

**THE DEGREE OF DIFFERENCE
FOR THE
DUAL ADJUDICATED MINOR IN UTAH**

**Institute for Court Management
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I. ABSTRACT

“Why aren’t our kids given the opportunity for a non-judicial closure?”

This was the question that launched more questions, discussions, and ultimately this research project. Asked by Kristen Brewer, the Guardian Ad Litem for Utah at the time, it became the catalyst for research, recommendations and changes in how Utah’s children in foster placements are treated when referred to juvenile court for a delinquent act.

Concern for Utah children in an out of home placement due to a child welfare adjudication and who have been charged with a delinquency surfaced among members of a sub-committee of the Utah Court Improvement Program committee.¹ This sub group of Utah juveniles is determined to be, and are identified as, “dual adjudicated” minors. The need for this project was borne out of discussions among those who serve our juvenile justice system and share this concern.

Through the use of current research, literature and data available on the state’s juvenile information system called the Court & Agencies’ Record Exchange (CARE)², the issue of the dual adjudicated minor is herein reviewed, analyzed and compared to the delinquency only³ minor. A number of areas are explored and compared including the decision to petition a delinquency referral or close the referral through a non-judicial adjustment, dispositions and sanctions, referrals for services, as well as other areas.

¹ Serving on the committee are judges, guardians ad litem, representatives from the Division of Child and Family Services (DCFS), as well as representatives from the Utah Attorney General’s Office and the Utah Juvenile Court’s assistant administrator for child welfare.

² See http://care.utcourts.gov/site/CARE_About.htm for history, mission and objectives of the CARE records system.

³ Delinquency only minors are defined as youth having been adjudicated on a delinquency only referral with no history of any involvement in child welfare matters as reported by CARE.

Through an intake survey, possible reasons why an intake probation officer chooses to petition a delinquency referral will be explored as well as factors that might influence such a decision. Additionally, the intake survey examines how likely intake probation officers are to petition a delinquency referral received by a minor in the custody of the Division of Child and Family Services and what factors influence that decision.

A hand review of over five hundred case files of dual adjudicated and delinquency only minors is used to provide information regarding justification for petitioning a delinquency referral and what sanctions the dual adjudicated minor is given in comparison to the delinquency only minor. Other areas of comparison include the attendance of a parent/guardian at an initial hearing for delinquency as well as legal representation, in addition to a number of other areas that potentially influence a minor's successful exit from the juvenile justice system.

As a result of this research project, there are several conclusions that are asserted indicating a distinct degree of difference in how dual adjudicated youth are treated in comparison to the delinquency only population. Thus, a number of recommendations are made to those invested in Utah's children. The recommendations extend from the juvenile court to the Division of Child and Family Services and foster parents. Only when everyone works in partnership for equity on behalf of our children will their future hold the hope and promise that Ms. Brewer's question will not be asked again.

II. INTRODUCTION

*“To no one will we sell, to no one deny or delay, right or justice.”
Magna Carta⁴*

It is assumed that every person, young, old or in between, will have their day in court and will have their right to justice. Utah’s Juvenile Court strives to be the best, one that protects children and holds them accountable; in both cases, giving them a chance at hope. It envisions children living in safe homes and residents living in safe communities.⁵ To accomplish this, the juvenile court is committed to working cooperatively with its allied agency partners to protect those who cannot protect themselves from repeated abuse and neglect, to holding juveniles accountable, and to assist in the rehabilitation of minors referred by local law enforcement, or in the alternative, by prosecuting them if necessary. There is a population of juveniles in Utah, however, that finds itself caught somewhere between victim and offender. These children are the focus of this project. Who are they? What do they look like? How did they get here? And, what does the future hold for them?

A. Context of the Issue

Uncovering the Problem in Utah

Throughout 2006 and 2007, a number of discussions and meetings were held to address the concern regarding Utah children⁶ who eventually became known as dually adjudicated minors.⁷

For purposes of this project, a dual adjudicated minor is herein defined as a minor involved in the

⁴ Magna Carta. England (1215). Liberty No. 40.

⁵ Utah Juvenile Court’s Vision Statement: *“Ensuring a safe home for every child and safe communities for all.”*

⁶ The term “minor”, “child”, “youth”, “juvenile” or other terms defining someone under the age of 18 are used interchangeably. See Utah Code §78-3a-103 for the definition of “minor” and “child”.

⁷ Utah Code §78-3a-103(1)(b) “adjudication” means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

juvenile court through the Division of Child and Family Services⁸ (DCFS) as a result of an adjudicated child welfare matter of dependency, neglect or abuse, and subsequently adjudicated on a delinquency referral from law enforcement. Discussion about this sub group of juveniles had not previously surfaced; therefore no tangible information, much less research, has been done in Utah prior to this project. A delinquency only minor for purposes of this project paper is a minor with a sustained delinquency referral, but not involved in the juvenile court under DCFS's watchful eye.

Utah's Desert

Despite the limited existence of national literature specific to the dual adjudicated minor, there is an abundance of written material which helps in understanding how one becomes dually adjudicated. And very little is known about how this population fares while passing through the juvenile justice system. Given the finite limits of the judicial process, many children placed in foster care move through the juvenile justice system seemingly unnoticed until someone asks a question.

Unfortunately, no literature currently exists and no research has been done regarding Utah's dual adjudicated minors. This project paper, then, will describe Utah's dual adjudicated children and research factors that may contribute to their transition from child welfare to dual adjudication. By identifying this population and providing information about them, it is the intent of this project paper to replace Utah's desert on the dual adjudicated minor with useful facts and recommendations. Additionally, it is hoped that by understanding the issue, the minor and the

⁸ Utah Code §62A-4a-103. The creation and purpose of the Division of Child and Family Services.

chain of events, that Utah can lay the foundation for the future of her children “through quality services for the positive development of children and families referred to the court.”⁹

B. Significance of the Problem

Experts in the field of child welfare and juvenile delinquency have supporting research as they boldly declare the problems faced by a child who has been abused or abandoned. Several publications about the dual adjudicated minor consistently paint a picture of a serious problem that is impacting thousands of children per year. In Utah, this issue impacts more than 1,700 dually dual adjudicated minors per year (see Table 2). Since no prior research has been done regarding this issue, any number of dual adjudicated minors and any research should be considered significant at this point.

C. Goal of the Research ~ Analyzing Utah’s Kids

Since no comparative information currently exists regarding the dual adjudicated and delinquency only minors, a number of tables and charts will be used to provide information aimed at understanding the issue in Utah and ultimately analyzing the information for further discussion and possible recommendations. Through the use and analysis of archival computer data of children placed in the custody of DCFS, a picture emerges that tells Utah’s story on this issue. Armed with information from CARE, a number of data points were used to create a descriptive picture of Utah’s dual adjudicated minor during the three year period between January 1, 2003 and December 31, 2005.

Results of an intake survey administered to probation officers throughout the state who process new delinquency referrals will be reviewed. The survey evaluates attitudes regarding the

⁹ Utah Juvenile Court’s Mission Statement: *“The Utah Juvenile Court’s mission is to provide quality services for the positive development of children and families referred to the court.”*

role of the probation officer and intake decisions made by them. The responses to these two focus points provide the beginning of an understanding to the difference in how delinquency only and dual adjudicated minors are handled at the first point of contact with the juvenile court for a delinquency referral. The survey also explores the decision making process that influences the likelihood of a delinquency referral being petitioned for a hearing before a judge for a minor in the custody of DCFS compared with a non-DCFS custody minor.

In addition to the responses from the intake survey, a hand review of randomly selected cases was completed. A form was developed to compare DCFS children with a delinquency referral and non DCFS children with a delinquency referral. This was accomplished by means of reviewing the legal record and social file of 504 cases. The cases were randomly selected using seven percent of identified dual adjudicated cases from the final draw from CARE's archival data retrieval system and an equal number of delinquency only cases. The data collected through the Case File Hand Review (see Appendix III) is intended to serve as a qualitative comparison of what the intake survey responses indicate happens in general and what the legal files reveal happens.

D. Outline of the Report

To understand the issue, a review of available literature and research is first presented. The literature review focuses on potential factors that increase the risk of a child thrust into the child welfare system becoming dually adjudicated. These factors, of which children have no control, but instead are inflicted upon them, are described as "the child welfare factors." As a result, children often find themselves placed into a system that on the one hand is dedicated to their safety while working to preserve the family, and on the other hand, may very well be contributing to their eventual dual adjudication through the child welfare factors.

National studies regarding the dual adjudicated minor¹⁰ indicate a number of child welfare factors including mental and medical health and welfare concerns resulting from childhood maltreatment, out of home placement, as well as others, that contribute to subsequent delinquent behavior. Some of these health and social issues include increased incidents of post-traumatic stress, substance abuse, juvenile suicide, violent behavior, and anti-social behavior, to name just a few. Due to a number of constraints, this project will not be exploring this in depth. Nonetheless, it is a concern frequently noted in the literature and as a result, warrants mention.

The methodology section of this project paper will first create a descriptive picture of Utah's dual adjudicated minor using data from the CARE system. Information regarding the background and purpose of the probation officer survey as well as highlights about attitudes regarding their role and function will then be presented. Finally, it will provide information regarding the case file hand review, the results of which indicate a difference in how dual adjudicated minors and delinquency only minors are treated when referred to the juvenile court.

The research findings will be provided and used to lay the foundation for the conclusion and recommendations. The findings, conclusion and the recommendations are intended to ensure the degree of differences between how dual adjudicated minors and delinquency only minors are treated is reduced. The bibliography and all reference appendices are placed at the end and conclude this research project report.

¹⁰ Literary reference to minors who have been defined in this project paper as "dual adjudicated" are also described as cross-overs, dual jurisdiction kids, and dual status minors, as well as other like terms indicating involvement in the juvenile justice system as the result of a child welfare and a delinquency matter.

III. LITERATURE REVIEW

A. A National Perspective on the Issue

The literature review includes the use of a variety of databases including the library at the National Center for State Courts (NCSC, or “National Center”), as well as internet searches to identify articles, books, journals and brochures that can be used for this project. Internet searches included the terms and word: *juvenile, minor, and delinquent; cross over minor; dual jurisdiction; and child welfare*, as well as searches for *delinquent minors in the child welfare system*.¹¹ The literature review also included searches in, and use of, Utah statutes regarding child welfare and delinquency.

The focus of this literature review is to find relevant information regarding research, services and recommendations relative to the dual adjudicated minor. The issue of the dual adjudicated minor and the challenges associated with them surfaced only recently, thus not much is known about them nationally and less so in Utah. Because little subject-specific written material can be found, the literature reviewed was based mostly on material related to the issue. A number of writings point toward a correlation between involvement in the child welfare system and acting out behaviors, resulting in dual adjudication. However, how dual adjudicated minors fare in the juvenile justice system compared to delinquency only minors is an area with little or not literature for one interested in insuring equitable treatment. Of particular interest are the writings that provide information which helps one understand the passage from injured party to law violator. They provide the best support of a child’s transition from child victim to placement subject to acting out juvenile to dually adjudicated minor.

¹¹ This is not intended to be an all inclusive list of terms and words used in searches.

There are a number of writings regarding juvenile delinquency, its causes and its impact on public safety and costs. There is an abundance of literature regarding children involved in the child welfare system, either maintained in their own home or in placement out of their home. A wealth of writings exists aimed at connecting the dots between maltreatment and/or the impact of domestic violence to delinquent behavior. There are even writings about the writings. Unfortunately, there is a literary vacuum regarding the dual adjudicated minor.

Since the days of Moses and the Ten Commandments, laws have been established. The Hammurabic (1728 BC – 1686 BC) Code, one of the earliest sets of written law, established punishment for breaking the rules. The Code contained some three hundred laws which focused on a number of social issues of the time such as theft, property damage, murder, death and injury, and even children's rights.

The juvenile justice system as we know it today, and still in its infancy relatively speaking, was established in Cook County, Illinois in 1899. The rise of this system was in response to centuries of young children being tried, sentenced, and jailed alongside hardened adult criminals.¹² Despite ancient laws which viewed children's rights important, members of the Society for the Prevention of Cruelty to Animals began a movement on behalf of children believing that animals were treated better than children. This helped establish separate courts for juveniles and adults.¹³ The British legal doctrine of *parens patriae*, "the State as parent", was used as the basis for the Court's charge. The translation of this Latin term literally means "parent of the country", and refers traditionally to the role of the state as being the sovereign and the guardian when acting to

¹² http://www.buildingblocksforyouth.org/juvenile_court.htm, Building Blocks for Youth, *The Juvenile Court, One Hundred Years in the Making*. Retrieved July 12, 2007

¹³ National Council Juvenile and Family Court Judges, *JUVENILE DELINQUENCY GUIDELINES: Improving Court Practice in Juvenile Delinquency Cases*, (November 2000), page 11.

protect the interests of children.¹⁴ This concept set a new direction for juvenile justice in the United States, emphasizing individualized treatment of juvenile cases instead of a rigid adherence to “due process,” probation over incarceration, and substituted rehabilitation for retribution.

Utah’s Juvenile Court was established in 1905 and generally has jurisdiction over juveniles less than 18 years of age, although jurisdiction can be maintained until the person reaches the age of 21. Minors come to the attention of the court when charged with committing an offense, when social services and the school have been unsuccessful at addressing a child’s ungovernable behavior, or when the child has fallen victim to abuse, dependency or neglect. Upon receiving a delinquency referral, the case is assigned to an intake probation officer who meets with the juvenile and his parents to determine the best course of action. If the juvenile denies the charge, the matter may be scheduled to be heard by a judge.¹⁵ If, on the other hand, a juvenile admits to the charge, the intake probation officer will consider a number of factors such as the severity of the offense, the juvenile’s age and past record, as well social factors such as the family situation, school performance, and peers when deciding how best to handle each individual case. The intake probation officer may decide to set the matter before a judge or may develop a non-judicial agreement and contract outlining the conditions for the non judicial closure.

Utah’s Juvenile Court judges also hear cases on behalf of children who are victims of abuse, neglect or dependency. This includes children falling victim to non-accidental physical or mental harm, sexual exploitation, mistreatment, abandonment, or becoming homeless or without proper care through no fault of the parent or guardian. From its inception, the juvenile justice system has used a holistic approach, taking into account a detailed assessment of the minor’s

¹⁴ Black’s Law Dictionary, Sixth Edition, page 1114

¹⁵ There are 27 judges and 1 commissioner in Utah’s eight judicial districts, thus most petitioned cases will be heard by a judge.

history and background in an effort to meet specific needs. Utah’s Juvenile Court also embraces this approach. Within the framework of its purpose, the court serves as a forum for resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due process.¹⁶ To accomplish this, the court can impose appropriate sanctions, order measures to promote guidance and control, and (where appropriate) order rehabilitation, reeducation, and treatment. All this is in an effort to promote public safety and individual accountability, and to embrace the balanced approach philosophy. Inherent in the balanced approach of accountability, community protection, and competency development is holistic justice.

During the 1960s and 70s, a number of landmark cases made their way to the United States Supreme Court which ruled in favor of juveniles being afforded due process protections including formal hearings when facing waiver to criminal court, protection against self-incrimination, the rights to notice of the charges, counsel, and cross-examination of witness, and adherence to the judicial standard of “proof beyond a reasonable doubt.”¹⁷

B. Violence and the Child Welfare Factor

“One of the most important things that should come out of listening to children’s voices is that it diminishes in all of us the impulse to deny the magnitude of what’s going on.”¹⁸

Domestic Violence

In ancient times, women were considered property. This attitude has prevailed throughout history; although more prevalent in third world countries, its existence continues in the United States. Historically, men were given legal authority to use physical force against their wives and children to ensure proper behavior and attitude. Law enforcement, consisting mostly

¹⁶ Utah Code §78-3a-102. Establishment of juvenile court – Organization and status of court – Purpose.

¹⁷ Kent v. United States (1966) , In re Gault (1967), and In re Winship (1970)

¹⁸ Pamela Sicher Cantor, M.D., Founder and President, Children’s Mental Health alliance Foundation, participating at the 1999 National Summit on Children Exposed to Violence.

of males through the ages, saw domestic violence as a private family matter and that a man was doing what he saw was in the best interest of his family. Thus, little was done to protect a woman or her children. Law enforcement and the courts minimized the dilemma and potential for harm, thus male batterers were seldom prosecuted.

Law enforcement encounters at least half a million children each year when responding to domestic violence calls, with a 30 to 60% overlap between violence against women and violence against children in the same family. This overlap results in an increased likelihood that a battered woman will abuse her children more often than a non-battered woman.¹⁹ Once again the problems and issues a minor is faced with are compounded by the mother's own needs and problems and her inability to cope. The National Council of Juvenile and Family Court Judges, in its resource guide, cited a report of the American Psychological Association noting that although not all children react adversely, "A child exposed to the father abusing the mother is at the strongest risk for transmitting violent behavior from one generation to the next."²⁰

The APA report concludes that behavioral problems have been noted in children as young as infancy and that preschool children display behaviors including aggression, yelling and irritability, as well as social problems including trouble interacting with peers. Although short term exposure to violence can be disruptive in a child's life, the long term consequences include difficulties in school, at work, and in relationships, physical and mental health problems, and risk of re-victimization by violence throughout their lives.²¹ Attention also turns to the risk of these children becoming offenders themselves. The APA report further indicates that in multiple

¹⁹ Alicia Summers, *Children's Exposure to Domestic Violence, A Guide to Research and Resources*. National Council of Juvenile and Family Court Judges, Reno, NV (2006), page 31.

²⁰ Report of the American Psychological Association Presidential Task Force on Violence and the Family, (1996).

²¹ Wendy Jacobsen, *Safe From the Start: Taking Action on Children Exposed to Violence*. Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. (2000) page 29.

studies, 20-30% of males who witness domestic violence often display characteristics of aggression, anxiety and depression, pro violent attitudes, as well as long term adjustment disorders. Another report states that on average, 47% of child victims of a substantiated abuse have higher delinquency rates than children who have not been abused or neglected.²²

By the time abused children reach adolescence, they begin to experience problems in social interactions including dating violence, delinquency, truancy, early sexual activity, and an increased risk of teen pregnancy.²³ Even teens with a history of being exposed to violence, versus a victim of it, often begin displaying symptoms of post traumatic stress disorder (PTSD). It is estimated that two million adolescents, ages twelve to seventeen, suffer from PTSD as a result of violent past experiences. Symptoms of this long term mental health condition include depression, anxiety, flashbacks or nightmares, in addition to other behavioral and psychological symptoms.²⁴ As a means of coping with the devastating effects of the violence, a significant number of teens enter the downward cycle of alcohol and drug abuse. Additionally, in an effort to avoid further violence, teens often find the need to defend themselves by carrying weapons or joining a gang. Unfortunately, these actions often result in further compounding the problem by heightening their exposure to additional violence.²⁵ The likelihood that today's children will be exposed to some form of violence is enormous given the access and freedom to a variety of mediums including music, television, movies and personal hand held gaming devices, with little

²² Joseph P. Ryan and Mark F. Testa, *Child Maltreatment and Juvenile Delinquency: Investigating the Role of Placement and Placement Instability*. Taken from an abstract in ScienceDirect, Children and Youth Services Review, Volume 27, Issue 3, (March 2005).

²³ See Note 21 supra, page 1.

²⁴ D. Kilpatrick and B. Saunders, *Prevalence and Consequences of Child Victimization: Results from the National Survey of Adolescents, Final Report*. Research in Brief, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. Washington, D.C. (1997), NCJ 181028.

²⁵ Candice Maze, J.D., *A Judicial Checklist for Children and Youth Exposed to Violence*. National Council of Juvenile and family Court Judges Technical Assistance Brief, Reno, NV (2006), page 13.

or no parental supervision. While exposure to such violence is dwarfed in comparison to the effects of domestic violence, the combination of the two is concerning.

A Minor Dilemma: “Who Represents Me?”

Despite the best efforts of the child welfare system, children often remain in foster care for an indefinite period of time and experience frequent moves from one placement to another. Each move brings with it a number of accompanying changes such as new “parents” and new rules at home, a new school and peers, and the loss of what was already familiar. This instability comes at a price; minors soon begin displaying their own bravado, often resulting in an appearance in juvenile court as a victim of a crime, a perpetrator of a crime, or both.

The introduction of delinquent behaviors can suddenly produce problems in finding or maintaining a permanent placement for the abused child. Foster parents may be deterred from going forward with plans of adoption or may opt to have the minor removed from their home rather than participate with him or her in juvenile court. In this scenario, it would not be uncommon for a juvenile to be placed in a detention facility awaiting an appearance before the judge and further placement.

In 1996, New York City’s child welfare Commissioner asked the Vera Institute of Justice to examine whether and why foster children were overrepresented in juvenile detention centers. Through their work, Vera planners discovered that youth in foster care entered juvenile detention facilities to await the outcome of their cases at higher rates than minors not in foster care.

Concern for the detained juveniles focused on

- Trauma caused by loss of liberty, which may be heightened for the foster child who has already experienced abuse and neglect and institutionalization.
- Further antisocial behavior being fostered while detained.
- Impact on the detainee’s educational progress and income earning power.

- Their inability to display other positive behaviors that could influence a judge's decision in ordering more severe sanctions.²⁶

According to the Vera report, a youth in foster care, facing the prospect of appearing before a judge for an allegation of delinquent behavior, despite all his bluster, faces a number of emotionally charged questions: Who will go to court with me? Will my caseworker be there? What will happen? Will my mom or dad show up? Will the judge listen to me? Although parents regularly accompany their offspring to a stressful event such as a court appearance, this certainty is not a given for the juvenile who finds himself caught in the juvenile justice system for two, seemingly, unrelated matters. The question that bubbles to the surface is how does a minor appearing before the court with no one advocating for him fare compared to the minor with a support system, even if that support is merely a court appointed attorney?

Minors adjudicated for a delinquency referral are eligible to receive any combination of sanctions. However, whereas a minor living at home has parents to support and ensure the orders of the court are met, the dual adjudicated minor in foster care, and quite likely removed from his latest placement, has no one for whom the court can rely on in the same respect. Thus, the dual adjudicated minor might possibly find services and programs withheld from him and could likely be kept in detention or placed into a program which is neither appropriate nor permanent.

A minor in the child welfare system with delinquency charges and a number of service needs is in desperate need of legal representation and someone who will advocate on his behalf. Unfortunately, when a juvenile is charged with a delinquent act, it is not uncommon for him to move from victim status to criminal status. Despite his history with the court as a victim of

²⁶ Dylan Conger and Timothy Ross, *Reducing the Foster Care Bias in Juvenile Detention Decisions; The Impact of Project Confirm*. Vera Institute of Justice, (June, 2001), page 8.

dependency, abuse or neglect, he is now seen by the system through a different lens. At this point, attorneys seem unable to effectively argue to continued services to address victimization needs; and child welfare workers with ever growing caseloads, "...may be more willing to push for a delinquency finding if it means one less difficult child on their caseload."²⁷ If the attorney does not actively and aggressively advocate for the minor during the delinquency proceeding, the opportunity for permanency and treatment is lost and the minor is likely to be labeled an offender and his victimization is lost, along with his hopes for adoption and permanency.

What Works

Once a juvenile is removed from his home and placed into the care and custody of a responsible adult or into a group home, it is not unusual to see a cycle of placements begin. Children acting out in their own home are disciplined by parents out of concern and love. Parents teach morals and ethics preparing their children for the future. However, juveniles in placement acting much the same way as their in-home counterparts, are more likely to find themselves facing a delinquency referral for minor infractions. An example of this might be on going rough housing. Parents will usually deal with this by sending their rowdy offspring to separate parts of the home. However, some foster parents and group home counselors are more apt to turn to law enforcement for assistance in managing such behaviors.²⁸ Because children with a history of abuse and trauma are predisposed to acting out, they are also more likely to face legal intervention rather than having the advantage of receiving parental instruction on

²⁷ Katharine W. Scrivner, *Crossover Kids: The Dilemma of the Abused Delinquent*, 2001 Law Student Essay Contest Co-winner. *Family Court Review*, Vol 40 No. 1, 135-152 (January, 2002), page 144.

²⁸ Leslee Moriss, *Two Strikes, Youth in Foster Care Who Commit Delinquent Acts*. Child Welfare League of America: Children's Voice Article. <http://www.cwla.org/articles/cv0501twostrikes.htm>, pulled June 18, 2007.

appropriate social interaction. A vicious cycle of repeated acting out, delinquency referral, displacement and disassociation begins to manifest.²⁹

A six month investigation in 1999 conducted by the American Youth Policy Forum attempted to find answers to a question posed by the Walter S. Johnson Foundation: What works and what doesn't work in reducing juvenile crime? The report found that for minors who do not pose a risk to the community, "...most of the winning strategies work with young people *in their own homes and communities*, rather than in institutions and they focus heavily on the family environment." (emphasis added) When combined with effective program services the chance for improvement increases dramatically. Two programs were noted by Richard A. Mendel in his report to the American Youth Policy Forum that can effectively be used while a minor is in the home are Multisystemic Therapy (MST) and Functional Family Therapy (FFT).³⁰ Both have proven outcomes that reduce recidivism substantially with a significant cost savings. In clinical trial, MST cut recidivism by 25 to 70% and an equally impressive reduction in recidivism rates of 25 to 80% using FFT was realized. According to Mendel, the fiscal savings realized by using MST and FFT program models is equally impressive at a cost of \$4,500 per child and \$2,000 per child, respectively. This is a fraction of the cost to maintain a juvenile in a correctional facility and a substantial savings to the community from reduced victimization.

USA Today recently reported that kids from a troubled home fare better when allowed to remain in their own home than if they are removed and placed into foster care. The article by Wendy Koch noted a study conducted by Joseph Doyle, an economic professor at MIT's Sloan School of Management that tracked over 15,000 kids in Illinois between the years of 1990-2002,

²⁹ Judy Finlay, *Crossover Kids: Care to Custody*. Office of Child and Family Service Advocacy (August, 2003), page 4.

³⁰ Richard A. Mendel, *Less Hype, More Help: Reducing Juvenile Crime, What Works and What Doesn't*. American Youth Policy Forum, Washington, D.C. (2000), page 2.

looking at the effects of foster care.³¹ Doyle’s study compared children who remained in their home and those who were removed from their home and concluded those who remained home were less likely to be arrested, become teen mothers and were more likely to remain employed.

Effects of Foster Care

Kids Who:	Remained w/ family	Removed from their home
Were arrested for a delinquent act	14%	44%
Became teen mothers	33%	56%
Held a job for at least three months	33%	20%

Table 1

Regardless of the tragic reasons for removal from their home, children on the whole openly declare that their happiest times were when they lived in their family home. Minors removed from their family of origin experience a sense of hopelessness and loss of family ties that contribute to their identity.³² Put into the words of one young female:

“You’re not receiving affection from the foster parents, not receiving the love you’re looking for that you’re missing on the inside. So you go outside looking for love on the street in the wrong places and that’s how you get into trouble.”³³

Keeping children in their own home whenever it is safe to do so is optimal, for the system and for the child. However, the best chance for a positive outcome is to provide services aimed at improving a child’s, and his family’s, situation. When comparing children of color³⁴ between the ages of seven and seventeen in California and Missouri, those minors who received services, whether in their own home or in foster care, had a lower risk of incarceration than did those that

³¹ Joseph Doyle, *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*. American Economic Review 97 (5), (December, 2007), pages 29-33 cited in Wendy Koch, *Kids in Troubled Homes Still Better Off Than In Foster Care, Study Finds*. USA Today (July 3, 2007).

³²See Note 29 supra, page 11.

³³ Leslee Morris and Madelyn Freundlich, *Youth Involvement in the Child Welfare and Juvenile Justice Systems: A Case of Double Jeopardy?* CWLA Press; Washington, D.C., (2004), page 33.

³⁴ In this cite, children of color include African American and Hispanic.

received little or no services.³⁵ Intervention programs can become the turning point for a number of juveniles who have poor or no coping skills.

C. Assessing Utah's Foster Care

In October 2006, Utah's Department of Human Services released a report reviewing the success of past foster children. The report was based on a study of 926 former foster care children and examined what happened to them within three years of leaving foster care and how well those that aged out in 2003 and 2004 were fairing. The second point of examination was based on the implementation in 2003 of the Transition to Adult Living Initiative which compared the 2003 and 2004 minors to those who aged out between 1999 and 2002. The areas that were examined included employment, education or training and career development, criminal activity, child bearing, supportive services, and obtaining a driver's license.³⁶

The reported revealed a mixture of results. Overall, young adults previously in foster care in Utah are able to make improvements in their lives. The report indicates that following the 2003 initiative, the subjects experienced a substantial increase in obtaining basic services such as medical care, a driver's license, food stamps, as well as referrals to post secondary education and job training. However, the report also notes that completion of post secondary education and job training did not have positive results and the young adults continued to have incomes below the poverty level. Additionally, criminal activity continued to rise with misdemeanor and felony arrests increasing by 41.7% and 30.6% respectively.

³⁵ Melissa Johnson-Reid, PhD, *Child Welfare Services and Delinquency: The Need to Know More*. Child Welfare League of America, Child Welfare, Vol. LXXXIII, #2, (March/April, 2004), page 164.

³⁶ Amanda Singer, Research Consultant, *Assessing Outcomes of Youth Transitioning from Foster Care*, Utah Department of Human Services, Salt Lake City, Utah (October 2006).

D. Using the Literature to Focus - Before and After Dual Adjudication

The Plan

Although not much is written regarding differential treatment of dual adjudicated minors, there are nevertheless, some pioneers in the topic. This project paper will build on these writings by first examining Utah's dual adjudicated children, their demographic characteristics and their referral picture. After examining the issue of foster children in juvenile detention centers, Conger and Ross's report to the Vera Institute³⁷ confirmed that children in foster care are overrepresented in detention facilities. They further point out that foster children's inability to display other positive behaviors influence decisions for sanctions. Since a delinquency referral is assigned to a probation officer upon receipt from law enforcement, this project will examine probation officer attitudes regarding DCFS and delinquency only minors and their role as they work with and make decisions regarding a course of action and the recommendations they make to the case judge.

This project will also examine cases in which the juvenile appears in court alone or with a parent, guardian or attorney. Katharine W. Scrivner indicates in her essay³⁸ that minors charged with delinquent behavior are in need of someone who will appear in court and advocate for them. Since having an advocate in court with the juvenile appears to be a potentially significant factor in whether the tide will be for or against him, this project will examine a sample number of cases in which the juvenile appears in court alone or with a parent, guardian or attorney.

Finally, the literature repeatedly points to the lack of communication between the different agencies working with the dual adjudicated minor.³⁹ A review will also examine the

³⁷ See Note 26.

³⁸ See Note 27.

³⁹ See Note 28.

use of a multi-agency screening process prior to potentially recommending out of home placement and / or change of legal status. With all parties playing very different roles on behalf of the juvenile, they must be able to share information that may impact how they address various issues of a case. Since lack of communication can delay service delivery, a review will aid in understanding the interrelatedness of agencies and avoid conflicting recommendations to the court. There are areas throughout Utah that currently uses a multi-agency staffing process when considering a recommendation for out of home placement.

IV. METHODOLOGY

Recognizing from the literature review that little information existed on the dual adjudicated minor in Utah and that no research had been done recognizing this population or problem, it was decided to use this project to investigate whether dual adjudicated minors were receiving differential treatment by not being given the opportunity for a non judicial adjustment. In this way, the research would be a means of ensuring the advancement of justice on their behalf. The first step of the process included research to identify the population and some of the characteristics that describe them. To accomplish this, three archival computer data retrievals from the Court & Agencies' Record Exchange (CARE) system were requested, as well as the Division of Child and Family Services' (DCFS) SAFE⁴⁰ data system. As a result of the data retrievals, it became apparent that an issue did exist and it was important to determine if a number of factors pointed out by the literature as influencing how a dual adjudicated minor's case moved through the juvenile court existed in Utah.

Archival Data Retrieval

To determine if an issue existed which could benefit from further research, the first request of data was requested from the Administrative Office of the Court's management technology department on April 26, 2007. The parameters for the information requested included:

- All children six years and older ordered by the Court into the custody of the Division of Child and Family Services between January 1, 2004 and December 31, 2006 and who committed a delinquent act within one year of the order date.
- The case number for each child.

⁴⁰ "SAFE" is not an acronym. SAFE is a data information system developed in 1996 for and used by DCFS. It contains case information for child protective cases, cases of children in DCFS custody and cases where services are provided to families in their homes; as well as domestic violence case information.

- The date of the DCFS custody order and the original reason for the referral of dual adjudicated minors.
- The date and identification of the subsequent delinquent act.
- The number of days between the child welfare adjudication and the subsequent delinquent referral.
- The gender and date of birth of each case.

This resulted in a sample size of 1,317 minors.

An analysis of the data pulled from the CARE records system was done in an effort to determine the scope of the issue and to create a picture of Utah's dual adjudicated minors. To review the role of the probation officer and examine attitudes about the dual adjudicated minor, a survey will be distributed to probation officers statewide with a requested return date for analysis. Finally, a hand review of case files for the purpose of qualitative analysis will be done with the assistance of individual court employees from around the state.

Information from DCFS was also requested through their SAFE records system using the same data sets, but only for children in their custody as of May 2007. With the assistance of the juvenile court research analyst, the data from CARE and SAFE were linked to provide a better picture of the dual adjudicated minor in DCFS custody as of May 2007. From this merged data set, the Statistical Program for Social Science (SPSS) was used to run descriptive statistics for the purpose of obtaining a general overview of the population. The final data set resulted in 384 dual adjudicated minors who entered DCFS custody during the three year period, were referred for a delinquent act within one year of the DCFS disposition date, and were in DCFS custody as of May 2007. This provided a snapshot overview of this unique population.

However, after completing the first archival data retrieval, it was determined that additional variables were needed to better identify this population. Additionally, some of the information originally requested was omitted. On July 18, 2007, a second data pull from CARE

was done which included three additional data points for the original 1,254 identified minors. This included: (1) gender (requested originally but not provided), (2) race and ethnicity and (3) the judicial district⁴¹ in which the minor was dual adjudicated. The additional data would provide information for two points of analysis. First, the additional information was used to analyze the possibility that some of the minor's characteristics impact decisions such as service referrals, the decision to file a formal petition versus a decision to close a referral through a non judicial adjustment, as well as dispositions and sanctions. Secondly, by knowing which district a minor was identified with, comparison groups could be established that would be more manageable for further analysis and comparison.

At this point, it was determination to eliminate two previously collected data points: adult contempt incidents and cases of children under the age of 11. Utah's juvenile information system, CARE, gives one case number to each minor entered in the system, whether for a child welfare matter or a delinquency referral. This case number will follow a juvenile throughout his involvement with the court, no matter the reason. If a child's case before the Court for dependency, abuse or neglect, the parent also receives a case number which is cross connected in CARE. To avoid the potential for adult contempt charges to be mistaken for contempt on the part of the minor, and to ensure they were not interpreted as a delinquency referral in the data set, all adult contempt charges were excluded when they appeared in the juvenile's case record. In addition, since the juvenile court in Utah subscribes to the philosophy of taking "appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship,"⁴² it was

⁴¹ There are eight judicial districts in Utah. See Appendix IV.

⁴² Utah Code §78-3a-102(5)(b).

doubtful there would be any significant variation in the severity of sanctions in the under 11 age group, making it difficult to evaluate any notable differences.

A third and final pull of data was done on August 13, 2007. The information requested for this retrieval included whether a child was in the current custody of DCFS, the most severe delinquency offense, date of the offense, date of adjudication and its corresponding disposition; whether the minor had ever been placed in a detention facility, and if a detention placement existed, the most severe offense associated with the detention placement. With this information, it would be possible to compare decisions made pre and post petition for dual adjudicate and delinquency only minors referred for similar type offenses.

Unfortunately not many tools exist that would be of benefit to this project topic. However, by using a specifically developed intake probation officer survey and a check off list for a hand review of chase files, a comprehensive picture of the issue will be presented. This will be followed by a conclusive summary and a set of recommendations aimed at improving the right to justice for the dual adjudicated minor. Through a hand review of case files, a number of other factors will be examined and compared including justification for the decision to petition a delinquency referral, as well as sanctions imposed.

A. Analyzing Utah's Kids – Who Are They? What Do They Look Like?

With the CARE records of all dual adjudicated minors, regardless of the time between placement into DCFS custody and a subsequent delinquency referral, and non dual adjudicated youth during the three year period of January 1, 2004 and December 31, 2006, characteristics and delinquency histories were compared. The analysis of this data provided a snapshot of youth who had a DCFS disposition during the three year time frame noted earlier and were currently in DCFS custody. The analysis showed that 21% of the minors currently in DCFS custody were

dual adjudicated with an average age of 16 years old. Most commonly they received a delinquency referral for contempt or crimes against persons or property. Additionally, the average time in DCFS custody for a dual adjudicated minor prior to a delinquency referral was 146 days. However, the dual adjudicated minor was more likely to be referred for a delinquency within the first month of their first DCFS placement.

The following is a snapshot summary of the data received from the three data retrievals requested from CARE and the one retrieval requested from SAFE and gives a number of demographic characteristics that help to identify and compare the dual adjudicated and delinquency only minor.

Table 2 provides the number of dual adjudicated minors and delinquency only minors per district.

Number of Dual Adjudicated and Delinquency Only Minors by District

	Dual Adjudicated Minors	Delinquency ONLY Minors
District 1	163	3,383
District 2	1,302	9,310
District 3	1,829	18,229
District 4	755	6,954
District 5	310	3,359
District 6	121	1,333
District 7	323	1,307
District 8	210	1,328
No District Specified	266	573
Utah	5,279	45,776
TOTAL	51,057	

Table 2

Table 2 includes all minors with a delinquency adjudication or non judicial closure and a child welfare adjudication in their lifetime. Table 5 includes minors with a child welfare adjudication first and a subsequent delinquency adjudication. Both tables reflect cases within the three year period between January 1, 2004 and December 31, 2006.

Chart 1 below indicates that the highest percentage of dual adjudicated minors are found in the Seventh District with 20% of the total number of dual adjudicated minors followed by the Eighth District with 14%. The lowest percentage of dual adjudicated minors are found in the First District with seven percent, and the Sixth District and Fifth District, both with eight percent of the total of dual adjudicated minors. Statewide, 10% of youth are dual adjudicated.

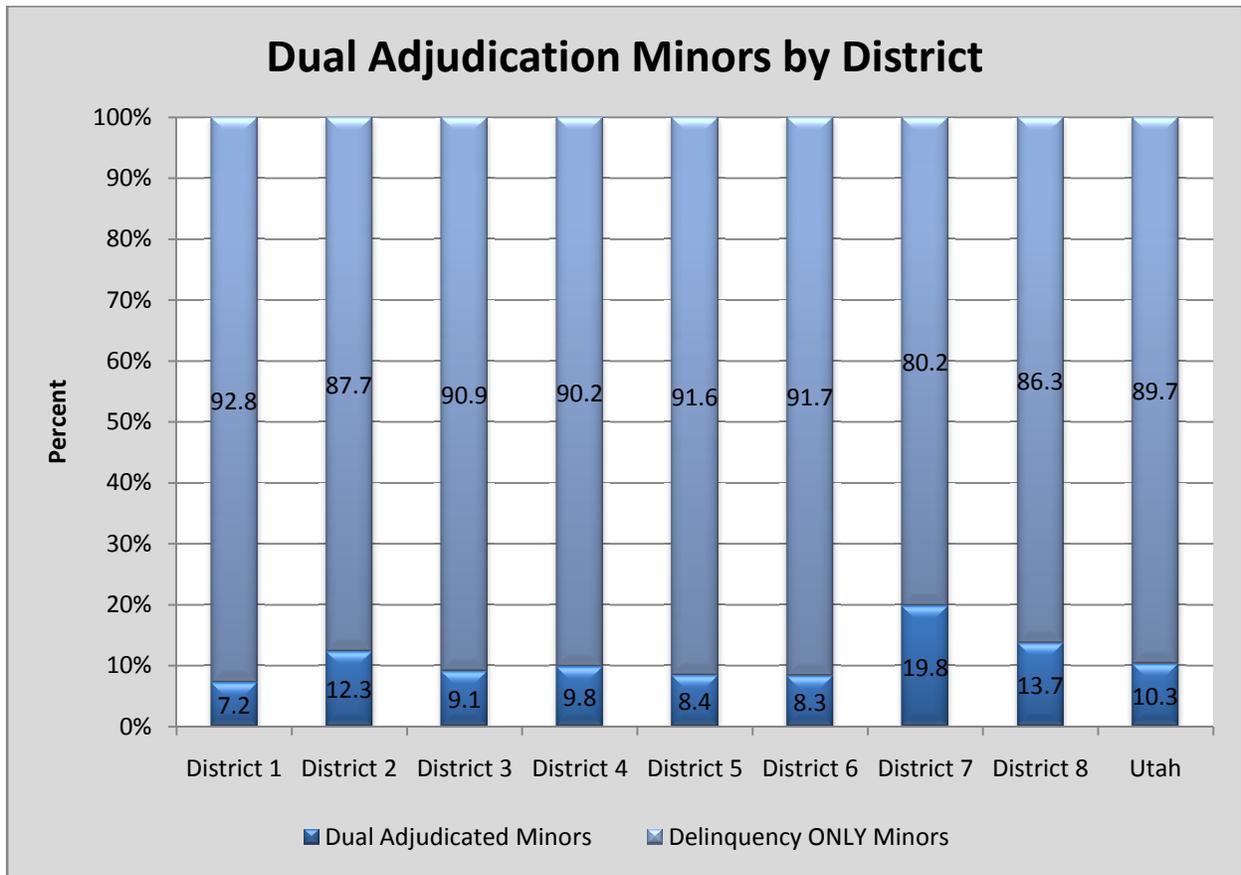


Chart 1

Dual adjudicated minors are more likely to be female than delinquency only minors while 33% of delinquency only youth are female 41% of dual adjudicated youth are female.

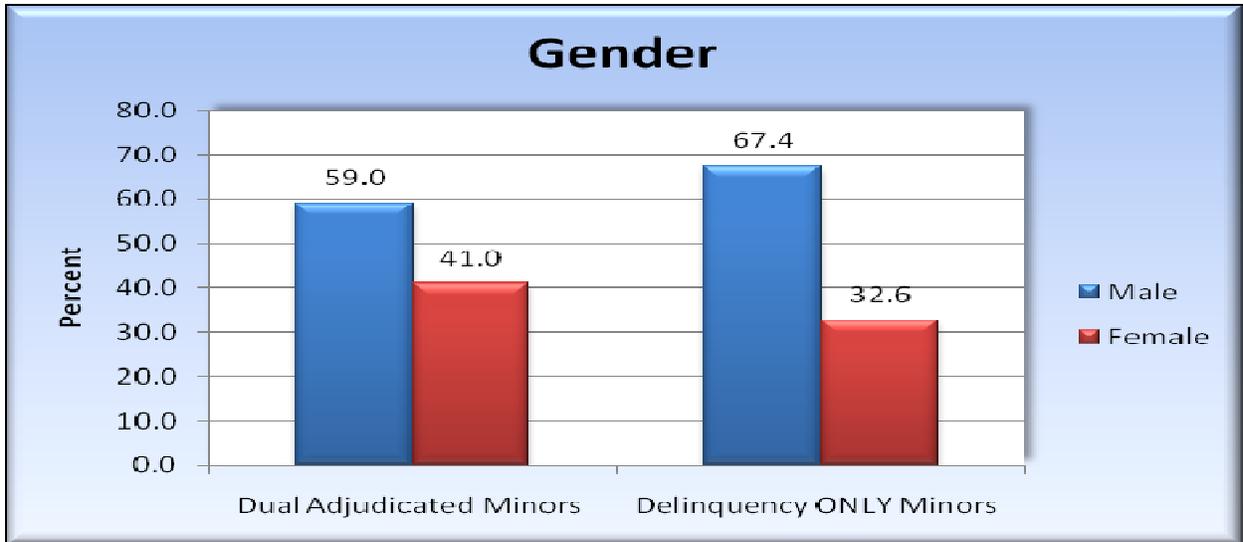


Chart 2

Dual adjudicated minors are slightly more likely to be American Indian or Black while delinquency only minors are more likely to be White, Hispanic, Asian, or Pacific Islander.⁴³

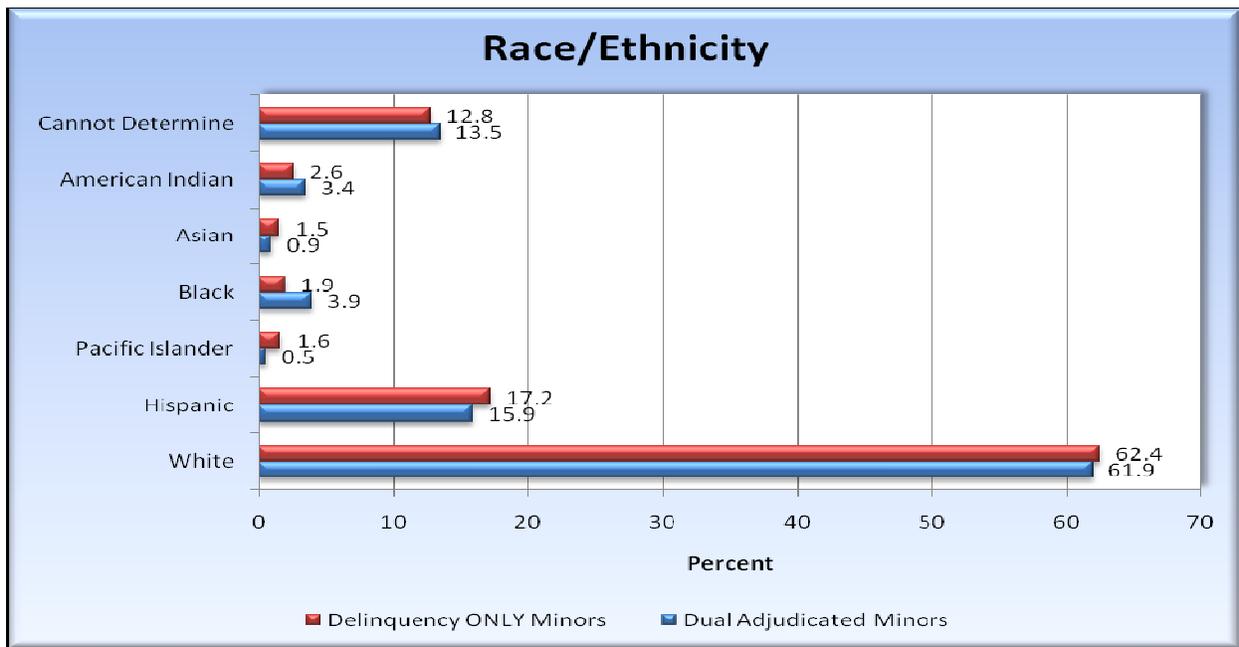


Chart 3

⁴³ Ethnicity is self determined and declared by the minor and/or parent at the time of the preliminary inquiry.

The information from Table 3 and Chart 4 indicates that dual adjudicated minors receive their first delinquency referral at a younger age than delinquency only minors. Upon further review, the Tables illustrate that like the delinquency referrals, dual adjudicated minors are also more likely to be adjudicated for a delinquency referral at a younger age than delinquency only minors.

Average Age at First Delinquency Referral / Adjudication

	Dual Adjudicated Minors	Delinquency ONLY Minors
Average Age at First Delinquency Referral	12.59 years old	14.30 years old
Average Age at First Delinquency Adjudication	13.13 years old	14.65 years old

Table 3

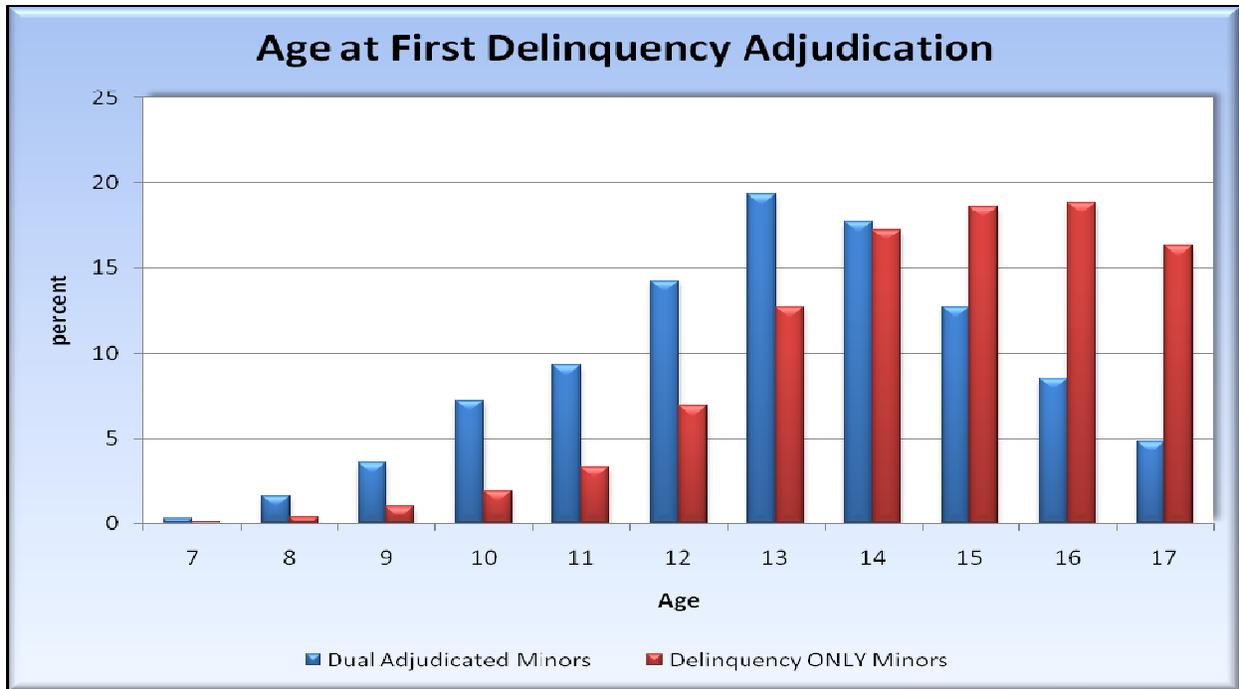


Chart 4

Overall, dual adjudicated males tend to receive delinquency referrals at a younger age followed by the dual adjudicated female and then delinquency only minors of both genders.

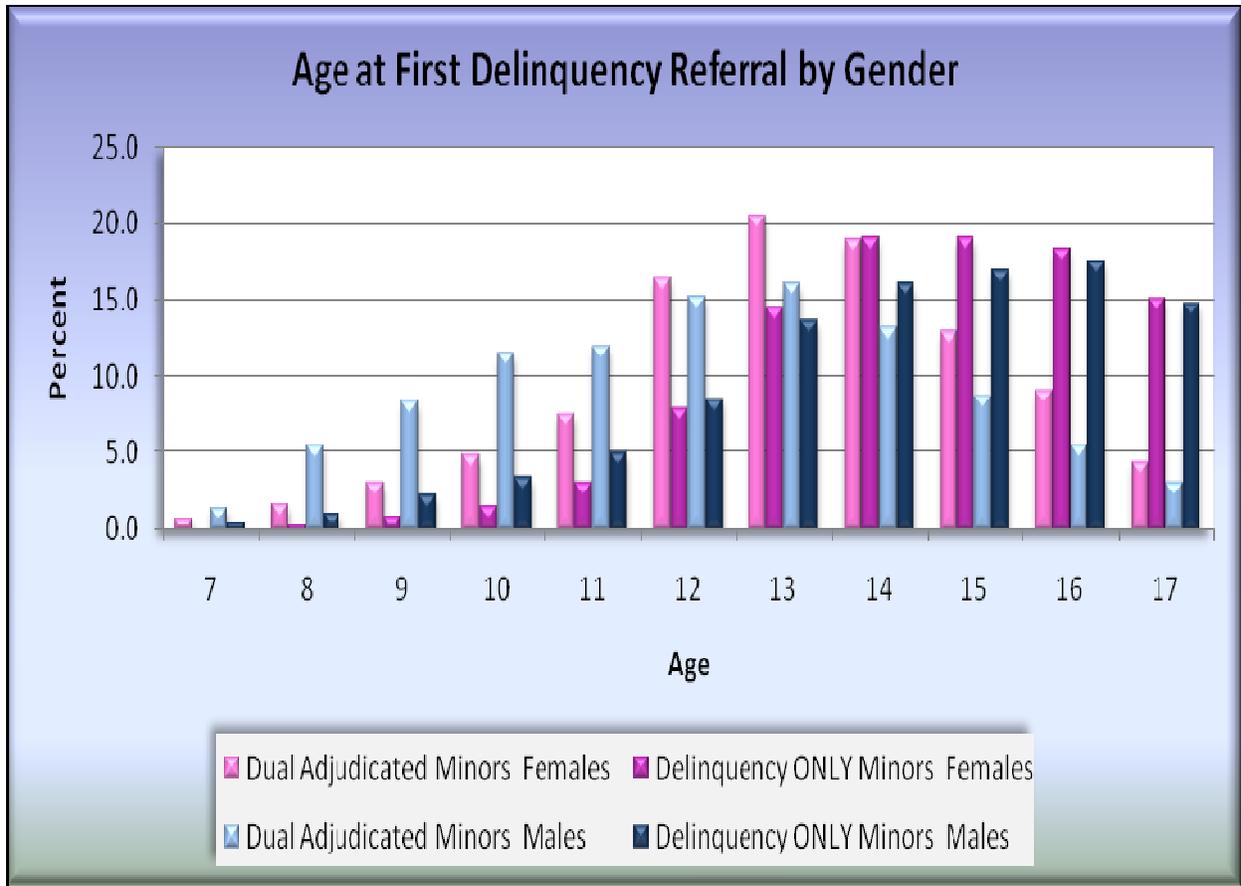


Chart 5

Chart 6 indicates dual adjudicated males are more likely to commit offenses against persons or property as their first offense than dual adjudicated females or delinquency only males or females. Dual adjudicated females are more likely to be adjudicated for truancy or contempt than dual adjudicated males or delinquency only males or females. .

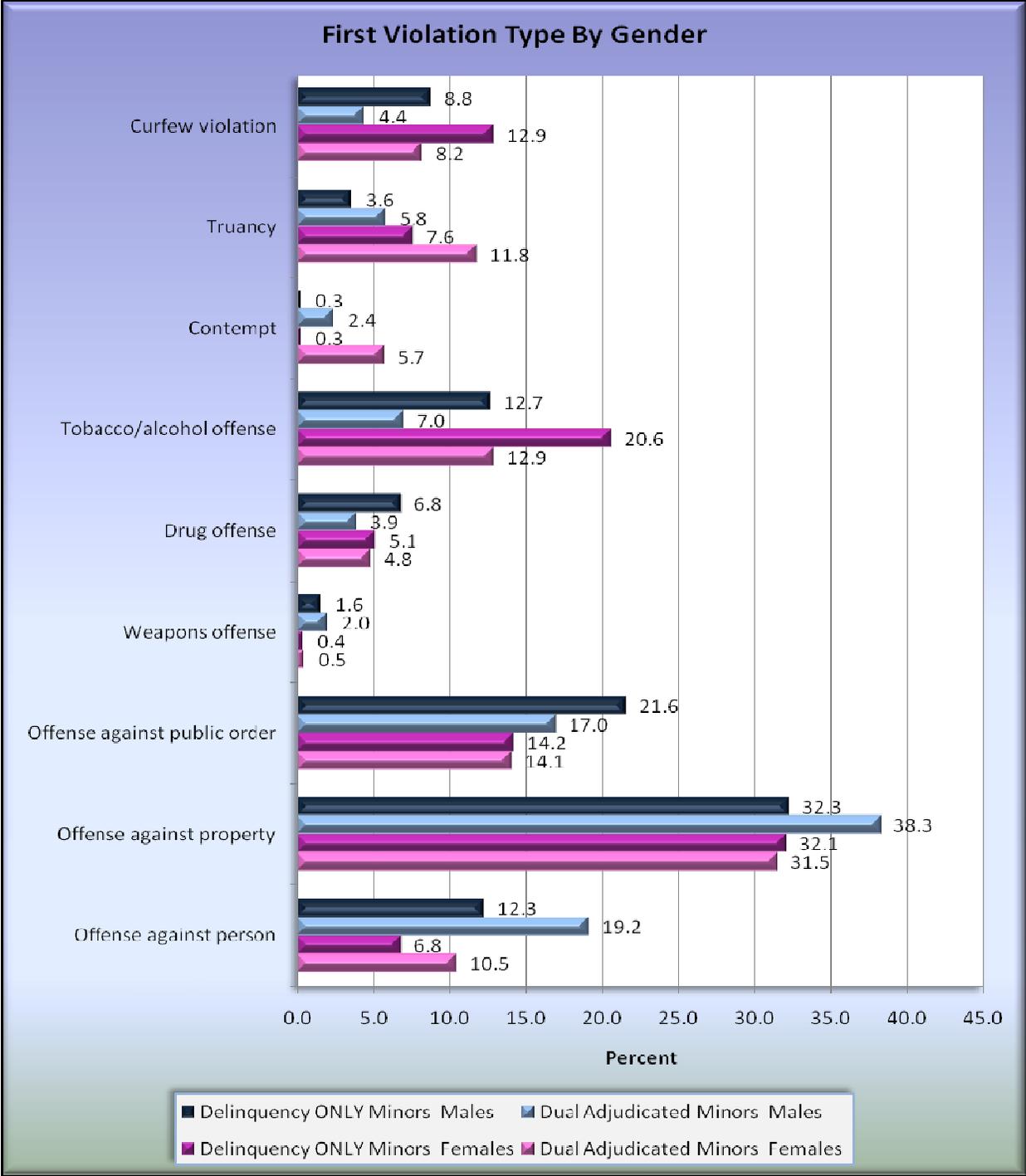


Chart 6

Delinquency only males are the least likely to receive a non-judicial closure while dual adjudicated males are the most likely to receive a non-judicial closure. Delinquency only females and dual adjudicated females have relatively similar rates of non-judicial closure.

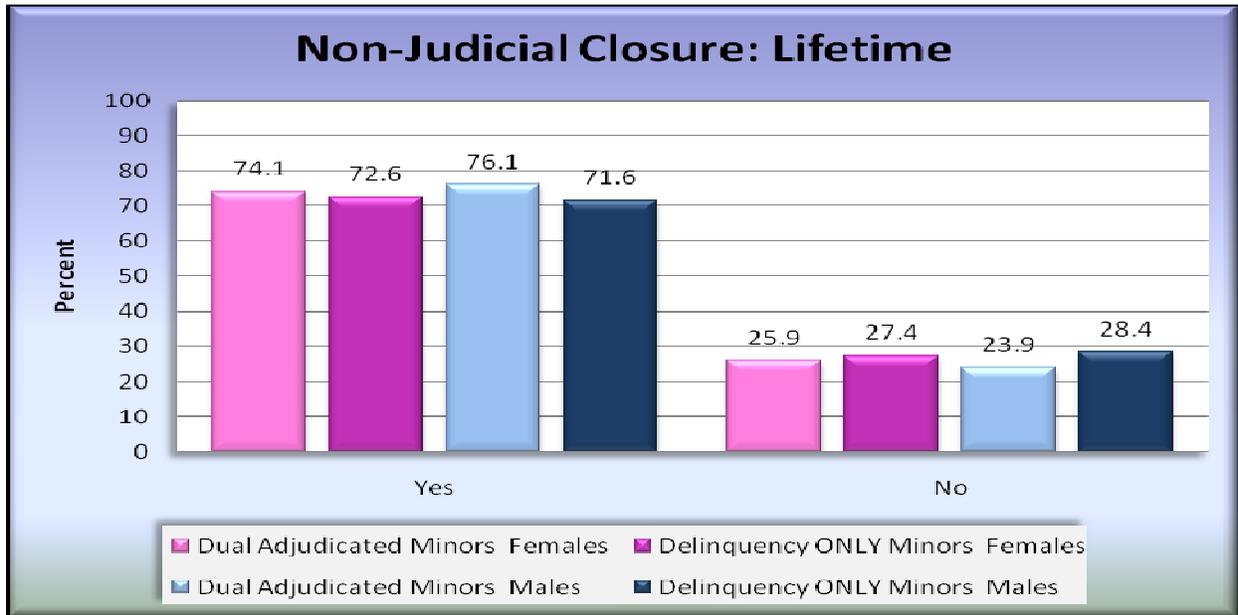


Chart 7

Dual adjudicated males and females are both more likely to be placed in detention than delinquency only youth. However, the rates of male and female dual adjudicated youth's placement in detention are relatively similar, unlike placement in the custody of the Division of Juvenile Justice Services. Further, the data reveals that dual adjudicated females are much more likely to be placed in detention for contempt than dual adjudicated males or delinquency only minors. Dual adjudicated males are more likely to be placed in detention for offenses against property or persons.

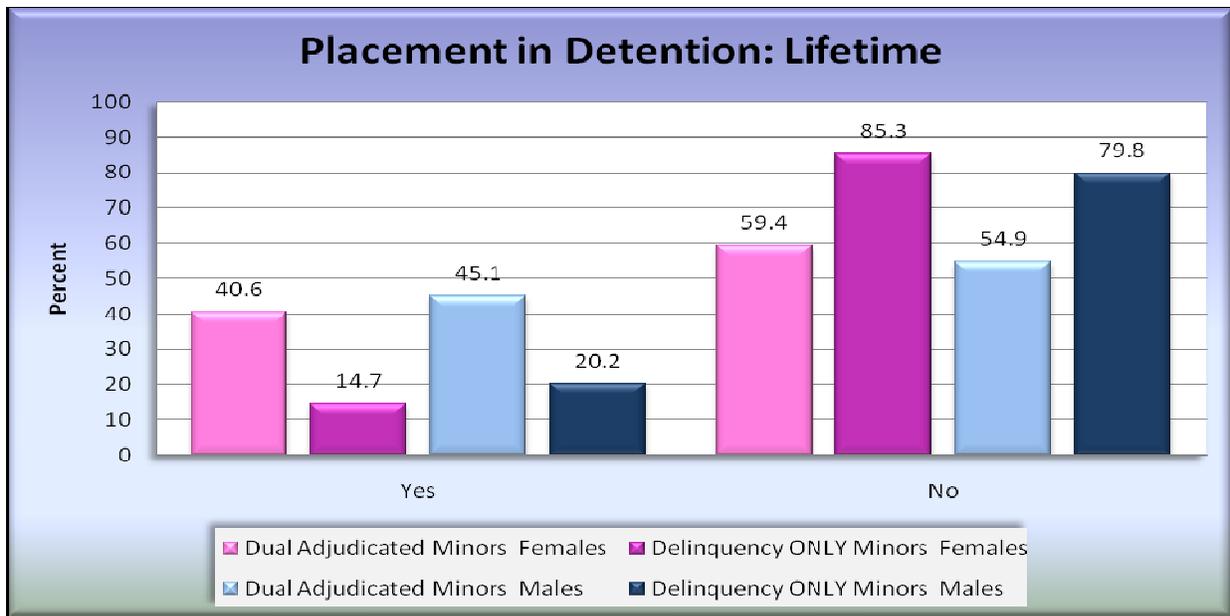


Chart 8

The following tables provide an overview and comparison of delinquency only minors, dual adjudicated minors with a child welfare adjudication prior to a delinquency referral, and dual adjudicated minors with a delinquency referral preceding a child welfare adjudication. The overview also provides a number of comparative demographic characteristics.

Overview and Comparison	Dual Adjudicated Minors
Average Age at First Child Welfare Referral	8.91 years old
Average Age at First Delinquency Referral	12.59 years old
Average Age at First Child Welfare Adjudication	9.01 years old
Average Age at First Delinquency Adjudication	13.13 years old
Average Number of Days between Child Welfare Referral & Delinquency Referral	1,354 days (3.7 years)
Average Number of Days between Child Welfare Adjudication & Delinquency Adjudication	1,504 days (4.1 years)
Percent of Delinquent Youth Who are Dual Adjudicated	10.3 % (5,279 youth)
Dual Adjudicated Youth in Current DCFS Custody	9 % (464 youth)

Table 4

The majority of dual adjudicated youth entered the system as child welfare cases and then received delinquency referrals. However, in about 20% of the cases, youth were referred for delinquency and subsequently received a child welfare referral, suggesting that court intervention due to the delinquency referral allowed for the identification of dependency, neglect, or abuse issues in the home.

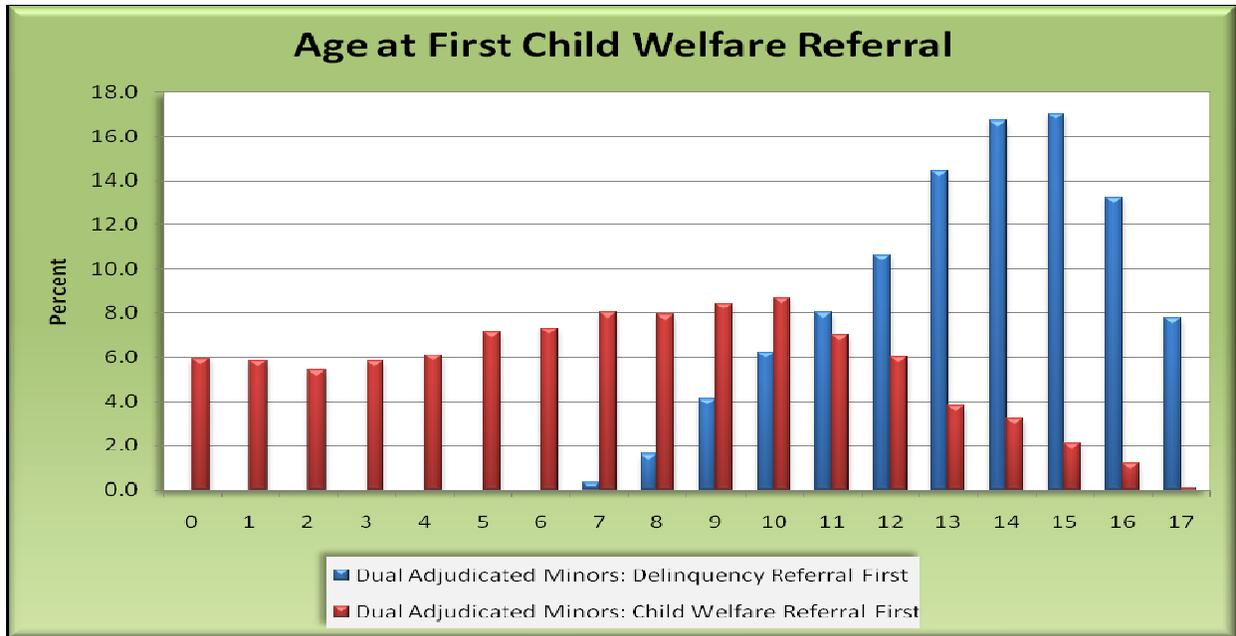


Chart 9

Initial child welfare referrals remain relatively flat before age ten, but then begin to drop. In contrast, initial delinquency referrals climb rapidly between ages seven and fifteen and then drop sharply.

Dual adjudicated minors who were initially referred for a delinquency tend to have their first referral at a much younger age, peaking at age 13, while dual adjudicated minors who were initially referred for child welfare matter tend to receive their delinquency referral somewhat later but also peaking at age 13. In contrast, delinquency only minors tend to receive their first referral between ages 14 and 17 years old.

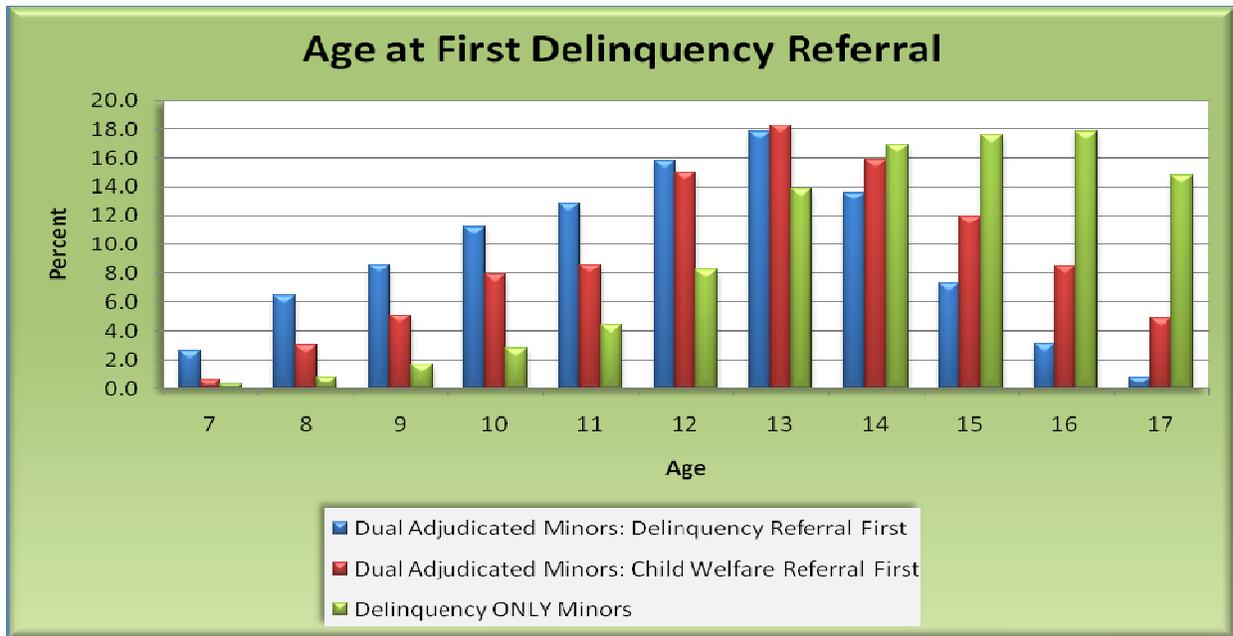


Chart 10

Chart 11 reveals that white minors⁴⁴ are more likely to enter the system on a delinquency referral and receive a subsequent child welfare referral. On the other hand, dual adjudicated minors who initially are referred for child welfare are more likely to appear under the “cannot determine” race/ethnicity category.

⁴⁴ See note 43.

Race/Ethnicity

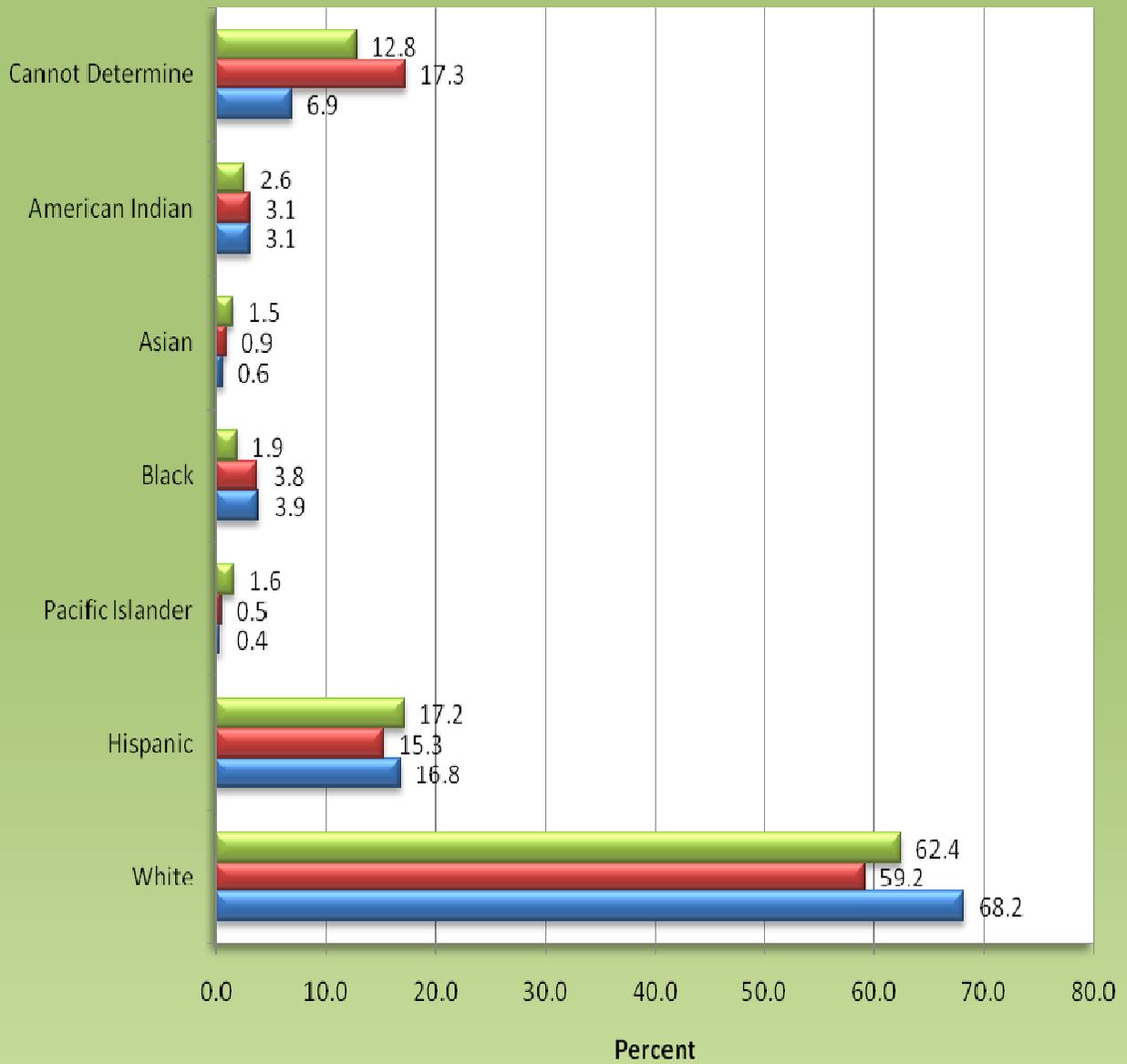


Chart 11

First offenses for dual adjudicated minors who entered the system through a child welfare referral are more likely to be referred for contempt. In contrast, dual adjudicated minors who were initially referred for delinquency are more likely to commit crimes against property, crimes against persons, or for truancy. However, delinquency only minors enter the system for offenses against public order, tobacco/alcohol and for curfew violations.

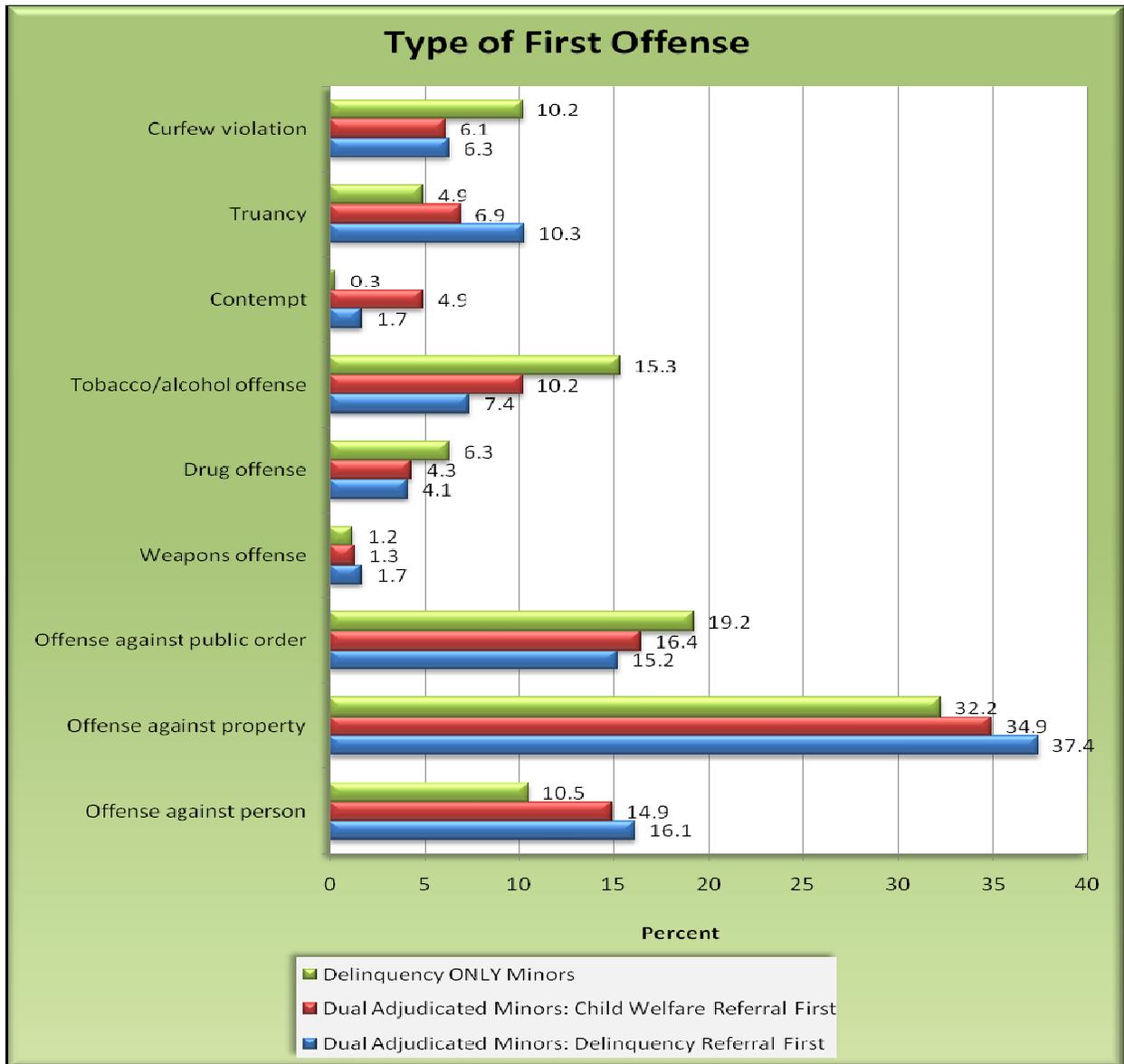


Chart 12

B. How Did They Get Here?

Intake Survey

Initially, the possibility of conducting some type of survey was explored. However, being unsure of what type of survey and to whom it would be given, a decision was made against conducting a survey. However, after reviewing the literature and the role of those involved in processing a delinquency referral, it was determined that, at minimum, a survey of those within the court making decisions regarding delinquency referrals was warranted. Although law enforcement is the first point of contact when it is alleged that a minor has committed a delinquent act, the probation officer makes the all important decision regarding how to proceed with the referral once it is received by the court⁴⁵ and screened for legal sufficiency. As a result, consideration was given regarding what information would be helpful to gather. A short six question survey was developed for distribution to probation officers throughout the state. The survey questions were intended to examine what criteria is thought to be important and used when making the decision to have the matter petitioned to be heard by a judge or to close the matter non-judicially. The survey would also examine the attitude of probation staff regarding delinquency referrals received by DCFS minors as well as to explore issues related to dual adjudicated minors. The survey (see Appendix II) provided multiple choice response options.

Parameters of Survey Data

Once the survey was developed it was sent as an e-mail attachment to the 13 probation chiefs throughout the state. The instructions given to the chiefs included giving "... the survey to any of the probation officers under your supervision that do intake preliminary inquiries... whether assigned only to intake or to a field supervision probation officer who might have

⁴⁵ Utah Rules of Juvenile Procedure. Rule 14 and Rule 15.

occasion to do an intake on a probationer.” Instructions were included for probation officers to submit completed surveys directly to the juvenile court research analyst who agreed to gather the surveys to preserve anonymity. A requested return date of September 28, 2007 was given, the last working day of the month. However, on October 1, 2007, it was realized I had failed to request and gather the number of probation officers to which the survey was given. On October 5, 2007 a follow-up e-mail was sent to the chief probation officers explaining that for purposes of determining the survey response rate, the total number of probation officers who were given the survey was needed.

The number of surveys distributed as reported by individual districts was 127 with a total of 63 surveys returned resulting in a response rate of 50 percent.

INTAKE PROBATION OFFICER SURVEY FINDINGS: SURVEY RESPONSE TOTALS BY DISTRICT

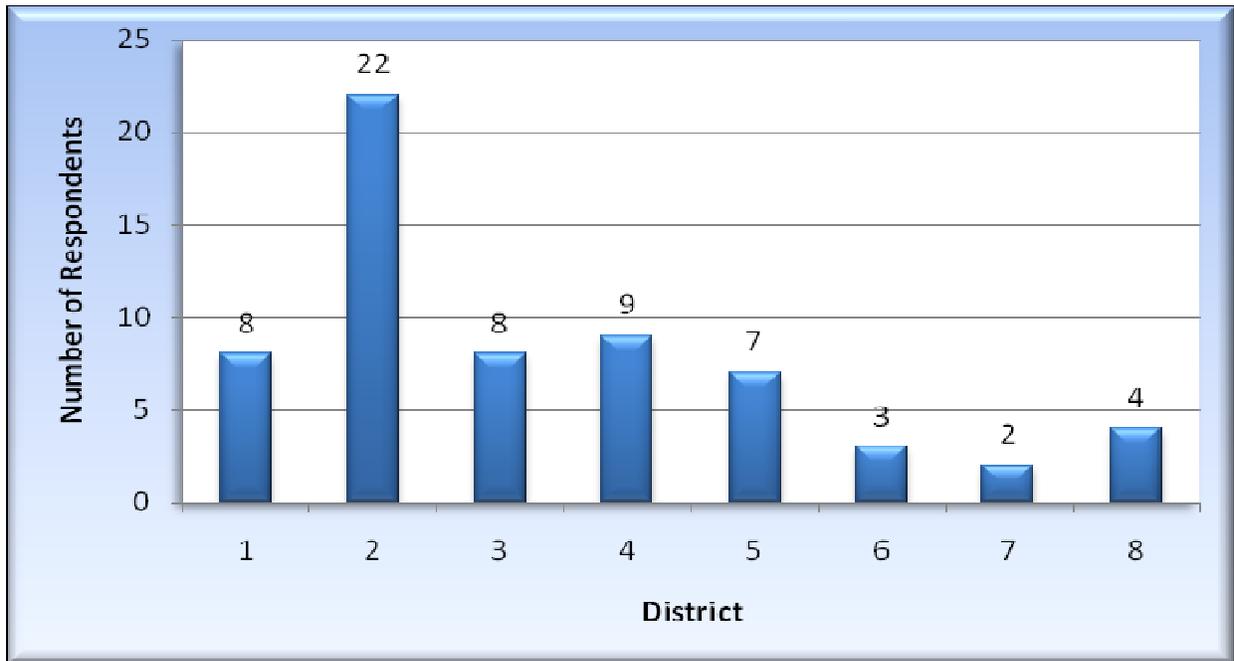


Chart 13

Survey Response Rate by District

District	Surveys Returned	Surveys Distributed*	Response Rate
First District	8	8	100%
Second District	22	35	63%
Third District	8	40	20%
Fourth District	9	14	64%
Fifth District	7	14	50%
Sixth District	3	5	60%
Seventh District	2	5	40%
Eighth District	4	6	67%
Statewide	63	127	50%

**Number as reported by the district*

Table 5

The Utah Sentencing Guidelines (Appendix V) are provided to help understand the importance of the role of the intake interview and the decisions made on a daily basis by intake probation officers

Case File Hand Review

It was determined early in the process to include a hand review of case files. The decision about the number of case files to review would depend on the number of cases selected either: (a) from the three largest and urban judicial district juvenile courts, Second, Third, and Fourth, which are located along Wasatch front⁴⁶ only; (b) from the second judicial district juvenile court only, comparing them to case files from a set number of other districts; or, (c) from a selected number of urban districts and compared to a selected number of rural districts.

⁴⁶ The Wasatch front includes Weber, Davis, Salt Lake and Utah Counties and is considered Utah’s urban area.

The three-fold purpose of the hand review is to examine:

1. The written reason(s), also referred to as justification, for the decision to process a referral by petition or a non judicial adjustment closure. Since this information is not entered into the CARE system, the written justification will be used. This information is found in the social file.⁴⁷

Although the case file hand review was intended to be qualitative as opposed to quantitative, it was also viewed as an opportunity to observe any trends. Since probation officers consider a number of factors, including the Juvenile Sentencing Guidelines which provide guiding principles for a decision to petition a delinquency referral, the anticipated results should reflect agreement with the Guidelines.

2. The number of cases represented by defense counsel appointed and to examine if having an attorney advocating for the minor has an impact on the outcome.

A number of readings in the literature review indicated that the lack of legal representation often resulted in harsher dispositions from the Bench.

3. The number of cases with a parent or legal guardian present at the initial hearing to determine if the presence of a parent or legal guardian at the initial hearing has an impact on a court order for placement.

Once again, the literature indicated that minors with support from a parent or other significant adult fared better than minors without this support system. Without a positive support base, the judge is often left with little or no option but to order a minor into placement.

⁴⁷ Minors with a delinquency referral, other than violation of traffic, parks and recreation, wild life, or boating, are referred to the probation department for an intake process. The referral is entered into the computer and a case history is printed and assigned for an intake decision. The case history is filed and maintained in the social file.

Parameters of the Case File Hand Review

By using the cases from CARE, 3,606 juveniles were determined to be dually adjudicated during the three year period from January 1, 2004 and December 31, 2006. These minors entered the juvenile justice system with a child welfare adjudication first and a subsequent delinquency referral. In consideration of time and numbers, the determination was made to review seven percent of the dual adjudicated cases. Given the large number of non dual adjudicated minors (45,203) versus the smaller number of dual adjudicated minors, it was decided the case file review would be qualitative rather than quantitative. For this reason, a stratified random sample, based on seven percent of dual adjudicated minors in each district and an equal number of delinquency only minors in each district, was used.

Case File Hand Review Random Sample

District	Dual Adjudicated	Sample Size	Delinquency Only	Sample Size	Total Sample Size
1	172	12	3383	12	24
2	990	69	9310	69	138
3	1319	92	18229	92	184
4	521	36	6954	36	72
5	213	15	3359	15	30
6	80	6	1333	6	12
7	175	12	1307	12	24
8	136	10	1328	10	20
Total	3606	252	45203	252	504

Table 6

Since the total sample size of cases to undergo a hand review totaled 504 (252 dual adjudicated minors and 252 non dual adjudicated minors) a request for assistance from the eight judicial districts was made. A presentation was made to the juvenile court trial court executives at the October 4, 2007 meeting. The court executives were informed regarding the research progress to date and the significance of the case file hand review. A memo was presented to

each district's court executive with the total number of case file needing to be pulled and reviewed. The case file hand review form (Appendix III) was also attached. Each district representative was willing to designate one or two staff within the district to complete the case file hand reviews by November 2, 2007. With this agreement, a list of randomly selected case numbers of both dual adjudicated and non dual adjudicated was sent to each district the following week.

Each district assigned one person to complete the case file hand review with the exception of Second, Third and Fourth. Second and Found District assigned the two chief probation officers to complete the reviews and Third District assigned four separate individuals. The limited assignment provided for a higher quality of consistency in how the forms were completed. Once the completed forms for each case were received, they were examined to insure all forms were returned and complete. As a result of this review, some cases were eliminated due to a variety of reasons such as "adult contempt", "deceased minor", and "unable to located file". Ultimately, all the information from the case file review forms was entered on an excel spreadsheet resulting in nearly 11,000 data points. The results are outlined in the Findings Section of this report.

V. RESEARCH FINDINGS

A. Introduction

As this project began to develop, there was some consideration given to conducting some type of survey or a file review. However, it was uncertain if either would be done since the scope of the issue had not yet been determined. Was it possible that cases were being handled differently depending on whether a juvenile was dual adjudicated or delinquency only? How important would the role of an advocate, parent, guardian or attorney make for a minor appearing before a judge? And would the two groups receive different sanctions for the same types of delinquency referrals? With these, and other, questions lingering, it was determined to survey intake probation officers regarding how they viewed their role and how cases are handled in light of that role. Also, it was determined to review a number of legal case files to review and compare differences between the dual adjudicated and delinquency only minor regarding the rate of non judicial closure versus a formal petition, whether someone appeared with them in court to advocate on their behalf, and what types of sanctions they received as well as the rate of detention for the two groups. What follows are a number of pictorial answers to these and other questions.

B. Intake Probation Officer Survey ~ Overview and Findings

The two main objectives for developing the Intake Survey were to:

1. Look at some of the reasons why an intake probation officer might opt to handle a delinquency referral by means of a petition rather than non judicially; and,
2. To examine how likely intake probation officers are to petition a DFS minor, and what factors influence that decision.

Overall, intake probation officers indicated a strong emphasis that all minors would be treated the same as a minor in the custody of DCFS. In fact, 68% of probation officers survey responses suggested that DCFS minors are not more likely to have a referral petitioned than a non-DCFS involved minor. However, 25% of probation officers responded that DCFS minors were more likely to be petitioned.

Survey responses from probation officers identified two main reasons for why minors involved with DCFS who are referred for a delinquency have their referrals petitioned more often. The first is that DCFS minors tend to be higher risk due to social factors and mental health issues. Thus, these minors are viewed as needing additional services. The second is that DCFS-involved minors are already involved with the court, and probation officers petition them at the request of DCFS or foster parents. However, the responses from the majority of probation officers indicated that minors involved with DCFS are treated the same as non-DCFS minors.

Overall, 63 probation officers completed and returned the survey. Second District returned the largest number of surveys. Thirty-five percent of all surveys obtained were returned by Second District while slightly less than 15% each came from First, Third, and Fourth District. It should be noted that as a practice, some districts automatically screen DCFS cases for petitioning and may account for some of the low response rates since it may be that some probation officers may have thought the survey was not applicable to their duties.

Thirty-nine percent of probation officer responses indicated that their main role was to evaluate risk, 31% identified ensuring sanctions and accountability, and 29% said matching services and needs as their main role.

MAIN ROLE OF AN INTAKE PROBATION OFFICER

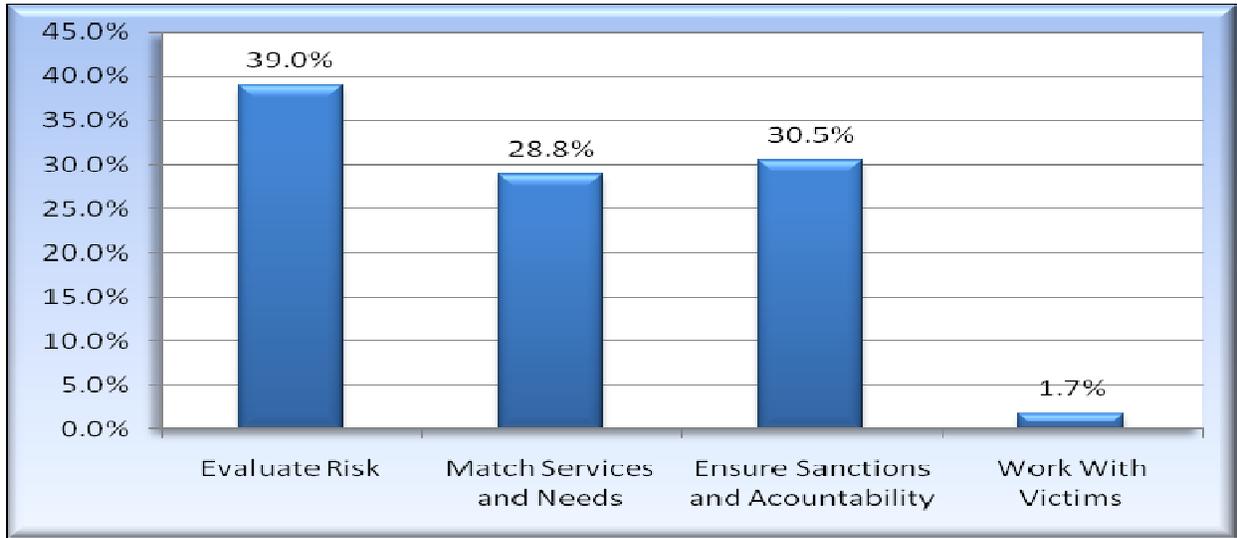


Chart 14

Probation officers view the level of offense as the most important factor influencing their decision to petition a delinquency, while prior record was also viewed as highly important. No probation officers identified DCFS involvement as the most important factor.

MOST IMPORTANT FACTOR INFLUENCING THE DECISION TO PETITION A DELINQUENCY

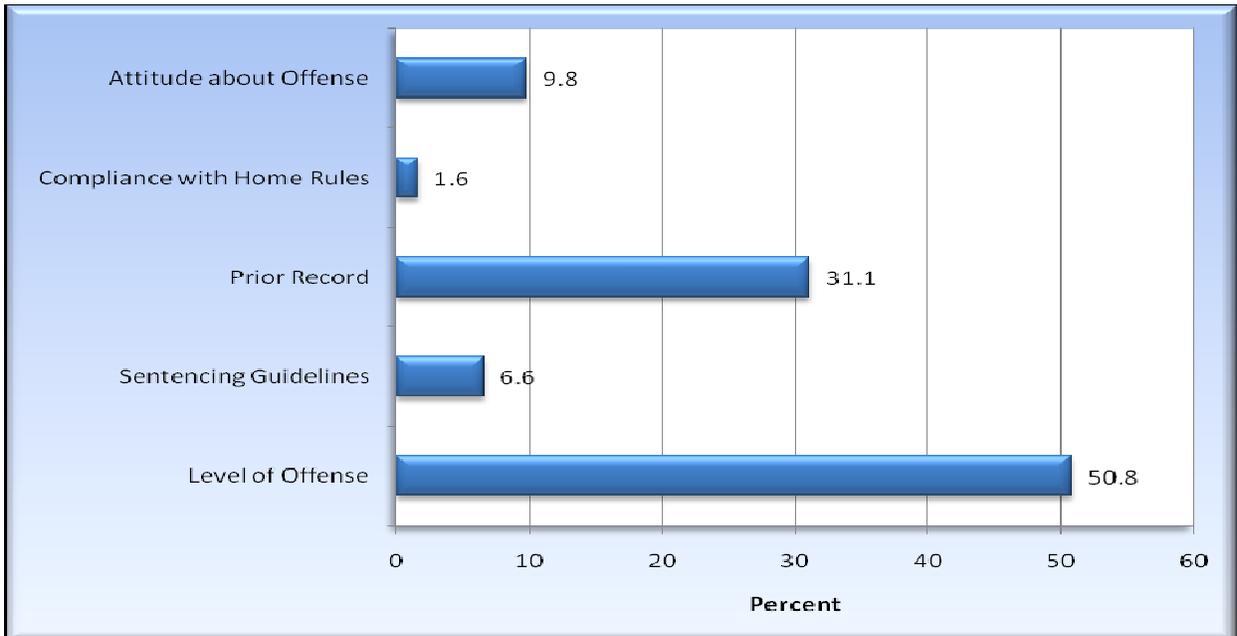


Chart 15

Twenty-one percent identified DCFS involvement as an influence factor and 27% identified requests by DCFS workers as influential factors in their decision to petition a delinquency referral. A solid majority identified the level of offense, prior record, the attitude about the offense, and sentencing guidelines as the most important factors that influence the decision to petition a delinquency referral.

FACTORS INFLUENCING THE DECISION TO PETITION A DELINQUENCY

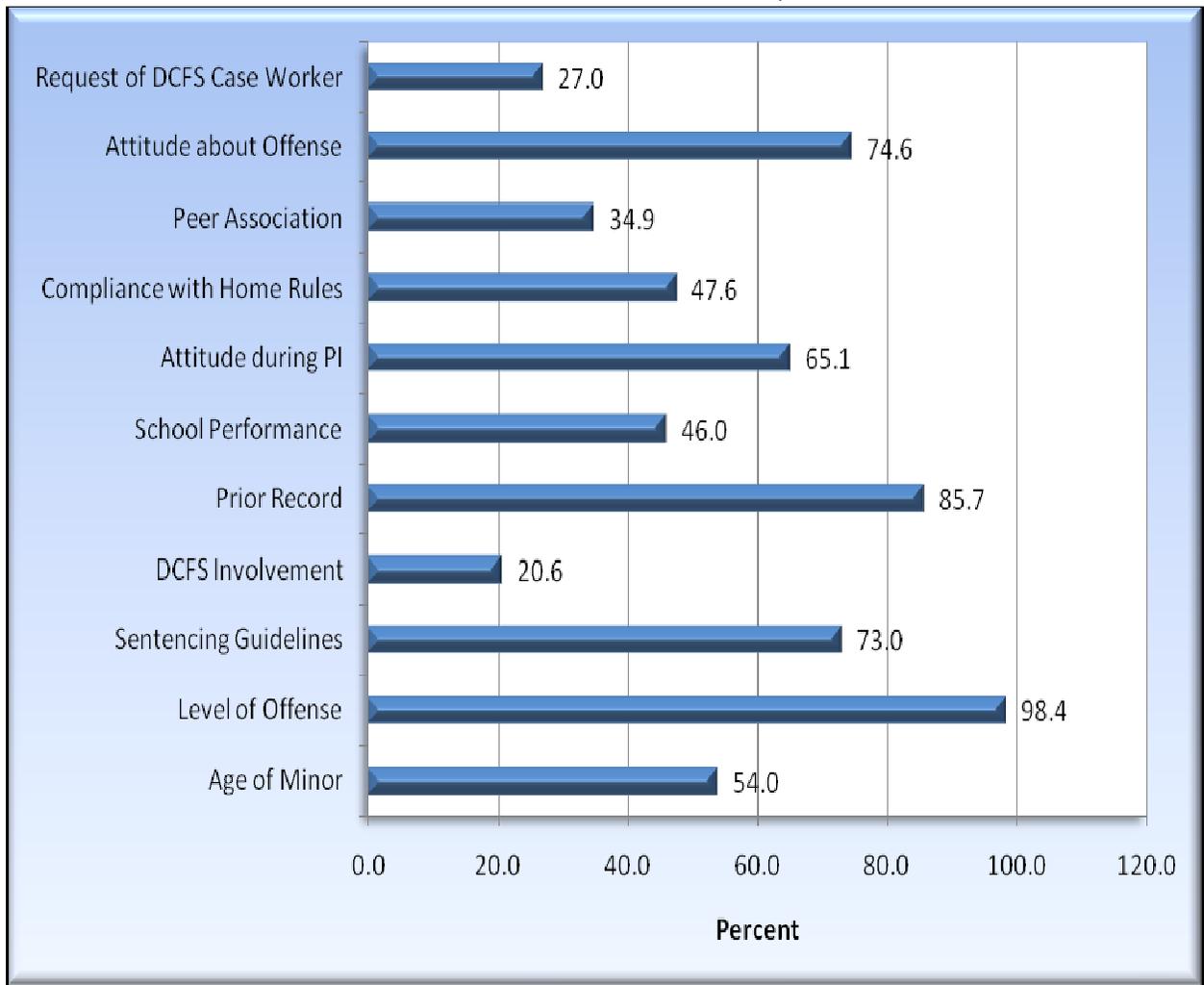


Chart 16

Over 75% of probation officers suggest that they are somewhat to very likely to petition a minor in DCFS custody for a delinquency referral, while about a quarter of probation officers are not as likely to do so. Since the survey did not identify the value of numbers 1-4, probation officers determined their value according to their own interpretation. Therefore, no further identification was made for the chart.

LIKELIHOOD THE PROBATION OFFICER WILL PETITION A DELINQUENCY FOR A DCFS MINOR

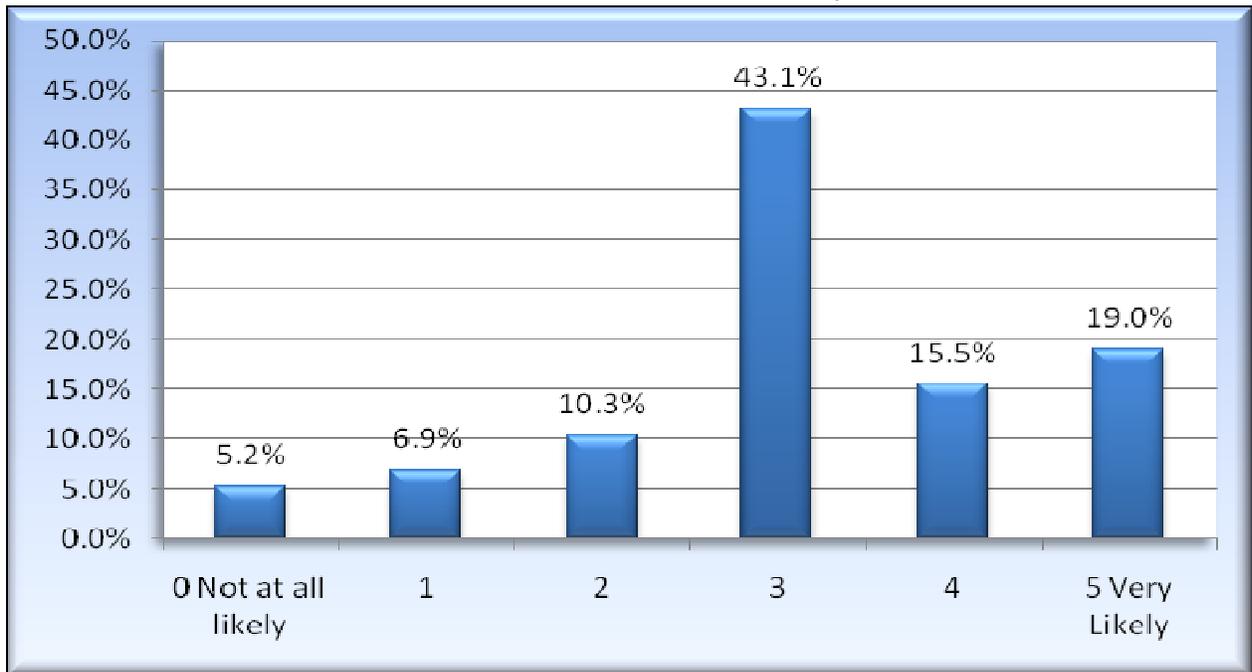


Chart 17

The majority of probation officers responded that there is no difference between the likelihood of a DCFS minor being petitioned for a delinquency and a non-DCFS minor being petitioned for a delinquency referral. However, 25% of probation officers feel that DCFS youth are more likely to be petitioned and six percent feel that they are less likely to be petitioned.

LIKELIHOOD THAT DCFS MINOR WILL BE PETITIONED COMPARED TO A NON-DCFS MINOR

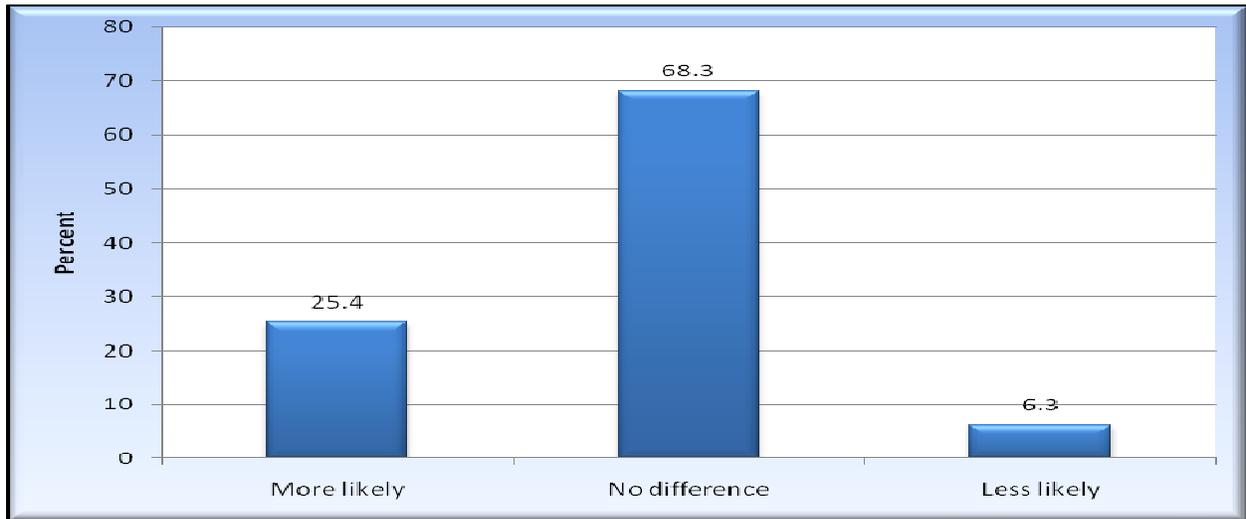


Chart 18

The survey responses indicate probation officers think DCFS minors may have a delinquency referral petitioned more often to receive additional services or because they are already involved in the system. However, a smaller portion of probation officers indicated that DCFS youth might be petitioned to ensure accountability or because of judicial preference

REASONS DCFS MINOR WOULD BE MORE LIKELY TO BE PETITIONED

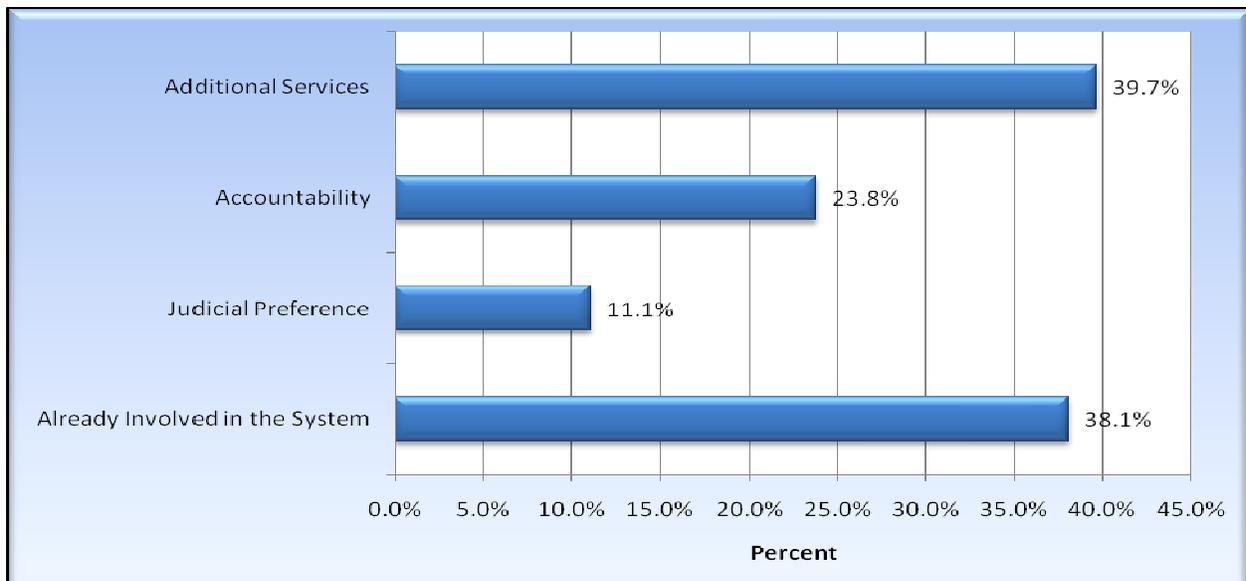


Chart 19

Probation officers that view their role as being to match services to needs are slightly likely to petition a DCFS minor, while those who view their role as being to evaluate risk or ensure sanctions and accountability tend to suggest that there is no difference between the likelihood of petitioning DCFS youth and non-DCFS minors. However, some probation officers that view their role as matching services to needs or evaluating risk report that they are less likely to petition a DCFS youth.

INFLUENCE OF THE ROLE OF PROBATION OFFICER ON LIKELIHOOD OF REFERRAL

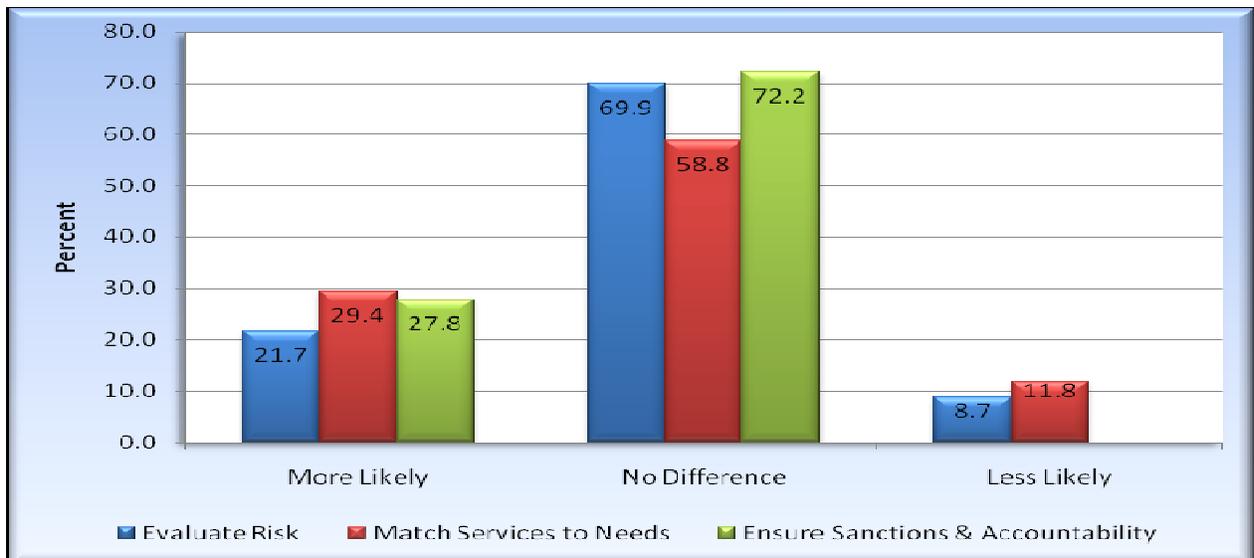


Chart 20

Additional Reasons for Higher Likelihood of Petitioning for DCFS Minors

The survey responses suggest a number of different reasons why a minor in the custody of DCFS might be more likely to have a delinquency referral petitioned. Probation officers indicate that DCFS youth are often petitioned for delinquency because the delinquency review can be combined with the child welfare review that is already calendared to be heard by the assigned judge. Some probation officers suggest that the minor is already coming to court to meet with the judge for a child welfare review so it is viewed as a way to resolve both issues at

one time. One probation officer explains, “Children in DCFS custody matters always come to court. The delinquency referral is usually scheduled to coincide with the DCFS review.” Other probation officers suggest that petitioning a delinquency referral of a DCFS minor can be used as a tool to make the judge aware of behavior problems in the foster home. One probation officer stated, “DCFS case workers or the foster parents want the judge to know the minor’s behavior and the probation officer succumbs to his or her request.”

Another factor that probation officers identified is the increased risk level of DCFS youth. Probation officers indicate that DCFS custody youth tend to be higher risk due to mental health issues or social factors identified on the Pre-Screen Risk Assessment. One probation officer explains that DCFS youth are “most likely involved with DCFS due to social factors that would increase their risk score. It would not be appropriate to close out a high risk case non-judicially. We need to ensure they get the services needed to reduce risk.” However, many other probation officers strongly emphasize that being in the custody of DCFS does not affect the likelihood of delinquency referral being petitioned. Probation officers indicate that DCFS youth are “treated the same” or that “DCFS custody has no relevance”.

C. Case File Hand Review ~ Overview and Findings

Overall, the data reveals that dual adjudicated minors are much more likely than delinquency only minors to be petitioned to the court when they receive a delinquency referral. This trend holds across offense types and severity levels. The justifications most often provided for petitioning the dual adjudicated minors are the level of offense or non-compliance.

The data further indicates that the dual adjudicated minor is more likely to be placed in detention at the time of arrest and charging, and is more likely to be returned to detention after the initial hearing than a delinquency only minor. Although a dual adjudicated minor is just

slightly less likely to have a parent or guardian present at the initial hearing than delinquency only youth, most parents or guardians of dual adjudicated minors attend hearings with their children when they appear before the court for a delinquency petition. This was a point of focus when reviewing the literature which indicated many dual adjudicated minors had few who advocated for them before a judge which resulted in higher rates of placement.

Despite the positive impact of parental representation for the dual adjudicated minor, the data reveals that the dual adjudicated minor is more likely to be placed in secure confinement, community placement than delinquency only youth. In contrast, a higher percentage of delinquency only youth receives the lesser sanctions of probation and non-judicial closures than dual adjudicated youth. However, there does not appear to be a notable difference between the likelihood of a dual adjudicated minor or a delinquency only minor receiving stayed or suspended detention days. The hand file review examined a number of factors for each case but paid close attention to which cases were petitioned, the justification for the petition, if there was legal representation, the frequency of the use of detention, and the sanctions imposed for both groups.

Each court executive was provided a list of cases within their district slotted for review. Due to the number of cases and the time required to review each of the 504 files, it was determined to solicit the assistance of one or two people from within each district to complete the case file hand review form (see Appendix III). The list was distributed October 5, 2007 to the court executives with a return date of November 2, 2007. All questionnaires were returned to the author and then entered into an Excel spreadsheet developed for this review.

This report is intended to provide additional information about dual adjudicated minors and is not intended to provide a representative sample, and results should not be generalized to

the population at large. Data, charts, graphs, and information in this report refer to the sample group, not the overall population. Small sample sizes should be taken into consideration when interpreting these data.

Although 504 files were identified, some were eliminated as not applicable; ie, adult contempt, minor deceased, etc.

OVERVIEW OF FILE REVIEW SAMPLE

	Delinquency Only	Dual Adjudicated	Total
District 1	11	11	22
District 2	64	64	128
District 3	84	84	168
District 4	30	30	60
District 5	12	12	24
District 6	5	5	10
District 7	12	12	24
District 8	8	8	16
Statewide Total	226	226	452

Table 7

The child welfare dual adjudicated minor is petitioned more often than delinquency only youth. While 64.6% of delinquency only youth are petitioned, 80.5% of dual adjudicated youth are petitioned.

DELINQUENCY REFERRAL: MINOR PETITIONED

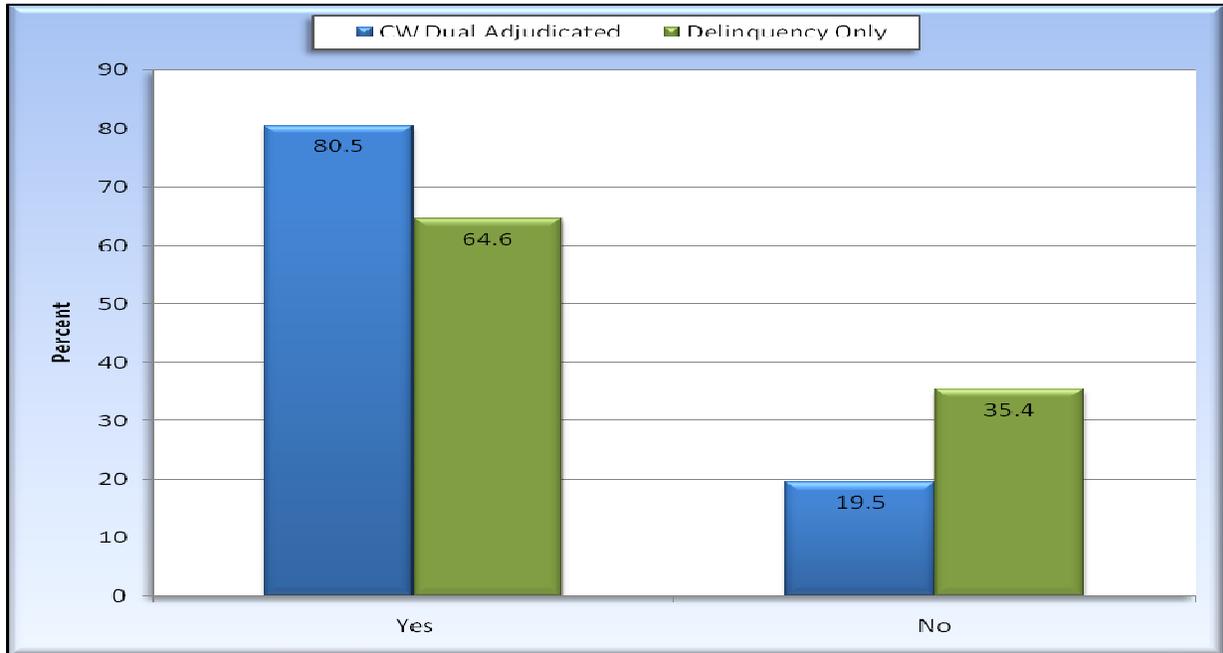


Chart 21

It is rare that any felony level offense is not petitioned, whatever the status of the minor. Despite this fact, dual adjudicated minors are more likely to have a misdemeanor or status offense petitioned than delinquency only minors. Whereas 71.8% of the child welfare dual adjudicated minors were petitioned for misdemeanors, 56.7% of the delinquency only minors were petitioned for misdemeanors. This gap is even larger with status offenses; while 38.9% of delinquency only youth are petitioned, 66.7% of child welfare dual adjudicated minors are petitioned for status offenses.

MINOR PETITIONED: OFFENSE SEVERITY

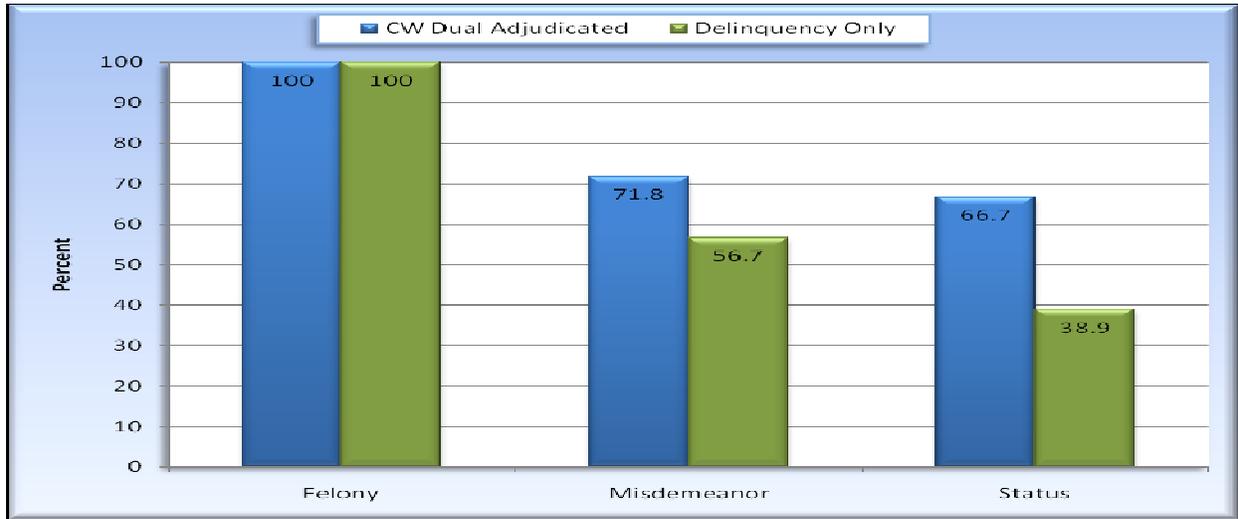


Chart 22

Dual adjudicated youth are most often petitioned for offenses against persons with 88.2% of those receiving a referral having the referral petitioned. In contrast, 75% of delinquency only youth who are referred for offenses against persons are petitioned. However, the largest gap appears with offenses against property; 76.7% of child welfare dual adjudicated youth having a property offense petitioned in contrast to 57% percent of delinquency only youth having a property offense petitioned.

MINOR PETITIONED: OFFENSE TYPE

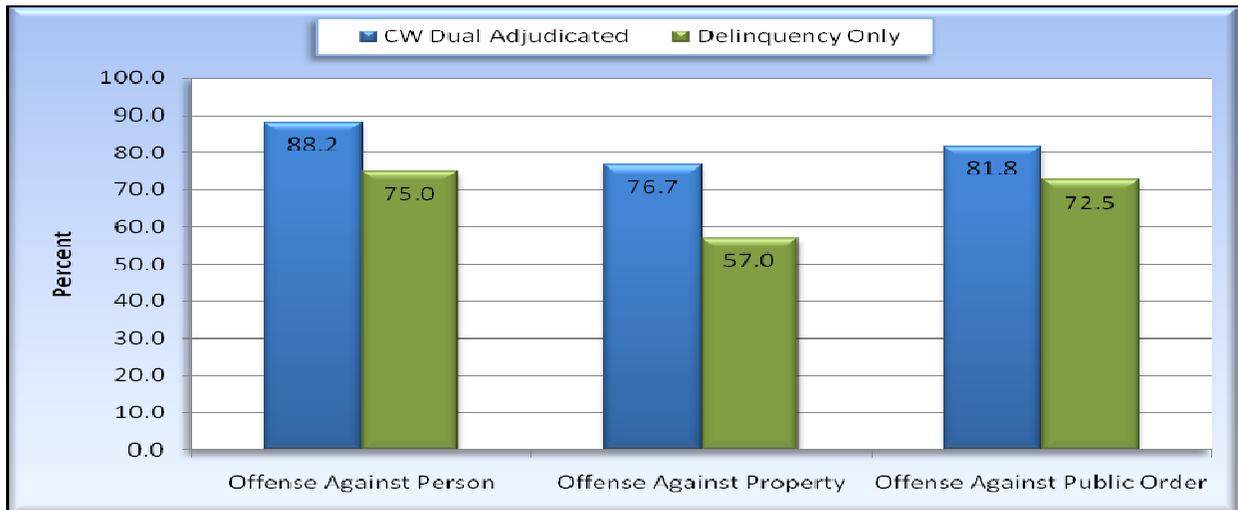


Chart 23

Child welfare dual adjudicated youth are much more likely to be petitioned if they receive a curfew or truancy referral than delinquency only youth. While 33.3% of delinquency only youth who were referred for curfew/truancy are petitioned, 71.4% of dual adjudicated youth who were referred for curfew/truancy are petitioned. A higher percentage of child welfare dual adjudicated youth referred for theft, destruction of property, and assault are petitioned than delinquency only youth also.

PERCENT OF MINORS PETITIONED: DESCRIPTION OF OFFENSE

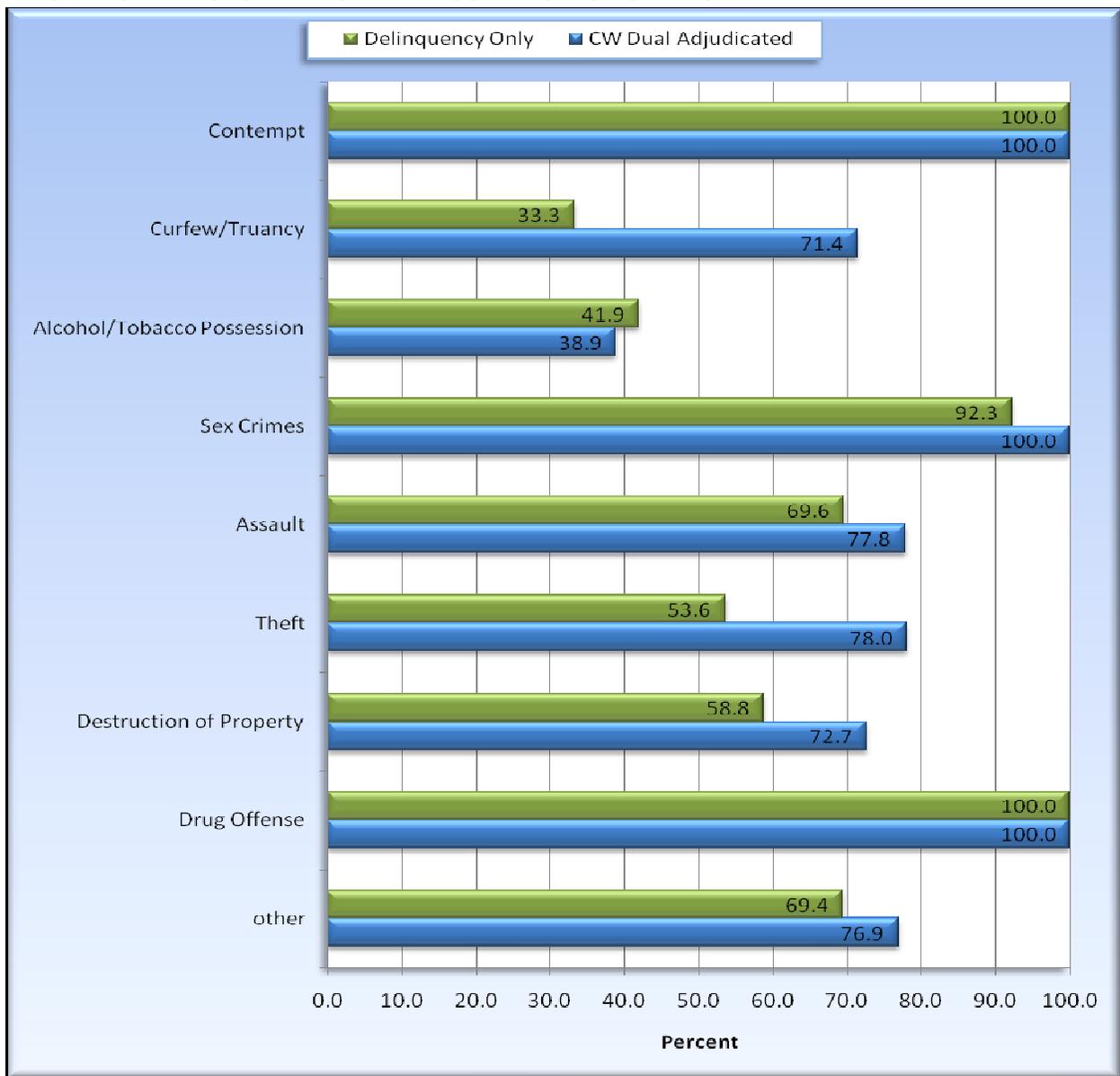


Chart 24

Given the number of factors to consider when deciding to petition a referral, for both dual adjudicated and delinquency only cases, the level of offense was most often cited as the reason for petitioning the case. While this reason is cited more often for dual adjudicated youth, this is not surprising since in this sample they are more likely to be charged with a felony.⁴⁸ However, child welfare adjudicated youth are much more likely than delinquency only youth to be petitioned for non-compliance or as repeat offenders.⁴⁹

JUSTIFICATION FOR PETITION

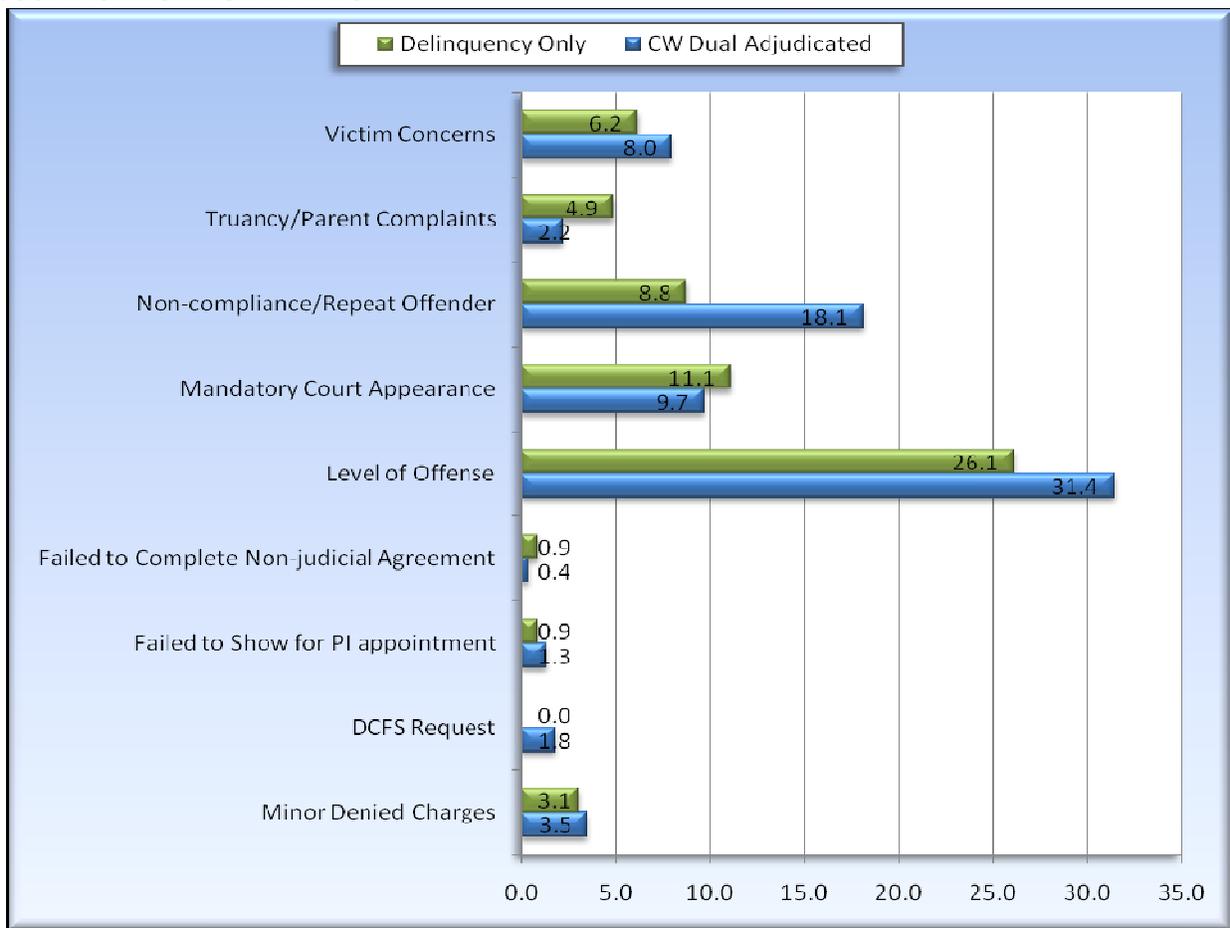


Chart 25

⁴⁸ In this sample, 31.9% of dual adjudicated minors were charged with a felony; 62.8% were charged with a misdemeanor; 4% were charged with a status offense; and 1.3% were charged with an infraction. For delinquency only minors in this sample, 21.7% were charged with a status offense and 0.9% were charged with an infraction.

⁴⁹ For purposes of the file review, repeat offending is considered non compliance since illegal activity is contrary to court orders or expectations.

Dual adjudicated youth are more likely to be in detention as a result of the charges prior to the initial hearing than delinquency only youth. While 26.1% of dual adjudicated youth are in detention prior to the initial hearing, 18.6% of delinquency only youth are in detention.

SEVERITY OF OFFENSE FOR MINORS PETITIONED WITH LEVEL OF OFFENSE AS THE JUSTIFICATION

	Delinquency Only	Dual Adjudicated	Total
1 st Degree Felony	6	9	15
2 nd Degree Felony	16	33	49
3 rd Degree Felony	17	17	34
Class A Misdemeanor	8	10	18
Class B Misdemeanor	11	1	12
Class C Misdemeanor	0	1	1
Status	0	0	0
Infraction	1	0	1
Statewide Total	59	71	130

Table 8

MINOR IN DETENTION AS A RESULT OF THE CHARGES PRIOR TO HEARING

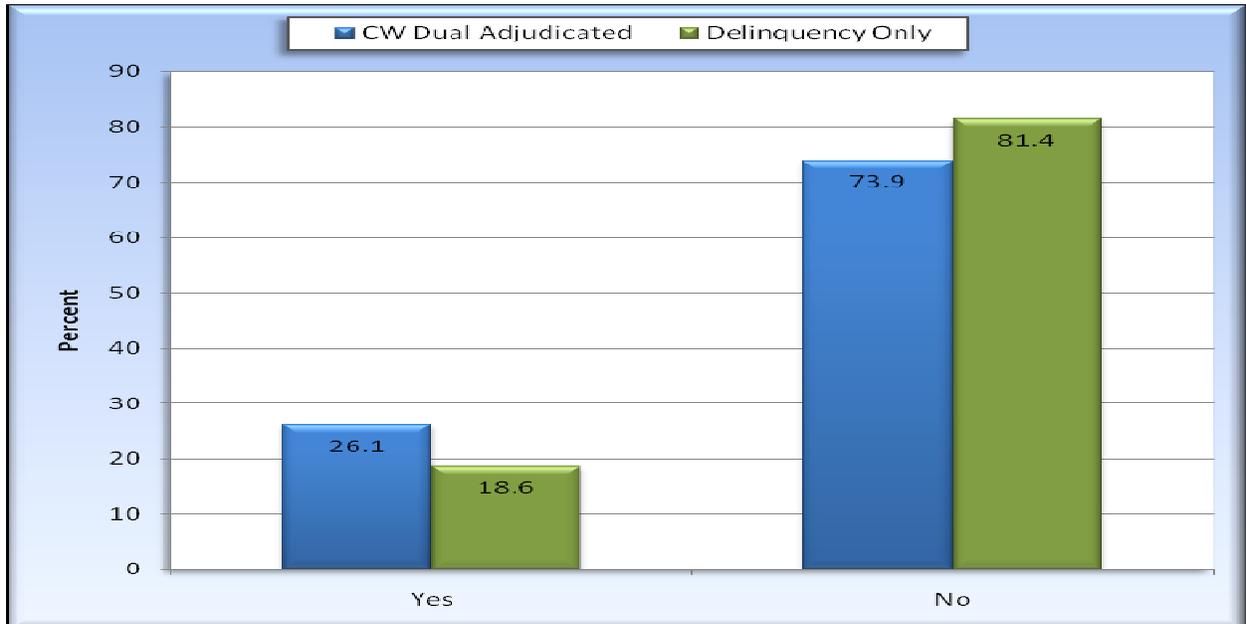


Chart 26

Almost the same percent of dual adjudicated minors and delinquency only minors are held in detention prior to the initial hearing for felony offenses. However, dual adjudicated minors are much more likely to be held in detention on a misdemeanor petition than delinquency only minors. While 22.5% of dual adjudicated minors charged with a misdemeanor are held in detention prior to their initial hearing, 10.6% of delinquency only minors charged with a misdemeanor are held in detention prior to their initial hearing.

MINOR IN DETENTION AS A RESULT OF CHARGE: OFFENSE SEVERITY

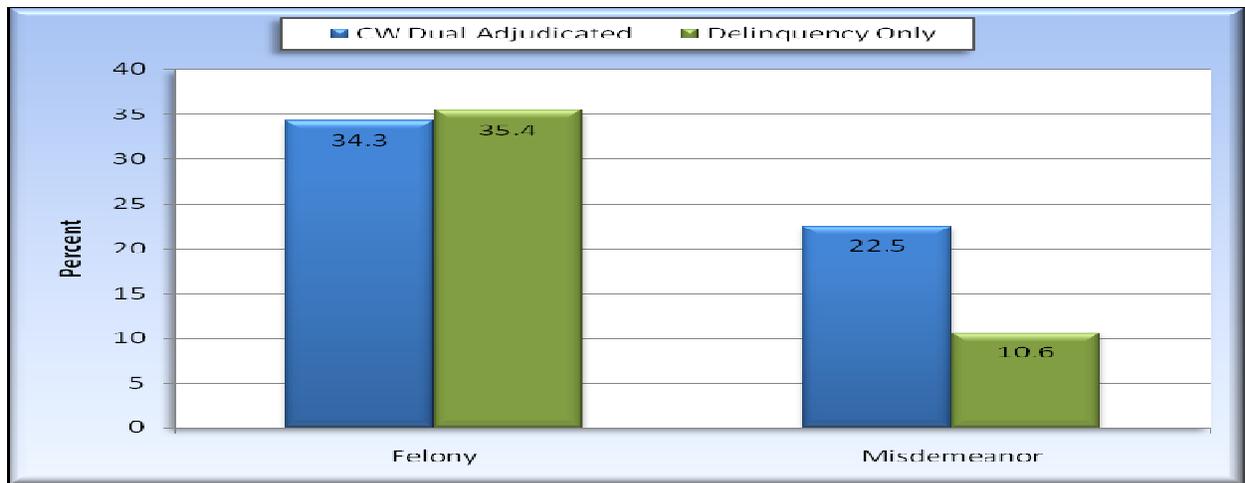


Chart 27

Of the child welfare dual adjudicated minors placed in detention, 29.8% were for assault, 25.5% for theft, 12.8% for sex crimes, and 10.6% for contempt. Delinquency only youth also tended to be placed in detention for theft and assault. However, delinquency only minors were much less likely to be in detention for drug offenses or sex related offenses than were dual adjudicated minors. Over half of the dual adjudicated youth were placed in detention *prior* to the initial hearing for a theft or assault. However, 13% were placed in detention for sex related offenses and 11% were placed in detention for contempt. Similar to the dual adjudicated minor, almost 60% of delinquency only youth were placed in detention prior to the initial hearing for

theft or assault. However, delinquency only minors are less likely to be in detention for sex crimes, drug offenses, and contempt.⁵⁰

MINOR IN DETENTION AS A RESULT OF CHARGE: OFFENSE TYPE⁵¹

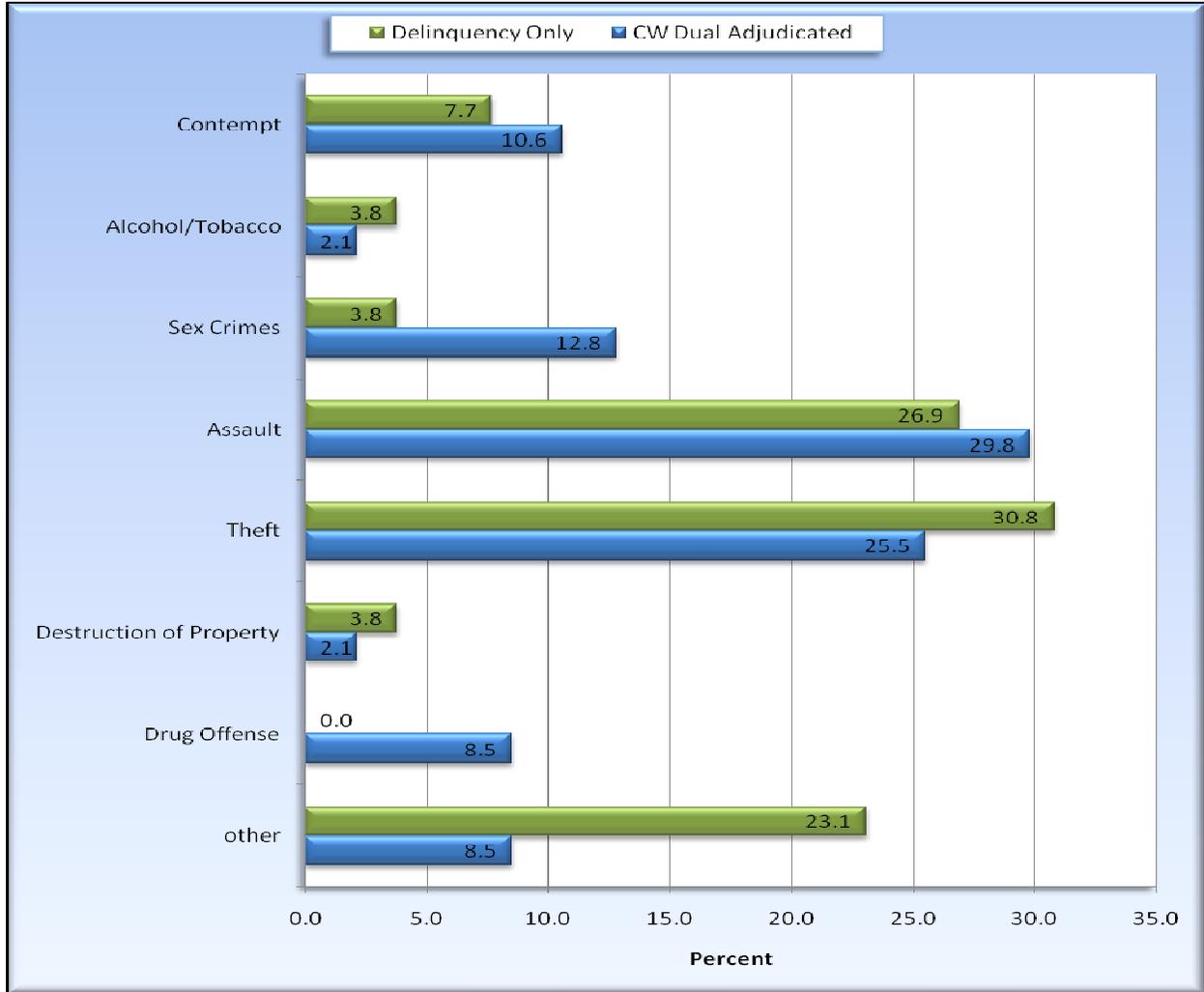


Chart 28

⁵⁰ See Note 51.

⁵¹ The *Curfew/Truancy* category was not included on this chart because no youth fell into this category. The *other* category represents such categories as third degree felony against person, other acts against persons, other acts against property, and firearms offenses.

The hand file review questionnaire indicates that overall most dual adjudicated minors had a parent or guardian appear with them at the initial hearing when a delinquency referral was petitioned. The literature, on the other hand, indicates that dual adjudicated minors had a much higher placement rate of having no adult in court advocating for them. Conversely, the dual adjudicated minor is slightly less likely to have a parent or guardian attend the initial hearing than a delinquency only minor. Almost 95% of delinquency only minors have parents or guardians that attend the initial hearing while about 88% of dual adjudicated minors have parents or guardians in attendance. Nonetheless, the overall rate of parent/guardian appearance with them at the initial hearing is significant, providing the judge with the opportunity to see that an adult is advocating for the minor’s overall well being.

PARENT/GUARDIAN PRESENT AT INITIAL HEARING

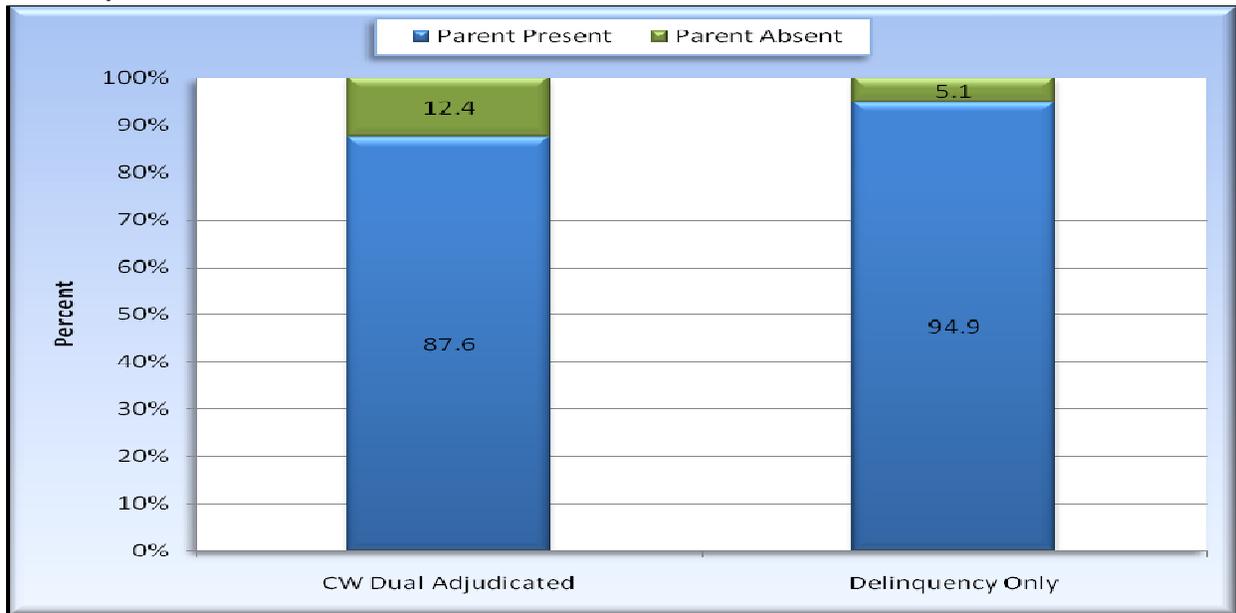


Chart 29

Dual adjudicated youth are more likely to have their case staffed at a multi-agency staffing⁵² (MAS) than delinquency only youth. While 12.7% of dual adjudicated youth have their cases staffed at multi-agency staffing, 4.5% of delinquency only youth have their cases staffed through the multi-agency staffing process. By using the MAS process, dual adjudicated youth cases are given more consideration for alternatives to more severe sanctions.

CASE STAFFED AT MULTI-AGENCY STAFFING

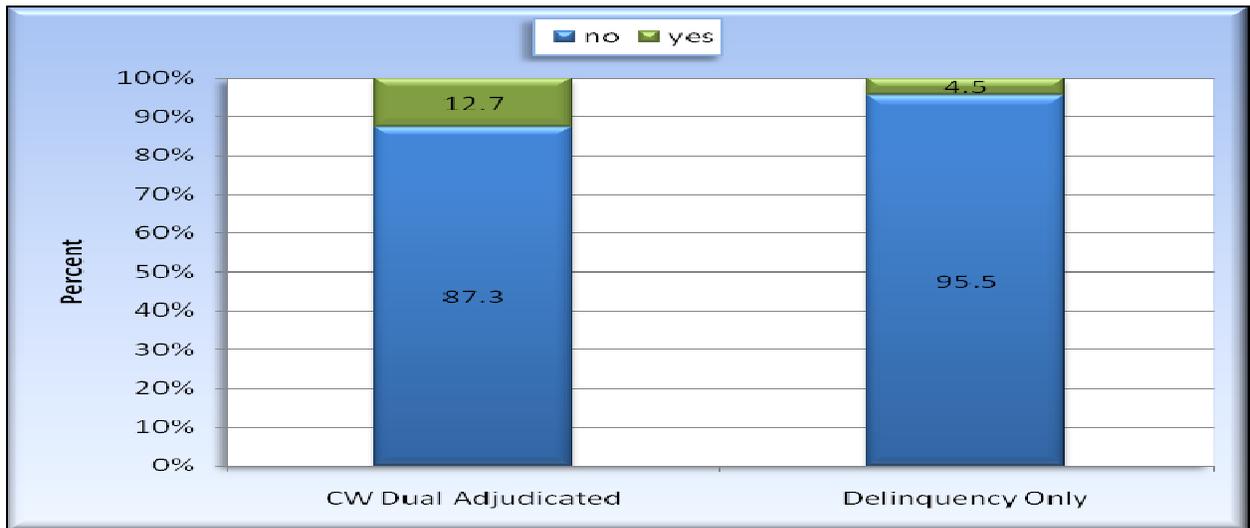


Chart 30

Child welfare dual adjudicated youth are more likely to be returned to detention after the initial hearing than delinquency only youth. Eight percent more dual adjudicated minors were returned to detention after the initial hearing than dual adjudicated minors, while 8% more delinquency only youth were released from detention after the initial hearing than were dual adjudicated minors.

⁵² Multi-agency Staffing (MAS) is a regularly scheduled opportunity to staff a case when considering making a recommendation for a change of a minor’s status; i.e. placement on probation or change of custody. Representatives from several agencies to insure all options are explored and give advise if not.

MINOR RELEASED OR RETURNED TO DETENTION AFTER INITIAL HEARING

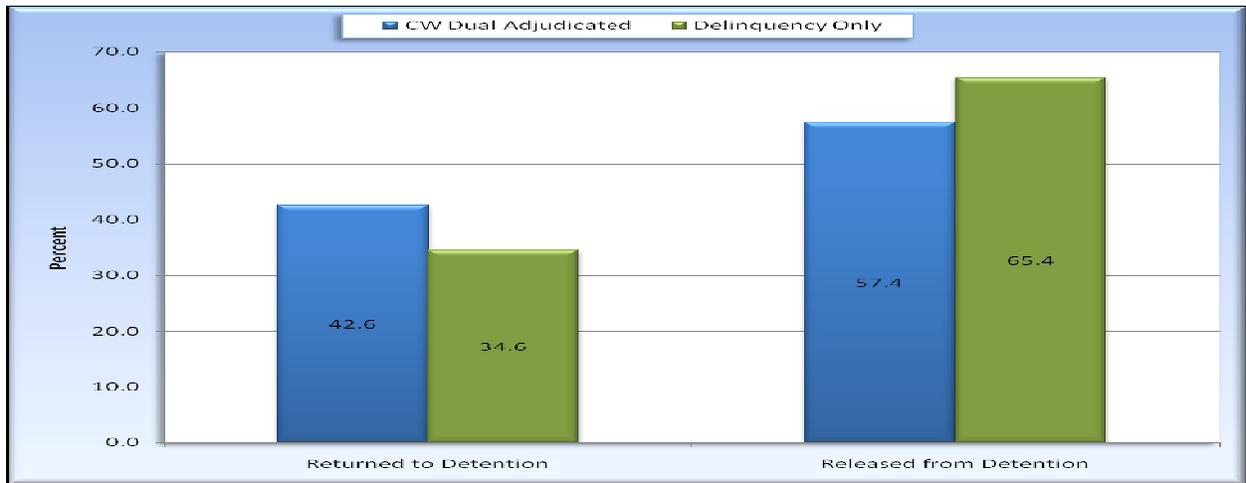


Chart 31

Of those youth who were in detention for a felony at the time of their initial hearing, a higher percentage of dual adjudicated youth were returned to detention than delinquency only youth. In contrast, a slightly higher percentage of delinquency only youth who commit misdemeanors are returned to detention than dual adjudicated youth.

MINOR RETURNED TO DETENTION AFTER INITIAL HEARING

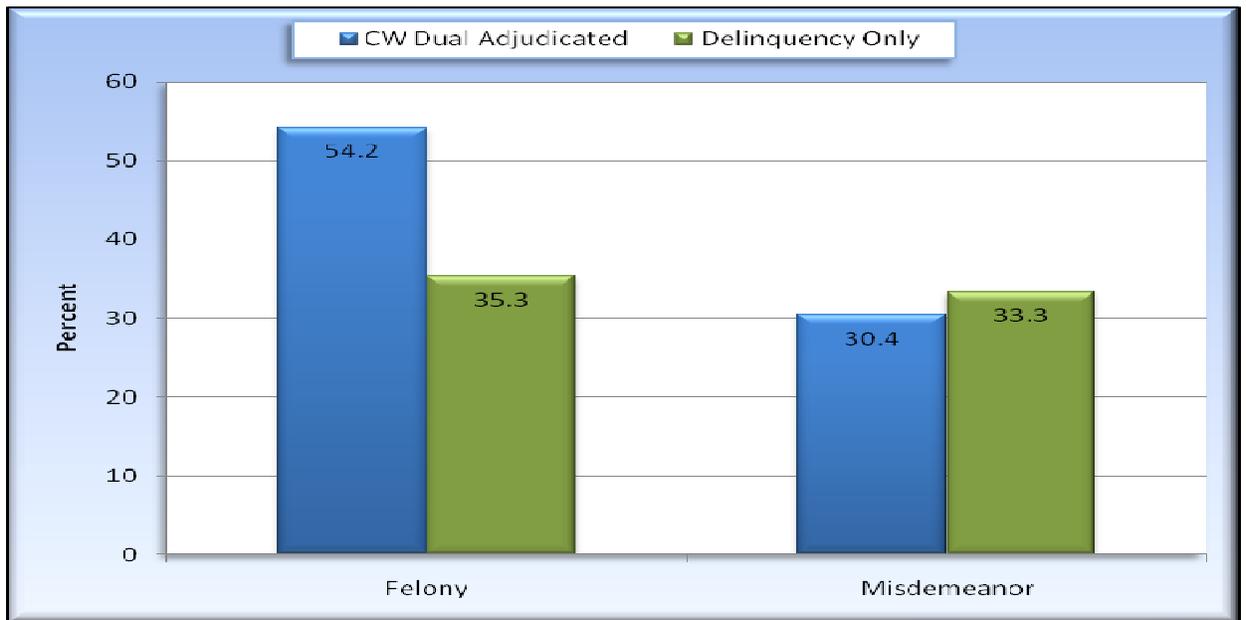


Chart 32

Almost a quarter of all dual adjudicated youth in the sample have the charges against them dismissed while 17.7% of delinquency only youth have the charges dismissed. Although dual adjudicated minors were placed in detention more frequently than delinquency only minors and were less likely to be released after the initial hearing, this chart indicates dual adjudicated minors more often were afforded the opportunity for interventions such as court ordered community service hours, assessments and/or evaluations for treatment, and programs. Although at a much lower rate than other sanctions, dual adjudicated minors are also more likely to receive community placement or secure confinement than delinquency only youth. However, a similar percentage of dual adjudicated youth and delinquency only youth receive stayed orders. The majority of these stayed orders are stayed detention days. Since many deputy court clerks used stayed orders and suspended orders during the study period, in this report stayed orders refer to orders that are suspended based on conditions of compliance with court orders. This definition is based on court clerk practices in entering data into CARE, not legal definitions.

Dual adjudicated minors have a delinquency referral closed non judicially only 19.5% while delinquency only minors have a non judicial closure rate of 35.4%. Yet the dismissal rate for the dual adjudicated minor is 6.2% more than for the delinquency only minor. This might be indicative of the dual adjudicated minor in this sample review receiving a degree of preferential treatment.

PERCENT OF MINORS RECEIVING DISPOSITION BY TYPE

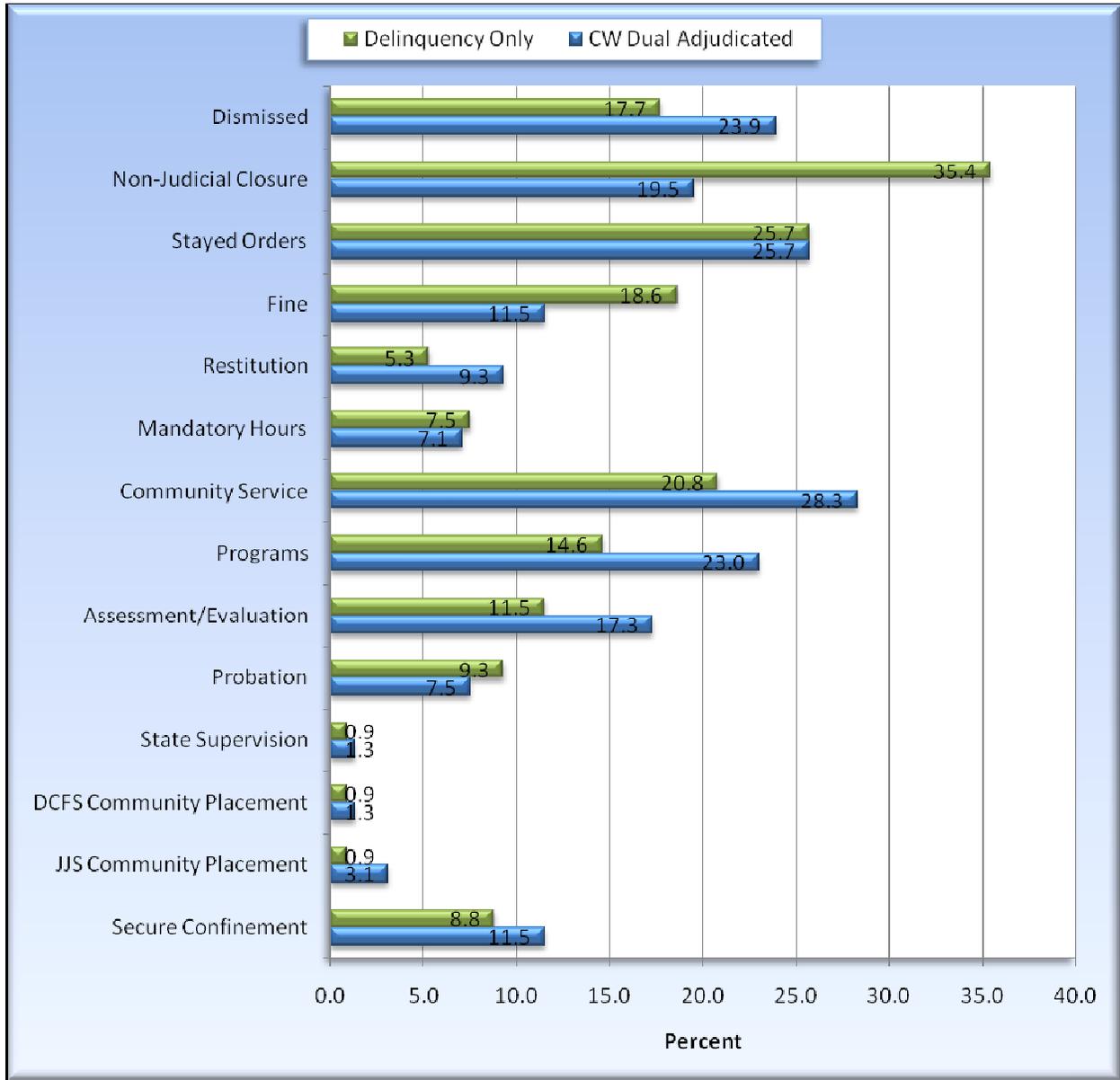


Chart 33

The following chart places dispositions into “severity” categories based on a theoretical scheme to simplify the data; it does not represent legal categories of severity. For this chart, severity is coded from less restrictive to more restrictive. Thus, items higher on the list such as dismissal are coded as less severe and items lower on the list are coded as more severe, such as secure confinement. Also, it should be noted that on this chart, fewer youth are receiving

dismissals because if a youth received a fine, probation, and a plea in abeyance and the charges were dismissed after completion of the fine and/or probation, probation would be coded as the most severe disposition.

MOST SEVERE DISPOSITION RECEIVED

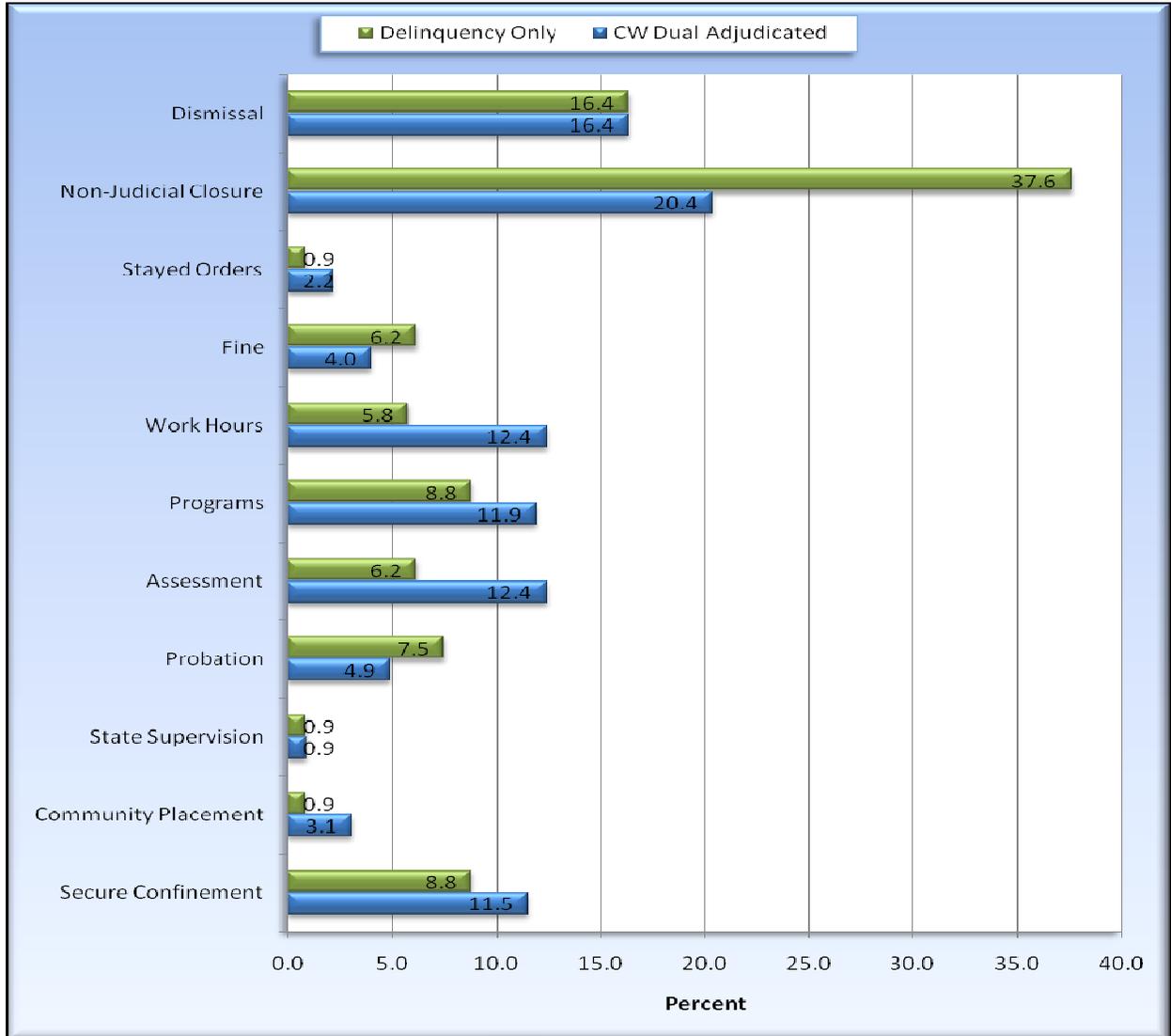


Chart 34

Delinquency only youth are more likely to receive probation and non judicial closures as the most severe disposition than dual adjudicated youth. However, dual adjudicated minors are more likely to receive work hours, programs, and assessment than delinquency only minors. For felony offenses, dual adjudicated youth tend to have the charges against them dismissed (23.6%),

ordered to receive assessment (16.7%), or be placed in secure confinement (18.1%).

Delinquency only youth display somewhat similar trends, with 20.4% of cases dismissed and 14.3% placed in secure confinement. However, delinquency only youth tend to receive probation more frequently (26.5%) than dual adjudicated youth (11.1%); and delinquency only youth tend to receive an order for assessment less often (8.2%) than dual adjudicated youth (16.7%). In contrast to felonies, delinquency only youth are slightly more likely to have misdemeanor charges dismissed than dual adjudicated youth. Delinquency only youth are also more likely to receive a non-judicial closure while dual adjudicated youth are more likely to receive work hours, programs, and assessment.

VI. CONCLUSIONS AND RECOMMENDATIONS

Despite the guiding principle of the Magna Carta, it appears that some of the youngest and most vulnerable of our citizens are being denied justice. If all are to be given their right to justice, then Utah's juvenile justice system must serve as this beacon for the children.

Unfortunately, this project reveals that although the degree of difference in how the dual adjudicated minor is treated when compared to the delinquency only minor is only slight, there is nonetheless, a difference. This research project has explored some of the differences and some reasons for them.

A. Conclusions

The results of this project, taking into account the survey and case file reviews have provided a picture not as gloomy as originally thought. In fact, there are a number of things that Utah is doing quite well although there are still areas which could use improvement. Some changes have already been implemented, pointing to the legitimacy that policy makers, and those who work the cases, care and listen to the needs of the youth. The amount of interest this issue has raised is promising and is a testament to the commitment of all those who handle juvenile cases daily. The legacy that is left to Utah's future lies in the hands of those that will guide the children to a brighter tomorrow.

From the first data set, a picture emerges indicating that a sizeable number of dual adjudicated minors exist in Utah. Further, by using this data, an initial comparison reveals that dual adjudicated minors are being handled differently from their delinquency only counterparts in ways that make the issue worthy of further study. The matter of contempt and its use are the first items that come to the forefront. Dual adjudicated minors are more likely to be referred first for contempt than delinquency only minors and dual adjudicated females are the most likely to

be referred for contempt. The dual adjudicated minor is referred for delinquencies at a younger age, especially for property offenses, truancy, contempt and offenses against persons. The dual adjudicated minor is placed in detention for contempt 3% more often than a non dual adjudicated minor. Of particular concern, dual adjudicated minors are generally placed in the custody and guardianship of the Division of Juvenile Justice Services (DJJS) more often than non dual adjudicated minors. For those outside of Utah, placement in DJJS would be considered placement into a correctional agency since it is viewed as a more severe on a continuum of sanctions.

For the dual adjudicated minor, the first delinquency activity and referral arise shortly after placement in foster care. According to much of the research, this may be due to stress factors as a minor moves from a familiar, albeit chaotic, home to an unfamiliar foster placement. Another possibility offered by the literature is that foster parents or group home leaders tolerate much less acting out behavior than a biological parent would.

The intake survey highlighted some systemic problems. In some areas of the state, dual adjudicated minors have not previously been provided the same opportunity for a non judicial closure of certain level offenses. In an effort to assist a minor in obtaining services, probation officers would often choose to petition charges to be heard through a formal hearing process. In this way, recommendations for services could be made a part of court order, thereby providing the best assurance for the completion of the services deemed to be most appropriate and that could assist a minor in improving their situation.

Unfortunately this also had a negative effect, as minors are pushed further into the system and considered more criminal than minors given the opportunity to obtain the services without a formal petition. Since Utah's Juvenile Sentencing Guidelines consider adjudications, necessary

for a court order, a factor indicative of more delinquent behavior, the recommendations within the guidelines matrix would elevate their disposition assessment. Although probation officers certainly do not intend to penalize the dual adjudicated minor according to the survey results regarding their desire to handle cases equitably, this desire to help minors through court ordered services can also, and often does, work against the dual adjudicated minor.

A number of items were revealed from the file hand review questionnaire. In this sample, dual adjudicated minors are likely to be petitioned more often for the same level of offense. As an example, the dual adjudicated minor with a felony referral is likely to have the charged petitioned 80.5% of the time compared to 64.6% for the delinquency only minor. Dual adjudicated minors have truancy and curfew referrals petitioned at a much higher rate than delinquency only minors. This may be due to probation officers systematically petitioning a dually adjudicated minor with these, and other charges, to be heard conjointly with a regularly scheduled Division of Child and Family Services review. There is also a notable difference in the rate that sex related offenses are petitioned. Dual adjudicated minors charged with a sex related offense had the charges petitioned 100% of the time compared to a 92% petition rate for the delinquency only minor.

When broken out by the number of delinquency incidents, 61% of the dual adjudicated minors had no previous delinquency referrals; the petitioning of the current offense appears to be based on non-compliance rather than for repeat offending. Because of the emotional and mental status of the dual adjudicated minor, they do not always behave in a manner expected from most minors. This may influence how probation officers view them in comparison to the delinquency only minor. Often minors in a period of emotional distress seem distant and this may be interpreted as detached or unremorseful.

There are areas that should be highlighted as ways Utah is working well on behalf of all minors. Despite the literature which indicates dual adjudicated minors often appear in court without representation and support, Utah breaks from the national trend. The vast majority of dual adjudicated and delinquency only minors have a parent or legal guardian in attendance for all court appearances. Legal representation, being one of the items done very well in Utah, is one of the principles outlined by the National Council of Juvenile and Family Court Judges' Guidelines.⁵³ The Third Judicial District Juvenile Court in Utah has a number of courts serving as model courts which follow the 16 key principles outlined in the Guidelines. Published in summer 2005, the Guidelines are a benchbook of best practices and serves as a resource for those working toward an improved juvenile delinquency system.

A third area that should be noted as positive is the use of the multi-agency staffing process; most cases use this to ensure cases are receiving the best options for their individual needs. This is especially important in light of the progress made toward full integration of case management which focuses on the individual risk and protective factors of each minor based on the overall results of a risk and needs assessment tool. The multi-agency staffing allows probation officers to present all available information to representatives from a variety of allied agencies to review the information and determine the best course of action.

B. Recommendations

The teen years are difficult ones even in the best of circumstances. Some are able to navigate through it seemingly unscathed; when problems do arise, they have a host of caring people to help them – parents, other family members, teachers or clergy. They have a connection to their universe. However, there exists a separate subset of teens without that safety

⁵³ National Council of Juvenile and Family Court Judges, *DELINQUENCY GUIDELINES, Improving Court Practices in Juvenile Delinquency Case*. Reno, Nevada (November 2000).

net, a group which becomes disenfranchised and whose individuals find they must create their own network of support.

For teens in foster care, this time in their life becomes even more of a challenge. They are not only left with the residual effects of the abuse, neglect and / or dependency issues, but they are also constantly in a state of uncertainty about their situation. Because of their background, they must also combat their increased risk of substance abuse, behavioral problems, school failure, delinquency, and mental health problems. The proverbial deck is stacked against them, and although the probability for a positive outcome for them is bleak, the guardians of these young people must act to ensure they have the best chance possible to succeed. The following recommendations are made to secure the best chance for a future for Utah's children.

1. Ensure all minors have the opportunity for a non judicial closure.

Statewide policy should be developed that would ensure all minors, dual adjudicated or delinquency only, have the opportunity to have charges closed through a non judicial adjustment. It is worth noting that since this study began, this recommendation has already been initiated in areas of the state.

2. Avoid using child welfare review hearings to automatically petition and set low severity charges to be heard in conjunction with the review.

Rather than automatically setting low severity charges at the same time as a child welfare review, dual adjudicated minors should be afforded the option of a non judicial closure. The child welfare review hearing should be used as an opportunity to update the judge of any charges and non judicial adjustment that occurred between regular DCFS review hearings.

3. Broker services early without a formal court order.

Although probation officers see their role as that of matching needs to services, this is often done through a petition, formal hearing and court order. Since the data shows dual adjudicated minors are having their cases petitioned more often, resulting in earlier penetration into the Division of Juvenile Justice Services, it is recommended that dual adjudicated minors be given the opportunity to fulfill a service referral without an adjudication and court order. This message, in particular should be shared with probation officers throughout the state who may be unaware of the effects of their desire to assist the dual adjudicated minor. By minimizing the formal petition process to insure services, this downward movement through the system can be minimized.

4. Reduce placement in detention for non dangerous minors while awaiting a hearing through improved communication and coordination.

Because Utah's data indicates the dual adjudicated minor is placed in detention more often than the delinquency only minor for contempt and low severity offenses, current policy should include procedures outlining how probation officers, DCFS case workers and foster parents can better communicate. The literature asserts that foster parents and group home leaders become frustrated more easily, as might a DCFS case worker, and may push for the use of detention as a means of a temporary separation, or "time out", from a difficult child. In the case file hand review, this was cited more than a few times as a justification reasons for filing charges. Improved communication using motivational interviewing techniques would likely limit the use of detention for the dual adjudicated minor. By reducing the use of detention, reduced court time would be realized; foster parents could feel a sense of active involvement in the minor's case planning.

5. Continue building supportive interagency partnerships among entities that share responsibility for Utah’s children.

Probation officers throughout Utah should be applauded for their consistent use of the multi-agency staffing process. Probation officers should continue to utilize the staffing as a way of insuring all options available are explored when making recommendations to the Court on behalf of the dual adjudicated minor. Some areas of the state have an active MAS process which should be duplicated elsewhere.

The agency meetings, commonly called the Table of 6, bring together the leadership of agencies working in the juvenile justice system. The meetings are a time for discussion on policy and practice, and give all parties an opportunity to actively engage in bringing programs, issues and ideas to the table openly and to work cooperatively for the needs peculiar to their area. These interagency meetings have proven to be highly effectively throughout the state and should continue to be fostered.

6. Provide and require foster parents to attend regular quality training on how to handle the difficult foster child to minimize the use of court imposed punishment.

In addition to the training foster parents receive prior to licensure; DCFS must invest in continual training in how to work with minors using natural positive and negative consequences. Rather than using punishment or the courts as a means of addressing acting out behavior, the benefits of good behavior and the natural negative consequences for poor behavior should be taught and reinforced. In this way also, the judge or the probation officers does not become the proverbial “what until I tell your dad” approach to acting out behavior. Through continual training, foster children are treated more like natural borne children.

7. Deliver in-home treatment and family focused resources to foster with low risk dual adjudicated minors.

Combined with the training recommended above, community based, family focused services should be provided at the same level as is made available to intact families. Foster families experiencing problems would greatly benefit from services such as Family Preservation or Utah Youth Village. By providing such services at the earliest sign of acting out behavior, foster families could better weather the stages of the foster placement, thereby minimizing the potential for a child to become dually adjudicated through contempt or other low severity charges. The potential for another removal would also be minimized if foster children and their foster families received a full spectrum of intervention services. The emotional toll on dual adjudicated minors in placement cannot be measure. However, they do provide professionals a view through their continued acting out and the resulting charges that accompany the acting out, and through the counseling needed to help him work through the maze of hurt and confusion. In addition to the emotional investment made on behalf of the dual adjudicated minor, potential savings could also be realized through less community victimization, and reduced placement in DJJS or mental health facilities.

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APPENDIX I

www.utcourts.gov/onlinecourts/juv/intro/before/htm#pi

Preparing for Court: The "Preliminary Inquiry"

If a juvenile receives a referral or citation to appear in juvenile court, s/he may be asked to participate in a voluntary preliminary inquiry. A preliminary inquiry is a meeting between the juvenile, the parent(s) or guardian, a court intake worker, and a lawyer if desired. **The idea of a preliminary inquiry is for the juvenile's court worker to decide whether or not the juvenile has to go before a judge, or whether the charge(s) can be taken care of informally.**

The worker will:

Explain the court process to the juvenile
Explain the juvenile's rights
Explain the charges filed against the juvenile
Ask the juvenile about school, family, friends, and outside activities

The worker will also look at:

1. How serious the offense is
2. The juvenile's court record
3. The age of the juvenile

What Can the Juvenile Expect?

A juvenile may be nervous about or not know what to expect during the preliminary inquiry. To get a feel for what will take place, here are some sample topics and questions that the intake officer *may* ask the juvenile or the parents about:

- *Family Profile:* This includes questions about the juvenile's siblings, parents, and their family relationships.
- *School:* The intake officer may ask the juvenile where s/he attends school, what programs s/he is involved in and his/her relationships with teachers, counselors and fellow students.
- *Goals and Aspirations:* The juvenile may be asked about future plans for school and work.
- *Peers:* This topic may cover questions such as how many close friends the juvenile has as well as activities his/her friends are involved in (Examples: Use of tobacco and/or alcohol).
- *Parental Questions:* The intake officer may also ask the parents questions about their behavior, past illnesses or accidents.

Where do we go from here?

Case Closed	Going to Court
<p>After evaluating the facts, the worker may decide that the juvenile can take care of the case without seeing the judge. The juvenile, the court case worker, and the parent will agree on the terms of the case. As long as the juvenile follows through on the agreement, s/he will not have to go before a judge.</p> <p>In order to close the case like this, the juvenile may have to comply with a "Non-Judicial Agreement" which may include elements such as those described below.</p> <p>When the juvenile follows through with the agreement, the case will be closed. If the juvenile fails to follow through, s/he will be called back to court to see the judge in an arraignment. (See Step Three)</p>	<p>After evaluating the facts, the intake officer may decide that the juvenile should appear before a judge. The juvenile may also have to see the judge if:</p> <ul style="list-style-type: none">• A class A misdemeanor or a felony has been committed OR• If they deny the charges <p>If the juvenile is going to court, click here to learn more about the next step in the process, the arraignment.</p>

What is a Non-Judicial Agreement?

It is a written agreement between the juvenile, the intake officer and the parent(s). Once the juvenile completes the requirements of the agreement, no petition will be filed with the court. So what could a juvenile face if s/he signs a non-judicial agreement?

- Paying a fine (not more than \$100 per offense).
- Paying the victim back for any damage caused him or her ("**restitution**").
- Community service hours
- Counseling
- Drug or alcohol treatment
- House arrest or probation
- Other reasonable actions in the interest of the minor/community

Read Utah Rule of Juvenile Procedure 15 about informal adjustments without petition.

Quick Facts: 37% delinquency and dependency cases filed with Juvenile Court are closed by voluntary agreement (without going before the judge).

APPENDIX II

District _____

Date _____

INTAKE SURVEY

1. Which best describes the MAIN role of an intake probation officer? *(Please circle one)*
 - a. Evaluate risk.
 - b. Match services to needs.
 - c. Work with victims.
 - d. Insure sanctions and accountability.

2. Assuming the minor admits the offense(s), which factors influence your decision to petition a delinquency? *(Circle all that apply)*

<input type="checkbox"/> Age of Minor	<input type="checkbox"/> Prior Record	<input type="checkbox"/> Peer Association
<input type="checkbox"/> Level of Offense	<input type="checkbox"/> School Performance	<input type="checkbox"/> Attitude About the Offense
<input type="checkbox"/> Sentencing Guidelines	<input type="checkbox"/> Attitude During PI	<input type="checkbox"/> Request of DCFS Case Worker
<input type="checkbox"/> DCFS Involvement	<input type="checkbox"/> Compliance w/ Home Rules	

3. Assuming the minor admits the offense, what is the MOST IMPORTANT factor in your decision to petition a delinquency matter or close it non judicially? *(Please circle one)*

a. Age of Minor	e. Prior Record	i. Peer Association
b. Level of Offense	f. School Performance	j. Attitude About the Offense
c. Sentencing Guidelines	g. Attitude During PI	k. Request of DCFS Case Worker
d. DCFS Involvement	h. Compliance w/ Home Rules	

4. Using a scale of 1 to 5, with 1 being not at all likely and 5 being very likely, how likely are you to petition a referral if the minor is in the custody of the Division of Child and Family Services.

<u>0</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Not at all					Very likely
Likely					

5. Are minors in the custody of DCFS with a delinquency referral more or less likely to have charges petitioned than non DCFS minors with a delinquency referral?
 - a. More likely
 - b. No difference
 - c. Less likely

6. What reasons would a DCFRS minor be more likely to have a delinquency referral petitioned than a non DCFS minor? *(Check all that apply)*

<input type="checkbox"/> Already Involved in the System	<input type="checkbox"/> Accountability
<input type="checkbox"/> Judicial Preference	<input type="checkbox"/> Additional Services
<input type="checkbox"/> other _____	

APPENDIX III

Name of reviewer: _____
Phone #: _____

Date _____

Case Number _____

Case Judge _____

Court Location: _____

CASE FILE HAND REVEIW

Please list the most serious petitioned charge.

Charge: _____ **Offense:** _____

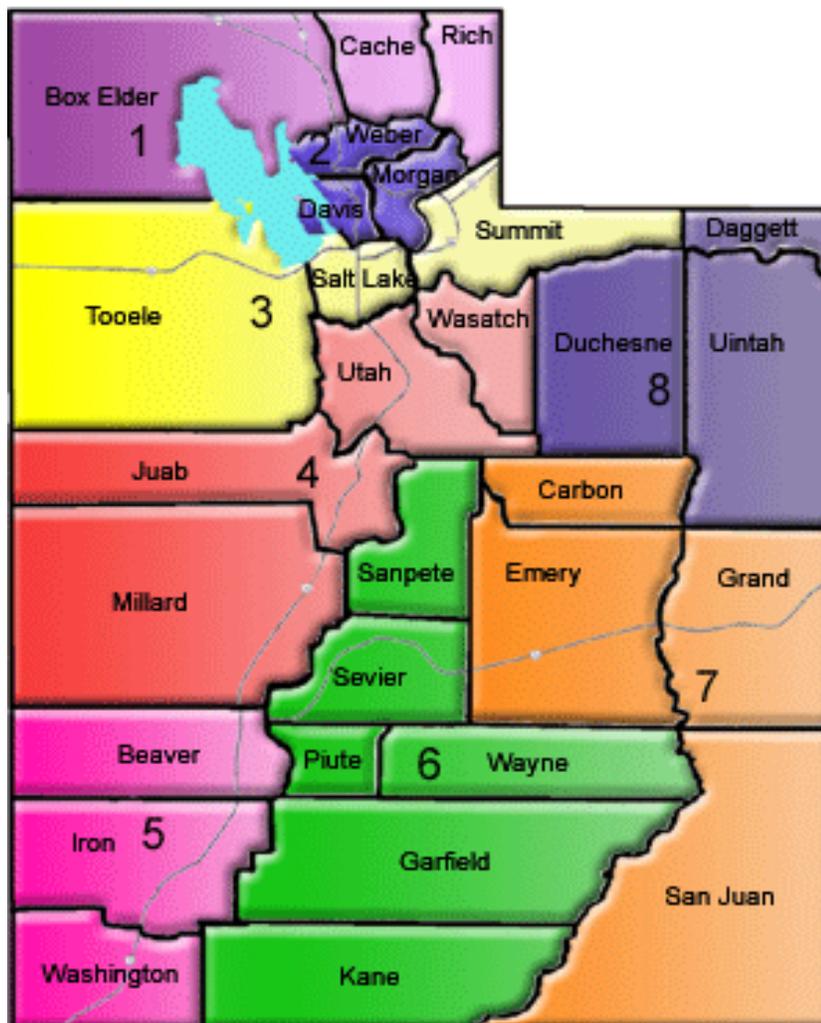
Please answer the following questions in relation to the above offense:

1. **What was the justification for petition (noted on the back of the form 5 or in the dispositional report).**

2. **Was the minor in detention as a result of this / these charge(s)?**
 Yes No
3. **Was a parent or legal guardian present at the initial hearing?**
 Yes No
4. **Defense counsel:**
 Public Defender Appointed Hired No Defense Counsel
5. **Was defense counsel present at the initial hearing?**
 Yes No
6. **Was the case staffed at a multi-agency staffing?**
 Yes No
7. **Was the minor released or returned to detention after the initial hearing?**
 Released Returned Minor not in detention
8. **Disposition:**

APPENDIX IV

Utah's Eight Judicial Districts



APPENDIX V

<http://www.sentencing.utah.gov/Guidelines/Juvenile/JuvenileManual2004.pdf>

Juvenile Sentencing Guidelines

INTRODUCTION

The Utah Sentencing Commission, pursuant to its statutory authority and responsibility, promulgates the following Juvenile Sentencing Guidelines. One of the primary duties of the Sentencing Commission is to develop guidelines and propose recommendations to all three branches of government concerning the sentencing and release of juvenile offenders. Utah Code Ann. § 63-25a-304. In order to assist the development of sound sentencing policy, the Commission recommends that all governmental agencies and private associations coordinate with the Commission regarding sentencing-related concerns.

The following manual is intended to instruct, serve as a resource, and to assist in the on-going use of the Juvenile Sentencing Guidelines.

BACKGROUND

In 1994, the Juvenile Justice Subcommittee of the Utah Sentencing Commission initiated review of sentencing of juvenile offenders. This Subcommittee developed a uniform system of sentencing based upon earlier intervention and more intensive supervision for chronic offenders. This system, titled the Presumptive Standards for Juvenile Sentencing, was widely endorsed but failed to gain funding during the 1996 General Legislative Session.

In 1996, a legislative task force was created to study major issues in the juvenile justice system, including the sentencing of juvenile offenders. Through a wide spread cooperative process, the Presumptive Standards evolved into the current Juvenile Sentencing Guidelines in its matrix

format. A unified voice including the Sentencing Commission, juvenile courts, the Division of Youth Corrections (now the Division of Juvenile Justice Services), and Governor's Office recommended these Juvenile Sentencing Guidelines to the legislative task force, which, in turn, adopted them. The 1997 legislature funded these new guidelines by means of passing SB 25 *Sentencing Guidelines* which is codified at Utah Code Ann. § 63-25a-304 and § 78-3a-505.

PHILOSOPHY STATEMENT

Although the foundation of the guidelines is sound, they need to be revisited, monitored, and evaluated on a regular basis. One of the primary directions of the Sentencing Commission is to provide this review, and the following basic philosophies and goals direct this effort. The goal of the guidelines is to bring more objectivity to the sentencing process but to also allow the juvenile court discretion in considering aggravating and mitigating circumstances. The guidelines provide for consideration of the following factors:

- severity of the presenting offense episode;
- Utah penal statutes;
- delinquency history and risk to society;
- judicial discretion; and
- continuum of sanctions.

Sanctions should be proportionate to the severity of the presenting episode. The guidelines should reflect the culpability of the juvenile offender based on the nature of the presenting criminal episode. (The Juvenile Justice Information System defines criminal episode as all offenses occurring on the same calendar day.) In addition, the guidelines should consider the juvenile

Utah Sentencing Commission 1

offender's role coupled with the relevant criminal episode history. The guidelines are comprised of a scoring system which allows evaluation beyond the presenting episode. Distinctions between person, property, and public order offenses, broader categories paralleling the degrees within the criminal code, and the criminal episode history comprise the foundation of the matrix. The matrix portion of the guidelines includes a variety of dispositions to accommodate a continuum of sanctions which are probation, state supervision, community placement, and secure care.

Juvenile sentencing, among other things, should focus on the particular circumstances of each criminal episode, offender, and victims involved. Guidelines should promote uniformity while, at the same time, afford the juvenile court the flexibility to fashion a specific sentence to an individual juvenile offender. Therefore, aggravating and mitigating circumstances must be factored into the framework of the guidelines. Decision makers are strongly encouraged to abide by the guidelines. Departures from the guidelines may be based upon substantial aggravating or mitigating factors which are strongly encouraged to be articulated on the record. These guidelines are not intended to eliminate but simply structure discretion.

GUIDELINES PREMISE

The primary goal of the guidelines is to better protect society. This is accomplished through two basic approaches: 1) earlier intervention and 2) more intensive supervision. There exists broad agreement that earlier intervention may prevent or disrupt the delinquent careers of most juveniles. Across the entire selection of dispositions, from probation to secure

care, the guidelines recommend early intervention. Consequently, these guidelines may have a net widening effect, i.e., more offenders will be brought into the juvenile justice system earlier. The early intervention approach is also intended to have a long term impact. It is an effort to rehabilitate these younger offenders before they become imbedded in a delinquent lifestyle and before they penetrate the system to the point of long term out-of-home placement.

At the same time, the guidelines provide for more intensive supervision of juvenile offenders. This is particularly true for the chronic juvenile offenders. Although the Serious Youth Offender law, Utah Code Ann. § 78-3a-602, is intended to transfer many of these chronic and serious juvenile offenders into the adult system, there is still a growing need for secure placements in the juvenile system. The guidelines provide for more and earlier incapacitation of chronic and serious juvenile offenders. In short, the guidelines implement a system that will hopefully change juvenile behavior, but one that can lock-up juveniles that refuse to change.

Sentencing guidelines should communicate a general standard to all of those involved in the system: prosecutors, defense attorneys, juvenile offenders, probation officers, case managers, judges, and victims alike. All of these parties should have a general idea of a disposition in a particular case. This fosters equity in the system by promoting the practice of sentencing similarly situated offenders similarly. However, there should be no concrete expectation that a recommended sentence will be the one actually imposed. Guidelines should also assist in managing current and future resources by serving as a predictive

instrument. Guidelines should even further treatment and cognitive restructuring efforts by mapping out the probable dispositions of future criminal activity. This entire approach brings more accountability to the system.

At the same time, sentencing guidelines need to preserve judicial discretion and individualized sentencing. Although all participants involved in the system are encouraged to refer to the guidelines, only the recommending authority, such as juvenile court probation, is mandated by statute to consider them: "When preparing a dispositional report and recommendation in a delinquency action, the probation department or other agency designated by the court shall consider the juvenile sentencing guidelines . . . and any aggravating or mitigating circumstances." Utah Code Ann. § 78-3a-505(2).

As to the actual sentencing, the guidelines are entirely discretionary and do not bind the juvenile court. The guidelines include a non-exhaustive list of aggravating and mitigating factors for consideration when deviation is appropriate.

GUIDELINES AS A TOOL

Utah law provides the basis for the sentencing of juvenile offenders. By sound design these statutes allow significant latitude in decision making. The guidelines are an attempt to further structure decision making relative to sentencing, yet still retain the flexibility to deal with atypical cases and the dynamic nature the Juvenile Court. The guidelines also provide a means of determining and allocating required resources. Utah's guidelines are intended to maintain the desirable functions of judicial discretion, and at the same time incorporate a rational

criminal justice philosophy, eliminate unwarranted disparity, and provide a tool to match resources with needs.

The guidelines, as structured, provide a forum for discussion regarding sentencing and a common frame of reference on which to base discussion. Equally important, they provide a means to look into the future and assess the demand for resources based on policy changes.

POLICY IMPLICIT IN THE GUIDELINES

These guidelines are a cooperative venture. No additional legislation is being proposed to coerce agencies to conform. The effort is to provide a mechanism for communication and improvement of key policy rather than to dictate practice by statute or rule. For the guidelines to function well, several policies are important. The policies need not be implemented exactly as stated, but their intent is critical.

Prosecution

Prosecutors may use the guidelines to determine the implications of charging and plea negotiations. The guidelines are intended to make the system predictable by making explicit the sentence an offender with a given background is likely to receive. This makes charging decisions and plea negotiations even more critical. Prosecutors should make it a policy to explain the effect of charging and plea negotiations in each individual case to the victim.

Recommending Authority

The authority that recommends the sentence to the juvenile court, ordinarily juvenile court probation, must consider the sentencing guidelines. The recommending authority should include the guidelines sentence in their pre-sentence report along with their own recommendation which may entail deviation from the guidelines. All this information should be passed on to the sentencing judge, the prosecutor, and the offender. The recommendations made to the judge should conform to the guidelines unless substantial aggravating or mitigating circumstances are documented in the recommendations.

Sentencing Judges

Sentencing judges may require that the guidelines forms be attached to all recommendations. Judges are encouraged to consider the sentencing guidelines when rendering dispositions in delinquency matters. When the disposition is different than what the matrix calls for due to substantial mitigating or aggravating circumstances, these circumstances should be stated in open court and be included on the record.

**JUVENILE SENTENCING
GUIDELINES INSTRUCTIONS
& DEFINITIONS**

The guidelines are comprised of three fundamental parts: 1) the criminal episode history assessment, 2) the matrix with its continuum of dispositions, and 3) a list of aggravating and mitigating factors. Observation and assessment is also to be considered in the guidelines as explained below.

All offenses used in the guidelines are convictions grouped into episodes. (The Juvenile Justice Information System defines a criminal episode as all offenses occurring on the same calendar day.) Non-judicial closures or non-petitioned episodes as well as cases dismissed or found not true by the court are not counted toward the guidelines.

CRIMINAL HISTORY ASSESSMENT

The Criminal History Assessment is located at the top of Form 1. It is divided into five levels of severity, rows I - V. This assessment determines the vertical axis (rows) located on the matrix. Ordinarily, when evaluating the criminal episode history, the recommending officer should not include the most severe presenting episode because the presenting episode is counted separately on the horizontal axis of the matrix. To count the presenting episode in the history would be double counting which is not intended by the guidelines. The only instance when a presenting criminal episode is to be counted in the history is a felony offense where the offender had previously been in youth correction's community placement. As stated in Level V, described in detail below, *any felony after community placement, including the presenting*

offense, should be counted in the history.

If multiple episodes are being adjudicated at the same hearing, they should be adjudicated in order from least severe to most severe. All except the last episode should be added to the offender's offense history. The last episode should be treated as the presenting episode offense.

Probation violations, contempt, and non-judicial actions are to be considered as aggravating factors within the guidelines but are not to be considered as part of the criminal history assessment.

The five levels of criminal episode history severity are as follows:

- Level I** - 0 to 3 Misdemeanor Episodes or 0 Felony Episodes
- Level II** - 4 to 5 Misdemeanor Episodes or 1 Felony Episode
- Level III** - 6 to 7 Misdemeanor Episodes or 2 to 3 Felony Episodes
- Level IV** - 8 or More Misdemeanor Episodes or 4 Felony Episodes or 1 Person Felony Episode or 1 Firearm Felony Episode
- Level V** - 5 or More Felony Episodes or 2 or More Person Felony Episodes or 2 or More Firearm Felony Episodes or Any Felony After Community Placement (Including Presenting Offense)

DISPOSITION ASSESSMENT

The disposition assessment is the matrix located on the bottom of Form 1. It is comprised of 50 cells within varying shaded areas of dispositions, e.g., probation or secure facility. The Criminal Episode History (vertical axis) is explained above.

Presenting Episode Severity

The Presenting Episode Severity determines which column on the matrix should be used. The Presenting Episode Severity is based on the severity of the most serious offense within the presenting episode. The Juvenile Sentencing Guideline Notice (a sample of which is included as Addendum A) identifies the appropriate column. Addendum B explains how to manually determine the Presenting Episode Severity once the most serious offense within the episode has been identified.

All but the most serious presenting criminal episode should be included as part of the criminal episode history. Probation violations and contempt are to be considered as aggravating factors but not to be considered as part of the presenting episode severity analysis.

POSSIBLE DISPOSITIONS

After determining the Level of Criminal Episode History and the Presenting Criminal Episode Severity, the recommending officer should consult the matrix to determine the recommended sentence for a particular offender. The cell where the presenting episode severity and the criminal episode history intersect determines the recommended disposition.

The following describes the available graduated sanctions under the guidelines in order of intensity.

Probation

Under the guidelines, the juvenile court is fundamentally changing probation to be more effective. In the future, each probation officer will carry smaller case loads, yielding more interactions

between juvenile offenders and field probation agents. The probation population, in general, will have fewer offenses per offender than in the past and the offenses will be less serious. All of this is an attempt to turn the juvenile offender around before he or she graduates to more serious offenses. As such, probation is key to the earlier intervention premise of the guidelines. The probation agreement will incorporate the balanced approach of restorative justice which focuses on community protection, accountability, and competency development.

To realize the benefits of probation, the following statewide model is provided: probation case loads should not exceed 15 probationers per officer and should last approximately three months; in cases of probation violations, the ratio should not exceed 10 probationers per officer and should last for six months. Again, the probation component of the new guidelines is essential to their success. It is therefore strongly recommended that the various juvenile court districts follow this model.

State Supervision

The state supervision category is a sentencing option on the guidelines that falls between probation and community placement on the continuum of available dispositions. The overriding philosophy of this option is also consistent with the three areas of the balanced approach of restorative justice which are community protection, accountability, and competency development. State supervision is designed to deliver an intensified level of intervention for juveniles who have reached a delinquency level defined by the guidelines and are not yet ready for long term removal from their homes.

State supervision resources should be focused on juveniles who have not penetrated the juvenile justice system beyond probation. Juveniles who have been placed out of their home may qualify for state supervision based on their delinquent record, but should be served through out-of-home placement resources. Those not yet reaching this out-of-home sanction level should also be served through current resources. State supervision was created to provide more intervention while a juvenile is in their own home and to reduce the number of juveniles being placed in the long term custody of the state. The responsibility for state supervision is divided between the juvenile court, Juvenile Justice Services, and to a much smaller extent, the Division of Child and Family Services.

The primary interventions of state supervision will be provided in the juvenile's own home. A smaller portion of this option's population will be placed in an out-of-home placement of limited duration, generally less than 90 days. The majority of the juveniles receiving state supervision will be served by the juvenile court and should first be on probation. Prior to out-of-home state supervision placement, a juvenile should generally receive in-home state supervision through probation. It is anticipated that the juvenile court is the case management agency, whether the placements are in-home or out-of-home. The assigned officer will be the identified worker to coordinate the interventions of state supervision.

Each juvenile receiving this sanction will have a written "correction plan" outlining specific measurable outcomes in each of the three areas of the balanced approach. This plan will be under the direction of the juvenile court while the juvenile is in their own home and modified as appropriate for an out-of-

home placement. The modifications will be made in consultation with the agency providing the out-of-home placement. The optimum goal is to coordinate both in-home and out-of-home placements in order to maximize the effects of each.

It is important to note that any juvenile offender sent to Juvenile Justice Services under a state supervision placement, must fall within the statutory age definition of a "youth offender." "'Youth offender' means a person 12 years of age or older and who has not reached 21 years of age." Utah Code Ann. § 62A-7-101.

If a juvenile is currently under community placement supervision or in secure care and commits an offense that would put him or her in state supervision, the placement should stay in the more intensive option. State supervision includes the various wrap-around services and programs. These include day/night reporting centers, electronic monitoring, work camps, and treatment programs.

Community Placement

Community placement involves a continuum of services which are both residential and nonresidential. The appropriate specific placement within this option depends upon the juvenile offender's particular needs balanced with the necessary level of supervision to protect the public. Although it also involves a continuum of services, community placement is distinct from state supervision. Private providers play a large role in community placement and various alternatives include proctor homes, wilderness programs, sex offender treatment group homes, and substance abuse treatment.

Secure Facility

Secure facility placement is the most intrusive sentencing option under the guidelines and should be reserved for the most dangerous or chronic offenders that remain in the juvenile justice system. The guidelines are designed to facilitate this design. These placements are generally long-term and involve behavioral and cognitive restructuring and an emphasis on victim reparation through restitution programming. The Youth Parole Authority, which decides the length of placement in secure facilities, has adopted release guidelines for the length of secure confinement.

Other Sanction

The section shaded "other sanction" includes fines, restitution, and community service and is not necessarily a part of the guidelines. However, these sentences may be imposed in combination to other guidelines dispositions.

OBSERVATION AND ASSESSMENT

Observation and assessment is intended as a diagnostic tool. The guidelines are intended to reemphasize the appropriate role of observation and assessment in assisting the juvenile court in finding the appropriate disposition. Observation and assessment is not intended to be used as a disposition in and of itself nor simply for shock incarceration or time-out for juvenile offenders.

SHORT TERM DETENTION

Juveniles may be committed to a place of detention or an alternative to detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction. This option,

although not identified within the context of the guidelines, may be used as a disposition by the juvenile court for any delinquent act, regardless of the criminal history.

AGGRAVATING & MITIGATING FACTORS

As mentioned, it is critical that the guidelines preserve judicial discretion and individualized sentencing. There are occasionally circumstances that compel deviation from the guidelines. Some of the more common reasons are listed for convenience on Form 2. Other reasons, as they occur, can be specified. Reasons should always be specified when the guidelines disposition is not recommended. These listed factors are suggestions only, by no means do they constitute all of the justifications for departures, upward or downward. Often, there will be a combination of factors involved in a particular case that justify a departure from the recommended disposition.

OTHER

Juveniles transferred to the adult system either through certification or the Serious Youth Offender process should not be considered within the context of the guidelines, neither should juveniles convicted of aggravated murder or murder. Infractions and status offenses are not within the scope of the guidelines, neither are moving and non-moving traffic violations unless they are drug related.

ACTION RESEARCH APPROACH

The guidelines are not intended to set policy in concrete. The philosophy, functioning, and problems of the juvenile justice system fluctuate constantly. The guidelines should be adaptable to change, and should even encourage such change. Certainly the best policy tools provide feedback and are self-correcting. This entire approach is one of the ongoing goals of the Sentencing Commission.

FORM 1

JUVENILE SENTENCING GUIDELINES

These are guidelines only. They do not create any right or expectation on behalf of the juvenile.

Criminal Episode History Assessment

I	0 to 3 Misdemeanor Episodes or 0 Felony Episodes
II	4 to 5 Misdemeanors or 1 Felony Episode
III	6 to 7 Misdemeanor Episodes or 2 to 3 Felony Episodes
IV	8 or More Misdemeanor Episodes or 4 Felony Episodes or 1 Person Felony Episode or 1 Firearm Felony Episode
V	5 or More Felony Episodes or 2 or More Person Felony Episodes or 2 or More Firearm Felony Episodes or Any Felony After Community Placement (including Presenting Offense)

Disposition Assessment Presenting Episode Severity

		A	B	C	D	E	F	G	H	I	J	
		1st Degree Person Felony	2nd Degree Person Felony	3rd Degree Person Felony	1st Degree Property Felony	1st Degree Public Order Felony	2nd Degree Property & Public Order Felony	3rd Degree Property & Public Order Felony	Class A Misdemeanor	Class B Misdemeanor	Class C Misdemeanor	
Criminal Episode History	V	SECURE FACILITY										
	IV											
	III	COMMUNITY PLACEMENT										
	II											
	I	PROBATION							Drug Related			

Sentence Suggested By Matrix: _____

Aggravating Circumstances (list number if applicable): _____

Mitigating Circumstances (list number if applicable): _____

Sentence Recommended: _____

Actual Sentence Imposed: _____

FORM 2
JUVENILE SENTENCING GUIDELINES
AGGRAVATING AND MITIGATING FACTORS

Aggravating

1. **Impact of Offense on Victim and Community:** Offender's callousness and cruelty shock the conscience of the Court; offense involved substantial monetary loss; offender caused substantial physical or psychological injury to the victim; offender has offended against current victim on prior occasions; or the offender knew or should have known that the victim was particularly vulnerable.
2. **Prior Violent Delinquent Conduct:** Offender has demonstrated, by prior history of delinquency adjudications, a propensity for violent, delinquent conduct.
3. **Substantial Adjudication History:** Adjudication for the same or similar offense on two or more previous separate occasions; gross number of prior offenses; or the offender has been adjudicated delinquent.
4. **Need for Out-of-Home Treatment:** Treatment needs of the offender require an out-of-home placement.
5. **Need for Secure Confinement:** Offender presents a danger to the community that requires secure confinement.
6. **Lack of Remorse:** Offender has demonstrated a total lack of remorse or a lack of acceptance or responsibility with regard to the offense.
7. **Supervision to Monitor Restitution:** A long period of supervision is necessary to monitor the offender's restitution responsibilities.
8. **Lack of Amenability with Lesser Sanctions:** Offender has demonstrated a lack of cooperation with lesser restrictive sanctions; offender has probation violations, other contempt orders, or non-judicial actions that should be considered; or offender has previously been placed on or qualified for a higher sanction.
9. **Lack of Attendance or Participation in Educational Programs:** Offender has willfully failed to attend or participate in school or other appropriate educational or vocational programs.
10. **Gang Involvement.**
11. **Other (specify)** _____

Mitigating

1. **Significant Improvement Since the Offense:** Offender has demonstrated significant improvement since the time of the offense; offender has voluntarily sought treatment; offender compensated or made a good faith effort to compensate victim.
2. **Physical/Mental Impairment:** Offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed; or the offender is mentally retarded as demonstrated by all of the following: (a) offender is significantly sub-average in general intellectual functioning (usually interpreted as an IQ score of 70 or less); and (b) offender demonstrates deficits in adaptive behavior (has insufficient life skills to get along without constant assistance from others); and (c) offender manifested the above handicaps during the developmental period. The voluntary use of intoxicants does not fall within the purview of this category.
3. **Limited Adjudication History:** Offender has no or only minor prior adjudications; long period of time since previous referral; or extreme length of time since the offense occurred.
4. **Age and Maturity of Offender:** Offender's age and maturity suggest that the offender did not fully understand the impact or nature of the delinquent conduct.
5. **Current Status:** Offender is currently in an appropriate level of treatment or supervision.
6. **Treatment Needs Exceed Need for Punishment:** The offender is in greater need of an available treatment program than of punishment through incarceration.
7. **Other (specify)** _____

Revised: 12/2004

*** JUVENILE SENTENCING GUIDELINE NOTICE ***
 07/18/97
 RE: xxxxxxxxxxxxxxxxx (CASE: xxxxxxx)

ATTENTION: xxxxxxxxxxxxxxxx

ACCORDING TO THE GUIDELINE, THE RECOMMENDATION FOR xxxxxxxx IS:

*** SECURE FACILITY *** (COLUMN F, ROW V)

BECAUSE THE MOST SERIOUS PENDING OFFENSE IS:

EPISODE 7 INC-NO 64* (THCR25) CAR THEFT 2ND DEGREE FELONY 05/11/97
 (COLUMN F ON THE SENTENCING GUIDELINE)
 FIRST FELONY SINCE COMMUNITY PLACEMENT 09/05/1995

OTHER LESS SERIOUS PENDING CRIMINAL EPISODES THAT WERE COUNTED IN DETERMINING THE PRIOR RECORD INCLUDE:

EPISODE 8 INC-NO 65* (FORGI6) FORGERY 05/12/97
 INC-NO 66 (RCPTYE) RECEIVE STOLEN PROP UNDER \$300

PRIOR CONVICTIONS FOR CRIMINAL OFFENSES INCLUDE:

EPISODE 1 INC-NO 21* (PSSVH6) POSSESSION OF STOLEN VEHICLE 08/20/93
 EPISODE 2 INC-NO 27* (POTPSH) MARIJUANA POSSESSION OR USE 02/16/95
 EPISODE 3 INC-NO 35* (JYRD1D) JOYRIDE DRIVER-RET.UNDER 24 HR 03/09/95
 EPISODE 4 INC-NO 41* (THCR25) CAR THEFT 2ND DEGREE FELONY 07/05/95
 EPISODE 5 INC-NO 44* (POTPSH) MARIJUANA POSSESSION OR USE 08/11/95
 EPISODE 6 INC-NO 54* (ASALTB) ASSAULT-SUB.RISK OF/BODILY INJ 11/29/95

THESE PRIOR CONVICTIONS ALONG WITH PENDING CRIMINAL EPISODES PLACE THIS YOUTH IN ROW V OF THE SENTENCING GUIDELINES.

NOTE THAT NON-JUDICIAL AND OTHER NON-PETITIONED OFFENSES ARE NOT COUNTED IN MAKING THIS DETERMINATION.

THE PRESUMPTION FOR THIS YOUTH IS THAT A PETITION WILL BE FILED AND IF ALL PENDING OFFENSES ARE FOUND TRUE, YOU WILL RECOMMEND THAT BE PLACED IN A SECURE FACILITY.

NOTE THAT MITIGATING OR AGGRAVATING CIRCUMSTANCES CAN ALWAYS BE ESTABLISHED WHICH COULD SUGGEST AN ALTERNATIVE SENTENCE.

ALSO NOTE THAT ONLY THE MOST SERIOUS OFFENSE IN A CRIMINAL EPISODE IS COUNTED IN DETERMINING THE PROPOSED SENTENCE AS NOTED BY THE '**' FOLLOWING THE INCIDENT. IF YOU DETERMINE THAT THE EPISODES ABOVE HAVE BEEN GROUPED INCORRECTLY, THE SENTENCING RECOMMENDATION MIGHT CHANGE. PLEASE CONFIRM BEFORE ACCEPTING THE RESULTING SENTENCE RECOMMENDATION.

-
- | | |
|--|---|
| 1 Juvenile name & case number | 9 Episode number |
| 2 Guideline recommended sentence | 10 Incident number |
| 3 Column of the matrix for juvenile | 11 Acronym for offense |
| 4 Row of the matrix for juvenile | 12 Short title for offense |
| 5 Most serious pending offense/episode | 13 Hearing date |
| 6 Short title for most serious presenting offense | 14 List of prior episode (criminal history) |
| 7 Identifies that this is a felony after a community placement | 15 Matrix row placement based upon juvenile's history |
| 8 Other less serious pending offense(s) counted in history | 16 Reminders on how to use the guidelines |

DETERMINING THE SEVERITY OF THE OFFENSE BASED UPON THE JUVENILE COURT'S OFFENSE ACRONYM

The Juvenile Court's Juvenile Information System represents every possible offense with a six character offense code or acronym. The last character in the acronym determines the severity of the offense. Knowing this is helpful in determining the level of the offense for the matrix. The following is an example of one such offense code:

THCR25

Every offense in the juvenile information system is represented by a six (6) character acronym, such as this one (Car Theft).

The sixth character (circled) represents the severity of the offense. By looking at the sixth character, in this case the number 5, we can tell that this particular Car Theft is a 2nd Degree Property Felony.

Some general rules have been applied in categorizing offenses. First, offenses are divided into felony crimes and misdemeanor crimes. Felony crimes are all identified using a numeric character. Misdemeanor crimes are all identified using an alphabetic character.

Offenses are further subdivided into person, property, and public order offenses. The table that follows identifies the level and subcategory of every offense used with the matrix. Practitioners should use this table for reference purposes. It is critical to remember that the sixth (or last) character in the offense code determines the severity of the offense.

Offense Character (Last character in offense code)	Severity and Category of Offense
0	Capital Felony
1	1 st Degree Person Felony
2	2 nd Degree Person Felony
3	3 rd Degree Person Felony
4	1 st Degree Property Felony
5	2 nd Degree Property Felony
6	3 rd Degree Property Felony
7	1 st Degree Public Order Felony
8	2 nd Degree Public Order Felony
9	3 rd Degree Public Order Felony
A	Class A Person Misdemeanor
B	Class B Person Misdemeanor
C	Class C Person Misdemeanor
D	Class A Property Misdemeanor
E	Class B Property Misdemeanor
F	Class C Property Misdemeanor
G	Class A Public Order Misdemeanor
H	Class B Public Order Misdemeanor
I	Class C Public Order Misdemeanor

APPENDIX VI

Intake Probation Officer Job Description / Specs

UTAH STATE JUVENILE COURTS
ADMINISTRATIVE OFFICE OF THE COURTS
PROBATION OFFICER WORKLOAD STUDY, APRIL 2005

APPENDIX A – PROBATION OFFICER DESCRIPTIONS

Intake Probation Officer

Screens referrals and reviews police reports to determine if allegations of delinquency bring the juvenile within the court's jurisdiction; conducts preliminary inquiry interviews with juveniles and parents/guardians in order to determine whether to pursue non-judicial handling of the case or to request petitioning of the case to court for judicial actions.

Conducts investigations on juveniles placed in detention and recommends release or continuation in detention at hearing as warranted by the seriousness of the offenses committed and the relative threat posed to the community by the individual's alleged actions.

Diverts juveniles who do not warrant further court involvement out of the system through non-judicial closure of cases; applies non-judicial sanctions and interventions, as dictated by the frequency and seriousness of the offenses, within the parameters contained in state laws and court policies; develops and monitors consent agreements with juveniles and parents/guardian in order to implement non-judicial sanctions and interventions, such as: payment of fines and restitution, essays, work hours, referral to counseling or education program, etc.

Prepares and recommends filing of petitions to activate formal court action based upon the seriousness and frequency of offenses committed; prepares cases for court action, including preparation of social history summary and preparation of dispositional recommendations; develops treatment/correctional plans for recommendation to the court, including brokering needed services with community agencies such as Juvenile Justice Services, Family Services, mental health, State Hospital, and various private and public counseling and education programs, etc.; presents dispositional recommendations in court hearings.

Participates in case staffing in order to consult regarding proposed dispositional and treatment recommendations for difficult or unusual cases.

Acts as liaison between court and victims of juvenile crime in order to assess and satisfy warranted restitution.

Coordinates case processing with various divisions of the court.

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