

THE MIAMI-DADE PUBLIC DEFENDER'S OFFICE JUVENILE SENTENCING ADVOCACY PROJECT

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Funded under BJA's FY 98 Open Solicitation Discretionary Grant Program, the Miami-Dade Public Defender's Office Juvenile Sentencing Advocacy Project (JSAP) embraced a key opportunity to intercede in the alarming and growing trend of transferring juvenile offenders to the jurisdiction of adult courts. In response to prosecutorial direct file provisions, the Miami Public Defender's Office became a pro-active force in the courtroom by implementing an innovative defense strategy for juvenile clients. The central component of this strategy is the development of a sentencing plan that capitalizes on a provision permitting adult court judges to sentence transferred juveniles to the Department of Juvenile Justice, thereby providing for the effective rehabilitation of the youth in a system that was designed to recognize and respond to the developmental needs of adolescents.

This innovation comes at a particularly critical public policy moment— a time when most states, encouraged by the availability of Federal funds, have expanded the mechanisms by which adult-level sanctions can be used to respond to juvenile crime. The site of the JSAP, Miami, Florida, has been called “an ideal policy laboratory” for this issue (Bishop et al, 1999) because Florida leads the nation in the number of juveniles transferred to the adult system. In 1996, of an estimated 27,000 cases processed nationally in the adult system, 19% were from Florida (Tollett, 2000). Several researchers have noted Florida's aggressiveness in terms of its policies to move juvenile cases to the adult system (The Sentencing Project, 2000; Bishop et al., 1999; Shiraldi and Ziedenberg, 1999). An analysis of Florida Circuit Court 1998 data indicate that of the 5,223

cases were moved to the adult system via prosecutorial direct file statewide, 24% were from the 11th Circuit/Dade County Court (data prepared for the JSAP, 1999).

Originally, transfer and waiver provisions were designed to provide a resource for responding to serious, violent juvenile offenders who had proven to be unmanageable in the juvenile system and who had exhausted the resources available in that arena. The popularity of this approach among politicians and policy makers is grounded in its “get tough” appeal as a no-nonsense strategy for dealing with youth who pose the highest threat to public safety—those who have committed the most violent offenses and for whom all other attempts at rehabilitation have failed. Were this an actual representation of the youth targeted by the various transfer and waiver mechanisms, the level of concern over these provisions would surely be lessened. However, there is growing evidence that many youth are transferred to the adult court for less-serious, non-violent offenses, even when they have not been exposed to the full range of graduated sanctions available in the juvenile justice system.

Zimring stated (2000) “While ‘worst case’ events are a small portion of the juvenile court’s business, they are a recurrent phenomenon...of course, not all cases transferred out of the juvenile court are super serious. It is necessary to distinguish between the type of cases that make transfer necessary and the much wider variety of cases that get transferred” (p. 211). Although juvenile waiver and transfer provisions are considered essential to deal with serious, violent and chronic offenders, it is common for these laws to include non-violent offenses (e.g. property and drug offenses) and for youth without long criminal histories to be transferred to the adult system. In 1999, half of the youth transferred to adult court in Miami-Dade were charged with non-violent property and drug crimes (DJJ, 2000). Recent research examining juvenile transfer trends in 18 large jurisdictions found that the majority of youth (57%) were released on bail prior to the disposition of the case, and most were released within 24-hours of the

charges being filed (Juszkiewicz, 2000). These findings, along with high rates of non-conviction and high probation rates, suggested that the cases triggering transfer to adult court may not be sufficiently strong or the charges may not be particularly serious (Juszkiewicz, 2000).

It is important to recognize that although “get tough on crime” rhetoric would suggest that juveniles transferred to adult court will be sentenced to long prison terms, transferred youth are not always convicted, nor are they sanctioned exclusively to the adult system (Snyder and Sickmund, 1999). Florida statute 985.233 gives the adult court judge the authority to sentence transferred youth to the Department of Juvenile Justice, unless the convicting offense is punishable by a life or death sentence. A “985 sentence” has important future implications in that the juvenile will not be subject to the “once an adult, always an adult” mechanism by which any subsequent offense would automatically be transferred to the adult system. Thus, JSAP’s focus is not only on developing the most effective sentencing plan to deal with the youth’s current needs, but to keep the youth’s options open in the future. The Florida DJJ (2000) reported that, of the 7,862 youth prosecuted in adult courts in 1998:

- 40% were sentenced to adult probation;
- 26% were sentenced to adult prison;
- 15% were acquitted/dismissed;
- 10% were sentenced to adult jail for a felony;
- 7% were committed to a juvenile commitment program;
- 1% were sent to pre-trial diversion; and
- 1% were sentenced to juvenile community control.

Thus, while prison certainly may be appropriate for a segment of the transferred population, a much broader array of options may be imposed for less serious, non-violent offenders.

Program Design

The basic approach of the JSAP addresses the qualitative differences between juvenile and adult offenders in both the genesis of their criminality and the promising approaches toward rehabilitation. Just as the adult correctional system is often poorly prepared to manage and treat young offenders (see Austin and Dedel Johnson, 2000; Beyer, 2000; Zimiring, 2000), the structure of a law office designed to represent adult clients may be similarly ill-equipped to serve the needs of children. Thus, the structure of the JSAP was engineered to permit investigation, assessment, and case planning that attended to the unique life circumstances, levels of mastery and competence, and treatment needs of younger clients. The programs' structure reflects many of the best practices encouraged by The Sentencing Project (Young, 2000), whose commission identified essential elements of strong and effective public defender programs serving youth prosecuted as adults.

The JSAP target population includes a sub-set of all juvenile cases direct filed by the State's Attorney. By law, certain cases are not eligible for juvenile sanctions (e.g., those indicted by a grand jury, those with previous adult convictions or charged with an offense that carries a life or death penalty) and are therefore excluded from the program. From the remaining cases, any youth age 16 or younger is automatically accepted for intensive services and investigation. Youth aged 17 and 18 are also eligible, although since the jurisdiction of the DJJ extends only to age 19, the time available for court processing and treatment in a DJJ program must be considered.

▶ Sentencing Advocacy Using Multi-Disciplinary Teams

Upon notice that the State's Attorney filed a juvenile case in the adult court system, the JSAP attorney screens the case for eligibility, and assigns the case to a JSAP social worker. In collaboration with the assigned defense counsel (the cases are distributed among the 80 attorneys in the Felony Unit), the social

worker interviews the youth, investigates his or her background, and begins to formulate a sentencing plan. The social workers' approach is to gather relevant social, educational, emotional, and family indicators to personalize each case in the context of relevant legal factors. The defense counsel's role is to advocate for an appropriate sentence that responds to the needs and strengths identified by the social worker. The social worker's contribution to the legal case, and vice versa, creates an environment of mutual respect.

The underlying premise of the sentence planning process is that juveniles are inherently different from adults. Developmental processes shape their maturity, cognitive development, impulse control, judgement and relationships—all of which form at differing rates and are manifested in different ways. Therefore, an effective response to a juvenile's criminal behavior must not only understand the role of these issues in the offense itself, but must also embrace them as part of treatment and rehabilitation efforts. The sentencing plan details the youth's psychosocial history, educational development and the confluence of events around key developmental stages. Also included are the youth's needs and strengths, past interventions and reasons they have not been successful, and a recommended sanction that maximizes the resources available in the juvenile justice system. The JSAP receives significant assistance from the Florida Department of Juvenile Justice (DJJ) which has shown a strong willingness to accommodate transferred youth and to work toward effective strategies for their treatment.

An important development for the field is a strength-based assessment designed for use by psychologists to 1) determine the level of cognitive, moral and emotional development of a youth, rather than to focus narrowly on the presence/absence of specific mental disorders; 2) highlight an individual youth's strengths in order to better prescribe specific treatment alternatives and their potential benefits; 3) provide a personal and historical context for the youth's

behavior so that specific areas may be targeted for interventions (Mason, 2000). The assessment tool was designed by a team of community-based youth experts, academic researchers, attorneys, and social workers. While its development is an important advancement, its implementation has been difficult because of the additional time and effort required by the contracted psychologists to become comfortable with the new format.

After discussing the sentencing plan with the prosecutor, the defense counsel presents the plan to the judge for consideration. Between January, 1999 and March, 2000, a total of 93 JSAP sentencing plans were developed. Of these, 39% were accepted by the court, 24% were rejected by the court, 12% were rejected by the prosecutor, 18% were rejected by the youth, and 7% were pending (Mason, 2000).

► **Local and National Training**

The JSAP is an innovation in its structure and its focus; it presents the whole child to the court and takes a proactive approach to develop sentencing plans that create the opportunity for positive, long-term change. With such innovation comes the need to create awareness of the project's goals, the roles of various professionals, and the potential impact. At the outset of the program, all Assistant Public Defenders participated in training that outlined the JSAP's mission, the legal advice available through the JSAP attorney, and the contribution of the JSAP social workers. A total of 51 training sessions, for a total of 355-person hours of training, were provided.

In the early implementation stages of the program, the JSAP attorney recognized that many judges were not aware of their authority, under statute 985.233, to impose a juvenile sanction when a youth has been transferred to the adult court. Utilizing both group and individual formats, extensive judicial education efforts were implemented to explain the judges' options, to provide detailed information about effective juvenile programs, and to explain the role of

the JSAP social worker in court. As might be expected, considerable variability exists among judges in their willingness to consider the JSAP sentencing plans. Mason's (2000) examination of the judge's acceptance rates revealed a clear split: some judges were quite willing to impose the recommended juvenile sanctions (i.e., accepted at least 80% of the plans presented to them) while others were clearly resistant (i.e., rejected at least 80% of the plans presented to them). Given the program's relatively short tenure and small number of cases, a detailed analyses of court acceptance rates is not yet possible.

On a national level, the JSAP organized a conference to elevate the level of discourse on the harms associated with treating juveniles as adults and the current innovations in the assessment and treatment of juvenile delinquency. Presenters at the "Our Children, Our Future" conference included national policy makers, researchers, advocates and experts and included topics such as sentencing procedures, special education issues, adolescent development, family dynamics, and effective interventions. A total of 257 individuals registered for the conference from various segments of the juvenile and criminal justice systems, including public defenders, Department of Juvenile Justice staff, Department of Corrections staff, attorneys, social workers, police officers, child advocates, judges, and service providers.

Preliminary Findings

A preliminary assessment of the JSAP indicated its significant potential to influence sentencing decisions for transferred youth (Mason, 2000). In the first 15-months of operation, 357 youth received JSAP services, although 102 cases were ultimately transferred outside the Public Defender's Office (e.g., a private attorney was hired). Of the remaining 255 cases, 36% received juvenile sanctions, 56% received adult sentences, 4% were nolle prosequere/dismitted, 3% were closed by the Public Defender's request, and 2% had no action or were otherwise closed. The 91 youth receiving juvenile sanctions represents a 350%

increase in the number of similarly-transferred youth sanctioned to the juvenile system as compared to a similar 15-month period (Mason, 2000).

While these findings are promising, a rigorous impact evaluation is required to isolate the effects of offender characteristics, circumstances of the crime, criminal history, and other social history factors. Further, more in-depth analysis is needed of the judges' and prosecutors' perspectives on juvenile sentences for transferred youth, as well as the youths' perceptions of the impact of these options. Funds are being sought for a long-term outcome analysis.

Next Steps

Given the vast increases in the number of juveniles who are being tried as adults, and the growing evidence that the adult system may be ill-equipped to maximize these youths' potential for rehabilitation, the sentencing decisions made for transferred youth represent one of the most pivotal elements of an effective response to juvenile crime. Future research should examine the differing outcomes for youth sentenced to the juvenile versus the adult system, and should work toward a prescription for addressing the developmental needs of juvenile offenders. Further, prosecutor training and specific early advocacy efforts directed toward the initial transfer decision may prove to be a uniquely powerful tool for preventing the *en masse* transfer of juveniles to the adult system.

Only through a critical examination of the role that adolescent development plays in the genesis of criminality will the pathways toward positive community integration be discovered. The JSAP project, through its strength-based approach to sentencing, represents one of the most promising approaches to dealing with the negative consequences associated with juvenile transfer.

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