

9-1-1997

Dangerous Offender Legislation: A Short Term Solution to a Long Term Problem

Amy M. Lageman

Follow this and additional works at: <http://elibrary.law.psu.edu/psilr>



Part of the [Criminal Law Commons](#)

Recommended Citation

Lageman, Amy M. (1997) "Dangerous Offender Legislation: A Short Term Solution to a Long Term Problem," *Penn State International Law Review*: Vol. 16: No. 1, Article 5.

Available at: <http://elibrary.law.psu.edu/psilr/vol16/iss1/5>

This Comment is brought to you for free and open access by Penn State Law eLibrary. It has been accepted for inclusion in Penn State International Law Review by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

Dangerous Offender Legislation: A Short Term Solution to a Long Term Problem

I. Introduction

Worldwide, a new trend in the law is capturing the outrage of the public and the imagination of legislators: legislation designed to punish sex offenders and protect the public. This legislation encompasses a desire for community protection, a need for retribution, and a disregard of civil rights. Many of the English-speaking countries have recently introduced, or are wrestling with the introduction of, laws that fall under the rubric of "dangerous offender legislation."¹ These laws carry grave implications for those criminals dubbed dangerous offenders. Not surprisingly, the criminal most likely to be considered a dangerous offender is a repeat violent or sexual offender whose behavior indicates a high probability of committing further crimes in the future.²

The emergence of such legislation in Canada, Australia, and the United Kingdom is the focus of this comment. The Australian province of Victoria introduced dangerous offender legislation in 1993 in an amendment to its sentencing act.³ Canada and the

1. John Pratt, *Governing the Dangerous: An Historical Overview of Dangerous Offender Legislation*, 5 SOC. & LEGAL STUD. 21 (1996).

2. *Id.* at 21.

3. Richard G. Fox, *Legislation Comment: Victoria Turns to the Right in Sentencing Reform: The Sentencing (Amendment) Act 1993 (Vic.)*, 17 CRIM L. J. 394, 395 (1993).

United Kingdom are currently engaged in a debate over the enactment of dangerous offender legislation.⁴ What is remarkable about the situations in these three countries is the similarity of their proposals and their debate. This comment reviews the provisions of the proposed and enacted legislation dealing with repeat sex offenders. These provisions can be broken into three categories: extended supervision after release from prison⁵, mandatory life sentences⁶, and abolition of remission of sentences.⁷

Part II examines the historical background of dangerous offender legislation, from its origin as legislation to protect against crimes to property to its transformation into laws protecting the community and its individuals from crimes against the person.⁸ This part also focuses upon the impetus behind the current legislation in Canada, Australia, and the United Kingdom, the sparks that brought this legislation to the forefront of public concern.

Part III details Canada's, Australia's, and the United Kingdom's current laws and proposals relating to the imprisonment and monitoring of sex offenders. It describes the relevant portions of the legislation impacting sex offenders, such as extended sentencing, community supervision, restrictions upon movement, and the registration of addresses with the authorities.

Part IV examines each country's variation of these provisions within a framework of competing rights: the rights of the victim and the community to be safe from violent sexual crime versus the right of the criminal to serve a reasonable sentence and be released without unreasonable restrictions placed upon his behavior.

Part V summarizes the comment, concluding that legislators should not sell the hard won civil rights of their countries for the uncertain and short term gain represented by this type of legislation.

4. See HOME OFFICE, SENTENCING AND SUPERVISION OF SEX OFFENDERS: A CONSULTATION DOCUMENT, 1996, Cmnd. 3304. See also Steve Bindman & Charles Rusnell, *New Law Not Tough Enough, Say Critics*, THE EDMONTON J. (Canada), Sept. 18, 1996, at A3, available in 1996 WL 5147731.

5. HOME OFFICE, *supra* note 4, para. 2.

6. J.N. Spencer, "Protecting the Public"—*The Government's Strategy on Crime*, 160 JUST. PEACE & LOC. GOV'T L. 346, 347 (1996).

7. Fox, *supra* note 3, at 402.

8. Pratt, *supra* note 1, at 21.

II. Historical Background of Dangerous Offender Legislation

While the enactment of laws to deal with repeat sex offenders is a relatively recent phenomenon, laws dealing with offenders perceived to present a threat to society are not. These laws have moved through a continuum, first focusing on crimes against property followed by the modern focus on crimes against the individual's person.

A. *The Continuum: From Property to Personal Crimes*

The original dangerous offenders were habitual criminals whose crimes focused upon the taking or destruction of property.⁹ First introduced around 1890, dangerous offender laws recommended indefinite sentencing to remove the threat represented by the habitual criminal.¹⁰ The idea was to render the offender incapable of committing another crime for as long as possible.¹¹ These criminals were not feared for the depravity of their actions, but rather for the habitualness of their criminal activity, which indicated that they were beyond any form of redemption within the criminal system.¹² Since society viewed these criminals as unredeemable, it considered itself besieged by the unidentifiable offender who indiscriminately took from every member of the community:

A man who kills his personal enemy excites no dread in the breasts of strangers In contrast with this, take the case of a commonplace burglary. Never a night passes that some crime of this kind is not committed in the metropolis. No one can be certain, as he shuts his door and lies down to sleep, that the sanctity of his home will not be thus outraged before morning.¹³

Not until the 1930s were sexual offenses included in dangerous offender legislation.¹⁴ The focus of this early legislation was

9. *Id.* at 23.

10. John Pratt, *Dangerousness, Risk, and Technologies of Power*, 28 AUSTL. & N.Z. J. CRIMINOLOGY 1, 5-6 (1995). The first laws were introduced at the 1890 Congress of the International Union of Criminal Law at St. Petersburg. *Id.*

11. *Id.*

12. *Id.* at 9-10.

13. Pratt, *supra* note 1, at 24 (quoting R. Anderson, *Our Absurd System of Punishing Criminals*, THE NINETEENTH CENTURY, February 1901, at 269). These criminals were 'unknowable' in the sense that they were practitioners of fraud and impersonation, givers of false identity who could not afterward be located. *Id.*

14. *Id.* at 24.

homosexual offenders, for society perceived homosexuality as a threat to the survival of the community as a whole.¹⁵ As property became easily replaceable and insurance arrived to cover individual losses, petty thievery and robbery became less important than the preservation of the population itself.¹⁶ This evolution led to another. The criteria for dangerousness no longer focused solely upon a criminal's past offenses, but also considered the need for community protection from such individuals after their release.¹⁷ Thus the defense of society became the overriding mandate of dangerous offender legislation.

Despite the outcry against such criminals, the dangerous offender laws remained largely unused.¹⁸ By 1945 in New Zealand, only 605 offenders were declared habitual criminals, despite the existence of such legislation for forty years.¹⁹ The United States had no better record, for although much of its dangerous offender legislation included those labeled sexual psychopaths, it was never utilized by the enacting states.²⁰ In reality, of all the countries of the Western world where dangerous offender legislation was in place, it was significantly enforced in only three jurisdictions: Soviet Russia, Fascist Italy, and Nazi Germany.²¹ Thus, in the past, such legislation was either not used at all or employed as an extreme measure of punishment.

The current crop of dangerous offender legislation is different from its predecessors in that it focuses almost solely upon violent and/or sexual offenders.²² These measures are based upon the crimes an offender will likely commit in the future, rather than upon crimes committed in the past.²³ The new legislation is also accompanied by a strong political rhetoric holding out the safety of the community as dependent on these laws. This transformation of dangerous offender legislation is largely due to the growth of the women's movement calling for the recognition that "sexual victimization . . . may be regarded as widespread and in some

15. *Id.* at 25. This fear was related to the outbreak of World War II, with its dogma of racial extermination, and the necessity of rebuilding after the war, when every life was precious and the reproduction of life was also highly valued. *Id.*

16. *Id.* at 26-27.

17. Pratt, *supra* note 10, at 23-24.

18. *Id.* at 18.

19. *Id.*

20. *Id.*

21. *Id.* at 20.

22. Pratt, *supra* note 10, at 31.

23. *Id.*

senses a 'normal' experience of females . . . it cannot be regarded as rare . . . or as an aberrant exception."²⁴ It is a sad reality that sexual assault is an overwhelming problem, probably originating from "an essentially social rather than psychological character and may . . . combine cultural imperatives that endorse the use of violence to solve interpersonal conflict with a dominant male culture and misogynistic legal system."²⁵ Also instrumental in the change is the fact that life itself is now considered sacred, such that the dangers to it are all the more threatening and the need for its protection, in turn, has become much greater.²⁶ In addition, the media has played a role in this change, for "the fact that our sources of information about crime highlight the existence of 'dangerous criminals' makes them a potential threat to all of us, however oblique and far removed the distance between 'them' and 'us'."²⁷ This combination of a heightened awareness of a woman's right to protection, the sheer preciousness of 'life' itself, and a communication network bringing to everyone the most depraved crimes as a lead on the evening news are the fundamental underpinnings of the recent reintroduction of dangerous offender laws.

B. The Current Debate Over Dangerous Offender Legislation in Canada, Australia, and the United Kingdom

Dangerous offender legislation is hotly contested in every country in which it is introduced. By some, namely the drafters of the legislation and victims' rights groups, the laws are hailed as the savior of the community, as the government finally getting tough on crime, and as a recognition of the rights of women and children to be free from danger in their everyday lives.²⁸ There are those, however, who take a more cautious approach to this legislation. Psychiatrists and psychologists who work with these offenders are particularly skeptical when the legislation is upheld as the best and

24. R. G. Broadhurst & R. A. Maller, *The Recidivism of Sex Offenders in the Western Australian Prison Population*, 32 BRIT. J. CRIMINOLOGY 54, 71 (1992).

25. *Id.* at 72.

26. Pratt, *supra* note 10, at 38.

27. *Id.* at 39-40.

28. See Jason Bennetto, *Abusers Who Seek Work with Young Face Jail*, THE INDEPENDENT (London), June 18, 1996, at 4, available in 1996 WL 9933785. See also Mark Bruer, *Think Before We Allow Arrest for Loitering*, THE AGE, (Melbourne), Nov. 19, 1993, available in LEXIS, Aust Library, Allnews File. See generally Paul McKeague, *Victims' Rights Rally goes to the Hill*, WINDSOR STAR (Canada), Sept. 28, 1995, available in 1995 WL 3630523. "We know that the key concern has to do with the protection of society, especially from violent offenders We know that more has to be done and it will be done." *Id.*

only way to deal with a sex offender.²⁹ Therefore, the decision to impose this legislation hinges on a balancing of rights: those of the victim and the community versus those of the criminal. So far, the sympathy is where one would expect it to lie, with the victim.

1. *The Debate in Canada.*—Canada is currently struggling over whether or not to implement dangerous offender laws. The combination of factors that sparked the debate is not surprising: a heightened awareness of the rights of women and children coupled with an outbreak of crime to highlight the inadequacies of the current system.³⁰ Canada's participation in the Fourth United Nations World Conference on Women in Beijing, China, demonstrated for the nation the rights and needs of women.³¹ Mrs. Finestone, Canada's Secretary of State for the Status of Women and Multiculturalism, stated that the Conference "reaffirmed that women have the right to live their lives free of discrimination, violence, and coercion. Too many women in Canada continue to suffer various forms of abuse at the hands of partners, acquaintances, or strangers, simply because they are women."³² In Canada, 51% of all women have experienced at least one incident of physical or sexual violence since age 16 and 90% of all sexual assaults go unreported.³³ Such statistics, however, are merely dry numbers until a crime captures the outrage of a nation.

Just such a crime did occur when 23 year old Melanie Carpenter was abducted from her place of employment, sexually assaulted, and murdered.³⁴ The murderer was a violent offender released after serving two-thirds of his sentence, as is customary under Canadian law.³⁵ The Canadian legislation under fire is the Corrections and Conditional Release Act of 1993, which mandates

29. See Gina Kolata, *Sex Offenders: Facts and Myths*, MONTREAL GAZETTE (Canada), Sept. 4, 1996, at B1, available in 1996 WL 4202057.

30. See generally *Violence Against Women a Violation of Women's Human Rights*, CAN. NEWSWIRE (Canada), Nov. 27, 1995, available in LEXIS, Canada Library, Canpub File. See also Tim Harper, *Victims to Rally for Vote on Crime Bill*, TORONTO STAR (Canada), Sept. 27, 1995, at A10, available in 1995 WL 6016910.

31. *Violence Against Women a Violation of Women's Human Rights*, *supra* note 30.

32. *Id.* Mrs. Finestone also indicated that "eliminating violence remains a priority of the Canadian government." *Id.*

33. *Id.* (quoting *The Violence Against Women Survey*, Statistics Canada, THE DAILY, Nov. 18, 1993).

34. McKeague, *supra* note 28.

35. Harper, *supra* note 30, at A10. Here, Reform MP informed the Canadian Justice Minister that "government legislation contributed to her death." *Id.*

statutory release of a criminal after he has served two-thirds of his sentence, unless a detention hearing is requested and granted by the parole board.³⁶ The clamor in Canada is similar to the clamor elsewhere: our women need protection, our children need to be safe, and our legislation needs to be reformed to do so.

2. *The Genesis of the Australian Sentencing Legislation.*—An Australian province, Victoria, enacted its own version of sentencing reform in 1993, by amending its sentencing statute.³⁷ While this legislation has not been implemented at the national level of government, it still sets an example for the other Australian provinces considering such legislation, and indeed, for other countries as well. Although Victoria experienced two very severe random shootings in public places in the late 1980s, the impetus for these amendments and the debate over sentencing reform truly began with one man, Garry David.³⁸

Garry David was a violent repeat offender due to be released in the early 1990s.³⁹ To prevent this, the Victorian government introduced a piece of “one-man” legislation, the Community Protection Act of 1990, whereby a Supreme Court judge was empowered to order Garry David’s preventive detention if it was shown that he presented a serious risk to the community.⁴⁰ After much debate, the bill was tabled, with the Attorney General stating that it “was only a ‘temporary’ measure and that further general provisions for the preventive detention of dangerous offenders would be introduced into the legal system.”⁴¹ Such general provisions were introduced in the sentencing amendments of 1993, in the words of the Attorney General, “to keep criminals like Hannibal the Cannibal Lechter from being released from Victorian prisons.”⁴² The government believed that by enacting the legisla-

36. *Six Steps to Parole: Under the Corrections and Conditional Release Act, There are Six Types of Release Available to Prisoners*, VANCOUVER SUN (Canada), Feb. 4, 1995, at A3, available in 1995 WL 3499749. See also Corrections and Conditional Release Act, R.S.C. Ch. 20, § 127(3) (1992) (Can.).

37. See Fox, *supra* note 3.

38. Leanne Craze & Patricia Moynihan, *Violence, Meaning and the Law: Responses to Garry David*, 27 AUSTL. & N.Z. J. CRIMINOLOGY 1, 8 (1994).

39. *Id.* at 9. Garry David began committing crimes at age eleven and over a sixteen year period was convicted over seventy times. *Id.*

40. *Id.* at 20.

41. *Id.* The Community Protection Act became superfluous on June 11, 1993, when Garry David died in prison from self-inflicted wounds. Craze & Moynihan, *supra* note 38, at 22-23.

42. *Id.* at 22.

tion, it fulfilled the wishes of the general public, who wanted its government to institute strong measures to fight crime.⁴³

3. *The Debate in the United Kingdom.*—The United Kingdom's current goal is simple: to crack down on rapists and child abusers.⁴⁴ The statistics cited in its government White Paper "Protecting the Public" are not good, as a reported 217 offenders were convicted of a second serious violent or sex offense in 1994, but only 10 of those 217 offenders received a discretionary life sentence.⁴⁵ Michael Howard, the Home Secretary and author of the White Paper and a consultation paper, "Sentencing and Supervision of Sex Offenders," stated "there needs to be better protection for the public from those who carry out sexual offences. Such crimes can have a devastating effect on the victim."⁴⁶ The consultation paper makes clear the underlying assumptions of the reform movement. Sex offenders are seen as almost incapable of controlling their urges for "once a pattern of repeated sex offending is established, the risk of re-offending persists over many years, perhaps for life."⁴⁷ Additional need for community protection arises from the belief that sex offenders manipulate their surroundings so as to maximize their opportunities to offend, as well as from the idea that sex offenders never truly accept the gravity of their crimes.⁴⁸ The consultation paper also highlights deficiencies in the current law requiring reform.⁴⁹ Here, the main criticism is that sex offenders often have to be released from custody even though they represent an active threat to the community.⁵⁰ Other concerns are that once a sex offender's period of supervision in the community ends, the government has no means of monitoring his activities.⁵¹ In cases of short sentences or limited community

43. Fox, *supra* note 3, at 395.

44. Bennetto, *supra* note 28, at 4.

45. Spencer, *supra* note 6 at 348. *See also* Criminal Justice Act, 1991, ch. 53, § 2(2)(b) (Eng.). Here, the judge has the authority to pass a custodial sentence other than that mandated by law "where the offense is a violent or a sexual offense, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender." *Id.*

46. Bennetto, *supra* note 28, at 4.

47. HOME OFFICE, *supra* note 4, at para 2.

48. *Id.*

49. *Id.* at para. 11.

50. *Id.*

51. *Id.*

supervision, it is difficult to engage a sex offender in a treatment program.⁵²

The United Kingdom, especially its public, is also very much aware of what other countries are doing with their sex offenders and these comparisons in turn put pressure on the government to update its laws.

Whereas in Britain even some employers and professionals have difficulty checking up on the criminal record of staff who work with children, in America members of the public can call in on their local police department and look up the names of sex offenders in an expanding library of files.⁵³

While these perceptions of how the laws in other countries function may give them too favorable an assessment, the incorrectness of such perceptions does not help a government to reason with a public that emphatically views such methods as the best, and perhaps only, possible solution.

III. An Analysis of the Current Legislation and Proposals

This first analytical section reports on the current laws or proposals in Canada, Australia, and the United Kingdom, focusing upon the provisions designed to mitigate the threat posed by repeat sex offenders. This is followed by a section discussing the advantages and disadvantages of these proposals for both the victim and the criminal. It examines the governmental justification for the proposals in light of the consequences for the sex offender. These sections suggest that, as horrible as a sexual offense is to a victim and as deserving of punishment the convicted criminal may be, the dangerous offender legislation resembles a heated emotional reaction rather than a viable, long term solution to a very grave problem.

A. *The Canadian Proposals*

Canada's current sentencing laws regarding sex offenders leave the public feeling unsafe. Canada's primary sentencing statute, the Corrections and Conditional Release Act, has as its guiding principle "that the protection of society be the paramount consider-

52. HOME OFFICE, *supra* note 4, at para. 11.

53. Jenny Cuffe, *PROTECTION: The Menace in Their Midst*, THE GUARDIAN (London), Oct. 4, 1995, at 2, available in 1995 WL 9938193.

ation in the corrections process.”⁵⁴ The stated purpose of the statute is to ensure a just, peaceful, and safe society by carrying out the offender’s sentence in a humane manner and by assisting in the offender’s rehabilitation and reintroduction into society.⁵⁵ While these goals appear to nicely complement each other on paper, society perceives that its protection requires measures not ‘just’ or ‘humane’ in the strictest sense of the word.

There are six types of release under the statute: full parole, day parole, statutory release, escorted temporary absences, unescorted temporary absences, and work release.⁵⁶ The public dissatisfaction lies with the provisions of the act that allow for release of the criminal before the full sentence has been served.⁵⁷ Under full parole, a criminal can request the right to be released “under specified conditions and supervision” after one-third of his sentence is served.⁵⁸ The statutory release provision is even more inflammatory because criminals are entitled to release after they have served two-thirds of their sentence, once again under “specified conditions and supervision,” although the release can be denied if officials request a detention hearing to which the parole board agrees.⁵⁹

While these provisions seem to strike the proper balance of equity between the victim’s right to see her attacker jailed and the criminal’s right to serve a humane sentence, the victims are not satisfied.⁶⁰ Dissatisfaction runs high particularly when the released criminal commits another crime, as did the murderer of Melanie Carpenter.⁶¹ So what is a beleaguered government to do? As with the other governments faced with this dilemma, Canada has introduced very restrictive measures in relation to its criminals.

54. Corrections and Conditional Release Act, R.S.C. Ch. 20, § 4(a) (1992) (Can.). The sentence is also supposed to be carried out with regard to all relevant information, such as the recommendations of the sentencing judge, and any other information from the trial, sentencing process, or the victim or criminal in an attempt to ensure the fairest possible sentence. *Id.* at § 4(b).

55. *Id.* at § 3(a) & (b).

56. *Six Steps to Parole*, *supra* note 36, at A3.

57. McKeague, *supra* note 28. Victims’ rights demonstrators presented Justice Minister Allan Rock with 520,000 signatures on petitions demanding reforms. *Id.*

58. *Six Steps to Parole*, *supra* note 36, at A3.

59. *Id.*

60. See generally McKeague, *supra* note 28.

61. Harper, *supra* note 30, at A10.

The proposal which would amend the Criminal Code is known as Bill C-45.⁶² This bill creates a "long-term offender" designation which allows judges to require that convicted sex offenders submit to an additional 10 years of post-parole supervision.⁶³ Currently, offenders released on parole or statutory release continue to serve their sentence of imprisonment in the community by meeting the terms and conditions of their release until such time as the actual sentence has expired.⁶⁴ The new form of supervision requires a sex offender to report to a supervisor and attend counseling and also prevents him from possessing firearms.⁶⁵ Any judge declaring a criminal a "long-term offender" must then sentence that criminal to an indefinite prison term, possibly life.⁶⁶ Further, judges have the discretion to impose electronic monitoring on a criminal up to a year after his release if there is a reasonable belief that the criminal will commit a serious personal injury crime.⁶⁷ The final provision requires that only one psychiatrist, instead of the current two, testify during the court proceeding in order to have a criminal declared a dangerous offender.⁶⁸ Bill C-45 has been met with acclaim by some and concern by others.⁶⁹ The approval from the victims' rights groups and police officers weighs much more heavily in favor of the provisions than the cautions of the legal experts on

62. David Vienneau, *Rock Cracks Down on Sex Offenders, Bill Proposes Supervision After Time Served*, TORONTO STAR (Canada), Sept. 18, 1996, at A2, available in 1996 WL 3387404.

63. *Id.*

64. Corrections and Conditional Release Act, R.S.C., Ch. 20, § 128(1) & (2) (1992) (Can.).

65. Stephen Bindman & Alexander Norris, *Police Chiefs Hail New Get-Tough Law on Sex Offenders: But Lawyers, Prisoner Groups Says Parts are Unconstitutional*, MONTREAL GAZETTE (Canada), Sept. 18, 1996, at A12, available in 1996 WL 4204074.

66. Vienneau, *supra* note 62, at A2.

67. *Id.* Electronic monitoring consists of having the criminal wear a tamper resistant ankle bracelet that allows authorities to monitor him, thus ensuring he does not visit places such as schools or bars. *Id.* This provision, however, only applies in the provinces currently using electronic monitoring of which there are only four. *Id.*

68. Bindman and Rusnell, *supra* note 4, at A3.

69. As of the date of publication, the proposed amendments to the Criminal Code are still under debate in the Canadian legislature. See Stephen Bindman, *Monitoring Out: Rock Drops Criminal Code Change to Allow Electronic Tracking of the Dangerous*, CALGARY HERALD (Canada), Mar. 5, 1997, at A12, available in 1997 WL 5641735. While judges are still allowed to impose electronic monitoring upon a person believed to be capable of committing a serious personal injury crime, the amendments merely will not require judges to impose this form of punishment. *Id.*

civil rights violations and researchers who say that this is not the best solution to rehabilitating sex offenders.⁷⁰

B. The Provisions of the Victorian Sentencing Amendments

The Victorian sentencing amendments hinge on a criminal being labeled a "serious sexual offender."⁷¹ A serious sexual offender is someone "convicted in the past of two or more sexual offenses for each of which he or she earned a sentence of imprisonment or detention in a youth training center."⁷² The court, in determining whether to name a criminal a serious sexual offender, considers multiple factors such as "the nature of the offense, the defendant's prior convictions, age and character, any medical, psychiatric or prison reports, and the risk to the community if the sentence were not imposed."⁷³ The burden is on the sex offender to demonstrate that he should not be declared a serious sexual offender.⁷⁴ Under this law, sexual offenses are defined very broadly, including crimes ranging from rape to assault with intent to rape to abduction of children.⁷⁵

If considered a serious sexual offender the criminal is subject to an indeterminate sentence which begins to run after the regular sentence required by law expires.⁷⁶ The indeterminate sentence is reviewed every two years, unless a review is initiated by the Attorney General or the criminal himself, under exceptional circumstances.⁷⁷ This process continues until such time as the offender is deemed safe to release into the community.⁷⁸ A new provision was added to the purposes of sentencing, instructing the court to "regard the protection of the community as the principal purpose for which the sentence is imposed."⁷⁹ In order to achieve this purpose, the sentencing judge may impose a sentence which is

70. Bindman and Norris, *supra* note 65, at A12.

71. See generally Fox, *supra* note 3.

72. *Id.* at 396.

73. Michael Magazanik, *War on Sex Offenders*, THE AGE (Melbourne), Mar. 24, 1993, available in LEXIS, Aust Library, Allnws File.

74. *Id.*

75. Fox, *supra* note 3, at 397. The full definition of sexual offenses includes rape, indecent assault with circumstances of aggravation, assault with intent to rape, incest under 18, sexual penetration of children up to 16, indecent and other sexual acts with children under 16, abduction and detention of children, conspiracy, incitement, or attempt to commit any of the above offenses. *Id.*

76. Magazanik, *supra* note 73.

77. *Id.*

78. *Id.*

79. Fox, *supra* note 3, at 400.

longer than the amount considered proportionate to the gravity of the offense.⁸⁰ Judges are no longer allowed to take into consideration the abolition of remission of sentences when sentencing a serious sexual offender.⁸¹ This results in an immediate one-third increase in an offender's jail term.⁸² Also increasing a serious sexual offender's jail term is the requirement that an offender convicted of multiple offenses be given consecutive, rather than the customary concurrent, sentences.⁸³

The first sentence of indefinite imprisonment occurred in the case of Kevin J. Carr in 1995.⁸⁴ He was convicted of raping an elderly woman in a public restroom.⁸⁵ The judge handed down the indefinite sentence because Mr. Carr's medical reports, coupled with the manner of his attack, demonstrated to the court that he had "an impulsive desire for sexual gratification with little regard to the consequences" and "that he had difficulty in learning from experience and modifying his behavior and his re-entry into the community would have to be gradual and closely supervised."⁸⁶ The fact that the first instance of a criminal being given an indefinite sentence occurred two years after the introduction of the legislation suggests one of two things: either the crime rate in Victoria has drastically decreased or the sentencing judges are not as pleased with their new-found discretion to indefinitely jail a criminal as is the community.⁸⁷

C. *The Governmental Push for Reform in the United Kingdom*

The current debate over dangerous offender legislation in the United Kingdom began with the publishing of a White Paper on

80. *Id.* at 400.

81. *Id.* at 402.

82. Magazanik, *supra* note 73.

83. *Id.*

84. Stewart Oldfield, *Station Rapist Gets First Indefinite Sentence*, THE AGE (Melbourne), May 26, 1995, available in LEXIS, Aust Library, Allnws File.

85. *Id.*

86. *Id.*

87. As of the date of publication, the Victorian legislation remains undisturbed, but there is a push on the national level to establish "compulsory registration of all . . . sex offenders with the police." David Killick, *Wood Recommends Tough Controls on Paedophiles*, AAP NEWSFEED (Australia), Aug. 26, 1997, available in LEXIS, Aust Library, Allnws File. This proposal stems from a Royal Commission Report, which also recommends that it be an offense for convicted pedophiles "to loiter near children without a reasonable excuse." *Id.* In addition, convicted pedophiles would be issued "unacceptable risk certificates" to prevent them from seeking work with children. *Id.*

sentencing entitled "Protecting the Public" by the Home Secretary, Michael Howard.⁸⁸ This Paper recommends that sex offenders convicted of a second offense be given an automatic life sentence, unless "exceptional circumstances" exist.⁸⁹ Currently, the trial judge sets that portion of the sentence, known as a "tariff," which is served for purposes of retribution and deterrence.⁹⁰ At the end of this time the Parole Board determines whether the criminal is safe to release.⁹¹ Under an "Honesty in Sentencing" provision, automatic early release and parole are abolished so that the offender is required to serve his full term of imprisonment.⁹² Unlike Victoria, British judges are expected to take the abolition of remission into consideration when sentencing, so the government does not expect an increase in the amount of time spent in prison.⁹³ This provision was introduced because under the present system, prisoners are sometimes automatically released after serving only half of their sentence, which in turn causes the community to become cynical about the meaning and effectiveness of prison sentences.⁹⁴ The White Paper also suggests that after release, sex offenders should be required to register any change of address with the police in addition to being prohibited from seeking any employment which involves contact with children.⁹⁵

The Consultation Paper, "Sentencing and Supervision of Sex Offenders" elaborates on the latter two proposals.⁹⁶ This document focuses primarily on extended supervision of sex offenders.⁹⁷ Currently, prisoners released after a portion of their sentence is

88. See HOME OFFICE, PROTECTING THE PUBLIC: THE GOVERNMENT'S STRATEGY ON CRIME IN ENGLAND AND WALES, 1996, Cmnd. 3190.

89. Phillip Johnston, *Politics: Criminals Who Re-offend Face Longer Jail Terms*, DAILY TELEGRAPH (London), Apr. 4, 1996, at 14, available in 1996 WL 3939874.

90. Spencer, *supra* note 6, at 347.

91. *Id.* The relevant sexual offense covered by this provision are rape, attempted rape, and unlawful sexual intercourse with a girl under 13. *Id.* All of these offenses currently carry a discretionary life imprisonment penalty. *Id.*

92. *Id.* at 347. Prisoners, however, can still earn a discount of six days per month toward their sentence for the first twelve months by cooperating with prison officials. *Id.* After twelve months, prisoners can earn a discount of three days per month for cooperation and another three days for positive good behavior. *Id.*

93. *Id.*

94. *Id.* With this proposal, prisoners would serve their full sentence prior to release, even if it does not mean that they spend a greater amount of time in jail. *Id.*

95. Spencer, *supra* note 6, at 347.

96. See HOME OFFICE, *supra* note 4.

97. *Id.*

served are subject to supervision until the equivalent of three-quarters of their full sentence has expired.⁹⁸ The prisoners remain at risk of being returned to prison during the last quarter of their sentence to serve the remaining time if convicted of another crime.⁹⁹ The new proposal offers three options for the duration of the extended supervision.¹⁰⁰ The first is to have the court specify the length of the supervision.¹⁰¹ The second determines the length of the supervision as a set percentage of a criminal's jail sentence, the percentage determined by statute, or by the court subject to a maximum percentage.¹⁰² The third extends the supervision indefinitely, subject to review by an independent governmental body.¹⁰³ Whatever option is chosen, the supervision is conducted by a probation officer in accordance with the national standards of the profession, which include regular interviews with the offender, both at the probation office and at home. Thus, the probation office is able to check for signs of rehabilitation as well as indications that the offender presents a danger to others.¹⁰⁴

Further restrictions on a released sex offender are proposed in the Consultation Paper. One such restriction is electronic monitoring whereby an offender is given a 'curfew' which mandates times at which the offender is required to remain in his home.¹⁰⁵ Compliance with these orders is automatically enforced through the placement of monitoring equipment in the offender's home.¹⁰⁶ Another proposal requires a released offender to live in a hostel

98. Roger Hood & Stephen Shute, *Protecting the Public: Automatic Life Sentences, Parole, and High Risk Offenders*, CRIM. L. REV. 788, 790 (1996).

99. *Id.*

100. HOME OFFICE, *supra* note 4, at para. 18.

101. *Id.* This option presents the difficulty of requiring the judge to predict the risk an individual offender may present to the community years in advance of release, without the benefit of knowing how the offender responded to his jail time and any treatment he received. *Id.* at para. 19.

102. *Id.* Either of these alternatives would be relatively easy to administer, as the time for probation is either mandated by statute or judicial discretion. *Id.* at para. 20.

103. *Id.* at para. 20. This option opens the door for imposing harsh periods of supervision, out of proportion with the offense. *Id.* at para. 21.

104. *Id.* at para. 23.

105. HOME OFFICE, *supra* note 4, at paras. 29-30. The monitoring would also be used to ensure that the offender remains at home during times of day in which he poses a specific threat, as when school lets out. *Id.* at para. 29. The government is also considering, for when the technology is sufficiently advanced, the use of electronic monitoring to ban offenders from particular locations, such as a victim's house. *Id.* at para. 30.

106. *Id.* at para. 29.

where personnel can help him make the transition back into community life, while observing him to ensure that he does not become a danger to the community.¹⁰⁷ The government has also proposed that an offender must notify the police of any change of address.¹⁰⁸ This requirement allows local police to know when a previously convicted sex offender moves into their area, enabling them to either prevent future crimes, or if a crime does occur, to better identify suspects.¹⁰⁹ To further empower the police, the Paper proposes that DNA samples be taken from all sex offenders who are still in custody and added to a DNA database to both deter criminals from committing further crimes and to provide the police with the means to convict the perpetrators of repeated sexual crimes.¹¹⁰

Finally, the Paper proposes that a new offense be created for sex offenders seeking employment involving access to children.¹¹¹ Seeking employment is defined as "making an application for or accepting an offer of an appointment, whether or not remunerated, where the nature of their employment would enable the offender to have direct access to children under 18."¹¹² This offense is a summary offense only, punishable by a fine or six months in prison and only applies to those previously convicted of offenses against children.¹¹³

Thus far, these proposals have spawned one bill: the Crime (Sentences) Bill introduced on October 25, 1996.¹¹⁴ The bill contains an automatic life sentence for a second sexual or violent offense, with the judiciary retaining the discretion whether to

107. *Id.* at paras. 26-28. At the hostels, offenders are expected to work or attend training courses or seek out treatment facilities in the community. *Id.* at para. 27.

108. *Id.* at paras. 41-43.

109. *Id.* at para. 43. Currently, the National Police Register contains only the last known address of an offender, which is generally where the offender was living when he was convicted. *Id.* Therefore, the police have no way of knowing when a convicted sex offender moves to a new area. *Id.*

110. HOME OFFICE, *supra* note 4, at para 40. Under the Criminal Justice and Public Order Act 1994, police power to take DNA samples from persons charged with and persons convicted of recordable offenses was extended. *Id.* This new proposal merely goes one step further. *Id.*

111. *Id.* at paras. 69-74.

112. *Id.* at para. 71.

113. *Id.* at paras. 73-74.

114. Richard Ford, *Howard Sets Out Tough New Sentencing Regime*, THE TIMES (London), Oct. 26, 1996, at 6, available in 1996 WL 6528370.

impose the sentence for exceptional circumstances.¹¹⁵ An extended supervision proposal is also contained in the bill.¹¹⁶ All sex offenders are subject to extended supervision after their release for a period equaling twelve months or half of their sentence, whichever is greater.¹¹⁷ Indeed, supervision could be for up to ten years in certain situations.¹¹⁸ The bill also abolishes automatic remission of sentences and parole.¹¹⁹ Mr. Howard, the Home Secretary and driving force behind all of this change, hails the bill as the "biggest step (sic) in the fight against crime this century."¹²⁰ It may well be the biggest step in the fight against crime in his eyes, and in the eyes of the public he placates.¹²¹ But the real question is: do these measures truly do anything to solve the real problem, which is the abolition of sexual offenses?

IV. A Balancing of Rights: The Community and the Victim Versus the Convicted Sex Offender

The proponents of the current dangerous offender legislation emphasize the need for community safety and the protection of victims of crime.¹²² In their outrage, these advocates mask a curiously absent part of their considerations. Namely, there is very

115. *Id.* If the judge finds that exceptional circumstances exist, he is required to explain those circumstances in open court and the Attorney General is permitted to argue for the imposition of the sentence through the appeals court. *Id.* The bill does not, however, define what constitutes 'exceptional circumstances.' See Jason Bennetto, *Howard Launches Battle of the Century*, THE INDEP. (London), Oct. 26, 1996, at 4, available in 1996 WL 13497864.

116. Ford, *supra* note 114, at 6.

117. *Id.*

118. *Id.*

119. Bennetto, *supra* note 115, at 4.

120. *Id.*

121. The Bill passed into official law in Mar. 1997. See Hugo Young, *Commentary: Passing the Slippery Baton of Power*, THE GUARDIAN (London), Mar. 20, 1997, at O19, available in 1997 WL 2371647. The provisions dealing with sex offenders remained intact, but the current government is preparing to make changes of its own, such as reinstating remission and parole and instead requiring judges to explain to the victims and the media exactly how the early release system functions. David Rose, *Straw Scraps Tory Ban on Parole*, THE OBSERVER (London), June 1, 1997, available in 1997 WL 10815657. The Sex Offenders Act also became law in March 1997. See Philip Johnston, *Police Block on Paedophile Alert to Neighbors*, THE DAILY TELEGRAPH (London), Apr. 1, 1997, available in 1997 WL 2299047. This law makes it an offense, carrying a penalty of up to six months in jail, for a person convicted or cautioned for specific sex crimes to fail to inform the police within 14 days of a change of address. *Id.*

122. Ford, *supra* note 114, at 6. When introducing his new bill, Mr. Howard hailed it as necessary "because the public had a right to more protection from serious and violent criminals and persistent offenders." *Id.*

little discussion by the proponents of such legislation about the effects it will have on its intended targets: the sex offenders. This may be a case of unwillingness to defend the indefensible, for any interjection of the civil rights of criminals is likely to amount to political suicide. However, the civil rights of these offenders exist and cannot be ignored. The balancing of the rights of the criminal with the rights of the victim never took place with regard to this legislation, for the scale immediately tipped in favor of the victim.¹²³ And certainly, the victim does have rights. Perhaps the primary right is to see the sex offender appropriately punished. These laws, however, go far beyond punishment, for they either torture the offender with indefinite imprisonment or cast him out into the community branded with the equivalent of a scarlet letter. Each provision of this legislation resounds with emotion, not common sense, and gives retribution without hope of rehabilitation.¹²⁴ It is as if society has finally concluded that these offenders are animals. So why not destroy them like rabid dogs? Because that truly would violate their civil rights, but perhaps less so than the limbo of indefinite imprisonment and community stigma.

A. *The Prevention of Crime Versus the Myths About Sex Offenders*

The proponents of these laws declare them necessary for the safety of the community and for the prevention of crime. Justice Minister Allan Rock of Canada, speaking about his country's proposal, stated "we must protect our families and our children in society . . . We must give police the tools to combat violent crime in the streets."¹²⁵ Mr. Howard defends his measures, stating that they take "the most serious, persistent and dangerous offenders out of circulation to prevent them from being able to commit more crime."¹²⁶ In all of this discussion, however, there is little talk of how, exactly, indefinite sentencing and supervision after release are going to achieve the objectives of stopping sexual crime altogether. Right now, it appears that indefinite sentencing only prevents the

123. See generally HOME OFFICE, *supra* note 4. See also McKeague, *supra* note 28.

124. See generally Craze and Moynihan, *supra* note 38. The case of Garry David is a perfect example of this phenomenon, where legislation was introduced for the sole purpose of keeping one man indefinitely in jail. *Id.* at 20.

125. Bindman and Rusnell, *supra* note 4, at A3.

126. Bennetto, *supra* note 115, at 4.

criminal from going out into the community.¹²⁷ It does nothing to solve the underlying problems of recidivism.¹²⁸ Extended supervision merely provides the police with a prepared list of suspects if a crime is committed in the community.¹²⁹ The fact that an offender is required to register his address with the police provides little in the way of deterrence.¹³⁰ It simply tells the offender to commit his crime as far away from his house as possible.¹³¹ In addition, giving the police and the public a list of the local offenders presents numerous possibilities for abuse: the offenders could be regularly harassed by the righteous.¹³² If a crime does occur, the known offenders will likely be the first ones accused even if another, unknown offender is the culprit.¹³³ Having this registration requirement has its advantages, in part because if a criminal does re-offend he will be easier to catch. The potential for misuse of the registration, however, is simply too great to ignore. It may even cut down on effective police investigating by creating a predisposition to look no farther than the list of

127. See Joy Copley, *Ex-Ministers Warn Howard of Risks in Prison Reforms*, THE DAILY TELEGRAPH (London), Nov. 5, 1996, at O2, available in 1996 WL 3990464.

128. *Id.* In criticizing the United Kingdom bill, Douglas Hurd, a former Home Secretary, stated "the case for training, for probation, for work and education in prisons is the case for the future protection of the public and it is directly relevant to this Bill." *Id.*

129. *The Law and Release of Sex Offenders*, THE TIMES (London), June 16, 1997, at 21, available in 1997 WL 9209070. Indeed, this may not even occur, since only a small portion of sex offenders are ever successfully detected, convicted, and sentenced. *Id.*

130. *Id.* In this editorial, the General Secretary of the Association of Chief Officers of Probation, states: "Community notification is unproven in practice and a flawed concept, since the prescribed geographical boundaries may be unobserved by offenders. It will also actively militate against the properly managed supervision and monitoring of offenders who have been convicted of sex offenses against children by driving them underground." *Id.*

131. *Id.*

132. See Paul Kaihla, *Sex Offenders: Is There a Cure?*, MACLEAN'S, Feb. 13, 1995, available in LEXIS, Canada Library, Canpub File. Here, a convicted pedophile was harassed at his home by reporters and protestors before he disappeared from view. *Id.* See also, Owen Bowcott and Erlend Clouston, *Nightmare on Any Street*, THE GUARDIAN (London), June 10, 1997, at TOO2 available in 1997 WL 2385596. This article details many instances in the United Kingdom where vigilante style justice has occurred with tragic results, as when a 14 year old girl died when the house in which she was staying was burned down by people looking for a pedophile. *Id.* Other instances include a released child molester being stabbed to death in his home, the eviction of convicted pedophiles from their apartments, and even the beating of an innocent bystander who was mistaken for a convicted pedophile. *Id.*

133. *The Law and Release of Sex Offenders*, *supra* note 129.

known offenders. After all, once a person is guilty, he is always guilty. Or so the legislation presumes.

It is true that the rehabilitation of sex offenders is very uncertain. But those who work with sex offenders continually advocate putting the money spent keeping them in jail into treatment programs.¹³⁴ According to researchers, much of what is assumed about sex offenders is inaccurate,¹³⁵ and is based on fear and ignorance.¹³⁶ The greatest fear about a sex offender seems to be that he will re-offend after release from prison.¹³⁷ The fact that psychiatrists cannot predict how well or how often their rehabilitative efforts succeed rightfully disturbs and worries the public.¹³⁸ The apparent problem is that simply not enough is known about the sex offender to predict with any degree of accuracy the success of any rehabilitative measure.¹³⁹

Both sides of this debate are, to some extent, stabs in the dark. For example, a recidivism rate of 90% has been characterized as a 'folk belief' by Frank Zimring, a law professor at the University of California at Berkeley.¹⁴⁰ He maintains that "the recidivism rates of child molesters are lower than in other crimes . . . They are in the teens or twenties, depending on how long you follow up."¹⁴¹ Following sex offenders does seem to be the key, as other researchers claim the recidivism rate jumps to 50% when criminals are tracked for ten years.¹⁴² Fifty percent, as disturbing as it is, is still not 90%. In the words of one researcher: "Treatment may work for child molesters, but we can't prove it. That isn't to say that we should give up and stop trying."¹⁴³ The current proposals seem to advocate giving up. While the United Kingdom does make some provision for requiring counseling, it, like the other countries, focuses its attentions on protecting the community by locking the

134. Kaihla, *supra* note 132. As one expert in the treatment of sex offenders pointed out, "locking them up is no solution because we could be using that money for other health-care costs." *Id.*

135. *See generally* Kolata, *supra* note 29, at B1.

136. *See generally* Kaihla, *supra* note 132.

137. *Id.*

138. *Id.* One researcher has admitted: "We don't seem to be having much of an impact on them." *Id.*

139. *See generally* Kolata, *supra* note 29, at B1.

140. *Id.* at B1.

141. *Id.* Researchers contrast that figure with a study conducted by the U.S. Justice Department where it was found that 46% of all felons were convicted of another felony within three years of their release from prison. *Id.*

142. Kaihla, *supra* note 132.

143. *Id.*

offenders up or by keeping them under an eternally watchful eye. This legislation fails to realize that the key to truly keeping the community safe might be fair jail terms coupled with adequate treatment while in jail so that when released into the community only minimal supervision would be needed. There may be no concrete proof that rehabilitation is successful, but there is no proof that extended detention or supervision works either.¹⁴⁴ In this guessing game, one thing is certain: it is better to try to change behavior than simply to try to prevent it in the long run.

B. The Desire to Protect the Victims Versus the Harm Caused to the Criminals and the Harm Caused to Society

Mr. Howard, the British Home Office Secretary, has stated that "of all the crimes which are committed, sex offenses constitute a category which causes more alarm than practically any other."¹⁴⁵ Certainly, that statement receives no argument. It is the manner in which the English-speaking governments have chosen to alleviate that alarm which has caused its own alarm. There are those who view the legislation as little more than the easiest political answer designed to placate the public.¹⁴⁶ As one commentator on the Victorian legislation stated: "It is obviously a politically based agenda because it plays on and caters to the fears and apprehensions that we are living in an increasingly lawless society. The perception is ill-founded, but is generated by the media and by politicians for their own end."¹⁴⁷ While that may be too cynical a view, the fact that this legislation is charged with emotion does merit some consideration. The objective is to provide the victims with a measure of satisfaction and a feeling of safety, two very worthy goals. But when it comes to sex offenders,

144. See Copley, *supra* note 127. One former minister pointed out "whether prison works depends not just on length of the sentence but on what happens in prison." *Id.* See also, *Howard's Way is No Solution*, THE TIMES (London), Mar. 16, 1997, at 8, available in 1997 WL 10144752. Here, the Director of Prison Reform Trust observed that "[t]he United States now has more than 1.6 million people behind bars. If prison were a solution to the crime problem, America would be one of the safest places on earth not one of the most violent." *Id.*

145. *Howard Unveils Plan to Stop Sex Offenders Abusing Again*, IRISH TIMES, June 18, 1996, at 10, available in 1996 WL 10577464.

146. See Young, *supra* note 121, at O19. Here, the author finds that "the Crime (Sentences) Bill was the purest essence of the political rather than the judicial, the penal, the philosophical, or even the half-considered." *Id.*

147. Michael Magazanik, *Civil Rights vs. Public Safety-Has Victoria Gone Too Far?*, THE AGE (Melbourne), Nov. 27, 1993, available in LEXIS, Aust Library, Allnws File.

there are no easy answers. Rehabilitation is not proven, so locking them up indefinitely seems the only viable alternative for someone whose life is forever altered by such a crime. In a world where nothing is fair, it is a reasonable emotional response to desire revenge upon the sex offender, not to care about his civil rights, and to see him as less than human. And the politicians, who are also human and who listen to the criticisms of their laws and are pushed for immediate results, have chosen the method which appears to offer the most concrete, objectifiable result.

The number kept in jail can be held up to the community as proof of its safety and the knowledge that the police have a record of all sex offenders living in the area may make some people sleep easier at night. Indeed, the police favor having themselves, rather than the community, notified of the offenders in the area, believing that less panic will result.¹⁴⁸ These notification provisions, while providing an easy means of locating likely re-offenders, ignore the problem of why a criminal re-offends, perhaps hoping it will magically disappear. In all, the laws do not work toward answering the questions of why such offenses are committed and how they can be prevented in the future. As one who works with such prisoners stated: "apart from the issue of containment, jail is counter-productive . . . We should be focusing on preventive measures, to stop people going to jail in the first place."¹⁴⁹ It is very hard to take the long view, especially when it is one that cannot offer any concrete results, when the pain of victims is immediate and long-lived. However, imprisoning a criminal indefinitely or monitoring him constantly provides no incentive for rehabilitation and only exacerbates the problem of re-offending in the future. It is only logical that someone who is not treated fairly by the justice system has no desire to curb his behavior once he wins free of it.

There are two additional practical considerations the legislation either avoids or glosses over. The first is the cost of this legislation to the victims.¹⁵⁰ There is a fear that mandatory sentencing will cause the offenders to plead not guilty with greater frequency, as

148. Vienneau, *supra* note 62, at A2.

149. Liz Porter, *Indefinite Jail Would Hurt Victims Too - Criminologist*, THE AGE (Melbourne), Mar. 28, 1993, available in LEXIS, Aust Library, Allnws File.

150. Broadhurst and Maller, *supra* note 24, at 74. The authors point out that "where punishment of the offender is the prime concern the needs of the victim tend to be relegated, reinforcing their powerlessness and perhaps even extending the trauma, in order to meet the special criteria required by law to punish." *Id.*

there is no incentive for them to admit their guilt, knowing that it condemns them to prison for an unknown period of time.¹⁵¹ As a result, each victim would be forced to take the stand and be extensively cross-examined,¹⁵² which in turn could make victims even more reluctant to report crimes. There is another fear: that offenders, knowing they face an indefinite jail term for sex offending but perhaps not for murder, would be more likely to kill their victims in an effort to avoid detection.¹⁵³ Thus, the deterrence to murder is effectively removed for these criminals.

The final consideration is one of a very practical nature. Simply: how much will these measures cost? Assuming that the indefinite sentencing is vigorously enforced, the jail population could grow at a rapid rate. For the United Kingdom, the estimated amount of extra prisoners is 10,000 within the next fifteen years, requiring twelve new jails at a cost of an extra 400 million pounds per year.¹⁵⁴ The number of probation officers will also have to be increased to meet the new demands of extended supervision. The United Kingdom estimates that two to three hundred probation officers, complete with training, will be needed over the next five years to enforce the supervision requirements.¹⁵⁵ The costs to the other countries have not yet been calculated, but they are surely substantial. Crowding the jails with criminals indefinitely detained who have little hope of rehabilitation or freedom strains not only the taxpayer's wallet, but also offers no positive solution for the future. Dissatisfied, embittered criminals have no incentive to reform their behavior, no matter how closely they are monitored. And the community will continue to live in fear.

V. Conclusion

Sexual offenses are horrible crimes, more horrible than any other. They leave the victims forever changed, rob society of its

151. Fox, *supra* note 3, at 412. There is another consideration with the indeterminate sentencing: the fact that the mothers, wives, and sisters of the offenders are deprived of having the offender return to them as a useful member of society and of the family, providing even greater encouragement for an offender not to admit guilt. *Id.*

152. Fox, *supra* note 3, at 412. The reporting of sexual assault is of paramount importance in the fight against such crimes as "the prospects for improved deterrence and protection appear to be governed by the extent that victims are willing to report to police." Broadhurst and Maller, *supra* note 24, at 74.

153. Fox, *supra* note 3, at 412. See also Copley, *supra* note 127.

154. Johnston, *supra* note 89, at 14.

155. Howard Unveils Plan to Stop Sex Offenders Abusing Again, *supra* note 145, at 10.

feeling of safety, and cause children to grow up in fear. The perpetrators of this violence deserve to be punished and punished in accordance with the gravity of their crimes. They do not deserve, however, to have their civil rights violated wholesale. For while it may satisfy a deep-seated need for vengeance to imprison them forever or to effectively cage them within the community like animals, this cannot be the final solution. To implement measures such as those proposed is to do a larger disservice to society. A better future, one free of fear, cannot be created when the best solution to sexual crime is to 'lock them up and throw away the key.' Indeed, this ignores all of the hard won rights and freedoms that form the basis of these countries. Something of our basic humanity is lost with these measures, if only our capacity for understanding and forgiveness. These laws are not better alternatives to rehabilitative treatment, even though they produce more concrete results in the short term. The underlying problem of a society accustomed to the rape of women by men and the social attitudes and conditions that foster it are not addressed by these measures. This failure perpetuates incidents of sexual crime until the jails are too full to hold the criminals and the parole officers are too overworked to watch them. What will happen then? Perhaps as a society, we will finally decide upon genocide. It is not a far cry from indefinite imprisonment, and may be more humane in the long run.

Amy M. Lageman