



# State of New Hampshire

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## Office of the Child Advocate

Moira O'Neill  
Director

Testimony of Moira K. O'Neill, PhD  
The State Child Advocate  
Office of the Child Advocate  
Before the  
Commission on Law Enforcement Accountability, Community and Transparency  
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Good day Attorney General MacDonald and members of the commission. For the record my name is Moira O'Neill and I am the State Child Advocate. Thank you for the opportunity to share information and observations from the Office of the Child Advocate. To give you context, the Office of the Child Advocate was created to provide oversight of the Division for Children, Youth and Families (DCYF), the state agency responsible for child protection and juvenile justice services. Our authority is grounded in access to information about children receiving services from DCYF. We receive complaints from a wide range of sources, including from within DCYF, and we receive reports of incidents involving children in the custody or supervision of DCYF. We investigate where necessary, and monitor for trends that underscore areas for system improvement. Our office leads a Working Group on Juvenile Justice tasked with examining New Hampshire's juvenile justice system and identifying models for improvement. I am also a member of an interdisciplinary team supported by the Annie E. Casey Foundation and the Georgetown Center on Juvenile Justice Reform working on a probation reform project. Perhaps most importantly, we have launched an initiative to convene and organize young people with experience in juvenile justice so that they may provide us guidance with system reform. There is a lot of good work underway in New Hampshire's juvenile justice services.

Recently with the passage and signing of House Bill 1162, the Office of the Child Advocate expanded jurisdiction over all state agency services provided to children. When House Bill 1162 goes into effect next month, the Office will be more deeply involved in conversations with intersecting systems effecting children. A key finding of our work thus far has been the essential need for these intersecting systems to communicate and respond to each other to best support children. This should also be a key, if not primary finding for your charge of examining the current state of relationships between law enforcement and the communities they serve: the safety, health, and welfare of children and adults is not a matter for law enforcement alone. The remedy you seek will be found in interdisciplinary partnerships, that promote understanding, respect, support, and clarity of roles – all guided by voices of the community itself.

We are here having this conversation about police accountability and engagement with communities because of the excruciating death of George Floyd. The response to his tragedy demonstrates the grief and despair of the Black community for its daily assaults by individual policemen and the institutions that allow and perpetuate the bias of difference. And in this rare moment of vulnerability in an unstable economy, massive health crisis and isolation, we are all exposed and perhaps see for the first time the cruelty certain people among us endure daily. I think often about the chance of phones and cameras at the moment of Mr. Floyd's death. As I watched the policemen restrain him for those lethal eight minutes, I reflected on the many reports my office receives weekly describing incidents of restraint of children. They happen in residential programs where children are sent for treatment when their behavior is deemed unsafe or inappropriate. On occasion my staff and I watch videos of the children being restrained. Some are far longer than eight minutes. Those videos do not go viral. It is only the Office of the Child Advocate who can raise attention to them. Pursuant to RSA chapter 126-U, prone

restraints have, in essence, been made illegal in New Hampshire since 2010 and any restraint is prohibited unless it is an emergency. Yet children continue to experience these practices, often because of manifestations of the conditions for which they are in placement. DCYF only recommends against employing those tactics, they do not prohibit as the law does. We have not found a licensing violation for their use.

I am telling you about this because the current dialogue about law and order in the United States, a necessary dialogue, is missing the most vulnerable population. It is missing children. Justice starts somewhere. It starts with the way we treat children. I appreciate that the Commission has heard testimony on the circumstance of children in juvenile justice, the presence of police officers in schools, and the age at which children should be prosecuted. I suggest to you that the values we project in how we treat children cement the foundation for biased and ineffective systems. Children taught to expect police in their neighborhoods and schools teaches them the assumption and normalcy of crime in their worlds. Children who endure physical restraint for manifestations of a mental illness or traumatic past, acclimate and normalize to external controls of force that teach them little about internal coping strategies and trust. The risks of living under these conditions are increased for children of color, over the past eight years, approximately 25 percent of admissions to the Sununu Youth Services Center (SYSC) have been Black or Hispanic children when they only represent 8 percent of the entire population of children in the state.<sup>1</sup> This is where it starts.

As I mentioned before, this is not a law enforcement problem. This is a multi-system problem. This is a culture problem. It has been a mistake to expect the police to solve social problems. I do not imagine that law enforcement intended to take over social service roles. And yet our office has heard from many law enforcement officers of the difficulties of having to respond to mental health crises and family dysfunction. Over the past few decades insufficient investments in social services have prompted building capacity in law enforcement to respond to social problems. Criminalizing mental illness, poverty, developmental disability or any behavior judged to be anti-social is not a solution. While we all agree that both children and adults must be held accountable for their actions, we are learning that punitive emphasis of law and order does not solve the problems that bring children into the system. Those problems are solved by accessible healthcare, available and knowledgeable parents supervising and guiding, housing, food security and responsive schools, among other things.

In the first year of operations the Office of the Child Advocate reviewed the overdose death of a child who had been involved in the juvenile justice system. The boy's journey into the system stemmed from possessing tobacco at school. He was suspended from school and while home unsupervised, damaged someone's property. It was not a serious offense, and he was able to work things out justly with the owner of the damaged property, but his trajectory was set on a two-year path of probation violations and court orders. His path was paved with tobacco. Reading the details of his suspensions and police citations, one wondered at the degree to which such a young boy would be physically addicted to tobacco. He broke into cars looking for it. He rummaged in the woods for partial cigarettes. He ran away from a residential facility to obtain tobacco. Yet, in all of the time he was engaged or sought after by juvenile justice services, and all the interventions undertaken with him, no one ever treated him for tobacco addiction. There are equal hazards with criminalizing and pathologizing normal adolescent behavior. But assessing for underlying cause of behavior and treating that cause will produce far more successful outcomes than punitive measures. We can punish the use of tobacco but the addiction remains untreated. Finding the right balance requires a culture of positive behavioral supports, holding a child accountable in a developmentally meaningful way, engaging the child in positive relationships, and facilitating access to clinical or medical services when necessary. This approach takes considerable commitment to a developmental model that embraces the science of the brain and basic child

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<sup>1</sup> SYSC admissions data, not unique (obtained 08/04/20)  
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development. Within this approach there must be a strengths-based assessment of the child's needs, access to an array of services that match identified needs and optimize strengths. This approach requires more than just law enforcement, but a community of support and providers.

There is an abundance of science and guidance for models of juvenile justice programs that are effective. Acknowledging the damaging effects of disproportionate minority representation, the Annie E. Casey Foundation promotes leading with race to reimagine youth justice. The beauty of emphasizing change in the treatment of children who are Black, Hispanic or of other minority groups is that the system then improves for *all* children. You have heard voluminous testimony to the presence and effect of ethnic and racial bias in New Hampshire. I would suggest that children with problem behaviors are systematically treated with bias across the board. Even parents express anger when DCYF will not remove their child. They are exhausted from untreated, sometimes dangerous, behavior, and often without services. They are tired of the police showing up at the house. It is difficult to have a vision for children under those conditions. Without a champion, a child could be placed in a situation that exacerbates rather than improves. Among those children encountering law enforcement in New Hampshire, a Black child is worse off. Of children arrested, a Black child is approximately 2.71 times more likely to be arrested than a white peer. That is slightly down from 2017 but about the same as in 2015. So there is little improvement. While general arrests are steadily moving down year to year – that is not the case for Black children. Once arrested, Black children are also 2.10 times more likely than an arrested White child to be detained. The Hispanic child is also slightly more likely to be arrested (1.35 times) and of those arrested, the Hispanic child is 2.53 times more likely than a White child to be confined at SYSC.<sup>2</sup> Being more responsive to minority children will set the trend for being more effectively responsive to all children.

There are two approaches to addressing disproportionate minority treatment and improving systems over all:

- Education and legislation aimed at raising bias awareness and minimizing opportunities for bias to occur
- Community infrastructure to prevent and treat, rather than criminalize, underlying causes of behavior that might result in law enforcement encounters

### **Raising Bias Awareness and Minimizing Opportunity for Bias**

The Commission has already received a number of good recommendations for educating and raising bias awareness. I reiterate as applies to children:

- Education and training for all child-facing roles on child development, brain development, cultural differences, social determinants of health, presentation and communication patterns of persons with intellectual or developmental disabilities, and inter-professional education
- Robust data collection and regular analysis to identify children at risk, racial or ethnic disparities in system response, and outcomes to assess return on investment
- Regional Interdisciplinary Working Groups comprised of child facing roles to promote understanding of roles, responsibilities, networking for resources, learning for best collaborative responses and holistic community engagement

Limiting opportunities within the system for high degree of discretion in decision-making will lower the risk of contamination with implicit bias. Establishing hard policy infrastructure to guard against arbitrary and developmentally insensitive decision making will minimize risk of exposure to the juvenile system, the single highest predictor of school failure and recidivism.<sup>3</sup>

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<sup>2</sup> SYSC data (obtained 8/5/2020)

<sup>3</sup> Annie E. Casey Foundation, (2018). Transforming Juvenile Probation: A Vision for Getting it Right.

<https://www.aecf.org/resources/transforming-juvenile-probation/>

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- Legislate prohibition of probation for low level offenses
- Require strengths-based needs assessment for all children encountering law enforcement. Use assessment results to determine service referrals, diversion or probation
- Standardize diversion programs with evidence-based programming and ensure equitable accessibility across the state
- Re-design rules of probation limiting to compliance with individual plan of treatment guided by strengths-based needs assessment
- Assessment and treatment decisions conducted by unbiased parties rather than assigned JPPO or residential provider
- Require a panel or independent entity to determine probation violations with guidance from the child's assessment and treatment plan
- Set an age limit for certification as an adult and require higher level for approval to pursue certification

### **Community Infrastructure**

The good news is that New Hampshire is already positioned to build a more responsive, fair system of juvenile justice. Senate Bill 14 in 2019 established mobile crisis response and stabilization services that would respond to child and family crisis where the child is – at home or school. DCYF plans to implement highly evidence-based in-home services including multi-systemic therapy for children at risk of removal from home due to problem behavior. This kind of service infrastructure would shift away from the need of law enforcement and respond to it appropriately with professionals who are trained to treat the underlying problem while still holding children accountable. By shifting this responsibility to address the underlying cause of behavior, outcomes are far more effective. These system improvements would also free up law enforcement to do the work of their own safety mission.

SB 14 also required the establishment of independent case management entities (CME) to make decisions about necessary child assessments and treatment or placement decisions. This role remedies concerns associated with the discretion left up to the JPPO or residential provider and assures objective, unbiased decision-making. One CME has been established; there is a delay on a second one. In addition, DCYF recently released an RFP for community-based voluntary services that would support families and children at risk. There was a good response from providers, but DCYF was delayed in processing the responses and awarding contracts. The Office of the Child Advocate understands these delays to be the result of backups in the contracts office of the Department of Health and Human Services, which is short-staffed. To build out this community infrastructure and avoid the brunt of child and family crisis continuing to shift to law enforcement:

- Allocate funds for hiring in the DHHS contracts office and expedite RFPs and contracts for mobile crisis response and stabilization services, MST, a CME, and other community-based infrastructure, including housing, food supplements and other family supports
- Coordinate any necessary law enforcement response with appropriately matched mental health and/or substance use professionals
- Remove police officers from school and replace with social workers, nurses, family resource center staff, and parent supports
- Maintain positive relationships between children and police officers through community-building activities, police athletic leagues, mentoring and career planning

Changing a culture of fear and bias requires taking a good hard look at what we want our culture to look like. As a daughter of a police officer and member of the police family, I understand too well the difficulties of the role and value efforts made at building community relations. But if our efforts are not evidence-based, data driven and proven to have sustained outcomes, we must reconsider and move on.

School resource officers and programs like the Mirror Project that teach children to be respectful to police when they arrive on the scene, are well-meaning. But they normalize the presence of law enforcement in places that should harbor peace and harmony. It is both a measure of intrinsic and institutional bias that we expect disorder at schools or that children will encounter police responding to crimes in their neighborhoods and homes. Imagine an alternative vision for children. Imagine a system that values families and provides supports when children's behavior indicates family dysfunction, mental health needs or developmental disability. Imagine an array of mental health, behavioral health and developmental services that work with children and schools to promote pro-social growth and development. Imagine a system with checks and balances to minimize opportunities for bias when responding to children who demonstrate anti-social behavior. That system would be populated by positive behavioral coaches rather than juvenile probation and parole officers. That system would embrace the model of health outcomes from positive experiences or the "four pillars of hope"<sup>4</sup> that build resilience in children to overcome adverse childhood experiences. Positive experiences include:

- The presence of a caring consistent adult, like a well-supported parent, mentor or even law enforcement officer as role model
- A sense of belonging in the community that one gains from regularly attending school, volunteer experiences, participating in town and city government, being consulted in decision making affecting young people
- The sense of being valued that a child feels when teachers and principals know the child's name on a strengths-basis rather than punitive, or when neighbors ask about their day, or when a law enforcement officer gives a friendly wave and compliments a sport achievement
- School success – which can only happen when students are engaged, respected and able to participate. There is no learning in suspension and expulsion. If the underlying causes of anti-social school behavior are not examined and understood, they will not be resolved and they will only be exacerbated by removal from the school community

### **Include and Consult Children**

The most important recommendation I can offer is that you consult with children themselves. Their experience in the juvenile justice system should be viewed as expertise. They can tell you what makes a good lawyer, what rules of probation work or do not work, and what treatment programs are actually helpful. They can also tell you what appeals to them and what they will engage with. When I ask children what their vision is for their individual programs, they too frequently share that they have no vision because they have never been asked to contribute one. The Office of the Child Advocate would welcome your support in our initiative to organize children as self-advocates in the juvenile system. We have a lot to learn from them.

Thank you for your time. I welcome questions if you have them.

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<sup>4</sup> Sege, RD (2017). Responding to ACEs with HOPE: Health outcomes from positive experiences. *Academic Pediatrics*.