



Keeping Kids In School and Out of Courts

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COLLABORATIVE ROLE OF COURTS IN PROMOTING OUTCOMES FOR STUDENTS: THE RELATIONSHIP BETWEEN ARRESTS, GRADUATION RATES AND SCHOOL SAFETY

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Schools throughout the United States have adopted zero tolerance strategies to address school discipline. These policies have resulted in a significant increase in suspensions and expulsions. The placement of police on campus has exacerbated the problem by adding arrests and referrals to juvenile court as a disciplinary tool. This article discusses the origin of zero tolerance and its negative effects on school safety and graduation rates. This article will examine three jurisdictions and their application of a collaborative model using judicial leadership to convene stakeholders resulting in written protocols to reduce school arrests and suspensions and developing alternatives that have produced better outcomes for students, the school and the community.

We are a nation in crisis when it comes to educating our children. On one hand we promulgate laws to promote the education and welfare of children and on the other we implement policies that effectively push them out-of-school, creating what has been coined the "School-to-Prison Pipeline." These competing approaches create a dysfunctional paradox that harms children and the community. In an effort to address school discipline, educators have adopted a zero tolerance approach resulting in a dramatic increase in out-of-school suspensions (OSS) and expulsions. The introduction of police on school campuses exacerbated the problem by adding arrest and incarceration as another disciplinary tool.

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The widespread use of zero tolerance policies is probative of educator's belief that such "get tough" strategies have value in correcting behavior and removing disruptive students. No matter the reason, zero tolerance policies deny recent research on adolescent brain development concluding that "mischief is a foreseeable derivative of adolescence" (Teske, 2011). Other studies show that zero tolerance strategies in general are ineffective, harmful to students and fail to improve school safety.

An analysis of the zero tolerance problem using a systems model reveals that school systems lack the resources to effectively address disruptive behavior, creating an over-reliance on zero tolerance strategies (Teske, 2011). The systems model, however, tends to focus on individual agencies and although helpful in identifying deficiencies, is not always helpful in identifying solutions when the problem is grounded in inter-organizational issues. Finding solutions to reverse the negative effects of zero tolerance, other than legislative changes, must involve those who are part of and involved in the problem. This approach is summed up in Richard Kempe's problem-solving quote, "A solution, to be a solution, must share some of the problem's characteristics." Zero tolerance, in most localities, is a multi-system problem and requires a multi-system approach for a solution.

In this article, we first define zero tolerance and explore its origins and why it is a problem that demands serious attention. We then present the framework for solving the zero tolerance dilemma using a Multi-Integrated Systems Model (Teske, 2011). We conclude with a discussion of the model's application and outcomes in three jurisdictions.

ZERO TOLERANCE: ITS ORIGIN AND OUTCOMES

The term "zero tolerance" has its roots in the 1980s "war on drugs." The government's attack on drugs led to stiffer penalties for users as well as dealers and an aggressive use of forfeiture laws to confiscate the fruits of the drug transactions including personal and real property (Kochan, 1998).

In 1982, the "Broken Windows" theory to combat urban crime arguably led to the application of zero tolerance approaches to minor offenses (Wilson & Kelling, 1982). The theory argues that the proliferation of crime is analogous to broken windows in a building that go unrepaired and attract vagrants. The vagrants break more windows and become squatters, who soon set fires to the building causing damage. Thus, effective crime prevention begins with tough measures against minor offenders.

During the early 1990s, school systems began adopting this “get tough” approach for minor school infractions using OSS for up to ten days and expulsions. By widening the net of infractions, the use of OSS nearly doubled from 1.7 million in 1974 to 3.1 million in 2000 (Poe-Yamagata & Jones, 2000). The most contradictory application of OSS involves truant students. Suspending a truant student is indicative of the inherent problems with zero tolerance policies in a school setting. It confounds the mind that professionals trained and certified to teach our children are duped into believing that suspending a student who doesn’t want to be in school is an effective tool. It is not surprising that some have referred to zero tolerance as “zero intelligence” (Richardson, 2002).

Zero tolerance can be defined as a “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context” (Skiba et al., 2006). The punitive nature of zero tolerance practices increased with the introduction of police on school campuses. What was typically handled in the principal’s office now involved a police officer with the power to arrest. In addition to suspension, students were handcuffed and transported to juvenile intake locations. The net for incarceration widened. The phenomenon is referred to as the “School-to-Prison Pipeline” (Wald & Losen, 2003).

School administrators apply zero tolerance practices believing that the removal of disruptive students will deter others from similar conduct, creating a safer classroom environment. This belief fails to take into consideration the growing body of research that zero tolerance is contrary to adolescent cognition and the role school plays as a protective buffer against delinquency.

The Surgeon General’s report on youth violence revealed that a child’s connection to school was a protective factor against risk factors for violence (U.S. Department of Health and Human Services, 2001). Other studies found that students’ belief that adults and peers in school care about them is related to lower levels of substance abuse, violence, suicide attempts, pregnancy and emotional distress (McNeely, Nonnemaker & Blum, 2002). Studies also reveal that this belief, referred to as school connectedness, is linked to school attendance, graduation rates and improved academics (Rosenfield, Richman & Bowman, 1998; Battin-Pearson et al., 2000).

Despite efforts by many juvenile judges to stop these minor school offenses from reaching their courtroom using informal intake diversion mechanisms, it still is not good enough. Research shows a strong link between school arrests and drop-out rates. One study found that a student arrested in school is twice as likely to drop out and four times as likely to drop out if

the student appears in court (Sweeten, 2006). Juvenile court judges should consider what steps can be taken to prevent unnecessary referral to the court.

Removing students from schools that serve as a buffer against delinquency is counterproductive to the goals of education, best practices in juvenile justice and community safety. Take for instance what we know about the importance of assessing the risk of juvenile offenders to determine the level of services needed to prevent re-offending. Studies show that recidivism is reduced among high risk youth if provided intensive interventions. Conversely, these same studies show that intensive interventions applied to low risk youth increase the risk of re-offending (Andrews, Bonta & Hoge, 1990). Applying these findings to zero tolerance strategies, the harsh treatment of students committing minor infractions increases the risk of anti-social and delinquent behaviors. Studies show that the use of OSS and arrests without consideration of the risk level of the student makes students' behavior worse (Andrews & Bonta, 1998; Mendez, 2003). Another study on the use of OSS of elementary and middle school students found that OSS is a predictor of future suspensions (Mendez, 2003). The study also found that OSS contributes to poor academic performance and failure to graduate. It should be common sense that keeping kids in school will increase graduation rates.

Zero tolerance as a philosophy and approach is contrary to the nature of adolescent cognition and disregards the research in adolescent brain development. The research using magnetic resonance imaging (MRI) found that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21 (Giedd et al., 1999). Adolescents are "biologically wired to exhibit risk-taking behaviors, impulsive responses, and exercise poor judgment" (Teske, 2011).

The implications of these studies within the context of zero tolerance approaches are important to show the negative impact on adolescents. The use of OSS and arrests for behavior that is neurologically normative for adolescents aggravates the existing challenges confronting youth. Neurologically speaking, youth are still under construction and require positive surroundings, including school (Giedd et al., 1999). Removing youth from school settings that serve as a protective buffer increases the probability of negative outcomes for the student, school and the community.

METHODOLOGY: MULTI-INTEGRATED SYSTEMS MODEL

A system is defined as “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment” (Bozeman, 1979). As shown in Appendix Figure 1, the systems model analyzes organizations by taking into account their inputs in the form of demands and supports and their outputs (or desired outcomes) in the form of services or products. Obviously, it should be the objective of every system to maximize its desired outcomes, which can be achieved by identifying not only the best available resources but also the constraints on the system. This analytical model is called linear programming, which identifies “those values of x , the variables that maximize the linear objective z while simultaneously satisfying the imposed linear constraints and the non-negativity constraints” (Bozeman, 1979). In other words, identifying resources is not enough to realize the greatest outcome. It also requires identifying the factors that are working in opposition to the system or are non-supportive in order to act to minimize these constraints. The idea is to increase supports and decrease constraints.

Students bring to school their unique characteristics, some of which produce negative behaviors (Barber & Olsen, 1997). School systems have tremendous demands beyond the scope of classroom teaching. They must manage a population already difficult by nature of adolescence, but further compounded by mental health disorders demanding an Individual Education Plan (IEP). It is important to understand that there is a larger population of disruptive students with disorders that are not eligible for assessment and treatment under the Individuals with Disabilities Education Act (IDEA). The studies show that disruptive students are typically not assessed to determine the underlying reasons for the behavior (Mendez, 2003). This may not be for lack of want, but for lack of resources. School systems already operate with insufficient resources to assist those required by law for services, so how can we expect them to assess a larger population as to which they have no legal obligation?

It also begs another question: Do we really want school systems to be the sole proprietor of all services provided to students given the varying types of social, emotional and psychological needs students bring to school? Should the school system be a “Jack of all Trades?” Within a systems perspective, school systems are not designed to address these needs. On the contrary, most localities have established separate agencies, private and public, to assess and treat these needs including social services, mental health and private providers. With the advent of campus police programs, juvenile courts and juvenile

justice agencies are now drawn into this problem. These questions present an analytical framework problem when we focus only on the organization and not the problem. What should an organization do if the services needed are the primary outcome of other organizations?

The answer to this question brings us to a discussion of collaborative theory and the connecting of organizations to enhance desired outcomes of each participating organization. Applying a systems model to collaborative phenomena requires a shift from the organization to the problem domain (Wood & Gray, 1991). When this shift occurs, the nature of the questions also changes. A problem domain-focused as opposed to an organization-focused analysis drives the evaluator to understanding that each system sometimes works within a larger system with shared boundaries. Instead of asking how do we address disruptive students, which will lead to punitive measures given the shortfall of resources, the question becomes who else shares our problem and has resources to help us? We call this the Multi-Integrated Systems Model as shown in Appendix Figure 2. This model and integrates each system's outputs toward a single desired outcome.

A review of the literature reveals several definitions of collaboration, but we have chosen the following we believe encompasses all attributes of collective action:

Collaboration occurs when a group of autonomous stakeholders of a problem domain engage in an interactive process, using shared rules, norms, and structures, to act or decide on issues related to that domain (Wood & Gray, 1991).

This definition, however, does not identify how collaboration begins and by whom, which requires a discussion of leadership and other related factors that drive organizations to take collective action to solve a problem.

Generally, organizations that seek collaboration do so when influenced by any one or combination of factors that include consequential incentives, interdependence or uncertainty (Emerson, Nabatchi & Balogh, 2011). It is important to understand that these factors may be used by one organization to influence another to join a collaborative effort. For example, a juvenile court judge who recognizes a 1,248 percent increase in school referrals to the court—of which 92 percent are low level offenses including school fights, disorderly conduct, and disrupting public school, as was the case in Clayton County, Georgia—is burdened with an overwhelming docket. This becomes a consequential incentive to address the negative impact of zero tolerance.

It also becomes an opportunity to show police and the school system the negative impact of low level referrals, including a decline in graduation rates and little to no improvement in reducing drugs and weapons on campus. It is an opportunity to convince the other stakeholders that the problem is interdependent because no organization on its own can increase graduation rates, improve school safety and reduce the court docket. To act alone brings some uncertainty, but acting together reduces fear of the unknown through the “interactive process,” also coined “Principled Engagement” (Emerson, Nabatchi & Balogh, 2011).

There remains one other factor essential to driving collective action-leadership. There is usually an identified leader in a position to initiate the collaborate effort. Leadership typically takes the form of a convening role. A convener’s role is “to identify and bring all the legitimate stakeholders to the table” (Gray, 1989). The convener, in order to be effective, must possess the following characteristics:

- **Convening Power**—the ability to bring stakeholders to the table;
- **Legitimacy**—the stakeholders perceive the convener to have authority, formal or informal, within the problem domain;
- **Vision**—the convener understands the problem domain and related issues to process stakeholder concerns and needs; and
- **Stakeholder Knowledge**—the convener can identify the stakeholders and possesses knowledge of each stakeholder role in the problem domain (Gray, 1989).

Some literature includes neutrality as a convener characteristic, but from our experience in the three jurisdictions discussed below, neutrality is not necessary if the convener’s role is limited to bringing stakeholders together. It is difficult to be unbiased if the convener is also a stakeholder, and to exclude a stakeholder from convening a collaborative may be detrimental to initiating action. We recommend that a stakeholder convener identify a neutral facilitator to engage the stakeholders during the “interactive process.”

Within the problem domain of zero tolerance, we recommend the Judicial Leadership Model (JLM) to bring stakeholders together. The juvenile court is the one place where all agencies serving children and youth intersect. The juvenile court is the common denominator of all child service agencies (Teske, 2011). With the juvenile court situated at the crossroads of juvenile justice, the juvenile judge is placed in a unique role. (Teske & Huff, 2010). Juvenile judges are “incomparable agents for change within the juvenile justice system, and with the respect and authority accorded the bench, are

in a unique position to bring together system stakeholders” (Teske & Huff, 2010). Juvenile court judges possess all of the characteristics of an effective convener. Their authority on the bench translates into informal authority off the bench (Wood & Gray, 1991). Former National Council of Juvenile and Family Court Judges president Judge Leonard P. Edwards said it best: “This may be the most untraditional role for the juvenile court judge, but it may be the most important.”

The stakeholder must identify the stakeholders of the problem domain, but only after defining the problem. The problem informs us who must be at the table. When Clayton County began its stakeholder meetings, it began with a single objective to reduce school arrests. After the “interactive process,” it became evident that the problem was bigger than school arrests, which led to understanding that the solution was multi-faceted. A convener must understand that the stakeholder’s self interests and the problem domain’s collective interests are not always clear and distinct (Wood & Gray, 1991). Stakeholders come to the table with their own interests and these interests may or may not be shared, differing, or opposing (Wood & Gray, 1991). The facilitator must engage the stakeholders in a fair and open discourse that identifies all the interests. This “interactive process” may present new questions, issues and interests that in turn may lead to identifying other stakeholders who should be at the table.

THE COLLABORATIVE APPROACH

In 2003, the juvenile court judge in Clayton County, acting as convener, invited the School Superintendant and Chief of Police to meet and discuss the overwhelming increase of school referrals to the juvenile court and how this may be handled in other ways. Our meetings generated more questions as a result of each stakeholder’s self interest. What are school administrators to do with these disruptive students who no longer referred to the court? When should police intervene in school disruption matters? How do we identify the underlying problems causing the disruption? What do we do to address those problems given the limited capacity and resources of the schools? How do we ensure the safety of the schools? The collaborative process generated new and difficult questions that extended the time to develop a system to meet the goal. It also required more stakeholders at the table, including mental health, social services, private providers, parents, youth and the NAACP. The judge appointed a neutral person to facilitate the meetings. The judge participated in the discussions but limited his role to convener.

The judge convened the meetings twice a month. The facilitator assigned tasks to stakeholders between each meeting. The “interactive process” took nine months. The stakeholders agreed that two written agreements or Memoranda of Understanding (MOU) were necessary to address the interests of all stakeholders: 1) reduce suspensions, expulsions and arrests and 2) develop alternatives to suspension and arrests including assessment and treatment measures for chronically disruptive students. The first MOU, titled “School Referral Reduction Protocol,” identified misdemeanor offenses no longer eligible for referral to the juvenile court unless the student has exhausted a two tier process that includes: warning on the first offense to student and parent; referral to a conflict skills workshop on the second offense; and referral to the court on the third offense. The second MOU created a multidisciplinary panel to serve as a single point of entry for all child service agencies, including schools, when referring children, youth and families at risk for petition to the court.

The panel, called the Clayton County Collaborative Child Study Team (Quad C-ST), meets regularly to assess the needs of students at risk for court referral and recommends an integrated services action plan to address their disruptive behavior. The panel consists of a mental health professional, the student’s school social worker and counselor, a social services professional, juvenile court officer and approved child service providers, and is moderated by a trained facilitator provided by the court. The panel links the child and family to services in the community not available to the school system. The panel developed an array of evidence-based treatment programs such as Functional Family Therapy, Multisystemic Therapy, cognitive behavioral programming and wrap-around services.

OUTCOMES

When police were placed on middle and high school campuses in the mid-1990s, the number of referrals to the juvenile court by 2004 increased approximately 1,248 percent. Approximately 92 percent of the referrals were misdemeanor offenses involving school fights, disorderly conduct and disrupting public school--infractions traditionally handled in school using school code of conduct responses. In addition to school arrests, the rate of OSS increased and by 2003 graduation rates decreased to 58 percent (Clayton County Public School System, 2010).

Altogether, one-third of all delinquent referrals to the court were from the school system, and most were minor offenses (Clayton County Juvenile Court, 2010). These referrals contributed to a large increase in probation caseloads, averaging approximately 150 probationers involving minor offenses and kids not considered a high risk to re-offend or a public safety risk. These were kids who may make you mad, but in a juvenile justice context, did not scare you. The increased number of probationers, of which most were low risk to commit a delinquent act in the community, reduced the level of supervision and surveillance of the serious offenders. Resources were wasted on the youth who made us mad instead of concentrated on the youth who scared us. This resulted in high recidivist rates that compromised community safety.

By 2003, with referrals, probation caseloads, and recidivist rates increasing, and graduation rates decreasing, the system was under stress. It was time to evaluate how the system should respond to disruptive students in light of the research indicating that punishment alone, whether by suspension, expulsion or arrest, exacerbates the problem for the students, schools and the community. These findings demonstrate the importance of a dualistic approach in integrating community systems to reduce reliance on punitive measures while at the same time provide additional resources for school systems to assess and treat disruptive students.

Following the School Referral Reduction Protocol, referrals to the court were reduced by 67.4 percent. The school police had spent most of their time arresting students for low-level offenses. The implementation of the protocol produced a residual effect in the felony referral rate with a decrease of 30.8 percent. According to school police, the warning system was used for some felony offenses involving typical adolescent behavior. The decision by school police over time to extend their discretion to use the warning for certain offenses outside the scope of the protocol indicates a shift in cognition. When prohibited from making arrests, school police began to engage students and developed an understanding that discipline should be applied on a case-by-case basis. This resulted in even greater reductions in referrals.

After the protocol was implemented, the number of students detained on school offenses was reduced by 86 percent. The number of youth of color referred to the court on school offenses was reduced by 43 percent.

Another byproduct of the protocol was a 73 percent reduction in serious weapons on campus. These involve weapons outside the discretion of police and must be referred to the court by law. These results appear to refute the belief among school administrators that zero tolerance promotes school safety.

A survey of school police shows that the cessation of school arrests increased police presence on campus because they were no longer leaving campus to transport and file referrals. This in turn increased their knowledge of the student body. Their increased presence promoted friendly engagement of students. This positive engagement coupled with the student's perception that the police were there to help (because arrests drastically declined) produced sharing of information by students to police about concerns on campus. Consequently, students share information that leads to solving crimes in the community as well as crimes about to occur on campus. "Schools are a microcosm of the community" as stated by the supervisor of the school police unit (Richards, 2009). If one wants to know what is going on in the community, talk to the students. However, the students must want to talk to you. Therefore, the aim of school policing is to gather intelligence of student activity through positive student engagement.

The response by police to the change in the handling of disruptive students exemplifies human adaptation to systemic adjustments. Although the primary objective was the adjustment of system routines to reduce referrals in order to reduce court dockets, probation caseloads, and increase graduation rates, no one predicted such a considerable improvement in school safety. One study found that people within a system, whether they are police or school administrators, will modify their routines and practices to suit the new situation (Berkhout, Hertin & Gann, 2006). Confronted with greater time on campus and placed in a less confrontational role with students, police altered their law enforcement approach to gather information that can be used to prevent crimes on campus and in the community.

At the same time, the School Referral Reduction Protocol went into effect; the Quad C-ST began work to develop alternatives to OSS and connect the school system with other community providers. These alternatives resulted in an 8 percent decrease in middle school OSS (Clayton County Public School System, 2010).

After implementing these integrated systems, the school system observed an increase in graduation rates, resulting in a 24 percent increase by the end of the 2010 school year surpassing the statewide average. By 2004, the juvenile felony rate in Clayton County reached an all-time high, but declined 51 percent after creating the integrated systems.

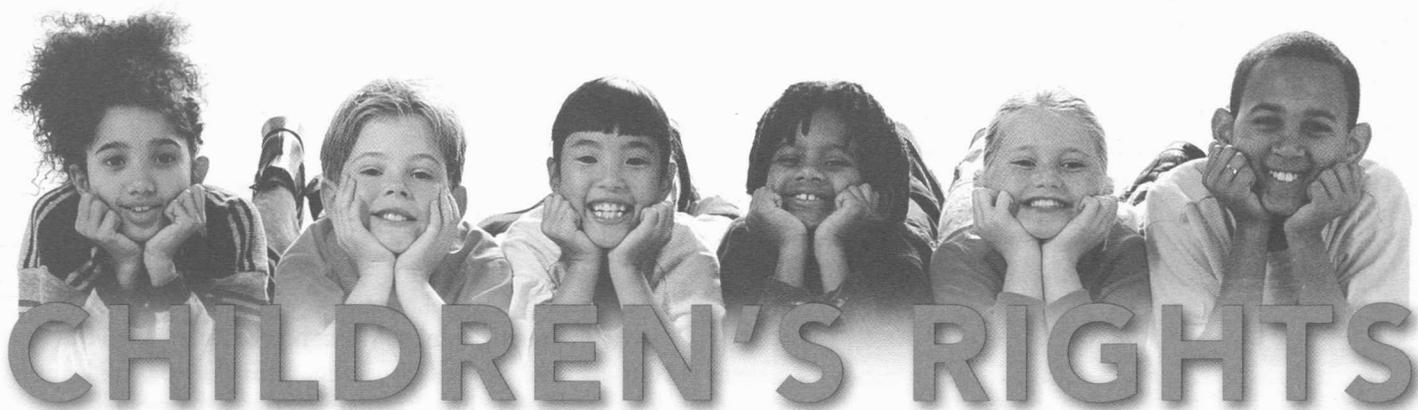
Some of these results have been replicated in other jurisdictions including Birmingham, Alabama and Wichita, Kansas. The family court judge in Birmingham was the first to replicate this collaborate approach. During the 2007-08 school year, school police in Birmingham referred 513 students to court of which 99 percent were African American and 96 percent were for

petty misdemeanor offenses. The judge also brought stakeholders together and developed a written protocol similar to that of Clayton County. The referrals declined by 75 percent and detention rates fell by 72 percent between 2004 and 2011. Recently, the juvenile judge in Wichita convened stakeholders meetings and established a protocol resulting in a 50 percent decrease in school arrests.

CONCLUSION

The results from the collaborative efforts of three jurisdictions support the research that overuse of OSS and school arrests decrease graduation rates and is counter-productive in promoting school and community safety. The results in Clayton County reveal that a collaborative effort to assess and treat chronically disruptive students provides school systems with the additional resources needed to effectively address the behaviors. This approach relieves school systems from relying on the traditional punitive approach while simultaneously reducing court dockets and probation caseloads to improve the supervision of youth who scare the community. It also reveals a better method of policing that is grounded in improving human relations between police and students. The replication of outcomes in three different jurisdictions in different states shows the effectiveness of the collaborative approach using the Judicial Leadership Model.

Finally, the Multi-Integrated System Model is key to improving the education and safety of students because of the causal relationship between OSS, school arrests and graduation rates. Arguably, as more students graduate, fewer students drop-out and commit crimes. Unless stakeholders in the problem domain of zero tolerance collaborate to combine their knowledge and resources, suspensions and arrests will continue to push out students from a protective system into a delinquent system that is intended the fewer youth who seriously scare us.



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The Paradox of Education in America: Integrating Systems for Children with Disabilities

By Judge Steven C. Teske and Judge Brian Huff

We're a nation in paradox when it comes to taking care of our children. It's an indictment of communities across the country when, on one hand, we promulgate laws to promote the education of children with disabilities, and, on the other, we fail to safeguard them from incarceration on relatively minor school offenses that are likely a manifestation of their disabilities. Currently, a disproportionate number of children with

education-related disabilities, eligible for special education services under the Federal Individuals with Disabilities Education Act (IDEA), are in the juvenile justice system. Worse is the disproportionate number of children with disabilities currently incarcerated in juvenile facilities. For example, studies reveal that approximately 70 percent of incarcerated children have disabilities.¹ It's time to evaluate our policies with an eye toward removing these contradictions so that

children with disabilities are not disrupted from their educational services and placed in a juvenile justice system that only leads to additional, avoidable risk factors for these children.

The juvenile courts in Jefferson County, Alabama (Birmingham), and Clayton County, Georgia (a suburb of Atlanta), used a multi-integrated systems approach to significantly reduce the number of school

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Representing the Status Offender: The Need for a Multi-Systemic Approach

By Marlene Sallo and Sarah Darbee Smith

Status offenses are unique to juveniles, meaning that only juveniles can be charged with or adjudicated for conduct that, under the law of the jurisdiction in which the offense was committed, wouldn't be a crime if committed by an adult.¹ Status offenses include truancy, incorrigibility, running away from home, using vulgar language, and drinking. These behaviors tend to be the result of a poor family environment or school or community problems, and they present attorneys with a multitude

of challenges. Research indicates that risk factors for potential truancy include push-out policies, unsafe school environments, academic problems, a lack of parental involvement in education, substance abuse, and chronic health problems.²

Petitions for status offenses have historically subjected youth to juvenile court jurisdiction and detention as a form of protective supervision. Detained status offenders were frequently adjudicated and committed to an institutional

setting. Studies have shown consistently poor outcomes for institutionalized youth due to lack of services within institutional facilities. In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJJPA), which mandated the deinstitutionalization of status offenders as one of its core protections. The emphasis on deinstitutionalization of status offenders in the JJJPA was premised on the understanding that youth who misbehave but haven't committed

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The Paradox of Education in America

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referrals to the juvenile court, including referrals for children with disabilities. A review of the literature generally recommends that juvenile courts address this problem through better intake and screening of referrals to 1) continue or defer pending the outcome of the special education due process and disciplinary proceedings, 2) divert minor offenses into informal supervision programs, or 3) dismiss the case in the interest of the child and community. These are excellent recommendations, but they don't go far enough to address the systemic issues giving rise to the inherent contradictions that hurt children by merely making a referral to the juvenile justice system, or worse, by placing handcuffs on them. This article discusses the role of juvenile judges, attorneys, and other stakeholders in making system changes that eliminate ineffective policies and practices that defeat the objectives of special education laws.

The School-to-Prison Pipeline and Special Education

Understanding the problem with referring children with disabilities to the juvenile court requires a reexamination of the purpose of a juvenile justice system and its systemic characteristics. The juvenile court was created to treat the criminal conduct of children differently from that of adults. The behavioral sciences, most recently adolescent brain research using magnetic resonance imaging, support the notion that children are biologically wired to exhibit risk-taking behaviors, impulsive responses, and poor judgment. This research shows that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21.² Adolescents, therefore, are more capable than adults of learning from their mistakes, because they are still in a cognitive structuring phase. In other words, it's neurologically normative for adolescents to make poor decisions, which may include breaking the law.

Despite this research, a phenomenon

has developed since the early nineties that has significantly increased the number of children and adolescents suspended, expelled, and arrested for minor school offenses involving disruption of school. This phenomenon is the result of school systems adopting a "zero-tolerance" approach to school discipline—an approach taken to fight the war against drugs. The problem was further compounded with the placement of police on school campuses. For example, in Clayton County alone, the number of referrals from the school system increased approximately 1,248 percent immediately after police were placed on campuses. Approximately 90 percent of these referrals were misdemeanors involving school fights, disorderly conduct (mouthing off), obstruction (not following the verbal command of a police officer), and disrupting school (throwing a wad of paper, shouting out in class).

During these same years, suspensions out of school increased, while, simultaneously, the graduation rates decreased to 58 percent by 2003. The data in Birmingham and Clayton County supported the research that suspensions and arrests increase the dropout rates.

Generally, suspensions and arrests are contrary to the ultimate goal of public school systems: graduation. The problem with zero tolerance is that it removes children from school, when school is the second-most-important protective factor against delinquency and other negative behaviors.³ More problematic are studies that show disciplining harshly with suspension, expulsion, and criminal sanctions, in most cases, increases the risk of delinquent conduct and dropping out of school.⁴ Despite the importance of education in protecting our children from negative behaviors, our educational systems, with the passive acceptance of juvenile courts, have created another paradox that compromises the health, education, and safety of our children. What a novel idea that keeping kids in school will increase their chances of graduation and

their success in adulthood.

It's not surprising that children with disabilities are more likely to be suspended, expelled, and arrested. For example, it's estimated that juvenile justice facilities are three to five times more likely to have youth with emotional disabilities than public schools have.⁵ If children without disabilities are expected, as the research shows, to be impulsive and make poor decisions that result in breaking the law, there is no question that children with disabilities are even more susceptible to rule infractions that lead to court referral. The two most common educational disabilities among children referred to the juvenile court are specific learning disability (LD) and emotional behavioral disorder (EBD).⁶ These disabilities can include symptoms that can place the child at a disadvantage within a school setting, which explains the need for special services. Children with learning disabilities often develop feelings of embarrassment about their disability and become frustrated and angry and act out against others. A number of children with EBD have experienced trauma in their childhood that makes it difficult for them to build or maintain relationships with peers and teachers, or it could cause them to suffer depression and phobias associated with personal or school problems. Such symptoms make children, who are already vulnerable to impulsive and irrational thoughts, easy targets for punishment when they act out.

Even assuming that courts have established appropriate intake and screening of referrals to ensure that cases are deferred pending disciplinary hearings, diverted, or dismissed in the best interest of the community, the emotional vulnerability of many of these children with disabilities demands measures that prohibit unnecessary referrals to juvenile court in the first place. It's not enough for these children that courts work to improve their intake and screening techniques, although it is extremely important. Additionally, repairs to a system that allows unnecessary referrals



are desperately needed so that no child with special needs will encounter the trauma of arrest and court referral. This requires the relevant stakeholders in the juvenile justice system to develop alternatives to suspension, expulsion, and court referral. For this to happen, there must be an individual with the influence to help stakeholders agree to make a systems change.

The Role of the Judge as an Agent for Change

A system is commonly defined as “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment.”⁷ All systems have inputs in the form of demands and supports and a desired outcome. This definition, however, is not readily applicable to a “juvenile justice system” because it doesn’t have a “common boundary” as stated in the definition. To achieve the desired outcome of reduced recidivism, it’s imperative that effective treatment modalities be identified to address the causes of delinquent conduct. These causes, referred to as criminogenic needs, include lack of family support, poor performance in school, lack of prosocial activities, substance abuse, antisocial cognition (attitudes, values, and beliefs), and antisocial associates. These needs are served by different agencies in the community, including social services, mental health professionals, the school system, and juvenile court. Thus, the “juvenile justice system” is comprised of multiple systems that must work together to achieve a desired outcome. Paradoxically, these multiple systems possess their own policies, procedures, budgets, and regulations that oftentimes impede communication between them.

The prohibitive factor in establishing a method to reduce the referral of children with disabilities to the court is the lack of resources to treat such children outside the school. Consequently, schools tend to rely on punishers such as suspension, expulsion, and arrests to address disruptive behavior. Although schools may have a special-needs child appropriately placed, disruptions often occur, resulting from underlying issues at

home or outside school, and may require services not accessible to the school system. It’s essential that schools be linked to other community resources that can assess and provide interventions for the child and fam-

Our educational systems, with the passive acceptance of juvenile courts, have created another paradox that compromises the health, education, and safety of our children.

ily to reduce the risk of disruptive behavior.

Judicial leadership is the key to bringing all the relevant stakeholders together to develop a system in which schools may refer children with disabilities for further assessment and intervention as an alternative to suspension, expulsion, and arrest. Within this larger system we call juvenile justice, the court is the common denominator—the intersection of juvenile justice—and the juvenile judge is the traffic cop. Juvenile judges are incomparable agents for change within the juvenile justice system. All stakeholders in the system intersect with the court. This factor, coupled with the respect accorded judges, places judges in a unique position to bring together system stakeholders.

The Multi-Integrated Systems Approach: Creating Alternatives for Children with Disabilities

In Clayton County and Birmingham, the judges brought stakeholders—including educators, mental health professionals, law enforcement, prosecutors, treatment providers, social services, and the justice system—to the table to find ways to shift children,

especially those with disabilities, away from the court and into programs that better serve them. The judges asked the stakeholders to create a protocol that prevents the arrest and referral of children for minor school offenses. The stakeholders were also asked to develop alternatives to suspension, as well as for arrests. A neutral moderator was assigned to facilitate the discussions and move them toward a written protocol. After many months of meetings and discussions on a plethora of issues involving school and community safety, the purpose of IDEA, the role of campus police, the dynamics between school police and school administrators, the assessment of offenses worthy of referral to court, and many more, the multidisciplinary committee agreed to a written protocol.

The protocol called for a three-tier graduated response process that focused on certain misdemeanor offenses that made up the majority of the referrals. The first infraction required a written warning to the student and copies to the school and parent. The second infraction required a referral to a school conflict workshop or mediation. Since implementation, the police have modified the protocol allowing for greater discretion on the second infraction to issue a second warning. The police have been creative in developing their own alternatives at the second level such as school-based community service. Oftentimes, the officer will spend time counseling the child and speaking with the child’s parents. This interaction was seldom allowed before the protocol because the sheer quantity of referrals didn’t allow time to develop a rapport with students, and because arrests on campus caused police to spend time off campus transporting students and filing complaints. The lack of rapport was also grounded in the distrust students had for police due to the disproportionately harsh treatment they had been receiving for committing petty infractions.

Another protocol was developed that created a single point of contact for children with chronic disciplinary problems. As pointed out above, the “disconnect” between stakeholder agencies in the juvenile



justice system had to be connected. Understanding that school systems aren't designed to be "one-stop, one-shop" agencies that include mental health, social services, and other relevant needs, the larger system, working together to make the connection, must make their resources available. In fact, this is the way it was intended, with the communities creating agencies designed to address mental health and social service needs. In other words, it just doesn't make sense to expect a school system to treat all of a child's mental health and social needs when we have already created other entities to treat those needs. It's a waste of resources and a waste of taxpayers' money because it duplicates resources. A complex, disconnected system is inefficient, and worse, mystifying to youth and families that have to navigate this "non-system."

The single point of contact for a student with chronic disciplinary problems is a panel that meets regularly and consists of the deputy director of social services, a mental health counselor, a psychologist from the mental health department, the child's school social worker and counselor, and other approved treatment providers from the community. Staff of the juvenile court moderates the panel. The parent, and sometimes the child, is required to be present during the assessment. The panel develops an action plan that connects community resources and treatment modalities to the specific needs of the child and the family. The school social worker manages the action plan with assistance from court personnel.

Consequently, the two protocols together have reduced referrals to the court by 67.4 percent in Clayton County and 50 percent in Birmingham. In Clayton County, the protocol produced a residual effect on felony referrals, reducing them by 30.8 percent. (Birmingham only recently implemented the protocol and doesn't have longitudinal data.) Subsequent to implementing the protocol in 2004, the police requested and were granted permission to use the warning and other alternatives in certain "low level" felony cases such as terroristic threats (a child threatening harm

to another out of anger). This request by police shows a cognitive shift in handling school offenses on a case-by-case basis. This reduction in referrals also reduced the number of children detained in a secure facility by 86 percent. The protocol favorably impacted racial and ethnic disparity concerns by reducing the number of children of color referred to the court by 43 percent.

Attorneys advocating for children with disabilities should also engage judges outside the courtroom and in the chambers to encourage them to use their legitimate authority as judges to engage the community and bring stakeholders together.

Another incidental effect of the protocol is the reduction of serious weapons brought on campus. Under federal law, the police have no discretion involving serious weapons, yet the presence of such weapons fell 73 percent. School police attribute this to their increased presence on school campus and handling each offense on a case-by-case basis, leading to more amicable relationships between the police and children. This increase in rapport has led to more information shared with police about potential incidents involving weapons and gang-related issues. The supervisor of the school resource officers in Clayton County, Sgt. Marc Richards, stated, "Schools are a microcosm of the community. If you want to know what

is going on in the community, talk to the kids." But the kids must want to talk to you! Therefore, school safety can be enhanced if school policing focuses on intelligence gathering through student engagement by using positive approaches.

The multidisciplinary panel established as a single point of entry developed an array of treatment programs that include multisystemic therapy, functional family therapy, cognitive behavioral programming, wraparound services, and more. These alternatives resulted in a decrease in suspensions of 8 percent.

More importantly, the graduation rates increased during this time period by 20 percent, while felony rates fell 51 percent. This supports the theory that keeping children in school using alternative measures will increase graduation rates. It probably goes without saying that the more children graduate, the less juvenile crime appears in the community.

Finally, the protocols working together have reduced the number of children with disabilities referred to the court by 44 percent. A number of these children, however, have been assessed and are receiving treatment in the home and community to address the reasons for their referral.

Conclusion

Much has been said and written about how children with disabilities should be treated once they're referred to the juvenile court. The threshold question is whether these children should be referred to the court at all. Many children with disabilities are disruptive for reasons related to their disability, but this does not make the child delinquent. The beauty of the juvenile court is that the commission of a delinquent act doesn't necessarily make the child delinquent. Children are prone to make poor decisions and do things that break the law. This is their nature. The juvenile court should be reserved for children who scare us, not those who make us mad.

Judicial leadership is the key to getting the schools and police together to discuss alternatives to arrest. Judges should judge when on the bench, but engage the



community when off the bench. Attorneys advocating for children with disabilities should also engage judges outside the courtroom and in the chambers to encourage them to use their legitimate authority as judges to engage the community and bring stakeholders together. Zealous representation of child clients in the courtroom is essential, but such advocacy can be effective outside the courtroom as well.

The juvenile justice system is not a single entity, but a collection of different systems with the desired outcome of reducing recidivism. These different systems must be connected through an intermediary, preferably a multidisciplinary team, to assist schools with alternatives to suspension and arrest. It's not enough to wait for children with disabilities to come to the system when, in many circumstances, they shouldn't have been referred in the

first place. Effective advocacy eradicates this paradoxical system for our children, especially those with disabilities. Effective advocacy doesn't begin in the courtroom. It begins with leadership in the community advocating for systems change.

Steven C. Teske is a juvenile judge in Clayton County, Georgia. He was appointed to the bench in 1999. Brian Huff is a family court judge in Jefferson County, Alabama. He was elected to the bench in 2006.

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The Dichotomy of Judicial Leadership: Working with the Community to Improve Outcomes for Status Youth

By Judge Steven C. Teske and Judge J. Brian Huff

INTRODUCTION

First enacted in 1974, the federal Juvenile Justice and Delinquency Prevention Act (JJDP A)¹ creates a partnership among the federal government, states, and U.S. territories to create more effective juvenile justice systems premised on standards for the fair treatment of court-involved youth, and to reduce over-reliance on incarceration, while still holding youth accountable and keeping communities safe. Over the last 35 years, the JJDP A has fostered many systemic improvements, but a recent report by the Coalition for Juvenile Justice, *A Pivotal Moment: Sustaining the Success and Enhancing the Future of the Juvenile Justice and Delinquency Prevention Act*, underscores various unresolved issues faced by many states and territories.² One such issue is the increasing use of locked detention for youth charged with status offenses (“status youth”).

Under the JJDP A’s “Deinstitutionalization of Status Offenders” mandate, states may not place status youth in secure (that is, locked) detention. Rather, states must implement policies and programs that provide status youth with the family- and community-based services needed to address and ameliorate root causes of their behavior.

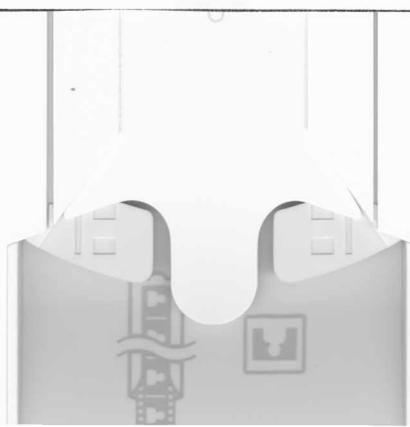
¹ 42 U.S.C. 5601.

² The report may be found at www.juvjustice.org.

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Judge J. Brian Huff has been presiding juvenile judge for Jefferson County (Birmingham), Alabama, since 2005. Judge Huff oversees Reclaiming Our Youth, a collaborative effort to improve the Jefferson County juvenile justice system from intake to disposition to promote positive youth development, restorative justice, and family involvement.

Editor’s Note: This article was written in collaboration with Tara Andrews and Nancy Gannon Hornberger of the Coalition for Juvenile Justice.



A statutory exception to this mandate is the valid court order (VCO) exception.³ Under the VCO exception, judges may order the locked detention of a status youth who has violated a direct order of the court not to commit a repeat or additional status offense, such as running away again or breaking curfew.⁴ While originally intended to be an exception used on an infrequent basis, data reveal that the VCO exception is too often overused and misused, resulting in the locked detention of thousands of status youth every day.

When we as judges do not have a clear assessment of detention alternatives, and are unaware of the harm that detention has been shown to cause, locking up status youth may become a default option. As juvenile court judges, who both preside in states where locking up status youth under the VCO exception is a legal option, we offer our perspectives and share our experiences on ways to ensure the best possible youth and community outcomes without the use of detention, and help jurisdictions comply with the spirit as well as the letter of the JJDPA.

DETENTION OF STATUS OFFENDERS: PROTECTIVE OR PROBLEMATIC?

As judges, we have great discretion in deciding whether a young person who comes before us should be detained in a secure facility or diverted from detention. When making this decision, we have a responsibility to consider the short- and long-term consequences of our actions.

Advocated by judges and child professionals, and amended into the JJDPA in 1980, the original purpose of the VCO exception was to provide judges with a tool to enforce their orders and protect status youth who repeatedly exposed themselves to harmful situations. The philosophy was that youth should be held accountable for disobeying the court, and some youth, particularly chronic runaways, were safer locked up than they would be on the street. Detaining youth in secure facilities, however, has proved to cause far-reaching, negative consequences. Research shows that youth who spend time in secure custody are less likely to complete high school, avoid re-arrest, find employment, and form stable families. They are also more likely to abuse drugs and alcohol.⁵ Furthermore, youth of color continue to be disproportionately impacted by the juvenile justice system, including at the detention stage.⁶

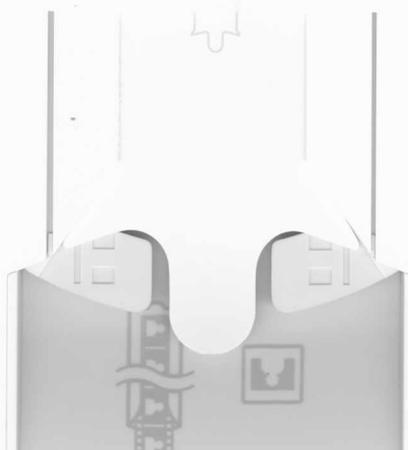
The underlying causes of status offenses are typically linked to factors associated with family dynamics, school concerns, trauma, mental health needs, and peer group

3 David J. Steinhart, *Juvenile Court: Status Offenses*, 6 THE FUTURE OF CHILDREN, Winter 1996, 90-92.

4 42 U.S.C. Sec. 223(11).

5 M. Szalavitz, *Why Juvenile Detention Makes Teens Worse*. TIME MAGAZINE, Aug. 7, 2009. Retrieved from <http://www.time.com/time/health/article/0,8599,1914837,00.html>.

6 B. Holman & J. Ziedenberg (2009). *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, A JUSTICE POLICY INSTITUTE REPORT (The Justice Policy Institute, Washington, DC).



influences.⁷ Locked detention is not designed to treat or to resolve such causes. Rather, the negative outcomes that can arise from detention far outweigh any benefits of short-term confinement with no access to critical services needed to eliminate the reasons for running away in the first place. Detention can exacerbate underlying causes of the young person's behavior and simultaneously expose them to predatory behaviors of other youth charged with more serious, delinquent offenses. This exposure can increase the risk of emotional harm and escalation of delinquent behavior.⁸

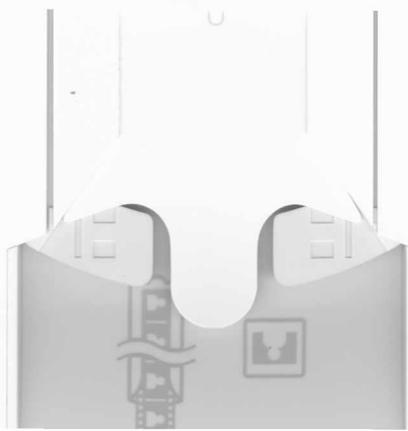
For all of these reasons, detention should never be the default option. Rather, secure detention should only be used if a youth poses a serious threat to public safety, or if there is a strong, documented reason to believe that the youth will not return to court for required hearing dates. Status offenses such as running away, skipping school, violating curfew, and using tobacco and/or alcohol under age generally do not meet this threshold. In keeping with this view, the JJDDPA mandates that youth charged with status offenses *not* be detained except in limited circumstances. Unfortunately, in many jurisdictions, the VCO exception has swallowed the original rule. Overuse of the VCO exception contributes to the approximately 11,900 status youth held annually in secure detention facilities.⁹

More than a dozen states have eliminated or limited the use of the VCO exception by statute or court rule, and Congress is considering its removal from the JJDDPA altogether. Limiting judges' ability to order the detention of status youth is a source of contention among judges, placing judges at odds with many juvenile justice practitioners, service providers, and advocates. At times, status youth present a threat to themselves, and naturally we want to protect them. However, using detention with the intention of safeguarding youth facilitates a process that exposes status youth to greater risks and may cause their behavior to deteriorate, sometimes causing a greater threat to themselves or others. This presents a difficult paradox for juvenile court judges, believing that we must decide between the lesser of two evils: 1) do we release a status youth to his or her family or community and run the risk that s/he may be victimized or run away again? Or 2) do we detain them, knowing that detention may expose the youth to further physical and emotional harm? No matter how difficult the choice, we must guard against doing anything that will make matters worse, even when it feels contrary to our protective instincts. When we as judges fail to guard against this, we may end up contributing to juvenile delinquency and future offending, rather than preventing it.

7 National Center for School Engagement. (2009). *What is Truancy?* (NCSC, Denver, CO) at <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf>; H. HAMMER, D. FINKELHOR, & A. J. SEDLAK, NISMART: NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY AND THROWN AWAY CHILDREN, RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS. (U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Washington, DC, 2002) at <http://www.ncjrs.gov/pdffiles1/ojdp/196469.pdf>.

8 U. Gatti, R. E. Tremblay, & F. Vitaro, *Iatrogenic Effect of Juvenile Justice*, 50 JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY (2009); D. WEATHERBURN, *THE SPECIFIC DETERRENT EFFECT OF CUSTODIAL PENALTIES ON JUVENILE REOFFENDING* (Australian Institute of Criminology, Canberra, 2009).

9 CHARLES PUZZANCHERA & MELISSA SICKMUND, *JUVENILE COURT STATISTICS 2005*. (National Center for Juvenile Justice, Pittsburgh, PA, 2008). This number represents a 54% increase from 1995.



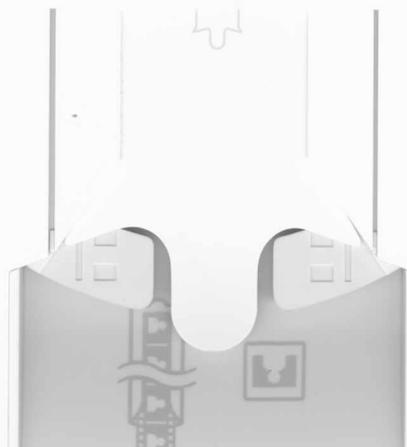
COMMUNITY-BASED RISK REDUCTION: IMPROVED OUTCOMES THROUGH JUDICIAL LEADERSHIP¹⁰

To address the harm from overuse of the VCO exception, and detention and confinement generally, we have developed what we call the Community-Based Risk Reduction Model ("community-based model"), which is grounded in three key suppositions.

- First, the model recognizes that juvenile courts are generally the *worst* delivery system of direct services to youth. The primary function of the court is to adjudicate youth and hold them accountable in keeping with due process. Juvenile courts are not effective treatment providers, and many courts do not possess the resources required to treat the underlying needs of youth, including status youth.
- Second, the model recognizes that the "juvenile justice system" is not only the court, but includes all public and private entities that service youth. Sadly, the negative characteristics of bureaucracies may create "silos" and barriers to communication among court service/youth service entities. Such disconnection wreaks havoc on youth and families, especially if the youth and/or family have multiple needs requiring services from two or more entities. In addition, when two or more providers work with a single youth/family without coordination to address different needs, they sometimes work at cross-purposes. Many communities, by and through various providers, are equipped to address most of the needs presented by status youth and to develop a cooperative treatment plan to meet all of the identified needs of status youth.
- Finally, the community-based model presupposes that juvenile courts are incomparable agents for change within the juvenile justice system. The juvenile court sits at the intersection of juvenile justice, youth success, and community safety, and the juvenile court judge is the traffic cop. Of all stakeholders, juvenile court judges have the greatest potential to influence and connect everyone who can help meet the needs of youth and families.

In addition to deciding cases fairly, we as juvenile court judges must play an active role in bringing together the multiple child service agencies in our communities to ensure that our collective efforts are producing the best outcomes for youth, families, and communities. Put another way, judicial leadership both *from* the bench *and off* the bench is the key to good detention practice. We have coined this "The Dichotomy of Judicial Leadership," meaning that we should endeavor to be judges from the bench, but off the bench we should advocate for collaboration. As pointed out by former NCJFCJ President

¹⁰ The name is taken from a title of a statute in the Georgia Juvenile Code. O.C.G.A. 15-11-10 authorizes juvenile judges to engage stakeholders to develop protocols to address delinquency and status offenses. The collaborative approach, with emphasis on judicial leadership, was inspired by the Juvenile Detention Alternatives Initiative (JDAI) key strategies of the Annie E. Casey Foundation in Baltimore, Maryland. Clayton County, Georgia, and Jefferson County, Alabama, are participating sites of JDAI.



Judge Leonard P. Edwards, "This may be the most untraditional role for the juvenile court judge, but it may be the most important."¹¹

Over the last several years, we have embraced this dichotomy to bring the courts and local stakeholders to the table to create a system designed to divert status youth away from detention and into programs that better serve them. In doing so, we have been careful to make sure that our roles are narrowly tailored to achieve the ends of collaboration: improvement of systems through candid discussions between local stakeholders including experts in education, social services, mental health, families, and service delivery.

PROTOCOLS TO MAKE EFFECTIVE SYSTEM CHANGE FOR STATUS YOUTH

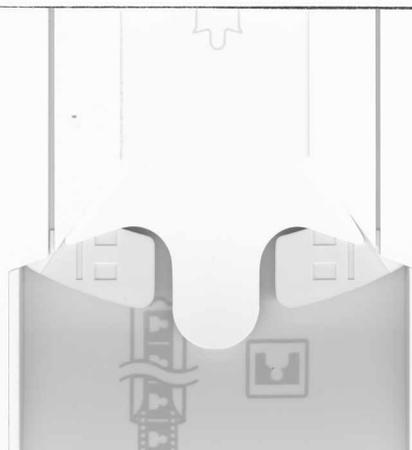
To collaboratively develop detention alternatives for status youth, half the battle is getting the stakeholders together. The other half is effectively engaging stakeholders to integrate and, where necessary, change systems to ensure that needs assessments are conducted, a comprehensive continuum of care is in place, and gaps in service delivery are filled. Therefore, the role of a facilitative judge brings such stakeholders together to develop collaborative systems and reduce detention by creating and ensuring alternative treatment programs and strategies. This systemic change requires written protocols between stakeholders to support the goals of collaboration and to guarantee compliance and sustainability. Persuading and helping stakeholders to develop these protocols is an essential facilitative role of the judge.

Allow us to provide a concrete example, focusing on the point of entry for status and other at-risk youth. When serving youth and families with varying needs, the problem is not only the "disconnect" in communication between different stakeholders, but a complex system with multiple points of entry and no clear exit.¹² Needless to say, a complex, disconnected "non-system" is inefficient, and worse, mystifying to the youth and families who have to navigate it. In Clayton County, Georgia, Judge Teske facilitated frank and earnest discussions between stakeholders for eight months, which led to the creation of a permanent multidisciplinary panel to serve as a single point of entry for status youth and at-risk youth. The mission, goals, and processes of the panel were captured in a written protocol that is the County blueprint for working with youth and families.

Since its creation in 2004, the panel has developed a comprehensive system of assessment and treatment programs in the community. For instance, the panel has developed an array of evidence-based programs (EBPs) such as functional family therapy, multi-systemic therapy, cognitive behavioral programming, and wrap-around services, proven to be more cost-effective and to have a positive impact on community safety when

11 Leonard P. Edwards, *The Juvenile Court and the Role of the Juvenile Court Judge*, 43 JUVENILE AND FAMILY COURT JOURNAL, Spring 1992, at 29.

12 WALTER F. BUCKLEY, *SOCIOLOGY AND MODERN SYSTEMS THEORY* 227 (Prentice Hall, 1967).



compared with locking up youth.¹³ In addition, when these professionals come together at the same table, it prevents an “overlapping” effect of redundant services and helps each stakeholder make the most of available funding, whether Medicaid, Temporary Assistance for Needy Families (TANF), and/or private funding sources. We have also found that individual stakeholders are far less likely to refuse to give assistance to certain youth or argue that the youth—due to point of entry or other factors—are “not their responsibility.” Gone, too, are unnecessary filings of status petitions with the court, such that now in Clayton County status petitions have decreased by approximately 40%.¹⁴

REVERSING THE SCHOOL-TO-PRISON PIPELINE

Judicially facilitated dialogue among stakeholders can also produce protocols that directly benefit school-aged youth and their families. For example, the authors employ a protocol in both of our jurisdictions (Birmingham, Alabama, and Clayton County, Georgia) designed to reduce school referrals to the court.

As judges, we must guard against court filings that attempt to pass off status-type conduct as delinquent acts,¹⁵ e.g., referrals that arise out of unruly behavior that, while disruptive, does not rise to the level of a delinquent or criminal act. School systems in many jurisdictions, including our own, have become the major source of court referrals, yet most involve behavior that is typical of youth.¹⁶ A widespread “zero tolerance approach” to school discipline has been dubbed the “school-to-prison pipeline,” based on studies showing correlations between increased use of suspensions, expulsions, and court referrals with increases in drop-out rates and incarceration. Zero tolerance practices also have a grossly disproportionate negative impact on youth of color. African-American youth are six times more likely and Latino youth three times more likely to be suspended, expelled, and referred to court than white youth for the same infractions.¹⁷

In response to this unfavorable zero tolerance approach, we worked with stakeholders to create a protocol that has significantly reduced low-level referrals to the court, while simultaneously developing alternatives that have decreased suspensions. The school system utilizes the single point of entry to access services not readily available to school

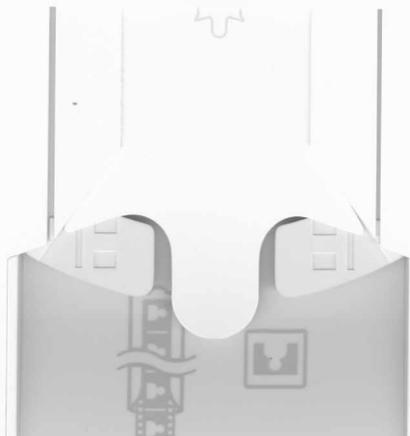
13 Lee A. Underwood, Kara Sandor von Dresner, & Annie L. Phillips, *Community Treatment Programs for Juveniles: A Best-Evidence Summary*, INTERNATIONAL JOURNAL OF BEHAVIORAL CONSULTATION AND THERAPY, Summer 2006.

14 Data provided by J. Barrett, Canyon Services, using the Juvenile Court Automated Tracking System.

15 M. Klein, *Deinstitutionalization and diversion of juvenile offenders: A litany of impediments*, in CRIME AND JUSTICE 145 (N. Morris & M. Tonry eds., University of Illinois Press, Chicago, Vol. I, 1979); see also W. Krause & M. A. McShane, *Deinstitutionalization Retrospective: Relabeling the Status Offender*, 17 JOURNAL OF CRIME AND JUSTICE, 1994, 45-67. These studies indicate that systems have creatively found ways to get around the DSO requirements by arresting youth on delinquent charges.

16 In Clayton County, Georgia, the number of school referrals increased by over 1,000% after placing police on school campus. The graduation rates subsequently fell to 58%.

17 E. POE-YAMAGATA & M. JONES, AND JUSTICE FOR SOME. (Building Blocks for Youth, Washington, DC, 2000).



administrators. When educators ask, "Why is Johnny chronically disruptive?," the panel of community professionals answers with a needs assessment and a treatment plan based on the assessment. Consequently, graduation rates have increased and juvenile felony offenses have decreased.¹⁸ Diverting status and low-risk youth to alternative programs has also decreased probation caseloads. Finally, the community is safer because status youth receive focused and needed attention from responsible and caring adults, resulting in reduced recidivism among our high-risk youth and fewer victims in the community.¹⁹

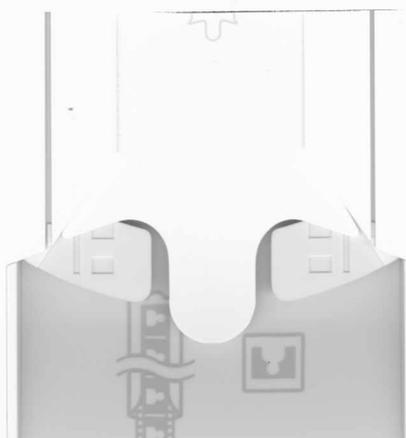
IN CONCLUSION

Now is the time for judges to do our part to ensure that our judicial actions do not put youth behind bars at unacceptably high rates, yielding serious and damaging social consequences. We applaud Congressional efforts to strengthen the JJDPa by calling for the phasing out and ultimate elimination of the VCO exception to the DSO core requirement, and with amendments that provide greater emphasis on the development and expansion of constructive detention alternatives and detention reforms.

Critical to youth, family, and community success is forward-thinking judicial leadership that rejects detention of non-violent, status, and non-offender youth as a harmful default option and, instead, works to facilitate and sustain lasting, productive community partnerships and resources for youth and families. Such judicial leadership will, in turn, afford status youth and other vulnerable, troubled young people with the opportunities all juvenile court judges seek to give them: to enjoy a stable and healthy family life, to stay in school, and to grow up to be productive adults and contributing members of their communities.

18 Graduation rates obtained from Luvenia Jackson, Special Assistant to the Superintendent, Clayton County Public School System; Juvenile felony rates obtained from data using the Juvenile Court Automated Tracking System managed by Canyon Services in Phoenix, Arizona.

19 E. Lowenkamp, E. Latessa, & A. Holsinger, *The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Correctional Programs?* 52 CRIME AND DELINQUENCY, 2006, 77-93.





WHEN DID MAKING ADULTS MAD BECOME A CRIME?

The Court's Role in Dismantling the School-to-Prison Pipeline

By Judge Steven C. Teske and Judge J. Brian Huff

The juvenile justice system in America is a paradox when it comes to promoting the welfare of our nation's young people. We have come a long way from old English common law which treated children as adults under the "vicious will" doctrine,¹ to creating juvenile courts with the understanding that children, despite a willful act, still possess a formative mind and should be treated differently from adults. Despite this progression, decision-makers continue to promulgate laws and policies that treat children as adults in contradiction of the philosophy underlying the creation and role of juvenile courts. The zero tolerance policies of many school systems across the country are a prime example of this paradoxical treatment of children. In an attempt to address discipline, school systems have adopted a "get tough" approach using out-of-school suspension, expulsion, and arrests.

Many of these arrests resulting in court referrals are for misdemeanor offenses involving school fights, disorderly conduct, and the creative application of laws that include disruption on school grounds. For example, Georgia enacted a law against disrupting public schools to punish parents for disruptive conduct at school arising from custody battles. Ironically, this law quickly turned against students when police on campus began making arrests for small infractions.

A review of the literature generally recommends that courts can address this problem through better screening of referrals. Although true, the harmful effects of zero tolerance are felt at the moment the referral is made. A student arrested in school is twice as likely not to

graduate and four times as likely if he or she appears in court.²

Clayton County, Ga., and Jefferson County, Ala., like many counties across America, experienced significant increases in minor school arrests when police began to be placed on campuses in the early 1990s. However, school safety did not improve with the increased police presence, and graduation rates fell.³ The authors, who preside on the juvenile court bench in these two counties, brought stakeholders together to develop a protocol to reverse this trend, relying on the Juvenile Detention Alternative Initiative (JDAI) model and NCJFCJ's Juvenile Delinquency Guidelines. Both counties subsequently experienced a significant decrease in school arrests. Clayton County,

the first to apply this approach several years ago, expanded its protocol to develop a system of care that includes alternatives to suspension and arrests such as functional family therapy, multi-systemic therapy, wrap-around services, peer court, and in-school responses. Consequently, graduation rates increased while serious juvenile crime in the schools and community decreased.

This experience has provided considerable insight into the essential role of the judge in system change to improve outcomes for youth. This article will discuss the harmful effects of zero tolerance policies and why they deserve judicial attention. We will show, absent major legislative changes, how the juvenile judge is crucial in system reform that can ameliorate these harmful effects.

ZERO TOLERANCE: ITS ORIGIN, APPLICATION, AND EFFECTS

The background and etymology of the term “zero tolerance” can be traced back to the 1980s during State and Federal efforts related to the “war on drugs.” It has been suggested that the application of zero tolerance to minor offenses originated from the “broken windows” theory of crime, which analogizes the spread of crime to a building with broken windows that attracts vagrants and squatters, inviting more serious crime.⁴ Thus, it makes sense to punish minor offense violators before major crimes occur.

By the early 1990s, school systems began to adopt zero tolerance policies for minor school infractions, which resulted in the near doubling of students suspended annually from 1.7 million in 1974 to 3.1 million in 2001.⁵ The most illogical use of zero tolerance is for truancy. The suspension from school of a student who does not want to attend illustrates the inherent problems with zero tolerance policies, and has led some to refer to zero tolerance as “zero intelligence” or “zero evidence.”⁶

Within the context of school discipline, zero tolerance can best be defined as a “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context.”⁷ The severity and punitive nature of zero tolerance practices escalated when police were placed on campuses. Consequently, the number of students arrested and referred to juvenile court for infractions once handled by school administrators increased dramatically. The study of this phenomenon has been referred to as the “school-to-prison pipeline.”⁸

Zero tolerance policies operate under the “broken windows” assumption that removing disruptive students deters other students from similar conduct while simultaneously enhancing the classroom environment. On the contrary, some studies suggest that such strategies are harmful to students and may make schools and communities less safe.⁹

Zero tolerance strategies ignore the unrefined skills associated with an adolescent’s developmental capacity to manage emotions and conflicts. Recent adolescent brain research has found that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21.¹⁰ Youth are biologically wired to exhibit risk-taking behaviors, impulsive responses, and poor judgment.

Disciplinary policies that result in the arrest of students for normal adolescent behavior can exacerbate the challenges already facing

youth. Because adolescents are still neurologically immature, they should be surrounded by positive influences to help them become responsible adults.¹¹ Schools are positive institutions and have been found to be a protective buffer against negative influences.¹² Zero tolerance policies that remove students who do not pose a serious threat to safety may very well be increasing the risk of negative outcomes for the student — especially if removed in handcuffs — as well as the school and the community.

It is not surprising that children with disabilities are more likely to be arrested under zero tolerance policies. For example, it is estimated that juvenile justice facilities are three to five times more likely to have youth with emotional disabilities than public schools.¹³ If adolescents are neurologically wired to make poor decisions, adolescents with disabilities are at even greater risk to be arrested.

Finally, zero tolerance policies contribute to the existing racial and ethnic disparities in public education.¹⁴ These inequalities more often than not produce lower graduation rates among minority youth, which contributes to higher rates of criminality among these youth.¹⁵

A study of the impact of zero tolerance policies shows that minority youth are disproportionately suspended and referred to court on school-related offenses. Black students are 2.6 times as likely to be suspended as White students.¹⁶ For example, in 2000, Black students represented 17% of the nation’s student population yet represented 34% of the suspended population.¹⁷ There is no evidence connecting this disparity to poverty or assumptions that youth of color are prone to disruptive and violent behavior.¹⁸ On the contrary, studies indicate that this overrepresentation of Black students is related to referral bias on the part of school officials.¹⁹

Although many juvenile courts have acted to minimize these harmful effects through diversion, this effort is insufficient because the harm occurs at the point of arrest. Comprehensive system reform is needed, which cannot take place without a change agent. The following discussion defines the juvenile justice system and how the juvenile judge, as a stakeholder, holds a unique position to be that change agent.

THE MULTI-SYSTEM INTEGRATED APPROACH: UNDERSTANDING THE JUVENILE JUSTICE SYSTEM

A system is commonly defined as “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment.”²⁰ All systems have inputs in the form of demands, supports, and a desired outcome. This definition, however, is not readily applicable to a “juvenile justice system” because it does not have a “common boundary” as described below.

The desired outcome of any juvenile justice system is to reduce delinquency. This can only occur by using effective treatment modalities to address the causes of delinquent conduct. These causes, referred to as criminogenic needs, include lack of family support, poor performance in school, lack of pro-social activities, substance abuse, anti-social cognition, and anti-social associates.²¹ These needs are served by various community agencies, including social services, mental health services, the school system, and the juvenile court. The desired outcome of reducing delinquency is dependent on many systems working together. These systems possess varying budgets and regulations that

Zero tolerance policies contribute to the existing racial and ethnic disparities in public education. These inequalities more often than not produce lower graduation rates among minority youth, which contributes to higher rates of criminality among these youth.

often impede communication among them, resulting in policies that contradict the desired outcomes of the larger juvenile justice system.

Zero tolerance is an example of a contrary policy. When police were placed on school campuses in Clayton County, Ga., in 1994, the number of referrals from the school system increased approximately 1,248%. Approximately 90% of these referrals were infractions previously addressed by administrators. Jefferson County, Ala., experienced a similar increase. During this time, school suspensions increased while graduation rates decreased to 58% by 2003. The data in both jurisdictions supported the research that increased suspensions and arrests were resulting in higher drop-out rates.

One should be careful not to place blame solely on the police and schools. The increase in referrals should be analyzed in a systems context, and the role of each system within the larger juvenile justice system. Police, for example, are trained to make arrests when they have probable cause that an offense has occurred. Without additional training for school police, we should not expect them to respond any differently than their role dictates.

Likewise, school administrators are responsible for the safety of schools. The primary role of schools is to educate—not provide mental health, social, or other services, which are the province of other agencies in the community. Schools, therefore, tend to rely on punitive measures such as suspension, expulsion, and now even arrest to address disruptive behavior. Unfortunately, many students are chronically disruptive because they have underlying issues at home or outside school that require services not accessible by the school system. It is essential that schools are linked to other community resources that can assess and provide interventions for the child and family to reduce the risk of disruptive behavior.

Using a systems model, it becomes evident that the juvenile justice system is not a single entity, but a system of multiple entities working together toward desired outcomes for youth. Within this larger system we call juvenile justice, the court is the common denominator. The court is the intersection of juvenile justice, and the juvenile judge is the traffic cop.²² Juvenile court judges are incomparable agents for change within the juvenile justice system, and with the respect and authority accorded the bench, are in a unique position to bring together system stakeholders. How judges can effectuate this role is the key to success.

IMPROVING OUTCOMES FOR YOUTH: THE ROLE OF THE JUDGE

Judges often express legitimate concerns when asked about exercising a role off the bench. Obviously, judges must refer to their state's judicial ethics rules for guidance. Most states, however, do not prohibit judges from engaging the community if it will promote a better juvenile justice system.²³

In Clayton and Jefferson counties, the judge's role was limited to bringing the relevant stakeholders together to discuss the problem and develop a solution. Judges give orders on the bench, but off the bench they forge and define relationships to improve outcomes for youth. Judicial leadership is 10% bringing people together to talk about the problem and solutions and 90% persuasion. They will come if asked by a judge. What they do after that depends on how they are persuaded.

The protocol process in Clayton and Jefferson counties has led to the following recommendations when forging protocols to reverse the school-to-prison pipeline:

It is essential that schools are linked to other community resources that can assess and provide interventions for the child and family to reduce the risk of disruptive behavior.

- **Identify Stakeholders:** It helps to identify the stakeholders and meet with them individually to present the problem using data and research on the ineffectiveness of school referrals. It is crucial to present only the problem and request their participation in a series of collaborative meetings with other stakeholders to develop solutions. Stakeholders feel threatened if told how to fix a problem, especially one they had a hand in creating. They are experts in their respective fields and have much to contribute toward a solution. These expert stakeholders should include, but are not limited to, school superintendent, chief law enforcement officer, chief prosecuting attorney, chief public defender, head of social services and mental health, chief court intake officer, and the administrative judge. Judges should also give serious consideration to including a parent and youth. Persons of color representative of the community should be included since they tend to be the most affected by zero tolerance policies and can offer insight into the problem and possible solutions.
- **Identify a Neutral Moderator:** The stakeholders should see the judge as an objective participant. The judge should make introductions at the first meeting, introduce the moderator, and explain the goals of the meetings and that the judge will be an equal participant. A solution grounded in personality is not sustainable. Because judges come and go, the next judge can reverse administrative decisions. Solutions developed by a community are more apt to become its culture, and less likely to be changed on the whim of a personality.
- **Provide Data and Research:** The first meeting, and others as needed, should include presentations by stakeholders or other experts about the problem that may suggest possible solutions as the group moves forward in discussions. It is important that the group understands the problem in order to develop solutions.
- **Get it in writing!** A written protocol increases the fidelity of the program as well as its sustainability. It is difficult to ensure quality control absent a document that provides reference for guidance.
- **Appoint a Monitor:** A watchdog is needed to ensure that referrals follow the protocol's guidelines. This may be an individual assigned this task or may be assigned when the referral is made provided all intake staff are trained in the protocol. In Clayton and Jefferson counties, questionable referrals are returned to the campus police or school for reconciliation.
- **Provide Cross-training:** All persons who will make the protocol operational must be trained together at the same time to minimize misunderstandings. This should occur before the start of each school year to ensure new personnel are familiar with the protocol. This also allows for feedback about the mechanics and application of the protocol. Each stakeholder agency should develop policy that directs their staff on its application.
- **Inform the Community:** The community should be informed of the protocol and its objective by using the media and other information outlets. Most citizens are concerned about the effects of zero tolerance policies. The political rhetoric we often hear to get tough on juveniles seldom spills over to minor school offenses. Clayton and Jefferson counties have experienced strong support from the community to prevent school arrests for minor infractions and find positive alternatives.

- **Collect the Data:** Accurate data is necessary for periodic review to measure the outcomes and determine if changes are needed.

Using this process, Clayton and Jefferson counties developed protocols that included a three-tier graduated response process that focused on certain misdemeanor offenses.²⁴ The first infraction requires a written warning to the student and copies to the school and parent. The second infraction requires a referral to a school conflict workshop or mediation. The third infraction may result in a referral to the court.

The protocol has resulted in a reduction of referrals by 67.4% in Clayton County and 50% in Jefferson County. Since its implementation in 2004, the Clayton County stakeholders have created a system of care to assess and treat disruptive students as an alternative to suspension, expulsion, and arrests. These alternatives resulted in a decrease in suspensions of 8%. The protocol, coupled with the system of care, has resulted in an increase of graduation rates by 20%, while felony rates fell 51% in the community. This supports the theory that keeping as many children as possible in school using alternative measures will increase graduation rates. It probably goes without saying that the more children we graduate, the less juvenile crime in the community.

We also experienced an improvement in school safety due to the cognitive shift of police toward how they relate to students. School police share that the significant reduction in referrals has increased their presence on campus—they are no longer leaving campus to transport students to juvenile intake. The students do not observe police making arrests, but instead engaging students. Students are now more inclined to share information with police about matters they hear on campus that could pose a threat. This is evident, in part, by the 73% reduction of serious weapons on campus. According to Sgt. Marc Richards, the supervisor of the school resource officers in Clayton County, “Schools are a microcosm of the community. If you want to know what is going on in the community, talk to the kids. But the kids must want to talk to you!” School safety can be enhanced if school policing focuses on intelligence gathering through student engagement using positive approaches.

When efforts are made to decrease referrals from schools, which are typically the largest feeder of court referrals, the number of youth of color referred is decreased. The considerable decrease in referrals in Clayton and Jefferson counties resulted in a decrease in racial and ethnic disparity by as much as 58% and a decrease in the detention rate of youth of color by 38%. These data suggest that efforts to reduce disproportionate minority contact (DMC) can be addressed with substantial results by focusing on zero tolerance policies and their adverse effects.

Finally, employing the processes we outline here can not only help mitigate the unintended, harmful outcomes associated with zero tolerance, but can also set the stage to develop alternatives to detention for truant behavior and avoid the use of the valid court order exception for this—and other—status offenses. Many of the underlying causes of disruptive behavior in school are the same for truant and incorrigible youth. These same youth can benefit from a system of care that connects all agencies serving youth.²⁵

CONCLUSION

Much has been said and written about how students should be treated once they are referred to the juvenile court. The more pertinent question is whether many of these students should be referred to the court in the first place. Many students are disruptive for reasons related to their normative immaturity or a disability. The beauty of the juvenile court is that the commission of a delinquent act does not necessarily make the child delinquent. Youth are wired to make poor

decisions and commit delinquent acts. The juvenile court should be reserved for children who “scare” us, not those who make us “mad.”

Because of the court’s stature in the juvenile justice system, judges are in a unique position to bring positive change to a system that feeds the court with unnecessary referrals. No one is better situated than the judge to stop the harmful effects of zero tolerance.

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END NOTES

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A Study of Zero Tolerance Policies in Schools: A Multi-Integrated Systems Approach to Improve Outcomes for Adolescents

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Search terms:

Criminogenic need, delinquency, linear programming model, multi-integrated systems model, protective factor, racial disparity, risk principle, school-to-prison pipeline, suspension, zero tolerance

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PROBLEM: School officials throughout the United States have adopted zero tolerance policies to address student discipline, resulting in an increase in out-of-school suspensions and expulsions. The introduction of police on school campuses also increased the referral of students to the juvenile courts. Although school personnel generally view zero tolerance policies as a constructive measure, this approach denies recent research on adolescent brain development that mischief is a foreseeable derivative of adolescence.

METHODS: A case study method examined one juvenile court's innovative multi-integrated systems approach related to the adverse trends associated with zero tolerance policies.

FINDINGS: A multi-disciplinary protocol resulted in more effective youth assessments that reduced out-of-school suspensions and school referrals; increased graduation rates by 20%; and decreased delinquent felony rates by nearly 50%. The resulting protocol changed how the system responds to disruptive students by significantly reducing out-of-school suspensions and school referrals, and putting into place alternatives as well as providing community resources to address the underlying causes of the behavior.

CONCLUSION: A multi-systems approach that targets the reasons for disruptive behavior improves student educational and behavioral outcomes.

Public education in the United States is replete with inequalities that are defined along racial, ethnic, and socioeconomic lines. These inequalities more often than not produce lower graduation rates contributing to higher rates of criminality among our youth (Mendez, 2003). Recent educational policies have exacerbated the problem with the advent of standardized and mandated graduation tests. As many as 58% of minority students in the ninth grade do not graduate (Wald & Losen, 2003). Despite the overwhelming data reflecting the adverse impact of these inequalities and testing standards, there appears to be little to no effort among policy makers to ameliorate the problem. On the contrary, it appears that policy makers, in an attempt to address school discipline using a zero tolerance approach, have increased the racial and ethnic gap while simultaneously widening the net to include students with diagnosable mental health problems (Skiba et al., 2006). Recent research indicates the ineffectiveness of zero tolerance strategies in secondary public schools, how such strategies are harmful to children, and how such policies actually increase risks to school and community safety.

Using a systems model, it is revealed that school systems in general are limited in their resources to adequately respond to disruptive behavior, creating an overreliance on zero tolerance strategies. The purpose of this article is to show the importance of connecting the school system with other systems serving students to assess disruptive students and access alternative modalities to treat the underlying reasons for the disruptive behavior that can reverse the negative outcomes of zero tolerance.

Literature Review: the Problem With Zero Tolerance Policies

Definition of Zero Tolerance

The history and etymology of the term "zero tolerance" can be traced back to the 1980s during State and Federal efforts to combat drugs, or what became known during the 1980s as the "war on drugs." It was not long before the term was applied to various subjects, including environmental

pollution, trespassing, sexual harassment, to name a few. Arguably, its widespread application to minor offenses can be attributed to the “Broken Windows” theory of crime (Kelling & Coles, 1997). This theory analogizes the spread of crime to a few broken windows in a building that go unrepaired and consequently attract vagrants who break more windows and soon become squatters. The squatters set fires inside the building, causing more damage or maybe destroying the entire building. The broken windows theory argues that communities should get tough on the minor offenses and clean up neighborhoods to deter serious crimes. Thus, it becomes necessary to punish minor offense violators.

By the early 1990s, school systems began to adopt this “Broken Windows” approach, or zero tolerance, for minor school infractions by suspending students for up to 10 days. These infractions typically involved fighting, disruption in school, and smoking. This is evident in the near doubling of students suspended annually from 1.7 million in 1974 to 3.1 million in 2001 (Poe-Yamagata & Jones, 2000). The most incongruent use of out-of-school suspension (OSS) is for truancy infractions. Suspending a student who does not want to attend school is illustrative of the inherent problems with zero tolerance policies, and has led some to refer to zero tolerance as “zero intelligence” or “zero evidence” (Richardson, 2002).

Considering its origin and use over the years, zero tolerance can best be defined as a “philosophy or policy that mandates the application of predetermined consequences, most often severe and punitive in nature, that are intended to be applied regardless of the seriousness of behavior, mitigating circumstances, or situational context” (Skiba et al., 2006). The severity and punitive nature of zero tolerance practices escalated with the placement of police on school campus, resulting in a considerable increase in the number of students arrested and referred to juvenile court for infractions once handled by school administrators. The study of this occurrence has been referred to as the “school-to-prison pipeline” (Wald & Losen, 2003).

Within the context of school discipline, zero tolerance policies operate under the assumption that removing disruptive students deters other students from similar conduct while simultaneously enhancing the classroom environment. As the research below shows, this assumption fails to consider various factors that impede the zero tolerance policy goal of maintaining a safe and disciplined learning environment.

Effects of Zero Tolerance Approaches

Zero tolerance policies are generally viewed by school systems as a viable approach to school discipline to maintain safe classrooms. However, professionals in other related fields such as mental health, social services, and the courts have begun to question the effectiveness of these policies, resulting

in various studies on the matter. The studies to date show that zero tolerance strategies have not achieved the goals of a safe and disciplined classroom. On the contrary, some studies suggest that such strategies are harmful to students and may make schools and communities less safe (Wald & Losen, 2003).

School as a Protective Factor

Students bring to school their unique individual and environmental characteristics, some of which may produce negative behaviors (Barber & Olsen, 1997). Negative characteristics are referred to as *risk factors* that, if untreated, may lead to disruptive conduct, delinquency, and even more negative behaviors.

The *risk principle*, as used in the field of corrections, has useful application in understanding the ineffectiveness of zero tolerance policies within the school setting. In the context of juvenile justice, risk is defined as a child’s probability to commit a crime, or to re-offend. Studies consistently show that factors predicting the risk of delinquent behavior include antisocial attitudes, associates, personality, and a history of antisocial behavior (Andrews & Bonta, 1998). Other risk factors include substance abuse and alcohol problems, family characteristics, education, and employment (Gendreau, Little, & Goggin, 1996). The importance of assessing risk factors is reflected in studies showing that intensive interventions are required in high-risk youth to reduce recidivism. Conversely, studies show that intensive interventions applied to low-risk youth increase the risk of re-offending (Andrews, Bonta, & Hoge, 1990). Today, many juvenile justice systems use an objective risk assessment, a tool that measures the child’s risk to re-offend, to determine which offenders are in need of intensive supervision and treatment. Without it, many low-risk youth would be harmed by too much intervention.

Because being in school is a protective factor against delinquent conduct (U.S. Department of Health and Human Services, 2001), suspending and removing students from school for normal teenage behaviors is counterproductive. Besides being counterproductive, suspension increases the risk of antisocial and delinquent behaviors. Zero tolerance policies apply sanctions across the board regardless of the risk level of the student. Studies have found that disciplining harshly with OSS and criminal sanctions regardless of the risk level of the student exacerbates the problem by making students worse (Andrews & Bonta, 1998; Mendez, 2003). A longitudinal study on the disciplining of elementary and middle school students found that OSS is a predictor of future suspensions (Mendez, 2003). The study also found that OSS contributes to poor academic performance and failure to graduate.

The research shows that students handled by punishment alone are less likely to succeed (Mendez, 2003). This finding is the same for youth in the correctional setting; that is, the

use of punishers to modify behavior increases the risk of re-offending (Andrews, Bonta, & Wormith, 2006; Lowenkamp & Latessa, 2004).

The Surgeon General's report on youth violence indicated that a child's connection to school was one of only two protections against risk factors for violence (U.S. Department of Health and Human Services, 2001). Other studies found that students' belief that adults and peers in school care about them is related to lower levels of substance abuse, violence, suicide attempts, pregnancy, and emotional distress (McNeely, Nonnemaker, & Blum, 2002). Studies also reveal that this belief, referred to as school connectedness, is linked to school attendance, graduation rates, and improved academics (Rosenfield, Richman, & Bowman, 1998; Battin-Pearson et al., 2000).

The research shows that students who disrupt are typically not assessed to determine the reasons for the behavior (Mendez, 2003). The failure of schools to assess disruptive students may be explained by the goal of zero tolerance policies, which focus solely on punishment as a tool to modify behavior and which minimize the need to ask why a student is disruptive.

Mental Health

Although there have been less data collected regarding the impact of zero tolerance on students with diagnosable mental health disorders, a report by the American Psychological Association Zero Tolerance Task Force stated that "students with disabilities, especially those with emotional and behavioral disorders, appear to be suspended and expelled at rates disproportionate to the representation in the population" (Skiba et al., 2006). Studies of youth with mental health disorders in the juvenile justice system support this position of the task force. A report of the Surgeon General found higher rates of mental disorders among the youth in the juvenile justice system (U.S. Department of Health and Human Services, 2002). The Texas Youth Commission (TYC) reported a 27% increase in the number of youth with mental disorders entering the juvenile justice system between 1995 and 2001 (Reyes and Brantley, 2002). In 2001 alone, the TYC reported that 67% of the intakes were for nonviolent offenses (Reyes & Brantley, 2002). School systems have become the greatest feeder of the youth into the system since the inception of zero tolerance policies (Rimer, 2004).

Children with mental or emotional disorders are prone to have academic difficulties, and are less likely to succeed if subjected to suspension and expulsion. One study found that 73% of youth with serious emotional disorders who did not graduate were arrested within 5 years (Garfinkle, 1977; Wagner et al., 1991). It is estimated that juvenile justice facilities are three to five times more likely to have youth with emotional disabilities than public schools (Leone & Meisel, 1997).

Arguably, the greater number of youth with emotional disabilities in the juvenile justice system is the result of the school-to-prison pipeline effect caused by zero tolerance policies. These studies support the "school-to-prison pipeline" theory which posits that zero tolerance policies increase dropout rates, leading to higher rates of arrest for this population (Wald & Losen, 2003).

Racial and Ethnic Disparity

Minority youth are disproportionately suspended and referred to court on school-related offenses. Black students are 2.6 times as likely to be suspended as White students (Wald & Losen, 2003). For example, in 2000, Black students represented 17% of the student population yet represented 34% of the suspended population (Wald & Losen, 2003). According to the Zero Tolerance Task Force of the American Psychological Association, there is no evidence connecting the disparity to poverty or assumptions that youth of color are prone to disruptive and violent behavior (Skiba et al., 2006). On the contrary, studies indicate that overrepresentation of Black students is related to referral bias on the part of school officials (Skiba, 2000).

This disproportionate minority suspension is related to the racial and ethnic disparities in the juvenile justice system, thereby lending additional support to the "school-to-prison pipeline" argument; that is, removing students from positive learning environments and criminalizing normative immaturity increases the risk of incarceration (Skiba, 2000). For example, in 1998 Black youths with no prior criminal history were six times, and Latino youths three times, more likely to be incarcerated than White youths for the same offenses (Poe-Yamagata & Jones, 2000). Although youth of color make up one-third of the adolescent population, they represent two-thirds of all the youth detained in secure facilities (Poe-Yamagata & Jones, 2000).

Another evidence in support of the "school-to-prison pipeline" effect is the considerable number of adult inmates that have not graduated high school. In 1997, 68% of state prisoners had not graduated (Sentencing Project, 1997). One study found that suspension and expulsion is the most significant contributing factor for subsequent arrest among adolescent females (American Bar Association & The National Bar Association, 2000).

Adolescent Brain Research

The most pressing reason that zero tolerance policies are not an effective means of modifying disruptive behavior is that it disregards all adolescent brain development research. Zero tolerance strategies ignore the unrefined skills associated with an adolescent's developmental capacity to manage emotions and conflicts. Recent adolescent brain research using

magnetic resonance imaging (MRI) found that the frontal lobe of the brain, which filters emotion into logical response, is not fully developed until about age 21 (Giedd et al., 1999). Youth generally rely on parts of the brain that generate emotions because the frontal lobe is not developed. As described by medical researcher Dr. Deborah Yurgelun-Todd of Harvard Medical School, “one of the things that teenagers seem to do is to respond more strongly with gut response than they do with evaluating the consequences of what they’re doing” (American Bar Association, Juvenile Justice Center, 2004). Youth are biologically wired to exhibit risk-taking behaviors, impulsive responses, and exercise poor judgment.

The implications of these MRI studies are relevant to how punishment should be applied in secondary schools as well as what should be done to improve the social, emotional, and academic outcomes for the youth. A zero tolerance policy that results in the suspension and/or arrest of students for behavior that is neurologically normative at this age can exacerbate the existing challenges facing the youth. Their developmental immaturity strongly implies that youth are still in a cognitive structuring stage. Youth are under neurological construction, and should be surrounded by positive adults, peers, and institutions to enable them to become responsible adults (Giedd et al., 1999). Dr. Jay N. Giedd, a brain imaging scientist, described the importance of how adults should manage the youth stating, “You are hard-wiring your brain in adolescence. Do you want to hard-wire it for sports and playing music and doing mathematics—or for lying on the couch in front of the television?” (Weinberger, Elvevag, & Giedd, 2005).

Schools are positive institutions found to be a protective buffer against negative influences (U.S. Surgeon General, 2001). Zero tolerance policies that remove students who do not pose a serious threat to safety may very well be increasing the risk of negative outcomes for the student, school, and the community.

Methodology: the Systems Model

The common definition of a system is “a set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment” (Bozeman, 1979). As shown in Appendix Figure 1, the systems model employed to analyze organizations includes *inputs* in the form of demands and supports from the environment, and *outputs* in the form of services or products generated internally by the organization back into the environment. Although there are a variety of techniques to analyze systems, the Linear Programming Model (LPM) is a good beginning toward understanding the juvenile justice system because it seeks to determine the desired outcomes by identifying the best available resources. Conceptually, the LPM finds “those values of x , the variables that maximize

the linear objective z while simultaneously satisfying the imposed linear constraints and the nonnegativity constraints” (Bozeman, 1979). For example, the goal of any system is to identify a desired outcome (i.e., outputs as shown in Appendix Figure 1) and improve or enhance the outcome. LPM engages systems on how to achieve their desired outcome by identifying supports to the system while simultaneously recognizing constraints that work against the acquisition of the desired outcome. Once identified, the system should develop strategies to increase the supports and decrease the constraints.

Redefining Juvenile Justice System

Upon application of this model to the juvenile justice system, it becomes clear from the start that the term “juvenile justice system,” if the term is intended as a system designed to achieve a desired outcome, does not have a “common boundary” as described in the definition of a system. Historically, juvenile justice systems have been defined as the juvenile court or a single bureaucracy commonly called a department of juvenile justice. Using a systems model, specifically LPM, a true definition of a juvenile justice system is much broader and encompasses multiple systems that must work in unison if the desired outcome is to be achieved.

For example, the desired outcome of a juvenile justice system is the reduction in recidivism. As discussed previously, the research shows that reducing recidivism requires the targeting of high-risk offenders and identifying their criminogenic or crime-producing needs using assessment tools and matching them with effective treatment modalities. These crime-producing needs, factors that promote antisocial behavior, include lack of nurturing and supervision at home (family), poor performance in school (education), lack of pro-social activities (recreation), substance abuse, antisocial cognition (attitudes, values, and beliefs), and antisocial associates (friends) (Andrews, Bonta, & Wormith, 2006). The problem is that each of these factors, in order to be effectively addressed, are linked to different organizations within the larger public system; that is, organizations with their own “set of interacting components, acting interdependently and sharing a common boundary separating the set of components from its environment.” Simply stated, these independent organizations, including social services, mental health, school system, juvenile court, and juvenile justice agency, operate in silos under separate budgets, policies, and operating procedures which together operate as a constraint. From a systems theory perspective, the problem is not only the “disconnect” in communication, but also the complex system with multiple points of entry with no clear exit (Buckley, 1967; Teske & Huff, 2010). Needless to say, a complex, disconnected system is inefficient, and worse, mystifying to youth and families having to navigate this “non-system” (Teske & Huff, 2010).

The Multi-Integrated Systems Theory, as shown in Appendix Figure 2, assumes that any desired outcome may be dependent on services provided by multiple organizations as opposed to a single entity. This is determined by assessing the desired outcome to find what variables are necessary to maximize the outcome using an LPM. If achieving the desired outcome is dependent on multiple systems, it becomes necessary to connect those systems using an integrated approach.

The Judicial Leadership Approach

Although various mechanisms may be employed to integrate multiple systems, Clayton County utilized the judicial leadership approach to bring relevant stakeholders together to develop written Memorandum of Understandings (MOUs) or protocols. Judicial leadership is the key within a juvenile justice system because the juvenile court is the common denominator of all child service agencies. The intersection of juvenile justice is the juvenile court, and the juvenile judge is the traffic cop (Teske & Huff, 2010). Of all stakeholders, juvenile judges possess the greatest influence, and it is hurtful to children in a disconnected system when judges fail to use that influence to connect the independent silos. As pointed out by former National Council of Juvenile and Family Court Judges president Judge Leonard P. Edwards (1992), "This may be the most untraditional role for the juvenile court judge, but it may be the most important."

The key to winning the battle against this ineffective non-system is engaging the stakeholders to change the system to ensure needs assessments are conducted, to ensure delivery of a comprehensive continuum of care, and to fill gaps in service delivery. However, system change through collaboration requires written protocols to guarantee compliance and sustainability. Facilitating key stakeholders to develop protocols is the final role of the judge in creating an effective system of care for the youth.

The Collaborative Approach in Clayton County

Beginning in 2003, the juvenile judge in Clayton County brought stakeholders together to develop protocols to reverse the negative trends of zero tolerance policies. The research discussed previously, showing the correlation between suspensions, expulsions, and arrests and an increase in drop-out and recidivist rates, served as the blueprint for system integration using MOUs. For example, because the use of suspensions and arrests for minor infractions is associated with decreased graduation rates and increased juvenile crime, mechanisms were put in place to reduce suspensions and arrests and consequently keep students in school. Additionally, the mechanisms included appropriate assessment and treatment alternatives to address the disruptive behavior.

The stakeholders included the school superintendent, chief of police, directors of mental health and social services, and a community volunteer. The judge appointed a neutral person from outside the county to facilitate the discussion. The judge served in a limited capacity as the convener of the meetings. Initially, the group's goal was to reduce referrals from all schools in Clayton County to the juvenile court, affecting approximately 52,000 students. As the meetings progressed, the discussion on how to reduce school referrals generated more questions. What are school administrators to do with these disruptive students no longer referred to the court? When should police intervene in school disruption matters? How do we identify the underlying problems causing the disruption? What do we do to address those problems given the limited capacity and resources of the schools? How do we ensure the safety of the schools? The collaborative process generated new and difficult questions that extended the time to develop a system to meet the goal. The judge convened the meetings at least twice a month, with the facilitator assigning tasks to each member between meetings. The process to develop a system for reducing referrals to the juvenile court took 9 months. Following cross-training of police, school administrators and other relevant personnel, mental health and social service providers, and court personnel, the newly developed system was implemented at the beginning of the 2004–2005 academic year.

The stakeholders agreed that two MOUs were required to accomplish a reduction in suspensions and arrests while simultaneously securing alternative treatment measures. The first MOU, titled the "School Reduction Referral Protocol," called for the reduction in the arrests of students for certain misdemeanor offenses using a three-tier process. The student and parent received a warning on the first offense, a referral to a conflict resolution workshop on the second offense, and referral to the court on the third offense. The second MOU created a multidisciplinary panel to serve as a single point of entry for all child service agencies, including schools, when referring children, youth, and families at risk for petition to the court. The panel, called the Clayton County Collaborative Child Study Team (Quad C-ST), meets regularly to assess the needs of students at risk for court referral and recommends an integrated services action plan to address the students' disruptive behavior. The panel consists of a mental health professional, the student's school social worker and counselor, a social services professional, juvenile court officer, approved child service providers, and is moderated by a trained facilitator provided by the court. The panel linked the child and family to services in the community not available to the school system. The panel developed an array of evidence-based treatment programs such as functional family therapy, multisystemic therapy, cognitive behavioral programming, wrap-around services, and more. These professionals avoided the "overlapping" effect by targeting the mechanism to fund

treatment, whether it may be a youth entitled to benefits from Medicaid, Temporary Assistance for Needy Families, or another source (Teske & Huff, 2010). Before, stakeholders would refuse assistance, arguing that the youth is not their responsibility because they did not fit into a narrowly defined pigeonhole for services.

Results

The findings of the studies highlighted in the literature review showing the negative effects of zero tolerance policies are also reflected in the data collected in Clayton County, GA. The data were collected using the Juvenile Court Automated Tracking System (JCATS). Data were entered into JCATS on each referral received from the school police, including the nature of the offense, the school, grade level, race, sex, and gender.

After police were placed on middle and high school campuses in the mid-1990s, the number of referrals to the juvenile court increased approximately 1,248% by 2004. Most of the referrals were misdemeanor offenses involving school fights, disorderly conduct, and disrupting public school, which are infractions previously handled in school with school disciplinary measures. At the same time, the more serious felony offenses did not increase.

During these same years, the OSS numbers increased (Clayton County Public School System, 2010). As these numbers increased, the graduation rates decreased to 58% by 2003 (Clayton County Public School System, 2010).

Altogether, one-third of all delinquent referrals to the court were from the school system, and most were minor offenses (Clayton County Juvenile Court, 2010). These referrals contributed to an increase in probation caseloads averaging approximately 150 probationers per caseloads. The majority of the caseloads involved minor offenses and consisted of kids not considered a high risk to re-offend or a public safety risk. Consequently, the high-risk and serious offenders were not adequately supervised because of the overwhelming number of probationers. In other words, resources were wasted on the youth who made us mad instead of concentrated on the youth who scared us. This resulted in high recidivist rates that compromised community safety.

By 2003, with referrals, probation caseloads, and recidivist rates increasing, and graduation rates decreasing, the system was under stress. It was time to evaluate how the system should respond to disruptive students in light of the research indicating that punishment alone, whether by suspension, expulsion, or arrest, exacerbates the problem for the students, schools, and the community. These findings demonstrate the importance of a dualistic approach in integrating community systems to reduce reliance on punitive measures while at the same time providing additional resources for school systems to assess and treat disruptive students. As shown in Appendix

Figure 3, following the School Referral Reduction Protocol, referrals to the court were reduced by 67.4%. By distinguishing felonies and misdemeanors, we see that the school police spent most of their time arresting students for low-level offenses. The implementation of the protocol produced a residual effect in the felony referral rate with a decrease of 30.8%. According to school police, the warning system was used for some felony offenses involving typical adolescent behavior. The decision by school police over time to extend their discretion to use the warning for certain offenses outside the scope of the protocol indicates a shift in cognition; that is, an understanding that discipline should be applied on a case-by-case basis. This resulted in greater reductions in referrals.

After the protocol was implemented, the number of students detained on school offenses was reduced by 86%. The number of youth of color referred to the court on school offenses was reduced by 43%.

Another by-product of the protocol was a reduction in serious weapons on campus by 73%. These involve weapons outside the discretion of police and must be referred to the court by law. At the same time, the School Referral Reduction Protocol went into effect; the Quad C-ST began work to develop alternatives to OSS and connect the school system with other community providers. These alternatives resulted in an 8% decrease in middle school OSS (Clayton County Public School System, 2010).

After implementing these integrated systems, the school system observed a gradual increase in graduation rates, resulting in a 20% increase by the end of the 2009 school year, which surpassed the statewide average. By 2004, the juvenile felony rate in Clayton County reached an all-time high, but declined 51% after creating the integrated systems.

Discussion: Implications for Mental Health Professionals

The results support the research that overuse of suspension and court referrals decreases graduation rates and is counterproductive in promoting school and community safety. The results also support the research that chronically disruptive students should be assessed to determine the underlying causes of the disruptive behavior, and services provided to address the causes. The problem to date has been how to make this happen for school systems that are not equipped to conduct mental health assessments and provide mental health and other services. The results support a multi-integrated systems approach that creates a single point of entry in which schools may refer difficult students for assessment and treatment by appropriate providers. This allows schools to rely more on assessment and treatment instead of the traditional punishment approach which is ineffective if used alone to modify behavior among students with chronic disruptive behavior.

The results appear to refute the notion that zero tolerance policies promote school safety. On the contrary, the results reflect an increase in school safety with the decrease in weapons on school campus. A survey of school police to explain the significant decrease in weapons on campus indicated that the protocol, by significantly reducing the arrest rate, increased the presence of police on campus. This increased presence promoted a friendly engagement with students on campus, which was bolstered by the students' change in perception of the police because they made fewer arrests. Consequently, police state that students share information that leads to solving crimes as well as crimes about to occur on campus. "Schools are a microcosm of the community" as stated by the supervisor of the school police unit (Richards, 2009). If one wants to know what is going on in the community, talk to the students. However, the students must want to talk to you. Therefore, the aim of school policing is to gather intelligence of student activity through student engagement.

The results suggest that graduation rates may be connected to serious juvenile crime in the community. Arguably, it could be posited that more students graduating from high school would lead to a reduction in the juvenile crime rate.

The implications for mental health professionals working with adolescents to improve their school performance begin with an understanding that mental health professionals are at a disadvantage because of the inherent limitations of school systems to appropriately address those student behaviors that diminish the opportunity to graduate. Based on the case study of the Clayton County Public School System, which appears to mirror most school systems in the country, the lack of resources to assess and provide treatment for chronically disruptive students creates a greater demand for punishers in the form of suspensions, expulsions, and arrests. Thus, zero tolerance policies become the primary approach to address disruptive behavior absent other viable alternatives. Unfortunately, this approach avoids connecting students with services to change behavior and instead, through suspensions and arrests, oftentimes places students in settings that exacerbate the behavior, and further diminishes their chance to succeed.

Realizing that zero tolerance policies are a by-product of a multisystems failure, it would be contradictory to think that a mental health system will work in isolation to correct the problem. In that knowledge, this singular service provider failure becomes more apparent in families of poverty given their limitations to navigate the systems of care in their respective community. A study of families in poverty indicated that mental health service delivery "must be multifaceted with agency cooperation and collaboration as well as multidisciplinary teams" (Dashiff, DiMicco, Myers, & Shepard, 2009). Another reason is that the types of effective programs that promote pro-social behavior are best delivered in the home and school and not the sterile environment of a

mental health office setting. For example, some effective approaches include communication skills, conflict resolution, social skills development, positive behavior reinforcement, engagement of parents, and school-based family therapy (Bruns, Moore, Stephan, Pruitt, & West, 2005).

This study further implies that no single system can adequately address disruptive behavior in the school setting. Although approximately 75% of all mental health service contacts occur in the schools, one study indicated that direct mental health service delivery in the school setting did not impact suspension rates (Bruns et al., 2005). The study did suggest that such delivery was difficult absent school policies to provide for alternatives to suspension. It is difficult to deliver treatment if the student is repeatedly suspended and/or arrested, causing disruption in service delivery. This implies, as does the study of Clayton County, that other systems such as social services, school police, prosecutors, and juvenile justice should be involved to help develop alternatives to suspensions and arrests.

Finally, and probably the most important implication, is the multisystems integration approach that employs a single point of entry to allow school systems to immediately access interventions to address the underlying causes of disruptive behavior. As this case study reveals, the multiple systems involved with adolescents, when brought together on a regular basis, guided by a written protocol with clear objectives, will enhance the effectiveness of mental health and other professionals while promoting a student's academic performance.

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Appendix

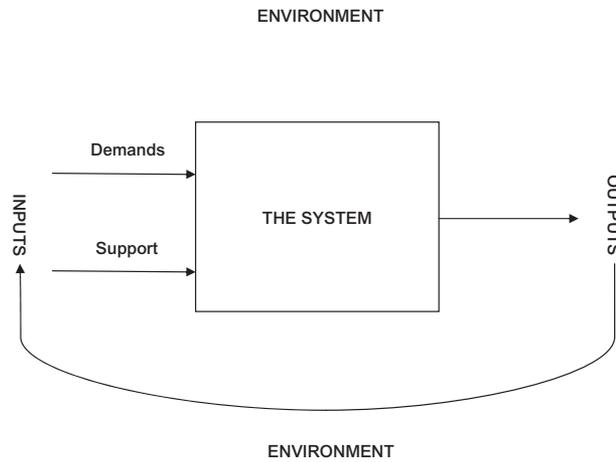


Figure 1. The Systems Model (Adapted From Easton, 1957)

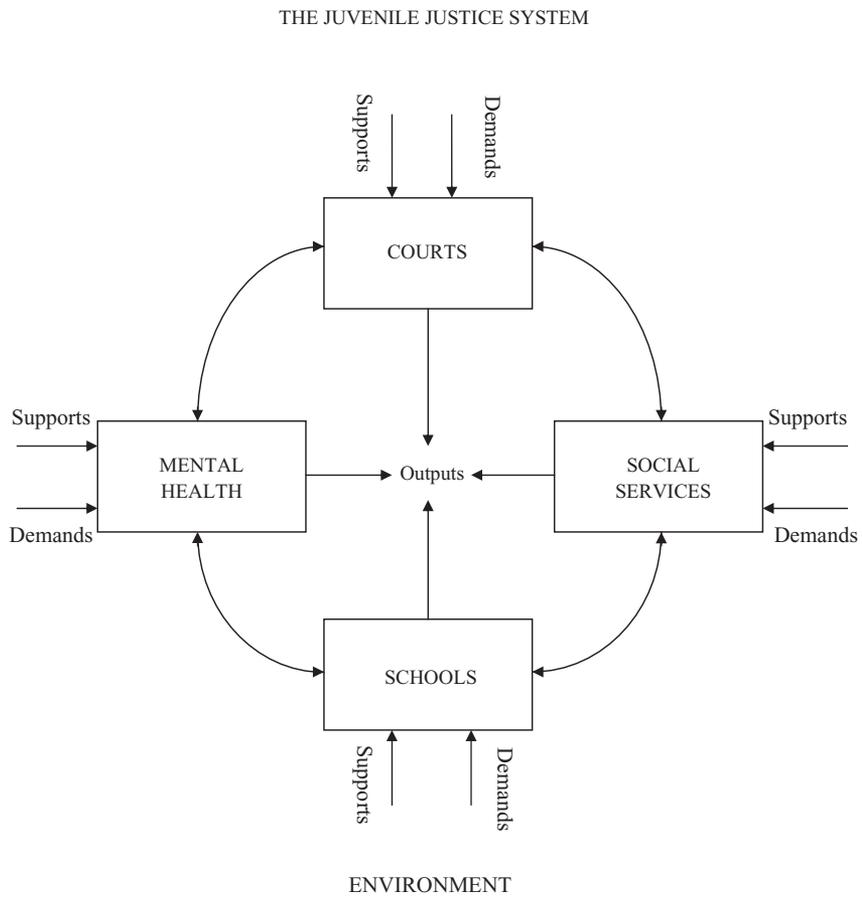


Figure 2. The Multi-Integrated Systems Model (Adapted From the Systems Model as Shown in Figure 1)
 A desired output that is dependent on outputs from multiple systems must be integrated or connected as shown by the arrows to achieve the output.

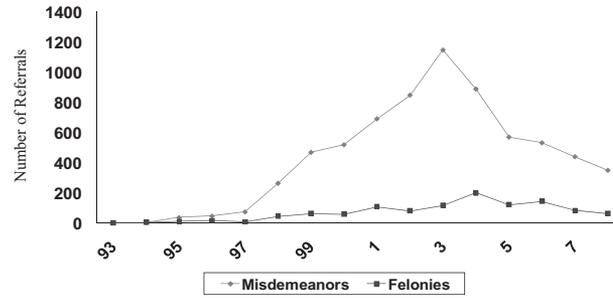


Figure 3. Line Graph Showing the Increase in Referrals After Police Were Placed on Campus and the Decrease After the Protocol Became Effective in 2004