



The National Center on
Addiction and Substance Abuse
at Columbia University

COMPANION DOCUMENT TO CASA'S MODEL BILL OF RIGHTS FOR CHILDREN IN JUVENILE JUSTICE SYSTEMS

In October 2004, CASA released *Criminal Neglect: Substance Abuse, Juvenile Justice and the Children Left Behind*. Based on five years of research and analysis, this 177-page report remains the most comprehensive study ever undertaken of substance abuse and state juvenile justice systems, and the first thorough examination of the relationship between substance abuse and juvenile delinquency. This landmark report documents profound failure to meet the needs of 2.4 million children engaged in juvenile justice systems and the fact that up to 80 percent of arrested juveniles are involved with alcohol and/or drug abuse. Without intervention and treatment, these juveniles are at high risk for future crimes as juveniles and adults and of perpetuating a cycle of intergenerational substance abuse and crime.

Based on this research, CASA is now working to create, refine and disseminate a Model Bill of Rights for Children in Juvenile Justice Systems, to provide a model for a legislative mandate and conceptual framework for further improvements in the field of juvenile justice within states that would provide a minimum of conceptual uniformity across states, and offer a mechanism for enforcement.

In this effort, CASA has engaged experts nationwide, and through the strong support of the John D. and Catherine T. MacArthur Foundation, has shared the Model Bill of Rights for Children in Juvenile Justice Systems with policymakers and legislators in an increasing number of states.

The research findings are powerful:

- 80% of juvenile arrestees have a connection to substance abuse.
- Treatment is vastly more successful in avoiding recidivism than traditional incarceration.
- Nationwide, the costs of community-based treatment is about one tenth the cost of traditional, punitive sanctions.
- Education for incarcerated children is substandard and intermittent.
- Nearly 75% of incarcerated children have diagnosable mental health disorders, yet mental health treatment is scarce.
- The public strongly believes that children can be rehabilitated, and supports a policy of rehabilitation over punishment.



Background

America's 51 separate juvenile justice systems have no national standards of practice or accountability. Juvenile justice systems represent an ideal opportunity not only to hold juveniles accountable for their actions but also to help them become productive citizens. Although the 51 systems were created to focus on prevention and rehabilitation of juvenile offenders, the trend has been to mimic adult systems of retribution and punishment. By abandoning a commitment to rehabilitation, a more punitive approach renders these juvenile justice systems a dead end for substance-involved youth rather than an opportunity to reshape their lives.

By the time children reach a juvenile justice system, virtually every prevention and support system in America--family, neighborhoods, schools, health care--has failed them. Substance abuse is but one of a cluster of problems these children face that increase their risk of juvenile crime. Juvenile offenders are likely to have been neglected and abused by parents; many have grown up in impoverished and dangerous neighborhoods; schools, teachers and administrators have been unable to engage them; they have either slipped through the cracks in our nation's health system or providers have failed to diagnose or treat their problems; and they are likely to be hanging out with other troubled peers, engaging in risky sex and lacking spiritual grounding. A high percentage of juvenile offenders could become productive citizens, responsible parents and taxpaying, law-abiding members of society if they could only receive the help they so desperately need.

Unfortunately, when children and teens arrive at the courthouse doors, juvenile justice systems often deny them services that could make the difference and instead demand accountability without habilitation. Indeed, juvenile justice systems may make matters worse, pushing young offenders toward increased substance abuse and crime.

Problems in the Process

Substance abuse

Nationwide, according to data reported to the Substance Abuse and Mental Health Services Administration's (SAMHSA) Uniform Facility Data Set for the 1997 Survey of Correctional Facilities, only 36.7 percent of juvenile correctional facilities provide onsite substance abuse treatment. Only 20,000 (16 percent) of the estimated 122,696 substance-involved juvenile offenders in juvenile correctional facilities receive substance abuse treatment, such as detoxification, individual or group counseling, rehabilitation and methadone or other pharmaceutical treatment within these facilities. Another 4,500 juvenile offenders receive substance abuse treatment through drug courts.

Together, this adds up to only 24,500 juveniles of the 1.9 million substance-involved juvenile arrests for which CASA can document receipt of any form of substance abuse treatment – about 1.3 percent. Even if we assumed that a full 20 percent of juveniles receiving “other sanctions”



(community service, restitution, fines, social services and treatment) were placed in substance abuse treatment, the percentage of substance-involved arrested juveniles would still be only 3.6 percent.

Health and Education

Mental health services are similarly scarce, and most education programs fail to meet even minimum state educational criteria. Additionally, when juveniles are transferred between facilities, the educational credit they have achieved often does not transfer with them, eliminating the reward even where effort is made. Up to 75 percent of all incarcerated juveniles have a diagnosable mental health disorder compared with 20 percent of all 9- to 17-year olds. Serious disorders, such as schizophrenia, major depression and bipolar disorders, are also diagnosed in juvenile offenders at levels greater than in the general population. At least 80 percent of all young offenders are estimated to have conduct disorders. Female juvenile offenders have been found three times likelier to have clinical symptoms of depression or anxiety than female adolescents in the general population. Up to 80 percent of incarcerated juveniles suffer from learning disabilities and need special education classes--at least three to five times more than the public school population. Although teens in correctional settings have the greatest academic need due to learning disabilities, truancy and suspension, school programs in correctional settings fail to meet the minimum standards set for public schools.

Abusive Conditions

In addition to lacking education, health and social services, children caught up in juvenile justice systems too often face horrific conditions that push them further into a life of crime. In 1995, the latest available data, almost 60 percent of the children admitted to secure detention found themselves in overcrowded facilities. Children in crowded detention centers are more likely to be injured, spend less time in school, participate in fewer constructive programs, receive fewer family visits, have fewer opportunities to participate in religious activities and get sick more often. Instances of maltreatment and overcrowded and inhumane facilities have been documented in a number of states including California, Connecticut, Florida, Maryland, Mississippi, Nevada and New York.

- A State review prompted by a class action lawsuit brought by a group of incarcerated juveniles found that the California juvenile prison system--a dysfunctional jumble of antiquated facilities, under-trained employees and endemic violence--fails even in its most fundamental tasks of providing safety. Juvenile inmates with mental disorders are ignored or overmedicated, classes are canceled arbitrarily and learning disabilities go unattended.
- A videotape released in June 2004 by Connecticut's Attorney General Richard Blumenthal documented abuse of detained juveniles by staff members of the Connecticut Juvenile Training School.



- In Florida, a report of the Inspector General, issued in March 2004 faulted employees at the Miami-Dade Regional Juvenile Detention Center for failing to act as a 17-year old begged for help but slowly died of a ruptured appendix in June 2003.

Risky Sexual Behavior

Incarcerated juveniles are likelier to be sexually active, to have initiated sex at an earlier age, to have had more sexual partners and to have less consistent condom use than their non-incarcerated peers. Up to 94 percent of juveniles held in detention facilities are sexually active, compared to 46 percent of high school students.

Gender Difference

Between 1991 and 2000, the arrest rate for female juveniles *increased* almost 7.4 percent, while the arrest rate for male juveniles *decreased* almost 18.9 percent. Girls often come to juvenile justice systems through different paths than young males and the nature of their delinquency often is different from that of boys. Physical, emotional and/or sexual abuse frequently is the first step on a girl's path into a juvenile justice system. Girls are less likely than boys to be charged with violent offenses such as murder or assault and more likely to be charged with crimes such as prostitution, running away, truancy or curfew violations. In 2000, although girls represented 28 percent of arrested juveniles, they accounted for 59 percent of all arrests for running away and 55 percent of all arrests for prostitution.

Disproportionate Minority Contact

The arrest rate for black juveniles is more than 1.5 times the rate for white juveniles. Further, at every stage of proceedings, from initial contact through arrest, tribunal and adjudication and sentencing, African-Americans and other minorities are selected for harsher treatment. In New York, for example, African-American youth constitute 18 percent of the overall youth population, but form 60.3 percent of the population of youth in detention. This ratio is roughly consistent in other states: Illinois reports 18 percent and 52 percent; New Jersey reports 18 percent and 64 percent; Pennsylvania reports 20 percent and 62 percent; California reports 8.2 percent and 25 percent.

Cost

Using data for the year 2000, CASA estimates that the cost of substance abuse to juvenile justice programs is at least \$14.4 billion annually for law enforcement, courts, detention, residential placement, incarceration, federal formula and block grants to states and substance abuse treatment. Only one percent (\$139 million) of this cost is for treatment. CASA was unable to determine the costs of probation, physical and mental health services, child welfare and family services, school costs and the costs to victims that together could more than double this \$14.4 billion figure.

As compared with the costs of detention, the costs of treatment in the community are often minimal. For instance, in New York, recent data from Act 4 Juvenile Justice suggest that it costs between \$9,000.00 and \$12,000.00 per year to send a child to a community-based alternative



program, whereas the average annual cost of detention for a juvenile in New York City exceeds \$171,000.00. Given that incarceration is such a strong indicator of future recidivism, the profligacy of the “get tough” initiatives fund nothing but future crime and failure.

What is to be Done?

The CASA report, *Criminal Neglect: Substance Abuse, Juvenile Justice and the Children Left Behind*, recommends a top to bottom overhaul of the way the nation treats juvenile offenders. This overhaul should be designed to achieve two fundamental goals, while assuring that juveniles offenders are held accountable for their actions:

- (1) to assure that each child entering the systems receives a comprehensive assessment to determine their needs; and
- (2) to take advantage of opportunities within the juvenile justice systems to divert juveniles from further substance use and crime by providing appropriate treatment in the least restrictive setting possible and throughout the continuum of pre- and post-adjudication and during aftercare.

As the first step towards these goals, CASA proposes the states’ adoption of the Model Bill of Rights for Children in Juvenile Justice Systems, which would set minimum standards and offer a commitment to providing appropriate rehabilitation while ensuring that the juvenile’s due process rights are protected and that accountability is maintained.

Why Legislation?

Numerous efforts are underway that are making enormous contributions to improving the treatment of juveniles and facilitating their return to society. The MacArthur Foundation’s Models for Change has engaged on-the-ground efforts in 4 states. The MacArthur Research Network’s research into adolescent development has helped to establish that juveniles are not little adults and that treating them as though they are not only ignores real issues of culpability, but bypasses an opportunity for positive change. The Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative has taken up the charge against the widespread problem of unnecessary detention of juveniles during the juvenile justice process. The Reclaiming Futures program is encouraging comprehensive screening of juveniles in the systems and tailored treatment, and in many places is working with communities to partner troubled juveniles with mentors while promoting compassion among adults. The foregoing are but a few of the efforts that have engaged policy makers, service providers, communities and law enforcement to find and engage better practices.

Two-Tiered Approach

The Model Bill of Rights proposed by CASA brings a complementary component to the field of practices-based initiatives by seeking a general legislative mandate for a more effective and just



juvenile justice system. By engaging at both levels – on-the-ground execution as well as legislation – our efforts take both the long and the short plan to improving juveniles’ chances to reclaim their lives and preventing backslide with changes in administrations and agency officials.

Standard Standards

The Model Bill of Rights also offers a common document with common language to fit the common problem. There is no consistency, organization, collaboration or standardization within the 51 juvenile justice systems. The Model Bill of Rights would be an opening to change that and is a staging point for more substantive changes going forward, such as a standardization of the ages of juvenile jurisdiction nationwide.

Insufficiency of Federal Standards

Good practice and predictable results are strengthened and legitimized by legislative mandates. Currently, the Federal Juvenile Justice and Delinquency Prevention Act is up for congressional reauthorization. The Model Bill of Rights reflects many of the principles enshrined in the JJJPA, but unlike the JJJPA, passage by a state of the Model Bill of Rights would create requirements for state agencies to engage in better practice, rather than merely offering incentives to adopt good practices. Consequently, state prosecuting authorities could enforce those rules and ensure faithful application of the policy. Furthermore, by vesting the rights directly in the children, states accomplish two things: (1) they provide an additional enforcement mechanism; and (2) most importantly, they acknowledge the inherent human dignity of children in the system, and thereby begin to change the belief that these children are disposable that underlies the abuse and neglect they suffer.

Accountability

A legislative act, rather than an executive decision, offers a more permanent legal basis for prosecutors, public advocates and judges to compel state facilities to improve conditions and provide much-needed services to children in the systems.

Because there are no model juvenile justice codes or national standards of practice and accountability, states and counties currently respond to issues that arise in the various systems through federal, state and local investigations and lawsuits brought by the U.S. Department of Justice under the *Civil Rights of Institutionalized Persons Act* (CRIPA). Under CRIPA, the U.S. Department of Justice has the authority to investigate conditions in public residential facilities including juvenile correctional facilities and to take appropriate action if a pattern or practice of unlawful conditions deprives persons confined in the facilities of their constitutional or federal statutory rights. If unlawful conditions are uncovered during CRIPA investigations, negotiations and conciliation efforts can be initiated by the Attorney General’s Special Litigation Section of the Civil Rights Division or CRIPA lawsuits may be filed against the violating correctional facilities leading to judgment or more often voluntary settlement.

The Model Bill of Rights would give prosecutors and public advocates leverage to compel state facilities to improve conditions and provide much-needed services to children entering and



engaged in the systems. Likewise, vesting the rights directly in the children expands the field of those empowered to seek justice and redress. Under the Model Bill of Rights, children who are treated inappropriately will have a basis for redress, even when the prosecuting authority declines to act.

Popular Support

It is axiomatic that however good a policy may be, the popular will to support it must exist or be created if it is ultimately to succeed. The effect of years of harsh treatment of juveniles has not gone unnoticed by the public. A recent survey from Models for Change and The Center for Children's Law and Policy has shown that a majority of persons favor treatment over punishment for juveniles convicted of non-violent offenses. The survey showed that nearly 90 percent of those polled agreed that "almost all youth who commit crimes have the potential for change," and over 70 percent agreed that "incarcerating youth offenders without rehabilitation is the same as giving up on them." Polling in 2007 in Illinois, Louisiana, Pennsylvania and Washington showed that the public is actually willing to spend an average of 20% more in taxes on rehabilitation services than on extended incarceration for serious offenders, even when assuming a parity of effectiveness.

The Rights

The Right to Rehabilitation provides an affirmative commitment to rehabilitation of juveniles by requiring the state to use its best efforts to rehabilitate each juvenile, rather than adopting a more ephemeral commitment to rehabilitate, as in many state juvenile justice purpose clauses, often treated in practice as an incidental goal.

This right mandates comprehensive assessment to evaluate a child's substance involvement, family and home situation, social problems, educational, medical and mental health needs in addition to the typical criminal history screening that is always conducted. This assessment would take place at intake, and the results would inform formal and informal processing. In this way, decision-makers may accurately understand the difficulties confronting the individual child, and take corrective action.

The Right to Treatment represents an affirmative commitment to medical and mental health and substance abuse treatment. Juveniles' delinquent acts often are fueled or enhanced by substance abuse and mental illness. By treating these, society not only heals one of its most vulnerable members, but it is also acting to prevent future crime by addressing roots of potential future recidivism.

The Right to Education is necessary to enable juveniles to exit the juvenile system with the tools to remake their lives in society. The education provided in facilities often does not measure up to state educational standards, and when juveniles are transferred between facilities within the system, their credits often do not transfer with them. Without a



commitment to equip these children to function in the real world, they will have no chance to succeed.

The Right to Family and Social Services addresses the sad reality that many juvenile offenders come from abusive or neglectful homes. Often they have never been taught how to appropriately interact with others and society. Committing to teaching these skills equips children to function when they return from placement or are progressively released from scrutiny. Failure to do so often condemns these children to repeat the wrongs they have suffered.

The Right to Least Restrictive Alternatives addresses the perverse effect caused by disjointed services in states and localities where well-meaning officials push juveniles further into the juvenile justice system in an effort to secure treatment for them that is unavailable in less restrictive settings. Children should not be paying with their liberty to cure the state's failure to provide appropriate services in the schools and communities.

The Right to Reintegration calls for juveniles to be provided appropriate aftercare after exiting direct control of the system. It is necessary to have a commitment from the State to view aftercare as part of a continuing process. Too often by separating aftercare into a different agency or department, continuity is not maintained, and the chance of success is diminished.

The Right to Non-Discrimination addresses the overwhelmingly disproportionate contact minorities have with the juvenile justice systems nationwide. At every stage of the juvenile justice continuum, minorities, and blacks in particular, are selected for harsher treatment. In the aggregate, this means that blacks are ultimately incarcerated at much higher rates than whites and other minorities, out of proportion to their share of offenses.

The Right to Safety and Security requires the maintenance of safe and healthy facilities for juveniles placed in detention or corrective institutions. All too often, juveniles leave one abusive home only to find the facility to which they are committed is overcrowded, unhealthy, and where they are subjected to mental and physical abuse both by fellow detainees and by the very officers who are charged with their care. When juveniles are committed to adult institutions, these problems are only exacerbated, with juveniles five times more likely to be sexually-abused in adult facilities as in juvenile facilities. The state has an obligation in all cases to ensure all detained and placed juveniles' safety and good health. Viewing unhealthy conditions as part of the punishment is not acceptable.

The Right to Counsel is necessary to protect juveniles before the court, as well as in the pre- and post-tribunal process, and ensure that there is a competent voice for the child's interests. This threshold right shall not abridge any existing right to counsel already recognized.



The Right to Protection from Self-Incrimination addresses the concern that in the process of the comprehensive assessment and treatment, potentially incriminating statements may be elicited. By insulating a juvenile from criminal liability for acts described in statements elicited by state officials and their agents for providing treatment, we can remove the tension between the child's interests in obtaining appropriate treatment and his constitutional right to avoid self-incrimination. In practice the form of this insulation may vary, as with the provision of counsel during such sessions, or by the creation of a privilege or use immunity for all statements given in assessment screenings and treatment itself.

The Right to Evidence-Based Practice is required to ensure that the treatment and services provided are always current with what scientific inquiry shows to be the best practices. Failure to commit to an ongoing review of practices condemns these efforts to eventual obsolescence, and the children subject to them to an insidious neglect.

The Right to Speedy Review addresses the reality that oftentimes a juvenile comes into the system on a referral before a prior referral has been addressed. In such cases, the earlier referral represents a missed opportunity to rehabilitate the child appropriately and prevent a further harm to society.