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# NAVIGATING THE MAZE: LEADING THE COURT TO A BETTER DISPOSITION

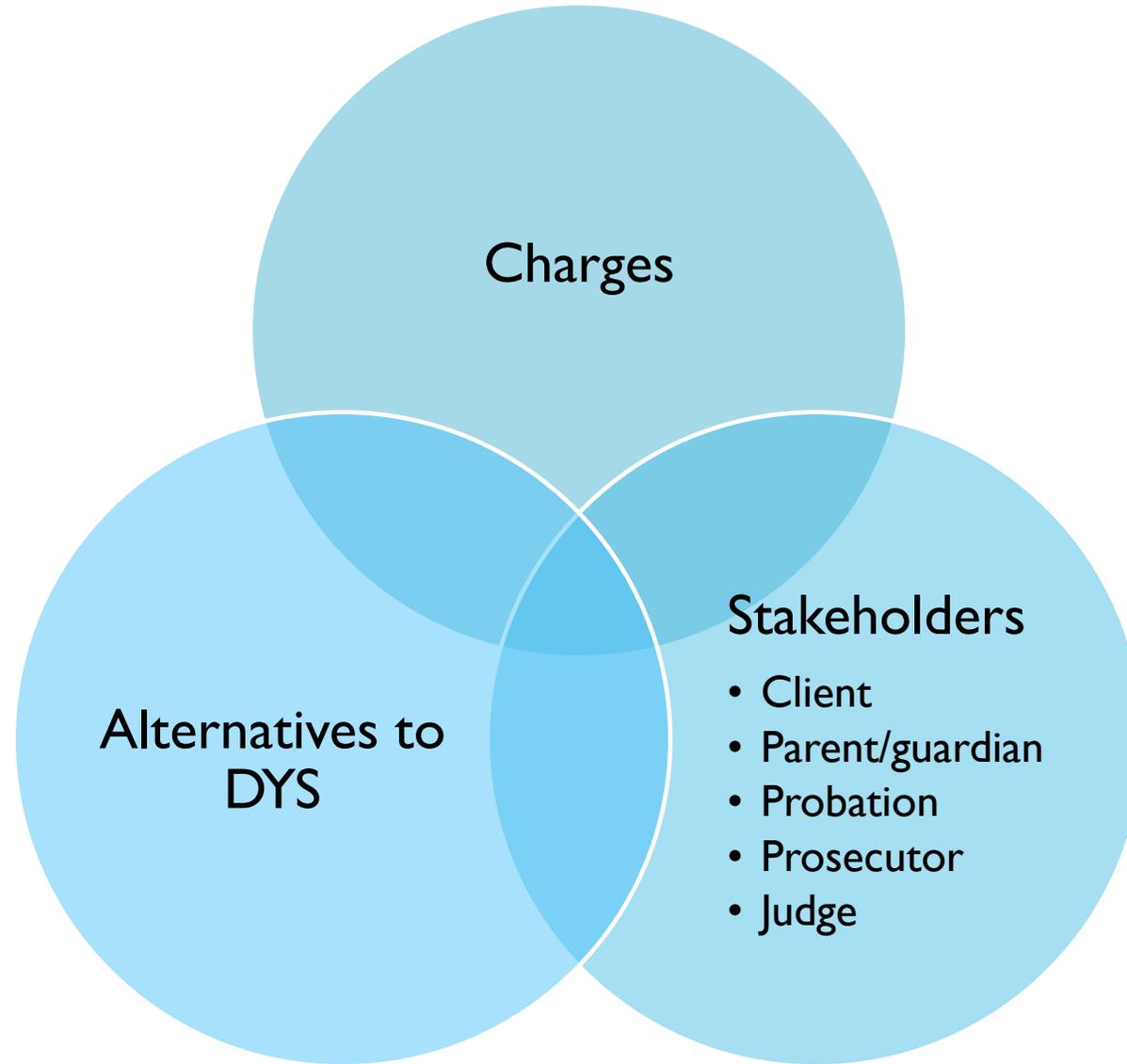


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# DISPOSITIONAL ADVOCACY – HOW TO ADVOCATE.





Charges

Alternatives to  
DYS

Stakeholders

- Client
- Parent/guardian
- Probation
- Prosecutor
- Judge

# TIPS FOR DISPOSITIONAL ADVOCACY

- Start from day 1
- Counsel your client
- Engage parents/guardian (with caution)
- Connect with probation (with caution)
- Know the alternatives
- Understand the Research
- Know the judge
- Put it in writing

# START PLANNING FROM DAY ONE

- How do you determine whether DYS is on the table?
  - Juvenile Record
  - Type of Charge
  - Previous Experience
  - Detention Status
  - Ask if you don't know
    - Probation Officer
    - Other defense attorneys



# START PLANNING FROM DAY ONE

- Start collecting:
  - Collecting client records
    - School: grades, IEPs, 504 Plans, disciplinary history
    - Mental Health
    - Medical
    - Children's Services
    - Probation
  - Gathering mitigation and support
    - Teachers, employers, church leaders, family, coaches



# COUNSEL YOUR CLIENT

- Involve your client:
  - Advise of possible dispositions.
  - Explain the process and likely outcomes.
  - Get client input: “What would you like to see happen?”
  - Advise client on conditions of release, or if detained, maintaining good behavior in detention.
  - Get permission on information you wish to share.

# COUNSEL YOUR CLIENT

- Prepare your client:
  - What to expect and what not to do when getting evaluated or meeting with probation
  - How to behave and what (not) to say at disposition hearing



# COUNSEL YOUR CLIENT



Review the National Juvenile Defense Standards, Part VI: “Role of Juvenile Defense Counsel at Disposition Hearings.”

# ENGAGE PARENTS/GUARDIAN

- Prepare parents for disposition and for meeting with probation
- Inform parents of possible and likely outcomes
- Bring parent in alignment with client goals if possible
- Empower when possible
- Refer parents to support services if needed



# CONNECT WITH PROBATION

- If client is already on probation:
  - Get insight from PO
  - Review prior reports
  - If issue is with PO, request probation records
- If client is not on probation:
  - Share positives
  - Share relevant mitigation if it will positively influence
- Review report and recommendations ASAP



# CONNECT WITH PROBATION

- Mitigate misunderstandings
- Present alternative proposal



# KNOW THE ALTERNATIVES

- Court list/approved contractors
- Community programming
  - Mental health treatment centers
  - Case management
  - Functional Family Therapy
- Other private facilities



# KNOW THE ALTERNATIVES: MAP YOUR ALTERNATIVES

- Community Programming
- Probation Programming
- Residential Treatment- Private
- Residential Treatment- Children's Services
- Residential Treatment- Probation

Map your alternatives- from least to most restrictive.

# KNOW THE ALTERNATIVES



- Use your defender community
  - Reach out on the listserv
- When all else fails:

Google



# KNOW THE ALTERNATIVES

- Find the best alternative!
  - Promote individualized treatment
  - Understand your client's needs
- Keep a list of alternatives and creative options
- Understand the limitations of DYS



# KNOW THE JUDGE

- Side with probation?
- Likely to read?
- “Hot button” issues for your judge? (Guns, theft, drugs?)
- Sympathies (Mental health, abuse/neglect..)



# KNOW THE JUDGE

- What does your judge consider strengths?
- What does your judge consider weaknesses?
- What does your judge consider mitigating vs. aggravating?



# PUT IT IN WRITING

- Consider writing a dispositional memorandum
- Present a plan
- Include research
- Assess probation or prosecution's proposal for appropriateness
- Include letters of support and exhibits
- Get creative!



# PUT IT IN WRITING

Consider your audience's frame of reference



# PUT IT IN WRITING

## Redirecting the solution

- Pragmatic approach to solutions

# PUT IT IN WRITING: DISPOSITION MEMO

- General mitigation around the offense
- Mitigation using developmental perspective
- Address your client's needs
- Developmental Perspective
- Address the “Three S’s”:
  - Status
  - Sleep
  - Schedule



# DISPOSITIONAL ADVOCACY – WHAT TO ADVOCATE FOR.





Most frustrating thing about my job:

We know what works. We're just not doing it.

## WHY RESEARCH?

- In the last 10 years, research from across the country has aligned to tell us what works.
- What's the alternative to making research-based decisions?:
  - Guessing
  - Gut-level decision-making
  - Assumptions
  - Implicit bias
- The good news: We don't have to guess anymore.

# HOW SHOULD RESEARCH GUIDE OUR DECISIONS?

Goal: Reducing recidivism

- Low reoffending risk – Diverted from the juvenile justice system altogether
- Moderate or high reoffending risk – Subject to the minimal level of supervision and control consistent with public safety and be provided with appropriate, effective therapeutic services
- Recognize that “punishment beyond that which is inherent in the level of control necessary for public safety is likely to be counter-productive to reducing recidivism.”

Mark W. Lipsey, et.al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, Center for Juvenile Justice Reform (2010), p. 12.



TWO PRINCIPLES:  
RISK & NEED



## HOW DO WE KNOW A KID'S RISK LEVEL? - OYAS

- Validated as accurate on Ohio youth EXCEPT for sex-offenses (contact DYS about validated risk assessments for sex-based offense)
- Purpose: To determine what interventions are appropriate to address the youth's level of risk and need (i.e. match the youth with the right program for their risk level and needs).
- Five Opportunities to Use the OYAS:
  - Diversion
  - Residential
  - Detention
  - Reentry
  - Disposition

## ADVOCATING FOR YOUR CLIENT - OYAS

- Was your client **given an OYAS** assessment? – If not, challenge any disposition.
- Was your client given the **right OYAS** assessment for the proper point in the court process?
- Has the person who has given the OYAS been **trained**?
- What **quality assurance** does the court have in place to ensure the OYAS is delivered validly?
- Was the OYAS **overridden** by the judge?

# WHAT DISPOSITIONS ARE AVAILABLE?

- **Premise:** If there are no programs in your county to address your client's risk and needs, your client can't receive an appropriate disposition.
- Mapping your county's disposition options:
  - What state funding sources does your county get? (i.e. Youth Services, RECLAIM, BHJJ, Targeted RECLAIM, and Competitive RECLAIM)
  - What local funding does your county get?
  - What programs is that money spent on?
  - What programs are missing? If your court had other programs, would your client have a better outcome?
- Client-centered questions:
  - Does the program match my clients' 1) risk-level AND 2) need?
  - Has the program your client is being placed in effective/been shown to reduce recidivism?

<b>Program</b>	<b>Proven?</b>	<b>Counties</b>
Youth Services	N	All 88
RECLAIM	N	Up to all 88 – varies by year
BHJJ	Y	Cuyahoga, Franklin, Hamilton, Lucas, Montgomery, Summit, Lorain, Trumbull/Mahoning, Wayne/Holmes
Targeted RECLAIM	Y	Allen, Ashtabula, Butler, Cuyahoga, Franklin, Hamilton, Licking, Lucas, Lorain, Mahoning, Medina, Montgomery, Stark, Summit, Trumbull
Competitive RECLAIM	Y	Allen, Ashtabula, Athens, Clermont, Erie, Fairfield, Franklin, Gallia, Geauga, Hamilton, Hardin, Jackson, Lorain, Lucas, Mahoning, Marion, Meigs, Montgomery, Morrow, Muskingum, Scioto, Summit, Trumbull, Wayne

## RECLAIM FUNDED PROGRAMS:

- RECLAIM funding is used on a huge variety of programs from diversion to residential programs.
- Top 5 RECLAIM programs – by funding:
  - Probation (10.9%) - Restitution/community service (7%)
  - Residential (8.1%) - Mental health counseling (6%).
  - Diversion (7.6%)
- Top 5 RECLAIM programs – by failure rate/effectiveness:
  - Diversion (5%) - Mediation (11%)
  - Drug testing (8%) - Restitution/Community Service (14%)
  - Work detail (8%)

Source: [UC Evaluation of RECLAIM Programs](#) (2014)

## RECLAIM AND RISK:

Not all programs decrease recidivism, meaning placing your client in these programs could make them worse. This determination is based on:

- Program type: For example, low-risk youth increased recidivism when placed in residential, substance abuse, and day treatment programs.
- Program length: Low- and moderate-risk youth had least recidivism after being in a program for 0-3 months; for high-risk youth the time frame was less than 13 months.
- Program number: The lower the better.

Source: [UC Evaluation of RECLAIM Programs](#) (2014)

Risk	Programs that Reduce Recidivism	Programs that Increase Recidivism
Low	<b>Diversion</b> , substance abuse education, mentors, alternative school, drug testing, work detail, mediation, restitution	Family preservation, aftercare/parole, mental health counseling, sex offender, wrap around, intensive supervision, <b>probation</b> , group, <b>residential</b> , <b>substance abuse treatment</b> , day treatment
Medium	<b>Drug testing, diversion</b> , mentors, restitution, family preservation, mental health counseling, sex offender	Probation, mediation, wrap around, intensive supervision, substance abuse treatment, monitoring, work detail, <b>residential</b> , group, <b>aftercare/parole</b>
High	<b>Sex offender</b> , work detail, <b>diversion</b> , drug testing, aftercare/parole, alternative school, <b>probation</b> , wrap around, substance abuse treatment, substance abuse education, restitution, mediation, intensive supervision, day treatment, family preservation	<b>Mental health counseling, residential</b> , mentors, monitoring, <b>group</b> .

## WHAT DOES THE RESEARCH TELL US ON INCARCERATION?

Incarceration should be used rarely – if at all – and :

1. Only for youth who are at high-risk for reoffending
2. For a maximum of 6 months
3. In a facility where youth are not subject to harmful conditions and that utilizes positive youth development in a developmentally appropriate setting
4. In conjunction with programming that meets youths' individual needs
5. With intensive services to transition youth successfully home

If the above conditions aren't met (and even in some cases when they are), incarceration increases the likelihood that the youth will reoffend.

Source: <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/04/reexamining-juvenile-incarceration>

## HOW IS INCARCERATION USED NOW IN OHIO?

- Only 29% of youth placed in juvenile correctional facilities by judges are high-risk of reoffending
- Specification laws require youth adjudicated delinquent of offenses with certain specifications to be incarcerated for a mandatory amount of time
- Half of the boys and over 90% of girls incarcerated in Ohio are on the mental health caseload
- Black youth are 17% of Ohio's population, but are over 60% of youth sentenced to correctional facilities

IF NOT INCARCERATION, THEN WHAT?

Community

Community

Community

## COMMUNITY BASED ALTERNATIVES TO INCARCERATION

### Community-based alternatives:

- Are cost effective - \$240/day versus \$75/day (on average)
- Produce better outcomes
- Help youth and families apply skills and build support in the communities where they live
- Promote well-being and positive development

## EVEN FOR HIGH RISK YOUTH?

A recent national study of community-based alternatives for high-risk youth showed that 86% of the youth remained arrest free while in the program and 93% remained living at home at the end of services.

Source: Fazal, S. (2014). [Safely Home: Reducing youth incarceration and achieving positive youth outcomes for high and complex need youth through effective community-based programs](#), Washington, DC. Youth Advocate Programs Policy & Advocacy Center.

## APPROACHING DISPOSITION – OVERARCHING THEMES:

- Focus on community-based programs, particularly diversion, even for high-risk youth.
- Fight residential options – only appropriate in an extremely small percentage of cases.
- Know what disposition options are available in your county, what are not, and what options have been shown to work for what type of youth.  
Example: Structured Decision Matrix.



## Florida Department of Juvenile Justice Disposition Recommendation Matrix

(Staff should begin with the least restrictive setting within a particular disposition category. See Structured Decision-Making guidelines.)

Most Serious Presenting Offense	PACT Risk Level to Reoffend			
	Low Risk to Reoffend	Moderate Risk to Reoffend	Moderate-High Risk to Reoffend	High Risk to Reoffend
Civil Citation Eligible <sup>1</sup>	Level 1	Level 1	N/A	N/A
Minor <sup>2</sup>	Level 2 or 3a	Level 2 or 3a	Level 2 or 3a-c	Level 3a-c or 4
Serious <sup>3</sup>	Level 2 or 3a	Level 2 or 3a-b	Level 3a-c or 4	Level 3a-c or 4
Violent <sup>4</sup>	Level 2 or 3a-b	Level 2, 3a-c, or 4	Level 3a-c, 4, or 5	Level 3a-c, 4, or 5

<sup>1</sup> – Eligibility for civil citation is outlined in F.S. 985.12. Youth deemed ineligible for civil citation (based on community standards) should be reviewed under the “Minor” offense category based on the PACT risk level to reoffend.

<sup>2</sup> – All misdemeanor offenses.

<sup>3</sup> – Felony offenses that do not include violence.

<sup>4</sup> – Violent felony offenses (do not include misdemeanor assault and battery which are captured under “Minor”).

**Level 1** – Alternatives to Arrest

**Level 3** – Community Supervision

**(3a)** – Probation Supervision

**(3b)** – Probation Enhancement Services (ART, EPICS, LifeSkills, etc.)

**(3c)** – Day Treatment, MST, FFT, Minimum Risk Commitment

**Level 2** – Diversion & Non-DJJ Probation

**Level 4** – Non-Secure Residential Commitment

**Level 5** – Secure Residential Commitment (High & Maximum Risk Programs)

## APPROACHING DISPOSITION – CLIENT STEPS:

- Step 1: Determine client's risks/needs (OYAS).
- Step 2: Determine if/what programs are available that match your client's risks/needs (mapping and research).
- Step 3: Put together an ideal disposition with specific programs or parameters to meet your client's risk/need and using the themes on the prior slide, including programs that may not exist and inappropriate dispositions.
- Step 4: Challenge disposition options that have not been proven to work with your client with research and on the record.



# CASE STUDY

