

The Convergence of U.S. Juvenile Justice Policies and the U.N. Convention On The Rights Of The Child

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Introduction

When South Sudan ratified the United Nations Convention on the Rights of the Child³ (CRC) in 2015, it left the United States as the only country in the world not to have ratified the convention.⁴ However, lack of ratification⁵ does not prevent the United States juvenile justice field from moving its policies closer to the principles of the CRC.

Interestingly, the branch of government recently in tune with the CRC principles has been the U.S. Supreme Court, which may not be surprising, since historically, the Court has often based its decisions on principles broader than current policies and in that way has actually impacted policy throughout the country.⁶ In fact, the U.S. Supreme Court in *Miller v. Alabama*⁷ took a step closer to the CRC, when it ruled that juveniles

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³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 44 [hereinafter Convention].

⁴ *UN Lauds South Sudan as Country Ratifies Landmark Children's Rights Treaty*, UN NEWS CENTRE (May 4, 2015), <http://www.un.org/apps/news/story.asp?NewsID=50759#.VhCEXRNVhBc>.

⁵ The US signed the CRC in 1995 but has not ratified it. *Convention on the Rights of the Child – Frequently Asked Questions*, AMNESTY INTERNATIONAL, <http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child-0> (last visited Sept. 13, 2015). In order to ratify, the President needs to submit the CRC to the United States Senate. While President Obama has indicated support for the CRC, apparently the political climate is not conducive to its garnering sufficient votes. Howard Davidson, *Does the U.N. Convention on the Rights of the Child Make a Difference?*, 22.2 MICH. ST. INT'L L. REV. 497, 506 (2014); Patrick Geary, *United States: Is Obama's Win also a Victory for Children's Rights?*, CHILD RTS. INFO. NETWORK, (Nov. 7, 2008), <http://www.crin.org/en/library/newsarchive/united-states-obamas-win-also-victory-childrens-rights>.

⁶ See, e.g., *The Paquete Habana*, 175 U.S. 677 (1899) (looking to historical international practice to support the Court's decision).

⁷ 132 S.Ct. 2455 (2012).

could not receive a mandatory sentence of life without parole, even in murder cases. Under CRC Article 37(a), "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age."⁸ The Supreme Court had already eliminated the death penalty for juveniles in *Roper v. Simmons*⁹ and prohibited life without parole in non-murder cases in *Graham v. Florida*.¹⁰ So a clear movement toward the principles of the CRC is visible within the US judiciary. In *Roper*, the Supreme Court actually cited the CRC as a factor in its decision.¹¹ A logical next step for the juvenile justice system to move toward the CRC would be to eliminate the possibility of a sentence of life without parole for all juveniles.

This article will argue that there are several other ways in which our national and local juvenile justice policies are aligning with the principles of the CRC. This article will not review all of the CRC's requirements for juvenile justice. It is noteworthy, however, that the United States' policies would line up closely with many requirements, such as those involving due process.¹² It might not do so well on others, such as the non-discrimination requirement that "[P]articular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children."¹³ Instead, this article will focus on recent

⁸ Convention, *supra* note 3, at art. 37.

⁹ 543 U.S. 551, 578-79 (2005).

¹⁰ 560 U.S. 48, 82 (2010).

¹¹ 543 U.S. at 576, 578 ("It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. . . . The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.")

¹² *Id.* at 576 (noting that "Article 37 of the United Nations Convention on the Rights of the Child . . . contains an express prohibition on capital punishment for crimes committed by juveniles under 18" as support for prohibiting the death penalty for offenders under the age of 18).

¹³ Comm. on the Rights of the Child, Children's Rights in Juvenile Justice, U.N. Doc. CRC/C/GC/10, ¶ 6 (2007),

trends that demonstrate the convergence of our juvenile justice policies and the CRC requirements.

Both our juvenile justice system and the CRC are now using a developmental model to understand adolescent behavior and its potential influence on policies and practice. Both are focusing more on rehabilitation rather than retribution. Also, there are policies that, while not yet the same, are becoming more consistent. The CRC has principles regarding the appropriate use of juvenile detention and prohibiting the use of solitary confinement, issues currently being addressed in the U.S. juvenile justice system. Further, our juvenile justice policies are starting to move away from indiscriminate shackling in juvenile court and beginning to use a trauma-informed approach to understand youth violence. While these two issues are not directly addressed by the CRC, they are consistent with its principles. Such CRC principles have and likely will continue to impact our juvenile justice systems, prompting the development of policies that will better serve our youth and communities, even in the absence of ratification of the Convention by the United States.

The UN Convention on the Rights of the Child, the Committee, and OJJDP

In its preamble, the CRC proclaims that children are "entitled to special care and assistance" and that they should be "brought up... in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity."¹⁴ That is not language that will be found in preambles to most state juvenile justice statutes. Of course, the CRC is much broader in its focus than just juvenile justice; it also addresses the social, political, economic, health care and

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11.

¹⁴ *Convention, supra* note 3, at 45.

cultural rights of children. Defining a child as being younger than 18 years of age (unless the state law declares a younger age of majority), the Convention addresses everything from the child's right to an identity and healthy development; to the state's role in supporting families and children through public systems of education, child welfare, juvenile justice, and immigration; and even to the state's need to protect children affected by issues of child labor, sexual exploitation, child soldiering, and refugee status.¹⁵

Adopted by the United Nations in 1989,¹⁶ the CRC consists of 54 Articles. The UN has subsequently adopted three Optional Protocols to the Convention,¹⁷ one regarding the involvement of children in armed conflict, another regarding the sale of children, child prostitution, and child pornography, and a third regarding communications and compliance procedures.¹⁸

The CRC does not include any enforcement mechanisms, and violation of its terms cannot be used as a basis for sanctions or as a right of action in any international tribunal.¹⁹ However, it does create a Committee on the Rights of the Child,²⁰ which monitors the implementation of the Convention and the optional protocols. The Committee issues reports and recommendations regarding signatory nations.²¹ States are

¹⁵ *Id.* at 46-47.

¹⁶ *Id.* at 3.

¹⁷ See G.A. Res. 54/263, Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography (May 25, 2000); G.A. Res. 66/138, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, (Dec. 19, 2011).

¹⁸ The United States has ratified the first two optional protocols and participates in reporting requirements. *United States Ratification of International Human Rights Treaties*, HUM. RTS WATCH (July 24, 2009), <https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties>.

¹⁹ See Davidson, *supra* note 5, at 512.

²⁰ *Convention*, *supra* note 3, at 58.

²¹ See *id.* at ¶ 43-45.

required to submit a report to the Committee at least every five years, and the Committee issues its reports at least every two years.²²

In 2007, the Committee issued a General Comment on children's rights in juvenile justice.²³ In this Comment, the Committee pulled together the various juvenile justice references from the CRC (including Articles 37 and 40, the major CRC articles addressing juvenile justice issues) and its own findings regarding states' compliance, and organized them into one document in order "to provide the State parties with more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with CRC."²⁴ That framework for the appropriate administration of justice presents a template for reviewing the U.S. system in this article.

The Comment provides that, "[a]t the outset, the Committee wishes to underscore that CRC requires States parties to develop and implement a comprehensive juvenile justice policy."²⁵ The United States, as a federal system, is administered at the local and state levels. It is at those levels that much of the juvenile justice policy is made.²⁶ The United States government does, however, provide a framework for that policy through both the creation of federal laws and through the interpretation of those laws by the federal courts. This article will discuss both. Through the federal government, the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) mission is to provide "national leadership, coordination, and resources to prevent and respond to juvenile delinquency

²² *Id.*

²³ Comm. on the Rights of the Child, *supra* note 13.

²⁴ *Id.* at ¶ 3.

²⁵ *Id.* at ¶ 4.

²⁶ See Robert G. Schwartz, *Opportunities for Juvenile Justice Reform: Paper Prepared for the William T. Grant Forum on Reforming Publicly Funded Youth Systems* 1 (Mar. 2003), <https://www.aspeninstitute.org/sites/default/files/content/docs/rcc/rccRobertSchwartz.pdf>, ("For all practical purposes, there is no federal juvenile justice system.").

and victimization."²⁷ OJJDP does this by providing money and technical assistance, supporting "states and communities in their efforts to develop and implement effective and coordinated prevention and intervention programs . . . to improve the juvenile justice system."²⁸ Sometimes, individual acts of the federal government, such as the passage of SORNA (or the "Adam Walsh Act"),²⁹ which dictates sex registration for certain types of offenses—including those committed by juveniles—use federal grant diminution as a way to encourage local level conformity with the Act, which can have a dramatic impact on local policies.³⁰ Thus, while juvenile justice systems' policies are influenced by national principles and decisions such as *Miller*, detailed policies are designed and implemented at the state and local level. Therefore, for the purposes of this article, examples from the state and local level will be used to illustrate the relationship between the CRC principles and U.S. juvenile justice policies.

Meeting of the Minds: CRC and Juvenile Justice Systems

A Developmental View of Youth

The General Comment on children's rights in juvenile justice repeatedly emphasizes the need to use a "developmental framework" when dealing with adolescents in the juvenile justice system. It points out that:

Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict

²⁷ *Vision and Mission*, OFFICE OF JUVENILE JUST. AND DELINQUENCY PREVENTION, <http://www.ojjdp.gov/about/missionstatement.html> (last visited Sept. 21, 2015, 2:47 PM).

²⁸ *Id.*

²⁹ 18 U.S.C. § 2250 (2012).

³⁰ *Juvenile Offenders Required to Register Under SORNA: A Fact Sheet*, OFFICE OF JUST. PROGRAMS, http://ojp.gov/smart/pdfs/factsheet_sorna_juvenile.pdf (last modified Apr. 29, 2010).

with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.³¹

The Comment requires that all judicial interventions fully respect and ensure the child's right to development³² and calls for all juvenile court professionals to become "knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children."³³

Over the last decade, our juvenile justice systems have begun to use more of a developmental framework in working with youth.³⁴ Research on adolescent brain development³⁵ and risk-taking³⁶ has had a major impact. This is particularly evident in the U.S. Supreme Court decisions regarding sentencing juveniles. From *Roper* to *Graham* to *Miller*, the Court increasingly relied on child development research to "emphasize that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."³⁷ The Court elaborated on how juveniles have a lack of maturity;³⁸ are more susceptible to negative influences;³⁹ and have a less-developed character than

³¹ Comm. on the Rights of the Child, *supra*, note 13 at ¶10.

³² *Id.* at ¶ 11.

³³ *Id.* at ¶ 13.

³⁴ See, e.g., *Prevention & Early Intervention*, YOUTH.GOV, <http://youth.gov/youth-topics/juvenile-justice/prevention-and-early-intervention> (last visited Oct. 26, 2015) (describing the use of "a positive youth developmental model to address the needs of youth who might be at risk of entering the juvenile justice system").

³⁵ Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 NATURE NEUROSCIENCE, no. 10, 861 (1999).

³⁶ Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST, no. 12, 1009 (2003).

³⁷ *Miller v. Alabama*, 132 S. Ct. 2455, 2464-65 (2012).

³⁸ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

³⁹ *Id.*

adults.⁴⁰ This led to the decisions prohibiting the sentencing of juveniles to the death penalty, to life without parole in non-capital cases, or to mandatory life without parole in capital cases.⁴¹

Example: OJJDP and the MacArthur Foundation have co-funded grants to distribute the Mental Health Training Curriculum for Juvenile Justice (MHTC-JJ).⁴² Developed and distributed through the National Center for Mental Health and Juvenile Justice (NCMHJJ),⁴³ the curriculum trains juvenile justice staff to understand adolescent development, mental health, and child trauma issues and to adapt their interactions with youth accordingly. The curriculum has been distributed to over 20 state juvenile justice systems.⁴⁴ Thus, both the CRC and our juvenile justice systems—reflecting in part the opinion of the Court—recognize that it is essential to use a developmental lens in understanding adolescent risk behaviors and in creating appropriate practices to address those behaviors.

Rehabilitation, not Retribution, as the Goal

Given the focus on child development, the CRC makes it clear that the guiding principle to use in working with youth is rehabilitation, not retribution. As the General

⁴⁰ *Id.* at 570 ("The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.").

⁴¹ See Gene Griffin & Sarah Sallen, *Considering Child Trauma Issues in Juvenile Court Sentencing*, 34:1 CHILD. LEGAL RTS J., 1, 4 (Dec. 2013).

⁴² *Mental Health Training for Juvenile Justice*, NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUSTICE, <http://www.ncmhjj.com/projects/current-projects/mental-health-training/> (last modified Sept. 21, 2015).

⁴³ *Overview*, NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUSTICE, <http://www.ncmhjj.com/about-us/overview/> (last visited Oct. 27, 2015).

⁴⁴ See *Mental Health/Juvenile Justice Action Network*, Models for Change, <http://www.modelsforchange.net/about/Action-networks/Mental-health-Juvenile-justice.html> (last visited Oct. 27, 2015) (listing the initial states as Connecticut, Colorado, Illinois, Louisiana, Pennsylvania, Ohio, Texas, and Washington); *Mental Health Training for Juvenile Justice*, *supra* note 42 (explaining that the curriculum has also been distributed to Alaska, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Kentucky, New Mexico, New York, North Carolina, Oregon, Tennessee, Utah, and Wisconsin).

Comment states, “the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.”⁴⁵ The CRC emphasizes the importance of re-integrating youth into society⁴⁶ rather than punishing them.⁴⁷ The Committee specifically rejects “zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures.”⁴⁸ It argues for raising youth to respect human rights and freedom and then asks, rhetorically, “[i]f the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?”⁴⁹

In the United States, public policy has vacillated over how to treat juvenile delinquents;⁵⁰ a youth can go from being the “poor victim” in a child welfare case to being the “dangerous predator” in a juvenile justice case without ever leaving juvenile court. States have struggled with how to treat a youth who is both a victim and a threat.⁵¹ Even as recently as *Graham*, the Supreme Court listed four legitimate bases for sentencing: retribution, incapacitation, deterrence, and rehabilitation.⁵² While noting that research demonstrates that punishment does not promote rehabilitation, the Court

⁴⁵ Comm. on the Rights of the Child, *supra* note 13 at ¶ 10.

⁴⁶ *Id.* at ¶ 23.

⁴⁷ *Id.* at ¶ 71.

⁴⁸ *Id.* at ¶ 96.

⁴⁹ *Id.* at ¶ 13.

⁵⁰ Gene Griffin et al., *Using a Trauma-Informed Approach in Juvenile Justice Institutions*, 5 J. CHILD AND ADOLESCENT TRAUMA 271, 278 (2012).

⁵¹ *Id.* at 272.

⁵² *Graham v. Florida*, 560 U.S. 48, 50 (2010).

nonetheless maintained that "criminal punishment can have different goals, and choosing among them is within a legislature's discretion."⁵³

Moving forward to *Miller*, the Supreme Court concluded that the principles of retribution, incapacitation, and deterrence are inappropriate bases for sentencing juveniles.⁵⁴ The Court struck down a mandatory sentence of life without parole because such a sentence is "at odds with a child's capacity for change" and is inconsistent with the "rehabilitative ideal" of juvenile court.⁵⁵ This statement would appear to be a significant return to rehabilitation and CRC principles.

Example: These changes are not limited to the Supreme Court. In 2015, the Illinois Justice Project (ILJP)⁵⁶ determined that the Cook County, Illinois, juvenile justice system was sending 327 youth per year to state prisons, representing 47% of the entire state juvenile prison population.⁵⁷ As part of a larger coalition, ILJP encouraged the leaders of Chicago's juvenile justice system—including the Chief Judge, State's Attorney, Public Defender, and County Board President as well as sixty local business, civic, and religious organizations—to support a set of principles, much like the CRC principles, emphasizing rehabilitation in working with juveniles.⁵⁸ Included in the ten principles are the following:

IV. Acknowledge that the goals of the juvenile justice system include re-integrating justice-involved youth back into their communities and relying on local community organizations to provide rehabilitative programs and

⁵³ *Id.* at 71.

⁵⁴ *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012).

⁵⁵ *Id.*

⁵⁶ ILL. JUST. PROJECT, <http://www.iljp.org> (last visited Sept. 22, 2015).

⁵⁷ ILL. DEP'T JUVENILE JUST., ILLINOIS DEPARTMENT OF JUVENILE JUSTICE REPORT, (June 2015). Cook County was responsible for 418 individuals or 35% of total aftercare caseload. *Id.*

⁵⁸ Illinois Justice Project, *Cook County Juvenile Justice System Leaders Pledge Support for Rehabilitation Over Incarceration* (Feb 19, 2015), http://static1.squarespace.com/static/542c05bbe4b0b79760440ec0/t/54e655b1e4b0f93fe9fefb43/1424381361304/JJ+Commitment_news+release_Feb19.pdf. Chicago is the major city in Cook County.

treatment to try to prevent youth from entering the adult criminal justice system, as well as restoring public safety and the well being of victims and witnesses to criminal activity...

VI. Maintain safe conditions of confinement, free from all forms of abuse and that the [detention center] provide detained youth with quality trauma informed care, mental health and rehabilitative treatment services as well as educational and vocational programming.⁵⁹

These principles are intended to serve as the basis for decisions regarding policy and practices within the Cook County juvenile court, probation and detention systems.⁶⁰ The coalition monitors the outcomes to see whether implementation comports with the principles.

U.S. Juvenile Justice Systems Needs to Explicitly Follow the Principles of the CRC

Alternatives to Detention

The CRC clearly provides that no status offenders should ever be put in juvenile detention.⁶¹ When it comes to youth who are charged with crimes, the juvenile justice system is instructed “to strictly limit the use of deprivation of liberty, and in particular pretrial detention, as a measure of last resort.”⁶² In fact, when it comes to juveniles being detained pretrial, the Committee repeatedly uses the phrase “only as a measure of last resort and for the shortest appropriate period of time.”⁶³ Regarding the first requirement, a measure of last resort, the Committee notes that a package of detention alternatives

⁵⁹ Press Release, Illinois Justice Project, Commitment to Improvements in the Juvenile System in Cook County (Feb. 19, 2015), http://static1.squarespace.com/static/542c05bbe4b0b79760440ec0/t/54e655c8e4b0f93fe9f9fc06/1424381384892/JJ_Commitment_021915.pdf.

⁶⁰ *Id.* (explaining that the purpose of the principles is to “protect public safety, make wiser use of the County’s limited resources, and improve outcomes for justice-involved youth, victims, witnesses and the community.”).

⁶¹ Comm. on the Rights of the Child, *supra* note 13, at ¶ 8. The Committee goes on to say that, “In addition, behavior such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behavior.” *Id.* at ¶ 11.

⁶² *Id.* at ¶ 28.

⁶³ *Id.* at ¶¶ 11, 79.

must be available (but not used to widen the net of which youth are brought into the system).⁶⁴ Further, pretrial detention should not be used for punishment. Instead:

The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.⁶⁵

Regarding the latter requirement, “for the shortest appropriate period of time,” the Committee notes that in many countries, children can “languish in pretrial detention for months or even years, which constitutes a grave violation . . . of [the] CRC.”⁶⁶

The U.S. has not met all the CRC standards since much of the current policy is a reflection of decisions made during the era of the “super predator” theory.⁶⁷ However, polices are slowly changing. The primary impediment to changing detention criteria appears to be the U.S. Supreme Court decision *Schall v. Martin*,⁶⁸ which allows for the “preventive detention” of juveniles who are at serious risk of committing another crime before the next court date. The Court justified this action, not only under a state's police powers (the duty to protect its citizens), but also under its *parens patriae* powers (the duty to act as a parent for its citizens who cannot care for themselves).⁶⁹ The majority opinion explained that juveniles “are always in some form of custody.”⁷⁰ Since it is assumed that juveniles cannot care for themselves they are subject to the control of their parents “and if

⁶⁴ *Id.* at ¶ 80.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Challenging the Myths*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (February 2000), <https://www.ncjrs.gov/pdffiles1/ojjdp/178993.pdf> (“Juvenile violent crime trends of the late 1980’s and the early 1990’s led some [researchers] to conclude that the nature of juvenile violence had changed and that a new breed of juveniles—the superpredator—was now a threat to U.S. society. These were juveniles for whom violence was a way of life—new delinquents unlike youth of past generations.”)

⁶⁸ 467 U.S. 253, 281 (1984).

⁶⁹ *Id.* at 263 (“The State has ‘a *parens patriae* interest in preserving and promoting the welfare of the child[.]’”) (quoting *Santosky v. Kramer*, 455 U.S. 745, 766 (1982)).

⁷⁰ *Id.* at 289.

parental control falters, the State must play its part as *parens patriae*.”⁷¹ The Court reasoned that the State “has a legitimate interest in protecting a juvenile . . . from potential physical injury which may be suffered when a victim fights back or a policeman attempts to make an arrest and from the downward spiral of criminal activity into which peer pressure may lead the child.”⁷² Essentially, the court ruled that a judge is allowed to detain a youth for his own good. The decision was roundly criticized by the dissenters, who argued that:

The absence of meaningful guidelines creates opportunities for judges to use illegitimate criteria when deciding whether juveniles should be incarcerated pending their trials for example, to detain children for the express purpose of punishing them. Even the judges who strive conscientiously to apply the law have little choice but to assess juveniles' dangerousness on the basis of whatever standards they deem appropriate... [T]he majority today upholds a statute whose net impact on the juveniles who come within its purview is overwhelmingly detrimental.⁷³

Legal analysts were also critical of the majority opinion,⁷⁴ with one commentator's summation that, “[t]he *Schall* Court's treatment of children's constitutional rights was abysmal.”⁷⁵ Nonetheless, the decision stands and other juvenile justice forces must work around it.

Regarding status offenders, Congress passed the Juvenile Justice and Delinquency Prevention Act in 1974 and most recently reauthorized it in 2002.⁷⁶ It created OJJDP, and it requires the deinstitutionalization of status offenders.⁷⁷ OJJDP monitors

⁷¹ *Id.* at 265.

⁷² *Id.* at 266.

⁷³ *Id.* at 308.

⁷⁴ Lee A. Weiss, *Fourteenth Amendment--Due Process and the Preventive Detention of Juveniles*, 75 J. CRIM. & CRIMINOLOGY 855, 855 (1984).

⁷⁵ Mary Jane Boswell, *Where Have All the Children Gone?: The Supreme Court Finds Pretrial Detention of Minors Constitutional: Schall v. Martin*, 34 DEPAUL L. REV. 733, 752 (1985).

⁷⁶ 42 U.S.C. §§ 5601-81 (2012).

⁷⁷ There are three other 'core requirements' that states must address- the prohibition against placing juveniles in adult jails- with certain exceptions; the requirement of sight and sound separation of the

compliance and its enforcement mechanism through its control of federal funds.⁷⁸ In 2015, only the U.S. Virgin Islands had their funding reduced due to the status offender requirement.⁷⁹

OJJDP maintains a model program guide for providing detention alternatives.⁸⁰ Nationally, the Annie E. Casey Foundation funds the Juvenile Detention Alternatives Initiative (JDAI), which has been implemented in over 300 counties and has proven effective in reducing some detention center populations.⁸¹ The Casey Foundation also encourages the use of risk assessment tools to guarantee objective and consistent admission decisions, which can better define and narrow the appropriate application of *Schall*.⁸² Some effective potential sanctions include home confinement, electronic monitoring, and day and evening reporting centers.

*Example: There are multiple community-based clinical programs designed to work with delinquent youth that have proven effective.*⁸³ *In Illinois, on the front end, the Mental Health Juvenile Justice Initiative (MHJJ) funds community mental health centers to work with juvenile detention centers to identify youth who might have a major mental*

juveniles from adults when one of those exceptions applies; and disproportionate minority confinement. Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. § 5633 (2012).

⁷⁸ *The Juvenile Justice and Delinquency Prevention Act of 1974*, Office of Juvenile Justice and Delinquency Prevention, <http://www.ojjdp.gov/compliance/jjdpchronology.pdf> (last visited Oct. 26, 2015) (outlining the evolution of the OJJDP).

⁷⁹ See U.S. DEP'T OF JUST. OFFICE OF JUVENILE JUST. AND DELINQUENCY PREVENTION, *State Compliance with JJDP Act Core Requirements*, <http://www.ojjdp.gov/compliance/compliancedata.html> (last visited Sept. 22, 2015) (Massachusetts was fined for a sight and sound violation; Wyoming is the only state that chooses not participate in federal funding and, therefore, does not report.).

⁸⁰ *Detention, Confinement, and Supervision*, OFFICE OF JUVENILE JUST. AND DELINQUENCY PREVENTION (last visited Sept. 22, 2015), <http://www.ojjdp.gov/mpg/Topic/Details/34>. See also James Austin, Kelly Dedel Johnson & Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, OFFICE OF JUVENILE JUST. AND DELINQUENCY PREVENTION BULLETIN, (Sept. 2005).

⁸¹ *Juvenile Detention Alternatives Initiative*, THE ANNIE CASEY FOUNDATION, <http://www.aecf.org/work/juvenile-justice/jdai/> (last visited Sept. 23, 2015).

⁸² See DAVID STEINART, *JUVENILE DETENTION RISK ASSESSMENT: A PRACTICE GUIDE TO JUVENILE DETENTION REFORM* (Dec. 9, 2006), <http://www.aecf.org/m/resourcedoc/aecf-juviledetentionriskassessment1-2006.pdf>.

⁸³ Gene Griffin & Michael J. Jenuwine, *Using Therapeutic Jurisprudence to Bridge the Juvenile Justice and Mental Health Systems*, 71 U. CIN. L. REV. 65, 71 (2002).

illness. The MHJJ liaison then puts together a community wraparound plan and, if the judge releases the youth back to the community, links the youth to the appropriate services. An evaluation has found that MHJJ is effective in improving the youth's clinical condition and school attendance while lowering the recidivism rate.⁸⁴ On the back end, Redeploy Illinois works to decrease the number of youth sentenced to 'youth centers' (the Illinois juvenile prisons) after conviction. Tracking the reasoning of the CRC Committee, this has reduced the number of youth sent to prison for "court evaluations" or "bring back orders" (ordered by judges as a time-limited way to assess mental health status and to isolate or punish a youth) and replaced those "sanctions" with appropriate services. Since its inception in 2005, over 1300 youth have been diverted from further incarceration.⁸⁵

Regarding compliance with the "shortest period of time" requirement, OJJDP data⁸⁶ indicates that in 2013 over half of the 14,559 youth in detention stayed less than 21 days. However, 241 youth had been in detention for over a year.⁸⁷

Overall, then, our juvenile justice systems have not achieved the ideals of the CRC relating to detention admissions. Judges continue to have wide discretion in deciding who enters detention centers and how long they stay.⁸⁸ We have, however, made gains in eliminating the detention of status offenders, designing detention

⁸⁴ John S. Lyons et al., *Clinical and Forensic Outcomes from the Illinois Mental Health Juvenile Justice Initiative*, 54 PSYCHIATRIC SERVS., 1629, 1632, 1634 (2003).

⁸⁵ REDEPLOY ILLINOIS, <http://www.redeployillinois.org> (last visited Sept. 23, 2015).

⁸⁶ *Year of Census by Sex*, OFFICE OF JUVENILE JUST. AND DELINQUENCY, <http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/display.asp> (last visited Sept. 23, 2015).

⁸⁷ Note that this does not include automatic transfers (youth who are being tried as adults but held in detention centers). *Automatic Transfer to Adult Court*, JUVENILE JUST. INITIATIVE, <http://jjjustice.org/resources/juvenile-transfer-to-adult-court/> (last visited Sept. 23, 2015). They can regularly stay in detention a year or more. *Juvenile Detention in Cook County: Future Directions*, NAT'L COUNCIL ON CRIME AND DELINQUENCY (Feb. 2012), http://www.nccdglobal.org/sites/default/files/publication_pdf/cook-county-report.pdf.

⁸⁸ See generally *Schall v. Martin*, 467 U.S. 253 (1984)

alternatives, and lowering lengths of stay.⁸⁹ The next issue is to examine the treatment of youth who do get admitted to detention centers.

Detention Center Isolation and Solitary Confinement

Once again, the CRC position is straightforward. The Committee emphasized that it strictly forbids disciplinary measures such as closed or solitary confinement, or placement in a dark cell.⁹⁰

Within the U.S., while there is no general prohibition against placing a youth in solitary confinement, the OJJDP Report of the Attorney General's National Task Force on Children Exposed to Violence (NatCEV)⁹¹ quite clearly lays out the dangerousness of solitary confinement for children:

Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement. A 2002 investigation by the U.S. Department of Justice showed that juveniles experience symptoms of paranoia, anxiety, and depression even after very short periods of isolation. Confined youth who spend extended periods isolated are among the most likely to attempt or actually commit suicide. One national study found that among the suicides in juvenile facilities, half of the victims were in isolation at the time they took their own lives, and 62 percent of victims had a history of solitary confinement.⁹²

The ACLU in its 2014 report, “Alone and Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities”⁹³ summarizes the various standards and state and federal laws that regulate the use of isolation with children in

⁸⁹ See *supra* pages 11-15.

⁹⁰ Comm. on the Rights of the Child, *supra* note 13 at ¶ 89.

⁹¹ ROBERT L. LISTENBEE, JR. ET AL., REPORT OF ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE, 178 (2012), <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

⁹² *Id.*

⁹³ AM. CIVIL LIBERTY UNION, ALONE & AFRAID: CHILDREN HELD IN SOLITARY CONFINEMENT AND ISOLATION IN JUVENILE DETENTION AND CORRECTIONAL FACILITIES 10-11 (Rev. ed., Jun. 2014).

detention. Some states have recently prohibited the use of solitary confinement.⁹⁴ But, as the ACLU notes, no provision of any federal law “prohibits solitary confinement or isolation of children in juvenile detention centers.”⁹⁵ Recognizing that international instruments, including CRC, and human rights groups are calling for the practice to be banned, the ACLU has started its own campaign to stop the use of isolation in the United States.⁹⁶ Many other advocacy groups have taken a similar stand.⁹⁷

Thus, the use of solitary confinement with juveniles in detention is being powerfully challenged in the U.S. To date, the U.S. Supreme Court case has not ruled on the issue. However, *Schall* did provide some discussion that might prove relevant. In approving the pretrial detention of juveniles, the Court clearly states, “It is axiomatic that ‘[d]ue process requires that a pretrial detainee not be punished.’”⁹⁸ Then, in deciding that the pretrial detention involved in the case was not punitive, the Court explained:

Secure detention is more restrictive, but it is still consistent with the regulatory and *parens patriae* objectives relied upon by the State. Children are assigned to separate dorms based on age, size, and behavior. They wear street clothes provided by the institution and partake in educational and recreational programs and counseling sessions run by trained social workers. Misbehavior is punished by confinement to one's room. . . . We cannot conclude from this record that the controlled environment briefly imposed by the State on juveniles in secure pretrial detention “is imposed for the purpose of punishment” rather than as “an incident of some other legitimate governmental purpose.”⁹⁹

⁹⁴ Garrett Therolf, *Advocates Seek to End Solitary Confinement Options for Young Offenders*, L.A. TIMES, (May 28, 2015), <http://www.latimes.com/local/crime/la-me-solitary-jvenile-20150528-story.html>.

⁹⁵ AM. CIVIL LIBERTY UNION, *supra* note 93, at 8.

⁹⁶ *Id.* at 10-11.

⁹⁷ See, e.g., The American Academy of Child and Adolescent Psychiatry, *Solitary Confinement of Juvenile Offenders*, https://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx, (Apr. 2012). See also Juvenile Justice Initiative, *Solitary Confinement*, <http://jjjustice.org/resources/solitary-confinement/> (last visited Sept. 23, 2015, 12:57PM).

⁹⁸ *Schall v. Martin*, 467 U.S. 253, 269 (1984) (citing *Bell v. Wolfish*, 441 U. S. 520, 535, n. 16 (1979)).

⁹⁹ *Id.* at 271.

Arguably, solitary confinement is a much more severe sanction than “confinement to one's room” and might be found to be punitive, which would thereby prohibit it from being used on pretrial detainees.

The New York Times editorial board recently noted that Justice Kennedy has spoken out several times against the prolonged use of solitary confinement in adult corrections, taking his multiple statements to imply that he wants someone to bring such a case to court.¹⁰⁰ A case involving juvenile detainees might prove even more compelling. Because the Court's articulated view about the malleability of young people and their capacity for rehabilitation, presumably the Court would view severe punishment such as solitary confinement as being likely to work harm on youth and inhibit rehabilitation. Such a case might also offer the opportunity to clarify some of the *parens patriae* reasoning of *Schall*.

Example: In 2005, Illinois created the Department of Juvenile Justice (IDJJ), breaking it out from the adult Department of Corrections.¹⁰¹ The new director of IDJJ eventually changed the practice on the use of isolation at the “youth centers.” Previously, if one youth hit another youth, it was automatically five days in isolation. And if a youth struck a correctional officer, it was automatically thirty days in isolation. Under the new practice, the superintendents have to review and approve the use of isolation for more than a few days. When a group of experts reviewed programming at the various facilities in 2010,¹⁰² some guards complained about the diminished use of

¹⁰⁰ Editorial Board, Opinion, *Justice Kennedy on Solitary Confinement*, N.Y. TIMES, June 19, 2015, http://www.nytimes.com/2015/06/20/opinion/justice-kennedy-on-solitary-confinement.html?emc=edit_th_20150620&nl=todaysheadlines&nid=65757435&_r=1.

¹⁰¹ Governor Blagojevich names acting director of new Illinois Department of Juvenile Justice, STATE OF ILLINOIS (May 26, 2006), http://www.illinois.gov/idjj/Pages/News_Archive_2006_05_26.aspx.

¹⁰² Experts Recommend Improvements in Identifying and Treating Youth with Behavioral Health Needs in Illinois Youth Centers, MODELS FOR CHANGE (Jul. 29, 2010), <http://modelsforchange.net/newsroom/150>.

solitary confinement, saying they now feared for their own safety. However, no major incidents were ever reported due to this change. The guards' concern did prompt more use of the MHTC-JJ curriculum¹⁰³ to train IDJJ staff in alternative ways of interacting with youth. Progressing even further, in May 2015, the Illinois ACLU reached a settlement agreement with IDJJ¹⁰⁴ on the use of confinement. Under the agreement, punitive isolation is prohibited; juveniles in non-punitive confinement must receive their mental health and education services; and the non-punitive confinement cannot last longer than 24 hours.¹⁰⁵

U.S. Juvenile Justice System Implicitly Incorporating the Principles of the CRC

Indiscriminate Shackling

When leaving secure detention centers to attend court dates, youth cannot leave on their own and must be taken to court by detention staff or other court officials (e.g. deputies, probation officers, etc.). Some facilities require that all youth going to court be placed in shackles (some combination of handcuffs, leg irons, and a belly chain).¹⁰⁶ Once they get to court, youth can be placed in a holding cell until their case is called and they then enter the courtroom. At issue is whether the individual shackles are removed before the youth actually appears in the courtroom (not whether they are used as part of transport). There is consensus that, if a youth presents a risk of flight or violence, that

¹⁰³ The Nat'l Ctr. for Mental Health and Juvenile Justice, *supra* note 42.

¹⁰⁴ *Federal Court Approves End to Solitary Confinement of Juveniles in Illinois*, AM. CIVIL LIBERTY UNION OF ILL. (May 4, 2015, 9:00 AM), <http://www.aclu-il.org/federal-court-approves-end-to-solitary-confinement-of-juveniles-in-illinois/>.

¹⁰⁵ *Id.*

¹⁰⁶ See *Ending the Indiscriminate Shackling of Youth*, NAT'L JUVENILE DEFENDER CTR., <http://njdc.info/wp-content/uploads/2014/10/Shackling-HR-10.9.14.pdf> (last visited Sept. 23, 2015) ("In juvenile courts throughout the nation, children arrive, face full hearings, and depart weighed down by handcuffs, leg irons, and belly chains.").

youth may remain in shackles while in court. Where there is disagreement is when the courts keep all the youth in shackles, even when there is no evidence of the youth being at risk of fight or flight.¹⁰⁷

This practice of indiscriminate shackling is sometimes defended as helping to maintain order in the courtroom.¹⁰⁸ Often it is done for administrative convenience as it takes less time and requires fewer staff to move youth who remain shackled for the entire trip. Arguments against indiscriminate shackling include the fact that many juvenile courtrooms do not allow shackling and are able to maintain order.¹⁰⁹

"Less restrictive means such as the presence of court personnel, law enforcement personnel, and bailiffs can achieve the same end."¹¹⁰ Administrative convenience and cost savings are outweighed by the harm caused to shackled youth. Indiscriminate shackling is viewed as dehumanizing, humiliating, stigmatizing, and traumatizing; it interferes with a youth's ability to communicate with his attorney, and goes against a presumption of innocence.¹¹¹

The CRC does not directly address indiscriminate shackling in juvenile justice courtrooms. Presumably, it would be against the practice. The Committee does say that whenever a youth is deprived of liberty by the state:

¹⁰⁷ *Campaign Against Indiscriminate Juvenile Shackling*, NAT'L JUVENILE DEFENDER CTR., <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling/> (last visited Sept. 23, 2015).

¹⁰⁸ See Brian D. Gallagher and John C. Lore III, *Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone's Interest*, 12 U.C. DAVIS J. OF JUVENILE L. & POL'Y 453, 462-63 (2008) (explaining common defenses of the practice of shackling juveniles in court).

¹⁰⁹ *Shackling Fact Sheet*, NAT'L JUVENILE DEFENDER CTR., <http://njdc.info/wp-content/uploads/2014/09/CAJS-Fact-Sheet-2014-8-18-15.pdf> (last visited Oct. 26, 2015) ("Once Miami-Dade County, Florida ended indiscriminate juvenile shackling, more than 20,000 youth appeared in court without shackles between 2006 and 2011. None escaped. No one was harmed. Other jurisdictions that have implemented anti-shackling reform report similar successes.").

¹¹⁰ *Ending the Indiscriminate Shackling of Youth*, *supra* note 106.

¹¹¹ *Innovation Brief on Eliminating the Practice of Indiscriminate Shackling of Youth*, MODELS FOR CHANGE, <http://www.modelsforchange.net/publications/505> (last visited Sept. 23, 2015, 2:20PM).

Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.¹¹²

While this regulation is directed toward institutional deprivation, such as detention centers, it seems likely that the Committee would use the same logic in addressing juvenile detainees being restrained by deputies in a juvenile justice courtroom.

The U.S. Supreme Court has touched on this issue of shackling for adults. Under English common law, a defendant could not be shackled during his criminal trial.¹¹³ In *Deck v. Missouri*,¹¹⁴ the Court determined that an adult defendant could not be shackled at a sentencing hearing where a jury was imposing the sentence and the death penalty was at stake. That is a much narrower decision than today's movement to prevent the shackling of a juvenile at any court appearance.

Example: The anti-indiscriminate shackling movement in the U.S. appears to be having some success.¹¹⁵ Organized by the National Juvenile Defender Center and supported in part by the John D. and Catherine T. MacArthur Foundation, the Campaign Against Indiscriminate Juvenile Shackling (CAIJS) has collected affidavits from expert mental health and trauma clinicians as well as policy and position papers from national legal and child advocacy organizations. CAIJS is working with over thirty states and territories to get laws, regulations, or court orders in place to prohibit the indiscriminate

¹¹² Comm. on the Rights of the Child, *supra* note 13, at ¶ 89.

¹¹³ See Robert G. Neds, *Criminal Defendants: Maintaining the Appearance of Innocence*, 37 MO. L. REV. 660, 660 (1972).

¹¹⁴ 544 U.S. 622, 623 (2005).

¹¹⁵ *Juvenile Shackling Reform in the United States*, NAT'L JUVENILE DEFENDER CTR. (Jul. 1, 2015), <http://njdc.info/wp-content/uploads/2014/09/CAIJS-Progress-July-20151.pdf>.

*shackling.*¹¹⁶ *In Illinois, ILJP and others worked with CAIJS to draft an Illinois Supreme Court Rule that prohibits indiscriminate shackling in juvenile courts. The Court is currently considering the proposal.*¹¹⁷ *This movement is clearly consistent with CRC principles.*

Trauma-Informed Juvenile Justice Systems

There is an important argument to be made for including the concept of "trauma" in the policies of juvenile justice systems. As noted above, the CRC and the juvenile justice systems already call for understanding adolescent development and focusing on rehabilitation. The former principle includes understanding brain development and risk-taking as part of the normal adolescent process. These issues will naturally improve as children mature.¹¹⁸ Rehabilitation, however, focuses on recovery from what has been damaged. Trauma helps explain that damage and suggests a different path to recovery than has traditionally been used in juvenile justice.

Child trauma is a broader concept than the clinical diagnosis of Posttraumatic Stress Disorder (PTSD)¹¹⁹ and can be understood through a framework of the "Three E's"—Events, Experience, and Effects.¹²⁰ Adverse Childhood Experiences (ACES)¹²¹ are

¹¹⁶ *Id.*

¹¹⁷ E-mail from Era Lauder milk, Program Dir., Ill. Just. Project, to Gene Griffin, Dir. of Research, ChildTrauma Acad. (Sept. 3, 2015, 15:52 CST) (on file with author) (confirming that the Illinois Judicial Conference Juvenile Justice Committee is considering the proposed rule).

¹¹⁸ Laurence Steinberg et al., *Psychosocial Maturity and Desistance from Crime in a Sample of Serious Juvenile Offenders*, JUVENILE JUSTICE BULLETIN, 2 (Mar. 2015).

¹¹⁹ Gene Griffin et al., *Addressing the Impact of Trauma before Diagnosing Mental Illness in Child Welfare*, 90 CHILD WELFARE 69, 71 (2012).

¹²⁰ Griffin, *supra* note 41, at 6. *See also* SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, HHS PUBLICATION NO. (SMA) 14-4884, SAMHSA'S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH (2014), <http://store.samhsa.gov/shin/content//SMA14-4884/SMA14-4884.pdf>.

¹²¹ *Injury Prevention & Control*, CTR. FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/ace/> (last updated May 13, 2014).

examples of objective "Events."¹²² Being overwhelmed versus having resilience are examples of the subjective "Experience."¹²³ The "Fight or Flight Response"¹²⁴ is an example of "Effects."¹²⁵ From this perspective, a youth's violent or runaway behaviors, either of which can be used to justify pretrial detention, isolation, and shackling, become matters for treatment (with improvement resulting in "rehabilitation") rather than punishment.

Classically, child trauma has been relegated to child welfare.¹²⁶ It needs to be brought into juvenile justice. As Schwartz so aptly describes it, adults decide whether to label an adolescent's behavior as "Mad," "Sad," "Bad," or "Can't Add;" and that decision determines what service system a child is put in:

Whether a youth enters the juvenile justice system is often as much about adult decisionmakers—and how much blameworthiness they attribute to the youth— as it is about the youth's behavior. Many children in the four major child serving systems—education, juvenile justice, child welfare, mental health—are remarkably similar, even though they wear different labels. Decision-makers allocate them to one of these systems based upon the conduct or traits of the children or of their parents. For purposes of assigning children into a system we label them as Bad, Sad, Mad or Can't Add. It is like attaching a mailing label—the Bad child gets sent to the juvenile justice system. The Sad child goes into the child welfare system. The Mad child enters the mental health system. Can't Add goes to special education. Sorting often depends upon issues of race or class. Minority and poor children are more likely to be labeled Bad.¹²⁷

¹²² Griffin, *supra* note 41, at 6-7.

¹²³ *Id.* at 7.

¹²⁴ *Surviving Childhood: An Introduction to the Impact of Trauma, Lesson 2: The Psychology and Physiology of Trauma*, CHILDTRAUMA ACADEMY, http://www.childtraumaacademy.com/surviving_childhood/lesson02/printing.html (last visited Sept. 23, 2015).

¹²⁵ Griffin, *supra* note 41, at 7-8.

¹²⁶ See, e.g., Eva J. Klain and Amanda R. White, *Implementing Trauma Informed Practices in Child Welfare*, AM. BAR. ASS'N CTR. ON CHILDREN AND THE L. (Nov. 2013), <http://childwelfaresparc.org/wp-content/uploads/2013/11/Implementing-Trauma-Informed-Practices.pdf> (encouraging adoption of trauma informed practices in child welfare without addressing similar policies for juvenile justice).

¹²⁷ Schwartz, *supra* note 26, at 2.

Juvenile Justice has always worked with the "Bad" kids. And, through forensic issues, such as fitness to stand trial or insanity defenses, the Juvenile Justice system has been able to access the mental health system for some of its "Mad" kids as well. Using a child trauma lens would allow the juvenile justice system to respond to the "Sad" kids without having to accuse parents of abuse or neglect and sending them to the child welfare system. It might help the juvenile justice system start to understand Schwartz' wisdom—that the Bad/Mad/Sad/Can't Add kids are often the same high risk kids, viewed from different adult perspectives.

There is ample evidence of child trauma affecting youth in the juvenile justice system. OJJDP-funded research¹²⁸ demonstrates that over 92% of youth in a detention center had lived through a traumatic "Event" with over half reporting exposure to six or more traumatic events. Further, the most common trauma was witnessing violence.

OJJDP's CEV Report recognizes that:

[The] vast majority of children involved in the juvenile justice system have survived exposure to violence and are living with the trauma of that experience. If we are to fulfill the goals of the juvenile justice system—to make communities and victims whole, to rehabilitate young offenders while holding them accountable, and to help children develop skills to be productive and succeed—we must rethink the way the juvenile justice system treats, assesses, and evaluates the children within it.¹²⁹

The report goes on to make a series of recommendations for the juvenile justice system, including eliminating punitive sanctions and incorporating trauma assessments and

¹²⁸ Karen M. Abram et al., *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth*, U.S. DEP'T OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (Jun. 2013), <http://www.ojjdp.gov/pubs/239603.pdf>.

¹²⁹ LISTENBEE, *supra* note 91, at 171.

services.¹³⁰ Even the *Miller* Court notes the importance of considering adverse events as mitigation in juvenile sentencing, though it never uses the word "trauma."¹³¹

Similarly, the CRC and Committee Report never use the word "trauma" in relation to juvenile justice. The earlier (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") mentions trauma only once¹³² in reference to juvenile detainees. Interestingly, UNICEF's 2007 Implementation Handbook for the CRC¹³³ mentions trauma over 20 times, but always in reference to other child rights, such as child protection, family reunification, refugees, armed conflict, sexual exploitation, and even violence against children. It does not discuss trauma when dealing with the two articles that directly address juvenile justice issues.¹³⁴ This seems to echo a little of *Schwartz's* description of child victims being identified as "Sad" while the juvenile justice kids are "Bad."

*Examples: Many organizations are now outlining ways of becoming a trauma-informed juvenile justice system.*¹³⁵ *Most involve some combination of training, assessment, and treatment. Regarding training, in addition to the MHTC-JJ noted earlier, the National Child Traumatic Stress Network (NCTSN) has a developed a*

¹³⁰ *Id.* at 176-91.

¹³¹ Griffin, *supra* at note 41, at 5 (citing *Miller*, 132 S.Ct. at 2467).

¹³² G.A. Res. 40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, at 5 (Nov. 29, 1985).

¹³³ Rachel Hodgkin & Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, THE UNITED NATIONS CHILDREN'S FUND (2007), http://www.unicef.org/publications/index_43110.html.

¹³⁴ *Id.* at art. 37, 40. This is also true with subsequent Committee reports. Comm. on the Right of the Child, Rep. on the Work of Its Sixty-seven Session, U.N. Doc. A/67/41 (Dec. 3, 2012) (mentioning trauma in discussing violence against children and sexual exploitation).

¹³⁵ See SAMHSA, *supra* note 120, at 3. See also *Trauma Informed System of Care*, NAT'L COUNCIL JUVENILE AND FAMILY COURT JUDGES (last visited Sept. 23, 2015, 11:11PM), <http://www.ncjfcj.org/our-work/trauma-informed-system-care>.

*training specifically for trauma in juvenile justice.*¹³⁶ *The NCTSN also publishes a list of screening and assessment tools as well as a list of empirically supported trauma treatments, allowing a juvenile justice system to piece together the relevant pieces.*¹³⁷ *Other organizations, such as the ChildTrauma Academy, have developed a comprehensive system of training, assessment, and treatment planning.*¹³⁸ *Its Neurosequential Model of Therapeutics (NMT) assesses a child's history of adverse events, relational support and current functioning; incorporates child and brain development data; and makes a series of recommendations for the child, family, and community to implement in order to overcome the effects of trauma, develop core strengths, and restore the child to a healthy level of functioning.*¹³⁹

*Several years ago the Illinois Department of Juvenile Justice used the initial approach, adopting the MHTC-JJ training, implementing a trauma assessment tool,*¹⁴⁰ *and training clinicians in each of its institutions to provide a trauma-focused group therapy.*¹⁴¹ *Currently, the Illinois Department of Education, the Department of Children and Family Services, and selected community mental health agencies are learning to use*

¹³⁶ See *Think Trauma: A Training for Staff in Juvenile Justice Residential Settings*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/products/think-trauma-training-staff-juvenile-justice-residential-settings> (last visited Sept. 23, 2015).

¹³⁷ See *Juvenile Justice System*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/resources/topics/juvenile-justice-system> (last visited Sept. 23, 2015). See also *Measures Review Database*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/resources/online-research/measures-review> (last visited Sept. 23, 2015); *National Child Traumatic Stress Network Empirically Supported Treatments and Promising Practices*, NAT'L CHILD TRAUMATIC STRESS NETWORK (last visited Sept. 23, 2015), <http://www.nctsn.org/resources/topics/treatments-that-work/promising-practices>.

¹³⁸ NMT, CHILDTRAUMA ACAD., <http://childtrauma.org/nmt-model/> (last visited Sept. 23, 2015).

¹³⁹ *Overview of the Neurosequential Model of Therapeutics*, CHILDTRAUMA ACAD., https://childtrauma.org/wp-content/uploads/2013/06/NMT_Description_Overview_6_22_12x.pdf (last visited Oct. 26, 2015).

¹⁴⁰ See *The NCTSN CANS- Trauma Version*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <http://www.nctsn.org/content/nctsn-cans-comprehensive-trauma-version-cans-trauma> (last visited Sept. 23, 2015).

¹⁴¹ See *Structured Psychotherapy for Adolescents Responding to Chronic Stress*, NAT'L CHILD TRAUMATIC STRESS NETWORK, http://www.nctsn.org/sites/default/files/assets/pdfs/sparcs_general.pdf (last visited Sept. 23, 2015).

NMT. If a state could merge the approaches, it would begin to develop both a trauma-informed juvenile justice system and a trauma-informed system of care and treatment. That linkage is essential and could lead to children having more support and healthier development, which gets us back to where we began, with a central principle of the CRC.

Summary

Even if the United States does not ratify the Convention on the Rights of the Child, our juvenile justice systems can work to attain the relevant principles that the CRC lays out. This article identified issues where our juvenile justice system seems to have reached consensus with the CRC (incorporating concepts of child development and focusing on rehabilitation); issues where we need to more explicitly incorporate the CRC (principles for detaining youth and solitary confinement); and issues where we are implicitly incorporating the CRC (indiscriminate shackling and developing a trauma-informed juvenile justice system). In addition, this article offered specific examples of each issue, demonstrating that these principles can be applied at a state and local level. Should the U.S. continue to incorporate the CRC principles, the end result should be more effective and inexpensive justice systems joining with other child-serving systems to achieve a developmentally healthier and higher functioning child, as well as more cohesive families and communities. These are rights of the child worth striving for.