



Remarks to the Blueprint Commission

September 4, 2007

Thank you to the Commission for allowing me the time to present the concerns of Florida's Children First.

First, for those of you who do not know, Florida's Children First, Inc. is a 5 year old, not for profit, statewide, children's legal advocacy organization. FCF was founded by advocates who were trying to pool their time, money, talent to make a coordinated, meaningful and sustained difference in the lives of children in Florida. FCF's Board of Directors is comprised of child advocates from all over the state with a broad reach and depth, beginning with its 24 Board members and continuing with a 50 member Advisory Board. The depth does not stop there, as many others volunteer on particular projects.

We offer these remarks to assist you in your important deliberations:

Interagency Coordination: Systems that serve children in Florida are fragmented among a variety of agencies. At the state level alone, children are served by the Dept. of Children & Families, the Dept. Juvenile Justice, the Dept. of Education, the Agency for Workforce Innovation, the Agency for Health Care Administration and the Agency for Persons with Disabilities. Additionally, a myriad of local governmental and non-profit agencies deliver services directly to children. Agency staff may maintain contact with some of their partner agencies, but they rarely have a clear understanding of those agencies' legal mandates, policies, procedures, and resources. Good collaboration would result in a more effective use of resources and improved services.

In our experience, current efforts, although well intentioned, lack coordination.

FCF recommends that:

Improved communication and collaboration with, among and between all of the agencies providing prevention and

treatment services for children become a core premise of the "Blueprint."

In our work, we have found too many children who are victims of abuse or neglect "crossing over" from the Department of Children and Families into the Juvenile Justice system. For these children, it is critical that they be represented at the earliest moment. To do otherwise, could risk children being improperly moved from being a victim to being a survivor. We have read reports where youth have been referred to the JJ system when the CBC system had no placement/home for the youth, or where a youth had a violation of probation report filed for talking back to the caseworker and was detained on that basis. Moreover, with unified family courts, it becomes more important that youth are represented by attorneys whenever a case in which the youth is a party is heard by the Judge.

Furthermore, youth that have been sexually abused often carry out inappropriate sexual behaviors on other youth. These children should be treated as victims and provided treatment rather than being punished as perpetrators and stigmatized for life as sexual offenders in the State registry.

While we strongly support prevention and diversion programs, for the purposes of these remarks, we will focus on issues that arise when the youth comes into the Juvenile Justice system.

Education: The JJ system does not coordinate well with the education system. If children are to truly become productive adults, they need an education. The children in the Juvenile Justice system are often not enrolled in a school program, and are not receiving special education services when required. Credit for courses taken while in a JJ facility often do not transfer to a regular school putting the youth even further behind in efforts to complete school.

FCF recommends that:

- All children receive an education while in DJJ custody, and those children with disabilities receive special education services*
- No child leave a JJ facility without an education transition plan to include enrollment in the local school and transfer of credit for work undertaken while in the facility.*

Children's Health Services: It should go without saying that children in the custody of DJJ need to have adequate medical care. The Child's

medical history and medical records while in custody must be complete and correct, and provided to the youth upon exiting the system. To do otherwise risks their health while providing problems for treating doctors. For youth returned to the community, Juvenile Probation Officers serve as the youth's primary case manager and are responsible for recommending, managing, coordinating and monitoring services including referrals to community mental health and substance abuse services. JPOs must provide information on Medicaid and state sponsored children's health insurance to the parents of children who are not insured and work with caseworkers for those who are in DCF custody in order for the services to be provided.

FCF recommends that:

- *Families are provided with the information to obtain health insurance for youth within the families' financial means.*
- *Health care records from time in custody must be provided to the family or the caseworker when the child leaves JJ custody.*

Mental /Behavioral Health/Developmental Disabilities: More than half the children and adolescents who are in state care have some disability or some mental health needs. All children who come into state custody are supposed to be screened for mental health needs and provided treatment for those needs. Suicide risk and mental health screening results are to be provided to the court for youth in delinquency proceedings at disposition. Developmental Disability information and diagnosis should be included in the health screenings both for proper planning and to assist in preventing victimization while the child is in custody.

Screening results should also be provided to Detention Centers to help inform them about how to serve youth, however in at least some parts of the state there is a breakdown in communication between the JACs and the Detention Centers. Youth who remain in detention and for whom a screening indicates a developmental, mental health or substance abuse need is identified are supposed to be referred for a comprehensive assessment. Successful rehabilitation of a youth is greatly increased when parents are involved, yet Florida does not routinely obtain informed consent from parents or the children regarding health or mental health treatment.

FCF recommends that:

- *DJJ implement measures to ensure that mental health and substance abuse information obtained in the JAC assessment conveyed to the Detention Center with the youth.*
- *Comprehensive assessments should be incorporated into a treatment plan for each youth, if the parent and child have given informed consent, or with the child's attorney's consent, or judicial order after a hearing where the child is represented by counsel.*
- *DJJ develop a standard informed consent form and protocols that meet recognized standards.*

Psychotropic Medications: Youth in the custody of DJJ may be administered psychotropic medications with the consent of their parents. The State must obtain a court order to administer psychotropic medications to youth who do not have parents who consent to the medication. Yet such youth are not routinely appointed counsel to assist them in asserting their right to object to such medication. In some instances where the youth do have counsel, these orders are obtained ex parte without counsel or the child having an opportunity to object. For youth in DCF custody, the protections established in Section 39.407(3) should apply.

FCF recommends that:

- *All youth should be properly evaluated prior to the administration of psychotropic medications and carefully monitored for side effects or contra-indications while receiving those medications.*
- *All youth who are being involuntarily treated with psychotropic medications should be appointed competent counsel to represent them.*

Access to Treatment in Detention Centers: Youth are not supposed to remain in detention centers for more than 21 days. They are supposed to either be released or committed to juvenile facilities. However, youth deemed incompetent to proceed, and those who need specialized treatment facilities, may remain in detention centers long past 21 days. ***Unlike adults, there is no time limit in the Juvenile statutes.***

Detention centers generally do not have adequate mental health and substance abuse treatment programs. Some are capable of stabilizing youth in crisis – others take youth to community based crisis treatment centers.

There is no provision for the continuity of care for youth who were receiving mental health /behavioral or substance abuse services in the community prior to their entry into the juvenile justice system.

Moreover, youth with serious mental health and substance abuse needs who are delayed in detention centers do not begin treatment until they are moved to a commitment facility.

FCF recommends that:

- *DJJ work with community providers to provide youth with access to the mental health and substance abuse services they received in the community.*
- *DJJ initiate provision of mental health and substance abuse services to youth in detention centers.*

Youth Incompetent to Proceed: Currently, there are a limited number of facilities available to provide competency restoration to youth deemed incompetent to proceed. As a consequence, youth with serious mental illness remain in detention centers for long periods of time. Additionally, most youth are sent far away from home to attend competency restoration programs that deprive them of close communication with their family.

There are no appropriate programs for dealing with youth whose developmental delays will preclude them from ever obtaining sufficient competency to stand trial. These youth may spend months at very expensive programs that cannot provide them with the cognitive capacity to assist counsel in their defense.

FCF recommends that:

- *DJJ work with community providers to create community based competency restoration programs.*
- *DJJ investigate best practices in other states to create appropriate systems for dealing with developmentally disabled youth in the criminal justice system.*

Court Proceedings: Juvenile court frequently serves as a training ground for new public defenders, prosecutors, and judges. Youth need competent experienced legal professionals to handle and hear their cases. They should have counsels who understand the unique needs of youth and particularly of youth with mental health concerns and other disabilities. Prosecutors and judges should likewise have

knowledge and understanding of youth and the systems that serve them.

Youth are permitted to enter guilty pleas without first obtaining the advice of counsel. While this practice has serious consequences for all youth, it is particularly dangerous for youth with mental health concerns. Such youth may not fully comprehend the consequences of their plea, nor understand that they may have viable health-related defenses.

A recent study of public defender and private attorney performance in delinquency proceedings in Florida noted that advocacy at the dispositional phase was “routinely weak and inadequate.” Currently the majority of public defenders and private attorneys are not well trained on the mental health and substance abuse needs of their clients rendering them less effective at advocating for appropriate services.

Presently most delinquency and dependency courts routinely bring detained youth in to court in shackles, regardless of whether the youth pose a threat or escape risk. This degrading and dehumanizing practice serves to further traumatize youth with mental health concerns and disabilities.

FCF recommends that:

- *Courts immediately order that DJJ stop the indiscriminate shackling of youth.*
- *Courts refuse to allow youth to plead guilty or no contest until they have had a meaningful opportunity to confer with an attorney.*
- *Courts, State Attorneys and Public Defenders cease using Juvenile court as training grounds and work together to enhance the quality of practice in juvenile court.*
- *Public Defenders train their staff on mental health and substance abuse issues for children and implement procedures to enhance the quality of advocacy at the dispositional phase.*
- *Bar associations provide educational programs with CLEs for attorneys on mental health and substance abuse issues for children and implement procedures to enhance the quality of advocacy at the dispositional phase.*

Probation and Conditional Release (After-Care): Youth released to the community receive referrals for continued mental health and substance abuse treatment, but there is no mechanism in place to ensure that they receive the needed treatment. We have found that for some “crossover kids”, CBC Caseworkers often advocate against conditional release and seek to hold the child in custody because the CBC does not have adequate stable placement alternatives for the child. Children eligible for probation or conditional release should not be detained further for the convenience of child welfare providers.

FCF recommends that:

- *The courts routinely require that the JPOs identify treatment providers and ensure that necessary and appropriate services are in place.*
- *DJJ and DCF work with communities to enhance availability of mental health and substance abuse services for youth released from DJJ custody.*
- *DJJ, DCF and CBC’s work with communities to enhance availability of foster and group homes for youth released from DJJ custody.*

Special Concerns: In our experience many youngsters are sentenced into a 6 or 12 month DJJ program but when something happens, the youth are reported as disruptive, and administratively transferred to a different program, where the clock starts all over. There does not seem to be any examination as to whether the disruptive behavior is a manifestation of any disability or whether the cause for the disruptive behavior justifies an extended sentence. For example, we are aware of more than one child sentenced to a 6 month program who was held in DJJ programs for 4 years. Additionally, we have a special concern regarding the overrepresentation of minority youth in the juvenile justice system at all stages. This fact is well known and yet continues unaddressed.

FCF recommends that:

- *A careful, objective study of the practice of extending sentences be conducted and recommendations from the study be implemented.*
- *The state work to reduce disproportionate minority contact and the overrepresentation of minority youth in the juvenile justice system.*

Transition to Adulthood: Some children and youth, unfortunately, seem to be growing up in the juvenile justice system. These and other

youth need services tailored to supporting a successful transition to productive, law-abiding adulthood. The DJJ should revamp its programs to include evidence based practices that further goals related to successful transitions.

Pre-Dispositional Behavioral Assessments: The National Juvenile Defender Center's recent assessment of Florida's delinquency system notes that some courts routinely obtain behavioral assessments which the courts use in decision making. The child's counsel is often not permitted to review the reports for factual accuracy, which can have the unintended consequences of placing "prejudicial, private, irrelevant, incriminating or erroneous information" before the court. Moreover, public defenders do not routinely engage independent experts to establish defenses or an independent look at the child's psychological issues.

FCF recommends that:

- *Behavior assessments conducted on children prior to disposition be provided to defense counsel for review and the opportunity to obtain revision/corrections prior to submission to the court.*
- *Public defenders increase their use of independent experts to examine youth and make dispositional recommendations.*

Information Sharing: Juvenile justice and other youth-serving agencies often have difficulty receiving timely and reliable information needed for conducting assessments and determining appropriate supervision, sanctions, incentives, and services for youth. The agencies and programs serving children generally do not perceive that they can accomplish more by working together than they can on their own. In advocating information sharing, we note it is important that confidentiality must be maintained even when information is properly shared among agencies. Any disclosure of youth- and family- specific information needs to be based on appropriate legal authorization.

Sharing information could result in better comprehensive assessments, referral to the most appropriate services, coordination of services and the avoidance of duplication, facilitate the monitoring of service plans, and serve the needs of the broader community for accountability and even safety. Florida needs to join with state and local jurisdictions across the United States that have begun working to improve information sharing among key agencies responsible for community

safety and the health and wellbeing of at-risk youth and juvenile offenders for these purposes.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), and other federal departments such as the Substance Abuse and Mental Health Services Administration and the U.S. Department of Education, have begun promoting information sharing among juvenile justice, education, and other youth-serving agencies to support a comprehensive continuum of care and services. Reportedly, 35 states have enacted new legislation regarding juvenile records. In addition, policymakers have (rightfully) begun requesting that agencies provide accurate data to measure program effectiveness, costs, gaps, or redundancy that can best be provided through information sharing.

FCF recommends that:

- *This Commission join with the Governor's Commission on Open Government and update Florida laws regarding confidentiality practices, privacy protections and information sharing relevant to:*
 - *Juvenile Court and Juvenile Probation records.*
 - *Child welfare and child protection records.*
 - *Education records.*
 - *Medical and behavioral health records.*
 - *Specialized services (e.g., pre-trial release, detention).*

FCF joins DOJ in recommending key decision-makers or stakeholders from the following groups be involved in developing a new and better approach to information sharing:

- ◆ *Juvenile justice and corrections.*
- ◆ *Child welfare.*
- ◆ *Community services.*
- ◆ *Education.*
- ◆ *Law enforcement.*
- ◆ *Mental health.*
- ◆ *Primary health care.*
- ◆ *Substance abuse.*
- ◆ *Developmental Disabilities.*
- ◆ *Technology.*
- ◆ *Legal advisors, e.g., general counsels, prosecutors, public defenders, attorneys for children.*
- ◆ *Other advocacy organizations serving youth.*
- ◆ *Other youth-serving agencies and organizations.*

We also suggest other possible stakeholders be included, such as:

- *Business representatives.*
- *First Amendment Foundation Representatives.*
- *Elected officials.*
- *Youth and Family Representatives*

Engage youth and family representatives: It is critical to involve youth and families in the planning and development of system improvements especially related to information sharing. By participating, youth and their families are included in the development of solutions that affect their lives. Engaging and learning from youth and families also results in better decision-making. Typically, at-risk and delinquent youth and their families are engaged with multiple agencies, each of which collects similar information as part of intake and processing. They know that when agency decision-makers receive the information necessary to make good decisions, they know when duplicate information is requested, they know when they receive the services and assistance they need.

Informed Consent/Common Release: *One system improvement that we strongly recommend for immediate implementation is that state agencies agree upon and implement a common process for obtaining informed consent for information release/sharing to begin the process.*

The criteria¹ for a common release should include:

- Explanation of the purpose(s) of the information sharing.
- The reason(s) for disclosing the information.
- The way(s) that the disclosed information will be used, including other agencies to which it might be disclosed.
- Any limitations on the disclosure and/or use of the information.
- Agency practices regarding sharing of non-confidential, as well as confidential information, and the privacy protections that will be used.
- The way(s) youth and/or the youth's parent/legal guardian can revoke their consent.

¹ The elements noted are derived from relevant statutes and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), and 42 C.F.R. Part 2: Federal Alcohol/Drug Confidentiality Regulations and as contained in the DOJ,OJJDP Report, Guidelines on Information Sharing, October, 2006.

- Policies for youth and/or youth's parent/legal guardian to review, revise and/or supplement their information.
- Identification of the expiration date of the consent to release information or the circumstances upon which the consent automatically expires (e.g., when a youth is successfully terminated from probation or court supervision).
- Grievance procedures for suspected unauthorized disclosure or use of the information.
- Penalties for unauthorized disclosure or use of the information.
- Provisions for the subject of the information to exercise the right to a copy of the release.

A common consent form used by all participating agencies can reinforce the respect for the privacy rights of the children and the informed consent process while facilitating the prompt sharing of information needed to provide services.

"Informed consent" requires that the youth and/or parent(s), or legal guardian provide consent with a full understanding of what information is likely to be shared, with whom and under what circumstances, what information can be released to whom without their consent, and consequences for unauthorized disclosure. To ensure that the consent is "informed," participating agencies need to be aware of any cultural or linguistic factors that may impact the youth and/or parent or legal guardian's ability to understand the consent process, including the need for interpretive services.

Despite assurance of privacy protection, the youth, parent(s), or legal guardian may not want specific personal information disclosed. In cases when a youth, parent(s), or legal guardian refuses to provide consent, in part or in total, they should not be denied services based on their refusal unless the information is necessary to determine eligibility for services. The agency must be responsible for ensuring that the youth, parent(s), or legal guardian understand that they are not required to consent to the release of any personal information; the consequences, if any, of not providing consent; and if their refusal may hinder the delivery of services.

We also recommend informational materials about confidentiality policies and procedures be "user friendly," that is, written in language that is developmentally appropriate, easily understood, and available in the primary languages of most affected youth and families. A user-

friendly approach should also be used for materials that inform youth and their families on how to assert their privacy rights.

SUMMARY

Florida's Children First strongly supports a common sense approach to Juvenile Justice; one that treats young people fairly, holds them accountable for their actions, and keeps our neighborhoods, schools, and communities safe while also providing appropriate care while children are in the custody of the state. We hope the above comments will assist the Commission in its work.