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Strengthening Interagency Collaboration: The Case for Pre-Adjudication Diversion

By John S. Ryals, Jr., Ph.D., Jefferson Parish Department of Juvenile Services and
Blake Bascle, L.C.S.W., B.A.C.S., Jefferson Parish District Attorney's Juvenile Diversion Program

As increasing numbers of juvenile probation departments recognize the potential for their departments to improve outcomes for youth, families, and communities, probation system reform efforts have grown exponentially. Under the Robert F. Kennedy National Resource Center for Juvenile Justice, a proven methodology for a comprehensive probation system review has been successfully used in state and local jurisdictions across the United States over the past decade. Contained within this framework for analysis of policies and practices is a review of interagency processes that affect system performance and youth outcomes. Use of pre-adjudication diversion is one example of an interagency process that has resulted in dramatic improvements in youth outcomes, community safety, system performance, and interagency collaboration.

Benefits of using pre-adjudication diversion to achieve these goals are rooted in the history of the juvenile justice system, demonstrated through proven intervention approaches, and embedded in adolescent development research. This practice brief describes how the use of pre-adjudication diversion is supported by current knowledge about youth development and highlights benefits of diversion programming in Jefferson Parish, Louisiana.

Collaboration between the Jefferson Parish Department of Juvenile Services Probation Department and Jefferson Parish District Attorney's Juvenile Prosecution Division and Juvenile Diversion Program has shown noteworthy improvements to system and youth outcomes. More specifically, prosecutors developed an objective set of criteria for screening youth for

diversion from formal processing. Based on local priorities, these criteria have resulted in an increased number of referrals to diversion and, subsequently, fewer youth placed on probation.

IATROGENIC IMPACT & JUVENILE JUSTICE SYSTEMS

A quick glance at the history of the juvenile justice system will reveal often contradictory approaches taken to curb youth delinquency. Courts in the early 20th century made decisions to place youth in reform schools to "rehabilitate" them with no proof these schools made any difference in youth behaviors. Decades later, reform facilities became more secure and modeled after adult prisons, which were less focused on rehabilitation and more focused on community protection. Over the past two decades however, prolific research findings and wider use of meaningful data have consistently demonstrated these "rehabilitative" efforts have produced opposite effects. Highlighting this contradiction, Gatti, Tremblay, & Vitaro¹ asserted there is an iatrogenic effect in the juvenile justice system. That is, for many youth, involvement in the juvenile justice system can increase the likelihood of involvement in the adult correctional system. This conclusion compels system stakeholders to take an honest inventory of which outcomes they are attempting to achieve and are actually achieving by processing youth formally.

¹ Gatti, U., Tremblay, R. E., & Vitaro, F. (2009). Iatrogenic effect of juvenile justice. *Journal of Child Psychology and Psychiatry*, 50(8), 991-998.

Decisions to process youth formally should balance the likelihood of recidivism with the negative impact of formal processing. A recent study revealed that for first-time offenders, decisions to process cases in the formal system were made based on factors not related to youth's risk to recidivate.² Processing youth formally without consideration of their risk to recidivate also does not account for desistance – a term denoting that a vast majority of youth will stop offending by early adulthood.

Further, in formal processing there is often a lack of congruence between disposition decisions and youth's levels of risk. Research on judicial decision-making has found variability in dispositional decisions based on gender, previous court involvement, race, and a number of other factors not empirically associated with criminogenic risk. The concept of "justice by geography" has also illuminated the variability of judicial decisions across geographic locations and social contexts.³ As discussed later, this mismatch can result in more harm than good being done when youth are processed through the formal court system.

IMPORTANCE OF DECISION-MAKING BASED ON THE RISK-NEEDS-RESPONSIVITY PRINCIPLE

Taking into account the rehabilitative responsibility of the juvenile justice system, it would seem prudent to determine the level of rehabilitation and dosage of interventions youth need for the system to be effective at achieving its goal. As indicated previously, decisions to process youth in the formal system often do not account for one central characteristic – risk to re-offend. The Risk-Need-Responsivity (RNR) principle, initially introduced by Andrews, Bonta, and Hoge in 1990,⁴ has been the desired standard for juvenile justice programming for decades. The Risk Principle asserts that criminal behavior can be predicted with a degree of scientific certainty and that interventions should match the offender's level of risk. The Need Principle highlights the necessity of targeting criminogenic needs. Finally, the Responsivity Principle describes the need to match criminogenic needs with effective interventions that target those needs. The benefit of applying the RNR principle was demonstrated in a study by Vieira, Skilling, and Peterson-Badali, which highlighted that matching criminogenic need with effective services improves youth

outcomes.⁵ In order for the juvenile justice system to improve youth outcomes and community safety, criminogenic risk should be identified and targeted at the appropriate level of intensity.

OBJECTIVE DECISION-MAKING FOR PRE-ADJUDICATION DIVERSION

Taking into consideration the variability of formal processing decision-making, the potential negative effects formal involvement may have, and the need to match youth's services with their level of need, it is essential for juvenile justice systems to develop and utilize objective decision-making criteria to determine which youth require formal system intervention. Due consideration should be given when weighing the potential detrimental effects of formal processing against the benefit to the youth, family, and community. Objective decision-making requires use of valid and reliable recidivism risk tools combined with a set of written criteria that are applied to every case screened through the use of the applied risk screening instrument. Potential criteria typically include whether or not the charge is the youth's first offense, the nature/type of the offense, and the age of the youth at the time of the offense. Risk tools and written criteria work together to reduce the number of youth referred to formal processing who do not warrant that level of intervention. Further, this process reduces opportunities for disparate entry by youth of color into the formal system.

FORMAL PROCESSING FOR HIGHER RISK YOUTH

In 2009, Mark Lipsey conducted a meta-analysis of 548 delinquency intervention programs to determine, among other findings, which program characteristics were associated with the greatest effects on recidivism.⁶ One of the four program characteristics associated with the highest effects on delinquency reduction was a focus on higher risk juveniles. Lipsey stated, "In practical terms, juvenile justice systems will generally get more delinquency reduction benefits from their intervention dollars by focusing their most effective and costly interventions on higher risk juveniles and providing less intensive and costly interventions to the lower risk cases."⁷

2 Fine, A., Donley, S., Cavanagh, C., Miltimore, S., Steinberg, L., Frick, P. J., & Cauffman, E. (2017). And justice for all: Determinants and effects of probation officers' processing decisions regarding first-time juvenile offenders. *Psychology, Public Policy, and Law*, 12(1), 105-117.

3 Feld, B. C. (1991). Justice By Geography: Urban, Suburban, and Rural Variations in Juvenile Justice. *Journal of Criminal Law & Criminology*, 82(1), 156-210.

4 Andrews, D. A., Bonta, J., & Hoge, R.D. (1990). Classification for Effective Rehabilitation: Rediscovering Psychology. *Criminal Justice & Behavior*, 17, 19-52.

5 Vieira, T. A., Skilling, T. A., & Peterson-Badali, M. P. (2009). Matching Court-Ordered Services with Treatment Needs: Predicting Treatment Success with Young Offenders. *Criminal Justice & Behavior*, 36(4), 385-401.

6 Lipsey, M.W. (2009). The primary factors that characterize effective interventions with juvenile offenders: A review of systematic reviews. *Annual Review of Law and Social Science*, 3, 297-320.

7 Lipsey, M.W., Howell, J.C., Kelly, M.R., Chapman, G., & Carver, D. (2010). Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practices. Center for Juvenile Justice Reform, Georgetown

Inferred from this finding is that juvenile justice systems should determine risk levels to distinguish between youth that would benefit most from more intensive programming applied after formal processing, and youth that do not need intensive programming, but rather pre-adjudication diversion or other informal intervention approaches often permitted by existing statute or policy. Pre-adjudication diversion and informal adjustments that target youth accountability (often in tandem with victim restoration), prevention of re-offending, and positive behavior change are less intensive, and less costly than formal processing and, for many youth, more appropriate for their criminogenic risk levels.

BRIDGING ADOLESCENT BRAIN DEVELOPMENT AND JUVENILE JUSTICE

Despite an ever-growing body of knowledge surrounding adolescent brain development,⁸ connecting the research with sometimes intractable probation and court procedures can be challenging. Pre-adjudication diversion and alternative response programming and approaches take advantage of this knowledge to improve youth outcomes in several ways.

First, youth's behaviors are highly motivated by immediate rewards rather than long-term consequences. Reliance on formal, court-based sanctions to improve behaviors contradicts youth's tendency to respond better to immediate rewards. For example, in Jefferson Parish, the delay between arrest and disposition can be as long as four months, which does little to connect the consequence imposed by formal processing to the delinquent behavior that warranted arrest. Use of pre-adjudication diversion can reduce the time between the arrest and intervention. Diversion services typically begin within one month of the offense. Expedient case processing provides youth with immediate opportunities to achieve program goals rather than relying on significantly delayed court-based responses to change behaviors.

Second, youth are sensitive to peer influences in two ways – they are more likely to act impulsively when around peers and they are more likely to give in to the influence of peers. Formal processing provides youth with many opportunities to engage in peer-to-peer interactions with youth who have also committed delinquent acts. Sitting in court waiting rooms or being detained for technical violations of probation are examples of opportunities for forced interactions with negative peers. Pre-adjudication diversion provides more expedient

interventions that minimize opportunities for negative peer-to-peer contact.

Lastly, contact with youth who are also in the juvenile justice system has an impact on youth's social identity and, consequently, their behaviors. According to Dr. Laurence Steinberg, professor of psychology and adolescent development expert, youth tend to act according to the norms and standards of the crowd with whom they identify. Thus, if youth are channeled into a peer group that is largely delinquent, they will internalize and manifest the normative behaviors of that group. Formal processing tends to place youth together which impacts their reference group and unintentionally has a potential negative impact on their behaviors. For example, a youth that has a low delinquency risk processed in the formal system is likely to begin identifying with higher risk delinquent youth and, as a result, begins to “fit in” and exhibit similar attitudes and behaviors as higher risk delinquent youth.

FROM RESEARCH TO PRACTICE – EVOLUTION OF THE JEFFERSON PARISH JUVENILE JUSTICE SYSTEM

In 2008, Jefferson Parish began a Probation System Review (PSR) under the MacArthur Foundation's Models for Change initiative, which resulted in sustained system-wide impacts. The Probation System Review was conducted using a proven analytical framework as detailed in the *Probation System Review Guidebook 2nd Edition*.⁹ Notable primary impacts of the PSR include decreased costs of providing evidence-based practices and mental health evaluations, and reduced probation officer caseloads, to name two. Secondary impacts of the reforms and changes in practice have received less attention, but the alterations in process have also had tremendous impact on system performance. Lower treatment costs signaled increased availability of evidence-based treatment slots among service providers. Lower evaluation costs indicated fewer youth were undergoing unnecessary forensic evaluations and more were engaged in community-based mental health services. Lastly, lower caseloads gave probation officers more time to focus on high risk youth rather than spending time monitoring lower risk youth. Recognizing these added benefits brought awareness that other aspects of the juvenile justice system could improve their service interventions by reinvesting these secondary benefits back into the system. Based on knowledge garnered from juvenile justice research, it was evident that the reinvestment was to focus on pre-adjudication diversion in the following ways:

9 Tuell, J.A., and Harp, K.L. (2016) *Probation System Review Guidebook*, 2nd edition. Robert F. Kennedy Children's Action Corps.

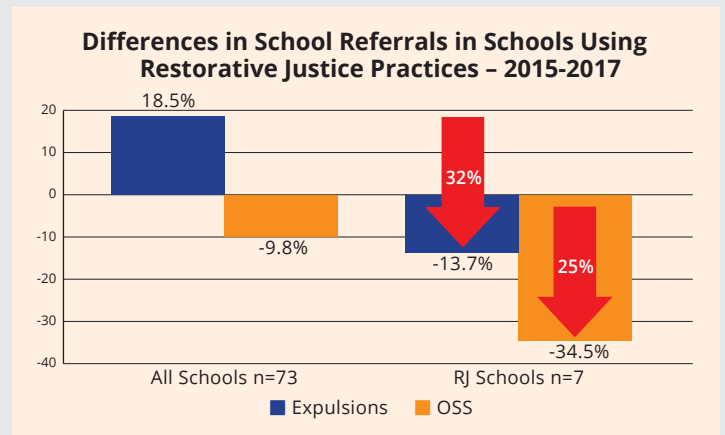
University, 23.

8 Tuell, J. A., Heldman, J., & Harp, K. (2017). Developmental Reform in Juvenile Justice: Translating the Science of Adolescent Development to Sustainable Best Practices. Robert F. Kennedy Children's Action Corps. https://rfknrcjj.org/wp-content/uploads/2017/09/Developmental_Reform_in_Juvenile_Justice_RFKNRCJJ.pdf

- **Expanded Use of Evidence-Based Programs** – Open treatment slots created by fewer youth referred from probation enabled services to be expanded to pre-adjudication programs. Since 2014, evidence-based treatment services have been made available to pre-adjudication diversion youth and families. Programs such as Functional Family Therapy, Trauma-Focused Cognitive Behavioral Therapy, Cognitive-Behavioral Therapy, and Moral Reconciliation Therapy, were previously inaccessible unless youth were on probation. However, reductions in referrals allowed these services to be utilized by pre-adjudication diversion participants. As of 2015, approximately 73% of youth in Juvenile Diversion referred to these evidence-based practices did not matriculate into the formal probation system. In addition, shifting eligibility for these programs decreased the number of youth placed on probation solely so they could receive these evidence-based interventions.

- **Strengthening Structured Decision-Making** – In addition to the use of objective criteria for deciding which youth are appropriate for pre-adjudication diversion programming, the diversion program is strengthening its structured decision-making process. In conjunction with the National Center on Mental Health and Juvenile Justice and the Department of Juvenile Services, the Jefferson Parish Juvenile Diversion Program is implementing valid and reliable screening and assessment tools to assess for recidivism risk, criminogenic needs, mental health, and traumatic response. Results from these tools have contributed to more comprehensive and targeted interventions and, thus, improved outcomes and more youth successfully completing the pre-adjudication program.

- **Expanded Use of Restorative Justice in Schools** – In order to address high numbers of relatively minor offenses, the diversion program and alternative responses to formal processing began to implement restorative justice techniques. Restorative practices and community conferencing have been used with great success within the program. As a result, restorative justice practices were expanded to several local schools to address high levels of suspensions and expulsions. Results comparing schools that use restorative practices to those that do not were dramatic. As shown in the graph below, referrals across the 2015-2016 and 2016-2017 school years decreased significantly in schools using restorative practices. Over these two school years, schools using restorative practices showed a 13.7% decrease in expulsions, while in all other schools expulsions increased 18.5%. Further, schools using restorative practices showed a 34.5% decline in out-of-school suspensions compared to only a 9.8% decrease in other schools. In the



2017-18 school year, even more schools are implementing restorative justice practices.

- **Interagency Collaboration and System Improvements** – Among the achievements recognized through the enhanced collaboration of the District Attorney’s office and the Jefferson Parish Department of Juvenile Services is an expanded use of pre-adjudication diversion consistent with the RNR principle. From 2011 to 2017, there was a steady increase in the number of arrested youth referred to pre-adjudication diversion leading to fewer youth in formal processing. In 2011, only 16% of arrests were referred to diversion; that percent rose to 33% in 2016. Consequently, fewer youth have matriculated into formal processing. Expanded use of this alternative to formal processing has reduced probation referrals to the lowest levels in the past 27 years.
- **Improving Public Safety** – Although critics of pre-adjudication diversion believe public safety is best achieved when youth are required to go to court, expanding the use of pre-adjudication diversion can be an effective tool to improve community safety and youth outcomes. For example, in Jefferson Parish, delinquency arrests have declined 22% from 2014 through 2016 since expanding the use of pre-adjudication diversion programming.

BUILDING A DEVELOPMENTALLY APPROPRIATE JUVENILE JUSTICE SYSTEM

Probation systems and pre-adjudication diversion are inseparable elements of a developmentally appropriate juvenile justice system. Results from Jefferson Parish have demonstrated the inter-connectedness between pre-adjudication diversion, alternative responses to formal processing, and probation. Fewer youth matriculating into formal processing translates to a greater focus on higher risk youth. In turn, with probation approaches that balance supervision/oversight with targeted, evidence-based

interventions for the higher risk youth, the primary goals of the juvenile justice system (e.g., protection of public safety, youth accountability, prevention of re-offending, and positive behavioral change) can be achieved. With appropriate deflection of youth from formal involvement in the juvenile justice system, reductions in the iatrogenic effect of the system through expanded use of diversion and alternative responses can and has contributed to reductions in recidivism and an improved array of youth, family, and system outcomes.

About the Authors

Dr. John Ryals, Jr. is the Evaluation/Treatment Supervisor for the Jefferson Parish Department of Juvenile Services in Jefferson Parish, Louisiana. He is a member of the RFK National Resource Center's Probation System Review Practice Network and Information Sharing Advisory Group. He can be contacted by e-mail at JRyals@jeffparish.net or by phone at 504-364-3750, extension 87438.

Blake Bascle is the Deputy Chief of Adult and Juvenile Diversion for the Jefferson Parish District Attorney's Office. He can be contacted by e-mail at BBascle@jpda.us or phone at 504-364-6139.