ModelsforChange
Systems Reform in Juvenile Justice

Measurable Progress Series

Impact of Illinois' Statutory Change Mandating the Least Restrictive Alternative Standard

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The Issues: History Leading to the Least Restrictive Alternative Standard

In 2010, juvenile justice advocates grew increasingly concerned about the high number of commitments to the Illinois Department of Juvenile Justice (IDJJ) for non-violent low-level felony and misdemeanor offenses. During 2010, over half (53%) of the court commitments to IDJJ were for non-violent offenses, with nearly 12% of the commitments for misdemeanor offenses and over 5% for drug offenses. By contrast, only 9 of the 1,243, or less than 1%, of court commitments were for homicide.

In light of the research documenting the ineffectiveness of incarceration, especially for low-level offenders,[1] the high percentage of incarcerated low-level offenders is contrary to best practices. Redeploy Illinois, initiated in 2006, had reduced the number of court commitments to IDJJ, but the Redeploy program was operating on a small budget with funding only for roughly a dozen sites around the state. Meanwhile, a bed in the state juvenile prison was costly, averaging around $90,000 per bed annually.

In January of 2011, key stakeholders in Illinois participated in a policy summit hosted by the Juvenile Justice Initiative on proportionality in sentencing. The purpose of the summit was to examine current trends in juvenile dispositions in Illinois as well as look to best practices, research and policy to ensure individualized treatment and utilization of incarceration as a last resort for as short a time as possible.

One outcome of the summit was the opportunity to work on legislation to ensure individualized treatment of youths in the juvenile justice system. In January of 2011, state Representative Annazette Collins filed House Bill 83. The bill began as a shell, but after a flurry of amendments, eventually House Amendment No. 3 was filed and assigned to the House Human Services Committee. Rep. Collins was appointed to the Senate, and Rep. Karen Yarbrough took over sponsorship in the House. The House amendment included the requirement that commitment to IDJJ be the least restrictive alternative, and provided a presumption in favor of community based treatment rather than secure confinement for

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[1] *Pathways to Desistance,* http://www.pathwaysstudy.pitt.edu

minors adjudicated delinquent based on a misdemeanor or non-violent felony. The House amendment also required an individualized case plan including a reentry plan. House Amendment 3 was adopted in the Human Services Committee with only one dissenting vote.

However, prior to the House floor vote, H.B. 83's language was replaced by House Amendment 5, which required a review of individualized factors and a finding that reasonable efforts had been made to prevent removal from home. This amendment became the final bill, passing the House on a 73-25-0 roll call, and passing the Senate unanimously. The bill was signed by the Governor and took effect as Public Act 97-0362 on Jan. 1, 2012.

Innovations: The Legislative Change to Least Restrictive with Reasonable Efforts

House Bill 83 [Public Act 97-0362] was intended to help judges obtain the necessary information to make informed decisions regarding dispositions for youths. Without essential information about youths and possible alternatives to incarceration, judges had no choice but to over-rely on incarceration as their only option for youths who need more structure than normal probation. The legislature assumed that H.B. 83 basically codified the current best practices of judges.

H.B. 83 reminded judges that they must find that: ***"Commitment to the Department of Juvenile Justice is the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement."***

H.B. 83 also required that courts be provided with the following information before making a finding that secure confinement was necessary:

- **Detailed information on the youth's background, family, and strengths & challenges, including:**
  - Youth's age
  - Youth's criminal background
  - Review of results of any assessments of the minor, including child-centered assessments such as the CANS
  - Youth's educational background (e.g., special ed., school discipline, grade level)
  - Physical, mental and emotional health of the youth
  - Available family support
- **Detailed information on services that were offered and specific information on why they didn't work and what could be changed to help them work.**
  - Physical, mental, or emotional health services provided and whether the youth was compliant with services.
  - Community based services provided and whether the minor was compliant with the services.
  - When services fail, the court should be provided with a comprehensive explanation of what happened (problems with transportation, support, etc) and what changes might allow the services to be successful.
  - A listing of specific services within the Department of Juvenile Justice that will meet the individualized needs of the minor.
- **Detailed information on services available in the community.**

- Judges could utilize the Illinois Statewide Provider Database (illinoisoutcomes.dcfs.illinois.gov), which recommends available and appropriate services based on the youth's demographic, clinical, and geographic characteristics.

Finally, the bill provided that before commitment, the court also had to find that "***reasonable efforts have been made to prevent or eliminate the need for the minor to be removed from the home, or reasonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal, and removal from home is in the best interests of the minor, the minor's family, and the public."***

Results: Impact of the Change to Least Restrictive Standard

To determine the impact of the statutory change mandating the least restrictive alternative standard for juvenile sentencing, the Juvenile Justice Initiative (JJI) conducted examined court commitments from the year immediately preceding the change, FY11, versus court commitments from the first year of the statutory reform, FY12.[2] JJI looked at the total statewide commitments as well as individual county commitments.

Statewide, court commitments had already been steadily decreasing, in large part due to Redeploy Illinois. Court commitments statewide totaled 1382 in FY09, then decreased by 11% (to 1243) in FY10, and 6% (to 1171) in FY11. In 2012, the first year of the H.B. 83 reform, commitments decreased by 15% (down to 1019).[3] The impact of the statutory change mandating the least restrictive alternative standard clearly impacted the downward trend in court commitments to IDJJ.

JJI also conducted a preliminary comparison of calendar year arrest rates with the fiscal year court commitments, which indicates that the decrease in court commitments is not due solely to falling arrest rates, although most counties experienced a decrease in arrest rates as well. See Appendix B.

Kane County. In order to examine the impact of H.B. 83, JJI undertook an examination of individual counties that were not part of Redeploy Illinois, so that it would be clear that the statutory reform was the basis of any changes in commitments to IDJJ.[4] Kane County is one example. Kane had utilized the Redeploy planning process, but was not a Redeploy site. The combination of the planning process and the least restrictive statutory reform led to a dramatic decrease in court commitments in Kane County – from 25 in FY11 (the year prior to the reform) to a decrease to 12 in FY12 (the first year of the reform). Kane County implemented the statutory reform by requiring cross-disciplinary staffing of all cases that were in danger of commitment to IDJJ.

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[2] All of the court commitment data referenced in this document was taken from the annual summaries of admissions to the Illinois Department of Juvenile Justice, prepared by Dr. David E. Olson of Loyola University, as his volunteer contribution to the Advisory Board of the IDJJ. The summaries are posted on the IDJJ website.

[3] Ibid.

[4] Several counties that were not part of Redeploy IL in FY12 were selected and examined to observe the impact of the HB83 statutory reform in order to avoid decreased commitments that might well be due to Redeploy IL services and practices rather than the HB83 reform. However, it is worth noting that HB83 had a positive impact in Redeploy sites as well, and is an effective strategy, along with Redeploy services, to decrease commitments to state juvenile prison.

Champaign County. Champaign was not a Redeploy site, but decreased its court commitments to IDJJ the year of the statutory reform. In FY11, Champaign County had 72 court commitments, but this decreased to 33 court commitments in FY12, the year the least restrictive standard took effect.

Cook County. Cook County was not a juvenile Redeploy site, but decreased its commitments to IDJJ the year of the statutory reform. In FY11, Cook County had 489 court commitments to IDJJ. This decreased to 436 court commitments in FY12. Cook County reports they changed their court order form, and that they were also able to access Title IVE federal reimbursement for juvenile services.

Sangamon County, also not a Redeploy site, reduced from 23 in FY11 down to 16 in FY12, the first year of the statutory reform.

Macon County. Macon County had a similar reduction in court commitments. Macon decreased from 34 in FY11 to 22 in FY12. Furthermore, Macon County Juvenile Court Judge R.C. Bollinger used his county's local juvenile justice council to educate key stakeholders of the impact of the least alternative standard (see Appendix A).

Lessons: Implementing the Least Restrictive Standard

Local Leadership. One critical aspect to limiting commitment to use of the least restrictive alternative is local leadership. **DuPage County** (not a Redeploy Illinois site) is one example of the impact of local leadership valuing the use of all efforts to keep youth at home. Over a decade ago, DuPage (the county with the second largest juvenile population in the state) determined it was too costly to continue to remove youth from home. Probation officers were trained in multi-systemic therapy and court stakeholders were encouraged to examine every possible alternative short of removal from home. The shift in local values led to the downsizing of detention and commitments to IDJJ – such a dramatic downsizing that the county eventually closed its detention center. DuPage County court commitments to IDJJ in FY11 were 10; this fell to 7 in FY12. The county with the second largest juvenile population in the state has one of the state's lowest commitment rates, based on the leadership of the county's leaders. A similar shift can be observed in **Will County**, based on the leadership of its juvenile court judge, Judge Paula Gomora. This has been a steady decrease, with court commitments of 27 in FY09, down to 12 in FY11 and further down to 10 in FY12.

Stewardship from the Court. A recent Appellate Court opinion out of the Fourth District reversed a commitment to IDJJ by a Vermilion County judge on the basis of the judge's failure to actively seek evidence that commitment was the least restrictive alternative. *In re Raheem M., No 4-13-0585,* 12/10/13, involved a sixteen year old and a "brawl" in the school cafeteria during which chairs were thrown and one chair hit a teacher, resulting in the aggravated battery case. Seven months after the incident, the court held an adjudicatory hearing and *sua sponte* (on its own) ordered the minor detained, despite the lack of any evidence of any further misconduct over the intervening seven months and no request for detention from the state. The detention caused the youth to miss taking the G.E.D. Despite the minor's lack of priors (police contacts but no court referrals), and without any direct evidence of investigation of less restrictive alternatives, the court committed the minor to IDJJ. Defense counsel filed a motion to reconsider, introducing evidence of an alternative community placement with probation and a guardian, but the court denied the petition citing what it deemed to be the minor's lack of respect for authority. In overturning the commitment, the Appellate Court reminded sentencing judges:

"***Prior to committing a juvenile to the DOJJ, a trial court must have before it evidence of efforts made to locate less restrictive alternatives to secure confinement and the court must state the reasons why said efforts were unsuccessful. This is not some pro forma statement to be satisfied by including the language of the statute in a form sentencing order. Actual efforts must be made, evidence of those efforts must be presented to the court, and, if those efforts prove unsuccessful, an explanation must be given why the efforts were unsuccessful. None of this was done prior to respondent's commitment to the DOJJ…the General Assembly made clear with the passage of Public Act 97-362 (Pub. Act 97-362, § 5 (eff. Jan. 1, 2012)), a juvenile shall not be sentenced to the DOJJ without evidence before the sentencing judge of less restrictive alternatives, except in the case of murder. The court must have evidence efforts were made to locate a less restrictive alternative and must also have evidence of the reasons why the efforts made were unsuccessful. These statutory requirements ensure trial courts are treating the DOJJ sentences as a last resort."***

This decision clarifies the Court's commitment to ensuring the standard of least restrictive alternative is meaningful, following a thorough review of all possible less restrictive alternatives.

Next Steps

The statutory change mandating court commitment to the Illinois Department of Juvenile Justice only where it is the least restrictive alternative and all reasonable efforts were made to keep the minor at home did have a positive impact on court practice leading to more thorough review at sentencing with more detailed information before the court and expanded consideration of alternative dispositions. The dramatically reduced level of court commitments in non-Redeploy counties the first year after the change illustrates the impact of clarifying the standard and the required review prior to court commitment.

Furthermore, the data reveals that there are more opportunities to implement H.B. 83:

- **Regional capacity to provide individualized case review: the judiciary needs more information on alternatives.** A recent downstate case of a 13 year old who remained incarcerated over a year later due to ongoing mental health issues because the judge felt there were no other alternatives illustrates the urgent need to ensure all judges in juvenile court have access to timely information on alternatives to incarceration. One approach would be to develop regional capacity in the state to develop individualized case plans for judges in cases where they believe removal from home may be necessary. These individualized case reviews would include planning for wrap around community-based services, if possible, and for reentry plans if removal from home is deemed necessary.

- **Child welfare services: utilize in lieu of commitment for cases with underlying child welfare issues.** The development of regional capacity to develop individualized case plans would then enable the state to standardize the consideration of child welfare services (as well as community based alternatives), thereby maximizing limited child welfare services, as well as accessing federal dollars (Medicaid and Title IVE) for cases that come into court through the juvenile justice door, rather than the child welfare door.

- **Continuing to rightsize the juvenile justice population: limit misdemeanor /low level felony (property and drug)/ and technical probation violator court commitments:** Illinois should explore joining the growing list of states (e.g., Ohio, Texas, and California) that eliminate misdemeanor court commitments and encourage greater review of low level felony court commitments. Further, Illinois should also explore following the Rule 23 reasoning (3rd Dist case) and close the door to commitments that result from technical violations of probation. It is worth noting that the statutory Least Restrictive Alternative change only addresses the front end commitments to IDJJ from court. It does not address the growing issue of re-admissions to IDJJ based on parole violations (most of them technical violations, rather than recommitments on a finding of guilt on a new criminal offense). ***Re-admissions on parole violations accounted for nearly half (48.76%) of all admissions to IDJJ in FY12[5].*** Illinois legislators and policy makers need timely and complete data on re-admissions of parole violators to IDJJ to determine whether re-admissions to IDJJ should be restricted to youth only with a finding of guilt on a new criminal offense.

Overall, while implementing the least restrictive standard is a work in progress, the evidence reveals the statutory change to clarify what was considered existing practice – commitment only if evidence reveals it is the least restrictive alternative available – worked to change court practices and decrease court commitments.

Resources

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This brief is one in a series describing new knowledge and innovations emerging from Models for Change, a multi-state juvenile justice initiative. Models for Change is accelerating movement toward a more effective, fair, and developmentally sound juvenile justice system by creating replicable models that protect community safety, use resources wisely, and improve outcomes for youth. The briefs are intended to inform professionals in juvenile justice and related fields, and to contribute to a new national wave of juvenile justice reform.

[5] IDJJ admissions include both court commitments following a finding of guilt, as well as re-admissions following a parole revocation.

Appendix A

Excerpt from Macon County Juvenile Justice Council's Fall 2012 Newsletter:

"Effective January 2012, the [Juvenile Court] Act was amended to place significant limitations on the Court's authority to commit minors to the Department of Juvenile Justice. The Court is now required to make an express finding that reasonable efforts have been made to eliminate the need for the minor to be removed from the home, or that reasonable efforts cannot, at this time, for good cause, prevent or eliminate the need for removal and that the removal is in the best interests of the minor, the minor's family and the public. This legislative change was in response to juvenile justice reform efforts and studies indicating that sentencing a minor to a juvenile prison is generally not an effective sentencing option and that community-based sentences may be more effective at reducing delinquent conduct.

In an effort to comply with the spirit and intent of this recent legislative amendment, the Council has attempted to identify all local service providers willing to offer community based services to minors involved in juvenile court proceedings. Various providers have responded to these inquiries and have expressed a willingness to provide necessary services, including mental health counseling and treatment, substance abuse treatment, home intervention services, individual and group counseling, adult mentoring services. This information in turn is being utilized by counsel representing the parties and the Court in an effort to comply with the recent legislative mandate.

To ensure that minors are not placed at risk while receiving community-based services, all organizations that will be providing services to minors pursuant to a court order will be required to screen their individual service providers and strictly adhere to a background check policy. Community-based services are now being offered to minors and their parents in the early stages of juvenile court proceedings pursuant to the Community A.C.C.E.S.S. and Second Chance grant funded program initiatives. All minors placed in juvenile detention are immediately evaluated for services with their consent. After being evaluated, recommendations are made to the Court for release of the minor to the home, with requirements that the minor engage in various community-based programs pursuant to an individualized service plan. Similarly, minors may voluntarily participate in the Community A.C.C.E.S.S program at the early stages of the proceeding. Short of commitment to a juvenile prison, the court has various sentencing alternatives under the Act, including a continuance under supervision of the Court, conditional discharge and probation. These community-based sentences typically include various conditions, such as ongoing participation in the Community A.C.C.E.S.S or Second Chance programs, various treatment plans on an inpatient or outpatient basis, community service work, restitution, participation in educational programs, work with community restorative boards, etc. If the minor commits another criminal offense or fails to comply with any of the conditions, the State may charge the minor with a violation and seek to have the minor resentenced. The services offered to the minor and the minor's participation and progress in these programs are considerations by the Court on resentencing if a violation is proven. The Court conducts periodic compliance reviews whereby the minor, parents and service providers come into Court to report on the minor's participation and progress. When appropriate, the Court will reinforce with the minor the importance of participation in the programs and the potential consequences of a violation. If the minor's parents are engaging in conduct that is counter-productive to the minor's success in these programs, the parents may be placed under a protective supervision order of the Court. Sanctions may be imposed on a parent who willfully fails to comply with any condition of the protective supervision order.

These efforts for the most part, appear to have contributed to a reduction in the need for secure detention and commitment of minors to juvenile prison facilities. Minors have benefitted and made substantial progress while in these community-based programs. We have experienced many positive outcomes to date. Further efforts are being undertaken by the Court and Council to identify community-based service providers that may be interested in working with minors involved in juvenile court proceedings, as well as consideration of a new pilot program involving the use of electronic monitoring as an alternative to secure detention.

Judge R. C. Bollinger"

Appendix B

Arrest Rates, Adjudication Rates and Department of Juvenile Justice Court Commitment Rates in Year of Passage of Least Restrictive Alternative Standard

	Arrest (Age 13-17)			DJJ Court Commitment (Age till 21)		
County	**CY2011**	**CY2012**	**% Change**	**FY2011**	**FY2012**	**% Change**
Cook	31837	28994	-8.93%	489	436	-10.84%
Champaign	495	471	-4.85%	72	33	-54.17%
Kane	2065	2058	-0.34%	25	12	-52.00%
Macon	396	424	7.07%	34	22	-35.29%
Sangamon	386	335	-13.21%	23	16	-30.43%
Jefferson	125	113	-9.60%	5	2	-60.00%
Franklin	20	34	70.00%	4	3	-25.00%

Data Source

Arrest: Criminal History Information Record retrieved by ICJIA

DJJ Court Commitment: David Olson's Report