

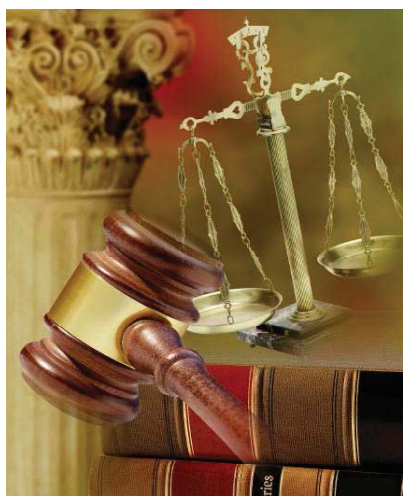
## The Juvenile Justice System

### Introduction

*This issue of Facts on KIDS and the next will cover the topic of the Juvenile Justice system. It will begin with a historical look at juvenile justice - reforms and changes in law. The next issue will cover the juvenile justice system in South Dakota.*

### History of Juvenile Justice

In order to understand the juvenile justice system, it will be helpful to look at how it developed historically. Early in U.S. history, children who broke the law were treated the same as adult criminals. Throughout the late 18th century, “infants” below the age of reason (traditionally age 7) were presumed to be incapable of criminal intent and were, therefore, exempt from prosecution and punishment. Children as young as 7, however, could stand



trial in criminal court for offenses committed and, if found guilty, could be sentenced to prison or even to death.

A shift in society’s views came in the 19th century. Reformers became concerned about the overcrowded conditions in the jails and the corruption youth experienced when confined. Reformers became more interested in rehabilitating juveniles instead of punishing them. In response, Houses of Refuge opened as facilities exclusively for children. In the mid-nineteenth century Houses of Refuge were replaced with training schools.

The 19th-century reform movement also led to the establishment of the juvenile court in the U.S. The first juvenile court in the U.S. was established by the Illinois legislature in 1899. It was “believed that children differed from adults in significant ways and that these differences

led to the need for a specialized court to handle legal issues involving children.”<sup>1</sup> The juvenile court exercised its authority based on the British doctrine of *parens patriae* (the State as parent). A key element was the focus on the welfare of the child. The delinquent child was seen as in need of intervention. The State had the inherent power and responsibility of protecting children until they were ‘rehabilitated’ or became adults. By 1924 only two states did not have a juvenile court.

### The 1950’s - 1970’s

In the 1950’s and 60’s public concern grew about the increasing number of juveniles institutionalized for an indefinite period of time. Lawsuits in the 1960’s argued that the civil proceedings of the juvenile courts did not afford youths, who were facing confinement, due process of law as established in the Bill of Rights (5<sup>th</sup> and 14<sup>th</sup> Amendments). The U.S. Supreme Court made a series of decisions based on lawsuits that formalized the juvenile courts. As a result “formal hearings were required in situations where juveniles were waived to adult courts; juveniles facing confinement were required to be given the right to receive notice of charges held against them, and the right to have an attorney represent them. “Proof beyond a reasonable doubt” had to be established, instead of just “a preponderance of evidence” for an adjudication.”<sup>2</sup>

Congress weighed in on juvenile justice and in 1968 passed the Juvenile Delinquency Prevention and Control Act. The Act encouraged states to handle children charged with a status (non-criminal) offense outside the court system.

In the 1970’s Congress passed the Juvenile Justice and Delinquency Prevention Act. As a condition for states to receive federal funding they were required to deinstitutionalize status offenders and non-offenders and to separate juvenile delinquents from adult offenders.

### 1980’s and 1990’s

The 1980’s and 1990’s were significant in changing treatment of many juvenile offenders as criminals. In the 1980’s juvenile delinquency and violent behavior



## The Juvenile Justice System & Disproportionate Minority Contact

### Introduction

*This issue of Facts on KIDS continues with the topic of the Juvenile Justice system. The South Dakota juvenile justice systems and disproportionate minority contact (DMC) will be discussed.*

### South Dakota's Juvenile Justice System<sup>1</sup>

The responsibility for the juvenile justice system in South Dakota is shared among county governments, the state court, and state executive branches. Counties are responsible for the prosecution of juvenile offenses and detention in the preadjudicatory period. In addition, one dispositional option open to judges is sentencing for up to 90 days in a county juvenile detention facility. The Unified Judicial System's Court Services Department provides predisposition investigation and probation supervision services through seven judicial districts. The Department of Corrections administers the state's juvenile correctional services in the post-adjudicatory phase. What follows is a brief description of the system.

### Detention

County executive agencies administer South Dakota's seven secure detention facilities. A youth may be detained if he or she is:

- (1) a fugitive from another jurisdiction;
- (2) charged with certain offenses;
- (3) already held in detention or on conditional release in connection with another delinquency proceeding; and
- (4) failing to appear for juvenile court proceedings, violent conduct, or adjudications for serious property offenses.

### Delinquency & Diversion

By statute, a state's attorney must conduct a preliminary investigation to determine whether further action should be taken after receiving a delinquency referral. The state's attorney has the option to decide to refer the matter to a court-approved juvenile diversion program for any informal action outside the court system. Informal adjustment may last no longer than three months. The state's attorney may also file a petition to bring the child before the court.

### Predisposition Investigation & Probation Supervision

Court Services Officers within the Unified Judicial System's Court Services Department prepares a "prehearing social case study". Court Services Officers may give recommendations and prepare social case histories when court-ordered. The court sets the terms and conditions of probation. An individualized Supervision Plan, in addition to the Conditions of Probation as set forth by the court, is required.

### Juvenile Corrections Continuum

If the youth is to be placed out of the home, the juvenile is committed to the Department of Corrections (DOC), which administers juvenile institutions. The South Dakota DOC operates programs such as the Patrick Henry

Brady Academy, Youth Challenge Center or the Living Center for boys and the QUEST or EXCEL programs for girls. Youth can also be placed with the Department of Human Services, in foster care or in private care. Juvenile Corrections Agents, working in 17 offices



across the state, interview juveniles to make placement recommendations.

### Direct Placement

The court can place a juvenile directly in a local or private placement only for chemical dependency placements and into short-term detention facilities. Direct placements to detention centers may not last longer than 90 days. The court may place the juvenile at the Human Services Center for examination and treatment. A Court Services Officer supervises the juvenile while he or she is in direct placement.

### Release

The Secretary of Corrections may order the release of a juvenile from the Department of Corrections (DOC) as a reward for good conduct upon satisfactory evidence of reformation. Also, the court may order a youth's release from the DOC after a hearing to determine if release will promote the youth's best interests.

Within 30 days after a juvenile is committed to the DOC and every 90 days thereafter while the juvenile remains in a correctional placement, the DOC must file with the court that committed the youth a report that contains: the results of any assessments of the youth concerning the youth's emotional, mental, educational, psychological, psychiatric, medical, physical, or health status and needs; information regarding the placement of the youth within particular programs administered by the DOC; and progress of the youth in programs administered by the DOC.

### Aftercare/Re-entry

The Department of Corrections Juvenile Corrections Agents (JCA) provides aftercare services. JCAs maintain case management supervision and begin aftercare planning once a youth is placed in a DOC facility. The Department of Human Services operates one transitional living program for young men who are unable to return home.

### Victim Rights & Services

South Dakota extends rights to victims of juvenile offenders. The Department of Social Services administers the crime victim compensation program.

### Juvenile Justice Core Requirements for States

In 2003, the South Dakota legislature enacted legislation to assure South Dakota's compliance with the core protections for youth required in the JJDP Act. As a result, the state became for more than half a million dollars in federal grants from the Juvenile Justice and Delinquency Prevention Act. The guidelines to receive federal funds stated:

- Juveniles cannot be held in adult jails or prisons
- If, as allowed under certain conditions within the first 48 hours after apprehension, a juvenile is held in jail or prison, they must be separated both in sight and sound from imprisoned adults.
- CHINS – Children in Need of Supervision cannot be detained in secure facilities
- Disproportionate minority contact must be addressed by the state.

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) also required all States participating in the Formula Grants Program (Title II, Part B, of the Act) to address disproportionate minority confinement (DMC) in their State plans. In 2002, the JJDP Act broadened the DMC initiative from disproportionate minority "confinement" to disproportionate

"representation" of minority youth at all decision points along the juvenile justice system continuum.

### DMC Core Requirements of JJDP Act

States must address specific delinquency prevention and system improvement efforts to reduce the rate of contact with the juvenile justice system of a specific minority group, if that rate is significantly greater than the rate of contact for whites or for other minority groups. The purpose of this core requirement is to ensure equal and fair treatment for every youth (regardless of membership in a minority or majority population group) involved in the juvenile justice system. *Minority populations* are defined as non-white and grouped as: American Indian or Alaska Native; Asian; Black or African-American; Hispanic or Latino; Native Hawaiian or Other Pacific Islander.

*Contact* refers to the initial legal encounters through law enforcement (arrest) and to ongoing contact through actions within the juvenile justice system such as diversion, detention, referral to juvenile court, issuance of petitions, adjudication as delinquent, placement on probation, placement in secure juvenile corrections, transfer to adult court, and other such processes.



States undertake efforts to reduce DMC by moving through phases: Identification, Assessment, Intervention, Evaluation, and Monitoring.

Each State must report on its progress and describe its DMC reduction plan for the coming 3 years and the next year. OJJDP reviews the plan and its updates annually.

Failure to show progress in its DMC reduction plan under review could result in a state losing 20 percent of its Formula Grants allocation for the year.

### South Dakota's Approach to Addressing DMC

The Council of Juvenile Services (CJS) was established by the state legislature in 2003. The CJS works with the South Dakota Department of Corrections (SD-DOC) to implement the JJDP formula grants within the state.

South Dakota addressed the question of overrepresentation of minorities in secure confinement in the juvenile justice system. In December 2005, the South Dakota Department of Corrections and the Council of Juvenile Services released the report "*Juvenile Justice and Delinquency Prevention Program. Disproportionate Minority Contact Report.*"

(The Report is on-line at:

<http://www.state.sd.us/corrections/DMCReport2005Final.pdf>)

## Highlights of South Dakota's DMC Report

In Fiscal Year 2005, South Dakota completed the identification phase of the DMC process. Based on data collected, "DMC was found to exist in South Dakota's juvenile justice system. The arrest stage was found to exhibit the most evidence of minority overrepresentation within the juvenile system."<sup>2</sup>

The report found 17.5% of children and youth under age 18 in South Dakota were minority youth. The largest minority population was Native American youth (15%).

For several of the stages in the juvenile justice process data showed the following:

- The **arrest**<sup>3</sup> rate for Native American youth was 2.40 times higher than the arrest rate for Caucasian youth.
- The **detention** rate for Native American youth was 1.62 times higher than the detention rate for Caucasian youth.
- Petitions** filed for Caucasian youth was 1.19 times higher than the rate filed for Native American youth.
- The **adjudication** rate for Caucasian youth was 1.11 times higher than the adjudication rate for Native American youth.
- The **probation** rate for Native American youth was 1.20 times higher than the probation rate for Caucasian youth.
- The **detention as a disposition** rate for Native American youth was 1.20 times higher than the rate for Caucasian youth.
- The **commitment** rate for Native American youth was 2.33 times higher than the commitment rate for Caucasian youth.
- The **secure placement** rate for Native American youth was 1.59 times higher than for Caucasian youth.

## Assessment

The South Dakota Department of Corrections (DOC) concluded that it needed to understand why such overrepresentation exists. Mountain Plains Research conducted both a quantitative and a qualitative study assessment of DMC to help in identifying interventions that could reduce the occurrence of DMC. Twelve focus groups were held across the state with 92 total participants. Focus group respondents cited bias in the system from law enforcement, state's attorney, and judges. Reasons cited by focus group respondents were different laws, mores and cultural values between Reservation and Non-Reservation areas; inconsistent family life/structure; truancy and dropout rates; substance abuse; and environment-loss of culture/identity; to name a few.

Focus groups also identified solutions to reduce delinquency and DMC. Responses were cultural sensitivity/diversity training, holding adults accountable, including spiritual aspects as a part of the solution, breaking the cycle of negativity, and mentoring programs, to name a few.

More information on these issues can be found in "Assessment of Disproportionate Minority Contact in South Dakota," by Gary R. Leonardson and Roland Loudenberg, is available from the South Dakota Department of Corrections. (The report can be accessed at: <http://www.state.sd.us/CORRECTIONS/FullDMCReportFinal.pdf>).

## Intervention

The Council of Juvenile Services, responsible for juvenile justice system planning and oversight of South Dakota's compliance with the JJDP Act, created the Disproportionate Minority Contact Committee to examine DMC statewide and also recommend interventions workgroups in Sioux Falls, Rapid City and Sisseton. Statewide DMC intervention strategies were developed:

- Funded DMC interventions in Sioux Falls, Rapid City and Sisseton.
- Increase collaboration with Indian tribes and the state juvenile justice system.
- Assess the cultural competency of state agencies and departments.
- Offer cultural competency training for each agency/department/system.
- Improve quantity and quality of data for the study of DMC.
- Create legal education program for parents.
- Continue to support three local DMC workgroups.
- Research impact on raising compulsory school attendance from 16 to 18.
- Disseminate DMC information.

The remaining phases, evaluation (to evaluate the effectiveness of the chosen intervention strategies) and monitoring (to note changes in DMC trends and to adjust intervention strategies as needed) will be completed when the intervention strategies have been implemented and results compiled.



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#### Notes:

<sup>1</sup>Information for this section is used with permission from: National Center for Juvenile Justice. 2006. "South Dakota." State Juvenile Justice Profiles. Pittsburgh, PA: NCJJ. Online. <http://www.ncjj.org/stateprofiles/>.

<sup>2</sup>South Dakota Department of Corrections and Council of Juvenile Services (2005) Juvenile Justice and Delinquency Prevention Program. Disproportionate Minority Contact Report. (Page 9).

<sup>3</sup>If the youth is a juvenile, the youth is apprehended and not "arrested."

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The South Dakota KIDS COUNT Project ([www.sdkidscount.org](http://www.sdkidscount.org)) is a national and state-by-state effort, sponsored by the Annie E. Casey Foundation, to track the status of children in the United States. By providing policymakers and citizens with benchmarks of child well-being, KIDS COUNT seeks to enrich local, state, and national discussions concerning ways to secure better futures for children and families. Additional funding for the state project comes from the South Dakota Departments of: Education, Human Services, and Social Services.

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#### Resources:

- OJJDP's DMC website at <http://www.ojjdp.ncirs.org/dmc>.
- South Dakota Department of Correction website: <http://www.state.sd.us/DOC>
- South Dakota Voices for Children. The South Dakota Juvenile Justice System Guidebook for Youth and Parents. <http://www.sdvoicesforchildren.org/JJGuidBk.pdf>
- Kids, Crimes, Choices: What Can We Do? by Susan M. Randall, Ph.D., Jeanmarie Heriba, and Ruth Yellow Hawk. Available from The Chiesman Foundation for Democracy: <http://www.chiesman.org/publications.php#6>
- The Juvenile Court* The Future of Children,. (Vol. 6, No 3, Winter 1996). Accessible online at: <http://www.futureofchildren.org/homepage2824/archive.htm>

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was on the rise. The public perceived that the system was too lenient and many states passed punitive laws, including mandatory sentences and automatic waivers to adult court for certain crimes.

In the 1990's this tough on crime trend accelerated. Between 1992 and 1997, states changed laws in one or more of the following areas<sup>3</sup>:

- Transfer provisions—Laws made it easier to transfer juvenile offenders from the juvenile justice system to the criminal justice system (45 States).

- Sentencing authority—Laws gave criminal and juvenile courts expanded sentencing options (31 States).

- Confidentiality—Laws modified or removed traditional juvenile court confidentiality provisions by making records and proceedings more open (47 States).

Changes were also seen in the areas of victims rights and correctional programming. Victims of juvenile crime had an increased role in the juvenile justice system in 22 states. With new transfers and sentencing laws, correctional administrators in the adult and juvenile corrections systems developed new programs.

### 'Get Tough on Crime' Legislation in the U.S.<sup>4</sup>

A steep rise in juvenile crime occurred between the late 1980s and mid-1990s. The increase in crime hit a peak in 1994 and then began to gradually decline. In response to a fear that juvenile crime would continue to rise at the rate seen between (roughly) 1987 and 1994, legislatures enacted measures designed to 'get tough on crime.' The 1974 Juvenile Justice and Delinquency Prevention Act was amended to include provisions that would allow states to try juveniles as adults for some violent crime and weapons violations. Minimum detention standards were also put into place in some states. The anti-crime sentiment of the period caused changes to be implemented to the juvenile justice system that made it increasingly similar to the adult (criminal) justice system. The shift Justice Stewart had predicted in 1967, with the implementation of formal trials for youth, reflected an increasingly common view that juvenile offenders were not youth begging rehabilitation, but young criminals. Rehabilitation became a lesser priority to public safety in the aggressive campaign against crime of the 1990s.

In the late 1990s Americans faced growing concern over highly publicized and violent juvenile crime. A series of school shootings and other horrendous offenses caused the public to fear a new breed of "juvenile superpredators," defined by the OJJDP as "juveniles for whom violence was a way of life - new delinquents unlike youth of past generations." The OJJDP's February 2000 "Juvenile Justice Bulletin,"

acknowledged that the threat of juvenile violence and delinquency was grossly exaggerated in the 1990s; however, the fear experienced at the time resulted in significant changes to the U.S. approach to juvenile crime.

### What is the juvenile justice system?<sup>5</sup>

There are several parts to the juvenile justice system and each has its own role to play:

- The *police* determine whether or not a particular act or behavior by a child appears to violate a law.

- The *state's attorney* decides whether to handle it informally, through a referral to a diversion program, or whether to notify the court by filing a petition alleging the child to be a delinquent or status offender. ("referral").

- Diversion programs* are normally operated by local private organizations and provide youth the opportunity to avoid a juvenile record by completing a program (Teen Court, shoplifting program, alcohol and drug education).

- If a *petition* is filed, the juvenile court hears the case and decides if the child is guilty (adjudication) and if so what the disposition should be.

- Probation* is the most common disposition and involves the youth completing a period of supervision in the community.

- Diversion programs* and *commitment to the juvenile corrections system* for placement out of the home is also a disposition available to the courts in an effort to try to change the child's behavior ("rehabilitation").

### The Juvenile Court<sup>6</sup>

Since its inception the juvenile court system has handled three types of cases: delinquency, status offenses, and child abuse and neglect.

#### Delinquency

Juvenile delinquency is a child who breaks a law, which if committed by an adult would be a crime. Delinquency cases are the vast majority of juvenile court cases. South Dakota has set the age range for a juvenile delinquent as a child ages 10-17.

#### Status Offenses

Status offenses are non-criminal behaviors that are illegal only for juveniles. Examples of status offenses: truancy or running away from home. At one time status offenses were treated as a type of delinquency

in terms of intervention and treatment. In the 1960s-70's states passed laws to distinguish the two. Instead of incarceration for status offenses, services for them were developed.

### Child Abuse and Neglect

The court provides protection for children who have allegedly been abused or neglected. The juvenile court:

1. determines the validity of the child abuse or neglect allegations
2. decides whether the child needs to be placed in foster care or remain in the home with supervisions and services.

### **Tribal Court History<sup>7</sup>**



Since time immemorial, Native American and Alaska Native tribes have been keeping the peace and administering justice in their homelands through the use of their own ancient laws, traditions and customs. Historically, the United States federal government has

recognized the inherent sovereignty of Indian nations to “make their own laws and to be ruled by them.” (Williams v. Lee, 358 U.S. 217, 1958.) Traditionally, most tribes resolved disputes and addressed criminal activity by consensus, not by an adversarial system, as do Anglo-Americans. While each of the more than 560 federally recognized tribes in the U.S. possesses traditional methods of dispute resolution, formal court institutions are a relatively recent development in Indian Country.

The development of tribal courts as they are now known can be traced to a case arising in the 1880's on land that is now the Rosebud Sioux reservation in South Dakota, when a Lakota tribal member, Crow Dog, killed a fellow tribal member, Spotted Tail. At the time, there was no formal court system utilized by the Lakota people. Utilizing traditional methods of dispute resolution, the tribe required Crow Dog to provide restitution to Spotted Tail's family in the form of goods and provisions. Although the victim's family was satisfied with the resolution, in the eyes of the federal government, the tribal approach did not inflict what it thought was appropriate punishment. As a consequence, the Department of the Interior, the federal agency responsible for directing Indian affairs, set up the “Court of Indian Offenses” to handle less serious criminal offenses and to resolve disputes between tribal members through the application of federal law and regulations-not tribal law or custom.

It was not until 1934, with the passage of the Indian Reorganization Act, that tribes were encouraged by the federal government to enact their own laws and to establish their own justice systems. Many tribes, however, did not adopt their own codes at that time, but rather operated under provisions of the Code of Federal Regulations (CFR). Due to lack of financial resources, many smaller tribes could not afford to operate their own tribal courts and retained the CFR courts operated by the Bureau of Indian Affairs. There are approximately 23 CFR courts still in existence.

Approximately 275 Indian nations and Alaska Native villages have established formal tribal court systems. There is widespread variety in the types of forums and the law applied in each is distinctly unique to each tribe. Some tribal courts resemble Western-style judiciaries where written laws and rules of court procedure are applied. An increasing number of tribes are returning to their traditional means of resolving disputes through the use of peacemaking, elders' councils and sentencing circles.

Each tribe, in developing its justice system, confronts three considerations: (1) Is our justice system effective in reaching prompt, long-term resolutions to disputes? (2) Does our system ensure the safety and well being of our community by preventing crime? (3) Does our justice system inspire confidence in its abilities to the tribal community and the outside American society? In an effort to address all of these goals, many tribes establishing new tribal courts, or enhancing established ones, are developing hybrid or blended systems that will incorporate traditional dispute resolution elements that have proven effective within their culture and community while also insuring that due process is provided.

### **Notes:**

<sup>1</sup>The Future of Children, a publication of the Center for the Future of Children, The David and Lucille Packard Foundation, pg. 5.

<sup>2</sup>U.S. Department of Justice. December 1999. Juvenile Justice: A Century of Change. National Report Series, Juvenile Justice Bulletin. Retrieved January 20, 2006, [http://www.ncjrs.gov/html/ojdp/9912\\_2/juv1.html](http://www.ncjrs.gov/html/ojdp/9912_2/juv1.html).

<sup>3</sup>IBID

<sup>4</sup>On-line source, Juvenile Justice FYI website accessed January 30, 2006, from [http://www.juvenilejusticefyi.com/history\\_of\\_juvenile\\_justice.html](http://www.juvenilejusticefyi.com/history_of_juvenile_justice.html).

<sup>5</sup>Information from Kevin McLain, South Dakota Department of Corrections.

<sup>6</sup>Material for this section was obtained from: The Future of Children, a publication of the Center for the Future of Children, The David and Lucille Packard Foundation. Volume 6, Number Three – Winter 1996 The Juvenile Court.

<sup>7</sup>Obtained from website source: National Tribal Justice Resource Center, <http://www.tribalresourcecenter.org/tribalcourts/> Accessed January 30, 2006. Information is used with permission from The National Tribal Justice Resource Center.



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