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## The Miami-Dade Public Defender's Office Juvenile Sentencing Advocacy Project

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*Given the vast increase in the number of juveniles being tried as adults and the growing evidence that the adult system may be ill-equipped to maximize the youth's potential for rehabilitation, the Miami-Dade Public Defender's Office established the Juvenile Sentencing Advocacy Project to develop strength-based sentencing plans that increase client access to effective programs.*

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Funded under the Bureau of Justice Assistance's (BJA's) fiscal year 1998 Open Solicitation Discretionary Grant Program, the Miami-Dade Public Defender's Office Juvenile Sentencing Advocacy Project (JSAP) embraced a key opportunity to intercede in the alarming and growing trend of transferring juvenile offenders to the jurisdiction of adult courts. In response to prosecutorial direct file provisions, the Miami-Dade Public Defender's Office became a proactive force in the courtroom by implementing an innovative defense strategy for juvenile clients. The central component of this strategy is the development of a sentencing plan that capitalizes on a provision permitting judges in adult courts to sentence transferred juveniles to the state's Department of Juvenile Justice (DJJ), thereby providing for the effective rehabilitation of youth in a system that was designed to recognize and respond to the developmental needs of adolescents.

This innovation comes at a particularly critical moment in public policy—a time when most states, encouraged by the availability of federal funds, have expanded the mechanisms by which adult-level sanctions can be used to

respond to juvenile crime. Miami, Florida, the site of JSAP, has been called "an ideal policy laboratory" for this issue (Bishop et al., 1999, p. 1) because Florida leads the nation in the number of juveniles transferred to the adult criminal justice court system. In 1996, 19 percent of the estimated 27,000 cases processed nationally in the adult court system were from Florida (Tollett, 2000). Several research studies have noted Florida's aggressiveness in terms of its policies to move juvenile cases to the adult court system (The Sentencing Project, 2000; Bishop et al., 1999; Shiraldi and Ziedenberg, 1999). An analysis of the Florida Circuit Court's 1998 statewide data indicates that 24 percent of the 5,223 cases moved to the adult court system via prosecutorial direct file were from the 11th Circuit/Dade County Court (data were pulled from the Florida Supreme Court Summary Reporting System on August 16, 1999).

Transfer and waiver provisions originally were designed to provide judges with a resource for responding to serious, violent, and chronic juvenile offenders who had proven to be unmanageable in the juvenile system and had exhausted the resources

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

Zimring (2000) stated, "While 'worst case' events are a small portion of the juvenile court's business, they are a recurrent phenomenon. . . . Of course, not all cases transferred out of the juvenile court are super serious. It is necessary to distinguish between the type of cases that make transfer necessary and the much wider variety of cases that get transferred" (p. 211). Although juvenile waiver and transfer provisions are considered essential to dealing with serious, violent, and chronic juvenile offenders, these laws often include nonviolent offenses (e.g., property and drug offenses) and may permit youth without long criminal histories to be transferred to the adult court system. In 1999, half of the youth transferred to adult court in Miami-Dade were charged with nonviolent property and drug crimes (Department of Juvenile Justice, 2000). Recent research examining juvenile transfer trends in 18 large jurisdictions found that the majority of youth (57 percent) were released on bail prior to the disposition of the case, and most of these youth were released within 24 hours of the charges being filed (Juszkiewicz, 2000). These findings, along with high conviction and probation rates,

suggest that the cases triggering transfer to adult court may not be strong or serious enough to warrant transfer in the first place (Juszkiewicz, 2000).

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

- 40 percent were sentenced to adult probation.
- 26 percent were sentenced to adult prison.
- 15 percent were acquitted or their cases were dismissed.

- 10 percent were sentenced to adult jail for a felony.
- 7 percent were committed to a juvenile commitment program.
- 1 percent were sent to pretrial diversion.
- 1 percent were sentenced to juvenile community control.

Thus, while prison may be appropriate for a small segment of the transferred population, neither in theory nor in practice is it the only option for youth involved in serious criminal behavior. The slogan, "old enough to do the crime, old enough to do the time," lacks insight into the causes and correlates of delinquency. In fact, it encourages policymakers to ignore the very issues that bring youth before the court in the first place (i.e., lack of maturity, lack of judgement, etc.). Zimring (2000) states, "Transfer does not create adult levels of maturity and responsibility. There is no evidence that the commission of a terrible crime is an indicator that the offender is more mature or sophisticated than his peers [who are tried in the juvenile system]" (p. 214).

### Program Design

JSAP's basic approach addresses the qualitative differences between juvenile and adult offenders in both the genesis of their criminality and the promising approaches toward rehabilitation. Just as the adult correctional system is often inadequately prepared to manage and treat young offenders (see Austin and Dedel Johnson, 2000; Beyer, 2000; Zimring, 2000), the structure of a law office designed to represent adult clients may be similarly ill equipped to serve the needs of children. With this in mind, the structure of JSAP was engineered to permit investigation, assessment, and case planning that attended to the unique life circumstances, levels of mastery and competence, and treatment needs of younger clients. The program's structure reflects many of the best practices encouraged by The Sentencing

Project (Young, 2000), a project whose commission identified essential elements of strong and effective public defender programs serving youth prosecuted as adults.

JSAP's target population includes a subset of all juvenile cases direct filed by the state's attorney. By law, certain cases are not eligible for juvenile sanctions (e.g., cases involving youth who have been indicted by a grand jury, have had previous adult convictions, or have been charged with an offense that carries a life or death penalty); therefore, they are excluded from the program. Of the remaining cases, youth age 16 or younger are automatically accepted to the program for intensive services and investigation. Seventeen- and eighteen-year-olds also are eligible for the program; however, because DJJ's jurisdiction extends only to age 19, the time available for court processing and treatment in a DJJ program must be considered.

### Sentencing Advocacy Using Multidisciplinary Teams

After receiving notice that the state's attorney intends to file a juvenile case in the adult court system, the JSAP attorney screens the case for eligibility and then assigns the case to a JSAP social worker. In collaboration with the assigned defense counsel (the cases are distributed among the 40 attorneys in the Felony Unit), the social worker interviews the youth, investigates his or her background, and begins to formulate a sentencing plan. The social worker's approach is to gather relevant social, educational, emotional, and family indicators to personalize each case in the context of relevant legal factors. The defense counsel's role is to advocate for an appropriate sentence that responds to the needs and strengths identified by the social worker. The social worker's contribution to the defense counsel's legal case, and vice versa, creates an environment of mutual respect.

The underlying premise of the sentencing planning process is that juveniles are inherently different from adults. Developmental processes shape youth's maturity, cognitive development, impulse control, judgment, and relationships—all of which form at differing rates and are manifested in different ways. Therefore, an effective response to a juvenile's criminal behavior must not only take into account the role of these issues in the offense itself but also must embrace the issues as part of treatment and rehabilitation efforts. The sentencing plan details the youth's psychosocial history and educational development and the confluence of events surrounding his or her key developmental stages. The plan also includes the youth's needs and strengths, past interventions and reasons he or she was not successful, and a recommended sanction that maximizes the resources available in the juvenile justice system. JSAP receives significant assistance from the Florida DJJ, a department that has shown a strong willingness to accommodate transferred youth and to work toward effective strategies for their treatment.

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An important development for the field is a strength-based assessment designed for use by psychologists to do the following, as described by Mason (2000):

- Determine a youth's level of cognitive, moral, and emotional development rather than focus narrowly on the presence or absence of specific mental disorders.
- Highlight an individual youth's strengths to better prescribe specific treatment alternatives and their potential benefits.
- Provide a personal and historical context for the youth's behavior so that specific areas may be targeted for intervention.

The assessment tool was designed by a team of community-based youth experts, academic researchers, attorneys, and social workers. Its development is an important advancement, but its implementation has been difficult because of the additional time and effort required by the contracted psychologists to become comfortable with the new format.

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

### Local and National Training

JSAP's innovative focus presents the whole child to the court and takes a proactive approach to developing sentencing plans that offer the opportunity for youth to experience positive, long-term change. With such innovation comes the need to create awareness of the project's goals, the roles of various professionals, and the project's potential impact. At the outset of the program, all assistant public defenders participated in training that outlined JSAP's mission, the legal advice available through the JSAP

attorney, and the role of JSAP social workers. The program provided a total of 51 training sessions or a total of 351 person-hours of training.

In the early implementation stages of the program, the JSAP attorney recognized that many judges were not aware of their authority, under Florida statute 985.233, to impose a juvenile sanction when a youth had been transferred to the adult court. With both group and individual formats, extensive judicial education efforts were implemented to explain judges' options, provide detailed information about effective juvenile programs, and explain the role of JSAP social workers in court. As might be expected, considerable variability exists among judges in their willingness to consider the JSAP sentencing plans. Mason's (2000) examination of judges' acceptance rates revealed a clear split: some judges were quite willing to impose the recommended juvenile sanctions (i.e., accepted at least 80 percent of the plans presented to them) whereas other judges clearly resisted imposing the sanctions (i.e., rejected at least 80 percent of the plans presented to them). Given the program's relatively short tenure and small number of cases, it is not yet possible to make a detailed analysis of court acceptance rates.

On the national level, JSAP organized a conference to elevate the level of discourse on the harms associated with treating juveniles as adults and the current innovations in the assessment and treatment of juvenile delinquency. Presenters at the "Juveniles in Adult Court Training Conference: Our Children, Our Future," held in March 2000 in Miami, Florida, included national policymakers, researchers, advocates, and experts who discussed topics such as sentencing procedures, special education issues, adolescent development, family dynamics, and effective interventions. A total of 257 individuals from various segments of the juvenile and criminal justice systems

registered for the conference, including public defenders, DJJ staff, Department of Corrections staff, attorneys, social workers, police officers, child advocates, judges, and service providers.

### Preliminary Findings

A preliminary assessment of JSAP indicated its significant potential to influence sentencing decisions for transferred youth (Mason, 2000). In the first 15 months of operation, 357 youth received JSAP services, although 102 cases were ultimately transferred outside the Public Defender's Office (e.g., a private attorney was hired). Of the remaining 255 cases, approximately 36 percent received juvenile sanctions, 56 percent received adult sentences, 4 percent were *nolle prosequi*/dismissed, 3 percent were closed per the public defender's request, and 2 percent had no action or were otherwise closed.<sup>1</sup> The 91 youth who received juvenile sanctions represent a 350 percent increase, as compared with a similar 15-month period, in the number of similarly transferred youth sanctioned to the juvenile system (Mason, 2000).

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

### Next Steps

Given the vast increase in the number of juveniles being tried as adults and the growing evidence that the adult system may be ill equipped to maximize the youth's potential for rehabilitation, the sentencing decisions made

for transferred youth represent one of the most pivotal elements of an effective response to juvenile crime. Future research should examine the differing outcomes for youth sentenced to the juvenile versus the adult justice system and should work toward a prescription for addressing the developmental needs of juvenile offenders. Furthermore, prosecutor training and specific early advocacy efforts directed toward the initial transfer decision may prove to be the unique, powerful tool necessary for preventing the *en masse* transfer of juveniles to the adult court system.

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

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### Note

1. *Nolle prosequi* is an entry on the record of legal action denoting that the prosecutor or plaintiff will proceed no further in an action or suit.

### For Further Information

An evaluation of this project, together with another 30 projects funded by BJA's FY 1998 Open Solicitation Discretionary Grant Program, is being conducted by The Institute on Crime, Justice and Corrections at The George Washington University in Washington, D.C. For further information about this project, please contact:

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