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H.B. 440: OHIO RESTRUCTURES ITS JUVENILE JUSTICE SYSTEM

I. INTRODUCTION

Ohio, along with the rest of the United States, faces increasing juvenile crime.¹ House Bill 440 is the latest attempt by the Ohio General Assembly to enable the Ohio juvenile justice system to respond to this increase.² The major objectives of H.B. 440 are the reduction of recidivism in juvenile offenders and improvement of the juvenile justice system to ensure that it is more accountable to the public.³ The bill attempts to accomplish these objectives by increasing the jurisdiction of juvenile judges and by tightening detention requirements for serious offenders.⁴ House Bill 440 makes numerous changes in the juvenile justice system.⁵ The most significant of these changes affects the institutionalization of the juvenile offender and his care after his release from the institution. This note will focus on the recent and controversial changes made in these areas.

Prior to the enactment of H.B. 440, emphasis was placed on deinstitutionalization of juvenile offenders.⁶ Deinstitutionalization was accomplished by the Ohio Youth Commission⁷ pursuant to the premise that institutionalization increases delinquency and that deinstitutionalization is a more cost effective manner in which to deal with juvenile offenders.⁸ To carry out deinstitutionalization the Ohio Youth Commis-

1. Federation for Community Planning, *Serious Juvenile Crime in Ohio 6-7* (1981) (on file with University of Dayton Law Review office).

2. Am. Sub. H.B. 440, 114th General Assembly (1981) (amends, enacts, and repeals various sections of titles 1, 21, 23, 29, 33 and 51 of the Ohio Revised Code) (effective Nov. 23, 1981).

3. Interview with Gerald E. Radcliffe, Secretary of the Ohio Association of Juvenile Court Judges, in Chillicothe, Ohio (Aug. 5, 1982) [hereinafter cited as Radcliffe Interview] (on file with University of Dayton Law Review office).

4. *Id.*

5. Among these many changes is a new provision specifying that juveniles bound over to and convicted in an adult criminal court will be tried thereafter as an adult for any subsequent charges of murder, aggravated murder, or a felony of the first or second degree. OHIO REV. CODE ANN. § 2151.26(G) (Page Supp. 1982). Also, H.B. 440 increases the subsidy fund to counties to support prevention, diversion, and treatment programs for juveniles who are alleged or adjudicated unruly or delinquent or at the risk of becoming so. OHIO REV. CODE ANN. § 5139.02 (Page Supp. 1982). The bill also creates a youth services oversight committee. OHIO REV. CODE ANN. § 5139.43 (Page Supp. 1982).

6. W. Reader, *Direct Community Placement Program of the Ohio Youth Commission*, 2-4 (Apr. 28, 1981) [hereinafter cited as Reader Article] (on file with University of Dayton Law Review office).

7. The Ohio Youth Commission (now the Department of Youth Services) is an administrative body which through the Division of Correctional Services is in charge of managing all state institutions or facilities established or created for the training or rehabilitation of delinquent children. OHIO REV. CODE ANN. § 5139.03 (Page 1976).

8. Reader Article, *supra* note 6, at 4.

sion developed a direct-community placement program for youths committed to the commission by the juvenile court judges.⁹ The purpose of the direct-community placement program was to place juvenile offenders, whom the Ohio Youth Commission determined were not in need of institutionalization, in alternative placement programs¹⁰ administered by local communities.¹¹ The Ohio Youth Commission used a matrix point system to determine eligibility for the direct-community placement program.¹² The matrix system was a mathematical formulation based on the number of prior and current offenses.¹³ If, after performing certain calculations, the sum of the prior and current offenses and their severity were below a certain level, the Commission assigned the youth offender to the direct-community placement program.¹⁴ Those youth offenders whose totals were above the specified level were placed in youth commission institutions.¹⁵ Although this method was clear cut and easy to administer, it had many faults. For example, under this method a juvenile who committed a series of non-violent misdemeanors and then one serious felony could avoid being institutionalized.¹⁶ Yet a juvenile who committed a serious felony and only one previous misdemeanor offense could be institutionalized.¹⁷ This type of situation caused some juvenile court judges to criticize the direct-community placement program as being illogical.¹⁸

The major complaint of most juvenile court judges was that the direct-community placement program permitted the Ohio Youth Commission to return to the community those juveniles the judges wanted institutionalized.¹⁹ This occurred because the juvenile court lost jurisdiction over the youth offender after committing the offender to the

9. *Id.*

10. Alternate placement programs include "restitution programs, day treatment centers, group and shelter care homes, foster homes, supported work programs and outward bound or wilderness justice programs . . ." Reamer and Shireman, *Alternatives to the Juvenile Justice System: Their Development and the Current State of the Art*, JUV. & FAM. CT. J., May 1981, at 32.

11. See generally F. Cheesman & A. Carter, Questions and Answers about the New OYC Placement System (1981) (on file with University of Dayton Law Review office).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Reader Article, *supra* note 6, at 4.

17. *Id.*

18. *Judges Call Youth Offender Scoring Plan Stupid*, The Columbus Dispatch (1980) (on file with University of Dayton Law Review office).

19. Interview with Thomas Bayer, Administrative Assistant to Senator Paul E. Pfeifer, Representative of the 26th District (July 7, 1982) [hereinafter cited as Bayer Interview] (on file with University of Dayton Law Review office).

jurisdiction of the Youth Commission.²⁰ Many judges also disliked the fact that an administrative agency, rather than a judicial body, had the authority to determine whether a youth was to be institutionalized.²¹ Additionally, some juvenile court judges criticized the matrix point system because it focused solely on the offense committed to the exclusion of other important factors such as the offender's family background, his ability to relate to other youths and his achievements in school.²² The use of the matrix system was viewed as being contrary to the entire philosophy of the juvenile system because it made the sentence fit the crime, rather than the needs of the juvenile.²³

The public also registered discontent with the Youth Commission's direct-community placement program. In a telephone survey conducted by the *Columbus Dispatch*, a majority of participants were against the Ohio Youth Commission's practice of placing delinquent youths in community group homes and foster care facilities.²⁴ The survey participants favored institutionalization in the belief that it is a more effective juvenile crime deterrent as opposed to community placement programs.²⁵ In response to these criticisms, the Ohio General Assembly considered measures to revise Ohio's juvenile justice system. After lengthy debate, the General Assembly, with the urging of the Ohio Association of Juvenile Court Judges,²⁶ passed H.B. 440.²⁷

II. H.B. 440—PROVISIONS OF THE BILL

House Bill 440 makes several changes in the commitment and institutionalization of juvenile offenders in Ohio. The bill eliminates the direct-community placement program and the matrix system by making institutionalization mandatory for all youths judicially committed to the Department of Youth Services (D.Y.S.).²⁸ The decision of whether to institutionalize a juvenile now rests directly with the juvenile courts.²⁹ H.B. 440 stipulates, however, that the courts may only commit juveniles convicted of crimes that would be a felony if committed by an adult, but the court is not required to do so.³⁰

20. *Id.*

21. Gerald E. Radcliffe, Statement of Policy on Amended Substitute House Bill 440, 3 (June 23, 1981) (on file with University of Dayton Law Review office).

22. *See supra* note 18.

23. *Id.*

24. *Group Home Policy of OYC Criticized*, *The Columbus Dispatch*, (1980) (on file with University of Dayton Law Review office).

25. *Id.*

26. *See supra* note 21.

27. *See supra* note 2.

28. OHIO REV. CODE ANN. § 5139.06(A)(1) (Page Supp. 1982).

29. *Id.* § 2151.355.

30. *Id.* § 2151.355(A)(4), (5), (6).

House Bill 440 also impacts upon the institutionalization of the juvenile offender by creating minimum and maximum sentence requirements.³¹ Prior to the passage of H.B. 440 there were no minimum and maximum sentence requirements; juveniles were released from institutions at the discretion of the youth commission.³² The new law establishes a maximum sentence which is equal to the difference between the age of the juvenile when committed and the attainment of age twenty-one.³³ The length of the minimum sentence depends on the severity of the crime.³⁴ A juvenile committed for a third³⁵ or fourth³⁶ degree felony must serve a minimum sentence of six months.³⁷ A juvenile committed for a first³⁸ or second³⁹ degree felony must serve a minimum sentence of one year.⁴⁰ A juvenile committed for murder or aggravated murder must be institutionalized until he reaches age twenty-one.⁴¹ This change can be viewed as a response to the criticism that treatment of the serious juvenile offender has been too lenient.

31. *Id.*

32. See Bayer Interview, *supra* note 19.

33. OHIO REV. CODE ANN. § 2151.355(A)(4), (5), (6) (Page Supp. 1982).

34. *Id.*

35. A third degree felony includes any act which constitutes safecracking, OHIO REV. CODE ANN. § 2911.31 (Page 1976); bribery, *Id.* § 2921.02; perjury, *Id.* § 2921.11; aggravated riot while an inmate in a detention facility, *Id.* § 2917.02(B); negligent homicide, *Id.* § 2903.05; aggravated vehicular homicide, *Id.* § 2903.06(B); abduction, *Id.* § 2905.02; extortion, *Id.* § 2905.11; criminal usury, *Id.* § 2905.22(A), (B); sexual battery, *Id.* § 2907.03; corruption of a minor, *Id.* § 2907.04; promoting prostitution (person under 16), *Id.* § 2907.22(B); arson (over \$150 or a public building), *Id.* § 2909.03(A) (1), (2), (3); and inciting to violence, *Id.* § 2917.01. See also Federation for Community Planning, *Juveniles in Institutions of the Ohio Department of Youth Services* (May 1982) [hereinafter cited *Juveniles in Institutions*] (on file with University of Dayton Law Review office).

36. A fourth degree felony includes any act which constitutes aggravated assault, OHIO REV. CODE ANN. § 2903.12 (Page 1976); forgery, *Id.* § 2913.31; breaking and entering, *Id.* § 2911.13; vandalism, *Id.* § 2909.05; vehicular homicide, *Id.* § 2903.07(B); promoting prostitution, *Id.* § 2907.22; child stealing by child's parents (removal from state), *Id.* § 2905.04(C); corrupting sports, *Id.* § 2915.06; possessing criminal tools, *Id.* § 2323.24; bookmaking, *Id.* § 2915.02(A)(1); aggravated riot with four or more others, *Id.* § 2917.02(A); disseminating obscene materials, *Id.* § 2907.31; theft (\$150 or more), *Id.* § 2913.02; vehicle theft (second offense), *Id.* § 2913.03(A); and escape, *Id.* § 2921.34. See also *Juveniles in Institutions supra* note 35.

37. OHIO REV. CODE ANN. § 2151.355(A)(4) (Page Supp. 1982).

38. A first degree felony includes any act which constitutes rape, OHIO REV. CODE ANN. § 2907.02 (Page 1976); aggravated robbery (weapon), *Id.* § 2911.01; kidnapping, *Id.* § 2905.01; aggravated arson (occupied structure), *Id.* § 2909.02; aggravated burglary, *Id.* § 2911.11; voluntary manslaughter, *Id.* § 2903.03; and abortion manslaughter, *Id.* § 2919.13. See also *Juveniles in Institutions, supra* note 35.

39. A second degree felony includes any act which constitutes robbery (no weapon), OHIO REV. CODE ANN. § 2911.02 (Page 1976); child stealing, *Id.* § 2905.04; burglary, *Id.* § 2911.12; taking firearms on aircrafts, *Id.* § 2923.12(D); felonious assault, *Id.* § 2903.11; kidnapping (victim not hurt), *Id.* § 2905.01(C); and arson (for hire), *Id.* § 2909.03(A)(4). See also *Juveniles in Institutions, supra* note 35.

40. OHIO REV. CODE ANN. § 2151.335(A)(5) (Page Supp. 1982).

41. *Id.* § 2151.335(A)(6).

The new institutionalization provisions in H.B. 440 are designed to reduce the number of commitments to D.Y.S. facilities and to change the type of youthful offender sent to these institutions.⁴² To accomplish this goal, the new program reallocates funds so that monies previously allocated to institutions are now earmarked for the local communities for the treatment of misdemeanants and status offenders.⁴³ The major rationale for reducing the number of commitments to youth services institutions is to prevent overcrowding of institutions so that education, drug and alcohol treatment, and psychological counseling can be better adapted to the particular needs of the serious offender.⁴⁴ It is hoped that alleviating overcrowded conditions better enables the institutions to focus on rehabilitation of youth offenders.⁴⁵ The new law is aimed at improvement of the quality of rehabilitative treatment in order to reduce recidivism in serious juvenile offenders.⁴⁶ Since only felons may be institutionalized under the new law, the type of youthful offender in D.Y.S. institutions should change.⁴⁷ It is believed that by separating the more culpable offenders from the less culpable, the more serious offenders will not be able to influence the youths convicted of only misdemeanors.⁴⁸

The new law also shifts the responsibility for rehabilitation of misdemeanants and status offenders⁴⁹ to local communities.⁵⁰ Proponents of the law believe that the offender's local community has a better understanding of the juvenile's background and needs.⁵¹ Many of the existing local programs, such as drug and alcohol treatment and psychological counseling, already meet the needs of these misdemeanants and

42. See *Juveniles in Institutions*, *supra* note 35, at 4.

43. *Id.* at 22.

44. *Testimony—H.B. 440, Before House Finance Committee*, 1 - 2 (Apr. 28, 1981) (testimony of Sally Maxton, Executive Director of the Ohio Youth Network) [hereinafter cited as *Testimony*]. The term serious offenders "includes juveniles adjudicated delinquent for violent or repeated serious property offenses." *Juveniles in Institutions*, *supra* note 35.

45. See *Testimony*, *supra* note 44.

46. Federation for Community Planning, News Release (May 27, 1982) (on file with University of Dayton Law Review office).

47. *Juveniles in Institutions*, *supra* note 35, at 4.

48. Interview with George Sheehan, Chief of Legal Affairs of the Department of Youth Services, in Columbus (Aug. 12, 1982) [hereinafter cited as Sheehan Interview].

49. "Status offenses are acts committed by children (truancy, running away, consensual sexual behavior, smoking, drinking, curfew violation, disobeying authority, ungovernability, waywardness, etc.) which would not be considered crimes if committed by adults but which subject children to the jurisdiction of the juvenile court." NATIONAL COUNCIL ON CRIME AND DELINQUENCY, *Jurisdiction Over Status Offenses Should Be Removed from the Juvenile Court; A Policy Statement*, in *STATUS OFFENDERS AND THE JUVENILE JUSTICE SYSTEM* 3 (R. Allinson ed. 1978).

50. See G. Radcliffe, *Ohio Plan—A New Approach*, 8 (1982) [hereinafter cited as *Ohio Plan*] (on file with University of Dayton Law Review office).

51. See Radcliffe Interview, *supra* note 3.

status offenders.⁵² By keeping the less serious offenders in local community programs, apart from the more serious offenders in the institutions, the drafters of H.B. 440 hope to stop misdemeanants and status offenders from becoming serious juvenile offenders.⁵³

Another area of the Ohio juvenile justice system that H.B. 440 affects is the juvenile court's role in the release of institutionalized youths. Prior to H.B. 440, the juvenile court relinquished all jurisdiction over a juvenile offender when the offender was committed to the care of the Ohio Youth Commission.⁵⁴ The Youth Commission had exclusive control of the offender,⁵⁵ including complete discretion to decide when to release and whether to permanently or conditionally release the juvenile.⁵⁶ House Bill 440 allows judges to retain some jurisdiction over the juvenile by adding conditions to releases and conducting release hearings.⁵⁷ The new law provides three ways by which the D.Y.S. may release committed juveniles.⁵⁸ The Commission must follow specific procedures⁵⁹ and no other types of releases are allowed.⁶⁰

First, H.B. 440 provides that D.Y.S. may release an institutionalized child before the expiration of the prescribed minimum sentence.⁶¹ However, early releases require the approval of the committing court.⁶² The D.Y.S., the juvenile himself, or the juvenile's parents or guardian may petition the court for an early release.⁶³ The court may also grant an early release on its own motion.⁶⁴ Once the court receives a petition for early release it may either approve the release by a journal entry or hold a hearing within thirty days after the request is made.⁶⁵ If the hearing results in a denial of the early release request, the youth will remain in the institution for at least the minimum term.⁶⁶ If early release is granted, it will be conditioned upon the successful completion of an aftercare program.⁶⁷

52. *Id.*

53. *See* Sheehan Interview, *supra* note 48.

54. *See* Bayer Interview, *supra* note 19.

55. *Id.*

56. *Id.*

57. OHIO REV. CODE ANN. § 2151.38(B)(2) (Page Supp. 1982).

58. *Id.* § 2151.38(B), (C).

59. *Id.* § 2151.38(D).

60. *Id.* § 5139.06(B).

61. *Id.* § 2151.38(B)(2).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* *See infra* note 79 and accompanying text.

A second type of release is known as a conditional release.⁶⁸ After the juvenile has completed the minimum sentence the D.Y.S. has the sole authority to grant a release.⁶⁹ However, the D.Y.S. must notify the committing court fifteen days prior to the release.⁷⁰

The third method in which a committed juvenile may be deinstitutionalized is by discharge.⁷¹ A discharge means that the D.Y.S. no longer has legal custody of the youth and cannot set any terms or conditions upon his release.⁷² Discharges usually occur after the juvenile has served the minimum sentence.⁷³ A discharge requires no court approval, but the committing court must be given fifteen days notice prior to the discharge.⁷⁴ There are no aftercare program requirements following discharge.⁷⁵

When a juvenile is granted an early release or a conditional release, the D.Y.S. must prepare a written treatment and rehabilitative program commonly called an aftercare plan.⁷⁶ The plan must be reviewed by the child and his parents and the child must be advised that he can be penalized for violations of the plan requirements.⁷⁷ Prior to release, D.Y.S. must file a copy of the treatment plan with both the committing court and the court in the county where the child will be placed upon release.⁷⁸ A typical aftercare plan contains conditions and terms with respect to attendance at counseling sessions or regular school attendance.⁷⁹ The community in which the juvenile is placed usually administers the aftercare treatment.⁸⁰ The aftercare plan must be adopted by the court in the county where the youth is ultimately placed. This court may add any additional terms which are consistent with the aftercare plan prepared by D.Y.S.⁸¹

During the child's post-institutional care period, D.Y.S. must report monthly to the court in the jurisdiction where the youth has been

68. OHIO REV. CODE ANN. § 2151.38(C) (Page Supp. 1982).

69. *Id.*

70. *Id.* § 5139.06(C)(1).

71. *Id.* § 2151.39(C).

72. *Id.* § 5139.06(C)(4).

73. Federation For Community Planning, Ohio's Justice System for the Serious Juvenile Offender: Implications of Am. Sub. H.B. 440, 6 (May 1982) [hereinafter cited as Implications of Am. Sub. H.B. 440] (on file with University of Dayton Law Review office).

74. *Id.*

75. *Id.* at 14.

76. OHIO REV. CODE ANN. § 2151.38(D)(1) (Page Supp. 1982).

77. *Id.* § 2151.38(D)(2).

78. *Id.* § 2151.38(D)(4).

79. See Radcliffe Interview, *supra* note 3.

80. *Id.*

81. OHIO REV. CODE ANN. § 2151.38(B)(2)-(C) (Page Supp. 1982).

placed, with respect to the child's rehabilitative progress.⁸² If the juvenile court has reason to believe that the youth has violated his conditional or early release, the court will schedule a revocation hearing.⁸³ If the hearing results in a determination that a serious violation has occurred, the court may set new terms or conditions or may return the juvenile to the D.Y.S. for institutionalization.⁸⁴ If the child is recommitted, he must serve a minimum sentence of three months.⁸⁵ However, if the revocation involves an early release, the juvenile must either complete the original sentence or serve a three month term, whichever is longer.⁸⁶ When a juvenile completes his post release terms or reaches the age of twenty-one, he is then discharged from the legal custody of D.Y.S.⁸⁷

III. ANALYSIS

House Bill 440 is an innovative piece of legislation that attempts to address many of the serious problems confronting Ohio's juvenile justice system. It addresses these problems while keeping in mind the purposes of a juvenile justice system.⁸⁸ The law attempts to better serve the needs of the less serious juvenile offender by providing local community treatment. It also tries to address the needs of the more serious juvenile offenders by providing them with more specialized treatment. Perhaps, most importantly, H.B. 440 ensures that serious juvenile offenders will be institutionalized.

Some states have resorted to reducing the age that a juvenile may be bound over to the adult criminal justice system in order to ensure that the serious juvenile offender will be institutionalized.⁸⁹ However, this method defeats the purpose of a juvenile justice system since the primary focus of these systems is on detention rather than rehabilitation.⁹⁰ Lowering the bind over age puts juvenile offenders in adult jails. While H.B. 440 amends Ohio's juvenile bind over law,⁹¹ its plan for institutionalization of the more serious offenders in D.Y.S. facilities is

82. *Id.* § 2151.38(E).

83. *Id.* § 2158.38(C).

84. *Id.*

85. *Id.*

86. *Id.* § 2158.38(B)(2).

87. *Id.* § 2151.38(E).

88. "Juvenile corrections, far more than adult corrections, has as its guiding premise the rehabilitation of individuals before they become hardened criminals." C. BARTOLLAS & S. MILLER, *THE JUVENILE OFFENDER: CONTROL, CORRECTION, AND TREATMENT* 279 (1978).

89. "Some dozen states, including New York, have opted for lowering the age at which a person can be tried as an adult for a serious crime." *Experts Split On Ways To Handle Juvenile Offenders*, *The Cincinnati Enquirer* (1981) (on file at University of Dayton Law Review office).

90. See Radcliffe Interview, *supra* note 3.

91. *Ohio Rev. Code Ann.* § 2151.26(C) (Page Supp. 1982). See *supra* note 2.

less severe than arbitrarily lowering the bind over age. In this respect, H.B. 440 is a superior alternative to increasing bind overs because it attempts to facilitate rehabilitation and avoids detention of juveniles in adult jails. At the same time, the community is assured that serious juvenile offenders are institutionalized.

Despite the advantages of H.B. 440, Ohio's reformed juvenile justice system has some inherent problems. Under H.B. 440, the juvenile justice program tends to focus more on retribution for the offense committed as opposed to the needs of the juvenile offender.⁹² The minimum sentence requirements seem to focus on punishing rather than rehabilitating the youth offender. This is contrary to the basic philosophy that the juvenile justice system ideally should emphasize rehabilitation over retribution or punishment. Minimum sentence requirements may be subject to the same criticisms that were aimed at the matrix point system.⁹³

Perhaps the major flaw in the juvenile program established by H.B. 440 is its affect on institutional populations. The bill was based on the implicit assumption that since only felons would be institutionalized, the nature, number, and pattern of commitments to the D.Y.S.⁹⁴ would change. However, recent experience has shown that the H.B. 440 juvenile program may not be attaining all of these desired results.

D.Y.S. operates nine institutions with a rated bed capacity of 1,481 individuals.⁹⁵ These institutions have been operating over capacity since April 1981.⁹⁶ Under H.B. 440 it was projected that commitments to D.Y.S. would decline since no misdemeanants or status offenders would be institutionalized.⁹⁷ Deinstitutionalization of less serious offenders was also supposed to change the nature of the institutionalized populations.⁹⁸ D.Y.S. would contain more serious offenders than the pre-H.B.440 population. In addition, the treatment of less serious offenders in local programs was supposed to insure adequate bed-space in the juvenile institutions.⁹⁹ In connection with these major changes, monies previously allocated to the D.Y.S. are now earmarked for the local communities to accommodate the added responsibilities of treating less serious offenders.¹⁰⁰ The major premise behind this alloca-

92. Sheehan Interview, *supra* note 48.

93. *See supra* note 22.

94. Juveniles in Institutions, *supra* note 35, at 4.

95. *Id.* at 5.

96. *Id.* at 7.

97. *Id.* at 4; *see also* Ohio Plan, *supra* note 50, at 11.

98. *Id.*

99. Ohio Plan, *supra* note 50, at 8.

100. Juveniles in Institutions, *supra* note 35, at 22.

tion of funds is that the "dollar should follow the child."¹⁰¹

When H.B. 440 became effective in November 1981,¹⁰² the total population in D.Y.S. institutions was 1,700.¹⁰³ In December 1981 the number of youths committed decreased by twelve percent.¹⁰⁴ This decrease was caused by the initial release of misdemeanants and status offenders who were institutionalized prior to H.B. 440.¹⁰⁵ However, by March 1982, commitments to D.Y.S. institutions had increased dramatically resulting in a higher institutional population.¹⁰⁶ The increase in the number of institutionalized juveniles has continued even though the number of serious juvenile offenders has not increased significantly since the enactment of H.B. 440.¹⁰⁷

This increase may be attributable to the new institutionalization practices and restraints which H.B. 440 implemented.¹⁰⁸ Prior to passage of H.B. 440, the Ohio Youth Commission had the authority to assign juveniles who were previously institutionalized to alternative community programs¹⁰⁹ pursuant to the direct-community placement program.¹¹⁰ These programs served as a "safety valve" on institutional populations.¹¹¹ If the population of the institutions became too large, the Ohio Youth Commission could increase assignments to the alternative community programs. House Bill 440, however, abolished the direct-community placement program.¹¹² The new program does not provide D.Y.S. with a comparable device for regulating the size of institutional populations.¹¹³ Under the new program the juvenile judges in all eighty-eight counties of Ohio may commit as many felony offenders as they see fit and the D.Y.S. must institutionalize them regardless of available facility space.¹¹⁴

This situation is aggravated by the minimum sentence require-

101. See *Testimony*, *supra* note 44.

102. See *supra* note 2.

103. See *supra* note 35, Appendix Table A-1, A-2.

104. *Id.*

105. Juveniles in Institutions, *supra* note 35, at 5.

106. See *supra* note 35, Appendix Table A-1, A-2.

107. Federation for Community Planning, News Release (June 7, 1982) (on file with University of Dayton Law Review office). D.Y.S. institutional population has steadily increased since June of 1982. By August 1982 the population reached 1806, 325 above the rated bed capacity. See *supra* note 104.

108. Federation for Community Planning, News Release (June 7, 1982) (on file with University of Dayton Law Review office).

109. See *supra* note 10.

110. See *supra* note 11 and accompanying text; Reader Article, *supra* note 6.

111. Sheehan Interview, *supra* note 48.

112. See *supra* note 28 and accompanying text.

113. Sheehan Interview, *supra* note 48.

114. *Id.*

ment.¹¹⁵ Prior to H.B. 440, the average stay of a juvenile in D.Y.S. institutions was five to six months.¹¹⁶ Under the new bill, the minimum sentence for a minor felony is six months.¹¹⁷ A serious felony, such as rape or aggravated robbery, carries a minimum sentence of one year.¹¹⁸ The H.B. 440 minimum sentence requirements increase the average length of time that a juvenile will be institutionalized. This increase could cause overcrowding since commitment rates have not significantly decreased under H.B. 440.¹¹⁹

The effect of the increase in institutionalized juveniles could hamper many of the long range goals of H.B. 440. Overcrowded institutions will adversely affect the ability of D.Y.S. to rehabilitate institutionalized juveniles.¹²⁰ One of the purposes of limiting institutionalization to serious offenders was to emphasize and improve rehabilitation programs.¹²¹ It is feared that overcrowding may once again force institutions to serve a maintenance function as opposed to a rehabilitative one.¹²²

Overcrowded conditions could also adversely affect the community based programs which concentrate on treatment of the less serious juvenile offender. House Bill 440 cut funds to D.Y.S. in order to provide local communities increased subsidies for operation of alternative programs.¹²³ If institutionalized populations continue to increase, there will be pressure for increased funding for D.Y.S. Considering Ohio's current fiscal crisis and the General Assembly's reluctance to appropriate money to criminal institutions,¹²⁴ the money needed to accommodate the D.Y.S. overcrowding problems may come from the alternative community programs.¹²⁵ This would mean that local communities, providing treatment to misdemeanants and status offenders, would be forced to downgrade their ability to provide rehabilitation for the less serious juvenile offender.

There are some possible actions that can be taken to help minimize the problems which the new juvenile justice system faces. The D.Y.S. could release pre-H.B. 440 felons before they serve what would

115. See *supra* notes 31-41 and accompanying text.

116. Sheehan Interview, *supra* note 48.

117. OHIO REV. CODE ANN. § 2151.355(A)(4) (Page Supp. 1982).

118. *Id.* § 2151.355(A)(5).

119. See *supra* note 108.

120. Juveniles in Institutions, *supra* note 35, at 22.

121. See *supra* note 44 and accompanying text.

122. Juveniles in Institutions, *supra* note 35, at 22.

123. *Id.*

124. Bayer Interview, *supra* note 19.

125. Juveniles in Institutions, *supra* note 35, at 22.

constitute their minimum sentence under H.B. 440.¹²⁶ This would alleviate overcrowding. Secondly, the juvenile courts could begin to grant more early releases.¹²⁷ Arguably D.Y.S. is in the best position to evaluate the rehabilitative progress of the juvenile, yet D.Y.S. has so far been reluctant to request early releases.¹²⁸ One of the reasons cited for this reluctance is that the administrative handling of early releases generally takes so long that often the offender's minimum sentence has expired before the release can be granted.¹²⁹ If administrative handling of early releases could be streamlined, this would help alleviate the overcrowding problem. Third, the juvenile courts could reduce the number of institutional commitments.¹³⁰ The judges could use greater discretion in order to decrease the number of institutionalized offenders. First time offenders and less serious property crime offenders could be treated in local alternative programs.¹³¹ This practice would still promote the goal of assuring institutionalization of the more serious juvenile offender.¹³²

Even with the provisions of H.B. 440, the overcrowding problem could persist since the juvenile judges may commit as many felony offenders as they wish. In order to better control the population size in D.Y.S. institutions, some kind of "safety valve" similar to the direct-community placement program should be developed. The law could be amended to allow some form of noninstitutional placement by D.Y.S. selection of participants for noninstitutional placement supervised by the juvenile courts. Another option to be considered is amending the law so that a statistical safety valve is placed on the number of commitments. A maximum commitment level could be determined for each county based on either the county's population or juvenile crime rate.¹³³ If a county were to exceed its maximum commitment level, its community subsidies would be cut proportionately.¹³⁴ These funds could then be distributed to D.Y.S. for treatment of those juveniles who were committed beyond the maximum commitment level. This plan would preserve the juvenile court's discretion to commit as many serious juvenile offenders as necessary. In addition, this statistical safety valve would

126. *Id.* at 23.

127. OHIO REV. CODE ANN. § 2151.38(B)(2) (Page Supp. 1982).

128. Radcliffe Interview, *supra* note 3.

129. Sheehan Interview, *supra* note 48.

130. Juveniles in Institutions, *supra* note 35, at 23.

131. 62% of the total number of D.Y.S. commitments during December of 1981 & January of 1982 were for property crimes. *Id.* at 15.

132. *See supra* note 4 and accompanying text.

133. In the early stages of the consideration of H.B. 440, the Ohio Youth Commission recommended adoption of a plan similar to this. Sheehan Interview, *supra* note 48.

help control the institutional population size and help to ensure that "the dollar follows the child."¹³⁵

Another possible way to alleviate the problems posed by the overcrowding of D.Y.S. institutions would be to provide more institutional bedspace. This solution, however, is not economically feasible. At one time, the Ohio juvenile justice system had approximately 4,000 institutional bedspaces.¹³⁶ Currently, they only have 1,481 bedspaces.¹³⁷ Most of the old institutional bedspaces have been converted to other uses.¹³⁸ If overcrowded conditions continue, the program will eventually require more bedspace; the state would be faced with the expense of building new institutional facilities. According to the Director of D.Y.S., in order to handle the overcrowding caused by H.B. 440, the department would need two new facilities.¹³⁹ It is estimated that the cost of these new facilities would be twenty million dollars with an annual operating budget of four million dollars.¹⁴⁰ This is an expensive alternative for a state suffering from severe fiscal problems.

IV. CONCLUSION

House Bill 440 was an attempt to completely restructure the juvenile justice program in Ohio. The inherent problems, however, indicate that at best the new law has resulted in a transitional program whereby the means do not adequately promote the underlying policy and long range goals.

If Ohio is going to refocus its juvenile justice system back to the institutionalization of serious offenders, then the General Assembly should allocate to D.Y.S. the necessary funds to accomplish its institutionalization function. This increased funding should not be at the expense of the community based programs, rather the funding for institutionalization should come from outside of the juvenile justice system. If the institutions continue to be overcrowded, the ones who will pay the highest cost will be the juveniles.

The General Assembly by passing H.B. 440 has made a policy statement. They want serious juvenile offenders off the streets and in

135. See *supra* note 101 and accompanying text.

136. Reader Article, *supra* note 6, at 2.

137. See *supra* note 35, Appendix Table A-1, A-2.

138. Sheehan Interview, *supra* note 48. A prime example of this is the Fairfield School for Boys, which used to be a medium security juvenile facility in Lancaster. The legislature closed Fairfield School and transferred the facility to the adult prison system. *Delinquent Youth: Is Reform Likely Without Jail?*, The Columbus Dispatch (on file with University of Dayton Law Review office).

139. Times Leader (Martins Ferry, Bellaire, & St. Clairsville, Ohio), Apr. 3, 1981, § A, at 5, col. 2.

140. *Id.*

institutions. Only time will tell if the new law will give the juvenile justice system the ability to accomplish this goal.

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Code Sections Affected: 121.02, .03, 122.21, .23, 123.01, 124.381, 2151.011, .151., .18, .26, .312, .34, .341, .3416, .351, .353, .355, .358, .38, .651, .652, 2317.06, 2945.47, 3304.28, 3323.091, 5101.47, 5103.02, .03, 5119.02, 5120.05, .10, 5122.54, 5123.03, 5139.01-.03, .031, .04-.17, .171, .18, .19, .191, .20, .21, .24-.27, .271, .28, .281, .29-40, .43, .44, .85, .86.

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