Abdication of Duty: The Potential for Child Abuse and Neglect in the Juvenile Justice System (Part Two)
By Roger Canaff 1

A previous Update examined the potential for abuse and neglect that exists when children are incarcerated for pretrial or short-term detention, or for longer-term correctional placement. This article will examine strategies prosecutors and other juvenile justice and child abuse professionals can employ to prevent and react to issues of abuse that can arise in the context of juvenile corrections.

Close to Home: Using the Multi-Disciplinary Team (MDT) to Prevent Child Abuse and Neglect in Local Custodial Situations
Local and temporary detention situations can be dangerous settings for juveniles. The first step toward ensuring that detained youth are appropriately treated is to combine the knowledge and resources of all those involved in juvenile custody. Many prosecutors and even some in the judiciary mistakenly consider even local detention and custody policies to be a system out of their control and not realistically within their sphere of influence. Juvenile intake and probation officers, on the other hand, tend to be more involved and familiar with the conditions of local juvenile confinement, but may know little about police directives that govern the handling of juveniles in custody. Police are governed by their own directives, but may have less involvement with shelter and detention centers, and thus may be unaware of those policies and procedures. Without the collaboration of all of these agencies, teams might also identify a judge who oversees the welfare of abused and neglected children in the community will have a hand in making sure that this abuse and neglect isn’t compounded if and when a youth becomes detained.

Knowing the Limits: Enforcing Laws and Guidelines in Juvenile Cases
In many states, statutes that cover the perimeters and time limits pertaining to juvenile detention are complicated and not easily understood. Because of this, and because of pressures exerted on every area of the system, teams might also identify a judge who oversight to call for juveniles to be held except under applicable state law. New Jersey law prohibits juvenile detention except when the juvenile has demonstrated a risk of flight, or is a danger to himself or others and is charged with an offense that would be a crime if committed by an adult. Nevertheless, investigators compiling a report on youth with mental health needs in New Jersey detention centers found that juveniles were often detained by well-intentioned judges simply because alternative placements and services were simply unavailable. Efforts are underway in New Jersey to alleviate this issue.

Even in jurisdictions where limited resources make unsanctioned detention a seemingly viable, if temporary, option, prosecutors and other juvenile justice system team members may be in similarly grave danger, albeit of a wholly different kind. In some communities, by the time the juvenile has appeared before any judicial officer, he or she has passed through the hands of two or more agencies responsible for his or her wellbeing. The only way to ensure that all agencies have proper, comprehensive policies for handling juveniles, and that juveniles will be handled seamlessly as they pass from the hands of one agency to the other, is to engage the same MDTs that work together to prevent and respond to child abuse in the community. Understanding that MDTs’ time and resources are already stretched, it is a good idea for every multi-disciplinary team to spend at least some time periodical reviewing the programs and procedures the team has in place regarding the welfare of juveniles in custody. For this purpose, the team should invite detention center staff or local detention commissioners as ad-hoc members of the team. For the limited purposes of reviewing policies that protect children in the juvenile justice system, teams might also identify a judge who oversees juvenile matters and is willing to participate in the meetings. In this way, the same team that oversees the welfare of abused and neglected children in the community will have a hand in making sure that this abuse and neglect isn’t compounded if and when a youth becomes detained.
ably call for candor toward the tribunal and prohibit the failure to “dis-

disclose to the tribal legal authority in the controlling jurisdiction known
to the lawyer and adverse to the position of the client and not disclosed
d by opposing counsel.” For prosecutors, whose client is the state, this rule
becomes relevant when laws limiting and controlling juvenile confinement
are not strictly enforced, and the prosecutor is complicit in the illegality.

In general, juvenile cases should proceed quickly through the system,
particularly when the juvenile in question is being held in custody. The
National District Attorneys Association’s National Prosecution Standards,
Second Edition, recommends best practice charging guidelines for juvenile
prosecutors.1 Timelines are included within these recommendations. For
juveniles who are held in custody from the time of their arrest, it is rec-
ommended (subject to applicable state law) that prosecutors conduct an
initial review of their cases within 24 hours of a police report to deter-
nune if facts are sufficient for a charge. If the juvenile remains detained
after the initial determination of sufficient facts for prosecution, the stan-
dards recommend that the prosecutor decide whether to divert the case,
petition the juvenile or transfer the case to adult court within 72 hours.1 The
commentary to the NDAA standard describes the juvenile charging process
notes that prompt determinations regarding juvenile cases “gener-
ally promote confidence in the system and fairness to the victim, the
community, and the juvenile. Further, prompt decisions are more likely
to result in rehabilitation of the juvenile by providing more immediate
action.”2

At the State Level: Encouraging and

Working Toward Systemic Prevention Efforts

In addition to working with existing child abuse teams on the local level,
prosecutors and other child abuse professionals should look into what, if
any, efforts are being made at the state level to ensure that abuse and
neglect are not seen among juveniles appropriately placed in correctional
facilities. As previously mentioned, New Jersey has created an Office of the
Child Advocate. The duties of the child advocate include, by explicit sta-
tutory command, the power to review the operations, policies and proce-
dures of juvenile detention centers in the state.3 Connecticut also has such
an office, and lists the results of its facility investigations on its Web site.4

South Dakota has created the position of juvenile corrections monitor
who is empowered to investigate allegations of abuse or neglect in juve-
nile corrections facilities, review state DOC policies relating to juvenile
corrections, and lists the results of its facility investigations on its Web site.5

School of Government.13 Juvenile justice professionals who are interested
in public policy and social advocacy are encouraged to check the following
Web sites: The National Court Professional Standards,6 the American Juris-
dical Association’s National Standards7 for детективные суды and
the American Prosecutors Research Institute’s National Prosecution Stan-
dards8 for детективные суды. Further, guidance for child protection
professionals can be found in the following sources: the American Bar Association’s Rules of Professional Conduct,9
the National District Attorneys Association’s National Prosecution Standards,10
the American Prosecutors Research Institute’s National Prosecution Standards,11
American Prosecutors Research Institute’s National Prosecution Standards,12
and the Federal Rules of Criminal Procedure.13

1 Senior Attorney, APRL’s National Center for Prosecution of Child Abuse.
2 New Jersey Office of the Child Advocate, Juvenile Detention Center

Investigation: An Examination of Conditions of Care for Youth with Mental
4 See, e.g., American Bar Association’s Rules of Professional Conduct,
5 National District Attorneys Association, National Prosecution Standards,
6 Id. at §92.3(d). See N.J.S.A. 2A:4A-34(e). 7 Id. at Commentary to Juvenile Justice, p. 260.
8 See 52 N.J. Stat. §187. Information on the New Jersey Office of the
Child Advocate can also be found at www.childadvocate.nj.gov.
9 Information on the Connecticut Office of the Child Advocate and
information on the state’s juvenile justice residential facilities can be
found at www.crt.gov/oca.
10 See SDCL 26-11A-24-34.
11 South Dakota’s Juvenile Corrections Monitor can be reached at
(605) 773-5990, by mail to Juvenile Corrections Monitor, Dept. of
Human Services, Hillsview Plaza, East Hwy 34, c/o 500 E. Capitol,
Pierre, SD 57501-5070, or by e-mail at infodhs@state.sd.us.
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his assistance with this article.
12 Information on the CJCA can be accessed at
www.cjca.net/sitecode/cjca_home.html. Information on OJJDP
can be accessed at http://ojjdp.ncjrs.org.
13 See Innovation in American Government Awards press release,