



Orphanages, Training Schools, Reform Schools and Now This?

Recommendations to Prevent the Disproportionate Placement and Inadequate Treatment of Children with Disabilities in the Juvenile Justice System

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June 2015

NATIONAL
DISABILITY RIGHTS
NETWORK
Protection & Advocacy for Individuals with Disabilities





A Letter from the Executive Director

Dear Friends,

For centuries we have been searching for a humane way to treat children with “bad” behavior, and still we have not found our way. We have locked them up in orphanages, so-called schools for the “retarded,” “mental hospitals,” training and reform schools. We have dispatched them across the nation on orphan trains, farmed them out, drugged them, shocked, lobotomized and beaten them. We have exorcised and broken their spirits. We have scared them straight, made them climb mountains in wilderness camps and dig holes in boot camps, hoping they would learn to behave through starvation and sheer exhaustion. We have tortured our children and youth with all manner of horrors, from pepper spray to cattle prods. As if this isn’t bad enough, now we have decided these children are criminals and lock them up in juvenile justice facilities, adult jails, and prisons, sometimes placing them in solitary confinement (the “Hole,” or the “Box”) for weeks and months at a time.

And, we treat some children worse than others. Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than that of the general population.

The difference between then and now is that we know better.

We know more than ever about the hidden causes that often underlie challenging behaviors. We have a huge body of research at our disposal about best practices and adolescent development. We know what works and what does not. Yet, we persist in doing it the wrong way. Solitary confinement and treating children like adult criminals does not make them better people. In fact, more often than not it worsens their behavior and diminishes the United States in the eyes of the international community.

We know that youth who receive services at home and in their communities are better off. We should focus on providing community based services to the vast majority of juvenile offenders who are non-violent, using secure facilities as a last resort, and even then only for the amount of time necessary to ensure safety to our communities. We can afford to provide the services they need if we stop locking them up.

The best way to prevent recidivism is to ensure that youth leave the system with marketable skills, some hope, and a home to return to. It’s time to trade “solitary” for “community” so our nation’s children and youth will have a connection and a reason to succeed when they go back home. The millions we spend housing and feeding our young people behind razor wire can be far better spent helping them to find their way in this world.

Sincerely,

A handwritten signature in blue ink that reads "Curtis L. Decker".

Curtis L. Decker, Esq.
Executive Director

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I. Executive Summary

Despite some remarkable advances in the last ten years, the U.S. has not yet recovered from the policies that swept our children into juvenile justice facilities in an unprecedented wave during the 1990s. While juvenile incarceration rates have been reduced since that time, many serious problems continue to plague youth programming – such as inhumane conditions in facilities, youth treated as and intermingled with adult prisoners, and physical and sexual abuse. At the same time, the United States continues its love affair with incarceration of adults, locking up a greater percentage of citizens than any other nation, and an industry of private, for-profit prisons has developed. We need to ensure that our juvenile justice system does not serve as a ready feeder for the adult prison system.

Positive changes are occurring in the juvenile justice system, and these reforms need our support to prevent them from drowning in the current wave of incarceration zeal. In general, rates of juvenile crime and incarceration are down, the age for delinquency has been raised in many states, and lengths of stay in detention have been reduced. Dozens of juvenile justice facilities have closed and been replaced by more effective community based services.

Recent scientific advances have shown that young brains do not function as adult ones do, so that punishment using adult methods may be less effective for youth. This same body of research has shown us what methods and techniques work better with at-risk youth, and some communities have already implemented these practices with good results. The legal system has begun to change as well. In fact, the U. S. Supreme Court recently eliminated the death penalty for juveniles and Juvenile Life Without Parole.

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 from particular racial and ethnic backgrounds and youth with disabilities are incarcerated at disproportionately higher rates. Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability, a rate that is more than three times higher than that of the general population.

Prisons, jails and juvenile justice facilities have in many places become the new “mental hospitals” and “homes for the retarded,”¹ and they do not treat our children much better than

¹ It is very important to note here that these phrases and their ilk should never be used in a current context, which is why they appear here in quotes. They represent and are bound tightly to a period in our history that has come to its end, and so has the language representing it. However, it is similarly important to remember that history and to honor with honesty the struggles of those in the disability rights movement who made the change

the old institutions did. In many places, education and habilitation have become less important than punitive “behavior modification” regimes. Adult-like methods of punishment, such as solitary confinement have become commonplace in many facilities. Solitary confinement (isolation) is even more brutal to young people than it is to adults.

Despite policy efforts to prevent this, juvenile justice facilities can be places where children and youth, many of whom were abused as small children, are physically, emotionally and sexually abused all over again. Vulnerable youth learn survival skills 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 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 they are provided the services they need to grow and develop, as well as the educational and rehabilitation necessary to rejoin their communities successfully.

The National Disability Rights Network (NDRN) is the national membership organization for the Protection and Advocacy (P&A) and Client Advocacy System (CAP) Systems, the nationwide network of congressionally mandated, legally based disability rights agencies. P&A agencies have the authority to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities, and are the largest provider of legally-based services for people with disabilities in the nation.

The P&A network staff understand what children and youth with disabilities encounter within the juvenile justice system because they 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 they are found, including prisons, jails, and detention centers. P&As have the legal authority to monitor and investigate allegations of abuse in these facilities.

The goal of this report is to share what the P&As have learned about the needs of children and youth with disabilities in the juvenile justice system with those who can help make the necessary changes and protect and advance current systemic reforms.

Issues addressed in this report include: **Diversion** of children and youth with disabilities from the juvenile justice system (particularly stemming the “School to Prison Pipeline”), humane **Conditions** while incarcerated (such as accommodation and communication needs, medical care, mental health treatment, and the prevention of abuse and neglect) and **Re-entry** services

possible. Therefore, in this report we will use these words when they are necessary to provide a historical context and only then.

like education and treatment to ensure the child or youth’s success upon release from the facility.

In this report, we will describe the problems children and youth with disabilities encounter, solutions utilized with success by the P&As, and provide specific recommendations for systemic improvements.

Some of those recommendations include:

- Congress should authorize and fund a Protection and Advocacy for Juvenile Justice Program to help divert youth with disabilities from entering the juvenile justice system, investigate and monitor conditions for youth with disabilities in the juvenile justice system, and ensure proper return to the community with needed services and supports.
- Congress should include in the reauthorization of the Juvenile Justice Delinquency Prevention Act (JJDP) language that clearly and specifically eliminates the Valid Court Order exception and prohibits the use of solitary confinement and/or isolation for all juveniles, including those housed in adult settings.
- Congress should require that schools identified as having elevated school-based arrest rates: 1) lose the opportunity to use federal funds to employ School Resource Officers (SROs); 2) are required to develop Memoranda of Understanding that ensure that SROs work is limited to traditional police activities and not discipline of non-violent student behavior; and, 3) require SROs in those schools to undergo training in specific, related topics.
- The U.S. Department of Education (ED) and Department of Justice (DOJ) should fully enforce all provisions of Title VI, Title IX, the Americans with Disabilities Act (ADA), Section 504, and the Individuals with Disabilities Education Act (IDEA), including all obligations under these statutes for youth in correctional facilities, so that education of youth in these settings is equal to that provided to students in other public schools.

We can do better.

II. Overview of the Problem

Incarcerating Children with Disabilities Does Not Make Them Better People

Despite some remarkable advances in the last ten years, the U.S. has not yet recovered from the policies that swept our children into juvenile justice facilities in an unprecedented wave during the 90's.² While juvenile incarceration rates have been reduced since that time,³ many serious problems continue to plague youth programming— such as inhumane conditions in facilities, youth treated as and intermingled with adult prisoners, and physical and sexual abuse. At the same time, the United States continues its love affair with incarceration of adults, locking up a greater percentage of citizens than any other nation,⁴ and an industry of private, for-profit prisons has developed. We need to ensure that our juvenile justice system does not serve as a ready feeder for the adult prison system.

Positive changes are occurring in the juvenile justice system, and these reforms need our support to prevent them from drowning in the current wave of incarceration zeal. In general, rates of juvenile crime and incarceration are down, the age for delinquency has been raised in many states⁵ and lengths of stay in detention have been reduced.⁶ Dozens of juvenile justice facilities have closed⁷ and been replaced by more effective community based services.

Recent scientific advances have shown that young brains do not function as adult ones do, so that punishment using adult methods may be less effective for youth.⁸ This same body of

² Mark Soler, Dana Shoenberg, and Marc Schindler, *Juvenile Justice: Lessons For A New Era*, 16 Geo. J. on Poverty L. & Pol'y 483, 541 (2009). Available at:

<http://www.cclp.org/documents/JJDPAResources/Soler%20Shoenberg%20Schindler%20-%20Juvenile%20Justice%20-%20Lessons%20for%20A%20New%20Era.pdf>

³ *Juvenile Arrest Rate Trends*, OJJDP Statistical Briefing Book. Online. Available:

http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201. December 09, 2014. Available at: http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201; *Youth Incarceration in the United States*, Annie E. Casey Foundation, February 6, 2013. Available at: <http://www.aecf.org/resources/youth-incarceration-in-the-united-states/>

⁴ For a useful infographic see: *The state of America's federal prison system*, Wash.Post. (May 27, 2015). Available at http://www.washingtonpost.com/world/national-security/the-state-of-americas-federal-prison-system/2015/02/28/4855afc6-bf87-11e4-b274-e5209a3bc9a9_graphic.html?postshare=4101430761370984;

Travis, Jeremy, et. al., *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 37 (2014). Available at http://www.nap.edu/openbook.php?record_id=18613&page=37

⁵ Sickmund, M. *Which State Will Be The Last To 'Raise The Age'?*, 2014. Available at: <http://jije.org/which-state-will-be-the-last-to-raise-the-age/>

⁶ *Re-Examining Juvenile Incarceration*, PEW Charitable Trusts, April 20, 2015. Available at:

<http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>

⁷ Bryer, Levin, *The Comeback States: Reducing Youth Incarceration in the United States*, 2013.

Available at: http://www.njjn.org/uploads/digital-library/Comeback-States-Report_FINAL.pdf

⁸ This report does not address the effectiveness of these methods as applied to adults.

research has shown us what methods and techniques work better with at-risk youth⁹ and that even very short stays in detention have a negative impact on youth.¹⁰ Some communities have already implemented new practices with good results.¹¹ The legal system has begun to change as well. In fact, the U. S. Supreme Court has eliminated the death penalty for juveniles¹² and Juvenile Life Without Parole.¹³

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 from particular racial and ethnic backgrounds¹⁴ and youth with disabilities are incarcerated at disproportionately higher rates.¹⁵ Prevalence studies have found that 65-70 percent of youth in the justice system meet the criteria for a disability,¹⁶ 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,¹⁷ leaving them at-risk for mental health disorders such as posttraumatic stress syndrome.

⁹ Georgetown University, *Improving the Effectiveness of Juvenile Justice Programs A New Perspective on Evidence Based Practice*, <http://cjr.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>.

¹⁰ Barry Holman & Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Facilities* (Justice Policy Institute, 200*)

¹¹ *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>.

¹² *Roper v. Simmons*, 543 U.S. 551 (2005)

¹³ *Miller v. Alabama*, 567 U.S. —, 132 S.Ct. 2455(2012).

¹⁴ *Disproportionate Minority Contact*. 6 Nat'l Council of St. Legis. 1, 2 (2011). Available at <http://www.ncsl.org/documents/cj/jguidebook-DMC.pdf>

¹⁵ *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%2014%20FINAL.pdf>. <http://act4jj.org/sites/default/files/ckfinder/files/ACT4JJ%20Mental%20Health%20Fact%20Sheet%20August%202014%20FINAL.pdf>

¹⁶ 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. 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, 1 7 (2014). Available at: <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>

¹⁷ *Better solutions for Youth with Mental Health Needs in the Juvenile Justice System*, The Mental Health and Juvenile Just. Collaborative for Change, 1 7 (2014). Available at: <http://cfc.ncmhjj.com/wp-content/uploads/2014/01/Whitepaper-Mental-Health-FINAL.pdf>

Prisons, jails and juvenile justice facilities have in many places become the new “mental hospitals” and “homes for the retarded”,¹⁸ and they do not treat our children much better than the old institutions did. In many places, education and habilitation have become less important than punitive “behavior modification” regimes. Adult- like methods of punishment, such as solitary confinement have become commonplace in many facilities. Solitary confinement (isolation) is even more brutal to young people than it is to adults.¹⁹

Despite policy efforts to prevent this,²⁰ juvenile justice facilities can be places where children and youth,²¹ many of whom were abused as small children,²² are physically, emotionally and sexually abused all over again.²³ Vulnerable youth learn survival skills 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 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

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¹⁹ 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>.

²⁰ 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.

²¹ 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.

²² Thomas Grisso & Gina Vincent, Trauma in Dual Status Youth: Putting Things in Perspective, Models For Change (May, 2015) <http://www.modelsforchange.net/publications/760l> 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.rfknrcji.org/images/PDFs/Guidebook-for-JJ-and-CW-System-Coordination-and-Integration-Cover.pdf>.

²³ 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, 1 23 (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>.

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>.

they need to grow and develop, as well as the educational and rehabilitation necessary to rejoin their communities successfully.

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The goal of this report is to share what the P&As have learned about the needs of children and youth with disabilities in the juvenile justice system with those who can help make the necessary changes and protect and advance current systemic reforms.

Issues addressed in this report include: **Diversion** of children and youth with disabilities from the juvenile justice system (particularly stemming the “School to Prison Pipeline”²⁴), humane **Conditions** while incarcerated (such as accommodation and communication needs, medical care, mental health treatment, and the prevention of abuse and neglect) and **Re-entry** services like education and treatment to ensure the child or youth’s success upon release from the facility.

We will describe the problems children and youth with disabilities encounter, solutions utilized with success by the P&As, and provide specific recommendations for systemic improvements.

²⁴ The “School to Prison Pipeline” is frequently referred to in the media as a group of policies which result in the removal of certain youth from school and into the juvenile or adult justice systems. See: Deeney, Jeff, [How To Discipline Students Without Turning School Into A Prison](http://www.theatlantic.com/education/archive/2014/01/how-to-discipline-students-without-turning-school-into-a-prison/282944/), Atlantic, (Jan. 9, 2014). Available at: <http://www.theatlantic.com/education/archive/2014/01/how-to-discipline-students-without-turning-school-into-a-prison/282944/>

Children with Disabilities Are Placed in the Juvenile Justice System Due to Failures in Other Systems

Few dispute that in order to protect its citizens, government must address situations in which individuals violate laws. But, civil rights and questions about the deterrence value of certain penalties arise when the penalty is applied as a result of the lack of other program or placement options, or when the violation is due to a symptom of a person's disability.

The United States incarcerates more of its youth than any other country.²⁵ As mentioned above, youth with disabilities and children of color are also disproportionately 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."²⁶

The causes of this problem are not a mystery and occur long before the youth is incarcerated. The P&As have learned through their advocacy and case work that students who are removed from school are more likely to enter the juvenile justice system, and school district discipline practices are one of the key intake routes into the School to Prison Pipeline (STPP).²⁷ In fact, as

²⁵ 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. 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.ncmhji.com/wp-content/uploads/2013/07/7.-PrevalenceRPB.pdf>.

²⁶ 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/dmccintro.pdf.

²⁷ 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. 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. Toldson, Ivory A., et al., Reducing Suspension among Academically Disengaged Black Males, Civil Rights Project at UCLA (April 2013)

the case examples below illustrate, 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.”²⁸

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 had the highest rate of suspension is African American male students with disabilities. In some of the largest districts in the U.S., suspension rates for this group reached more than 70% of their enrollment.”²⁹ As a result of this 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.

Given what we now know about practices that school districts may use to keep students productively engaged in school, including such low cost innovations as positive behavior supports and interventions, quality teacher training and behavior planning, these suspension rates are inexcusable.³⁰ Diversion 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 alternative coping methods. The provision of “wrap around”³¹ community based services may also be a helpful support to both the child and her or her

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.

²⁸ 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=

²⁹ 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>

³⁰ 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>.

³¹ “Wrap Around Services” generally consist of a package of individualized community-based services focused on the strengths and needs of the child and family.

school. In addition, if the youth later ends up in the juvenile justice system, those supports will be easily accessed when he/she transitions out.

CAUSES FOR DIVERSION FAILURES

There are a number of factors that result in youth with disabilities referred disproportionately into the juvenile justice system. Here are a few to consider:

Law Enforcement

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.³² P&As have learned through their case work that 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.

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. A child without disabilities may be more likely to be sent home by the court (remanded to parental custody) with a stern warning, than a child with disabilities who has a clear and unmet need for services. In some states, “direct file” statutes permit youths to be tried adults for certain offenses, making diversion more difficult. In addition, inadequate juvenile defense in some locations and basic unmet accommodation needs, such as the need for sign language interpreters, accessible public transportation, or courtroom accommodations, may result in the youth 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 therapy, “related services,” evaluation, medication, and other services that are not evidence based, may cause youth to be unnecessarily detained in the juvenile justice system or referred by school staff into that system due to a belief that this will expedite and shorten their wait for services.

³² 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>

Child Welfare

Children who are wards of the state or county due to parental abuse or neglect are also more likely than other youth to end up in the juvenile justice system for a variety of reasons, including lack of continuity of services and placement options. P&As have had cases in which children who have not been accused of breaking any laws were housed with youth adjudicated delinquent, due to lack of program/placement options.

Once in the juvenile justice system, youth involved in the child welfare system are detained at an earlier age, more frequently and for longer periods of time than youth with no child welfare involvement.³³ Like youth with mental health and substance use disorders, “dual status” 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 delinquency cases move deeper into the system.

Public Education

As described above and throughout this report, students who are removed from school are more likely to enter the juvenile justice system, and school district discipline practices are one of the key intake routes into the School to Prison Pipeline (STPP). School staff refer students with disabilities directly into the juvenile justice system, and children who do not receive needed services fall through the cracks in to the juvenile justice system at alarming rates.

WHY DIVERSION MATTERS

If juvenile incarceration were a benefit to youth, inequitable incarceration and mis-incarceration³⁴ 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.³⁵

In addition, it is unjust to punish children who have not broken the law by choice. For example, when a child with a disability is referred to the juvenile justice system for truancy but the child has been prevented from attending school because he or she has not received the services needed to do so.

³³ 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.

³⁴ By “mis incarceration” we mean youth who are incarcerated due to lack of other programming or community based services.

³⁵ 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>.

Once incarcerated, youth often leave these facilities worse, not better off, and often experience short-term and life-long adverse consequences.³⁶ Confinement often disrupts any educational and vocational opportunities, medication management, and counseling they had been receiving.³⁷ Even an interruption of a few days or weeks, coupled with the trauma of confinement, can cause disruptions in family and peer relationships and adolescent social and emotional development, and result in relationships with negative peers, dropping out of school, and difficulty finding work due to the stigma of incarceration.³⁸ Those who return home from detention because the charges were dismissed are stigmatized by their arrest and struggle to cope with the long-term effects of confinement.³⁹ Many problems that contributed 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 have difficulty managing their anger, emotions, and relationships.⁴⁰ In addition, these youth now have another risk factor: contact with the justice system.⁴¹

³⁶ 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. 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).

³⁷ 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. 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).

³⁸ 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. Griffin, Patrick, Juvenile Court-Controlled Reentry: Three Practice Models, National Center for Juvenile Justice (February 2005) <http://www.ncjj.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

³⁹ 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. 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. 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).

⁴⁰ 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>.

⁴¹ 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>.

Incarceration is all too often ineffective in protecting the public and correction facilities are more likely to serve as a “crime school” by exposing youth to anti-social peers resulting in a large number cycling back into the justice system.⁴² The high recidivism rate for court-involved youth is strong evidence that it is not effective in helping youth to get on track and become successful adults.⁴³

Juvenile facilities generally are not youth-centered, family-driven, or culturally sensitive.⁴⁴ They are not nurturing environments where youth with disabilities can accomplish the developmental tasks and learn the skills needed to become productive adults.⁴⁵ 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 youth live in stark cells and the emphasis is on physical control and punishment.⁴⁶ Even worse, these facilities often are places where youth are exposed to physical and sexual violence and negative role models.⁴⁷ While exemplary juvenile justice programs do exist and youth thrive within them, as described in the case examples in this report, 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 foregone conclusion. As in the past, P&As and other disability rights advocates will continue to play a key role in ameliorating unnecessary and inappropriate school

⁴² 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. 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. 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).

⁴³ 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).

⁴⁴ 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. 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).

⁴⁵ 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>.

⁴⁶ 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.

⁴⁷ 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>.

removals for children and youth with disabilities, preventing juvenile justice referrals of youth by school staff, and helping students meet with success at school. They will also assist in obtaining appropriate community based services for youth with disabilities, both those 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.

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 vulnerable youth, use data to determine systemic trends and to educate lawmakers and the public, represent youth at the individual and systemic levels, and change damaging 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.

P&A Diversion Work: Problems and Solutions

Here are some examples of the types of problems youth with disabilities encounter. Youth with disabilities who are also members of another protected class (such as race or ethnicity) encounter even more significant barriers.

ALABAMA

Problem

The Alabama P&A was contacted by parents of a 13 year old boy with multiple disabilities including severe anxiety disorder, tic disorder, and learning disabilities. His special education teacher and paraprofessional had filed harassment and assault charges against him.

Solution

The P&A provided information to the client's defense attorney, juvenile probation officer, and the assistant district attorney about the child's disability and how his behavior was a manifestation of his disability. The P&A advocate attended the hearing where the child was found not guilty on all charges. The defense attorney stated that the information provided by the P&A regarding the client's disability and its impact on his behavior was vital to the outcome of the case. As a result, the youth returned to school with an appropriate IEP developed with the P&A's assistance and delinquency charges were dropped.

CALIFORNIA

Problem

Juan is a student with anxiety and depression who receives special education services. He is prone to panic attacks, nose bleeds, vomiting, and other complications brought on by his fear of being in groups which has caused chronic truancy and poor attendance at school. As a result of an administrative error in recording Juan's absences from school, Juan was ordered to wear an ankle bracelet affixed by a probation department until he returned to school. A student attendance review board did not consider Juan's special education eligibility when it referred him to probation. Later, Juan was taken by force at the direction of the probation department from his mother's home and transported to school. In less than an hour, Juan's school called his mother to pick him up because he was experiencing physical symptoms of his anxiety.

Solution

Based on Juan’s qualifying diagnosis for special education and present problems in truancy court, the P&A convinced Juan’s new school to approve home-hospital as the appropriate educational placement and service for him for the remainder of the school year. Juan’s school completed assessments and revised his IEP to indicate that once the assessments were completed, he would receive mental health and educational services from the school district through a home-hospital program. The ankle bracelet was removed and it is anticipated that Juan will attend extended school year classes in a regular school in the summer of 2015.

CONNECTICUT

Problem

A child with mental and developmental disabilities was charged with criminal mischief and disorderly conduct related to altercations with staff at a hospital where he was treated. He had been placed in the custody of the Connecticut Dept. of Children and Families (DCF) on the basis of a finding of parental neglect. Pursuant to a Connecticut statute, DCF transferred him to the Dept. of Correction (DOC) for incarceration at a juvenile detention facility (where he was kept in solitary confinement). He had never been convicted of a crime, but was incarcerated because the DCF decided he was “dangerous.”

Solution

The P&A sued and the Connecticut Supreme Court held that the trial court should have conducted a competency evaluation of the youth before he was transferred to the Department of Corrections. The ruling helped improve case law.

FLORIDA

Problem

The mother of a youth with mental illness and learning disabilities contacted the P&A after the principal of his school advocated with the school resource officer to arrest him following an altercation with another youth. The youth was placed in county jail without educational resources until a hospital/homebound teacher found the youth in the jail by chance. The youth was without educational

services for several months and the School Board had not provided the youth educational services in accordance with his IEP in years.

Solution

P&A staff intervened and after a special education due process mediation session, the school department agreed to provide the youth with transitional vocational training, one-on-one compensatory education, tutoring, and behavioral counseling. A P&A staff person was subpoenaed to juvenile court and testified about the failure of the school to adequately serve this youth. The judge dismissed the case saying it was not a criminal matter and chided the state attorney for prosecuting it.

IDAHO

Problem

Court staff were unaware of the legal rights that apply to youth with disabilities.

Solution

The P&A affected change in the practice of how defense attorneys and judges apply IDEA to children whose disability related behavior results in being criminalized. The P&A developed a Continuing Legal Education course on the IDEA and the interplay with juvenile justice issues, and developed technical assistance which the P&A provided through consultation statewide to public defenders on disability related issues impacting children with mental illness.

KENTUCKY

Problem

A parent of a 14 year old male student with mental health related disabilities contacted Kentucky P&A because the student was banned from attending school by a juvenile court judge after having behavior problems there. The student was placed in a psychiatric residential treatment facility (PRTF) but a managed care organization denied continued services through the PRTF after two weeks. The juvenile court judge placed the student in foster care in an effort to ensure continuation of services. Behavioral concerns continued, and the student was removed from foster care and placed in a juvenile detention center. It took months for student to be returned home. But when he returned home, he was ordered to attend an alternative treatment program. Behavioral concerns

continued, and the student was ordered to stay at home and receive education services there.

Solution

There was no evidence that student could not attend school with supports. P&A worked with student and parent to see that student received appropriate wraparound services to stay in the community. P&A spoke with the parent and student about strategies and all agreed the juvenile court order needed to be lifted. In preparation for this, P&A spoke with Director of Special Education and scheduled an IEP meeting. At the meeting, the team agreed that if the court order could be lifted the student would be integrated back into school. P&A filed a motion with the court and the judge lifted the ban.

At the end of court, parent, school district, and P&A staff made plans to return him to school. An IEP meeting was scheduled and held. The plan discussed at the end of court was made part of the IEP. Student was returned to school in a staggered manner.

MARYLAND

Problem

A seventeen year old African American student was arrested at school 9 times, and was handcuffed and restrained. His behavioral issues in school began in first grade. Despite these continued problems and a clear complexity to their cause (including evidence of both emotional disability and Traumatic Brain Injury), the district continued to draft IEPs that only addressed his Attention Deficit Hyperactivity Disorder (ADHD) and that were not effective. Despite numerous suspensions and arrests, the district did not revise his Behavior Intervention Plan and at his triennial IEP review, did not order an educational or psychological assessment. Instead the district had him arrested by the school resource officer. Ultimately, he was placed in detention, due to the school based arrests and referrals to Department of Juvenile Services.

Solution

The P&A filed a complaint with the U.S. Department of Justice, the resolution of which is pending.

MASSACHUSETTS

Problem

A 16 year old African American girl with mental health disabilities was enrolled as a special education student in a fully segregated public high school for students with mental health disabilities. She has been attending segregated schools in her school district since middle school because of behavioral problems related to her disabilities. In the fall of 2013, when she was seven and half months pregnant, after an altercation with a fellow student, she was arrested by a school resource officer. During the course of arrest, the police officer grabbed her, ripped her shirt in the area of her abdomen, and threw her down on her stomach against a table in the cafeteria. The officer, while handcuffing her, held her against the table on her stomach and pushed his arm into the back of her neck. Once she was handcuffed, the officer escorted her to his police car. As the officer escorted her down the school hallway to the door, he continually pushed her in her back making her unsteady on her feet in what he later described as a “follow-along” technique.

The police officer also later stated that he was unaware that she was pregnant when he arrested her. He stated he thought that she was “fat.” The student was not offered any medical care immediately following the arrest. It was not until several days later after she complained of feeling pain that she received a medical exam.

Solution

As a result of legal advocacy, the girl was transferred to an integrated high school program on the campus of a local community college. In addition to taking high school courses, she is also able to take community college level courses for which she can use the credits that she earns toward her college degree. The student is now completing her senior year in high school and hopes to graduate soon.

NEW HAMPSHIRE

Problem

Children in New Hampshire were being referred to adult court and did not have access to counsel, even in cases with several consequences.

Solution

DRC was instrumental in getting a Juvenile Justice reform package passed through the legislature. The comprehensive legislation raised the age of majority from 17 to 18, and assured that all children with a mental illness have access to counsel.

OREGON

Problem

A mother who is not fluent in English contacted the P&A about her son, a 16-year-old boy with an intellectual disability, because she believed that the school blamed the boy for things other students put him up to. An interaction with two classmates at a park led to him being placed in juvenile detention. He did not understand the charges.

Solution

The P&A reviewed his records, helped him apply for Developmental Disability (DD) and mental health (MH) services, informed his public defender of his low IQ score and lack of intent, and advocated for a more appropriate interim placement. The P&A helped devise a supervision plan to present to the court, and he was released into his mother’s custody. He was found eligible for DD and MH services. The school district complied with all evaluations the P&A requested, including a behavior and security plan, and a new IEP was developed. His mother enjoys a good working relationship with the IEP team now that a Spanish interpreter is always at the table. All charges were dropped after two assessments both showed the client’s lack of intent.

RHODE ISLAND

Problem

An eleven year old special education student was being threatened with an arrest warrant and extradition to another state regarding an incident that had allegedly occurred with an aide on a special education school bus. The boy had been receiving special education in the other state and his alleged behavior had been determined to be disability-related.

Solution

The P&A collaborated successfully with the juvenile public defender from the other state for the charge to be discontinued and dismissed, and then referred the case to that state's P&A for review regarding the criminalization of disability related behavior.

TENNESSEE

Problem

A sixteen-year-old youth diagnosed with agoraphobia, major depressive disorder with psychotic features, post-traumatic stress disorder, and social phobia had been referred to the juvenile justice system by his school due to a disability related behavior. The school filed truancy charges for excessive absences against client, despite his record of excused absences and his mother's effort to work with the school to get client placed on homebound services.

Solution

Due to P&A work during in a juvenile proceeding, a client's charge was dismissed, and he was able to avoid being placed in state's custody. The P&A conducted interviews, obtained school records including attendance records, disciplinary records , special education records , copies of submitted absence excuses from the school, and letters from client's health care providers.

In preparation for client's court appearance, the P&A contacted the ADA Coordinator assigned to the county and requested courtroom modifications. DLAC requested that the courtroom be cleared of all nonessential persons during client's hearing due to his anxiety and the fact that he had missed two previous court appearances because of his agoraphobia. The court granted DLAC's request and cleared a very crowded courtroom in order to leave only individuals related to client's case. As a result, client was able to successfully attend his hearing. The judge was pleased with his progress and dismissed the truancy charge because he had been attending the special day school with no absences since the beginning of the current school year. As a result, client was able to avoid being placed into the state's custody and concentrate on obtaining an education that meets his needs.

TEXAS

Problem

A 10 year-old student diagnosed with Attention Deficit Hyperactivity Disorder who exhibits physical aggression in both the school and home settings was referred to the P&A. The boy was enrolled in 5th grade at a public elementary school where he had been restrained six times in the previous month due to hitting his teachers. The school had referred him to a Disciplinary Alternative Education Program (DAEP) and was regularly calling the police, who issued tickets and referred him to the juvenile court. Despite the deterioration of his behavior in school, they had not conducted a Functional Behavioral Assessment in eighteen months or provided behavioral services.

Solution

The P&A represented the boy in a series of Individualized Education Program (IEP) meetings and attended juvenile court with the family to provide technical support to his defense attorney on disability-related issues. Through the IEP process, the P&A kept the boy from being sent to the alternative program, ensured that new independent evaluations were conducted, and that a plan was developed that allowed the boy to attend school successfully without continued restraints.

WISCONSIN

Problem

Court staff did not sufficiently understand the rights specific to children with disabilities in the juvenile justice and child welfare systems.

Solution

The P&A advocated for eligible children with under state court supervision (both child welfare and juvenile justice) through ongoing training and support of court staff and agencies who are responsible for enforcement of federal rights, to increase their understanding of applicable legal authorities.

IV. Conditions

Once in the System, They Are Not Treated Humanely nor Provided the Services They Require

Correcting Inhumane Conditions and Rights Violations for Youth in Custody

Due to the flagrancy of some violations and, on some occasions, written policies and unwritten practices that are clearly contrary to law, it is not unreasonable to conclude that youth in custody have few rights. Yet, that could not be further from the truth. A number of legal rights apply to youth with disabilities in prisons, jails and juvenile detention facilities, which advocates can employ to keep them safe from harm and to ensure that they receive the education and services they require.

Rights are meaningless unless they are respected and, when necessary, enforced. During monitoring visits and investigations of facilities where youth are held, P&As encounter and address violations including but not limited to:

- Failure to provide necessary substance use treatment; mental health treatment⁴⁸ health care and education.
- Inappropriate use of restraint, seclusion, use of psychotropic medication to control behavior, and segregation/solitary confinement.
- Inhumane conditions in general (inadequate nutrition, space, exercise, bed coverings; heat; light; air, etc.).⁴⁹
- Failure to accommodate youth with disabilities, including both physical (e.g. wheelchair ramps, communication (e.g., sign language interpreters) and programmatic accommodations (e.g. access to therapy groups and educational programming).
- Failure to protect from physical and sexual abuse by peers and staff.

P&As are not alone in their recognition of the problem:

In a nationally representative sample of youth in juvenile facilities conducted by the Bureau of Justice Statistics, 10% of incarcerated youth reported that they had been sexually victimized by staff or other youth in

⁴⁸ Department of Justice Activities Under the Civil Rights of Institutionalized Persons Act Fiscal Year 2010, Department of Justice, (2010). Available at: http://www.justice.gov/crt/about/spl/documents/split_cripa10.pdf.

⁴⁹ Some speculate that the increase in incarceration rates and the lack of services is due in part to the increased use of privately run for-profit prisons, which have an incentive to reduce services to control costs. See: Benson, Thor, The Americans Profiting from Private Prisons, Our Time Media, (May 9, 2015) http://www.attn.com/stories/1616/executives-who-are-profiting-prisoners-private-prisons?utm_source=facebook&utm_medium=social&utm_campaign=stories-1616.

the facilities...Between 65 and 70% of youth in the juvenile justice system have a diagnosable mental health disorder; yet research widely shows that services are inadequate or unavailable....The U.S. Department of Justice reports that among all youth in confinement nationwide, more than half are held in facilities that do not conduct mental health assessments for all residents...In 2003, the U.S. Department of Justice estimated that one-third of youth in juvenile facilities reported being held in isolation as a punishment and that more than half of those children were held longer than 24 hours.⁵⁰

This nation which incarcerates so many of its youth does not ensure that these youth are treated humanely.

Sources of rights

A basic understanding of the rights youth with disabilities retain when they are placed into detention,⁵¹ post adjudication confinement in juvenile justice facilities, adult jails and prisons can be helpful in identifying and rectifying these violations.

The U.S. Constitution provides protections for youth in detention and in confinement through the Fourteenth Amendment, Eighth Amendment, the Fourth Amendment, and the First Amendment. In addition, federal statutes, state constitutions, and state statutes provide youth important rights. Some of these rights include basic needs, such as safety, food, shelter, healthcare and education, as well as basic civil rights and liberties.

One relevant federal statute is the Juvenile Justice Delinquency Prevention Act⁵² (JJDP). Its core protection severely limits the placement of juvenile justice youth in adult facilities. First, the JJDP prohibits youth who are under the jurisdiction of the juvenile justice system from being held in adult jails and lock-ups, except in very limited circumstances, such as while waiting for transportation to appropriate juvenile facilities. Second, a “sight and sound” requirement applies in the very limited circumstances where youth are permitted to be placed in adult jails and lock-ups, limiting the contact these youth may have with adult inmates. Third, the “de-institutionalization of status offenders” (DSO) core protection ensures that status

⁵⁰ “Fact Sheet: Protecting Incarcerated Youth” National Juvenile Justice and Delinquency Prevention Coalition (“Act 4 JJ”) (September 2014). Available at: <http://act4jj.org/what-jjdp/quick-facts>

⁵¹ The term “detention” is sometimes used interchangeably with “confinement” in the context of juvenile justice. Youth who are held but are not yet adjudicated (the equivalent of a finding of guilt for an adult) are “detained.” Once adjudicated, they may be “committed” to a juvenile justice facility (or other term used in that state). Detained youth somewhat have different rights than adjudicated youth, so it is important to make this distinction.

⁵² 42 U.S.C. 5633 et seq.

offender cannot be locked up, unless they violate a valid court order.⁵³ Status offenders are youth who commit crimes which would not be crimes, but for their age, such as truancy and curfew violations. In some states, however, the valid court order exception has nearly swallowed the rule.⁵⁴ This is one way in which truancy violators may end up incarcerated.

The Prison Rape Elimination Act (PREA) also applies to youth in juvenile justice facilities, in an attempt to protect them from sexual assault by peers and staff.⁵⁵ In addition, the IDEA,⁵⁶ Section 504⁵⁷ and the ADA⁵⁸ apply to youth with disabilities in juvenile justice facilities in largely the same manner as they do “on the outside.” The ADA and Section 504 provide protections against discrimination based on disability in programming, in discipline, in housing, and potentially applies *Olmstead*⁵⁹ rights (rights to community integration) to juvenile justice systems.

In addition, government contracts with private prison and medical care contractors may require conformance with certain rights. Voluntary participation by the facility in accreditation or the JDAI⁶⁰ process may also help ensure attention to rights. These contracts or standards may include reference to access to basic health, hygiene, and safety (including freedom from inappropriate restraint, staff and peer abuse, and solitary confinement/isolation), religious rights, nutritious food, regular exercise and fresh air, heat, clothing, visits, mail, reading materials, medical and mental health care and access to courts and counsel.

The use of solitary confinement/isolation with youth warrants a special note. While still widely used, recent research has shown that it has an exceptionally detrimental impact on developing brains.⁶¹ Youth report having been placed in the “Box” for hundreds of days at a time, and tell of the impact it has had, including the initiation of psychotic symptoms and other mental health

⁵³ Exceptions exist in the law, and there is an effort to strengthen the JJDA to limit these exceptions during its current reauthorization.

⁵⁴ Gately, Gary, [New Report Finds Incarceration for ‘Status Offenses’ Still Widespread](http://jjie.org/new-report-finds-incarceration-for-status-offenses-still-widespread/), Juvenile Justice Information Exchange (April 10, 2015) <http://jjie.org/new-report-finds-incarceration-for-status-offenses-still-widespread/>.

⁵⁵ In 2008 alone, 17,100 juveniles reported being sexually victimized. [Proposed National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act \(PREA\)](http://ojp.gov/programs/pdfs/prea_nprm_iria.pdf), Department of Justice, (January 24, 2011) http://ojp.gov/programs/pdfs/prea_nprm_iria.pdf.

⁵⁶ 20 USC §1400 et seq.

⁵⁷ 20 USC §794 et seq.

⁵⁸ 42 USC §12101 et seq.

⁵⁹ *Olmstead v. L.C.*, 527 U.S. 581 (1999)

⁶⁰ Juvenile Detention Facility Assessment: 2014 Update, Juvenile Detention Alternatives Initiative (Annie E Casey Foundation), (2014) [http://www.jdaihelpdesk.org/JDAI Practice Guides/Practice Guide 2.1- Juvenile Detention Facility Assessment - Standards Instrument \(2014 Update\).pdf](http://www.jdaihelpdesk.org/JDAI_Practice_Guides/Practice_Guide_2.1-Juvenile_Detention_Facility_Assessment_-_Standards_Instrument_(2014_Update).pdf).

⁶¹ See Castillo, Lisa C., [No Child Left Alone: Why Iowa Should Ban Juvenile Solitary Confinement](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2490101), Social Science Research Network, (February 21, 2015) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2490101.
https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx;

effects.⁶² In one recent Iowa P&A case, several girls were discovered having been placed in solitary confinement for months at a time, girls who were wards of the state and were not even adjudicated delinquent.

“Especially difficult” in Texas

“In the winter of 2010, the P&A was appointed to represent M.P., a foster youth with disabilities who was incarcerated in a Texas Juvenile Justice Department (TJJD) facility in Brownwood. At that time, the judge let the P&A know her case would be especially difficult. M.P. had behaviors that were assaultive, had suicidal ideations, and had never maintained a residential placement without running away. She had been a prostitute at the age of 9 and had been sexually abused for a number of years. She made no progress at all in TJJD. After a year, the P&A successfully argued for her to be released from TJJD to a treatment center so she could finally receive treatment she desperately needed. The placement went well for a short period of time, but problems arose quickly and the P&A found a new placement for M.P. On her first day in the new placement, she ran away.

During her time on the run, she contacted her attorney periodically to let him know she was safe. After more than a month, she returned to her previous placement. However, she subsequently ran away again. M.P. did return to care, but was two months pregnant by the time she did so.

The P&A located a placement for her that would offer her educational opportunities, on-site mental health treatment, and parent training. This placement was significantly less restrictive than any M.P. had experienced. She finally thrived and made true progress. Because of the freedom she had, she had no inclination to run away.

The P&A further represented her in her IEP meetings with the local school district and worked with the residential facility to find the appropriate mental health treatment and located a placement designed for teen mothers. Her application was rejected due to her disabilities and criminal history, but the P&A successfully appealed that rejection and M.P. moved to that facility when she was 7 months pregnant.

The P&A continued to work with M.P. until she was released from TJJD parole and we were sure she had the resources she needed to be a successful parent. She is now thriving in her placement, finishing her high school diploma, and remaining out of the justice system. The court released us from her case as a result of M.P.’s success.”

⁶² For a powerful example in a youth’s own words about the impact of solitary confinement, see: 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>.

P&A Conditions Work: Problems and Solutions

ALABAMA

Problem

The P&A investigated an incident in which a seventeen year old girl with a mental illness and a history of self-injurious behavior was placed in a prone (face down) restraint after she placed an object in her mouth in an attempt to injure herself.

Solution

The P&A issued an investigation report which detailed how the use of prone restraints violate best mental health practices and can have deadly consequences. As a result of the P&A's advocacy, Department of Youth Services (DYS) issued a system-wide directive prohibiting the use of prone restraints if staff suspect or confirm that an object is in a student's mouth. Also, the agency prohibited all other restraint techniques that can obstruct a person's respiratory airway, including techniques wherein a staff member places pressure on a youth's back or places his or her bodyweight against their torso or back. The directive further stated that all staff members who engage in these types of restraint or supervisors authorizing these restraints shall be placed on immediate disciplinary suspension. DYS made clear that an immediate investigation would ensue if staff member utilized this type of restraint and that violations of these directives may result in termination of employment. After a related complaint by the P&A, DYS discontinued the use of a restraint chair.

In addition, the P&A conducted twenty monitoring visits in the state's three largest juvenile justice facilities, meeting with more than 700 youth. The monitoring resulted in approximately 18 investigations into allegations of abuse and neglect or other rights violations. Investigations included issues related to mental health screening, assessment and treatment planning; inappropriate suicide policy implementation; special education issues; and medical neglect. Among other things, DYS and the P&A negotiated a new suicide prevention and response policy.

AMERICAN SAMOA

Problem

A juvenile was incarcerated at a detention center pending a competency status hearing. While incarcerated, he was subjected to sexual abuse by juvenile sex offender who was ordered by the court to not be placed in a cell with other juveniles. Officials of the center at the time did not take precautionary steps ensure the safety of the young man who has been diagnosed with bi-polar disorder.

Solution

When investigated by the P&A, it was found that the center had few policies and procedures in place for protection and safety, or for measures to be taken following incidents of that nature. For example, the report to Child Protective Services was done by the P&A rather than by program officials. As a result of this investigation, policies are being developed but they still need to be approved by the Office of the Attorney General and local legislature to be finalized. As such, the outcome is pending.

ARKANSAS

Problem

A state juvenile assessment and treatment center had a number of serious conditions problems.

Solution

Disability Rights Arkansas (DR-AK) issued a report on conditions and began to collaborate with State Division of Youth Services to address need for improvement. As a result, conditions at the facility improved, including increased access to psychiatric care, replacement of abusive staff, new supports for youth such as hiring of Certified Behavior Analyst, and new Clinical and Facility administrators. In addition, the agency hired an internal investigator at the facility for a more timely review of investigation of incidents occurring at the facility, and moved toward discharge of residents who have extended length of stay at the facility.

But, after the initial flurry of improvements, DR-AK identified serious ongoing issues with mental health treatment, education, and use of punitive practices that impact youth with disabilities. DR-AK continues to address these issues.

CALIFORNIA

Problem

A young man with autism received developmental disability services his entire life. On July 22, 2012, he had a behavioral episode during which he stabbed his stepfather. His stepfather was treated and released from the hospital the same night. The youth was seventeen and charged as an adult with attempted murder, but found not competent to stand trial. Later, the regional center pursued a commitment order to place him in a developmental center. The appointed public defender opposed the placement based on his strong ties to the community, his church, and family. The judge ordered the commitment, but did not allow placement at the developmental center and, instead, ordered the regional center to find and recommend a community placement. Meanwhile, when he turned 18 years old, he was transferred to a juvenile detention facility. The youth was housed in his own cell-block because, by law, he could not be around inmates under 18, and due to concern for his safety if housed in the adult facility.

Solution

The P&A, Disability Rights California, advocated on his behalf and he was ultimately released from custody and placed in a community home. This is an example of a larger systemic issue involving the power of regional center staff to determine placement of certain youth, which the P&A is also addressing.

COLORADO

Problem

The P&A received multiple reports from the American Civil Liberties Union of Colorado (ACLU), and the Colorado Juvenile Defenders' Coalition (CJDC) about seclusion practices at a juvenile justice facility that did not comport with state law. The P&A and these entities entered into a collaborative agreement to investigate the seclusion practices at the facility. During collaborative interviews, P&A discovered that juveniles were being subjected to pain compliance measures, known as pressure point control techniques (PPTC). Some of the juveniles received injuries after being struck, kneed in their thighs, and given nosebleeds after too much pressure was applied by staff below the nose and above the upper lip on a tender pressure point.

Solution

After investigating, the P&A sent a letter to the Colorado Department of Human Services (“DHS”), informing it of the preliminary findings and requesting immediate action to stop these illegal practices. As a direct response to this collaborative effort, NYC changed its seclusion policy to ban the use of 72 hour administrative seclusion. The parties have also been meeting regularly since July 2014 and although the substance of these meetings is protected by a confidentiality agreement, the collaborative team have been giving NYC input on the drafting of new regulations addressing these concerns.

Since the early 1990's, district attorneys in Colorado have been given great discretion to direct file on a juvenile, causing youth to be treated as adults in the system. The P&A provided information about the impact that District Attorneys' discretion to direct file in adult criminal court has on juveniles with disabilities. Related legislation gave juvenile defendants the right to a hearing to challenge any direct file decision.

CONNECTICUT

Problem

The P&A was prevented from monitoring and investigating allegations of abuse, neglect and rights violations in one of the state’s largest juvenile detention centers.

Solution

As a result of legal action brought by the P&A, the P&A will be able to monitor and investigate allegations of abuse, neglect and rights violations in this facility. After negotiations continued for months with no progress, the P&A ended the impasse by instituting a suit for injunctive relief in federal court. Once suit was filed, county officials quickly indicated their willingness to settle. A settlement was reached which provided the P&A access to residents of the facility for the first time.

DELAWARE

Problem

The State Department of Education (DOE) failed to provide a Free Appropriate Public Education (FAPE) for a class of pre-trial detainees with disabilities.

Solution

The P&A filed a state complaint for a class of pre-trial detainees. A positive finding resulted in systemic reform, including training for all staff and a review of all affected students' IEPs.

IOWA

Problem

During a monitoring visit, the P&A encountered three students removed from school and confined in concrete isolation cells for up to 23 hours per day for months at a time, with one resident being isolated for at least a year. The P&A's investigation revealed that the girls were not receiving any direct instruction (educational services) as required by the IDEA while being confined.

In addition, the P&A discovered that all of the residents at the Iowa Juvenile Home (IJH) had inadequate and inappropriate individual education plans, behavior intervention plans, and transition plans, and significant inadequacies in the comprehensiveness and quality of transition plans.

Solution

DRI filed a complaint with the state Department of Education (DE) in August 2013 against the school, the juvenile home, and the local education agency. Exemplars for seven individual students were given to the DE which triggered an investigation into the entire school population. The DE conducted a targeted compliance review based on many of the allegations in the complaint and ordered the juvenile home to provide compensatory education to all of the residents who had been in isolation cells from August 2011 to October 2013. The P&A's investigation also motivated the Governor to create a task force to make recommendations on educational and other services at IJH.

LOUISIANA

Problem

A student with emotional disorders and developmental delays was incarcerated in St. James Detention Center, and was receiving no special education services.

Solution

The P&A contacted the detention center, and student was immediately moved to another facility that was better able to meet his disability related needs. An appropriate IEP was developed and implemented.

MONTANA

Problem

The director of a youth corrections facility called to request P&A assistance for a 17 year old girl, a detainee, who was exhibiting symptoms of psychosis and in need of placement in a mental health treatment facility. A mental health evaluation had recommended placement in a mental health facility, but she remained in detention under court order with a juvenile delinquency petition pending.

Solution

The P&A made calls and wrote a letter to the girl’s court-appointed attorney, the attorney’s supervisor, the state public defender office, and the county attorney’s office. These calls were not returned. The P&A advocate then discussed the problem with the chairman of the Public Defender Commission. When the advocate called to speak with the director of the detention facility, a residential services specialist from the state licensing authority was present. The advocate explained the problems and asked for assistance. The next day, the advocate received a call from the Chairman of the Public Defender’s Commission giving notice that the girl had been released from the detention center and placed in a mental health facility. The transfer occurred immediately after P&A staff spoke with the state licensing authority, and the facility was cited for inappropriately housing a juvenile it was unable to treat. The citation said that the facility would be closed if the girl was not relocated to a more appropriate placement within three days.

NEW HAMPSHIRE

Problem

The New Hampshire Disability Rights Center (DRC) conducted an investigation into the use of restraints at the Sununu Youth Services detention Center, New Hampshire’s combined pre-trial detention center and commitment facility. The

results of DRC’s second investigation of the Sununu Center revealed a pervasive pattern of unnecessary and excessive force against children at the juvenile facility. DRC sampled 109 children and found that 42% had been subject to restraint one or more times during their stay at the Sununu Center. The types of restraints included escorts, arm controls, shoulder restraints, standing restraints, mechanical restraints, body wraps, takedowns, and supine and prone floor restraints. Prone restraint is a dangerous practice because it impairs a child’s breathing and exposes children to an unreasonable risk of death or injury. DRC had previously recommended that the Sununu Center discontinue the use of prone restraint but the investigation revealed that over half of restraint incidents at the Sununu Center involved a prone restraint.

Solution

The P&A educated officials about the need for the passage of SB 396, a law that prohibits the use of dangerous restraint techniques like the ones used at the Sununu Center. The Sununu Center is making progress in terms of mental health screening and treatment of youth in their care and reduction of restraint use.

NEW MEXICO

Problem

The P&A investigated PEAK Behavioral Health Services in Santa Teresa, NM, a 63 bed residential treatment facility for children and adolescents, some of whom are referred through the juvenile justice system. The reports the P&A received that led it to conduct this investigation included allegations of improper physical restraints, injuries, verbal abuse, threats of physical abuse, and other rights violations.

The P&A believed that PEAK staff were restraining residents far too often, in non-emergency situations, and out of view of cameras. While PEAK administration reports they have increased training in restraint and seclusion and verbal de-escalation techniques, recent reviews of incident reports continue to show that restraints occur even when there does not appear to be imminent danger. Residents also continued to report abusive treatment by staff, lack of medical attention, being denied access to the restrooms, issues around sending and receiving mail, being denied phone calls to the P&A and Juvenile Probation Officers, and other rights violations.

Solution

The P&A sent several letters to facility management in response to these concerns with information from the Children's Mental Health and Developmental Disabilities Act. The P&A also recommended that PEAK work with the Building Bridges Initiative (BBI) to bring it into the arena of best practices with regard to restraints and positive behavior interventions. After several months of recommending this program, Strategic Behavioral Health (the company which operates the facility) agreed to implement the BBI program at PEAK. BBI conducted two days onsite training for PEAK staff. The P&A is waiting for the PEAK's responses to its recent letters and continue to conduct site visits.

NEW YORK

Problem

The P&A has identified deficiencies in the educational programs offered to students in multiple juvenile justice (JJ) centers.

Solution

The P&A met with the certifying agency to discuss the results of its investigation to improve the delivery of services to students in these residential settings. The agency identified corrective action that the agency took to address the lack of Behavioral Intervention Plans (BIPs) for individuals residing in JJ Centers. The P&A has conducted on-site investigations of one of the Centers that has adopted new policies to implement BIPs and will be visiting other centers to determine if similar policies have been implemented during the next fiscal year.

OHIO

Problem

The P&A visited an Ohio youth residential facility on several occasions and interviewed any resident who wished to speak to the advocates. Many of the youth complained of being forced to remain in their rooms by staff, who would use their bodies to keep the door closed, even as the resident was trying to open the door from the other side. The facility was not licensed to practice any form of seclusion, and there had been problems in the past with the facility's use of seclusion.

Solution



The P&A reported the findings to the state agency. The agency conducted their own investigation of the facility and found issues with documentation, lack of trauma-informed care in treatment plan implementation, staff training, and cultural insensitivity. The facility received a Plan of Correction (POC) for these issues.

PUERTO RICO

Problem

A P&A advocate found inadequate facilities, water infiltration, and lack of maintenance at a treatment center that is part of the state Administration of Juvenile Institutions. At time of the visit, there were 19 individuals receiving mental health services in the facility.

Solution

A meeting with the Director and P&A advocate resulted in action plan to address issues presented. In another visit, the P&A corroborated that these issues had been addressed. Due to the constant change in directors of this particular institution, the P&A will continue to monitor this facility to guarantee that all services are provided.

VIRGINIA

Problem

Benjamin spent the first half of 2014 in a restrictive isolation unit in a Department of Juvenile Justice (DJJ) facility. He only received educational services for one (1) hour or less per day. His guardian contacted P&A because she was concerned that he was receiving inadequate educational services, as well as inadequate mental health treatment. She reported that the frequent placement in the isolation unit was endangering Benjamin's mental health stability.

Solution

The P&A intervened and successfully advocated for Benjamin's transfer to a general integrated unit, and for him to receive regular education and mental health services.

WASHINGTON, DC

Problem

Children were being placed in institutional settings due to a lack of alternatives to residential treatment facilities.

Solution

The P&A continued its involvement in creating a more robust community based children's mental health system by attending the District's inter-agency workgroup to create alternatives to residential treatment facilities. ULS also worked in collaboration with the Children's Law Center, Public Defender Services of the District of Columbia, the University of the District of Columbia and American University Law Schools to create training materials for attorneys in the juvenile justice and child neglect systems regarding how to use Medicaid law to advocate for community based mental health services.

Children with Disabilities Are Detained More Readily, Remain In the System Longer Than Other Children, and Are Deprived of the Services Necessary to Prevent Recidivism

Successful Re-Entry: Post Incarceration

The purpose of rehabilitative juvenile justice programming is to prevent recidivism and allow the youth to rejoin his or her community successfully upon release.

Some factors that improve a youth’s chances of success upon release include:

- A clear residential plan, where he or she will live, and with whom.
- Meaningful and respected involvement of the youth in all aspects of treatment, transition and discharge planning.
- The youth has maintained contact with family, community, and positive peers.
- A receiving school placement that will accept credits earned while in custody, that has access to the youth’s educational records.
- Continuation of any mental health, medical, and substance abuse treatment
- Ready access to other community based services.
- For youth who are also in the child welfare system, access to V-9⁶³ and other services to meet the needs of youth transitioning out of the child welfare system.
- For youth with an IEP, IDEA transition planning and timely records transfer.

Unfortunately, even for youth who were are never formally adjudicated, their home communities and school districts do not always provide an enthusiastic welcome to them upon return. Studies show that nationally, as many as two-thirds of youth eventually drop out of school after being involved in the juvenile justice system, due to these types of barriers.⁶⁴

⁶³ Pokempner, J. Transition Planning for Youth with Disabilities in the Child Welfare System, Juvenile Law Center, 2013. Available at: <http://www.jlc.org/resources/publications/transition-planning-youth-disabilities-child-welfare-system>.

⁶⁴ Vol. 32.4 Gagnon, Joseph C., et al., Juvenile Correctional Schools: Characteristics and Approaches to Curriculum, 18 673-696 (2009). Vol. 43.4 Gagnon, Joseph C., State-Level Curricular, Assessment, and Accountability Policies, Practices, and Philosophies for Exclusionary School Settings, 206-219, (2010). Vol. 55.1 Gagnon, Joseph, C., et al., Secondary Psychiatric Schools: Characteristics and Approaches to Curriculum, 42-52 (2010). Vol. 36.1 Gagnon, Joseph, C & Barber, Brian, Characteristics of and Services Provided to Youth in Secure Care Facilities, 7-17 (2010).

On December 8, 2014, the U.S. Department of Education released a guidance package on correctional education that is useful to advocates doing conditions and re-entry work.⁶⁵ It recommends, among other things, that the responsible agency:

- Immediately upon entry of a youth into a juvenile justice residential facility, create individualized prerelease plans in partnership with the youth and his or her family that identify action steps and support services to ensure reenrollment in a community school and reduce the likelihood of re-arrest or reoffending.
- Prior to release, offer additional formal learning opportunities for the youth that are grounded in evidence- and practice-based service models and focused on social, emotional, and behavioral skill development, especially for youths with mental health conditions.
- Utilize a comprehensive approach to reentry that includes individualized reentry plans, vocational and life skills training, behavior management systems and direct academic instruction.
- Clarification that students in juvenile justice facilities are eligible to receive Pell Grants.

There has been promising recent research on best practices for re-entry programming.⁶⁶ While there are fewer clear legal tools for advocates to use, there are approaches that can help ensure that youth have access to available services upon release.

⁶⁵ Correctional Education in Juvenile Justice Facilities, U.S. Department of Education, (January 7, 2015) <http://www2.ed.gov/policy/gen/guid/correctional-education/index.html>.

⁶⁶ Muller, Eve, Reentry Programs for Students with Disabilities in the Juvenile Justice System: Four State Approaches, George Washington University: In Forum, (December 2011) https://heath.gwu.edu/files/downloads/reentryprogsforswdinthejuvenilejusticesystem_fourstateapproaches.pdf. Altschuler, David & Bilchik, Shay, Critical Elements of Juvenile Reentry in Research and Practice, (April 21, 2014) <http://csgjusticecenter.org/youth/posts/critical-elements-of-juvenile-reentry-in-research-and-practice/>. Nellis, Ashley, Back on Track: Supporting Youth Reentry from Out-of-Home Placement to the Community, Juvenile Justice and Delinquency Prevention Coalition, (2009) http://www.sentencingproject.org/doc/publications/cc_youthreentryfall09report.pdf.

P&A Re-Entry Work: Problems and Solutions

HAWAII

Problem

Hawaii's juvenile justice system, like many, did not appropriately address the needs of youth re-entering the community after incarceration.

Solution

The Hawaii P&A provided substantive education to the legislature during the process of developing legislation to reform Hawaii's juvenile justice system. The resulting bill has since passed, which included the following improvements for youth with disabilities (*inter alia*): concentrating secure bed space on serious juvenile offenders and strengthening disposition, adjustment, diversion, and services available for juvenile offenders. The bill improves the system by increasing interagency collaboration, improving the probation and parole systems, creating reentry plans for all youth; and coordinated services plans for youth while they are in custody. The bill may be found at http://www.capitol.hawaii.gov/session2014/bills/HB2490_CD2_.pdf

IDAHO

Problem

An 18 year old Caucasian male dually diagnosed mental illness and developmental disabilities contacted the P & A for assistance with his impending discharge from the Juvenile Corrections Center (JCC). JCC staff were arranging services for him upon his release, but were neglecting to address his mental health needs on the advice of the developmental disability agency (DDA) they had secured to provide follow up services.

Solution

The P & A contacted JCC and provided information on the client's right to choose his care providers, as well as the need to address both his mental health in addition to his developmental disabilities. Per JJC policy, reintegration providers must observe and not infringe on the rights of offenders to participate in their programs. P&A staff attended his transition meeting to ensure the team was made aware of the client's right to direct services of his choice and interests as required by Medicaid rules and JJC policy. As a result of P & A intervention, the

client's rights to choose his providers, and receive services that met all his needs, were restored. Upon discharge from the facility, the client will be receiving services for both MI and DD from providers of his choice.

KENTUCKY

Problem

An 18 year old white male with a diagnosis of Obsessive Compulsive Disorder (OCD) was in a juvenile justice facility due to charges of criminal trespassing and robbery. He wanted to return home to live with his mother and to complete his diploma upon release. His Department of Juvenile Justice (DJJ) worker told the youth that it was doubtful that he would ever return to his home community, and certainly not to his home. The worker also told him to get a GED, rather than pursuing a general education high school diploma.

Solution

After P&A made a number of visits with the student, his mother, facility staff, and the DJJ worker, an appropriate discharge plan was developed that allowed him to return home to live with his mother, and to be enrolled in his former high school. The P&A provided the student's mother with educational information, employment information, and other resources that were available in the community in his home town. He continues to thrive at home and at school.

MINNESOTA

Problem

A teenager with mental health needs was placed on probation. He was then moved from a group home to a juvenile facility until he finished high school. Four weeks prior to the end of the school year, the school district pressured the client to sign papers that would discontinue his special education services and block him from graduation ceremonies. He spoke with the juvenile facility's social worker, who contacted the P&A.

Solution

The P&A advised the client and his social worker to sign "no" to the discontinuation and request a meeting with the facility, the school, and his adoptive parents. The P&A won the school's agreement to continue services until the end of the school year so the client could participate in graduation with

his classmates. The P&A also prompted the school to work with other agencies to develop a discharge plan and transition services to enable him to return to his hometown. As a result of this advocacy, adult mental health services and other supports were arranged, an apartment was located, and several job interviews were scheduled. The client graduated with his classmates, moved to an apartment in his hometown, found a job and has adult mental health services available to him.

SOUTH DAKOTA

Problem

A client with a disability who is eligible for special education services was due to be released from a state juvenile corrections facility back to his home school district. The home school district told the child's parent that it would refuse to serve him. Further, school staff led the parent to believe that the district would try to have the client placed into another juvenile detention facility.

Solution

The parent contacted the P&A which reviewed the files and facility records and conducted interviews with key persons involved. The P&A noted that the client had successfully completed all required elements of the program at the facility and, having done so, he had done his time and should be released. The P&A staff attended several meetings on his behalf with the district. After deflecting suggestions such as having client attend a school in a nearby district, eventually the home school district agreed to serve the child in the public school in the client's home town.

As a result, the juvenile corrections facility recognized that the local school districts in the state have an active responsibility to provide education, including IEP services, to students in their home communities. The facility also learned that initial refusals from school districts may need to be challenged in order to move students from facilities to their communities quickly and seamlessly when detention is over. The facility involved is the largest in the state.

SOUTH DAKOTA

Problem

A 17-year-old individual who had been placed in a youth correctional facility for over one year was then transferred to a psychiatric residential treatment facility (PRTF). The guardian expressed concerns about the individual's care and treatment at the PRTF.

Solution

After the P&A's involvement, there was more open communication between the guardian and the juvenile corrections agent to address the guardian's concerns. P&A staff participated in several conference calls between the guardian, the PRTF, and the juvenile corrections agent to address the guardian's concerns. The individual was eventually discharged from the PRTF back to her home community and will now graduate from high school on time with her class.

VIRGIN ISLANDS

Problem

A young man, age 18, was incarcerated for a year, awaiting trial, and did not receive educational services during this time. His parent wanted advocacy for him to receive a Free Appropriate Public Education. The youth was released from jail while awaiting trial and still was not receiving educational services.

Solution

P&A advocacy with Public Defenders Office resulted in the youth receiving educational services at the Office of Special Education (per the Court's Order). The P&A attended the youth's IEP meeting and a representative from vocational rehabilitation (VR) services also attended to assist with the youth's transition from high school. Upon successful completion of summer school, he will have enough credits to receive his diploma by the end of summer.

For his transition plan, a teacher will work with him to research various areas of his interest to help him narrow down the area he will want to pursue. He now has the application form to get enrolled with VR and they discussed him attending the Skills Center to pursue a trade. He is eager to work and move forward in life.

CONCLUSION

Diversion from the juvenile justice system is the best approach for most youth with disabilities. We can provide community based services to the vast majority of juvenile offenders who are non-violent, saving secure facilities only for those youth who are truly in need of such restrictive placements -- and only then for the amount of time necessary to ensure safety to our communities. Recidivism can be reduced when we ensure that youth leave the system with marketable skills, some hope, and when placement is unavoidable, a home and community that welcomes their return.

VI. Recommendations

Concrete Steps Systems and Policy Makers Can Make Now

CONGRESS

RECOMMENDATION

Congress should authorize and fund a Protection and Advocacy for Juvenile Justice Program to help divert youth with disabilities from entering the juvenile justice system, investigate and monitor conditions for youth with disabilities in the juvenile justice system, and ensure proper return to the community with needed services and supports.

RECOMMENDATION

Congress should fully fund the statutes that provide services for this population, including but not limited to Medicaid community based services, IDEA, and PREA.

RECOMMENDATION

Congress should include in the reauthorization of the JJDPA language that clearly and specifically eliminates the Valid Court Order exception and prohibits the use of solitary confinement and/or isolation for all juveniles, including those housed in adult settings.

RECOMMENDATION

Congress should require that schools identified as having elevated school-based arrest rates: 1) lose the opportunity to use federal funds to employ School Resource Officers (SROs); 2) are required to develop Memoranda of Understanding that ensure that SROs work is limited to traditional police activities and not discipline of non-violent student behavior; and, 3) require SROs in those schools to undergo training in specific, related topics, including but not limited to:

- IDEA discipline requirements
- Crisis management
- Cultural competency and implicit bias
- Data driven evidence based prevention (including such approaches as restorative justice, Positive Behavioral Interventions and Supports)
- De-escalation strategies
- Understanding and responding to the effects of trauma
- Culturally responsive practice

States should establish similar requirements.

ADMINISTRATION

RECOMMENDATION

The U.S. Department of Education (ED) and Department of Justice (DOJ) should fully enforce all provisions of Title VI,⁶⁷ Title IX,⁶⁸ the ADA,⁶⁹ Section 504,⁷⁰ and the IDEA,⁷¹ including all obligations under these statutes for youth in correctional facilities, so that education of youth in these settings is equal to that provided to students in other public schools.

RECOMMENDATION

Representatives from the ED, Office for Special Education Programs (OSEP), Office for Civil Rights (OCR), and DOJ, Civil Rights Division should coordinate their efforts regarding enforcement of the statutes over which they have jurisdiction, so as to completely eliminate disproportionality in juvenile justice referrals for all groups of youth currently over-represented within the system, including but not limited to, youth with disabilities.

RECOMMENDATION

ED should enforce all schools' obligation to report on School-Based Arrests and Referrals to Law Enforcement. This has been a requirement in the Civil Rights Data Collection (CRDC) since 2009-2010, but school districts grossly underreport these data.

RECOMMENDATION

During the investigations and remedies phase of all investigations, ED and DOJ should ensure the input of the full complement of community stakeholders on the structure and implementation of the settlement.

RECOMMENDATION

Representatives from the ED, Office for Special Education Programs (OSEP), Office for Civil Rights (OCR), and DOJ, Civil Rights Division, should eliminate the use of School Resource Officers and other sworn law enforcement officers to enforce school discipline codes. Sworn

⁶⁷ 42 U.S. Code § 12101 et seq.

⁶⁸ 20 U.S. Code § 1681-1688

⁶⁹ 42 U.S. Code § 12101 et seq.

⁷⁰ 20 U.S. Code § 794 et seq.

⁷¹ 20 U. S. Code § 1400 et seq.

law enforcement officers' role in school and at school functions should be limited to ensuring the safety of members of the school community.

RECOMMENDATION

DOJ should ensure that PREA is fully implemented and that funding limitations are fully enforced for states that choose not to satisfy its requirements.

RECOMMENDATION

ED and DOJ should expand the scope of their investigations to include youth in federal custody (Federal Bureau of Prisons (BOP), Department of Homeland Security (DHS), Immigration Detention and other federal programs).

RECOMMENDATION

The following student data must be publicly reported annually from every school and district and disaggregated by socio-economic status, race, gender, disability (including IDEA and Section 504 eligibility), English Language Learner (ELL) status, and Lesbian, Bisexual, Gay and Transgender (LBGT) (to the extent available):

- Data on youth who enter the juvenile justice system, and their ultimate academic and attainment outcomes;
- The number of youth referred to court, ticketed, and arrested while on the school campus.

Recommendation

DOJ' s Special Litigation Section should use the Civil Rights of Institutionalized Persons Act (CRIPA),⁷² PREA,⁷³ and other statutes and legal authorities to the fullest extent possible, to ensure that juveniles are treated in a safe and humane manner, including but not limited to: 1) Preventing sexual violence and violations of personal privacy; 2) Preventing the use of solitary confinement; 3) Limiting the mixing of youth with adult populations to those rare exceptions allowed by the law ; 4) Confinement of status offenders; 5) Ensuring access to adequate food, rest, exercise, light, heat and other physical essentials and 6) Ensuring access to adequate medical, substance abuse and mental health care.

⁷² 42 U.S.C.A. § 1997e et seq.

⁷³ 42 U.S.C. § 15601 et seq.

STATES

RECOMMENDATION

States should develop and support programs that provide training in the following rights, laws and regulations: IDEA,⁷⁴ ADA⁷⁵ and Section 504⁷⁶ Title VI⁷⁷ and Title IX,⁷⁸ disparate impact claims, harassment/hostile environment claims, Due Process rights applicable to all public school students, and state specific civil rights laws, to the groups/professions listed below.

- Probation officers
- Juvenile Court judges
- Prosecutors
- Court Appointed attorneys representing youth
- Public Defenders
- Publically funded attorneys who serve youth

RECOMMENDATION

The training described above should address, where there is applicable state law, the juvenile court's authority to enforce the IDEA and other education laws against the school districts. See Miss. Code § 43-21-621; Miss. Code § 43-21-151; Miss. Code § 43-21-105. Along this line, training should address the rights of the student to file an affirmative defense of contributory negligence or counterclaim for educational neglect. In states in which statutes do not currently permit the filing of such an affirmative defense, counterclaim or claim, this option should be considered. The ability of the juvenile court to hold the school districts accountable is critical to ending the school to prison pipeline.

RECOMMENDATION

States should utilize a comprehensive approach to reentry that includes individualized reentry plans, vocational and life skills training, behavior management systems and direct academic instruction.

RECOMMENDATION

⁷⁴ 20 U.S. Code §1400, et seq.

⁷⁵ 42 U.S. Code § 12111, et seq.

⁷⁶ 29 U.S. Code §794

⁷⁷ 42 U.S. Code § 2000d et seq.,

⁷⁸ 20 U.S. Code § 1681

States should ensure that immediately upon entry of a youth into a juvenile justice residential facility, individualized prerelease plans are developed, in full and meaningful partnership with the youth and his or her family, that identify action steps and support services to ensure reenrollment in a community school and reduce the likelihood of re-arrest or reoffending.

RECOMMENDATION

States should ensure that prior to release, all facilities housing juveniles offer learning opportunities for youth that are grounded in evidence- and practice-based service models, and focused on social, emotional, and behavioral skill development, especially for youths with mental health conditions.

LOCAL

RECOMMENDATION

School boards should evaluate the following within their district to ensure that they are not perpetuating the disproportionate referral of youth to the juvenile justice system:

- “Zero tolerance” policies and other school code elements that result in the removal of youth with disabilities without consideration of disability related factors.
- Methods of punishment that result in juvenile justice referrals for non-violent youth, such as tickets and the use of school resource officers to enforce common disciplinary violations.
- Methods of punishment that have the effect of punishing youth for their disabilities, such as truancy tickets for youth who are unable to attend school.
- School districts should develop Memoranda of Understanding with their police departments to ensure that school resource officers are not being used to enforce school code violations. In order to help achieve this, school boards could adopt policies consistent with the Consent Decree between DOJ and Meridian Municipal Separate School District (e.g., the school district will only contact law enforcement regarding matters of “unlawful activity” pursuant to Miss. Code § 37-11-29(6)).

VII. Acknowledgements

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APPENDIX A

Acronym List

ADA	American with Disabilities Act
ADHD	Attention-Deficit/Hyperactivity Disorder
BIP	Behavior Intervention Plan
BOP	Federal Bureau of Prisons
CAP	Client Assistance Program
CRDC	Civil Rights Data Collection
CRIPA	Civil Rights of Institutionalized Persons Act
DAEP	District Alternative Education Program
DD	Developmental Disability
DOJ	U.S. Department of Justice
DSO	Deinstitutionalization of Status Offenders
ED	U.S. Department of Education
FBA	Functional Behavioral Assessment
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Programs
JJ	Juvenile Justice
JJDPA	Juvenile Justice Delinquency Prevention Act
MH	Mental Health
NDRN	National Disability Rights Network
OCR	U.S. Department of Education Office for Civil Rights
OSEP	U.S. Department of Education Office of Special Education Programs
P&A	Protection and Advocacy Agency
PREA	Prison Rape Elimination Act
PRTF	Psychiatric Residential Treatment Facility
SRO	School Resource Officer
STPP	School to Prison Pipeline

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