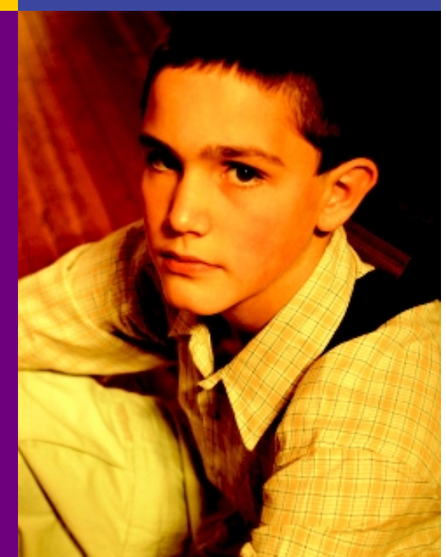
Does the youth have a mental health or learning disability?

Has this youth been in the juvenile system before?

What was done or is presently being done to appropriately address the needs of the youth?

What can be done to correct the behaviors that brought the youth into the system?



When was the disability detected?

Did the parents and the youth have an opportunity to learn appropriate techniques and/or treatments to deal with the disability?

Could any of the characteristics of the disability be contributing to the troublesome behaviors?

AD/HD and the Juvenile Justice System

by The Honorable Gerald Rouse

YOUNG PEOPLE COME INTO CONTACT WITH THE juvenile justice system or, as it is known in some states, the family justice system, for a variety of reasons. A child may commit an act that would be a violation of the criminal statutes if committed by an adult, including running afoul of the law due to poor driving habits. A youth may come into the system as a result of a status offense, such as running away from home, not attending school or being uncontrollable by a parent or guardian. However, youths with mental or learning disabilities, such as AD/HD, come into contact with the juvenile justice system at a statistically higher rate than other youths.[1] Parents, children and child advocates should be aware of what can happen to such children when the juvenile justice system becomes involved in their lives.

The National Council of Juvenile and Family Court Judges, the oldest and largest organization representing judges and other professionals in the juvenile justice field, became aware of the need to learn more about learning disabilities and mental health issues in youth several years ago. In recent years, presentations on how to better help young adults with mental health needs have become an important part of almost every juvenile justice conference.

One of the most exciting discoveries I have made as a judge is that children may have understandable reasons for doing things that seem to make little or no sense to most authority figures. When I began to understand the motivation behind their often confusing behaviors, I was able to have the system develop strategies that took these special needs into consideration. While we are not successful in every case, we have used this awareness to create more positive outcomes for youths in many more cases. This article, while not all inclusive, is intended to educate youths, parents and child advocates about some of the critical issues involving youths with mental health needs in the juvenile justice system.

I would suggest that parents of individuals with AD/HD be aware of the juvenile justice system, how it functions and what can be done to make it more responsive to youths with mental disabilities. There are also several books that are enlightening.[2]

Overview of the System

There are 51 juvenile justice systems in the United States—one for each state. The laws under which they operate vary, meaning the juvenile justice system in Nebraska can be quite different from the juvenile justice systems in New York, Michigan or California.

For example, the age at which young law-breakers can be brought into juvenile or family court varies from state to state, as does the minimum age at which youths can be held responsible for a crime. The age at which youth leave the juvenile justice system may also differ and the age at which juveniles can be tried in adult court may also vary from state to state. In some states, a juvenile case may start in juvenile court, but be continued under specific circumstances in the adult court system.[3]

When a prosecuting attorney is deciding to file criminal charges or when a judge is deciding whether a case should be tried in juvenile or family court as opposed to adult court, some pertinent questions need to be asked:

- Does the youth have a mental health or learning disability?
- Has this youth been in the juvenile system before?
- What was done or is presently being done to appropriately address the needs of the youth?
- What can be done to correct the behaviors that brought the youth into the system?
- When was the disability detected?
- Did the parents and the youth have an opportunity to learn appropriate techniques and/or treatments to deal with the disability?
- Could any of the characteristics of the disability be contributing to the troublesome behaviors that brought the youth to the attention of the juvenile justice system?

Initial Contact with the System and Pretrial Legal Issues

In their initial contacts with the juvenile justice system, youths, and at times their parents, will likely encounter law enforcement officers, child welfare workers, probation officers and initial detention facility staff. In addition to looking out for the safety of the child, these individuals must also consider the safety of bystanders and others involved, as well as their own safety. Consequently, a youth who is uncooperative, openly disrespectful or non-compliant with directives may be arrested or detained. Because youths with certain mental health disabilities often have difficulty controlling their impulses in such situations, they are more likely than other youths to be detained.[4]

In many instances, youths with AD/HD or other mental health issues are prescribed medication to help them control their behavior, enabling them to function more successfully. When a youth is detained, it is imperative that the authorities be made aware of any medication needs. In addition, the parents should make every effort to provide the detention facility with a supply of the medication and instructions for dispensing it. Some facilities do not give medications and in those jurisdictions, judges need to have written policies in place to guide the staff in complying with the Americans with Disabilities Act (ADA).[5] In those states where the court is responsible for the administration of detention facilities and probation programs, judges need to be very aware of the state's responsibilities under the ADA and the Individualized Education Program, commonly called IEP.

Youths in the juvenile justice system have basic rights, including the right to remain silent and the right to legal counsel.[6]

Parents should instruct their children not to answer the questions of law enforcement officers without either themselves or, better still, a qualified attorney present. The same applies should law enforcement officials ask to search a youth's car, room or residence.[7]

When a child is detained or removed from the home, the prosecuting attorney files a petition setting forth the legal basis for the state's intrusion into the lives of the parties involved. Most states then require that a detention hearing be held within a very short time. At this hearing, the allegations in the petition and the youth's rights under the law are explained. The court will also determine whether it is appropriate for the youth to return home or whether further detention is necessary. A youth who is detained should have access to an attorney, either hired or appointed, as soon as possible, even before a detention hearing is held.

Legal counsel should be made aware of any mental health disabilities a youth has in order to prepare motions for any accommodations the youth may need in court. The court will be explaining the youth's rights at this hearing. In addition, counsel may

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also file necessary documents to test confessions made by a youth, or determine whether any searches conducted were done so legally.

Counsel may also be able to work with the state's attorney to facilitate an appropriate conclusion to a case. Depending on the seriousness of the offenses, a variety of outcomes are possible including a warning, a mediated diversion program, probation or a transfer to the adult criminal justice system. One advantage of keeping the case in the juvenile justice system is that the youth is not convicted of a crime, which could have great ramifications later in life.

Trials

When a child denies or pleads not guilty to the allegations, most courts will usually schedule a trial at a later date. After the hearing and before trial, counsel may file and argue motions to suppress confessions and any evidence taken in illegal searches. Generally, the judge decides the facts based on evidence allowed by the court and whether the state has met its standard of proof. In delinquent cases or where a child is in need of supervision, the required standard of proof is beyond reasonable doubt.

In states that allow for a blended disposition with a sentence that can carryover into the adulthood, the youth has the right to a jury trial. In delinquent or CHINS (Child in Need of Supervision) cases, the child has the right to appeal the decision of the trial judge. Certainly, the parents may participate in making this decision, but the decision is the child's in consultation with legal counsel.

Dispositions and Blended Sentences

When the court finds the appropriate standard of proof has been met and takes jurisdiction over the child, it will usually ask for a report from probation or juvenile services before making a final decision regarding the disposition of the case. A disposition is similar to a sentence in adult criminal court. Judges should insist that assessment tools be available to determine if there is a need for mental health examinations and treatment. When the system becomes aware of a youth's special needs, it is better able to address them in the disposition.

Schools can be invaluable sources of information regarding a youth's abilities and needs. If the youth has an IEP, then the system should make further inquiries as to what system programs might help the youth successfully complete the disposition ordered by the court. While there are questions concerning the validity of some school evaluations, they are frequently helpful.

Depending on the state involved, the legal counsel, child and parent may have the right to read the written recommendations for disposition presented to the court. The youth may file objections and provide evidence at the disposition hearing. Juvenile and family courts generally have many more options available to them than criminal courts do, ranging from a warning to placement in a locked facility, with many less restrictive alternatives in between. Youths in states that don't offer a blended disposition and sentencing option can only remain in the system until they reach legal age, which may vary from 18 to 21. In those states with a blended disposition and sentencing option, the case may start in the juvenile justice system and following a later hearing, the youth may then be placed in the adult system to serve out an adult sentence.

If it is recommended that a youth be placed in an institutional setting, legal counsel should advocate by evidence at the disposition hearing that the facility have a program that complies with the ADA and meets the youth's educational needs. When a youth has successfully completed the requirements of the disposition, then the judge may consider early release from the court's jurisdiction.

Revocations and Further Dispositions

Those in the juvenile justice system know that even the best plans can go astray at times. Hence, all states have a procedure for revoking probation or asking a court to make a further disposition. However, most workers in the juvenile justice system are allowed to exercise a certain amount of discretion in deciding when a youth's regression is serious enough to warrant further detention or placements.

If the matter is brought back before the court, all parties will have an opportunity to present additional evidence and suggest modifications to the original disposition. Again it is imperative that the youth have legal counsel, ideally the individual or team who represented the youth initially and is familiar with the case. Should the court make a change or modification of the previous disposition, then the youth has the right of appeal.

Successful Conclusion of a Case

Following the successful completion of the disposition ordered by the court, the youth will be discharged from the system. In some states, the court automatically discharges the youth and orders the records sealed. In several states, once sealed, the records cannot be used in any subsequent criminal proceedings. However, in others, a juvenile record can be used later in criminal proceedings to help the criminal court decide what punishment might be appropriate for an adult. However, juvenile cases, like adult criminal convictions, cannot be used to enhance future penalties.

Among the positive changes that have occurred in the juvenile justice system over the last 20 years is the realization that youths can have mental health and/or learning disabilities that inhibit their ability to function well in life.

The juvenile justice system is constantly striving to better serve our troubled youths. In this article, I have made several suggestions that I hope youths, parents and child advocates will be able to use to better understand the issues involved when these individuals come before the court. In addition, parents should not be afraid to approach professionals in the system with their concerns when children come into contact with the juvenile and family courts. ■

The Honorable Gerald E. Rouse is the lead judge of the Permanency Planning Task Force in Nebraska and serves on CHADD's editorial advisory board.

References

[1] Mannuzza, S., R. Klein. P.H. Konig and T.L. Giampino. (1989). Hyperactive boys almost grown up; Criminality and its relationship to psychiatric status *Archives of General Psychiatry*, 46, 1073–1079.

[2] Synder, Marlene J. Ph.D. (2001). *AD/HD & driving: A guide for parents of teens with AD/HD.* Whitefish Consultants.

Fowler, Mary. (2001). *Maybe you know my teen.* Broadway Books, a division of Random House.

Amen, Daniel G., M.D. (2001). *Healing ADD: The breakthrough program that allows you to see and heal the 6 types of ADD.* G.P. Putnam's Sons.

[3] National Center for Juvenile Justice. (2000). *State juvenile justice profiles.* Pittsburgh: http://www.ncjj.org/stateprofiles/.

[4] Rouse, G. and Goldstein, S, *Responding to ADHD Youth in the Juvenile Justice System*, Juvenile and Family Court Journal, Vol. 50, Winter (1999).

[5] *Pennsylvania Department of Corrections, Et Al., v. Ronald R. Yeskey*, 118 S. Ct. 1953 (1998).

[6] *In re Gault*, 387 U.S. 1 (1979), and *In re Winship*, 397 U.S. 358 (1979).

[7] Id.