

Common Wisdom: Making the Case for a New Georgia Juvenile Code

Judicial District 1



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I. INTRODUCTION¹

A. Statement by Reporting Law Firm

This report will summarize information, ideas and opinions concerning Georgia’s current juvenile justice system elicited in interviews conducted by attorneys at King & Spalding LLP and other volunteers (collectively, the “Interviewers”) from various stakeholders who live and work in Georgia’s First Judicial District (the “District”). Between July of 2007 and July of 2008, the Interviewers conducted interviews with 37 subjects in the District (the “stakeholders”), including all of the following: six current juvenile court judges, a juvenile court officer and administrator, a probation officer, an intake supervisor, a court clerk, a Citizens Panel Review Administrator, an attorney who represents parents in deprivation cases, a Court Appointed Special Advocate (“CASA”) director, assistant district attorneys, a county prosecutor who works exclusively in juvenile court, a Special Assistant Attorney General (“SAAG”), a city attorney who is often appointed as a guardian ad litem (“GAL”) in juvenile cases, two public defenders who spend a substantial portion of their time in juvenile court, two mental health professionals who frequently treat children impacted by the juvenile justice system, ten police officers and investigators responsible for juvenile offenders, an acting director and administrator and a lead field program specialist from the regional Department of Family and Children’s Services (“DFCS”), a principal of a middle school within the District, a school social worker, and the aunt of a child currently being adjudicated for an S.B. 440 offense.²

B. Overview of JUSTGeorgia Project

This report is one of ten judicial district reports prepared to help guide a much-needed effort to replace Georgia’s outdated Juvenile Code with new legislation that will better serve the public safety and child welfare goals of this State. Judges, lawyers, and others who must turn to the Juvenile Code on a daily basis agree that it is unclear, outdated and difficult to apply. Responding to these views, JUSTGeorgia³ seeks passage of a new Juvenile Code that will better organize current state law regarding juvenile justice and child welfare, better reflect the impact of federal law throughout the Juvenile Code, incorporate research-based scientific findings and best practices in the child

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² Please note that all views expressed herein are solely those of the subjects interviewed. The views reported are opinions and perceptions of the interviewees based upon their experiences within Georgia’s juvenile justice system. The firm does not take a position on any of the views summarized in this report.

³ JUSTGeorgia is a joint project partnered by Voices for Georgia’s Children, Georgia Appleseed, and the Barton Child Law & Policy Clinic at the Emory School of Law. Formed in 2006, JUSTGeorgia is working to build a statewide coalition that will advocate, monitor, and report on the conditions, laws, and policies that affect Georgia’s youth.

development field and respond to the hard-earned wisdom of Georgians who work with or are impacted by the current Juvenile Code on a regular basis. Under the direction of JUSTGeorgia Partner Georgia Appleseed, teams of trained volunteers set out all across the state to ask stakeholders three simple but important questions about the current Juvenile Code that governs child neglect and abuse (deprivation), foster care, delinquency and the juvenile courts: What's working? What's not? And how would you, the stakeholder, make it better?

Throughout the State's ten judicial districts, JUSTGeorgia volunteers, mainly lawyers, conducted face-to-face interviews with hundreds of individuals who have a stake in the Juvenile Court system: juvenile court judges, law enforcement officers, child advocates, public defenders, prosecutors, legislators, educators, child welfare experts, school social workers, parents, children, and other community members. Every effort was made to be as inclusive as possible so that members of every demographic and geographic component of the State would have an opportunity to provide input.

To reach an even more diverse group of citizens, JUSTGeorgia conducted a town hall meeting in each of Georgia's ten judicial districts. The ten town hall meetings were publicized throughout the districts in a variety of ways, including radio, television, newspapers, flyers, statewide email distribution lists and personal contact. JUSTGeorgia engaged professional facilitators through The University of Georgia's Fanning Institute to ensure that everyone who attended a town hall meeting would have an opportunity to participate and provide input. Sophisticated software enabled the facilitators to capture citizens' comments anonymously and project them onto a large screen for other participants to see and use as a springboard for additional brainstorming and reaction.

Hundreds of interview summaries, together with the town hall meeting notes, were then compiled by district and summarized into ten judicial district reports. The district reports, in turn, have been compiled into one comprehensive statewide report, summarizing the strengths and weaknesses of Georgia's current Juvenile Code and making practical and realistic recommendations for fixing it. All reports are accessible through www.GaAppleseed.org and www.justga.org.

In March 2008, the Young Lawyers Division of the State Bar of Georgia (YLD) released its Proposed Model Juvenile Code for Georgia, a compilation of "best practices" based on four years of intensive research. With the YLD's Proposed Model Juvenile Code as the starting point, JUSTGeorgia is preparing a legislative package for the comprehensive revision of the Georgia Juvenile Code, preserving best practices where feasible and tailoring the proposed legislation to meet Georgia's unique needs as informed by the input of the hundreds of stakeholders who took the time to share their views with the JUSTGeorgia volunteers. The resulting legislative package will be submitted to the Georgia General Assembly.

The goal from the beginning of this project has been to hear from the people who have a stake in the workings of the Juvenile Court system. Throughout this process,

JUSTGeorgia has remained true to its commitment to listen to and report the views of these stakeholders as accurately as possible.

II. DESCRIPTION OF THE FIRST JUDICIAL DISTRICT

A. Basic Information About The District

The District is located in the far southeastern corner of Georgia. Approximately 821,000 people live in the district (roughly 8.6% of the total for Georgia). The District is comprised of 22 counties: Bryan, Evans, Liberty, Long, McIntosh, Tattnall, Bacon, Brantley, Charlton, Coffee, Pierce, Ware, Jeff Davis, Appling, Wayne, Glynn, Camden, Chatham, Bulloch, Effingham, Jenkins, and Screven.

The District encompasses five (5) of the state's judicial circuits: Atlantic, Brunswick, Eastern, Ogeechee, and Waycross. Within the district, there are five (5) full time and eight (8) part time juvenile court judges.



With the exception of Chatham County, the District is largely rural and relatively poor. The poverty rate in 19 of the 22 counties is higher, and in some cases significantly higher, than the 13.7% rate for the entire state. Of the twenty-seven (27) counties in the District, thirteen (13) have 20% or more of their residents living below the poverty line.

B. The Juvenile Justice System in The District

The juvenile justice system in the District operates with modest personnel and resources and is generally overburdened. According to statistics from the Georgia Department of Juvenile Justice (“DJJ”), a total of 6,428 individual children in the District were involved in the juvenile justice system in some fashion in fiscal year 2006. Of these, 477 were placed in the custody of the DJJ.

There are three regional youth detention centers (“RYDCs”) in the District: (1) Claxton RYDC (Evans County); (2) Savannah RYDC (Chatham County); and (3) Waycross RYDC (Ware County). Each of the RYDCs serves male and female juveniles. According to the DJJ, the Claxton RYDC offers substance abuse counseling from the Bulloch County Drug and Alcohol Program. There are also two Youth Development Campuses (“YDCs”) within the District: (1) McIntosh YDC (McIntosh County), and (2) Savannah River YDC (Screven County). The District’s YDC serves only male juveniles.

C. Particular Challenges Confronting The District

The District is confronted with many of the challenges that typically face economically disadvantaged areas: widespread poverty, poorly performing schools, scarce economic opportunities, and insufficient community resources.

A number of stakeholders cited the disparity of funding and services throughout the District. In particular, several stakeholders noted that Chatham County receives considerably more funding and services in total dollars than the rest of the District.

III. STATUS OF THE DISTRICT’S JUVENILE JUSTICE SYSTEM

While stakeholders expressed a broad range of thoughts and opinions, certain discernable trends and consensus about areas in which improvement is needed – both within categories of stakeholders and across the board – are apparent.

A. General Perceptions Of The Juvenile Justice System

For the most part, the stakeholders did not perceive the juvenile justice system as completely dysfunctional. To be sure, there were many areas (outlined below) relating to each of the Georgia Juvenile Code (the “Code”) and juvenile justice system implemented in the District that stakeholders feel need improvement. Nevertheless, the overall impression of the system gleaned from the interviews is that neither the Code nor the system is wholly broken; but each needs substantial improvement. As one stakeholder, speaking for many, put it, the juvenile justice system, as a whole, probably ranks a 5 or a 6 on a 10-point scale.

B. What Is Working?

The one program that stakeholders routinely cited as successful was the Short Term Program (“STP”)⁴, believed by many to be the most effective treatment option available for delinquent juveniles (according to some stakeholders, the only effective treatment option available to most juvenile courts around the state). Recent cutbacks to STPs were widely viewed to be a mistake. Several stakeholders advised that the STP program should be expanded, and that 30, 60 and 90 day STPs should be made available. Judges and court officers suggested that if space is not available for a juvenile in a STP, then that juvenile either be detained or released until space in a STP is available with such days spent waiting for a STP slot not counting toward the amount of time the child was ordered to spend in the STP, itself. These stakeholders feel that time spent in the STP was the most valuable treatment and rehabilitative time for the juvenile and the juvenile should receive the benefit of the full number of days prescribed. Currently, time spent waiting for a STP slot is counted as time in STP with the incongruous result that a child ordered to spend 60 days in STP might actually spend no days at all in the STP program due to waiting up to 60 days in detention, with no STP programming.

C. What Is Not Working?

1. Code Clarity

Several stakeholders want the Code reorganized to allow non-attorneys to better understand its requirements. Their rationale is that many lay people, who are crucial to the successful operation of the juvenile justice system, must be able to quickly consult the Code to understand what to do in certain situations. A prime example is the processing of a child at intake: both the intake officer and the police officer benefit from a clear and easy to use Code. Similarly, the community and the child subject to detention benefit when mistakes due to problems with the Code, itself, are avoided.

Specific suggestions for improving the clarity of the Code include to following: (1) expanding the definition section; (2) reworking the overall organization, notice provisions, timing provisions of section 15-11-58 (the primary statute dealing with child abuse and neglect cases, also known as deprivation cases); (3) completely revising or making consistent the burden of proof and notice provisions of section 15-11-55 (another statute dealing with deprivation cases); (4) clarifying the provisions dealing with transfers from probate court; (5) dividing section 15-11-58 into discrete sections; (6) clarifying who can file a petition; and (7) specifying who has standing to file a motion for extension.

One judge, perhaps partly in jest, also suggested that the legislature should be required to remove provisions from the Code each time it adds a new provision.

⁴ The Department of Juvenile Justice operates Short Term Programs. Until fairly recently, a commitment to STP could run up to 90 days, but the maximum stay is currently 60 days.

2. Consistent Age Limits

At least one stakeholder argued that the upper age limits for various provisions in the Code should be consistent. Currently, a youth has to stay in school until 16, is a juvenile offender until 17, but can be deprived until 18. This stakeholder would like the age set for all offenses and all determinations at 18, but is concerned that raising the age to 18 would cost more money and require additional court resources, including judges, at the Juvenile Court level.

3. Quality of Training and Quantity of Actors in the Juvenile System

A number of stakeholder groups shared concerns and frustrations at the low number of staff and inadequate training of many working within the juvenile system.

a) Judges. Judges interviewed expressed the opinion that every juvenile court should operate independently of DJJ; the current system disconnects responsibility from authority to achieve a higher level of performance. Currently, many juvenile courts must rely on DJJ for their probation staff, hence the descriptive terms “DJJ Courts” and “independent Courts,” the latter being those juvenile courts that employ their own probation staff at county expense. It is believed that independent courts have a better opportunity to oversee and improve the quality of probation services.

Several judges also indicated a preference for full-time, rather than part-time, juvenile court judge positions. These stakeholders explained, however, that for the foreseeable future lack of funding and the difficulty of traveling throughout a judicial district as geographically large as Judicial District One will continue to be obstacles to any effort to move to only “full time” judge positions.

Additionally, a stakeholder deeply immersed in the workings of the juvenile court indicated that the Code should be even more specific regarding training requirements for judges in the juvenile court and provide “teeth” in the requirements for failure to comply.

b) Prosecutors: Both the prosecutor and public defenders believe that full-time, rather than part-time, juvenile court prosecutors should try cases in juvenile court. It was further urged that juvenile court prosecutors should have at least two (2) years’ experience practicing in superior court prior to practicing in juvenile court.

c) Public Defenders/Court Appointed Defense Attorneys: A public defender, a prosecutor and a judge each stressed the importance of having experienced public defenders practicing in juvenile court. Each feels that having qualified public defenders in juvenile court would help the court, the state and the child to have a more fair hearing and a more just outcome.

One stakeholder indicated that he preferred highly experienced juvenile court public defenders to inexperienced court appointed defense counsel for a juvenile. He explained that less experienced counsel appointed in designated felonies cases, for instance, oftentimes made mistakes that were detrimental to their clients given the complexities of the law in this area. He also stated that, in his experience, less experienced court-appointed counsel tended to prematurely, as compared to experienced juvenile public defenders, advise their clients to plead guilty (admit to the delinquency). The prosecutor stated that to improve outcomes in juvenile court, a child must be represented by counsel experienced and familiar with the juvenile justice system.

A public defender stressed that public defenders may play a more important role in juvenile court than in superior court and gave as an example the belief that police will try to “get away with more” in juvenile court than in superior court if they think that their actions will not receive sufficiently experienced scrutiny by counsel for the child. It may be more necessary, therefore, to seek a suppression hearing in a juvenile court proceeding than in a superior court case to ensure a fair trial. Public defenders in juvenile court must have the experience to know when to take such action.

A public defender also articulated his perception that public defenders in juvenile court are not as highly respected as public defenders in superior court. He cited the elimination of the Juvenile Division of the Public Defender Standard’s Counsel as an example of the system’s failure to respect and support the work of public defenders that practice in juvenile court.

To the extent that court-appointed counsel is used, several stakeholders stressed that it was extremely important that such counsel receive adequate training specific to juvenile court proceedings prior to their first appointments as opposed to “learning on the job.”

d) Guardians ad Litem: A judge noted that there are no consistent training requirements for GALs and there are no consequences if GALs do not obtain the training that they are required to receive. While some courts prescribe training programs for GALs, these training programs are not consistent across the state. Another judge suggested that the Code should dictate training requirements for GALs.

e) Court Officers: A court officer suggested that court officers in juvenile court should receive continuing training and advised that the Code should specify consequences for not completing such training.

f) Law Enforcement: A judge stated that law enforcement officers often are not trained to handle juvenile court cases. This view was reinforced by the social worker who stated that, based on the social worker’s experience, police officers need additional training on how to interact with and appropriately question juveniles. A police officer added that more probation officers must be employed if the juvenile court probation program is to be effective.

4. Role of Counsel in the Juvenile Court

Several stakeholders identified the inconsistent use of prosecutors and defense counsel in juvenile court as an on-going problem. Generally, it is unclear what role attorneys were supposed to play in the juvenile court system, particularly during deprivation proceedings, and when attorneys are required to be involved in the process.

The prosecutor stated that judges in counties other than Chatham County, many times lacking a viable alternative, allow caseworkers, rather than the prosecuting attorney, to bring the charge. The prosecutor finds this practice to be problematic for many reasons: caseworkers are not attorneys, they have an inherent conflict of interest and are many times an adverse witness to the child in the case. In these circumstances, the judge must assume the roles of both judge and prosecutor, examining and cross-examining witnesses and then weighing the evidence produced. When the Code requires defense counsel, this practice of proceeding with the case without a prosecuting attorney, leads to proceedings where a public defender, but not a prosecutor, provides representation in the proceedings.

Both the prosecutor and public defender stakeholders believe that the juvenile justice system functions far better when both a prosecutor and a defense attorney participate in every case, and that, therefore, the Code should mandate that the district attorney be responsible for presenting charges against a juvenile in juvenile court just as he or she is responsible for charging adults in superior court.

5. Problems with Agency Coordination and Jurisdiction

Many stakeholders expressed frustration with the difficulty of coordinating among agencies and the juvenile court.

County Department of Family and Children Services (“DFCS”) representatives stated that the three separate agencies that work together under the Code - DFCS, Georgia Department of Juvenile Justice (“DJJ”) and the local county mental health agency - are not well coordinated and “trip over each other.” As an example, the DFCS stakeholders cited the problem of youth who need mental health services. Prior to two years ago, DFCS was able to place a child requiring mental health services in the appropriate mental health setting and pay for such care. However, the federal government recently required the state to “unbundle” services provided by DFCS and mental health services. DFCS can only pay for room and board and all mental health services must be arranged through the local county mental health agency. Many judges do not yet understand this and will place children with mental health needs with DFCS instead of with the appropriate county mental health agency. As a result, these children are less likely to receive the mental health services they need.

Additionally, numerous stakeholders indicated that the juvenile system is not as effective as it could be because the juvenile court does not have jurisdiction over the family issues that lead to delinquency or deprivation. According to many stakeholders, the behavior that causes juveniles to end up in juvenile court is oftentimes linked to problems at home, such as a divorce or the drug use of a parent. Because the juvenile court does not have sufficient authority over such family matters, the juvenile court is

limited in terms of its ability to solve root problems. Representatives from DFCS propose that a separate family court be formed so that one court can have jurisdiction over all family related matters, including delinquency and deprivation matters stemming from underlying family issues. These stakeholders also suggested that the court be allowed to adjudicate juveniles as both deprived and delinquent as the two are often connected.

6. Problems with DFCS

Many stakeholders, including representatives from DFCS, pointed out problems with DFCS.

The DFCS stakeholders stated that turnover was a major problem within DFCS. Each year, according to stakeholders interviewed, one out of every three DFCS caseworkers leaves DFCS.

Other stakeholders explained that DFCS caseworkers were overworked and received insufficient training. The school social worker believes that DFCS caseworkers would be better equipped for their difficult jobs if they were required to hold degrees or complete extensive training focused on social work and child development. The school social worker feels that the lack of such training prevents some DFCS caseworkers from conducting meaningful investigations of their cases.

A stakeholder deeply involved in the deprivation system stated that in her experience DFCS inappropriately avoids handling cases involving older teens because they are considered difficult to place. This creates a significant problem for 16 and 17 year old youths who are sent to DFCS by the juvenile court. If DFCS does not appropriately deal with such children, then they will be “bounced” back and forth between DFCS and the juvenile court until they age out of the system.

Stakeholders mentioned visitation as an area needing improvement within DFCS. Judges and a CASA representative explained that visitation, particularly between parents and young children, should happen more frequently than once every two weeks, as is the current local DFCS policy. Although there are many reasons why visits might be cancelled, one inappropriate reason that happens too often is because the DFCS caseworkers, themselves, are overextended. To avoid this problem and ensure regular visits, the CASA stakeholder would like to see the development of local visitation centers, operated independently from DFCS, in every county.

The police stated that DFCS does not work well with the law enforcement. As an example, law enforcement stakeholders articulated their experience that DFCS does not make it a priority to pick up a child who has been arrested. Instead, the police feel as though they are forced to “baby sit” the detained youth, sometimes “for hours,” while waiting for DFCS to arrive, which ties up the officer and prevents him or her from performing other important duties in the community.

7. Problems with Deprivation Proceedings

a) Representation

Several stakeholders thought that the question of whether every child is required to have a lawyer in deprivation should be clarified in the Code. The judges had conflicting opinions of whether every child needs a lawyer for deprivation hearings or whether CASA/Guardian Ad Litem would suffice.

b) Lack of Judicial Oversight

DFCS representatives raised concerns about the perceived lack of judicial oversight over some aspects of DFCS protective services and foster care. Under the current Code, after an adjudication of deprivation, a judge only has oversight responsibility for the deprived child's DFCS case plan, which the judge may review periodically. The stakeholders said that, though the citizens review panels are excellent, it is important for judges to exercise their oversight jurisdiction, too. In particular, the stakeholders stressed that if child protective services (the "pre-court" intervention) is brought within the jurisdiction of the juvenile court, a judge will have the authority to intervene earlier to order family members to cease certain types of behavior inconsistent with the welfare of the child and perhaps avoid a finding of deprivation altogether.

Additionally, DFCS representatives expressed the desire that the decision to suspend a case plan due to a parent's lack of progress be made in the caseworker's sole discretion. They believe that this decision should not be subject to judicial oversight.

c) Problems with Case Plans

DFCS representatives said that they had insufficient time to develop case plans. Currently, caseworkers have thirty (30) days to prepare initial case plans. Stakeholders explained that at least forty (40) days is needed because of the large number of persons involved in preparing a complete case plan: meetings must be held with the family and representatives from different support systems to design a plan that is in keeping with the mandated goal and the best interest of the child. DFCS representatives believe the best interest of the child is not always served by mandating too short a time frame to complete an initial case plan.

Other stakeholders cited problems with the case plans designed to evaluate a parent's ability to care for a child. Case plans contain requirements such as parenting classes, drug tests and maintaining employment. Some stakeholders believe that too much emphasis is placed on the requirements that the parent has not completed rather than the requirements that the parent has completed. At times, even when parents do complete a goal, guardians will argue that it was not completed to their satisfaction. Instead of recognizing the parent's achievement in completing some or all requirements, the appointed guardian will sometimes ask for an extension of the deprivation order. The stakeholder feels that the Code should be interpreted to preclude an extension of the deprivation order if the parent has made "measurable progress" toward completing the plan.

Further, at least one stakeholder believes that judges give DFCS far too much deference in assessing whether parents are making adequate progress.

d) Inability to Order Mental Health or Substance Abuse Services

According to stakeholders, even if they have the legal authority, judges do not have the practical authority to commit children to mental health facilities for longer than a day or two to complete a mental health assessment. DFCS representatives feel that, if a judge is responsible for ordering a disposition that is supposed to treat and rehabilitate a juvenile, then the judge should be able to order whatever treatment he or she finds necessary for that child, including mental health treatment.

Several stakeholders opined that mental health services should be moved under the auspices of the DJJ unless MHDDAD receives additional funding and that the juvenile unit at the District's mental health hospital should be reopened and made available for children and youth requiring mental health services.

Similarly, a judge explained that he is unable to ensure that substance abuse treatment is provided to juveniles with drug problems. Under the current rules, if the court puts a child in the custody of DJJ, then the judge loses the power to order what happens to that child in DJJ's custody; the judge can only make recommendations for substance abuse treatment, as an example, which DJJ may or may not follow, depending upon its own assessment of its limited resources. Further, the residential facilities, including Gateway, where juveniles were sent to receive residential substance abuse treatment, have been closed. Stakeholders want these facilities refunded and reopened so that youth can receive the substance abuse treatment they may need to get back on the right track.

8. Problems with Delinquency Proceedings

a) Representation

As discussed above, the stakeholders believe that full-time (and adequately trained) juvenile public defenders and prosecutors should handle all delinquency cases.

b) Punishment or Rehabilitation?

Stakeholders offered conflicting opinions about whether the juvenile justice system should aim to rehabilitate or punish offenders. Either way, both groups agree that the current system has insufficient options for either treatment or punishment.

For example, law enforcement stakeholders interviewed for this project are frustrated with efforts to rehabilitate most juvenile offenders. Instead, they subscribe to a deterrence model: juvenile offenders should be severely punished to deter other offenders and to "teach the offenders a lesson." At least one law enforcement stakeholder repeatedly emphasized that the system treats juvenile offenders far too leniently.

In contrast, several stakeholders stressed that there are not enough treatment programs available to rehabilitate juvenile offenders. Stakeholders cited the difficulty in obtaining mental health and substance abuse treatment for youth. Also, as discussed

above, many stakeholders found Short Term Programs (STPs) to be useful treatment options and suggested that more STPs of varying lengths be offered.

c) Sealing Juvenile Records

Stakeholders also referenced Section 15-11-79.2(a), the statute regarding sealing informal adjustments or dismissals, suggesting it needs to be revised. The problem they see is that a sealed record of informal adjustments can lead to a mistaken belief that the child is before the court on a first offense, when, in truth, the child has already received a second or third chance to change his behavior. This might not be a problem in smaller jurisdictions, but could lead to problems in larger courts. Some stakeholders speculate that the result of sealing the record this way is a reluctance by judges to use diversion programs (which might otherwise be appropriate for first offenders) because of a lack of confidence that the children in question are, in fact, first offenders.

d) Status offenders (“Unruly juveniles”)

There was disagreement as to whether juvenile court or DFCS should deal with status offenders. Several judges felt that the juvenile court should handle these cases because DFCS is overwhelmed and cannot deal with juveniles adjudicated as unruly. By contrast, at least one judge would like to eliminate the juvenile court’s jurisdiction over status offenders. This judge recommends social services rather than the juvenile court handle status offenses. He pointed to Washington and Oregon as examples of states that have adopted this approach.

Stakeholders believe that truancy is a status offense that presents particular challenges. The school social worker stated that there were no “teeth” in the law regarding truancy. She gave the example of a child who stopped going to school when he was eight years old. The child is now fifteen. His mother sends him to school every day but he does not actually enter the school. There does not appear to be anything that the school can do because there are no “meaningful” sanctions available to place on the juvenile. The school social worker said that truancy was particularly difficult with respect to children between the ages of 14 and 16 because there is no easy way to persuade them to attend school if they really do not want to go to school. One judge, reading the current code as prohibiting the secure detention of truant children, suggested that judges be granted the authority to order short-term detention for a child who violates an order to attend school.

e) Disruption of Public Schools Statute

Stakeholders had differing opinions about the use of the Disruption of Public Schools statute (found in the Education Code, not in the Juvenile Code).

A number of stakeholders believe that schools abuse the power found under the Disruption of Public Schools statute to send “problem” children to juvenile court. These stakeholders believe that these children should be disciplined at school or at home, but not sent to the courts. One stakeholder suggested that the statute was used to punish

students for a series of incidents of bad behavior, almost like the straw breaking the camel's back, and that none of the individual disruptive incidents, alone, amounted to a disruption warranting juvenile court involvement. On the other hand, one stakeholder pointed out that schools were in a difficult position because if school officials fail to report certain incidents to the juvenile court, they could be held legally responsible. Another stakeholder thinks schools are afraid of getting sued so they send their problem children to the juvenile court rather than imposing discipline at the school. This stakeholder suggested adding statutory privilege or immunity for schoolteachers and administrators to encourage them to administering discipline at school rather than relying on the juvenile court to do so.

Not all school systems in Judicial District One abuse the “disrupting public schools” statute. Stakeholders did say that it is common knowledge that at least one county in the District is much quicker to refer students to the courts under the statute than others of the same population.

To address these problems, one stakeholder suggested a pre-petition hearing process to determine if a disruption case should be referred back to the school. Another indicated that the prosecutor should act as gatekeeper by determining whether the behavior in question would be a true delinquency. Also, a number of stakeholders recommended that the Code definition of “disruption” be tightened. One specific suggestion is to use the language “knowingly and intentionally substantially disrupted to interfere with the normal operations and activities of the school.”

f) The Designated Felony Act (“DFA”)

Inconsistencies were noted in the minimum age requirements applicable under the DFA. For example, there is no minimum age for bringing a gun to school, but there is a minimum age for shooting someone with a gun.

There was a difference of opinion as to whether the minimum age requirements should be eliminated altogether in favor of individualized hearings in which the judge determines whether the child in question is competent. Some stakeholders felt that the minimum age requirement should be kept, but the minimum age should be made consistent. At least one stakeholder favored tying the minimum age requirement to the severity of the felony while another suggested that the minimum age be set at thirteen (13) years of age for all designated felony acts. A public defender felt that it was important to set and keep an age requirement as a safeguard for cases being handled by inexperienced juvenile court judges. Finally, one stakeholder expressed the view that the Code should allow judges sentencing discretion to sentence juveniles to secure incarceration for less than the 12 months under the DFA. In other words, the Code should be revised to delete the minimum sentence of 12 months and allow the judge to set the detention time depending upon the facts established in the case.

g) Automatic Transfers

Different stakeholders had very different (though equally strong) opinions about S.B. 440, also known as the “Seven Deadly Sins” law or the automatic transfer provision.

The law enforcement stakeholder interviewed think that S.B. 440 should be strengthened and expanded, to include additional crimes, such as offenses involving drug sales or trafficking and burglary. They also believe that judges should not have the discretion to sentence offenders to fewer than ten (10) years for S.B. 440 convictions. Instead, they suggested that ten (10) years should be a minimum and judges should have the discretion to increase the sentence. This stakeholder would retain the thirteen (13) year age requirement.

A number of stakeholders feel that the Code needs to distinguish certain consensual, non-predatory, sex offenses from other sexual offenses under S.B. 440. One stakeholder pointed out that it sometimes happens that two teenagers will have consensual sex and a parent will find out. The parent will become angry and ask that charges be filed against the older teenager even though the sex was consensual. Depending upon the charges filed, and if the juvenile is convicted in adult court, the juvenile can face a minimum ten (10) year prison sentence, with a minimum of twenty-five (25) years for some offenses, and have to be registered as a “sex offender.” The stakeholders felt this was a disproportionately severe punishment. One stakeholder suggested that the juvenile and superior courts have concurrent jurisdiction over juveniles who have committed sex offenses now covered by S.B. 440 with juvenile court judges determining which juveniles should be sent to superior court.

Concerns were expressed that, under S.B. 440, each offender is treated the same way. Many stakeholders would eliminate the thirteen (13) year minimum age requirement. Both a prosecutor and a public defender believe this age is arbitrary and think judges should have the discretion to charge a juvenile under S.B. 440 based on competency, not age. A judge struggles with the age requirement because he feels that some juveniles, regardless of an arbitrary age limitation, do not understand the consequences of their actions and should be given a second chance to reform their behavior.

A number of stakeholders feel judges should have sentencing discretion and should not be required to impose ten (10) year mandatory sentences with no parole for all S.B. 440 offenses. One stakeholder suggested that S.B. 440 offenses should be subject to parole. Some stakeholders believe juveniles convicted under S.B. 440 should be held by the DJJ until they turn 21.

There was also support for juvenile and superior courts to having concurrent jurisdiction over all current S.B. 440 cases.

h) Incarceration of Minors in Adult Prisons

Various stakeholders expressed concern over the transfer of juveniles to superior court under S.B. 440 or the other concurrent jurisdiction provisions in the current code and the impact of committing juveniles who are 17 years old to the Department of

Corrections (“DOC”) to be incarcerated in adult prisons. Some stakeholders thought that juveniles who are convicted in superior court should be detained by the DJJ, as opposed to the DOC, until the juvenile turns 21.

i) Lack of Sentencing Options

Stakeholders generally expressed frustration over the limited sentencing options available to judges. In particular, stakeholders felt limited in terms of possible placement locations and the possible lengths of sentences.

As explained above, stakeholders generally feel that STPs are a useful sentencing option that should be expanded. These stakeholders would like 30, 60, and 90 day STPs to be available and for the program to receive additional funding to alleviate the frequent waiting lists. The police suggest that boot camps be restored, as juveniles need the discipline and structure that boot camps can provide. At the least, structured discipline should be implemented or emphasized in the regular detention facilities as it was in the boot camps.

The law enforcement stakeholders want sentencing options increased by increasing the number of beds for the detention of juvenile offenders. When a DJJ facility is “full,” the court needs another option than simply sending the children home. These stakeholders also stated that because of the shortage of beds, many children are released prior to serving the full length of their sentences so that they can free up beds in detention facilities for other juvenile offenders.

Many stakeholders raised concerns that a juvenile sentenced to a program of a certain length of time would not receive the benefit of the full length of the program, usually because of the scarcity of beds in such programs. For example, if a juvenile is sentenced to a 60 day STP but a bed is not available in the STP at the time of the adjudication, the juvenile may have to spend fifty (50) days in detention and then have only ten (10) days in the STP. Several stakeholders suggested that time spent in detention or on conditional release should not count towards an STP sentence.

Stakeholders also feel that the method for calculating sentences for juveniles needed adjustment, though there was little agreement on how. Some stakeholders feel certain offenses should require a minimum two-year commitment to DJJ. Others feel judges should have complete discretion over the length of sentences.

9. Judicial Discretion and Review

Several stakeholders encouraged more discretion in sentencing. Some cases where less than the mandatory sentence would be appropriate may even be dismissed to avoid imposition of an overly harsh mandatory minimum sentence. As one stakeholder put it, there are no “usual” cases; some are simple and some are complex.

IV. CONCLUSION

A majority of the stakeholders interviewed in the District feel that there was a need to make meaningful changes to both the substance and form of the Code, as well as, existing procedures and practices within the juvenile justice system. A consistent theme was the desire to return greater discretion and control over the disposition of juvenile cases to juvenile court judges. Also, there seemed to be strong sentiment in favor of having juvenile cases handled by prosecutors, public defenders, and judges that practice on a full-time basis. Finally, there was a common theme that rehabilitative programs for juveniles need to be expanded and made available as sentencing options.