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Reporting That Matters: A Comparative Law Study on Probation Officers in the Juvenile Justice Systems of the United States and the Republic of Ireland

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Reporting That Matters: A Comparative Law Study on Probation Officers in the Juvenile Justice Systems of the United States and the Republic of Ireland

*Nicholas Minaudo**

INTRODUCTION

Diverting juveniles from the criminal justice system has been the goal of the United States' juvenile justice system since its inception.¹ To aid in this endeavor, the United States has relied on non-judiciary officers, such as probation officers, to present background assessments of the young offenders and to provide judges with the information to aid judicial officials in this difficult process. However, this method has created problems as initial policy concerns are now conflicting with an increased sentiment to "get tough on crime."² Although the Republic of Ireland created a reinvigorated juvenile justice system in the Children Act of 2001, Ireland is also addressing similar problems with conflicting policies. The comprehensive overhaul of the Children Act of 1908 reconfigured Ireland's juvenile justice system with a unique focus on the children in the system. This restructuring providing several useful alternatives that aid in solving juvenile justice problems in the United States, specifically relating to probation officers and the instruments they use in the juvenile justice system.

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¹ See, e.g., Jodi Lane, *Juvenile Probation*, in *ENCYCLOPEDIA OF ADOLESCENCE* 1512, 1513 (Roger Levesque ed., 2014) ("Probation is simply a sentence that allows an adolescent offender to remain in the community and be supervised by a probation officer (PO), rather than be incarcerated in a facility.").

² See Stephanie Béchar, Connie Ireland, Bruce Berg & Brenda Vogel, *Arbitrary Arbitration: Diverting Juveniles Into the Justice System—A Reexamination After 22 Years*, 55 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 605, 607 (2011).

While this Note joins in criticizing the use of presentence reports in the juvenile justice system, it offers a possible advancement by looking overseas to Ireland and using the framework of the Children Act of 2001 to bolster efficient, less redundant probation officer reports to aid in a more child-centered juvenile justice system. This statutory requirement would increase the role of probation officers in juvenile justice proceedings who collaborate with judges to rehabilitate young offenders in the system, creating a sustainable system grounded in continual, updated re-education of probation officers as procedures change.

This Note has four parts. Part I describes a brief colonial history of Ireland to give background on the country's legal structure. Part II provides a background on the juvenile justice system of Ireland, breaking down the comprehensive restructuring of the Children Act and describing a more involved role of probation officers. Part III examines the United States' juvenile justice system, describing the rise of risk assessment instruments after *In re Gault*. Part IV outlines a proposal for the more integrated probation officer report. Using the Irish statutory structure and policy of implementing these new reports, this Note demonstrates the benefits of reform, which would ultimately align with the policy of diverting children from the criminal justice system. Lastly, Part IV describes the feasibility of such a reform as well as the implications that such a shift could have on the juvenile justice system.

I. A BRIEF HISTORY

Unlike the United States, which gained its independence from Great Britain in 1776, Ireland remained a colony for nearly 150 more years.³ Due to the proximity to its colonizer and a variety of other factors, Ireland's road to independence was much longer and much different than the United States.⁴ Despite the differences between these countries, the remnant and

³ See Daniel McCoy, *Ireland's Spectacular, If Delayed, Convergence*, 5-7 RADHARC 181, 183 (2004-2006).

⁴ See R. Dudley Edwards, *The European and American Background of O'Connell's Nationalism: III: America and Irish Legislative Independence*, 76 IRISH MONTHLY 31, 31 (1948).

impact of British colonial rule on both countries is apparent, influencing even the similarities in policy for juvenile justice systems.⁵

Before describing Ireland's juvenile justice system, it is important to note the impact and length of British rule in Ireland. Ireland's tumultuous relationship under British Rule began in the late Twelfth Century.⁶ However, the extent of British control was not fully exerted until 1541 when the Irish Parliament gave King Henry VIII the title of King of Ireland.⁷ Under the Act of Union, Ireland became part of the newly formed United Kingdom in 1801 by abolishing Ireland's Parliament.⁸ While this Act enabled the UK to exert its control over the colony, it was not without backlash.⁹

Ultimately, these clashes rose to violent means during the twentieth century as Ireland moved closer towards independence. This violent means began on April 24, 1916, a day known as Easter Rising.¹⁰ Although this act of rebellion did not cause a direct schism with Great Britain, it did culminate in Ireland re-establishing an independent Irish parliament—Dáil Éireann—in 1919.¹¹ It then took an additional three years to fully gain independence from Britain in 1922.¹² As of 2006, Ireland had a population of 3.9 million people, 90% of whom were Roman Catholic.¹³

⁵ See generally Kate Bradley, *Juvenile Delinquency and the Evolution of British Juvenile Courts, c. 1900–1950*, INST. HIST. RES. (2008), <http://www.history.ac.uk/ihr/Focus/welfare/articles/bradleyk.html>.

⁶ Gavin Stamp, *Neighbours Across the Sea: A Brief History of Anglo-Irish Relations*, BBC NEWS, (Apr. 8, 2014) <https://www.bbc.com/news/uk-politics-26883211>.

⁷ *Id.*

⁸ See *Union, Act of (1800)*, in THE OXFORD COMPANION TO IRISH HISTORY (S.J. Connolly ed., online ed. 2007), <https://www.oxfordreference.com/view/10.1093/acref/9780199234837.001.0001/acref-9780199234837>.

⁹ *Id.*

¹⁰ Stamp, *supra* note 6.

¹¹ John M. Lynch, *The Anglo-Irish Problem*, 50 FOREIGN AFF. 601, 606 (July 1972).

¹² Mary E. Daly, *The Irish Free State/Éire/Republic of Ireland/Ireland: "A Country by Any Other Name"?*, 46 J. OF BRITISH STUD. 72, 72 (2007).

¹³ Mairéad Seymour, *Transition and Reform: Juvenile Justice in the Republic of Ireland*, in INT'L HANDBOOK JUV. JUST. 117, 117 (Josine Junger-Tas & Scott H. Decker eds., 2006) (noting that 37% of the population is below the age of 25).

II. JUVENILE JUSTICE SYSTEM: IRELAND

A. *Children Act of 2001: Background*

The Children Act of 2001 substantively changed Ireland's juvenile justice system, altering a legal structure that had been around for almost a century. The comprehensive restructuring involved moving away from the strict judiciary focus of the Children Act of 1908 to a more informal, child-centered focus.¹⁴ To align with a policy of restorative and rehabilitative justice, judges now decide between community-sanctioned punishment and detention centers with a focus on promoting reintegration.¹⁵ In addition, Ireland updated a variety of processes,¹⁶ bolstering the roles of the Garda Síochana (hereinafter Garda) police force as well as probation officers. Under the Act, the Garda officers and probation officers have affirmative duties imposed on them throughout specific parts of the youth's custody.¹⁷ For instance, the Garda officers are to inform the offenders of their entitlement to legal representation once they have taken an offender in custody, to keep children separate from adults, and finally to provide welfare if the child is in need.¹⁸

This requirement to guarantee child protections at certain stages is not limited to probation officers or Garda

¹⁴ See *id.* at 118. Although the Children Act of 1908 was seen as progressive during its time, its archaic way of approaching children has limited the Act to remain viable in the modern era. The most common critiques of the Act include an overemphasis on detention rather than community-based options. Additional critiques include the low age of criminal responsibility for children and the lack of legal avenues for the state to pursue against children. *Id.*

¹⁵ Children Act 2001 (Act No. 24/2001) (Ir.), <http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html?q=children+act+2001> (explaining, in § 18, that “[u]nless the interests of society otherwise require . . . any child who has committed an offence and accepts responsibility for his or her criminal behaviour shall be considered for admission to a diversion programme”).

¹⁶ Seymour, *supra* note 13 (listing, e.g., age of criminal responsibility, separation of care and the justice system, parental responsibility requirements, expanding the Garda Síochána juvenile cautionary programme, the introduction of restorative cautioning and family conferencing, use of detention as a measure of last resort, abolition of child imprisonment, and expansion of community-based sanctions).

¹⁷ See generally JENNIFER CARROLL & EMER MEEHAN, ASS'N FOR CRIM. JUST. RES. & DEV., *THE CHILDREN COURT: A NATIONAL STUDY* (2007).

¹⁸ *Id.* at 126–27 (noting that officers are required to use appropriate language, based on age, while informing children of their rights).

officials, as even the Irish government is responsible for the creation of a new court.¹⁹ This new court, the Children Court, formed after the restructuring of Ireland's juvenile justice system and is in the same vein as the United States' juvenile justice system, but with a statutory commitment to separate children from adult offenders.²⁰ Parts Seven and Eight of the Act detail the creation of this separate court as well as the procedures of this court in relation to children, compelling the court to ensure that the proceeding must not meet in the same building as an adult proceeding.²¹ Additionally, the Act requires judges to go through judicial training²² and parents are required to attend the proceeding of the offender.²³ All of these provisions align with Ireland's policy of empowering children in court proceedings and diverting first-time offenders away from dealing with the court.

Due to the recentness of Ireland's reform, the pervasiveness of policy and child psychology is intertwined throughout the legislation, but does the Children Act of 2001 equate to effective legislation? Has the Irish Juvenile Justice system reached its goal of becoming a more child-centered, non-judicial approach? After taking several years to implement fully,²⁴ the impact of the Children Act of 2001 has finally begun to be felt in the Irish juvenile justice system. However, the recentness of the Act has left an absence of time for a comprehensive and systematic analysis of the effectiveness of implementing Ireland's policy objective. Despite the lack of analysis, the response from

¹⁹ Children Act § 71.

²⁰ *Id.*

²¹ *Id.* (noting in § 71(1)(b) that "the Court shall sit in a different building or room from that in which sittings of any other court are held or on different days or at different times from those on or at which any such other court are held"); see also Ursula Kilkelly, *Youth Courts and Children's Rights: The Irish Experience*, 81 YOUTH JUST. 39, 46 (2008) [hereinafter *Youth Courts*] (stating that § 71 is only followed in Dublin, where there is a separate Child Court).

²² *Id.* § 72 ("A judge of the District Court shall, before transacting business in the Children Court, participate in any relevant course of training or education which may be required by the President of the District Court.").

²³ *Id.* § 91.

²⁴ See Ursula Kilkelly, *Diverging or Emerging from Law? The Practice of Youth Justice in Ireland*, 14 YOUTH JUST. 212, 214 (2014) [hereinafter *Diverging*] (stating that although the Act was instituted in 2001, it was partly implemented in 2004 and then fully implemented in 2007).

participants has been incredibly positive.²⁵ Relying on this sentiment, applying some of the policy and practical portions of Ireland's Children Act could result in many beneficial processes for young offenders involved in the United States' juvenile justice system. Although some of these practices are simply not feasible due to the difference in cultural norms,²⁶ a partial incorporation would adjust the penal system to the children's particularized situation.²⁷

Notable criticism has arisen in the years following the enactment of the Children Act of 2001 over the lack of statistics provided by the Irish juvenile justice system. Several studies have analyzed the compliance issues of Irish governmental agencies to determine the effectiveness of Ireland's new system.²⁸ When the Garda conducted their first annual report on the juvenile justice records of the Garda Juvenile Diversion Programme in 2002, they not only found a lack of comprehensive records but upon further analysis found groupings of ages that failed to align with any legislative definition.²⁹ Since that time, three different reports investigated subsections of the Probation Service's *Strategy Statement*,³⁰ implemented in 2008, to determine whether the Probation Service was on track with their policy goals.³¹ Each of these reports conveyed the lack of cohesion between probation policy and probation procedure. The first

²⁵See Nicola Carr, Deirdre Healy, Louise Kennefick & Niamh Maguire, *A Review of the Research on Offender Supervision in the Republic of Ireland and Northern Ireland*, 10 IRISH PROB. J. 50, 58 (2014) (saying that a 2011 customer satisfaction survey about probation officers showed an 80% satisfaction in quality).

²⁶ See generally Michael Barton, *Irish and American Character Compared: Some Findings from Cross-National Social Science Research*, 13-14 IRISH ASS'N FOR AM. STUD. 93 (2004-2005) (noting differences in individualism, religious involvement, and sexual morality).

²⁷ See Etain Quigley, *Pre-Sentence Reports in the Irish Youth Justice System: A Shift to Risk-Oriented Practice?* 11 IRISH PROB. J. 63, 78 (2014).

²⁸ Seymour, *supra* note 13, at 124 (noting the reviews by both the Department of Education and Science and from the Irish Prison Service).

²⁹ *Id.*, at 120 (stating that the Garda separated children in groups younger than fourteen, between fourteen and sixteen, between seventeen and twenty, and older than twenty-one).

³⁰ See Deirdre Healy, *The Evolution of Probation Supervision in the Republic of Ireland: Continuity, Challenge, and Change*, in COMMUNITY PUNISHMENT: EUROPEAN PERSPECTIVES 136, 144 (Gwen Robinson & Fergus McNeill eds., 2016).

³¹See *id.* (noting the strategy stressed efficiency, effectiveness, planning, governance, and the value of money).

study—conducted by Petrus in 2008—assessed community-based rehabilitation programs. It found a lack of quantifiable objectives, a failure to implement effective information systems, and an absence of evaluative research.³² The second study looked at the community service scheme, observing that the scarcity of operational data could interfere with the Probation Service's scheme and evaluative performance.³³ Ultimately, a general, independent review of the Department of Justice and Equality in 2014 observed that the nonexistent leadership, poor management practices, limited oversight and accountability, absence of targets or performance measures, antiquated IT systems, and inability to develop relationships with agencies compounded problems in adequately implementing the Children Act of 2001.³⁴ Each of these studies revealed a gaping problem in the Irish juvenile justice system: the lack of implementation. Due to the dearth of mechanisms for effective execution, the Children Act has not had the impact that it intended to have.³⁵

B. Probation Services: Ireland

Probation services for juveniles increased dramatically after the passing of Ireland's Children Act in 2001. The increase in services prompted the creation of different departments, like the Young Person's Probation, to deal with compliance issues.³⁶ However, the creation of this administrative body took until 2006.³⁷ Specifically, the Probation Service in Ireland established the Young Person's Probation (YPP) as a separate division to work with children between twelve and eighteen years old appearing before court with criminal charges.³⁸ The YPP provides pre-sanction reports on young persons, family

³² *Id.*

³³ *Id.* (noting that this research was conducted in 2009 by Petrus).

³⁴ *Id.*

³⁵ See *Youth Courts*, *supra* note 21, at 39–40.

³⁶ Paula O'Leary & Carmel Halton, *Young Persons' Probation in the Republic of Ireland: An Evaluation of Risk Assessment*, 6 IRISH PROB. J. 97, 97 (2009).

³⁷ *Id.*

³⁸ *Id.*

conferences, and supervision of community sanctions.³⁹ Since the YPP's establishment, it has remained extremely influential throughout juvenile court proceedings by offering recommendations on behalf of offenders.

Since the enactment of Children Act in 2001, judges are required to consider alternative community sanctions rather than detention, such as probation services.⁴⁰ To assist in these decisions, probation officers are tasked with providing background on the offender together with giving recommendations to judges on the likelihood of reoffending.⁴¹ The range of community sanction resources available for offenders prompts a difficult question for the judge: which sanction should be imposed? One that meets the seriousness of the crime, or the sustainability of the offender for various penalties, or the likelihood of re-offending?⁴² Although this assessment has been established as 56% to 85% accurate, it has received criticism from scholars for its lack of distinction between violent and non-violent offenses as well as the lack of reflection of cultural norms, disproportionately affecting marginalized groups.⁴³

Additional problems of the Irish risk assessment include the subjectivity of the reports and inability of longitudinal study.⁴⁴ While the report details a structured risk assessment of a young person who offends, it fails to account for a variety of external factors also pressuring young offenders—such as social groups, school environments, and family relationships—resulting in disproportionate risk assessments for minority groups.⁴⁵ The wide discretion given to probation officers filing these reports also gives rise to ethical concerns, especially regarding biases.⁴⁶ A meta-analysis on probation officer reports conducted in 2008 evaluated juvenile risk

³⁹ Tina Russell, Note, *Youth Mentoring in the Irish Youth Justice Service: Perceptions, Motivations, and Challenges from the Mentor's Perspective*, DUBLIN BUS. SCH., 5 (2016).

⁴⁰ Children Act § 18.

⁴¹ See, e.g., O'Leary & Halton, *supra* note 36, at 98–99 (stating its recommendations are informed by the Youth Level of Service and Case Management Inventory).

⁴² *Id.* at 98–99.

⁴³ *Id.* at 104–05.

⁴⁴ *Id.* at 105.

⁴⁵ See *id.* (noting that the test fails to incorporate the social, cultural, and political contexts influencing young people).

⁴⁶ See *id.*, at 108.

assessments finding that while gender differences did not affect the predictive measure of the risk assessment, it did affect how females were treated in the juvenile justice system.⁴⁷ Despite these problems, probation officers praise various parts of the report, specifically its transparency, base of evidence, and ease of using resources such as research.⁴⁸ Although officers commend these components of the risk assessment, a glaring problem is that professional discretion remains central, as practitioners must use their clinical experience and judgment in their recommendation to the court.⁴⁹ To examine the discretion and authority given to probation officers, one must first look at the pre-sanction reports they are tasked to create.

C. Pre-Sanction Reports

A pre-sanction report (PSR) is prepared by a probation officer upon the request of a judge, following a finding of guilt but in advance of sentencing.⁵⁰ These reports are used to aid in creating a multidimensional picture of the offender from an individual who has had extended contact with them.⁵¹ Probation officers have wide discretion to include an array of details about the offender.⁵² Although the statute mandates pre-sanction reports,⁵³ there is no legislation guiding either their structure or their procedural implementation—the only organization is provided through the agency.⁵⁴ Pre-sanction reports are broken up into four sections: offense(s) current and previous, victim issues, relevant background, and conclusion.⁵⁵ However, the standard

⁴⁷ *Id.* at 108.

⁴⁸ *Id.* at 109.

⁴⁹ *Id.*

⁵⁰ See Nicola Carr & Niamh Maguire, *Pre-sentence Reports and Individualised Justice: Consistency, Temporality, and Contingency*, 14 IRISH PROB. J. 52, 55 (2017).

⁵¹ See *id.* at 56 (noting a rise of risk of violation evaluations that these reports have created).

⁵² *Id.* at 55–56.

⁵³ Children Act § 99.

⁵⁴ See Andrea Bourke, *Pre-Sanction Reports in Ireland: An Exploration of Quality and Effectiveness*, 10 IRISH PROB. J. 75, 83 (2013).

⁵⁵ *Id.* at 84.

organization of this report is not always followed.⁵⁶ Research observed the variation in which these categories were included,⁵⁷ finding that the most incorporated section was the offence(s) section, while the least included section was victim issues.⁵⁸ The variation of these reports has prompted problems throughout the juvenile justice system.

Although varying case-by-case, pre-sanction reports followed a similar structure, which often resulted in omitting certain sections. The offence(s) section included a criminal record of the offender, the attitude of the offender, and their acceptance or denial of the facts.⁵⁹ The victim issues section included a brief description of the victim, if one exists for the crime.⁶⁰ The third section of this report usually provided any relevant background on the offender.⁶¹ This section is intended to provide the judge with information that would help in recommending probation. It also provides for any lack of care by parents contributing to the behavior that caused the offence.⁶² Probation officers are also allowed to get other reports, such as medical reports, to supplement the pre-sanction report.⁶³ Finally, the pre-sanction report ends with a conclusion section. This section allows the probation officer to give their recommendation for the offender, while also providing a risk of reoffending.⁶⁴

Much like the other parts of the Children Act of 2001, pre-sanction reports did not have the necessary implementation mechanisms to guide probation officers in making effective reports. Repeated studies into how these reports are used or why probation officers include particular factors have revealed just how little is known

⁵⁶ See Carr & Maguire, *supra* note 50, at 56.

⁵⁷ See Bourke, *supra* note 54, at 84–86.

⁵⁸ *Id.* at 84–85 (noting adherence to offence(s) current and previous at 70%; adherence to victim issues was at 31%; adherence to relevant offender background and circumstances was at 57%; and adherence to conclusion was at 62%).

⁵⁹ *Id.* at 84.

⁶⁰ *Id.* at 85.

⁶¹ *Id.* at 85–86.

⁶² *Id.* at 86.

⁶³ Children Act § 99(5).

⁶⁴ See O'Leary & Halton, *supra* note 36, at 98–99 (describing that this recommendation is informed by two different Irish agencies: the Youth Level of Service/Case Management Inventory (YLS/CMI), which attempt to present a level of certainty in assessing a youth's likelihood of reoffending).

about this process.⁶⁵ In 2003, the Irish Penal Reform Trust Commission surveyed how judges were using pre-sanction reports but found a lack of consistency with sentencing judges who rarely gave any rationale behind their sentencing.⁶⁶ In 2010, Healy and O'Donnell conducted an empirical analysis narrowing the factors judges weigh in the pre-sanction report to include: previous convictions, presence of intent and seriousness of the crime, quality of the evidence, age, gender, and perceived "respectability."⁶⁷ However, the authors of this report also noted that the judges they surveyed had a severe lack of faith in the juvenile justice system of Ireland, citing opposition to community-based supervision as well as a belief in the inability of the offender to change and an inaccessibility to resources for these offenders.⁶⁸ Despite the lack of cooperation by judges, Irish legal scholars are quick to retort that it is the Irish penal system that is the larger issue.⁶⁹

Ireland, unlike any other common law country in the world, does not have any form of statutory guidelines to aid in sentencing,⁷⁰ creating enormous amounts of discretion for judges when sentencing a child.⁷¹ In this absence of any statutory guidance, judges have prioritized "doing justice on a case-by-case basis over consistency in sentencing and, when asked about what guidance they rely on, some judges explained that 'probation reports' offered guidance that informed their sentencing."⁷² Although Irish judges report that they rely on probation officer reports when sentencing, there remains no legal—only a constitutional—obligation for judges to request a PSR.⁷³ This lack of a requirement caused a decline in the

⁶⁵ See generally Carr et al., *supra* note 25, at 53–54.

⁶⁶ See *id.* at 63.

⁶⁷ *Id.* at 64.

⁶⁸ *Id.* at 63–64.

⁶⁹ See Carr & Maguire, *supra* note 50, at 54.

⁷⁰ *Id.* at 54.

⁷¹ See *id.* at 54. In the absence of this guidance judges turned toward the principle of proportionality. However, when the Law Reform Commission conducted its report in 2013 on Irish sentencing practice, they found this principle lacking in judge's feedback forms. *Id.*

⁷² *Id.* at 54.

⁷³ *Id.* at 57 (noting that while there is a requirement for judges to request a report when considering the imposition of a Community Service Order but most reports remain discretionary).

use of PSRs,⁷⁴ a regression that has not been explained.⁷⁵ Although Ireland's juvenile justice system is plagued by vague interpretations of a statute that they hoped would provide a solution, and further plagued by a lack of information on the effectiveness of their system,⁷⁶ the United States' juvenile justice system could refine Ireland's failures as a means to solve the United States' variety of problems.

III. JUVENILE JUSTICE SYSTEM: UNITED STATES

A. *Rise of Gault and Zero-Tolerance*

Much like the policy behind the juvenile justice system of Ireland, the United States created a system to divert youths from the criminal justice system by protecting them with the State.⁷⁷ By establishing the first juvenile court in Chicago in 1899, the United States protected children through the doctrine of *parens patriae*, in which "the state serves as a surrogate parent to the child when the family fails to meet its obligations."⁷⁸ Early reformers in this new area utilized innovations that are still tentpoles of the juvenile justice court today, including age-based distinctions, indeterminate commitments, and broad jurisdiction over children accused of crimes.⁷⁹ However, it was not until the United States Supreme Court's decision in *Gault* that the juvenile court began to change significantly from criminal court.⁸⁰ Confronted with the issues presented in *Gault*, Supreme Court justices were "[a]ppalled at the frequent

⁷⁴ 2015 AN TSEIRBHÍS PHROMHAIDL: THE PROBATION SERVICE ANN. REP. 1, 59 (noting that the PSRs fluctuated from around 780 in 2012 to around 700 in 2014).

⁷⁵ See Carr & Maguire, *supra* note 50, at 54.

⁷⁶ See Bourke, *supra* note 54, at 81.

⁷⁷ See Tamar R. Birckhead, *Access to Justice: Evolving Standards in Juvenile Justice: From Gault to Graham and Beyond: Delinquent by Reason of Poverty*, 38 WASH. U. J.L. & POL'Y 53, 61–62 (2012).

⁷⁸ *Id.* at 63.

⁷⁹ See *id.*

⁸⁰ See *In re Gault*, 387 U.S. 1 (1967); Adam Saper, *Juvenile Remorselessness: An Unconstitutional Sentencing Consideration*, 38 N.Y.U. REV. L. & SOC. CHANGE 99, 99 (2014).

disregard of rudimentary due process standards by juvenile court judges.”⁸¹

By mandating that all juveniles have the constitutional right to basic due process of law, including the right to counsel,⁸² the privilege against self-incrimination,⁸³ and the right to cross-examine witnesses,⁸⁴ the juvenile court altered its own policy from managing dependence to managing *independence*. Since *Gault*, many have criticized how the juvenile justice system has handled children within the system⁸⁵ and have marveled at the missed opportunity to craft an adjudication process that would address the specific needs of children, such as rehabilitation in lieu of the criminal court experience.⁸⁶ A new policy of “zero tolerance” has emerged in the wake of *Gault*, leading to police and judicial officers operating with a remarkable amount of discretion, which in turn has correlated with a rise in adjudication for many youth offenders.⁸⁷ The logic of this policy has permeated into schools, where control is emphasized, often resulting in the exclusion of difficult young people.⁸⁸ The amount of discretion and power allotted to juvenile-court judges can only be shown to be on the rise in cases over the past few decades.

For the past few decades, juvenile courts have been increasingly active, hearing 1.7 million delinquency cases

⁸¹ Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 772 (2010).

⁸² *Gault*, 387 U.S. at 41.

⁸³ *Id.* at 44-55.

⁸⁴ *Id.* at 57.

⁸⁵ See Birkhead, *supra* note 77, at 68. (“Through the 1980s and 90s, the argument that juveniles received the ‘worst of both worlds’ continued to resonate, as ever greater numbers of young offenders were tried as adults and as the punitive ethos eclipsed the rehabilitative ideal.”).

⁸⁶ See Roger J. R. Levesque, *Juvenile Court Processes*, in ENCYCLOPEDIA OF ADOLESCENCE 1494, 1494 (Roger J. R. Levesque ed., Springer, 2012) (ebook) (noting also the protections that needed to be in place to protect minors depending on the offense and outcomes).

⁸⁷ See Gordon Bazemore, Leslie A. Leip & Jeanne Stinchcomb, *Boundary Changes and the Nexus Between Formal and Informal Social Control: Truancy Intervention as a Case Study in Criminal Justice Expansionism*, 18 NOTRE DAME J.L. ETHICS & PUB. POL’Y 521, 549–50 (2014) (arguing zero tolerance provides strong ideological and normative justification for relaxing barriers with little concern to granting officers wide discretion for tardiness, absence, or suspension in arresting for truancy).

⁸⁸ See *id.* at 533.

in 2008.⁸⁹ This uptick in adjudication proceedings is accompanied by judges believing they are acting in the best interest of the child, because “if [they] don’t act no one else will,”⁹⁰ which in turn is causing families, schools, and other community institutions to look to the juvenile courts to control youth behavior and crime.⁹¹ Sadly, this has left the public to rely on a promise that judges simply cannot keep, prompting the saying, “because you act, no one else does.”⁹² The zero tolerance policy alongside the rise in delinquency proceedings has changed the role of the probation officer to fit this paradigm.

B. Probation Services: United States

The incorporation of due process rights into juvenile justice proceedings has caused probation services for juveniles in the United States to evolve. Although the role of probation officers varies from state to state, there are some consistencies in their main responsibilities.⁹³ Their basic concerns include intake screenings of referred cases, presentence investigations into juveniles, and court-ordered supervision of children.⁹⁴ Probation officers’ assessments are given particular weight in juvenile court because of their ability to develop relationships with offenders.⁹⁵ They are often the best-informed individual with the most sustained contact to provide a full account on behalf of the juvenile.⁹⁶ While probation officers are seen to have a particular place in the juvenile justice system, their true impact has not been studied.⁹⁷ However, this is not the only area in juvenile justice that is lacking empirical analysis.

⁸⁹ See Birckhead, *supra* note 77, at 57–58; see also Sarah Livsey, U.S. DEP’T OF JUST., JUVENILE DELINQUENCY PROBATION CASELOAD, 2007 1, (2010), <https://www.ncjrs.gov/pdffiles1/ojdp/230170.pdf> (noting overall delinquency cases rising forty-four percent between 1985 and 2007).

⁹⁰ See Bazemore et al., *supra* note 87, at 527.

⁹¹ *Id.* at 528.

⁹² *Id.* at 527.

⁹³ See PATRICIA MCFALL TORBET, U.S. DEP’T OF JUST., JUVENILE PROBATION: THE WORKHORSE OF THE JUVENILE JUSTICE SYSTEM 2 (1996), <http://www.ncjrs.gov/pdffiles/workhors.pdf>.

⁹⁴ *Id.*

⁹⁵ See Carr & Maguire, *supra* note 50, at 64–65.

⁹⁶ See Birckhead, *supra* note 77, at 93.

⁹⁷ See, e.g., Lane, *supra* note 1, at 1513–14.

One practice that has seen a remarkable rise within probation offices is the use of risk assessment instruments (RAI).⁹⁸ Probation officers and the juvenile justice system use these instruments to rate each offender for specific detention-related risks.⁹⁹ This allows probation officers to apply a point-scale assessment of two distinct components of risk: public safety risk and failure to appear in court (FTA) after release.¹⁰⁰ Described as a “triage device” meant to uniformly and predictably assess the risk of an offender in the detention-decision process, RAIs are designed to help fully inform the judge in recommending probation.¹⁰¹ Despite the increase in use of these instruments,¹⁰² studies of the actual predictive value of risk assessment instruments or which particular instrument is the most effective have yet to be conducted.¹⁰³

Overall, the process of juvenile probation has lacked any comprehensive analysis, causing a variety of difficulties in proposing changes to this system. While voicing this concern, critics also recognize that confidentiality and privacy concerns create understandable barriers to these studies.¹⁰⁴ Still, although probation is widely used in the juvenile justice system, its effectiveness has not been fully evaluated.¹⁰⁵

⁹⁸ See, e.g., Craig S. Schwalbe, *Risk Assessment for Juvenile Justice: A Meta-Analysis*, L. HUM. BEHAV., 449, 449 (2007).

⁹⁹ See DAVID STEINHART, THE ANNIE E. CASEY FOUND., JUVENILE DETENTION RISK ASSESSMENT: A PRACTICE GUIDE TO JUVENILE REFORM, 5 (2006), <https://www.aecf.org/m/resourcedoc/aecf-juvenile-detention-risk-assessment-1-2006.pdf> (detailing that the overall risk is then used to guide the intake officer to detain or release an arrested youth).

¹⁰⁰ See *id.* at 9–10. However, self-harm is not a component that is used in the assessment, as it was historically used as a means to abuse the need for a child to be recommended for detention.

¹⁰¹ *Id.* at 9.

¹⁰² See Schwalbe, *supra* note 98, at 449 (stating risk assessment utilization has risen from 33% in 1990 to 86% in 2003).

¹⁰³ See *id.*

¹⁰⁴ See Lane, *supra* note 1, at 1513 (“Sometimes courts and probation agencies are reluctant to allow researchers access to their caseloads due to privacy concerns and worries about the effect of public scrutiny on their agencies. There are also more government restrictions on studies involving both adolescents and offenders, because of concerns about the inherent possibility of coercion due to their mental and/or situational vulnerabilities.”).

¹⁰⁵ See *id.*

C. *The Probation Process: Incorporating Presentence Investigations (PSIs) and Risk Assessment Instruments (RAIs)*

Presentence investigations provide the sentencing judge with information about the offender from a reliable individual who has maintained the most consistent contact.¹⁰⁶ It provides the potential risks and needs of the offender, allowing the trial court to provide an appropriate sentence, supervision plan, and treatment service.¹⁰⁷ In addition to being similar to the policy behind pre-sanction agreements, PSIs are also structurally similar to pre-sanction agreements, comprising four main sections: prior offense(s), victim facts, offender's background, and probation officer's recommendation.¹⁰⁸ However, unlike pre-sanction reports, PSIs include details about the risk assessment instrument but not an assessment of the likelihood of reoffending.¹⁰⁹ Probation officers use the RAI to evaluate that risk.

Despite the increase in use across state jurisdictions, RAIs have not been evaluated to determine crucial points of viability.¹¹⁰ While RAIs have been the subject of significant study since their implementation, several important questions, such as whether or not they are viable predictors for recidivism remain unanswered.¹¹¹ In terms of information collected, RAIs are similar to PSIs. RAIs typically include information regarding: offending history, substance abuse, family problems, peer delinquency, and school-related problems.¹¹² These factors are then combined to determine a raw score for the likelihood of reoffending, a score that classifies young offenders as either high-risk or

¹⁰⁶ *Id.* at 1516.

¹⁰⁷ *Presentence Investigation Report Application*, INDIANA JUDICIAL BRANCH, <https://www.in.gov/judiciary/admin/2932.htm> (last accessed Nov. 26, 2017).

¹⁰⁸ *See The History of the Pre-Sentence Investigation Report*, CTR. ON JUV. & CRIM. JUST., http://www.cjcj.org/uploads/cjcj/documents/the_history.pdf (noting that offender-based reports include a summary of the offense, the offender's role, prior criminal justice involvement, and a social history with an emphasis on family history, employment, education, physical and mental health, financial condition, and future prospects) (last visited Jan. 13, 2018).

¹⁰⁹ *See Presentence Investigation Report Application*, *supra* note 107, at 1.

¹¹⁰ *See* Schwalbe, *supra* note 98, at 451.

¹¹¹ *See id.* at 449 (noting that the correlation between the characteristics of risk assessment instruments and higher levels of predictive viability has also not been adequately assessed).

¹¹² *See id.* at 450.

low-risk.¹¹³ Most jurisdictions now use the second or third iteration of this risk assessment, which is based on a statistical correlation between the risk assessment instrument and reoffending.¹¹⁴ Although these revisions attempt to solve the problems of discretion within RAIs, widespread study of their reliability is lacking.¹¹⁵

In addition to the problems in using these reports effectively, RAIs and PSIs are not even mandated in all juvenile cases.¹¹⁶ The Supreme Court has only mandated PSIs in death penalty cases,¹¹⁷ and it refused to hear a case regarding the constitutionality of risk assessment algorithms.¹¹⁸ Despite the lack of clarity at the federal level, many states have begun to rely on these instruments and mandate their use in juvenile cases by statute.¹¹⁹ Indiana is one of these states compelling the use of PSIs in all juvenile felony cases¹²⁰ and RAIs whenever a probation officer recommends services for a child that falls under the probation officer's duty.¹²¹ Although Indiana has elected to implement RAIs in a variety of cases, the redundancy that occurs between PSIs and RAIs can be, and should be, reduced while still giving judges a full picture of an offender.

Indiana has undergone a similar—albeit less dramatic—transformation to Ireland by reinvigorating its juvenile justice department.¹²² After 2010, Indiana began to implement a new version of the risk assessment that used the information gathered in the PSI to inform interviewing tactics and to create a more accurate RAI.¹²³

¹¹³ *See id.*

¹¹⁴ *See, e.g., id.* (noting this is a movement away from the first iteration of the risk assessment, which was more grounded in the impressionistic attitudes of judicial officers).

¹¹⁵ *See id.* at 459.

¹¹⁶ *See id.* at 450 (noting that these assessments need to be tested on a large scale to see if they truly affect recidivism rates).

¹¹⁷ *See Gardner v. Florida*, 430 U.S. 349, 351, 361 (1977).

¹¹⁸ *Wisconsin v. Loomis*, 881 N.W.2d 749, 772 (Wis. 2016), *cert. denied*, 137 S. Ct. 2290 (2017).

¹¹⁹ Levesque, *supra* note 86, at 1494 (noting that the court process can change drastically between state to state).

¹²⁰ *See* IND. CODE § 31-30-4-2 (2014).

¹²¹ *See* IND. CODE § 31-37-17-4 (2014).

¹²² *See* CISC DATA JUVENILE PROJECTS REPORT, *Juvenile Initiatives*, IN.GOV, 1 (Jan. 29, 2016), <http://www.in.gov/children/files/cisc-data-jvenile-projects-report.pdf>.

¹²³ *See Indiana Court Information Technology Extranet (INcite)*, INDIANA JUDICIAL BRANCH, <http://www.in.gov/judiciary/admin/2665.htm> (last visited Nov. 26, 2017).

The Indiana Youth Assessment System (IYAS) has developed six instruments in their new comprehensive program, INcite Risk Assessment, which is aimed at developing an individualized plan for the offender with the goal of reducing recidivism.¹²⁴ One of the main objectives of INcite is to compile and store statewide data that is needed to revalidate tools.¹²⁵ By creating a method for evaluation, Indiana has initiated the means to ensure the most effective iteration of its PSI form, assuming that data is consistently collected. Notwithstanding the recentness of this new instrument, it touts a variety of benefits for offenders, such as its ease of access and its lack of redundancy.¹²⁶ These benefits demonstrate a commitment to a more collaborative juvenile judicial system, and has even received praise from Indiana's Supreme Court.¹²⁷ Despite the innovation of the INcite program, the remaining redundancies in reports and the lack of judicial involvement create a gap in probation services that needs to be addressed.

IV. STATUTORY SOLUTION

Irish probation officers' inability to effectively execute the Children Act's incomplete vision stunted the pre-sanction reports' effectiveness. Despite the increased role of probation officers in this system, departments were left virtually alone to uncover the intricacies of this

¹²⁴ CISC DATA JUVENILE PROJECTS REPORT, *supra* note 122, at 1.

¹²⁵ *See id.* (noting that as of date of this report, INcite has compiled over 171,000 reports on juveniles).

¹²⁶ INDIANA COURT TIMES, *Indiana's New Risk Assessment Tools: What You Should Know*, IND. CT. TIMES, (Apr. 13, 2011)

<http://indianacourts.us/times/2011/04/risk-assessment/> (noting that among its benefits are: system and maintenance are free to every agency, single electronic means for scoring assessment, easily shared to improve communication, easy to add additional sections to report, reduction in duplication between report and agency's local case management system, supervisors may view aggregate data to analyze recidivism rate, ease of access for revalidation, and most up-to-date materials).

¹²⁷ *See Malenchik v. State*, 928 N.E.2d 564, 573 (2010) ("It is clear that neither the LSI-R nor the SASSI are intended nor recommend to substitute for the judicial function of determining the length of sentence appropriate for each offender. But such evidence-based assessment instruments can be significant sources of valuable information for judicial consideration in deciding whether to suspend all or part of a sentence, how to design a probation program for the offender, whether to assign an offender to alternative treatment facilities or programs, or other such corollary sentencing matters.").

monumental Act.¹²⁸ Rather than repeat the mistakes of Ireland's Children Act, this Article proposes to add a statutory provision that corrects the United States' current juvenile-justice system by importing the framework of the Children Act, but filling in the "holes" left in the pre-sanction report section. This section breaks down three distinct subparts of this statutory provision that would create a more inclusive and effective presentence investigation: mandating the implementation of a more integrated presentence investigation, cooperating with judges to ensure these reports are utilized to their fullest, and educating probation officers on their increased role in the juvenile justice system.

A. *Implementing a Mandated Integrated Presentence Investigation*

In 2001, the Irish Oireachtas (legislature) required these pre-sanction reports in every juvenile case due to the policy of restorative justice in Ireland.¹²⁹ While this enactment was an attempt to bolster the child's voice in juvenile justice proceedings, it is a tool whose true impact has yet to be explored.¹³⁰ By acknowledging flaws within the current duties of probation officers reporting to judges, the United States' probation system may use Ireland's framework as a template from which to improve, recognizing that a statutory provision may be needed to address these systematic problems. To import Ireland's current framework could lead to similar neglect of reporting guidelines, which, as a 2010 Garda study

¹²⁸ See *Diverging*, *supra* note 24, at 215.

¹²⁹ See Liam Leonard & Paula Kenny, *Measuring the Effectiveness of Restorative Justice Practices in the Republic of Ireland Through a Meta-Analysis of Functionalist Exchange*, 91 PRISON J. 57, 60 (2011).

¹³⁰ See Lane, *supra* note 1, at 1516; see also Stacy L. Mallicoat, *Gendered Justice: Attributional Differences Between Males and Females in Juvenile Court*, 2 FEMINIST CRIMINOLOGY 4, 10–11 (2007) (stating that these reports can vary to include any of the following based solely on the probation officer's recommendation: "(a) demographic information such as the offender's age, race, and gender; (b) details of the current offense; (c) information regarding victim impact systems and restitution information; (d) details regarding previous delinquency adjudications and contact; (e) family history and background; (f) personal data including the offender's education, employment, mental health, substance abuse history, history of personal violence and abuse, and peer relationships; and (g) status of programs and community placements with which the youth may have been involved").

reports, range between 38% and 92% adherence.¹³¹ This gap in uniform reporting causes a void in the system where children are unable to get the resources they need. The U.S. juvenile justice system is plagued by a similar lack of information regarding the reporting style of probation instruments.¹³²

Although details on the effectiveness of PSIs and RAIs in the juvenile justice system are scarce, research reveals that these reports need to be more adequately assessed.¹³³ By compelling these instruments' use, RAIs and PSIs may be incorporated as they were intended, to aid in the decision making process of judges presiding over juvenile courts.¹³⁴ Additionally, mandating their use in juvenile justice cases widens the opportunity for formal analysis of these instruments.¹³⁵ Although Indiana's juvenile justice system requires PSI reports in every felony case¹³⁶ and RAI reports in every case recommending services,¹³⁷ the majority of crimes in the juvenile justice system are misdemeanors, leaving these reports underutilized.¹³⁸

Despite the desire to make these reports more uniform, critics are quick to point out the potential flaws in making this alteration. Specifically, individuals worry about the dangers that accompany the over-regulation and standardization of probation practices.¹³⁹ Since probation officers are intended to provide therapeutic care for youth offenders, by imposing stricter, more formulaic report, probation officers are substituting care for an administrative approach.¹⁴⁰ By combining the PSI and the RAI, probation officers could avoid this concern—providing judges with an adequate background of the

¹³¹ Bourke, *supra* note 54, at 84 (using topics like current and previous offense(s), victim issues, relevant background, and conclusion as the marking of accuracy).

¹³² See Lane, *supra* note 1, at 1516.

¹³³ See *id.* at 1515.

¹³⁴ *Id.* at 1513 (describing that despite the increase in probation diversion, the fact that “juvenile departments, policies, and practices vary widely across jurisdictions, mak[es] it difficult to get a systematic picture of how juvenile probation is implemented and how it affects youths nationwide”).

¹³⁵ Schwalbe, *supra* note 98, at 451.

¹³⁶ IND. CODE § 35-38-1-8 (2014).

¹³⁷ IND. CODE § 31-37-17-4 (2014).

¹³⁸ See Seymour, *supra* note 13, at 121.

¹³⁹ See O'Leary & Halton, *supra* note 36, at 102–03.

¹⁴⁰ *Id.*

offender while reducing redundancy between the reports. Because the PSI and RAI overlap in a variety of sections,¹⁴¹ probation officers could increase efficiency by merging these forms.

B. Cooperating with Judges

Despite the determinative role of judges in juvenile justice proceedings, not much is known about how they decide to impose probation.¹⁴² This lack of awareness as to how probation officer instruments are used results in offenders falling through the cracks as they were passed between different agencies through the juvenile justice system. Combining the efforts of probation officers and judges to successively divert children from the criminal justice system would fulfill the intent behind the juvenile justice system, while utilizing structures already in place.

The last few decades have seen a rise in judges committed to getting “tough on crime,” carrying over to their attitudes regarding young offenders and harming the rehabilitation process of youths caught in the juvenile justice system.¹⁴³ Although probation services are still widely utilized,¹⁴⁴ the emphasis on crime prevention has changed the motivation behind recommending probation, affecting its enactment. Probation officer reports reflect this disconnect between policy and action, emphasizing the offender rather than the offense.¹⁴⁵ However, by coordinating a cooperative effort by judges and probation officers, offenders can get a more cohesive, accountable system.

The purpose of the juvenile justice system remains the same as when it began: to divert children away from the criminal justice system. To fulfill this objective, judges and probation officers must work together to ensure that juveniles are given the adequate amount of services to lower recidivism.¹⁴⁶ Providing probation officers more feedback on a combined PSI/RAI form would allow

¹⁴¹ See Schwalbe, *supra* note 98, at 450; Bourke, *supra* note 54, at 84–86.

¹⁴² Lane, *supra* note 1, at 1516.

¹⁴³ See Bécharde et al., *supra* note 2, at 608.

¹⁴⁴ *E.g.*, Livsey, *supra* note 89, at 1.

¹⁴⁵ See, *e.g.*, *History of the Pre-Sentence Investigation Report*, *supra* note 108.

¹⁴⁶ See Birkhead, *supra* note 77, at 67.

probation officers to effectively aid judges in their goal. Additionally, judges could provide desperately needed feedback for probation officers.¹⁴⁷ However, this cooperative effort requires judges who are willing and eager to assist probation officers and to acknowledge their own biases in juvenile offenses. To overcome this problem requires an adjustment in thinking. Specifically, it compels judges to look at the multi-dimensionality of problems that exist for young offenders and to utilize probation officers who can aid in giving a more apt description of the offender. For example, in the case of truancy, although one cause could be truant behavior, it could also be due to domestic violence, neglect, negative role models, other factors, or a combination of multiple things.¹⁴⁸ After the Children Act in Ireland, the creation of a specific part of the probation agency, the Young Person's Probation division, utilized this approach in their attempt to use these reports to explain a child's situation, thus giving a more multi-dimensional report.¹⁴⁹

C. Education on Increased Role of Probation Officer

This third component of the statutory mandate ensures that these probation officer reports can be effective long-term. Without a defined system to train probation officers on these combined reports, their uninformed discretion will ultimately create gaps in adequate services for children.¹⁵⁰ But consistent, updated training on reports with a collaborative effort from judges, will, over time, guarantee a sustainable system where young offenders benefit from comprehensive, efficient reports to aid in judges' determinations.

The Children Act of 2001 lacks comprehensive education for parties participating in the juvenile justice system: judges, children, probation officers, and Garda

¹⁴⁷ Lane, *supra* note 1, at 1516.

¹⁴⁸ Bazemore et al., *supra* note 87, at 540 (arguing that the treatment of these problems requires looking beyond the scope of the personal identities of truants to focusing on school, community, and family-related factors).

¹⁴⁹ See Quigley, *supra* note 27, at 68.

¹⁵⁰ See Bourke, *supra* note 54, at 79.

Síochana officials.¹⁵¹ Failing to adequately educate these parties on the comprehensiveness of this new system has led to a variety of gaps in implementation.¹⁵² And these gaps have continued to impede Ireland's juvenile justice system.¹⁵³ By requiring probation officers to undergo initial training about the policy of these reports, how judges use reports, and how to craft an effective presentence investigation that aids the offender and judge in court, these reports can be used as they were intended.

Although Indiana has incorporated the need for inter-agency cooperation in its new INcite program,¹⁵⁴ the lack of judicial involvement needs to be addressed if this program is to have lasting sustainability in the court system. The Supreme Court of Indiana determined that these risk assessment instruments are merely to aid in the juvenile justice process, not to take the place of judicial determination, leaving little room for cooperation between groups.¹⁵⁵ After implementing these new policies, judges were invited to participate in a summit on their impact and effective uses.¹⁵⁶ Despite claims of adequate training for all users of these assessments,¹⁵⁷ increased judicial input is necessary to determine the effectiveness of this scheme.

¹⁵¹ See *Diverging*, *supra* note 24, at 222.

¹⁵² *Id.* at 223 (noting that neither lawyers nor judges were educated on the operation of the Children Court).

¹⁵³ See Carr & Maguire, *supra* note 50, at 68–69 (describing the ambiguity that exists in the statute and the reliance on seemingly archaic legislation creates a difficult framework for an effective juvenile justice system to exist).

¹⁵⁴ *The Indiana Risk Assessment System (IRAS) and the Indiana Youth Assessment System (IYAS)*, IND. JUD. BRANCH, <https://www.in.gov/judiciary/pscourts/2762.htm> (last accessed Nov. 26, 2017) (noting that the IYAS goal is to improve communication and cooperation between the Indiana Department of Correction, county supervision, and parole).

¹⁵⁵ *Indiana's New Risk Assessment Tools*, *supra* note 126.

¹⁵⁶ *Id.*

¹⁵⁷ *The Indiana Risk Assessment System (IRAS) and the Indiana Youth Assessment System (IYAS)*, *supra* note 154.

V. FEASIBILITY OF COMPREHENSIVE PRESENTENCE INVESTIGATIONS

A. *Presentence Investigations and Risk Assessment: Making a Report That Matters*

This Article's proposal not only suggests increasing the reporting requirements and the reporting procedures of probation officers, but also compelling judges to take a more collaborative approach to juveniles in a resource-deprived system. But why would they? Why should they? A first glimpse at the Irish juvenile system data reveals that such a substantive change does not necessarily result in effective reporting for juveniles.¹⁵⁸ However, a more in-depth analysis reveals that a comparison to Ireland demonstrates the potential feasibility of such a scheme,¹⁵⁹ while also providing a prototype, which the United States could then alter to realign with its own juvenile justice policies and priorities.

The United States can use Ireland's decade-long battle of implementation and empirical study as a template for how to proceed in statutorily mandating the enactment and combination of these two forms. Although Ireland's Children Act of 2001 did not provide the mechanisms to create effective pre-sanction reports, the United States can fill in these gaps by combining the RAI and PSI forms and detailing how probation officers are to proceed with this new instrument. In addition, the United States can stress the importance of this new form, while increasing the work of probation officers, ultimately cutting down on the redundancy that sometimes accompanies reporting in juvenile justice cases.

The largest potential problem with this system is the lack of an empirical study of the U.S. juvenile justice system, leaving out other complexities not considered in

¹⁵⁸ See Carr & Maguire, *supra* note 50, at 68 (describing the lack of clear legislative guidelines creates a variety in the types of reports being written, which can have "serious repercussions for fairness and consistency in sentencing").

¹⁵⁹ See *id.* at 65 (noting the secondary purpose of probation officers and judges during this process: the ability of the report to describe to the judge a willingness to change).

this Article.¹⁶⁰ Although the homogenous Irish society has its own complications in the juvenile system, the culture of its juvenile justice system is different than that of the United States. So, when a problem such as differential reporting style, which correlates with gender and minority status, occurs in Ireland,¹⁶¹ the fear that a similar error could occur in the U.S. needs to be adequately protected against.¹⁶² While Indiana's INcite program allows for continual reexamination of the risk assessment instruments, critical examination of potential bias is needed.

CONCLUSION

Since the construction of the juvenile court, the United States has seen a rise in the putative sentiments that detract from its rehabilitative policy. Within this system, probation officers and judges play a hands-off game with offenders, passing offenders off as they "advance" through the judicial system. Although juvenile justice systems in the United States, including Indiana, have opted towards using risk-assessment instruments more actively, there are a variety of issues that still accompany this recently enacted system. By incorporating this statutory provision, it would create a more collaborative system committed to juveniles.

With the Children Act of 2001, Ireland attempted to enact its vision of a more child-centered juvenile justice system. However, due to gaps within the Act, the implementation has not fully brought about this vision. Although certain states, such as Indiana, have begun to utilize certain reforms to juvenile screening and assessment, there is still potential for growth to align

¹⁶⁰ Other complexities include the privatization of the prison system, cultural differences, among other variables that change between the United States and Ireland. *Compare Facts & Figures*, IRISH PENAL REFORM TRUST, <http://www.iprt.ie/prison-facts-2> (last visited May 5, 2019), with Pete Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, PRISON POL'Y INITIATIVE (Mar. 14, 2018), <https://www.prisonpolicy.org/reports/pie2018.html> (noting these differences in systems as well as the sheer number of individuals affected).

¹⁶¹ See Bourke, *supra* note 54, at 80 (noting that reports of ethnic minorities were more likely to be thinner and weaker, giving unclear recommendations).

¹⁶² See Mallicoat, *supra* note 130, at 24 (highlighting gender as a particularly significant predictor for attribution type "in that probation officer use positive internal high culpability and positive external low culpability attributions compared to males" when making determinations in the United States).

with the ultimate policy of the juvenile court system. Indiana's restructuring of its probationary reporting style, alongside the creation of IYAS, seemingly filled many of the statutory gaps that seemed to exist. However, the INcite's implementation remains incomplete.

By incorporating this Article's proposal: a new probation officer report, a combination of the presentence investigation and risk assessment instrument; judge responses on these reports; a commentary on the useful components of their report; and finally, an evaluative education system, one that emphasizes the changes that occurred and how it has effected the reporting process, these presentence investigations may be appropriately utilized by the Court.¹⁶³ This will cease unnecessary and redundant reporting requirements thus giving the court a more accurate description of young offenders, while offering a more participatory role for probation officers and young offenders in the judicial system.¹⁶⁴ A revitalized presentence investigation would divert youths away from the school-to-prison pipeline that seems to plague the United States' current system, resolving a consistent and overwhelming problem and avoiding the pitfalls that have accompanied recent juvenile justice policies.

¹⁶³ CISC DATA JUVENILE PROJECTS REPORT, *supra* note 122, at 2.

¹⁶⁴ *Id.*