

**Break-Out Session II-A:
Legislative Lobbying and
Policy Reform**

ACLU RACIAL JUSTICE PROJECT/NYLS JUSTICE ACTION CENTER SCHOOL-TO-PRISON-PIPELINE SYMPOSIUM

April 1, 2009

LEGISLATIVE & POLICY ADVOCACY

LEGISLATIVE & POLICY ADVOCACY – IN GENERAL¹

- **How best to effect change.** Be knowledgeable, resourceful, persistent, respectful, and trustworthy.
- **Positioning.** To effectuate change, we need to:
 - position ourselves correctly and effectively.
 - be knowledgeable on the issues.
 - be seen as a “player” – as a force to be reckoned with.
- **Collaborating with advocacy organizations with similar goals.**
 - **Issue-specific and/or cross-issues coalitions.**²
 - **Coalitions can be key to educating policymakers.**
 - ✓ A tool to educate consumers, the community, and policymakers at all levels.
 - ✓ To win victories that cannot be won alone.
 - **Coalition building blocks.**
 - ✓ Have clear goals & objectives.
 - ✓ Recruit good members.
 - ✓ Anticipate people problems.
 - ✓ Balance organizational self-interest.
 - ✓ Reach consensus on issues.
 - ✓ Reach consensus on actions.
 - ✓ Make a plan with a timeline.
 - ✓ Be clear on roles & responsibilities.
 - ✓ Regroup, debrief, keep a record.
 - **Coalition strategies.**
 - ✓ Position papers and fact sheets.
 - ✓ Inform candidates.
 - ✓ Inform elected officials.
 - ✓ Inform legislators and policymakers.
 - ✓ Focus media attention on the issues.

¹ Prepared by Judith Storandt, Senior Staff Attorney, National Disability Rights Network. Adapted in part from materials developed by Eric Buehlmann, Director of Public Policy,, National Disability Rights Network.

² A state-by-state guide to members of the National Juvenile Justice Network is available online: http://www.njjn.org/members_public.html. Information about juvenile justice structure in each state, including active advocacy groups and projects, may be found through the National Center for Juvenile Justice state profiles at: www.ncjj.org.

- ✓ Real-life stories to “put a face” on the issue.
 - ✓ Provide testimony to relevant legislative committees.
 - ✓ Conduct public rallies in support of the issue.
 - ✓ Hold protests in hometowns of House & Senate members.
 - ✓ Schedule meetings with key legislators.
- **Maintaining a coalition.**
 - ✓ Find common ground.
 - ✓ Disclose areas of disagreement.
 - ✓ Celebrate victories no matter how small.
 - ✓ Pool limited resources.
 - ✓ Keep communication flowing.
- **Avoiding coalition pitfalls.**
 - ✓ No action taken (a coalition or a support group?)
 - ✓ Too many compromises on actions.
 - ✓ Too little compromises on actions.
 - ✓ Failure to reach consensus on issues.
 - ✓ Conflicts between needs of service providers versus needs of service recipients.
 - ✓ No enough members willing to do work.
 - ✓ Lack of continuity on who attends.
 - ✓ Not enough leadership roles.
 - ✓ Not enough ways to participate.
 - ✓ Money issues.
 - ✓ Competing demands on time.

EDUCATING LOCAL, STATE & FEDERAL POLICYMAKERS

- **Know your local & state officials.** Policy can be made at all levels. It definitely is implemented at all levels. State and local policymakers often go on to play a national role.
- **Contacting policymakers:** letters, phone calls, e-mails, faxes, personal visits.
- **Personal visits: the do’s.**
 - Make an appointment.
 - Be Prepared; Be Prompt; Be Patient; Be Polite.
 - **How to tell your story.**
 - ✓ Use specific examples or statistics.
 - ✓ Stay on message (don’t get too detailed or cover too many topics).
 - ✓ After the meeting, send a thank you letter with any follow-up information.
- **Personal visits: the “don’ts.**
 - Arrive unexpectedly.
 - Be late.
 - Be upset if a member won’t see you (staff know the issues well and may spend more time with you).
 - Cover too many topics.
 - Try to answer questions you don’t know the answer. Instead, offer to follow up with any information you can’t provide in person

- **Year round process.**
 - Don't just call, write, e-mail or visit one time.
 - Keep in touch - send newsletters, etc.
 - Invite to speak.
 - Invite to events and programs your organization hosts.
 - Become someone they remember positively.
 - Become someone they think of as a good resource.

- **Useful contact information.**
 - U.S. Capitol Switchboard: 202-224-3121
 - Contact Information for U.S. Senators: <http://www.senate.gov/>
 - Contact information for U.S. Representatives: <http://www.house.gov/>
 - To track the progress of a bill: <http://thomas.loc.gov/>

APPROACHES FOR PROMOTING STPP REFORMS

Legislatures hold policy, oversight, and funding leverage that can help change practices. Here are some vehicles for influencing policymakers.

- Prepare and disseminate a special report that analyzes an issue and makes recommendations to policymakers.
- Advocate for new (or changes to existing) state, local, and national legislation, regulations, and policies that promote positive reforms – and against those that increase the flow of youth into the Pipeline.
- Press for a legislative hearing on your issue.
- Hold a briefing for policymakers and their staff.
- Request a legislatively- or Governor-mandated task force (and for key stakeholders to be represented on it) to study a particular issue, alternative approaches, and models.
- Request a legislatively- or Governor-mandated study or Blue Ribbon panel or Commission to study an issue or approach, and issue recommendations.
- Advocate for the creation of an independent oversight/monitoring or enforcement authority (e.g., an Ombudsman office).
- Seek required reporting to the legislature of statistics, studies, conditions or improvements.
- Advocate for mandated reforms tied to a particular event (e.g., funding).
- Become a member of or consult with your State Advisory Group (SAG), and participate in the development of its Juvenile Justice State Plan.³
- Work with internal and external systems and watchdogs to share information and seek improvements (the level of enforcement authority granted these bodies varies in each state).

Considerations. The following considerations and others may play a part in determining which strategy may be most effective for your advocacy effort.

- ✓ Current and future goals
- ✓ Staff and volunteer availability and expertise
- ✓ Receptiveness of jurisdiction
- ✓ Existing allies
- ✓ Level of desired control

³ SAG information for each state is available online: <http://ojjdp.ncjrs.org/statecontacts/resourcelist.asp>.

SAMPLE LEGISLATIVE/POLICY REFORMS TO ADDRESS THE STPP⁴

Preventing the criminalization of student behavior.

➤ A bill was introduced in **Idaho** in 2005 that would have made “disruptive” behavior in school a criminal offense. It would have criminalized behaviors in school of students with behavior disorders. It also would have made “loitering” on school grounds by students a crime. The bill was supported by the Idaho Education Association, the school boards association, the sheriffs’ association, and the prosecutors’ association. When advocates became aware of the bill, it had passed out of the House education committee. Advocacy groups engaged in a senator-by-senator educational campaign to inform them about the flaws in the bill, and eventually it died without action.

Prohibiting Zero Tolerance Policies.

➤ The **Rhode Island** legislature mandated that discipline for any public school student who violates a school policy related to the possession or use of alcohol, drugs or weapons must now be imposed on a case-by-case basis. Schools may no longer use a “zero tolerance” approach to discipline that treats all violations the same regardless of the context. School guidelines must take into account the nature and circumstances of the violation and the applicability of any federal laws governing students with disabilities. S. 394/Chapter 407, passed June 12, 2007; effective July 6, 2007.

Adopting district-wide / school-wide PBIS.

➤ The **Los Angeles** Unified School District, through a Board Resolution directive dated 2-17-2007, mandates the development of a school-wide positive behavior support and discipline plan. Under the plan, positively stated rules must be taught, enforced, advocated, and modeled at every campus, and staff and parents must be trained in the skills necessary for the implementation of the policy. The plan outlines responsibilities of students, parents, teachers, administrators, staff, and community members, noting that administrators must consistently apply reasonable alternatives to suspension, expulsion, and opportunity transfers. Attachments to the plan include a list of the top ten alternatives to suspension (including restitution, community service, and negotiation/problem solving approaches), and a consequences/school response reference guide. A School-Wide Positive Behavior Support Task Force is tasked with collaborating with an independent auditor to implement and review roles and responsibilities, and evaluate data.

➤ The **Pennsylvania** State Board of Education revised its regulations on Special Education Services and Programs to focus on positive behavior supports rather than physical restraints and aversive techniques. The regulations require that behavior support programs include research-based practices and techniques and that the interventions used must be the least intrusive necessary. 22 Pa. Code Ch. 14, §133, effective July 1, 2008.

Limit the use of out-of-school suspensions.

➤ Beginning in July of 2009, suspensions in **Connecticut** public schools must be in-school, unless the school administration determines during a hearing that the student being suspended poses such a danger of disruption to the educational process that the student must remain out of school during the suspension. The Commissioner of Education issued guidelines on October 1, 2008 to aid local and regional boards of education in making the determination whether a

⁴ Adapted in part from *Advances in Juvenile Justice Reform: 2007-2008*, National Juvenile Justice Network, Washington, DC, available at: http://njjn.org/media/resources/public/resource_943.pdf

suspension of a student should be out-of-school or in-school. Substitute H.B. 5826/Public Act No. 08-160, signed into law June 12, 2008; effective July 1, 2009.

- The **Louisiana** legislature altered state laws relating to school expulsions to reduce their amount and duration and eliminate the practice of expelling students without providing any educational alternatives. Prior to the law's passage, a child's school was required to expel him or her on the fourth suspension. Now the school district has the discretion not to expel a child on the fourth suspension, thereby helping to avoid expulsions based on multiple low-level infractions. Additionally, the duration of expulsions has been reduced for many infractions, including possession of illegal drugs or controlled substances. All expelled students must be sent to alternative schools during the expulsion period; schools are now forbidden from seeking waivers to this requirement based on cost concerns, which often led to children being expelled "to the street." S.B. 265/Act 385, signed into law July 10, 2007; effective August 15, 2007.
- The **Louisiana's** Recovery School District in New Orleans revised its School Code of Conduct to include a more positive approach to youth and discipline. Infractions are now categorized into three levels, with a continuum of responses outlined for each level. Referral to law enforcement is no longer listed as a response for many infractions, including fighting between students, throwing objects, and willful disobedience. The new code reduces the amount of instructional time lost to unnecessary removals by reducing the number of school-based infractions that are "suspendable" and "expellable" and by increasing the use of school-based interventions and alternatives to suspension and expulsion. The Code is now also aligned with the principles of School-Wide Positive Behavioral Supports and is infused with useful and family-friendly information for parents and students about their rights in the discipline process. August, 2008.

Incorporate restorative justice principles in student Codes of Conduct to avoid referrals to law enforcement.

- The City of **Chicago** Board of Education's Student Code of Conduct now "recognizes and embraces" the philosophy of restorative justice. In a policy statement the Board encourages principals and administrators to adopt and implement restorative justice philosophies and practices as additional tools to address student misconduct. The Board specifically provides for the use of circles (also called peacemaking circles or circles of understanding), community service, peer juries, restorative group conferencing, victim impact panels, and victim offender conferencing. For each intervention, the policy statement provides a description or definition, goals for the intervention, and implementation guidelines. Effective September 13, 2007.
- The **Denver** Public Schools system revised its disciplinary policy in August 2008 to focus on more progressive and less harsh responses to disciplinary issues. The policy states that law enforcement should only be involved when there is a serious or immediate threat to individual or school safety, and encourages the use of alternatives to suspension, expulsion, and referral to law enforcement. One such alternative that is emphasized as a means to address misconduct is restorative justice, such as family group conferencing, victim-offender mediation, and classroom peace circles. Disciplinary procedures are outlined in a detailed matrix and a discipline ladder as a means to ensure fair, uniform application; eliminate the racial and ethnic disparities in school discipline; and provide greater clarity for students, parents, and school personnel.

Curtail referrals to juvenile court.

- A change to **Tennessee** law now mandates that school personnel may only file a juvenile petition against a student receiving special education after conducting a manifestation determination that concludes that the student's inappropriate behavior was not caused by the student's disability. A juvenile petition allows the school to file a petition directly with the juvenile court for status offense-type violations, such as truancy or unruly behavior. Prior to the passage of this legislation, school personnel could file a juvenile petition without making the new requisite

determination regarding the connection between the student's behavior and his or her disability. S.B. 2609/Public Chapter 1063, signed into law May 28, 2008; effective January 1, 2009.

➤ The **Alabama** Juvenile Justice Act of 2008 reorganizes the entire juvenile code. It prohibits secure custody for status offenders (with a limited exception for violation of valid court orders, those children may be detained for up to 72 hours (total) in any six-month period, but may not be committed to the Department of Youth Services); strengthens the authority of courts to divert cases; prohibits secure custody for children under the age of 13 (unless the child is charged with certain serious felonies); codifies the federal Juvenile Justice and Delinquency Prevention Act mandates concerning jail removal and sight & sound separation; prohibits schools from filing ungovernable petitions against students; and includes practice standards for juvenile defenders. H.B. 28 and 29/S.B. 33 and 34, signed into law May, 2008; effective January 1, 2009, except provisions regarding status offenders effective October 1, 2009.

Address disproportionate minority contact (DMC) with the juvenile justice system

➤ A legislatively-created Commission on Disproportionality in Youth Services in **Indiana** reported in October 2008 to the Governor and the General Assembly on juvenile justice, mental health, education, and child welfare services. The report includes 74 recommendations, 11 of which are relevant to all systems. The juvenile justice sub-committee issued 14 recommendations, including a call to amend the Indiana Code to include a non-discrimination principle; to create a community juvenile justice council in every county to prioritize the prevention and reduction of disproportionate minority contact; and for the Indiana Supreme Court to develop uniform statewide juvenile justice system data. H.B. 1001, signed into law May 11, 2007; effective July 1, 2007.

➤ The **Illinois** legislature created a Commission to Study Disproportionate Justice Impact in order to catalogue the nature and extent of harm caused to minority communities through violation and sentencing provisions. A representative from the Department of Juvenile Justice must serve on the Commission. The Commission's findings and recommendations must be submitted to the general assembly by December 31, 2009. S.B. 2476/Public Act No. 95-0995, signed into law October 3, 2008; effective June 1, 2009.

Expand community-based alternatives.

➤ In a public report issued in January 2007 the **Maryland** Disability Law Center details how youth with mental illness can be diverted from the juvenile-justice system, saving money and reducing recidivism, by using existing programs proven to work (e.g., Functional Family Therapy, Multi-systemic Therapy, etc.). The report, *Evidence-Based Practices for Delinquent Youth with Mental Illness in Maryland: Medicaid Must Cover These Cost Effective Services*, includes specific recommendations for action the state can take to save money and help vulnerable youth by adding evidence-based practices to its Medicaid Plan. It is available at: <http://www.mdcbalto.org/pdfs/EBP.pdf>.

Improve educational standards and services in juvenile justice facilities.

➤ Two pieces of legislation in **Mississippi** set new educational standards for youth in detention, and require the annual appropriation of sufficient funds for the provision of educational services to detained youth. School officials must now be notified when a student misses school due to being detained in a juvenile detention center. Additionally, school attendance officers must gather data on youth in detention centers and the Office of Dropout Prevention must establish a procedure to track students who enter and leave detention centers. Youth court judges may request that a local school district or private provider supply a certified Educational Standards Set for Detained Youth. A transition team must work to help youth transition back to their home school districts when released. The state Juvenile Detention Monitoring Unit reports that, as a result of these legislative changes, all detention centers are now providing some educational services to youth.

S.B. 2818/Chapter 568, signed into law April 21, 2007; effective July 1, 2007 and H.B. 348/Chapter 481, signed into law April 3, 2008; effective July 1, 2008.

Improve the quality of juvenile defenders, and guarantee the right to counsel.

- The **Illinois** governor signed a bill requiring the court to appoint counsel for youth detained in custody immediately upon the filing of a delinquency petition. The appointment of counsel is non-waivable and mandatory for all youth. The law also specifies that a detention hearing cannot be held until the youth has had adequate opportunity to consult with counsel. Attorneys may file a motion for extra time to consult with their clients before the detention hearing. S.B. 2118/Public Act No. 95-0846, signed into law August 15, 2008; effective January 1, 2009.
- The **Nevada** State Supreme Court adopted performance standards for indigent defense counsel, including those serving juveniles. Previously there were no such standards in the state to guide indigent representation. Standard Five specifically addresses juvenile delinquency cases. It outlines the role of defense counsel as an advocate for the child; calls for proper education, training, and experience of attorneys; recommends that counsel ensure they have adequate time and resources for juvenile representation; guides counsel through the initial client interview, detention hearing, case preparation, investigation, pretrial motions, plea negotiation, adjudicatory hearing, disposition hearing, post-disposition advocacy, and transfer proceedings; and addresses the options of informal supervision and diversion. Effective April 1, 2009.
- The **Louisiana** *Public Defender Act of 2007* mandates qualification standards for public defenders and strengthens juvenile representation. The Louisiana Public Defender Board has a new legislative mandate to ensure the provision of uniform public defender services throughout the state. The Board must create standards for all public defenders, including qualification, education, training, and quality of representation standards for juvenile public defenders. The Board must also employ a Director of Juvenile Defender Services and a Juvenile Justice Compliance Officer to provide oversight, monitoring, and regular reports and assessments. The Act creates, for the first time in Louisiana, statutory recognition that juvenile defenders require different skills than other public defenders, and that juvenile justice policies should focus on rehabilitation, opportunity, and treatment, rather than punishment. In Orleans Parish, there is already a more active pretrial motions and writ practice; visiting hours have been expanded at a number of facilities to accommodate more attorney visits to clients; and more charges are thrown out, favorable pleas are more readily offered, and not guilty verdicts are more frequent due to aggressive investigation and preparation. The Board must adopt the rules necessary to implement the provisions of the Act no later than August 15, 2011. H.B. 436/Act 307, signed into law July 9, 2007; effective August 15, 2007.

Protections against using screenings and assessments in juvenile court proceedings.

- **Pennsylvania** strengthened the right of juveniles against self-incrimination by placing restrictions on the use of mental health and substance abuse screenings and assessments. Statements, confessions, admissions, or incriminating information obtained from a juvenile through such screenings and assessments may no longer be used as evidence against the juvenile to determine his or her guilt. H.B. 1511/Act 109, signed into law October 9, 2008; effective October 24, 2008.
- New legislation improves the due process rights of children in families with service needs cases in **Connecticut**, and clarifies issues of confidentiality of mental health screenings and assessments. The law also requires the court to hold a permanency hearing within 12 months of a child's commitment to the Commissioner of Children and Families, and at least once every 12 months thereafter. The Commissioner of Children and Families must file a permanency plan with the court at least 60 days prior to the permanency hearing and make reasonable efforts to achieve the goals of the permanency plan. H.B. 5926/Public Act No. 08-86, signed into law May 27, 2008; effective October 1, 2008.

Mandated use of evidence-based programs.

➤ State agencies in **Tennessee** may no longer expend funds on any juvenile justice program or program related to the prevention or treatment of delinquency unless the program is evidence-based. The Department of Children's Services must continue to research and evaluate theory-based and research-based programs with the goal of identifying and expanding the number and type of available evidence-based programs. H.B. 1614/S.B. 1790, effective June 12, 2007.

Divert status offenders from the delinquency system.

➤ New legislation in **Connecticut** improves the due process rights of children in "families with service needs" cases and clarifies issues of confidentiality of mental health screenings and assessments. H.B. 5926/Public Act No. 08-86, effective Oct. 1, 2008.

➤ **Congress** reauthorized the Runaway and Homeless Youth Act, now entitled the *Reconnecting Homeless Youth Act of 2008* (RHYA). It provides community-based emergency and residential services to homeless and unaccompanied youth, many of whom are at risk of juvenile justice system involvement and detention because of their runaway status. It provides increased authorizations to fund runaway and homeless youth programs administered by the U.S. Dept. of Health and Human Services, extends the time a youth may stay in emergency or transitional living programs, and makes public entities eligible to receive funds from the program. S. 2982 / Public Law No. 110-378, passed by U.S. Congress, September 26, 2008.

Multidisciplinary treatment planning for committed youth in the JJ system.

➤ **West Virginia** law now requires the Division of Juvenile Services to engage in a multidisciplinary treatment planning process for committed juveniles. Treatment teams assess, plan, and implement comprehensive, individualized service plans for juveniles involved in status offense or delinquency proceedings. Prior to disposition, the team advises the court about the types of services needed and the type of placement that will best serve the needs of the child. The treatment team must engage families in the service plans and coordinate its activities with local family resource networks. S.B. 626/Chapter 31, effective June 3, 2007.

School re-enrollment after release from custody.

➤ The **Virginia** Board of Education adopted new guidelines in 2006 (8 VAC 20-660-10 *et seq.*) to facilitate the school reentry of youth exiting juvenile justice facilities by requiring agencies to plan for public school re-enrollment of youth. The regulations establish a collaborative process for re-enrollment, including timely exchange of student records, and delineate procedures, responsibilities, components of re-enrollment plans, and timelines. Virginia has also passed legislation that requires the Board of Juvenile Justice to consult with the Board of Mental Health, Mental Retardation and Substance Abuse Services to promulgate regulations for the planning and provision of mental health, substance abuse and other therapeutic treatment services for youth returning from corrections or detention. HB 2245 & SB 843, effective 7-1-05.

Large-scale system-wide reforms.

➤ The final report of the governor's Juvenile Justice Blueprint Commission in **Florida** was released in 2008. Its 52 recommendations include calls for reform across the spectrum of juvenile justice operations, spanning prevention and first entry into the system through residential treatment, lock-up, and aftercare. Issues such as workforce, gender specific services, disproportionate minority contact, health, and the schoolhouse to jailhouse track are debated and addressed along with systemic care and treatment issues.