

A Ray of Hope

in the Juvenile Justice System

For years, as a criminal defense attorney, I have consistently advocated for treatment for my clients in lieu of punishment or, at the very least, in addition to it. It has always been my belief that the only hope of reducing recidivism is to address the reasons for criminal conduct, as opposed to blind punishment. This message is harder to convey as crime increases and tolerance decreases. And, as significant as this message is, it is even more critical in the context of the juvenile justice system. Despite this importance, this message is often missed or ignored.

While the experts debate the pros and cons of rehabilitation for adults, the juvenile justice system poses a much more complex problem. First, by definition, the juvenile justice system involves children. Presumably the argument for rehabilitation is stronger with children and adolescents because there is a larger window of opportunity in their future. Conversely, a shorter period of antisocial behavior, relative to their adult counterparts in the criminal justice system, would logically lend itself to a more optimistic view toward rehabilitation. What further complicates the issue is that children under a certain age have a right to a Free Appropriate Public Education (FAPE). This obligation remains, despite charges of delinquency and potential

incarceration. In fact, an extraordinarily high percentage of children and adolescents with special education needs exhibit antisocial behavior that will bring them into the juvenile justice system. Without considering the educational component, far too many will continue on to enter the adult criminal justice system.

There is, however, a ray of hope. I have been fortunate over the past year to see up close how educational issues are prioritized in a local Family Court in White Plains, New York. The approach is to address the educational component with understanding and patience, to look behind the criminal conduct, and while punishing it appropriately, take the time and interest to see that these children receive the proper



by Robert M. Tudisco, Esq.

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assessment, education and placement. The reasoning is simple. First, these are children who could, in many cases, have a future if their educational needs are addressed. More practically speaking, however, these judges see the other side of the notorious “revolving door of justice.” It pains them to see the same faces coming before them as these children often return to the system. This is the sad and sympathetic side of the revolving door the public doesn’t see, or more accurately, chooses to ignore.

Judge Joan Cooney is the administrative judge for Family Court in Westchester County, N.Y., as well as some of the surrounding counties. Originally educated as a teacher before her legal career, she understands the importance of the educational component that is so often overlooked. According to Judge Cooney, “If you are really going to help children, the educational

component must be looked at and addressed.” Using State grant money, Judge Cooney boldly addressed what was consistently being missed in the juvenile justice system. She hired a full-time educational consultant/advocate to identify the missing piece of the puzzle.

Kaye Frank, who has over 20 years experience as an advocate, is the Court’s full-time educational consultant/advocate. Initially the program served and responded to neglect and abuse cases, but it eventually grew into the Juvenile Delinquent (JD) and Persons in Need of Supervision (PINS) cases.

Judge Cooney and the other judges will typically flag a case where they believe that the educational component is lacking and refer it to Ms. Frank. She reviews the school records and evaluations, and advocates for services and/or a placement if necessary.



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She attends Committee for Special Education (CSE) meetings with parents and goes to great lengths to tailor a placement to fit the child's special needs. In addition, she attends all of the court appearances, along with the attorney appointed to represent the child, and works closely with the Department of Probation in understanding and addressing the child's emotional and educational needs.

According to Ms. Frank, "The placement is really the key to the whole picture." She spends much of her time familiarizing herself with available placements and what they have to offer. She even organizes trips with the judges to the facilities so that they will have a better understanding of what resources are available and also what these kids face when they leave the courtroom.

Many of these adolescents and their families are uninformed and ill equipped to advocate for accommodations or special education. Many times, the allegations of delinquency are in fact manifestations of disabilities that were never classified. Punishment is therefore meaningless unless the underlying cause for the behavior is addressed. Furthermore, these children and adolescents have the right to FAPE, despite their

family's lack of means or education. The bottom line is that the educational system is failing many of these children. This in turn either causes delinquent behavior, or at the very least, exacerbates it.

Another benefit to the program is that it sponsors education sessions for parents, youth officers and attorneys so they can develop an understanding and compassion for the educational needs of the children in the system. This involves education on the disabilities themselves, their manifestations, as well as sensitivity training, all designed to address the unique needs of each child and to bring awareness to those involved in the system on an ongoing basis.

More recently, Judge Cooney has put together a new system, which will soon be implemented. In each case involving removal of a child, she will fax an order to the Board of Cooperative Education Services (BOCES) and within 72 hours, a complete copy of the child's school records will be sent to the Court file to follow the child through the system. The hope is that with this information, the child's educational needs will be addressed immediately.

It is important to stress that there must be a distinction made between the delinquent behavior and

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the educational component. Delinquent behavior is delinquent behavior—period. It isn't and shouldn't be condoned, and often must be punished. It is crucial, however, to look past the punishment and see what steps can be taken to prevent this from happening in the future. Again, the proper educational placement can play a vital role in removing frustration, addressing educational problems and enhancing self-esteem. Putting the punishment aside, the goal should be to not see this child in trouble in the future. It requires a break from traditional thinking, which can often blur these distinctions.

The only downside to this approach is that it is still considered novel. To my knowledge, it is the only program in existence in New York state, and possibly in the country. Clearly, this approach should be the rule rather than the exception. The problem usually comes down to funding and acceptance of non-traditional ideas—the latter of the two being much more difficult to overcome. I can only hope that other concerned judges and administrators learn from a program like this and begin to change the way the system works for the better. ■

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New Guide Helps Mental Health Advocates Monitor Juvenile Justice Facilities



According to a new publication from the National Mental Health Association (NMHA), "a number of studies estimate that children with mental health treatment needs make up between 60 and 75 percent of youth in detention." The publication, *Checking Up on Juvenile Justice Facilities: A Best Practices Guide*, is NMHA's latest offering towards addressing the needs of the children placed in these facilities. The 24-page booklet offers practical advice for the successful implementation of juvenile justice facility visits based on tour experiences in five states. Lessons learned through the tours are provided so that mental health associations and advocates can learn how to: ■ Build a coalition, ■ Organize and conduct a tour of a juvenile justice facility, ■ Raise the consciousness of key state and local policy makers, ■ Educate the public about the needs and problems that give rise to juvenile offenses, and ■ Encourage the development of effective, community-based alternatives to incarceration.

A single copy of *Checking Up on Juvenile Justice Facilities: A Best Practice Guide* is available free of charge and bulk copies are \$4 per package. Copies may be ordered by contacting NMHA's Resource Center at (800) 969-NMHA (6642) or infoctr@nmha.org. Other related resources available from NMHA: *Checking Up on Juvenile Justice Facilities: A Handbook for Child Mental Health Advocates* and *When Your Child is Behind Bars: A Family Guide to Surviving the Juvenile Justice System*.