

**FLORIDA'S JUVENILE DELINQUENCY  
COURT ASSESSMENT**

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**DELINQUENCY COURT ASSESSMENT**

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY.....1**

**CHAPTER 1**

**A BRIEF HISTORY OF JUVENILE JUSTICE IN THE UNITED STATES..... 9**

**THE EIGHTEENTH AND NINETEENTH CENTURIES..... 9**

**THE TWENTIETH CENTURY.....9**

**CHAPTER 2**

**JUVENILE JUSTICE IN FLORIDA – A LEGAL FRAMEWORK.....11**

**JUVENILE COURT VS. ADULT COURT – SOME FLORIDA CASE LAW..... 11**

**CHAPTER 985, FLORIDA STATUTES.....12**

**Legislative Policy and Goals..... 13**

**Overview..... 13**

**Beginning a Delinquency Proceeding – Intake.....14**

**Detention..... 15**

**Filing a Detention Petition and Arraignment.....16**

**Speedy Trial.....16**

**Adjudicatory Hearing.....17**

**Disposition..... 18**

**Transfer Proceedings.....19**

**CHAPTER 3**

**MAJOR FINDINGS..... 21**

**THE USE OF SECURE DETENTION.....21**

**National Perspectives.....21**

**Delinquency Caseloads and the Use of Detention in Florida..... 21**

**Determinants of Secure Detention.....22**

**Secure Detention and Commitment..... 23**

**Recommendations for Court Action..... 24**

**Recommendations for Stakeholder Collaboration..... 25**

**ADJUDICATION..... 25**

**DISPOSITION..... 27**

**Commitment..... 27**

**Probation..... 28**

**Balanced and Restorative Justice Principles.....28**

**Disposition Time Frames.....29**

**Recommendations for Court Action..... 32**

**Recommendations for Stakeholder Collaboration..... 32**

**DELINQUENCY COURT ASSESSMENT**

# DELINQUENCY COURT ASSESSMENT

## CHAPTER 4

<b>ADDITIONAL FINDINGS.....</b>	<b>33</b>
<b>REPRESENTATION.....</b>	<b>33</b>
<b>Recommendations for Court Action.....</b>	<b>34</b>
<b>Recommendations for Stakeholder Collaboration.....</b>	<b>34</b>
<b>DIVERSION.....</b>	<b>35</b>
<b>COMPETENCY.....</b>	<b>36</b>
<b>Juveniles' Ability to Understand Court Proceedings.....</b>	<b>37</b>
<b>Recommendations for Court Action.....</b>	<b>39</b>
<b>Recommendations for Stakeholder Collaboration.....</b>	<b>39</b>
<b>TRANSFERS TO ADULT COURT.....</b>	<b>39</b>
<b>Transfer Trends.....</b>	<b>40</b>
<b>Transfer in the Assessment Sample.....</b>	<b>41</b>
<b>Recommendations for Court Action.....</b>	<b>41</b>
<b>Recommendations for Stakeholder Collaboration.....</b>	<b>42</b>
<b>DISPROPORTIONATE MINORITY CONFINEMENT.....</b>	<b>42</b>
<b>DMC Defined.....</b>	<b>43</b>
<b>Theoretical and Empirical Perspectives on DMC.....</b>	<b>43</b>
<b>Minority Representation in the Juvenile Population.....</b>	<b>45</b>
<b>Disproportionate Minority Confinement at Detention.....</b>	<b>45</b>
<b>Where Does the Disparity Occur?.....</b>	<b>46</b>
<b>Disproportionate Minority Confinement at Disposition.....</b>	<b>46</b>
<b>Summary.....</b>	<b>47</b>
<b>Recommendations for Court Action.....</b>	<b>47</b>
<b>Recommendations for Stakeholder Collaboration.....</b>	<b>47</b>
<b>COURT OBSERVATIONS.....</b>	<b>47</b>

## CHAPTER 5

<b>SURVEY AND INTERVIEW RESULTS.....</b>	<b>49</b>
<b>SURVEYS OF JUVENILE JUSTICE PROFESSIONALS.....</b>	<b>49</b>
<b>INTERVIEWS WITH JUVENILES.....</b>	<b>52</b>
<b>INTERVIEWS WITH PARENTS.....</b>	<b>54</b>
<b>RECOMMENDATIONS FOR COURT ACTION.....</b>	<b>55</b>
<b>RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION.....</b>	<b>55</b>

## CHAPTER 6

<b>RECOMMENDATIONS.....</b>	<b>57</b>
<b>ISSUES FOR ADDITIONAL RESEARCH.....</b>	<b>57</b>
<b>PROPOSED RECOMMENDATIONS.....</b>	<b>57</b>
<b>EDUCATION/TRAINING.....</b>	<b>58</b>
<b>STATUTE/RULE.....</b>	<b>58</b>
<b>ISSUES FOR FURTHER STUDY.....</b>	<b>59</b>
<b>IMPLEMENTATION STRATEGIES.....</b>	<b>61</b>

## TABLE OF CONTENTS

### CHAPTER 7

<b>RESEARCH METHODS AND STATISTICAL ANALYSIS.....</b>	<b>63</b>
<b>ASSESSMENT RESEARCH DESIGN.....</b>	<b>63</b>
Case File Reviews.....	63
Structured Court Observations.....	63
Interviews and Surveys.....	63
<b>THE SAMPLES.....</b>	<b>64</b>
Multistage Cluster Sampling.....	64
Case File Sample.....	65
Court Observation Sample.....	65
Interview and Survey Sample.....	65
<b>A PRIMER ON STATISTICAL ANALYSIS AND INTERPRETATION.....</b>	<b>65</b>
Descriptive and Inferential Statistics.....	66
Linear Regression Analysis.....	66
Logistic Regression Analysis.....	67
<b>TABLES AND VARIABLES USED IN THE ANALYSIS.....</b>	<b>68</b>
<b>REFERENCES.....</b>	<b>69</b>

### APPENDIX A

<b>TABLES.....</b>	<b>73</b>
<b>Table 1: Correlations Between All Variable Pairs in Analysis</b>	
<b>Table 2: Logistic Regression of Secure Detention on Covariates</b>	
<b>Table 3: Logistic Regression of Adjudicated Delinquent on Covariates</b>	
<b>Table 4: Logistic Regression of Commitment at Disposition on Covariates</b>	
<b>Table 5: Linear Regression of Days Between Petition and Disposition on Covariates</b>	
<b>Table 6: Distribution of Case File Data</b>	
<b>Table 7: Distribution of Court Observation Data</b>	
<b>Table 8: Variables Used in the Analysis</b>	

### APPENDIX B

<b>DELINQUENCY CASE MANAGEMENT FLOWCHART.....</b>	<b>83</b>
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### APPENDIX C

<b>DETENTION RISK ASSESSMENT INSTRUMENT (DRAI).....</b>	<b>87</b>
<b>Statutory Citation for Detention Risk Assessment Instrument (DRAI)</b>	
<b>Department of Juvenile Justice Detention Risk Assessment</b>	

**DELINQUENCY COURT ASSESSMENT**

**APPENDIX D**

**DATA COLLECTION INSTRUMENTS..... 93**

**Case File Review Instrument**

**Court Observation Instrument**

**Interview with Juvenile Justice Professional**

**Interview with Juvenile**

**Interview with Parent**

# DELINQUENCY COURT ASSESSMENT

## EXECUTIVE SUMMARY

*One issue which results in frustration of the public and reflects negatively on the judicial system is untimeliness in decision-making. Justice delayed is often justice denied. The courts must strive to minimize, if not eliminate, untimely justice.*

JUSTICE CHARLES T. WELLS  
*Prospectus 2002*

### INTRODUCTION

In September of 2000, Justice Charles T. Wells established the Children's Court Improvement Committee to provide guidance to the judiciary on issues related to juveniles in delinquency and dependency court. In addition, the Florida Legislature authorized Family Courts Trust Fund dollars to support an assessment of Florida's juvenile delinquency court system. This authorization called for the Children's Court Improvement Committee to conduct a study of delinquency court case processing, from which reported findings would serve as the basis for future improvement initiatives. Therefore, as part of the committee's charge, Justice Wells directed the committee to oversee the efforts of this assessment, designed to:

- develop a descriptive report on delinquency courts and the role judges play in those courts;
- compare Florida's delinquency courts system with other states' courts;
- assess current practices and case processing results; and
- design and recommend strategies to enhance court processing of cases.

Justice Wells had heard expressions of concern regarding Florida's judicial handling of delinquency cases. He urged the committee to proceed with a factual analysis of how courts are performing their responsibilities in the delinquency system. He advised that the first task in this process was to gather information on how courts presently carry out their functions, and identify what obstacles prevent the processing of cases according to statute and rule. The delinquency court assessment was intended to gather information necessary to describe how delinquency cases are processed in Florida.

### SPECIFIC AREAS OF STUDY

The delinquency court assessment features an analysis of the core events that may occur in the processing of a delinquency case:

- detention hearings;
- petition filings;
- arraignment proceedings;
- competency proceedings;
- transfers to adult court;
- trial frequency and outcomes; and
- disposition and the imposition of sanctions.

## 2 DELINQUENCY COURT ASSESSMENT

In addition, the assessment compiles demographic information such as age, race, and sex of the juvenile. It provides descriptive information on how various proceedings are conducted, the type of representation juveniles receive, and the kinds of dispositions and sanctions that are ordered by the court.

The report provides an analysis of delinquency case processing. However, the assessment does not evaluate local practice or examine those processes not directly controlled by the court. Therefore, while this assessment is a thorough review of various aspects of delinquency case processing, it does not analyze:

- the decision-making process leading up to the arrest of a juvenile or formal charges of a crime;
- the effectiveness of various agencies;
- the performance of individual judges;
- the quality or effect of diversion programs;
- a comparison of outcomes for delinquent juveniles in different levels of commitment; and
- the effectiveness of various sanctions imposed by the court.

### ASSESSMENT METHODOLOGY

The delinquency court assessment utilized a three-tiered data collection approach consisting of case file reviews, court observations, and surveys and interviews of key stakeholders. A detailed research methodology section is included in the report.

A random sample of 350 delinquency cases was drawn from each of seven judicial circuits comprising a total of 22 counties. Files were reviewed utilizing a detailed data collection instrument. The sample size totaled

2,450 case reviews statewide and is sufficient to generalize to the statewide population of delinquency cases as well as to the individual circuits studied.

Staff observed hundreds of delinquency court hearings and developed descriptive findings on the conduct of those proceedings. This process was facilitated through the use of a court observation form developed to capture the time spent on a case, parties appearing before the judge, and issues generally addressed by the court.

Interviews of key stakeholders were conducted during circuit visits, and hundreds of surveys were distributed across the state. The surveys and interviews assisted staff in developing a snapshot of the perceptions and attitudes of the individuals who experience the process first hand.

### FINDINGS

A thorough analysis of the data reveals that Florida's judicial performance exceeds expectations in many areas. In fact, some findings are contrary to national trends, other studies, or the conventional wisdom of some juvenile justice observers. The analysis also reveals that there is great opportunity for improvement. The following offers selected highlights of findings.

#### *SECURE DETENTION*

In 98 percent of detained cases, courts held detention hearings within 24 hours after the juvenile was taken into custody, as required by Florida law. Juveniles were securely detained at detention hearings in 18 percent of cases in the sample. According to statute, decisions regarding detention placement are to be based on a risk assessment of the juvenile. This assessment is performed by the Florida

Department of Juvenile Justice through a Detention Risk Assessment Instrument (DRAI). This instrument provides a standardized method of determining the need for detention placement, by accounting for such factors as offense, prior history, and aggravating circumstances.

Analysis of the data indicates that the Detention Risk Assessment Instrument score significantly increased the odds of being securely detained: each one point increase in the DRAI score increased the odds of being securely detained by 21 percent. After accounting or controlling for the effects of the DRAI score, demographics (age, race, sex), offense characteristics (felony, misdemeanor, property offense, person offense), and legal representation were not significant predictors of detention. The analysis did not control for other possible predictors, however, such as prior history and concurrent petitions.

#### *ADJUDICATION*

Florida's juvenile courts are required to commence an adjudicatory hearing within 90 days of the juvenile being taken into custody or the filing of a delinquency petition, whichever is first. Adjudicatory trials occurred in approximately five percent of the sample. In these cases, the median number of days from custody / petition to trial was 84.5 days. However, in 45.3 percent of these cases the trial commenced more than 90 days after the filing of the delinquency petition. The data did not indicate if juveniles waived speedy trial, which may have affected the proportion of cases that exceeded 90 days.

If the court determines that a juvenile has committed a delinquent act, it may adjudicate the juvenile delinquent or it may withhold this adjudication. Of those cases disposed, 62.1 percent resulted in an adjudication of

delinquency. Adjudication was withheld in the remaining 37.9 percent of cases.

The following were found to be significant predictors of delinquency adjudication:

- Age – Each additional year of age increased the likelihood of being adjudicated delinquent by 25.2 percent.
- Offense – Relative to crimes against persons, burglary and theft charges each increased the likelihood of being adjudicated delinquent.
- Secure Detention – The analysis found that the odds of a securely detained juvenile being adjudicated delinquent were 3.3 times greater than the odds of a non-securely detained juvenile.

#### *DISPOSITION*

For cases that plead guilty or no contest and do not go to trial, Florida's juvenile courts are meeting accepted time standards for case processing. Because Florida does not have statutory or rule time requirements for these cases, a national standard of 90 days was used as a benchmark with which to compare case processing times for the sampled cases. On average, non-trial cases were disposed in 90.4 days (mean).

In contrast, cases that did go to trial were on average disposed 142.4 days after the petition was filed (mean). This well exceeds the 90 day national standard. However, because only a small minority of cases have a trial (less than five percent), it may be concluded that, overall, Florida's courts process a majority of delinquency cases consistent with statutory requirements and national time standards.

To summarize, the sample data indicate the following time frames:

#### 4 DELINQUENCY COURT ASSESSMENT

- Trial cases: 84.5 days from custody/petition to trial (median) and 142.4 days from petition to disposition (mean).
- Non-trial cases: 90.4 days from petition to disposition (mean).

The number of pretrial proceedings and the number of failures to appear significantly increase the number of days from the filing of the petition to the disposition of trial and non-trial cases:

- Each additional pretrial proceeding increases the time from petition to disposition by 24.6 days, on average.
- Each failure to appear increases the time from petition to disposition by an average of 30.9 days.

The court has many disposition options after adjudicating a juvenile, including:

**PROBATION.** In 59.5 percent of disposed cases, the juvenile received probation at disposition. Judges have great discretion in setting the conditions of probation. The three most common conditions of probation included community service (72.6 percent); school attendance (71.2 percent); and curfew adherence (57.1 percent).

**COMMITMENT.** Juveniles were committed to a facility in 29.5 percent of cases with a disposition. Increases in age and the Detention Risk Assessment Instrument score, burglary and theft crimes, and secure detention all increased the likelihood that a juvenile would be committed. No relationship was found between attorney representation and the likelihood of commitment; however, differences in type of representation were not accounted for, nor were differences in commitment level.

Recent empirical studies have found that the use of secure detention increases the

likelihood that a juvenile will be treated more harshly at case disposition. This is true even when demographic and legal factors are controlled. The findings from this delinquency court assessment are consistent with those of previous studies. After accounting or controlling for demographic variables, the plea, and the severity and type of offense, the data indicate that securely detained juveniles have odds of commitment that are three times greater than the odds of non-securely detained juveniles.

**BALANCED AND RESTORATIVE JUSTICE PRINCIPLES.** The balanced and restorative justice (BARJ) model promotes maximum involvement of the victim, the offender, and the community in the justice process. Its mission or philosophy consists of three primary principles: offender accountability, competency development, and community protection. The accountability component means having the juvenile take full responsibility for his or her actions, including taking steps to repair the harm done to the victim and/or community, as well as giving the victim an opportunity to be more involved in the process. The competency component means providing the juvenile with some life skills or competencies so she or he can be a more capable and productive citizen than before the juvenile committed the offense(s). Finally, the community protection component addresses the responsibility of the juvenile justice community to protect the public from delinquent acts committed by juveniles. While these three components form the foundation of the balanced and restorative justice model, there is no single or preferred way to implement the model.

The data from this assessment do not clearly indicate the extent to which Florida's juvenile courts integrate the balanced and restorative justice philosophy into their

practices. While the data indicate what types of sanctions are required by judges, such as community service and restitution, further research is needed to establish whether or not these sanctions are consistent with the goals of restorative justice. Furthermore, the sampled case files did not contain any consistent and measurable information about the victims' involvement in the process, their access to the court, or their satisfaction with case outcomes. These issues must be addressed as well in future research.

### *REPRESENTATION*

In each type of proceeding, juveniles were represented by counsel more than 60 percent of the time. In the small number of cases that went to trial, every juvenile had a lawyer, with most (84.8 percent) being public defenders. Analyses of the data indicated that having representation did not significantly reduce the likelihood that juveniles would be adjudicated delinquent or committed to a facility. Differences in type of representation were not accounted for due to sample size considerations. In addition, the analyses did not test for differences in commitment level by type of representation. These are issues for further research. Additional findings regarding representation are available throughout the report.

### *DIVERSION*

Diversion programs are generally designed to divert first time offenders with misdemeanor offenses from the court process. State attorneys, law enforcement, and the court may recommend diversion, but the juvenile must voluntarily decide to participate. The sample included cases only where a delinquency petition was already filed. Because most cases

are generally diverted prior to the filing of a petition, this assessment does not include a significant number of cases already diverted from the court system. Of the cases studied, 10.5 percent were diverted after the filing of a petition. Data indicate that 64.4 percent of these diversions were for misdemeanor offenses. Teen Court, arbitration, Intensive Diversion, and civil citation are the most common diversion programs utilized by circuits.

### *COMPETENCY*

Forty-nine states, including Florida, mandate that a juvenile be competent to stand trial. Competency hearings were held in only 32 of the 2,368 cases included in the sample. Of these cases, 66 percent of the juveniles were found competent to proceed. The small number of cases from the sample precluded additional analysis of competency proceedings.

Perceptions regarding a juvenile's ability to understand delinquency proceedings were also addressed. Stakeholders from across the state were asked to quantify a juvenile's ability to generally understand the juvenile court process on a scale from one to ten, with ten being the highest level of understanding. Responses varied by profession. Fifty-five percent of public defenders rated a juvenile's understanding between one and five; 56 percent of state attorneys and judges rated it seven or higher.

### *TRANSFERS TO ADULT COURT*

Existing Florida law provides a variety of mechanisms by which a juvenile may be transferred from juvenile delinquency court to adult criminal court for prosecution. In Florida most transfers occur via direct file

## 6 DELINQUENCY COURT ASSESSMENT

prior to the filing of a delinquency petition. This eliminated many transfer cases from the assessment. The total sample of 2,368 cases included only 20 cases that were transferred to adult court after the filing of a delinquency petition. Of these transfer cases, 63.2 percent involved felonies. The percentage of black and white juveniles who were transferred was identical at 45 percent.

### *DISPROPORTIONATE MINORITY CONFINEMENT*

Empirical research consistently indicates that minority juveniles in general, and black juveniles in particular, are over represented at every stage of the juvenile justice system. In 2000 black juveniles comprised 21.2 percent of Florida's juvenile population. To the extent that black juveniles comprise more than 21 percent of cases in any stage of the juvenile justice process, there is evidence of minority over representation. Among initially detained juveniles in the sample, 45.2 percent were black, confirming that blacks are over represented in the state's detention caseload.

The causes of this racial disparity are difficult to document. The empirical literature regarding disproportionate minority confinement contains mixed findings. Many studies find direct or indirect race effects, while several other studies find the effects of race to vary across the decision-making points in the juvenile justice system, and still others are inconclusive. Published research has documented that black juveniles are more likely to be arrested and charged with delinquency; however, the research also indicates that given formal handling, black juveniles are not more likely than whites to be adjudicated delinquent.

Findings from the assessment regarding disproportionate minority confinement are

mixed as well. While black juveniles are proportionally over represented in the detention and commitment caseloads, race does not appear to be an independent predictor of detention, adjudication, or commitment. In other words, holding other variables constant, black and white juveniles have equal odds of being detained, adjudicated delinquent, and committed. The over representation of blacks may therefore be caused or produced by a variable or variables other than race, or the effect race has on these outcomes may be mediated or conditioned by other variables. These are issues for further research.

### **SURVEYS AND INTERVIEWS**

Responses from judges, public defenders, state attorneys, and other professionals suggest that much more information should be made available to the court, prior to making their detention and/or disposition decisions. Survey data indicate that this is particularly necessary because many pre-disposition reports are incomplete and/or are not accurate. Additional information may include:

- parents' criminal/dependency history;
- school attendance/performance, including disciplinary actions;
- psychological and medical history;
- danger posed to the juvenile and others; and
- risk of flight.

In response to questions regarding training needs, surveyed judges expressed desire for training on:

- detention criteria;
- the commitment process;
- local programs and services available;
- mental health and substance abuse;

## EXECUTIVE SUMMARY 7

- communicating effectively with juveniles;
  - the best means to promote positive change in a juvenile in a dysfunctional family;
  - the psychology of dealing with adolescent
- and pre-adolescent juveniles; and
  - dealing with abused and neglected children.

## **8 DELINQUENCY COURT ASSESSMENT**

# CHAPTER 1

## A BRIEF HISTORY OF JUVENILE JUSTICE IN THE UNITED STATES

*Ambivalence is built into the very marrow of the juvenile court, which is expected both to nurture and protect the young against older members of society, and to protect society against the misbehaving young.*

CHARLES E. SILBERMAN

*Criminal Violence, Criminal Justice (1978)*

### THE EIGHTEENTH AND NINETEENTH CENTURIES

In the late eighteenth century, juveniles as young as seven could stand trial in criminal court, and if found guilty, could be sentenced to prison or even to death. Juveniles below the age of reason (traditionally age seven) were considered to be “infants,” and as such were presumed incapable of criminal intent and therefore exempt from prosecution and punishment (Snyder and Sickmund 1999).

Early reform movements in the nineteenth century encouraged the view that juveniles were not miniature adults, but rather persons with moral and cognitive capabilities not yet fully developed. The Society for the Prevention of Juvenile Delinquency advocated for the separation of adult and juvenile offenders in the mid 1820s. Such advocacy led to the advent of facilities specifically designed to house juveniles. Some considered these to be juvenile “prisons,” and by the mid-1800s many of these facilities came under criticism for various abuses (Snyder and Sickmund 1999).

As the system for handling juvenile offenders became more structured, state legislatures began to formally address juvenile delinquency issues. Illinois established the first juvenile court in 1899. The prevailing

standard used was *parens patriae*, the state as parent, with a focus on the best interest of the juvenile. The jurisdiction of this and other early juvenile courts included all matters of delinquency, including status offenses (truancy and other ungovernable behavior). Many of these courts also handled dependency matters. The benevolent nature of juvenile courts was underscored by the substantive differences established between the juvenile and criminal justice systems (Snyder and Sickmund 1999).

### THE TWENTIETH CENTURY

By 1925, all but two states had established juvenile courts or probation services (Snyder and Sickmund 1999). Early juvenile courts were considered to be informal because delinquency cases were handled as civil matters. This informality, coupled with broad or vague statutory frameworks, allowed judges great discretion in handling delinquency cases. In addition, juveniles were not afforded the same procedural protections as adults in criminal courts (Harris, Welsh, and Butler 2000). Attorneys for the state and for the juvenile were not considered essential by the system (Snyder and Sickmund 1999).

By the 1950s and 1960s many began to question the juvenile justice system’s

## 10 DELINQUENCY COURT ASSESSMENT

approach to rehabilitation. The basic philosophy of rehabilitation through individualized justice was not in question. However, there was growing concern regarding the number of juveniles indefinitely institutionalized for the sake of treatment. In a landmark 1967 ruling, the United States Supreme Court addressed the traditional informality of Juvenile Court and resulting lack of procedural protection:

Under our Constitution, the condition of being a boy does not justify a kangaroo court. The traditional ideas of Juvenile Court procedure, indeed, contemplated that time would be available and care would be used to establish precisely what the juvenile did and why he did it. . . .

*In re Gault*, 387 U.S. 1 (1967).

Congress also began to take note of juvenile issues. In 1968, the Juvenile Delinquency Prevention and Control Act recommended that status offenders be handled outside of the court system. The Juvenile Justice and Delinquency Prevention Act of 1974 required states to deinstitutionalize status offenders and non-offenders and to separate juvenile delinquents from adult offenders. Juvenile justice in the 1970s was characterized by community-based programs, diversion and deinstitutionalization (Snyder and Sickmund 1999).

In the 1980s, the national sentiment toward juveniles began to retreat from the philosophy of treatment and rehabilitation. The public was under the perception that there

was a serious increase in juvenile crime. Due in part to the perceived leniency of juvenile laws, statutory reforms were passed in many states that allowed certain juvenile offenses to be handled by adult courts. In short, there was strong sentiment that the juvenile justice system should be more like the adult criminal justice system. In 1980, the Juvenile Justice and Delinquency Prevention Act was amended to allow for the detainment of juveniles in adult facilities under specific circumstances (Snyder and Sickmund 1999).

State legislatures continued to impose more severe penalties for juvenile crime throughout the 1990s. Laws were passed that expanded eligibility for criminal court processing and adult correctional sanctioning. Laws pertaining to transfer provisions, sentencing authority, and confidentiality were amended or revised in all but three states. These changes tended to be more punitive than the former treatment focused approaches. The transfer of cases from the juvenile justice system into the adult criminal justice system also necessitated the development of programs to address the specific needs of transferred juveniles. Several states have recently attempted to strike a balance between offender accountability, competency development and community protection. In addition, an emphasis on victims' rights and restorative justice is reflected in many states' statutory language and current juvenile justice program designs (Snyder and Sickmund 1999).

## CHAPTER 2

# JUVENILE JUSTICE IN FLORIDA – A LEGAL FRAMEWORK

*It is important to remember that the United States has at least 51 different juvenile justice systems, not one. Given the local nature of juvenile justice in the United States, there has never been a single dominant vision of how to deal with delinquent children in law or in practice. The trend during the past decade, however, has been toward stiffening the laws dealing with juveniles.*

NATIONAL RESEARCH COUNCIL AND INSTITUTE OF MEDICINE  
*Juvenile Crime, Juvenile Justice (2001)*

### JUVENILE COURT VS. ADULT COURT – SOME FLORIDA CASE LAW

Florida has long recognized the unique nature of juvenile delinquency proceedings as fundamentally different from the adult criminal system. In 1976, the Florida Supreme Court observed:

Juvenile delinquency proceedings are neither wholly criminal nor civil in nature. The United States Supreme Court has refused to simplistically categorize juvenile proceedings as either “criminal” or “civil,” avoiding thereby a “wooden approach.” While certain federal constitutional rights obtain in juvenile proceedings, others do not.

*State v. Boatman*, 329 So. 2d 309, 312-13 (Fla. 1976)(citations and footnotes omitted).

In *In the Interest of C.J.W.*, 377 So. 2d 22, 24 (Fla. 1979), the court further expounded upon the differences between the objectives of the criminal and juvenile justice systems:

A child offender, even after being adjudged delinquent, is never held to be a criminal, even if the act would be considered a crime if committed by an adult. The key to this difference in approach lies in the juvenile justice system’s ultimate aims. Juveniles are considered to be rehabilitatable. They do not need punishment. Their need lies in the area of treatment. Therefore, while a juvenile

whose liberty the state seeks to restrain must be afforded a certain minimum standard of due process, it has never been held that he enjoys the full panoply of procedural rights to which one accused of a crime is entitled.

In *P.W.G. v. State*, 702 So. 2d 488, 491 (Fla. 1997), the supreme court approved the district court’s analysis that:

[D]ifferent treatment of minors is permissible because the liberty interest of minors is qualitatively different from that of adults. That interest is subject to reasonable regulation by the state to an extent not permissible with adults. Moreover, that interest is subject to the rights of parents. When the state must remove a child from the parents’ custody, either for the child’s welfare or for that of the public, the state, in its role as *parens patriae*, succeeds to the parent’s authority to limit the child’s freedom of action.

*P.W. G. v. State*, 682 So. 2d 1203, 1208 (Fla. 1996)(citation omitted).

In the early development of the juvenile court, the desire to focus on treatment more than punishment created the misperception that the system could proceed informally without the protections of due process. As courts and legislatures attempted to achieve a better balance between rehabilitation and the protection of the public, juveniles were

## 12 DELINQUENCY COURT ASSESSMENT

afforded some, but not all of the protections given to adults, such as the right to counsel. *J.G.S. v. State*, 435 So. 2d 942, 943 (Fla. 2d DCA 1983)(citing *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)); Fla. R. Juv. P. 8.165. Nevertheless, provision of such protections is still measured, recognizing that juveniles may have only a limited understanding of the justice system:

[A] juvenile defendant must be advised of his right to counsel, and if he chooses to waive counsel, the court must conduct a thorough inquiry to determine if the waiver was freely and intelligently made. See *M.A.F. v. State*, 742 So. 2d 534, 535 (Fla. 2d DCA 1999). The “requirement of a detailed inquiry recognizes that ‘[i]t is extremely doubtful that any child of limited experience can possibly comprehend the importance of counsel.’ ” *P.L.S. v. State*, 745 So. 2d 555, 557 (Fla. 4<sup>th</sup> DCA 1999) (quoting *G.L.D. v. State*, 442 So. 2d 401, 404 (Fla. 2d DCA 1983)). Although the inquiry for juveniles must be at least equal to that accorded adults, courts should be even more careful when accepting a waiver of counsel from juveniles. See *K.M. v. State*, 448 So. 2d 1124, 1125 (Fla. 2d DCA 1984). . . .

. . . .  
. . . We cannot overemphasize the principle articulated by the Fourth District in *P.L.S.* that the waiver of counsel inquiry is especially significant in juvenile cases because juveniles may not fully comprehend the importance of counsel or the consequences of waiving the right to counsel. See *P.L.S.*, 745 So. 2d at 557.

*State v. T.G.*, 800 So. 2d 204, 210-212 (Fla. 2001).

In addition to the process and goals of the two systems being different, the outcomes are also unique. Florida Statutes provide that an adjudication of delinquency does not operate as a criminal conviction. In 1998, the Florida Supreme Court stated:

We find the legislature’s use of the term “commitment” to be a clear indication of legislative intent that juveniles are not imprisoned when placed in the custody of the State pursuant to an adjudication of delinquency. This is in accord with this State’s approach that juvenile offenders are to be treated differently than adult offenders in the criminal justice system. Florida case law makes it clear that juvenile confinement is not to be equated with adult imprisonment. As we recently affirmed, under Florida law, juvenile delinquency proceedings exist to rehabilitate juvenile offenders in order to prevent them from becoming adult offenders, not to punish them. *P.W.G. v. State*, 702 So. 2d 488 (Fla. 1997).

*Williams v. State*, 707 So. 2d 683, 686 (Fla. 1998). The ability of the court to withhold adjudication also provides juveniles another opportunity to rehabilitate themselves without the stigma of a criminal conviction.

[A] juvenile who has adjudication withheld is, in essence, given a second chance. That is, the child is not labeled a “delinquent” so long as he or she comports with the conditions established by the court. In short, withholding adjudication provides the child with an opportunity to get his or her life back on track without developing a delinquency record.

*N.W. v. State*, 767 So. 2d 446, 450 (Fla. 2000).

These tenets of juvenile justice are woven through a long line of case law and are embodied in the Florida Statutes governing the conduct of juveniles.

### CHAPTER 985, FLORIDA STATUTES

Chapter 985, Florida Statutes, governs delinquency proceedings in Florida. Florida’s statutory scheme is similar to that of most states. The following description of Florida’s system is meant to provide the reader with a backdrop against which to evaluate the findings of this assessment.

**LEGISLATIVE POLICY AND GOALS**

Sections 985.01 and 985.02, Florida Statutes, set forth the legislative intent of Florida’s juvenile justice system. The stated purposes of Chapter 985 include the following: (1) ensuring the protection of society; (2) providing children committed to the Department of Juvenile Justice (DJJ) with training in life skills, including career education; and (3) ensuring that children found to have committed offenses receive the most appropriate control, discipline, punishment and treatment consistent with the seriousness of the act(s) committed, the need to protect the public, prior record and specific rehabilitation needs, as well as the need to compensate the victim. § 985.01, Fla. Stat. While the state’s policy is to first protect the public from acts of delinquency, it also pledges to provide children with several protections, including protection from abuse, neglect, and exploitation; a permanent and stable home; effective treatment to address physical, social and emotional needs; and access to preventative services. § 985.02, Fla. Stat. The legislative intent articulated in Chapter 985 is consistent with the core principles of the Balanced and Restorative Justice (BARJ) approach to juvenile justice. The three core components of the BARJ philosophy are offender accountability, competency development, and community protection (Bazemore 1997). See Chapter 3 for more specifics on the these balanced and restorative justice principles.

**OVERVIEW**

In Chapter 985, the definitions of “child,” “juvenile,” and “youth” are the same: “any unmarried person under the age of 18 who has not been emancipated by order of the court

and who has been found or alleged to be dependent, in need of services, or from a family in need of services; or any married or unmarried person who is charged with a violation of law occurring prior to the time that person reached the age of 18 years.” § 985.03(6), Fla. Stat. A child’s right to be treated as a juvenile is statutory. *Parr v. State*, 415 So. 2d 1353 (Fla. 4<sup>th</sup> DCA 1982).

Circuit courts have exclusive jurisdiction over juvenile delinquency proceedings. § 985.201(1), Fla. Stat. This jurisdiction attaches when the juvenile is taken into custody or when a summons is served, whichever comes first. §982.219(8) Fla. Stat. When a delinquency petition is filed, the court also obtains personal jurisdiction over the juvenile’s parents or legal guardian. §985.201(3)(b), Fla. Stat. A “notice to appear” procedure may also be used. The court retains jurisdiction until the juvenile reaches the age of 19 unless the court affirmatively relinquishes jurisdiction. Under certain circumstances, a court may retain jurisdiction until the juvenile is 21. § 985.201, Fla. Stat. All delinquency proceedings are open to the public unless the court determines that closing the hearing best serves the public interest and the welfare of the juvenile. § 985.205, Fla. Stat.

Section 985.203, Florida Statutes, provides that juveniles are entitled to be represented by counsel at all delinquency proceedings. If indigent, the court is to appoint counsel. In circumstances when the parents of a juvenile are not indigent and refuse to employ counsel, the court may appoint counsel for the juvenile. § 985.203(2),(3), Fla. Stat. A juvenile may waive counsel, though a judge must conduct an inquiry into the juvenile’s waiver and renew the offer to counsel at each stage of the proceedings. § 985.203, Fla. Stat.

## 14 DELINQUENCY COURT ASSESSMENT

Juveniles are deemed competent to proceed in delinquency proceedings if the juvenile has sufficient present ability to consult with counsel and the juvenile has a rational and factual understanding of the proceedings. § 985.223(1)(f), Fla. Stat. If, at any time prior to or during the proceeding, the court has reason to believe that the juvenile may be incompetent to proceed with the hearing, the court may, on its own motion or on the motion of a party, stay the proceeding and order an evaluation of the juvenile's mental condition. § 985.223(1), Fla. Stat.

### ***BEGINNING A DELINQUENCY PROCEEDING – INTAKE***

Any person may make a complaint or referral alleging that a juvenile has committed a delinquent act. § 985.21(3), Fla. Stat. However, most referrals come from law enforcement and Juvenile Assessment Centers in the form of a written report. Upon receiving a referral, the law enforcement officer or DJJ representative may either take the juvenile into custody or issue a notice to appear. A notice to appear is a written order issued by law enforcement officers or DJJ personnel requiring the juvenile to appear in court or at a governmental office at a specified date and time. If the juvenile who receives a notice to appear fails to do so, the court may issue a pick-up order. Fla. R. Juv. P. 8.045(g).

Section 985.207, Florida Statutes, enumerates the circumstances under which a juvenile may be taken into custody. A DJJ representative or a law enforcement officer will take the juvenile into custody and deliver the juvenile to a juvenile probation officer. § 985.215, Fla. Stat. A juvenile taken into custody must be released as soon as reasonably possible. § 985.211, Fla. Stat.

During the period of time from when a juvenile is taken into custody to the date of the detention hearing the juvenile probation officer must make the initial decision as to whether the juvenile will be placed in detention and whether it will be secure, non-secure or home detention. § 985.215(1)(a), Fla. Stat. This decision is to be based on an assessment of risk which is ascertained by reviewing the score a juvenile receives on a Detention Risk Assessment Instrument (DRAI). § 985.215(1)(b), Fla. Stat. The DRAI<sup>1</sup> is utilized statewide and takes into consideration factors including, but not limited to, prior history of failure to appear, prior offenses, any unlawful possession of a firearm, aggravating and mitigating circumstances, and whether the juvenile was abused or neglected. § 985.213(2)(b), Fla. Stat. In some instances, detention is mandated by statute. § 985.215(2), Fla. Stat.

Upon taking a juvenile into custody, DJJ performs a variety of intake functions. The purpose of the intake is to assess the juvenile's needs and risks to determine the most appropriate treatment plan and programmatic setting for the juvenile. § 985.21(2), Fla. Stat.

Information gathered is to be used in formulating the DJJ recommendation to the state attorney. § 985.21(1)(a)4, Fla. Stat. DJJ may also fingerprint and photograph the juvenile at this stage. § 985.212, Fla. Stat. The intake report and the referral are submitted to the state attorney to determine whether a formal petition or charge will be filed. If a juvenile is detained, this report must be submitted within 24 hours; if the juvenile has not been detained, within 20 days after the juvenile was taken into custody. § 985.21(4)(c), Fla. Stat. The report may also

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<sup>1</sup>Explanation of the DRAI and cite is contained in Appendix C.

include a recommendation from the juvenile probation officer as to whether it is in the best interests of the public and the juvenile to file a petition for delinquency or send the juvenile to a diversionary program, though the state attorney is not bound by DJJ’s recommendation. § 985.21(4)(b) - (d), Fla. Stat.

Once the state attorney has received the referral and the intake report from DJJ the state attorney may:

- File a petition for dependency;
- File a petition pursuant to Chapter 984;
- File a petition for delinquency;
- File a petition for delinquency with a motion to transfer and certify the juvenile for prosecution as an adult;
- File an information;
- Refer the case to a grand jury;
- Refer the juvenile to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the juvenile or the juvenile’s parents or legal guardians; or
- Decline to file. § 985.21(4)(d), Fla. Stat.

However, if the referral and report indicate that the juvenile meets the criteria for mandatory prosecution as an adult, the state attorney does not have the discretion described above, but instead must request the court to transfer and certify the juvenile for prosecution as an adult. The only exception to this is if, even though the juvenile meets the criteria for adult prosecution, the state attorney provides written reasons to the court as to why a transfer will not be requested.

*DETENTION*

Whether a juvenile is detained is a pivotal decision procedurally in the delinquency proceeding, as Chapter 985 has different procedures for those juveniles who are detained and those juveniles who are not. A juvenile may not be placed into or held in detention care for longer than 24 hours without a court order, therefore, once a decision to detain a juvenile is made, the court will hold a detention hearing. § 985.215(5), Fla. Stat. The purpose of the detention hearing is to determine the existence of probable cause that the juvenile has committed a delinquent act or violation of law. § 985.215(2), Fla. Stat. This issue is determined in a non-adversarial proceeding applying the standard of proof necessary for an arrest warrant. Rule 8.010(f), Fla. R. Juv. P.

The second issue to be determined at the detention hearing is the need for continued detention. Rule 8.010 specifies that no detention order shall be entered without a hearing at which all parties have an opportunity to be heard on the issue of detention. The juvenile is entitled to be present at this hearing unless the court finds that the juvenile’s mental or physical condition is such that the court appearance is not in the juvenile’s best interest. Rule 8.010(a), Fla. R. Juv. P. At the detention hearing the court will advise the parties of:

- the purpose of the hearing;
- the right to counsel;
- that the juvenile is not required to say anything; and
- that anything said by the juvenile may be used against him or her.

## 16 DELINQUENCY COURT ASSESSMENT

The factors to consider in making a detention decision are outlined by statute, and include things such as the score of the DRAI, whether the juvenile presents a substantial risk of inflicting bodily harm on others, and whether the juvenile will appear at subsequent hearings. § 985.213(1), Fla. Stat.

The court's detention order must be in writing and must make a determination of whether probable cause exists and whether other statutory factors requiring detention exist. Rule 8.010(g). If the court does not find probable cause, the juvenile must be released. If probable cause is found, the court must determine the appropriate type and length of detention using the DRAI and taking into consideration all probative evidence. Rule 8.010(f)(2), Fla. R. Juv. P. If a court orders a more restrictive placement than what is indicated by the DRAI, the court must include clear and convincing reasons for such placement in its written order.

The detention order must contain specific instructions for release of the juvenile. § 985.215(5)(a), F. S. The length of detention may vary according to certain specified circumstances. Detention should not exceed 21 days unless an adjudicatory hearing is begun in good faith by the court. § 985.215(5)(c), F. S. The time frame for the commencement of the adjudicatory hearing may be extended beyond 21 days upon motion of the juvenile, juvenile's counsel or the state. However, if the juvenile is in detention, a hearing must be conducted every 72 hours to determine if continued detention is needed. §985.215(5)(f), F. S.

### ***FILING A DETENTION PETITION AND ARRAIGNMENT***

If a petition is filed by the state attorney, an arraignment hearing must be held. For a

juvenile in detention status the hearing must take place within 48 hours of the filing of the petition, excluding weekends and holidays. § 985.215(7), Fla. Stat. For juveniles not in detention status, current law does not mandate a time period for the arraignment following the filing of a petition, therefore, the arraignment is held on a date prior to the adjudicatory trial.

At arraignment the juvenile enters a plea to the petition. Arraignment may be waived by filing a written response to the petition. While no answer to a petition for delinquency is required, an answer admitting the allegations of the petition may be filed by the juvenile, joined by a parent or the juvenile's attorney. § 985.222, Fla. Stat. The majority of cases do not proceed to an adjudicatory hearing because most juveniles enter a guilty or no contest plea during the arraignment hearing.

The court may refuse to accept a plea, and cannot accept a plea of guilty or nolo contendere without first determining that the plea is voluntary, that the juvenile fully understands the nature of the allegations and consequences and that there is a factual basis for the plea. Rule 8.075(a), Fla. R. Juv. P. If a guilty or nolo contendere plea is accepted, the court shall set a disposition hearing as soon as practicable. § 985.222, Fla. Stat. (see also rule 8.080, Fla R. Juv. P.) If a juvenile enters a plea of not guilty, an adjudicatory hearing is set. When a juvenile does not enter a plea or pleads evasively, a plea of not guilty is entered. Rule 8.075(d), Fla. R. Juv. P. A plea may be withdrawn only for good cause.

### ***SPEEDY TRIAL***

The progress of juvenile delinquency proceedings is governed by Rule 8.090, Speedy Trial. This provision requires that a

juvenile must be brought to an adjudicatory hearing within 90 days of either the date the juvenile was taken into custody or the date the petition was filed, whichever is earlier. If the juvenile files a written “Demand for Speedy Trial” a series of procedures is initiated to conduct the hearing within 60 days. See Rule 8.090(g), Fla. R. Juv. P. If a hearing is not conducted within the specified time frame, the juvenile can make a motion for discharge.

**ADJUDICATORY HEARING**

Adjudicatory hearings are held before the court without a jury § 985.228(2), Fla. Stat. The statute itself does not provide a specific time frame for holding an adjudicatory hearing; it simply states that these hearings must be held as soon as practicable after the petition for delinquency is filed. § 985.228, Fla. Stat. However, the speedy trial provisions set forth in Florida Rule of Juvenile Procedure 8.090 state that the adjudicatory hearing must occur either 90 days from the date the juvenile was taken into custody or the date the petition was filed.

The juvenile is entitled to present evidence and cross-examine witnesses and is given all rights against self-incrimination. § 985.226(2)(b),(c), Fla. Stat. The rules of evidence pertaining to criminal cases apply in delinquency proceedings and the burden of proof is evidence beyond a reasonable doubt. § 985.228(2), Fla. Stat. After presentation of all evidence the court may do one of three things:

- find the juvenile has not committed a delinquent act and dismiss the petition;
- find the juvenile has committed a delinquent act but withhold adjudication and place the juvenile on probation; or
- find the juvenile has committed a

delinquent act and adjudicate the juvenile delinquent.

If the state does not prove its case, the court must enter an order with that finding and dismiss the case. § 985.228(3), Fla. Stat. If the court finds the juvenile has committed a delinquent act, the court will enter an order stating that finding and the facts upon which it is based. Then the court has two options. The court may either withhold adjudication or adjudicate the juvenile delinquent. § 985.228(4),(5), Fla. Stat. If the court chooses to withhold adjudication, it will order that the juvenile be placed in a probation program under the supervision of DJJ or another person or agency authorized by the court. § 985.228(4), Fla. Stat. The court also has the option to require as a condition of probation monetary or other restitution (community service, a curfew, or any other non-residential punishment appropriate to the offense). The court may also require rehabilitative conditions such as participation in a substance abuse program. § 985.228(4), Fla. Stat. If the juvenile does not abide by the conditions of the court’s order, the court will hold a hearing to establish lack of compliance and may enter an adjudication of delinquency. § 985.228(4), Fla. Stat.

The court may also choose to adjudicate the juvenile delinquent. § 985.228(5), Fla. Stat. The statute specifies that an adjudication of delinquency shall not be deemed a conviction, nor shall the juvenile be deemed to have been found guilty or to be a criminal by reason of the adjudication § 985.228(6), Fla. Stat.

Once a decision has been made regarding adjudication, the court will consider whether a predisposition report (PDR) is warranted. The PDR is generally ordered at the court’s discretion except that a PDR is mandatory if it

## 18 DELINQUENCY COURT ASSESSMENT

is anticipated that the juvenile will receive a disposition of residential commitment or if a recommendation for commitment is made by any party. § 985.229(1), Fla. Stat. The predisposition report is a multi-disciplinary assessment completed by DJJ which addresses the juvenile's priority needs, recommendations regarding classification of risk for the juvenile and supervision needs, as well as a plan for treatment. § 985.229(1), Fla. Stat. The court has authority to order a variety of additional evaluations for the juvenile (for example, psychological or educational evaluations) and require that these be included in the PDR. § 985.229(2), Fla. Stat. The PDR must be provided to the court no later than 48 hours before the disposition hearing and must be considered by the court prior to making a final disposition. § 985.229(2), Fla. Stat.

### *DISPOSITION*

Following an adjudication of delinquency the court will conduct a disposition of the case. § 985.23, Fla. Stat. Usually the disposition is held in conjunction with another hearing, such as the arraignment or adjudicatory hearing, but it can also be a separate hearing. Section 985.23 requires that, before determining and announcing the disposition, the court must:

- State the purpose of the hearing using common terminology and advise parties of their right to be heard;
- Talk with the juvenile about his or her compliance with any plan since the date of offense;
- Talk with the juvenile about his or her feelings about the offense, the harm suffered by the victim, and the penalty that should be required; and
- Allow all parties to comment on the

disposition plan, any rehabilitation plan, and any necessary no contact orders.

The court's powers at the disposition hearing are enumerated in section 985.231. The court may order:

- placement in a probation program or a post commitment probation program under the supervision of DJJ or another person/agency authorized by the court;
- commitment to a licensed juvenile-caring agency;
- residential commitment with DJJ;
- revocation or suspension of the juvenile's driver's license;
- community service (for the juvenile alone or the juvenile and his or her parents);
- restitution in money or in kind;
- participation in a community work project (for the juvenile alone or the juvenile and his or her parents);
- commitment to DJJ for placement in a program or facility for serious or habitual juvenile offenders in accordance with section 985.31; and
- commitment to DJJ for placement in a program or facility for juvenile sexual offenders in accordance with section 985.308.

If the juvenile will be committed, the court must enter a finding on the record or a written order that includes specific findings of the reasons for commitment. § 985.23, Fla. Stat. The DJJ juvenile probation officer will make a recommendation regarding the appropriate restrictiveness level. § 985.23(3), Fla. Stat. The court does not have to adopt this recommendation, but if it decides not to do so, it must state its reasons for not doing so on the record based on a preponderance of the evidence. § 985.23(3)(c), Fla. Stat. The court

may order that the juvenile be placed in a probation program following the juvenile's discharge from commitment.

Following the disposition hearing of a juvenile who will be committed to the DJJ, the court must make a determination as to whether the protection of the public requires that the juvenile be placed in a program for serious or habitual juvenile offenders or a program for juvenile sexual offenders. § 985.231(2), (3), Fla. Stat. Juveniles who are ordered to residential commitment with DJJ must be held in detention care as they await placement in the designated facility.

If the court does not order residential commitment, the court must determine what community-based sanctions it will impose in a juvenile probation program for the juvenile. § 985.23(4), Fla. Stat. Some examples of such sanctions include, but are not limited to:

- participation in substance abuse treatment;
- a day treatment probation program;
- restitution in money or in kind;
- a curfew;
- revocation or suspension of the juvenile's driver's license;
- community service; and
- appropriate educational programs as determined by the district school board.

Both juveniles who have been adjudicated and those who have had adjudication withheld can be ordered to participate in a juvenile probation program. For both groups, the program must include a treatment plan designed to encourage the juvenile's rehabilitation. However, in the cases of those juveniles who have been adjudicated delinquent, the probation program must include a penalty component reflecting the seriousness of the offense. § 985.231(1)(a)1, Fla. Stat.

Upon the DJJ's recommendation, the court may order the juvenile to submit to random drug tests. § 985.231(1)(a)1, Fla. Stat. The court may also make recommendations as to specific treatment approaches for the juvenile. § 985.23(2), Fla. Stat. A \$50 fee for the victim's crime compensation trust fund must be imposed upon any juvenile found to have committed a delinquent act, regardless of whether adjudication was withheld. § 938.03, Fla. Stat.

Any commitment of a delinquent juvenile to the DJJ must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same sentence. § 985.231(1)(c), Fla. Stat. If the court orders the juvenile be placed on juvenile probation, the order must state that the probation will be until the juvenile's 19th birthday unless he or she is released by the court or other statutory exemptions from this rule apply. If supervision or a program of community service is ordered by the court, the duration of the supervision or program for a juvenile adjudicated delinquent must not exceed the term for which a sentence could be imposed if the juvenile were committed for the offense. § 985.231(1)(a)1.a., Fla. Stat. If the court withholds adjudication, there is no time limit for the period of probation. *N.W. v. State*, 767 So. 2d 446 (Fla. 2000).

***TRANSFER PROCEEDINGS***

Existing law provides a variety of statutory mechanisms by which a juvenile may be transferred from juvenile delinquency court to adult criminal court for prosecution. These mechanisms are voluntary waiver, involuntary waiver, grand jury indictment, and direct file.

***VOLUNTARY WAIVER.*** In this method, the juvenile requests in writing to be tried as an

## 20 DELINQUENCY COURT ASSESSMENT

adult. Upon such demand, the juvenile court must waive the case to adult court. If found guilty of the charges, the adult court has the discretion to sentence the child as an adult, as a youthful offender or as a juvenile. § 985.226(1), Fla. Stat.

**INVOLUNTARY WAIVER.** This transfer option is initiated by the state attorney, who must file a motion in the juvenile court for this type of transfer. The juvenile court then holds a hearing. There are two types of involuntary waiver: mandatory and discretionary. For discretionary waiver, the juvenile must be 14 years or older; if found guilty, the court has the option of sentencing the child as an adult, as a youthful offender or as a juvenile. For mandatory waiver, certain conditions of age and prior history (level of offense/s and prior adjudication) must be met; if found guilty, the

court must sentence the juvenile as an adult. § 985.226(2), Fla. Stat.

**GRAND JURY INDICTMENT.** The state attorney may convene a grand jury when a juvenile is charged with a violation punishable by death or life imprisonment. There is no age limitation. The grand jury determines whether the case will be handled in juvenile or adult court § 985.225, Fla. Stat.

**DIRECT FILE.** This action is initiated by the state attorney filing an information on the juvenile. In these filings, the juvenile court never sees the case. Like the involuntary waiver provision, there are two types of direct file: mandatory and discretionary. For either type, a substantive list of conditions applies, including type of offense/s and age. § 985.227, Fla. Stat. Presently, this is the most widely used transfer procedure in Florida.

## CHAPTER 3

### MAJOR FINDINGS

*With the increase in delinquency caseloads throughout the Nation, juvenile justice experts are concerned that delays in case processing are reducing the effectiveness of the juvenile court process.*

JEFFREY A. BUTTS

*Delays in Juvenile Court Processing of Delinquency Cases (1997)*

#### THE USE OF SECURE DETENTION

##### *NATIONAL PERSPECTIVES*

Judges have called detention hearings the most active area in the juvenile justice system (Ramsberger and Thomas 2001). Nationally, almost one out of every five cases results in secure detention at some point between referral and adjudication (Snyder and Sickmund 1999:152). Courts in the United States processed almost 1.8 million delinquency cases in 1998, and judges detained juveniles in 19 percent of those cases (approximately 342,000) in that year (Harms 2002). This number represents a 25 percent increase in detention caseloads since 1989. However, as Harms (2002) and MacKenzie (1999) both note, this rise in detention caseloads is due to the increase in overall juvenile delinquency caseloads since the late 1980s.

Besides the short-term consequence of being confined in a secure facility, does detention have any long-term consequences for a juvenile? Several studies published during the last 20 years suggest that secure detention does indeed have far-reaching effects on the life of a delinquency case. In their review of published empirical findings, the National Research Council and Institute of Medicine (2001:177) indicate that “Research

consistently shows that juveniles who have been in detention are more likely to be formally processed and receive more punitive sanctions at disposition than those not placed in detention, after controlling for demographic and legal factors, such as current offense and history of past offenses.”

A recent study by McGuire (2002) reports similar findings. Using logistic regression analyses, McGuire demonstrates that being held in detention significantly increases the odds that a juvenile will be adjudicated delinquent and committed. Furthermore, being held in detention has a stronger effect on the adjudication and commitment outcomes than any other variable in the study, including prior history and concurrent delinquency. These findings suggest that the act of secure detention itself, independent of prior history, the severity of the offense, and demographic characteristics of juveniles, increases the likelihood of both adjudication and harsher punishments at disposition.

##### *DELINQUENCY CASELOADS AND THE USE OF DETENTION IN FLORIDA*

Nationally, only a minority of delinquency cases are securely detained. According to data from the Office of Juvenile Justice and Delinquency Prevention, “In 1996, juveniles were detained between referral and disposition

## 22 DELINQUENCY COURT ASSESSMENT

in 18% of all delinquency cases processed during the year” (Snyder and Sickmund 1999:152). Moreover, the proportion of cases detained has remained fairly stable since 1989, when the courts detained 21 percent of delinquency cases (Harms 2002). Case file data were measured to determine whether Florida’s use of detention is consistent with its use nationwide. These analyses suggest that Florida’s detention caseload, as a proportion of all delinquency cases in the state, is very similar to the caseloads reported in national research.

Juveniles were initially detained in 33.6 percent of the 2,368 cases in the sample (N=795). Florida Statutes require that the court hold a detention hearing for juveniles who have been taken into custody. At this hearing, the judge determines the existence of

probable cause and the need for secure detention. Of the 776 cases with available data, 56.2 percent received secure detention as a result of the detention hearing (N=436). Overall, 18 percent of the juveniles in the full sample (436 of 2,368) were securely detained, which is consistent with national findings.

Florida Statutes also require that for juveniles who are initially detained, the court must hold a detention hearing within 24 hours after the juvenile has been taken into custody. In 98 percent of the sampled cases, the courts complied with this time frame. In only 15 of the 761 cases for which there are data did the detention hearing occur more than 24 hours after the juvenile was placed in custody. Of those 15, ten cases had their detention hearing between 24 and 48 hours after being placed in custody.

**QUESTION: Nationally, juveniles are detained in 18 percent of cases. How does Florida compare?**

**ANSWER: Of the total sample, juveniles were detained in 18 percent of cases.**

- Juveniles were initially detained in 33.6 percent of the cases in the sample. Each of these cases required a detention hearing.
- Of those cases with a detention hearing, judges securely detained 56.2 percent. Relative to the total sample size, 18 percent of the sampled cases received secure detention.

### *DETERMINANTS OF SECURE DETENTION*

A recent study by the Office of the State Courts Administrator (2002), on the use of audio-visual devices in juvenile detention hearings, found that the score on the Detention Risk Assessment Instrument (DRAI)

significantly increased the odds of being securely detained, holding all other variables in the analysis constant. The current study also used the DRAI score as one predictor of the odds of secure detention, along with demographic variables, offense characteristics, and representation status. These variables are

included in Table 1, which presents bivariate correlations among all variable pairs in the analysis. The analysis indicates that at the bivariate level, older juveniles and juveniles charged with a felony offense are more likely to receive secure detention. In addition, juveniles with higher scores on the Detention Risk Assessment Instrument are more likely to receive secure detention ( $r=.418, p\leq.01$ ).

Table 2 presents these variables and their associated statistics from a logistic regression model. This analysis presents the effects of each covariate on the dependent variable, while controlling or accounting for the effects of other covariates. As with the study of audio-visual devices, one variable significantly increased the odds of secure detention: the Detention Risk Assessment Instrument score. The odds ratio of 1.210 means that every one point increase in the DRAI score increases the odds of secure detention by 21 percent. No other variable's relationship with detention status reached the required level of statistical significance ( $p\leq.05$ ).

The analysis also suggests that black juveniles do not differ from whites and juveniles of other races in their odds of receiving secure detention. At the bivariate level, whites were less likely than blacks and juveniles of other races to receive secure detention, although the association did not reach statistical significance ( $r=-.061, p=.089$ ). Likewise, while the odds of a white juvenile receiving secure detention are less than a black juvenile's odds ( $Exp(b)=-.839$ ), the strength of the relationship in the logistic regression analysis is not sufficient to generalize this finding to the population. The assessment report returns to the issue of disproportionate minority confinement in Chapter 4, and it provides a more detailed analysis and discussion of how racial

differences influence judicial outcomes.

In evaluating these findings, one must consider two important characteristics of the analysis. First, Table 2 indicates that the only variable significantly associated with the likelihood of secure detention was a juvenile's score on the Detention Risk Assessment Instrument. This study, however, was not able to include several variables that may also be meaningful predictors of detention status. These include parental attendance at detention hearings, the juvenile's prior history, and concurrent delinquency petitions. Case files did not provide this information, and the study is therefore unable to account for the potential effects of these variables, effects that may alter the statistical association between the DRAI score and the odds of secure detention.

Second, the Detention Risk Assessment Instrument is a composite of several characteristics of a juvenile's case, such as prior history and aggravating and mitigating factors. Instead of including this composite measure, the analysis would have benefitted by including these characteristics individually. However, as mentioned above, the case files did not contain much of this information, making the DRAI score the best proxy available. Future research should attempt to examine the individual variables that comprise the Detention Risk Assessment Instrument, in addition to parental involvement and concurrent petitions.

### *SECURE DETENTION AND COMMITMENT*

As stated earlier in the chapter, the National Research Council and Institute of Medicine's report found that securely detained juveniles "receive more punitive sanctions at disposition than those not placed in detention, after controlling for demographic and legal factors, such as current offense and history of

## 24 DELINQUENCY COURT ASSESSMENT

past offenses” (2001:177). This finding, based on data from three published studies, marks a significant link between detention and the long-term outcomes of delinquency cases.

Does this relationship between detention and punitive sanctions exist in Florida? Are securely detained cases more likely to be committed than non-securely detained cases? These questions were addressed using assessment data. Commitment at disposition is used as the measure of punitive sanctions. This analysis, presented in Table 4, is consistent with the previously published research. After accounting or controlling for

demographic variables, the plea, and the severity and type of offense, findings show that securely detained cases have odds of commitment that are three times greater than the odds of a non-securely detained case. In other words, with all else being equal, securely detained cases are three times more likely to be punitively sanctioned with commitment. While this study did not replicate previous research by using identical measures and methods of analysis, these data do show an independent effect of detention status on whether or not a juvenile is committed.

**QUESTION: Are securely detained juveniles more likely to be committed than non-securely detained juveniles?**

**ANSWER: Yes. Securely detained juveniles are three times more likely to be committed at disposition.**

- The odds of a securely detained juvenile receiving commitment are 3.222 times greater than the odds of a juvenile that was not securely detained. This relationship is statistically significant, even after controlling for demographic variables, the plea, and the offense type and severity.
- This finding is consistent with published studies reporting that “juveniles who have been in detention are more likely to...receive more punitive sanctions at disposition than those not placed in detention” (National Research Council and Institute of Medicine 2001:177).

### *RECOMMENDATIONS FOR COURT ACTION*

- Promote increased attendance and/or involvement by parent, guardian and/or family members at the detention hearing.
- Create a standardized custody form order, which allows the issuing court to clearly specify whether the juvenile may be released on home detention/electronic

monitoring or whether the juvenile must not be released until brought before the issuing court.

- Explore additional ways to ensure that juveniles who are picked up for failing to appear are not unnecessarily detained in secure detention.
- Conduct a literature review of studies that look at the impact of secure detention on

juveniles, to include a focus on cross-over juveniles. If necessary, conduct a Florida study.

- Survey Florida juvenile judges to determine whether they would release juveniles or securely detain them, if they could not rely on the effectiveness of home detention/electronic monitoring.
- Reconsider the use of audio-visual appearances for juvenile detention hearings.
- Provide more training to delinquency/family judges on detention issues.

**RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION**

- Collaborate with key stakeholders on the scientific validation of the Detention Risk Assessment Instrument (DRAI) to determine:
  - whether it adequately assesses risk; and
  - whether it is race-neutral, gender-neutral, and ethnicity-neutral.
- Assist in the investigation of funding options for the scientific validation study of the Detention Risk Assessment Instrument.
- Encourage all stakeholders to review their curricula on detention issues in their pre-service and in-service training opportunities.

**ADJUDICATION**

Twenty-seven states have speedy trial provisions for juveniles (Butts and Sanborn 1999). These states vary in their operational definitions of speedy trial. Seventeen states have requirements that adjudication occur in less than 90 days, four states have 90 day rules, and five states allow adjudication beyond 90 days. Without statutory guidelines, many juvenile courts in the nation “continue to rely on voluntary goals and professional standards to control the timing of delinquency dispositions” (Butts 1997:1). What do these professional standards suggest as an appropriate length of time in which a case may be processed? Butts (1997:1) indicates that these standards “suggest that even the longest case should be processed within 90 days.” Standards set by organizations such as the National Conference of State Trial Judges restrict the time frame to as few as 45 days (see figure in Butts 1997).

Florida’s juvenile courts are required to adjudicate a juvenile within 90 days, beginning with the date the juvenile is taken into custody or the date of the petition for delinquency, whichever is first. How well do Florida’s juvenile courts comply with this requirement? Do cases in general adhere to this statutory provision? What case characteristics might cause or produce delays in reaching adjudication?

**QUESTION: Is the “typical” trial case adjudicated within 90 days, the statutory requirement?**

**ANSWER: Yes. The median number of days from custody or petition to trial is 84.5 days.**

## 26 DELINQUENCY COURT ASSESSMENT

Approximately five percent of the sampled cases (N=108) resulted in a trial at which the court determined whether a juvenile had committed a delinquent act. Florida's speedy trial law speaks directly to these cases, since the trial must commence within 90 days of the filing of the petition or the date the juvenile was taken into custody. For this analysis, data are available for 106 cases. The mean number of days from the juvenile being taken into custody or the filing of the petition to the trial was 114.5 days, approximately 24 days longer than allowed by statute. The distribution of this time frame is positively skewed, however, meaning that a small number of cases is inflating the mean by having a large number of days between the petition and trial. In cases such as these, the median is a useful statistic. The median, 84.5 days, is substantially lower, and also within the 90 day time frame.

Certainly, the median of 84.5 days does not imply that all cases are adjudicated within 90 days. On the contrary, while the median suggests that half of the cases begin a trial in less than 84.5 days, the statistic also indicates that half of the cases take longer than 84.5 days to commence the trial. In fact, in 45.3 percent of these cases the trial commenced more than 90 days after the filing of the delinquency petition. The data did not

indicate if juveniles waived speedy trial, however, which may have affected the proportion of cases that exceeded 90 days.

If the court determines that a juvenile has committed a delinquent act, it may adjudicate the child delinquent or it may withhold this adjudication. Adjudication data are available for 1639 cases in the sample. In 62.1 percent of these cases (N=1017), judges ordered adjudications of delinquency. Judges withheld adjudication in the remaining 37.9 percent. Are there certain case characteristics that increase the likelihood of adjudication? At the bivariate level (see Table 1), older juveniles, male juveniles, and juveniles with higher scores on the Detention Risk Assessment Instrument are more likely to be adjudicated. White juveniles are less likely than blacks and juveniles of other races to be adjudicated delinquent. Finally, juveniles that are represented in the case are more likely to be adjudicated than juveniles without counsel.

The logistic regression model in Table 3 identifies several variables that produced a statistically significant increase in the likelihood of adjudication. These are age, the level and type of offense, the Detention Risk Assessment Instrument score, and the secure detention status.

**QUESTION: What variables increase the likelihood of adjudication?**

- ANSWER:**
- 1. Increases in age**
  - 2. Burglaries and thefts, relative to crimes against persons**
  - 3. Increases in the DRAI score**
  - 4. Securely detained cases, relative to non-detained cases**

Among the demographic variables, age is the only significant predictor of adjudication. As age increases, the odds of adjudication increase. Specifically, each additional year of age increases the odds of adjudication by 25.2 percent. The offense level and type are also associated with the likelihood of adjudication. Felony cases are on average 48.2 percent less likely to be adjudicated delinquent. The regression model lists five offense variables: Burglary, Theft, Other Crimes Against Property, Drugs, and Other Crimes. The sixth offense category, Crimes Against Persons, serves as the reference category, and one is able to statistically compare each of the five offense types to crimes against persons. The data indicate that burglaries and thefts each increase the odds of adjudication, relative to crimes against persons. The increased odds of adjudication for other property crimes and drug offenses do not reach the level of statistical significance. Finally, findings show that cases with other crimes have lower odds of adjudication than cases charged with crimes against persons.

The last two significant predictors are the Detention Risk Assessment Instrument score and secure detention status. Increases in the DRAI score increase the odds of adjudication, independent of the other variables in the analysis. Secure detention status again shows a powerful influence on later stages of delinquency cases. As indicated in the section on the use of secure detention, detained cases have odds of commitment three times greater than non-detained cases. This analysis found that the odds of a securely detained case being adjudicated delinquent are 3.3 times greater than the odds of a non-securely detained case.

As was the case with secure detention, this analysis presents the statistical associations only for the variables included in Table 3. There are perhaps other variables which may

be theoretically and empirically related to the likelihood of adjudication; however, because the information was unavailable, this study is unable to account for them as possible sources of spuriousness.

## DISPOSITION

### *COMMITMENT*

In the disposition stage of the juvenile justice process, judges can dispose of a case by committing the juvenile to the custody of the Department of Juvenile Justice, or by placing the juvenile on probation. This analysis devotes a great deal of focus to those factors that increase or decrease the likelihood of commitment, because, as with secure detention, this is a point in the juvenile justice system at which a juvenile's physical liberty is at issue.

A disposition occurred in 70.5 percent of the cases in the sample (N=1669). Of those disposition cases for which data are available, judges committed juveniles in 29.5 percent (N=481 of 1631). As with adjudication, this analysis explores what causes or produces differences in the likelihood of commitment. Table 4 presents the variables and their associated statistics from a logistic regression analysis.

The variables that increased the odds of commitment are the same variables with a statistically significant relationship to adjudication. Each additional year of age increases the odds of commitment by 25.8 percent. Relative to crimes against persons, burglaries and thefts are twice as likely to be committed. Scores on the Detention Risk Assessment Instrument are positively related to commitment status, with each additional point increasing the odds of commitment by 10.5 percent. Finally, cases that are securely

## 28 DELINQUENCY COURT ASSESSMENT

detained are on average 3.2 times more likely to be committed than non-detained cases. This finding was also reported and discussed in the section on secure detention.

It is important to consider two final notes about the analyses of adjudication and commitment. First, in the regression models, felony cases had lower odds than misdemeanors for being both adjudicated and

committed. Second, no relationship between representation status and the likelihood of adjudication and commitment was found. These statistical relationships need to be explored further to gain a more complete understanding of how dispositional outcomes are influenced by offense and representation variables.

**QUESTION: What variables increase the likelihood of commitment?**

**ANSWER:**

1. Increases in age
2. Burglaries and thefts, relative to crimes against persons
3. Increases in the DRAI score
4. Securely detained cases, relative to non-detained cases

### *PROBATION*

A majority of the disposed cases in the sample received probation (59.5 percent). Judges have much discretion in setting conditions of probation; however, the data suggest that similar conditions are used throughout the courts we visited. Analyses indicate that judges tended to order multiple conditions when placing a juvenile on probation. Judges ordered an average of 4.39 conditions per case. In 14 percent of the probation cases judges ordered seven to ten conditions. These conditions are presented in the figure on page 29. The three most common conditions were that the juvenile perform community service (72.6 percent); that the juvenile attend school or some education program (71.2 percent); and that the juvenile adhere to a curfew (57.1 percent).

### *BALANCED AND RESTORATIVE JUSTICE PRINCIPLES*

In setting the conditions of probation, as well as in the imposition of other dispositions, judges have the unique opportunity to integrate balanced and restorative justice principles into their dispositions. The concept of restorative justice, which promotes maximum involvement of the victim, the offender, and the community in the process, is increasingly recognized as a viable alternative to the traditional juvenile justice approach. Bazemore (1997) has written extensively about balanced and restorative justice, and he identifies the three “goals of the juvenile justice system” under the “Balanced Approach” (p. 3): accountability, competency, and community protection.

The accountability component means having the juvenile take full responsibility for

his or her actions, including taking steps to repair the harm done to the victim and/or community, as well as giving the victim an opportunity to be more involved in the process. The competency component means providing the juvenile with some life skills or competencies so she or he can be a more capable and productive citizen than before the juvenile committed the offense(s). Finally, the community protection component addresses the responsibility of the juvenile justice community to protect the public from delinquent acts committed by juveniles (Office of Juvenile Justice and Delinquency Prevention 1998). While these components form the foundation of the balanced and restorative justice model, there is no single or preferred way to implement the model.

The data from this assessment do not clearly indicate the extent to which Florida's juvenile courts integrate the balanced and restorative justice philosophy into their practices. While the data indicate what types of sanctions are required by judges, such as community service and restitution, further research is needed to establish whether or not these sanctions are consistent with the goals of balanced and restorative justice. Furthermore, the sampled case files did not contain any consistent and measurable information about the victims' involvement in the process, their access to the court, or their satisfaction with case outcomes. These issues must be addressed as well in future research.

**QUESTION: How often are the various conditions of probation used in Florida?**

- ANSWER:**
- 72.6 % - Community Service ( $\bar{x}$  = 43 hours)
  - 71.2 % - Attend School / Education Program
  - 57.1 % - Curfew
  - 34.5 % - No Contact with Victim
  - 34.1 % - Apology Letter
  - 26.5 % - Psychological Program
  - 22.0 % - Essay ( $\bar{x}$  = 914 words)
  - 19.5 % - Drug Testing
  - 16.9 % - Prison Tour
  - 16.5 % - Restitution ( $\bar{x}$  = \$846.74)
  - 16.0 % - Substance Program
  - 7.2 % - Revocation / Suspension of Driver License

**DISPOSITION TIME FRAMES**

**TIMETODISPOSITION.** For non-trial cases, Florida's juvenile courts are meeting accepted time standards for case processing. Florida does not set time standards for these cases;

therefore, as a benchmark with which to compare case processing times for the cases in the sample, the standard of 90, days set by the National District Attorneys Association, was used (Butts 1997). The average or mean number of days from the filing of the petition

## 30 DELINQUENCY COURT ASSESSMENT

to disposition is 90.4 (N=1576). In contrast, cases that do go to trial are on average disposed 142.4 days after the petition is filed (N=78). When the medians of these two distributions are examined, the data indicate that both groups of cases are processed within substantially fewer days. The median of cases without a trial is 63.0 days, while cases with a trial have a median of 109.5 days.

To summarize, the cases in the sample without a trial reach disposition within recommended time frames. Cases that do go to trial, however, take in excess of 100 days to reach disposition, whether one measures the time frame with the mean or median. Because only a small minority of cases have a trial (less than five percent), it may be concluded that the courts process a majority of delinquency cases in a time consistent with statutory requirements and national time standards.

*DELAYS IN REACHING DISPOSITION.* Table 5 presents the results of an analysis in which

the time from petition to disposition is regressed on several covariates. Of the variables included in Table 5, two appear to cause or produce statistically significant delays in case processing time. First, pretrial proceedings increase the time from petition to disposition by an average of 24.6 days. Second, each failure to appear delays the time from petition to disposition by 30.9 days, on average. While other variables, such as the presence of counsel and a trial, are positively associated with delays in case processing, the strength of these associations is not sufficient to allow one to infer that these relationships exist in the population. To summarize, the current analysis suggests that pretrial proceedings and failures to appear produce significant delays in the time from petition to disposition. While it may not be surprising that delays occur as a result of additional hearings and failures to appear, it is instructive to know the magnitude of the delays that result.

### QUESTION: What causes delays in case processing?

#### ANSWER: Pretrial proceedings and failures to appear.

- On average, each additional **pretrial proceeding** increases the time from petition to disposition by **24.6 days**. These pretrial proceedings may be continuances, additional detention hearings, or status hearings.
- Each **failure to appear** on average increases the time from petition to disposition by **30.9 days**.

*FACTORS THAT REDUCE DELAYS IN DISPOSITION.* The analysis identified two case characteristics that reduce case processing time. Juveniles that pled no contest to the charges at arraignment reached disposition in 36.6 fewer days than juveniles that pled not

guilty, even after controlling for whether or not a trial occurred. Although juveniles that pled guilty reached disposition 18.4 days faster than those pleading not guilty, the difference was not great enough to conclude that the difference exists in the population.

In addition to the type of plea, the type of offense is statistically associated with the time frame. Relative to crimes against persons, which includes assaults, robberies, and sex offenses, cases with drug offenses reach disposition in 28.7 fewer days. The offense categories of burglary, theft, other property crimes, and other crimes, indicated no difference from crimes against persons in the time from petition to disposition.

*FACTORS THAT SHOW NO EFFECT ON THE TIME TO DISPOSITION.* In this analysis, no significant relationships were found between the demographic variables and the time to disposition. Differences in age, race, and sex did not cause or produce differences in the time from petition to disposition. Felonies did not differ from misdemeanor cases in case processing time. Cases that were securely detained following the offense were equal to non-securely detained cases in case processing time. Interestingly, once the effects of other covariates are taken into account, cases with a trial did not differ from cases without a trial in case processing time. The regression coefficient for the trial variable indicates that, in the sample, trials delayed the disposition by an average of 38.2 days. However, relative to the standard error for the estimate, the size of the coefficient is not large enough for us to infer that this difference exists in the population of delinquency cases.

Finally, findings show that having representation did not either lengthen or reduce case processing time, independent of the other variables in the regression model. Represented cases in the sample were on average 12.8 days longer than cases with no representation. However, as with the trial variable, the relationship is not strong enough for us to generalize this association to the population.

*CROSS-JURISDICTIONAL VARIATION IN TIME FRAMES.* This assessment has examined variation in case processing time frames using individual delinquency cases as the unit of analysis. While data were collected from seven different judicial circuits, the statistics reported in this assessment are based on an analysis of the entire statewide sample. This type of analysis is consistent with the bulk of the empirical literature on juvenile case processing and outcomes. According to Lanza-Kaduce, Bishop, and Winner (1997), "A very extensive body of literature has examined the effects of both legal and extra-legal variables on individual case processing outcomes within jurisdictions" (p. 3). This assessment contributes to that body of literature in general, and it specifically contributes to an understanding of case processing in the jurisdiction of Florida.

Lanza-Kaduce, Bishop, and Winner go on to note that "there is a surprising lack of research on the structural context of the juvenile justice system" in which there is a focus on "variations across jurisdictions" (1997:3). In response to this lack, the authors conducted an empirical study of case processing time frames and outcomes across regions and judicial circuits in Florida. On the basis of several multivariate analyses, the authors conclude that there are "marked area differences for 1995 in both the timing of juvenile justice processing and the outcomes of that processing across the state of Florida" (1997:66). These differences across regions and circuits existed even after accounting or controlling for gender, race, current offense, prior history, and other variables. In other words, the study suggests that differential characteristics of the areas themselves, whether structural or cultural, produce variation in the timing and outcomes of delinquency cases. In a related study, Bishop,

## 32 DELINQUENCY COURT ASSESSMENT

Lanza-Kaduce, and Winner (1996) use county-level data and find that structural variables, such as the county's index crime rate and percentage of high school graduates, are related to variation in time frames and outcomes of delinquency cases. These studies recognize the important ways in which structural features influence juvenile court case processing, and they make an important contribution to an understanding of how and why delays occur.

### *RECOMMENDATIONS FOR COURT ACTION*

- Analyze finding that burglaries and thefts result in residential commitment more so than crimes against persons.
- Consider how the court, within the current statutory framework, may better incorporate principles of balanced and restorative justice in detention and disposition proceedings.
- Conduct a national comparison or survey of probation conditions and judicial practices in jurisdictions where judges embrace the principles of balanced and restorative justice.
- Simplify and tailor the probation form order, to make it more consistent with the balanced and restorative justice principles articulated in Chapter 985, Florida

Statutes.

- Determine what case flow obstacles prevent cases that go to trial from being disposed of in 90 days.
- Provide more training to delinquency/family judges on:
  - the commitment process;
  - local programs and services available; and
  - the principles of balanced and restorative justice.
- Evaluate the effectiveness of any innovative case management systems or techniques presently in use in delinquency courts, in Florida or nationally, for possible expansion or replication to other jurisdictions.

### *RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION*

- Analyze reasons juveniles give for failing to appear (i.e., issue of proper notice? lack of transportation? conflict with parents' work schedule? etc.).
- Work with stakeholders to determine how to reduce the incidence of "failing to appear" for juvenile offenders, including the possibility of holding evening court hours as part of a pilot program.

## CHAPTER 4

### ADDITIONAL FINDINGS

*Our system of justice for juveniles was originally built upon a simple philosophy: that the fundamental purpose of all agencies charged with the care and handling of adjudicated juveniles should be to act in the best interests of the child. For the past 100 years this principle, which grew out of the nineteenth-century juvenile court movement, has provided the one major distinguishing feature between what we have come to think of as appropriate justice for juvenile law violators and justice for adult criminals in the United States.*

FRANK SCHMALLEGER

*Criminal Justice Today (1999)*

#### REPRESENTATION

*Every child has the right to representation... Children can and will be taken advantage of due to their age and ignorance of the law.*

DJJ PROFESSIONAL

The following tables present information about representation at four court proceedings: detention, arraignment, the adjudicatory hearing, and the disposition. For each case, the Office of the State Courts Administrator

recorded whether the juvenile was represented by a public defender, private counsel, or conflict counsel, or whether the juvenile was not represented. In a small number of cases the researchers were unable to determine the representation status.

In each type of proceeding, juveniles were represented more than 60 percent of the time. In the small number of cases that went to trial, every juvenile had a lawyer, with most (84.8 percent) being public defenders.

Percentage Distribution of Representation Status	Detention N=764	Arraignment N=2140	Trial N=105	Disposition N=1628
Public Defender	60.3	63.5	84.8	52.1
Private Counsel	1.7	3.5	7.6	8.6
Conflict Counsel	0.4	0.7	7.6	7.4
No Representation	24	29	0	28.7
Unable to Determine Representation	13.6	3.4	0	3.3
Total	100	100	100	100

## 34 DELINQUENCY COURT ASSESSMENT

### *RECOMMENDATIONS FOR COURT ACTION*

- Compare legal representation statistics in Florida juvenile courts to Florida's adult criminal courts (i.e., Are delinquent juveniles getting less legal representation than adults? Are they waiving their rights more?)
- Using existing data, determine whether the presence and type of legal representation affects outcomes for juveniles in the level of commitment or type of probation imposed.
- Conduct a literature review of studies that look at factors that may inadvertently affect the juvenile's decision to waive counsel.

### *RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION*

- Propose possible statutory/rule amendment, either for legislative or supreme court consideration respectively, to specifically create a right for juveniles to consult counsel, short of an outright appointment for the duration of the case, in the following instances:<sup>2</sup>
  - Regarding waiver of right to counsel or other right or legal interest in a delinquency proceeding, prior to the

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<sup>2</sup> This recommendation was made by the Representation Subcommittee of The Florida Bar Commission on the Legal Needs of Children. Final Report, The Florida Bar's Commission on the Legal Needs of Children, June 2002, p. A.14. The Commission drafted a rule of juvenile procedure, which provided standards to be used before a juvenile in delinquency proceedings may waive the right to counsel. At the time of print, draft rule amendments on this issue were voted out of The Florida Bar Juvenile Court Rules Committee. It is acknowledged that implementation of this recommendation could have a fiscal impact.

appointment of the Public Defender by a judge, or at any time thereafter where waiver is sought;

- Regarding informed consent, if the juvenile, parent or guardian requests to speak to an attorney, prior to the appointment of the Public Defender by a judge.
- Explore the Public Defender's goals to obtain any necessary legal authority and/or resources to adequately provide the consultation services outlined above.
- Reduce the percentage of time that delinquent juveniles proceed without legal representation in detention, arraignment and disposition hearings.<sup>3</sup>
- Request Florida law schools, as well as The Florida Bar, to review their curricula to ensure there are training opportunities for law students and practicing attorneys regarding the complex and unique issues/opportunities raised in the representation of juveniles in delinquency proceedings. This training should include, but not be limited to:
  - effectively communicating with children;
  - child and adolescent development;
  - adolescent psychology;
  - substance abuse and mental health;
  - balanced and restorative justice principles; and
  - balancing cooperation among the attorneys with the adversarial model of legal representation, within the confines of the constitution.

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<sup>3</sup> The Florida Bar Commission on the Legal Needs of Children, Final Report (June 2002), also expressed grave concerns regarding the ultimate effects that waiver of counsel may have on the juvenile in question.

**DIVERSION**

Diversion programs are designed to provide early intervention solutions for juveniles with less serious offense allegations. According to some arguments, traditional juvenile justice processing may be more harmful than beneficial to certain offenders, and therefore diversion is often a preferred method of handling these cases (Lundman 1993). Diversion also improves issues of heavy caseloads and overburdened detention and commitment facilities.

Diversion programs are primarily applied to first time offenders with misdemeanor offenses. Department of Juvenile Justice (2001) data indicate that 78.6 percent of youths diverted from court from 1999 to 2000 had misdemeanor offenses. White offenders comprised 63.3 percent of the diverted youths,

and 33.0 percent of the youths were black. The majority (66.8 percent) were males. State attorneys, law enforcement, and the court typically recommend diversion, but the decision to participate in the diversion program rests with the juvenile.

Most cases are diverted from prosecution before the filing of the petition. All of the cases reviewed in this study had a petition of delinquency filed, thus, the diversion information for pre-court filings was not part of the study. Data are available for those cases that were diverted subsequent to the filing of the petition. Those cases represent 10.5 percent of the sample. Of the juveniles in the sample diverted after the petition filing, 60.3 percent were white and 33.5 percent were black; the mean age was 15.4 years; and 64.4 percent of the juveniles were charged with misdemeanor offenses.

**QUESTION:** What were some of the most common diversion programs found in the statewide circuit profiles?

**ANSWER:** **Teen Court** is a diversion program in which volunteer teens act as attorneys, clerks, bailiffs, and jurors. They conduct a “teen trial” to handle the diverted juveniles. This program is used in 18 of the 20 judicial circuits.

**Arbitration** is a diversion program in which juveniles discuss their delinquency charges with victims. Juveniles and victims assist in crafting an individualized plan of consequences, education and treatment. This program is used in eight judicial circuits.

**Intensive Diversion (IDDS)** is available in seven judicial circuits. This program involves providing individualized treatment to the juvenile through counseling and various other services.

**Civil citation** is also used in seven judicial circuits. This program focuses on the juvenile providing service to the community in which the criminal act was committed.

## 36 DELINQUENCY COURT ASSESSMENT

The Office of the State Courts Administrator also compiled statewide circuit profiles with court processing, intake, and diversion information from all 67 counties in Florida. From these profiles, over 50 diversion programs throughout the state were examined. There were a few common programs, but the majority were unique to the individual circuits. The above figure on page 35 describes some of the common diversion programs in the state.

### COMPETENCY

Florida, as well as 48 other states and the District of Columbia, mandates that a juvenile must be competent to stand trial. Oklahoma is the only state which has held that the court

may proceed with a case regardless of the competency of the juvenile. Florida addresses this issue in section 985.223, Florida Statutes, which states “a child is competent to proceed if the child has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and the child has a rational and factual understanding of the present proceedings.” Florida’s standard of competency is similar to those of other jurisdictions and also to the adjudicative competency requirement used in criminal courts where a defendant must have “a rational and factual understanding of the proceedings against him”, and “the ability to consult with counsel and assist in preparing his defense” (Redding 2000:1).

#### **QUESTION: What are the characteristics of the sampled competency cases?**

- ANSWER:**
- The mean age of the incompetent juveniles was 13.5 years old.
  - 66 percent of the juveniles whose competency was evaluated were found competent to proceed.
  - 48 percent were charged with assault / battery offenses.
  - 29 percent were charged with burglaries or thefts.
  - 76 percent of the incompetent juveniles were males.
  - 62 percent were black.

A companion issue to the competency standard is the proper detection of incompetent juveniles and whether or not juveniles of certain ages should be automatically evaluated for competency. The 1967 landmark Supreme Court decision, *In re Gault*, 387 U.S. 1 (1967), gave juveniles the same rights of counsel and avoidance of self-incrimination as adults. Those rights are compromised if juveniles do not fully comprehend the meaning of the rights themselves. Dr. Thomas Grisso, an

internationally recognized forensic researcher and teacher, has conducted studies on the adjudicative competence of juveniles for the last few decades. In a *Miranda* study performed in the 1970s, he found that the majority of juveniles 14 and under were not capable of understanding their self-incrimination rights and “manifested significantly poorer comprehension than adults of comparable intelligence” (1980:1136). A 1995 study by Cowden and McKee sampled 136 juveniles (ages 9 to 16)

referred for competency evaluations. The study found:

- 72 percent of the 16 year-olds to be competent;
- 84 percent of the 15 year-olds to be competent;
- 63 percent of the 13 - 14 year-olds to be competent; and
- About a quarter of the 11 - 12 year-olds to be competent.

From the 2,368 case files reviewed in this assessment, a competency hearing was conducted in only 32 cases. The above figure on page 36 provides some descriptive information for these 32 cases.

**JUVENILES’ ABILITY TO UNDERSTAND COURT PROCEEDINGS**

*On average, most children don’t understand much. It’s a blur and only the ones who are most confrontational get questions answered. Plus, most clients have psychological/developmental disabilities that affect their comprehension.*

PUBLIC DEFENDER

Data on juveniles’ ability to comprehend proceedings were captured utilizing interviews and surveys with judges, state attorneys, public defenders, and probation officers. Respondents were asked to quantify the level of the juvenile’s understanding on a scale from one to ten, one being the least understanding and ten being the most. The answers varied with each group. For instance, 55 percent of the public defenders rated juveniles’ understanding between one and five, and 72 percent of the juvenile probation officers ranked juveniles’ understanding between one and five. In contrast, 56 percent of the state attorneys’ and judges’ answers

were seven or higher. The most frequently used answer from each group of professions was not a number from one to ten, but a written answer stating that the juvenile’s understanding depends on age, history, and prior contact with the system.

During data collection visits to the selected judicial circuits, a small sample of juveniles involved in delinquency court proceedings were interviewed. Juveniles were approached either prior to or after their court hearings, and verbal informed consent was obtained from each juvenile. At those hearings where a parent or guardian was present, informed consent was obtained from each juvenile’s parent. The goal in interviewing those juveniles was to learn about the court process from their perspective, and to understand their beliefs, their frustrations, and their wishes regarding the delinquency court system. Their responses are also instructive when considering competency issues.

The convenience sample yielded interviews with 27 juveniles; approximately half were female. Of the 14 females interviewed, 13 were interviewed in a focus group setting as part of the Girls Advocacy Project (GAP) in Miami. A majority of the juveniles were ages 14 to 17 (81.5 percent). Overall, the ages ranged from 11 to 18. Interviews were conducted in the Eleventh, Nineteenth, and Twentieth judicial circuits. The following sections summarize the responses of these juveniles and provide some quotations that yield insight into the juvenile justice process from the eyes and ears of these juveniles.

*These kids tend to say yes they understand, but later admit that they do not understand and said that just to get it over with.*

DJJ PROFESSIONAL

## 38 DELINQUENCY COURT ASSESSMENT

*Are delinquency court hearings difficult to understand?* The data from this small sample do not allow one to generalize to a larger juvenile population, but they do suggest what other studies have empirically measured: in general, juveniles show a lack of understanding.

When asked, What is the most difficult thing to understand about delinquency court hearings?, several juveniles answered “Nothing.” This response could mean one of several things. First, their responses may in fact reflect a more thorough understanding of delinquency court hearings, produced by repeated interactions with judges and other court personnel. Second, a nothing response could indicate a lack of interest in the interview process, as collectors received “Nothing” responses to several of the questions they asked. Third, a “Nothing” answer may suggest such a complete lack of understanding of the entire process that no one aspect stands out as being most difficult to understand.

Fourteen of the interviews began by asking each juvenile, “The first question is a simple yes or no: do you understand why you are here today?” (We did not ask this specific question to the girls in the GAP program.) This question speaks directly to the issue of

comprehension, is a self-report measure, and is easily quantified. In 13 of the 14 interviews the juveniles answered yes to the question. The sole respondent who answered no was a very quiet 11-year-old who was unable to describe the roles of the judge, public defender, state attorney, and Department of Juvenile Justice representative. According to his responses, he was completely uncertain about what to expect from the professionals in the courtroom.

The 13 respondents who said they did understand why they were in court exhibited limited knowledge of the courtroom participants. When asked what they expected the state attorney to do in court, 8 of the 13 respondents (61.5 percent) said nothing or that they did not know. Almost all the juveniles expected the judge to do something, such as release them, sentence them, or listen to their stories. None of the juveniles, however, expected the judge to discuss their various rights to counsel and a trial. While their responses were brief and limited, they were also personal. If juveniles were not aware of the formal roles of the various courtroom participants, they were perhaps somewhat cognizant of what to expect in their particular cases.

### **QUESTION:**

**What is the most difficult thing to understand about delinquency court hearings?**

### **ANSWERS:**

**“The words; too complicated.”**

**“Talk too fast, not enough is explained.”**

**“Standing and facing judge; being shackled.”**

**“When I can’t plea the way I want to plea.”**

**“They don’t understand they are talking to a child.”**

**RECOMMENDATIONS FOR COURT ACTION**

- Publish easy-to-understand/easy-to-read literature, which could be handed out to both the parents and juvenile before or during the juvenile’s first contact with the court. The literature could introduce the key players/stakeholders, their role, the different stages of the case proceeding, what one might expect at each stage, brief listing of their rights, etc.
- Provide training to judges on the accurate detection of incompetent juveniles and more consistent use of a competency hearing.
- Provide more training to delinquency/family judges on:
  - mental health;
  - substance abuse;
  - learning disabilities;
  - child and adolescent development;
  - adolescent psychology and communicating more effectively with juveniles; and
  - making the court experience more understandable to the juvenile and his/her family.

**RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION**

- Examine whether to submit, for legislative consideration, proposed statutory changes addressing competency evaluations in the following specific circumstances:
  - juveniles under a specified age (e.g., 14 years old);<sup>4</sup>

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<sup>4</sup> It should be noted that the Representation Subcommittee of the The Florida Bar Commission on the Legal Needs of Children recommended a statutory amendment to include a definition of what constitutes a “capacitated child,” which would provide a

- juveniles who will be transferred to adult criminal court;
- juveniles charged with misdemeanor offense(s).
- Consider methods of addressing additional factors (e.g., substance abuse, mental health, medications, language, etc.) that might impair a juvenile’s understanding of the court process and/or its significance.
- Examine ways to make the courtroom and case process more understandable to juveniles and families involved with the delinquency system. One example might be to produce a video, which could be shown to both the juvenile and the parents before the juvenile’s first contact with the court.
- Encourage the State Attorney and Public Defender to incorporate training on competency issues in their pre-service and in-service training opportunities, if not already doing so.

**TRANSFERS TO ADULT COURT**

*It should be done more often and earlier.*

STATE ATTORNEY

*It is throwing them away. It is the state, through the court, disavowing any intent, or desire, to rehabilitate a child, or young person.*

PUBLIC DEFENDER

Every state reserves some method of prosecuting juveniles as adults. In recent years, more and more states have created and

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rebuttable presumption that “a child who is at least 14 years of age is . . . capable of communicating his/her expressed wishes or considered judgment.” Final Report, The Florida Bar Commission on the Legal Needs of Children, June 2002, p. A.15-16.

## 40 DELINQUENCY COURT ASSESSMENT

modified statutes in order to expand the options available to try juveniles as adults. These expanded powers have resulted in a nationwide increase in the number of juveniles transferred to adult court. Between July 1994 and June 1995, close to 5,000 juveniles were transferred to criminal court in Florida (Lanza-Kaduce, Frazier, and Bishop 1999). Florida accomplishes these transfers through four mechanisms: (1) voluntary waiver; (2) involuntary waiver; (3) grand jury indictment; and (4) direct file. (See Chapter 2 for more specifics on each of these methods. In addition, White, Frazier, and Lanza-Kaduce (1999) provide an important historical analysis of Florida's juvenile transfer provisions, including the sociological and legal forces that guided the formation of these transfer mechanisms.)

In Florida, regardless of the type of transfer mechanism used, once a juvenile has been transferred and sentenced in adult criminal court, he or she will be prosecuted in adult court for all subsequent offenses. This is known as the "Once an Adult/Always an Adult" provision, and thirty other states exercise this rule. If the juvenile is found guilty in adult court, depending on the offense(s) and the particular method of transfer, the court may either sentence the juvenile as an adult or may impose juvenile sanctions. However, the court cannot do both. § 985.233, Fla. Stat. This type of sentencing scheme is known as criminal-exclusive blended sentencing. A handful of states authorize this particular type of blended sentencing.

### *TRANSFER TRENDS*

*TRANSFER BY DIRECT FILE.* Of the four transfer provisions, the most widely used in Florida is that involving direct filing of

juveniles. In fact, of those 5,000 juveniles transferred between 1994 and 1995, more than 90 percent were transferred by direct files (Lanza-Kaduce, Frazier, and Bishop 1999). Under the direct file provisions of section 985.227, Florida Statutes, the juvenile court does not see the case before it goes to the adult court.

*SERIOUSNESS OF TRANSFER CASES.* Nationally, transfers to adult courts are generally intended for the most serious offenders, but there is some research that suggests otherwise. A study in Florida indicated that 71 percent of juveniles transferred to adult court were charged with non-violent offenses (Bishop, Frazier, Lanza-Kaduce, and Winner 1996). In a study of transfer cases and juvenile justice system cases in Florida, Lanza-Kaduce, Frazier, and Bishop (1999) conclude that "Transfer is not reserved for the "worst" offenders in the four Florida circuits we studied" (p. 312). Their empirical analysis indicates that "many transfers do not involve particularly serious cases, and most of the cases that are transferred to adult court can be matched with comparable cases retained in the juvenile justice system" (p. 312).

Several studies have also found that adult court sanctions were not always more severe than those of the juvenile courts. Fagan (1996) found that of those transferred juveniles that were convicted, over half did not receive incarceration. More specifically, a study conducted in Florida in 1998 found that the majority of transferred juveniles received probation and only 15 percent were sentenced to prison (Mendel 2000).

*TRANSFER CASES AND RECIDIVISM.* In a comprehensive study of transfers to adult court in Florida, Lanza-Kaduce, Frazier, Lane, and Bishop (2002) compared the recidivism of juveniles transferred to adult court and

juveniles who remained in the juvenile justice system. Their results, based on a sample of transferred cases and a matched sample of juvenile court cases, consistently indicated that transfer cases were more likely to recidivate with a felony after the age of 18. The greater recidivism of transfer cases was evident regardless of whether the comparison was for all cases, the best matched cases, or when comparing the groups' recidivism across judicial circuits or type of sentence.

*DECLINE IN TRANSFER CASES.* Due to the expanded authority of prosecutors to transfer juveniles via direct file, beginning in 1978 and continuing through the 1990s (Lanza-Kaduce, Frazier, and Bishop 1999; White, Frazier, and Lanza-Kaduce 1999), Florida has “led the nation in transferring youth to the adult criminal court system mostly via direct file” (Florida Department of Juvenile Justice 2002a:4). As noted on page 40, this use of direct file resulted in approximately 5,000 juveniles transferred to criminal court in Florida between July 1994 and June 1995.

Since 1995, however, the number of juveniles transferred in Florida has steadily declined, and the Department of Juvenile Justice (2002a; 2002b) reports that 2,077 individual juveniles were transferred in 2000-2001, which was a 15-year low and a 41.4 percent decline from the previous year. What is a potential reason for this dramatic decline? The Department of Juvenile Justice (2002a:8) suggests that “enhancements in deep-end capacity and treatment effectiveness have not escaped the attention of prosecutors responsible for direct filings. High-risk and maximum-risk juvenile correctional facilities have become a viable alternative to adult criminal sanctions.”

*TRANSFER IN THE ASSESSMENT SAMPLE*

The data collected in this assessment yield little additional information on transfers to adult court. This is due to the fact that the majority of transfers occur via direct file, prior to the filing of a petition for delinquency. Such cases would not be in the sample. The assessment data were collected from cases where a petition had been filed already, thus excluding many transfer cases. The total sample of 2,368 cases included only 20 cases transferred to adult court. Of those 20 cases, the mean age was 16.7 years old. The majority of juveniles were charged with non-violent offenses. Characteristics of these cases include:

- Six of the twenty cases had burglary and theft charges.
- Four of the juveniles transferred to adult court had escape charges.
- The majority of the cases were felonies (63.2 percent).
- The percent of white and black juveniles were both at 45 percent.
- Regarding detention, 84.6 percent of the juveniles were initially securely detained.
- The transfers were fairly evenly distributed among the seven judicial circuits, with the exception of the Second Judicial Circuit, which had nine juveniles transferred to adult court.

*RECOMMENDATIONS FOR COURT ACTION*

- In order to make more effective sentencing decisions for transferred juveniles, provide training to judges in adult criminal court regarding:
  - the commitment process;
  - mental health;
  - substance abuse;

## 42 DELINQUENCY COURT ASSESSMENT

- learning disabilities;
  - child and adolescent development;
  - adolescent psychology and communicating more effectively with juveniles;
  - making the court experience more understandable to the juvenile and his/her family;
  - local programs and services available;
  - family dynamics or the best means to promote positive change in a juvenile in a dysfunctional family;
  - dealing with abused and neglected children; and
  - the principles of balanced and restorative justice.
- Examine the advantages and disadvantages of using either juvenile-inclusive or criminal-inclusive blended sentencing to determine whether to propose any statutory changes to the legislature.

### ***RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION***

- Obtain the literature review, conducted by The Florida Bar Commission on the Legal Needs of Children, and the Department of Juvenile Justice's most recent studies on juveniles who are direct-filed to adult court. Using those documents, and conducting further review where necessary, summarize the following factors on juveniles direct-filed to adult court in Florida:
  - juvenile's age;
  - severity of offense;
  - prior history;
  - sentence, including a special look at the sentence received by those juveniles who waived their right to

- trial, received probation, and then subsequently violated probation;
- rate of recidivism.

### **DISPROPORTIONATE MINORITY CONFINEMENT**

Statistics abound in the research literature indicating that minority juveniles in general, and black juveniles in particular, are disproportionately arrested, detained, and formally processed. The disproportionate confinement of minorities is an issue facing juvenile justice systems across the nation, and Florida is no exception to this pattern. In a profile of Florida's minority confinement statistics, Devine et al. (1998) argue that "African-American juveniles were over represented at every stage of the juvenile justice process" (p. 5).

Documenting disproportionate minority confinement, however, is a much easier task than describing its causes. The research for the present study indicates that black juveniles are indeed over-represented in detention and commitment populations in Florida's juvenile justice system. The research is less clear as to why black juveniles comprise such a large proportion of confined juveniles, relative to their representation in the population.

This chapter addresses these issues by first defining disproportionate minority confinement (DMC) and reviewing some of the recent empirical research relating to DMC. It then examines the composition of Florida's juvenile population and documents the extent to which minority juveniles are over-represented in the state's juvenile justice system. Finally, it provides several multivariate analyses in which the effects of race on judicial outcomes are tested.

**DMC DEFINED**

“Disproportionate minority confinement is defined in the JJDP Act [Juvenile Justice and Delinquency Prevention Act] as existing when ‘the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups...exceeds the proportion such groups represent in the general population’” (Devine et al. 1998:2). It is important to note that DMC does not mean that minority juveniles commit or are arrested for a majority of crimes; the statistics quoted in the figure below indicate that black

juveniles represented just more than one-fourth of all arrests in 1997. Disproportionate minority confinement does mean, however, that a racial disparity exists in which black juveniles are detained or confined far more than their representation in the population would suggest.

Why is this the case? What is causing or producing this disparity? As the remainder of this chapter indicates, there are no clear and consistent answers to these questions. The next section reviews various theoretical explanations for minority over-representation, and some of the current empirical research on how race affects judicial outcomes.

*Although black youth represented approximately 15 percent of the U.S. population ages 10-17 in 1997, they represented 26 percent of all juvenile arrests, 30 percent of delinquency referrals to juvenile court, 45 percent of preadjudication decisions, 33 percent of petitioned delinquency cases, 46 percent of cases judicially waived to adult criminal court, and 40 percent of juveniles in public long-term institutions. Thus, the proportion of blacks under the supervision of the juvenile or adult criminal justice systems is more than double their proportion in the general population.*

NATIONAL RESEARCH COUNCIL AND INSTITUTE OF MEDICINE  
*Juvenile Crime, Juvenile Justice (2001)*

**THEORETICAL AND EMPIRICAL PERSPECTIVES ON DMC**

Theories of racial disparity in the juvenile justice system generally focus either on racial differences in offending behaviors, biases in the juvenile justice system, or both. In each instance, explaining disproportionate minority confinement is an extremely complex process. For example, theories that propose different rates of offending behaviors often argue that minorities are exposed to risk factors that increase their likelihood of offending. Risk factors can include poverty, single-parent families, and living in an urban neighborhood

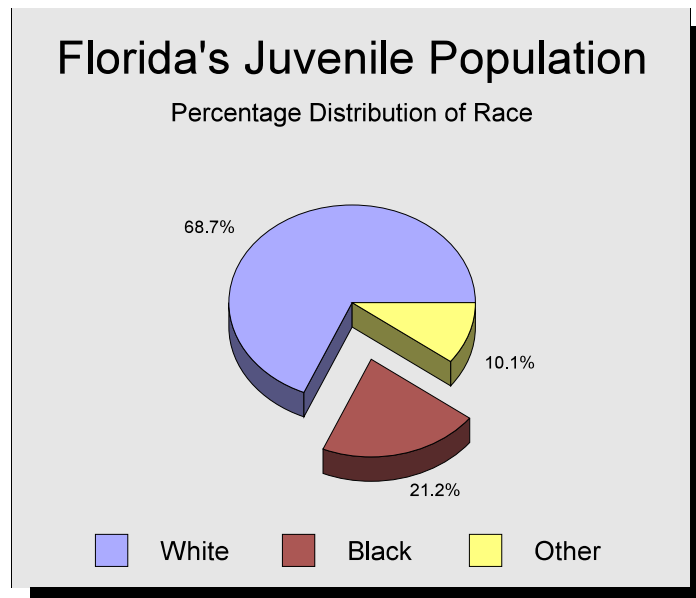
(National Research Council and Institute of Medicine 2001:242). Each of these factors may potentially mediate the relationship between race and delinquent behavior.

Those theories that focus on bias in the juvenile justice system have many decision points to address, from policing behaviors and intake to detention and commitment. Those empirical studies that examine disparate outcomes along these decision points do not provide uniform agreement as to the effect of race. Pope, Lovell, and Hsia (2002) review 34 published studies relating to disproportionate minority confinement, including three articles in which Florida was the study site. These

## 44 DELINQUENCY COURT ASSESSMENT

studies were published between 1989 and 2001, and “Taken together, the research findings support the existence of disparities and potential biases in juvenile justice processing. However, the causes and mechanisms of these disparities are complex” (Pope et al. 2002:11). This complexity is reflected in that direct or indirect effects of race on juvenile justice processing were found in only eight of the 34 studies. Seventeen studies reported mixed results, which meant that “race effects were present at some decision points yet not present at others, or race effects were apparent for certain types of offenders or certain offenses but not for others” (p. 10). One study found no race effects, and the remaining eight were classified as unknown. There is no clear consensus among these articles on what effects race has on juvenile justice processing. McGuire (2002) recently wrote that “the research record provides only inconsistent support for the notion that race significantly influences the treatment of children of color by the juvenile justice system” (p. 2).

One of the ways scholars have often explained disproportionate minority confinement is through cumulative disadvantage, a situation in which racial and ethnic inequality accumulates as juveniles progress through the juvenile justice process. Small racial disparities at various decision points accumulate to produce a wide gap between blacks, whites, and juveniles of other races in their likelihood of confinement. Again, the empirical research provides mixed support for this theory. While citing several studies that find evidence of cumulative disadvantage, McGuire’s (2002) own findings “do not show a clear pattern of accumulating disadvantage. To the contrary, this study suggests that rather than accumulating as a juvenile moves through the system, racial effects are localized at points in the process where decisions regarding the confinement of juveniles are being made” (p. 13). In addition, Pope et al. (2002) report they do not find evidence of cumulative disadvantage, in which the racial disparity increases from the petition to disposition stages.



Source: U.S. Census Bureau (2000)

**MINORITY REPRESENTATION IN THE JUVENILE POPULATION**

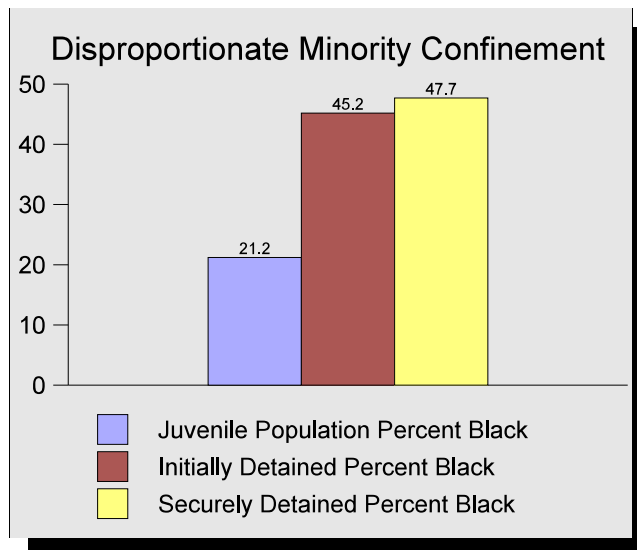
In order to establish disproportionate minority confinement in Florida’s juvenile justice system, it is necessary to first describe the racial distribution of the state’s juvenile population. Data from the U.S. Census Bureau (2002) indicate that in 2000, black juveniles comprised 21.2 percent of the state’s 3.6 million juveniles. In evaluating whether DMC exists, to the extent that black juveniles comprise more than 21 percent of cases in any stage of the juvenile justice process, there is evidence of minority over-representation. Whites accounted for 68.7 percent of Florida’s juvenile population in 2000. The remaining 10.1 percent are juveniles of other races. The figure on page 44 illustrates the percentage distribution of race in Florida’s juvenile population.

**DISPROPORTIONATE MINORITY CONFINEMENT AT DETENTION**

Data collected indicate that juveniles were initially detained in 33.6 percent of the cases in the sample. Judges ordered secure

detention for more than half of those initially detained (56.2 percent).

Of those juveniles initially detained, 45.2 percent were black, and almost half of those juveniles securely detained after the detention hearing were black (47.7 percent). In addition, of those juveniles in the sample who were committed at disposition, 46.8 percent were black. These statistics are consistent with the research on disproportionate minority confinement, and they clearly indicate that blacks are over-represented in the state’s detention and commitment caseloads. An analysis of the bivariate relationships between race and detention and commitment also provides evidence of minority over-representation. At the bivariate level, white juveniles were significantly less likely to be committed than blacks and juveniles of other races ( $r = -.088, p = .000$ ). In addition, while the correlation between race and detention does not reach the level of statistical significance, it does indicate that in the sample, whites were less likely to be securely detained than blacks and juveniles of other races ( $r = -.061, p = .089$ ).



## 46 DELINQUENCY COURT ASSESSMENT

### *WHERE DOES THE DISPARITY OCCUR?*

In analyzing Florida's detention hearings, a logistic regression model was used to explain why some cases are more likely than others to receive secure detention. This regression model is included in Table 2. The analysis examined those cases that had been initially taken into custody and detained, thereby requiring a detention hearing. In the analysis, black juveniles were compared to whites and juveniles of other races to determine their likelihood of receiving secure detention.

The data did not show a statistically significant difference between black and white juveniles, or between blacks and juveniles of other races, in their odds of being securely detained. In other words, black and white juveniles, at the detention hearing, had equal odds of being detained in a secure facility. Even though racial minorities continue to be over-represented in the detention caseloads, race itself does not appear to be an independent predictor of secure detention status.

**QUESTION: At the detention hearing, are black juveniles more likely than white juveniles to be securely detained?**

**ANSWER: No, black and white juveniles have equal odds of being securely detained, holding other variables constant.**

- Once they are at the detention hearing, **no difference exists between black and white juveniles** in their odds of secure detention.
- However, because black juveniles are disproportionately taken into custody, **blacks are still over represented in secure detention.**

### *DISPROPORTIONATE MINORITY CONFINEMENT AT DISPOSITION*

Multivariate analyses of disposition hearings in this assessment show a lack of racial disparity in the judicial decisions to adjudicate and commit juveniles. The regression models presented in Tables 3 and 4 indicate that black and white juveniles are equally likely to be adjudicated delinquent and to be committed, independent of other case characteristics, such as the offense and representation status. In

addition, black juveniles and those of other races are equally likely to be adjudicated and committed. As with the secure detention findings discussed earlier, these data suggest a lack of racial disparity in the courts' decisions to adjudicate and commit juveniles.

These findings do not indicate, and cannot be interpreted to mean, that disproportionate minority confinement does not exist in Florida's juvenile justice system. On the contrary, data suggest that 39.1 percent of juveniles adjudicated delinquent are black,

and 46.8 percent of committed juveniles are black. Because blacks comprised 21.2 percent of the juvenile population in 2000, these statistics provide strong evidence of minority over-representation. However, the data do suggest that in the disposition process, race does not appear to be an independent predictor, controlling for other variables in the analysis, of whether or not a juvenile is adjudicated delinquent or committed.

As described above, empirical studies on the extent and nature of disproportionate minority confinement present mixed findings. The National Research Council and Institute of Medicine (2001:257) report that, relative to whites, black juveniles “are not at greater risk, given formal handling, for being adjudicated delinquent or found guilty.” While the findings of this analysis are consistent with the National Research Council and Institute of Medicine’s empirically-based claim, this assessment’s findings are also contrary to other studies. This assessment adds to the body of knowledge of how race impacts outcomes in the juvenile justice system, and it should be a useful resource in further attempts to explain this complex process.

**SUMMARY**

The sources of disproportionate representation are systemic, meaning they lie within the entire structure of the juvenile justice process. The assessment found, for example, that black juveniles and white juveniles who were initially taken into custody had equal odds of being securely detained. Though the data provided no evidence that race was an independent predictor of secure detention, black juveniles were over-represented in the group initially detained, and therefore the disproportionate confinement of black juveniles was perpetuated in secure detention.

**RECOMMENDATIONS FOR COURT ACTION**

- Conduct further study on the effect of the court’s actions, if any, on the issue of disproportionate minority confinement.
- Analyze existing data and conduct a literature review to determine what role gender or ethnicity has, if any, in the judicial handling of delinquency cases.<sup>5</sup>
- Provide more training on disproportionate minority confinement to delinquency/family judges, including judges in adult criminal court presiding over transferred juveniles.

**RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION**

- Encourage all stakeholders to incorporate training on the issue of disproportionate minority confinement in their pre-service and/or in-service training opportunities, if not already doing so.

**COURT OBSERVATIONS**

Juvenile court proceedings were observed in each of the seven judicial circuits included in the assessment. Data were collected from a convenience sample of 702 delinquency court hearings. Table 7 presents the distribution of court observations, by circuit and county. Although inferences to the population cannot be made on the basis of this sample, the information gathered provides useful insights, particularly because the courtroom observations allowed for examination of certain variables that could not be obtained

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<sup>5</sup> The Department of Juvenile Justice presently categorizes juvenile intakes into the following ethnic groups: Hispanic, non-Hispanic, Haitian, and Jamaican.

## 48 DELINQUENCY COURT ASSESSMENT

from the case files. For example, data collectors measured the length of hearings and the parties present at each proceeding.

Of the 702 hearings observed, 87 percent were arraignments, 32 percent were status hearings, and dispositions comprised 28 percent. The remaining 13 percent consisted of detention hearings, violation hearings, and restitution hearings. Following are some basic descriptive statistics for the court observation sample:

- The median length of hearing was two minutes;
- The juvenile was present in 74.2 percent of the proceedings;
- A family member or guardian was present during 61.2 percent of the proceedings;
- In 83 percent of the hearings the Department of Juvenile Justice was

present;

- A continuance was requested by the court in 12 percent of the observed hearings;
- The defense requested a continuance in 11 percent of the hearings; and
- A pickup order was issued at 35.7 percent of the court hearings.

Notable variations existed when each type of hearing was examined individually. For example, the median length of the observed disposition hearings was four minutes, while both arraignments and status hearings lasted for a median length of two minutes. More private attorneys were present at dispositions than at other hearings, and continuances occurred more frequently in status hearings. The following diagram illustrates a few of the characteristics of the observed arraignments, status hearings, and dispositions.

	<b>Arraignment</b>	<b>Status</b>	<b>Disposition</b>
<b>Median length of hearing</b>	<b>2 minutes</b>	<b>2 minutes</b>	<b>4 minutes</b>
<b>Represented by Public Defender</b>	<b>83.5 percent</b>	<b>88.6 percent</b>	<b>81.4 percent</b>
<b>Represented by Private Counsel</b>	<b>5.7 percent</b>	<b>5.0 percent</b>	<b>10.0 percent</b>
<b>Juvenile Present</b>	<b>74.2 percent</b>	<b>61.2 percent</b>	<b>84.9 percent</b>
<b>Family / Guardian Present</b>	<b>61.2 percent</b>	<b>48.3 percent</b>	<b>75.6 percent</b>
<b>DJJ Present</b>	<b>83 percent</b>	<b>88.6 percent</b>	<b>87.2 percent</b>
<b>Continuances</b>	<b>26 percent</b>	<b>37.3 percent</b>	<b>15.7 percent</b>
<b>Continuances requested by court</b>	<b>12 percent</b>	<b>9.5 percent</b>	<b>11.6 percent</b>
<b>Continuances requested by defense</b>	<b>11.0 percent</b>	<b>24.9 percent</b>	<b>2.3 percent</b>
<b>Pickup Order issued</b>	<b>35.7 percent</b>	<b>22.2 percent</b>	<b>37.5 percent</b>

## CHAPTER 5

### SURVEY AND INTERVIEW RESULTS

*I enjoy working with youth; I enjoy the diversity of the job and the accompanying challenge. Mostly, I appreciate being given the chance to work with and hopefully help kids.*

PUBLIC DEFENDER

#### **SURVEYS OF JUVENILE JUSTICE PROFESSIONALS**

Delinquency court assessment surveys were conducted by the Office of the State Courts Administrator in twenty judicial circuits throughout the state of Florida. The survey consisted of fifteen questions and was distributed to various professionals (probation officers, administrators, state attorneys, public defenders, and judges) dealing with at-risk juveniles, both directly and indirectly (see Appendix D). Following are a series of survey questions and summaries of the responses by various professionals.

#### ***WHAT DO YOU LIKE MOST ABOUT YOUR JOB?***

- Working with the children, their families and the community at large.  
– DJJ
- The idea of being able to create and/or implement various programs and services for juvenile offenders is at most times, very rewarding for the Department.  
– DJJ
- Being able to help a troubled juvenile steer clear and remain clear of danger and/or trouble.  
– Public Defender

#### ***ARE THERE SPECIFIC STATUTORY/RULE PROVISIONS FOR DELINQUENCY PROCEEDINGS WHICH YOU BELIEVE ARE IN NEED OF CHANGE?***

- The use and/or misuse of a Detention Risk Assessment Instrument (DRAI).  
– DJJ
- Time frame to get ready for trial.  
– DJJ
- Recommendations to State Attorneys.  
– DJJ
- The ability to extend jurisdiction beyond age 19 to enable completion of commitment programs.  
– Judge
- Length and use of detention.  
– State Attorney
- Extend time for completion of discovery.  
– Judge
- More judicial discretion needed.  
– Public Defender

#### ***WHAT IS YOUR VIEW ON THE ADEQUACY AND/OR AVAILABILITY OF REPRESENTATION OF JUVENILES WHO ARE ALLEGED TO BE DELINQUENT?***

- Most professionals working within the system believe that the current system being used in individual circuits works fairly well.  
– DJJ

## 50 DELINQUENCY COURT ASSESSMENT

- Poor representation by the public defenders in various circuits. Better training for public defenders is needed.  
– DJJ
- Many public defenders are seen as showing a lack of interest and lacking the fight necessary to represent a juvenile offender.  
– State Attorney
- Public defenders are underpaid and have huge case loads. If the caseload could be reduced, more time could be spent per case and more positive outcomes achieved.  
– Public Defender
- More guardian ad litem volunteers are needed.  
– Public Defender
- More parent involvement and availability is needed.  
– Public Defender
- Many juvenile probation officers are alleged to show a lack of interest in the well-being of their clients and are seen as being anti-advocates.  
– DJJ

### *WHAT ARE YOUR THOUGHTS ABOUT TRANSFERRING JUVENILES TO ADULT COURT?*

- If a juvenile is transferred to adult court, the crime must be very severe and all juvenile services must have been exhausted.  
– DJJ
- The offense, prior charges, threat to community, school and family history should be taken into consideration.  
– State Attorney

- Should be limited and the age requirement should be raised for first time offenders.  
– Public Defender
- Some believe that this is harsh injustice.  
– DJJ
- Others believe that state attorneys transfer out of frustration with the Department's inept handling of cases.  
– Judge
- The juvenile justice system has in place many services for rehabilitation purposes and assistance to prepare the offender to return to the community acknowledging his/her faults, while moving forward in a positive and respectable manner.  
– DJJ

### *WHAT INFORMATION SHOULD A JUDGE RELY UPON IN MAKING THE DECISION TO DETAIN A JUVENILE?*

- It is helpful for judges to have any and all information pertaining to the juvenile offender's home and school life, any reports of abuse and/or neglect, and any psychological evaluations.  
– State Attorney
- Unfortunately, and in most circuits throughout the state, judges generally do not have all the information necessary to make important decisions.  
– Public Defender
- Many Pre-Dispositional Reports (PDR's) are incomplete and/or not accurate.  
– Judge
- The judge may request additional information before making his/her final decision such as, the juvenile's home and school status, various statutory criteria, prior offense history and victims information, if applicable.  
– Judge

***CAN YOU THINK OF SANCTIONS AND SERVICES FOR DELINQUENT JUVENILES THAT SHOULD BE USED?***

- Specialty courts (Drug & Truancy).  
– Public Defender
- Alternative schools (TMI, PACE, Second Chance).  
– Public Defender
- Counseling (family, individual & grief).  
– Public Defender
- Mentoring, mental health and drug treatment services and various residential and non-residential diversion programs (day treatment boot camps, sex offender programs, restorative justice).  
– DJJ
- Since the Department of Juvenile Justice’s budget cuts and reorganization, many of the services provided have been cut or down-sized within many circuits. This leads to a lack of resources for many in the form of manpower and money for various necessities.  
– DJJ
- More educational services for committed juvenile, substance abuse and mental health services, independent living programs and counseling services is desired for juvenile offenders.  
– DJJ

***DO YOU HAVE AN OPINION AS TO WHICH SERVICES CURRENTLY AVAILABLE IN YOUR AREA ARE MOST VALUABLE AND HAVE THE GREATEST IMPACT ON DELINQUENT JUVENILES?***

- Diversion programs (teen court, marine institutes, PACE, Multi-systemic therapy, etc.).  
– DJJ
- Mental health and substance abuse

counseling, as well as establishing social worker positions within the Office of the Public Defender. This establishment has proved to be very useful in several areas. Social workers help alleviate time spent inadequately by the public defender, because a social worker may interview the juvenile and the family in great detail and report all necessary information to the public defender for case management purposes. In addition to interviewing the family and juvenile offender, a social worker may transport the juvenile to various psychological evaluations, counseling appointments and any other pertinent pre-commitment appointments.  
– DJJ

***WHAT IS THE EASIEST WAY THAT YOUR JUVENILE COURT DIVISION COULD IMPROVE OPERATIONS?***

- Improvement must be based upon individual circuit needs, the community and the overall funding.  
– Public Defender
- Regardless of funding and manpower, improvement may come with better time efficiency in the courts (dockets, case loads), detention (limit days of stay), commitment and post commitment (aftercare) are adequately used, when sanctions are based solely on the offenders’ needs, when judges who truly understand the system and who are very knowledgeable of programs/services available are appointed to the juvenile system, when the Department is presented with more funding and manpower, and when individual agencies become responsible for rendering/not rendering their services to juvenile offenders.  
– Public Defender

## 52 DELINQUENCY COURT ASSESSMENT

### *CAN YOU RECOMMEND TRAINING NEEDS IN THE AREA OF JUVENILE DELINQUENCY?*

- Judges being surveyed expressed the desire to have training on detention criteria, the commitment process, programs and services available, mental health and substance abuse training, the psychology of dealing with juveniles, and how to break the juvenile of criminal behavior.
- Training is also desired on the organization of state agencies, therapeutic jurisprudence, how to utilize team approaches to problem solving, the availability of state funds, how to empower judges and prosecutors to make decisions outside of the Department's recommendations, training on all key players roles and/or involvement with the juvenile offenders, the Department's statutory requirements for detained juveniles, procedures and process for special needs kids and statewide diversion methods, including judiciary, prosecution and defense.
- The Department of Juvenile Justice's professionals desire training on understanding the law, including the juvenile rules of procedure and statutory changes, and the delinquency system as a whole.
- Various professionals also desire training on court decorum, court protocol and professional demeanor while in court, crossover training between dependency and delinquency, domestic violence, available resources and grant writing, contempt of court violations, including sentencing, violation ramifications, and the competency or incompetency to waive *Miranda*.
- Public defenders and state attorneys desire

training on the Florida Statutes, detention criteria, the Department of Juvenile Justice's limitations and how funding is set up.

- Other training needs include: the realm of court orders and clarification of roles and responsibilities; delinquency versus substance abuse; multi-disciplinary recommendations that utilize the defendant's history and victim input; how to determine help versus punishment; and how to deal with juveniles under age 10 and/or abused and neglected children.
- Police officers desire training on how to file charges, i.e., juvenile versus adult charges.
- Clerks desire training on the juvenile justice system to better help them perform their services for the juvenile and professionals participating in court procedures.
- Caseworkers need training on how to present matters to the court efficiently.
- Training is desired for school teachers and the school administration on how to deal with severely disturbed juveniles non-judicially.
- Juvenile Probation Officers desire training on people skills and how to provide adequate education for juvenile offenders while committed and during post-commitment.

### **INTERVIEWS WITH JUVENILES**

During data collection visits to the selected judicial circuits, a small sample of juveniles involved in delinquency court proceedings were interviewed. Juveniles were approached either prior to or after their court hearings, and verbal informed consent was obtained from each juvenile. At those hearings where a parent or guardian was present, informed

consent was obtained from each juvenile’s parent. The goal in interviewing these juveniles was to see the court process from their perspective, and to understand their beliefs, their frustrations, and their wishes regarding the delinquency court system. Their responses are also instructive when considering competency issues.

***WHAT SHOULD MY MOM AND DAD DO?***

In talking about their visits to court, each juvenile was asked, “When you go to court,

what do you expect your mom or dad to do?” A few juveniles said they expected their parents to do nothing, but a vast majority spoke of the support they hoped for from their parents. In criminological theory, Gottfredson and Hirschi (1990) and Hirschi ([1969] 2002) view the parent-juvenile attachment as a key source of both conformity and delinquency, depending on whether the attachment is a strong or a weak social bond. The responses of these juveniles indicate that they too see the bonds with their parents as meaningful.

**QUESTION:**

**When you go to court, what do you expect your mom or dad to do?**

**ANSWERS:**

**“Support me; be there with me.”**

**“To do whatever to help me out.”**

**“Stick by my side.”**

**“Support and help me the best way she can.”**

**“Be here.”**

Two other interesting responses were also given, both of which still speak to the importance of the parent-child relationship to the juvenile. One 14-year-old male suggested that his parents “go along with what the judge says.” One of the consequences of a strong attachment to parents is conformity to a society’s norms, laws, and mores; if this boy’s parents enforce “what the judge says,” and he shares a strong social bond with his parents, research suggests he will be less likely to be delinquent (Hirschi [1969] 2002).

The meaningfulness of the attachment juveniles share with parents was also evident in the comments of a 17-year-old male whose

parents did not show up for his court hearing. His anger, which he made known through profane language, was balanced by his hope that his parents would attend the next hearing in his case. For this particular hearing, he lacked the social support of which so many other juveniles spoke, and he was visibly and verbally upset.

***WHAT SHOULD THE JUDGE KNOW ABOUT ME?***

The final question asked of each juvenile was, “What kinds of things do you think that a judge should know about you?” While a few

## 54 DELINQUENCY COURT ASSESSMENT

of the juveniles reported nothing, most said they wished judges knew one of two things. First, if given the chance, several juveniles would tell the judge they were “good kids” and that the judge should know more about their life histories. In particular, the females

in the GAP program wished judges knew more about their past histories of abuse, neglect, and foster care. Second, many juveniles wished the judge knew about their extracurricular activities, such as drama and sports.

### **QUESTION:**

**What kinds of things do you think that a judge should know about you?**

### **ANSWERS:**

**“Act-drama. I’m not bad.”**

**“Background, history, talk to kid in private.”**

**“Football player, don’t have time for crime stuff.”**

**“Trying hard, it’s not easy, doing better on medicine.”**

**“I try and do my best.”**

## **INTERVIEWS WITH PARENTS**

In addition to the interviews conducted with juveniles during onsite visits to the selected circuits, researchers also interviewed a small number of parents/guardians with juveniles involved in delinquency court proceedings. Like the juveniles interviewed, parents were approached either prior to or after their court hearings. Interviews were conducted with nine parents/guardians. This small sample consisted of six mothers, two guardians, and one father. Five of the interviews were conducted in the Nineteenth Judicial Circuit and four in the Twentieth Judicial Circuit.

### ***WHAT IS THE MOST DIFFICULT THING TO UNDERSTAND?***

- Why it takes so long to do anything.
- Learning how the process works.
- Nothing for an adult...It’s the children that

can’t understand.

- Understanding the judge when there’s a language barrier.

### ***WHAT SHOULD THE JUDGE KNOW ABOUT YOUR CHILD?***

- Child has mental illness and is on medication.
- Very involved in school.
- Is a good kid and this is the first time he’s been in trouble.
- The past history and present circumstances of the child.

### ***IS THERE ANYTHING PEOPLE SHOULD BE DOING IN THE COURT THAT DOESN’T HAPPEN?***

- People should be more serious and stop talking during court.
- Explain things better to the children.

- More involvement from the public defender.
- Juvenile court is too tolerant and needs to be more strict on children.

**RECOMMENDATIONS FOR COURT ACTION**

- Provide more training to delinquency/family judges, including judges in adult criminal court presiding over transferred juveniles, on:
  - detention issues;
  - the commitment process;
  - mental health;
  - substance abuse;
  - learning disabilities;
  - child and adolescent development;
  - adolescent psychology and communicating more effectively with juveniles;
  - making the court experience more understandable to the juvenile and his/her family;
  - local programs and services available;
  - family dynamics or the best means to promote positive change in a juvenile in a dysfunctional family;
  - dealing with abused and neglected children; and
  - the principles of balanced and restorative justice.
- Survey Florida juvenile judges regarding their use of the pre-disposition report (i.e., its usefulness, accuracy, circumstances under which it is waived, suggestions on how it might be improved, etc.).
- Produce delinquency bench guides for different stages of the delinquency case. Such guides would contain checklists regarding statutory and rule requirements, “best practices” for each stage of the proceeding, and some things to consider

implementing to make the courtroom experience more meaningful and understandable to the juvenile and his/her family. These bench guides could be posted on the Intranet and updated as statutory changes occur.

- Work with the Steering Committee’s ad hoc workgroup on Treatment Based Drug Courts to explore how best to expand use of drug court principles in those cases where substance abuse is indicated in a juvenile’s assessment.
- Encourage delinquency/family judges to visit their local detention center and local residential commitment programs.

**RECOMMENDATIONS FOR STAKEHOLDER COLLABORATION**

- Encourage all stakeholders to incorporate training on the above topical areas in their pre-service and in-service training opportunities, if not already doing so.
- In that much of the information desired by the court regarding the juvenile’s home and school life can be obtained through a parent at the detention and/or disposition hearing, promote increased attendance and/or involvement by juvenile’s parent, guardian and/or family members in court proceedings (e.g., invite telephonic participation or written statements, if family members not able to appear in person; consider holding some evening court hours as part of a pilot; etc.).
- Request individual circuits to compile an inventory of all the local programs and services available for delinquent juveniles and/or their families, and to provide this inventory to the delinquency/family judges in their circuit. Individual circuits would be responsible for updating this inventory on an annual basis.

## 56 DELINQUENCY COURT ASSESSMENT

- Identify what barriers exist that might prevent the court from obtaining actual child abuse/neglect records, as well as school records, along with the pre-disposition report.

## CHAPTER 6

### RECOMMENDATIONS

*As a member of our justice system, I believe we should feel enormously privileged that society has placed its most troubled children on our doorstep for help. We cannot turn our backs.*

JUSTICE HARRY LEE ANSTEAD  
*Nova Law Review (2001)*

#### ISSUES FOR ADDITIONAL RESEARCH

The delinquency court assessment is a study of individual cases with a delinquency petition filed during a six-month period in 2000. Due to the availability of information and the scope of the assessment, data pertaining to certain issues were limited. Areas that may be of interest in future studies include:

- a review of all current open delinquency cases involving the same juvenile;
- adjudicatory trials;
- crossover cases;
- competency;
- attorney representation;
- the effect of gender on judicial outcomes;
- transfers to adult court prior to the filing of a delinquency petition; and
- diversion from the court system prior to the filing of a delinquency petition.

#### PROPOSED RECOMMENDATIONS

Of the twelve charges given to the Steering Committee on Families and Children in the Court (FCC) for 2002-2004, one specifically addressed delinquency. The committee's charge, for the delinquency area, was three-fold:

1. Review the findings of the delinquency assessment project;
2. Determine whether any additional studies are necessary; and
3. Considering the principles of balanced and restorative justice, develop recommendations for enhancing juvenile delinquency systems.

Having reviewed the findings in the assessment, the following areas of concern were identified:

- Juvenile's General Comprehension Regarding Proceedings
- Juvenile's Competency
- Legal Representation
- Disproportionate Minority Confinement
- Education
- Case Management
- Secure Detention
- Information Deficits
- Transfers to Adult Court

Preliminary recommendations targeting these areas were developed. While this assessment project answered many questions, it also raised as many. Not surprisingly, then, many of the proposed recommendations below call for additional study or analyses to be done. By providing the most accurate picture of Florida's delinquency system, these

## 58 DELINQUENCY COURT ASSESSMENT

continuing studies will enable the committee to achieve its paramount goal of enhancing that system.

The proposed recommendations below are loosely categorized into four categories: (1) Education/Training; (2) Statute/Rule; (3) Issues for Further Study; and (4) Implementation Strategies.<sup>6</sup> It is anticipated that, during the course of its work, the committee will likely refine these proposed recommendations, and prioritize and select which of them it will address during its tenure.

### EDUCATION/TRAINING

- Provide more training to delinquency/family judges, as well as judges in adult criminal court presiding over transferred juveniles, on:
  - detention issues;
  - the commitment process;
  - mental health;
  - substance abuse;
  - learning disabilities;
  - child and adolescent development;
  - adolescent psychology and communicating more effectively with juveniles;
  - making the court experience more understandable to the juvenile and his/her family;
  - local programs and services available;
  - family dynamics or the best means to promote positive change in a juvenile in a dysfunctional family;
  - dealing with abused and neglected children;
  - disproportionate minority confinement; and

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<sup>6</sup> It is acknowledged that some of the recommendations could easily be included under more than one category.

- the principles of balanced and restorative justice.
- Encourage other stakeholders to incorporate training on the above topical areas in their pre-service and in-service training opportunities, if not already doing so.
- Request Florida law schools, as well as The Florida Bar, to review their curricula to ensure there are training opportunities for law students and practicing attorneys regarding the complex and unique issues raised in representing juveniles in delinquency proceedings. This training should include, but not be limited to:
  - balanced and restorative justice principles;
  - effectively communicating with children;
  - child and adolescent development;
  - adolescent psychology; and
  - balancing cooperation among the attorneys with the adversarial model of legal representation, within the confines of the constitution.
- Provide training to judges on the accurate detection of incompetent juveniles or better and more consistent use of a competency hearing.
- Encourage the State Attorney and Public Defender to incorporate training on competency issues in their pre-service and in-service training opportunities, if not already doing so.

### STATUTE/RULE

- Propose possible statutory/rule amendment, either for legislative or supreme court consideration respectively, to specifically create a right for juveniles to consult counsel, short of an outright appointment for the duration of the case,

in the following instances:<sup>7</sup>

- Regarding waiver of right to counsel or other right or legal interest in a delinquency proceeding, prior to the appointment of the Public Defender by a judge, or at any time thereafter where waiver is sought;
- Regarding informed consent, if the juvenile, parent or guardian requests to speak to an attorney, prior to the appointment of the Public Defender by a judge.
- Explore the Public Defender's goals to obtain any necessary legal authority and/or resources to adequately provide the consultation services outlined above.
- Examine whether to submit, for legislative consideration, proposed statutory changes addressing competency evaluations in the following specific circumstances:
  - juveniles under a specified age (e.g., 14 years old);<sup>8</sup>

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<sup>7</sup> This recommendation was made by the Representation Subcommittee of The Florida Bar Commission on the Legal Needs of Children. Final Report, The Florida Bar's Commission on the Legal Needs of Children, June 2002, p. A.14. The Commission drafted a rule of juvenile procedure, which provided standards to be used before a juvenile in delinquency proceedings may waive the right to counsel. At the time of print, draft rule amendments on this subject were voted out of The Florida Bar Juvenile Court Rules Committee. It is acknowledged that implementation of this recommendation could have a fiscal impact.

<sup>8</sup> It should be noted that the Representation Subcommittee of the Florida Bar Commission on the Legal Needs of Children recommended a statutory amendment to include a definition of what constitutes a "capacitated child," which would provide a rebuttable presumption that "a juvenile who is at least 14 years of age is . . . capable of communicating his/her expressed wishes or considered judgment." Final Report, The Florida Bar Commission on the Legal Needs of Children, June 2002, p. A.15-16.

- juveniles who will be transferred to adult criminal court;
- juveniles charged with misdemeanor offense(s).
- Examine the advantages and disadvantages of using either juvenile-inclusive or criminal-inclusive blended sentencing to determine whether to propose any statutory changes to the legislature.
- Determine whether there are any statutory/rule issues raised by the assessment's survey results that the committee wishes to submit for legislative consideration.
- Reconsider the use of audio-visual appearances for juvenile detention hearings.

#### ISSUES FOR FURTHER STUDY

- Consider methods of addressing additional factors (e.g., substance abuse, mental health, medications, language, etc.) that might impair a juvenile's understanding of the court process and/or its significance.
- Compare legal representation statistics in Florida juvenile courts to Florida's adult criminal courts (i.e., Are delinquent juveniles getting less legal representation than adults? Are they waiving their rights more?)
- Using existing data, determine whether the presence and type of legal representation affects outcomes for juveniles in the level of commitment or type of probation imposed.
- Conduct a literature review of studies that look at factors that may inadvertently affect the juvenile's decision to waive counsel.
- Explore the extent to which the adversarial model of representation can

## 60 DELINQUENCY COURT ASSESSMENT

and should be modified to be more consistent with the Unified Family Court model.

- Conduct further study on the effect of the court's actions, if any, on the issue of disproportionate minority confinement.
- Analyze existing data and conduct a literature review to determine what role gender or ethnicity has, if any, in judicial handling of delinquency cases.<sup>9</sup>
- Conduct a literature review of studies that look at the impact of secure detention on juveniles, to include a focus on cross-over juveniles. If necessary, conduct a Florida study.
- From the sample of cases used in this assessment, determine how many of the juveniles had additional pending actions in the dependency court (cross-over cases).
- Consider how the court, within the current statutory framework, may better incorporate the principles of balanced and restorative justice throughout delinquency proceedings.
- Evaluate the effectiveness of any innovative case management systems or techniques presently in use in delinquency courts, in Florida or nationally, for possible expansion or replication to other jurisdictions.
- Analyze reasons juveniles give for failing to appear (i.e., issue of proper notice? lack of transportation? conflict with parents' work schedule? etc.).
- Work with stakeholders to determine how to reduce the incidence of "failing to appear" for juvenile offenders, including the possibility of holding evening court

hours as part of a pilot program.

- Explore ways to ensure that juveniles who are picked up for failing to appear are not unnecessarily detained in secure detention.
- Conduct a national comparison or survey of probation conditions and judicial practices in jurisdictions where judges embrace the principles of balanced and restorative justice.
- Survey Florida juvenile judges regarding their use of the pre-disposition report (i.e., its usefulness, accuracy, circumstances under which it is waived, suggestions on how it might be improved, etc.).
- Obtain the literature review, conducted by The Florida Bar Commission on the Legal Needs of Children, and the Department of Juvenile Justice's most recent studies on juveniles who are direct-filed to adult court. Using those documents, and conducting further review where necessary, summarize the following factors on juveniles direct-filed to adult court in Florida:
  - juvenile's age;
  - severity of offense;
  - prior history;
  - sentence, including a special look at the sentence received by those juveniles who waived their right to trial, received probation, and then subsequently violated probation;
  - rate of recidivism.
- Survey Florida juvenile judges to determine whether they would release juveniles or securely detain them, if they could not rely on the effectiveness of home detention/electronic monitoring.
- Analyze the assessment's finding that burglaries and thefts result in residential commitment more so than crimes against persons.
- Identify what legal barriers exist, if any,

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<sup>9</sup> The Department of Juvenile Justice presently categorizes juvenile intakes into the following ethnic groups: Hispanic, non-Hispanic, Haitian, and Jamaican.

that would prevent a Unified Family Court judge from having the necessary flexibility to design juvenile dispositions, in light of overlapping cases.

### IMPLEMENTATION STRATEGIES

- Examine ways to make the courtroom and case process more understandable to juveniles and families involved with the delinquency system. One example might be to produce a video, which could be shown to both the juvenile and the parents before the juvenile's first contact with the court.
- Publish easy-to-understand/easy-to-read literature, which could be handed out to both the parents and juvenile before or during the juvenile's first contact with the court. The literature could introduce the key players/stakeholders, their role, the different stages of the case proceeding, what one might expect at each stage, brief listing of their rights, etc.
- Work with the Steering Committee's ad hoc work group on Treatment Based Drug Courts to explore how best to expand use of drug court principles in those cases where substance abuse is indicated in a juvenile's assessment.
- Reduce the percentage of time that delinquent juveniles proceed without legal representation in detention, arraignment and disposition hearings.<sup>10</sup>
- Identify and build on the congruent points between the findings in this assessment and those contained in the final report

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<sup>10</sup> The Florida Bar Commission on the Legal Needs of Children, Final Report (June 2002), also expressed grave concerns regarding the ultimate effects that waiver of counsel may have on the youth in question.

issued by The Florida Bar Commission on the Legal Needs of Children, June 2002.

- Produce delinquency bench guides for different stages of the delinquency case. Such guides would contain checklists regarding statutory and rule requirements, "best practices" for each stage of the proceeding, and some things to consider implementing to make the courtroom experience more meaningful and understandable to the juvenile and his/her family. These bench guides could be posted on the Intranet and updated as statutory changes occur.
- Request individual circuits to compile an inventory of all the local programs and services available for delinquent juveniles and/or their families, and to provide this inventory to the delinquency/family judges in their circuit. Individual circuits would be responsible for updating this inventory on an annual basis.
- Conduct a new DELPHI study, to include more specific findings on the average length of time spent on each phase of the delinquency proceeding (i.e., detention hearing, arraignment, case management, waiver of counsel hearings, adjudicatory hearing, disposition hearing).
- Collaborate with key stakeholders on the scientific validation of the Detention Risk Assessment Instrument (DRAI) to determine:
  - whether it adequately assesses risk; and
  - whether it is race-neutral, gender-neutral, and ethnicity-neutral.
- Assist in the investigation of funding options for the scientific validation study of the Detention Risk Assessment Instrument.
- Obtain any available data on delinquency case flow from the Trial Court

## 62 DELINQUENCY COURT ASSESSMENT

### Performance and Accountability Study.

- Determine what case flow obstacles prevent cases that go to trial from being disposed of in 90 days.
- Identify what barriers exist that might prevent the court from obtaining actual child abuse/neglect records, as well as school records, along with the pre-disposition report.
- Simplify and tailor the probation form order, to make it more consistent with the balanced and restorative justice principles articulated in Chapter 985, Florida Statutes.
- Create a standardized custody form order, which allows the issuing court to clearly specify whether the juvenile may be released on home detention/electronic

monitoring or whether the juvenile must not be released until brought before the issuing court.

- Promote increased attendance and/or involvement by parent, guardian and/or family members in court proceedings (e.g., invite telephonic participation or written statements, if family members not able to attend in person; consider holding some evening court hours as part of a pilot, etc.).
- Encourage delinquency/family judges to visit their local detention center and local residential commitment programs.
- Establish regular meetings between all key players in the delinquency court process to discuss methods of enhancing case processing.

# CHAPTER 7

## RESEARCH METHODS AND STATISTICAL ANALYSIS

*“Data! data! data!” he cried impatiently. “I can’t make bricks without clay.”*

SIR ARTHUR CONAN DOYLE

*The Adventures of Sherlock Holmes (1892) ‘The Adventure of the Copper Beeches’*

### ASSESSMENT RESEARCH DESIGN

The methodology utilized in this research is a three-tiered assessment of juvenile delinquency court case processing. The goal was to incorporate triangulation into the research. According to Berg (1998:5), triangulation “represents varieties of data, investigators, theories, and methods.” The study maximizes this variety through the use of three sources of data.

- Case file reviews
- Structured court observations
- Interviews and surveys

### CASE FILE REVIEWS

The primary source of data is the case file sample. For each case sampled, the delinquency court case file was reviewed in its entirety. Data collection was consistent with content analysis or document study research (see Babbie 1992; Bailey 1994). This unobtrusive design produced a large set of quantitative data, using the data collection instrument contained in Appendix D. The data included information on detention hearings, arraignments, adjudicatory hearings, and dispositions; competency and transfer requests; and post-disposition proceedings.

### STRUCTURED COURT OBSERVATIONS

During data collection visits to the selected judicial circuits, collectors observed courtroom activity ranging from detention hearings and arraignments to dispositions and restitution hearings. The method of research was a semistructured study in which “a structured observational instrument is used but observation is conducted in a natural environment” (Bailey 1994:264). In this case, the courtroom was the natural environment, and the data collection form included in Appendix D served as the structured observational instrument. The court observation data allowed for the descriptive analysis of the conduct of various proceedings, including the parties in attendance and the issues addressed by the court.

### INTERVIEWS AND SURVEYS

Appendix D contains questionnaires that were administered and mailed to key participants in the juvenile justice process. Interviews were conducted with parents and juveniles during courtroom visits in the selected judicial circuits. In addition, semistandardized interviews with various professionals, including judges and public defenders, were conducted (Berg 1998).

The bulk of the qualitative data came from

## 64 DELINQUENCY COURT ASSESSMENT

questionnaires mailed to a comprehensive list of juvenile justice professionals. These include chief judges, delinquency judges, court administration support staff, state attorneys, public defenders, and Department of Juvenile Justice professionals. These data serve to highlight social interactions and structures important to the juvenile justice process that cannot be quantified. Together, these three methods of data collection provide a broad set of information with which to study Florida's juvenile delinquency court system.

### THE SAMPLES

The population from which the sample was drawn incorporated the group of cases with a petition of delinquency filed between January 1, 2000, and June 30, 2000. The goal in selecting the sample was two-fold: first, to ensure the creation of a probability sample that would allow for generalization to the statewide population of delinquency cases; second, the desire to obtain a probability sample that would allow for the description of circuit-specific practices and infer these findings to circuit populations. The sampling technique chosen for these objectives was multistage cluster sampling with probability proportionate to size (PPS).

#### *MULTISTAGE CLUSTER SAMPLING*

In a probability sample, every case in the population has an equal and known chance of selection for the sample. To accomplish this, cases are grouped into clusters. The 20 judicial circuits were chosen as clusters because they are both a convenient and meaningful choice for the cluster sample.

Next, seven judicial circuits were chosen as samples. Using petition filing data from the Summary Reporting System (SRS)

maintained by the Office of the State Courts Administrator (OSCA), a probability was created for each circuit's selection that was proportionate to the number of delinquency petitions filed within that circuit. Therefore, those circuits with larger numbers of filings had higher probabilities of selection. Following selection of the circuits, lists of all cases with a delinquency petition filed in the specified time frame were obtained, and a simple random sample of 350 cases per circuit was drawn, for a total sample size of 2,450 cases.

A primary benefit of multistage cluster sampling with probability proportionate to size is that it produces a final sample in which every element in the population has an equal and known chance of selection, just as if a simple random sample of cases was chosen statewide. This method is contrasted with a purposive or theoretical sampling design, in which circuits would have been selected for specified reasons, such as the use of drug courts or the existence of rural counties. Purposive sampling is a very useful design, but it is nonprobability sampling, which means "the investigator generally cannot claim that his or her sample is representative of the larger population" (Bailey 1994:94). With cluster sampling, the cases have a known probability of selection. Therefore there is greater confidence in generalizing findings to the larger population.

Cluster sampling's primary disadvantage, however, is that it introduces the possibility of sampling error not once, but at every level or stage of sampling. For this assessment, the procedure produces a certain level of sampling error at the circuit selection stage and at the case selection stage. Steps have been taken to minimize the level of sampling error in the data collection and to account for increased standard error terms in the regression

analyses. Readers interested in the specific calculations and probabilities used to select the sample should contact the authors of this report.

#### *CASE FILE SAMPLE*

The cluster sampling technique produced a final sample size of 2,450 cases, with 350 cases coming from each of the seven selected circuits. Cases were selected with a petition of delinquency filed from January 1, 2000, to June 30, 2000. A small proportion of the sample (.074) had a delinquency petition filed in the first six months of 2001 instead of 2000. However, since the assessment measured times between dates rather than reporting or using specific dates themselves, it was concluded that these cases did not compromise the quality of the data.

From December 2001 to April 2002 staff of the Office of the State Courts Administrator collected data from 22 counties. Table 6 presents the distribution of sampled cases, by circuit and by county. The final sample size used for analysis was 2,368, with the reduction in sample size due to inapplicable cases or missing data.

#### *COURT OBSERVATION SAMPLE*

During visits to the selected judicial circuits, data were collected from a convenience sample of 702 court proceedings. Collectors obtained verbal informed consent from judges or other court administrative personnel prior to making observations. Table 7 describes the distribution of sampled court proceedings, by circuit and by county.

A convenience sample is a nonprobability sample in which “the investigator merely chooses the closest live persons as respondents” (Bailey 1994:94). In this

assessment court proceedings took place at the time of the data collection. Therefore, the ability to measure sampling error and to generalize beyond the findings of the sample is quite limited. Where data are reported from court observations, the statistics are merely descriptions of the distributions of single variables in the sample. No attempt is made to draw inferences from our sample about the population of court proceedings.

#### *INTERVIEW AND SURVEY SAMPLE*

The Office of the State Courts Administrator selected an interview and survey sample with a purposive or theoretical sampling technique. This also is a nonprobability sample in which “the researcher uses his or her own judgment about which respondents to choose, and picks only those who best meet the purposes of the study” (Bailey 1994:96). Cumulatively, information was collected from 213 juvenile justice professionals, juveniles, and parents.

#### **A PRIMER ON STATISTICAL ANALYSIS AND INTERPRETATION**

Throughout the report, descriptions are provided of the distributions of individual variables in the sample, such as the average number of days from petition to disposition and the proportion of cases that go to trial. The assessment also describes relationships between two or more variables in the sample. An example is the relationship between the type of offense and the likelihood of commitment. Additionally, the report generalizes findings from the sample to the population of juvenile delinquency cases, stating whether or not a relationship in the sample actually exists in the population. Each of these activities makes use of particular statistics. For further information about the

statistics discussed, please consult DeMaris (1992), Loether and McTavish (1993), and Menard (1995).

#### *DESCRIPTIVE AND INFERENCE STATISTICS*

When examining the distribution of single variables in the sample, the assessment primarily reports two measures of central tendency, the mean and median, both of which give a sense of the average value cases take on a variable. The primary statistics on which this analysis is based are multivariate descriptive and inferential statistics. Multivariate statistics describe the characteristics of a relationship between three or more variables. When generalizing the findings from the sample to the population, inferential statistics are used.

#### *LINEAR REGRESSION ANALYSIS*

Table 5 regresses the variable Days Between Petition and Disposition on all the covariates or independent variables listed in the far left column. This ordinary least squares (OLS) regression model allows one to predict the average amount of change each variable causes or produces in the number of days from petition to disposition, independent of all the other variables in the table. In other words, it is accounting or controlling for the effects of multiple variables. The column labeled *b* presents the metric or unstandardized regression coefficients, which describe the amount of change each variable produces in the time from petition to disposition. For example, FTA NUMBER is an interval level variable measuring the number of failures to appear in each case. The variable's regression coefficient, 30.876, indicates that on average, each additional failure to appear increases the time from petition to disposition by 30.876

days. The negative coefficient for NOLO PLEA, -36.605, indicates an inverse relationship in which cases that plead no contest are on average disposed in 36.605 fewer days than cases pleading not guilty.

The column *SE* is the standard error of the estimate or coefficient; it is essentially a measure of the sampling error, being a function of the population parameter and the sample size. As mentioned earlier, cluster sampling introduces multiple points at which sampling error may occur. Relative to a simple random sample, one would then expect the amount of error from the cluster sample to be greater. The SAS System, a statistical analysis software program, contains a procedure called PROC SURVEYREG, which accounts for a cluster sampling design by adjusting its formulas for computing the standard error. This is important in that the size of the error term will in part determine the size of the inferential statistic, which is labeled as *t*. For the linear regression in Table 5, the SAS procedure was used to provide a more accurate estimation of the standard error.

The regression coefficient is a description of a relationship in the sample. However, the assessment should also show if a particular relationship exists in the population. Can findings be generalized from this sample to the larger population from which the sample was drawn? Inferential statistics answer this question. For linear regression, the assessment makes use of the *t* statistic and its distribution for inferences. In this analysis, *t* is the ratio of the regression coefficient to its standard error (for FTA NUMBER,  $t=30.876/6.562=4.71$ ).

In order to evaluate whether or not this is a statistically significant finding, the accompanying significance level (*p*) is used. For this statistic, *p* is .003. The primary question asked is: If no relationship exists in

the population between FTA NUMBER and time from petition to disposition, what is the probability of drawing a sample with a finding as big or bigger than the one currently drawn? If a high probability is obtained, one can conclude that a finding of this size is common in a population in which no relationship exists between the variables. Therefore, to establish that a relationship does exist in the population, low probabilities are necessary, such as .05 or less. The  $p$  value of .003 suggests the following: If no relationship existed in the population, one would obtain a finding as big or bigger than the assessment's in only 3 out of every 1000 samples drawn from the population. The fact that such a rare finding was obtained leads to the conclusion that this sample was drawn from a population in which there is a relationship between the number of failures to appear and the time from petition to disposition. A rule of thumb for these tables is that the smaller the value of  $p$ , the significance level, the more likely the relationship exists in the population. The standard  $p$  value of .05 is used for determining statistical significance.

The final column in Table 5 is the 95 percent confidence interval. The confidence interval for FTA NUMBER is 14.819 to 46.934. A typical interpretation of this statistic is that one can be 95 percent certain the regression coefficient for FTA NUMBER is within the range of the confidence interval. However, a more accurate interpretation is that 95 percent of all samples of this size ( $N=496$ ) with a regression coefficient ( $b$ ) of 30.876 come from populations that have a  $b$  somewhere between 14.819 and 46.934. With either interpretation, the confidence interval can be useful in evaluating the associations in the table.

### LOGISTIC REGRESSION ANALYSIS

In the previous discussion the dependent variable, time from petition to disposition, was measured at the interval level, with number of days as the unit of measurement. Many of the dependent variables were not interval level. Rather, they were dummy variables, which are dichotomous variables with codes of 1 and 0, indicating the presence and absence, respectively, of a particular characteristic. An example of one of the dummy variables is COMMITMENT AT DISPOSITION. For each case reviewed, this variable was coded as 1 if the case was committed at disposition and as 0 if not. Dichotomous variables pose a significant problem for traditional linear regression, which assumes the use of interval level dependent variables.

In order to analyze relationships with these dummy variables, the assessment used binary logistic regression models. One of these models is presented in Table 4, with COMMITMENT AT DISPOSITION as the dependent variable. Logistic regression transforms the dependent dummy variable into a statistic called a logit, which is the natural logarithm of the odds of a case being coded as 1. This transformation of the dependent variable changes the interpretation of the unstandardized regression coefficients, again labeled as  $b$ . In Table 4 the variable AGE has a  $b$  of .229. In other words, each additional year of age increases the log of the odds of being committed by .229. These coefficients have much less intuitive meaning than those from the linear regression analysis. However, they are equally useful in describing the characteristics of the relationships between the dependent and independent variables.

The column  $SE$  again presents the standard error of the estimate for each regression

coefficient. Unfortunately, for logistic regression neither SAS nor SPSS contains adjusted formulas for the standard error that account for complex sampling designs. As a result, the logistic regressions more than likely underestimate the size of the standard error. The consequence is a potentially inaccurate inferential statistic. Therefore, one must be very cautious in determining statistical significance.

The Wald statistic, listed in the third column of numbers, is the inferential statistic for this logistic regression. Wald is computed by squaring the ratio of  $b$  to  $SE$  (for MALE,  $Wald = (.152 / .315)^2 = .233$ ). Each Wald statistic has an associated significance level or  $p$  value, which is interpreted as described above. Low probabilities suggest that one may generalize the findings from the sample to the larger population from which the sample was drawn.

The final column is the odds ratio, which is the exponential form of the regression coefficient. Unlike the coefficient, the odds ratio has a very intuitive and useful interpretation. For the interval level variables, AGE and DRAI TOTAL, the odds ratio indicates the percentage change in the odds of being committed for each one unit increase in the independent variable. This percentage change is computed by subtracting 1 from the odds ratio and multiplying the difference by 100. Therefore, on average each additional year of age increases the odds of commitment by 25.8 percent. Each additional point on the detention risk assessment instrument (DRAI) increases the odds of commitment by an average of 10.5 percent. The odds ratio for the dichotomous covariates compares the odds of commitment for those coded 1 to the odds of commitment for those coded 0. As an example, the odds ratio for SECURE is 3.222;

this statistic indicates that the odds of being committed for a securely detained case are 3.222 times greater than the odds for a non-securely detained case. Likewise, the odds of a theft case being committed are more than twice the odds of a case charged with crimes against persons ( $Exp(b) = 2.506$ ). While the odds ratio does not describe anything more than the regression coefficient about an association, its interpretation is much more intuitive.

Finally, for both the linear and logistic regression analyses, summary statistics are presented that evaluate the models in their entirety. The R-square from the linear regression indicates the proportion of the variance in the dependent variable that is explained by the independent variables collectively. The assessment does not present a statistic analogous to R-square for the logistic regressions, but the  $-2$  log likelihood statistics ( $-2LL$ ) provide meaningful summary information about how poorly the models fit the data. A significant model chi-square value suggests that the inclusion of the independent variables improves the explanation of change in the dependent variable.

## TABLES AND VARIABLES USED IN THE ANALYSIS

Tables 1-5 present the specific bivariate and multivariate analyses that were conducted for this assessment. Information regarding the case file and court observation samples is contained in Tables 6-7. Table 8 presents a list of the variables used in the analysis, as well as the nominal definition of each variable, the numeric codes and value labels for each dummy variable, and each variable's mean score.

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## 70 DELINQUENCY COURT ASSESSMENT

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