

Legislation

How Legislation Supports JDAI

A concern exists that unless JDAI becomes part of the daily practices, policies, and procedures of the stakeholders, the progress could erode over time as key people leave the system. Legislation is much more difficult to change and/or modify, so it is essential that local and statewide JDAI efforts be supported via legislative changes.

History

After working on the JDAI effort in Bernalillo County for several years, it became apparent that if we were to institutionalize JDAI for both Bernalillo County and the State of New Mexico we would have to modify the Children's Code. In collaboration with the Children, Youth, and Families Department (CYFD), the New Mexico Council on Crime and Delinquency (NMCCD), and the Bernalillo County Juvenile Detention Center (BCJDC), initial changes were made to the Children's Code in 2003 and further changes in 2005.

Some of the key changes in 2003 focused on requiring CYFD to develop and implement a Risk Assessment Instrument (RAI) that would apply statewide to any youth who law enforcement desired to detain in local detention facilities. It also narrowed the criteria applied to youth for detention by requiring that youth have to demonstrate "substantial" risk of danger, flight, or failure to appear. These changes further prohibited youth over the age of eighteen from being housed within a Juvenile Detention Facility. Many of these changes were an attempt to have consistent admission policies throughout the state and did lead to CYFD developing a statewide Call Center where the RAI could be administered.

Realizing that most legislative changes happen incrementally, CYFD, NMCCD, and BCJDC were again involved in advocating for and helping to enact more changes to the Children's Code in 2005. In terms of the JDAI effort, the main impact was to bring efficiencies to case processing time by shortening the time juvenile agencies had to conduct their part. We further restricted the age at which youth could be housed in a local detention facility, shortened the time youth would be in correctional facilities before being paroled, and provided the court with some additional options.

How Have Legislative Changes Benefited Children and the Community?

Legislative changes have more permanently altered the juvenile reform efforts in New Mexico. This benefits youth and the community, as follows:

- ★ Reduces the number of youth who would have traditionally been housed in local juvenile detention facilities.
- ★ Creates a system that helps to ensure that those in custody are in fact a risk to public safety
- ★ Reduces the number of low-level offenders or youth who, by their actions, have upset an adult who works in law enforcement or the Juvenile Justice System (JJS).
- ★ Daily processes and procedures of juvenile agencies are changing.
- ★ Stakeholders are forced to consider other alternatives for serving youth.
- ★ Expedites the time for youth charged with crimes to be processed through the system.

Collaboration Is the Key

The Children's Code changes for 2003 and 2005 are an example of a very broad-based collaboration, ensuring that proposed changes had little to no opposition within the legislative arena. These changes are essential, and we had to incrementally pass them over a period of years. While initially it took a few "Champions" to recognize the need for and create the interest in changing the statutes, it could not have happened without being very inclusive in the process.

The collaborative effort itself was an interesting process.

1. BCJDC and CYFD collaborated on statute changes.
2. CYFD contracted with NMCCD to facilitate statewide discussions with all pertinent parties. Stakeholders were asked what changes were needed.
3. CYFD compiled the proposed changes.
4. The proposed changes were then assigned to various subcommittees that formed around specific sections of the Children's Code. They discussed ideas and suggested changes that had some general consensus of acceptability.
5. The Task Force considered the subcommittee recommendations and made appropriate modifications.
6. CYFD and the Governor's Office reviewed the legislation and presented it to the legislature for adoption.
7. NMCCD lobbied for the changes and provided expert testimony as required.

Legislation in Action

The entire process of changing legislation requires a concerted effort by many various elements of the system. We have viewed it as part and parcel of the entire JDAI effort for BCJDC and the State of New Mexico. All of us who have been working on the effort over numerous years feel more confident that if we leave the system the changes will sustain themselves and evolve as required.

The primary changes to the Children's Code in both 2003 and 2005 are listed below.

2003 Children's Code Changes

- Required CYFD to develop a risk assessment instrument (RAI).
- Allowed detention center staff to apply the RAI and admit youth into detention.
- Narrowed the criteria for detention requiring "substantial" risk be demonstrated or history of failure to appear.
- Prohibited eighteen-year-old youth from being housed in juvenile detention facilities.
- Allowed for youth who have been detained to have further considerations for release by the District Court Judge.
- Provided for ninety days of mandatory parole supervision after being released from a facility for long-term care and rehabilitation (juvenile correctional facility).
- Modified the section on sealing of juvenile records.
- Shortened the time to file a petition from forty-eight to twenty-four hours for youth in custody.

2005 Children's Code Changes

- Added aggravated battery against a household member to offenses considered to be "youthful offender."
- Youth's parents/guardians/custodians given reasonable notice of Pi for youth in custody and they have right to be present.
- If youth is not detained, then reasonable notice of Pi given within 30 days and the petition given within 60 days of completion of Pi.
- Youth under the age of eleven shall not be detained in a detention facility.
- Three months of mandatory parole supervision for a one or two year commitment.
- Youth 14 or over charged with first degree murder and found to have committed a delinquent act shall be adjudicated as a delinquent and subject to those dispositions.
- Changes to code for youth found to be incompetent, including how long these matters may be pending.
- An admission not required for a Consent Decree Order.
- Remove limit on the number of Consent Decrees the court may grant.
- One year commitment can be extended for a period of six months, inclusive of the three months of parole supervision.
- CYFD can contract a Preliminary Parole Revocations Hearing Officer. Youth may waive their right to a preliminary parole revocation hearing.
- Changes to the confidentiality of records section narrowing some access and expanding others, e.g., parental access.

Reducing Racial and Gender Disparity

Legislative changes have reduced the number of youth in secure confinement and by extension the number of youth of color who are exposed to all aspects of secure confinement.

Training

In 2005, after the Governor signed the legislative changes and they became law, CYFD conducted broad-based community meetings to educate the public about the changes. In addition, CYFD has trained the Courts, law enforcement, juvenile justice professionals and community members and has answered questions about the legislative changes.

Focusing on the Future

As of this writing, we are not planning further changes to the Children's Code (other than sections untouched in the previous section changes). However, as we move into the future we will identify the need for further changes. If the political will exists at the time, we will create changes that strengthen the local and statewide JDAI effort.