



# Probation Referral

A Model for Diversion of Children and Youth with Disabilities from the Juvenile Justice System

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September 2019

NATIONAL  
**DISABILITY RIGHTS**  
NETWORK  
Protection & Advocacy for Individuals with Disabilities



DRAFT

**Probation Referral**

*A Model for Diversion of Children and Youth With Disabilities from the  
Juvenile Justice System*

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## A Letter from the Executive Director

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Dear Friends,

Children and youth with disabilities often land in the correctional system after they are failed by other systems. These are not children who benefit from punishment or confinement. They cannot "learn" from their mistakes because their actions are not mistakes -- they are

consequential and oftentimes predictable behaviors of children who have not received needed services. These children are "mis-incarcerated."

The practice of mis-incarceration does not make us safer as a society, it does not benefit youth or their families, and is incredibly expensive. Children who receive services<sup>1</sup> at home and in their communities are more successful than those we lock up.

Generous funding by the Ford Foundation has permitted Protection and Advocacy (P&A) agencies to share in an ambitious and exciting campaign to end mis-incarceration by informing policy makers and others about diversion advocacy initiatives. P&As have been accepting direct referrals from state juvenile justice authorities to advocate on behalf of mis-incarcerated youth. This report shares the story of this successful campaign and provides recommendations for future expansion.

We hope you find this report helpful and informative.



Curt L. Decker, J.D.  
Executive Director

<sup>1</sup> By "services" we mean community based services, including school based services, that a child with a disability requires to be successful. These can include, but are not limited to, direct services such as therapies (e.g. mental health, physical, speech), devices such as glasses and hearing aids, service planning/case management, supports for parents and caregivers, such as respite, and/or development of behavioral plans and supports.



## Acknowledgements

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There would be no project on which to report without the inspiration and hard work of the staff and administration of Disability Rights Texas, the Native American Disability Law Center, Protection & Advocacy for People with Disabilities, Inc. (South Carolina), and Kentucky Protection and Advocacy. We look forward to working with them as this project grows.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies that are located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A / CAP affiliated with the Native American Consortium which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A /CAP agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A / CAP agencies comprise the nation's largest provider of legally-based advocacy services for persons with disabilities.

The P&A network advocacy staff understand what children and youth with disabilities encounter within the juvenile justice system because P&As are there to see it. P&As work with children and youth with disabilities on the front end of the juvenile justice system, and also maintain a presence in the facilities in which children are confined, including prisons, jails, and detention centers. P&As have the legal authority to monitor and investigate allegations of abuse in these facilities.

We are fortunate that the Ford Foundation funded a twenty-four month project beginning November 1, 2017, titled, *Preventing Mis-incarceration of Youth with Disabilities*. "Mis-incarceration" in this context means the placement of youth with disabilities in the juvenile or adult criminal justice systems due to the lack of community-based services to meet their needs, rather than due to a need for punishment or rehabilitation in the traditional sense.

The Mis-incarceration project's aim is to assist in the prevention of placement of youth in the juvenile justice system by expanding the advocacy provided to those who require treatment, therapy, or habilitation and other related services, supports and assistance to address disability related needs. This project is implemented through the use of formal juvenile court referral programs which refer youth to their local P&A for advocacy services. Thus far, P&A projects of this type have resulted in additional services to hundreds of children with disabilities and in reduced juvenile justice placements. The goal of this grant has been to improve upon and replicate the success of these programs.

This report describes the work of current P&A program participants and provides information for advocates and government officials in other jurisdictions interested in starting programs of their own. This report provides information on outcomes, recommendations, and best practices regarding referral programs of this type, as well as a communications strategy to inform stakeholders utilizing traditional and social media.

## STATEMENT OF PROBLEM

### Long Term Goal

*To dramatically decrease the number of children and youth with disabilities who are referred to the juvenile justice system as a result of system failure.*

### Incarcerating Children with Disabilities Does Not Make Them “Better” People

Our juvenile justice system must not serve as a ready feeder for the adult criminal justice system -- providing a steady supply of children who are failed by other systems and end up incarcerated by default.

Incarceration of youth is questionable as a general practice. Recent scientific advances have shown that young brains do not function as adult brains do, so punishment using adult methods may be less effective for youth.<sup>2</sup> This same body of research has shown us what methods and techniques work better with at-risk youth<sup>3</sup> and that even very short stays in detention have a negative impact on them.<sup>4</sup>

<sup>2</sup> This report does not address the effectiveness of these methods as applied to adults.

<sup>3</sup> Georgetown University, *Improving the Effectiveness of Juvenile Justice Programs A New Perspective on Evidence Based Practice*, <http://cjjr.georgetown.edu/pdfs/ebp/ebppaper.pdf> (2010), Phillippi, Stephen & DePrato, Debra, *Innovation Brief: Model for Effective Implementation of Evidence-Based Practices*, Models for Change, (December 12, 2013) <http://www.modelsforchange.net/publications/494>. *Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System*, Models for Change Resource Center Partnership, (December 9, 2014) <http://www.modelsforchange.net/publications/718>.

<sup>4</sup> Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Facilities* (Justice Policy institute, 200\*).

Some communities have already implemented new practices with good results.<sup>5</sup> The legal system has begun to change as well. In fact, the U. S. Supreme Court has eliminated the death penalty for juveniles<sup>6</sup> and juvenile life without parole.<sup>7</sup>

But it's not the same for everyone. The U.S. incarcerates juveniles unequally and as a result, improvements have bypassed some of our children and youth. Youth of color or from particular ethnic backgrounds<sup>8</sup> and youth with disabilities are incarcerated at disproportionately higher rates.<sup>9</sup> Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability,<sup>10</sup> a rate that is more than three times higher than that of the general population. Additionally, at least 75 percent of youth in the juvenile justice system have experienced traumatic victimization,<sup>11</sup> leaving them at-risk for mental health disorders such as posttraumatic stress syndrome.

The United States incarcerates more of its youth than any other country.<sup>12</sup> As mentioned above, youth with disabilities and children of color are also disproportionately

<sup>5</sup> Dual Status Youth Reform, Robert F. Kennedy National Resource Center for Juvenile Justice, (2013) <http://www.rfknrcjj.org/our-work/dual-status-youth-reform/>. Juvenile Detention Alternatives Initiative (JDAI), <http://www.jdaihelpdesk.org/SitePages/jdai-sites.aspx>.

<sup>6</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>7</sup> *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455 (2012).

<sup>8</sup> Disproportionate Minority Contact, 6 Nat'l Council of St. Legis. 1, 2 (2011). Available at <http://www.ncsl.org/documents/cj/jjguidebook-DMC.pdf>.

<sup>9</sup> Juvenile Justice and Mental Health and Substance Use Disorders Fact Sheet, Act 4 Juvenile Justice, (August 2014) Available at: <http://act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Mental%20Health%20Fact%20Sheet%20August%202014%20FINAL.pdf>.  
<http://act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Mental%20Health%20Fact%20Sheet%20August%202014%20FINAL.pdf>.

<sup>10</sup> Skowyra & Coccozza, Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System, National Center for Mental Health and Juvenile Justice, (May, 2015), [http://www.ncmhjj.com/wp-content/uploads/2013/07/2007\\_Blueprint-for-Change-Full-Report.pdf](http://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf). Teplin, Linda A., et al., The Northwestern Juvenile Project: Overview, 1-13 (2013). Available at <http://www.ojdp.gov/pubs/234522.pdf>. Better solutions for Youth with Mental Health Needs in the Juvenile Justice System, The Mental Health and Juvenile Just. Collaborative for Change, 17 (2014). Available at: <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>.

<sup>11</sup> Better solutions for Youth with Mental Health Needs in the Juvenile Justice System, The Mental Health and Juvenile Just. Collaborative for Change, 17 (2014). Available at: <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>.

<sup>12</sup> Holman, Barry & Ziedenberg, Jason, Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities, Justice Policy Institute, (2006,)



represented in the juvenile justice system. “As states have undertaken efforts to reduce disproportionate minority confinement for youth, they have found evidence that disproportionality occurs at every contact point within the juvenile justice system, from arrest to cases transferred to criminal court and not just at detention and correction.”<sup>13</sup>

Prisons, jails and juvenile detention facilities have in many places become the new institutions. These new facilities do not treat our children any better than the old ones did. In many jurisdictions, education and habilitation have become less important than punitive so-called “behavior modification” regimes. Adult-like methods of punishment, such as solitary confinement have become commonplace in many juvenile facilities. Solitary confinement (isolation) is even more brutal to young people than it is to adults.<sup>14</sup>

Despite policy efforts such as the Prison Rape Elimination Act,<sup>15</sup> juvenile detention facilities can be places where children and youth,<sup>16</sup> many of whom were abused as small children,<sup>17</sup> are physically, emotionally and sexually abused all over again.<sup>18</sup> Vulnerable

[http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Shufelt, Jennie L. & Coccozza, Joseph J, *Youth with Mental health Disorders in the Juvenile Justice System: Results from a Multi-State Prevalence Study*, National Center for Mental Health and Juvenile Justice. (June, 2006), <http://www.ncmhjj.com/wp-content/uploads/2013/07/7.-PrevalenceRPB.pdf>.

<sup>13</sup> Hsia, Heidi, *Disproportionate Minority Contact Technical Assistance Manual*, National Criminal Justice Reference Service, 1 (July 2009), [https://www.ncjrs.gov/html/ojjdp/dmc\\_ta\\_manual/dmcintro.pdf](https://www.ncjrs.gov/html/ojjdp/dmc_ta_manual/dmcintro.pdf).

<sup>14</sup> *The Box: Teens in Solitary Confinement in U.S. Jails, Prisons and Juvenile Halls*, Youtube, (May, 2015) <https://www.youtube.com/watch?v=jA1LkgyQ4lw&feature=youtu.be>. *One Dark Side of the Criminal Justice System that Everyone Should Know*, Mic, (May, 2015) <http://mic.com/articles/116806/one-dark-side-of-the-criminal-justice-system-that-everyone-should-know>.

<sup>15</sup> Such as the Prison Rape Elimination Act of 2003 (PREA), [42 U.S.C. § 15601](#) *et seq.*, which contains protections for youth from sexual predation by other inmates and staff.

<sup>16</sup> As this is a report about youth with disabilities, unless otherwise stated, when the term “youth” is used, it is intended to mean youth with disabilities.

<sup>17</sup> Thomas Grisso & Gina Vincent, *Trauma in Dual Status Youth: Putting Things in Perspective*, Models For Change (May, 2015) <http://www.modelsforchange.net/publications/7601>. Wiig, Janet K. & Tuell, John A., *Guidebook for Juvenile Justice & Child Welfare System Coordination and Integration*, xiii-xvi (2013, ed. 3). Available at: <http://www.rfknrcjj.org/images/PDFs/Guidebook-for-JJ-and-CW-System-Coordination-and-Integration-Cover.pdf>.

<sup>18</sup> Sexual: Elinson, Zusha, *Juveniles Sexually Abused by Staffers at Corrections Facilities*, Wall St. J. (Jan 1, 2015). Available at <http://www.wsj.com/articles/juveniles-sexually-abused-by-staffers-at-corrections-facilities-1420160340?mg=id-wsj>. Beck, Allen J., et al., *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009*, 123 (2010). Available at <http://www.bjs.gov/content/pub/pdf/svjfry09.pdf>. *Key Facts: Youth in the Justice System*, Campaign for Youth Justice (April 2012), <http://www.campaignforyouthjustice.org/documents/KeyYouthCrimeFacts.pdf>.

youth learn survival skills and coping mechanisms while in the system that increase the likelihood that they will re-offend upon release, feeding an adult system already crowded with prisoners who have disabilities. In short, it is often the case that youth with disabilities come out of the juvenile justice system worse off than they went in.

There remains an urgent need to protect children and youth with disabilities from unnecessary incarceration. When confinement is necessary, it is critical that youth are provided the services they need to grow and develop, as well as the education and rehabilitation necessary to rejoin their communities successfully.

### **Causes: Children with Disabilities Are Placed in the Juvenile Justice System Due to Failures in Other Systems**

Example:

In September 2019, a six-year-old girl with sleep apnea was arrested at school, handcuffed and taken in for booking after she had a tantrum.

The school resource officer who arrested her knew of her condition and arrested her anyway.

See:

<https://www.orlandosentinel.com/news/breaking-news/os-ne-lucious-emma-nixon-elementary-kaia-arrested-6-year-old-20190923-5jg3ehnl1fhs7lprtso4r2f35e-story.html>; <https://time.com/5683453/children-arrested-orlando-florida-school/>

### **Schools**

The causes of mis-incarceration often happen long before a child makes contact with the juvenile justice system. Students who are removed from school are more likely to

Physical: Understanding the OJJDP Survey of Conditions of Confinement in Juvenile Facilities, Center for Children's Law and Policy. (August 2010), <http://www.cclp.org/documents/Conditions/Fact%20Sheet%20-%20OJJDP%20Survey-%20Conditions%20of%20Confinement.pdf>. Fact Sheet: Protecting Incarcerated Youth, Act 4 Juvenile Justice, (September, 2014) <http://act4jj.org/sites/default/files/ckfinder/files/Act4JJ%20Fact%20Sheet-Protecting%20Incarcerated%20Youth%20FINAL%20Sept%202014.pdf>.

enter the juvenile justice system, and school district discipline practices are one of the key intake routes into the School to Prison Pipeline (STPP).<sup>19</sup> In fact, school staff refer students with disabilities directly into the juvenile justice system, through the use of such methods as arrests for school code violations, truancy actions, and disciplinary “tickets.”<sup>20</sup> This happens even where there are laws and policies in place to prevent punishing children for disability related behaviors, and that require the school district to provide behavior related services.

Children with disabilities are removed from school for disciplinary reasons more often than other students. A data analysis released in August of 2012 makes this connection for children with disabilities. Applying these three lenses together – race, gender and disability — yields a more disturbing image than any one of the categories alone. The group that consistently has the highest rate of suspension is African American male

<sup>19</sup> There is a package of research that addresses these issues at [http://civilrightsproject.ucla.edu/events/2013/copy\\_of\\_closing-the-school-discipline-gap-agenda](http://civilrightsproject.ucla.edu/events/2013/copy_of_closing-the-school-discipline-gap-agenda). See: Balfanze, Robert, et al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, Civil Rights Project at UCLA, (April, 2013), <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf>. Marchbanks, Miner P, et al., *The Economic Effects of Exclusionary Discipline on Grade Retention and High School Dropout*, Civil Rights Project at UCLA (April 2013), <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/the-economic-effects-of-exclusionary-discipline-on-grade-retention-and-high-school-dropout/marchbanks-exclusionary-discipline-ccrr-conf.pdf>. Skiba, Russell J., et al., *Where Should We Intervene? Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion*, Civil Rights Project at UCLA (April 2013), [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy\\_of\\_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/skiba-where-intervene-ccrr-conf-2013.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/skiba-where-intervene-ccrr-conf-2013.pdf). Toldson, Ivory A., et al., *Reducing Suspension among Academically Disengaged Black Males*, Civil Rights Project at UCLA (April 2013), [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3\\_of\\_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/toldson-reducing-suspension-ccrr-conf-2013.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy3_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline/toldson-reducing-suspension-ccrr-conf-2013.pdf).

<sup>20</sup> By “tickets” here we mean tickets given to students for violation of school rules that result in fines and/or referrals to the juvenile justice system. For example, tickets given to students in Texas as a result of truancy. See, *Class, Not Court: Reconsidering Texas’ Criminalization of Truancy*, Texas Appleseed, (2015), available at: [http://www.texasappleseed.net/index.php?option=com\\_docman&task=doc\\_download&gid=1209&Itemid=](http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=1209&Itemid=)

students with disabilities. In some of the largest school districts in the U.S., suspension rates for this group reach more than 70% of their enrollment.<sup>21</sup> As a result of a report by the Civil Rights Project and others, we know that a specific sub group of children of color, those who are also children with disabilities, receive different treatment than their peers in public school. Not surprisingly, this is also the group represented at the highest rates in the juvenile justice system.

These suspension rates are inexcusable, given what we now know about practices that school districts may use to keep students with disabilities productively engaged in school, including such low cost innovations as positive behavior supports and interventions, quality teacher training and behavior planning.<sup>22</sup> Diversion from the juvenile justice system can work well for schools and students both.

When a student begins to have behavioral issues at school, a solid functional behavior assessment and positive behavior intervention plan can make a great difference in both improving the child's behavior and teaching the child healthy alternative coping methods. The provision of "wrap around"<sup>23</sup> community based services may also be a helpful support to the child, her family, and school staff. In addition, if the youth later ends up in the juvenile justice system, those supports will be more easily accessed when he/she transitions out.

In short, the provision of special education services, and behavioral interventions at school can often prevent school removal and arrest.

<sup>21</sup> Losen, Daniel J. & Gillespie, Jonathan, *Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School*, Civil Rights Project at UCLA 36 (August 2012)

<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-ccrr-research/losen-gillespie-opportunity-suspended-2012.pdf>.

<sup>22</sup> Gregory, Anne, et al., *The Promise of a Teacher Professional Development Program in Reducing the Racial Disparity in Classroom Exclusionary Discipline*, Civil Rights Project at UCLA (April 2013),

<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/the-promise-of-a-teacher-professional-development-program-in-reducing-the-racial-disparity-in-classroom-exclusionary-discipline/gregory-teacher-development-ccrr-2013.pdf>.

*Positive Behavioral Interventions & Supports*, Office of Special Education Programs, (May 2015),

<http://www.pbis.org>.

<sup>23</sup> "Wrap Around Services" generally consist of a package of individualized community-based services focused on the strengths and needs of the child and family.

## Law Enforcement

Youth with disabilities may be arrested in the community for behaviors that appear concerning but are actually quite harmless. They may be arrested for behaving strangely or other actions that are not actually crimes. Police training can be successful at preventing negative police interactions under such circumstances. Disabilities may prevent youth from advocating appropriately for themselves at the time of arrest and/or for appropriate dispensation within the system. For example, youth with particular types of disabilities may be more likely to confess to a crime they did not commit.<sup>24</sup> Youth with disabilities may not be able to express exactly what happened during an incident, or may be named by another youth in an attempt to deflect responsibility, and be unable to explain their perspective regarding an incident. Youth who have community based services, such as wrap around services and case management, may have a built in professional advocate to explain to authorities why the youth acts in a particular way and assist to divert them from arrest. However, these services are not uniformly available.

Due to the lack of appropriate services or the inability to advocate effectively on their own behalf, youth with disabilities may also be more likely to move deeper into the system than other youth. Juvenile defenders often lack the information they need to inform the court of the impact of a child's disabilities. Some juvenile court staff and others may express a well-meaning belief that the best way to ensure access to services and to get the attention of parents and caregivers is by bringing the youth into the juvenile justice system.

In addition, a child without disabilities may be more likely to be sent home by the court (remanded to parental custody) with a stern warning, while a child with disabilities who has a clear and unmet need for services remains in custody. In some states, "direct file" statutes permit youths to be tried as adults for certain offenses, making diversion more difficult. In addition, inadequate juvenile defense in some jurisdictions and basic unmet reasonable accommodation needs, such as the need for sign language interpreters, accessible public transportation, or courtroom accommodations, may result in the youth

<sup>24</sup> Davis, Leigh Ann, *People with Intellectual Disability in the Criminal Justice System: Victims & Suspects*, The Arc, August 2009. Available at: <http://www.thearc.org/what-we-do/resources/fact-sheets/criminal-justice>



being unable to access the court system effectively, resulting in missed court dates and related appointments.

## **Community Mental Health and Other Community Based Services**

Long waiting lists for community based services, including access to evaluations, therapy, medication prescription services, and medication management, among others, may cause youth to be unnecessarily detained in the juvenile justice system or referred by school staff into that system. This referral may be due to a generally mistaken belief that contact with the juvenile justice system will expedite and shorten a youth's wait for services.

## **Child Welfare**

Children who are wards of the state<sup>25</sup> due to parental abuse or neglect are also more likely than other youth to end up in the juvenile justice system. Some reasons for this include a lack of services that will allow them to be successful in placement, and the lack of a continuum of placement options to meet their disability-specific needs. P&As also have had cases in which children who have not been accused of breaking any laws, are nonetheless housed with youth adjudicated delinquent, due to a lack of placement options.

For these reasons, youth involved in the child welfare system are detained in the juvenile justice system at an earlier age, more frequently, and for longer periods of time than youth with no child welfare involvement.<sup>26</sup> Like "dual status" youth with both mental health and substance use disorders, youth who are involved in both the child welfare and juvenile justice systems are more likely to be treated harshly within the juvenile justice system. Their numbers tend to accumulate proportionately as youth remain longer in the system.

<sup>25</sup> Or wards of the county in some jurisdictions.

<sup>26</sup> Halemba, Gregory & Siegel, Gene, Doorways to Delinquency: Multi-System Involvement of Delinquent Youth in King County (Seattle, WA), National Center for Juvenile Justice, (September 2011) [http://www.ncjj.org/pdf/MFC/Doorways\\_to\\_Delinquency\\_2011.pdf](http://www.ncjj.org/pdf/MFC/Doorways_to_Delinquency_2011.pdf).

## WHY DIVERSION MATTERS

If juvenile incarceration were of benefit to youth, mis-incarceration might be less of a concern – but this is simply not the case. Incarceration for the most part does not benefit youth, is expensive, and does not produce better outcomes.<sup>27</sup> It is both unjust and inefficient to punish children who have not broken the law intentionally. For example, when a child with a disability is referred to the juvenile justice system for truancy, but the child has been unable to attend school because accommodations have not been made so he can attend school, punishment will not improve the child's attendance.<sup>28</sup>

Once incarcerated, youth often leave these facilities worse, not better, off and often experience short-term and life-long adverse consequences.<sup>29</sup> Confinement often disrupts any educational and vocational opportunities, medication management, and counseling they may be receiving.<sup>30</sup> Even an interruption of a few days or weeks, coupled with the trauma of confinement, can cause disruptions in family and peer relationships. It can stall adolescent social and emotional development and result in relationships with negative peers, school dropout, and difficulty finding employment due to the stigma of incarceration.<sup>31</sup>

<sup>27</sup> Re-Examining Juvenile Incarceration: High Cost, Poor Outcomes Spark Shift to Alternatives, PEW Charitable Trusts, (April, 2015) <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>.

<sup>28</sup> This example may seem simplistic but P&A have handled cases with this fact pattern.

<sup>29</sup> Holman, Barry & Ziedenberg, Jason, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, Justice Policy Institute, (2006), [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Griffin, Patrick, *Juvenile Court-Controlled Reentry: Three Practice Models*, National Center for Juvenile Justice (February 2005) <http://www.ncjj.org/PDF/court-controlledreentry.pdf>. Nellis, Ashley, et al., *Youth Reentry: Youth Development, Theory, Research & Recommended Best Practices*, 1 49 (2009).

<sup>30</sup> Holman, Barry & Ziedenberg, Jason, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, Justice Policy Institute, (2006) [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Griffin, Patrick, *Juvenile Court-Controlled Reentry: Three Practice Models*, National Center for Juvenile Justice (February 2005), <http://www.ncjj.org/PDF/court-controlledreentry.pdf>. Nellis, Ashley, et al., *Youth Reentry: Youth Development, Theory, Research & Recommended Best Practices*, 1 49 (2009).

<sup>31</sup> Holman, Barry & Ziedenberg, Jason, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, Justice Policy Institute, (2006), [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Griffin, Patrick, *Juvenile Court-Controlled Reentry: Three Practice Models*, National Center for Juvenile Justice (February

Those who return home from detention because the charges are dismissed may be stigmatized by their arrest and struggle to cope with the long-term effects of confinement.<sup>32</sup> Many problems that contribute to a youth's maladaptive behavior, arrest, and confinement still persist when they return to the community — they still have low literacy, poor academic achievement, and difficulty managing their anger, emotions, and relationships.<sup>33</sup> In addition, these youth now have another risk factor: contact with the justice system.<sup>34</sup>

Incarceration is all too often ineffective in promoting public safety. It can result instead in a large number of youth cycling back into the justice system.<sup>35</sup> The high recidivism rate for court-involved youth is strong evidence that incarceration is not effective in helping youth to get on track and become successful adults.<sup>36</sup>

2005), <http://www.ncji.org/PDF/court-controlledreentry.pdf>. Baltodano, H. M., et al., Transition from Secure Care to the Community: Significant Issues for Youth in Detention. 372-388 (2005). Brock, L., et al., Transition Toolkit 2.0: Meeting the Educational Needs of Youth Exposed to the Juvenile Justice System, National Evaluation and Technical Assistance Center for the Education of Children and Youth who are Neglected, Delinquent, and At-Risk (2008), [http://www.neglected-delinquent.org/sites/default/files/docs/transition\\_toolkit200808/full\\_toolkit.pdf](http://www.neglected-delinquent.org/sites/default/files/docs/transition_toolkit200808/full_toolkit.pdf)

<sup>32</sup> Petteruti, A., et al., The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense, Justice Policy Institute, (May 2009), [http://www.justicepolicy.org/images/upload/09\\_05\\_rep\\_costsofconfinement\\_jj\\_ps.pdf](http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf). Holman, Barry & Ziedenberg, Jason, Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities, Justice Policy Institute, (2006) [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Mulvey, E.P., et al., Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders, Development and Psychopathology 22, 453-473 (2008).

<sup>33</sup> Matvya, J., et al., School Reentry for Juvenile Offenders, University of Maryland School of Mental Health Analysis and Action, (August 2006,) <http://csmh.umaryland.edu/Resources/Briefs/SchoolReentryBrief.pdf>.

<sup>34</sup> Matvya, J., et al., School Reentry for Juvenile Offenders, University of Maryland School of Mental Health Analysis and Action, (August 2006, <http://csmh.umaryland.edu/Resources/Briefs/SchoolReentryBrief.pdf>.

<sup>35</sup> Petteruti, A., et al., The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense, Justice Policy Institute, (May 2009), [http://www.justicepolicy.org/images/upload/09\\_05\\_rep\\_costsofconfinement\\_jj\\_ps.pdf](http://www.justicepolicy.org/images/upload/09_05_rep_costsofconfinement_jj_ps.pdf). Holman, Barry & Ziedenberg, Jason, Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities, Justice Policy Institute, (2006), [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Mulvey, E.P., et al., Trajectories of desistance and continuity in antisocial behavior following court adjudication among serious adolescent offenders, Development and Psychopathology 22, 453-473 (2008).

<sup>36</sup> Zhang, D., et al., Adolescents with Disabilities in the Juvenile Justice System: Patterns of Recidivism, Exceptional Children 77, 283-296 (2011). Zhang, D., et al., Juvenile Offenders with and without Disabilities: Risks and Patterns of Recidivism, Learning & Individual Differences 21, 12-18 (2011).

Juvenile facilities generally are not youth-centered, family-driven, or culturally sensitive.<sup>37</sup> They are not nurturing environments where youth with disabilities can accomplish the developmental tasks and learn the skills needed to become productive adults.<sup>38</sup> Not only are most secure facilities ill-equipped to meet the needs of youth with serious emotional and behavioral disabilities, standard therapies have not been normed for correctional settings where the emphasis is on physical control and punishment.<sup>39</sup> Even worse, these facilities often are places where youth are exposed to physical and sexual violence.<sup>40</sup> While exemplary juvenile justice programs do exist and youth thrive within them, such programs do not uniformly exist nationwide.

Fortunately, the pipeline which feeds children with disabilities into the juvenile justice system does not need to be a foregone conclusion. P&As and other advocates play a key role in ameliorating unnecessary and inappropriate school removals for children and youth with disabilities, preventing and diverting juvenile justice referrals of youth by school staff, and helping students meet with success at school. They also assist in obtaining appropriate community based services for youth with disabilities, both youth within and outside of the child welfare and juvenile justice systems, and work with public defenders and court staff to prevent injustices in the arrest and placement phases of adjudication.

The P&A network is well placed to do this work, currently representing thousands of children with disabilities every year. P&As and other advocates can help locate

<sup>37</sup> Holman, Barry & Ziedenberg, Jason, *Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities*, Justice Policy Institute, (2006), [http://www.justicepolicy.org/images/upload/06-11\\_REP\\_DangersOfDetention\\_JJ.pdf](http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf). Griffin, Patrick, *Juvenile Court-Controlled Reentry: Three Practice Models*, National Center for Juvenile Justice (February 2005), <http://www.ncjj.org/PDF/court-controlledreentry.pdf>. Nellis, Ashley, et al., *Youth Reentry: Youth Development, Theory, Research & Recommended Best Practices*, 1 49 (2009).

<sup>38</sup> Beyer, M. & Demuro, P., *Review of Services for Alabama Girls Charged with Delinquency*, Southern Poverty Law Center, (2012), <http://www.splcenter.org/review-of-services-for-alabama-girls-charged-with-delinquency>.

<sup>39</sup> Scott, E. S. & Steinberg, L., *Rethinking Juvenile Justice*, Harvard University Press (2008). Skowrya & Coccozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, National Center for Mental Health and Juvenile Justice, (May, 2015), [http://www.ncmhjj.com/wp-content/uploads/2013/07/2007\\_Blueprint-for-Change-Full-Report.pdf](http://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Blueprint-for-Change-Full-Report.pdf).

<sup>40</sup> Beck, Allen J., et al., *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-2009*, (2010). Available at <http://www.bjs.gov/content/pub/pdf/svjfry09.pdf>.

vulnerable youth, use data to determine systemic trends, educate lawmakers and the public, represent youth at the individual and systemic levels, and change damaging practices and unfair policies such as “zero tolerance” discipline codes.

Many P&As are already advocating on behalf of youth to divert them from contact with the juvenile justice system. By working in coalition with other interested stakeholders, including the racial justice community and juvenile defense bar, advocates also expand their capacity to serve youth.

## PROJECT DESCRIPTION

### Background

In response to a proposal submitted by National Disability Rights Network (NDRN), The Ford Foundation funded a 24-month project beginning November 1, 2017, titled, *Preventing Mis-incarceration of Youth with Disabilities*.

### Purpose and Scope of Work

The project is implemented through the use of four formal juvenile court referral programs, reviewing and learning from the advocacy techniques that are utilized by these programs. Current P&A projects of this type have resulted in additional services to hundreds of children with disabilities, resulting in reduced juvenile justice placements. The goal of this grant project has been to replicate and improve upon the success of these programs.

The initial project period encompasses two project phases and six overarching activities and benchmarks. Under Phase One, the period from November 1, 2017 – October 31, 2018, NDRN gathered information from P&As and other advocates with existing probation referral agreements<sup>41</sup>. Using this information, NDRN experience, and independent research, NDRN developed a training package for P&As and other stakeholders involved in probation referral advocacy. NDRN also hosted a national convening to enable the P&As and other stakeholders to train providers, share

<sup>41</sup> Probation Referral Agreements are formal arrangements by which probation departments refer youth to agencies for assistance, in this case, P&As.



strategies, and problem solve barriers. NDRN followed up on the input provided at those meetings, using it to refine the training package and guide the development of additional resources to assist P&As in getting past the barriers identified.

In spring 2018, NDRN developed a training for P&As on government referral models for diversion advocacy. The training curriculum includes:

- Legal requirements related to diversion of youth with disabilities
- Principles for best practices in diversion work
- P&A models for diversion work
- Problem solving of practical barriers P&As may encounter

The training was presented in part at the 2018 NDRN P&A/CAP Annual Conference in Baltimore, MD during a day-long institute where the Phase One findings were shared with P&A network attendees. During the institute, each of recipient P&As presented their work and answered questions about their unique models.

NDRN also facilitated an in-person strategy meeting for P&As interested in expanding their practice to use these models, including a discussion of barriers and challenges encountered and anticipated.

Some of the training needs and barriers identified by the P&As at this meeting include:

Sustainability of the project: When government contacts change to less supportive leaders, it can be difficult to maintain project momentum;

A lack of available placements for low income families as diversion options; youth with disabilities may be referred to juvenile justice due to lack of other placement options;

- How to increase the scope of the project beyond a specific county/district;
- Managing local differences from county to county;
- How to address needed abuse and neglect referrals (abuse by parents), without violating client confidentiality;
- Locating parents and keeping parents engaged for the long term;
- Sustainable funding for the project's work.

In Phase Two, the period from November 1, 2018 – September 30, 2019, NDRN scaled up this work collecting outcome data on the programs, refining, and publicizing the

training product to enable program expansion. NDRN also developed recommendations for best practices based on outcome data, to be included in this final report.

On April 17, 2019, NDRN held a network wide webinar on the project attended by 35 P&A participants, garnering additional feedback. NDRN included this information in a memorandum to the P&A network, which was circulated for network review and feedback on April 30, 2019. This information related to barriers and possible solutions to these barriers to program expansion.

NDRN includes this information in this report, to be released to the general public. In addition, at the request of P&A network agencies, NDRN added a session on the project at its Annual Conference in June 2019.

The first step under Phase One was to identify P&As currently working with probation departments and other government entities to divert youth with disabilities from the juvenile justice system. The initial idea stemmed from a pre-existing project in Harris County, Texas operated by Disability Rights Texas.

The three P&As initially selected for the project were Kentucky Protection and Advocacy (<http://www.kypa.net>), South Carolina Protection and Advocacy for People with Disabilities (<https://www.pandasc.org>) and Disability Rights Texas (<https://www.disabilityrightstx.org>). NDRN was pleased to identify a fourth P&A involved in this work, the Native American Disability Law Center (NADLC) (<https://www.nativedisabilitylaw.org/>) which serves Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest.

During the project, the 4 P&As completed these tasks and more:

The partner P&As conducted the following activities:

- Identifying and providing detail to NDRN about the successes, systemic barriers, and potential systemic solutions, which NDRN then shared with other advocacy groups
- Collecting aggregate data on the project participants; state/local systems involved
- Providing peer-to-peer mentoring
- Teaching the media and other advocates about the model

- Assisting in developing and presenting a 6-hour institute at the 2018 Annual Conference
- Assisting in developing and presenting a 90-minute live audio webinar and assisting in the development of a second webinar.
- Participating in a 90 minute in person strategy meeting with other P&As at the 2018 Annual Conference to discuss the barriers and solutions from their experience.
- Sharing documents, reports and other written materials developed through their projects with NDRN and other P&As
- Reviewing and commenting on draft documents developed by the NDRN about the model
- Meeting with Ford Foundation staff to respond to questions about their projects

Here is a very brief description of the four programs.

## **Texas**

Harris County Juvenile Probation Department contracts directly with Disability Rights Texas (DRTx) to provide educational advocacy services to youth in their jurisdiction who are involved with juvenile probation. The project which began in January 2016, encompasses 22 school districts. DRTx has accepted over 1,700 referrals from county probation officers regarding youth with disabilities who require educational advocacy services in order to remain in school successfully and meet the conditions of their probation.

## **Kentucky**

Kentucky had a high percentage of status offenders<sup>42</sup> placed in juvenile detention, rather than being released on probation. In 2014, a state level juvenile justice reform bill (SB 200) was proposed, which included a process to use Court Designated Workers (CDWs) to work directly with youth involved in the juvenile justice system. The bill passed and was enacted into law.

<sup>42</sup> Youth who have been charged with offenses that would not be illegal but for the age of the youth, such as truancy, possession of tobacco.

The Kentucky P&A provides technical assistance to the Department of Juvenile Justice (DJJ) staff and to the CDWs. P&A staff also provide substantive training, and form review, and represent individual youth with disabilities who are referred to the P&A by CDWs and DJJ workers.

### **Native American**

The Native American Disability Law Center (NADLC) has an agreement with a county level juvenile justice agency to accept educational advocacy cases for youth with disabilities directly from the juvenile court and juvenile probation office for screening and referral in certain regions. NADLC provides representation at disciplinary hearings, and other education related meetings. In addition, the program provides training to juvenile probation officers and community mental health workers on school discipline and education rights, and to parents/guardians with youth in the juvenile justice system. It has created a “Know Your Rights” brochure for distribution to families who may face school discipline issues.

The involvement of the Native American P&A adds a unique perspective to the project, involving intersectionality for a group of youth traditionally over-identified for commitment in the juvenile justice system, and cultural competency. Several important issues were raised by NADLC about ensuring long-term parent engagement and physical barriers to success of the program, including communication and transportation.

### **South Carolina**

As a result of lengthy litigation, the state of South Carolina entered into an agreement reforming key aspects of the state’s juvenile justice system. One outcome of this reform process was the creation of interagency treatment teams to address the needs of youth with disabilities. The P&A helps divert youth from commitment to the Department of Juvenile Justice (DJJ) by participating in the interagency treatment team meetings which bring state agencies to the table to discuss community services available for the child.

## OUTCOMES/DATA

### Texas

Disability Rights Texas (DRTx) began its third year providing education advocacy and support services to Harris County Juvenile Probation Department (HCJPD)-involved youth, families and staff on July 1, 2017. JPOs submitted a record 456 referrals between the beginning of July 2017 and end of June 2018. DRTx accepted 417 referrals – 91% of referrals received – and were able to provide services in 300 of those cases.

DRTx provided assistance with a variety of education-related issues, including the eligibility process for disability-related services at school, truancy, need for improved behavioral supports and/or disability services, denial of enrollment, services for youth who are several grade levels behind, bullying, and homelessness.

During the project's third year, DRTx attended nearly 175 meetings with schools and 100% of its direct representation cases resulted in an offer of improved services from school districts. In 76% of those cases, families overcame barriers to utilize those improved services and obtain favorable educational outcomes. DRTx found that 90% of cases where technical assistance and advice was provided to the family during its second program year were not re-referred to the program for additional assistance the following year that those services have proved to be effective in helping families and HCJPD staff resolve educational concerns.

### Native American

The P&A represented 34 students in one grant year, and obtained an extension and expansion of a grant from a local funding source allowing it to expand its new project. Some of the issues addressed included:

- Re-enrolling a student who had been expelled for a year and a half;
- Successfully keeping students in school after long-term suspension/expulsion hearings;
- Participating in Manifestation Determination Review<sup>43</sup> hearings and helping to advocate for clients whose behaviors were related to their disabilities;

<sup>43</sup> Students with disabilities have rights under statutes including the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act ("Section 504"). This includes the right to have a



- Advocating for evaluation and effective implementation of IEPs and Section 504 plans;
- Educating parent/guardians, JPOs, community health workers, and court staff on student educational rights.

## Kentucky

Kentucky P&A opened 25 cases between 2016 and 2019 on youth who have either had charges filed against them or had threats made that charges would be filed against them. The age ranges of these youth are from 5 - 20. Nine cases were for youth who are African American or bi-racial. 16 cases were for youth who were white. 20 of the 25 cases were for male clients while 5 cases were for female clients.

## South Carolina

### INITIAL OUTCOMES

During the initial 2018 Mis-incarceration project, state level outcomes were mixed with four state P&As participating in the project.

Two states (Texas and Native American P&A) were able to use advocacy to meet the service needs of hundreds of youth referred by the juvenile justice authority for diversion, while two (KY and SC) had more limited success. This was not due to the interest of the families or the hard work and ability of the advocates, but of specific systemic barriers in the system. For example, the Medicaid system in South Carolina incentivizes institutional care, diminishing the availability of community-based services. Diversion teams recommended community based counseling services for youth, and the youth would commit to access them, but services would not actually be available to meet the youth's needs. The P&A is seeking a systemic solution to the Medicaid barriers, as individual advocacy will not result in needed change.

Manifestation Determination Review hearing prior to suspension or expulsion to protect the students from disability discrimination. See for example, 20 U.S.C 1415(k)(1)(E).

## DESCRIPTION OF BARRIERS/SOLUTIONS

As mentioned above, some of the training needs and barriers identified by the P&As at the June 2018 meeting, and subsequently, include:

- Difficulty maintaining project momentum when government contacts change to less supportive leaders.
- Juvenile court systems that are too overloaded or have other internal barriers to consider the development of a project of this type.
- Lack of available placements, for low-income families especially, as diversion options; youth with disabilities may be referred to juvenile justice due to lack of other placement options. This problem may require a systemic rather than individual solution.
- Need to increase the scope of the project beyond a specific county/district.
- Difficulty in managing local differences from county to county.
- The need to address abuse and neglect referrals (abuse by parents), without violating client confidentiality
- Challenge to locate parents and keep them engaged
- Locating a sustainable funding source for the project's work

### Some Solutions Proposed by P&As:

The four P&A project partners advise programs to start small, with a pilot project first, and to provide training for court workers before proposing the project, so that government actors understand the need for diversion projects and how this differs from traditional punishment models.

Other recommendations include:

- Ensure cultural competency training and have ready translation services for all involved parties, prior to project start up;
- Solicit letter(s) of support from a government referral source to share with government peers (see Texas letter in Appendix II).
- Utilize the expertise of a respected and supportive judge or court officer who can explain the need and utility of the project to peers.
- Provide a letter of introduction to local school district staff from the court explaining the project and its purpose.

- Provide a letter of introduction to parents from the Juvenile Probation Officer, so they understand the project and its relationship to traditional juvenile justice programs.
- Meet clients at court to improve parent involvement as a second meeting and new location is not required.
- Connect this work to the need to improve community-based services as part of a larger systemic effort.
- Seek outside funding if possible to supplement P&A funding.

## COMMUNICATION STRATEGY AND FIRST STEPS

For advocates and government leaders wishing to start a diversion project of this type, it may help to provide information to the community about the need for diversion, the unfairness and ineffectiveness of incarceration as punishment for this population, and possible solutions. It is helpful for this information to be available well in advance of a specific proposal. It may be helpful to convene a stakeholder group to discuss local needs and solutions. Some stakeholder group members could include youth with disabilities and their parents, key state government officials (e.g. Dept. of Juvenile Justice, community mental health office), juvenile court judges, defense attorneys and prosecutors, members of key advocacy communities (e.g. local chapters of NAMI, parent training centers (PTIs), The Arc, civil rights organizations such as the NAACP, service providers, school district officials and the state childrens' ombuds, if one exists.

Following are some ideas for media content and methods:

**Social Media:** Tweets and posts to key websites and to Facebook with statistics relating to the poor outcomes that result from juvenile incarceration and success stories of youth with disabilities whose needs were addressed outside of the juvenile justice system. Also, media about the underlying causes of mis-incarceration in your community including suspension rates, rates of School Resource Officer (SRO) referrals to juvenile justice, rates of school based arrests, and information about lack of

community based services.<sup>44</sup> Advocates should be sure to utilize media outlets that serve minority communities who are over-represented as mis-incarcerated in the area.

**Op-Eds:** Local newspaper opinions about the need for juvenile diversion, especially for youth with disabilities.

**Local Media Stories:** Articles about local children and youth who have been removed from school due to disabilities, using stories of children already reported in the media; local children and youth who were deprived of needed services or were placed in a juvenile justice facility due to lack of other placement options. These stories help to emphasize that this is a current problem in the target community, rather than a theoretical issue impacting other communities.

## FUTURE PROJECT EXPANSION OPPORTUNITIES

There are at least three viable possibilities to expand community level juvenile justice diversion of children and youth with disabilities.

### Juvenile Probation Referral Programs

This model involves expansion of the project structured similarly to the project detailed in this report:

1. Increase the reach, geographically, demographically, and culturally of disability diversion programs to additional states and localities through the creation of additional programs.
2. Create planned obsolescence for diversion projects: Develop a model oversight infrastructure that will successfully prevent referral of children and youth with disabilities into the juvenile justice system in the first instance, without the continued need for outside intervention. This oversight infrastructure (which may simply require better enforcement by currently obligated enforcement entities, such as State Departments of Education) would reduce the use of illegal school removal, ensure more reliable access to quality community based mental health

<sup>44</sup> Much of this information is available at the local level on the Civil Rights Data Collection site: <https://ocrdata.ed.gov/>

services, and ensure treatment and support services for children and youth with disabilities in the child welfare system.

3. Policy makers, juvenile justice systems, and the larger civil rights and advocacy communities, are informed about this model oversight infrastructure and be provided the opportunity to support its adoption.

### **First Contact Referral Programs**

Due to the harm caused to children by interaction with the juvenile justice system, it is far better to divert a child with a disability, who is in need of services (e.g. special education, community based behavioral services, therapy and/or Medicaid eligibility) before they are even referred to the juvenile justice system. Studies have shown that system involvement, even minimal involvement, is counter-productive.

A pilot project focused on first contact would engage with the local police department(s) as a source of diversion pre-arrest and pre-booking. The model would work in this manner:

A police department contacted by an outside agency (e.g. school district/SRO, residential treatment program) to arrest or accept a referral to the juvenile justice system would place these actions temporarily on hold if they involve a youth with disabilities, who would either: (1) not be arrested if he or she committed the same offense in the community; and/or (2) the offense is the clear result of a failure of the child to receive needed services. The police department would provide the child's family with information about services, including referral to the P&A for advocacy, if appropriate, to see if the provision of services could obviate the need for the referral into the juvenile justice system.

Careful data collection during the pilot period will be critical to assess the long-term success of the program. The project will require training by the P&A of police department administration and officers.

### **Re-entry Referral Programs**

For many children with disabilities, incarceration is the beginning of a long journey through the juvenile and criminal justice system. Especially for children with disabilities who have unmet needs, they are likely to re-offend if they do not have access to needed



services, which are often not provided during incarceration. Even if the services are provided while they are incarcerated, such services must be continued upon release in order to be successful.

During the post-incarceration re-entry planning process, P&A staff could advocate to ensure successful entry or re-entry into community based services (school, medication, mental health treatment), critical to ensure that the child does not return to the system.

A pilot project focused on re-entry requires successful engagement with the state's juvenile justice agency. When the state agency develops a re-entry plan for a youth with disabilities who is in need of services upon release, referral to services needs to begin well prior to release. Under the re-entry referral model, if services are not readily available upon release, the agency can provide the child's family with a referral to the P&A. The family or case worker could also initiate P&A involvement in re-entry planning.

Upon referral, the P&A would either accept the case for advocacy services to obtain the needed services prior to release, and/or provide information to agency staff and the family about the services to which the child is eligible upon release and how to obtain them.

Data collection during the pilot period will be critical to assess the long-term success of the program. The project will also require training of state and local juvenile justice agency staff.

## RECOMMENDATIONS

### Federal

- Lawmakers should review current federal funding programs to ensure they properly incentivize diversion programs and do not place unnecessary barriers on the diversion of children with disabilities from the juvenile justice system.
- Federal agencies should vigorously enforce the legal protections provided for by the IDEA, other federal statutes and the U.S. Constitution, including protections against illegal removal of students with disabilities from school, failure to provide access to Medicaid funded mental health services, and others.

- Congress should fund P&A agencies to advocate for children with disabilities who have been referred to the juvenile justice system

## State

- State government, state advocates, and other state stakeholders should:
  - Review data from the Civil Rights Data Collection, state complaint filings, and other sources, that may indicate disproportionality in juvenile justice referrals and school removals for certain groups of students, and strategize to remove these barriers immediately.
  - Determine state level barriers that may be preventing successful diversion, such as Medicaid payment policies that encourage institutionalization over community based services, lack of SEA enforcement of illegal school removals, among others, and should strategize to remove these barriers immediately.
- State Education Agencies (SEAs) should move forward with requirements from the reauthorization of the Juvenile Justice Delinquency Prevention Act (JJDP A) (2018) that directs them to participate in rule-making for school districts around developing reentry plans for students transitioning out of juvenile justice facilities. This will permit youth to get back on track, so they do not cycle back through the juvenile system or move on to the adult system. This law applies to all students, not just students with disabilities, but is likely even more critical for students with disabilities who need stability and consistency during major transition.<sup>45</sup>

## Local

- Local level advocates, and other local stakeholders should meet to consider the development of a project to divert children with disabilities from the juvenile justice system through the use of the court referral system, like the one described in this report.
- Local level advocates, and other local stakeholders should meet review data from the Civil Rights Data Collection, state complaint filings, and other sources, that

<sup>45</sup>34 U.S.C. § 11133 (a) (32);

<http://juvjustice.org/sites/default/files/ckfinder/files/Reentry%20Fact%20Sheet%20.pdf>

may indicate disproportionality in juvenile justice referrals and school removals for certain groups of students in there, and should strategize to remove these barriers immediately.

## APPENDICES

- A. Resources
- B. Support Letter from Harris County Texas
- C. Texas Annual Report

## RESOURCES

**Anna Aizer, Joseph J. Doyle, Juvenile Incarceration, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges , The Quarterly Journal of Economics, Volume 130, Issue 2, May 2015, Pages 759–803**

Study of 35,000 juvenile offenders over a 10-year period using the incarceration tendency of randomly assigned judges. The conclusion was that juvenile incarceration results in substantially lower high school completion rates and higher adult incarceration rates, including for violent crimes. This was due, according to the authors, to the disruption of education and the likelihood of labeling after children return to school.

**Ian Lambie & Isabel Randell, The impact of incarceration on juvenile offenders, 33 Clinical Psychology Review 3, 448-459 (Apr 2013)**

Increasingly, research points to the negative effects of incarcerating youth offenders, particularly in adult facilities. Literature published since 2000 suggests that incarceration fails to meet the developmental and criminogenic needs of youth offenders and is limited in its ability to provide appropriate rehabilitation. Incarceration often results in negative behavioral and mental health consequences, including ongoing engagement in offending behaviors and contact with the justice system. Although incarceration of youth offenders is often viewed as a necessary means of public protection, research

indicates that it is not an effective option in terms of either cost or outcome. The severe behavioral problems of juvenile offenders are a result of complex and interactive individual and environmental factors, which elicit and maintain offending behavior. Therefore, the focus of effective treatment must be on addressing such criminogenic needs and the multiple “systems” in which the young person comes from. Recent research demonstrates that in order to achieve the best outcomes for youth offenders and the general public, community-based, empirically supported intervention practices must be adopted as an alternative to incarceration wherever possible.

**Dierkhising, C. B., Lane, A., & Natsuaki, M. N. (2014). Victims behind bars: A preliminary study of abuse during juvenile incarceration and post-release social and emotional functioning. *Psychology, Public Policy, and Law*, 20(2), 181-190.**

Knowledge of preincarceration experiences of abuse among youth in the juvenile justice system continues to grow, however we know very little about their experience of abuse during incarceration. Empirical evidence on abuse during incarceration is needed for policymakers to advocate on behalf of the safety of incarcerated youth. This preliminary study evaluated the prevalence of abuse during incarceration in secure juvenile facilities and examined how abuse during incarceration is associated with postrelease adjustment among a sample of formerly incarcerated young adults (n = 62; male = 75.8%). Nearly all youth experienced some type of abuse (e.g., physical abuse, sexual abuse, psychological abuse, denial of food, and excessive stays in solitary confinement) during incarceration (96.8%). The more frequent a youth was exposed to abuse during incarceration, the more likely they were to report posttraumatic stress reactions, depressive symptoms, and continued criminal involvement postrelease. This association was significant even after controlling for preincarceration child maltreatment. We discuss policy implications to improve the safety of youth during incarceration. (PsycINFO Database Record (c) 2016 APA, all rights reserved)

**Daniel Nagin, Alex Piquero, Elizabeth Scott, & Laurence Steinberg, Public Preferences for Rehabilitation Versus Incarceration of Youthful Offenders: Evidence from a Contingent Valuation Study, 5 *Criminology and Public Policy* 4, 627-651 (Nov 2006)**

Accurately gauging the public's support for alternative responses to juvenile offending is important, because policy makers often justify expenditures for punitive juvenile justice reforms on the basis of popular demand for tougher policies. In this study, we assess public support for both punitively and nonpunitively oriented juvenile justice policies by measuring respondents' willingness to pay for various policy proposals. We employ a methodology known as "contingent valuation" (CV) that permits the comparison of respondents' willingness to pay (WTP) for competing policy alternatives. Specifically, we compare CV-based estimates for the public's WTP for two distinctively different responses to serious juvenile crime: incarceration and rehabilitation. An additional focus of our analysis is an examination of the public's WTP for an early childhood prevention program. The analysis indicates that the public is at least as willing to pay for rehabilitation as punishment for juvenile offenders and that WTP for early childhood prevention is also substantial. Implications and future research directions are outlined.

**Higgins, G.E., Ricketts, M.L., Griffith, 38 J.D. et al. Am J Crim Just 1, 1-12 (2013)**

Disproportionate minority contact is an important issue in contemporary juvenile justice. Few studies have directly examined the link between race and judicial decision to incarceration. Using official data from Pennsylvania (n = 41,561), this study added to this literature in two ways. This study used propensity score matching to obtain a purer estimate of the influence race has on the decision to petition a case to juvenile court. The results indicated that prosecutors use perceptual shorthand in making this decision that hinges on race. Specifically, blacks were more 1.28 times more likely than whites to have their case petitioned to juvenile court.

**AR Piquero & L Steinberg, Public preferences for rehabilitation versus incarceration of juvenile offenders, 38 Journal of Criminal Justice 1, 1-6 (Jan 2010).**

While juvenile justice policy in the United States has become more punitive in recent years, it remains unclear whether the public actually favors this response in lieu of more rehabilitation-oriented services. Public opinion polling generally shows that the public favors less punitive responses than policymakers often suppose, but significant questions remain about the accuracy of these perceptions generally, and in how they

have been assessed in particular. Data from four states (Illinois, Louisiana, Pennsylvania, and Washington) aimed at assessing public preferences for rehabilitation and incarceration as a response to serious juvenile crime indicated that, for the most part, the public was willing to pay more in taxes for rehabilitation than incarceration.

**John S. Lyons, Dana Royce Baerger, Peter Quigley, Joel Erlich & Eugene Griffin (2001) Mental Health Service Needs of Juvenile Offenders: A Comparison of Detention, Incarceration, and Treatment Settings, 4 Children's Services 2, 69-85 (2001)**

Juvenile arrests have increased dramatically in recent years and emerging evidence suggests that youth involved in juvenile justice have significant mental health needs. In this study, we examined 473 youth in multiple counties from 3 settings: community settings (detention-petition), correctional settings, and residential treatment settings. Using the Childhood Severity of Psychiatric Illness Scale (Lyons, 1998), the mental health needs of youth in each of these settings was ascertained and compared. Results suggest an overall high rate of mental health needs, including serious emotional disorders. Youth in institutional settings had higher levels of need than those in the community. Youth with behavioral problems were more likely to be incarcerated, whereas youth with emotional problems were more likely sent to residential treatment facilities. Prior treatment experiences, both in mental health and substance abuse treatment, were strongly related to incarceration. Other clinical and demographic variables also distinguished youth in these three settings. Implications for service planning and integration are discussed.

**Rodriguez, N., Concentrated Disadvantage and the Incarceration of Youth: Examining How Context Affects Juvenile Justice, 50 Journal of Research in Crime and Delinquency 2, 189-215 (2013).**

Attribution theory is used to frame a study on concentrated disadvantage and youth correctional confinement. Method: Population of delinquent referrals and a random sample of 50 youth case file records from a large urban juvenile court in the southwest are analyzed. Results: Black and Latino/Latina youth were more likely than their White counterparts to be institutionalized. Youth from areas with high levels of concentrated disadvantage were more likely to be confined than youth from more affluent areas. Court officials' perceptions of disadvantage play an important role when deciding whether youth should remain in the community or be incarcerated. Conclusions: Race, ethnicity, and concentrated disadvantage play a significant role in juvenile justice. Court



officials perceive areas of disadvantage as high risk and dangerous for youth. Unfortunately, correctional confinement appears to be one way to address youths' vulnerable state. This study sheds light on the importance of economic landscapes in the administration of justice and the delivery of services.

**Clinkinbeard, S. S., & Zohra, T., Expectations, Fears, and Strategies: Juvenile Offender Thoughts on a Future Outside of Incarceration, 44 Youth & Society 2, 236–257 (2012).**

The current article explores the possible selves, or future expectations, of 543 incarcerated juvenile offenders in four Western states in the United States. We argue that juveniles who are able to articulate future expectations and fears and generate concrete strategies for achieving their goals have higher levels of motivational capital (i.e., resources which provide momentum for behavior) and thus greater readiness for transitioning back into society. We found that a majority of juveniles were able to articulate simple expectations about the future; however, less than a quarter recognized the relationship between hopes and fears and connected them to concrete strategies. Findings did not differ significantly according to race or gender. We point to a need for juvenile corrections to work with all youth to construct plausible reentry plans. Furthermore, we suggest that research is needed to compare post incarceration success of youth with varying levels of motivational capital.

**Gilman, A.B., Hill, K.G. & Hawkins, J.D., When Is a Youth's Debt to Society Paid? Examining the Long-Term Consequences of Juvenile Incarceration for Adult Functioning, 1 J Dev Life Course Criminology 33 (2015).**

Results show that juvenile incarceration is not only ineffective at reducing criminal behavior later in life but that there are also unintended consequences for incarceration beyond the criminal domain. Furthermore, it appears that once a youth becomes involved in the juvenile justice system, there is a higher likelihood that he/she will remain tethered to the criminal justice system through the transition to adulthood. Given these long-term deleterious outcomes, it is recommended that suitable alternatives to juvenile incarceration that do not jeopardize public safety be pursued.

**Desai, S.R. Urban Rev, “Hurt People, Hurt People”: The Trauma of Juvenile Incarceration, 51 Urban Review 1, 1-21 (2019).**

While approximately one in three youths are identified by juvenile probation officers as needing mental health services, researchers estimate that between 67 and 90% of detained and adjudicated youth meet criteria for at least one mental health diagnosis, and almost 50% for two or more comorbid psychiatric disorders. This staggering prevalence of mental health disorders amongst system-involved youth is more frequent than in the general adolescent population. The juvenile justice system (JJS) has become the default system for incarcerated youth who do not receive the proper mental health care in the community—especially marginalized, working-class youth of color. Given the fact that there are 1.6 million system-involved youth, it is vital for the JJS to begin to address their wellness. The purpose of this paper is to present how trauma affects system-involved youth by creating emotional, mental, spiritual and physical distress by examining data from a Youth Participatory Action Research project with system-involved youth and their allies.

**Karen M. Abram, PhD; Linda A. Teplin, PhD; Devon R. Charles; Sandra L. Longworth, MS; Gary M. McClelland, PhD; Mina K. Dulcan, MD, Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention, 61 Arch Gen Psychiatry 4, 403-10 (Apr 2004).**

To determine prevalence estimates of exposure to trauma and 12-month rates of posttraumatic stress disorder (PTSD) among juvenile detainees by demographic subgroups (sex, race/ethnicity, and age). An epidemiologic study of 898 juvenile detainees was conducted using the Diagnostic Interview Schedule for Children in a large juvenile detention center in Cook County, Illinois. Most participants (92.5%) had experienced 1 or more traumas (mean, 14.6 incidents; median, 6 incidents). Significantly more males (93.2%) than females (84.0%) reported at least 1 traumatic experience; 11.2% of the sample met criteria for PTSD in the past year. More than half of the participants with PTSD reported witnessing violence as the precipitating trauma.

**Kashani, J.H., Manning, G.W., McKnew D.H., Cytryn, L., Simonds, J.F. and Wooderson, P.C., Depression Among Incarcerated Delinquents, 3 Psychiatry Resources 2, 185-91 (1980)**

The authors examined the prevalence of depression among incarcerated delinquents and nonincarcerated, nondelinquent adolescents and reported a prevalence of 18% and 4%, respectively. The possible effect of incarceration on the development of depression was also studied. DSM-III diagnostic criteria for major depressive disorders were used. Of the 100 delinquents admitted consecutively to a detention center, 11 showed evidence of depression both during and before incarceration, while seven developed a depressive disorder in the center. With regard to specific symptoms, 100% of the depressed incarcerated adolescents were found to suffer from sleep difficulties, and 94% experienced disturbances of appetite. Psychomotor retardation or agitation were the symptoms least commonly observed.

**Benda, B.B. and Tollet, C.L., A Study of Recidivism of Serious and Persistent Offenders Among Adolescents, 27 Journal of Criminal Justice 2, 111-126 (1999)**

Studies on Arkansas' incarcerated youth<sup>11</sup> found not only a high recidivism rate for incarcerated young people, but that the experience of incarceration is the most significant factor in increasing the odds of recidivism. Sixty percent of the youth studied were returned to the Department of Youth Services (DYS) within three years. The most significant predictor of recidivism was prior commitment; the odds of returning to DYS increased 13.5 times for youth with a prior commitment. Among the youth incarcerated in Arkansas, two-thirds were confined for nonviolent offenses. Similarly, the crimes that landed the serious offenders under the supervision of adult corrections were overwhelmingly nonviolent—less than 20 percent were crimes against persons.

**Shelden, R.G., Detention Diversion Advocacy: An Evaluation, Juvenile Justice Bulletin Washington, DC: Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1999).**

Several studies have shown that youth who are incarcerated are more likely to recidivate

than youth who are supervised in a community-based setting, or not detained at all. Young people in San Francisco’s Detention Diversion Advocacy Program, for example, have about half the recidivism rate of young people who remained in detention or in the juvenile justice system

**Hayes, L.M., Suicide Prevention in Juvenile Correction and Detention Facilities. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (1999)**

Office of Juvenile Justice and Delinquency Prevention reports that 11,000 youth engage in more than 17,000 acts of suicidal behavior in the juvenile justice system annually.<sup>30</sup> Another monograph published by OJJDP found that juvenile correctional facilities often incorporate responses to suicidal threats and behavior in ways that endanger the youth further, such as placing the youth in isolation.<sup>31</sup>

DRAFT

National Disability Rights Network  
820 First Street NE, Suite 740  
Washington, DC 20002

Tel: 202.408.9514 • Fax: 202.408.9520 • TTY: 202.408.9521  
[www.ndrn.org](http://www.ndrn.org)