

Questions for the Record
Submitted by Senator Al Franken
Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
Hearing on “Ending the School-to-Prison Pipeline”

1. JUDGE TESKE, you noted in your written testimony that about one-third of your cases involved school-related, low-risk misdemeanors when you took the bench. Did you find that the law gave judges adequate discretion to fashion appropriate sentences in these cases? And, as a follow up to that: what factors should judges consider when they’re hearing these cases?

ANSWER: Part A—Most, if not all states, have fashioned a juvenile code that provides judges with adequate discretion to fashion appropriate sentences. For example, unlike adult court judges where the focus is on punishment over treatment, juvenile judges may dismiss a case if the child is not delinquent. It is often overlooked in policy development related to school discipline that any referral to the juvenile court must undergo a “least restrictive means” assessment. In other words, if the child admits at the intake process, most states allow for a court officer to divert the case and handle it using informal (non-court) responses from admonishment and counsel to a contract whereupon the child agrees to do certain things (i.e. conflict resolution, counseling, pay supervision fee, pay restitution, etc.) and upon completion the case is dismissed and the record in most states sealed. This function of the juvenile code takes into consideration the difference in development between adolescents and adults. Kids are neurologically wired to do stupid things and therefore should be provided relaxed and less stringent responses than should adults—and also to include educational and instructional responses over punishment because in adolescent development the focus should be cognitive structuring or restructuring.

What is also overlooked in policy formulation is that unlike the adult system, the juvenile justice sentencing phase asks the question “Is the child delinquent?” In the adult system, you do the time if you do the crime. In the juvenile justice system we accept, grounded in the behavioral and medical sciences, that just because a kid commits a delinquent act does not necessarily equate to a delinquent child. I query how many of us (Judges, prosecutors, Congressional leaders, law enforcement, and so on) committed delinquent act(s) in our adolescence? I am sure most if not all at least once have done something that violates the criminal code—no matter how minor.

Understanding this juvenile justice process is very important to policy development because it begs the question: Why refer so many kids for misdemeanor infractions on school campus knowing that most will be handled informally? What does that say about the policy development at the local level? Is there a lack of communication between agencies when deciding policy? Does the right hand know what the left hand is doing?

When I explained the role of the juvenile court to law enforcement and school leaders in my community when I decided to take this issue on and told them that most of the cases they sent me never saw the light of day in the courtroom—they were shocked. When I shared the law and revealed the role of the juvenile court they understood why—their shock dissipated. They were then able to grasp the concept of negotiating a better referral system. Why—because they saw it a waste of police resources to expend the time, energy, and money to arrest, transport, and complete paperwork with the intent to prosecute cases that would never go to court—especially low risk students who are not delinquent. They simply make adults mad, which many kids are prone to do by their neurological wiring. They are under neurological construction and require positive surroundings—not handcuffs, the back of a patrol car, detention cell, or a courtroom.

Part B: Is the kid truly delinquent? Again, as stated in response to Part A, the commission of a delinquent act does not always equate to a delinquent child. As a judicial officer, I cannot afford to spend the resources of the court responding to non-delinquent youth who, by the black letter of the criminal code, committed a delinquent act. I look for the following:

- a. Mental health concerns;
- b. Special needs—does the student have an individual education plan (IEP)?;
- c. If not, should the student be evaluated for an IEP?
- d. Age of child;
- e. Nature of act;
- f. How did the school respond?
- g. Does the student have prior delinquent history in the community (outside of the school)?
- h. Is the child remorseful?
- i. Did the parents take corrective action?

These factors are not exhaustive, but they help a judge to determine if the child is delinquent. For example, if a student has no prior delinquent acts outside the school and is before the court for a school fight, why should the court address it if the school and the parent have taken corrective action? The role of the court, in part, is to be a gate-keeper and prevent the government from intruding upon that which should be handled by the parents. I know I would resent the government stepping in to punish my child for a school fight if 1) the school (standing in loco parentis) had disciplined him and 2) I had the wherewithal and ability to take corrective action.

For example, our Georgia Court of Appeals has concluded that parents possess “a prima facie prerogative of training and supervision . . .” of their child and that such prerogative should not be deprived unless it can be shown that the child is “in need of supervision beyond the control of the parents and is in need of correction and training which the parents cannot provide.” *Young v. State*, 120 Ga. App. 605, 171 S.E. 2d 756 (1969). The Court further concluded that delinquent acts of the type that is “usually the subject of disciplinary action by school officials without the necessity of

invoking the aid of the courts . . .” should be handled by admonishment, counsel, advice, or diversion to avoid the “taking advantage of the real purpose of and necessity for the Juvenile Court Act . . .” and the burdens placed on the juvenile courts “. . . which rightfully belong to parents and school officials.” *Young v. State*, 120 Ga. App. 605, 171 S.E. 2d 756 (1969). See also *M.S.K.*, 131 Ga. App. 1, 205 S.E. 2d 59 (1974).

2. JUDGE TESKE, in your written testimony, you said that your court has seen an 83% reduction in the number of kids referred to your court for school-based offenses. What effect has this had on the court system’s ability to handle more serious cases? Have you found that the prosecutors and probation officers now have more time to focus on more dangerous defendants?

ANSWER: Yes—the role of the juvenile court beyond the due process requirements attached to whether a child is guilty of an allegation is to determine whether a child is delinquent as mentioned in the Part A answer to question 1 above. I do not know of any jurisdiction that is not afflicted with lack of resources of which many could be solved if the resources were re-directed to solely higher risk youth. The answer is not always more resources through additional funding but more resources through reconfiguring existing resources. This will not happen unless systemic changes are made to how we handle students who commit misdemeanor offenses. As long as we flood the court system with low level school related cases we widen the net to increase detention rates, court dockets, prosecutor and probation officer caseloads, and racial and ethnic disparities.

Take for example the testimony of former Senator Mike DeWine from Ohio who testified about his role in the development of Reclaim Ohio—a great re-investment program grounded in systemic change that re-directed lower risk youth from state custody that in turn re-directed money saved back into the community to supervise and treat those youth. His sister state of Illinois, the home of Chairman Durbin, has followed suit with Re-deploy Illinois. Texas has done the same and all have experienced a reduction in juvenile crime. I just concluded service on the Georgia Council of Criminal Justice reform established by Executive order of my Governor, Nathan Deal, to evaluate our current system of juvenile justice and recommend changes in our system. The recommendations of been forwarded to the Governor and like Ohio, Illinois, and Texas, we too made recommendations that restrict the commitment of low risk youth to state custody while simultaneously re-investing the cost savings into the local communities to supervise and treat low to medium risk youth in need of services and programs for which the absence of these programs created a default to commit.

This concept holds true to system change between schools and the courts and how we should respond to student misconduct that arises to misdemeanor conduct. Just as Ohio, Illinois, Texas, and I hope soon Georgia has changed their system by restricting commitments and realizing a cost savings, school systems should be restricted from referring low risk students to juvenile court and unnecessarily wasting taxpayer

money to transport, detain, and prosecute these mostly non-delinquent youth who pose no threat to the community at large. The more we tax our prosecutor and probation officers with low risk youth, the more we deprive our communities of the protection they deserve from those fewer youth who require intensive surveillance and treatment. The research is adamant that higher risk youth require intensive supervision and treatment to reduce recidivism. This cannot occur if we continue to add low risk youth to the caseloads of probation expecting officers to keep up with them that in turn dilutes their supervision of the dangerous youth—this is not smart probation supervision!

I want to conclude pointing out those two days after the hearing, a deranged gunman entered Sandy Hook Elementary School in Newtown CT killing 20 children and 6 adults. While I am not commenting on whether it is good policy to place police on every school campus, I am stating that in schools with police we must be diligent to guard against improper use of police that result in the arrest of minor offenses that takes them off campus when safer and more appropriate alternatives are available. Schools with police will experience a high death toll if they are used as disciplinarians and taken from their primary objective—to protect the students and staff from life threatening situations should they occur. It would not look good for local school superintendents and chiefs of police if someone comes on campus to do harm and no officer was present to respond because he or she was at the juvenile court intake booking a student for a school fight. We should reflect on why police were initially placed on campus—to protect students and staff from serious assaults and drugs. Zero tolerance policies have changed this focus and we are the worse for it.

Let police do what they were intended—to protect from serious harm. Likewise, let probation officers and prosecutors do what they're intended—prosecute and supervise the high risk youth to reduce the chance of serious injury to community members. This cannot occur if we tie their time and hands with low risk and minor offenses.