



Commission on Criminal and Juvenile Justice
Direct File Subcommittee

Minutes

September 16, 2008
 710 Kipling Street
 3rd Floor Conference Room

Attending:

Doug Wilson	Don Quick	Peter Weir
Ellen Roberts (by phone)	Sherry Stwalley	Ann Terry
Steve Siegel	Joe Thome	Jeanne Smith
Peter Hautzinger (by phone)	Meg Williams	Mark Randall
Pamela Wakefield	Stephanie Villafuerte	Maureen Cain
Gary Maas	Steve Hager	Kathy Sasak
Mary Ellen Johnson		

Absent: Regi Heurter, David Kaplan, Bill Kilpatrick

Call to Order and Opening Remarks:

The Chairman, Peter Weir, called the meeting to order at 1:35 p.m. Peter Weir began the meeting by clarifying the Commission's vision for this subcommittee. The Commission decided there may be a benefit to meeting outside the legislative arena to discuss the issue of direct file cases to adult court from juvenile court. Mr. Weir stated he would like to discuss the issue and bring forth a recommendation to the full Commission by the November meeting.

The participants then introduced themselves to the other participants.

Direct Files: State Judicial – Statistics and Facts presented by Sherry Stwalley.

Ms. Stwalley provided a handout that showed the number of criminal defendants, age 14 – 18 who were direct filed on from fiscal year 2004 – 2008. The defendants were identified based on their age on the date of filing. In fiscal year 2004, there were 78 cases involving juveniles from age 14 – 16. There were 114 cases involving juveniles from age 17 – 18, for a total of 192 cases filed. In fiscal year 2008, there were a total of 130 juveniles whose cases were direct filed. Of the 130, 63 were for juveniles age 14 – 16 and 67 were for ages 17 - 18. These statistics included vehicular assaults and homicides.

Ms. Stwalley also provided statistics for the same years with the cases charging vehicular assault and homicide removed. The question was asked why vehicle homicides were removed from the figures. Ms. Stwalley said that one legislative bill had removed the charge.

She was asked if she could provide information on how many of those juveniles were on probation or YOS when they reoffended. Yes, she is able to obtain the following information from those cases: the jurisdiction, the case number, the date of the offense, the age of the juvenile at the time of filing, the original charges filed, the charges pled to, and the sentence.

Mr. Weir asked what other information the subcommittee would need to discuss the issue. Don Quick asked if the criminal history of the offender would be included since that also weighs into the prosecutor's decision as well as how many cases are not filed on that fit the criteria for direct file. It was recognized by the group that this information would be very difficult to ascertain from state judicial.

Doug Wilson stated that one set of numbers that have not been tracked are the number of cases where the prosecutor's office threatens a direct file unless there is a juvenile plea to a charge. Mr. Quick suggested a possible way to track cases that were direct file eligible. The District Attorneys' could create a new charging code that would indicate if a case is direct file eligible.

Ms. Stwalley will obtain more information on the direct file cases. This information will include the charges filed, the age of the offender as of the filing date, case number jurisdiction, sentence and length of sentence conviction, sentencing information, and jurisdiction. If the data is sorted by jurisdiction, we might be able to see a trend. Ms. Stwalley will also get length of sentence.

Joe Thome said they are seeing juveniles that have a split sentence. He will access DYC's client manager system and to obtain the number of individuals who have split sentence.

Direct Files - Youth Offender System – Facts presented by Steve Hager:

Mr. Hager brought a couple of handouts including the statute and updated YOS fact sheet. The Youth Offender System was initiated by the Governor in 1993. It is designed to serve as a middle term sentencing structure by holding direct filed youthful offenders who commit a violent felony act. The age criteria is between 14 and 18, at the time the offense was committed and the offender is no older than age 19 at time of sentencing.

Provide an adult and juvenile model for sex offender treatment. Approximately 1100 people sentenced to YOS. 80% successfully complete the terms and conditions of their YOS sentence, and 5% get a juvenile reconsideration, 15% do not successfully complete. Of the 80% who successfully complete the terms and conditions, there is a 30% recidivism rate.

YOS is the only correctional facility that has a high school on the grounds. The youths are in high school for 7 hours a day that includes treatment programs and cognitive treatment programs.

Don Quick asked what the average cost is for YOS? It costs approximately \$180 dollars a day per offender. Their philosophy at YOS is either you pay now or you pay later.

To be sentenced to YOS, the offender is sentenced to an adult facility. That sentence is suspended based on the completion of the YOS sentence. YOS has three tiers to their sentence. The first phase is the integration. The second phase is transitional and the final phase is a 12 month period where the offender is brought back into the community.

Doug Wilson asked about the availability of beds. When the legislation was passed, YOS had 233 beds. After the facility moved to Pueblo in 1998, it had 263 beds. The YOS population has been stable at around 190 – 200 beds that are used. They have 140 staff. The statutes are clear that the young offenders cannot come into contact with adult offenders. Average length of stay is 5 ½ years. There may be empty beds. There are offenders in phase 3 throughout the state. The average age is about 19 years old. Early on there were a lot of 14 – 15 – 16 year olds sentenced. Now there are more 17 – 18 and 19 year olds. Steve Hager will get the breakdown of offenders by age.

There is a college associated with YOS. There have been three individuals who have graduated from Community College.

What challenges, concern would YOS face if the age limit increased? As long as they are able to meet the needs of these offenders, and the older offenders do not change the culture of the facility, Mr. Hager did not see any limitations. YOS is designed to turn the lives around of these individuals.

Joe Thome was asked for his perspective on increasing the age of offenders at YOS. Youthful offenders respond better to community based services that are at a location close to their family. If we take young offenders and transfer them into a large central facility, they lose the family in the treatments. Having YOS in Pueblo is sometimes a problem. It is difficult for the families to travel from Ft. Collins, Boulder, and Grand Junction to see their children.

The Prosecutorial Perspective by Don Quick and Pete Hautzinger

Pete Hautzinger stated they have a total of 73 cases that were eligible for direct filing in Mesa County. Of those 73, they did direct file on 21. They sent 1 to DOC. That was a 17 year old charged with 1st degree murder. The other 20 got probation, some went to YOS or others allowed to be sentenced back as a juvenile.

Don Quick provided data from Adams County. They have 1300 juvenile cases reviewed every year, with an average of 40 considered for direct files. Twenty of the 40 are direct

filed; the other twenty are filed as juvenile. About 75% of the offenders end up in YOS with the rest returning to juvenile or probation.

Mark Randal said the Jefferson County D.A. had 25 direct file cases in three years. In his discussions with district attorneys last year, most are in favor of sending offenders to YOS because they are so successful. Mr. Weir asked for clarification that the sentencing option is YOS as opposed to DOC, not YOS as opposed to probation. Yes.

Are there areas in the prosecuting arena that need work? Are policies that can be improved? Is there an area where the prosecutor is restrained statutorily?

Pam Wakefield said that it is difficult to have a statewide policy since the voters in Denver may want something different than the voters in Douglas County.

Should the DA have the discretion to do a direct file or should that decision be made someone else? Ms. Wakefield said in Douglas County, she made the decision. She was not sure what Arapahoe County was doing. Jeanne Smith said that in El Paso, she as the elected DA, made the final decision. Don Quick said in his jurisdiction the question goes through a Chief DA but that ultimately it is his (Mr. Quick's) decision. Mark Randall said that in Jefferson County the information goes to their Juvenile Chief Deputy who takes it to the DA.

Defense Perspective by Maureen Cain and Doug Wilson:

Ms Cain stated that research shows the juvenile brain works differently, especially before age 16. She would like to review who makes the direct file decision. In some states the process is done in the open, by the judge. Maybe the best practice is to have the judge determine which cases are direct files.

Juveniles between the ages of 13 and 15 who are eligible for direct file should be given a hearing. This is the age class that has the biggest need for protection. There is a strong correlation between recidivism and employment. Having an adult felony conviction keeps these juveniles from getting a job later in life.

The defense bar tried to bring it to the attention of the legislature that the practice of direct files has not been reviewed and there have been several recent statutory changes that are important. YOS did not exist prior to 1994. DYS mission changed in 1996 by adding public safety as a component. In 1992, the victim's rights amendment was passed. They were told that they had to prove that the system is broken.

Also of concern is the over-representation of minorities. DOC is 40% minority. DYC is 35 – 40% minority. Why is YOS made up of 70 – 80% minorities? Don Quick asked what percentage of YOS are gang members. 70 – 80%. Ms. Cain asked that this issue be a broader policy discussion.

Is There a Need for Change?

Mr. Weir suggested some issues for the next meeting.

1. Who decides if a case is direct filed - the Elected District attorney or a judge?
There is value in seeing a lot of cases and being able to compare them. This may be something that a DA would have more experience with this as opposed to a judge who may only see this once in a while.
2. What about the age of offenders that should be subjected to a direct file. If you don't get juveniles the age of 14, 15 or 16 help, they will be ones filling up the prison at age 18, 19 and 20. One position is that the 14 – 16 should not be part of the direct file law.
3. What role does punishment and public safety play in this decision?
4. Is this a resource issue? We want to identify what is in the best interest of the citizens of the state of Colorado, the citizens, offenders, victims. If it is in the best interest to build more YOS facilities, we identify them as a resource need.
5. Should YOS be opened up to the higher age groups and not use direct files on the lower age offenders?
6. If we want a policy discussion, we have to drill down and see what these statistics show. We need to have objective minds look at the data.

Wrap-up and Next Meeting:

Next meeting will be set for either October 2nd, 7th or 8th. Ann Terry will get the meeting time sent out to the members.

The meeting adjourned at 3:37 p.m.

Number of Defendants 14-18 filed in CR cases*

	14-16 in CR casetype	17-18 in CR casetype	Total 14-18 in CR casetype
FY 04	78	114	192
FY 05	91	120	211
FY 06	57	76	133
FY 07	61	81	142
FY 08	63	67	130
Average	70	91.6	161.6

Vehicular Homicide and Assault Removed **

	14-16 in CR casetype	17-18 in CR casetype	Total 14-18 in CR casetype
FY 04	72	107	179
FY 05	86	114	200
FY 06	52	72	124
FY 07	56	77	133
FY 08	62	64	126
Average	65.6	86.8	152.4

* Includes both direct file and transfer

** Case removed if vehicular assault or homicide was highest charge

Source: State Court Administrator's Office - September 15, 2008