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The Role of Specialty Mental Health Courts in Meeting the Needs of Juvenile Offenders

Prior to the creation of juvenile courts, most juveniles who were accused of violating laws were tried as adults and sent to adult jails.[1] At the end of the 19th century, the juvenile justice system in the United States was developed by reformers who wished to provide rehabilitation, rather than punishment, to young offenders.[2] In recent years, however, juvenile courts have drifted from their origins to become more punitive. Today children and adolescents with serious emotional and behavioral disorders come in contact with the juvenile justice system far too often, and their experiences raise grave concerns.[3]

A number of communities around the country are now looking at the mental health court, a specialty-court model used increasingly in adult criminal justice systems, as a way to improve the experience of youth in the juvenile justice system and curtail their excessive incarceration. A report from the Urban Institute points out that, in many respects, the trend of establishing specialized youth courts, including mental health courts, results from the same motivations that led to the establishment of the first juvenile courts, including concerns about lengthy delays in processing cases, the lack of individualized and appropriate treatment and sanctioning, and the lack of sustained and consistent monitoring of the progress youth make while under court supervision.[4]

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[1] Kelly Keimig Elsea, The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention, 5 *Kan. J.L. & Pub. Pol'y* 135, 137 (1995).

[2] *See generally* Sarah M. Cotton, Comment, When the Punishment Cannot Fit the Crime: The Case for Reforming the Juvenile Justice System, 52 *Ark. L. Rev*. 563 (1999).

[3] Daniel P. Mears & Laudan Y. Aron, Urban Institute, *Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge* 27-28 (Nov. 2003) at 27-28. Research does consistently suggest that youth with disabilities are over-represented in correctional settings. Among delinquent youth, between 1% and 6% have psychotic disorders. Randy K. Otto, et al., Prevalence of Mental Health Needs of Youth in the Juvenile Justice System, in *Responding to the Mental Health Needs of Youth in the Juvenile Justice System* 7-48 (Joseph J. Cocozza ed., National Coalition for the Mentally Ill in the Criminal Justice System 1992). Research further suggests that at least 20% of delinquent youth are estimated to have serious mental disorders generally (including schizophrenia, major depression, and bipolar disorder). Joseph J. Cocozza & Kathleen R. Skowyra, Youth with Mental Health Disorders: Issues and Emerging Responses, 7 *Juv. Just*. 3, 6 (Apr. 2000). Note that most research focuses on the prevalence of youth with disabilities among incarcerated youth, rather than prevalence throughout various stages of the juvenile justice system, and that prevalence estimates can vary considerably because of differences in defining and measuring disability, poor screening and assessment in schools and juvenile justice systems, and inconsistent or poor information-sharing between schools and juvenile courts and correctional facilities.

[4] Mears & Aron, *supra* note 3, at 44.

This document, a follow-up to the Bazelon Center's review of adult mental health courts,[5] aims to help inform an ongoing debate about the wisdom of such specialty courts for youth. Juvenile mental health courts raise many of the same concerns posed by similar adult courts, such as collateral consequences of court involvement, lengthier and more intense court oversight than youth in traditional juvenile court, and the requirement that they be arrested in order to receive necessary mental health treatment. Such courts raise additional concerns, however, because of the nature of the juvenile justice system and the young people who are subject to its jurisdiction.

Advocates for juvenile mental health courts argue that the juvenile justice system offers a unique opportunity to intervene in the lives of children with mental disabilities before additional negative outcomes materialize. However, for reasons discussed below, specialty mental health courts may not be a necessary or wise way for the juvenile justice system to address this "opportunity," which comes far too late for most young people with disabilities. The juvenile justice system, as originally conceived, already has the necessary framework to provide appropriate interventions for court-involved youth. Juvenile mental health courts divert attention and resources from what should be our highest priority—i.e., prevention.

The Existing Models: California & Ohio

The two most established juvenile mental health courts are in California and a third has recently opened in Ohio.[6] In California, Santa Clara County's juvenile mental health court, known as the Court for the Individualized Treatment of Adolescents (CITA), opened in February 2001 in San Jose. CITA "operates on the principle that neither institution [mental health or juvenile justice] has the exclusive solution to the complex problems presented by mentally ill children who commit delinquent acts, a principle that is confirmed by the abysmal track record of both in dealing with the issue

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[5] *See* Robert Bernstein & Tammy Seltzer, Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform, 7 *U.D.C. L. Rev*. 143 (2003) (fully discussing the concerns raised by mental health courts).

[6] *See, e.g.*, Michelle Guido & Yomi S. Wronge, Juvenile Court Targets Mental Illness: Santa Clara County Program will be First of its Kind in Nation, *San Jose Mercury News*, Feb. 24, 2001, *available at* www.childrensprogram.org/articles2.html; Greg Krikorian, On the Law: Mental Health Court Offers New Options: The Innovative Los Angeles County Program Examines Issues Bigger than Guilt when Dealing with Troubled Juvenile Offenders, *Los Angeles Times*, January 4, 2002, at B2; California HealthCare Foundation, *Los Angeles County Offers Special Court for Juveniles with Mental Health Problems* (Jan. 2002) *at* www.californiahealthline.org; Sharon Coolidge, Mental Health Court Helping Kids, *Cincinnati Enquirer*, July 6, 2004, at 1A. Juvenile mental health courts are reportedly in formation in other jurisdictions, including another California city, San Diego, and New Jersey and New York.

independently."[7]-In its first year of operation, CITA screened over 120 cases, referring nearly one third of the youth involved for treatment.[8]

CITA's target population is "juveniles with a serious mental illness (SMI), [as a primary diagnosis or comorbid condition,] that has contributed to their criminal activity, and likely, to their involvement with the juvenile justice system."[9] For purposes of the project, "SMI" includes "[b]rain conditions with a genetic component, including major depression, bipolar disorder, schizophrenia, severe anxiety disorders, or severe ADHD[,] [d]evelopmental disabilities such as pervasive developmental disorders, mental retardation, ...autism and [b]rain syndromes, including severe head injury."[10]

To identify candidates for CITA, all minors undergo initial screening for these and other mental disabilities upon arrival at juvenile hall.[11] Eligible youth receive more comprehensive assessments, and may ultimately be offered participation in the program subject to the consensus of a multi-disciplinary team of district attorney, defense counsel, probation officer and mental health coordinator.[12] For those who accept CITA jurisdiction, the court's mental health coordinator then develops individualized treatment plans.[13]

Though more serious offenders may still be incarcerated, the great majority of participants are placed on an electronic monitoring system and released to receive individualized treatment and rehabilitation services "designed to keep youth in their homes, schools and communities while providing comprehensive mental health services."[14] While on probation, youth return to CITA for judicial review every 30 to 90 days. [15] To remain in the program, they must demonstrate at a minimum a willingness to participate in psychological counseling, compliance with any prescribed medication, and a "generally positive attitude."[16]

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[7] David E. Arredondo, et al., Juvenile Mental Health Court: Rationale and Protocols, *Juv. & Fam. Ct. J.* 1 (Fall 2001).

[8] KQED, Juvenile Justice, Voices from the Trenches: Raymond Davilla (2002), *at* www.kqed.org/w/juvenilejustice/kqedorg/davilla.html.

[9] Arredondo, et al., *supra* note 7, at 6.

[10] *Id.*

[11] *Id.* at 11.

[12] *Id.* at 11-13.

[13] *Id.* at 15.

[14] Guido & Wronge, *supra* note 6.

[15] Arredondo, et al., *supra* note 7, at 16.

[16] *Id.* at 17.

Eligibility for the Los Angeles Juvenile Mental Health Court is determined based on criteria that include a diagnosed mental disorder or developmental disability, the individual's ability to communicate with an attorney, the degree of violence in his or her overall delinquency record and consideration of the seriousness of the offense at issue.[17] Once an eligible individual has accepted the court's jurisdiction,[18] the court employs a team of mental health professionals, school administrators and probation officers to determine an appropriate individual service plan.[19] Following disposition, judges continue to monitor each youth's progress in the assigned treatment program with assistance from an interdisciplinary team of mental health professionals, education and service providers, and representatives from the public defender's and district attorney's offices.[20]

In Ohio, the Hamilton County [Cincinnati] Juvenile Mental Health Court opened in 2004. Children diagnosed with major depression, post traumatic stress or bipolar disorder are eligible to have their criminal cases transferred to it. As of early July 2004, 11 youth were in the court, but administrators expect that the caseload will grow, and that the court will eventually accept children with more severe disorders. Participants are typically provided intensive, in-home treatment.[21] Court administrators and the juvenile mental health court judge support the new court as a way to respond to what they describe as the lack of community mental health resources for children with disabilities, which has forced youth into the juvenile justice system over the last decade.[22]

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[17] Krikorian, *supra* note 6.

[18] Richard Kwon, New Court Program Helps Teen Offenders with Mental Health Problems, *LAYouth* (May-June 2002) *at* www.layouth.com/4_15_11.htm.

[19] Los Angeles County Programs, Juvenile Justice Crime Prevention Act (JJCPA), *Increasing Mental Health Services*, *at* www.cpoc.org/JJCPA/losangeles.htm.

[20] Cheryl Romo, Focus on Youth Demands Discipline—Training Session for Aiding Troubled Kids Falls on Tragic Day, *Los Angeles Daily Journal,* Oct. 1, 2001.

[21] Coolidge, *supra* note 6.

[22] *Id.* ("Children were ending up in the juvenile system because there was nowhere else for them to go," said Frank Yux, executive director of Court Services for Hamilton County Juvenile Court. "They would be out of control. And with few resources out there, police would encourage parents and schools to press charges." Hamilton County Juvenile Court Judge Sylvia Hendon said: "Over the years, I have witnessed the mental health needs of our most troubled youth go largely unmet by the state and local mental health providers, and the cost of private mental health treatment beds escalate.")

Do Specialty Mental Health Courts Make Sense for Juvenile Offenders?

Most advocates for juvenile mental health courts seek better mental health treatment within the juvenile justice system and reduced recidivism of youth with emotional and behavioral disorders. The most important goal, avoiding contact with the juvenile justice system, is rarely if ever addressed. While it is open to question whether the specialty mental health courts are the best way to achieve success regarding better treatment and recidivism, they are clearly not designed to prevent unnecessary involvement and may unintentionally encourage police to arrest more juveniles than they would have with a traditional juvenile court.

When considering the quality and quantity of treatment and recidivism, no longitudinal data yet exist on the effectiveness of juvenile mental health court interventions, as little outside analysis or research has been done on the Santa Clara and Los Angeles courts. The Supervising Judge of the Santa Clara Juvenile Court, Judge Raymond Davilla, has reported that internal assessments show a reduction in recidivism(from a 25-percent recidivism rate for the general juvenile population to 7-percent recidivism for those who participate in the specialized CITA program.)[23] To date, however, few rigorous, empirical evaluations have demonstrated consistent support for the premise that any of the specialized youth courts are implemented as designed or that they will have the desired impact of better or more frequent mental health treatment or reduced recidivism.[24]

Even if rigorous studies ultimately show that mental health courts improve mental health intervention and reduce recidivism for youth, they may not be the best vehicle for making such gains. If provided the appropriate services *prior to* their involvement with the court, these young people may demonstrate similar or better outcomes.[25]

Participating in a mental health court is stigmatizing for participants, and many youth are uncomfortable identifying with the specialized court. When it opened, the Santa Clara court found great resistance even to the name "mental health court" among young people who came through the juvenile court, leading the court to become the "Court for the Individualized Treatment of Adolescents" or CITA.

The creation of juvenile mental health courts may also lead to "netwidening" by well-meaning police, teachers and others who come into contact with young people who have emotional and behavioral disorders. Knowing that the mental health court exists may cause such professionals to involve the juvenile justice system in a matter that they

[23] KQED, *supra* note 8.

[24] Mears & Aron, *supra* note 3, at 44.

[25] *See* Policy Research Associates, *Final Report: Research Study of the New York City Involuntary Outpatient Commitment Pilot Program, (at Bellevue Hospital)* (Dec. 1998).

might have otherwise resolved without court involvement. Indeed, some agencies that are responsible for serving such youth may view mental health courts as an opportunity to shirk their duties and save their budgets. These specialty courts may also influence how criminal justice authorities view young people with emotional and behavioral disorders: "Many specialized courts may 'pull into the net' of the justice system youth who otherwise would have had their cases dismissed or who would have received nominal sanctions."[26]

When young people are not receiving necessary preventive and support services in the community, juvenile mental health courts will be viewed as the gateway to these important services. For example, schools do not adequately identify children with mental illnesses for special education and related services. While 5 percent of school-age children have mental disorders and extreme functional impairment,[27] fewer than 1 percent are identified under the Individuals with Disabilities Education Act (IDEA) as needing special education.[28] Even though the IDEA explicitly calls for functional assessments and behavioral supports and interventions, too few schools use these important approaches. Instead, they rely on zero-tolerance policies, suspension, expulsion and calls to the police—tactics that do nothing to improve student behavior, according to experts in the field. In fact, such strategies increase the likelihood that children will end up in the juvenile justice system.[29] The presence of juvenile mental health courts will only

[26] Mears & Aron, *supra* note 3, at 44. This criticism has been applied to other specialty courts, as well. For example, Denver ended its 10-year experiment with specialty drug courts in 2003. According to one of the court's judges, Morris B. Hoffman, the creation of the drug court prompted police to widen the net for ever-smaller drug busts, tripling the number of defendants sent to prison. Terry Carter, Specialty Courts: Red Hook Experiment, 90 *ABA J.* 36, 42 (June 2004).

[27] Office of the Surgeon General, U.S. Public Health Service, *Mental Health: A Report of the Surgeon General* 124 (1999).

[28] James M. Kauffman, *Characteristics of Emotional and Behavioral Disorders of Children and Youth* (7th ed.) (Prentice-Hall, 2001). Even when children are identified, choices for services and appropriate academic programs are limited because there are still high levels of IDEA noncompliance reported across the country. National Council on Disability, *National Disability Policy: A Progress Report* (May 2000) *available at* www.ncd.gov/newsroom/publications/2000/policy98-99.htm. Further, children with mental health or emotional disorders, in particular, have poor school outcomes. U.S. Department of Education, *To Assure the Free Appropriate Education of All Children with Disabilities: 20th Annual Report to Congress* (1998). Students labeled emotionally disturbed (ED) have the lowest grade-point average of any group of students with disabilities; fail more courses than any other group of students; are retained more than any other group of students; have the highest rate of absenteeism of any group of students; and are more likely to drop out of school than any other groups of students (over 55% of students labeled ED drop out). *Id.* at II-57.

[29] *See, e.g.*, CHADD, et al. *In the Best Interests of All, Position Paper of the Children's Behavioral Alliance* 11 (Jan. 2003) *available at* www.bazelon.org/issues/education/publications/IntheBestInterest2.pdf;

reinforce these inappropriate practices by giving schools an acceptable "safety net" for the children and youth they refuse to serve.

Although mental health courts may "soften" the idea of juvenile delinquency, the juvenile justice system is not a benign intervention. Youth with emotional and behavioral disorders suffer the collateral and direct consequences of court involvement in a variety of ways. Entrance to the court may entail police involvement, with the stigma and danger inherent in any encounter between law enforcement officers who are not properly trained to address people with mental health problems and youth who may not respond as the police expect. Other collateral consequences must be considered, including the following:

> the impact on future decisions on transfer to adult court, loss of the more benign juvenile status for future acts of misbehavior, prohibition against firearms possession, enhancement of future adult criminal sentences, exposure of the juvenile to mandatory HIV and DNA testing, loss of confidentiality for police fingerprint and photograph records, requirement of registration as a sex offender, and increased use of juvenile adjudications as an enhancer in federal and state sentencing guidelines.[30]

The list of collateral consequences is growing. For example, although juvenile court proceedings were traditionally closed to the public and records sealed, there is a rapidly growing trend to limit confidentiality; forty-two states allow the press some level of access to juvenile court proceedings.[31] A juvenile record is increasingly becoming an impediment to employment. The U.S. military considers juvenile records when recruiting, and more job applications explicitly ask about juvenile offenses or broadly ask about arrests, which may include juvenile acts.[32] People with mental disabilities already have great difficulty finding employment–the additional impediment of a juvenile record is something to be avoided.

Given the origins and purpose of the juvenile justice system, it is unclear that the establishment of a "specialty court" for such a large proportion of the juvenile offender population makes sense at all. Advocates who support specialized mental health courts have pushed for them as a way to ensure that the judicial processes effectively identify, triage and treat youth with mental disabilities with a comprehensive array of integrated and coordinated services.[33] As is often not true within the adult criminal justice system,

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Hill M. Walker & Jeffrey R. Sprague, The Path to School Failure, Delinquency, and Violence: Causal Factors and Potential Solutions, 35 *Intervention in School and Clinic* 67 (1999).

[30] Robert E. Shepherd, Jr., Collateral Consequences of Juvenile Proceedings: Part II, *15 Crim. Just.* 41 (Fall 2000) *available at* www.abanet.org/crimjust/juvjus/cjmcollconseq2.html.

[31] *Id.*

[32] *Id.* at 41-2.

[33] *See, e.g.,* Arredondo, et al., *supra* note 7, at 14.

however, it is well within the power and purview of the larger juvenile court to address the concerns of juvenile mental health court advocates without isolating mental health considerations in a specialty court.[34] In no instance, however, should young people be forced to enter the juvenile justice system solely because they need mental health services and supports.

Recommendations

Juvenile justice and mental health advocates may debate use of juvenile mental health courts. They will nevertheless likely agree that "it is crucial that we deal not only with the specific behavior or circumstances that bring [juveniles] to our attention, but also with their underlying, often long-term mental health and substance abuse problems."[35]

Most jurisdictions do not provide adequate non-institutional public mental health services for children and families. All communities should provide services designed to keep youth active in their home, school and community environments "while providing a comprehensive set of services that respond to their mental health needs and related problems."[36] Appropriate services and supports maintain the integrity of the juvenile's family unit,[37] are less restrictive and invasive for youth who have emotional or behavioral disorders, and offer more effective treatment prospects than either institutional or residential placements.[38] All child-serving agencies, particularly schools and mental health systems, must work together to develop programs and implement services to meet

[34] *See* Bernstein & Seltzer, *supra* note 5, at 149 ("[A]ll courts, including mental health courts...can accommodate people with mental illnesses and achieve successful outcomes for them without compromising public safety *if* they function within a broader program of system reform." (Emphasis in original)).

[35] Shay Bilchik, Office of Juvenile Justice and Delinquency Protection, U.S. Department of Justice, *Mental Health Disorders and Substance Abuse Problems Among Juveniles* (July 1998) *available at* www.childrensprogram.org/media/pdf/mentalhealthdisorders.pdf.

[36] Cocozza & Skowyra, *supra* note 3, at 10.

[37] *See generally,* United States General Accounting Office (GAO,) *Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services* (April 2003).

[38] Mark Soler & Carole Shauffer, Fighting Fragmentation: Coordination of Services for Children and Families, 25 *Educ. & Urb. Soc'y* 129; National Council on Disability, *Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current Status of Evidence-Based Research* (May 2003) *available at* www.ncd.gov/newsroom/publications/2003/ juvenile.htm. Youth in community placements may "be linked to a variety of local services that together may result in a more comprehensive, individualized rehabilitation plan than could occur in most correctional settings." *Id.*

the mental health needs of youth—preferably in their home environments—before they come to the attention of the juvenile court. [39]

Models for comprehensive and coordinated community-based services are used in jurisdictions around the country, including wraparound services,[40] multisystemic therapy[41] and multidimensional therapeutic foster care.[42] They offer youth and their families comprehensive and coordinated services from a variety of service systems. While preventing court involvement for most youth, these same treatments can offer the juvenile justice system the promise of more successful therapeutic outcomes and reductions in recidivism rates for the few young people who would slip through the cracks in a well-functioning community system.

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[39] Beth A. Stroul & Robert M. Friedman, System of Care Concept and Philosophy, in *Children's Mental Health: Creating Systems of Care in a Changing Society* 11 (Beth A. Stroul., ed., Paul H. Brookes Publishing Co. 1996) (children with emotional disturbance should receive services that are integrated, with linkages between child-serving agencies and programs and mechanisms for planning, developing, and coordinating services.); Bilchik, *supra* note 36. Indeed, states are increasingly under mandates to provide such care because of entitlements such as IDEA and Medicaid, as well as civil rights laws like the ADA. *See, e.g., Olmstead v. L.C.*, 527 U.S. 581 (1999), and *J.K. v. Eden* , No. CIV 91-261 TUC JMR at para. 18, 22 (D.Ariz. June 26, 2001) (approving settlement agreement requiring that "In collaboration with the child and family and others, Arizona will provide accessible behavioral health services designed to aid children to achieve success in school, live with their families, avoid delinquency, and become stable and productive adults. ... When children have multi-agency, multi-system involvement, a joint assessment is developed and a jointly established behavioral health services plan is collaboratively implemented.")

[40] *See* Daniel P. Mears, Critical Challenges in Addressing the Mental Health Needs of Juvenile Offenders, 1 *Just. Pol'y J.* 40 (2001) *at* www.cjcj.org/pdf/justice.doc/pdf ("Wraparound service programs focus on providing treatment that is tailored to the needs of each youth. . . . [T]he Wraparound philosophy is specifically oriented toward…individualized care, flexible programming, and a never give up philosophy.'" (citation omitted))

[41] *See* Cocozza & Skowyra, *supra* note 3, at 10 ("[Multisystemic Therapy] is a family- and community-based treatment model that provides services in the home and community settings and addresses a range of family, peer, school, and community factors.")

[42] P. Chamberlain, J. Ray, & K. J. Moore, Characteristics of Residential Care for Adolescent Offenders: A Comparison of Assumptions and Practices in Two Models, 5 *J. of Child & Fam. Studies* 259 (May 1996).