

CROSSOVER COURT

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PUBLICATIONS & HONORS

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Chief's Award, Bexar County Juvenile Probation Department 2009
Co-Author: Compliance review, a follow-up report on the child welfare system in Bexar County 2007
Co-Author and Investigator: Judicial Review, a report on the child welfare system in Bexar County 2004
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CROSSOVER COURT

1. THE CROSSOVER YOUTH PRACTICE MODEL

If asked, attorneys practicing in the juvenile courts and the child welfare courts would guess that children suffering abuse or neglect are more likely to wind up in the juvenile justice system. Research backs up that assumption—maltreatment is a strong risk factor for delinquency.¹

A child who has experienced maltreatment and has engaged in delinquency is a crossover youth.² Once in both systems, the child and family find themselves dealing with a multitude of people—case workers, probation officers, attorneys, social workers, child advocates, and courts. Because the focus of the two courts is different—one focusing primarily on the parents' actions and services, and the other on the actions and rehabilitative needs of the child—and because they are separate systems that do not communicate well if at all, the child and family can face duplicative and conflicting expectations, making the experience confusing, frustrating, even unfathomable.

The Georgetown University Center for Juvenile Justice Reform has combined information gleaned from recent research on crossover youth with lessons learned from testing various approaches, and created a Crossover Youth Practice Model. The Crossover Youth Practice Model is a road map for child welfare and juvenile justice system integration. It explains the model's organizational philosophy, gives definitions, lays out the goals of the model, and then provides the major components and key features of the approach. The model addresses child welfare and juvenile justice practices from beginning to end— from the moment the child is identified as a crossover youth, through pre-trial diversion, family engagement, resource identification, preparation of joint court recommendation, coordinated or joint court processes, ongoing case planning and case management, and planning for youth permanency. Crossover Court is one element of the Crossover Youth Practice Model.

2. IMPLEMENTATION IN TEXAS

The Crossover Youth Practice Model was first implemented in five jurisdictions nationwide, with one of the five being Travis County. After first developing joint case planning processes, Travis County began their Crossover Court in February 2012. In April 2012, the Center for Juvenile Justice Reform offered technical assistance to other Texas jurisdictions who wished to develop a Crossover Youth Practice Model and Crossover Court, using not only the resources of the Center for Juvenile Justice Reform, but also the lessons learned in Travis County's implementation.

The counties participating in the 2012 Texas Spread Project are Dallas, El Paso, McClennan, Tarrant and Bexar. One of the first tasks each county faced was to define the target crossover population for the project. On the juvenile justice side, would the project include children at any stage of the juvenile justice system, only those who are pre-adjudication, or only those who are post-adjudication? On the CPS side, would the project include all children involved at any level with CPS including investigation and family-based, or only those in conservatorship? Each county identified its target population and then proceeded to develop a version of the Crossover Model that was uniquely fitted to that jurisdiction and population, while keeping an eye on the Crossover Youth Practice Model key features.

3. CROSSOVER COURT

One of the key features of the Crossover Model is consolidated court processing. A jurisdiction following the Crossover Model is expected to move toward one of three scenarios. At a minimum, there should be pre-court coordination, so that recommendations made to the CPS court and juvenile court are joint recommendations

¹ See summary of research in Georgetown University Center for Juvenile Justice Reform publication *Crossover Youth Practice Model*, Chapter XII. Crossover Youth Research Summary, pp. 87-121.

² A crossover youth is any child who has experienced maltreatment and committed an offense, whether or not the child was actually in either system. A child who is simultaneously in the child welfare system and the juvenile justice system is a sub-population of crossover youth, and is called a dually-involved youth. For simplicity sake, in this paper the dually-involved youth are referred to by the more general term crossover youth.

addressing both juvenile and child welfare issues. The other two options are variations on the Crossover Court. The Crossover Court can be one family/one judge, where a single court hears the child welfare case and the juvenile cases for all children within a family. Or a county can go a step further and establish a dedicated docket, where a particular court and court personnel (including prosecutor and public defender if applicable) are designated to hear all crossover cases, with probation and CPS staff expected to attend all hearings.

Bexar County made the decision to create a Crossover Court, to begin in January 2013. During the process of fashioning the Crossover Court, there were practical challenges aplenty. This paper, however, is limited to a discussion of the legal issues that surfaced.

4. SHARING INFORMATION – THE THRESHOLD CHALLENGE

At the core of the Crossover Court model is the premise that the probation officer and Child Protective Services (CPS) case worker will exchange case-related information. Once a child is identified as a crossover youth, for example when a CPS child is referred to the juvenile justice system, the probation officer and CPS case worker are expected to make contact promptly and begin a collaboration that will last throughout the life of the crossover case. Timely exchange of known information such as family history, assessment results, past services, current service plans, educational and medical and psychological information, and resources available to each agency is critical. The sharing of information leads to more complete and accurate information being provided to the judge, who can then make a better informed decision. Also, working from a common base of knowledge about a child and family, the probation officer and CPS case worker will be able to present a unified recommendation to the court, a joint or aligned case plan for the family and child, and ongoing case management that is coordinated and integrated.

Legal and Institutional Barriers

Both the juvenile justice and the child welfare systems in Texas incorporate statutory safeguards to protect the confidentiality of the children involved. Until legislative changes of 2011, local entities trying to work together had to be creative to build working relationships and share information critical to providing effective services.

History

Juvenile case and treatment records are confidential and can be accessed only by a named few, except by leave of court or by juvenile board guidelines.³ Until recently, the Texas Department of Family and Protective Services (TDFPS) was not one of the named agencies with automatic access to juvenile case information. Thus, if the local CPS office and Juvenile Probation Department entities wanted to share information about a child in both systems, access had to be gained through an interlocal agreement making the local CPS office a consultant⁴ through juvenile board guidelines, or some other workaround.

Likewise, CPS is subject to confidentiality provisions governing the release of abuse and neglect reports and investigation records that historically did not clearly allow for sharing of information with juvenile justice agencies.⁵ The statutory framework made collaborating on cases where the child was in both systems very difficult.

Federal law constraints have also been a concern, especially with respect to child welfare records. However, the Child Abuse Prevention and Treatment Act (CAPTA) recognizes that communication between child welfare and juvenile justice agencies is critical. In fact one of the statutory purposes of operation grants to the states is “supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems”.⁶ Further, CAPTA includes an exception that allows states to

³ TEX. FAM. CODE ANN. §§ 58.005, 58.007(b) (West 2012).

⁴ TEX. FAM. CODE § 58.007(b)(1), Op. Tex. Att’y Gen. No. MW-359 (1981).

⁵ TEX. FAM. CODE. § 261.201.

⁶ The Child Abuse Prevention and Treatment Act of 2003, *as amended*, Sec. 106 (a)(13).

disclose otherwise confidential reports and records to entities statutorily authorized by the State to receive such information pursuant to a legitimate state purpose.⁷

There have been previous legislative efforts to promote the exchange of information between CPS and juvenile probation. For children with mental impairment, TDFPS and juvenile probation departments have long been required to share case-relevant information including the child's needs, treatment, medical and mental health history for the purpose of continuity of care or services.⁸ This provision for some reason has been little used, perhaps because although juvenile probation departments were included in the statute as agents or contractors of the state juvenile justice agency, they were not specifically named in the statute until a 2011 amendment. Another law makes it clear that in a juvenile court disposition hearing involving a child in TDFPS managing conservatorship, the juvenile court judge may communicate with the judge presiding over the TDFPS case, and may allow the parties to the TDFPS case to participate in the disposition hearing.⁹

Senate Bill 1106

In the 82nd Legislative session, a sweeping new law was enacted to free up the flow of information among public agencies who are working with the same children and families. Senate Bill 1106, codified as Texas Family Code Sections 58.0051 and 58.0052, formalized the recognition that there should be a bias in favor of government agencies sharing information about multi-system youth.¹⁰ It requires that child welfare and juvenile justice information be exchanged, including personal health information, where it is to be used to identify a multi-system youth, coordinate and monitor care, and/or improve the quality of juvenile services being provided.¹¹ The new law applies to juvenile justice service providers, which includes TDFPS and local juvenile probation departments, among others.¹²

Exchange of the information once requested is mandatory, and where the provisions of Section 58.0052 conflict with another law of the state, then Section 58.0052 controls.¹³ Information that must be shared upon request includes "personal health information"¹⁴ or a history of governmental services provided to the multi-system youth, including: (1) identity; (2) medical records; (3) assessment results; (4) special needs; (5) program placements; and (6) psychological diagnoses.¹⁵ The better interpretation is that this list is not exclusive. The Texas Government Code's Chapter 311, Code Construction Act provides rules "meant to describe and clarify common situations in order to guide the preparation and construction of codes."¹⁶ It states that the terms "includes" and "including" are "terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded."¹⁷ So the list of personal health information and history of governmental services that is to be shared is not exclusive but is representative of the types of information to be exchanged.

⁷ 42 USC §5106a (b)(2)(B)(viii)(VI).

⁸ TEX. HEALTH & SAFETY CODE § 614.017.

⁹ TEX. FAM. CODE § 54.04(y).

¹⁰ A "multi-system youth" is a person who is under age 19 and who has received services from one or more juvenile service providers. TEX. FAM. CODE § 58.0052(a)(2).

¹¹ TEX. FAM. CODE § 58.0052.

¹² TEX. FAM. CODE § 58.0051(a)(2).

¹³ TEX. FAM. CODE § 58.0052(d).

¹⁴ "Personal health information" means personally identifiable information regarding a multi-system youth's physical or mental health or the provision of or payment for health care services, including case management services, to a multi-system youth. The term does not include clinical psychological notes or substance abuse treatment information. TEX. FAM. CODE § 58.0052(a)(3).

¹⁵ *Id.*

¹⁶ TEX. GOV'T CODE ANN. § 311.003.

¹⁷ TEX. GOV'T CODE § 311.005(13).

A New Era and Crossover Court

Having the new law in place opens up the exchange of case-specific information, making it easier to develop local processes for collaboration on crossover cases than would have been possible two years ago. At the time of this writing, a statewide Memorandum of Understanding is being developed to detail how Senate Bill 1106 information is to be exchanged between CPS and juvenile probation departments. Meanwhile, the Crossover Court planning processes move forward in several Texas counties, with local leaders secure in the knowledge that the framework of state law clearly supports collaboration and sharing of critical case information in crossover cases.

5. CONFLICT OF INTEREST

In Bexar County, the Crossover Court is a one family/one judge court with a dedicated docket. The juvenile case and child welfare case are kept as two separate proceedings, with separate cause numbers and separate orders. However, they are handled by one judge and the same court staff, and hearings are coordinated and combined whenever practicable.

A question that quickly surfaced in Travis County and Bexar County is whether an Assistant District Attorney can prosecute the juvenile on behalf of the state, and at the same time represent TDFPS' Child Protective Services in litigation brought against the parent under Chapter 262 of the Family Code. Rule 1.06 of the Texas Disciplinary Rules of Professional Conduct comes into play. This Conflict of Interest General Rule prohibits an attorney from representing a person if the representation "involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyers firm", or if the representation "reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person or by the law firm's own interests".¹⁸

As prosecutor in the juvenile case, the attorney represents the interest of the State in seeing that justice is done, that the welfare and safety of the community is protected. In many cases, that requires the prosecutor to advocate for removing the respondent child from the home in order to protect the community in which the family resides. On the other hand, the attorney representing CPS may at any given point in time be advocating for reunification of the family. The interests of the two clients on the issue of whether the child should remain in the home with the family could easily be materially and directly adverse to one another.

Another potential for conflict of interest is venue. CPS and the State might have different perspectives on venue considerations such as convenience, location of evidence, and trial strategy. For example, in the situation where a child in a foster home commits an offense and the foster home is in a different county than the one where the CPS legal case is pending, there may be a disagreement between CPS and the State about the preferred venue for prosecution. CPS may wish to have the juvenile case transferred under Section 51.07 Texas Family Code to the child's home county, which has jurisdiction over the child in the CPS Chapter 262 case. That is where the CPS caseworker is located, as well as other people who have worked with the child over a long period of time and know him and his circumstances well. The State may have an entirely different view. The State's prosecutor may oppose the transfer of venue, preferring the case to remain in the county where the offense occurred because the witnesses, the victim and other evidence are located in that county.

An attorney must decline to represent a client if the representation would result in a violation of a rule of professional conduct.¹⁹ If the violation presents itself mid-representation, the attorney must withdraw.²⁰ The better approach then is for two attorneys to be used in Crossover Court to represent the State in the juvenile case and CPS in the child welfare case.

Another question to be resolved in the planning process for the Bexar County Crossover Court was whether the Respondent's defense attorney in the juvenile case and the child's Attorney Ad Litem in the CPS case could be the same person. In both representations, the client is the child, and in both cases the attorney is obligated to

¹⁸ TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06(A), *reprinted in* TEX. GOV'T CODE ANN., tit. 2, subtit. G app. A (Vernon Supp. 2005)

¹⁹ TEX. DISCIPLINARY R. PROF'L CONDUCT 1.15.

²⁰ *Id.*

advocate for the wishes of the child client. In both the juvenile case and the CPS case, if the child's best interests are not being served, the court has the ability to appoint a Guardian Ad litem or Amicus Attorney.²¹ For these reasons, it was concluded that there is no potential conflict, and one attorney can represent the child in both the CPS case and the juvenile case.

An outgrowth of this determination that the two representations are aligned was a realization in Bexar County that the visitation procedures for CPS children in detention could be reexamined. The visitation rules have since been adjusted to allow attorneys representing children in CPS cases to visit their clients in the juvenile detention center on the same basis as the child's attorney of record in the juvenile case, rather than on an individually approved basis as was previously the practice.

6. CONFIDENTIALITY CONSIDERATIONS

While the child welfare and juvenile justice agencies are now within the same circle of trust and can share case-related information, there are still some confidentiality matters to consider in the process of setting up the Crossover Court. At the core of the confidentiality concern is that documents traditionally distributed to a controlled number of people might now be shared with a wider audience. In building the process for hearing notifications and sharing sensitive documents, it is important to take into consideration the need to continue to protect confidential information from unintentional improper disclosure.

7. CONCLUSION

The Crossover Court model is a framework in which juvenile justice and child welfare agencies can integrate efforts to make the court experience more manageable and understandable for the crossover youth, while enabling the court to make better informed and more comprehensive decisions. The recent change in Texas law opening up the exchange of information clearly positions the two agencies to take a more robust multi-system approach, while keeping an eye on conflict of interest and confidentiality constraints.

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²¹ See, TEX. FAM. CODE §§ 51.11, 107.002, 107.003.