.*, *supra* note 226 at 379. Cognitive behaviourism is not a unified, distinct psychological theory but a term given to a range of interventions. It assumes that offenders are shaped by their environment and have failed to acquire certain cognitive skills or have learned inappropriate ways of behaving. Thus, it does not attribute the causes of criminal behaviour solely to individual or psychological factors but also takes into account the social conditions which affect individual development. Cognitive-behavioural therapy aims to teach offenders to face up to what they have done, understand their motives and develop new coping strategies and ways of behaviour through such techniques as problem-solving training, role plays, and social skills training. For a more complete description of cognitive-behaviourism, please see J. Vennard, D. Sugg & C. Hedderman, *supra* note 220 at 5-7.

correctional programs were found to have statistically significant effects on recidivism.

Despite the results obtained by Andrews *et al*, it was felt that there was a need for a larger, more comprehensive meta-analysis evaluating young offender treatment programs. At least one well known meta-analysis had reached much more pessimistic conclusions about the success of rehabilitative work with juveniles than had the Andrews *et al* study, and the authors of this more negative study had expressed concern with the methodology used by the Andrews group. After analyzing fifty programs for juvenile offenders, Whitehead and Lab found that no group of study characteristics could be linked to greater effect sizes.[229]

A larger, more comprehensive meta-analysis of young offender treatment programs was eventually conducted. In his meta-analysis, Lipsey examined 443 studies dealing with juvenile correctional programs and found that in 64.3% of the studies the treatment group recidivated significantly less than the control group.[230] Using the same definition of recidivism as Andrews *et al*, Lipsey found that the mean

---

[229] J.T. Whitehead & S.P. Lab, "A Meta-Analysis of Juvenile Correctional Treatment" (1989) 26 Journal of Research in Crime and Delinquency 276 at 295. However it should be noted that of the fifty programs evaluated in the Whitehead and Lab meta-analysis, thirty involved juvenile diversion, which may not have included any form of intervention to address offending behaviour. In any case, it is clear that the Whitehead and Lab meta-analysis did not include a large cross-section of juvenile treatment programs.

[230] M.W. Lipsey, "Juvenile Delinquency Treatment: A Meta-Analytic Inquiry into the Variability of Effects" in T.D. Cook *et al.*, eds., *Meta-Analysis For Explanation: A Casebook* (New York: Russell Sage Foundation, 1992) 83 at 94.

effect size for the studies was 0.172, which is equivalent to a reduction in recidivism of 8.6%.[231] Lipsey concluded that programs which were multi modal (incorporate a variety of methods), and had more concrete, behavioral or skills-oriented character, had the most impact, with effect sizes of 0.20 to 0.32 (equivalent to a 10-16% reduction in recidivism against untreated controls).[232] In fact, Lipsey asserted that "the treatment types that show this large order of effects are . . . those defined as most clinically relevant in the Andrews *et al* review[.]"[233]

Although the meta-analytic results from the Andrews *et al* and Lipsey studies suggest that juvenile rehabilitation programs have positive impacts that are statistically significant, the practical value of such programs for sentencing policy may be minimal. Using the Andrews *et al* figures, even "appropriate" programs only result in reductions of recidivism of 31.5% in 69% of the cases. In other words, treatment group offenders commit 31.5% fewer offences than control group offenders 69% of the time. Utilizing the arguably more accurate figures from the larger Lipsey meta-analysis, the most that can be expected from "appropriate" juvenile treatment programs, when they do work, is a reduction in recidivism of 16%. Given these results, it seems unlikely that the public would be comfortable with a young offender sentencing policy driven by rehabilitation.

---

[231] *Ibid.* at 95.

[232] *Ibid.* at 123.

[233] *Ibid.*

Albeit that the findings may not support a rehabilitation-oriented young offender sentencing policy, it can be argued that correctional officials should offer "appropriate" treatment programs to those offenders who have been sentenced pursuant to another sentencing policy. In other words, rehabilitation does not deserve to be an objective of young offender sentencing, but it may be a positive by-product of a sentence imposed pursuant to another sentencing goal. However, the Andrews *et al* and Lipsey meta-analyses reveal that the efficacy of youth treatment programs is reduced when delivered in custodial institutions.[234]

There are also problematic features of meta-analyses that make "appropriate" treatment programs at most a promising technique for particular types of young offenders who have been given noncustodial dispositions. Mair and Copas explain what these problematic features are:

> The main difficulty arises from the use of formal statistical procedures to calculate mean effect sizes for subsets of the studies, grouping for example, according to design characteristics or type of programme. Since effect sizes are artificial constructs they may fail to take account of important differences in the design of the studies and the offenders sampled. Sample subjects are not, as in controlled trials, selected randomly from a clearly defined population. Rather, the collection of primary studies comprises the sample and it is [wrongly] assumed that the totality of offenders across the studies is representative . . . [and] that the interventions are broadly comparable and delivered in equivalent conditions.[235]

---

[234] See Andrews *et al.*, *supra* note 226 at 384 and M.W. Lipsey, *supra* note 230 at 122.

[235] G. Mair & J. Copas, "Nothing Works and What Works - Meta-Analysis?" (1996) [unpublished] quoted in J. Vennard, D. Sugg & C. Hedderman, *supra* note 220 at 10.

Indeed, none of the meta-analytic reviews to date have included many studies dealing with violent juvenile offenders.[236] Therefore, little can be said about the effectiveness of programs for these offenders. Other researchers have observed that the way in which meta-analysis has been used to aggregate the results of programs with offenders glosses over the disparate nature of much of this work, including the various success criteria used.[237] Lipsey himself concedes that treatment modality and the organizational structures and settings in which programs are delivered are often described rather poorly in the original studies comprising meta-analyses.[238] Consequently, it is difficult to code the studies and more doubt is thrown on the results of meta-analyses. Thus, the most that can be claimed from meta-analyses of young offender treatment programs is that they are promising, at least some of the time, in terms of reducing either seriousness or number of future offences for some nonviolent young offenders who are given noncustodial dispositions.

One specific type of treatment program can be evaluated using the three level scale. This treatment program has its genesis in the large body of research indicating a

---

[236] L.W. Sherman *et al.*, *supra* note 218 at 9-33.

[237] See, for example, D. Farrington, "Criminological Psychology: Individual and Family Factors in the Explanation and Prevention of Offending" in C. Hollin, ed., *Working with Offenders: Psychological Practice in Offender Rehabilitation* (Chichester: Wiley: 1996) 35.

[238] M.W. Lipsey, *supra* note 230 at 123.

relationship between criminal activity and drug use,[239] and the numerous studies that demonstrate that substance abuse treatment is effective regardless of whether the offender enters the program voluntarily or under some form of coercion.[240]

Prison-based therapeutic communities operate as twenty-four-hour, live-in facilities within the prison. Participants of this particular type of treatment program are segregated from the rest of the prison population and only have contact with prisoners in the general population during brief periods when they are in the library or infirmary. The treatment staff is composed primarily of ex-addicts who have successfully gone through the program and are leading crime free lives. The program they implement is

---

[239] See, for example, M.R. Chaiken, "Crime Rates and Substance Abuse Among Types of Offenders" in B.D. Johnson & E. Wish, eds., *Crime Rates Among Drug-Abusing Offenders: Final Report to the National Institute of Justice* (New York: Narcotic and Drug Research, Inc., 1986) 42, M.R. Chaiken & J.M. Chaiken, *Varieties of Criminal Behavior* (Santa Monica, CA: Rand Corp., 1982), J.A. Inciardi, "Heroin Use and Street Crime" (1979) 25 Crime and Delinquency 335, B.D. Johnson & E.D. Wish, "The Impact of Substance Abuse on Criminal Careers" in A. Blumstein *et al.*, eds., *Criminal Careers and Career Criminals*, vol. 2 (Washington, D.C.: National Academy Press, 1986) 142, D.N. Nurco, T. Hanlan & T. Kinlock, *Offenders, Drugs and Treatment* (Washington D.C.: United States Department of Justice, 1990) and G. Speckart & D.M. Anglin, "Narcotics and Crime: A Causal Modeling Approach" (1986) 2 Journal of Quantitative Criminology 3.

[240] See M.D. Anglin & Y.I. Hser, "Treatment of Drug Abuse" in M. Tonry & J.Q. Wilson, eds., *Drugs and Crime* (Chicago, IL: University of Chicago Press, 1990) 182, M.D. Anglin & T.H. Maughn, "Overturning Myths About Coerced Drug Treatment" (1992) 14 California Psychologist 20, G.P. Falkin, H.K. Wexler & D.S. Lipton, "Drug Treatment in State Prisons" in D.R. Gerstein & H.J. Harwood, eds., *Treating Drug Problems*, vol. 2 (Washington, D.C.: National Academy Press, 1992) 89, C.G. Leukefeld & F.M. Tims, *Drug Abuse Treatment in Prison and Jails* (Washington D.C.: U.S. Government Printing Office, 1992), and J. Travis *et al.*, *Drug Involved Offenders in the Criminal Justice System* (Washington, D.C.: National Institute of Justice, 1996).

a highly structured one composed of intense group and individual drug therapy and education.

There are three studies of prison-based therapeutic communities with sufficient scientific rigor to be included within this chapter.[241] In all three studies the researchers found that the graduates of the programs had statistically significant lower recidivism rates than those who spent less time or no time in the programs. The study that showed the greatest treatment effect found that only 43% of those who completed the program returned to prison compared to 63% of those in the control group.[242] However, all three of the studies dealt with sample populations consisting solely of adults. Consequently, prison-based therapeutic community programs cannot be labeled as programs that work for young offenders but instead can be thought of as promising. Even if the studies had used juvenile subjects, the difference between the treatment and control groups may not have warranted sending a substance-abusing young offender into custody for the sole purpose of putting the offender into a custodial therapeutic community. What these three studies with their present sample populations do suggest is that it may be beneficial for correctional officials to establish therapeutic

---

[241] See H.K. Wexler, G.P. Falkin & D.S. Lipton, "Outcome Evaluation of a Prison Therapeutic Community for Substance Abuse Treatment" (1992) 17 Criminal Justice and Behavior 71 (a level two study), S.S. Martin, C.A. Butzin & J. Inciardi, "Assessment of a Multistage Therapeutic Community for Drug Involved Offenders" (1995) 27 Journal of Psychoactive Drugs 109 (a level one study), and H.K. Wexler *et al.*, *Evaluation of Amity In-Prison and Post-Release Substance Abuse Treatment Programs* (Washington, D.C.: National Institute of Drug Abuse, 1995) (a level one study).

[242] H.K. Wexler *et al.*, *supra* note 241 at 117.

communities within young offender detention centres so that substance abusing juveniles, who have been given custodial terms on the basis of something other than rehabilitation, can be exposed to this treatment program.

Due to the limited success of young offender rehabilitation efforts, as revealed by meta-analyses and controlled trials of treatment programs, some of the federal government's recent and proposed changes to Canada's juvenile justice legislative regime are problematic. The explicit recognition contained in s.3(1)(c.1) of the *YOA*, that the primary objective of the criminal law applicable to youth is best achieved by rehabilitation, may motivate youth court judges to sentence young people on the basis of rehabilitative concerns. The likelihood of this occurring would be enhanced if, as proposed, the fundamental purpose of Canada's new youth justice legislation fuses ss.3(1)(a) and (c.1) of the *YOA*.

However, I do not suggest that rehabilitation should be omitted from the new legislation's Declaration of Principle. The new legislation should recognize that, at present, our knowledge of effective youth treatment programs is limited and therefore rehabilitation should play no part in the sentencing of young offenders. Yet this chapter shows that certain types of juvenile treatment are promising, at least for some offenders and to some degree. Thus there should also be legislative recognition that our lack of knowledge in this area does not mean that rehabilitation efforts should cease or that young offenders should not be offered treatment services. In fact, the legislation should mandate that correctional officials offer rehabilitative programs to the young people under their care.

Such legislative recognition may serve as an impetus for the creation and implementation of rigorous studies that involve large numbers of youth. It is only through these types of studies that we can truly determine what, if anything, works for treating juvenile offenders.

C. Incapacitation

The concept of incapacitation as a crime prevention technique is simple: As long as offenders are incarcerated they cannot commit crimes outside their places of detention.

Although it is indisputable that incapacitation efforts prevent some crimes, the overall effectiveness and cost efficiency of this crime prevention strategy are questionable. The adoption of a policy whereby every youth that is convicted of a criminal offence is imprisoned for life would result in crime prevention because some of those imprisoned would have, undoubtedly, recidivated had they been released. However, many young people convicted of crimes never recidivate. A study of young offenders convicted in Canada's youth courts in 1993-94 found that only about 40% were repeat offenders.[243] On the basis of this figure,[244] it can be argued that a policy of

---

[243] Canadian Centre for Justice Statistics, *Juristat*, "Recidivism in Youth Courts 1993-94," vol. 15, no.16, at 2.

[244] To discuss the potential pitfalls associated with a policy of incapacitation, it is assumed that only 40% of young offenders recidivate. But what this figure represents is the amount and type of youth crime reported by victims, detected by police, and processed through the courts. Yet not all crimes get reported and of those crimes that are reported, the police are only able to ascertain the identities of the offenders in a minority of cases. A still smaller subset of cases are presented to the courts and result

life imprisonment for every youth that is convicted of a criminal offence would result in no crime prevention effect for 60% of the youth population imprisoned. Moreover, the cost of building new custodial institutions to house the additional youth that would be imprisoned, pursuant to this collective and extensive incapacitation policy, would be astronomical.[245]

The effectiveness and cost efficiency of this collective, extreme incapacitation policy is reduced by the propensity of most people to commit offences during their adolescence and then stop upon reaching adulthood. Between 80-90% of young people are estimated to have committed at least one act which, if detected and processed by the authorities, could result in their being found guilty of a criminal offence.[246] Thus, if criminal justice officials were willing and able to apprehend and convict all young people who have committed crimes, the proposed incapacitation policy would result in the majority of the population being imprisoned indefinitely.

Clearly, if incapacitation is to be a workable crime prevention strategy, it must take a more selective and limited form. Encouragement for this kind of incapacitation

---

in a conviction. Thus, it is likely that the official recidivism rate of 40% is smaller than the actual recidivism rate. Unfortunately, recidivism, like crime in general, is difficult to measure.

[245] Of course this policy of incapacitation would also result in some savings. For every crime prevented through this policy there would be a concomitant prevention of loss to the victim of the crime. In addition, police and court costs associated with apprehending and prosecuting recidivating offenders would be eliminated.

[246] A.N. Doob, V. Marinos & K.N. Varma, *Youth Crime and the Youth Justice System in Canada: A Research Perspective* (Toronto: Centre of Criminology, University of Toronto, 1995) at 37.

is found in studies that demonstrate that a small number of very active offenders account for a disproportionately large amount of crime.[247] Also in support of a more selective and limited form of incapacitation sentencing policy is the work of some researchers who suggest that increasing the length of time served by high rate offenders while simultaneously reducing the time served by low rate offenders could reduce crime rates without a corresponding increase in prison populations.[248]

All of this research, in combination with the evidence that many of those who commit criminal acts have criminal careers of limited time duration, means that in order for incapacitation to be effective, offenders who would continue to commit serious crimes at high rates must be identified and the length of their criminal careers must be quantified. Ideally, those offenders who would commit the most serious crimes at the highest rates and who are not yet at the end of their criminal lives would be identified and imprisoned until the end of their criminal life spans. Using estimates of crime commission rates, derived from studies using inmate self-reports of criminal

---

[247] 6% of a Philadelphia birth cohort accounted for 52% of the juvenile and adult arrests attributable to the cohort (see M.E. Wolfgang, R.M. Figlio & T. Sellin, *Delinquency in a Birth Cohort* (Chicago, IL: University of Chicago Press, 1972). 50% of all Canadian offences (those committed by adults and juveniles) are the work of between 5 to 10% of offenders (see D.P. Farrington, *Justice Report*, vol. 3, no. 2 (Ottawa: Canadian Criminal Justice Association, 1986). A recent Calgary study revealed that even though persistent young offenders (those with three or more prior convictions) represented only 3.2% of the total number of young offenders, they were involved in 14.1% of the criminal occurrences (see Canadian Research Institute for Law and the Family, *A Study of the Level and Nature of Youth Crime and Violence in Calgary* (Calgary: Canadian Research Institute for Law and the Family, 1995).

[248] See, for example, P.W. Greenwood & A. Abrahamse, *Selective Incapacitation* (Santa Monica, CA: Rand Corp., 1982).

activities prior to incarceration, a number of researchers have investigated whether this retrospective data could be used to predict future arrests.[249] What these researchers found was that their data had poor predictive accuracy - there was little statistical difference in subsequent arrest rates between the groups classified as high risk and low risk. Because the problem of predicting future delinquent behavior, and thus of identifying the most dangerous offenders has not been solved, even selective and limited incapacitation is, at present, an unpromising crime prevention strategy and should not guide young offender sentencing decisions.

D. Deterrence

As alluded to earlier, there are two varieties of deterrent strategies. General deterrence aims to discourage potential offenders while specific deterrence has as its objective the discouragement of the sanctioned offender from reoffending.

The general deterrent effect of criminal sanctions requires that offenders perceive that the certainty of punishment upon infringing the law is high. However, it has already been noted that a very small proportion of young people who commit offences are apprehended and sentenced. Thus, in order for general deterrence to work as a youth crime prevention strategy, young people must be led to believe that, despite

---

[249] See, for example, P.W. Greenwood & S. Turner, *The VisionQuest Program: An Evaluation* (Santa Monica, CA: Rand Corp., 1987), S.D. Gottfredson & D.M. Gottfredson, "Behavioral Prediction and the Problem of Incapacitation" (1994) 32 Criminology 441, A. von Hirsch, *Past or Future Crimes - Deservedness and Dangerousness in the Sentencing of Criminals* (New Brunswick: Rutgers University Press, 1985), and C. Webster, B. Dickens & S. Addario, *Constructing Dangerousness: Scientific, Legal and Policy Implications* (Ottawa: Department of Justice, 1985).

the reality of the situation, they will likely be severely punished if they engage in criminal behavior.

Given the manner in which the media reports crime stories, it will be difficult to instill this erroneous perception in Canadian young people. The news media tend to report lenient sentences, especially when dealing with young offenders.[250] Furthermore, the media regularly report that the clearance rates for the majority of criminal offences are quite low,[251] which undermines any belief in the certainty of being caught and sentenced.

There is also empirical evidence that throws doubt on the efficacy of general deterrent strategies of youth crime prevention. "Scared Straight" is an American program designed to deter young offenders and at-risk juveniles from criminal behavior. The young people enrolled in this program are taken to a maximum security adult institution, where the inmates relate to them the horrors of prison life. Studies of these programs have not indicated any differences between those who participate in the programs and comparison groups.[252] Indeed, Lipsey's meta-analyis suggests that

---

[250] See Canadian Sentencing Commission, *Sentencing Reform, A Canadian Approach* (Government of Canada, Supply and Services, 1988) at 137 and *Renewing Youth Justice*, *supra* note 183 at 20-21.

[251] Canadian Sentencing Commission, *supra* note 250 at 137.

[252] See, for example, J.C. Buckner & M. Chesney-Lind, "Dramatic Cures for Juvenile Crime: An Evaluation of a Prison-Run Delinquency Prevention Program" (1983) 10 Criminal Justice and Behavior 227 and R.V. Lewis, "Scared Straight California Style: Evaluation of the San Quentin Squire Program" (1983) 10 Criminal Justice and Behavior 209. Neither of these studies contained enough information for them to be scored using the three level scale.

"Scared Straight" programs actually produce higher rearrest rates for those juveniles who participate in them compared to those who do not.[253] Recent Canadian youth court statistics also suggest that general deterrent strategies are ineffective at preventing youth crime. 1995-96 youth court statistics collected from all ten provinces and two territories reveal no consistent correlation between higher custodial disposition rates and lower youth court caseloads.[254] Consequently, it seems that

---

[253] M.W. Lipsey, *supra* note 230 at 123-124.

[254] Canadian Centre for Justice Statistics, *Juristat*, "Youth Court Statistics 1995-96 Highlights", (October 1997) vol.17, no. 10, at 6-7. The relevant statistics are as follows:

	case rate per 10,000 youths	youth court cases with custodial sentences
ONT	558	42%
ALTA	730	25%
QUE	174	27%
B.C.	347	28%
SASK	909	29%
MAN	765	26%
NS	472	30%
NB	418	35%
NFLD	313	37%
NWT	873	30%
YUK	2038	35%
PEI	282	37%

In the context of adult sentencing, some Canadian courts have already noted that the general deterrent effect of incarceration is somewhat speculative. See, for example, *R.* v. *W.(J.)* (1997), 5 C.R. (5th) 248 (Ont. C.A.).

general deterrence is an unpromising youth crime prevention strategy[255] and should not guide young offender dispositions.[256]

As with general deterrence, the specific deterrence effects of criminal sanctions are based on nonexistent prerequisites. The idea behind specific deterrence is that the pain generated by the punishment will serve to discourage any future criminality on behalf of the offender. It assumes a rational choice model of decision making where the offender perceives that the benefits of the crime are outweighed by the cost of the punishment. However it is not possible for young offenders to engage in this type of analysis because young people cannot know the likely penalty for particular offences, in advance of committing them, since there is so much variation in the penalties actually imposed.[257] Doob, Marinos and Varma use the example of a young offender who is thinking about committing a break and enter to illustrate the problem of applying a rational choice model to youth:

> [L]ooking at the data . . . our "rational calculating" youth with access to youth court records would realize that if he or she was apprehended (an unlikely event itself) he or she would stand about a 20% chance of having

---

[255] It is concluded that general deterrence is an unpromising youth crime prevention strategy as opposed to being one that does not work due to the absence of any three level scale evaluations testing this strategy and because of the inherent unreliability associated with meta-analyses (as recounted earlier in this chapter).

[256] It should be noted that this was not the conclusion arrived at by the Supreme Court of Canada in *R.* v. *M.(J.J.)* (1993), 81 C.C.C. (3d) 487 (S.C.C.). In this case, Cory J., writing for the court, decided that general deterrence has a role to play in fashioning young offender dispositions. For a more detailed examination of this case, see Chapter Four.

[257] A.N. Doob, V. Marinos & K.N. Varma, *supra* note 184 at 70.

> the charges withdrawn. But if the case went through to the disposition stage, he or she could expect to get anything from an absolute discharge to a period of time in secure custody.[258]

Even if all the obstacles to the utility of the rational choice model posed by the break and enter scenario were removed, research indicates that young people do not fit within this model of offending because they make the decision to commit crime based on the immediate situation, not by considering the longer term consequences.[259]

Specific deterrence is the rationale that is often given when a youth court judge gives a short custodial disposition followed by probation to an offender convicted of committing a relatively minor offence. The idea behind such a disposition is that a short period of incarceration will "shock" the offender into ending his or her criminal career. Reviews of "shock" sentences have provided little evidence of a deterrent effect for those young people given "shock" dispositions compared to other young people, with similar criminal backgrounds, who committed similar offences and were given only probationary terms.[260] Again, the Lipsey meta-analysis found that young

---

[258] *Ibid.* at 72.

[259] See M. Cusson, *Why Delinquency?* (Toronto: University of Toronto Press, 1983), C. Ladouceur & L. Biron, "Ecouler la Marchandise Volee, Une Approche Rationnelle?" (1993) 35 Can. J. Crim. 169, and M. LeBlanc & M. Frechette, *Male Criminal Activity From Childhood Through Youth* (New York: Springer-Verlag, 1989).

[260] See, for example, G. Vito, "Developments in Shock Probation: A Review of Research Findings and Policy Implications" (1984) 48 Federal Probation 22, G. Vito & H.E. Allen, "Shock Probation in Ohio: A Comparison of Outcomes" (1981) 25 International Journal of Offender Therapy and Comparative Criminology 7075, and J. Boudouris & B.W. Turnbull, "Shock Probation in Ohio" (1985) 9 Journal of Offender

offenders subjected to "shock" sentences recidivated more than those juveniles who were given simple probation.[261] These studies suggest that specific deterrence is an unpromising youth crime prevention strategy and one that is unworthy of elevation to a young offender sentencing principle.

E. Boot Camp Programs

A recent innovation in custodial programs for young offenders has been the advent of correctional boot camps. First developed in the 1980s in the United States, they are becoming increasingly popular, with boot camp proposals being considered or adopted in a number of Canadian provinces.[262]

Although juvenile boot camp programs do differ from each other, they are all based on a form of discipline-oriented regime similar to military basic training. Boot camp advocates hope that the punitiveness associated with the physically and mentally challenging program will discourage participant offenders from committing future crimes. Those who support such programs believe that the military model, while instilling discipline in young offenders, also increases staff and peer bonding with and between the juveniles, which causes them to become more law abiding. In addition to the traditional structure, discipline, and challenge aspects of juvenile boot camps,

---

Counseling Services and Rehabilitation 53. None of these studies contained enough information for them to be scored using the three level scale.

[261] M.W. Lipsey, *supra* note 230 at 123-124.

[262] N. Bala, *Young Offenders Law* (Concord, Ontario: Irwin Law, 1997) at 244-245.

some of the camps include therapeutic or treatment components in their programs that have as their objective the rehabilitation of youth.

There have been four recent studies conducted that evaluate the crime prevention effectiveness of juvenile boot camps.[263] None of the boot camps evaluated incorporated a treatment component into their disciplinary regime. Unfortunately, the results from these studies are not encouraging. Each of the studies rank as level three on the scientific methods score scale, but all save one revealed no significant differences in recidivism between boot camp youth and the control groups who were imprisoned in regular youth detention centres. The one study that did find a significant difference in recidivism between the two groups concluded that boot camp youth recidivated more than control group youth.[264] Thus, juvenile boot camp programs that do not contain therapeutic components do not work at preventing youth crime.

---

[263] See M. Peters, *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Denver Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996), M. Peter, *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Mobile Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996), M. Peters, *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Cleveland Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996), and J. Bottcher, T. Isorena & M. Belnas, *Lead: A Boot Camp and Intensive Parole Program - Impact Evaluation, Second Year Findings* (Los Angeles, CA: State of California, Department of the Youth Authority, Research Division, 1996).

[264] See M. Peters, *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Cleveland Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996).

However, the results of a study of adult boot camps in the United States provides some empirical support for the efficacy of a certain type of juvenile boot camp.[265] In this level two study, the researchers found that in four of the states the reoffending behavior of boot camp inmates was no lower than that of those in a comparison sample who had served sentences in conventional custodial facilities. In two states, boot camp inmates actually reoffended at higher rates than those in the comparison sample. Yet in two other states, where quality rehabilitation programs were a significant component of the boot camp regime (at least three hours per day was devoted to therapeutic activities such as counselling) and supervision and support had taken place in the community upon release, statistically significant lower rates of recidivism were reported compared to the comparison sample. Consequently, using the criteria of this chapter, juvenile boot camp programs that include at least three hours per day devoted to treatment and implement some type of post-boot camp community follow-up for the offenders are to be considered promising for youth crime prevention.[266]

---

[265] The adult study can be found at D.L. MacKenzie *et al.*, "Boot Camp Prisons and Recidivism in Eight States" (1995) 33 Criminology 327.

[266] Nevertheless, the actual studies conducted of juvenile boot camps, which did not include any treatment programs and yielded negative results compared to regular custodial placements, coupled with the previous finding that certain types of rehabilitation programs for youth are promising could mean that any positive effects of boot camp programs that incorporate treatment are due solely to the rehabilitation programs, which may overcome the negative effects of the disciplinary atmosphere of the boot camps. If this were true, there would be no benefit to using boot camps at all since the rehabilitation programs would work better in the less negative regular custodial setting or, for optimal benefit, the treatment programs could be implemented

Using the existing data, it is possible to evaluate Ontario's juvenile boot camp program. Project Turnaround, located north of Toronto in Moonstone, Ontario, is described as a strict discipline treatment facility for young offenders.[267] It is operated by Encourage Youth Corporation, a private correctional services business, which has been awarded the contract to run the facility by the Ontario Ministry of the Solicitor General and Correctional Services. In order to be committed to the facility, a young person must be male, between sixteen and seventeen years of age at the time of his offence, and have received a secure custody disposition of four months or longer.[268] In addition, Project Turnaround does not accept young offenders who have been convicted of murder, arson or sexual offences.[269] Every young person who participates in the program receives aftercare supervision and support.[270] Moreover, youth committed to Project Turnaround are subjected to cognitive-behavioural treatment.[271] As noted earlier, the meta-analyses conducted by Lipsey and Andrews *et al* found that

---

in a community setting. In essence, this was the submission made by the John Howard Society to the task force examining the possibility of introducing boot camps in Ontario (see John Howard Society of Ontario, *Boot Camps for Young Offenders* (Toronto: The Society, 1996)). Clearly more study is required of juvenile boot camps that utilize treatment programs.

[267] Encourage Youth Corporation, Project Turnaround Information Pamphlet, (19 August 1998) [hereinafter Pamphlet].

[268] *Ibid.*

[269] *Ibid.*

[270] *Ibid.*

cognitive-behavioural programs yield statistically significant positive results with juvenile offenders.

Despite these features of Project Turnaround, which the research data indicate are promising for reducing young offender recidivism, there are problematic features of the boot camp program. For instance, offenders' regimes are structured to ensure that they are engaged in activity for sixteen hours a day. However, the young people at Project Turnaround only receive 1.5 hours of therapeutic programming four days a week.[272] The rest of their time is spent performing manual labor and conducting military drills.[273] As a result, youth sent to Project Turnaround receive far less than the minimum three hours per day of treatment that is required, according to the research literature, to positively effect recidivism rates. Moreover, the treatment provided to the young people is delivered using a contra-indicated method. Project Turnaround uses a peer group treatment model.[274] This model involves a staff member guiding group discussions in which offender participants are encouraged to recognize problems with their own behavior, attitudes and values. Peer pressure to adopt pro-social attitudes is expected to occur. Nonetheless, as will be shown when school-based crime prevention

---

[271] Encourage Youth Corporation, Project Turnaround Treatment Programs Package (19 August 1998) [hereinafter Package].

[272] Per telephone conversation with Joan M. Howe, staff member, Project Turnaround, 25 August 1998 and Package, *supra* note 271.

[273] Package, *supra* note 271.

[274] *Ibid.*

is explored, these interventions produce negative effects on adolescents, possibly because the young people are brought into closer association with negative peers during the peer counselling sessions.[275]

III. COMMUNITY-BASED YOUTH CRIME PREVENTION

A. Introduction

Because all crime prevention efforts, save those that occur within the criminal justice system, can be said to be conducted within the community, communities are the central institution for youth crime prevention. Nevertheless, only those programs based in community settings that do not directly involve the family, the school, or the labor market are discussed here under the rubric of community-based youth crime prevention. This type of crime prevention is explored through an examination of gang, mentoring, and recreation programs.

B. Gangs and Community-based Youth Crime Prevention

The utility of programs aimed at preventing youths from joining gangs depends on whether the elimination of gangs would reduce the number of serious crimes. After all, it is possible that young offenders who are also gang members do not commit more serious crime than do young offenders who are not gang members. Even if this is not the case, it is possible that gangs simply attract serious criminals and that,

---

[275] G.D. Gottfredson, "Peer Group Interventions to Reduce the Risk of Delinquent Behavior: A Selective Review and a New Evaluation" (1987) 25 Criminology 671 at 708.

therefore, members of a gang would commit the same offences whether or not they joined the gang.

There does exist empirical evidence on the connection between gang membership and serious crime. In Rochester, New York, one-third of a panel of adolescent males reported being a member of a gang at some point before the end of high school.[276] That same one-third committed 90% of the serious crimes attributed to the entire panel, including 80% of the violent crimes and 83% of the drug sales.[277] Similar figures were reported for panels of male youth in Seattle and Denver.[278] This data suggests that a disproportionate number of grave offences are committed by gang members.

Other figures from the Rochester youth panel support the hypothesis that gangs cause juveniles to commit more serious crimes than they would commit anyway. Specifically, it was found that gang members commit offences against persons twice as often while they are active members of the gang than before and after active membership.[279] Consequently, there is evidence warranting the targeting of gangs as a means of preventing youth crime.

---

[276] L.W. Sherman *et al.*, *supra* note 218 at 3-11.

[277] *Ibid.* at 3-11-3-12.

[278] *Ibid.* at 3-12.

[279] *Ibid.*

Three categories of community-based gang programs exist. The first category aims to prevent youths from joining gangs. The second type of program seeks to influence juveniles who have already joined gangs to leave them. The final kind of community-based program does not target gang membership but rather aims to reduce gang violence.

Only three studies could be found that evaluate gang membership prevention programs and none of these studies are scientifically rigorous enough to earn a scientific methods score of one.[280] The fact that there are only three evaluations of gang membership programs and all of them lack the stringency required to draw conclusions about the programs is surprising given the prevalence of gangs and the problems they pose, especially in the United States. In California, whose street gangs are infamous, the state's Office of Justice Planning spent almost $6 million in 1990-91 on sixty gang projects, many of which were gang membership prevention programs.[281] Yet not a dollar went to an independent evaluation of the effectiveness of these projects.[282] This example illustrates the need not only to fund and carry out

---

[280] The three studies are described in F. Thrasher, "The Boys' Club and Juvenile Delinquency" (1936) 41 American Journal of Sociology 66, R.L. Woodson, *A Summons to Life: Mediating Structures and the Prevention of Youth Crime* (Cambridge, Mass.: Ballinger, 1981), and D.W. Thompson & L.A. Jason, "Street Gangs and Preventive Interventions" (1988) 15 Criminal Justice and Behavior 323.

[281] M. Klein, *The American Street Gang: Its Nature, Prevalence and Control* (New York: Oxford University Press, 1995) at 138.

[282] *Ibid.*

community-based youth crime prevention programs but also the need to fund and carry out careful evaluations of these programs.

Through the new $32-million-a-year national crime prevention program aimed at developing community based responses to crime, Canada's federal government has indicated its support for community crime prevention programs and their evaluation. Part of the new national crime prevention program is the crime prevention investment fund that supports selected demonstration projects of Canada-wide significance. In order to be supported by this fund, project proposals must, among other things, provide for a methodologically sound evaluation plan.[283]

While the establishment of the crime prevention investment fund, and the requirement that only those programs having a strong evaluation plan can draw from the fund, are positive, the actual amount of money available for youth crime prevention programs and their evaluation is still quite low, especially in comparison with the amount spent on youth custody and community services. In 1994-95, federal/provincial spending on these latter areas is estimated to have been $526 million.[284] Only $7.5 million per year is allocated to the crime prevention investment fund, with the remainder of the national crime prevention program's $32 million per

---

[283] Canada, National Crime Prevention Centre, *Crime Prevention Investment Fund Access Guide* (Ottawa: Queen's Printer, May 1998) at 7.

[284] Canadian Centre for Justice Statistics, *Juristat*, vol. 17, no. 3, at 6.

year slated for the other elements of the program.[285] Since the crime prevention investment fund is to provide support for crime prevention demonstration projects and evaluations aimed at youth, women, and aboriginal people, it can be assumed that at least half of the $7.5 million per year will not go toward implementing and testing youth crime prevention projects. Consequently, less than one percent of the total spent on youth custody and community services will be spent on funding and evaluating crime prevention programs for youth. Thus, while the federal government is to be commended for increasing its investment in the crime prevention field,[286] much more must be spent, especially in regard to testing new crime prevention approaches, before

---

[285] National Crime Prevention Centre, News Release, "The National Strategy on Community Safety and Crime Prevention" (2 June 1998). The national crime prevention program is comprised of the following four components: (1) a safer communities initiative, which in turn is composed of the community mobilization program, the crime prevention investment fund, and the crime prevention partnership program, (2) a promotion and public education program, (3) a private sector, nonprofit body on crime prevention, and (4) a National Crime Prevention Centre within the federal Department of Justice which has the responsibility to implement the national program in partnership with the federal Department of the Solicitor General. The objectives of the community mobilization program are to increase three things: (1) the development of broad, community-based partnerships focused on dealing with local crime prevention issues, (2) public awareness of and support for crime prevention, and (3) the capacity of diverse communities to deal with crime and victimization. The crime prevention partnership program aims to support the involvement of organizations that can contribute to community crime prevention activities and to develop information, tools and resources that facilitate community participation in all phases of crime prevention. The private sector, nonprofit body on crime prevention will attempt to encourage the financial participation of the private sector in crime prevention programs.

[286] Federal spending on crime prevention was about $2 million per year prior to the announcement of the new national crime prevention program ("National General News" *Canadian Press 98* (2 June 1998) (QL)).

more than the current meager amount of information is known about effective youth crime prevention techniques.

Fortunately, a fair amount is already known about programs for intervening with active gangs and gang members. The primary component of gang intervention programs is the detached worker. Detached workers are trained youth counselors who spend most of their working hours on the streets with gang members. The workers vary in the extent to which they focus on gangs as groups or on gang members as individuals, but all workers attempt to either encourage gang members to leave the gang and/or redirect gang energy toward legitimate activity and away from crime.

Two level one studies were found that evaluated interventions aimed at influencing gang members to leave the gang.[287] The results from both studies were that the detached workers failed to have a statistically significant effect on gang membership. These results have led at least one gang researcher to conclude that gangs "cannot . . . be controlled by attacks on symptoms alone; community structure and capacity must also be targetted."[288] Indeed, based on the established criteria, detached worker gang intervention programs whose objective it is to encourage youth in gangs to forsake those gangs do not work.

---

[287] See W.B. Miller, "The Impact of a Total Community Delinquency Control Project" (1962) 9 Social Problems 168 and M. Gold & H.W. Mattick, *Experiment in the Streets: The Chicago Youth Development Project* (Ann Arbor, MI: Institute for Social Research, 1974).

[288] M. Klein, *supra* note 281 at 147.

A community-based strategy that does work in relation to gangs is gang member intervention programs that focus on crisis intervention and conflict mediation. A test of this approach by detached workers in Chicago had encouraging results, at least as far as the juvenile population was concerned.[289] This level one study concluded that while the program area had a slower rate of increase in serious gang crimes by youth than the comparison area, the program area also had a faster increase in serious crimes by adults.[290] A second level one study found that conflict mediation between gangs by detached workers resulted in a 50% drop in violent crimes attributed to the targeted gangs, and this drop occurred without a concomitant increase in the areas' adult criminality.[291]

---

[289] I.A. Spergel, "The Violent Gang in Chicago: A Local Community Approach" (1986) 60 Social Service Review 17.

[290] Although the detached workers in the program area intervened to mediate disputes between rival gangs in the hope of reducing violence between these gangs, it could be that their efforts somehow encouraged gangs to pursue less violent courses of action in general. If this was so, it is also possible that the increase in serious crimes by adults in the program area merely reflects the increased criminal opportunities for adults due to the relinquishment of those opportunities by the juvenile gangs. For example, in the interests of reducing violence between gangs, two rival gangs competing for the same extortion territory could both be persuaded by detached workers from engaging in this type of activity. Although this persuasion would reduce violence between the gangs and overall gang violence, it would allow adult criminals to engage in extortion operations in the program area, thereby increasing the number of serious crimes committed by adults.

[291] I.A. Spergel, *The Youth Gang Problem: A Community Approach* (New York, NY: Oxford University Press, 1995).

C. Community-based Mentoring Programs

The theoretical rationale for mentoring lies in the fact that it provides a high dose of adult-child interaction. It is hypothesized that this high level of interaction allows mentors to develop strong bonds with at-risk juveniles. The objective is that the mentor's approval becomes a thing of value to the youth so that the juvenile has something important to lose if an infringement of the law occurs.

The mentoring programs examined all share certain characteristics but they also tend to differ from each other in a number of respects. The mentoring programs evaluated feature a minimum of three to four meetings a month between the adult mentor and the child, with each meeting lasting several hours. Mentors see the youths they are involved with in a number of places, including home and recreational settings. Mentoring programs vary in whether mentors are paid or volunteers, what age they are required to be, and the amount of training they receive. The evaluations conducted of mentoring programs record program effects on the criminal behavior of youth as well as known risk factors for this type of behavior, such as early onset of behavior problems, especially in the school context.[292]

The first community-based mentoring study with sufficient scientific rigor to be included in this chapter began in 1937 and concluded with long term follow-ups in 1942 and 1976.[293] This level three study, known as the Cambridge-Somerville

---

[292] *Renewing Youth Justice, supra* note 183 at 25.

[293] J. McCord, "A Thirty-Year Followup of Treatment Effects" (1978) 33 The American Psychologist 284.

experiment, involved recent college graduates who were hired to spend time with at-risk boys under the age of twelve. 253 of the original 325 treatment group boys were still in the program when it ended in 1942. The results of this program showed no difference between treatment and control groups in terms of their criminal records, either in 1942 or in 1976.

Another community-based mentoring study involved the Big Brothers/Big Sisters program that is popular in the United States and Canada.[294] This level three study dealt with high risk male and female children between the ages of ten and fourteen. The researchers found that after one year of the mentoring intervention, the treatment group children had 45% less reported onset of drug use, 27% less onset of alcohol use, and 32% less frequency of hitting others than did the control group children. The Big Brothers/Big Sisters program also seemed to reduce truancy, with treatment group children skipping 52% fewer days of school and 37% fewer classes on days they were in school compared to the control group youth.

There have been two studies, involving volunteer mentors, that focused on measuring classroom behavior of juveniles. The first one was a level two examination of the Big Brothers program.[295] The other one was a level one evaluation utilizing

---

[294] J.P. Tierney, J.B. Grossman & N.L. Resch, *Making a Difference: An Impact Study of Big Brothers/Big Sisters* (Philadelphia, PA: Public/Private Ventures, 1995).

[295] B.C. Green, *An Evaluation of a Big Brothers' Program for Father-Absent Boys: An Eco-Behavioral Analysis* (Ph.D. Dissertation, New York University, 1980) [unpublished].

college student mentors for six- to thirteen-year-old male and female youths.[296] Neither study reported any significant difference between the treatment and control groups in terms of classroom behavior.

The final two studies dealing with community-based mentoring programs involved paid mentors and at-risk ten- to seventeen-year-old juveniles. They are both level three studies. The first one found that truancy declined significantly for those subjects who received contingent approval from their mentors.[297] The other study reported that those youths who were in mentoring relationships and had no prior criminal records committed more offences during the relationships than control group youths, but those young people who had prior records at the initiation of mentoring were less likely to recidivate than those in the control groups (the possible reasons for this difference were not discussed by the authors of the evaluation).[298]

In summary, there have been six studies evaluating community-based mentoring programs that have been conducted with sufficient scientific rigor to be included within this chapter. Three of these studies yielded negative results (the

---

[296] C. Dicken, R. Bryson & N. Kass, "Companionship Therapy: A Replication in Experimental Community Psychology" (1977) 45 Journal of Consulting and Clinical Psychology 637.

[297] W.S.O. Fo & C.R. O'Donnell, "The Buddy System: Relationship and Contingency Conditioning in a Community Intervention Program for Youth with Nonprofessionals as Behavior Change Agents" (1974) 42 Journal of Consulting and Clinical Psychology 163.

[298] W.S.O. Fo & C.R. O'Donnell, "The Buddy System: Effect of Community Intervention on Delinquent Offenses" (1975) 6 Behavior Therapy 522.

mentoring intervention was ineffective), one study had mixed results, and two had positive results. Because the preponderance of the evidence, which would be four of the six studies in this case, does not support a pessimistic conclusion regarding the efficacy of mentoring programs, it is concluded that these programs have unknown effects.

D. Community-based Recreation Programs

When Justice Minister Anne McLellan announced the new national crime prevention program, she did it at the Ottawa-Carleton police youth centre. This youth centre is a community-based recreation program that the Minister described as the kind of place the government will be establishing in other locales under the national program.[299] Many people support the establishment of new community-based recreation programs for youth because, in the words of one editorial: "Children need places to go and things to do . . . the best way to prevent the majority of juvenile crime - minor assaults, vandalism and shoplifting - is to provide kids with suitable outlets for their energy[.]"[300] However, it is just as plausible that the establishment of community recreation programs in high crime areas will provide the venue for high-risk youth to interact with each other and obtain validation and support for their anti-social and

---

[299] "National General News" *Canadian Press 98* (2 June 1998) (QL).

[300] "Crime prevention, a home issue" *The [Toronto] Globe and Mail* (4 June 1998) A18.

violent behavior. Thus, rather than arguing on theoretical grounds alone, it would seem more valuable to test each of these hypotheses scientifically.

Although the number of studies of community-based youth recreation programs is limited, enough exist to demonstrate that these programs work at preventing crime. The first evaluation is a level one study comparing low income children in a Canadian public housing project who had been provided access to a community-based recreation program, with children in a comparison Canadian public housing project with no access to a community-based recreation program.[301] Compared to a baseline period of two years prior to the program, arrests of juveniles in the program site declined 75%, while during the same time period, arrests of youth in the comparison site rose 67%. These results were replicated in a level two study involving children in American public housing projects.[302] Consequently, it seems that the federal government's decision to fund community-based recreation programs is a prudent one.

---

[301] M.B. Jones & D.R. Offord, "Reduction of Anti-Social Behavior in Poor Children by Nonschool Skill Development" (1989) 30 Journal of Child Psychology and Psychiatry and Allied Disciplines 737.

[302] S.P. Schinke, M.A. Orlandi & K.C. Cole, "Boys and Girls Clubs in Public Housing Developments: Prevention Services for Youth at Risk" (1992) OSAP Special Issue Journal of Community Psychology 118.

IV. FAMILY-BASED YOUTH CRIME PREVENTION

A. Introduction

Because certain family characteristics are strongly associated with later juvenile criminality, they are properly the subject of youth crime prevention efforts. Young offenders tend to be produced in families with antisocial parents, abusive parents, parents in conflict, parents imposing inconsistent punishment, and parents who supervise their children loosely.[303] As a result, many family-based youth crime prevention measures deal with improving parents' child-rearing skills. This type of crime prevention is analyzed by reviewing home visitation programs, parent training within school and clinical settings, and a relatively new kind of family-based intervention called multisystemic therapy.

B. Home Visitation Programs

Home visitation programs vary enormously in a number of respects, but they all share a common core. Depending on the program, the professionals engaged in home visitation are nurses, social workers, preschool teachers, or psychiatrists. They provide information, support, or both to parents. They can actively teach parents or they can passively watch and listen to parental concerns. The common core of home

---

[303] See R. Tremblay & W. Craig, "Developmental Crime Prevention" in M. Tonry & D.P. Farrington, eds., *Building A Safer Society: Crime and Justice*, vol. 19 (Chicago: University of Chicago Press, 1995) 158 and C.S. Widom, "Child Abuse, Neglect, and Violent Criminal Behavior" (1989) 27 Criminology 251.

visitation is a visitor who cares about child-raising sitting down in a home with a family and providing a bridge between the parent(s) and the outside world.

Home visitation programs have been the subject of a large amount of scientific inquiry. Consequently, there are seventeen home visitation studies that meet the minimum standards to be included within this chapter. All of them rank as level two studies.

Two studies directly evaluated the link between home visits and the later criminality of children. The first of these studies dealt with the Perry Pre-School Program.[304] This study involved teachers visiting the homes of high-risk African-American children, between the ages of three and five, weekly for two to three years. The second study was concerned with the Syracuse University Family Development Program.[305] This study utilized social workers who visited the homes of high-risk African American children, newborn to five years of age, weekly for five years. In addition to the home visitation aspect of the programs, both the Perry Pre-school Program and the Syracuse University Family Development Research Program offered pre-school services to the children. The researchers found that both programs were

---

[304] J.R. Berreuta-Clement *et al.*, *Changed Lives: The Effects of the Perry Preschool Program on Youths Through Age 19* (Ypsilanti, MI: High Scope Press, 1985).

[305] J.R. Lally, P.L. Mangione & A.S. Honig, "The Syracuse University Family Development Research Project: Long-Range Impact of an Early Intervention with Low-Income Children and their Families" in D.R. Powell, ed., *Annual Advances in Applied Developmental Psychology: Parent Education as Early Childhood Intervention - Emerging Directions in Theory, Research, and Practice*, vol. 3 (Norwood, NJ: Ablex, 1988) 183.

associated with long term delinquency prevention effects. The children who participated in the two studies experienced a 75% reduction in later arrests compared to control groups.[306]

Five studies, two of which involved Canadian subjects, examined the effect of home visitation programs on child abuse during or shortly after the period of the home visits.[307] The five studies varied in the ages of the children whose parents were visited (although all of the children were between one month and three years old), the regularity and duration of the visits (the visits varied from weekly to bimonthly for twenty-six weeks to three years), the nature of the visitors (depending on the study, the

---

[306] It can be argued that since the two programs both included pre-school services, it was the pre-school programs and not the home visits that caused the reduction in later delinquency. However, as will be revealed later in this chapter, only one of the five studies involving home visitation and child abuse rates included involvement in pre-school. Yet all five studies resulted in lowered child abuse rates for the families visited. In addition, only one of the ten home visitation studies concerning crime risk factors for later youth criminality involved pre-school programs. Nevertheless, all ten studies found that crime risk factors were significantly reduced for those families who participated in the visitation programs. These findings strongly suggest that the positive results of the visitation evaluations are not simply spurious correlates of the effects of pre-school programs.

[307] See D.L. Olds *et al.*, "Improving the Life-Course Development of Socially Disadvantaged Mothers: A Randomized Trial of Nurse Home Visitation" (1988) 78 American Journal of Public Health 1436, R.P. Barth, S. Hacking & J.R. Ash, "Preventing Child Abuse: An Experimental Evaluation of the Child-Parent Enrichment Project" (1988) 8 Journal of Primary Prevention 201, and J.D. Gray *et al.*, "Prediction and Prevention of Child Abuse and Neglect" (1979) 35 Journal of Social Issues 127. The two studies involving Canadian subjects can be found in R. Tremblay & W. Craig, *supra* note 303 and G.A. Wasserman & L.S. Miller, "The Prevention of Antisocial Behavior" in R. Loeber & D.P. Farrington, eds., *Report of the Office of Juvenile Justice and Delinquency Prevention Study Group on Serious, Chronic, and Violent Juvenile Offenders* (Washington, DC: OJJDP, 1998) 34.

visitors were nurses, social workers, or psychologists), and the services other than visitation that were offered (in one study pre-school programs were offered in addition to the visitation).[308] However, all five studies reported significant reductions of child abuse for the groups that were involved in the home visitation programs compared to the control groups who did not receive home visits.

Ten of the seventeen home visitation program evaluations measured known risk factors for later youth criminality such an antisocial behavior in school, low cognitive scores, high anxiety and low responsivity and attachment of parents to children.[309] As with the earlier home visitation program studies, these programs differed from each other in terms of the ages of the children in the subject families

---

[308] That study can be found in R. Tremblay & W. Craig, *supra* note 303.

[309] See V. Seitz, L.K. Rosenbaum & N.H. Apfel, "Effects of Family Support Intervention: A Ten-Year Follow-Up" (1985) 56 Child Development 376, D.L. Johnson & T. Walker, "Primary Prevention of Behavioral Problems in Mexican-American Children" (1987) 15 American Journal of Community Psychology 375, B.H. Wasik *et al.*, "A Longitudinal Study of Two Early Intervention Strategies: Project CARE" (1990) 61 Child Development 1682, T.M. Achenback *et al.*, "Seven Year Outcome of the Vermont Intervention Program for Low-Birthweight Infants" (1990) 61 Child Development 1672, M.F. Gutelius *et al.*, "Controlled Study of Child Health Supervision: Behavioral Results" (1977) 60 Pediatrics 294, M.E. Barrera, P.L. Rosenbaum & C.E. Cunningham, "Early Home Intervention With Low Birth-Weight Infants and their Parents" (1986) 57 Child Development 20, G.H. Ross, "Home Intervention for Premature Infants of Low-Income Families" (1984) 54 American Journal of Orthopsychiatry 263, S.W. Jacobson & K.F. Frye, "Effect of Maternal Social Support on Attachment: Experimental Evidence" (1991) 62 Child Development 572, A.F. Lierberman, D.R. Weston & J.H. Pawl, "Preventive Intervention and Outcome with Anxiously Attached Dyads" (1991) 62 Child Development 199, and K. Lyons-Ruth, "Infants at Social Risk: Maternal Depression and Family Support Services as Mediators of Infant Development and Security of Attachment" (1990) 61 Child Development 85.

(newborn to five years of age), the regularity and duration of the visits (from weekly to monthly for between three months and three years), the type of professionals comprising the visitors (teachers, nurses, social workers, or psychologists), and the services other than visitation that were offered (one study offered pre-school).[310] Again, as with the earlier home visitation program evaluations, each of the ten studies reported positive results. All ten studies concluded that the families who participated in the home visitation programs showed significantly fewer risk factors for later youth criminality at the end of the intervention than did control group families. Thus, it is clear that home visitation programs of high-risk families with infants and young children work at preventing youth crime.

C. Parent Training Within School and Clinical Settings

Formal parent training programs vary in the type of professional utilized to deliver the training and the setting in which it is conducted. In some programs the trainer is a teacher, while in others it is a social worker or psychologist. The parent training programs that have been evaluated to date fall into one of two categories, parent training in school settings and parent training in clinical settings.

There have been a number of studies examining the efficacy of parent training in school settings.[311] Unfortunately, the evaluations suffer from small samples, short

---

[310] That study can be found in D.L. Johnson & T. Walker, *supra* note 309.

[311] See, for example, R.E. Tremblay *et al.*, *A Bimodal Preventive Intervention for Disruptive Kindergarten Boys: Its Impact Through Mid-Adolescence* (Montreal: University of Montreal Research Unit on Children's Psycho-Social Maladjustment,

or no follow-up periods, a lack of significance tests and other methodological weaknesses. As a result, no evaluation of parent training programs in school settings could be found to meet the minimum scientific standards required to obtain a ranking on the three level scientific methods scale.

There are hopeful signs that this lack of knowledge concerning parent training programs in school settings will soon change. As part of phase I of the National Strategy on Community Safety and Crime Prevention, one of the crime prevention studies created by Canada's federal government was a $100,000, two year study to follow up with children whose parents went through the Moncton Headstart program. A major component of this program is parent training within a school context.[312] The results of the Headstart study are expected in the near future.

Many studies have also been performed dealing with parent training programs in clinical settings.[313] Nevertheless, the current state of knowledge regarding the

---

1994), D.J. Pepler, G. King & W. Byrd, "A Social Cognitively-Based Social Skills Training Program for Aggressive Children" in D.J. Pepler & K.H. Rubin, eds., *The Development and Treatment of Childhood Aggression* (Hillsdale, NJ: Erlbaum, 1991) 73, W.F. Horn *et al.*, "Additive Effects of Behavioral Parent Training and Self-Control Therapy With Attention Deficit Hyperactivity Disordered Children" (1990) 19 Journal of Clinical Child Psychology 98, and I. Kolvin *et al.*, *Help Starts Here* (New York, NY: Tavistock, 1981).

[312] For more information on Moncton Headstart see Canada, National Crime Prevention Centre, *Moncton Headstart* (Ottawa: Queen's Printer, May 1998) and A. McIlroy, "One way to build better families" *The [Toronto] Globe and Mail* (29 September 1998) A1.

[313] See, for example, A.E. Kazdin, T.C. Siegel & D. Bass, "Cognitive Problem-Solving Skills Training and Parent Management Training in the Treatment of Anti-Social Behavior in Children" (1992) 60 Journal of Consulting and Clinical Psychology

efficacy of parent training programs is the same regardless of the setting in which it takes place. None of the evaluations of parent training programs in clinical settings could be ranked using the three level scientific methods scale, either because the studies were not rigorous enough or because they did not contain enough information to allow a proper assessment of the soundness of their methodology.

Through phase I of the National Strategy of Community Safety and Crime Prevention, the federal government has also implemented studies of parent training programs in clinical settings. In particular, the Youville Centre in Ottawa and the Neighbourhood Parenting Support Network in Winnipeg are currently being evaluated.[314] The government's commitment to rigorously evaluate these two programs should shed light on the efficacy of parent training programs in clinical settings.

733, T.J. Dishion, G.R. Patterson & K.A. Kavanagh, "An Experimental Test of the Coercion Model: Linking Theory, Measurement and Intervention" in J. McCord & R.E. Tremblay, eds., *Preventing Anti-Social Behavior: Interventions from Birth Through Adolescence* (New York, NY: Guilford, 1992) 41, and P. Yu *et al.*, "A Social Problem-Solving Intervention for Children at High Risk for Later Psychopathology" (1986) 15 Journal of Clinical Child Psychology 30.

[314] For more information on the Youville Centre and the Neighbourhood Parenting Support Network, see Canada, National Crime Prevention Centre, *Youville Centre - Ottawa* (Ottawa: Queen's Printer, May 1998), Canada, National Crime Prevention Centre, *The Neigbourhood Parenting Support Network - Winnipeg* (Ottawa: Queen's Printer, May 1998), and M. Rosenberg, "Is It Time To Focus On Responsibilities In Addition To Rights? From Criminal Justice To Justice For Children And Youth, Notes For A Presentation" (Paper presented at a conference entitled, *Building a Human Rights Agenda for the 21st Century: A Practical Celebration of the 50th Anniversary of the Universal Declaration of Human Rights*, Ottawa, 2 October 1998) [unpublished].

D. Multisystemic Therapy

Multisystemic therapy, or MST, is a family-based youth crime prevention approach whose underlying premise is that criminal conduct is multicausal. As a result, although MST requires that a youth have at least one person who will act as a parent or parent surrogate, it focuses on more than just the parent-child relationship. MST mandates that the multiple sources of criminogenic influence be addressed, including those sources found in the youth's school, peer group, and neighborhood.

MST differs from conventional therapy in many respects. It is a highly individualized, flexible intervention tailored to each situation.[315] MST therapists do their work in the community (i.e., home, school, etc.) rather than the office and are

---

[315] Although there is no one specific recipe for every MST application, there are broad principles that guide intervention. The nine broad principles that guide MST intervention are as follows: (1) The primary purpose of assessment is to understand the fit between the identified problems and their broader context, (2) therapeutic contacts should emphasize the positive and should use systemic strengths as levers for change, (3) interventions should be designed to promote responsible behaviour and decrease irresponsible behaviour among family members, (4) interventions should be present-focussed and action-oriented, targeting specific and well-defined problems, (5) interventions should target sequences of behaviour within or between multiple systems that maintain the identified problems, (6) interventions should be developmentally appropriate and fit the developmental needs of the youth, (7) interventions should be designed to require daily or weekly effort by family members, (8) intervention efficacy is evaluated continuously from multiple perspectives with providers assuming accountability for overcoming barriers to successful outcomes, and (9) interventions should be designed to promote treatment generalization and long-term maintenance of therapeutic change by empowering care givers to address family members' needs across multiple systemic contexts (A. Cunningham, *MST FAQS* (visited June 22, 1998) <http://www.lfcc.on.ca/mstfaqs.html>.)

available twenty-four hours a day if needed.[316] Their average caseload is only four to six families per worker, and while the initial MST involvement may be intense, perhaps requiring daily contact with the therapist, the ultimate goal is to empower the family to take responsibility for making and maintaining gains.[317] MST service duration ranges from three to five months, with the average duration of treatment being approximately sixty hours of contact over four months, with the final two to three weeks consisting of less intensive contact to monitor the maintenance of therapeutic gains.[318]

The MST process necessitates a number of steps. The first step is the identification of problematic behaviors of the youth. For example, the child may be truant, violent, or drug or alcohol dependent. The parents of the youth are vital to identifying the treatment targets of the MST intervention. The next step involves an assessment of the factors in the youth's environment that support the continuation of the problem behaviors and the factors that operate as obstacles to their elimination. In order to perform this assessment, the therapist has to spend time with the youth's peer group, extended family, and teachers. Therapists often find such factors as poor discipline skills on the part of the parents and teachers, peer reinforcement of problem

---

[316] S.W. Henggeler, "Treating Serious Anti-Social Behavior in Youth: The MST Approach" (May 1997) Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin 1 at 3.

[317] *Ibid.* at 2-3.

[318] *Ibid.* at 2.

behaviors, and neighborhood cultures that condone violence or other antisocial behavior. Finally, the MST therapist attempts to find positive aspects of the youth and his or her environment that would tend to promote positive change in the young person. With all of this information, the MST therapist is able to develop a therapeutic strategy to produce observable results in the youth's problematic behavior.

In order to fully understand the MST process it is useful to review an actual case of MST intervention.[319] This case involved a sixteen-year-old male who had recently returned home from serving his second custodial sentence. He entered MST with the following background: (1) His prior criminal record consisted of numerous property related offences, one breach of probation, and one robbery offence, (2) he consistently failed to meet his curfew and was very threatening to his mother, with whom he lived, (3) he lived in a neighborhood where drug and alcohol use was rampant, and (4) he had a poor academic and school attendance record, which resulted in his previous school refusing to have him back. Initially, the MST therapist saw this family three to four times per week with a fair amount of telephone contact. Visits eventually decreased to twice weekly, and for the last month of the four month intervention, the visits were reduced to once a week with reduced telephone contact.

The MST therapist began the intervention by assessing the problem behaviors of the youth and the systemic barriers to changing them. She found that the young

---

[319] This case is taken from the files of the London Family Court Clinic. Full particulars of the case, except for the subject family's name, can be found on the Clinic's website at http://www.lfcc.on.ca.

person was disrespectful of authority figures, non-compliant, truant, and had substance abuse issues. The youth's mother minimized his academic needs and overestimated his abilities. She often gave in to her son's demands and enforced house rules sporadically. The youth was easily influenced by his peers, who also had substance abuse issues.

Despite these negative features of the youth and his environment, there were also positive characteristics that were identified. For instance, the youth wanted a job and his best friend was a positive influence who did well in school and had not been in conflict with the law.

Using all of this information, certain overarching goals were articulated by the MST therapist. The targeted goals pertained to family, school, and peers. The objectives were (1) that the youth follow the rules at home and in the community as evidenced by self-reports, parent observations, and no further police contact, (2) that a school placement for the youth be obtained that can meet his academic and behavior needs as evidenced by regular daily attendance, passing grades, and completed assignments, and (3) that the youth increase his association with pro-social peers as evidenced by efforts to obtain a job, complete outstanding community service hours, and decrease drug and alcohol use.

To obtain these objectives, the MST therapist began working with the mother. To ensure the mother made time to learn the required parenting skills and was motivated to do so, the MST therapist provided time saving services to the mother. For example, on many occasions the therapist drove the mother so she could do her

errands. Through MST the mother acquired the tools she needed to effectively discipline her son and enforce house rules. She clearly posted house rules and the consequences for breaking them, engaged in active listening, and made use of time outs. As a result, the youth stopped breaking his curfew and threatening his mother. In addition, the mother and the MST therapist found an appropriate school placement to meet the boy's academic and behavior needs. The mother's weekly calling of her son's new school and regular monitoring of his homework completion, led to an improvement in the youth's attendance record and grades. The mother also actively encouraged the youth to obtain a part-time job, refrain from committing further criminal acts, and complete his outstanding community service hours, which he did. The youth's mother began to give clear and consistent messages of non-acceptance concerning the youth's drug and alcohol use. Consequently, the youth reduced his intake of these substances. Finally, in order to monitor and curtail her son's negative peer associations, the mother kept a telephone list of all of her son's friends and contacted parents when necessary. The MST intervention was terminated without the therapist establishing a substantial direct relationship with the youth because the objectives of the therapy were reached through empowering the mother.

While it is encouraging to see that MST yielded positive results for this particular youth, it is necessary to determine how it has fared in larger studies. There have in fact been a number of strong scientific evaluations of MST. The first study is a level three evaluation in which abusive and neglectful families were assigned to either

MST or conventional parent training.[320] The parents in the MST group were found to have controlled their children's behavior more effectively and to be more responsive to their children's actions than the parents in the parent training group. The second study ranks as level three on the scientific methods scale.[321] Participants consisted of eighty-four violent and chronic juvenile offenders at imminent risk of out-of-home placement and their families. 54% of the offenders had records for violent crimes. The findings from the study were that youths who had received MST had significantly fewer rearrests and weeks incarcerated than did youths who had received the usual mental health and counseling services. The last study, which rates as a level three study, examined the long-term effectiveness of MST.[322] A sample of 176 families, each containing one juvenile offender, was assigned to MST or conventional individual therapy (IT). All of the offenders had records of serious criminal involvement. At the end of the four year follow-up the overall arrest rate for MST completers (22%) was less than one third the rate for the IT group (71%). The attrition problem for the MST group was negligible; however, even those who dropped out of MST were at a lower

---

[320] M. Brunk, S.W. Henggeler & J.P. Whelan, "A Comparison of Multisystemic Therapy and Parent Training in the Brief Treatment of Child Abuse and Neglect" (1987) 55 Journal of Consulting and Clinical Psychology 311.

[321] S.W. Henggeler *et al.*, "Family Preservation Using Mulitsystemic Treatment: Long Term Followup to a Clinical Trial with Serious Juvenile Offenders" (1993) 2 Journal of Child and Family Studies 283.

[322] C.M. Borduin *et al.*, "Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence" (1995) 63 Journal of Consulting and Clinical Psychology 569.

risk of arrest than those who underwent IT (the arrest rate for MST dropouts was 47%). MST was also associated with significantly fewer serious crimes among those who were arrested. Based on these three studies it is concluded that MST works at preventing youth crime.

A recent study by the Washington State Institute for Public Policy rated MST as the most effective and cost efficient of the sixteen programs they evaluated.[323] This study found that, after subtracting the cost of the MST intervention itself, MST saved taxpayers on average $21, 863 (U.S.) per youth in reduced correctional and victims of crime costs.[324]

However, there are some concerns regarding MST. The principle concern relates to the potential for MST therapists to burn out due to being on call twenty-four hours a day in a community setting. In the words of a former MST therapist:

> The work was hard and demanding. The first problem was how my private life was disrupted by MST. On Sunday morning, I was taking donuts to a client's home so I could be sure to catch them home. At 7:45 in the morning, instead of eating breakfast I was visiting a family to help get a boy to school. The boundary between my life and the therapy was getting blurred. The four walls of the therapy room were gone and I was waking up every morning thinking about my clients. [After two months], I was chasing 14 year old boys, driving mothers to bail hearings, talking to frustrated police

---

[323] Washington State Institute for Public Policy, "Watching the Bottom Line: Cost-Effective Interventions for Reducing Crime in Washington" (January 1998) 3162 Seminar 5. This study is relatively unique because most youth crime prevention program studies do not contain an examination of the monetary costs associated with the programs. Where such information has been provided, it has been included in the descriptions of the studies in this dissertation.

[324] *Ibid.*

officers [and] encouraging burned-out parents.[325]

Due to such concerns and the fact that none of the MST studies conducted to date have used Canadian subjects, the federal Department of Justice and the Ontario Ministry of Community and Social Services have decided to fund a four year study of the effectiveness of MST in four Ontario communities.[326] If the researchers follow the stated methodology and evaluation plan for the study, the project should yield particularly compelling results since it will be a level three evaluation.

V. SCHOOL-BASED YOUTH CRIME PREVENTION

A. Introduction

As an institutional setting for youth crime prevention, schools have great potential. From the age of six, children spend a significant portion of their weekdays in the school environment. This environment is staffed with individuals paid to help socialize youths into healthy, happy, productive citizens. Moreover, research has linked poor academic performance, school attendance, and classroom/schoolyard behavior to later juvenile crime.[327] Since many of the precursors to youth criminality

---

[325] A. Cunningham, *Clinical Trials of Multisystemic Therapy (MST) with High Risk Phase I Young Offenders, 1997 to 2001: Year-End Report 1997/98* (visited June 22, 1998) <http://www.lfcc.on.ca/mstreport.html>.

[326] *Ibid.*

[327] See, for example, D.C. Gottfredson, M.D. Sealock & C.S. Koper, "Delinquency" in R. DiClemente, W. Hansen & L. Ponton, eds., *Handbook of Adolescent Health Risk Behavior* (New York: Plenum Publishing Corp., 1996) 34, J.D. Hawkins, R.F. Catalano & J.L. Miller, "Risk and Protective Factors for Alcohol and Other Drug Problems in Early Adulthood: Implications for Substance Abuse Prevention" (1992)

are school related, it is plausible that school-based interventions could be effective in dealing with them and reducing youth crime.

There are three categories of school-based youth crime prevention programs. The first category aims at changing school and classroom environments. In this category, rule setting, innovative teaching methods, and regrouping students are the specific interventions that have been tested. The second category focuses on the content of the curriculum being taught to the students. Law-related, substance abuse, and violence prevention education programs are often utilized in schools. The third category encompasses the additional services, other than instruction, that are provided by schools to students, such as peer group counseling.

B. Rule Setting

Efforts to clarify school rules, and the mechanisms for the enforcement of these rules by teams consisting of school staff, parents, students, and community members, have been the subject of much study. A level two evaluation that compared schools that underwent rule setting reform with those that did not found that, after the first year of the program, the students in the treatment high schools reported significantly less delinquent behavior and drug use while students in the comparison

---

112 Psychological Bulletin 64, and J.C. Howell *et al.*, *A Sourcebook on Serious, Violent, and Chronic Juvenile Offenders* (Newbury Park, CA: Sage Publications, 1995).

high schools did not change.[328] A second level two study found that the positive effects of the rule setting intervention persisted into the second year of the program.[329]

Evaluations of rule setting interventions in junior high schools have also been conducted. A Norwegian study focused specifically on bullying, a known risk factor for later delinquency.[330] In this level one study, a booklet was sent to participating schools directing them to establish clear rules against bullying, regular class meetings were held to clarify norms against bullying, improved supervision of the playground commenced, and teachers began to consistently enforce the new rules against bullying. As a result, bullying decreased by 50% in participating schools relative to control schools.

Another study testing the efficacy of rule setting in junior high schools dealt with American subjects.[331] In this level two study, school teams of administrators, teachers, and other school personnel were responsible for implementing the program. Student reports of rebellious behavior, a scale measuring minor delinquent acts,

---

[328] D.C. Gottfredson, "An Empirical Test of School-Based Environmental and Individual Interventions to Reduce the Risk of Delinquent Behavior" (1986) 24 Criminology 705 at 707-710.

[329] D.C. Gottfredson, "An Evaluation of an Organization Development Approach to Reducing School Disorder" (1987) 11 Evaluation Review 739 at 743-744.

[330] See D. Olweus, "Bullying Among Schoolchildren: Intervention and Prevention" in R.D. Peters, R.J. McMahon & V.L. Quinsey, eds., *Aggression and Violence Throughout the Life Span* (Newbury Park, CA: Sage Publications, 1992) 203.

[331] See D.C. Gottfredson, G.D. Gottfredson & L.G. Hybl, "Managing Adolescent Behavior: A Multiyear, Multischool Study" (1993) 30 American Educational Research Journal 179.

increased significantly over the three year time frame for students in both the treatment and comparison schools, and slightly more so in the treatment schools.

The results of this study contrast sharply with those of the other rule setting program evaluations in high schools and junior high schools. One possible reason for the negative results in the American junior high school study is that, in contrast to the other studies, it did not involve students in the development and enforcement of the rules. This may have led to a perceived lack of validity and fairness concerning the rules among the students, which in turn may have had deleterious effects on their behavior. Perhaps more pertinently, implementation data shows that the components of the program in the American junior high school study were implemented with high fidelity to the original design in only half of the treatment schools.[332]

Despite the pessimistic results of the American junior high school study, three of the four evaluations demonstrate the effectiveness of rule setting as a means of reducing youth crime and risk factors for youth crime. Thus, it is concluded that rule setting in schools works at preventing juvenile offences.

C. Innovative Teaching Methods

There are three types of innovative teaching methods that are often used in schools with high-risk student populations. Cooperative learning strategies uses small learning groups to reinforce and practice what the teacher has taught with rewards provided to the teams of students who have demonstrated improvement. Proactive

---

[332] *Ibid.* at 213.

classroom management consists of establishing expectations for classroom behavior, using methods of maintaining classroom order that minimize interruptions to instruction, and giving frequent contingent praise and encouragement for student programs and effort. Interactive teaching involves frequent assessment of student understanding and, if necessary, remediation.

One program that utilizes all three types of innovative teaching methods is the Seattle Social Development Project. In a 1988 level one study of this program, there was no statistically significant difference regarding measures of delinquency and drug use between high risk seventh graders who participated in the Project for one year and those who did not.[333] A later level one study of the Project had more positive, although still mixed, results.[334] In this evaluation, high-risk children in the second grade began the program. Two years later, teachers reported that aggressive behavior, a known risk factor for later delinquency, decreased among treatment boys but not girls, relative to the control groups.

Another program that employs cooperative learning strategies, proactive classroom management, and interactive learning is the Child Development Project. A level one study of this program involved high-risk children in the fifth and sixth

---

[333] See J.D. Hawkins, H.J. Doueck & D.M. Lishner, "Changing Teaching Practices in Mainstream Classrooms to Improve Bonding and Behavior of Low Achievers" (1988) 25 American Educational Research Journal 31.

[334] See J.D. Hawkins, E. Von Cleve & R.F. Catalano, "Reducing Early Childhood Aggression: Results of a Primary Prevention Program" (1991) 30 Journal of the American Academy of Child and Adolescent Psychiatry 208.

grades.[335] After two years of the intervention, no statistically significant differences were found for the treatment group regarding delinquency and substance use compared to controls. This study reinforced the findings of an earlier level one study that revealed no statistically significant difference in negative classroom behavior between high-risk participant and nonparticipant children.[336]

Based on these findings, I conclude that programs that use cooperative learning strategies, proactive classroom management, and interactive teaching do not prevent youth crime or reduce known risk factors for youth crime. However, these innovative teaching techniques have produced improved academic achievement for low risk young people.[337] Thus, it could be that cooperative learning strategies, proactive classroom management, and interactive teaching are not strong enough on their own to reduce delinquency in high risk youth populations and that they must be combined with other more potent techniques to affect positive change in these young people. Clearly more study is required.

---

[335] See V. Battistich *et al.*, "Prevention Effects of the Child Development Project: Early Findings from an Ongoing Multi-Site Demonstration Trial" (1996) 11 Journal of Adolescent Research 12.

[336] D. Solomon *et al.*, "Enhancing Children's Prosocial Behavior in the Classroom" (1988) 25 American Educational Research Journal 527.

[337] D.D. Brewer *et al.*, "Preventing Serious, Violent, and Chronic Juvenile Offending: A Review of Evaluations of Selected Strategies in Childhood, Adolescence, and the Community" in J.C. Howell *et al.*, eds., *A Sourcebook on Serious, Violent, and Chronic Juvenile Offenders* (Newbury Park, CA: Sage Publications, 1995) 13 at 17.

D. Regrouping Students

A number of studies have examined interventions which group students together to create more supportive or challenging environments for high-risk youths. The first two studies are both level two evaluations that reported on the effects of the School Transitional Environment Project, a one-year program for students making the transition to high school.[338] In this program, high-risk students are assigned to small schools within the school, and they remain in these small groups for their home room period as well as their academic subject periods. In both of the studies of this program, significantly fewer students in the treatment groups dropped out of school prior to high school graduation than did students in the control groups. In addition, at the end of the program and one year after the end of the program, both studies showed that on measures of absenteeism and grade point average, the treatment group students tended to have significantly more positive results compared to the control group students.

A program similar to the School Transitional Environment Project was evaluated in 1991.[339] This level two study found no statistically significant differences

---

[338] The two studies of the School Transitional Environment Project are reported in R.D. Felner, R.D. Ginter & J. Primavera, "Primary Prevention During School Transitions: Social Support and Environmental Structure" (1982) 10 American Journal of Community Psychology 277 and R.D. Felner & A.M. Adan, "The School Transitional Environment Project: An Ecological Intervention and Evaluation" in R.H. Price *et al.*, eds., *14 Ounces of Prevention: A Casebook for Practitioners* (Washington, D.C.: American Psychological Association, 1988) 133.

[339] O. Reyes & L.A. Jason, "An Evaluation of a High School Dropout Prevention Program" (1991) 19 Journal of Community Psychology 221.

between treatment group students and control group students pertaining to grade point averages, absences, and dropout rates.

The last study dealing with regrouping students evaluated the Student Training Through Urban Strategies program.[340] In this program, high-risk youths are grouped together to receive an integrated Social Studies and English program. Students stay together for two hours per day. The study tested the effects of the program after one year of its implementation in junior high and senior high schools. The researchers found that treatment group students were significantly less likely to get involved in criminal activity or drugs compared to control group students. Thus, it appears that regrouping high-risk students into smaller schools within schools prevents youth crime.

E. Law-Related Education

Schools in the United States and Canada have implemented law related education programs for nearly three decades. This curricula is designed to familiarize youths with the nation's laws and develop their appreciation of the legal process. The programs are premised on the idea that lack of knowledge about the law and negative attitudes about law and government are causes of juvenile crime.

---

[340] This level two study is reported in D.C. Gottfredson, "Changing School Structures to Benefit High-Risk Youths" in P.E. Leone, ed., *Understanding Troubled and Troubling Youth* (Newbury Park, CA: Sage Publications, 1990) 246.

Despite the fact that law related education programs have a long standing history and are fairly prevalent, there exists only one rigorous study of their effects.[341] That study is an extensive level one American national evaluation involving sixty-one elementary, junior, and senior high school classrooms that received law-related education taught by teachers and forty-four control classrooms that did not. The treatment and control classrooms were drawn from thirty-two different schools in six states. While the students who were given law-related education courses scored higher than the control students on tests of law-related factual knowledge, effects on other outcomes, including delinquency and substance abuse, were minimal or nonexistent. Consequently, it seems that law-related education programs are an unpromising youth crime prevention method.

The Canadian government has decided to fund a study examining the effectiveness of a public legal education program on the knowledge, attitudes, and behavior of Aboriginal school children from kindergarten to grade seven in British Columbia.[342] First Nations Journeys of Justice is one of the crime prevention programs being evaluated as part of Phase I of the National Strategy on Community Safety and Crime Prevention. Although the wisdom of the federal government's decision to fund

---

[341] That study is reported in G. Johnson & R. Hunter, *Law-Related Education as a Delinquency Prevention Strategy: A Three-Year Evaluation of the Impact of LRE on Students* (Washington, D.C.: National Institute for Juvenile Justice and Delinquency Prevention, 1985).

[342] Canada, National Crime Prevention Centre, *First Nations Journeys of Justice - British Columbia* (Ottawa: Queen's Printer, May 1998).

an evaluation of a law-related education program could be questioned in light of the negative results from the American national study, it should be noted that there is no indication that Aboriginal children formed a significant portion of the subject population in that study. Moreover, the Canadian evaluation deals with a program that is designed to provide information about Canadian and Aboriginal justice systems.[343] By appealing to the cultural backgrounds of Aboriginal children, this program may appear more interesting to the children and enhance their sense of self-esteem. By coupling Canadian and Aboriginal justice systems together in one education program, some of the legitimacy and respect the school children may feel for their own justice systems may also attach to the Canadian justice system. It is plausible that these factors could lead to greater compliance on behalf of Aboriginal youth with Aboriginal and Canadian laws.

F. Substance Abuse Education

Some substance abuse education programs use information dissemination approaches that teach primarily about drugs and their effects, fear arousal methods that emphasize the risks associated with drug use, moral appeal techniques that teach students about the evils of substance use, and affective education lessons that focus on building self-esteem, responsible decision making, and interpersonal growth. One substance abuse education program that incorporates all of these approaches is the Drug Abuse Resistance Education (D.A.R.E.) program which is taught by uniformed

---

[343] *Ibid.*

law enforcement officers. A recent level one study conducted in Sweden found no significant differences on measures of delinquency, substance use, or attitudes favoring substance use between students who did and did not receive the D.A.R.E. program.[344] The results from this study were collected immediately after the D.A.R.E. program was completed by the participants. Two other scientifically stringent studies of the D.A.R.E. program concluded that there were no positive long-term effects of the program on students.[345] On the strength of these studies it is asserted that substance abuse education programs that use information dissemination, fear arousal, moral appeal, and affective education techniques do not prevent youth crime.

There are substance abuse education programs that do not utilize any of these methods. Instead they employ resistance skills training to teach students about the social influences that encourage substance use, and they seek to give students specific skills for effectively resisting these pressures.

Four rigorous studies of resistance skills training substance abuse education programs exist. The first one is a level one study dealing with seventh grade students from thirty junior high schools in eight urban, suburban, and rural communities in

---

[344] P. Lindstrom, "Partnership in Crime Prevention: Police-School Cooperation" (Paper presented at the annual meeting of the American Society of Criminology, 1996) [unpublished].

[345] The two studies both rank as level two evaluations and can be found at D.P. Rosenbaum *et al.*, "Cops in the Classroom: A Longitudinal Evaluation of Drug Abuse Resistance Education (DARE)" (1994) 31 Journal of Research in Crime and Delinquency 3 and R.R. Clayton, A.M. Cattarello & B.M. Johnstone "The Effectiveness of Drug Abuse Resistance Education (Project DARE): Five-Year Follow-Up Results" (1996) 25 Preventive Medicine 307.

California and Oregon.[346] The second, third, and fourth evaluations are level one, two, and three studies respectively in which a resistance skills program was delivered to seventh grade students from ten suburban New York junior high schools.[347] Although positive results were obtained for the treatment students on measures of substance use compared to controls, it was found that the effects of these programs were short-lived in the absence of continued instruction. When given these programs for at least three years, long term positive effects regarding substance use were observed in the participant children. As a result, it is concluded that comprehensive instructional programs that focus on resistance skills training, and that are delivered over a long period of time (at least three years) to continually reinforce skills, do prevent youth crime.

G. Violence Prevention Education

Violence prevention education programs are designed to improve students' social, problem solving, and anger management skills. They also aim to promote

---

[346] See P.L. Ellickson, R.M. Bell & K. McGuigan, "Preventing Adolescent Drug Use: Long-Term Results of a Junior High Program" (1993) 83 American Journal of Public Health 856.

[347] The level one study is reported in G.J. Botvin *et al.*, "A Cognitive Behavioral Approach to Substance Abuse Prevention" (1984) 9 Addictive Behaviors 137, the level two study can be found in G.J. Botvin *et al.*, "A Cognitive Behavioral Approach to Substance Abuse Prevention: One Year Follow-Up" (1990) 15 Addictive Behaviors 47, and the level three study is described in G.J. Botvin *et al.*, "Long-Term Follow-Up Results of a Randomized Drug Abuse Prevention Trial in a White Middle-Class Population" (1995) 273 Journal of the American Medical Association 1106.

beliefs favorable to nonviolence and increase student knowledge about conflict and violence.

The only violence prevention education program that has been rigorously evaluated to date is the Washington (D.C.) Community Violence Prevention Program.[348] This fifteen-session program focuses on social information processing deficits and belief systems associated with aggressive behavior. The study that tested the program is a level one evaluation. Its subjects were fifth and seventh grade students from three inner city schools. Students receiving the course were compared with students from the same schools and grade levels during the following year. The results were mixed. On some measures regarding violent attitudes, the treatment students showed significantly more positive effects compared to control group students, while on others no difference was observed, and on still other measures of violent attitudes, the control group students fared better than the treatment students. Inexplicably, the researchers involved in this study did not attempt to assess the program's influence on violent behavior. Given these mixed results, at present it is concluded that violence prevention education programs have unknown effects.

---

[348] The evaluation of the Washington (D.C.) Community Violence Prevention Program is reported in P.S. Gainer, D.W. Webster & H.R. Champion, "A Youth Violence Prevention Program: Description and Preliminary Evaluation" (1993) 128 Archives of Surgery 303.

H. Peer Group Counselling

Aside from the provision of educational services, the service that schools are most often associated with is student counselling. Because of the demand for counselling in the school setting and the limited number of school counsellors assigned to schools, it is not uncommon for counsellors to use peer group counselling as opposed to one-on-one individual counselling. As indicated earlier in this chapter, this type of counselling involves an adult counsellor guiding group discussions in which the student participants are encouraged to recognize problems with their own behavior, attitudes, and values. The group, facilitated by the counsellor, is expected to guide its individual members to adopt a less delinquent lifestyle.

Only one rigorous study could be found that tested the efficacy of peer group counselling in the school context.[349] It found that peer group counselling produces no statistically significant effects, positive or negative, for younger children, but for older children it is associated with particularly negative effects. Specifically, junior and senior high school youths who participated in peer group counselling were found to have reported significantly more delinquent behavior, increased tardiness to school, less attachment to their parents and school, and higher association with delinquent peers than did comparable groups of control students.

Presumably, these interventions backfire because students are grouped together with negative peers during the peer counselling sessions. But if this is the case, why

---

[349] See G.D. Gottfredson, *supra* note 275 at 671-714.

does regrouping high-risk students into smaller schools within schools and providing community recreation programs for high-risk youth produce positive results? It could be that these latter programs force the youths to focus on something other than their antisocial lifestyle and attitudes, whether that something is the lesson plan for the day or a sports activity. Meanwhile in peer group counselling, the students are encouraged to express their antisocial attitudes and honestly recount their delinquent behavior. This airing of delinquent beliefs and actions may reinforce the groups' criminal ways. Regardless of the reason, it is clear that peer group counselling is unpromising as a youth crime prevention technique.

VI. LABOR MARKETS AND YOUTH CRIME PREVENTION

A. Introduction

It seems likely that there is a nexus between employment and crime. After all, those who commit crimes tend to be out of the labor force or unemployed and the communities in which crime, particularly violent crime, is so heavily concentrated show persistently high jobless rates.[350] These facts suggest that any complete assessment of youth crime prevention programs should include those aimed at

---

[350] L.W. Sherman *et al.*, *supra* note 218 at 6-1 and 6-5 - 6-6. But see S. Field, *Trends in Crime and their Interpretation: A Study of Recorded Crime in Post-War England and Wales*, Home Office Research Study 119 (London: HMSO, 1990) quoted in D. Hay, "Time, Inequality, and Law's Violence" in A. Sarat & T.R. Kearns, eds., *Law's Violence* (Ann Arbor, MI: University of Michigan Press, 1992) 141 at 157. Field's study of England shows that, from the 1950s to the present, during depressed economic periods (times of high unemployment), property crimes increased but violent crime decreased.

increasing youth employment. These programs fall into one of the following three categories: (1) subsidized employment programs, (2) short-term training programs, or (3) intensive residential programs.

B. Subsidized Employment Programs

Of the three types of youth employment programs, subsidized employment programs are the cheapest and shortest. They provide subsidized employment for young people in either public or private sector organizations at a cost of about $1,000 (U.S.) per participant. The subsidization is for a limited time period, usually less than three months. The idea is to encourage employers to take a chance on inexperienced, at-risk young people by having the government pay their wages during the on-the-job training phase.

There have been three evaluations of subsidized employment programs stringent enough to be included within this chapter.[351] All three studies show a decided increase in employment for the targetted population over the time period of the subsidy, but no evaluation showed any long-term effect on employment. Thus, it seems that after the subsidy is discontinued, so are the positions held by the young

---

[351] The study reported in W. Ahlstrom & R.J. Havighurst, "The Kansas City Work/Study Experiment" in D.J. Safer, ed., *School Programs for Disruptive Adolescents* (Baltimore, MD: University Park Press, 1982) 138 is a level one evaluation. The study described in J.B. Grossman & C.L. Sipe, *Summer Training and Education Program: Report on Long-Term Impacts* (Philadelphia, PA: Public/Private Ventures, 1992) is a level three study. The study reported in R. Maynard, *The Impact of Supported Work on Young School Dropouts* (New York, NY: Manpower Demonstration Research Corp., 1980) is a level three evaluation.

people, and the skills they acquire during their on-the-job training do not seem to make them more marketable. Moreover, two of the three evaluations of subsidized employment programs also collected data on subsequent crime rates of the participants compared to control populations.[352] Neither of these two studies showed a sustained decrease in crime rates for the participants relative to the controls. In addition, the crime rate of participants in the subsidized employment programs did not decline while they were working in the subsidized jobs. Thus, subsidized employment programs do not prevent youth crime.[353]

In light of these empirical findings, Toronto Mayor Mel Lastman's creation of a subsidized employment program for his city's at-risk youth may not have been a prudent use of resources. Called Mayor Mel's Youth Employment Initiative, the program will subsidize wages for youths during their on-the-job training.[354] If this program's results are similar to those previously evaluated, Mayor Lastman's Youth Employment Initiative will not reduce youth unemployment or crime. Indeed it is

---

[352] The two studies that collected this data are W. Ahlstrom & R.J. Havighurst, *supra* note 351 and R. Maynard, *supra* note 351.

[353] The failure of subsidized employment programs to significantly reduce youth crime is supportive of the claim of Sampson and Laub, who assert that it is not the job but the social bonds of the marketplace, bonds that are probably absent in a short term subsidized work environment, that work to prevent crime (see R. Sampson & J. Laub, *Crime in the Making: Pathways and Turning Points Through Life* (Cambridge, MA: Harvard University Press, 1993) at 17-25).

[354] "Lastman launches program for street youth" *The [Toronto] Globe and Mail* (28 July 1998) A7.

uncertain whether the efficacy of this program will ever be known, as Mayor Lastman has not announced any plans for evaluating its success or failure.

C. Short-Term Training Programs

Short-term training programs are usually longer and more expensive than subsidized employment programs. Most short-term training programs are about six months in length, deliver roughly 400 hours of service to participants, and cost approximately $2,500 to $5,000 (U.S.) per participant. The young people in these programs have dropped out of high school. They receive classroom job skills training and job search assistance.

There is one rigorous evaluation of a short term training program.[355] This level three study found that the program had no lasting impact on employment outcomes or crime rates. Consequently, short-term training programs are unpromising youth crime prevention interventions.

A possible reason for the failure of short term training programs to reduce youth crime and unemployment is that these programs are too low in dosage and duration to counterbalance the failed academic careers of the youths who participate in them. For example, it is conceivable that a good proportion of the youths who participate in short term training programs dropped out of high school due to the frustration they felt at being fifteen or sixteen years old and having the academic skills

---

[355] See H. Bloom *et al.*, *The National JTPA Study: Overview of Impacts, Benefits, and Costs of Title IIA* (Bethesda, MD: Abt Associates, 1994).

of fourth and fifth graders. Such youths would continue to be frustrated after the short term training program is completed because a larger amount of training is needed to raise academic skills by four, five, and six grade levels. Without these skills, the young people would continue to have difficulty finding employment.

D. Intensive Residential Programs

Intensive residential programs tend to be longer and more expensive than short-term training programs. Intensive residential programs usually have a duration of at least one year and provide extensive skills training, general education, and job placement services after graduation. The cost of such programs is almost $15,000 (U.S.) per participant.

As was the case with short term training programs, there is only one rigorous study of intensive residential programs.[356] It is a level two evaluation that found that four years after participants successfully completed the program, they earned, on average, 15% more than people in the control group. Moreover, compared to those in the control group, the participants experienced significantly fewer arrests for serious crimes. These results are particularly startling given that over 80% of the participants in the intensive residential program were high school dropouts when they entered it.

Many possible explanations exist for the success of this type of program. It delivers a higher dosage of services over a longer period of time compared to short

---

[356] See C. Mallar *et al.*, *Third Follow-Up Report of the Evaluation of the Economic Impact of Job Corps* (Princeton, NJ: Mathematica Policy Research Inc., 1982).

term training programs. Perhaps this enhanced level and duration of service is enough to overcome the educational deficits of the participants. It could be that the residential aspect of these programs serves to resocialize youths by breaking antisocial group ties, presenting pro-social role models, and reducing illegal earnings opportunities. Whatever the reason, it is apparent that intensive residential programs are promising interventions to prevent youth crime.

VII. CONCLUSION

Upon examination of the research data on youth crime prevention within the criminal justice system, a number of important points are revealed. Noncustodial correctional rehabilitation programs that direct the highest intensity of treatment to the young people most likely to recidivate are promising. However, the reductions in crime associated with these programs only occur with some types of offenders, to some degree, some of the time. In addition, these programs must be implemented as designed, address dynamic criminogenic factors, and follow a cognitive behavioural approach. Prison based therapeutic communities for substance abuse treatment are also promising youth crime prevention programs.

However, the magnitude and consistency of the effect of these two types of rehabilitation programs may be too low to justify a rehabilitation-driven young offender sentencing policy. Thus, the federal government's 1995 amendment to the *YOA*, whereby rehabilitation was explicitly recognized in the *Act*'s Declaration of Principle without specifying that it was not to guide sentencing decisions, was not

prudent as this amendment can lead to youth court judges sentencing on the basis of rehabilitation. The current reform proposals exacerbate this situation by explicitly linking rehabilitation and crime prevention and having these principles constitute the fundamental purpose of the new legislation. Although recognition of the importance of youth crime prevention and rehabilitation is laudable, the legislative proposals make no attempt to circumscribe the influence of rehabilitation and crime prevention so that they do not effect the sentencing process. Nevertheless the empirical findings do suggest that appropriate rehabilitation programs should be offered to youths who are sentenced pursuant to another, more appropriate, sentencing policy and this is the way that rehabilitation should be recognized in the Declaration of Principle. Thus, young offender sentencing should be guided by a policy other than rehabilitation. However, while pursuing this other sentencing policy, it is plausible that some rehabilitative effect can be obtained from appropriate treatment programs. Consequently, appropriate youth rehabilitation programs are worthwhile, but rehabilitation should not be the goal driving youth court sentencing.

But what is the appropriate sentencing policy for young offenders? The studies demonstrate that incapacitation, general, and specific deterrence are all unpromising at preventing youth crime. The appropriate sentencing policy for youth and how it can be implemented is discussed in Chapter Four.

The latest development in youth corrections is the boot camp. Research shows that juvenile boot camp programs that do not contain therapeutic components do not prevent youth crime. But juvenile boot camp programs that include at least three hours

per day devoted to treatment and implement some type of post-boot camp community follow-up for the offenders are promising for youth crime prevention. Unfortunately, Ontario's boot camp program fails to give offenders the required amount of treatment and employs a contra-indicated method of administering the treatment that it does provide.

Community-based youth crime prevention efforts consist of gang, mentoring, and recreation programs. The efficacy of gang membership prevention programs is unknown, but programs that seek to influence juveniles who have already joined gangs to leave those gangs are known not to work. The only type of gang programs that do prevent youth crime are crisis intervention and conflict mediation with gangs and gang members. While community-based mentoring programs have unknown effects, community-based recreation programs also prevent youth crime. Therefore, the federal government's plan to establish community-based recreation programs for youth is reinforced by the research data.

Many recent government youth crime prevention initiatives take aim at the family. The only type of family-based youth crime prevention program that is not the subject of government study is an intervention that does work - home visitation programs. Parent training within school settings has unknown effects, but more information about this type of program will be gathered as a result of the Moncton Headstart evaluation. Parent training in clinical settings also has unknown effects but the Youville Centre and Neigbourhood Parenting Support Network studies should shed some light on the efficacy of such interventions. Research has also demonstrated

that multisystemic therapy works at preventing youth crime, and this conclusion is being tested in an Ontario study.

The school-based youth crime prevention programs are rule setting, innovative teaching methods, regrouping students, law related education, substance abuse education, violence prevention education, and peer group counselling. The empirical results suggest that rule setting, regrouping students, and resistance skills training substance abuse education programs prevent youth crime. However, innovative teaching methods, specifically cooperative learning strategies, proactive classroom management, and interactive teaching, and substance abuse education programs that use information dissemination, fear arousal, moral appeal, and affective education techniques do not work. Peer group counselling and law-related education are, based on the criteria of this chapter, unpromising at preventing youth crime. Yet the First Nations Journeys of Justice program being evaluated in a federal government study is different than conventional law-related education programs and may provide surprising and useful results. Violence prevention education programs have unknown effects.

The last institutional setting in which youth crime prevention efforts occur is the labor market. Short-term training programs are unpromising, while intensive residential programs are very promising at preventing youth crime. Clearly, though, subsidized employment programs do not work. Thus, it is argued that Toronto's municipal government, in launching such a program, has made an unwise policy decision.

Taken together, the results from the studies testing youth crime prevention programs in all five institutional settings point to two inexorable conclusions. The first is that, despite decades of government funding of youth crime prevention programs, little is really known about their effectiveness. This leads to the second and central conclusion, which is that the efficacy of most youth crime prevention strategies will remain unknown until the nation invests more in evaluating them. The federal government has taken a courageous first step in this direction by increasing its investment in the crime prevention field through phase II of the National Strategy on Community Safety and Crime Prevention. Yet even with this new funding, less than one percent of the total spent on youth custody and community services will be spent on funding and evaluating new crime prevention programs for youth. It is only with increased government expenditure on youth crime prevention programs and evaluations that rigorous large scale studies will be performed and the need to rely on problematic meta-analyses will diminish.

Successful youth crime prevention cannot be achieved through the criminal justice system alone. What is required is an integrative approach involving all five institutional settings and three levels of government. Fiscally-minded commentators will point out that such an investment will be expensive and will require drawing on already scarce resources. Some of these expenses can be avoided if programs proven not to work have their funding discontinued, if every new program is evaluated before being widely implemented, and if, as the federal government's new national crime prevention program requires, every new program given funding has a stringent

assessment procedure in place. Chapter Two's recount of the history of juvenile justice reform demonstrated that the provinces and the federal government are particularly concerned about the costs associated with youth crime prevention programs. The reluctance to spend more on these programs, in favor of increasing spending on additional custodial institutions for young offenders, has been partly driven by victims rights organizations and police associations who have garnered much public support for their "get tough" approach to juvenile offenders. Ways must be found to appeal to these interest groups and the public at large so that increased government spending on youth crime prevention programs becomes politically feasible. The real question is, can we really afford not to protect our most prized resource, our children?

CHAPTER FOUR

SENTENCING, JUDICIAL DISCRETION, AND CANADA'S JUVENILE JUSTICE SYSTEM

I. INTRODUCTION

Other than the determination of an accused's guilt or innocence, the most difficult and important task facing a judge in a criminal matter is sentencing. Through their role in the sentencing process, the judiciary wield enormous power over the lives of individuals. The proper exercise of that power is a matter of concern to offenders, academics, members of the Bar and helping professions, and to the public at large. In no context is this concern more keenly felt than with young offenders.

The passing of the *YOA* into law was supposed to usher in a new era of Canadian juvenile justice. As recounted in Chapter Two, under the previous legislative regime, the *JDA,* judges and other juvenile justice professionals were given wide discretion regarding the sentencing of young people who contravened the law. There was also a profound lack of uniformity among the provinces regarding key aspects of juvenile justice processing. The *YOA* was characterized as a regime that would reduce and structure discretion and impose uniformity on the different parts of the country. This chapter provides a detailed examination of the caselaw and legislative provisions under the *YOA* in order to determine whether it has lived up to its promise of reduced discretion and enhanced uniformity in sentencing.

In analyzing the legislative provisions and caselaw under the *YOA*, the appropriateness of applying certain sentencing principles to young offenders is re-

examined. It will be recalled that in Chapter Three, certain sentencing strategies were shown to lack the empirical basis to drive youth sentencing policy. In Chapter Four, these same sentencing principles will be assessed in order to determine whether any of them can be supported by the legislative framework of the *YOA*.

This chapter is divided into two parts. First, I examine the sentencing provisions and caselaw developed under the *YOA*. In this portion of the chapter, I demonstrate the great discretion and lack of uniformity that pervade dispositions under the *YOA*. Within the second part of the chapter, I suggest possible reforms aimed at structuring discretion and achieving more uniformity in young offender sentencing.

II. PRINCIPLES AND PROBLEMS PERTAINING TO SENTENCING UNDER THE *YOA*

A. Introduction

The *YOA* was supposed to transform Canada's juvenile justice system from one that lacked essential due process rights for youth to one that required stringent adherence to these rights. In the sentencing context, this meant not only reduced and structured discretion but more uniformity. The provisions of the *YOA* and the caselaw interpreting them must be examined in order to determine if the *YOA* has delivered on its promise of reduced discretion and enhanced uniformity in the sentencing of young offenders.

B. Dispositional Options Under the YOA

A broad range of noncustodial and custodial dispositional options can be imposed under the *YOA*. Among the noncustodial options are absolute discharges,[357] conditional discharges,[358] fines not exceeding one thousand dollars,[359] orders of restitution and compensation,[360] community service orders,[361] prohibition orders,[362] probation orders not exceeding two years,[363] and court orders containing other conditions.[364] The noncustodial dispositions can be given to a young offender regardless of the offence he or she has committed.[365] However, the custodial dispositions under the *YOA* are tied to the type of offence committed by the young offender. All offences, conviction for which would result in less than life imprisonment for an adult, yield a maximum term of imprisonment of two years for a

---

[357] See s.20(1)(a) of the *YOA*.

[358] See s.20(1)(a.1) of the *YOA*.

[359] See s.20(1)(b) of the *YOA*.

[360] See s.20(1)(c) – s.20(1)(f) of the *YOA*.

[361] See s.20(1)(g) of the *YOA*.

[362] See s.20(1)(h) of the *YOA*.

[363] See s.20(1)(j) of the *YOA*.

[364] See s.20(1)(l) of the *YOA*.

[365] Under the *YOA*, status offences were abolished. In order to come within the ambit of the *YOA*, a young person must commit an "offence" as defined by s.2(1) of the *YOA*. An offence under the *YOA* "means an offence created by an Act of Parliament or by any regulation, rule, order, by-law or ordinance made thereunder other than an ordinance of the Yukon Territory or the Northwest Territories[.]"

young offender.[366] With the exception of murder, all offences that could result in life imprisonment for an adult yield a maximum term of three years for a young offender.[367] For youths convicted of first degree murder in youth court, the maximum sentence is ten years, with a maximum of six years in custody and the balance on conditional supervision.[368] For youths convicted of second degree murder in youth court, the maximum sentence is seven years, with a maximum custodial portion of four years and the balance on conditional supervision.[369] Thus, the *YOA* is a regime under which a young person found guilty of robbery could receive a sentence ranging from an absolute discharge to three years imprisonment. In order to aid youth court judges in their task of imposing a suitable type and quantum of sentence, Parliament enacted a declaration of principle within the *YOA*.

---

[366] See s.20(1)(k)(i) of the *YOA*. It should be kept in mind that young offenders are more likely to serve their full sentences as compared to adults because adults, unlike young offenders, are virtually automatically granted reductions in sentence for remission. Young offenders, who are not subject to parole or mandatory supervised release, are instead subject to judicially controlled release (see s.28 of the *YOA*) and custodial sentences are not automatically reduced on judicial review. For example, in British Columbia the 1990 statistics indicate that young offenders committed to custody serve more than 80% of the original sentence imposed, whereas imprisoned adult offenders serve less than two-thirds of their sentence (Statistics Canada, *Sentencing in Youth Courts,* (Ottawa: Canadian Centre for Justice Statistics, 1990).

[367] See s.20(1)(k)(ii) of the *YOA*.

[368] See s.20(1)(k.1)(i) of the *YOA*.

[369] See s.20(1)(k.1)(ii) of the *YOA*.

C. The Declaration of Principle

Section 3 of the *YOA* sets out the *Act*'s philosophy and, consequently, provides a framework to guide sentencing decisions. Prior to 1995, s.3 of the *YOA* read as follows:

> 3.(1) It is hereby recognized and declared that
> (a) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions;
> (b) society must, although it has the responsibility to take reasonable measures to prevent criminal conduct by young persons, be afforded the necessary protection from illegal behaviour;
> (c) young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
> (d) where it is not inconsistent with the protection of society, taking no measures or taking measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences;
> (e) young persons have rights and freedoms in their own right, including those stated in the *Canadian Charter of Rights and Freedoms* or in the *Canadian Bill of Rights*, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
> (f) in the application of this Act, the rights and freedoms of young persons include a right to the least possible interference with freedom that is consistent with the protection of society, having regard to the needs of young persons and the interests of their families;
> (g) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and
> (h) parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate.
> (2) This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in subsection (1).

It can readily be seen that the Declaration of Principle contains many conflicting, inconsistent, and unprioritized principles of sentencing.

For instance, deterrence and incapacitation can be seen in the Declaration's admonition that young offenders should "bear responsibility for their contraventions," that they require "supervision, discipline and control" and that society "must . . . be afforded the necessary protection from illegal behaviour." While not explicitly mentioning rehabilitation,[370] treatment considerations could also be seen as being alluded to in the following portions of s.3: "youths have special needs and require guidance and assistance," youths have the "right to the least possible interference with freedom" and "young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate." Sometimes seemingly incompatible principles are included within the same statement in s.3.[371]

D. Evidence of Disparity

The apparent mixture of sentencing principles in s.3 and the fact that the section gives no explicit guidance to the decision maker when the principles are in conflict, means that youth court judges have an enormous amount of discretion when

---

[370] Rehabilitation was not explicitly mentioned in the Declaration of Principle until Parliament passed *An Act to amend the Young Offenders Act and the Criminal Code* S.C. 1995, c.19. These amendments to the *YOA* came into force on December 1, 1995, and they will be discussed in greater detail later in this chapter.

[371] See, for example, s.3(1)(f) of the *YOA*.

it comes to the sentencing process. Not unexpectedly, this large amount of discretion has resulted in a problem of disparity in the sentencing of young offenders.

The evidence of great variation in young offender sentencing comes from many sources. Perhaps in no context is the problem of disparity more evident than in murder sentencing in youth court. Even for offences like murder, the *YOA* eschews statutory minimum sentences.[372] Between 1986 and 1993, when the maximum term of

---

[372] In *R.* v. *T.(K.D.)* (1986), 72 N.S.R. (2d) 313 (C.A.), the Nova Scotia Court of Appeal ruled that the mandatory minimum custodial sentences of the *Criminal Code* did not apply to young people charged under the *YOA*. The court held that s.20 of the *Act* was a complete guide to young offender dispositions and that the application of the *Criminal Code* by virtue of s.51 of the *YOA* did not import mandatory minimum sentences. (Section 51 states that the *Criminal Code* applies to young offenders with such modifications as the circumstances require.) The court concluded that mandatory minimum custodial sentences were contrary to the purpose and spirit of the *YOA* and, therefore, did not apply. As a result, the mandatory one-year custodial disposition under the *Criminal Code* for the offence of using a firearm in the commission of an indictable offence was held not to apply to the young person. The Ontario Court of Appeal in *R.* v. *H.(R.)* (1993), 77 C.C.C. (3d) 198 (Ont. C.A.) [hereinafter *H.(R.)*] came to a similar conclusion. In this case, the young offender pled guilty to one count of robbery and one count of use of a firearm in the commission of an indictable offence. He was given a custodial disposition of five months for the firearm offence. The Crown appealed, arguing that a mandatory minimum sentence of one year in custody for the firearm offence was warranted by s.85(1)(c) of the *Criminal Code*. The Ontario Court of Appeal dismissed the appeal, stating

> [t]he imposition of mandatory minimum sentences is inconsistent with the provisions of the *Young Offenders Act*, in particular with the declaration of principle set out in s.3 of that Act. The thrust of the declaration is that while young offenders are to be held accountable for what the section refers to as their "contraventions," they should not in all instances be held accountable or suffer the same consequences for their behaviour as adults (s.3(1)(a)). Specifically "the rights and freedoms of young offenders include a right to the least possible interference with freedom that is consistent with the protection of society" (s.3(1)(f)). I cannot reconcile these principles of the Act with mandatory minimum sentences of the severity contemplated by s.85 of the *Code*. Where, as in the case on appeal, the youth court judge is restricted to a totality of dispositions of three years duration, the

imprisonment for murder in youth court was three years, of the 75 youths sentenced for murder, 37 did not receive the maximum secure custody term.[373] Of these 37

> imposition of a one year . . . custody disposition at the outset effectively removes almost all discretion from the youth court judge.

In *R.* v. *B.(C.F.)* (1987), 33 C.C.C. (3d) 95 (N.W.T.C.A.), the Northwest Territories Court of Appeal ruled that the youth court was not bound to impose a prohibition order, pursuant to what was then s.100(1) of the *Criminal Code*, on a young person even though the order would be mandatory if the accused was an adult. The court held that s.20 of the *YOA* confers a very broad discretion on the youth court judge in the making of a disposition order – the only mandatory provision is that the youth court make at least one of the dispositions available to it under the section. Thus, mandatory minimum custodial dispositions and prohibitions do not apply to young offenders. Moreover, s.36(5) of the *YOA* specifically prevents the youth court from imposing a mandatory minimum custodial term in circumstances where a greater punishment is prescribed by reason of previous convictions. Thus, in *R.* v. *W.(J.) (No. 2)* (25 March 1992), (Yuk. Terr. Ct.) [unreported], a young offender found guilty of impaired driving for the third time was not subject to the mandatory minimum penalty in s.255 (1) of the *Criminal Code* for a third offender.

[373] P. Platt, *Young Offenders Law in Canada*, 2d ed. (Toronto and Vancouver: Butterworths Canada Ltd., 1995) at 10. There are two types of custody under the *YOA*, open and secure. Section 24.1(1) of the *YOA* defines both these terms:

> 24.1(1) In this section and sections 24.2, 24.3, 28 and 29,
> "open custody" means custody in
> (a) a community residential centre, group home, child care institution, or forest or wilderness camp, or
> (b) any other place or facility
> designated by the Lieutenant Governor in Council of a province or his delegate as a place of open custody for the purposes of this Act, and includes a place or facility within a class of such places or facilities so designated;
> "secure custody" means custody in a place or facility designated by the Lieutenant Governor in Council of a province for the secure containment or restraint of young persons, and includes a place or facility within a class of such places or facilities so designated.

In 1995, s.24.1 of the *YOA* was amended to allow provincial governments to pass legislation which would give the provincial director the power to determine whether custodial sentences were to be open or secure. Prior to these amendments, youth court judges designated custodial dispositions as open or secure. At the time of writing, none of the provinces had passed the legislation required to transfer this power from

youths who did not receive the maximum secure custody term, most of the sentences imposed ranged from varying terms of open custody to varying terms of secure custody.[374] Two of the 37 youths were sentenced to probationary terms for the crime of murder.[375] Thus, there is evidence of wide disparity in sentences imposed for murder in youth court.

Criminological studies demonstrate that disparity in the sentencing of young offenders is not limited to the offence of murder. Carrington and Moyer analyzed all youth court cases reaching disposition between April 1, 1990 and March 31, 1991 in eight provinces.[376] They found that few offence categories, including serious offence categories like aggravated sexual assault, sexual assault with a weapon and aggravated assault, have characteristic dispositions.[377] For example, 59% of young offenders convicted of aggravated sexual assault or sexual assault with a weapon, and 48% of those convicted of aggravated assault, received noncustodial dispositions.[378]

---

the youth court judges to the provincial director. As a result, when youth court judges impose custodial dispositions, they still designate whether it is to be served in open or secure custody.

[374] P. Platt, *supra* note 373 at 10.

[375] *Ibid.* These statistics do not reflect whether pretrial detention may have been considered nor do they distinguish between first and second degree murder.

[376] P.J. Carrington & S. Moyer, "Factors Affecting Custodial Dispositions under the *Young Offenders Act*" (Apr. 1995) 37 Can. J. Crim. 127.

[377] *Ibid.* at 138-140.

[378] *Ibid.* at 138.

The use of custody is not the only disparate aspect regarding the sentencing of young offenders. After analyzing the data for 1990 from the Uniform Crime Report and the Youth Court Survey, Carrington and Moyer found that there was substantial interprovincial variation regarding average custodial sentence lengths.[379] Similarly, Anthony Doob examined the use of custodial dispositions in six provinces from 1984 to 1989.[380] He found that average sentence length and the proportion of young people receiving custodial dispositions varied markedly across the provinces.[381] However, Doob points out that these variations may not be the result of judges imposing disparate sentences for similar offences and offenders, but instead may be the result of a different mix of cases going to youth court.[382]

Fortunately, qualitative studies regarding disparity in sentencing in youth court have been conducted. These studies demonstrate that the wide judicial discretion allowed by s.3 of the *YOA* is a significant contributor to disparity in youth court sentencing. Perhaps the most comprehensive of these qualitative studies is the study conducted by Doob and Beaulieu in 1988.[383] In this study, 43 youth court judges from

---

[379] P.J. Carrington & S. Moyer, "Interprovincial Variations in the Use of Custody for Young Offenders: a Funnel Analysis" (July 1994) 36 Can. J. Crim. 271 at 285.

[380] A.N. Doob, "Trends in the Use of Custodial Dispositions for Young Offenders" (Jan. 1992) 34 Can. J. Crim. 75.

[381] *Ibid.* at 81-82.

[382] *Ibid.* at 82.

[383] A.N. Doob & L.A. Beaulieu, "Variation in the Exercise of Judicial Discretion with Young Offenders" (Jan. 1992) 34 Can. J. Crim. 35.

across Canada read and responded to two written descriptions of cases involving four young offenders. The judges recommended sentences for each of the four youths. The judges also indicated what purposes they were trying to accomplish with their disposition and what aspects of the case they found to be important in pronouncing sentence.

The results of the study are startling. There was a fair amount of variability in the type of dispositions (custodial or noncustodial) handed down in the cases.[384] Moreover, there did not exist a consensus on the goals to be emphasized in determining the sentence for any of the four young offenders.[385] While most judges favored giving precedence to individual deterrence or rehabilitation, at least fifteen percent of the judges thought that either punishment, general deterrence or incapacitation should be given precedence in each of the four cases.[386] Even among those judges who agreed as to the purpose the sentence should serve, there was a large amount of variation in the recommended disposition. Thus, even when the judges were trying to accomplish the same purpose, they went about it in quite different ways.[387] Complicating the situation further, the study found that most judges thought most goals or purposes of sentencing were very important or somewhat important in

---

[384] *Ibid.* at 40.

[385] *Ibid.* at 43.

[386] *Ibid.*

[387] *Ibid.*

determining disposition.[388] Thus, within the context of a single disposition, judges are attempting to accomplish an enormous amount. The practical result of this judicial discretion and confusion is illustrated by the fact that in one of the hypothetical cases, an assault causing bodily harm, the severity of the disposition selected by the judges varied from a fine to twelve months in secure custody.[389] As a result, Doob and Beaulieu concluded that

> [w]hen the "Declaration of Principle" is looked on as a potential guide for sentencing, it is clear that no guidance is given on how, for example, to weigh prevention, protection of society, the special needs of the young person which require assistance, and the principle of making young persons accountable for the offences when each of these principles taken by itself would lead to vastly different dispositions . . . Though judges are responsible for their individual decisions, the Act itself is responsible for the fact that very different sentences can legitimately be given to the same case. Individualized decision making by individual judges acting without much guidance is not compatible with a high degree of consistency in sentencing.[390]

E. J.J.M. and the Principles of Young Offender Sentencing

It was hoped that the confusion surrounding s.3 of the *YOA* would be resolved by *R.* v. *M.(J.J.)*,[391] the Supreme Court of Canada's first judgment regarding young offender sentencing principles. In *J.J.M.* the court affirmed a sentence of two years in open custody for the young offender who had been found guilty of three counts of

---

[388] *Ibid.* at 47.

[389] *Ibid.* at 41.

[390] *Ibid.* at 48-49.

[391] *R.* v. *M.(J.J.)* (1993), 81 C.C.C. (3d) 487 (S.C.C.) [hereinafter *J.J.M.*].

break, enter and theft and one count of breach of probation. His prior record consisted of three counts of break, enter and theft and two counts of taking a car without consent. The court characterized J.J.M's family history as "depressing."[392] His home life was described as extremely abusive and violent. J.J.M. and his siblings had been apprehended by Child Welfare in Manitoba but were returned to their parents when they proved to be "uncontrollable."[393]

In *J.J.M.*, the court provided a general approach to young offender dispositions, and, in particular, it resolved a debate about whether general deterrence should play a role in the sentencing of young offenders. Different provincial courts of appeal had different views on this topic. The Alberta Court of Appeal, together with the Newfoundland and New Brunswick appellate courts, took the position that general deterrence has no role in the determination of dispositions under the *YOA*.[394] However, appellate courts in Ontario, Saskatchewan, Nova Scotia, Quebec and the Yukon Territory held that general deterrence must be considered when sentencing young offenders.[395] Cory J., writing for the Supreme Court, decided that the approach of the

---

[392] *Ibid.* at 490.

[393] *Ibid.*

[394] See *R.* v. *G.K.K.* (1985), 63 A.R. 379 (Alta. C.A.), *R.* v. *C.W.W.* (1986), 68 A.R. 196 (Alta. C.A.), *R.* v. *C.J.L.* (1986), 59 Nfld. & P.E.I.R. 76 (Nfld. C.A.), and *R.* v. *R.C.S.* (1986), 68 N.B.R. (2d) 361 (N.B.C.A.).

[395] See *R.* v. *O.* (1986), 27 C.C.C. (3d) 376 (Ont. C.A.), *R.* v. *M.J.C.* (1985), 42 Sask. R.. 197 (Sask. C.A.), *R.* v. *K.D.T.* (1986), 72 N.S.R. (2d) 213 (N.S.S.C.A.D.), *Protection de la jeunesse-431* [1990] R.J.Q. 645 (Que. C.A.) and *R.* v. *Darren Douglas B.*, [1988] 3 Y.R. 5 (Yuk. Terr. C.A.).

Ontario Court of Appeal was correct. Thus, general deterrence must be considered, but it has diminished importance in determining the appropriate disposition in the case of a young offender.[396]

Cory J.'s comments went beyond the role of general deterrence in young offender sentencing. He also stated that while the principle of proportionality has a role to play in young offender dispositons, it will have a greater significance for adults than youths.[397] In addition, the Supreme Court chose to reaffirm the importance of rehabilitation in the sentencing of young offenders. Cory J. stated: "It is not unreasonable to expect that in many cases carefully crafted dispositions will result in the reform and rehabilitation of the young person. That must be the ultimate aim of all dispositions."[398] Counsel for J.J.M. argued that the youth had received a disproportionately long sentence that could not be justified on the basis of the youth's offence or his criminal record, but rather could only be justified by his child welfare needs. Because of the importance of rehabilitation, Cory J. held that the home situation of the young offender could be a factor in sentencing.[399] As a result, J.J.M. was given a disproportionately long sentence on the basis of child welfare concerns.[400]

---

[396] *J.J.M.*, *supra* note 391 at 496.

[397] *Ibid.* at 494.

[398] *Ibid.* at 491.

[399] *Ibid.* at 495.

[400] In outlining the general approach to young offender dispositions, Cory J. did not explicitly comment on the validity of incapacitation as a sentencing objective for

F. J.J.M. – the Comprehensive Analysis

The anticipated guidance it was hoped that *J.J.M.* would provide to youth court judges has not materialized. Although *J.J.M.* has resolved that general deterrence has some role to play under the *YOA*, there is no guidance regarding how important this role should be. Thus, the debate over whether general deterrence has any role in youth court sentencing has been superceded by a debate over the scope of the role of this sentencing goal.[401]

The caselaw is replete with inconsistent examples of how general deterrence is balanced with the rehabilitation of the offender, particularly when the offence is grave and the rehabilitation of the offender in a noncustodial setting is promising. For

---

young offenders. Cory J. did state: "The references to responsibility contained in s.3(1)(a) and to the protection of society in paras. (b), (d) and (f) suggest that a traditional criminal law approach should be taken into account in the sentencing of young offenders." (*J.J.M.*, *supra* note 391 at 492.) This passage, taken alone would suggest that incapacitation is a valid sentencing objective for young offenders. However, immediately after writing this passage, Cory J. wrote, "[y]et, we must approach dispositions imposed on young offenders differently because the needs and requirements of the young are distinct from those of adults." (*J.J.M.*, *supra* note 391 at 492.) Given the fact that the Supreme Court did not explicitly discuss incapacitation as a guiding principle of young offender dispositions, the relatively few cases that acknowledge its validity in the young offender context (the only reported cases that state that incapacitation is a valid young offender sentencing principle are *R.* v. *A.C.H.* (1990), 113 A.R. 344 (Prov. Ct.), *R.* v. *C.W.W.* (1986), 68 A.R. 196 (C.A.), *R.* v. *G.K.K.* (1985), 63 A.R. 379 (C.A.), *R.* v. *M.M.D.* (1993), 19 W.C.B. (2d) 391 (B.C.C.A.), and *R.* v. *G.W.C.* (1994), 160 A.R. 328 (Prov. Ct.)), and the fact that the most threatening and violent youths can be transferred to adult court, I contend that incapacitation is not a valid objective of young offender dispositions.

[401] J. Bolton *et al.*, *supra* note 94 at 1010.

instance, in *R.* v. *William L.*[402] a sixteen-year-old young person pled guilty to dangerous driving causing death when he went through a red light and struck a vehicle in an intersection. A five-year-old child died as a result of the accident and the child's father suffered serious injuries. The youth court judge noted the deep remorse felt by the youth and his previous good record as well as the statement in *J.J.M.* that general deterrence had limited importance in youth court dispositions. As a result, the court imposed a disposition consisting of 240 hours of community service to be performed within twelve months, probation for two years and a driving prohibition of three years. However in *R.* v. *E.M.*,[403] a seventeen year old young offender pled guilty to criminal negligence causing death. The charge arose from the death of one of the female high school students riding in the car operated by E.M.. As was the case with William L., E.M. had no prior criminal record. Moreover, she was an outstanding student and had a very positive PDR.[404] Nevertheless, the Court of Appeal held that the seriousness of the offence mandated some form of custodial disposition and it raised the noncustodial

---

[402] *R.* v. *William L.* (15 November 1993), (Ont. Y.Ct.) [unreported].

[403] *R.* v. *E.M.* (1992), 76 C.C.C. (3d) 159 (Ont. C.A.). This case was decided prior to the Supreme Court's judgement in *J.J.M.*, but note that it was the Ontario Court of Appeal's position, regarding general deterrence and its relative importance to rehabilitation, that the Supreme Court adopted in *J.J.M.*.

[404] PDR is an acronym for Pre-disposition Report. Section 14 of the *YOA* governs PDRs. In essence, a PDR is a report, usually written by a probation officer, concerning the young offender's family background, education, attitude, etc. Before making an order of committal to custody, the youth court has to consider a PDR, unless the judge, Crown and defence counsel all agree to waive the necessity for it (s.24(2) and s.24(3) of the *YOA*).

sentence imposed at trial to 90 days of open custody. In *R.* v. *Joshua C.*,[405] a seventeen-year-old youth with no previous criminal record accidentally shot his friend. While he pointed the gun at his friend's head and pulled the trigger, he believed that the gun was unloaded. The Ontario Court of Appeal, in affirming his eighteen month open custody sentence, stated that considerations of specific deterrence, rehabilitation, and reformation had no application in the case. The court was satisfied that Joshua C.'s actions would never be repeated by him. However, on the principle of general deterrence, the custodial disposition was seen to be just. In all three of these cases, the young offenders had excellent rehabilitative potential and had committed offences with horrific consequences – all involved the taking of a life. Yet, because of the differential impact of the role of general deterrence, the sentences ranged from a noncustodial disposition to eighteen months open custody. Consequently, *J.J.M.*'s pronouncement regarding the applicability of general deterrence has not resulted in, nor can it be expected to result in, more uniform youth court sentences.

The Supreme Court of Canada's view of rehabilitation, in the context of young offender sentencing, has also come under academic criticism. Nicholas Bala states:

> . . . in the context of dealing with young offenders, many of whom have "troubled" family backgrounds, [*J.J.M.*] often means support for longer periods in a "controlled" environment, away from the presumed harmful influences of the family. This implicitly indicates support for longer custodial sentences for many young offenders. This is in direct contrast to the use of rehabilitation as a factor in adult sentencing, where it is invariably used to justify a shorter custodial sentence. From the point of view of the youth facing sentencing, the situation may seem

---

[405] *R.* v. *Joshua C.* (1992), 17 W.C.B. (2d) 382 (Ont. C.A.).

> unfair, since he may legitimately feel that he is being "punished" (ie. receiving a longer sentence) because, in a case like . . . [*J.J.M.*] . . . his parents were alcoholics and abusive toward him. This will appear especially unfair if youths receive different sentences for the same offence because of differences in "family background". There is obviously a potential for unconscious class or racial bias to become a factor in the assessment of family backgrounds, and hence the length of sentence received. One can also ask why, if help is needed for a youth, it is not provided voluntarily or under child protection legislation, in which case the focus of attention will be providing assistance, and questions of helping and punishing will not become confused.[406]

Although *J.J.M.* is subject to the criticisms previously discussed, it suffers from a more profound and significant deficiency. The Supreme Court has not interpreted s.3 of the *YOA* in accordance with the history of juvenile justice reform in this country.

As shown in Chapter Two, three of the main impetuses for repealing the *JDA* and replacing it with the *YOA* were the evidence that rehabilitative programs did not work, the advances made in developmental psychology, and the due process movement. Since it was the rejection of rehabilitation that led, in part, to the enactment of the *YOA*, it is inappropriate to equate "special needs" in s.3 of the *YOA* with rehabilitation. This argument is bolstered by the fact that in first enacting the *YOA,* no explicit mention was made of rehabilitation, despite Parliamentary debates that raised the issue of the propriety of leaving rehabilitation out of s.3.[407] Instead,

---

[406] N. Bala, "*R.* v. *M.(J.J.)*: The Rehabilitative Ideal for Young Offenders – Back to the Past?" (Aug. 1993) 20 C.R. (4th) 308 at 309.

[407] C.G. Lane, *The Philosophy of the Young Offenders Act and Its Impact on the Formal Legal Education and Practice of Advocates for Youth* (LL.M. Thesis,

pursuant to the work done in developmental psychology suggesting that children are particularly suggestible, generally unaware of their rights and, therefore, particularly

---

University of Alberta, 1995) at 43-47. One of the rules of statutory interpretation is the original meaning rule. It assumes that the meaning of a statute is fixed when the legislation is first enacted and, once fixed, nothing short of amendment or repeal can change it (R. Sullivan, *Statutory Interpretation* (Concord, Ontario: Irwin Law, 1997) at 100). One possible method to determine the original meaning of a statute is to examine its legislative history. Legislative history includes anything brought to the attention of the legislature or generated by the legislature during the enactment process, including Parliamentary debates. Recently, the Supreme Court of Canada in *R.* v. *Heywood* (1994), 120 D.L.R. (4th) 348 (S.C.C.) [hereinafter *Heywood*] had occasion to comment on the propriety of using legislative history in interpreting statutes. Cory J., writing for the majority of the court, stated:

> The admissibility of legislative debates to determine legislative intent in statutory construction is doubtful . . . This court has repeatedly held that legislative history is not admissible as proof of legislative intent in the construction of statutes . . . It is apparent that legislative history may be admissible for the more general purpose of showing the mischief Parliament was attempting to remedy with the legislation . . . None the less, there are persuasive reasons advanced which support the position that legislative history or debates are inadmissible as proof of legislative intent in statutory construction . . . The main problem with the use of legislative history is its reliability . . . [T]he intent of particular members of Parliament is not the same as the intent of the Parliament as a whole . . . Despite the apparent merits of the rule that legislative history is inadmissible to determine legislative intent in statutory construction, this court has on occasion made use of such materials for this very purpose (*Heywood*, *supra* note 407 at 379-381).

In the end, Cory J. never did resolve the question as to whether it was proper to use legislative history to construe a statute because he deemed it unnecessary to do so in order to properly interpret the statute in question in *Heywood* (*Heywood*, *supra* note 407 at 381). Thus, in theory, whether or not legislative history can be resorted to when interpreting legislation is uncertain. In practice, however, when legislative history materials are tendered, courts usually examine them before deciding whether they are admissible and if the material is helpful, the chances are the court will rely on them (R. Sullivan, *supra* note 407 at 201). Consequently, it is argued that the legislative history, including the Parliamentary debates, surrounding the *YOA* are properly looked to when interpreting the statute.

vulnerable to police interrogation,[408] "special needs" should refer to special procedural protections for young offenders. Thus, "special needs" properly refers to such aspects of the *YOA* as s.56 which gives young offenders more due process protection regarding the admissibility of confessions than adults receive.

To make rehabilitation the reason for imposing or lengthening custodial dispositions under the *YOA*, as the Supreme Court has done, means a return to the *parens patriae* approach and a concomitant erosion of due process rights for youth. For example, one of the key due process rights implemented by the *YOA* was the determinate sentence. After the Supreme Court's decision in *J.J.M.*, Crown prosecutors in Saskatchewan began using post-dispositional reports to determine how young offenders were doing in their custodial rehabilitation programs. If they were not doing well, the Crown launched sentence appeals on the basis that the young offenders required more time in custody to effect their rehabilitation. In many cases, the Saskatchewan Court of Appeal accepted these arguments and lengthened the custodial dispositions of young offenders.[409] The use of post-dispositional reports coupled with

---

[408] For studies that demonstrate the vulnerability of youth to police interrogation, see E.D. Driver, "Confessions and the Social Psychology of Coercion" (1968) 82 Harv. L. Rev. 42, E.W. Shoben, "The Interrogated Juvenile: Caveat Confessor?" (1973) 24 Hast. L.J. 413, S.A. Burr, "Now My Son, You Are a Man: The Judicial Response to Uncounselled Waivers of Miranda Rights by Juveniles in Pennsylvania" (1987) 92 Dick. L. Rev. 153, A.B. Ferguson & A.C. Douglas, "A Study of Juvenile Waiver" (1970) 7 San Diego L. Rev. 39.

[409] See, for example, *R.* v. *C.(D.A.)* (1995), 131 Sask. R. 313 (C.A.), *R.* v. *G.(J.L.)* (1994), 123 Sask. R. 120 (C.A.), and *R.* v. *R.R.* (1996), 32 W.C.B. (2d) 157 (Sask. C.A.).

Crown appeals of sentence based on these reports are a means to avoid, at least in part, the determinate sentencing structure of the *YOA*.

There are other ways in which using rehabilitation as the basis for making young offender dispositions more onerous erodes due process guarantees. In *R.* v. *T.M.P.*,[410] the British Columbia Court of Appeal dealt with a sentence appeal involving a young offender who pled guilty to a charge of break and enter that had occurred two years previously. When the PDR was being prepared, the young offender admitted to his probation officer that he had committed break-ins and car thefts subsequent to the commission of the offence to which he pled guilty. This was noted in the PDR, despite the fact that the youth was never found guilty of these subsequent offences. Moreover, the youth court judge took into account these subsequent offences when sentencing the young offender. The majority of the Court of Appeal held that to ignore the unproven offences admitted by the young offender would be to ignore circumstances bearing directly on his special needs and his requirements for guidance and assistance contrary to s.3(1)(c) of the *YOA*.[411] The majority of the Court of Appeal concluded:

> [T]he scheme of the *Young Offenders Act*, with its emphasis on rehabilitation and reformation of the young offender, answers all of the appellant's arguments regarding the propriety of the disposition in this case . . . The presumption of innocence requires that subsequent offences not be used in relation to the punitive aspects of sentencing – general and specific deterrence,

---

[410] *R.* v. *T.M.P.* (1996), 105 C.C.C. (3d) 450 (B.C.C.A.).

[411] *Ibid.* at 457.

> isolation for the protection of the public and denunciation – but I think it is clear that the judge in this case considered these matters only for the purposes of . . . the reformatory element[.][412]

Southin J.A., dissenting in part, thought that ignoring the due process guarantees of the youth because the purpose of the court's disposition was not to punish but help the young offender was an unwarranted return to the *parens patriae* approach. In her words, "the authority conferred on a youth court judge is not that of the wise parent."[413]

The use of general deterrence in youth court dispositions is also antithetical to the due process origins and orientation of the *YOA*. The use of general deterrence by youth courts may require them to impose more severe sanctions on individual young offenders than the particular offences committed by these offenders would otherwise

---

[412] *Ibid.* at 457, 459-460.

[413] *Ibid.* at 455. In dealing with the adult version of the PDR, the PSR (Pre-Sentence Report), Chief Justice MacKeigan of the Nova Scotia Supreme Court had this to say:

> I wish that those who prepare such reports would realize that it is no part of their job to give any information, whether inculpatory or exculpatory, respecting offences which the accused committed, especially ones for which he has not been convicted. Their function is to supply a picture of the accused as a person in society-his background, family, education, employment record, physical and mental health, associates and social activities, and potentialities and motivations. Their function is not to supply evidence of criminal offences[.] (*R.* v. *Bartkow* (1978), 1 C.R. (3d) S-36 at S-40 (N.S.S.C.A.D.).)

Even if custodial rehabilitative programs were proven to be effective, the *YOA*'s determinate sentencing scheme coupled with the fact that judges sentencing a young offender cannot designate the institution in which the young offender will be placed (youth court judges may designate the level of custody, open or secure, but pursuant to s.24.2 of the *YOA*, the provincial director chooses the institution in which the sentence is to be served), means that rehabilitative goals are difficult to achieve under the *Act* and therefore should not guide dispositions.

merit. This disproportionate sentencing of individual offenders would be conducted so as to achieve a social end: the protection of society.[414] However, by sentencing in this manner, youth courts would be placing the rights of the offender in a subsidiary position to the welfare of society. Thus, not only does the adoption of general deterrence run counter to the individual rights orientation of the *YOA*, but it particularly offends the principle of "least possible interference with freedom" contained in s.3.

Consequently, had the judiciary interpreted s.3 of the *YOA* in accordance with the history of juvenile justice reform, general deterrence and rehabilitation would not guide young offender dispositions. By default, the only major sentencing principle left is proportionality. Proportionality is the only major sentencing principle that does not have a dubious empirical basis. In fact, it is the only one that does not have utilitarian objectives. When one sentences in accordance with the principle of proportionality, punishment is associated with the nature of the offence committed and not to the potential for the sanction to prevent crime in the future. Those sentenced in accordance with the principle of proportionality should receive similar dispositions, if they committed similar crimes in similar circumstances. Thus, proportionality makes sentencing more consistent. As disparity breeds disrespect for the criminal justice system, a fair, consistent scheme of sentencing is vital to the administration of youth

---

[414] J. Bolton *et al.*, *supra* note 94 at 1011.

justice. The philosophical basis for proportional sentencing is perhaps best stated by Norval Morris, who wrote:

> No sanction greater than that 'deserved' by the last crime or series of crimes for which the offender is being sentenced should be imposed . . . [T]he link between established crime and deserved suffering is a central precept of everyone's sense of justice, or more precisely, of everyone's perception of injustice . . . Punishment in excess of what the community feels is the maximum suffering justly related to the harm the criminal has inflicted is, to the extent of the excess, a punishment of the innocent . . . [W]e should oppose excessive punishments because of fundamental views of human dignity . . . [R]espect for the human condition requires drawing precise justifiable restraints on powers assumed over other persons . . . Fairness and justice in the individual case, not a generalized cost-benefit utilitarian weighing, dictate the choice.[415]

But to sentence young people in accordance with an untrammeled principle of proportionality would be to treat them the same way adults are treated.[416] Recall from Chapter Two that adolescents tend to be greater risk takers, have less ability to think about the long term consequences of their actions, and are more susceptible to negative peer influences than most adults, and that most young people tend to disengage from criminal behavior as they near the age of eighteen. All of this suggests that the proper interpretation of s.3 is one that mandates that when sentencing young

---

[415] N. Morris, "The Future of Imprisonment: Towards a Punitive Philosophy" (1974) 72 Mich. L. Rev. 1169 at 1173. See, also M.S. Moore, "The Moral Worth of Retribution" in J. Feinberg & H. Gross, eds., *Philosophy of Law*, 3d ed. (Belmont, CA: Wadsworth Publishing Co., 1992) 573.

[416] The fundamental purpose guiding adult sentencing is found in s.718.1 of the *Criminal Code*, which states: "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

offenders, the principle of proportionality should be tempered by considerations of the developmental stages of the youths in question.[417]

G. Legislative Attempts to Provide More Guidance to Young Offender Sentencing – Post J.J.M.

In 1995, Parliament amended the *YOA*. Among the amendments was a new provision added to s.24 of the *Act*. Section 24(1) of the *YOA* states:

> 24.(1) The youth court shall not commit a young person to custody under paragraph 20(1)(k) unless the court considers a committal to custody to be necessary for the protection of society having regard to the seriousness of the offence and the circumstances in which it was committed and having regard to the needs and circumstances of the young person.

The 1995 amendments added the following subsection to s.24:

> (1.1) In making a determination under subsection (1), the youth court shall take into account:
> (a) that an order of custody shall not be used as a substitute for appropriate child protection, health and other social measures;
> (b) that a young person who commits an offence that does not involve serious personal injury should be held accountable to the victim and to society through non-custodial dispositions whenever appropriate; and
> (c) that custody shall only be imposed when all available alternatives to custody that are reasonable in the circumstances have been considered.

Section 24(1.1)(a) of the *YOA* is arguably a partial legislative override of *J.J.M.*.[418] A simple reading of s.24(1.1)(a) suggests that a young person can no longer be given a custodial term on the basis of rehabilitation.

---

[417] The *YOA*'s structure of diminished maximum penalties compared to the *Criminal Code*, in itself takes into account, at least in a small way, considerations pertaining to the developmental stages of youth.

While Parliament is to be complimented for attempting to structure judicial discretion in the sentencing of young offenders, s.24(1.1)(a) is too narrowly drafted to be effective. Section 24(1.1)(a) directs youth court judges not to give custodial dispositions on the basis of rehabilitative concerns. However, it still permits longer custodial dispositions on the basis of rehabilitation if the youth court judge determines the young offender should receive a custodial term irrespective of the question of rehabilitation. Indeed, there is evidence that the courts have been sentencing in this manner since the enactment of s.24(1.1)(a) of the *YOA*.[419]

Although it was possible for the Supreme Court to reconsider s.3 of the *YOA*, and interpret it so that rehabilitation and general deterrence were not seen as guiding principles in young offender sentencing, the possibility that this will occur has been made less likely by Parliament. Among the 1995 amendments to the *YOA* were

---

[418] Thus far, there have been no cases explicitly interpreting s.24(1.1)(a) of the *YOA*. Consequently, the courts have not ruled as to whether s.24(1.1)(a) does indeed constitute a partial legislative override of *J.J.M.*. The only cases that have dealt in any way with the new s.24(1.1) are *R.* v. *T.(J.D.V.)* (1996), 108 C.C.C. (3d) 94 (N.S.C.A.) [hereinafter *J.D.V.T.*] and *R.* v. *D.A.* (1996), 31 W.C.B. (2d) 76 (Ont. Ct. of Jus. Prov. Div.) [hereinafter *D.A.*]. In *J.D.V.T.*, one of the factors relied upon by the Court of Appeal in affirming the lenient sentence given to the young offender by the youth court judge was the enactment of s.24(1.1)(b) and (c). In *D.A.*, the court ruled that s.24(1.1) of the *YOA* could be applied retrospectively.

[419] See, for example, *R.* v. *J.(M.C.)* (1996), 107 Man. R. (2d) 319 (C.A.), *R.* v. *P.(S.)* (1996), 174 N.B.R. (2d) 343 (Q.B.), *R.* v. *T.(D.S.)* (1996), 79 B.C.A.C. 286 (C.A.), *R.* v. *M.B.* (1996), 31 W.C.B. (2d) 143 (Ont. Ct. Prov. Div.).

amendments to s.3 of the *YOA*.[420] Specifically, s.3(1)(c.1) was added to the Declaration of Principle. As may be recalled, the text of this provision reads:

> 3.(1) It is hereby recognized and declared that
> (c.1) the protection of society, which is a primary objective of the criminal law applicable to youth, is best served by rehabilitation, wherever possible, of young persons who commit offences, and rehabilitation is best achieved by addressing the needs and circumstances of a young person that are relevant to the young person's offending behaviour[.]

As stated in Chapter Three, the explicit recognition of rehabilitation in the *YOA*'s Declaration of Principle, without any specification that rehabilitation is not to guide sentencing decisions, will likely mean that courts will continue to sentence young offenders on the basis of rehabilitation. The enactment of s.3(1)(c.1), coupled with the narrow drafting of s.24(1.1)(a), means that little has been accomplished by the 1995 amendments to the *YOA* in terms of structuring judicial discretion in sentencing.

---

[420] This chapter focuses on the new s.3(1)(c.1) of the *YOA*, however s.3(1)(a) of the *Act* was also effected by the 1995 amendments. Section 3(1)(a) was replaced by the following provisions:

> 3.(1) It is hereby recognized and declared that
> (a) crime prevention is essential to the long-term protection of society and requires addressing the underlying causes of crime by young persons and developing multidisciplinary approaches to identifying and effectively responding to children and young persons at risk of committing offending behaviour in the future;
> (a.1) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions[.]

H. Dispositional Issues in Need of Resolution

It is the policy of the Supreme Court of Canada to refuse to hear sentence appeals where the only issue is the fitness of the sentence imposed. Thus, provincial courts of appeal are the final arbiters regarding the fitness of sentences. However, the Supreme Court does hear sentence appeals dealing with questions of law. Unfortunately, the legacy of vast judicial discretion in youth court sentencing seems to have led to a situation where different appellate courts have diametrically opposing views regarding key dispositional issues and the Supreme Court is reluctant to intervene and resolve the conflicting appellate court judgments. For example, the courts of appeal differ regarding the power of youth courts to impose consecutive sentences[421] and to give credit for pretrial detention custody.[422] The result has been national criminal legislation that is not being interpreted uniformly.

---

[421] The Ontario Court of Appeal, the Alberta Court of Appeal, the British Columbia Court of Appeal and the Manitoba Court of Appeal have all held that s.20(2) of the *YOA*, which allows the court to order a disposition to come into force at some later date, in effect provides for a wide power to impose consecutive dispositions. These appellate courts concluded that s.20(4.1) of the *YOA* was not intended to limit the power to impose consecutive terms to only those circumstances were an offence is committed during the currency of another disposition. See, for example, *R.* v. *F.(D.J.)* (1988), 29 O.A.C. 92 (Ont. C.A.), *R.* v. *B.(D.W.)* (1991), 64 C.C.C. (3d) 164 (Ont. C.A.), *R.* v. *F.(K.R.)* (1995), 96 C.C.C. (3d) 469 (Alta. C.A.), *R.* v. *N.L.M.* (1995), 26 W.C.B. (2d) 331 (B.C.C.A.), and *R.* v. *D.J.R.* (1992), 76 C.C.C. (3d) 88 (Man. C.A.). However, the Nova Scotia Supreme Court Appeal Division, the Prince Edward Island Supreme Court Appeal Division and the Quebec Court of Appeal have held that s.20(2) of the *YOA* does not authorize consecutive dispositions except as envisaged by s.20(4.1) of the *YOA*. See, for example, *R.* v. *T.D.D.*, [1996] N.S.J. No. 367 (QL), *R.* v. *W.J.C.* (1988), 83 N.S.R. (2d) 352 (C.A.), *R.* v. *J.M.C.* (1990), 96 N.S.R. (2d) 179 (C.A.), *R.* v. *M.A.S.* (1991), 102 N.S.R. (2d) 177 (C.A.), *R.* v. *T.M.*, [1994] N.S.J. No. 454 (QL), *R.* v. *B.(S.W.)* (1988), 70 Nfld. & P.E.I.R. 169 (P.E.I.C.A.), and *R.* v. *L.(M.)* (1994), 23 W.C.B. (2d) 648 (Que. C.A.).

III. WAYS TO STRUCTURE DISCRETION AND MOVE TOWARD UNIFORMITY IN YOUNG OFFENDER SENTENCING

A. Introduction

In the first part of this chapter, I demonstrated that the judiciary has not interpreted the *YOA* in a manner that is consistent with the history of juvenile justice reform. As a result, youth court judges have an enormous amount of discretion when it comes to the sentencing process, and this discretion has created a situation where disparate sentences are the norm and appellate courts are in disagreement regarding key sentencing issues. In the second part of this chapter, I will discuss two ways judicial discretion can be structured so as to reduce disparity and lack of uniformity in

---

[422] The Manitoba, Ontario and British Columbia Courts of Appeal have adopted a non-formulaic approach to pre-trial detention custody credit. In these provinces, a young offender is ordinarily given credit for presentence custody. However the extent of the credit is dependent upon the circumstances and is a matter within the discretion of the youth court judge. Thus, there may be exceptional circumstances where the extent of credit is limited or even nonexistent. See, for example, *R.* v. *K.(C.J.)* (1994), 97 Man. R. (2d) 31 (C.A.), *R.* v. *T.(M.N.)* (1992), 51 O.A.C. 37 (C.A.), and *R.* v. *K.L.A.W.*, [1991] W.D.F.L. 1064 (B.C.C.A.). The Nova Scotia Supreme Court Appeal Division in *R.* v. *C.(J.A.)* (1993), 116 N.S.R. (2d) 141 (C.A.) held that it is improper to give young offenders credit for pre-trial detention custody. In *R.* v. *R.C.C.* (1993), 141 A.R. 161 (C.A.), the Alberta Court of Appeal held that young offenders must be given one day's credit for each day of pre-trial detention. Finally, the Court of Quebec Youth Division has held in *R.* v. *P.(D.)* (17 November 1988), (Ct.Que.Yth.Div.) [unreported] that the time a young offender spends in pre-trial detention ought to be weighted in the same manner as the time that an adult prisoner spends in pre-trial detention. Thus, in Quebec, young offenders get two days credit for each day of pre-trial detention custody.

the sentencing of young offenders. The two ways this goal could be accomplished are through appellate court sentencing guidelines and legislative sentencing guidelines.[423]

B. Appellate Court Sentencing Guidelines

Appellate courts have had the power to review lower court sentencing decisions since 1921. However it is only relatively recently that appellate courts have taken seriously the enterprise of designing relevant sentencing principles to assist lower courts in their determination of an appropriate sentencing disposition.[424] Moreover, while many appellate courts have provided guidelines for lower courts with respect to principles and sometimes quantum, none have done so to the same degree as the Alberta Court of Appeal. In its attempt to guide lower court sentencing decisions for adults, the Alberta Court of Appeal has adopted a "starting point approach" to sentencing for many offences.[425] The starting point approach is "first, a categorization

---

[423] For the purposes of this chapter, the phrase "sentencing guideline" refers to any remedy used to avoid unwarranted sentencing disparity. Thus, a sentencing guideline can be as specific as a prescribed sentencing range for an offence or as general as the articulation of relevant or forbidden factors to be taken into account in the sentencing process.

[424] A. Young, *The Role of an Appellate Court in Developing Sentencing Guidelines*, (Ottawa: Minister of Supply and Services Canada, 1988) at 6.

[425] Some examples of offences for which the Alberta Court of Appeal has utilized the starting point approach are home invasion robberies which have starting point sentences of eight years (*R.* v. *Matwiy* (1996), 105 C.C.C. (3d) 251 (Alta. C.A.)), armed robberies of commercial outlets which have starting point sentences of three years (*R.* v. *Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.)), major sexual assaults upon adults which have starting point sentences of three years (*R.* v. *Sandercock* (1985), 22 C.C.C. (3d) 79 (Alta. C.A.) [hereinafter *Sandercock*]), and major sexual assaults upon

of a crime into typical cases, second, a starting sentence for each typical case, third the refinement of the sentence to the very specific circumstances of the actual case."[426] Because trial judges are to simply begin the sentencing process by using the starting point and then adjust the sentence upward or downward on the basis of factors relating to the particular offence or offender, the starting point is not a minimum sentence or a cap on sentences. Starting point sentencing is better characterized as a bell curve with fewer cases attracting greater variation from the starting point selected in the first place.[427] Thus, while the discretion of the court to place a particular sentence above or below the starting point remains, the approach of the sentencing court is guided toward a general measure of consistency and parity between offenders and classes of offenders.[428]

Unfortunately, the promise of reduced discretion and enhanced uniformity in sentencing held out by the starting point approach has not materialized. Peter McCormick's study of sentence appeals to the Alberta Court of Appeal between 1985-1992 reveals that trial judges have not responded with conformity to the starting point

---

children which have starting point sentences of four years (*R.* v. *S.(W.B.)*; *R.* v. *P.(M.)* (1992), 73 C.C.C. (3d) 530 (Alta. C.A.)).

[426] *Sandercock*, *supra* note 425 at 83.

[427] J. Watson, *Criminology and Sentencing Law Course Handout No. 8* (Faculty of Law, University of Alberta, 1995) [unpublished] at 1-2.

[428] *Ibid.*

regime.[429] McCormick's study shows that although Alberta is the fourth largest province, its appellate court handles more sentence appeals, both as an absolute number and as a proportion of total caseload, than any other province except Ontario.[430] Moreover, 51.4% of sentence appeals heard by the Alberta Court of Appeal succeed.[431] McCormick acknowledges that these statistics do not necessarily mean that trial courts are rejecting the starting point of the Court of Appeal. The high volume and success rate of sentence appeals could indicate the tendency of the Alberta Court of Appeal to tinker with sentences. However, McCormick's study accounts for this by looking at the quantum of change in sentence on successful sentence appeals. The median reduction in sentence for a successful defence appeal is 50% and the median increase in sentence for a successful Crown appeal is 100.5%.[432] These figures strongly suggest that the Court of Appeal does not tinker when allowing a sentence appeal and that Alberta trial judges are not heeding the appellate starting points. Thus, if youth court judges react similarly to their adult court counterparts, transplanting the starting point approach to youth court will not result in reduced discretion and enhanced uniformity in young offender sentencing.

---

[429] P. McCormick, "Sentence Appeals to the Alberta Court of Appeal, 1985-1992: A Statistical Analysis of the Laycraft Court" (1993) 31 Alta. L. Rev. 624.

[430] *Ibid.* at 627.

[431] *Ibid.* at 630.

[432] *Ibid.* at 640.

In fact, there are indications that applying a modified starting point approach to young offender sentencing would have even less effect in structuring judicial discretion than the starting point approach had in regard to adult sentencing. In a study of youth court judges across Canada, Doob concluded that the judges would find a way to avoid appellate sentencing guidelines if they thought their courts of appeal were not informed about the nature of the cases for which they were providing guidance.[433] Given the fact that young offender sentence appeals make up a small proportion of the caseload of appellate courts,[434] and that therefore appellate courts have much less experience with young offender matters than youth court judges, there is strong reason to believe that youth court judges will feel that they are much more informed about young offender dispositions than their colleagues in appellate court. As a result, youth court judges would likely ignore the sentencing guidelines of their Courts of Appeal.

Besides the empirical evidence that appellate sentencing guidelines would be ineffective, the institutional competence of appellate courts to guide sentencing, particularly young offender sentencing, is also in doubt. Several conditions led the Canadian Sentencing Commission to the conclusion that appellate courts are not

---

[433] A.N. Doob, "Dispositions Under the *Young Offenders Act*: Issues Without Answers?" in L.A. Beaulieu, ed., *Young Offender Dispositions: Perspectives on Principles and Practice*, (Toronto: Wall & Thompson Inc., 1989) 193 at 208.

[434] For example, between 1985-1992, young offender appeals accounted for only one seventh of all sentence appeals heard at the Alberta Court of Appeal (P. McCormick, *supra* note 429 at 632).

institutionally competent to develop and update a comprehensive set of sentencing guidelines:

> The first condition related to the necessity of maintaining a balance between national guidelines and regional standards. Located across the country, in ten provinces, Courts of Appeal are more apt to uphold regional and community standards than to develop consistent guidelines for all of Canada. Given the minute proportion of cases that are appealed, the opportunity for Courts of Appeal to deal with the wide range of cases occurring in daily practice is extremely restricted. The vast majority of cases are never subjected to appellate review. Accordingly, the Court of Appeal can in reality seldom provide guidance to the trial courts . . . Courts of Appeal . . . lack the necessary resources and experience to collect and process the sentencing data which sentencing policy must take into account. Furthermore, the courts would operate on two levels: first, on the level of policy-making and second, of reviewing particular cases. Consequently, Courts of Appeal would either feel bound by their own rules (and be less sensitive to the justifications for departing from them) or, alternatively, if they upheld frequent departures from their guidelines, it might be construed as indicating that the rule they formulated is inadequate.[435]

The institutional incompetence of appellate courts to guide lower court sentencing decisions is more glaring in youth court than in adult court. The reason for this is that, although s.11 of the *YOA* provides young people with publicly funded counsel for trials and other types of hearings, it does not explicitly provide young people with a publicly funded lawyer for the purposes of appeal. Some jurisdictions provide young persons with the right to a publicly funded appeal through a legal assistance programme but others do not. As a result, in many cases young offenders wishing to appeal their sentence have to apply to privately retain counsel. Because

---

[435] The Canadian Sentencing Commission, *Sentencing Reform, A Canadian Approach* (Government of Canada, Supply and Services, 1988) at 295.

young people do not have the financial resources of adults, their access to the appeal process is more limited. Compounding this lack of monetary resources is the fact that many youths are not aware of their legal rights, particularly their right to appeal sentences. Consequently, the number and types of young offender sentence appeals reaching courts of appeal are even more limited than is the case with adult sentence appeals. The outcome is that appellate courts have even less opportunity to provide guidance to youth trial courts than to adult trial courts.

The judiciary has also created barriers to the use of appellate court sentencing guidelines. Recently, the Supreme Court of Canada in *R.* v. *McDonnell*[436] had occasion to comment on the propriety of Alberta's starting point approach to sentencing. In *McDonnell*, the adult accused pled guilty to two counts of sexual assault. The sentencing judge found that neither of the two assaults was a major sexual assault, as defined in past cases by the Alberta Court of Appeal. Major sexual assaults have starting point sentences of three years. The sentencing judge, in imposing sentence on McDonnell, ordered twelve months in custody for the first offence and six months concurrent for the second offence. The Alberta Court of Appeal allowed the Crown's appeal and found the sexual assaults to be major ones. Accordingly, the Court of Appeal ordered that McDonnell receive a global sentence of five years in custody.

---

[436] *R.* v. *McDonnell*, [1997] 1 S.C.R. 948 (S.C.C.) [hereinafter *McDonnell*].

The Supreme Court, in a five to four decision, allowed McDonnell's sentence appeal and reinstated the sentence imposed by the sentencing judge. The majority decision, written by Sopinka J., began by reiterating that the applicable standard for appellate intervention is as expressed by the Supreme Court in *R.* v. *Shropshire*[437] and *R.* v. *M.(C.A.)*.[438] In these cases, the Supreme Court articulates a deferential approach that limits appellate review. As stated by Lamer C.J.C. in *M.(C.A.)*: "Put simply, absent an error or principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit."[439] A sentence is deemed to be demonstrably unfit when it falls outside the acceptable range of orders.[440]

Sopinka J. then went on to consider Alberta's starting point approach to sentencing. He held that it is not an error in principle for a sentencing judge to fail to place a particular offence within the appropriate starting point category. The two reasons he gave for this conclusion were the following:

> First, *Shropshire* and *M.(C.A.)* . . . clearly indicate that deference should be shown to a lower court's sentencing decision. If an appellate court could simply create reviewable principles by creating categories of offences, deference is diminished in a manner that is inconsistent with *Shropshire* and *M.(C.A.)* . . . Second, there is no legal basis for the judicial creation of a category of offence within a statutory

---

[437] *R.* v. *Shropshire,* [1995] 4 S.C.R. 227 (S.C.C.) [hereinafter *Shropshire*].

[438] *R.* v. *M.(C.A.)*, [1996] 1 S.C.R. 500 (S.C.C.) [hereinafter *M.(C.A.)*].

[439] *Ibid.* at 565.

[440] *McDonnell, supra* note 436 at 964.

> offence for the purposes of sentencing . . . it is not for judges to create criminal offences, but rather for the legislature to enact such offences.[441]

Moreover, Sopinka J. stated that a sentence's departure from the Court of Appeal's view of the appropriate starting point does not, in itself, imply that the sentence is demonstrably unfit.[442]

Given Sopinka J.'s characterization of the starting point approach, it is not surprising that both the dissent and academic commentators have described the majority position in *McDonnell* as a rejection of the starting point approach.[443] However, near the end of his judgment in *McDonnell*, Sopinka J. stated:

> [A]ppellate courts may set out starting point sentences as guides to lower courts. Moreover, the starting point may well be a factor to consider in determining whether a sentence is demonstrably unfit. If there is a wide disparity between the starting point for the offence and the sentence imposed, then, assuming that the Court of Appeal has set a reasonable starting point, the starting point certainly suggests, but is not determinative of, unfitness.[444]

What does this mean? Is the Supreme Court endorsing or rejecting the starting point approach? On the one hand, it can be argued that Sopinka J.'s primary criticism of the starting point approach centers upon the Alberta Court of Appeal's definition of a "major sexual assault" as necessitating a presumption of bodily harm:

---

[441] *Ibid.* at 974.

[442] *Ibid.* at 969-970.

[443] See, for example, *McDonnell*, *supra* note 436 at 996 and A. Manson, "*McDonnell* and the Methodology of Sentencing" (1997), 6. C.R. (5th) 277 at 277.

[444] *McDonnell*, *supra* note 436 at 981.

> The danger of courts encroaching into the realm of Parliament by creating offences is illustrated by the present case. The Court of Appeal appeared to base its conclusion that the first assault was a "major sexual assault" on the likelihood of psychological harm and indeed on the existence of actual harm. The court thus concluded that the sentence should be based on the existence of such harm. There is, however, a specific offence that deals with sexual assault causing bodily harm within the *Criminal Code*, namely s.272(c) . . . psychological harm from a sexual assault may be considered bodily harm. Given Parliament's intention to treat sexual assaults causing bodily harm under s.272(c), it is particularly inappropriate to create a "major sexual assault", which is based at least in part on the existence of harm to the complainant pursuant to s.271.[445]

Thus, it can be argued that what the majority of the Supreme Court rejected is starting point categories that are subsumed within *simpliciter* offences and assume bodily harm. Consequently, other types of starting point categories could continue to be utilized. On the other hand, the pronouncement by Sopinka J. that there is no legal basis for the judicial creation of a category of offence within a statutory offence for the purposes of sentencing goes to the very heart of the propriety of using starting point sentences at all. Moreover, the relatively low precedential stature of starting point pronouncements, because of the Supreme Court's refusal to characterize a departure from a judicially created starting point as an error of principle which could be regarded as a basis for appellate review, reduces the efficacy of the starting point approach.

---

[445] *Ibid.* at 975. McLachlin J., writing for the dissent in *McDonnell*, stated that the Alberta starting point approach for major sexual assaults does not involve a presumption of harm. What the judge has to ascertain is if the act was of a sort which would make lasting emotional or psychological harm likely. If so, the judge may classify the assault as major. However the judge does not presume that the harm has in fact occurred in classifying the assault (*McDonnell*, *supra* note 436 at 1003).

Although the status of the starting point approach to sentencing for adults is somewhat ambiguous in light of *McDonnell*, it is clear that courts have rejected the starting point approach for sentencing young offenders. In *R.* v. *C.W.W.*,[446] the Alberta Court of Appeal held that, in light of the very significant measure of individualization contemplated by the *YOA*, it was improper to attempt to express a starting point for offences involving young offenders. What the Alberta Court of Appeal failed to realize in *C.W.W.* is that the starting point approach combines general considerations relating to the crime committed with personalized considerations pertaining to the particular offender and the unique circumstances of the offence. Thus, the starting point approach represents an attempt to marry, in one sentencing principle, the values of uniformity and individualization.[447] In analyzing *C.W.W.*, Riley states:

> [t]his opinion [the judgment in *C.W.W.*] assumes that limiting youth court discretion will render youth court judges unable to tailor their sentences to the needs of individual young offenders. It must be recognized that pointing youth court discretion in a certain direction is not the same thing as removing the discretion altogether. Prioritizing the principles in s.3 would simply give the courts an indication of the dimensions to be used in individualizing the sentence.[448]

Despite such observations, the Alberta Court of Appeal is not alone in rejecting appellate sentencing guidelines for youth court dispositions. The Nova Scotia Court of Appeal has also implicitly rejected the use of appellate sentencing guidelines for youth

---

[446] *R.* v. *C.W.W.* (1986), 25 C.C.C. (3d) 355 (Alta. C.A.) [hereinafter *C.W.W.*].

[447] *McDonnell*, *supra* note 436 at 991 per McLachlin J. in dissent.

[448] P. Riley, "Proportionality as a Guiding Principle in Young Offender Dispositions" (Fall 1994) 17 Dalhousie L.J. 560 at 572.

court. This rejection is embodied by the court's statement that caselaw has a lesser role in the young offender system than it does under the *Criminal Code*.[449] Because of many factors, it is evident that if structured judicial discretion and enhanced uniformity in the sentencing of young offenders is to be achieved, it must be done through legislative as opposed to judicial means.

C. Legislative Sentencing Guidelines

Legislative sentencing guidelines can be as general as a declaration of principle or as specific as legislated presumptive sentences for each offence. I argue that in order to structure judicial discretion under the *YOA*, both a declaration of principle and a legislated presumptive sentencing scheme is required.

Earlier in this chapter, s.3 of the *YOA* was examined and it was shown that a number of conflicting sentencing objectives could be gleaned from its provisions. Indeed, it was also demonstrated that the judiciary interpreted s.3 in exactly this manner, which in turn led to great judicial discretion and disparity in young offender sentencing. If my Chapter Two argument, that rehabilitation was largely rejected by Parliament in passing the *YOA*, is correct, and if the judiciary had interpreted the provisions of s.3 in accordance with the history of juvenile justice reform, the principle of proportionality would have been the fundamental principle guiding young offender dispositions. However, the principle of proportionality would have had to accommodate the developmental stage of the youth in question. Moreover,

---

[449] *R.* v. *S.A.B.* (1990), 96 N.S.R. (2d) 374 at 375 (N.S.C.A.).

rehabilitation and general deterrence would not be factors in determining young offender sentences.[450] Prior to 1995, it was possible for s.3 of the *YOA* to be interpreted in this manner. However, this interpretation was rendered improbable by the manner in which rehabilitation was explicitly added to the Declaration of Principle in 1995. For this reason I recommend the repeal of s.3(1)(c.1). Moreover, in order to clarify that young offender sentencing is to be guided by the principle of proportionality which is to be tempered to accommodate the developmental stage of the young offender being sentenced, the following provision should be added to the Declaration of Principle:

> In determining the appropriate disposition for young persons who commit offences, the court shall be guided by the fundamental principle of sentencing, that sentences be proportionate to the gravity of the offence and the degree of responsibility of the offender, and in determining the degree of responsibility of the offender, the developmental stage of the offender shall be taken into account.

By amending the *YOA*'s Declaration of Principle in this manner, Parliament will be able to limit the wide discretion of youth court judges, at least to some degree. At the same time, the Declaration of Principle, which has been the subject of considerable

---

[450] By this statement I do not mean that rehabilitative services should not be offered to young offenders, simply that rehabilitation should not guide young offender dispositions. I also do no wish to be interpreted as saying that general deterrence is wholly irrelevant to young offender dispositions, simply that general deterrence should not guide youth court sentencing. Any general deterrence that can be derived from a young offender disposition should be the result of a just form of punishment, and not the reason for imposing the punishment.

international attention and is being held up as a model at the United Nations,[451] will remain relatively intact.

At the request of the Minister of Justice in 1996, the Standing Committee on Justice and Legal Affairs conducted a broad review of Canada's youth justice system. The Standing Committee acknowledged that the current Declaration of Principle in s.3 of the *YOA* leads to disparity, unfairness, and uncertainty in the interpretation and application of the legislation and that this situation needs to be ameliorated.[452] But instead of making a recommendation similar to the one made in this chapter, they made the recommendation that ss.3(1)(a) and (c.1) should be fused together to form a fundamental purpose section and the remainder of the s.3 provisions should be relegated to the status of supporting guiding principles.[453] However it is unclear how these proposals will lead to less disparity, unfairness, and uncertainty in the sentencing of young offenders given the problematic nature of rehabilitation as a youth sentencing principle.[454]

---

[451] N. Bala & M.A. Kirvan, "The Statute: Its Principles and Provisions and their Interpretation by the Courts" in A.W. Leschied, P.G. Jaffe & W. Willis, *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, (Toronto: University of Toronto Press, 1991) 71 at 109.

[452] *Renewing Youth Justice*, *supra* note 183 at 9-10.

[453] *Ibid.* at 12.

[454] On May 12, 1998, the federal government responded to the report of the Standing Committee on Justice and Legal Affairs. As part of the government's new youth justice strategy, the *YOA* will be replaced by new youth criminal legislation that will incorporate the recommendations of the Standing Committee regarding the Declaration of Principle. Among the other changes that this new legislation is

Even if Parliament were to adopt the more suitable recommendation made in this chapter concerning the Declaration of Principle, the history of sentencing under the *YOA* is replete with examples which demonstrate that legislative provisions of general application do not sufficiently guide and structure judicial discretion. For instance, s.24(1) of the *YOA*, which sets out the conditions that must be met before custody is imposed, originally only applied to secure custody committals, not to open custody committals. The provinces became concerned that youth court judges, thinking that open custody meant placement in a group home as opposed to jail,[455] were imposing open custody in situations that did not call for a custodial disposition. In response to these provincial concerns about the open custody option "widening the net" of custody, and in an effort to reduce the use of open custody, s.24(1) of the *YOA*

---

expected to bring to the sentencing of young offenders include a special sentencing option which will be available for the most violent, high-risk young offenders. This special sentencing option will allow judges to sentence young offenders found guilty of the most serious violent offences to a combination of long periods of supervised control and intensive rehabilitation programs. The new youth justice legislation will also put a stronger emphasis on the development of a full range of alternatives to custody for young offenders that emphasize responsibility to the victim and community. For more information on the federal government's new youth justice strategy see http://canada.justice.gc.ca/News/Communiques/1998/yoasum_en.html. As stated in Chapter Two, the federal government has now tabled their new youth criminal justice legislation in the House of Commons. For more details about this legislation, please see the Bill.

[455] In fact, there is a great deal of variation between, and even within, individual provinces in terms of which types of institutions are designated by provincial regulation as secure or open custody establishments. For instance, one of the major secure custody centres in Manitoba is not a locked facility, whereas in Alberta, the following secure facilities, which employ traditional physical security barriers, are also designated as open facilities: the Edmonton Young Offender Centre, the Calgary Young Offender Centre and the Lethbridge Young Offender Centre.

was amended so that its criterion also applied to open custody committals.[456] This amendment to the *YOA* came into force on September 1, 1986. If the amendment had its intended effect, the use of open custody should have declined after this point. However, it is clear that the amendment did not have its intended effect. Between 1985-86 and 1988-89, open custody admissions increased by 41% in British Columbia and 52% in Ontario.[457] In fact, every province except Quebec experienced a substantial increase in the proportion of cases committed to open custody from 1985-86 to 1989-90.[458] This data, coupled with evidence that youth crime has not been increasing in the last ten years,[459] suggests that the 1986 amendment to s.24(1) of the *YOA* has not constrained the use of open custody.

Another example of a legislative provision that is not tied to any particular offence, and yet is supposed to guide young offender sentencing, is s.24(1.1)(a) of the *YOA*. As indicated earlier, s.24(1.1)(a) states that a youth court shall not commit a young person to custody as a substitute for appropriate child protection, health and

---

[456] See *An Act to amend the Young Offenders Act, the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act,* R.S.C. 1985, c.24 (2nd Supp.).

[457] A. Markwart, "Custodial Sanctions Under the *Young Offenders Act*" in R.R. Corrado, N. Bala, R. Linden & M. Le Blanc, eds., *Juvenile Justice in Canada*, (Toronto and Vancouver: Butterworths Canada Ltd., 1992) 229 at 264 and Statistics Canada, *Youth Court Statistics: Preliminary Data*, (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 1985-86 and 1988-89).

[458] *Ibid.*

[459] A.N. Doob, V. Marinos & K.N. Varma, *Youth Crime and the Youth Justice System in Canada: A Research Perspective,* (Toronto: Centre of Criminology, University of Toronto, 1995) at 20-26.

other social measures. In other words, youth courts shall not sentence young offenders to custody on the basis of rehabilitative concerns. This provision of the *YOA* came into effect in 1995. Nevertheless, youth courts are still giving custodial dispositions on the basis of rehabilitation. For instance, in *R.* v. *N.L.S.*,[460] a seventeen-year-old, female first offender pled guilty to two counts of robbery. Both incidents can be described as muggings that occurred on the same date. The youth court judge sentenced her to six months open custody and eighteen months probation. After citing the fact that the young offender was neglected by her mother and abused by her father, the youth court judge stated:

> I recognize you have no prior record, but in light of the very sad history which you have which I am not blaming you for as it is not your fault, I can see no viable option at this point in time other than putting you into an ongoing, structured environment and that frankly for me to release you to the community at this time, as has been suggested, I think would be a dereliction of my responsibility to you . . . So I am going to sentence you to a period of open custody.[461]

The British Columbia Court of Appeal noted that the youth court judge's first and primary concern was rehabilitation and that as the sentence was one clearly designed with the young offender's best interests in mind, it dismissed the young offender's sentence appeal. Thus, the Court of Appeal acknowledged that the only reason N.L.S.

---

[460] *R.* v. *N.L.S.* (1996), 78 B.C.A.C. 246 (B.C.C.A.) [hereinafter *N.L.S.*].

[461] *Ibid.* at 248.

was given a custodial disposition was for rehabilitative reasons and it upheld the sentence on this basis despite the enactment of s.24(1.1)(a) of the *YOA*.[462]

The failure of legislative provisions like s.24(1) and s.24(1.1)(a) of the *YOA* to effectively structure judicial discretion illustrate that future legislative efforts to produce a fairer and more uniform sentencing system for youth should be as explicit and detailed as possible. For this reason, I recommend that the *YOA* be amended to include presumptive legislated sentencing guidelines modelled on the sentencing guidelines in Washington State's 1977 *Juvenile Justice Act*.[463]

The *JJA* contains a set of presumptive sentencing guidelines that are developed by a nine-member commission and approved by the state legislature. These presumptive sentencing guidelines are based on a point system. Points are assigned on the basis of the age of the offender and the offence severity.[464] The offender's previous criminal record serves as a multiplier of the base point level for each offence.[465] The

---

[462] Section 24(1.1)(a) of the *YOA* was not mentioned by the Court of Appeal or the youth court judge in this case.

[463] *Wash. Rev. Code Ann.* s.13.40 (West 1984) [hereinafter *JJA*].

[464] The offences under the *JJA* are narrower in scope than those under the *Criminal Code,* and therefore, by implication, the offences under the *JJA* are also narrower in scope than those under the *YOA*. Offence descriptions that only catch a limited type of behaviour within their ambit are a prerequisite to any sentencing scheme that strives to reduce disparity.

[465] It can be argued that allowing the sentence to be influenced by past offences offends the principle of proportionality because it allows the offender to be punished for a crime for which he has previously been sentenced (A. Young, *supra* note 424 at 47). However, Andrew Von Hirsch argues that taking into account the offender's past

resulting point total determines the range of sentence the offender faces. The sentencing ranges provided by the *JJA* include custodial and noncustodial dispositions. Thus, for a serious offence committed by an older youth with a long criminal record, the presumptive sentence may be a range consisting of a number of months in custody. However, for a less serious offence committed by a younger youth with a more limited criminal record, the sentencing range may consist of a number of months of community supervision, a number of community service hours to be performed, or a number of dollars to be paid as a fine. The juvenile court judge may depart from the presumptive sentence only upon a written finding that the disposition would be manifestly unjust – either to the juvenile by being too severe, or to the community by being too lenient.[466]

---

offences in imposing sentence for a current offence does not offend the principle of proportionality:

> The offender is not being made to suffer twice for the same crime. He is punished less on the first occasion that he otherwise would be because of our reluctance to impute the full measure of blame to a first offender. On the subsequent occasions, he simply loses this preferred status and is punished as he deserves for his current crime.

(A. Von Hirsch, "Sentencing" (1981) 65 Minn. L.R. 591 at 615.) Indeed, the Alberta Court of Appeal in *R.* v. *Hastings* (1985), 58 A.R. 109 (C.A.) adopted Von Hirsch's explanation as a theoretical basis for the proper use of an offender's criminal record as an aggravating factor on sentencing.

[466] Washington State has acknowledged that, in appropriate cases, judges must be allowed to depart from the legislated sentencing guidelines. This approach is laudable because predetermined sentencing guidelines cannot take into account the myriad of extenuating circumstances surrounding offences and offenders. For example, the severity of a disposition can vary with the cultural background of the offender. A short custodial disposition in a large multicultural urban institution may be a more severe punishment for a native young person who lives in a small rural native community than it may be for a white young person who lives in the city. For the native young

In the mid-1980s two social scientists, Anne Schneider and Donna Schramm, completed an extensive assessment of the *JJA*.[467] They found that the *JJA*'s presumptive sentencing guidelines resulted in greater equality, proportionality, and predictability of dispositions.[468] While violent and serious, or chronic, offenders were more likely to be institutionalized under the *JJA*, nonviolent first offenders and chronic minor property offenders were less likely to be institutionalized than was the case under the previous legislative regime.[469] As a result, the *JJA* led to a decrease in the overall severity of sanctions.[470] Moreover, despite the judiciary being overwhelmingly unsupportive of the sentencing guidelines, Schneider and Schramm found that 95% of all cases were sentenced within the presumptive range.[471]

---

person, the custodial disposition means taking him or her completely away from his or her culture and community. As a result, imposing the same sentence on both offenders because they committed the same offence may not be appropriate.

[467] A. Schneider & D. Schramm, "The Washington State Juvenile Justice System Reform: A Review of Findings" (1986) 1 Crim. Just. Pol'y Rev. 211.

[468] *Ibid.* at 226-228.

[469] *Ibid.* at 227-228.

[470] *Ibid.* at 225-226.

[471] *Ibid.* at 223. Although Washington State is the only American jurisdiction to use legislative sentencing guidelines for young offenders, many U.S. states utilize legislative sentencing guidelines for adult offenders. For example, legislated presumptive sentences are currently used for adults in Kansas, Minnesota, and Pennsylvania. Because the Kansas guidelines were only adopted in 1992, no studies have been conducted regarding their efficacy. However, there have been analyses of the older Minnesota and Pennsylvania schemes. The major finding of these studies is that the sentencing guidelines have achieved substantial improvements in sentencing policy. In particular, the sentencing guidelines have curtailed the random dispersion of

If disparity is to be decreased and uniformity increased in the sentencing of young offenders in Canada, judicial discretion must be structured through the use of legislated sentencing guidelines like those contained in the *JJA*. But how would such guidelines be created and implemented here? Just as in Washington State, a commission would have to be appointed to develop the sentencing guidelines. This commission should be predominantly made up by those who have the most experience in crafting youth court dispositions: youth court judges. However, the commission should also contain statisticians and criminologists who can collect and process the sentencing data that sentencing policy must take into account. Once sentencing guidelines are developed by the commission, the commission would present them to Parliament as a set of regulations made under the *YOA*, and they would be passed into law unless rejected by negative resolution of the House of Commons.[472]

There are important reasons why the sentencing guidelines should take the form that I have suggested. I propose that the sentencing guidelines be regulations made under the *YOA*, as opposed to being statutory provisions of the *YOA* itself, because regulations can be passed and amended in a more expedient fashion than is

---

sentences. They have also reduced sentence differences that are related to race, gender, location, and social status and, finally, they have decreased judicial and correctional costs (A. Vining, *Issues Relating to Sentencing Guidelines: An Evaluation of U.S. Experiences and their Relevance for Canada* (Ottawa: Minister of Supply and Services Canada, 1988) at 21 and 45.)

[472] This proposal is similar to the one made by the Canadian Sentencing Commission in regard to adult sentencing guidelines, see Canadian Sentencing Commission, *supra* note 250 at 305-309.

the case with statutes. I recommend that the regulations come into effect unless rejected by negative resolution of the House of Commons as opposed to taking effect only upon affirmative resolution of Parliament in order to reduce political influence on the sentencing guidelines. During the 1993 federal election campaign, youth justice was a federal campaign issue for the first time in Canadian history, with the Liberal, Conservative, New Democratic and Reform parties all calling for a "get tough" approach.[473] An affirmative resolution mechanism for passing the guidelines would require that the commission's sentencing guidelines be the subject of debate in Parliament. As a result, politicians and political parties that wish to portray themselves to the public as law and order oriented could use these debates, and the mechanism of an affirmative resolution, to reject the commission's guidelines in favor of harsher ones. However, the negative resolution mechanism could be utilized so that it would be necessary to provide time for discussion and debate in Parliament only if a minimum number of members brought forward a negative resolution rejecting the guidelines. Such a mechanism could be easily resorted to if a particular sentencing guideline suggested by the commission was clearly too low or high. Yet the mechanism of a negative resolution would be more difficult to use for the purpose of political grandstanding than that of an affirmative resolution, especially if the minimum number of members required to trigger it is high.

---

[473] J.H. Hylton, *supra* note 181 at 237.

IV. CONCLUSION

The *YOA* has not lived up to its promise of reduced discretion and enhanced uniformity in the sentencing of youths. In large part, this situation exists because the judiciary has not interpreted the *YOA* in a manner consistent with the history of juvenile justice reform in Canada. In order to ameliorate this state of affairs, Parliament, the appellate courts and the Supreme Court of Canada have a role to play. Parliament should amend the Declaration of Principle of the *YOA* so that it clearly states that the principle of proportionality, tempered by consideration of the developmental stages of youth, will be the guiding principle in young offender dispositions. Moreover, s.3(1)(c.1), as it is now stands, should be repealed. Parliament should also pass regulations under the *YOA* that establish presumptive sentencing guidelines. Youth court judges should continue to have the power to deviate from these presumptive guidelines, but the judges must state their reasons for departure, which will then be subject to appellate review. Appellate courts should also continue to resolve legal issues concerning the sentencing of young offenders, such as the power of youth courts to impose consecutive sentences and the credit that should be given to youths for pretrial detention custody. When appellate courts come to different conclusions in regard to these issues, it is incumbent upon the Supreme Court to resolve the conflict. Unless these steps are taken, youth courts will remain instruments of juvenile injustice in which the law is applied unequally and disproportionately to the detriment of us all.

CONCLUSION

Traditionally, the subjects of young offender sentencing and youth crime prevention have been handled separately, with lawyers dealing with the topic of sentencing and social scientists dealing with the topic of crime prevention. One of the principal contributions made by this dissertation is the linking of these subjects through a comprehensive, critical, and comprehensible analysis of the empirical bases of young offender sentencing principles.

However, crime prevention programs are not limited to the criminal justice setting. For this reason, youth crime prevention practices that operate in four other institutional settings have also been examined. These other settings were the community, the family, the school, and the labor market.

In recent years, various levels of Canadian government have invested in new youth crime prevention programs that operate both inside and outside the criminal justice system. Yet none of their initiatives have been evaluated using the existing social science data, until now. Chapter Three of this dissertation addresses all of the above points and suggests some ways that a more effective youth crime prevention policy can be implemented.

The policy recommendations contained in Chapter Three are informed by more than just empirical evidence. In order to formulate viable policy reforms, one must take into account the various obstacles and forces that affect juvenile justice change. For this reason Chapter Two provides a longitudinal account of juvenile justice reform

in Canada, and this account is the only one that includes an analysis of both the origins of differentiation between adults and juveniles in English common law in the 1300s and Canadian juvenile justice reform from 1982 to the present day.

The historical analysis of youth justice reform also provides a means by which to evaluate the current legislative and jurisprudential state of young offender sentencing law, which is the topic of Chapter Four of this dissertation. The empirical evidence discussed in Chapter Three supports a young offender sentencing policy that is consistent with the legislative framework of the current statute. Thus, one of Chapter Four's conclusions is that a new statutory framework need not be enacted. Nevertheless, some legislative changes are recommended in Chapter Four in order to better implement the youth sentencing policy that is supported by both social science data and by legislative history.

Thus, effective youth crime prevention requires legislative and broader juvenile justice policy reform. In this dissertation, I have demonstrated that since the enactment of the *YOA*, youth crime, the youth justice system, and juvenile justice reform have become matters of great public concern. Interest group lobbying has also often served and continues to serve as a force for change in youth justice policy. As a result, in order for any reform in youth justice policy to be successfully implemented, it must be accompanied by widespread public and interest group support. This can be achieved if governments adopt the first policy recommendation of this thesis, which is that governments commit to invest in comprehensive, multi-faceted public education campaigns concerning proposed youth justice policy changes. In addition,

governments must consult with interest groups in the formulation of these new policies.

Throughout this dissertation, I have asserted that some of the youth justice policy reforms that are needed mandate legislative amendments. Although s.3(1)(c.1) of the *YOA* must be repealed because rehabilitation programs are not effective enough to drive young offender sentencing and because the structure of the *Act* makes achieving rehabilitative goals through sentencing problematic, empirical findings suggest that appropriate rehabilitation programs should still be offered to sentenced youths. Moreover, the appropriate sentencing policy for young offenders is proportionality tempered by considerations of the developmental stages of the youths in question. The Declaration of Principle should contain provisions directing correctional officials and youth court judges to act in accordance with these youth justice policies. Thus, the second policy recommendation of this thesis deals with amending s.3 of the *YOA*. The recommendation is that s.3(1)(c.1) be repealed, the rest of the s.3 provisions remain as they are today, and two additional subsections be added to the Declaration of Principle. The additional subsections read as follows:

> s.3(1) It is hereby recognized and declared that
> . . .
> (i) in determining the appropriate disposition for young persons who commit offences, the court shall be guided by the fundamental principle of sentencing, that sentences be proportionate to the gravity of the offence and the degree of responsibility of the offender, and in determining the degree of responsibility of the offender, the developmental stage of the offender shall be taken into account; and
> (j) although rehabilitation shall not influence the imposition of dispositions for young persons who commit offences, appropriate

> rehabilitation programs shall be offered to young persons while they serve their dispositions.

The final legislative change is addressed in recommendation three, which is that Parliament pass regulations under the *YOA* that establish presumptive sentencing guidelines. These guidelines would help to ensure a more proportional and uniform scheme of young offender sentencing.

To make impressive gains in youth crime prevention requires a multi-institutional approach and increased knowledge as to which programs truly work at preventing youth crime. Because there have been at least promising results for youth crime prevention programs that operate in or focus on the criminal justice system, the community, the family, the school, and the labor market, governments should continue to fund programs in each of these institutional settings. That is recommendation four. However, relatively little is known about which programs prevent youth crime and which do not. Therefore, governments should substantially increase the funds for youth crime prevention programs and their evaluations. That is recommendation five. Some of the increased expense these recommendations entail can be reduced, and knowledge about successful youth crime prevention programs can be increased, if governments adopt recommendation six, which consists of three inter-related points: (1) programs proven not to work shall not obtain initial funding, and if they are currently receiving funding, their funding shall be discontinued, (2) every new program must be rigorously evaluated before being widely implemented, and (3) in

order to qualify for government funds, every new program must have a stringent assessment procedure in place.

While none of the problems faced by young persons who commit offences have easy, quick, or inexpensive solutions, an integrated, multi-disciplinary, multi-institutional approach can prevent youth crime. Failure to adequately address the problems of today's youths puts the future at risk - theirs and ours.

APPENDIX: LIST OF RECOMMENDATIONS

1. Governments should commit to invest in comprehensive, multi-faceted public education campaigns concerning proposed youth justice policy changes and, in formulating these policy changes, governments should consult with interest groups.

2. Section 3(1)(c.1) of the *YOA* should be repealed, the rest of the s.3 provisions should remain as they are today, and the following two subsections should be added to the Declaration of Principle:

   (i) in determining the appropriate disposition for young persons who commit offences, the court shall be guided by the fundamental principle of sentencing, that sentences be proportionate to the gravity of the offence and the degree of responsibility of the offender, and in determining the degree of responsibility of the offender, the developmental stage of the offender shall be taken into account; and
   (j) although rehabilitation shall not influence the imposition of dispositions for young persons who commit offences, appropriate rehabilitation programs shall be offered to young persons while they serve their dispositions.

3. Parliament should pass regulations under the *YOA* that establish presumptive sentencing guidelines.

4. Governments should continue to fund youth crime prevention programs that operate in or focus on the criminal justice system, the community, the family, the school, and the labor market.

5. Governments should substantially increase funding for youth crime prevention programs and their evaluations.

6. Youth crime prevention programs proven not to work should not obtain initial government funding, and if they are currently receiving funding, their funding

should be discontinued. Moreover, every new youth crime prevention program should be rigorously evaluated before being widely implemented and, in order to qualify for government funds, every new program should have a stringent assessment procedure in place.

TABLE OF CASES

Eyre v. *Shaftsbury* (1772), 24 E.R. 659	54
In Re Gault, 387 U.S. 1 (1967)	64-65
In Re Winship, 397 U.S. 358 (1970)	64-65
Kent v. *United States*, 383 U.S. 541 (1966)	64
Protection de la jeunesse-431 [1990] R.J.Q. 645 (Que. C.A.)	187
R. v. *A.C.H.* (1990), 113 A.R. 344 (Prov. Ct.)	189
R. v. *B.* (1956), 19 W.W.R. 651 (B.C.S.C.)	66
R. v. *B.(C.F.)* (1987), 33 C.C.C. (3d) 95 (N.W.T.C.A.)	182
R. v. *B.(D.W.)* (1991), 64 C.C.C. (3d) 164 (Ont. C.A.)	202
R. v. *B.(S.W.)* (1988), 70 Nfld. & P.E.I.R. 169 (P.E.I.C.A.)	202
R. v. *Bartkow* (1978), 1 C.R. (3d) S-36 at S-40 (N.S.S.C.A.D.)	196
R. v. *C.(D.A.)* (1995), 131 Sask. R. 313 (C.A.)	194
R. v. *C.(J.A.)* (1993), 116 N.S.R. (2d) 141 (C.A.)	203
R. v. *C.J.L.* (1986), 59 Nfld. & P.E.I.R. 76 (Nfld. C.A.)	187
R. v. *C.W.W.* (1986), 68 A.R. 196 (Alta. C.A.)	187, 189, 213
R. v. *D.A.* (1996), 31 W.C.B. (2d) 76 (Ont. Ct. of Jus. Prov. Div.)	200
R. v. *D.J.R.* (1992), 76 C.C.C. (3d) 88 (Man. C.A.)	202
R. v. *Darren Douglas B.*, [1988] 3 Y.R. 5 (Yuk. Terr. C.A.)	187
R. v. *E.M.* (1992), 76 C.C.C. (3d) 159 (Ont. C.A.)	190-191
R. v. *F.(D.J.)* (1988), 29 O.A.C. 92 (Ont. C.A.)	202
R. v. *F.(K.R.)* (1995), 96 C.C.C. (3d) 469 (Alta. C.A.)	202

R. v. *G.(J.L.)* (1994), 123 Sask. R. 120 (C.A.) 194

R. v. *G.K.K.* (1985), 63 A.R. 379 (Alta. C.A.) 187, 189

R. v. *G.W.C.* (1994), 160 A.R. 328 (Prov. Ct.) 189

R. v. *Gerald X* (1958), 25 W.W.R. 97 (Man. C.A.) 66

R. v. *Gyngall* (1893), 2 Q.B. 232 54

R. v. *H.(R.)* (1993), 77 C.C.C. (3d) 198 (Ont. C.A.) 181-182

R. v. *Heywood* (1994), 120 D.L.R. (4th) 348 (S.C.C.) 193

R. v. *J.(M.C.)* (1996), 107 Man. R. (2d) 319 (C.A.) 200

R. v. *J.M.C.* (1990), 96 N.S.R. (2d) 179 (C.A.) 202

R. v. *Johnas* (1982), 32 C.R. (3d) 1 (Alta. C.A.) 204

R. v. *Joshua C.* (1992), 17 W.C.B. (2d) 382 (Ont. C.A.) 191

R. v. *K.(C.J.)* (1994), 97 Man. R. (2d) 31 (C.A.) 203

R. v. *K.D.T.* (1986), 72 N.S.R. (2d) 213 (N.S.S.C.A.D.) 187

R. v. *K.L.A.W.*, [1991] W.D.F.L. 1064 (B.C.C.A.) 203

R. v. *L.(M.)* (1994), 23 W.C.B. (2d) 648 (Que. C.A.) 202

R. v. *M.(C.A.)*, [1996] 1 S.C.R. 500 (S.C.C.) 210

R. v. *M.(J.J.)* (1993), 81 C.C.C. (3d) 487 (S.C.C.) 117, 186-192, 194, 199-200

R. v. *M.A.S.* (1991), 102 N.S.R. (2d) 177 (C.A.) 202

R. v. *M.B.* (1996), 31 W.C.B. (2d) 143 (Ont. Ct. Prov. Div.) 200

R. v. *M.J.C.* (1985), 42 Sask. R.. 197 (Sask. C.A.) 187

R. v. *M.M.D.* (1993), 19 W.C.B. (2d) 391 (B.C.C.A.) 189

R. v. *Matwiy* (1996), 105 C.C.C. (3d) 251 (Alta. C.A.) 204

R. v. *McDonnell*, [1997] 1 S.C.R. 948 (S.C.C.) 209-213

R. v. *N.L.M.* (1995), 26 W.C.B. (2d) 331 (B.C.C.A.) 202

R. v. *N.L.S.* (1996), 78 B.C.A.C. 246 (B.C.C.A.) 219

R. v. *O.* (1986), 27 C.C.C. (3d) 376 (Ont. C.A.) 187

R. v. *P.(D.)* (17 November 1988), (Ct.Que.Yth.Div.) [unreported] 203

R. v. *P.(S.)* (1996), 174 N.B.R. (2d) 343 (Q.B.) 200

R. v. *R.C.C.* (1993), 141 A.R. 161 (C.A.) 203

R. v. *R.C.S.* (1986), 68 N.B.R. (2d) 361 (N.B.C.A.) 187

R. v. *R.R.* (1996), 32 W.C.B. (2d) 157 (Sask. C.A.) 194

R. v. *S.(W.B.)*; *R.* v. *P.(M.)* (1992), 73 C.C.C. (3d) 530 (Alta. C.A.) 205

R. v. *S.A.B.* (1990), 96 N.S.R. (2d) 374 (N.S.C.A.) 214

R. v. *Sandercock* (1985), 22 C.C.C. (3d) 79 (Alta. C.A.) 204-205

R. v. *Shropshire,* [1995] 4 S.C.R. 227 (S.C.C.) 210

R. v. *T.(D.S.)* (1996), 79 B.C.A.C. 286 (C.A.) 200

R. v. *T.(J.D.V.)* (1996), 108 C.C.C. (3d) 94 (N.S.C.A.) 200

R. v. *T.(K.D.)* (1986), 72 N.S.R. (2d) 313 (C.A.) 181

R. v. *T.(M.N.)* (1992), 51 O.A.C. 37 (C.A.) 203

R. v. *T.D.D.*, [1996] N.S.J. No. 367 (QL) 202

R. v. *T.M.*, [1994] N.S.J. No. 454 (QL) 202

R. v. *T.M.P.* (1996), 105 C.C.C. (3d) 450 (B.C.C.A.) 195-196

R. v. *W.(J.)* (1997), 5 C.R. (5^{th}) 248 (Ont. C.A.) 116

R. v. *W.(J.) (No. 2)* (25 March 1992) (Yuk. Terr. Ct.) [unreported] 182

R. v. *W.J.C.* (1988), 83 N.S.R. (2d) 352 (C.A.) 202

R. v. *William L.* (15 November 1993), (Ont. Y.Ct.) [unreported] 190

Re Cline (1964), 45 W.W.R. 184 (B.C.S.C.) 66

Y.B. 30-31 Edw. I, 511-3 (R.S.). Cf. Eyre of Kent, S.S. vol. 24, 109 26

Y.B. Hil. 3 Hen. VII, f.1, pl. 4. Cf. Y.B. Mich. 3 Hen. VII, f. 12, pl. 8 27-28

TABLE OF STATUTES AND BILLS

An Act for consolidating and amending the Statutes in England relative to Offences against the Person (U.K.), 9 Geo. 4, c.31 27

An Act for establishing Prisons for Young Offenders – for the better government of Public Asylums, Hospitals and Prisons, and for the better construction of Common Gaols, Statutes of the Province of Canada, 2nd Session, Fifth Parliament of Canada, 1857, c.28 38

An Act for the better Care and Reformation of Youthful Offenders in Great Britain (U.K.), 17 & 18 Vict. c.86 34-35

An Act for the More Speedy Trial and Punishment of Juvenile Offenders, 1847 (U.K.), 10 & 11 Vict., c.82 38

An Act for the More Speedy Trial and Punishment of Young Offenders, Statutes of the Province of Canada, 2nd Session, Fifth Parliament of Canada, 1857, c.29 38

An Act respecting Arrest, Trial and Imprisonment of Youthful Offenders S.C. 1894, 57-58 Vict., c.58 48

An Act Respecting Industrial Schools, S.O. 1874, 37 Vict., c.29 42

An Act Respecting Vagrants, S.C. 1869, c.28 55-56

An Act to amend and consolidate the Acts respecting Industrial Schools, S.O. 1884, 47 Vict., c.46 42

An Act to Amend the Young Offenders Act and the Criminal Code, S.C. 1995, c.19 79, 180

An Act to Amend the Young Offenders Act and the Criminal Code. S.C. 1992, c.11 79

An Act to Amend the Young Offenders Act, the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act, S.C. 1986, c.32 79

An Act to amend the Young Offenders Act, the Criminal Code, the Penitentiary Act and the Prisons and Reformatories Act, R.S.C. 1985, c.24 (2nd Supp.) 217-218

Bill C-192, *An Act Respecting Young Offenders and to Repeal the Juvenile Delinquents Act*, 3d Sess., 28th Parl., 1970 67-73, 75-77

Bill C-61, *Young Offenders Act*, 1st sess., 32d Parl., 1981 73, 75-76

Bill C-68, *Youth Criminal Justice Act*, 1st Sess., 36th Parl., 1999 (1st reading 11 March 1999) 80, 82-86, 91, 170

Canada Assistance Plan, R.S.C. 1970, c.C-1 69-70

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11 10-11, 77

Criminal Code, 1892, S.C. 1892, c.29 30-31, 47

Criminal Code, R.S.C. 1985, c. C-46 54, 181-182, 198-199, 214, 220

Juvenile Delinquents Act, R.S.C. 1970, c.J-3 3, 12-14, 48-49, 51, 53-59, 63, 66, 69, 71, 77, 175, 192

Wash. Rev. Code Ann. s.13.40 (West 1984) 220-223

Young Offenders Act, R.S.C. 1985, c.Y-1 3, 9, 11-20, 64, 73, 77-85, 90, 110 169, 175-203, 208, 213-220, 225, 227-229

BIBLIOGRAPHY

Government Publications

Archibald, D. *Report on the Treatment of Neglected Children in Toronto* (Toronto: Arcade, 1907).

Canada, Department of Justice, *A Strategy for the Renewal of Youth Justice* (Ottawa: Canada Communications Group-Publishing, Public Works and Government Services Canada, 1998).

Canada, Department of Justice, *Youth Crime and the Youth Justice System in Canada: A Research Perspective* (Working Document 1995-1e) by A.N. Doob, V. Marinos & K. Varma (Toronto: University of Toronto Centre of Criminology, 1995).

Canada, Department of Justice, *Youth Justice Strategy* (visited August 19, 1998) <http://canada.justice.gc.ca>.

Canada, House of Commons, *Thirteenth Report of the Standing Committee on Justice and Legal Affairs: Renewing Youth Justice* (Ottawa: Canada Communications Group-Publishing, Public Works and Government Services Canada, 1997).

Canada, Legislative Assembly, "Warden's Report" in *Sessional Papers* (1861) no. 24.

Canada, Ministry of the Solicitor General, *Young Persons in Conflict with the Law* (Ottawa: Communication Division, 1975).

Canada, National Crime Prevention Centre, *Crime Prevention Investment Fund Access Guide* (Ottawa: Queen's Printer, May 1998).

Canada, National Crime Prevention Centre, *First Nations Journeys of Justice - British Columbia* (Ottawa: Queen's Printer, May 1998).

Canada, National Crime Prevention Centre, *Moncton Headstart* (Ottawa: Queen's Printer, May 1998).

Canada, National Crime Prevention Centre, *The Neigbourhood Parenting Support Network - Winnipeg* (Ottawa: Queen's Printer, May 1998).

Canada, National Crime Prevention Centre, *Youville Centre - Ottawa* (Ottawa: Queen's Printer, May 1998).

Canadian Centre for Justice Statistics, *Juristat*, "Recidivism in Youth Courts 1993-94," vol. 15, no.16.

Canadian Centre for Justice Statistics, *Juristat*, vol. 17, no. 3.

Canadian Centre for Justice Statistics, *Juristat*, "Youth Court Statistics 1995-96 Highlights", (October 1997) vol.17, no. 10.

Censuses of Canada, 1665-1871, vol. IV (Ottawa: Queen's Printer, 1876).

Department of Justice, *Report of the Correctional Planning Committee* (Ottawa: Queen's Printer, 1961).

Department of Justice, *Report of the Department of Justice Committee on Juvenile Delinquency* (Ottawa: Queen's Printer, 1965).

Field, S. *Trends in Crime and their Interpretation: A Study of Recorded Crime in Post-War England and Wales*, Home Office Research Study 119 (London: HMSO, 1990).

"First Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B.

Hendrick, D. Canadian Centre for Justice Statistics, *Juristat*, "Youth Court Statistics 1997-98 Highlights" (March 1999) vol. 19, no.2.

House of Commons Debates (18 July 1908).

House of Commons Debates (6 July 1967).

House of Commons Debates (23 November 1906).

House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* (9 February 1982).

House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs* (16 September 1971).

Law Reform Commission of Canada, *Diversion* (Working Paper No. 7) (Ottawa: Queen's Printer, 1975).

Ministry of the Solicitor General, *Highlights of the Proposed New Legislation for Young Offenders* (Ottawa: Ministry of Supply & Services, 1977).

Ministry of the Solicitor General, *Legislative Proposals to Replace the Juvenile Delinquents Act* (Ottawa: Solicitor General, 1979).

National Crime Prevention Centre, News Release, "$32-million-a-year Community-based Crime Prevention Program Launched" (2 June 1998).

National Crime Prevention Centre, News Release, "The National Strategy on Community Safety and Crime Prevention" (2 June 1998).

Ontario, *Report of the Commissioners Appointed to Enquire into the Reformatory System of Ontario* (Toronto: Warwick, 1891).

Ontario, Solicitor General, *Recommendations from the Task Force on Strict Discipline for Young Offenders* (Toronto: Queen's Printer, 1996).

President's Commission on Law Enforcement and Administration of Justice, *Juvenile Delinquency and Youth Crime* (Washington: U.S.P.O., 1967).

"Report of a Select Committee on the Expediency of Erecting a Penitentiary," *Journals of the Legislative Assembly* (1831).

"Report of the Commission on the Subject of Prisons etc.," *Journals of the Legislative Assembly*, No. 71 (1836).

"Roman Catholic Chaplain's Report," *Journals of the Legislative Assembly* (1856).

"Second Report of the Commissioners Appointed to Inquire into the Condition and Management of the Provincial Penitentiary," *Journals of the Legislative Assembly* (1849) at Appendix B.B.B.B.B.

Statistics Canada, *Sentencing in Youth Courts,* (Ottawa: Canadian Centre for Justice Statistics, 1990).

Statistics Canada, *Youth Court Statistics: Preliminary Data* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 1986)

Statistics Canada, *Youth Court Statistics: Preliminary Data* (Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 1989)

U.K., *Children and Young Persons: Scotland* (Kilbrandon Committee) (Edinburgh: H.M.S.O., 1964).

U.K., *Report of the Committee on Children and Young Persons* (Ingleby Committee) (London: H.M.S.O., 1960).

Vining, A. *Issues Relating to Sentencing Guidelines: An Evaluation of U.S. Experiences and their Relevance for Canada* (Ottawa: Minister of Supply and Services Canada, 1988).

Webster, C., Dickens, B. & Addario, S. *Constructing Dangerousness: Scientific, Legal and Policy Implications* (Ottawa: Department of Justice, 1985).

Young, A. *The Role of an Appellate Court in Developing Sentencing Guidelines*, (Ottawa: Minister of Supply and Services Canada, 1988).

Assessments of Correctional Treatment Regimes

Achenback, T.M. *et al.* "Seven Year Outcome of the Vermont Intervention Program for Low-Birthweight Infants" (1990) 61 Child Development 1672.

Ahlstrom, W. & Havighurst, R.J. "The Kansas City Work/Study Experiment" in D.J. Safer, ed., *School Programs for Disruptive Adolescents* (Baltimore, MD: University Park Press, 1982) 138.

Andrews, D.A. *et al.* "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis" (1990) 28 Criminology 369.

Anglin, M.D. & Hser, Y.I. "Treatment of Drug Abuse" in M. Tonry & J.Q. Wilson, eds., *Drugs and Crime* (Chicago, IL: University of Chicago Press, 1990) 182.

Anglin, M.D. & Maughn, T.H. "Overturning Myths About Coerced Drug Treatment" (1992) 14 California Psychologist 20.

Bailey, W.C. "Correctional Outcome: An Evaluation of 100 Reports" (1966) 57 Journal of Criminal Law, Criminology and Police Science 153.

Barrera, M.E., Rosenbaum, P.L. & Cunningham, C.E. "Early Home Intervention With Low Birth-Weight Infants and their Parents" (1986) 57 Child Development 20.

Barth, R.P., Hacking, S. & Ash, J.R. "Preventing Child Abuse: An Experimental Evaluation of the Child-Parent Enrichment Project" (1988) 8 Journal of Primary Prevention 201.

Battistich, V. *et al.* "Prevention Effects of the Child Development Project: Early Findings from an Ongoing Multi-Site Demonstration Trial" (1996) 11 Journal of Adolescent Research 12.

Berreuta-Clement, J.R. *et al. Changed Lives: The Effects of the Perry Preschool Program on Youths Through Age 19* (Ypsilanti, MI: High Scope Press, 1985).

Bloom, H. *et al. The National JTPA Study: Overview of Impacts, Benefits, and Costs of Title IIA* (Bethesda, MD: Abt Associates, 1994).

Borduin, C.M. *et al.* "Multisystemic Treatment of Serious Juvenile Offenders: Long-Term Prevention of Criminality and Violence" (1995) 63 Journal of Consulting and Clinical Psychology 569.

Bottcher, J., Isorena, T. & Belnas, M. *Lead: A Boot Camp and Intensive Parole Program - Impact Evaluation, Second Year Findings* (Los Angeles, CA: State of California, Department of the Youth Authority, Research Division, 1996).

Botvin, G.J. *et al.* "A Cognitive Behavioral Approach to Substance Abuse Prevention: One Year Follow-Up" (1990) 15 Addictive Behaviors 47.

Botvin, G.J. *et al.* "Long-Term Follow-Up Results of a Randomized Drug Abuse Prevention Trial in a White Middle-Class Population" (1995) 273 Journal of the American Medical Association 1106.

Botvin, G.J. *et al.*, "A Cognitive Behavioral Approach to Substance Abuse Prevention" (1984) 9 Addictive Behaviors 137.

Boudouris, J. & Turnbull, B.W. "Shock Probation in Ohio" (1985) 9 Journal of Offender Counseling Services and Rehabilitation 53.

Brewer, D.D. *et al.* "Preventing Serious, Violent, and Chronic Juvenile Offending: A Review of Evaluations of Selected Strategies in Childhood, Adolescence, and the Community" in J.C. Howell *et al.*, eds., *A Sourcebook on Serious, Violent, and Chronic Juvenile Offenders* (Newbury Park, CA: Sage Publications, 1995) 13.

Brunk, M., Henggeler, S.W. & Whelan, J.P. "A Comparison of Multisystemic Therapy and Parent Training in the Brief Treatment of Child Abuse and Neglect" (1987) 55 Journal of Consulting and Clinical Psychology 311.

Buckner, J.C. & Chesney-Lind, M. "Dramatic Cures for Juvenile Crime: An Evaluation of a Prison-Run Delinquency Prevention Program" (1983) 10 Criminal Justice and Behavior 227.

Chaiken, M.R. "Crime Rates and Substance Abuse Among Types of Offenders" in B.D. Johnson & E. Wish, eds., *Crime Rates Among Drug-Abusing Offenders: Final Report to the National Institute of Justice* (New York: Narcotic and Drug Research, Inc., 1986) 42.

Chaiken, M.R. & Chaiken, J.M. *Varieties of Criminal Behavior* (Santa Monica, CA: Rand Corp., 1982).

Clayton, R.R., Cattarello, A.M. & Johnstone, B.M. "The Effectiveness of Drug Abuse Resistance Education (Project DARE): Five-Year Follow-Up Results" (1996) 25 Preventive Medicine 307.

Cullen, F.T. & Gilbert, K.E. *Reaffirming Rehabilitation* (Cincinnati, OH: Anderson Publishing Co., 1982).

Cunningham, A. *Clinical Trials of Multisystemic Therapy (MST) with High Risk Phase I Young Offenders, 1997 to 2001: Year-End Report 1997/98* (visited June 22, 1998) <http://www.lfcc.on.ca/mstreport.html>.

Cunningham, A. *MST FAQS* (visited June 22, 1998) <http://www.lfcc.on.ca/mstfaqs.html>.

Cusson, M. *Why Delinquency?* (Toronto: University of Toronto Press, 1983).

Dicken, C., Bryson, R. & Kass, N. "Companionship Therapy: A Replication in Experimental Community Psychology" (1977) 45 Journal of Consulting and Clinical Psychology 637.

Dishion, T.J., Patterson, G.R. & Kavanagh, K.A. "An Experimental Test of the Coercion Model: Linking Theory, Measurement and Intervention" in J. McCord & R.E. Tremblay, eds., *Preventing Anti-Social Behavior: Interventions from Birth Through Adolescence* (New York, NY: Guilford, 1992) 41.

Ekblom, P. & Pease, K. "Evaluating Crime Prevention" in M. Tonry & D.P. Farrington, eds., *Building a Safer Society: Crime and Justice*, vol. 19 (Chicago: University of Chicago Press, 1995) 585.

Ellickson, P.L., Bell, R.M. & McGuigan, K. "Preventing Adolescent Drug Use: Long-Term Results of a Junior High Program" (1993) 83 American Journal of Public Health 856.

Falkin, G.P., Wexler, H.K. & Lipton, D.S. "Drug Treatment in State Prisons" in D.R. Gerstein & H.J. Harwood, eds., *Treating Drug Problems*, vol. 2 (Washington, D.C.: National Academy Press, 1992) 89.

Farrington, D. "Criminological Psychology: Individual and Family Factors in the Explanation and Prevention of Offending" in C. Hollin, ed., *Working with*

Offenders: Psychological Practice in Offender Rehabilitation (Chichester: Wiley: 1996) 35.

Felner, R.D. & Adan, A.M. "The School Transitional Environment Project: An Ecological Intervention and Evaluation" in R.H. Price *et al.*, eds., *14 Ounces of Prevention: A Casebook for Practitioners* (Washington, D.C.: American Psychological Association, 1988) 133.

Felner, R.D., Ginter, R.D. & Primavera, J. "Primary Prevention During School Transitions: Social Support and Environmental Structure" (1982) 10 American Journal of Community Psychology 277.

Fo, W.S.O. & O'Donnell, C.R. "The Buddy System: Effect of Community Intervention on Delinquent Offenses" (1975) 6 Behavior Therapy 522.

Fo, W.S.O. & O'Donnell, C.R. "The Buddy System: Relationship and Contingency Conditioning in a Community Intervention Program for Youth with Nonprofessionals as Behavior Change Agents" (1974) 42 Journal of Consulting and Clinical Psychology 163.

Gainer, P.S., Webster, D.W. & Champion, H.R. "A Youth Violence Prevention Program: Description and Preliminary Evaluation" (1993) 128 Archives of Surgery 303.

Gendreau, P. "Treatment in Corrections: Martinson was Wrong" (1981) 22 Canadian Psychology 332.

Gendreau P.& Ross, R. "Success in Corrections: Programs and Principles" in R.R. Corrado, M. LeBlanc & J. Trepanier, eds., *Current Issues in Juvenile Justice* (Toronto: Butterworth & Co. (Canada) Ltd., 1983) 335.

Gendreau, P. & Ross, R.R. "Correctional Potency: Treatment and Deterrence on Trial" in R. Roesch & R. Corrado, eds., *Evaluation Research and Policy in Criminal Justice* (Beverly Hills: Sage Publications, 1981) 35.

Gendreau, P. & Ross, R.R. "Effective Correctional Treatment: Bibliography for Cynics." (1979) 25 Crime and Delinquency 463.

Gendreau, P. & Ross, R.R. "Revivification of Rehabilitation: Evidence from the 1980's" (1987) 4 Justice Quarterly 349.

Glueck, S. & Eleanor, T. *Five Hundred Criminal Careers* (New York: Alfred Knopf, 1939).

Gold, M. & Mattick, H.W. *Experiment in the Streets: The Chicago Youth Development Project* (Ann Arbor, MI: Institute for Social Research, 1974).

Gottfredson, D.C. "An Empirical Test of School-Based Environmental and Individual Interventions to Reduce the Risk of Delinquent Behavior" (1986) 24 Criminology 705.

Gottfredson, D.C. "An Evaluation of an Organization Development Approach to Reducing School Disorder" (1987) 11 Evaluation Review 739.

Gottfredson, D.C. "Changing School Structures to Benefit High-Risk Youths" in P.E. Leone, ed., *Understanding Troubled and Troubling Youth* (Newbury Park, CA: Sage Publications, 1990) 246.

Gottfredson, D.C., Gottfredson, G.D. & Hybl, L.G. "Managing Adolescent Behavior: A Multiyear, Multischool Study" (1993) 30 American Educational Research Journal 179.

Gottfredson, D.C., Sealock, M.D. & Koper, C.S. "Delinquency" in R. DiClemente, W. Hansen & L. Ponton, eds., *Handbook of Adolescent Health Risk Behavior* (New York: Plenum Publishing Corp., 1996) 34.

Gottfredson, G.D. "Peer Group Interventions to Reduce the Risk of Delinquent Behavior: A Selective Review and a New Evaluation" (1987) 25 Criminology 671.

Gottfredson, M.R. "Parole Guidelines and Reduction of Sentence Disparity" (1979) 16 Journal of Research in Crime and Delinquency 218.

Gottfredson, S.D. & Gottfredson, D.M. "Behavioral Prediction and the Problem of Incapacitation" (1994) 32 Criminology 441.

Gray, J.D. *et al.* "Prediction and Prevention of Child Abuse and Neglect" (1979) 35 Journal of Social Issues 127.

Greenwood, P. & Zimring, F.E. *One More Chance: The Pursuit of Promising Intervention Strategies for Chronic Juvenile Offenders* (Santa Monica, CA: Sage Publications, 1985).

Greenwood, P.W. & Abrahamse, A. *Selective Incapacitation* (Santa Monica, CA: Rand Corp., 1982).

Greenwood, P.W. & Turner, S. *The VisionQuest Program: An Evaluation* (Santa Monica, CA: Rand Corp., 1987).

Grossman, J.B. & Sipe, C.L. *Summer Training and Education Program: Report on Long-Term Impacts* (Philadelphia, PA: Public/Private Ventures, 1992).

Gutelius, M.F. *et al.* "Controlled Study of Child Health Supervision: Behavioral Results" (1977) 60 Pediatrics 294.

Halleck, S. & Witte, A.E. "Is Rehabilitation Dead" (1977) 23 Crime and Delinquency 372.

Hawkins, J.D., Catalano, R.F. & Miller, J.L. "Risk and Protective Factors for Alcohol and Other Drug Problems in Early Adulthood: Implications for Substance Abuse Prevention" (1992) 112 Psychological Bulletin 64.

Hawkins, J.D., Doueck, H.J. & Lishner, D.M. "Changing Teaching Practices in Mainstream Classrooms to Improve Bonding and Behavior of Low Achievers" (1988) 25 American Educational Research Journal 31.

Hawkins, J.D., Von Cleve, E. & Catalano, R.F. "Reducing Early Childhood Aggression: Results of a Primary Prevention Program" (1991) 30 Journal of the American Academy of Child and Adolescent Psychiatry 208.

Henggeler, S.W. "Treating Serious Anti-Social Behavior in Youth: The MST Approach" (May 1997) Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin 1.

Henggeler, S.W. *et al.* "Family Preservation Using Mulitsystemic Treatment: Long Term Followup to a Clinical Trial with Serious Juvenile Offenders" (1993) 2 Journal of Child and Family Studies 283.

Hirschi, T. & Gottfredson, M. "Age and the Explanation of Crime" (1983) 89 American Journal of Sociology 552.

Horn, W.F. *et al.* "Additive Effects of Behavioral Parent Training and Self-Control Therapy With Attention Deficit Hyperactivity Disordered Children" (1990) 19 Journal of Clinical Child Psychology 98.

Howell, J.C. *et al. A Sourcebook on Serious, Violent, and Chronic Juvenile Offenders* (Newbury Park, CA: Sage Publications, 1995).

Inciardi, J.A. "Heroin Use and Street Crime" (1979) 25 Crime and Delinquency 335.

Jacobson, S.W. & Frye, K.F. "Effect of Maternal Social Support on Attachment: Experimental Evidence" (1991) 62 Child Development 572.

Johnson, B.D. & Wish, E.D. "The Impact of Substance Abuse on Criminal Careers" in A. Blumstein *et al.*, eds., *Criminal Careers and Career Criminals*, vol. 2 (Washington, D.C.: National Academy Press, 1986) 142.

Johnson, D.L. & Walker, T. "Primary Prevention of Behavioral Problems in Mexican-American Children" (1987) 15 American Journal of Community Psychology 375.

Johnson, G. & Hunter, R. *Law-Related Education as a Delinquency Prevention Strategy: A Three-Year Evaluation of the Impact of LRE on Students* (Washington, D.C.: National Institute for Juvenile Justice and Delinquency Prevention, 1985).

Jones, M.B. & Offord, D.R. "Reduction of Anti-Social Behavior in Poor Children by Nonschool Skill Development" (1989) 30 Journal of Child Psychology and Psychiatry and Allied Disciplines 737.

Kazdin, A.E., Siegel, T.C. & Bass, D. "Cognitive Problem-Solving Skills Training and Parent Management Training in the Treatment of Anti-Social Behavior in Children" (1992) 60 Journal of Consulting and Clinical Psychology 733.

Kirby, B.C. "Measuring Effects of Treatments of Criminals and Delinquents" (1954) 38 Sociology and Social Research 368.

Klein, M. *The American Street Gang: Its Nature, Prevalence and Control* (New York: Oxford University Press, 1995).

Kolvin, I. *et al. Help Starts Here* (New York, NY: Tavistock, 1981).

Lab, S.P. & Whitehead, J.T. "An Analysis of Juvenile Correctional Treatment" (1988) 34 Crime and Delinquency 60.

Lally, J.R., Mangione, P.L. & Honig, A.S. "The Syracuse University Family Development Research Project: Long-Range Impact of an Early Intervention with Low-Income Children and their Families" in D.R. Powell, ed., *Annual Advances in Applied Developmental Psychology: Parent Education as Early Childhood Intervention - Emerging Directions in Theory, Research, and Practice*, vol. 3 (Norwood, NJ: Ablex, 1988) 183.

LeBlanc, M. & Frechette, M. *Male Criminal Activity From Childhood Through Youth* (New York: Springer-Verlag, 1989).

Lemert, E.M. *Human Deviance, Social Problems and Social Control*, (Englewood Cliffs, NJ: Prentice-Hall, 1967).

Leukefeld, C.G. & Tims, F.M. *Drug Abuse Treatment in Prison and Jails* (Washington D.C.: U.S. Government Printing Office, 1992).

Lewis, R.V. "Scared Straight California Style: Evaluation of the San Quentin Squire Program" (1983) 10 Criminal Justice and Behavior 209.

Lierberman, A.F., Weston, D.R. & Pawl, J.H. "Preventive Intervention and Outcome with Anxiously Attached Dyads" (1991) 62 Child Development 199.

Lindstrom, P. "Partnership in Crime Prevention: Police-School Cooperation" (Paper presented at the annual meeting of the American Society of Criminology, 1996) [unpublished].

Lipsey, M.W. "Juvenile Delinquency Treatment: A Meta-Analytic Inquiry into the Variability of Effects" in T.D. Cook *et al.*, *Meta-Analysis For Explanation: A Casebook* (New York: Russell Sage Foundation, 1992) 83.

Logan, C.H. "Evaluation Research in Crime and Delinquency: A Reappraisal" (1972) 63 Journal of Criminal Law, Criminology and Police Science 378.

Lyons-Ruth, K. "Infants at Social Risk: Maternal Depression and Family Support Services as Mediators of Infant Development and Security of Attachment" (1990) 61 Child Development 85.

MacKenzie, D.L. *et al.* "Boot Camp Prisons and Recidivism in Eight States" (1995) 33 Criminology 327.

Mair, G. & Copas, J. "Nothing Works and What Works - Meta-Analysis?" (1996) [unpublished] quoted in Vennard, J., Sugg, D. & Hedderman, C. *Changing Offenders' Attitudes and Behaviour: What Works?* (London, U.K.: Home Office Research and Statistics Directorate, 1997) at 10.

Mallar, C. *et al. Third Follow-Up Report of the Evaluation of the Economic Impact of Job Corps* (Princeton, NJ: Mathematica Policy Research Inc., 1982).

Martin, S.S., Butzin, C.A. & Inciardi, J. "Assessment of a Multistage Therapeutic Community for Drug Involved Offenders" (1995) 27 Journal of Psychoactive Drugs 109.

Martinson, R. "What Works? – Questions and Answers About Prison Reform" (1974) 35 The Public Interest 22.

Maynard, R. *The Impact of Supported Work on Young School Dropouts* (New York, NY: Manpower Demonstration Research Corp., 1980).

McCord, J. "A Thirty-Year Followup of Treatment Effects" (1978) 33 The American Psychologist 284.

Miller, W.B. "The Impact of a Total Community Delinquency Control Project" (1962) 9 Social Problems 168.

Moffitt, T. "Adolescent-Limited and Life Course Persistent Antisocial Behavior: A Developmental Taxonomy" (1993) 100 Psychology Review 674.

Mulvey, E. & La Rosa, J. "Delinquency Cessation and Adolescent Development" (1986) 56 American Journal of Orthopsychiatry 212.

Nurco, D.N., Hanlan, T. & Kinlock, T. *Offenders, Drugs and Treatment* (Washington D.C.: United States Department of Justice, 1990).

Olds, D.L. *et al.* "Improving the Life-Course Development of Socially Disadvantaged Mothers: A Randomized Trial of Nurse Home Visitation" (1988) 78 American Journal of Public Health 1436.

Olweus, D. "Bullying Among Schoolchildren: Intervention and Prevention" in R.D. Peters, R.J. McMahon & V.L. Quinsey, eds., *Aggression and Violence Throughout the Life Span* (Newbury Park, CA: Sage Publications, 1992) 203.

Palmer, T. "Martinson Revisited" (1975) 12 Journal of Research in Crime and Delinquency 133.

Palmer, T. "The Effectiveness Issue Today: An Overview" (1983) 46 Federal Probation 3.

Pepler, D.J., King, G. & Byrd, W. "A Social Cognitively-Based Social Skills Training Program for Aggressive Children" in D.J. Pepler & K.H. Rubin, eds., *The Development and Treatment of Childhood Aggression* (Hillsdale, NJ: Erlbaum, 1991) 73.

Peter, M. *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Mobile Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996).

Peters, M. *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Denver Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996).

Peters, M. *Evaluation of the Impact of Boot Camps for Juvenile Offenders: Cleveland Interim Report* (Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1996).

Powers, E. & Witmer, H. *An Experiment in the Prevention of Delinquency: The Cambridge-Somerville Youth Study* (New York: Columbia University Press, 1951).

Reyes, O. & Jason, L.A. "An Evaluation of a High School Dropout Prevention Program" (1991) 19 Journal of Community Psychology 221.

Rosenbaum, D.P. *et al.* "Cops in the Classroom: A Longitudinal Evaluation of Drug Abuse Resistance Education (DARE)" (1994) 31 Journal of Research in Crime and Delinquency 3.

Rosenthal, R. & Rubin, D.B. "A Simple, General Purpose Display of Magnitude of Experimental Effect" (1982) 74 Journal of Educational Psychology 166.

Ross, G.H. "Home Intervention for Premature Infants of Low-Income Families" (1984) 54 American Journal of Orthopsychiatry 263.

Sampson, R. & Laub, J. *Crime in the Making: Pathways and Turning Points Through Life* (Cambridge, MA: Harvard University Press, 1993).

Schinke, S.P., Orlandi, M.A. & Cole, K.C. "Boys and Girls Clubs in Public Housing Developments: Prevention Services for Youth at Risk" (1992) OSAP Special Issue Journal of Community Psychology 118.

Seitz, V., Rosenbaum, L.K. & Apfel, N.H. "Effects of Family Support Intervention: A Ten-Year Follow-Up" (1985) 56 Child Development 376.

Sherman, L.W. *et al. Preventing Crime: What Works, What Doesn't, What's Promising* (Washington, D.C.: Office of Justice Programs, U.S. Department of Justice, 1997).

Solomon, D. *et al.* "Enhancing Children's Prosocial Behavior in the Classroom" (1988) 25 American Educational Research Journal 527.

Speckart, G. & Anglin, D.M. "Narcotics and Crime: A Causal Modeling Approach" (1986) 2 Journal of Quantitative Criminology 3.

Spergel, I.A. "The Violent Gang in Chicago: A Local Community Approach" (1986) 60 Social Service Review 17.

Spergel, I.A. *The Youth Gang Problem: A Community Approach* (New York, NY: Oxford University Press, 1995).

Thompson, D.W. & Jason, L.A. "Street Gangs and Preventive Interventions" (1988) 15 Criminal Justice and Behavior 323.

Thrasher, F. "The Boys' Club and Juvenile Delinquency" (1936) 41 American Journal of Sociology 66.

Tierney, J.P., Grossman, J.B. & Resch, N.L. *Making a Difference: An Impact Study of Big Brothers/Big Sisters* (Philadelphia, PA: Public/Private Ventures, 1995).

Travis, J. *et al. Drug Involved Offenders in the Criminal Justice System* (Washington, D.C.: National Institute of Justice, 1996).

Tremblay, R. & Craig, W. "Developmental Crime Prevention" in M. Tonry & D.P. Farrington, eds., *Building A Safer Society: Crime and Justice*, vol. 19 (Chicago: University of Chicago Press, 1995) 158.

Tremblay, R.E. *et al. A Bimodal Preventive Intervention for Disruptive Kindergarten Boys: Its Impact Through Mid-Adolescence* (Montreal: University of Montreal Research Unit on Children's Psycho-Social Maladjustment, 1994).

Van Voorhis, S. "Correctional Effectiveness: The High Cost of Ignoring Success" (1987) 51 Federal Probation 56.

Vennard, J., Sugg, D. & Hedderman, C. *Changing Offenders' Attitudes and Behaviour: What Works?* (London, U.K.: Home Office Research and Statistics Directorate, 1997).

Vito, G. "Developments in Shock Probation: A Review of Research Findings and Policy Implications" (1984) 48 Federal Probation 22.

Vito, G. & Allen, H.E. "Shock Probation in Ohio: A Comparison of Outcomes" (1981) 25 International Journal of Offender Therapy and Comparative Criminology 7075.

Wasik, B.H. *et al.* "A Longitudinal Study of Two Early Intervention Strategies: Project CARE" (1990) 61 Child Development 1682.

Wasserman, G.A. & Miller, L.S. "The Prevention of Antisocial Behavior" in R. Loeber & D.P. Farrington, eds., *Report of the Office of Juvenile Justice and Delinquency Prevention Study Group on Serious, Chronic, and Violent Juvenile Offenders* (Washington, DC: OJJDP, 1998) 34.

Weeks, A.N. "The Highlights Project and Its Success" in N. Johnston, L. Savitz & M.E. Wolfgang, eds., *The Sociology of Punishment and Correction* (New York: John Wiley & Son, 1962) 43.

Wexler, H.K. *et al. Evaluation of Amity In-Prison and Post-Release Substance Abuse Treatment Programs* (Washington, D.C.: National Institute of Drug Abuse, 1995).

Wexler, H.K., Falkin, G.P. & Lipton, D.S. "Outcome Evaluation of a Prison Therapeutic Community for Substance Abuse Treatment" (1992) 17 Criminal Justice and Behavior 71.

Whitehead, J.T. & Lab, S.P. "A Meta-Analysis of Juvenile Correctional Treatment" (1989) 26 Journal of Research in Crime and Delinquency 276.

Widom, C.S. "Child Abuse, Neglect, and Violent Criminal Behavior" (1989) 27 Criminology 251.

Wolfgang, M.E., Figlio, R.M. & Sellin, T. *Delinquency in a Birth Cohort* (Chicago, IL: University of Chicago Press, 1972).

Woodson, R.L. *A Summons to Life: Mediating Structures and the Prevention of Youth Crime* (Cambridge, Mass.: Ballinger, 1981).

Archival Sources

Archives of Ontario, RG 60-61, acc 27227 box 5. Director's Files: Paul Siemens. Letter, dated February 8, 1971 to The Honourable Jean-Pierre Goyer, Solicitor General of Canada from Allan Grossman, Minister of Correctional Services.

National Archives of Canada, RG 13 A2 acc 86-87/84 v.69 file 764/1908 Wm. Stark, Secretary of the Chief Constables Association, to Aylesworth, Minister of Justice, 29 Aug. 1907.

National Archives of Canada, RG 73 80-81/039 box 81 file 8-93-3 (part 1) Letter, date stamped June 6, 1973, from Marc Lalonde, Minister of National Health and Welfare to Syl Apps, Minister of Correctional Services for Ontario.

National Archives of Canada, RG 73 acc 80-81/039 box 57 file 8-2 (part 1) News Release, December 9, 1970 by Hon. Allan Grossman, Minister, Ontario Department of Correctional Services. Statement by the Minister regarding Federal Bill C-192 – An Act Respecting Young Offenders.

National Archives of Canada, RG 73 acc 80-81/039 box 58 file 8-2 (part 5) Draft Memorandum to Cabinet dated May 4, 1971 by J.H. Hollies, Legal Counsel, Legal Services, Department of the Solicitor General.

National Archives of Canada, RG 73 acc 80-81/039 box 81 file 8-93-3 (part 1) Internal departmental memorandum from the Deputy Solicitor General, Mr. Roger Tasse, to the Solicitor General, and VOTE 45B-Income Security and Social Assistance.)

National Archives of Canada, RG 73 acc 90-91/039 box 57 file 8-2 (part 1) Memorandum from George J. McIlraith, Solicitor General, dated December 18, 1970, to all members of the House of Commons and Members of the Senate regarding the CMHA Brochure. Copy of the CMHA Brochure attached to the memorandum.

National Archives of Canada, W.L. Scott Papers, vol. 6, Mr. Justice Anglin to W.L. Scott, 7 Feb. 1907.

National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to J.J. Kelso, 23 Nov 1906.

National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to J.J. Kelso, 4 June 1906.

National Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to Mr. Justice Anglin, 8 Feb. 1907.

Public Archives of Canada, W.L. Scott Papers, vol. 6, W.L. Scott to Judge Winchester, 11 June 1907.

Theses and Dissertations

Bain, I. *The Role of J.J. Kelso in the Launching of the Child Welfare Movement in Ontario* (M.S.W. Thesis, University of Toronto, 1955) [unpublished].

Challen, R.D. *The Reform of Canada's Juvenile Justice System, 1969 to 1982: Ontarios's Role in Co-operative Federalism?* (Ph.D. Thesis, University of Toronto, 1996) [unpublished].

Denney-Lightfoot, J. *Redirecting Canadian Juvenile Justice Policy: Rehabilitation and Hope for the Future* (LL.M. Thesis, University of Toronto, 1995) [unpublished].

Doerr, A. *The State and the Reproduction of Social Control: A Study of the History of Canadian Juvenile Justice Practices* (M.A. Thesis, University of Windsor, 1996) [unpublished].

Green, B.C. *An Evaluation of a Big Brothers' Program for Father-Absent Boys: An Eco-Behavioral Analysis* (Ph.D. Dissertation, New York University, 1980) [unpublished].

Houston, S.E. *The Impetus to Reform: Urban Crime, Poverty and Ignorance in Ontario 1850-1875* (Ph.D. Thesis, University of Toronto, 1974).

Lane, C.G. *The Philosophy of the Young Offenders Act and Its Impact on the Formal Legal Education and Practice of Advocates for Youth* (LL.M. Thesis, University of Alberta, 1995).

Moore, D.L. *Juvenile Justice: Rhetoric, Reality and Prospects for Change* (M.A. Thesis, York University, 1981) [unpublished].

O'Mahony, D. *The Use of Chronological Age in the Development of Legislation Affecting Young People in Canada, 1799-1985* (M.A. Thesis, University of Ottawa, 1987) [unpublished].

Veitch, R. *The Young Offenders Act: A Panacea for Violent Youth Crime in Canada?* (M.A. Thesis, Acadia University, 1994) [unpublished].

Williams, M.G. *Canadian Youth Justice: Moral Panic or Respectable Fears?* (M.A. Thesis, Carleton University, 1994) [unpublished].

Books (not including collections of essays)

Andrew, D.T. *Philanthropy and Police: London Charity in the Eighteenth Century* (Princeton, N.J.: Princeton University Press, 1989).

Bala, N. *Young Offenders Law* (Concord, Ontario: Irwin Law, 1997).

Beattie, J.M. *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986).

Beccaria, C. *On Crimes and Punishments,* (Indianapolis: Bobbs-Merill, 1963).

Becker, H.S. *Outsiders: Studies in the Sociology of Deviance,* (New York: Free Press, 1963).

Brown, D.H. *The Genesis of the Canadian Criminal Code of 1892,* 2d ed. (Toronto: University of Toronto Press, 1990).

Buckland, W.W. & McNair, A.D. *Roman Law and Common Law* (Cambridge, Great Britain: Cambridge University Press, 1952).

Buckland, W.W. *A Text-Book of Roman Law from Augustus to Justinian*, 2d ed. (Cambridge, England: Cambridge University Press, 1932).

Burbidge, G. *A Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890).

Canadian Corrections Association, *The Child Offender and the Law* (Ottawa: Canadian Welfare Council, 1963).

Canadian Research Institute for Law and the Family, *A Study of the Level and Nature of Youth Crime and Violence in Calgary* (Calgary: Canadian Research Institute for Law and the Family, 1995).

Canadian Sentencing Commission, *Sentencing Reform, A Canadian Approach* (Government of Canada, Supply and Services, 1988).

Carrigan, D.O. *Crime and Punishment in Canada, A History* (Toronto: McClelland & Stewart Inc., 1991).

Chunn, D.E. *From Punishment to Doing Good: Family Courts and Socialized Justice in Ontario, 1880-1940* (Toronto: University of Toronto Press, 1992).

Doob, A.N., Marinos, V. & Varma, K.N. *Youth Crime and the Youth Justice System in Canada: A Research Perspective* (Toronto: Centre of Criminology, University of Toronto, 1995).

Drescher, S. *Capitalism and Antislavery: British Mobilization in Comparative Perspective* (New York: Oxford University Press, 1987).

Farrington, D.P. *Justice Report*, vol. 3, no. 2 (Ottawa: Canadian Criminal Justice Association, 1986).

Garland, D. *Punishment and Welfare: A History of Penal Strategies* (Aldershot: Gower, 1985).

Hobbes, T. *Leviathan*, (London: Penguin, 1981).

John Howard Society of Ontario, *Boot Camps for Young Offenders* (Toronto: The Society, 1996)

Jolowicz, H.F. & Nicholas, B. *Historical Introduction to the Study of Roman Law*, 3d ed. (Cambridge, England: Cambridge University Press, 1972).

Mandel, M. *The Charter of Rights & the Legalization of Politics in Canada*, Revised, updated and expanded ed. (Toronto, Thompson Educational Publishing Inc., 1994).

McConville, S. *A history of English prison administration*, vol. I, *1750-1877* (London: Routledge & Kegan Paul, 1981).

Oliver, P. *Terror to Evil-Doers: Prisons and Punishments in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1998).

Phillimore, R., Phillimore, W.G.F. & Jemmett, C.F. *The Ecclesiastical Law of the Church of England*, vol. I, 2d ed. (London: Sweet & Maxwell, 1895).

Piaget, J. *The Moral Judgment of the Child* (New York: Free Press, 1965).

Pickett, R.S. *House of Refuge: Origins of Juvenile Reform in New York State, 1815-1857* (Syracuse: Syracuse University Press, 1969).

Platt, P. *Young Offenders Law in Canada*, 2d ed. (Toronto and Vancouver: Butterworths Canada Ltd., 1995).

Pollock, F. & Maitland, F.M. *The History of English Law*, vol. 2 (Cambridge, Great Britain: Cambridge University Press, 1968).

Schur, E. *Radical Nonintervention: Rethinking the Delinquency Problem* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

Splane, R.B. *Social Welfare in Ontario, 1791-1893* (Toronto: University of Toronto Press, 1965).

Stephen, J.F. *A Digest of the Criminal Law*, 1st ed. (London: Macmillan, 1877).

Strange, C. *Toronto's Girl Problem: The Perils and Pleasures of the City, 1880-1930* (Toronto: University of Toronto Press, 1995).

Sullivan, R. *Statutory Interpretation* (Concord, Ontario: Irwin Law, 1997).

Taylor, I.R., Walton, P. & Young, J. *The New Criminology: For a Social Theory of Deviance*, (London: Routledge & Kegan Paul, 1973).

Tepperman, L. *Crime Control: The Urge Toward Authority* (Toronto and Montreal: McGraw-Hill Ryerson Limited, 1977).

von Hirsch, A. *Past or Future Crimes - Deservedness and Dangerousness in the Sentencing of Criminals* (New Brunswick: Rutgers University Press, 1985).

Wiener, M.J. *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830-1914* (Cambridge: Cambridge University Press, 1990).

Other Material

Adamson, C.R. "The Breakdown of Canadian Prison Administration: Evidence from Three Commissions of Inquiry" (October 1983) 25 Can. J. Crim. 433.

Anderssen, E. "Crime bill aims to reduce rate of incarceration" *The Globe and Mail* (12 March 1999) A4.

Antieau, C.J. "Constitutional Rights in Juvenile Courts" (1961) 46 Cornell L.Q. 387.

Baehre, R. "Origins of the Penitentiary System in Upper Canada" (1977) 69 Ontario History 185.

Bailey, V. "English Prisons, Penal Culture, and the Abatement of Imprisonment, 1895-1922" (July 1997) 36 Journal of British Studies 285.

Bala, N. & Kirvan, M. "The Statute: Its Principles and Provisions and their Interpretation by the Courts" in A.W. Leschied, P.G. Jaffe, & W. Willis eds., *The Young Offenders Act: A Revolution in Canadian Juvenile Justice*, (Toronto: University of Toronto Press, 1991) 71.

Bala, N. "*R.* v. *M.(J.J.)*: The Rehabilitative Ideal for Young Offenders – Back to the Past?" (Aug. 1993) 20 C.R. (4th) 308.

Bala, N. "The 1995 *Young Offenders Act* Amendments: Compromise or Confusion?" (1994) 26 Ottawa L. Rev. 643.

Beemsterboer, M.J. "The Juvenile Court-Benevolence in the Star Chamber" (1960) 50 J. Crim. L., Crim. & Pol. Sci. 464.

Bellomo, J.J. "Upper Canadian Attitudes Toward Crime & Punishment" (1972) LXIV Ontario History 11.

Bolton, J. *et al.* "The *Young Offenders Act*: Principles and Policy – the First Decade in Review" (October 1993) 38 McGill L.J. 939.

Bowker, M.M. "Juvenile Court in Retrospective: Seven Decades of History in Alberta (1913-1984)" (1986) 24 Alta. L.R. 234.

Burr, S.A. "Now My Son, You Are a Man: The Judicial Response to Uncounselled Waivers of Miranda Rights by Juveniles in Pennsylvania" (1987) 92 Dick. L. Rev. 153.

Carrington, P.J. & Moyer, S. "Factors Affecting Custodial Dispositions under the *Young Offenders Act*" (Apr. 1995) 37 Can. J. Crim. 127.

Carrington, P.J. & Moyer, S. "Interprovincial Variations in the Use of Custody for Young Offenders: a Funnel Analysis" (July 1994) 36 Can. J. Crim. 271.

Cauffman, E. & Steinberg, L. "The Cognitive and Affective Influences on Adolescent Decision-Making" (1995) 68 Temp. L. Rev. 1763.

Corrado R. & Markwart, A. "The Prices of Rights and Responsibilities" (1988) 7 Can. J. Fam. L. 93

Corrado, R.R. & Markwart, A. "The Evolution and Implementation of a New Era of Juvenile Justice in Canada" in R.R. Corrado, N. Bala, R. Linden & M. Le Blanc, eds., *Juvenile Justice in Canada*, (Toronto and Vancouver: Butterworths Canada Ltd., 1992) 137.

"Crime prevention, a home issue" *The [Toronto] Globe and Mail* (4 June 1998) A18.

Doob, A.N. & Beaulieu, L.A. "Variation in the Exercise of Judicial Discretion with Young Offenders" (Jan. 1992) 34 Can. J. Crim. 35.

Doob, A.N. & Sprott, J.B. "Is the Quality of Youth Violence Becoming More Serious?" (April 1998) 40 Can. J. Crim. 185.

Doob, A.N. "Dispositions Under the *Young Offenders Act*: Issues Without Answers?" in L.A. Beaulieu, ed., *Young Offender Dispositions: Perspectives on Principles and Practice*, (Toronto: Wall & Thompson Inc., 1989) 193.

Doob, A.N. "Trends in the Use of Custodial Dispositions for Young Offenders" (Jan. 1992) 34 Can. J. Crim. 75.

Driver, E.D. "Confessions and the Social Psychology of Coercion" (1968) 82 Harv. L. Rev. 42.

Encourage Youth Corporation, Project Turnaround Information Pamphlet, (19 August 1998).

Encourage Youth Corporation, Project Turnaround Treatment Programs Package (19 August 1998) [hereinafter Package].

Feld, B.C. "Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy" (1997) 88 J. Crim. L. & Criminology 68.

Ferguson, A.B. & Douglas, A.C. "A Study of Juvenile Waiver" (1970) 7 San Diego L. Rev. 39.

Grisso, T. "Society's Retributive Response to Juvenile Violence: A Developmental Perspective" (1996) 20 Law & Hum. Behav. 229.

Hay, D. "Time, Inequality, and Law's Violence" in A. Sarat & T.R. Kearns, eds., *Law's Violence* (Ann Arbor, MI: University of Michigan Press, 1992) 141.

Hemmens, C., Fritsch, E. & Caeti, T.J. "Juvenile Justice Code Purpose Clauses: The Power of Words" (1997) 8 Crim. Just. Pol'y Rev. 221.

Hylton, J.H. "Get tough or get smart? Options for Canada's youth justice system in the twenty-first century" (July 1994) 36 Can. J. Crim. 229.

Innes, J. & Styles, J. "The Crime Wave: Recent Writing on Crime and Criminal Practice in Eighteenth-Century England" (1986) 25 Journal of British Studies 380.

Jones, A. "Closing Penetanguishene Reformatory: An Attempt to Deinstitutionalize Treatment of Juvenile Offenders in Early Twentieth-Century Ontario" in R.C. Macleod, ed., *Lawful Authority: Readings on the History of Criminal Justice in Canada* (Mississauga: Copp Clark Pitman Ltd., 1988) 277.

Kean, A.W.G. "The History of the Criminal Liability of Children" (1937) 53 L.Q. Rev. 364.

King, P. & Noel, J. "The Origins of the Problem of Juvenile Delinquency: The Growth of Juvenile Prosecutions in London in the Late Eighteenth and Early Nineteenth Centuries" (1993) 14 Criminal Justice History 17.

Kohlberg, L. "Moral Development" in *International Encyclopedia of Social Sciences*, vol. 10 (New York: MacMillan, 1968) 483.

Ladouceur, C. & Biron, L. "Ecouler la Marchandise Volee, Une Approche Rationnelle?" (1993) 35 Can. J. Crim. 169.

"Lastman launches program for street youth" *The [Toronto] Globe and Mail* (28 July 1998) A7.

Leon, J.S. "The Development of Canadian Juvenile Justice: A Background for Reform" (1977) 15 Osgoode Hall L.J. 71.

Ludwig, F.J. "History of Significance of Immaturity for Responsibility from Youth and the Law" in S. Fox, ed., *Modern Juvenile Justice* (St. Paul, Minnesota, West Publishing, 1981) 428.

Manson, A. "*McDonnell* and the Methodology of Sentencing" (1997), 6. C.R. (5th) 277.

Markwart, A. "Custodial Sanctions Under the *Young Offenders Act*" in R.R. Corrado, N. Bala, R. Linden & M. Le Blanc, eds., *Juvenile Justice in Canada*, (Toronto and Vancouver: Butterworths Canada Ltd., 1992) 229.

Marquis, G. "Canadian Police Chiefs and Law Reform: The Historical Perspective" (1991) 33 Can. J. Crim. 385.

May, M. "Innocence and Experience: The Evolution of the Concept of Juvenile Delinquency in the Mid-Nineteenth Century" (Sept. 1973) 17 Victorian Studies 7.

McCormick, P. "Sentence Appeals to the Alberta Court of Appeal, 1985-1992: A Statistical Analysis of the Laycraft Court" (1993) 31 Alta. L. Rev. 624.

McIlroy, A. "One way to build better families" *The [Toronto] Globe and Mail* (29 September 1998) A1.

McIlroy, A. "Plan aims to jail fewer youths - But repeaters face crackdown" *The [Toronto] Globe and Mail* (12 May 1998) A1.

Merlo, A.V., Benekos, P.J. & Cook, W.J. "Waiver and Juvenile Justice Reform: Widening the Punitive Net" (1997) 8 Crim. Just. Pol'y Rev. 145

Moore, M.S. "The Moral Worth of Retribution" in J. Feinberg & H. Gross, eds., *Philosophy of Law*, 3d ed. (Belmont, CA: Wadsworth Publishing Co., 1992) 573.

Morris, N. "The Future of Imprisonment: Towards a Punitive Philosophy" (1974) 72 Mich. L. Rev. 1169.

Morse, S.J. "Immaturity and Irresponsibility" (1997) 88 J. Crim. L. & Criminology 15.

"National General News" *Canadian Press 98* (2 June 1998) (QL).

Parker, G. "The Century of the Child" (1967) 45 Can. Bar. Rev. 741.

Parker, N. "Swift Justice and the Decline of the Criminal Trial Jury: The Dynamics of Law and Authority in Victoria, BC, 1858-1905" in H. Foster & J. McLaren,

eds., *Essays in the History of Canadian Law*, vol. 6, *British Columbia and the Yukon* (Toronto: University of Toronto Press, 1995) 171.

Riley, P. "Proportionality as a Guiding Principle in Young Offender Dispositions" (Fall 1994) 17 Dalhousie L.J. 560.

Rosenberg, M. "Is It Time To Focus On Responsibilities In Addition To Rights? From Criminal Justice To Justice For Children And Youth, Notes For A Presentation" (Paper presented at a conference entitled, *Building a Human Rights Agenda for the 21st Century: A Practical Celebration of the 50th Anniversary of the Universal Declaration of Human Rights*, Ottawa, 2 October 1998) [unpublished].

Rusk, J. "Old prison farm to be used as boot camp, Runciman says," *The [Toronto] Globe and Mail* (12 February 1997) A6.

Rusk, J. "Tory panel wants to crack down on Ontario's youth crime" *The [Toronto] Globe and Mail* (2 June 1998) A7.

Schneider, A. & Schramm, D. "The Washington State Juvenile Justice System Reform: A Review of Findings" (1986) 1 Crim. Just. Pol'y Rev. 211.

Scott, E.S. & Grisso, T. "The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform" (1997) 88 J. Crim. L. & Criminology 137.

Scott, E.S. *et al.* "Evaluating Adolescent Decision Making in Legal Contexts" (1995) 19 Law & Hum. Behav. 221.

Scott, W.L. "The *Juvenile Delinquents Act*" (1908) 28 Can. Law Times and Rev. 892.

Shoben, E.W. "The Interrogated Juvenile: Caveat Confessor?" (1973) 24 Hast. L.J. 413.

Smandych, R.C. "Tory Paternalism and the Politics of Penal Reform in Upper Canada, 1830-34: A Neo-revisionist Account of Kingston Penitentiary" (1991) 12 Criminal Justice History 57.

Steinberg, L. & Cauffman, E. "Maturity of Judgment in Adolescence: Psychosocial Factors in Adolescent Decision Making" (1996) 20 Law & Hum. Behav. 249.

Tappan, P.W. "Treatment without Trial" in S. Glueck, ed., *The Problem of Delinquency* (Boston: Houghton Mifflin, 1959) 290.

von Hirsch, A. "Sentencing" (1981) 65 Minn. L.R. 591.

Washington State Institute for Public Policy, "Watching the Bottom Line: Cost-Effective Interventions for Reducing Crime in Washington" (January 1998) 3162 Seminar 5.

Watson, J. *Criminology and Sentencing Law Course Handout No. 8* (Faculty of Law, University of Alberta, 1995) [unpublished].

Yu, P. *et al.* "A Social Problem-Solving Intervention for Children at High Risk for Later Psychopathology" (1986) 15 Journal of Clinical Child Psychology 30.