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THE INCREDIBLE SHRINKING SYSTEM:
JUVENILE DETENTION CAPACITY DECISIONS IN
NEW YORK STATE

BY

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CAPSTONE PROJECT

Submitted in partial fulfillment of the requirements for
the degree of Masters in Public Administration in the
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Abstract

As local and state governments increasingly look to cut costs, save money, and explore service alternatives, juvenile detention bed capacity has decreased dramatically in New York State over the past few years. Concerned about the impact this reduction is having on youth, families and communities, the Juvenile Detention Association of New York State has begun to confront the issue of detention capacity management. In order to better understand capacity changes, this study investigates the capacity decision-making process at the agency level. Building on the conceptual foundation established by existing literature on nonprofit-government relations and nonprofit advocacy, I identify factors that have impacted capacity decisions in 8 detention agencies, including informational inputs, agency goals, and agency relationships with government stakeholders. Based on findings from this exploration of the capacity decision process, I make recommendations that the Juvenile Detention Association of New York can use to develop an effective approach to managing nonsecure juvenile detention in New York State.

Dedication

This capstone project is dedicated to all the kids who ever have been, are now, or will be in detention in New York State. May this project someday be irrelevant.

Acknowledgements

I am deeply grateful to John Gaines, my friend and my mentor, without whom I would truly not be here today, for his wisdom and support of my work. I also appreciate the participation and expertise of the members of JDANYS who backed this project, in particular Roger Kelly. I give thanks and admiration to the faculty and staff in the Public Administration Department, especially Dr. Campbell and Dr. Lambright, who cared about my project. Thank you also to my fellow students, who have equally been a source of knowledge and insight for me. Finally, to my family, who believe in me, and most especially to Daryl, who I love, thank you for helping me.

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Executive Summary

In response to increasing financial constraints at state and local levels, growing concern over the potential harmful effects of detention on youth, and perceptions of overuse of detention, New York State has taken initiatives to reduce the use of juvenile detention and prioritize funding for alternatives to detention. Its Office of Children and Family Services, the agency responsible for regulating juvenile detention, has been mandated to develop a methodology to regularly assess the need for detention capacity, a protocol that would become the basis for awarding certification for new detention capacity and recertifying existing capacity. At least partly as a result of these initiatives, nonsecure juvenile detention capacity in New York State, which is almost entirely provided by nonprofit organizations, has decreased dramatically since 2000.

Because inadequate capacity has potentially serious implications for service quality, there is concern among juvenile detention providers and other stakeholders about whether the current level of service provision can meet future needs for detention, which fluctuate over time and by locality. The Juvenile Detention Association of New York State (JDANYS), a professional association of detention providers whose mission is to improve detention services, is seeking to determine an effective approach to the management of statewide detention capacity, in accordance with its role as information resource and policy advocate for its member organizations.

JDANYS functions both as an information and training resource for its members and as an advocate on behalf of detention providers to work to influence policy and regulation at the state level that impacts the need for and provision of juvenile detention. The Association is worried that OCFS's recent policy direction may result in overall capacity levels that do not accurately reflect the needs of local communities. Because JDANYS has historically perceived OCFS as unwilling to accept input from detention providers in formulating policy and regulations, it is struggling to identify an appropriate and effective role for itself in any statewide efforts to actively manage juvenile detention capacity. This study was undertaken in response to the Association's concerns.

Provision of nonsecure detention capacity takes place within a complex network of nonprofit providers that contract with county governments for detention services and that are

certified and regulated by New York State's Office of Children and Family Services (OCFS). The contractual and regulatory relationships among nonprofit providers, county governments and state government are important in shaping the structure of nonsecure detention service delivery. Recent shifts in financial, social and political trends in New York State constitute forces within this service environment that affect those relationships, and therefore impact both the demand for detention services and the efforts of providers to answer that demand.

Understanding how this interplay of contractual relationships and environmental dynamics may inform changes in nonsecure detention capacity represents a first step in determining how JDANYS can contribute to statewide detention capacity management. Therefore, this study asked two research questions: 1) What factors impact juvenile capacity decisions among nonprofit providers? 2) How can JDANYS use this information to contribute effectively to detention capacity management?

To address these questions, interviews were conducted with nonprofit detention providers in New York State. The data collected was then analyzed in order to describe how nonsecure detention providers make decisions to increase or reduce their service capacity, and to illuminate connections between these capacity decisions and salient characteristics of nonprofit-government interactions and the environment in which they occur.

Major findings from this study include the following:

- That detention providers have common goals in making capacity decisions, the primary one being to meet the needs of the county government customers they serve;
- That detention providers use similar types of informational inputs in making capacity decisions, including internal and external utilization rates and information about legislative, policy and regulatory changes that are likely to impact the need for detention;
- That informal relationships with other nonprofit detention providers, especially JDANYS members, are very important in making capacity decisions, particularly as a source of informational inputs;
- That different types of nonprofit providers have somewhat different needs and considerations in making capacity decisions, depending on their size and their relationships with county and state governments;
- That detention providers see recent changes for the better in their relationships with OCFS, particularly with regard to consistent enforcement of regulations as well as overall openness to collaboration and dialog; and

- That detention providers envision a variety of ways in which JDANYS can and should participate in system-wide efforts to manage detention capacity in New York State.

These findings led to the formulation of four recommendations for JDANYS as to how it can contribute effectively to detention capacity management in New York State:

1. Increase its membership, and strengthen the relationships among its members in order to facilitate the flow of information between nonprofit providers.
2. Expand its advocacy agenda to attend to the needs of different types of detention agencies, which will help increase and diversify its membership, thereby strengthening its advocacy position.
3. Build on recent, positive perceptions of OCFS among providers and work to improve communication with OCFS, which will also help strengthen its advocacy position.
4. Devote resources to researching and developing models to explain and analyze changes in detention utilization and capacity, and make this knowledge available to member organizations.

Introduction

Nonsecure Juvenile Detention in New York State

Nonsecure juvenile detention in New York State is provided almost entirely by nonprofit organizations that contract with individual counties to furnish a certain number of beds on a yearly basis. New York State law requires every county to have access to an “adequate” number of detentions beds (New York State Consolidated Laws, County Laws, Article 5 §218-a).

While the decision to send an individual child to detention is made formally by the county court judge where that child resides (or where the juvenile offense is committed), county agencies such as the Department of Social Services, the County Attorney’s office, and the Department of Probation often make recommendations, sometimes conflicting, about the use of detention for individual youth. Furthermore, each youth is represented by a law guardian who can make a case against the use of detention.

Detention facilities are overseen and regulated by the New York State Office of Children and Family Services (OCFS), but the decision about how and with whom to contract for these beds is up to the counties. The state, via OCFS, reimburses individual counties for up to 50% of their detention costs, and has the power to dictate what types of expenses charged by detention facilities will be reimbursed. However, individual detention agencies may still set the rates at which they charge for detention use, allowing competition among agencies for county contracts. In 2004, New York State had been experiencing an average of 15,000-17,000 admissions to juvenile detention each year (JDANYS, 2007a).

As a result, the juvenile detention system in New York State is a complex network of actual detention providers plus a number of stakeholders with significant influence over the use of detention and its administration. This means that the interplay of factors that shape decisions affecting the capacities of individual agencies and of the state as a whole is complicated.

The Juvenile Detention Association of New York State

The Juvenile Detention Association of New York State (JDANYS) is an association of detention-providing agencies. Its mission, as described on its website, is “improving the quality of care and service that New York’s locally operated juvenile detention facilities provide to the courts, police, youth in care and communities they serve” (JDANYS, 2007a). The goals of JDANYS include, among others, facilitating communication among stakeholders in the juvenile detention system, developing recommendations regarding legislation and regulations, and consulting and advising with stakeholder groups.

In pursuing these goals, JDANYS strives to be a resource for juvenile justice research and practices, coordinating and sponsoring training events and conferences to disseminate current and effective methods and educate practitioners about theoretical advances in the field. The association has also developed and circulated its own best practices statements.

In addition, JDANYS concerns itself with current and future state legislation and regulations that impact juvenile detention in the state, lobbying state legislators and promulgating position papers that address specific issues. Where JDANYS perceives that existing or proposed provisions of the state law and/or regulations have or could have a negative impact on detention agencies’ ability to provide quality services, it advocates for change through its lobbying efforts, its papers, and through discussions with OCFS’s Detention Services Unit. Occasionally, the Association has also approached other state agencies for assistance, such as the Governor’s Office for Regulatory Reform (GORR), when its efforts to advocate directly with OCFS have been unsuccessful.

In a less structured way, membership in JDANYS facilitates informal relationships among the nonprofits that provide nonsecure detention in New York State. JDANYS members maintain contact with each other regarding both JDANYS matters and non-JDANYS matters.

These relationships are sources of knowledge and support to members that may be as important in navigating the statewide detention system as the more formal structures of the Association. It is important to note that at this time, not all agencies providing nonsecure detention in New York State are members of JDANYS.

Problem Statement

Detention Use and Capacity Trends

For many years, the demand for nonsecure detention beds in New York State was a given. Although local utilization fluctuated, and numbers occasionally spiked or receded briefly, overall demand remained stable or moved upward over time, peaking in 2000-2001 (J.A.Gaines IV, personal communication, September 20, 2007). Accordingly, most agencies providing detention have relied on long-term, established relationships with stakeholders to ensure repeated renewal of contracts. When demand for beds increased enough, obtaining certification from OCFS for new or expanded facilities was a routine matter of paperwork. In response to the peak demand in the late 1990s, a number of new facilities opened, and existing facilities expanded (J.A.Gaines IV, personal communication, September 20, 2007).

In the last few years, however, a number of factors have combined to reverse this trend. Tight state and county budgets, increased attention to public spending, changes in theory on juvenile delinquency and mental health, and challenges by child welfare advocates around the appropriateness of juvenile detention in many instances seem to have resulted in a downward trend in juvenile detention bed usage. Agencies that opened new facilities a few years ago have closed them again; facilities that added new beds have now downsized again (R. Kelly, personal communication, February 22, 2006; J.A. Gaines, IV, personal communication, September 5,

2007). Detention capacity in New York outside of New York City has been reduced by an estimated 25-35% in the past few years (R. Kelly, personal communication, September 6, 2007).

Entering into this dynamic is a recent policy initiative by OCFS to reduce detention use in New York State (NYS OCFS, “PINS Reform Legislation”, n.d.[a]; J.A. Gaines, IV, personal communication, March and November 2006). This initiative includes statutory changes that require increased diversion services and discourages use of detention for youths at risk of becoming adjudicated status offenders, i.e. youths that exhibit behaviors considered problematic but not illegal, such as truancy or running away (PINS Reform Law: New York State Family Court Act, Article 7, § 720-5(a)). These changes are based in part on a growing body of policy analysis that suggests that detention is potentially harmful to juveniles, is not warranted in many cases where it is ordered, and that New York has traditionally overused detention (Chiu & Mogulescu, 2004; Holman & Ziedenberg, 2006; New York State Task Force on Juvenile Justice Indicators, 2007; Schwartz & Barton, 1994).

Partially in response to the surge in detention bed capacity in the early 2000s, as part of the 2002 New York State budget OCFS was required to develop a “needs methodology”, or a protocol for granting certifications for new detention beds and yearly recertifications for existing beds (New York State Consolidated Laws, Executive Laws, Article 19-6, Title 4, §530, Subsection 8). This law also explicitly requires OCFS to include detention providers in the process of developing its needs methodology. However, a few years ago, OCFS put an informal “freeze” on certifications for new detention beds (J.A.Gaines IV, personal communication, September 20, 2007) that appears to still be in effect today, with rare exceptions. In 2006, OCFS published draft regulations to implement a needs methodology, and has sought input from detention providers (J. A. Gaines IV, personal communication, November 15, 2007).

The Importance of Detention Capacity

Although the need for nonsecure juvenile detention has decreased, and likely will continue to do so, the severe and abrupt reductions in state-wide bed capacity are of concern for several reasons. As stated, local detention use in a county or region often fluctuates in response to many different factors. If bed space for a juvenile who has been remanded for detention is not available locally, the county must transport the child elsewhere in the state to be detained, necessitating hours of driving. Often several such trips are required as the youth makes multiple appearances in their home county family court or receives various social, psychological and other assessments as ordered by the court or county social services. These multiple trips are usually costly to counties; most transports of remanded youth are performed by sheriff's deputies, and long trips often mean expensive overtime pay. Long distances may inhibit access to professionals involved with the youth, such as caseworkers, counselors, law guardians, and probation officers. Also, counties usually pay more for detention beds that they are borrowing from an agency they don't regularly contract with. The distance also makes family visitation difficult or impossible.

Further, there is concern among juvenile justice practitioners that unavailability of detention beds may result in decisions to release youths back to the community instead of remanding them to custody, possibly resulting in further danger to the community and the youth themselves. Another potential outcome of inadequate detention space is overcrowding. While OCFS regulations determine maximum capacities for each facility, agencies can request, and usually receive, ad hoc approval to house more youths than they are officially allowed (called "going over capacity"). While such situations are usually brief, they can contribute to dangerous conditions in some detention facilities, and are generally considered to threaten the quality of

care provided (American Correctional Association, 1991; National Juvenile Detention Association, 2005; Office of Juvenile Justice and Delinquency Prevention, 2001).

Excess detention capacity creates another set of problems, such as inefficient use of tax dollars. Facilities with unused beds must still meet staffing requirements for their size; when counties pay for beds that are unused, they waste money. The state does also, because they reimburse counties for up to 50% of detention expenses.

Concerned that pressures to reduce detention use in New York may result in dangerously low capacity that is unable to meet local and temporal fluctuations in detention need, JDANYS has stated that it supports the establishment and use of a detention “needs methodology” (JDANYS, 2007b). Such a protocol could be used to assess the need for juvenile detention capacity and accordingly make rational decisions about certification and recertification of detention facilities. This would constitute a first step in ensuring “the availability of adequate and accessible detention for juveniles” (JDANYS, 2007b).

However, to date, no methodology has been published, nor has OCFS shared publicly how it intends to design and implement any such procedure. There is apprehension among Association members that political pressures to reduce detention beds will distort the process of establishing an accurate, effective needs methodology (R. Kelly, personal communication, September 6, 2007; J.A.Gaines, IV, personal communication, September 5, 2007). Detention providers also worry that their own perceptions and experiences with detention capacity issues will not be taken into account by OCFS when formulating a needs methodology, potentially leaving out important considerations and information and resulting in a protocol that will undermine the ability of providers to adapt their capacities and meet local needs successfully.

In line with the mission and goals of JDANYS as described above, the Association can potentially play a role in developing an effective approach to managing nonsecure juvenile

detention capacity in New York State. JDANYS has expressed interest in gaining a more thorough understanding of how individual detention providers make decisions to change their own bed capacities (R. Kelly, personal communication, September 6, 2007). This understanding would enable the Association to identify ways in which it can be of assistance to detention operators who face complex and often conflicting pressures from stakeholders in managing capacity.

As evidenced by the statement on its website (JDANYS, 2007b), JDANYS is invested in the maintenance of an effective statewide nonsecure detention capacity, and has demonstrated its willingness to advocate assertively with OCFS. Armed with an understanding of the particular factors that impact individual detention providers' capacity management processes, JDANYS can work to have a voice in the process of determining a statewide needs methodology, representing the concerns of detention providers and the welfare of youths affected by changes in detention capacity in the state.

In accomplishing these goals, JDANYS will be aided by an analysis of what has driven nonsecure detention capacity changes in New York to date. An empirically grounded examination of the issues that affect individual agency capacity will help identify what resources agencies could use to manage capacity more effectively and what challenges might undermine the decision-making process. JDANYS can then work to provide resources that will assist agencies in making effective capacity decisions, and advocate with OCFS stakeholders on behalf of nonsecure detention providers to eliminate obstacles.

Research Questions

- 1) What factors influence decision-making by nonsecure juvenile detention providers in New York State to expand and reduce detention capacity?

- 2) How can JDANYS use information about these factors to facilitate state and local detention capacity management in accordance with its stated mission and goals?

Conceptual Framework and Literature Review

Conceptual Framework

As described above, almost all nonsecure juvenile detention in New York State is provided by nonprofit agencies. The primary customers, however, are county governments, who make decisions about what agencies to contract with and how many beds to purchase. The decision to utilize detention is, by law, made by county Family Court Judges (with rare temporary exceptions for youths apprehended outside of court hours). Put simply, nonprofit detention agencies provide a service entirely in response to demand from a single source: county government. Furthermore, the provision of this service is strictly regulated by the state government.

The nature of the roles that governments (both county and state) and nonprofit detention providers play in the provision and consumption of detention services have significant implications for how NYS OCFS and nonprofit detention agencies manage capacity. In addition, theories of nonprofit-government relations address the type of environmental factors that impact both the demand for and the provision level of detention beds. For these reasons, the theory and research on nonprofit-government relations provides an excellent framework for both describing and examining further the nature of detention agencies' decision-making processes around capacity issues.

Another important body of literature in addressing these research questions concerns nonprofit advocacy. Advocacy is seen as important to nonprofits, both as a component and as an outcome of the complex dynamics between nonprofits and government. As a professional

association, JDANYS is in an excellent position to advocate for changes to the juvenile detention system, particularly regarding the elements of that system connected to capacity management. To address how information about capacity management decisions can be used to help JDANYS fulfill its stated goals, literature regarding the roles and responsibilities of nonprofits and nonprofit associations in terms of advocacy will therefore also be reviewed.

Nonprofit-Government Relations Literature

Young (2006) draws on economic theory in proposing three distinct views of nonprofit-government relations: supplementary, complementary, and adversarial. In the complementary view, nonprofits are seen as partners of government, or as vehicles for providing public goods that are financed by government. This implies a direct relationship between levels of government activity, specifically expenditures, and nonprofit activity. This view appears to describe the relationship between governments and detention providers in New York State very well—as county governments’ need for detention rises, presumably so does their rate of expenditure for the service. The state government’s level of activity rises as well, both through its reimbursement of county detention costs and through its responsibility for regulating the provision of detention.

The direct nature of this relationship, where government purchases services directly from nonprofits, allows government to influence organizations’ behavior. Smith (2003) suggests that even where governments and nonprofits are nominally complementary, there is “inherent tension” (p. 37) in the relationship. Government may fund and nurture nonprofits through favorable regulation, but can also undermine them by defunding or underfunding, and by regulating excessively or inappropriately. If, as Young (2003) suggests, one function of

nonprofits is to represent minority interests, government may defend the majority position through its regulation of such organizations.

Government funding can also negatively affect nonprofits' behavior by creating pressure to "adjust" organizational goals and missions to reflect governmental priorities. Because even in a complementary relationship, government is likely to be the more powerful partner, nonprofits are often constrained by the norms and policies of government (Smith, 2005). This phenomenon is discussed by many authors in the area of nonprofit-government relations, described often as "goal displacement" (Cho & Gillespie, 2006; Froelich, 1999) or "mission drift". Even where government preferences for service do not directly influence nonprofit activities, the mission of the nonprofit may be diluted or distorted. The increased effort demanded of nonprofits in meeting government requirements related to funding such as accounting and reporting diverts time, money and other resources away from primary mission-related activities (Froelich, 1999; Gronbjerg, 1991).

The effects that governments can have on nonprofit providers can be less direct, and can depend on the environment in which both government and nonprofit are operating. A study of social service agencies in New York State found that the relationship between government and nonprofit tends to evolve (Van Slyke, 2006). At first, the relationship has the characteristics of the principal-agent model, in which the goals of government (retaining power and maximizing wealth) are assumed to conflict with those of the nonprofit (maximizing utility). The nonprofit is also assumed to have more information than the government regarding its specific service, which the nonprofit will then exploit for self-gain rather than mutual interest. These potential conflicts result in contractual interactions consisting of incentives, sanctions, reporting systems, and monitoring mechanisms.

Over time, however, the relationship between government and provider moves toward what Van Slyke (2006) calls an “evolved principal-agent relationship”, which he likens to that described in stewardship theory. As stewards, nonprofits value goal convergence with government over self-interest, and the long-term contractual relationship is based on trust, reputation, and alignment of motives. There is some variation in the development of these relations, based on the possibility of competition among providers (and, accordingly, whether the exchange occurs in a rural, suburban, or urban environment) and the level of government involved.

However, generally speaking, as the dynamic moves closer to that of stewardship than principal-agent, the government “rewards” its nonprofit contractor by sharing information about funding opportunities, navigating the particular bureaucracy they operate in, and political strategies to gain/maintain support. Government customers can also enhance the reputation of nonprofits, increasing their legitimacy and their ability to acquire funding and other resources. Nonprofits in these long-term, evolved relationships see themselves as able to be more creative, innovative and assertive in making programmatic decisions and policy recommendations (Van Slyke, 2006).

For nonprofit detention agencies in New York State, this view suggests that there will be considerable variation in how individual organizations negotiate and fulfill contracts with county governments, depending on how competitive the environment is and the longevity of the nonprofit in its service area. Where governments develop long-term relationships with “preferred providers” based on demonstrated competence, trustworthiness and goal convergence, detention agencies may be more successful in influencing their contracts and the policies that govern them. Where the relationships remain more hierarchical and coercive, detention agencies may find their positions more tenuous.

Among the many ways nonprofit providers must accommodate their customers' needs is the level, or quantity, of service provision. Since New York State counties are required by law to have access to "adequate" nonsecure detention, and because detention beds are most often utilized on very short notice, capacity is an important element of detention service provision. Van Slyke's model therefore has particular implications for how nonprofit detention providers make decisions related to detention capacity. Since NYSOCFS regulates the certification of new detention beds, and reimburses counties for up to half of their detention costs, this model may also describe a dynamic between nonprofits and state government that affects how capacity decisions are made.

Size is another factor that affects how nonprofits interact with their government partners. A larger nonprofit has access to resources (credit lines, endowment, fundraising capacity) that may allow it to weather the cash flow fluctuations that tend to accompany government contracts (Smith, 2005; Tucker & Sommerfeld, 2006); because of this increased financial stability, it is also likely to be a more attractive partner for government customers to begin with (Smith, 2005).

Cho & Gillespie (2006) provide an intricate analysis of nonprofit-government relations in developing a model of nonprofit-government interdependence they call "dynamic resource theory". They build on resource dependence theory (Froelich, 1999; Galaskiewicz, 1985), which suggests that at least part of the basis for interaction among organizations is the need for resources that each organization can not acquire on its own. Figure 1 illustrates how Cho & Gillespie elaborate on the view of nonprofit-government relationships seen in resource dependence theory. They then incorporate other concepts that they see as determining factors in the nature of nonprofit-government relations over time.

One concept is the shifting of power balances in the partnerships between nonprofits and governments over time. Drawing from resource dependence theory, Cho & Gillespie (2006)

suggest that the partner with less power at any given moment is more likely to experience a negative outcome in any exchange. A nonprofit provider who is depending on only one customer for revenues has less ability to set favorable rates or other contractual terms than providers who have many customers. A county that can choose from several potential providers is more able to contract for services on favorable terms than one that is limited to only one local provider. Because power can shift from one partner to another, outcomes may also alternate over time between more and less favorable; this fluctuation over time will influence the actions of both partners in any contractual relationship.

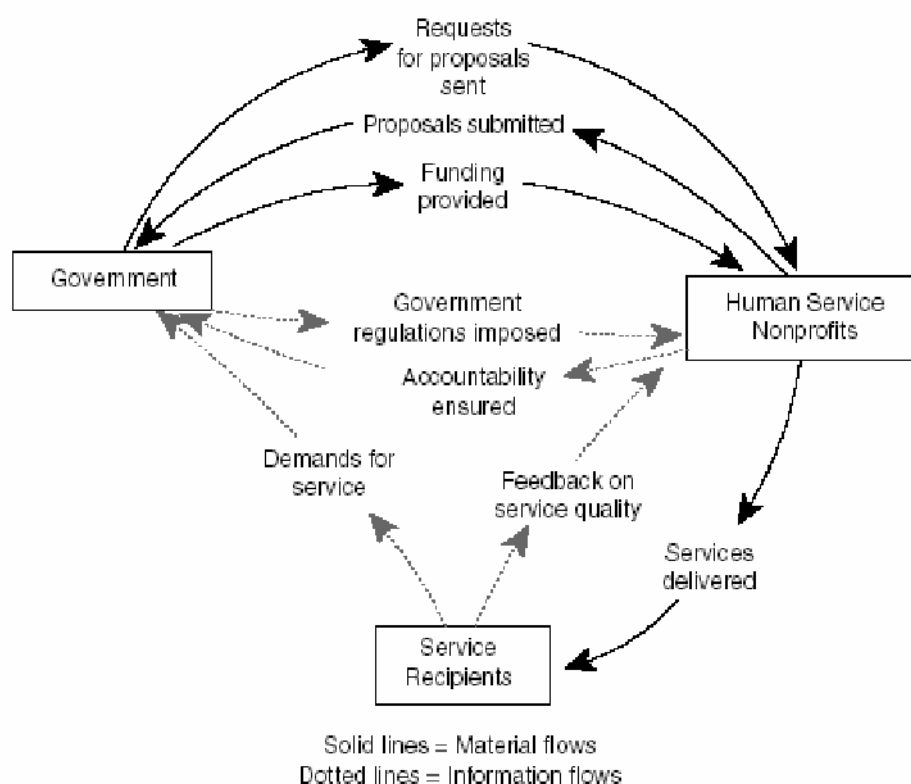


Figure 1. Elaborated View of the Relationship between Government and Human Service Nonprofits

NOTE: From "A Conceptual Model Exploring the Dynamics of Government-Nonprofit Service Delivery," by S. Cho and D. Gillespie, 2006, *Nonprofit and Voluntary Sector Quarterly*, 35, p. 496. Copyright 2006 by Association for Research on Nonprofit Organizations and Voluntary Action. Reprinted with permission.

Another concept is the exchange of information between nonprofits and government, which the authors describe as essential in understanding how decisions are made and actions are chosen. This concept is useful in understanding how the interaction between nonprofit detention providers and their government customers and regulators impact choices by nonprofits to change how they provide services (in this case, raise or lower capacity).

Cho & Gillespie use the idea of feedback loops to represent the two-directional exchange of information between nonprofits and government, separating them into reinforcing (positive) and balancing (negative) feedback loops. Reinforcing loops lead to accelerating change in activity (whether growth or decay) in the organizations by conveying information that continues to influence organizational choices in a single direction. Balancing loops lead to a slowing of change by conveying information that influences organizational choices to change direction (between growth and decay).

Because in real life there are time delays between the receiving of information and the implementation of changes based on that information, policy-makers will often make too many interventions (send too much information, e.g. regulations or legislation) regarding a specific service or policy based on the misperception that the first intervention had no effect when in fact the effect is simply delayed. Until the information discrepancy is resolved, the adjustments to service compound over time and result in serious service problems.

When a reinforcing feedback loop is dominant in a nonprofit-government system, changes in service delivery or policy intended by government can, because of the time delay, overshoot or undershoot the target level, causing problems in service delivery. A simple analogy is when a driver overcorrects in response to a sudden event, sending the car too far (sometimes irretrievably) in the other direction. A balancing feedback loop occurs when correct information successfully reaches the service provider, influencing them to change service delivery

appropriately and resulting in effective service delivery. The dynamic resource model suggests that reinforcing feedback loops and balancing feedback loops can dominate relationships at different points in time, meaning fluctuation between good service delivery and problematic service delivery.

This model has significant implications for the dynamic between nonprofit detention providers and government at both the county and state levels. Because information conveyed from government to the nonprofit often has a delayed impact in terms of change in service provision, county governments may make too many changes in detention contracts, with the end result being a surplus or deficit of capacity instead of an appropriate level. Similarly, the state government may make too many changes in regulation of capacity on a statewide level before the cumulative impacts become clear, resulting in a mismatch of capacity to actual demand.

This can be exacerbated further when state or county governments are motivated or constrained by political considerations and contingencies. Smith (2005) enumerates several reasons that contract administrators might either delay or expedite contract renewal with nonprofit service providers, including election processes, personnel changes, or the desire to manipulate the provider by raising the specter of uncertainty about contract security. These reasons would apply equally to a state regulator deciding whether to certify new or existing detention services. This adds yet another factor that may compound the effects of Cho and Gillespie's reinforcing feedback loops, resulting in further mismatch between actual need and service provision levels.

Nonprofit Advocacy Literature

Throughout the literature on nonprofit advocacy, a central theme is the lack of consensus about exactly what it entails (Boris & Krehely, 2002; Reid, 2000; Smucker, 2005). However, there is wide agreement that nonprofits have a right, if not a responsibility, to advocate with

government on their own behalf and on behalf of others (Boris & Krehely, 2002; Cho & Gillespie, 2006; Nonprofit Sector Strategy Group, 2000; Smith, 2005; Smucker, 2005). In addition to a complementary or partnership role, nonprofit organizations can and do play an adversarial role in relation to government, which Young (2006) characterizes as nonprofit advocacy.

Within the narrower context of the relationship between social service providers and government, advocacy has become increasingly relevant as resources grow scarce and at the same time government contracting for service provision has become more common (Smith, 2005; Nonprofit Sector Strategy Group, 2000; Smucker, 2005). Advocacy activities generally seen as appropriate in this context include issue identification and research, education, policy advocacy and lobbying (Nonprofit Sector Strategy Group, 2000; Smith, 2005; Reid, 2000; Smucker, 2005; Cho & Gillespie, 2006).

For smaller human service organizations, incorporating advocacy into their more traditional service roles can be a challenge. Small nonprofits, especially those with low-income or otherwise disadvantaged constituencies, often lack the resources, staff and skills needed to be politically effective (Boris & Krehely, 2002; Smith, 2003). Tucker and Sommerfeld, in their study of social service nonprofits in New York State, suggest that smaller organizations are less likely to be able to “constrain external contingencies to adapt to them as opposed to the reverse” (2006, p. 199). Because smaller organizations are particularly vulnerable with regard to funding constraints, advocacy activities that can potentially threaten relationships with government customers are often unrealistic (Smith, 2005).

Accordingly, one strategy to further political efficacy among smaller nonprofits is the creation of “umbrella” coalitions or associations (Boris & Krehely, 2002; Smith, 2003; Reid, 2006). Statewide associations of nonprofits, such as JDANYS, can provide assistance to

member organizations on practical matters, such as insurance and liability, staffing, and program needs. They can also be effective on policy issues relating to contracts, funding levels, and regulations; since these associations are not directly dependent on government for funding, they are in a better position to call attention to and push for change in matters that impact nonprofit organizations (Smith, 2005).

Nonprofits can benefit from the advocacy efforts of associations that represent them regardless of the character of their relationships with their government customers. Nonprofits that enjoy the “evolved principal-agent” type of interaction with the public managers who oversee their contracts still risk undermining those trusting relationships if they are directly adversarial with government on matters of legislation and regulation. Cho & Gillespie’s dynamic resource model (2006) is sensitive to the environmental and organizational realities that impact the mutual flow of information, and therefore power balance, between nonprofits and government customers. For this reason, they are clear in stating that nonprofits must endeavor to “shape regulations through advocacy efforts when new standards are proposed or old standards revised” (p. 505).

Because JDANYS represents agencies whose funding is to varying degrees dependent on government contracts and grants, it is particularly important for the association to recognize where it can be of assistance to its members on potentially controversial issues of policy, legislation and regulation. It is not coincidental that much of the literature on nonprofit-government relations also touches on the importance of advocacy and the roles of nonprofit associations in facilitating communication and negotiating change in policy matters that impact nonprofit operations.

Methods

Data Collection

To address the research questions posed in this study, 8 interviews were conducted with administrators that work in nonprofit agencies that provide nonsecure juvenile detention. One interview included two administrators from the same agency. These respondents will hereinafter be referred to as ‘operators’. Each operator was identified by the current leadership of JDANYS as having fulfilled some role in decisions made by their agencies concerning juvenile detention bed capacity, i.e. expanding or reducing the numbers of beds available for detention services. Operators were chosen from several areas in New York State (outside of New York City, which has its own, separate juvenile detention system), and held a variety of positions within their agencies, including Executive Directors, Program Directors, Presidents, and Directors of Services.

This is known as purposive sampling, in which respondents are selected precisely because they are in a position to provide information of the type sought by the researcher; the operators interviewed in this study can be described as “key informants” (Schutt, 2006). It is also important to note that many of the operators who participated also hold or have held leadership positions in JDANYS.

Drawing on key concepts from the literature, a protocol for a semi-structured interview was developed. It included structured questions designed to uncover ideas that I suspected would be important in capacity decisions. Other less structured questions were designed to elicit a more free-flowing response, capturing elements that might be important but that I had not anticipated. In this way, the research incorporated both inductive and deductive inquiry.

Each operator was asked to provide information about their agency and about the services provided, both detention and non-detention. Requested information included operating budget,

numbers of detention beds, and a brief description of the agency's contracts for detention. Operators were then asked to describe the circumstances that led up to the capacity decisions their agencies faced, the factors that were considered in the course of the decision-making process, and the sources of these inputs. Other questions were asked regarding perceptions of their agencies' relationships with stakeholders and of the importance of these relationships in the capacity decision-making process. Operators were encouraged via these open-ended questions to "tell a story" about the decision-making processes from their perspective. Finally, respondents were asked to offer their opinions about any ways in which they believed JDANYS could be of more help to nonsecure detention providers in making capacity decisions.

I took handwritten notes during each interview to record participants' responses; these notes were then typed and organized following the structure of the interview instrument. The typed notes provided a relatively standardized format for analyzing the collected data. Confidentiality was preserved for all respondents; collected data was kept in a secure, locked location, and respondents were assured that any information presented in the study would be kept anonymous.

Data Analysis

To answer the question of what factors inform capacity decisions in nonsecure detention agencies, this research was designed to develop an overall picture of the decision-making processes these detention operators participated in, and then identify common themes and elements of these processes and the contexts in which they occurred. Therefore, most of the data collected is qualitative in nature, consisting of description and narrative rather than absolute terms or numeric measurements. In order to present the collected data in a systematic way and enable themes and elements to be identified, notes taken during the interviews were typed and

read carefully. Concepts that emerged across interviews as relevant to the research question were used as categories for matrices, or charts that arrange data obtained from several sources in a way that illuminates commonalities across categories and by data source (Schutt, 2006).

Strengths and Weaknesses of Study Methods

Qualitative data methods are designed to “chart the dimensions of previously unstudied social settings” and to investigate the “subjective meanings that motivate individual action” (Schutt, 2006, p. 320). This study, therefore, was not intended to result in a set of numeric comparisons or statistical correlations. Instead, it attempted to describe some important qualities of the capacity decision process in juvenile detention agencies and the contexts in which they occur. Such a description, while not generalizable to the entire population of detention agencies, helps us build theories about the nature of capacity decisions and therefore is invaluable in contributing to a larger understanding of this aspect of service provision.

Because of the time and effort involved in collecting and interpreting interview data, the number of data sources is limited in this study; however, the 8 interviews conducted did generate clear, useful themes related to the research questions. While the sample population cannot be considered representative of detention agencies at large, these operators are unarguably in a position to offer rich descriptions of their experiences in managing service contracts with government providers. The overlap between participants and JDANYS past and present leadership raises the possibility of bias among respondents; however, it also means respondents can provide information and perspectives that are valuable in understanding the context and addressing the questions posed by this study.

Finally, the use of semi-structured interviews, in which the questions guide respondents toward particular topics, make observer bias a potential problem. I have a history of professional

interaction with both JDANYS and with some of the operators who participated, and cannot claim to have eliminated observer bias from this study. However, in standardizing the interview protocol, and remaining as conscious as I could of the risk that my own experiences might influence how I conducted the interviews and recorded the resulting data, I have worked to minimize the threat to the validity of the findings.

Findings

General Contract and Payment Structure

Each of the participating agencies has yearly contracts with one or more counties to provide nonsecure juvenile detention services to youths remanded by the counties' family courts. Most agencies charge a flat yearly rate to counties who reserve beds; the rate is per bed and is not based on actual use. Other agencies bill counties using various structures based on actual use and/or their total detention expenditures. Most of the agencies also lend beds on a space-available basis to noncontracting counties for a per diem rate (based on days of actual use) that is higher than the equivalent paid by their contracting counties. In some of the agencies, all the detention beds are reserved; in some, a few beds are unreserved and therefore available on an as-needed basis to both contracting and noncontracting counties. In all cases, contracting counties have preference; if a reserved bed is being used by a noncontracting county and is suddenly needed by a contracting county, the youth from the noncontracting county is moved by that county, or 'bumped', to another facility that has space.

Agency Characteristics

Two categories of agency emerged right away: agencies that provide only or primarily detention, and those that provide detention among an array of other services. These categories

are relevant in light of the fact that New York State reimburses counties for detention at different rates from which it reimburses for other youth services. These categories also reflected a division among the agencies based on size: those agencies providing only or primarily detention were also the smallest of the agencies (in terms of total operating budget). Table 1 offers an overview of these characteristics, including the net change in capacity for each agency.

Table 1: Characteristics of Agencies Providing Nonsecure Detention

| Agency | Operating Budget Range (in millions) | Detention Budget Range (in millions) | Current # of Detention Beds | Other Services? | Net Change in Capacity (since 2000) |
|---------------|---|---|------------------------------------|------------------------|--|
| 1 | \$25 – 100 | \$3 – 10 | 55 | yes | -8 |
| 2 | \$25 – 100 | \$1 – 3 | 18 | yes | -36 |
| 3 | \$25 – 100 | \$1 – 3 | 24 | yes | +6* |
| 4 | \$10 – 25 | <\$1 | 12 | yes | none |
| 5 | \$3 – 10 | <\$1 | 12 | yes | -6 |
| 6 | \$3 – 10 | <\$1 | 8 | yes | -8* |
| 7 | \$1 – 3 | \$1 – 3 | 32 | no | +10 |
| 8 | \$1 – 3 | \$1 – 3 | 8 | no | -6 |

* Decision still in process, no change to date.

NOTE: Operating and detention budget information are presented in ranges to preserve the confidentiality of participating organizations.

Each agency had within the past several years confronted at least one potential change in detention capacity. Some ultimately arrived at a decision to expand capacity, some to reduce

capacity; one agency ultimately made no change. Some agencies made more than one change in capacity during the time frame described; for two agencies, the decision-making process is not complete and no change has yet been made.

Decision Inputs

As Table 2 shows there were several different types of inputs, or information, used by all or most agencies in making capacity decisions.

Table 2: Capacity Decision Inputs

| Agency | Capacity Decision Inputs | | | | |
|----------|--------------------------|---------------------------------------|-------------|-------------|---------------|
| | Occupancy Rate | Knowledge of Other Facilities' Trends | Legislation | OCFS Policy | County Policy |
| 1 | X | X | | X | X |
| 2 | X | | X | X | X |
| 3 | X | | | | |
| 4 | X | X | | X | X |
| 5 | X | X | X | X | X |
| 6 | X | X | X | | X |
| 7 | | X | X | | X |
| 8 | X | X | X | X | X |

NOTE: "X" indicates input was present during capacity decision.

Finding #1: Information used to predict future need was an important input in most agencies' capacity decisions.

This information typically concerned occupancy rates, both at the operators' own agency and at others, and recent or future changes in legislation or policy. In all but two agencies, the operators and other participants in the process had become aware of significant changes in their agencies' occupancy rates in the months prior to the capacity decision. As one operator said, "We saw the writing on the wall." One agency had only been open for about a year, and its occupancy rate had been consistently very high, triggering consideration of an expansion of capacity (the agency is still undergoing the decision process). Another operator did not report change in their agency's utilization, but was aware of increased need in neighboring (noncontracting) counties.

A related experience reported by some operators was a change in the number of 'turndowns' to noncontracting counties. As described above, several of the agencies lend unused beds on a per diem basis to counties they do not contract with. More than one agency is in the habit of documenting the number of times they must refuse per diem bed space to a noncontracting county, or refuse a contracting county that is asking for bed space beyond its reserved number of beds, because all available beds are in use. The rate of these 'turndowns' is accepted as both a reflection of how often a facility is full, or general occupancy rate, and also as an indicator of need for detention beds by noncontracting counties.

Most agencies reported using knowledge about occupancy trends at other nonsecure facilities. Some operators extrapolated from this information and drew conclusions about regional and even statewide trends in utilization that helped them in forming general predictions about their own customers' likely future needs. For some, this helped confirm that local trends were not anomalous or temporary, or that there was an overall change in attitudes and even policies toward detention use in the state.

Several operators indicated that awareness of state legislation affecting detention use, such as the PINS 18 Law (New York State Family Court Act, Article 7, §714-b), which raised the age of jurisdiction for status offenses (e.g. running away, truancy, etc.) to 18, and the PINS Reform Law (New York State Family Court Act, Article 7, § 720-5(a)), was an important factor. One respondent said that information he learned from JDANYS allowed his agency to “stay in tune with the legislature” and anticipate coming policy changes. Some also stated that OCFS regulatory policy, in particular their recent reluctance to certify new beds, was considered. A few operators reported having prior knowledge of likely changes in legislation and/or policy that allowed them to prepare for subsequent changes in utilization. Both of these types of inputs were again used in forming predictions about likely future needs.

In a related way, an understanding of formal or informal changes in policy at the county level, which many operators perceived as being driven by legislation and policy at the state level as well as county fiscal constraints, informed operators’ predictions of future need. One operator observed that their contracting counties seemed more likely to spend money on preventive services, which they said are perceived as giving “more bang for the buck” than detention. In two cases, agencies’ contracts with single counties were or may be eliminated at the county’s initiative, leaving the agencies no say in the decision.

Agency Goals in Making Capacity Decisions

Several types of goals were common to agencies undergoing capacity decisions. Table 3 presents those mentioned most often.

Table 3: Agency Goals for Capacity Decisions

| Agency | Agency Goals in Making Capacity Decision(s) | | | | |
|----------|---|-------------------------|-------------------------|------------------|-----------------|
| | Meet Customer Needs | Capture/Retain Revenues | Retain Flexibility To: | | |
| | | | Adapt to Customer Needs | Serve Population | Structure Costs |
| 1 | X | X | X | | |
| 2 | X | | | | |
| 3 | X | X | | | |
| 4 | X | X | | X | |
| 5 | X | X | | | X |
| 6 | X | | | | |
| 7 | X | X | X | X | |
| 8 | X | X | X | X | |

NOTE: "X" indicates goal was present during capacity decision.

Finding # 2: Meeting customer needs, capturing or retaining revenue, and retaining agency flexibility were all primary goals for agencies in making capacity decisions.

Capturing or retaining revenues was a goal for most operators. Agencies contemplated adding capacity to accommodate more of an existing customer's business, or to attract new customers; others considered reducing capacity as a way to reduce costs to their counties and thereby keep business that might otherwise be sent elsewhere.

For all agencies, meeting the needs of their customer counties was an important desired outcome for the decision-making process. For some, this meant expanding to accommodate

increased need for detention; for others, it meant reducing costs to the counties who were paying for unused beds by reducing capacity and therefore being able to charge counties less. For still others, changing capacity allowed changes in how they serve their populations, enabling them to safely house more difficult youths or manage intake more effectively and therefore provide better service to their customer counties.

A theme among most agencies was a desire to match capacity to local need. Three operators reported that raising the issue of underutilization and/or rising costs with their customer counties, and considering capacity changes as a means to address these issues, was an obligation that they felt toward their customer counties based on their relationships with them. “No one wants the counties to pay exorbitant costs,” as one operator put it. Another described having too many unused detention beds open, saying that from an organizational point of view, “it didn’t look right and it didn’t feel right.” Now that they have reduced their capacity levels to match the level of need in their customer counties, “everything is making sense, counties are paying their fair share, and the beds are being used.”

Three operators referred specifically to flexibility as an important attribute to protect in their agencies. Two others related that they wanted to preserve or enhance their agencies’ ability to structure services or administration in particular ways that implicated flexibility as an important quality. For some agencies, reducing beds meant less flexibility to adapt to fluctuations in customer need, and this was an item of concern throughout the decision process. For others, expanding capacity was a way to increase their flexibility to manage the detention population more effectively, enhance the safety and wellbeing of youth and staff, and increase service quality.

One operator indicated that retaining a certain level of detention capacity allowed the agency to preserve administrative resources it might otherwise have lost, since state

reimbursement for detention services includes a certain amount allowable for administrative costs. This agency also provides other youth services to its customer counties, and the operator stated that while it could have closed its entire detention operations and still survived as an organization, retaining some detention capacity allowed the agency to keep an active role in the arena of family court and the juvenile justice system, in addition to its role in the local school and social services systems. It was important, they felt, to remain “responsive to the changing needs of the system.”

Finding #3: Most operators feel that their relationships with other detention providers, and in particular other members of JDANYS, have been important to them in making capacity decisions.

Most operators stated that JDANYS as an organization had little impact on their agencies’ capacity decisions, although a few felt that the Association was an important source of valuable information, and one described the information they obtained from JDANYS about legislative and regulatory changes as “crucial” in being able to prepare their agency for changes in demand for detention. However, 6 of the 8 operators said that their relationships with other nonsecure detention providers, and with other JDANYS members in particular, played an important role in the capacity decision process. As one operator said when discussing the value of informal relationships with other providers, “I don’t call non-members.” All indicated that this primarily had to do with the exchange of information; for many, as described under Finding #1, awareness of utilization trends at other agencies was very useful in developing predictions about needs in their own localities.

In addition, two operators stated openly that their relationships with other JDANYS members would prevent them from making capacity decisions that would impact negatively on

other member agencies, i.e. they would not seek to expand detention services into areas that would put them into direct competition with other JDANYS members.

Opportunities for Impacting Capacity Management

A final pair of findings relate to where detention operators currently see themselves in relation to OCFS, and what the possibilities are for JDANYS to have an impact on juvenile detention capacity at a macro level.

Finding #4: Several operators report greater consistency from and collegiality with their OCFS detention contacts over the past year or two.

Each nonsecure detention provider is assigned a ‘consultant’ from OCFS who is responsible for conducting site visits, monitoring compliance, and issuing compliance reports. The consultant also serves as a point person for the agencies when operators have questions or need assistance regarding regulations or procedural issues. Several operators reported that while relations with their detention consultant had been unhelpful or outright hostile in the past, they felt that in the past year or so things had improved. Many operators discussed the quick turnover among consultants in the past; this, along with a general perception of “fuzziness” in detention regulations, appeared to have resulted in considerable variation from one consultant to the next, and therefore from one year to the next, in their interpretations of regulations. “[It was] always someone with a different set of standards,” one respondent said about compliance visits.

When asked about the quality of their agencies’ relationships with OCFS, most operators indicated that it varied depending on who their consultant was, and that individual personality seemed to play a large part. More than one operator, including some who reported generally good relations with OCFS, also reported feeling that OCFS either doesn’t have or doesn’t use

expertise on serving youth and knowledge about local detention needs in executing its regulatory function.

Overall, operators from large agencies that provide a variety of youth services in addition to detention were more likely to report consistently good relations with OCFS over time, although they too acknowledged variation from person to person. There was a recognition among many respondents that larger agencies that provide an array of youth services are in a different position in relation to both customer counties and OCFS, and that detention-only agencies, because of their dependence on detention revenues for survival, naturally had different priorities in their relations with county and state government. As one operator said of their agency's relationship with its customer county, "If [we] only did detention, we'd be a bug stuck to the bottom of the county's shoe." This finding is predicted by the literature on both resource dependency and nonprofit-government contracting.

Recently, however, operators of agencies both large and small have noticed a longer tenure among detention consultants, as well as a more collegial, open attitude. Respondents report feeling that their current consultant is more helpful, is "making more of an effort", and "does what [he] says [he] will do". Some operators also state that they perceive a "new energy" in OCFS at the organizational level, with a renewed focus on serving youth and an openness to input from detention providers and other stakeholders. In addition, some operators who also hold leadership roles in JDANYS commented that this perceived change at OCFS extended to its relationship with JDANYS as an organization; one operator reported perceiving less "brinksmanship" from OCFS and a greater willingness to work with detention providers on policy matters. Having developed a draft of new regulations addressing the needs methodology requirement, OCFS has indeed sought input from detention providers, which has contributed to the perception of new openness at the agency. The presence of a recently appointed OCFS

commissioner was mentioned by several operators as perhaps the source, at least in part, of this new positive feeling.

Finding #5: There is a variety of opinions among operators as to whether and how JDANYS can be of assistance to detention providers in making capacity decisions.

A few operators stated that they felt it was not likely that JDANYS could have much direct impact on individual capacity decisions. While there was not a clear consensus among respondents about how JDANYS might be helpful in a larger or more general context, several themes emerged related to the Association's potential role in the statewide detention system. One suggestion echoed by a few operators was that JDANYS could use its weight or its "strong voice" to advocate for nonsecure detention providers on matters of local need and service issues, strengthening their positions with OCFS and/or their contracting counties.

On the other hand, a few operators expressed reservations about how effective JDANYS has been in advocating with OCFS in the past, suggesting that a less adversarial or more strategic approach might accomplish more. As described in Finding #4, and as suggested by literature on nonprofit-government relations, large agencies that provide an array of youth services tended to have a more positive view of their relationships with OCFS over time than smaller agencies. This distinction was seen by some as informing JDANYS' current oppositional stance with OCFS, perhaps at the expense of the Association's relevance for larger, more diverse youth service agencies.

Another suggestion from more than one operator was that JDANYS could foster ongoing dialog at the state level regarding systemic capacity issues; some operators felt this would help address concerns with insufficient capacity that impact negatively on youth and families.

Finally, a set of themes relating to JDANYS as a source of information became clear. Operators felt that JDANYS could continue to be a resource for information about detention

agencies, local and state utilization trends, and regulatory and policy items that affect nonsecure detention. Specific suggestions included developing a model to predict need and use trends, publishing more information from more agencies on the JDANYS website, and perhaps developing training and other resources for nonprofit providers to use in planning.

Recommendations

Based on the findings of this study as well as the concepts discussed in the literature reviewed, I make the following recommendations for how JDANYS can contribute to nonsecure juvenile detention capacity management at the local and state levels.

Recommendation #1: JDANYS should continue to facilitate and work to strengthen relationships among nonsecure juvenile detention providers.

A constant element among operators' descriptions of how JDANYS was important to decision-making was the informal access they had to other members of the Association. This was viewed by several operators as a primary source of information regarding utilization trends at other agencies (and indirectly of information about local and regional need patterns) and other inputs used to make predictions about future demand. This type of information can supplement what is formally available in the exchange between government and the contracting nonprofit, helping redress the information deficit referred to by Cho & Gillespie (2006) that can undermine service provision. For example, a detention provider may be able to negotiate a more appropriate contract if it can confidently predict local service needs, leading to a better match between service provision and demand.

These informal relationships were also viewed as a source of support and wisdom that was helpful for some operators in confronting capacity-related challenges. They validated for some operators their perceptions of systemic changes and realities, enabling them to take actions

and make decisions from a position of relative strength. While informal, these relationships are still part of the advocacy “umbrella” that a professional association provides, helping individual operators at least feel less vulnerable to the risks that come with relying on government contracts.

JDANYS should consider explicitly encouraging informal exchange of information among members, perhaps openly advertising this as a benefit to be gained from membership. Steps can be taken to maximize members’ exposure to each other, such as holding Association events at a variety of locations around the state so that travel hardship doesn’t regularly prevent less centrally located members from attending. More opportunities for less formal, unstructured networking could be created, such as regional social events sponsored by JDANYS for the purpose of encouraging members to “make friends”.

A corollary to this recommendation is that JDANYS should also work actively to increase membership, so that detention agencies who currently don’t have the kind of informal access to each other that membership appears to facilitate can benefit.

Recommendation #2: JDANYS should revamp its advocacy agenda to attend to the sometimes diverging concerns of larger, diverse agencies and smaller detention-only agencies.

As described in Findings #4 and 5, there is recognition that large, diverse youth service agencies tend to have different views of their relationships with both customer counties and OCFS from small, detention-only agencies. Dependence on government contracts as the sole or primary source of revenues appears to make contractual, regulatory and legislative changes that impact detention more of an advocacy priority for smaller agencies than for the larger ones. Agencies that provide a wider spectrum of care for youth experience detention provision as only a small part of an overall picture of their relationships with their counties and with OCFS,

meaning systemic changes that impact detention are less important, or perhaps differently important, than they are for smaller agencies.

As an example, larger agencies that provide a variety of services have more flexibility to draw on different funding streams to support administration, to reassign resources to other service areas if detention services are reduced, and to weather temporal fluctuations in utilization that affect revenue levels. They also have more leverage when negotiating with customers and regulators, since from the counties' or OCFS' point of view, more is at stake than just detention services. They may rely on larger agencies as providers of other crucial services as well, strengthening these agencies' negotiating positions and also their ability to resist the negative impacts of government contracting discussed in the literature.

Therefore, in order to remain relevant in an advocacy role for both large and small agencies, it would be wise for JDANYS to further develop its understanding of how capacity is important to both types of agency and how both types of agency are important to the question of overall capacity management. While there is considerable agreement that JDANYS is not likely to be able (nor should it) directly impact individual agencies' capacity decisions, the suggestion from more than one provider that JDANYS should initiate a larger discussion of statewide capacity issues is well taken. If larger, more diverse agencies experience detention-impacting issues differently from smaller agencies, and they have different abilities to manage capacity changes within their own agencies, they too must have a voice in any meaningful discussion of statewide capacity, and JDANYS should work to be that voice, at least in part. The more agencies JDANYS can bring (and keep) on board, the more weight it brings to any advocacy it undertakes, and the more credibility to any statewide discussion of capacity issues.

Recommendation #3: JDANYS should capitalize on the recent changed perceptions that detention operators and JDANYS representatives have of OCFS in its efforts to contribute to effective capacity management.

Detention operators have related that they perceive a more positive energy and a more open, collegial attitude from OCFS in three areas: provider interactions with their individual consultants, administration at the state level, and interorganizationally with JDANYS. In light of the suggestions by operators that JDANYS should participate in a state-level discussion of detention capacity and perhaps even partner with OCFS in examining the detention system as a whole, an increased ability to work with OCFS at different levels is key to the Association's efforts.

If, as JDANYS states on its website, one of its purposes is "to provide effective channels of communication between detention centers and all agencies involved in the juvenile detention process" (JDANYS, 2007a), working to improve its own communication with OCFS is important. It is also, by extension, likely to help individual agencies improve their communication with OCFS, since JDANYS leaders are also detention operators, and since a significant amount of information appears to travel via informal channels among JDANYS members.

It is important to understand that increased collegiality with OCFS and a strong advocacy role in the state detention system are not mutually exclusive. Young (2006), in his discussion of the supplementary, complementary, and adversarial roles nonprofits can play in relation to government, is clear that organizations often simultaneously act in more than one of these roles. Nonprofit detention providers can at the same time faithfully discharge their contractual obligations to government providers and regulators, and also push for change in government policy and practice. As described in the literature on nonprofit advocacy, JDANYS, as an "umbrella" organization of nonprofit providers, is especially well situated to accomplish this.

Since, as an association, it is not directly dependent on government revenue nor under the jurisdiction of the state regulatory agency, it can use its “one step removed” status to represent the aggregate interests of its member agencies while still working in good conscience to partner with OCFS on matters of concern to the state juvenile justice system at large.

This is not to suggest that such a balancing act is easy. As nonprofit-government literature shows, power shifts back and forth between organizations in any ongoing relationship. The responses of several detention operators indicate that they don’t see OCFS as an expert on youth or on juvenile detention; many felt that, with regard to capacity issues, OCFS was important only because it had the power to grant or deny certification of detention beds. However, even a small change in perceptions among JDANYS members about OCFS as an agency presents an opportunity for the Association to improve its ability to communicate effectively with the state agency. It seems likely that even incremental expansion of the common ground between the two organizations will lend credibility to JDANYS’s position where it must advocate in opposition to the state, and raise the level of discourse between the two bodies.

Recommendation #4: JDANYS should set aside resources to research statewide capacity issues, and to provide information and training on capacity management to stakeholders in the juvenile justice system.

Detention operators have indicated that they view JDANYS, both in its formal role as an association and in its facilitation of informal relationships among members, as a valuable source of information on detention at large and on detention capacity issues. Respondents reported that JDANYS has provided specific facts about legislative and regulatory matters that impact detention use, and that informal exchanges with other JDANYS members gave them access to information about local and regional detention use that was important to them in making their own capacity decisions. Some operators explicitly suggested that an appropriate role for

JDANYS in statewide capacity management would be to develop expertise in detention use and capacity trends, and to disseminate this information among members via its website and trainings.

Pursuing a comprehensive, structured analysis that identifies variables that impact detention use and capacity and generates models to help predict need in New York State will also strengthen JDANYS' position in advocating with the state on issues related to capacity. Where detention operators perceive in OCFS a lack of or unwillingness to use specific knowledge about local needs and capacity issues, JDANYS' introduction of these concepts into the dialog about capacity may influence OCFS to be more transparent about its own rationales and procedures for certification. At the very least, incorporating an analytical approach into its own positions on capacity will set a standard for OCFS to aspire to in its capacity management efforts. In what is perhaps a best-case scenario, JDANYS' contributions to a larger understanding of detention need, utilization and capacity can become part of a collaborative effort among juvenile justice stakeholders to make the detention system more effective, responsive and accountable in serving court-mandated youth and their families.

Conclusion

Managing capacity successfully is a challenge in a system as complex as New York State's juvenile detention system. Nonsecure detention, which is provided almost entirely by nonprofit youth service agencies, many of whom also provide other youth services, presents its own distinct set of problems for stakeholders who are trying to achieve, among other things, a good match of service provision to need. The dynamics of nonprofit-government contracting, the numerous and disparate factors that affect detention utilization, and the changing fiscal landscape of state and local government form a context that complicates decisions about

detention capacity at all levels, from the individual contracted bed all the way up to state certification protocols.

JDANYS has embraced its mission to be a resource for juvenile justice stakeholders and to improve the quality of care provided by New York's juvenile detention facilities. Now, as fiscal constraints, increased attention to accountability and efficiency, and political pressures have contributed to a significant recent reduction in nonsecure juvenile detention capacity, the Association faces the tough job of both advocating effectively on behalf of its constituents and continuing to support its members in their efforts to provide good service. How much capacity is too much? How much is not enough?

The steps outlined in the recommendations above are simply a starting point for JDANYS from which it can develop a more comprehensive strategy for having an active role in statewide detention capacity management.

Appendix A

Interview Protocol

PRELIMINARY INFORMATION

Name: _____ Agency: _____
 Position: _____ Current # of Detention Beds: _____
 Other Services Offered (briefly): _____

JDANYS: _____ member _____ nonmember

Annual Operating Budget (agency): _____

Detention Budget: _____

- 1) Please briefly describe the nature of your contracts for nonsecure detention.
 - with whom
 - how many beds
 - basic payment structure
- 2) What, if any, decisions has your agency faced in the past several years having to do with nonsecure detention capacity (i.e. expanding or reducing number of beds)? Include decisions that resulted in no change in capacity.
- 3) What was your role in this decision-making process? Who else was involved, and what are their roles in the agency?
- 4) What were the circumstances leading up to this decision-making point for your agency?
- 5) What factors did you and other decision-makers consider during the process?
 - internal
 - external
 - need-based
 - strategic
- 6) Were there inputs (e.g. information) that were particularly relevant and/or helpful during the process?
 - information about need
 - information about usage
 - information about trends
 - information about regulation
 - political contingencies

If so, where did these inputs come from?

- contracting entity
- OCFS
- JDANYS
- other

7) Please briefly describe your agency's relationship with your contracting entities.

- longevity
- how much contact
- how much information is exchanged? which direction?
- trust level
- hierarchical? competence-based? relational?
- how important is this relationship in making capacity decisions?

8) Please briefly describe your agency's relationship with OCFS.

- how much contact
- how much information is exchanged? which direction?
- hierarchical? compliance-based?
- how important is this relationship in making capacity decisions?

9) If you or your agency is a member of JDANYS, please briefly describe your relationship with JDANYS.

- how much contact
- how much information is exchanged? which direction?
- how important is this relationship in making capacity decisions?

10) Can you envision any way in which JDANYS could be of further help to your agency or other agencies in future capacity-related decisions?

Appendix B

Table of Interview Responses to Interview Question #10: Can you envision any way in which JDANYS could be of further help to your agency or other agencies in future capacity-related decisions?

| Agency | How JDANYS Can Help Agencies with Capacity Decisions |
|--------|---|
| 1 | It can't. |
| 2 | <ul style="list-style-type: none"> • Send message that while we believe in keeping kids in the community, the system shouldn't go too far in the direction of reducing detention • Bring objectivity to individual decisions to remand youth to detention |
| 3 | <ul style="list-style-type: none"> • Post more information from more agencies on JDANYS website • Get more detention providers on board • Strengthen nonsecure providers' position with OCFS & counties |
| 4 | <ul style="list-style-type: none"> • Probably no direct impact on individual decisions • Remain a "strong voice" in state detention issues • Be a resource for information on legislation and other state activities that affect detention • Develop expertise and provide training, information on capacity trends |
| 5 | <ul style="list-style-type: none"> • Probably no direct impact on individual decisions • Partner with OCFS to look at system as a whole, develop "global picture" of detention |
| 6 | <ul style="list-style-type: none"> • Probably no direct impact on individual decisions • Foster overall discussion of state capacity • Have a say in significant changes in statewide capacity |
| 7 | <ul style="list-style-type: none"> • Develop a model to predict detention need and utilization; identify variables that impact • Advocate with OCFS for nonsecure detention providers regarding local needs and conditions, including misuse of detention • Lend its weight to providers to balance OCFS's power to grant/deny certification |
| 8 | <ul style="list-style-type: none"> • Provide resources regarding statewide trends in use which providers can access and use for planning |

Appendix C

Institutional Review Board – Human Subjects Research Approval

Date: October 25, 2007

To: Jennifer Whitehead, PA

From: Anne M. Casella, CIP Administrator

Human Subjects Research Review Committee

Subject: Human Subjects Research Approval

Protocol Number: 729-07

Protocol title: *Nonsecure Detention Capacity Decision-Making in New York State*

Your project identified above was reviewed by the HSRRC and has received an expedited approval pursuant to the Department of Health and Human Services (DHHS) regulations, 45 CFR Part 46 section 45 CFR 46.110(7).

An expedited status requires that you will be required to submit a Continuing Review application annually as outlined by Federal Guidelines: *46.109 (e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.*

If your project undergoes any changes or modifications these changes must be reported to our office prior to implementation.

Any unanticipated problems and/or complaints related to your use of human subjects in this project must be reported, using the form listed below, <http://humansubjects.binghamton.edu/Forms/Forms/Adverse%20Event%20Form.rtf> and delivered to the Human Subjects Research Review Office within five days. This is required so that the HSRRC can institute or update protective measures for human subjects as may be necessary. In addition, under the University's Assurance with the U.S. Department of Health and Human Services, Binghamton University must report certain events to the federal government. These reportable events include deaths, injuries, adverse reactions or unforeseen risks to human subjects. These reports must be made regardless of the source of funding or exempt status of your project.

University policy requires you to maintain as a part of your records, any documents pertaining to the use of human subjects in your research. This includes any information or materials conveyed to, and received from, the subjects, as well as any executed consent forms, data and analysis results. These records must be maintained for at least six years after project completion or termination. If this is a funded project, you should be aware that these records are subject to

inspection and review by authorized representative of the University, State and Federal governments.

Please notify this office when your project is complete by completing and forwarding to our office the following form:

<http://humansubjects.binghamton.edu/Forms/Forms/Protocol%20Closure%20Form.rtf>

Upon notification we will close the above referenced file. Any reactivation of the project will require a new application.

This documentation is being provided to you via email. A hard copy will not be mailed unless you request us to do so.

Thank you for your cooperation, I wish you success in your research, and please do not hesitate to contact our office if you have any questions or require further assistance.

cc: file

David Campbell

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