

***The Role of the National Council of Juvenile and Family  
Court Judges (NCJFCJ) in the Current Reform Process***

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## **The Role of the National Council of Juvenile and Family Court Judges (NCJFCJ) in the Current Reform Process**

### **1. Introduction**

The juvenile justice system in the United States has a long history of struggling to balance its social welfare foundations with social control demands. In 2014, we now see our system edging away from the punitive orientation of the last several decades. One example of this important change can be seen in recent U.S. Supreme Court decisions – such as eliminating life without parole as a disposition for juveniles. This move back toward rehabilitation and restoration as guiding principles is likely a result of scientific advances in areas such as understanding brain development, healing after trauma, and improving substance abuse treatment. For many, continuing to craft a developmentally appropriate juvenile justice system that appreciates “adolescence as a mitigating factor” remains a priority goal for system reform.

### **2. Current Reform Efforts**

There are several components of current reform efforts that illustrate this move toward a developmentally appropriate juvenile justice system:

1. For example, research has established that mixing low-risk youth (e.g., runaways) with high-risk youth (e.g., armed robbers) results in worse outcomes for the low-risk youth compared to no intervention.
2. In the context of detention and similar institutions, this dynamic has been called “deviancy training” – and points to the need for robust diversion systems and strong structured decision-making protocols.

### **2.1 The Juvenile Justice and Delinquency Prevention Act (JJDP)**

#### **2.1.1 Alternatives to Detention**

Our understanding of this phenomenon is perhaps most strongly demonstrated through the Juvenile Justice and Delinquency Prevention Act (JJDP) that includes criteria about not using detention in cases of status offenses (e.g., truancy). Coupled with widespread support for elimination of the Valid Court Order exception in the pending re-authorization of the JJDP – which is fully supported by the NCJFCJ – we are now seeing jurisdictions working to develop alternatives to detention that keep lower risk kids engaged in their community versus locked up in unhealthy environments.

#### **2.1.2 Keep Kids in School and out of Court**

Diversion programs are only one part of efforts to *ensure the least restrictive options are used across the juvenile justice system*. There is a large push, in general, to “keep kids in school and out of court” by dismantling what some have termed the “school to

prison pipeline”. This approach seeks to return discretion and authority back to schools to deal with student behavior via “teachable moments” and other methods without the confines of zero tolerance policies. The flow of cases to court for low-level offenses occurring at school is cutoff – preventing children from becoming ensnared in the justice system and being put at risk for additional system penetration.

### **2.1.3 Decriminalization**

Another prong by which reform efforts are seeking to reduce the number of children that come before the court and placed at risk for unnecessary involvement in the juvenile justice system is re-defining what, exactly, constitutes an offense. For example, underage victims of commercial sexual exploitation are increasingly being dealt with as dependent versus delinquent youth. In treating these children as victims versus offender (i.e., prostitute), they can avoid harmful stigmatization and receive supportive services, treatment, etc. that often are not available through the juvenile justice system. Indeed, eliminating trafficking of children for sexual purposes is a priority issue in the USA. The NCJFCJ, along with partners such as Human Rights for Girls, are working to develop tools to support judges and courts to effectively identify and appropriately intervene with these victims.

### **2.1.4 Incarceration as Last Resort**

Another example of current reform efforts is how we treat those relatively few youth that must be incarcerated due to serious and violent offenses. Although some in the United States have called for the complete elimination of secure confinement with youthful offenders, this is not likely a realistic goal, or perhaps not even a wise goal. Rather, it is more realistic we work to ensure that:

- incarceration is only used with the most serious youth offenders (by some estimates, only about 20% of delinquent youth will continue on to a life of criminal activity – of which only a small percentage would be considered serious/violent offenders requiring incapacitation); and
- conditions of confinement are humane and rehabilitative.

## **3. Current Trends in Juvenile Justice**

### **3.1 Understanding of Trauma**

Perhaps one of the most promising current trends in juvenile justice is incorporating our understanding of the impact of trauma on human development into practice and policy. Courts are working to do this by first conceptualizing then operationalizing what it means to be trauma-informed. For many, being trauma-informed means acknowledging that, by definition, the majority of people that come before the court will be injured in some way. Embracing this assumption then means implementing universal precautions in practice to help promote perceptions of safety, agency, and connectedness – the three domains to promote healing of those injured. Efforts such as these to become increasin-

gly trauma-informed are not just centered within the court – but throughout the juvenile justice system and include treatment providers, probation, and detention.

Although this work is still in early stages, we are leveraging prior work by the *National Child Traumatic Stress Network* on trauma-informed systems, and are already seeing improvements in outcomes. For example, a juvenile detention center in the United States that mandated trauma training for all staff and changed how it approached children when they are “acting out” reduced restraints by over 90% in a one year period with an associated decrease in both child and staff injury. On the horizon for reform efforts in juvenile justice are a number of emerging trends; topics and issues that will likely be on the center stage of work over the next 3-10 years.

### **3.2 Sanctuaries**

One of these trends builds upon the trauma-informed work just mentioned and involves creating “sanctuaries” for youth involved in the juvenile justice system. Based on the sanctuary model developed by Dr. Sandy Bloom and colleagues, this approach seeks to develop environments and practices – across systems of care – to be havens that encourage a sense of safety, control, and connectedness. In turn, these are the conditions that promote healing in those injured (e.g., those experience traumatic stress reactions). Given individuals with traumatic histories are often in a state of hyperarousal that involves constantly scanning for threats – developing environments in detention, courts, etc. that limit unnecessary and counterproductive arousal is critical.

### **3.3 Changes in Treatment of Juvenile Sex Offenders**

In the next few years, we will see substantial changes in how juvenile sexual offenders are treated.

Juvenile sexual offenders are often considered the most difficult group of offenders with whom we work, and mandatory registration requirements highlight the degree to which society view them as a threat to community safety. Historically, treatment of these youth has focused on incapacitation to ensure community safety, then working with the offender to manage deviant arousal and put in place a safety and supervision plan.

Research over the last decade, however, suggests this approach to treatment of juvenile sexual offenders is misguided. Rather, current research suggests that the majority of juvenile sexual offenders will not recidivate – and in fact have some of the lowest recidivism rates for any offense type. Further, research suggests that atypical or deviant sexual interests is relatively rare in this group, and that many offenses are more likely related to poor boundary issues, age, education, etc.

To that end, current thinking about the treatment of juvenile sexual offenders is that the majority can be handled in the community and are best served through modalities such as Multi-Systemic Therapy (MST) and education regarding healthy sexuality.

### **3.4 Further Professionalization of the Juvenile Justice Field**

Further Professionalization of the juvenile justice field is another emerging trend. Much like similar efforts in the field of social work, it is likely we will see juvenile justice careers framed by standards of education and training. It is probable we will be seeing degree programs specializing in working with youth in the justice system. We will likely see increased numbers of certification and licensure opportunities. In working toward professionalizing this field, we are indeed honoring the value we place on our youth and those working with all youth to ensure safe and productive citizens.

### **3.5 Restorative Practices**

In the coming years, it is anticipated we will see a return to the use of restorative practices in the juvenile justice field. This will likely involve us turning to other systems and cultures – such as tribal courts – for practices like peacemaking and healing circles that can be used in juvenile courts and the juvenile justice system.

## **4. The Impact of Research in the Juvenile Justice Field**

### **4.1 Specific Studies and Research**

In the next decade, researchers will strive to identify evidence-based practice with groups not often studied (i.e., non-white / non-male). Research must be expanded to include specific studies on females, cultural differences, rural versus urban, LGBTQ, etc. as developmental and intervention needs are not always universal. That is to say that what works for a 16 year old white male very well might not work for anyone who is not a 16 year old white male.

### **4.2 Disproportionate Minority Contact/Implicit Bias**

In the thinking about the near future, one of the most vexing problems in the juvenile justice system will receive a substantial increase in attention: disproportionate minority contact (DMC). Despite decades of work to reduce DMC in the juvenile justice system, very little progress has been made and/or maintained. Recent conversations initiated by the Office of Juvenile Justice and Delinquency Prevention indicate reducing DMC will be a priority in the coming years, and an effort that will likely be led by public / private partnerships in working with states. As part of this work, researchers and practitioners alike will need to develop strategies to not just reduce institutional bias, but reduce bias in individual decision-making. The most difficult aspect of reducing individual bias is testing and implementing interventions to reduce implicit bias. Implicit bias operates outside of our awareness and has been linked to biased behavior in many different populations (e.g., police officers, physicians, etc.). Although implicit bias is linked to normative information processing in humans, its effects on decision-making cannot be underestimated, and successful attempts to reduce DMC will almost certainly need to include consideration of “being human” in working with others not like ourselves.

### **4.3 Establishing 18 Years as Age of Jurisdiction**

Lastly, we will likely see resurgence in establishing the age of jurisdiction as 18 years across all states. In some states, the age of jurisdiction can be quite low for some offenses (e.g., 14 years). This again is inconsistent with our founding principles of our Juvenile Justice System. Consistent with research findings regarding the adolescent brain as a “work in progress” and not fully formed until approximately 23 years of age, the NCJFCJ has taken the position that all states should recognize the age of jurisdiction as 18 years. Indeed, this shift alone might be the largest indicator of progress toward building a truly developmentally appropriate juvenile justice system.

### **4.4 Epigenetics**

In terms of the more distant future of juvenile justice, it is difficult to anticipate what major development will occur outside of those outlined here we hope will come to fruition. That said there is one area of science that holds much promise for working with children and families. This is the science of epigenetics. “Epi” means to act upon, and refers to the process by which chemical markers control gene expression without modifying the actual gene.

To illustrate this, I will use a library as an example. In thinking about epigenetics, it is helpful to think of your genes as a vast library of books—some of which are easily read and others that are not (e.g., they are stuck behind other books, are on a very high shelf, etc.). One factor that can facilitate access to all of the books in your library is a librarian (i.e., chemical markers). If the librarian is stressed, he or she might not be as adept in locating books. On the other hand, if everything is running smoothly, he or she can make accessing books much more efficient and productive.

Research suggests the same dynamic applies in terms of chemical markers responding to toxicity or stress in the environment. When there is stress on an organism, markers might suppress or express genes as a result. What is interesting with epigenetics is that the organism under stress may or may not show symptomology related to gene expression (e.g., anxiety).

However, the expression can be passed on to future generations, and under the right circumstances, that offspring would experience the symptomology of the trauma experienced by the parent or grandparent or great grandparent, etc. This, in part, could help explain historical trauma and why “just get over it just isn’t enough”.

Researchers today are working to understand how we might be able to manipulate various chemical markers to shut off or turn on genes that prior environmental stress impacted negatively in some way. Obviously much work remains to be done to achieve this goal – but the potential this science holds for improving well-being and interrupting intra and inter-generational suffering is impressive.

## **5. Conclusion**

As a Judge, I have a unique vantage point in the broader system. From my perspective as a decision maker, I have only one guiding principle:

***Is what I am doing making a positive difference for this child and this family standing in front of me?***

I have always found this approach to be helpful. Even as we look at the many issues discussed here on a Macro level, I encourage you to also look at the Micro level:

***Is what I am doing making a positive difference for this child and his family?***

This is an exciting time to be a professional in the Juvenile and Family Justice System in the United States. I am sure it is also true for all of my colleagues worldwide who are dedicated to make the Juvenile Court System and the outcomes for our Children every day a little better and “child friendlier” than it was yesterday.

Much remains to be done in the United States. Achieving these goals will require a substantial change in laws, screening instruments, research funding, etc. – as well as a fundamental shift in how our society perceives the value of youth and the effectiveness of punishment and deterrence.

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