

**The Sixth Judicial Circuit Public Defender's Office  
 Juvenile Crossover Children's Program  
 FY 2007-2008 Status Report**

**A. INTRODUCTION – THE CASE OF TWELVE-YEAR-OLD M.D.B.**

M.D.B entered the foster care system six months prior to the hearing on the revocation of probation at the age of twelve having been removed from his mother's care for neglect based on a lack of food and shelter. Prior to his removal, M.D.B. had a history of being tardy to school, but his serious truancy problem developed after he was taken into the care of the State of Florida. M.D.B. was diagnosed as having ADHD and prescribed Wellbutrin and Adderall as a result of a psychological evaluation evidently performed the same day as the battery which gave rise to this [delinquency] case. The November 16, 2004, battery was on a staff member of the shelter where M.D.B. and his siblings had been living since being removed from their mother's care. The incident occurred on the same day as M.D.B.'s adjudication of dependency and placement in foster care. The Department of Juvenile Justice (DJJ) predisposition reports note that M.D.B. had anger management and behavioral control problems which responded to the medication, and that M.D.B. suffered from headaches and was resistant to taking medication. The original pleas of guilty to this charge was made without the presence of a parent, as evidenced by the plea form, and without the benefit of counsel, as evidenced by the disposition order. The original order of disposition in January 2005 placed M.D.B. on "judicial sanctions," not probation; imposed probation-like sanctions; and retained jurisdiction. The journey from adjudication as a foster child placed under the protection of the Department of Children and Family Services to adjudication of delinquency and commitment to the DJJ took M.D.B. six months. *M.D.B. v. State*, 952 So.2d 590, 594 n.5 (Fla. 2d DCA 2007)(Isom, Associate Judge, concurring) (emphasis added).

In M.D.B., the Child was represented by an attorney whom he barely knew, having been appointed a public defender in the morning for a violation of probation evidentiary hearing scheduled later that afternoon. The public defender barely had the opportunity to learn the circumstances of the delinquency matter, much less the Child's dependency case or circumstances. Many foster children describe the confusion surrounding the events on the day of their removal from their home and their placement with strangers as well as the continuing confusion, uncertainty and stress as they remain in foster care. Foster care professionals are taught and teach that these children are experiencing not only the effects of the past abuse, abandonment or neglect, but the current trauma, grief and loss of their home and family. Twelve-year-old M.D.B. may have benefited in 2004 from the early intervention and continued assistance of an attorney advocate, trained in both delinquency and dependency, to represent M.D.B.'s express interests in his cases and to fight the "juggernaut" (Id. at 595) that resulted in the six-month transformation of a neglected child to an adjudicated, incarcerated, juvenile delinquent. Public Defender Bob Dillinger of the Sixth Circuit created a program of such advocates. **B. THE PUBLIC DEFENDER CROSSOVER CHILDREN'S PROGRAM**

**1. GENDER\***

Male	Female
59	42

*\*prosecuted in juvenile*

**2. AGE / GENDER\***

Age	Male	Female	Total
11	3		3
12	1		1
13	5	1	6
14	4	5	9
15	8	5	13
16	11	7	18
17	12	15	27
18	15	7	22
19		2	2

*\* prosecuted in juvenile*

### 3. RACE / ETHNICITY

Race/Ethnicity	Male	Female	Total
Caucasian	42	29	71
African American	27	22	49
Hispanic	3	3	6
Asian	2	2	4
Native American	1	1	2

\* includes juveniles prosecuted as adults

### 4. DUALY-INVOLVED

Clients also in Dependency Court as a Parent

Male	Female	Total
1	4	5

## F. FY 2007-2008 OUR CASES

### 1. DELINQUENCY

Types of charges:

	Juvenile	Transferred from Another County	Adult Direct File	Total
Misdemeanor	203	39	2	244
Felony	129	14	28	171

### Delinquency Results:

Reduced Charges	35
No-Filed	45
Non-Judicial Diversion	6
Nolle Prosequi/JOA/Dismissal	11
Incompetent to Proceed	16
Juvenile Probation	21
DJJ Commitment	27
Direct File Sentenced as Adult	5
Direct File Sentenced as YO	1
Direct File Sentenced as Juvenile	7

### Hearings

The most common delinquency hearing attended by the crossover attorneys is the Pre-Trial Conference. One or more Pre-Trial Conference may be held as discovery, investigation or negotiation of the case is ongoing. The crossover attorneys are also vital in advocating in disposition hearings, which may be a separate court date, but which typically follow the entry of a guilty plea, if the case does not proceed to trial, or follow a guilty verdict if the client proceeded to trial. In FY 2007-08, the crossover attorneys advanced six Motions to Suppress on behalf of their clients, and proceeded to trial/adjudicatory hearings on nine clients.

## 2. DEPENDENCY

### Number of Months in Care

<12	12
12-18	13
18-24	8
24-30	9
30-36	8
36-48	19
48-60	14
60+	44
Total	127

### Dependency Results

Over one-third of crossover clients have been in care in excess of five years. Only six clients are or were available for adoption. One client, in care for over a decade, has been featured in a local television station's weekly "Wednesday's Child" segment, as well as in the Pinellas-Pasco "Heart Gallery," but has yet to find a forever family. Of cases closed in FY 2007-2008, a greater number of clients had their dependency case closed due to aging out rather than by achieving permanency.

Reunification	6
Permanent Guardian	16
RTI	12
Subsidized IL	1
Extended JD	20
Aged Out	24

### Hearings

Crossover attorneys can be called upon to attend all phases of juvenile proceedings including shelter hearings; dependency arraignments, pre-trial conferences and trials; termination of parental rights arraignments, pre-trial conferences and trials; judicial reviews conducted by a magistrate; judicial reviews before the UFC judge; permanency reviews before a magistrate; permanency reviews before the UFC judge; independent living reviews before a magistrate; independent living reviews before the UFC judge; motions to extend jurisdiction; other motions; and adoptions. The most common hearing attended is a judicial review conducted by the general master. In addition to participation in court proceedings, the crossover attorneys have become a fixture at staffings conducted at the CBC. Issues with inadequate advance notice of staffings, or inadequate notice of cancellation of staffings remain a challenge. Dependency placements

The crossover client, due to age, emotional, behavioral or mental health difficulties, and delinquency involvement, can be a difficult-to-place child. The crossover attorney must keep track of clients as they suffer placement breakdowns, run away, or change placements for other reasons. Crossover clients may be placed in regular foster care, medical or therapeutic foster care, group homes, SIPP or mental health hospital, relative placement, or non-relative placement. In many cases, the CBC cannot find suitable or available placement locally and the client is placed out of county.

### Educational Outcomes

Three crossover clients earned their high school diploma during FY 2007-2008. One client continued on to community college and another is a freshman at a four-year college. However, not all crossover clients are doing so well. Due to changes in foster care placement or running away, the crossover child's educational placement can be very unstable. When a crossover child incurs a criminal charge in delinquency court or is subject to disciplinary measure with the school, school reassignment can result. The crossover attorneys have identified educational outcomes as an area in need of additional advocacy on behalf of their clients. G. FY 2007-2008 Program Strengths / Challenges Strengths

### **Low delinquency recidivism.**

While crossover clients typically begin with an average of three or more delinquency charges, however, upon resolution of the delinquency charges, the bulk of the remaining representation of the client takes place in dependency court. Crossover attorney caseloads on the delinquency side are low compared to the caseloads of public defenders assigned to delinquency court. To further verify recidivism rates, the program will need to develop and put in place a system to track and capture information regarding re-arrests.

### **Strong attorney/client relationships.**

Although case managers may change, the Community Based Care provider may change, the Guardian ad Litem may change, the crossover attorneys are committed to being a consistent point of contact until case is closed. The crossover attorneys remain on case even after delinquency is closed to the end of dependency case. This consistency of representation creates strong attorney-client relationships. For example, one crossover client invited his very proud attorney to attend his high school graduation.

## **CHALLENGES**

### 1. Direct filing of foster children as "adults" to face adult incarceration

Twenty-eight crossover clients were direct filed into adult felony court in FY 2007-2008. The charges they faced were not always the most serious, nor were their prior records. Some clients are incompetent to proceed. Based on their age of sixteen or seventeen, it was often the prosecutor's discretionary decision, rather than a statutory mandate, that brought them to adult court.

Research shows juveniles in adult corrections facilities are more likely to be victimized, commit suicide or suffer educational deficits. Placement of a foster child - who has already experienced significant abuse, abandonment or neglect - into an adult corrections facility is far more contraindicated and exposes these already particularly vulnerable children to further abuse or other harms.

Dependency case planning is more flexible than an "adult" sentence of probation or incarceration. A dependency case plan can be amended to respond to changing circumstances, without implicating double jeopardy. An additional benefit to foster children in Pinellas County is the existence of Unified Family Court, under which one judge will hear all cases -whether dependency or delinquency - pertaining to the same child. Direct filing of a foster child takes the criminal allegations from the judge who best knows the child, to a judge unfamiliar with the child's delinquency or dependency background and who will preside over only the criminal matter while not being able to address the dependency case.

The fact of current or former foster care placement should mitigate, if not militate, against direct filing of foster children into adult court. Continued advocacy is needed to protect foster children from being prosecution as "adults" and subject to the harms of adult sentencing.

### 2. Out of county placements.

The out-of-county placement of local children, either by the Department of Juvenile Justice to a commitment program or the Community-Based Care provider, creates difficulty with maintaining a strong attorney-client relationship, securing the attendance of the child in court, and maintaining sibling or parent contact and visitation. In some cases, foster case workers volunteered information regarding a child's out-of-county placement to local law enforcement to assist in securing interrogation of a foster child suspected of a crime, which led to criminal charges in delinquency court. With the change in the Community Based Care provider at the beginning of FY 2008-2009, it is hoped that recruitment and retention of foster parents will be prioritized to maximize the CBC's ability to place children locally.

3. Lack of emphasis on "responsible sexuality."

As seen in a chart above, a number of crossover clients are dually involved in dependency court as both child and parent. An unknown number of clients are sexually active, if not sexually exploited. An unknown number have sexually transmitted diseases. Studies have shown that children in foster care are 2.5 times more likely than those not in foster care to have been pregnant by age 19. Additionally, 46% of teen girls in foster care who have been pregnant have had a subsequent pregnancy by age 19, compared to 29% of their non-foster care peers. Clients seeking information, resources or services in this area report they are met with a "don't ask, don't tell" response by their caseworkers. To pretend the issue does not exist in the pre-teen and adolescent foster child population does little to break the cycle of dependency.

4. Runaways.

Approximately 20-25% of crossover clients are on runaway status at any given time. The problem is more prevalent among the female clients than the male. Many of the runaways, however, will contact their crossover attorney to make arrangement to return to care. The consistent attorney-client relationship assists the foster children returning to care as they know they can contact their attorney, who will also advocate for an appropriate placement and services upon the child's return.

#### **H. FY 2008-2009 SERVICES/GOALS/NEEDS**

The Public Defender will enhance the Crossover Children's Program with the initiation of two services that were unavailable in FY 2007-2008:

1. Project Juvenile HOPE (Honor, Openness, Potential, Excellence) - will provide anger management and life skills counseling to delinquency and dependency-involved Public Defender clients. Our social worker is creating a schedule to provide in-office and/or at-home/placement counseling. The schedule to provide counseling to interested clients is being developed to include the group homes where many of our crossover clients are placed in Pinellas, Pasco and neighboring Hillsborough counties.

2. Clothes Closet – The Public Defender Crossover Children's Program has a supply of teen-appropriate clothing for clients in need. The clothes closet also has available children's clothing and supplies to assist our clients who are themselves parents. The dependency social worker will arrange appointments for clients in need of clothing to come to the office to make their selections. Access to appropriate apparel is hope to increase client's willingness/ability to attend school, attend court proceedings, as well as apply for and maintain employment.

In addition to continued advocacy on the challenges identified above, the Crossover Children's Program has identified the following goals and needs for FY 2008-2009:

1. To improve educational outcomes. The crossover attorneys will work to enhance accountability regarding the client's educational progress at judicial reviews. In addition, the crossover attorneys will attempt to be more involved in the client's educational plan, including attending meetings for Individual Education Plans (IEP's).
2. To identify future attorney advocates for foster children, and increase the quality of current crossover representation. The crossover attorneys will work with the local law school to initiate and maintain a Dependency Clinic program, and train and supervise law students enrolled in the clinic while the students are working on a client's case. This will start in January 2009 in conjunction with Stetson College of Law.
3. To improve the program's ability to capture information and track trends to identify program strengths as well as areas of needed intervention.

## **I. CONCLUSION – THE CASE OF TWELVE-YEAR-OLD S.T.H.**

S.T.H. was born to a mother who was just fourteen years old. At the tender age of five in 2001, S.T.H. was first removed from his parents' care. He was placed with a relative caregiver. This relative placement, however, broke down in a little more than three months. S.T.H. was sheltered briefly and sent back to his relative placement. He was reunited with his mother after eleven months, with the dependency case closed a few months later. The process of removal, reunification and case closure was repeated a second time over the course of a year and a half as S.T.H. passed from nine to ten years old.

S.T.H., having survived the significant abuse and dependency history with his family, began to draw the attention of local law enforcement agencies before he was ten years old. Although S.T.H.'s IQ scores reveal a child of average intelligence, S.T.H. suffers from significant emotional and behavioral disorders. At age seven, S.T.H. incurred his first arrest based on an outburst at his elementary school in which a teacher and officer were touched or struck, making the charges felonies. As the years passed, S.T.H. was arrested a total of eight times. The State Attorney elected to file delinquency petitions which resulted in five charges including the felonies of Battery of a pregnant female, two counts of Battery of a Law Enforcement Officer and Battery on a Specified Official.

In 2005, S.T.H. was found incompetent to proceed in the delinquency matters but appeared from time to time before the delinquency judge to check on his progress toward competency. S.T.H. appeared in delinquency court one day in 2006 bearing bright pink circular marks consistent with cigarette burns on his face. S.T.H. had more than 50 burns on his face, shoulder and back. An adult was charged with burning S.T.H. as punishment for not doing his "job" assisting the adult, an alleged drug dealer, correctly. As prosecutors tried to prepare the case, they were frustrated by the lack of cooperation of S.T.H.'s mother, who repeatedly failed to bring S.T.H. to appointments. When they tried to speak to S.T.H. at school, he was often absent. Concerned about S.T.H.'s supervision at home, the prosecutors notified the Department of Children and Families. Due to S.T.H.'s significant emotional and behavior problems which impaired his ability to be a witness, the case in which he was alleged to be a victim was dropped. Some people thought S.T.H. inflicted the cigarette burns on himself. In was late in this same year that S.T.H. was removed from his mother's care for the third time. S.T.H. was ordered into a residential mental health placement at the request of the community based care provider. He was eventually found competent to proceed in his delinquency matters.

At eleven years and nine months old, S.T.H. faced four violent felony charges he was alleged to have committed over the course of the previous two years. On August 16, 2007, the Unified Family Court Judge appointed a crossover attorney to represent S.T.H. as attorney ad litem on his dependency case and as public defender on his delinquency cases. The crossover attorney, armed with access to the dependency records, was able to construct a time line which showed what was going on in S.T.H.'s tumultuous home life at the time of each of the four felony offenses he was alleged to have committed. The crossover attorney was able to draft a letter to the director of the Juvenile Division at the State Attorney's office, which included information about the Child's mental health history and information from the time line, requesting that all four violent felony charges be amended to misdemeanors. After several follow up conversations regarding the merits as well as the mitigation of the cases, the State Attorney's Office agreed to reduce all of S.T.H.'s charges.

The crossover attorney continues to represent twelve-year-old S.T.H. in dependency court. Although more than a year has passed from the original appointment, S.T.H. has not required further representation in delinquency court. S.T.H.'s foster care placement has changed three times during the past year and he continues to struggle to find a stable and permanent placement. Thus far, however, through his own effort, with the support of his crossover attorney and his guardian ad litem, S.T.H. remains felony free and looks forward to a brighter future.