



The University of New Hampshire

Justiceworks

in cooperation with

The Institute on Disability

CHILDREN WITH DISABILITIES
IN THE NEW HAMPSHIRE
JUVENILE JUSTICE SYSTEM

A REPORT TO THE DIVISION OF
JUVENILE JUSTICE SERVICES

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

STATE OF NEW HAMPSHIRE

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Introduction

The New Hampshire Department of Health and Human Services, Division for Juvenile Justice Services, engaged the University of New Hampshire’s Justiceworks program, in cooperation with the University’s Institute on Disability, to conduct a study that would describe the impact of the New Hampshire juvenile justice system on children with disabilities. It has been long understood that the nation’s juvenile corrections system contained a disproportionate population of children with conditions such as learning disabilities, mental retardation, emotional disturbance, and attention deficit hyperactivity disorder. The New Hampshire youth corrections system has not, however, been systematically

studied. This examination of the population at the Youth Development Center (YDC) is the first comprehensive investigation of the range of disabilities represented at that facility in the context of offense patterns, adjudication history, and educational background.

This study sought to go beyond the corrections population, however. Little research has been conducted in any jurisdiction to examine how disabilities are represented in the juvenile court system as a whole¹. By including both courts and corrections, the study would describe the system in a way that promoted understanding of populations and the decisions that affect them at two important stages of the system. In addition, because such a small fraction of delinquency actions result in a YDC commitment, the study of a corrections population would be expected to overemphasize the circumstances of youth with more serious offenses, or higher rates of noncompliance with less severe sanctions, or both. The project was designed to examine two of New Hampshire's busiest district courts, Manchester and Concord. Resources were not available to sample courts throughout the state, so generalization of the study's results should be done with caution. Nevertheless, the study begins to assemble a picture of the population of children moving through New Hampshire's delinquency system.

This study can be the foundation for further examinations of specific aspects of the handling of youth with disabilities. Scrutiny of court practices, defense representation, and competency evaluations, for example, may further reveal the dynamics that lead to disproportionate impact, as well as opportunities to reduce that impact and improve results for children with disabilities. The study may also set the stage for examination of school practices and other interventions that can improve outcomes for children at risk for delinquency. Finally, the study can be used as a benchmark against which to measure future developments at YDC and the two studied district courts.

The study was largely descriptive and represents an attempt to identify the contours of the population in the three locations, in terms of demographic information, types of charges, and adjudication and disposition of cases. We did not set out to conclude *how* children with disabilities arrive in the justice system, although we were aware that there might be opportunities to identify avenues for potential intervention, particularly in the court process.

Central to this project is assessment of the juvenile justice system's ability to identify children with disabilities. Effective mechanisms to do so are fundamental to the system's ability to both adjudicate cases and respond to the needs of youth. Timely and accurate identification supports the system in several ways:

¹ National Council on Disability, *Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Status of Evidence-Based Research* (2003), available at <http://www.ncd.gov/newsroom/publications/juvenile.html>.

- With a proper understanding of the emotional and mental condition of their clients, lawyers are better able to communicate with them², assist in the difficult decisions faced by them, and effectively investigate issues of culpability and dispositional needs. A competent and motivated attorney is, by virtue of her confidential relationship with her clients, the best positioned of the principal court participants to gather information about clients' conditions and communicate it to prosecutors, courts, treatment programs, and corrections facilities.
- Judges and court staff who are well informed about the condition of those who are subject to the court are better able to accommodate disabilities through modification of style and mode of communication about the justice process to juveniles and their families, adjust procedures, and make informed decisions about such matters as accepting waivers of important rights. Courts can also make earlier and more accurate assessments of the need for information about disabilities from schools and other institutions.
- Treatment programs, detention centers, and corrections facilities, once given information about disabling conditions, can provide more effective programming and educational services upon arrival of juveniles.
- The parties, probation officials, and courts can best plan for dispositions which address treatment needs and protect public safety once those needs and their relationship to antisocial conduct are understood.

The Relationship between Disability and Delinquency

Children with learning disabilities, emotional and behavioral disorders, and developmental disabilities are represented disproportionately in the juvenile justice system. Most research has focused on incarcerated youth as opposed to all court-involved youth. Although estimates vary, some studies have suggested that as many as 70% of residents of youth correctional facilities suffer from one or more disabilities³.

The prevalence of mental health disorders alone is striking. A research review conducted in 2000 concluded that the majority of youth in the juvenile justice system had a diagnosable mental health disorder, and that at least 20% of youth

² See generally, American Bar Association Juvenile Justice Center, *Talking To Teens In The Justice System: Strategies for Interviewing Adolescent Defendants, Witnesses, and Victims*, available at <http://www.abanet.org/crimjust/juvjus/maca2.pdf>

³ Leone, P.E., Zaremba, B.A., Chapin, M.S., and Iseli, C., *Understanding the Overrepresentation of Youths with Disabilities in Juvenile Detention*, District of Columbia Law Review 3(Fall):389-401 (1995).

in the juvenile justice system had mental health disorders serious enough to substantially interfere with community, home, or school activities⁴.

Mental health disorders, like many other disabilities, do not typically operate alone in increasing the chances that a child will engage in delinquency. Many children with diagnosable mental illnesses also have other risk factors such as family instability⁵. Just as in the general adult population, it is estimated that half or more of youth with mental health disorders have co-occurring substance abuse disorders, with the possibility of even higher rates of co-occurrence for court-involved or incarcerated children⁶.

A broad range of disabilities increase the likelihood of court involvement in general. One study concluded that 32% of children with learning disabilities and 57% of those with emotional disturbances are arrested at least once⁷. Learning disabled youth are believed to be 200% more likely to be arrested than non-disabled youth for comparable delinquent activity, are more likely to be adjudicated, and spend longer periods of time incarcerated or on probation⁸.

Theories of the Disability-Delinquency Relationship

Considerable attention has been paid in the literature to the relationship between disability and delinquency. Three predominant explanations have been proposed for the link:

⁴ J. Coccozza and K. Skowyra, *Youth with Mental Health Disorders: Issues and Emerging Responses*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Journal* Volume VII, Issue 1, (2000). Some believe that as many as 90% of youth in the juvenile justice system may qualify for a mental health diagnosis of some sort. Otto, R., *Responding to the Mental Health Needs of Youth in the Juvenile Justice System*, National Coalition for the Mentally Ill in the Criminal Justice System (1992).

⁵Members of minority racial and ethnic groups have higher rates of childhood disability, and receive lower quality services. Recent studies identify poverty, weak family structure, and associated parental stress as better predictive factors than race and ethnicity, which are themselves associated with poverty, family instability, and the like. See National Council on Disability, *supra* at note 1. For a general discussion of factors that influence delinquency, see Wasserman, G.A., Keenan, K., Tremblay, R.E., *Risk and Protective Factors of Child Delinquency*. Child Delinquency Series Bulletin, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, (2003), available at <http://ojjdp.ncjrs.org/pubs/delinq.html#193409>.

⁶ Edens, J.F. & R.K. Otto, *Prevalence of Mental Disorders among Youth in the Juvenile Justice System*, *Focal Point*, 11(1), 1, 6-7 (1997).

⁷ Wagner, M., D'Amico, R., Marder, C., Newman, L. & Blackorby, J., *The Second Comprehensive Report from the National Longitudinal Transition Study of Special Education Students*, Palo Alto, CA: SRI International (1992).

⁸ The Children's Law Center, Inc., *The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice*, Covington, KY (2001).

- 1) *Susceptibility Theory* proposes that youth with disabilities are simply more likely to engage in delinquent acts. Attributes such as suggestibility and impulsivity contribute to a predisposition to anti-social behavior;
- 2) *School Failure Theory* explains that disproportionate offending patterns are due to the difficulties and frustration of failure in school, which in turn leads to separation from positive structures and relationships and thus to criminal behavior;
- 3) *Differential Processing Theory* holds that children with disabilities are actually no more likely to engage in delinquent acts than other children. Rather, they are more likely to be caught up in the system and adjudicated. For example, they may have greater difficulty concealing criminal activity. They may be less able to cope with the court process and all that it entails, such as decision-making, relationships with attorneys, and effective communication in the courtroom. There may also be a greater likelihood of receiving a harsh disposition upon completion of the case, even holding other factors equal⁹.

Whichever of the hypotheses best explains disproportionate representation of children with disabilities, a number of characteristics seem to make these children more likely to be involved in the juvenile justice system:

- They may be alienated from the school and community. This alienation may be accelerated by greater contact with the school disciplinary system, which particularly in a time of zero tolerance policies increase the instances of both forced and voluntary separation from the school community.
- Their reduced social skills and poor decision-making abilities may increase their involvement in delinquent behavior.
- They may have a reduced ability to avoid detection and apprehension for delinquent behavior by school and police authorities.
- Their social skills may be so limited that harsher treatment results from the exercise of discretion by decision-makers in the school discipline system, the police system, and the court system. At virtually every stage, actors exercise discretion in deciding who to refer to police, who to charge and with what, whether to divert children to family or community sanctions, whether to place or release while the court process is active, etc. Each decision can have significant influence on the ultimate choice of whether a child is adjudicated and incarcerated, and a child's demeanor, communication skills, and general ability to respond effectively to authority figures likely affect the exercise of discretion.

⁹ See, generally, National Council on Disability, *supra* at note 1.

- They may have learning problems that interfere with positive, constructive responses to the actions of the school discipline and juvenile justice processes.

In addition to making it more likely to be involved in the juvenile justice system, learning problems, developmental disorders, and mental health conditions can significantly affect the ensuing process. Such disabilities can impair the ability to understand and waive Miranda rights, rights to speedy adjudication, rights to counsel, and the array of rights implicated when a juvenile pleads true to delinquency charges. They can also affect the ability to recall and then accurately and completely narrate the facts that are important to the case, identify important witnesses, and testify and behave in the courtroom in a way that supports defense objectives. Also affected can be the ability to understand and participate in important decisions, such as whether to plead true or contest charges, whether to testify, and the like¹⁰. Finally, such conditions can limit a juvenile's ability to respond to rehabilitative interventions, especially when they are not targeted at the disability that is present.

Prevalence of Disabilities in the United States and New Hampshire

The results of this study are best understood in the context of the incidence of disability in studies of the general population and of delinquent youth.

National Disability Rates

Table 1 summarizes the frequency of various disabilities as found in the literature. The large amount of variability has been attributed to the use of inconsistent definitions and methods of measurement in the various studies, as well as the investigation of different population types¹¹.

¹⁰ When considering the impact of disability on a child's ability to understand and otherwise negotiate the shoals of a delinquency prosecution, it is important to recognize that most adolescents bring the impairment of immaturity to the proceedings even without a disability. Immaturity alone may impair the ability of many juveniles to adequately understand and participate in delinquency proceedings, and it is believed that age may not be an adequate benchmark for maturity, particularly when disability is part of the picture, as mental disorders may delay relevant development such that children suffering from them are behind their age mates in both cognitive and emotional maturity. Grisso, T., *The Changing Face of Juvenile Justice*, Psychiatric Services, 51, 425-426, 438 (2000).

¹¹ National Council on Disability, *supra* at note 1.

Table 1 Estimates of prevalence of disorders among adolescents in community and delinquency samples, United States

Disorder	Community Samples (%)	Delinquent Samples (%)
Conduct disorder	2-10%	41-90%
Attention deficit disorders	2-10	19-46
Substance abuse and dependence	2-5	25-50
Mental retardation	1-3	7-15
Learning and academic disabilities	2-10	17-53
Mood disorders	2-8	19-78
Anxiety disorders	3-13	6-41
Posttraumatic stress disorder	1-3	32
Psychoses and autism	0.2-2	1-6
Any disorder present	18-22	80

Almost all studies of disability in delinquent populations have investigated institutionalized populations, and the few court studies are believed to understate the incidence of disability among court-involved youth. Much of that population goes unidentified by the justice system. Justice agencies may not receive all information relevant to disability, and the court-involved population is less likely to be identified in the first instance by schools. Schools may fail to detect some members of this population because they are more likely to be absent for prolonged periods of time and less likely to have assertive (or even compliant) families who will participate effectively in the special education identification process. Most research is based on records review rather than actual evaluation and diagnosis conducted for the studies, so the validity of results is highly dependent on previous identification. This project had similar limitations.

A related feature of the delinquent population is that even an accurately determined disability rate would probably understate the levels of impairment at

work. Many children who fail to meet the thresholds for particular diagnoses nevertheless are hindered in their functioning by one or more conditions¹².

Despite these restrictions, previous studies identify several key features of the population. In all categories, the rate of disability incidence in delinquency populations is higher, sometimes to a dramatic degree. Mood disorders and conduct disorders predominate among mental health diagnoses, and there is a high incidence of post-traumatic stress disorder, generally considered to be a lingering feature of child neglect and abuse.

New Hampshire Disability Rates

New Hampshire's rate of disability is generally higher than that of the nation as a whole. According to the United States Department of Education, in 2001 New Hampshire's children had higher than average levels of disability in nearly all categories monitored by the agency responsible for special education oversight. This puts New Hampshire at about the middle of the range of New England states. See Table 2.

Table 2 Disability Percentage (Based on Estimated Resident Population) of Children Ages 6-17 in general population, New England and United States¹³

State	All Disab.	Specific Learning Disab.	Speech or Language Impairment	Mental Retardation	Emotional Dist.	Other Health Impairments
CN	9.41	4.52	1.73	0.55	1.03	0.94
ME	11.28	4.78	2.70	0.39	1.41	0.75
MA	11.59	7.10	1.74	1.14	1.00	0.09
NH	9.62	4.75	1.95	0.37	0.87	1.21
RI	12.57	7.29	2.22	0.52	1.11	0.97
VT	9.52	3.64	1.53	1.06	1.55	0.83
US	8.92	4.50	1.72	0.95	0.74	0.40

Although the New Hampshire rate of disability is somewhat higher than the national average, its graduation rate for high school students with disabilities is

¹² Kazdin, A.E. (2000), Adolescent development, mental disorders, and decision making of delinquent youths, In Grisso, T. & Schwartz, R.G. (Eds.), Youth on trial, Chicago, IL.: University of Chicago Press.

¹³ Modification of Table AA9, OSERS 23rd Annual Report to Congress on the Implementation of the IDEA, United States Department of Education (2002), available at <http://www.ed.gov/about/reports/annual/osep/2001/index.html>

higher (70.1% vs. 57.4%), and its dropout rate for high school-aged students with disabilities is lower (20.9% vs. 28.9%)¹⁴.

Characteristics of Children with Disabilities

Children with disabilities have a number of characteristics which put them at higher risk for alienation from school, peers, and supportive institutions, and therefore at increased likelihood of delinquency and court involvement. Although the mechanisms may differ from condition to condition, students with disabilities are more likely to drop out of school during adolescence than their non-disabled peers, perhaps due to the frustration of repeated school failure, lack of attachment to teachers and other students, and higher levels of experience with school disciplinary measures.

Children with *learning disabilities* have deficits in information processing, perception, memory, or attention. Such children most commonly have impairments in reading skills, although the category also includes problems in written and oral expression, reading and listening comprehension, and mathematical reasoning and calculation. There may also be accompanying difficulties in social skills. Peers may ignore or reject them due to their poor academic performance and difficulty negotiating social situations. As a result, social isolation and low rates of participation in social and extracurricular activities may accompany struggles with academics and lack of attachment to teachers, coaches and other adult figures. Attachment to a prosocial adult outside the family has been recognized as a protective factor for adolescents otherwise at risk for drug use and delinquency, as has the recognition for achievement in school and in extracurricular activities¹⁵.

A commonly identified risk factor for court involvement is substance abuse, and low self-esteem may predispose adolescents with learning disabilities to such activity, as may neurological factors, peer rejection, school failure, and low commitment to school. Further, children with learning disabilities may be viewed by adults as non-compliant due to their difficulties paying attention to, understanding, and remembering directions. It is also believed that learning disabled youth who engage in antisocial behavior are more likely to be apprehended, prosecuted, and found delinquent than their counterparts without disabilities due to a lack of verbal and social skill to escape detection or effectively relate to law enforcement and court personnel.

Students with *emotional disturbance* experience emotions and/or behaviors that interfere with their abilities in the classroom. The mental health conditions that lead to this designation are often accompanied by low self-esteem and poor social skills. Similarly to children with learning disabilities, they may have

¹⁴ National Center for Learning Disabilities, New Hampshire Statistical Profile, available at <http://www.nclld.org/advocacy/pdf/NHData.pdf>, accessed September 11, 2003.

¹⁵ National Council on Disability, *supra* at note 1.

inadequate relationships with parents, other adults, siblings, and peers. Students with emotional and behavioral disorders as a group have lower grades, more failed courses, and more grade retentions than either the general population or other disability types. They are believed to have the highest dropout rate of any other disability category¹⁶. Dropping out of school itself brings a very high risk of anti-social behavior and contact with the justice system: as many as 73% of youth with emotional and behavioral disorders who drop out of school are arrested. This high rate of arrest is consistent with the high rate of mental illness among adult prison inmates, which is estimated to be two to four times that of the general population¹⁷.

One consequence of the high rates of mental illness among court-involved youth is the impact many mental health conditions can have on decision-making. Mental disorders play a dual role in the quality of choices made by delinquent youths. First, core symptoms of some of the disorders can directly interfere with decision-making leading to delinquent behavior. Impulsiveness as a feature of ADHD is an obvious example. Impulsiveness can also be present in many other disorders such as posttraumatic stress disorder and oppositional defiant disorder.

Second, the child, parent, family, and other contextual influences with which mental health conditions are often associated also are relevant to adolescent decision-making. Indeed, these influences are likely to be more relevant than core symptoms.¹⁸

Impaired decision-making can also have significant effects during the prosecution of the juvenile itself, as choices with far-reaching consequences must be made by the juvenile about often unfamiliar and complex procedures, frequently in the face of real or perceived pressures from parents, judges, police or other authority figures.

Attention deficit hyperactivity disorder (ADHD) is considered to be the most commonly diagnosed behavioral disorder of childhood, affecting 3 to 5 percent of school-age children. Core symptoms include developmentally inappropriate levels of attention, concentration, activity, distractibility, and impulsivity. ADHD has also been shown to have long-term adverse effects on academic

¹⁶ Wood, S. J.; Cronin, M. E., *Students With Emotional/Behavioral Disorders And Transition Planning: What The Follow-Up Studies Tell Us*, 36 *Psychology in the Schools*, 327 (1999) [reviewing literature]; United States Department of Education, *The Sixteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (1994), reports that 40% of those classified as emotionally and behaviorally disordered exit high school by dropping out. Reports since 1994 do not include comparable statistics.

¹⁷ Bureau of Justice Statistics Special Report, *Mental Health Treatment of Inmates and Probationers* (1999, NCJ 174463).

¹⁸ Kazdin, A.E., "Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths", In Grisso, T. & Schwartz, R.G. (Eds.), *Youth on Trial*, Chicago, IL.: University of Chicago Press (2000).

performance, vocational success, and social-emotional development¹⁹. It commonly occurs co-morbidly with other special education categories²⁰ and is prevalent among incarcerated youth²¹.

New England leads the nation in Ritalin usage per capita, and New Hampshire leads the other five New England states²². Suggested causes for the high rates of Ritalin usage include the direct marketing of ADHD medication to parents, endorsement of their use under appropriate circumstances by the American Academy of Pediatrics, and school pressure on parents to medicate their children²³.

Speech and language disabilities encompass both problems with the use of spoken language (speech impairments) and understanding of the information communicated by language (language impairments). The incidence of speech and language impairments and associated special education designations diminish significantly as children move through the elementary grades, although many students with other special education designations in later years were first identified as speech and language impaired. Because the designation is typically assigned early and is later supplanted with other special education coding, evidence of speech and language labeling was infrequently found in the study samples.

Methodology

Our investigation began by examining files from YDC commitments during calendar year 2001. Our principal objective was to describe the population in terms of demographics, court and school history, and disability status. This would allow for an analysis of the interplay of disability status, offending patterns, and adjudication process.

As with the YDC stage of the project, our purpose in the district courts was to describe the population of juveniles with new case entries during 2001. This description would emphasize the presence or absence of known disabilities, but

¹⁹National Institutes of Health Consensus Development Conference Statement, *Diagnosis and Treatment of Attention Deficit Hyperactivity Disorder* (1998), available at http://odp.od.nih.gov/consensus/cons/110/110_statement.htm.

²⁰ McKinney, J., Montague, M., & Hocultt, A., *Educational Assessment of Students with Attention Deficit Disorder*, *Exceptional Children*, 60, 125-131 (1993).

²¹ Farrington, D., Loeber, R., & Van Kammen, W., "Long-Term Criminal Outcomes of Hyperactivity-Impulsivity-Attention Deficit and Conduct Problems in Childhood," in L. Robins & M. Rutter (Eds.), *Straight and Devious Paths from Childhood to Adulthood* (pp.62-81), Cambridge, England: Cambridge University Press (1990).

²² Office of Applied Studies, Substance Abuse and Mental Health Services Administration, *State Estimates of Substance Use from the 200 National Household Survey on Drug Abuse: Volume I, Findings*, National Institute on Drug Abuse, 2002.

²³ Albernaz, Ami, *Debate on Ritalin Use Continues*, *Massachusetts Psychologist*, October 2003.

in order to begin to understand differences in offense patterns, procedure, and demographic characteristics, it would also encompass a variety of data elements about charged offenses, personal and family characteristics, and the course of the adjudication process. A comprehensive table of the data elements collected during both phases of the study can be found in Appendix A.

Identification of the true extent of any particular condition would require actual screening of the study population, interviews of family, and if possible collection and review of additional records. In our study we confined our examination to the review of documentary evidence in court and YDC files. We necessarily relied on determinations of disability made by evaluators in the schools and elsewhere. Similarly, the accuracy of our analysis is dependent on the completeness of the written records. We did not gain access to the historical special education data held by the New Hampshire Department of Education, so the history of labels and diagnoses we were able to gather was inconsistent. Because we had access to the special education files held by the YDC school, we had relatively complete information about current educational coding for the YDC sample.

We identified our samples by using commitments and case entries during calendar year 2001. Our objective was to gather a full calendar year of data from both courts and YDC so that seasonal variations in case entries and commitments, particularly due to the school calendar, would not undermine the validity of results. By using case entries and commitments during the year rather than, for example, examining all residents at YDC at a particular time, we avoided skewing the results by focusing too much on longer-term YDC residents or cases which were kept active longer by the court. The resulting data set represents a full cycle in the annual stream of juveniles and their cases through these institutions.

The two sources of data had reciprocal strengths and weaknesses. The YDC files were relatively rich in information such as family background, history of treatment and diagnoses, and educational intervention. They did not, however, consistently contain reliable and complete information about court proceedings, even concerning the offense that triggered commitment. On the other hand, the district court files we examined were relatively sparse in even the most basic demographic information such as race and the marital status of parents, and uneven in materials which concerned treatment or educational labels and interventions. They were, however, largely complete records of at least those court proceedings that concerned delinquency. There was less confidence about completeness of information about proceedings in other courts, or previous involvement in child protection or Children in Need of Services (CHINS) proceedings.

A significant goal of the project was to understand how the delinquency system responds to the potential of disability being present, by looking at the efforts taken to identify juveniles with disabilities, the quality of information provided by

schools²⁴ and other sources, and efforts undertaken by attorneys and others to respond to the presence of a disability. Although the YDC data was relatively complete with regard to social history and disability information, the court files often lacked the disability information sought by the project. Although no specific conclusion can be reached from the lack of such information, it is suspected that this is more due to the procedures followed in the typical delinquency case than to the true nature of the population of court-involved youth.

Courts in New Hampshire (and in many other jurisdictions) do not employ screening processes designed to identify disabilities at the time delinquency cases are entered, or when juveniles first appear in court. They allow juveniles to waive counsel and enter pleas without counsel at early stages of the proceedings before information concerning potential disabilities has been collected. A significant characteristic, then, of the New Hampshire juvenile justice system is that it is not designed to identify disabilities before proceeding with important stages of delinquency proceedings. As has been observed, "youth in the juvenile justice system are much more likely to have both identified and *undiscovered* disabilities²⁵." (emphasis added).

The effectiveness of the system to accurately and completely identify disabilities can be essential:

Information about a youth's disability may be relevant at every stage of a juvenile court case. It may help to determine whether formal delinquency proceedings should proceed or suggest important directions for investigation and case strategy. Information about the disability often helps to explain behavior in a way that facilitates constructive intervention, and it is essential to arriving at a disposition that will both meet the youth's rehabilitative needs and comply with IDEA requirements²⁶.

In addition, early identification of a disability will allow any receiving institution to prepare for and provide special education services required by IDEA²⁷. In New Hampshire, the federal district court has required that services be provided promptly in the case of children placed by a court²⁸. Moreover, well-designed

²⁴ Identified as a significant unanswered question in the National Council on Disability Report, *supra*, at note 1.

²⁵ Burrell, S. and Warboys, L., *Special Education and the Juvenile Justice System*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin (2000).

²⁶ *id.*

²⁷ The federal Individuals with Disabilities Education Act (IDEA), requires a "free appropriate public education" for children with disabilities even if they have been placed outside the home and local school district by a court.

²⁸ See *James O., et. al. v. Donahue*, U.S.D.Ct. NH #86-6-M.

special education services may assist in a successful re-integration to school after absence due to detention, commitment, or residential placement.

Sampling Procedure

The study design had several objectives. Due to the sensitive nature of the data, effective confidentiality procedures were of paramount importance. It was also critical that largely narrative information be collected in a manner that allowed quantitative analysis later in the study.

Cases were identified by docket number or YDC file number only. No documents were removed from the study locations with names or other identifying information. All persons collecting information signed agreements with the YDC that outlined the purposes and limitations of their activities.

So that identification could not be made through dates of birth, that information was only collected in the form of the calendar quarter of birth, and the mid-point of the quarter was used for age calculations.

The study design contemplated collection of a 100% sample from YDC and samples of 100 cases each from the court locations. With the court sample, our objective was to collect information about 100 juveniles who had been subject to new charges during the study year, regardless of the number of charges that might have been entered against them, or whether they had charges entered in years other than the study year. As sampling in the courts progressed, we were able to collect a 100% sample in the Concord District Court, but kept close to the sample of 100 in Manchester.

In Manchester we selected cases by docket number using a random number table. Because a docket number for a particular youth might be assigned to only one of several charges handled together as part of the same case, court personnel assisted in identifying the full collection of charges associated with the selected docket number. We also recognized that better information would be gathered if we reviewed all cases for each selected child, as important information about disability might be filed in only one case of several involving the same child. Court personnel in both the Concord and Manchester courts helped to identify all cases involving the studied juveniles. We thus reviewed many more charges and cases than indicated by the sample size itself.

During the YDC phase of the study, collection of information about court proceedings was also important, so we focused on the offense that triggered the YDC commitment order itself. There are shortcomings to this approach, as courts may enter significant orders in a particular case because it was the first case involving the juvenile, or the case in which an order of conditional release was issued which was later violated by a more serious offense, or similar reasons which do not turn on the true import of particular acts. Nevertheless, it was determined that the committal offense method was better than any identified alternative.

Findings

Demographics

Compared with the national juvenile corrections population, the court population and YDC have a higher percentage of females. In addition, YDC has a higher rate of disproportionate representation of racial minorities.

The YDC population is 77% male and 23% female. Nationally, the juvenile corrections population is about 88% male and 12% female²⁹. The two study courts also had a higher proportion of girls than nationally, where 28% of all juvenile arrests were for females in 2000³⁰. See Table 3.

**Table 3 Gender distribution
District Court samples**

	Girls		Boys	
	#	%	#	%
Manchester District Court	32	32	69	68
Concord District Court	72	38	119	62

The racial composition of the 2001 YDC population is shown in Table 4. There is a disproportionately high representation of racial minorities in the YDC population as compared to the population of minority youth in New Hampshire as a whole. The disproportionate confinement rate is 3.1, which is similar to the rate of 3 reported in recent literature from the United States Department of Justice³¹. The number of minority youth is small, however, and the change of just a few residents would modify the rate significantly.

Unfortunately, we are unable to describe the racial makeup of the court population, as fewer than 10% of the cases examined in the district courts contained information about race. We cannot, therefore, determine if the rate of disproportionate minority confinement echoes the rate among cases entered into court or among those that result in findings of delinquency.

²⁹ Snyder, H.N., Sickmund, M., *Juvenile Offenders and Victims: 1999 National Report*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (1999).

³⁰ Snyder, H.N., *Juvenile Arrests 2000*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention *Juvenile Justice Bulletin* (2002).

³¹ Snyder, H.N., Sickmund, M. (1999), *supra* at note 29.

Table 4 Race of YDC residents

	YDC percentage	NH Population percentage ³²
All minorities	16.3%	5.2%
American Indian	1.6	0.3
Black	7.3	0.9
Caucasian	83.7	94.8
Hispanic	6.5	2.5
Mixed race	.8	1.8

The age at court entry and first commitment to YDC was also collected. In the court samples, we used the marker of juveniles' ages at the time of the most serious offense in the sampled cases. As shown in Figures 1 and 2 , both courts showed a similar age profile, with the most common age being 16, followed closely by 15.

³² United States Census Bureau

Children with Disabilities in the New Hampshire Juvenile Justice System

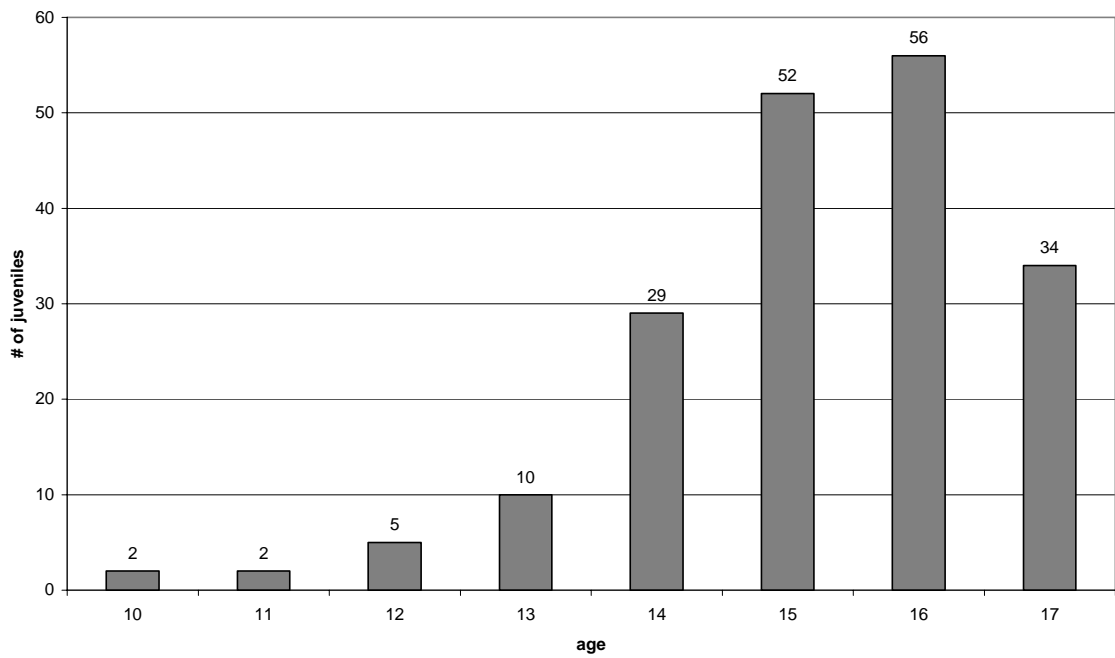


Figure 1
Age at date of most serious offense
Concord District Court
(rounded to nearest year)

Children with Disabilities in the New Hampshire Juvenile Justice System

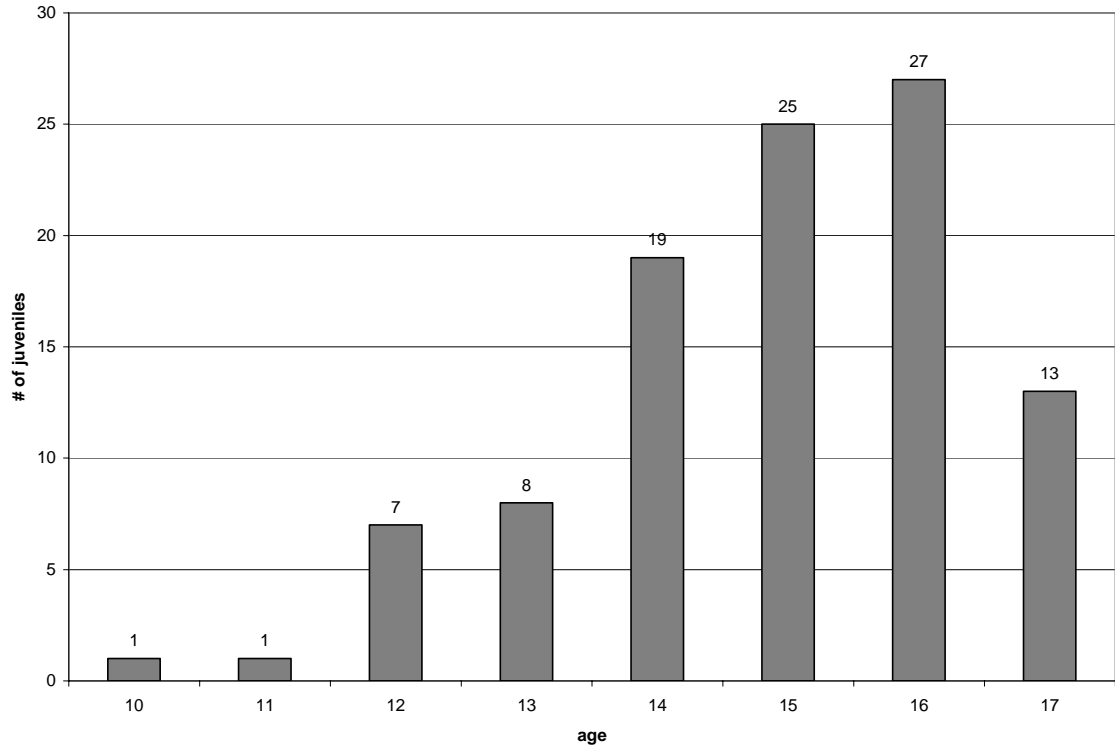


Figure 2
Age at date of most serious offense
Manchester District Court
(rounded to nearest year)

We also examined the age of first commitment in the YDC population. The age profile of YDC commitments is shown in Figure 3.

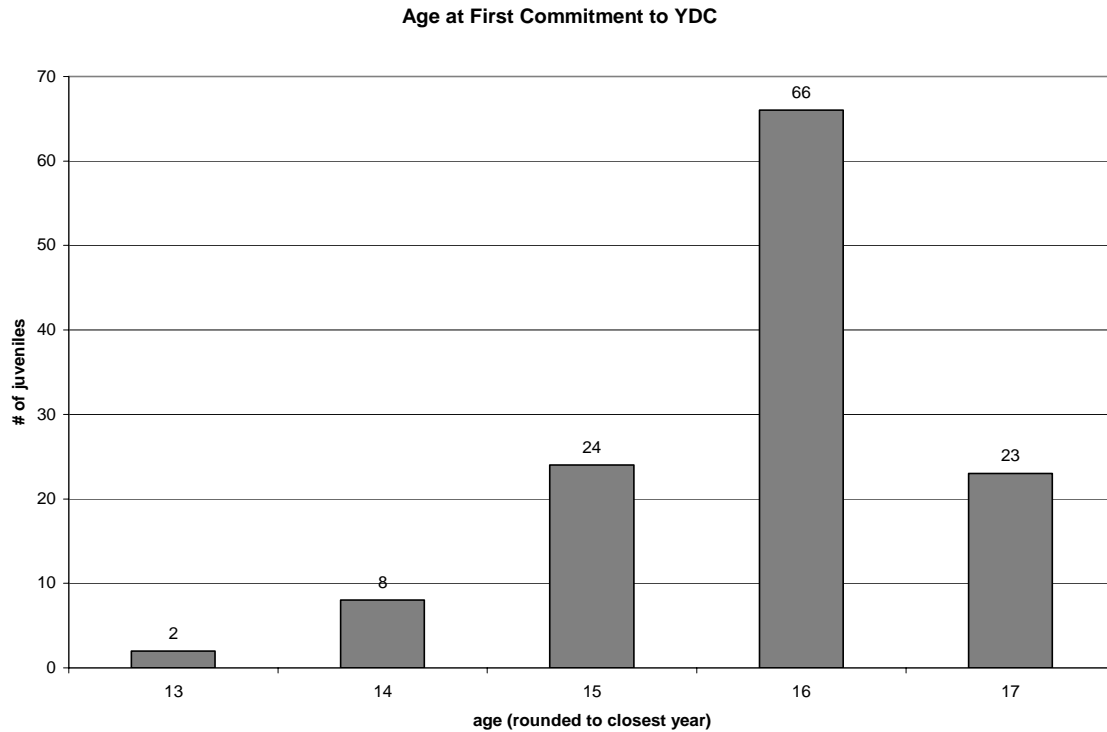


Figure 3
Age at first commitment to YDC

We expected some variation based on disability incidence, supposing that earlier alienation from school, higher rates of family instability among disabled youth, and the presence of other risk factors would accelerate the development of delinquent behavior as compared to the non-disabled population. Our analysis, however found virtually no difference in the age at first commitment between the populations of residents with and without disabilities.

Grade

We collected information about school advancement in the YDC sample in light of the association of school failure, disability, and delinquency. Unfortunately, evidence of school retention was too sparse to analyze. We collected grade information regardless of whether or not the child was enrolled in school immediately prior to their court involvement or commitment. The average grade for all residents was nine, and was consistent for both the disabled and non-disabled populations. See Table 5. We examined whether there were differences between any of the identified disabilities in the school grade at commitment and found only minor differences that were not significant. The majority (55%) of YDC commitments are entered against juveniles who have completed grade 9 only. The transition from middle school to high school thus appears to be a critical time for many juveniles, and may be an appropriate focal point for interventions.

Children with Disabilities in the New Hampshire Juvenile Justice System

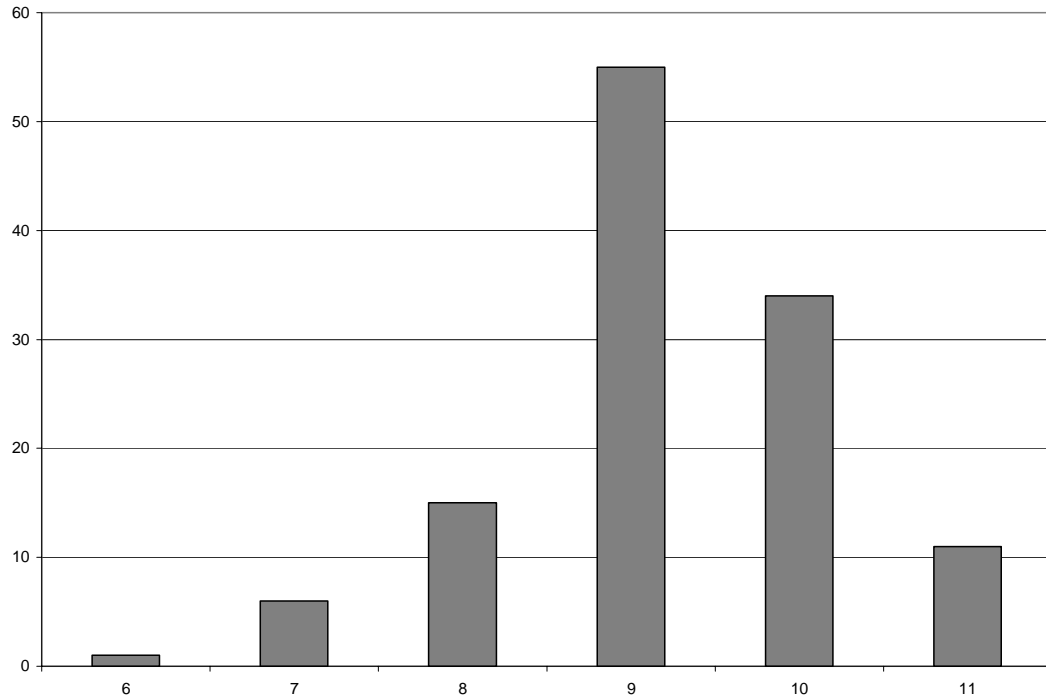


Figure 4
Grade at first commitment to YDC

Table 5 Grade at first commitment to YDC
By disability

Grade at first committal	6	7	8	9	10	11
All YDC commitments (122)	1	6	15	55	34	11
No known disability history (30)	0	0	4	14	10	5
Any known disability history (89)	1	6	11	41	24	6
ED (41)	0	5	6	15	13	2
LD (21)	1	1	3	11	5	2
ADHD (27)	0	2	2	12	9	2
SL (9)	0	2	1	4	1	1

The court samples contained grade information that was both inadequate and inconsistent, so no meaningful analysis could be conducted.

The marital status of each resident’s parents was documented, as family stability has been identified as a risk factor for delinquency. The results are in Table 7. Nearly half of residents’ parents were divorced at the time of commitment, and only one out of five were married at that time. Although there are associations between marital status of parents and delinquency, better predictors of delinquency are personal characteristics of parents (particularly mothers), which may predict both the behavior of children and the likelihood of single parenthood or divorce³³.

Table 6 Marital status of parents at time of child’s commitment to YDC

	#	%
Married	25	21%
Never married	32	26%
Divorced	57	47%
One or both deceased	7	6%

Among the court populations, there was considerable variation between the two study locations, but shortcomings in the data may undermine any conclusions that could be drawn from the variation. See Table 7. Marital status information was taken in most cases from financial affidavits, which were not always fully completed. In addition, the marital status area of the form affidavit was apparently confusing to many of those completing it.

The Manchester population shows a lower marriage rate for parents than either the Concord or YDC populations. There were more uncompleted affidavits in Manchester, however, which may explain part of the difference. Among the cases that contained marital status information, the marriage rate in Concord is 28% and is 19% in Manchester, a smaller statistical difference.

³³ Emery, R., Waldron, M., Kitzmann, K., & Aaron, J., *Delinquent Behavior, Future Divorce or Nonmarital Childbearing, and Externalizing Behavior Among Offspring: A 14 Year Prospective Study*, *Journal of Family Psychology*, 13, 568-579 (2000).

**Table 7 Marital status of parents at time of case entry
Concord and Manchester District Courts**

	Concord		Manchester	
	#	%	#	%
Married	43	23%	14	14%
Never married	11	6%	5	5%
Divorced	59	31%	23	23%
One or both deceased	11	6%	8	8%
Parents living apart but marital status unknown	27	14%	25	25%
Unknown	38	20%	25	25%

The YDC and court populations both show what appear to be higher rates of divorced parents than New Hampshire as a whole. The portion of the New Hampshire population reporting itself as divorced in 2000 was 10.5%³⁴. This comparison statistic should be viewed with caution, as it does not count as divorced those who have remarried. In New Hampshire, 20% of children lived in single parent households in 2000³⁵. Nationally, about 69 percent of children lived with both parents in 2000³⁶.

New Hampshire does have a higher proportion of “coupled” households with partners married and unmarried than either the Northeast or the nation as a whole³⁷.

³⁴ Kreider, Rose, and Simmons, Tavia, *Marital Status: 2000*, Census 2000 Special Reports, United States Census Bureau, (2003), available at <http://www.census.gov/prod/2003pubs/c2kbr-30.pdf>.

³⁵ The Children's Alliance of New Hampshire, *Kids Count New Hampshire 2003 Data Book*, available at http://www.childrennh.org/secure/kc_2003.php.

³⁶ Federal Interagency Forum on Child and Family Statistics, *America's Children 2003*, available at <http://childstats.gov/ac2003/indicators.asp?IID=103&id=1>.

³⁷ Simmons, Tavia, and O'Connell, Martin, *Married-Couple and Unmarried-Partner Households: 2000*, Census 2000 Special Reports, United States Census Bureau (2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf>.

Disability Incidence

Central to our investigation was documentation of evidence of disability. As previously noted, we found extensive disability information in the YDC population, but very little in the court portion of the study.

Disability Incidence at YDC

The three primary disabilities found among juvenile corrections populations are specific learning disability, emotional disturbance, and mental retardation³⁸. Although many cases with designations of learning disability and emotional disorder were found in our samples, few instances of even a history of mental retardation were found in the samples. There was one case in Manchester with a mental retardation described as in the “mild range,” no cases in Concord, and one case at YDC with an IQ score within a few points of the cutoff for mental retardation. The YDC sample also included one case with an earlier designation of mental retardation that had been abandoned years before, presumably due to reevaluation.

Table 8 shows the overall incidence of disabilities in the YDC population as compared to the New Hampshire youth population in general. In New Hampshire, a significantly greater proportion of children with disabilities are represented in the juvenile corrections population than in the population at large.

These results are consistent with the results of studies of delinquent populations around the country. See Table 1.

A breakdown of the disability incidence by gender shows that for most disability categories there is not a large difference in the gender representation. As general population figures would predict, learning disabilities, emotional disturbance and ADHD are more common in boys at YDC than girls³⁹.

³⁸ See Rutherford, R., Bullis, M., Wheeler Anderson, C., & Griller, H., *Youth with Special Education Disabilities in the Correctional System: Prevalence Rates and Identification Issues*, Office of Juvenile Justice and Prevention and Office of Special Education Programs, Monograph available from The National Center on Education, Disability, and Juvenile Justice, University of Maryland, 1224 Benjamin Building College Park, MD 20742.

³⁹ National Council on Disability, *supra* at note 1.

Table 8 YDC and New Hampshire disability in adolescent population

	YDC		NH
	#	%	%
Total Population	123		
Any Disability ⁴⁰	90	73%	9.62%
Emotional Disturbance	45	37	.87
Learning Disability	30	24	4.75
Other Health Impairment (all ADHD in YDC sample)	27	22	1.21
Speech/Language	17	14	1.95

**Table 9 YDC disability and gender
(percentages indicate gender percentage of each disability)**

	Girls		Boys	
	#	%	#	%
Total Population	28	23%	95	77%
Emotional Disturbance	9	20	36	80
Learning Disability	17	17	52	83
Medication History	2	25	27	75
Other Health Impairment (all ADHD)	2	7	25	93
Speech/Language	5	24	25	76
Substance Use/Abuse History	25	25	75	75

⁴⁰ For this table, YDC population is defined as any history of any of the listed disabilities, as well as psychoactive medication or Axis 1 diagnosis. The general population figures are from the *OSERS 23rd Annual Report to Congress*, see *supra* at note 13, which tracks 13 different disability categories: specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, multiple disabilities, hearing impairments, orthopedic impairments, other health impairments, visual impairments, autism, deaf-blindness, traumatic brain injury, and developmental delay. However, 9 out of 10 children served under the IDEA fall within the four designations of specific learning disabilities speech or language impairments, mental retardation, and emotional disturbance.

Disability in the Court Sample

Set out in Tables 11 and 12 is the occurrence of 6 disabilities (and related indicators) among the female and male population of the two courts' delinquency entries during 2001. As described above, the court files reviewed were disappointingly meager in the extent and quality of information about disabilities. As a result, the disability incidence information is of limited utility.

**Table 10 Disability distribution
Concord District Court**

	Girls		Boys	
	#	%	#	%
Total Population	72	38%	118	62%
Emotional Disturbance	2	3%	7	6%
Learning Disability	3	4%	12	10%
Medication History	9	13%	16	14%
Other Health Impairment (all ADHD)	3	4%	19	16%
Speech/Language	3	4%	5	4%
Substance Use/Abuse History	24	33%	50	42%

**Table 11 Disability distribution
Manchester District Court**

	Girls		Boys	
	#	%	#	%
Total Population	32	32%	69	68%
Emotional Disturbance	3	9%	9	13%
Learning Disability	3	9%	2	3%
Medication History	7	22%	10	14%
Other Health Impairment (all ADHD)	0	0%	8	12%
Speech/Language	1	3%	0	0%

Substance Use/Abuse History	6	19%	15	22%
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Drug Use and Abuse

The level of drug use and abuse history was strikingly high in the YDC sample, as shown in Table 10. It was not considered worthwhile to attempt to discern whether mention of alcohol or drugs in a youth's file reflected use, abuse, or addiction. The files did not consistently reflect evaluations for substance disorders, and rarely was an identified substance disorder the diagnosis that appeared to be driving the treatment program(s). We coded any evidence of use.

Fully four-fifths of the YDC population showed a history of substance use or abuse. Of course, these figures rely on disclosure by the juveniles, so there may be a higher incidence in fact. Nationally, more than half of 14 to 15 year-olds and more than two-thirds of 16 year-olds have used alcohol⁴¹. 2001 figures show that 28.4% of 12 to 17 year-olds reported using drugs at least once during their lifetime⁴². New Hampshire is among the top fifth of the states in alcohol use among 12 to 17 year olds (as well as other age groups), according to estimates based on 1999 and 2000.⁴³

Just as serious emotional disorders are linked to family circumstances that are themselves risk factors for juvenile delinquency, they are also linked to higher rates of drug and alcohol use. And the severity of emotional problems are associated with increased likelihood of adolescent alcohol use and dependence, as well as the use of and dependence on marijuana and other illicit drugs such as cocaine, inhalants, hallucinogens, and heroin.⁴⁴ Theories for the association between such disorders and substance use emphasize the interplay between symptoms of mental illnesses and the substances' effects ("self-medication"), the role of impulsivity and impairments to judgment brought about by some emotional and behavioral disorders, and the use of substances to forget unpleasant experiences or to fulfill a need that cannot otherwise be gratified.

⁴¹ Snyder & Sickmund (1999), *supra* at note 29.

⁴² Office of National Drug Control Policy Fact Sheet, *Juveniles and Drugs* (2003), available at <http://www.whitehousedrugpolicy.gov/publications/factsht/juvenile/index.html>.

⁴³ Use is defined as any use of alcohol within the month before the surveys. Wright, D. (2002). State Estimates of Substance Use from the 2000 National Household Survey on Drug Abuse: Volume I. Findings (DHHS Publication No. SMA 02-3731, NHSDA Series H-15). Rockville, MD: Substance Abuse and Mental Health Services Administration, Office of Applied Studies, available at <http://www.samhsa.gov/oas/2kState/PDF/Vol1/2kSAEv1W.pdf>.

⁴⁴ Substance Abuse and Mental Health Services Administration, *The Relationship Between Mental Health and Substance Abuse Among Adolescents*, (1999).

Table 12 YDC substance use by gender and disability

	Evidence of substance use or abuse	Total population	%
Total population	98	123	80%
girls	24	28	86
boys	74	95	78
any disability	70	90	78
no disability	28	35	80

The YDC sample showed little variation between youth with and without disability histories, and there was more documented use or abuse among the girls.

Medication History

In order to fully document evidence of mental health conditions in the YDC sample, information was collected about any evidence of the use of medication, past or present, which was associated with the treatment of disabling conditions which affect behavior, attention, or similar function. About half of the files contained reference to administration of such medications in documents such as psychological evaluations, special education plans, and pre-disposition reports. Because medical files were not reviewed, it is likely that medication usage is understated, as some of the population may have received medication for the first time while at YDC. The medications found in the YDC review are listed in Appendix D, along with their typical uses.

Offense Patterns

We then looked at the patterns of offending – both in terms of offense types and offense locations.

Offense Types

National studies portray a delinquency population with predominantly property offenses, and only a quarter of offenses in the category of crimes against persons. See Table 13.

**Table 13 Most serious offense type and sex
United States⁴⁵**

Most Serious Charged Offense	Girls	Boys
Person	26%	22%
Property	42	42
Drug	8	13
Public Order	24	23
Total	100%	100%

We also considered offenses by type rather than individual statutory violations, both to allow categorical evaluation and for comparison with national statistics. Offense types were assigned according to the following Table 14.

We looked at the distribution of offenses in two ways. In the court samples, we tabulated all offenses documented in the files, and also designated one offense in each case as the most serious offense. In the YDC sample, we also documented all offenses mentioned in the files, but separately identified the offense which was used by the courts to order the commitment to YDC.

⁴⁵ Source: Puzzanchera, C., Stahl, A.L., Finnegan, T.A., Tierney, N., and Snyder, H.N., *Juvenile Court Statistics 1999*, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (2003)

Table 14 Offense categories for analysis

<u>Person</u>	<u>Property</u>	<u>Drug</u>	<u>Public Order/Other</u>
aggravated felonious sexual assault	arson	possession of a controlled drug with intent to sell	contempt of court
criminal threatening	burglary	possession of controlled drug	disorderly conduct
first degree assault	criminal mischief	sale/distribution of a controlled drug	escape
kidnapping	criminal trespass		false public alarm
reckless conduct	forgery		falsifying physical evidence
robbery	fraudulent use of credit card		noncompliance with CHINS order
second degree assault	receiving stolen property		obstruction of justice
sexual assault	shoplifting		resisting arrest or detention
	taking without owner's consent		
	theft by unauthorized taking		

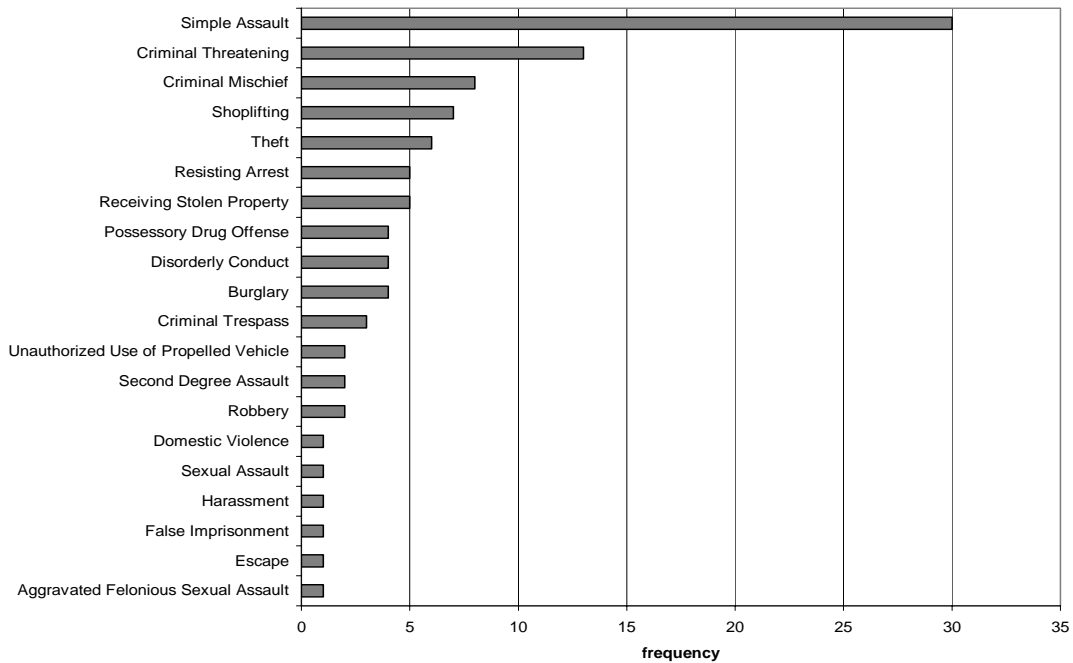


Figure 5
Charge distribution
Manchester District Court
(one randomly selected charge per juvenile)

Figures 5 and 6 show the distribution of offenses entered in the two study courts. The most frequent charge in both courts, by a large margin, was simple assault. Concord had many more possessory drug offenses than Manchester.

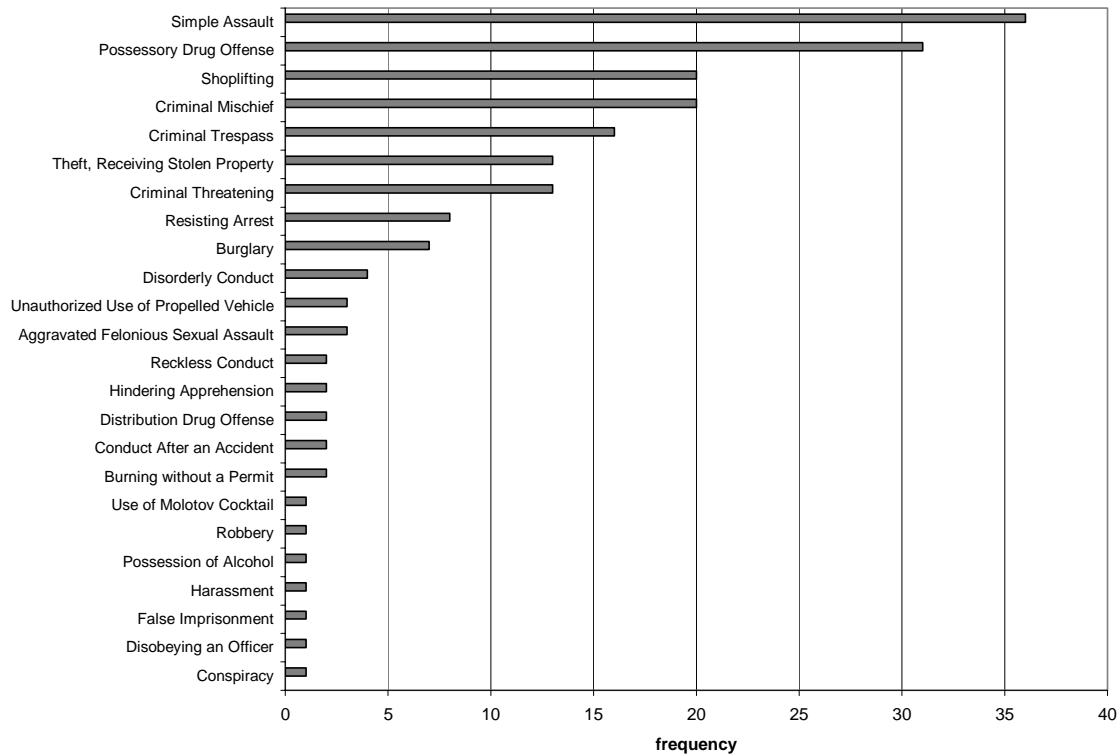


Figure 6
Charge distribution
Concord District Court
(one randomly selected charge per juvenile)

Table 15 shows the most serious charge's offense type in the two study courts.

Table 15 Most serious offense type and sex
Concord and Manchester District Courts

Most Serious Charged Offense	Concord		Manchester	
	Females	Males	Females	Males
Person	44%	40%	72%	67%
Property	43%	43%	19%	22%
Drug	10%	12%	0%	3%
Public Order/Other	3%	5%	9%	9%
Total	100%	100%	100%	100%

The difference in serious offense distribution between the courts is striking. There was a lower proportion of drug offenses and a higher proportion of offenses against the person in Manchester. This may reflect any number of influences, including the more urban nature of the Manchester court's jurisdiction, different enforcement priorities by the police, and institutional pressures to divert less serious cases.

The Concord data mirror national figures, showing that girls were referred more for person offenses than boys, and boys were referred more for drug offenses. The Concord cases, however, show a much higher proportion of person offenses than nationally⁴⁶:

Drug Offense Findings

The Concord drug offense figures are similar to national figures, which constituted about 9% of all arrests of juveniles under 18⁴⁷. It should be noted that this analysis, which uses the most serious charged offense, understates the total incidence of charged drug offenses. Drug use among delinquent youth is much more extensive than those figures would suggest, as drug testing of juvenile detainees at 5 (primarily urban) sites across the country during 2002 showed that about 60% of males and 46% of females were positive for drugs⁴⁸.

Offense Location

We examined offense location and its relationship to gender, disability, and other factors. Certain disabilities may be associated with behavior that is more likely to occur at particular locations⁴⁹. For example, it is hypothesized that a child with a learning disability may experience such frustration and ostracism at school that she is more likely to offend at that location than at others. Because the data on disability was incomplete in the court files, the court results may indicate the need for further work, but little more.

Table 16 sets out the location of the committal offense and disability. Most offenses did occur outside of the school or home, but the disability population was more likely to have school-based offenses, particularly the emotionally disordered population. As previously discussed, this population has the greatest difficulty in the school environment. Juveniles with learning disabilities were least

⁴⁶ Id.

⁴⁷ In 1998, juvenile courts handled a caseload that consisted of 23% person offenses, 45% property, 11% drugs, and 21% public order. Sickmund, M., *Juveniles in Court*, National Report Series Bulletin, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (2003).

⁴⁸ Office of National Drug Control Policy Fact Sheet, *Juveniles and Drugs*, June 2003.

⁴⁹ Juvenile crime peaks between 3 and 4 pm, at least on school days (adult violent crime peaks at 11 pm). This would suggest that most offenses would be away from the school environment. Snyder & Sickmund (1999), *supra* at note 29.

likely to have a committal offense in the home. It should be noted that this particular data may or may not indicate a truly different *offending* pattern, as there may be differences in the likelihood of detection and apprehension for children with disabilities in the school setting.

Table 16 Committal offense location and disability YDC

Locations of committal offense (n)	Home	School	Other
All YDC commitments (115)	19%	19%	62%
No known disability history (30)	23%	10%	67%
Any known disability history (85)	16%	21%	62%
ED (40)	15%	33%	52%
LD (21)	5%	29%	66%
ADHD (27)	11%	30%	59%
SL (9)	11%	44%	44%

As seen in Table 17, girls were more likely than boys to be committed to YDC for offenses at school, and, by a particularly large margin, at home.

Table 17 Committal offense location by sex YDC

Locations of committal offense	Home	School	Other
All YDC commitments	19%	19%	62%
Girls	35%	23%	42%
Boys	13%	17%	70%

Tables 18 and 19 show the distribution of offense locations in the court samples. Most of the population in each location had at least one offense away from home or school, and the home was the least likely offense location. Girls were more likely than boys to have offenses at home, but only to a slight degree, and boys were more likely to offend away from either home or school.

**Table 18 Offense location by sex
Concord District Court**

	Home		School		Other	
	#	%	#	%	#	%
Total Sample (n=191)	39	20%	67	35%	126	66%
Girls (n=72)	16	22	22	18	49	41
Boys (n=119)	23	19	45	38	77	65

**Table 19 Offense location by sex
Manchester District Court**

	Home		School		Other	
	#	%	#	%	#	%
Total Sample (n=101)	26	26%	40	40%	82	81%
Girls (n=32)	9	28	14	44	24	75
Boys (n=69)	17	25	26	38	58	84

We examined the association of disability and offense location in the court samples. The sparse information about disability undermines the usefulness of this analysis, but it may suggest further investigation.

**Table 20 Offense location by disability
Concord District Court**

cases with at least one offense at:

Home	School	Other
------	--------	-------

Children with Disabilities in the New Hampshire Juvenile Justice System

	Location					
	#	%	#	%	#	%
All Cases	39	20%	57	30%	126	66%
Axis I Diagnosis	5	36	5	36	10	71%
Emotional Disturbance	3	33	5	56	6	67%
Learning Disability	5	33	10	67	9	60%
Medication History	9	36	11	44	18	72%
Other Health Impairment (all ADHD in study sample)	7	32	9	41	14	64%
Any of listed disabilities	17	36	21	45	30	64%

**Table 21 Offense location by disability
Manchester District Court**

	cases with at least one offense at:					
	Home		School		Other Location	
	#	%	#	%	#	%
All Cases	26	26%	40	40%	82	81%
Axis I Diagnosis	4	29	8	57	10	71
Emotional Disturbance	5	42	6	50	8	67
Learning Disability	2	40	2	40	4	80
Medication History	8	47	10	59	11	65
Other Health Impairment (all ADHD in study sample)	3	38	6	75	5	63
Any of listed disabilities	11	42	14	54	17	65

These data suggest the following observations about this population of juveniles:

- Offenses were most likely to occur away from home or school, followed by school, and then by home⁵⁰. This pattern held true for the full study

⁵⁰ In assessing the significance of this data, it should be noted that the likelihood of detection and referral to authorities probably varies with location.

population and for each individual disability with the sole exception of learning disabilities in the Concord sample.

- A learning disability was most likely to be associated with offenses at school.
- Emotional disturbance and other indications of mental illness were likely to be associated with offenses at locations other than home or school.
- The existence of any disability raised the likelihood of offending at home or school as compared to the population as a whole. This may be due to associated family instability and school frustration and alienation. In the Manchester sample, a disability appeared to lower the incidence of offending away from home or school, but only moderately. Such offenses may be inhibited by social difficulties that reduce associations with peers.

The District Courts

Representation by Counsel

In 1966 the United States Supreme Court held that due process required the assistance of counsel in delinquency proceedings when it decided the case of *In Re Gault*. The court described the utility of counsel:

A proceeding where the issue is whether the child will be found to be delinquent and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him⁵¹.

In cases involving actual or potential disabilities the role of counsel is even more important, both to the interests of the juvenile and to the integrity and effectiveness of the proceedings themselves. A lawyer can investigate the history of evaluation and treatment, assess the role of the disability in the nature and degree of criminal blameworthiness, advocate for dispositional orders which will address actual treatment needs, gather and present expert information to the parties and court, and assist in informed and voluntary decision-making by the client. Such activities are more likely to result in delinquency proceedings that fully address the conduct and rehabilitative needs of the juvenile, and fulfill their statutory purposes⁵².

⁵¹ *In Re Gault*, 387 U.S. 1, 36 (1966) (quotations and footnotes omitted).

⁵² RSA 169-B:1 sets out the purposes of New Hampshire's scheme for dealing with juvenile delinquency:

- I. To encourage the . . . development of each minor . . . by providing the protection, care, treatment, counseling, supervision, and rehabilitative resources which such minor needs.

The assistance of counsel is given paramount importance by the American Bar Association Juvenile Justice Standards, which require that a juvenile court should not begin adjudication proceedings unless the respondent is represented by an attorney who is present in court, and do not allow waiver of counsel⁵³.

New Hampshire does allow waiver of counsel unless a particular hearing results in the detention or commitment of a juvenile⁵⁴. Prior to 2002, counsel was required from the beginning of the proceedings if detention or commitment were to be ordered at any stage, and that provision was commonly interpreted to mean any court-ordered placement outside the home⁵⁵. Under current law, the court may accept waivers of counsel and proceed to place a juvenile outside the home without the participation of counsel, and detain or commit the juvenile so long as counsel participates in the hearing at which incarceration is ordered. There is no requirement that the court gather any particular information about a child before accepting a waiver of counsel, and when a waiver is executed at the time of arraignment it is unlikely that the court will have received any information about educational disability⁵⁶. Waivers are accomplished through a combination of written documents and questions from the judge in the courtroom. Parents or guardians typically participate in the waiver procedure, and their assent is required before a waiver can be effective. RSA 169-B:12, II governs waiver of counsel⁵⁷.

II. Consistent with the protection of the public interest, to promote the minor's acceptance of personal responsibility for delinquent acts. . . [,] encourage the minor to understand and appreciate the personal consequences of such acts, . . ., . . . and make parents aware of the extent if any to which they may have contributed to the delinquency and make them accountable for their role in its resolution.

III. To . . . whenever possible . . . [keep] a minor in contact with the home community and in a family environment . . .

IV. To provide effective judicial procedures . . . which recognize and enforce the constitutional and other rights of the parties and [assure] them a fair hearing.

⁵³ I.J.A. & A.B.A., Juvenile Justice Standards, *Standards Relating to Pretrial Court Proceedings*, Standard 6.1(A) (1980) ("[a] juvenile's right to counsel may not be waived," although other rights may sometimes be waived); I.J.A. & A.B.A., Juvenile Justice Standards Annotated *Standards Relating to Adjudication*, Standard 1.2 & Commentary (Robert E. Shepherd, Jr., ed. 1996)]

⁵⁴ RSA 169-B:12, IV.

⁵⁵ New Hampshire Laws 2001, 162:2, 3.

⁵⁶ RSA 169-B:22 sets out the procedures for the court to request information about the existence and status of educational disabilities and for the legally liable school district to make recommendations for meeting a juvenile's educational needs in the context of the court's dispositional orders.

⁵⁷ "The court may accept a waiver of counsel in a delinquency proceeding only when:

- (a) The minor is represented by a non-hostile parent, guardian or custodian; and
- (b) Both the minor and parent, guardian or custodian agree to waive counsel;

and

- (c) In the court's opinion the waiver is made competently, voluntarily and with full understanding of the consequences[.]"

Both in New Hampshire and throughout the country, there are a significant proportion of cases in which juveniles decline the assistance of counsel. There are several factors that contribute to the high rates of counsel waiver:

. . . [P]arental reluctance to retain an attorney; inadequate or non-existent public-defender legal services in nonurban areas; a judicial encouragement of and readiness to find a waiver of the right to counsel in order to ease administrative burdens on the courts; cursory and misleading judicial advisories of rights that inadequately convey the importance of the right to counsel and suggest that the waiver litany is simply a meaningless technicality; a continuing judicial hostility to an advocacy role in traditional treatment-oriented courts; or a judicial predetermination of dispositions with nonappointment of counsel where probation or nonincarceration is the anticipated outcome. Whatever the reasons and despite *Gault's* promise of counsel, many juveniles facing potentially coercive state action never see a lawyer, waive their right to counsel without consulting with an attorney or appreciating the legal consequences of relinquishing counsel, and face the prosecutorial power of the state alone and unaided⁵⁸.

Even when counsel is involved, juvenile cases are considered to be particularly challenging arenas for effective legal advocacy:

Organizational pressures to cooperate, judicial hostility toward adversarial litigants, role ambiguity created by the dual goals of rehabilitation and punishment, reluctance to help juveniles "beat a case," or an internalization of a court's treatment philosophy may compromise the role of counsel in juvenile court. Institutional pressures to maintain stable, cooperative working relations with other personnel in the system may be inconsistent with effective adversarial advocacy⁵⁹.

Although the American Bar Association found in 1993 that effective counsel had a demonstrable effect on reducing incarceration of children⁶⁰, research studies have found that, paradoxically, the presence of counsel can result in a more severe disposition for a juvenile than for a similarly situated unrepresented peer, possibly due to hostility from a court system rooted in *parens patriae*⁶¹.

⁵⁸ Feld, Barry C., *The Right To Counsel In Juvenile Court: An Empirical Study Of When Lawyers Appear And The Difference They Make*, 79 J. Crim. L. & Criminology 1185 (1989).

⁵⁹ *id.*

⁶⁰ American Bar Association, Presidential Working Group on the Unmet Legal Needs of Children and Their Families, *America's Children at Risk: A National Agenda for Legal Action*, 1993.

⁶¹ Feld, *In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court*, 34 Crime & Delinq. 393, 400-02 (1988).

Regardless of a lawyer’s impact in a particular case, children are likely to face increasingly severe sanctions with each set of court proceedings. If a court engages in a practice of allowing, or even encouraging, waivers when fairly lenient disposition are expected, children with repeated court involvement might face enhanced penalties due to earlier delinquency findings that were uncounseled.

Frequency of Counsel Appearance

We looked at a total of 292 cases in the Concord and Manchester District Courts. The vast majority of the juveniles had the benefit of counsel during at least one of the cases they had before the courts⁶². Only 15% of youth in the Manchester District Court and 17% in the Concord District Court had never had the benefit of counsel on any of their cases. Appointed counsel handled the great majority of cases, and of those the Public Defender Program handled the majority. Table 22 tabulates the appearance of counsel in cases involving the juveniles in the court study; some juveniles had cases with multiple varieties of counsel, some with no counsel, and some with combinations of the two. The figures are largely consistent in the two courts.

**Table 22 Representation by counsel type
Concord and Manchester District Courts**

Type of Counsel (on any case)	Concord (n=191)		Manchester (n=101)	
	#	%	#	%
Public Defender	101	53%	53	52%
Private				
Appointed Counsel	64	34%	43	43%
Retained Counsel	16	8%	4	4%
No Counsel				
On Any Case	33	17%	15	15%

Counsel appearances total more than 100% because all available cases for each juvenile were examined.

⁶² Our sampling procedure involved reviewing all cases involving a juvenile who had a case entry during 2001. We did this because we recognized that the court may have important information relevant to the purposes of the study in files that had been opened before or after 2001. To maintain the ability to develop a statistical picture of court activities during a particular year, we designated the originally selected docket number a “sample charge” for purposes of sampling charge type, rates of representation, plea or adjudicatory hearing, and the like.

New Hampshire does not have a designated juvenile defender unit⁶³, nor does it require that attorneys handling juvenile cases be certified to handle such cases or that they receive particularized training before accepting such cases. Indeed, no such certification exists for any specialized legal practice in New Hampshire. The Public Defender Program, a state funded non-profit agency with offices throughout the state, handles the majority of appointed criminal and delinquency cases. Private attorneys handle cases that cannot be handled by defenders due to caseload limits or conflicts of interest under one of two arrangements. One group of attorneys contracts with the state to handle a certain number of cases for a designated fee, and any attorney may be selected on an *ad hoc* basis to take a case for an hourly fee determined by the New Hampshire Supreme Court⁶⁴.

New Hampshire practice includes two important features that may affect the treatment of children who have disabilities unrecognized by the court. First, pleas of true without counsel are permitted so long as the court does not commit the juvenile at the time of the plea. Second, the vast majority of cases with counsel involve the first appearance of counsel after the arraignment. This is because the court typically does not evaluate eligibility for counsel until the arraignment date itself, issuing appointing papers in the hours or days following that proceeding. See Table 24. This means that important proceedings can take place without the assistance of counsel and potentially involving a child with a disability that has not been recognized by the court. The court may in such cases accept a waiver of important rights, up to and including a plea of true that waives the right to contest the charge. Because a pre-disposition report is not prepared in all cases, and rarely by the time of arraignment, the juvenile probation parole officer will not have examined the juvenile's educational and treatment background by the time these early decisions are made. Because present law allows for later detention and incarceration of children who plead true or waive other important rights earlier in the proceedings without the benefit of counsel, it is possible for a child with a significant disability to plead true before the court realizes that impairment of the quality of the waiver of rights may be present. Further, such a child may later be detained, placed outside the home in a residential facility, or even committed to the youth development center for an indefinite term.

⁶³ Specialized public defender units tend to be limited to urban areas with concentrations of cases of particular types that can be efficiently handled by specialized units. Defender offices also often organize themselves in parallel to the court organization. New Hampshire does not have specialized juvenile courts. Juvenile cases are handled by the same district courts that handle adult criminal, domestic violence, motor vehicle, and small claims cases.

⁶⁴ The hourly rate is sixty dollars per hour, and has not been adjusted for more than ten years. Surveys in recent years have determined that the hourly overhead rate for private law firms is approaching, and may have exceeded, the sixty-dollar level.

**Table 23 Stage of proceeding and first appearance of counsel
Concord and Manchester District Courts**

First Appearance of Counsel, District Court Samples	Concord District Court		Manchester District Court	
	#	%	#	%
Arraignment ⁶⁵	23	15%	20	27%
Adjudicatory Hearing	124	83	55	73
Dispositional Hearing	1	1	0	0
After Dispositional Hearing	1	1	0	0

In Manchester, there were 6 cases involving pleas of true at arraignment involving children with disability histories including learning disability, emotional disturbance, and medication history. In Concord, there were four such cases, involving bipolar disorder, learning disability, speech/language disorder, and ADHD. In each of the courts, there was a juvenile who pled true to charges having never been represented in any cases.

Counsel was appointed in all but two of the committal offense cases examined at YDC, and the two cases without evidence of counsel may have had incomplete court information.

Actions by Defense Counsel

As we reviewed both the YDC and court files, we were attentive to evidence of advocacy by defense counsel that was related to disability. We looked for instances where attorneys sought further information about the disability, by, for example, asking for court-ordered evaluations or production of educational and treatment records. We also collected information about cases where counsel relied on the condition to advance a particular position, such as a finding of incompetence to stand trial, suppression of a confession, or implementation of a particular treatment program as part of a disposition. We observed little in either category. It should be noted that in juvenile cases the timelines are very short, with between 21 and 30 days between arraignment and trial, and the practice expectations in juvenile court are such that there are relatively few written motions. It is possible that there was oral advocacy for particular dispositions

⁶⁵ The appearances of counsel at arraignment is often due to prior involvement with a juvenile due to appointments in other cases; appointments are also made at the arraignment stage when the court is considering detention of the juvenile due to a concern for safety or to ensure appearance at future hearings.

that does not appear in the written records of the cases. But we saw no motions to gain access to additional records regarding educational or other disabilities, no motions seeking funds for expert assistance (which must be in writing), nor written memoranda indicating that a court had acted on oral requests for relief. This may be an indicator of a need for the training of those counsel handling delinquency cases.

Adjudication Patterns

Youth with disabilities may be treated differently at various points in the process. The major stages at which such effects might be seen are initial referral to law enforcement, charging decisions by law enforcement and prosecution, adjudication, and disposition. The first major point this study captures is adjudication. We analyzed the data to determine if juveniles with disabilities were more or less likely to plead true to offenses or to contest the charges.

Type of adjudication -- YDC

About three quarters of the YDC residents pled true to the offense for which they were committed. It should be noted that this does not necessarily mean that the juveniles agreed to a YDC commitment as part of a negotiated plea agreement. Rather, juvenile cases allow the court to maintain jurisdiction over the dispositional orders and to modify them if initial dispositions are deemed to be unsuccessful or inappropriate. Many YDC commitments are ordered after less restrictive dispositions are found by the court to have been ineffective.

The nature of juvenile court jurisdiction is such that offenses do not have different degrees and therefore for most purposes carry all dispositional options regardless of the nature of the conduct. This means that a court may enter dispositional orders and monitor a juvenile using a case that does not involve the most serious, or the most common, of the offenses. Frequently a relatively minor case entered early on in the history of a child's court involvement remains the most active even after more serious conduct triggers changes in the severity of that case's disposition. For example, a shoplifting charge entered against a thirteen-year-old may remain open and be used as the vehicle for YDC commitment when an incident of burglary or assault occurs months or years later.

**Table 24 Type of adjudication and disability
YDC**

Adjudication Type		Plea of True to Petition	Contested Adjudicatory Hearing	Insufficient information in files
Full Population	#	84	13	19
	%	73%	11%	16%
Any disability	#	63	7	15
	%	74%	8%	18%
LD	#	17	1	3
	%	81%	5%	14%
ED	#	29	5	6
	%	73%	13%	15%
ADHD	#	19	3	4
	%	73%	12%	15%

There did not appear to be noteworthy differences among the subpopulations in the adjudication of their cases during the court process. The lowest rate of contested hearings, however, is among those with learning disabilities. It is a small number, however, in which a change of a single data point would align the group with the rest of the population.

Type of Adjudication -- Courts

In order to fully capture the court’s treatment of cases, we collected two types of data about adjudication. So that we could assess on a statistical basis such matters as offense patterns and types of adjudication, we collected information about the charge that was selected by our random sampling process (the “sample charge”). In order to fully capture the treatment of a particular juvenile’s cases throughout her involvement with the court, we examined all available cases concerning a juvenile in the study, even if they occurred outside the study year. This allowed us to discover all available information about disability, for example, regardless of its location in the various case files for a particular juvenile.

Figures 7 and 8 illustrate the overall pattern of adjudication in the two study courts. In both courts the largest single portion of charges are resolved by pleas of true at the time of adjudicatory hearing. This is typically the stage at which counsel first appears and before which the lawyer has had the opportunity to consult with her client, review the police investigation, and negotiate with

prosecutors and juvenile probation officers. Those cases which are resolved by plea at arraignment probably involve pleas without counsel, as few families retain counsel and attorney appointments are rarely made until after the first appearance. There is a very large segment of the cases that are withdrawn or placed on file without a finding. The term “placed on file” typically means that the case is not pursued on condition that the juvenile satisfy some condition, from merely maintaining good behavior for a period of time to engaging in some sort of programming, such as participation in a diversion program, paying restitution, or the like. As with adult criminal cases, relatively few charges are adjudicated through a contested hearing.

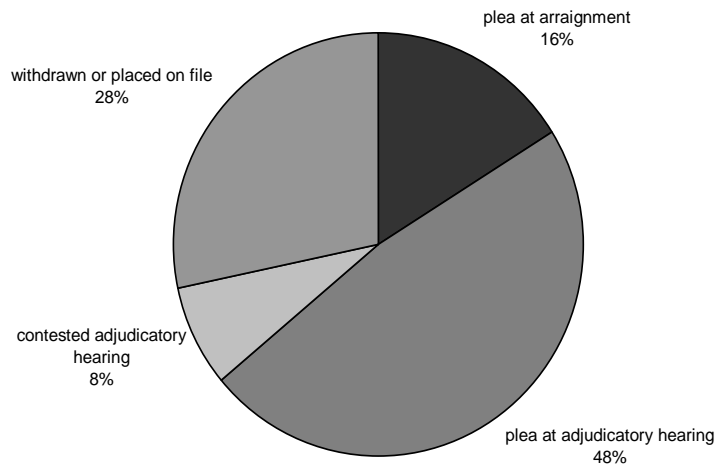


Figure 7
Adjudication type
Concord District Court
(one randomly selected charge per juvenile)

Because of the strong influence of practices in individual courts, few conclusions can be drawn from the differences in adjudication patterns between the two courts. Individual police departments exercise varying degrees of discretion in determining whether to handle cases formally or through diversion or other informal procedures. Different combinations of judges and prosecutors develop patterns of case resolution, applying, for example, either lenient negotiated dispositions or voluntary dismissals to first offenders. The availability and effectiveness of diversion alternatives or community programming can also have an influence on case resolution.

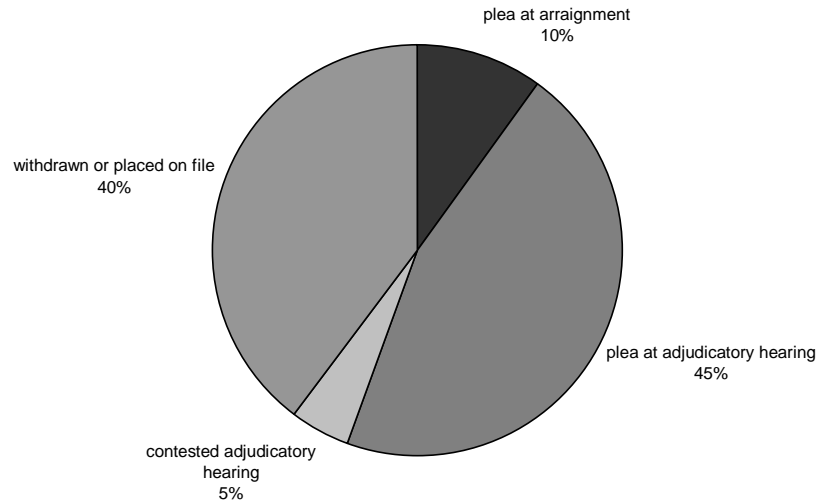


Figure 8
Adjudication type
Manchester District Court
(one randomly selected charge per juvenile)

No consistent pattern emerged from this analysis.

The adjudication pattern for the district court disabled population is shown in Figures 9 and 10. The Manchester disabled population pled true to more cases at arraignment than the overall population, but the Concord disabled population pled to fewer. A higher proportion of the disabled population in Manchester proceeded to an adjudicatory hearing, but a lower proportion of the Concord population did. The sparse information about disability and the inconsistent patterns make it difficult to reach meaningful conclusions with any confidence.

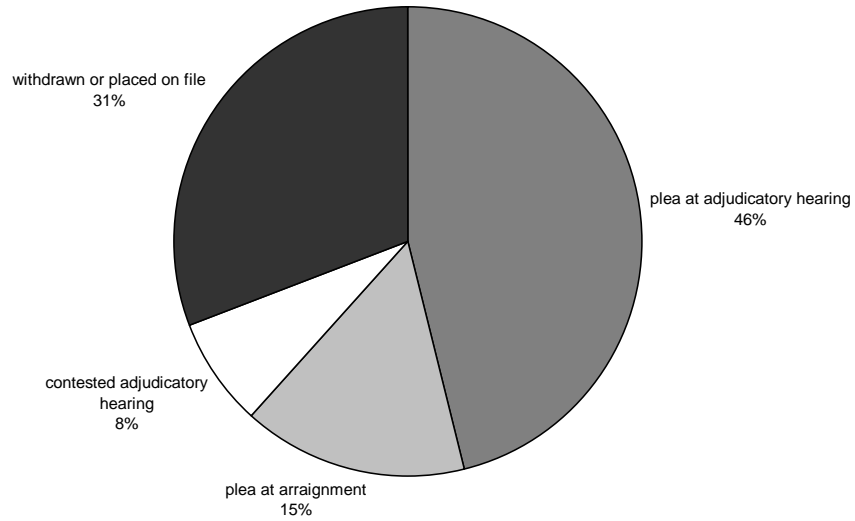


Figure 9
Adjudication type
Manchester District Court disability sample
(N=26)

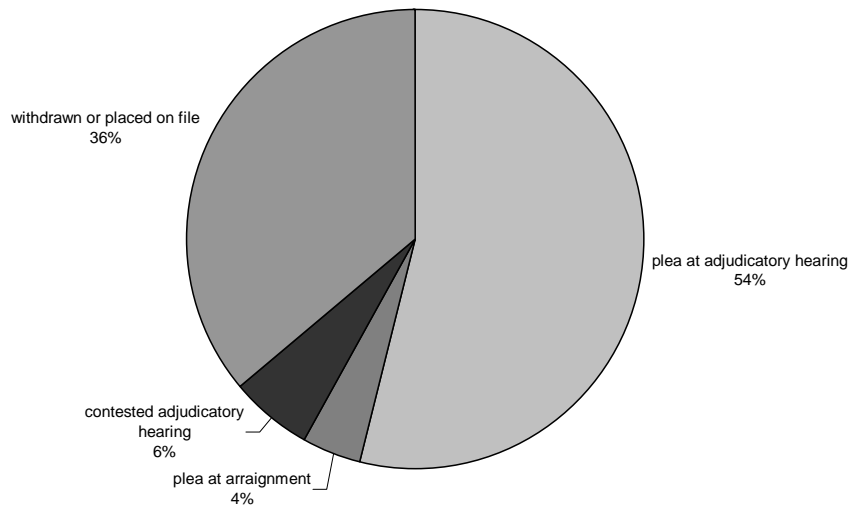


Figure 10
Adjudication type
Concord District Court disability sample
(N=50)

Effect of Disability on Proceedings

Despite the total disability proportion of 73%, no case was found in the YDC sample where a judge made reference to a disability as affecting the extent of responsibility of the juvenile.

Although court records were often incomplete at YDC, it appeared that part of the problem might be that courts are not receiving information about disabilities. In only 27 of 123 cases did we find evidence that the court had been notified of the presence of a disability. This typically came in the form of information in a pre-dispositional report, a school report in response to a court referral, or a report from a placement utilized before the YDC commitment. Interestingly, in none of those 27 cases was there an explicit indication that the disposition had been affected by the existence of a disability. There were only 6 instances where we found dispositional orders in the file that specifically mentioned disabilities that would indicate that the court was considering the disability in determining the proper disposition of the case. The lack of an explicit reference does not preclude the possibility that the court was in fact considering the disability when ordering services. The lack of written evidence, however, may suggest that such consideration was not central to the disposition decisions.

In only 3 of the YDC files did we find that the issue of competency to stand trial⁶⁶ had been raised – in each case by defense counsel. A figure showing that nearly 3% of cases triggered competency proceedings does not appear to be insignificant when considered in relation to all juvenile cases. It does appear inconsistent with the committed population, which in the study year had 73% of its members with at least a history of disabling conditions.

We were interested in whether courts sought information about disabilities, either generally or in response to indications of problems in particular cases. The only consistent indicator we found was the referral for educational disability evaluation under RSA 169-B:22⁶⁷, which provides for joinder of a school district for among

⁶⁶ As a matter of due process, a criminal defendant or delinquency respondent has the constitutional right not to be tried if he or she is incompetent to stand trial. Competency requires an understanding of the proceedings and the ability to assist the lawyer in the preparation of a defense. *State v. Champagne*, 127 N.H. 266 (1985).

⁶⁷ 169-B:22 Disposition of Educationally Disabled Minor. – At any point during the proceedings, the court may . . . and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the minor is educationally disabled as defined in RSA 186-C or of directing the school district to review the services offered or provided under RSA 186-C, if the minor has already been determined to be educationally disabled. . . . Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter and shall make a recommendation to the court as to where the child's educational needs can best be met. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed. If the school district finds or has found that the minor is educationally disabled, or if it is found that the minor is educationally disabled on appeal from the school district's decision in accordance with the due process procedures of RSA 186-C, the school district shall offer an appropriate educational program and placement in accordance with RSA 186-C. Financial liability for such education program shall be as determined in RSA 186-C:19-b.

other things a determination of the status of educational disability of a child before the court on a delinquency petition. Such referrals are typically made by check-off on the form used by the court during arraignment on a petition. In the YDC cases reviewed we found evidence of such referrals in 37, or 30%. The incompleteness of YDC's records of court proceedings diminishes the significance of this statistic, as does the possibility of information in other court files, orally delivered information, or testimony from witnesses, which would not trigger a written record in the committal offense case file. Similarly, we found evidence that educational records were obtained by any participant in the proceedings in only 7 cases (5 by the JPPO, 1 due to a direct request by the court, and 1 by unknown means). In 3 cases we found that expert information about a disability had been provided to the court. 14 cases indicated that at some point a dispositional order had been entered that included treatment for an identified disability.

We were able to accurately track referrals to school districts under 169-B:22 for purposes of evaluation for educational disability. We collected data about the referrals themselves as well as written responses from the schools. The results are shown in Table 25.

Table 25 Referrals for evaluation of educational handicap under RSA 169-B:22

	Manchester		Concord	
	#	%	#	%
referral made by court	53	52%	133	70%
written response in court file	10	10	55	29
evidence of distribution of response beyond court file	0	0	38	20%

One-half to two-thirds of the cases triggered a school referral. Presumably courts do not consider referrals useful in cases that are resolved by pleas at arraignment, which accounts for some of the cases in which no referral was made. Of those cases involving referrals, only a fifth to a third of them contained written responses to the courts. Of those with written reports, there was no written evidence of distribution beyond the court file in any of the Manchester cases. In Concord, most of them appeared to have been distributed to at least one of the parties, but 30% of the cases with reports did not show evidence of distribution.

It is possible that information about disability is provided in person by school representatives. Some schools in the state do make it a practice to have administrators attend delinquency proceedings involving their students. Clerical staff at the study courts reported that they recalled some instances of oral reports in lieu of written responses to the 169-B:22 referrals.

Such a practice is problematic, as the information is not memorialized in the court file, or perhaps even the files of JPPOs and defense attorneys. It is a common occurrence that a delinquency case will be handled by different judges at successive hearings in the larger courts and that different JPPOs and public

defenders will be involved over the life of a youth's involvement in court. Moreover, treatment and corrections providers are much less likely to receive the information if it is not in written form.

In addition, it is unlikely that such reports, when given orally, provide the specific and comprehensive input contemplated by the statute⁶⁸. School officials that attend court proceedings may not be special education staff or school psychologists, or even teachers familiar with the students' particular conditions.

The lack of evidence of distribution is problematic as well, as the roles of counsel and of JPPOs cannot be fulfilled without access to the information which may bear on treatment needs, competency, offense context, or, if relevant to mental state, actual guilt or innocence. It may be that the information is transmitted without written record, or shared but not copied, but there remains the problem of information gaps at later proceedings when different personnel are involved.

Time to Disposition

One effort to bring focus to the courts' treatment of YDC cases involving disabilities was an examination of the length of time between the initial disposition on the charge that triggered commitment and the commitment itself. We found that although there was considerable variation, it did appear that courts that supervised cases involving disabilities did so for a longer time before commitment than in cases not involving such conditions. In such cases there was 26% more time on average taken between disposition and commitment than in cases with no evidence of disability. See Figure 11.

It is beyond the scope of this study to determine whether this difference is due to a more intense and sustained focus on treatment and rehabilitation in the disability cases, differences in degree of culpability, different attitudes of lawyers, judges, or probation officers, efforts taken in cases other than that which finally triggered commitment, or other factors.

⁶⁸ See note 67.

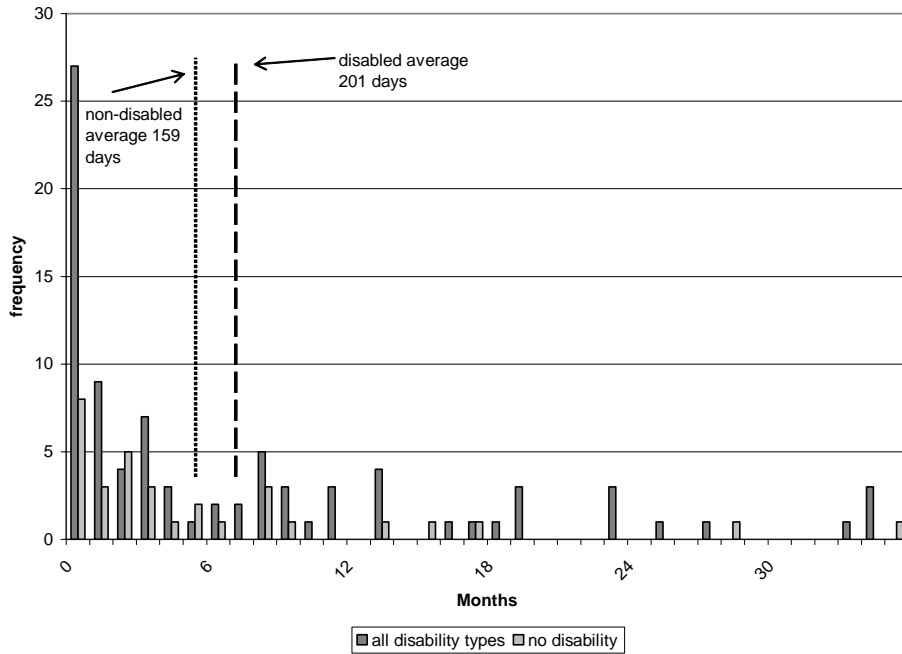


Figure 11
Months from disposition to commitment, by presence of disability
YDC commitments

YDC

Time to Release

We also examined the time between initial commitment to YDC and first release. Release from YDC can be due to court order upon reconsideration of the commitment decision, discretionary release by YDC on parole or other transition status, loss of jurisdiction due to a child turning 17⁶⁹, or due to breach of YDC’s court-ordered population limits.

We encountered a problem with the data for the time to release analysis due to the fact that some of the residents admitted during 2001 remained at YDC as late as February 2003, when the last data was collected. All but one of the 10 residents remaining had at least one disability, potentially skewing the intended calculations significantly. We adjusted the data for those residents, assuming for this purpose that each resident had been released on the day after the last data was collected (February 13, 2003). This adjustment made for a more accurate picture, but the data continues to understate the time to release for those 10 members of the study population.

⁶⁹ Since 2002, YDC residents may be held after their 17th birthday under limited circumstances. See RSA 169-B:4,V,(c).

The time to release figures appear in Table 26. The disabled and non-disabled groups differ as a whole by only a couple of weeks, but focusing on the learning disability and emotional disturbance groups shows a one- and two-month average difference respectively. There is considerable variation, and further analysis may be needed to clarify the picture. Residents with emotional disturbance as a group remain at the facility longer than both their non-disabled peers (by almost two months), and their peers with other disabilities (one to two months).

Table 26 Time to release from YDC by disability

Months to Release	Mean	Median	Range
All YDC	8.2	7.7	0.1 - 24.9
One or more disabilities	8.4	7.8	0.1 - 24.9
No known disabilities	7.8	7.3	0.1 - 20.4
LD	8.7	7.8	0.4 - 20.9
ED	9.7	13.6	0.2 - 24.9
ADHD	8.0	8.1	0.1 - 24.9

Nationally, two-thirds of juveniles are released by six months after commitment to a corrections facility, and 85% are released by the end of a full year⁷⁰. In New Hampshire, the time to release is considerably longer. Only 35% of those committed in 2001 had been released by the end of six months, and 78% had been released at the end of one year. This may be related to the relatively low rate of juvenile commitment in New Hampshire. In 1997, the rate of commitment was about half of the national rate, and may be lower today⁷¹. Accordingly, the population of committed youth may be made up of a larger proportion of those with significant treatment needs and behavior problems within the institution, making it more difficult to prepare them for release. On the other hand, the population is made up of a lower proportion of serious and violent offenders than nationally. The 2001 sample showed that fully 38% of residents had been committed for simple assault, while nationally only 5% of committed youth were committed for that offense⁷².

⁷⁰ Snyder & Sickmund (1999), *supra* at note 29.

⁷¹ Officials at the YDC report that the population trend in the 2001-2002 time frame had been moderately downward.

⁷² Snyder & Sickmund (1999), *supra* at note 29.

Type of Release

Residents with no history of disability were much more likely to receive a discretionary release than those with disabilities. It is important to take into account the influence of age on these events, for a child who is committed to YDC needs at least several months of participation in YDC programming before a discretionary release will be considered, but both the disability and non-disability population arrived at an average age of 15.7. Type of offense, disciplinary record at YDC, and history of failures in programming may also have an influence on the decision to release before turning 17.

Table 27 Type of release from YDC, by disability

	No Disability (n=30)		Disability (n=79)	
	#	%	#	%
Parole or Administrative Release	18	60%	26	33%
Court Order	4	13%	21	27%
Statutory loss of jurisdiction	8	27%	32	41%

Conclusion

A large amount of data was collected during this study, and more analysis is likely to produce additional significant results. The analysis to date has resulted in the following key findings:

1. The offenses for which youth are committed in New Hampshire are less serious than in the nation at large.
2. Most children are committed to YDC for offenses that occurred at some location other than home or school.
3. In both of the studied courts and at YDC, there is a higher proportion of girls than found in the courts and corrections population in national studies.
4. The YDC has a disproportionate minority confinement rate which exceeds that of the nation as a whole, with minorities at YDC represented at about 3 times their representation in the general adolescent population.
5. 16 is the age of the most serious offenses for court-involved youth, and tends to be the age of first commitment to YDC.
6. Children typically arrive at YDC for the first time having completed the 9th grade, typically having been under a court's jurisdiction on the committal offense for about 6 months. Often the first contact with the court will have come during the middle school years or earlier.
7. The parents of YDC residents are much more likely to be divorced than the parents of non-incarcerated children, and only a quarter of them have parents who are married at the time of their commitment.

8. The most common crime triggering court involvement or commitment to the YDC is simple assault.
9. The YDC population has a markedly higher incidence of disabilities than in the population of adolescents in New Hampshire generally.
10. The YDC population has a significantly higher rate of substance use than in the adolescent population at large in New Hampshire.
11. Learning disabled children are more likely to be committed for an offense at school than their peers who have other disabilities or have no disability.
12. A child committed to the YDC who does not have a history of disability is more likely to be released on parole or administrative release than those with a history of disability.
13. Lawyers are appointed for the vast majority of delinquency cases in the studied courts. However, lawyers do not typically appear until the adjudicatory hearing stage of the proceedings, and 10 and 16 percent, respectively, of the juveniles pled guilty at an earlier stage of the proceedings.
14. Most cases in the courts are resolved by either pleas of true or a disposition that does not result in a delinquency finding. Fewer than 10 percent of cases proceed to a contested adjudicatory hearing.
15. Compared to the results of studies in other jurisdictions, New Hampshire appears to have a fairly low proportion of mentally retarded youth in its system.
16. Referrals to the legally liable school district for evaluation of educational disability are made in most cases, but written responses are only received in a small minority of cases, and may not be distributed to all interested parties.
17. There is a somewhat longer time taken between initial disposition and commitment to YDC by the courts with juveniles with disabilities.

Recommendations for Further Study

This study was intended as a starting point. There are several avenues that could be pursued to further understanding of the court-involved population, the dynamics that contribute to their conduct and treatment in the justice system, and interventions that may be effective:

1. Trace the education experience of the children with disabilities identified during the YDC portion of the study, paying particular attention to special education and disciplinary interventions. The objective of such an investigation would be to identify opportunities for effective intervention before court referrals are made.
2. Evaluate the effectiveness of the YDC school in the education of children with disabilities and its ability to adequately prepare them for re-entry to their home school district.

3. Institute a pilot juvenile defense project to utilize improved evaluations and educational rights lawyers to explore the adequacy of identification and provision of services by the schools serving their clients, and measure whether it makes a difference. One of the first programs to integrate civil and delinquency-related services was the TeamChild program. Started in Seattle, Washington, it has been replicated in various parts of the country, and has been able to demonstrate both reduced recidivism and thousands of dollars in tax savings per client it represents. Much of the difference it has made has been attributed to work in the area of educational rights under IDEA.
4. Evaluate the level and complexity of language used during juvenile hearings to determine if it is appropriate for informed and voluntary decision-making and adequate participation in the proceedings by the full range of children who are subject to them.
5. In selected courts, interview children and families at case entry about the existence of disabilities, or the history of them. Provide information to the court, attorneys and JPPOs. Evaluate the use of the information to determine if the proceedings are affected or outcomes are improved.
6. Institute procedures in selected courts to ensure that referrals to schools for evaluation of educational disability receive written responses that are distributed to the parties. Evaluate court proceedings, dispositions and actions by defense counsel to determine if the cases are affected. Determine if the number of juveniles known to have disabilities in those courts increases.
7. Survey the training needs of judges, JPPOs, defense attorneys, juvenile officers at police departments in the area of disabilities and their effects on school performance, delinquency, and ability to participate in court proceedings. Develop and implement a training curriculum in selected courts to determine if such training can improve procedures and outcomes.
8. Collect racial information in the courts. Racial data was nearly non-existent in the study's court samples. Although New Hampshire has one of the smallest minority populations (4% versus nearly 25% nationally in 2000)⁷³, it has one of the fastest growing minority populations, with the highest net immigration rate of Hispanics in the Northeast⁷⁴. The Administrative Office of the Courts, or DJJS itself, should consider recording such information at the time of case entry. Such information will be generally helpful in documenting minority impact in the juvenile system,

⁷³ United States Census Bureau, *State and County QuickFacts*, available at <http://quickfacts.census.gov/qfd/states/33000.html>.

⁷⁴ Schachter, Jason, *Migration by Race and Hispanic Origin: 1995 to 2000*, Census 2000 Special Reports, United States Census Bureau (2003), available at <http://www.census.gov/prod/2003pubs/censr-13.pdf>.

and due to the differing impact of disabilities in such populations, would assist in future exploration of the juvenile population with disabilities.

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Appendix C: Data Elements Collected

District Courts

Demographic

Quarter of birth
 Sex
 Parental status
 Race
 Town/city of residence
 financial affidavit: weekly income level, evidence of public benefits, other notable information

Initial Proceedings

Docket Number
 sample charge
 Charge List
 charge narrative
 number of incidents
 Identity and Date of most serious offense
 Offense Location (school, home, other)
 detention (or placement outside home) at any stage before adjudicatory hearing
 detention (or placement outside home) at any stage before dispositional hearing
 School joined under RSA 169-B:22
 169-b:22 response: filed, distributed, educational coding mentioned, history of labels and interventions described

Counsel and Related

waiver of time limits for service of petition prior to arraignment
 cases without counsel of any type
 public defender appointed
 private counsel appointed
 counsel retained
 Stage of first appearance of counsel on sample charge
 time limits waived without counsel
 time limits waived with counsel
 pleas without counsel
 adjudicatory hearing without counsel

Adjudicatory

petitions withdrawn
 placed on file without finding at any stage
 plea at arraignment -- sample charge
 plea at adjudicatory hearing -- sample charge
 contested adjudicatory hearing -- sample charge
 plea at arraignment -- any charge
 plea at adjudicatory hearing -- any charge
 contested adjudicatory hearing -- any charge
 plea narrative, including any withdrawal or changes in plea
 plea at other hearing

Children with Disabilities in the New Hampshire Juvenile Justice System

Court History

Court contact history
Court contacts under CHINS
Removal from home under CHINS
Court contacts under abuse/neglect
Removal from home under Abuse/Neglect

School

School District
Grade retention
coding before court involvement
educational intervention history
Out-of-district placements
Suspension
expulsion
other discipline

Dispositional Hearing

Educational records obtained by any participant before disposition
pre-disposition report filed by JPPO (in any case)
important facts in pre-dispositional reports
diversion reports filed
important facts in diversion reports
Evidence of coding known to court
Source of coding information to court
reference to disability as affecting responsibility
Dispositional report references emotional disturbance and recommends psychological/mental health treatment or evaluation.
Dispositional report references emotional disturbance but no recommendation for psychological/mental health treatment or evaluation.
Dispositional report references learning disability and recommends educational intervention, change in school programming, etc.
Dispositional report references learning disability but no recommendation for educational intervention, change in school programming, etc.
Dispositional report references mental health diagnosis and recommends psychological/mental health treatment or evaluation.
Dispositional report references mental health diagnosis but no recommendation for psychological/mental health treatment or evaluation.
Court made aware of emotional disturbance and dispositional order includes psychological/mental health treatment or evaluation.
Court made aware of emotional disturbance but dispositional order does not include

psychological/mental health treatment or evaluation.

Court made aware of learning disability and dispositional order includes educational intervention, change in school programming, etc.

Court made aware of learning disability but dispositional order does not include educational intervention, change in school programming, etc.

Court made aware of mental health diagnosis and dispositional order includes psychological/mental health treatment or evaluation.

Court made aware of mental health diagnosis but dispositional order does not include psychological/mental health treatment or evaluation.

other mention of disability, inquiry, or related actions by any participant, etc.

diversion programming

extended jurisdiction (after age 17)

disposition includes placement outside home

disposition includes YDC commitment (not suspended or deferred)

disposition includes conditional release

summary of dispositional order, including specific programming/services

other interventions, including educational, chins orders, paid treatment, etc. (but not part of delinquency proceedings)

changes to dispositions

Disability

Competency raised by any party

History of substance use/abuse

History of labels

LD (Learning disability) and year

ED (Emotional Disorder) and year

Axis I diagnosis

Medication history

Mental Health Diagnosis Year

Mental Retardation and year

Speech/Language and year

Sensory impairment

SI year

Other Health Impairment (OHI)

ADHD (attention deficit hyperactivity disorder)

ADHD year

Youth Development Center

General Information

Calendar quarter of Birth

Sex

Children with Disabilities in the New Hampshire Juvenile Justice System

Race
Parental status
Town/city of residence
School District

Educational Information

Grade at committal to YDC
Whether Grade retention
Number of schools before commitment
Pre-commitment coding
educational intervention history
Number of education placements
Out-of-district placements
Suspension
Suspension length
discipline expulsion
Expulsion length
discipline other
Other discipline specified

Disability

History of substance use/abuse
History of labels
LD (Learning disability)
LD year
ED (Emotional Disturbance)
ED year
Axis I diagnosis
Axis II diagnosis
Axis III diagnosis
Axis IV diagnosis
Medication history
Medication history
MH Year
MR (Mental Retardation)
MR year
Speech/Language
S/L year
Sensory impairment
SI year
Other Health Impairment (OHI)
ADHD (attention deficit hyperactivity disorder)
ADHD year

Court Information (Historical)

Court contact history

Court contacts under CHINS
Removal from home under CHINS
Judge
Court contacts under abuse/neglect
Removal from home under Abuse/Neglect

Court Information (Delinquency)

most serious charged (and adjudicated) offense
offense type (most serious)
committal offense location
charge narrative
Date of committal offense
offense location
attorney
type of adjudication
Date of initial disposition on committal offense
Previous placements/dispositions on committal offense
reference to disability as affecting responsibility
reference to disability as affecting disposition
Evidence of coding known to court
Source of coding information to court
Disability referenced in dispositional order by court
Disability referenced in dispositional recommendations
Competency raised by any party
School joined under RSA 169-B:22
Educational records obtained by any participant
Expert information on disability provided to court
Disposition includes treatment/intervention for disability
Previous placements/dispositions on other delinquency offenses
Date of first commitment to YDC
days from first disposition on committal offense to commitment

YDC Events

Date of first release from YDC
Type of release
Disability treatment/intervention in post-release plan from YDC
Return to YDC
Number of Returns to YDC following first release
Detention Score

Appendix D: IDEA Definitions (34 C.F.R. § 300.7)

(c) Definitions of disability terms. The terms used in this definition are defined as follows:

(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

(4) Emotional disturbance is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(9) Other health impairment means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

(ii) Adversely affects a child's educational performance.

(10) Specific learning disability is defined as follows:

(i) General. The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Appendix E: Resources

American Bar Association Juvenile Justice Center	http://www.abanet.org/crimjust/juvjus
Bazelon Center for Mental Health Law	http://www.bazelon.org
Census of Juveniles in Residential Placement Databook	http://www.ojjdp.ncjrs.org/ojstatbb/cjrp
Center for Behavioral Health, Justice, & Public Policy, University of Maryland School of Medicine	http://www.umaryland.edu/behavioraljustice
Center for Effective Collaboration and Practice (CECP)	http://cecp.air.org
Center for Law and Education	http://www.cleweb.org

Children with Disabilities in the New Hampshire Juvenile Justice System

Center for the Promotion of Mental
Health in Juvenile Justice
Columbia University/NYSPI
1051 Riverside Drive, Unit 78
New York, NY 10032

<http://www.promotementalhealth.org/index.htm>

Civic Research Institute (CRI)	http://www.civresearchinstitute.com
Coalition for Juvenile Justice	http://www.juvjustice.org
Communities in Schools	http://www.cisnet.org
Criminal Justice Resources, Michigan State University Libraries	http://www.lib.msu.edu/harris23/crimjust/juvenile.htm
Institute of Law, Psychiatry, and Public Policy, University of Virginia	http://www.ilppp.virginia.edu
Juvenile Justice Evaluation Center Online	http://www.jrsainfo.org/jjec
Juvenile Law Center	http://www.jlc.org
National Alliance for the Mentally Ill	http://www.nami.org
National Archive of Criminal Justice Data	http://www.icpsr.umich.edu/NACJD
National Center for Juvenile Justice	http://www.ncjj.org
National Center for Mental Health and Juvenile Justice	http://www.ncmhjj.com
National Center for Youth Law	http://www.youthlaw.org
National Center on Education, Disability and Juvenile Justice	http://www.edjj.org
National Council on Disability	http://www.ncd.gov
National Criminal Justice Reference Service	http://www.ncjrs.org
National family court	
National Institute of Mental Health	http://www.nimh.nih.gov
National Mental Health Association	http://www.nmha.org

Children with Disabilities in the New Hampshire Juvenile Justice System

National Technical Assistance Center for Children's Mental Health, Georgetown University Center for Child and Human Development	http://www.georgetown.edu/research/gucdc/cassp.html
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OJJDP Statistical Briefing Book	
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PACER Center (Parent Advocacy Coalition for Educational Rights)	http://www.pacer.org
<hr/>	
Positive Behavioral Interventions & Supports	http://pbis.org
<hr/>	
The Sentencing Project	http://www.sentencingproject.org/
<hr/>	
SRI Policy Division, Education and Human Services, The National Longitudinal Transition Study (NLTS)	http://www.sri.com/policy/cehs/dispolicy/nlts.html
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Substance Abuse and Mental Health Services Administration (SAMHSA)	http://www.samhsa.gov
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The Center for Mental Health Services, A Component of Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services	http://www.samhsa.gov/centers/cmhs/cmhs.html
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The Center on Juvenile Justice and Criminal Justice	http://www.cjcj.org
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The Civil Rights Project, Harvard University	http://www.law.harvard.edu/groups/civilrights
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The National GAINS Center for People with Co-occurring Disorders in the Juvenile Justice System, Policy Research Associates, Inc.	http://www.gainsctr.com
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U.S. Department of Education, Office of Special Education Programs	http://www.ed.gov/offices/OSERS/OSEP
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Appendix E: Medications taken by YDC residents with typical uses

Drug	Purpose
Adderal	attention-deficit hyperactivity disorder treatment
Ambien	short-term treatment of insomnia
Wellbutrin	antidepressant; also used off-label for other psychiatric uses, including ADHD.
Buspar	for the treatment of generalized anxiety disorder; investigated for treatment of attention-deficit hyperactivity disorder
Celexa	antidepressant
Clonidine	used in treatment of variety of conditions such as opiate withdrawal, nicotine withdrawal, Gilles de la Tourette's syndrome,
Cylert	Treatment of attention-deficit hyperactivity disorder
Depakote	anticonvulsant (anti-seizure)
Dexadrine	used for ADHD and obesity
Effexor	antidepressant, also considered effective for the treatment of anxiety and related conditions
Lithium	manic depressive illness, occasionally depression
Lithobid	extended release lithium
Neurontin	anticonvulsant
Olanzapine	anti-psychotic used for schizophrenia and mania with bipolar disorder
Pamelor	antidepressant
Paxil	antidepressant
Prozac	antidepressant; also used for obsessive compulsive disorder
Risperdal	antipsychotic; also considered effective in certain types of mania and bipolar disorder.
Ritalin	ADHD
Tegretol	anticonvulsant
Topamax	antiepileptic
Zoloft	antidepressant, also approved for treatment of PTSD
Zyprexa	antipsychotic