



## **Using Research to Reduce Incarceration as a Disposition**

**"Defense Strategies to Challenge and Reduce Over-Incarceration"  
National Juvenile Defender Summit, Denver  
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# Using Research to Reduce Incarceration as a Disposition

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Recent policy research offers rich opportunities for reducing the use of incarceration as a "sentencing" disposition. It makes arguments much more compelling; helps courts and other juvenile system professionals to see beyond their normal horizons; and gives you support for points you wanted to make anyway. (Adolescent development, problems with group care, facility abuses in your jurisdiction, importance of education, need to address trauma, absurd costs of incarceration versus things that work, etc.) Here are some low tech, achievable suggestions for using policy research and reports in daily practice and affecting change in your jurisdiction:

- 1. Gather and Organize Policy Research and Reports.** When new studies come in over the NJDC listserv or from other sources, designate someone in the office to summarize salient and useable tidbits with citations, so they are readily available for use in motions, briefs and presentations. This could be a good job for law student interns. Keep computer folders with the studies saved as PDFs.
- 2. Incorporate the Reports into Practice Materials.** Create motions and briefs that can be used by the juvenile section of the office – so individual lawyers have them at their fingertips – both for disposition and post-disposition issues.
- 3. Use Policy Research in Dispositional Advocacy.** At the disposition stage, use policy research both in opposing long term incarceration and offering less restrictive, effective alternatives for the court to use. Introduce the reports as exhibits to contested disposition reports (or cite them) and use them in argument to educate the court that:
  - Incarceration has an independent negative effect apart from specific service deficiencies (distance from family, lack of individualized services, negative peers, interference with regular life and development)
  - The education and special education services we know to be effective and that this child needs are not available in the proposed institutional setting. (Individuals with Disabilities Education Act and the Americans with Disabilities Act)
  - Your client needs specific services that are not available in the proposed institution – e.g., your client was a victim of trauma and/or sexual abuse (and you know what services are needed because you read the studies), or your client needs mental health or addiction services
  - Incarceration is incredibly expensive and the money would be better spent on something proven to be effective (and then you say what the effective services are)

All of this makes it harder for the court to say "no" and if you lose, the research will be in the record for appellate counsel to work with.

- 4. Make the Court Accountable.** Use the reports to educate yourself about what services are effective as interventions for specific needs your client has, and request a specific dispositional order for those services. Then, your client may actually get what he or she needs, and if not, you have the grounds for an enforcement action. In some states this may be done through statutes permitting counsel to bring the case back to court for modification or rescission of the initial order; in others it may be possible to pursue the failure to provide services or address other deficiencies as contempt.

5. **Use the Research to Support New Legal Theories of Advocacy.** For example, the idea that ordering dispositions that result in more DMC + are more expensive + less effective (rather than ordering more effective, less expensive, and less racially disparate in impact...) constitutes intentional disregard and is therefore illegal (unconstitutional, violation of equal protection)... See, article by Edgar Cahn and Cynthia Robbins in Helpful Research handout.
6. **Employ Policy Research in the Public Arena.** Local policymakers often like to think of themselves as being in the vanguard and following best professional practice, so it is our duty to let them know that over-incarceration is passé. Hand out studies that support your position when you have meetings with the court, county supervisors, community groups, and probation. This is a slow process, but worth it.
7. **Utilize the Media to Get Your Message Out.** Adverse publicity about horrible conditions in juvenile facilities tends to get everyone's attention, and has had a major impact in California, New York, Connecticut, Texas and other states. Have the studies that make your point on what should be done to fix the problem of horrible long term institutions ready to give to reporters, legislators or other public officials interested in reform issues. Defenders can help by providing the media with information about individual cases or situations that demonstrate the need for other approaches.
8. **Conduct Training for Juvenile Court Judges, Probation Officers and Prosecutors.** Just as we have slowly trained juvenile courts about special education issues and adolescent development, we can train them about the dangers of over-incarceration and the benefits of using targeted non-institutional services that meet the needs of individual children. And of course, make over-incarceration a regular topic at state and local training for defenders in your jurisdiction.
9. **Use Research to Get More Resources.** Policy research on what the systems should be doing to identify service needs and monitor service provision may be used to bolster your need for additional resources or staffing for post-disposition advocacy. For example, the research on abuses and service deficiencies in juvenile facilities surely supports the need for additional staffing to make sure children do not remain in untenable situations and that they receive what the court ordered.
10. **Identify Gaps in the Research and Funding Sources.** Juvenile defenders are in a unique position to recognize areas in juvenile justice that would benefit from additional research, such as the specific harm of incarceration on the educational outcomes for youth. Defender offices are increasingly successful in securing funding for community services, and re-entry programs that reduce incarceration.
11. **Work with Community Allies.** Build relationships with local members of the community who have credibility and legitimacy with policymakers and judges and judges in the jurisdiction. These may include local faith community leaders, service providers, business leaders and education or mental health professionals. Sometimes people discount "national experts," saying that "things are different" where they are. Local allies can provide data and impact in the community, and can often help build community understanding and support for alternatives to incarceration. Also, building coalitions increases political leverage for community-based programs and needed services instead of bricks and mortar solutions.

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