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## SYMPOSIUM ISSUE

*Delinquency or Illness? The Intersection of Mental Health and Juvenile Justice*

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A recent story in the New York Times included a surprising statistic. Although a majority of the 800 youth in New York’s juvenile prisons have some form of mental disorder, the state does not have a single full-time psychiatrist on staff to serve these youth.² The problem is not unique to New York. What is unusual about the New York Times article is that the topic of mental health and juvenile justice has now become a subject of national media focus. Traditionally, scant attention was paid to the challenges faced by children, families and juvenile justice stakeholders when mentally-disordered young offenders entered the justice system. Prior to the mid-1990s, relatively little was known about the prevalence of mental disorders among this category of youth.³ No reliable mechanisms existed for identifying the broad range of mental health issues among the juvenile justice population.⁴ Similarly, there was little research on successful strategies for intervention or prevention. In the
past two decades, however, scientists, juvenile justice practitioners, policy makers, and advocates increasingly have turned their attention to these issues.5 The Public Interest Law Reporter Symposium Issue, “Delinquency or Illness? The Intersection of Mental Health and Juvenile Justice,” builds on their efforts in a series of articles that review existing knowledge, discuss promising practices and identify areas of ongoing need. The authors are social scientists and practitioners who study and observe how the mental health, education and juvenile justice systems respond to the needs of youth with mental disorders. The goal of this preface is to set the stage for that discussion by identifying areas of progress and issues of concern when exploring the intersection of delinquency, adolescent development, and disease.

Mental Health and Trauma Disorders Among Justice-Involved Youth

In the 1990s, concerns about a rise in youth violence and a corresponding increase in “get tough” responses led researchers to explore a broad range of issues related to juvenile crime.6 An important aspect of this effort involved the use of new technologies to better understand how the brain develops and changes during adolescence. The outcome of this research was to provide empirical validation for the centuries-old observation that children, including teenagers, are fundamentally different than adults.7 These developmental differences help explain why adolescents are at special risk for behaviors that may lead to their involvement in the juvenile justice system.

Although normal adolescent development places all youth at risk for behaviors that pose potential harm to themselves or others, these risks are compounded when adolescents have mental health problems.8 A recent study found that the median age of onset for all types of mental disorders is age 14.9 According to the study, anxiety disorders can begin as early as late childhood, while mood disorders typically develop in later adolescence and substance abuse issues in one’s early 20s.10 The overall prevalence rate for youth with some form of behavioral health disorder is estimated at somewhere between 15 percent and 25 percent.11

It is now well-established, however, that youth in the juvenile justice system have higher rates of mental disorders than those in the general public. Prevalence studies have consistently found that up to 70 percent of justice-involved
youth suffer from some form of mental health disorder. In at least a quarter of cases the disorder is so severe that a youth’s ability to function is seriously impaired.

To further complicate matters, some young offenders have undergone traumatic experiences which exacerbate the challenges they already face in coping simultaneously with normal adolescence and mental health needs. Such traumatic events may include experiencing or witnessing family or community violence, physical or sexual abuse, loss of a loved one or unintentional injury. Although trauma is a comparatively new area of research, preliminary data suggests that youth in the juvenile justice system have been exposed to higher levels of trauma than youth in general. Some studies have found that the rate of victimization among youth in the justice system is as high as 75 percent. Girls appear more likely to exhibit trauma-related symptoms than boys. The higher levels of trauma-affected youth in the justice system is attributed in part to the way some youth respond to their traumatic experiences, including heightened levels of aggression and oppositional behavior.

**AREAS OF PROGRESS**

Prevalence studies on mental health and the impact of trauma have contributed to an increased awareness of the need for better early identification and intervention strategies for youth with mental health and related needs. This heightened awareness has prompted new areas of research as well as changes in law, policy and practice. Four recent positive developments include better screening and assessment mechanisms, new strategies for diverting youth from the formal justice system, increased use of evidence-based practices and experimentation with specialized juvenile mental health courts.

**SCREENING AND ASSESSMENT**

One of the most significant developments in the last decade has been the increased availability of scientifically-validated tools designed to screen and assess youth for mental health disorders. Although justice-involved youth are at higher risk than others for mental health problems, the absence of tools to assess this risk long served as a barrier to the timely and accurate identification of a youth’s mental health status and needs. Juvenile detention and correc-
tions personnel were at a particular disadvantage in not knowing what effect a youth’s unidentified mental disorder might have on institutional safety and discipline. Today there are a number of scientifically sound tools for screening and assessing the mental health needs of youth in the justice system. One of the most widely used instruments is the MAYSI-2, a self-report tool administered on youth entering detention or corrections facilities. Now in use in the majority of states, MAYSI-2 is intended to be a fast, easily administered method for determining whether further clinical assessment is required. Other scientifically sound screening tools are also available for use in determining if a youth requires more extensive evaluation.

As useful as screening and assessment tools are in evaluating a youth’s mental health needs, researchers caution that their reliability depends on a clear understanding of their purpose and limits and as well as training in their administration. There is still some confusion in the field, for example, about the difference between screening and assessment – screening is a preliminary determination of whether additional follow-up is indicated, whereas assessment is a more in-depth examination of a youth’s mental health status. Untrained juvenile justice practitioners also continue to confuse mental health screening and assessment tools with instruments designed for other purposes, such as a youth’s risk of violence or repeat offending.

**DIVERSION**

A significant percentage of youth who enter the juvenile justice system, including those with mental health disorders, are charged with lower-level offenses. There is now abundant evidence that many of these youth can be successfully diverted from the formal justice system into less expensive and more effective community-based and family-focused programs. Among the services offered by these programs are individual and family counseling, substance abuse treatment and medication prescription and management. Several model diversion programs have emerged in recent years. For example, the Texas Front-End Diversion Initiative is an early intervention and diversion effort. This program uses Specialized Juvenile Probation Officers who have received training in such areas as motivational interviewing, crisis intervention, family engagement and case management. Specialized Juvenile Probation Officers work with youth and families for up to six months, linking them with community-based ser-
vices and helping them develop aftercare plans to ensure that treatment continues after formal system involvement has ended.

Diverting youth with mental disorders from secure detention is the goal of the Illinois Mental Health Juvenile Justice program. Begun as a pilot program in 2000 and later expanded to include all counties with detention centers, the program uses master’s level mental health professionals to serve as liaisons linking detention centers, juvenile courts and community-based mental health and substance abuse treatment programs. Upon entry into a detention center, each youth is screened for a serious mental illness. When such an illness is identified, the liaison prepares a treatment plan as an alternative to secure confinement. Consistent with the plan, youth and their families are referred to community-based providers for services which may include substance abuse treatment, individual and family therapy, educational advocacy and job training. The re-arrest rate for the over 4,500 youth who have received community services is slightly over 20 percent, as compared to a re-arrest rate of over 70 percent for youth detained prior to trial.

A youth’s mental health needs are also relevant at the time of adjudication and sentencing. The Cook County Juvenile Court Clinic has drawn national attention for its success in achieving better informed decision-making on behalf of youth with mental health disorders. Established in 1999, the Cook County Juvenile Court Clinic provides a comprehensive set of services aimed at helping judges understand the competency, culpability and treatment implications when a youth suffers from some sort of mental impairment. Each juvenile courtroom has a clinical coordinator who responds to requests from any party to provide relevant behavioral health information and, where appropriate, arranges for a clinical evaluation. The clinic’s interdisciplinary staff conducts the evaluation and files a report with the judge. The report may include a treatment recommendation, but the Juvenile Court Clinic does not itself provide clinical services. The Clinic instead provides the court with information about community-based services appropriate to a youth’s needs. The Juvenile Court judge, in turn, may use this information either to divert cases from the formal system or as part of a dispositional order after adjudication.
EVIDENCE-BASED PRACTICES

Another area of progress in responding to the mental health needs of justice-involved youth has been the development of treatment interventions that produce empirically-verifiable positive outcomes. The body of intervention and treatment approaches with proven records of success is collectively known as evidence-based practices or EBPs. Rather than relying on anecdotal experiences or traditional practices, EBPs are the product of rigorous scientific testing. Increasingly public and private service providers are being advised, and in some cases required, to use EBPs to treat youth with behavioral health disorders. In Oregon, for example, the use of EBPs is required for service-providers receiving state funds. Among the EBPs that have shown promise in reducing recidivism among juvenile-involved youth are Aggression Replacement Training (ART), Functional Family Therapy (FFT), Multi-Systemic Therapy (MST) and Multidimensional Treatment Foster Care (MTFC).

Although EBPs have been proven to reduce delinquency, similar to mental health screening and assessment tools, they must be understood and used as intended or they will not produce the results for which they are designed. Unfortunately, some of the most effective EBPs are very expensive (although proponents argue that costs are recouped in lower rates of system involvement). In addition, not every community has access to evidence-based practices. Stakeholders in small rural communities, for example, argue that it would be unfair to withhold state funding from a local service provider who lacked the training and resources to provide a range of evidence-based interventions for the relatively small number of youth entering the justice system in their communities.

JUVENILE MENTAL HEALTH COURTS

Some jurisdictions have begun to explore the feasibility of establishing juvenile mental health courts which specialize in responding to justice-involved youth with mental health disorders. The first of these courts was established in Santa Clara County, California in 2001. Modeled on similar courts developed in the adult criminal justice system, these courts are intended to respond to the mental health needs of youth charged with crimes, while at the same time protecting the community from future crimes attributable in part to youths'...
unaddressed behavioral health problems. The criteria for deciding which youth are eligible for referral to the mental health court and the timing of referral vary by program. Some programs specialize in youth with a particular diagnosis, such as a dual diagnosis of mental health and substance abuse. Others serve youth with severe biologically based disorders, such as bipolar and post-traumatic stress disorder. Additional selection criteria may include a youth’s age and the seriousness of the charge. Although some juvenile mental health courts operate at the front end of the process, the majority intervene after adjudication and prior to entry of a dispositional order.

Those who support the idea of courts focused on the mental health status and needs of youthful offenders cite the benefits of using a multi-disciplinary approach to decision-making, the potential for greater compliance with judicially-imposed treatment orders and an increased understanding of the role of mental health in the justice system that comes with having a court docket expressly devoted to that issue. Despite their increasing popularity, however, juvenile mental health courts have not been met with universal enthusiasm. Those expressing concern about such courts note that under this model mental health services only become available after a youth has entered the formal justice system, giving rise to fears that such courts will have a “net-widening” effect if the courts are relied on as the source for access to mental health services. In addition, given lingering attitudes about mental illness in the larger society, many youth and families worry about the stigma of being sent to a specialized mental health court. They also note that the *quid pro quo* for receiving behavioral health services is that youth in these specialized courts may be subject to longer and more active system oversight than those charged with similar crimes. While acknowledging the importance of identifying and responding to a young offender’s mental health problems, these critics suggest that a jurisdiction’s resources are better spent on community-based mental health programs tailored to meet the needs of youth in conflict with the law.

SYMPOSIUM ARTICLES

The articles in this symposium issue elaborate on many of the above themes, but also introduce new issues such as the role of education in responding to a youth’s mental health needs.
In her article, “Illinois’ Fitness Statute: Is It a Good Fit for Juvenile Court?,” Rachel Tait, Juvenile Justice Clinical Director of the Cook County Juvenile Court Clinic, tackles the question of how the law should be framed when considering whether a youth is competent (or “fit”) to stand trial. Although the Illinois Juvenile Court Act does not have an express provision relating to fitness to stand trial, the adult standard is applied when issues of competence to stand trial are raised in delinquency proceedings. As a consequence, youth, like adults, are presumed fit to stand trial. Tait faults Illinois’ current approach to youth competency on three grounds. First, she observes that the adult fitness standard is flawed, at least when applied to minors, because it does not specify what aspects of the trial a juvenile is expected to understand or ways in which he or she must be able to participate in the defense. She also questions the practice of holding unfit youth in a secure setting while efforts are made to restore them to competency. Finally, Tait joins the national debate over whether juvenile fitness standards should take into account developmental immaturity in addition to mental illness or retardation.

In their article, “Cost–Effective Crime Prevention: Economic Analysis of the Chicago Child-Parent Centers’ Early Education Program,” University of Minnesota’s Judy Temple, Associate Professor at the Humphrey Institute of Public Affairs, Barry White, Research Fellow of the Institute of Child Development and Arthur Reynolds a Professor at the Institute of Child Development, explore the relationship between early education programs directed at vulnerable children and crime reduction. In particular, they use a cost-benefit analysis to assess the effectiveness of the Chicago Child-Parent Center in reducing juvenile and adult crime. Because the Chicago-Parent Center has operated in low-income neighborhoods for nearly 50 years, the authors were able to conduct a longitudinal study tracing the trajectory of approximately 1,500 children up to the age of 26. This study, combined with earlier cost-benefit analyses, provides strong evidence for the proposition that early education programs, such as the type provided by the Chicago Child-Parent Centers can be effective in preventing and reducing juvenile crime.

In “The School-to-Prison Pipeline: How Schools Are Failing to Properly Identify and Service Their Special Education Students and How One Probation Department Has Responded to the Crisis,” Kristina Menzel, Assistant Public Defender at the Law Office of the Cook County Public Defender, Juvenile Justice Division, observes that one of the many benefits of compulsory education is that schools become a catchment area for early identification of youth
with special education and mental health needs. Recently, however, she suggests too many schools have become part of the problem rather than part of the solution. She notes that although federal law imposes on schools which receive federal funds an obligation to identify and provide appropriate services to children with mental health needs, their failure to do so results in an over-representation of these youth in the juvenile justice system. The link between unmet special education needs and justice system involvement is exacerbated by the increasing trend on the part of school districts to rely on the law enforcement and judicial system to punish in-school behaviors, including those that traditionally were dealt with as a school disciplinary matter. Although Menzel argues for strategies designed to keep youth with mental health needs out of the juvenile justice system, she also addresses the need for justice system stakeholders to engage with school districts on behalf of their young clients.

In “Service for All: Mental Health Services for At-Risk Children,” Miquel Lewis, Disproportionate Minority Contact Project Administrator, Cook County Juvenile Probation Department; Michael Fletcher, Assistant Director, FACE-IT Residential Program; and Randell Strickland, State DMC Coordinator, MacArthur Foundation’s Illinois Models for Change Juvenile Justice Reform Initiative, explore the negative environmental determinants that impact adolescent behavior and elevate their risk for involvement in the juvenile justice system. In particular, they point to children’s exposure to violence as a form of “social toxicity,” which threatens the upward trajectory of their lives, and too often, the lives of their victims. The authors also catalogue a list of promising service delivery strategies as well as programs and initiatives being used in the Cook County schools and court system to respond to youth in the justice system with mental and substance abuse needs. The article concludes with the common-sense observation echoed by other authors that mental health intervention before a youth becomes involved in the justice system is a less-costly and more effective response to the behavioral health needs of youth.

One of the persistent problems in the juvenile justice system is the overrepresentation of youth of color at all stages of the process. In their article, “Encouraging the Use of Community Involvement and Restorative Practices as Treatment for Trauma with Black Juvenile Offenders,” Uduakobong Ikpe and Kendell Coker explore the issue of racial disparity in the juvenile justice system and consequences for Black youth. They advocate for the use of restorative justice practices as one approach for meeting the needs of African-American youth in conflict with the law. Restorative justice offers a new paradigm for
responding to youth crime, one which rejects an approach focused primarily on rehabilitation and substitutes a model which seeks to repair harm to victims and communities while at the same time helping the young offender to develop external and internal competencies.\(^\text{50}\) Restorative justice practices can take different forms, including victim-offender mediation, peer juries, community panels for youth and peacemaking circles. The model advocated for by Ikpe and Coker is group conferencing because it involves the community in addressing the youth’s offending and invests its members in helping the youth to succeed.

Linda Uttal, Chief of the Juvenile Justice Division, Law Office of the Cook County Public Defender and David Uttal, Professor of Psychology and of Education at Northwestern University, co-authored the final article in the symposium issue, entitled “Children Are Not Little Adults: Developmental Differences and the Juvenile Justice System.” The article advocates for the use of a developmental perspective when adopting policies and practices affecting youth at risk of entering or already involved in the justice system. Using this approach, they argue that the goal should be to stop youth from entering the system whenever possible. The authors suggest that principles of adolescent development should also inform law and practice surrounding custodial confinement and clinical evaluations. Finally, the article urges jurisdictions such as Illinois to raise the age of juvenile court jurisdiction to at least 18, consistent with recent brain development research suggesting that adult-level maturity is not achieved until an individual’s early 20s.

**GOING FORWARD**

The prospects for achieving better outcomes for justice-system involved youth with mental health needs appear to be improving, supported by emerging research and new empirically-tested intervention and treatment approaches. There is now widespread acceptance of the idea that appropriate intervention and treatment can reduce re-offending and promote positive youth behaviors even among young offenders charged with serious crimes.\(^\text{51}\) For some, this optimism is tempered by a fear that much of the progress that has been made over the last decade may be at risk in light of the financial crisis that is crippling many states. Cash-strapped states such as Illinois have already slashed their human services’ budgets and many service providers are barely surviving. In the grim economic climate, some wonder how long states and local jurisdic-
tions will be able to maintain proven, but more expensive, evidence-based and community-based intervention and treatment programs.

Will a decline in community-based care lead to higher rates of confinement as an alternative to more expensive therapeutic options? Is there the potential for the overuse of medication as a cheaper form of behavioral control? In the short term, these concerns are real. In the longer term, however, there are good policy arguments, grounded in well-designed research, for continuing to invest in evidence-based prevention efforts and community-based treatment alternatives for justice-involved youth with mental health needs. As an attendee at the Public Interest Law Reporter Symposium expressed it, “we’re on the right side of the hope curve.”

NOTES

1 Diane Geraghty is the A. Kathleen Beazley Chair in Children’s Law at Loyola University Chicago School of Law, where she directs the Civitas ChildLaw Center.

2 Julie Bosman, For State’s Detained Youth, No One to Oversee Mental Health Treatment, N.Y. Times, Feb. 11, 2010 at A24.


5 Thomas Grisso, Progress and Perils in the Juvenile Justice and Mental Health Movement, 35 J. Am. Acad. Psychiatry L. 158, 158-59 (2007). Grisso attributes the current focus on justice-involved youth with mental health disorders to the decline in juvenile crime over the last fifteen years and a corresponding willingness to examine the wisdom of “get-tough” policies that began two decades earlier.


8 A mental disorder is defined as a mental disability that is sufficiently severe to meet the formal criteria under the Diagnostic and Statistical Manual of Mental Disorders: Fourth Edition, DSM-IV (American Psychiatric Association, 1994). See Cocozza & Skowyra, supra note 3, at 7.


10 Id.

11 Thomas Grisso, Adolescent Offenders with Mental Disorders, 18 The Future of Children 143, 150 (2008).
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13 Id.  
15 Id. at 3.  
16 Id. at 2.  
17 Id. at 3.  
19 Grisso, supra note 5, at 161.  
20 Id.  
21 SKOWYRA & COCOZZA, supra note 4, at 2-3.  
22 Id. at 3.  
24 See generally O’Shaughnessy & Andrade, supra note 6, at 35-39.  
26 Id. at 2 (summarizing findings that the most successful models for responding to mental health issues and reducing repeat offending are community and family-based).  
27 Id. at 4.  
28 Id. 4-5.  
30 A detailed description of the program is available at http://www.modelsforchange.net/reform-progress/45.  
31 Id.  
34 Id.  
35 Information on Oregon’s statutory requirement that state-funded programs to use treatment practices which have been shown to reduce recidivism and/or mental health commitments is available at http://www.oregon.gov/OYA/rpts_pubs.shtml.  
37 Greenwood, supra note 36, at 201 (noting that initial licensing fees may cost more than $100,000 annually, with initial training fees running between $20,000 and $50,000).  
38 Ellen Harris et al., The Role of Specialty Mental Health Courts in Meeting the Needs of Juvenile Offenders, The Bazelon Center for Mental Health 1, 2, fn. 6 (2004), http://


40 Id.


42 Id. at 4-5.

43 Id. at 5.

44 Harris et al., supra note 38, at 5.

45 Id.

46 Id.

47 725 ILL. COMP. STAT 5/104-10 (West 2008).

48 See Dana Royce Baerger et al., Competence to Stand Trial in Preadjudicated and Petitioned Juvenile Defendants, 31 J. AM. ACADE. PSYCHIATRY L. 314, 318 (2003) (reviewing studies on the link between developmental immaturity and competency to stand trial and finding that Illinois youth are most likely to be found incompetent under the state’s adult fitness statute if they are younger than age 12, have a history of special education needs, and have received some form of mental health treatment).

49 American youth of color comprise approximately 38 percent of the population but nearly 70 percent of youth in confinement as a result of higher rates of arrest and incarceration than nonminority youth charged with similar crimes. See The W. Haywood Burns Institute for Juvenile Justice Fairness and Equality Fact Sheet, available at http://www.burnsinstitute.org. Id.


51 O’Shaughnessy & Andrade, supra note 6, at 33.

52 Id.
ILLINOIS’ FITNESS STATUTE: IS IT A GOOD FIT FOR JUVENILE COURT?

by Rachel Tait, Psy.D.

Holding juveniles to an adult fitness standard can be problematic first, because children and adolescents are different from adults; second, because of the failure to explicitly recognize deficits due to developmental immaturity; and third, because the current statutory provisions regarding contents of the fitness report are unclear regarding what knowledge and understanding a juvenile would be expected to have about the proceedings, and in what ways juveniles are expected to assist in their defense. In order to address these problems, it is proposed that Illinois should develop provisions for juvenile fitness within the Juvenile Court Act by a) including developmental immaturity as an additional basis for a determination of unfit, b) providing greater
specificity about the fitness abilities required in juvenile proceedings, and c) identifying the least restrictive setting as the default placement for juvenile fitness restoration services.

THE IMPORTANCE OF FITNESS

It is a longstanding and well accepted principle in the United States that adult defendants must be fit when tried. The Supreme Court has declared this a constitutional right for adults¹ but has not recognized the same right for juveniles in juvenile court proceedings. However, all states with the exception of Oklahoma acknowledge that fitness is required in juvenile delinquency proceedings.²

Fitness is important in juvenile justice proceedings, particularly as these proceedings become increasingly adversarial. When the first American juvenile court was established in Illinois, the court’s parens patriae³ approach to juvenile justice was rehabilitative and consistent with the best interests of the child. Juvenile fitness was not of great import because the goal of juvenile proceedings was rehabilitation. Although rehabilitation remains a goal of the juvenile justice system in Illinois according to Article V of the Juvenile Court Act,⁴ juvenile proceedings seem to have become more adversarial in recent history. Criminal proceedings are adversarial but adult defendants are protected by their constitutional right to be fit. Therefore, given that juvenile proceedings seem to have become increasingly adversarial, juveniles should be fit if proceedings are to remain fair and just. Secondly, there is a high prevalence of mental health disorders in the juvenile justice population⁵ and mental health issues can negatively impact juvenile fitness.

THE STANDARDS AGAINST WHICH JUVENILE FITNESS IS MEASURED

States vary widely in terms of the standards against which juvenile fitness is measured. At least 20 states have fitness statutes specific to juveniles.⁶ Many other states, including Illinois, refer to the adult standard to measure juvenile fitness. The adult fitness standard in most states is based on two seminal cases: Dusky v. United States and Drope v. Missouri.⁷ The Dusky standard requires a defendant to have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “a rational, as well as factual
understanding of the proceedings against him.”8 The *Drope* standard indicates that a defendant must have the capacity to assist counsel in preparing his defense. In addition, *Drope* identified a “mental condition” as a source of unfitness.9

In Illinois, the Juvenile Court Act simply refers to the adult criminal code, according to which, “A defendant is unfit if, because of his mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense.”10

**Reasons Why an Adult Fitness Standard May Not Be a Good Fit for Juveniles**

Applying an adult statutory scheme to juvenile court proceedings is not a good fit for juveniles. For example, in Illinois, juveniles tend to be placed in the least restrictive setting necessary to help them attain fitness, and yet the current default placement for individuals with mental conditions to receive fitness restoration services is a secure setting.11 However, more importantly, the adult statutory scheme is not a good fit for juveniles because the adult standard does not explicitly account for important differences in juvenile and adult functioning. First, unlike the average adult, children and younger adolescents typically have deficiencies in decision-making capacity, especially because they tend to weigh short-term consequences more heavily than long-term consequences when making choices.12 Second, ‘normal’ children and adolescents tend to have reduced perception of risk, a more time-limited perspective, a fore-shortened sense of the future, and heightened susceptibility to peer influence.13 Third, they are often more impulsive than adults and generally have a relatively reduced capacity for self-management. Fourth, they tend to be more emotionally reactive and vulnerable to stress than adults.14 Fifth, children and younger adolescents typically have difficulty grasping relatively complex concepts.

The aforementioned functional issues are the result of developmental immaturity, meaning that children and adolescents are typically not as mature as adults. General research supports the above conclusions and has established that brain development typically continues into early adulthood.15 Similarly, the brief of the Amici on behalf of Christopher Simmons acknowledged that brain studies had established an anatomical basis for adolescent behavior, and
that adolescent brains are not yet fully developed in areas associated with reasoning, risk-taking and impulse control.\textsuperscript{16}

The functional consequences of developmental immaturity mentioned above can have a detrimental impact on juvenile fitness. The Illinois statute, as mentioned before, specifies that the source of unfitness must be a mental or physical condition. However, even when mental health issues are absent, developmental immaturity can cause some children to lack the abilities required of competent individuals.\textsuperscript{17} It is important to understand that not all juveniles with developmental immaturity and/or mental health issues are unfit. It is important to consider that factors such as an individual’s age, experience and rate of maturation will determine the extent to which developmental immaturity impacts fitness abilities.

A recent study found that judges and lawyers acknowledge the potential significance of developmental immaturity on a minor’s fitness. Judges and defense attorneys surveyed in 2007 across seven states considered developmental immaturity as moderately important in fitness determinations.\textsuperscript{18} Twenty-four percent of the judges thought that juveniles in juvenile proceedings could be found unfit on the basis of developmental immaturity alone.\textsuperscript{19}

Florida is the only state with a statute that explicitly recognizes “age or immaturity” as a sufficient basis for a finding of incompetence.\textsuperscript{20} However, the Arkansas juvenile fitness statute requires consideration of whether juveniles have the “developmental” abilities to understand the charges and the trial process, and to adequately trust and work collaboratively with their attorneys.\textsuperscript{21}

As mentioned previously, the fitness standard in Illinois requires that the source of unfitness be a “mental or physical condition.”\textsuperscript{22} Arguably, developmental immaturity could be considered a mental condition and as discussed below, juvenile court judges in Illinois acknowledge that they consider developmental immaturity when making fitness determinations. However, under the requirements of the current statute, a fitness report must contain a diagnosis in addition to a description of the mental disability.\textsuperscript{23} Developmental immaturity is normal for children and adolescents. It does not require a diagnosis, nor is it considered a disability. By explicitly acknowledging developmental immaturity as a potential source of unfitness, the statute would be more applicable to juvenile fitness determinations. As noted by Menninger and McMa-
hon, Illinois’ statute should “address unfitness arising from mental disability as well as that arising from developmental immaturity.”

Clarification of the requirements for juvenile fitness is particularly important when evaluators are asked to render opinions on the ultimate legal issue. Unlike adults who can be expected to have a certain level of understanding and ability to assist counsel, juveniles require a closer examination because of developmental immaturity. Section 104-16 of the Illinois adult statute lists a number of factors admissible on the issue of fitness, but these factors are not identified as elements that must be included in a fitness report. Section 104-15 of the statute simply requires the report to include an opinion as to whether and to what extent the mental or physical condition impairs understanding of the nature and purpose of the proceedings or to assist in one’s defense.

Section 104-15 does not specify what juveniles are expected to understand about the nature and purpose of the proceedings. For example, the plea bargaining process is a relatively complex concept for children and younger adolescents to grasp, as is the right to go to trial. Is an understanding of both necessary? Similarly, is it sufficient that a juvenile understands what it means to testify, or should he also understand that testifying involves relinquishing the right to avoid self-incrimination, another relatively complex concept to understand? Furthermore, the report requirements do not specify ways in which a juvenile must be able to assist in his defense. For instance, sufficient decision making ability is required in order to make informed legal decisions. Shouldn’t decision making be one of the factors that evaluators are required to assess and report on, as is the case in Arkansas?

Evaluators have insufficient statutory guidance on the issues mentioned above. Although they do not have any clinical basis for offering opinions on the ultimate legal issue, they are required to do just that. Without sufficient guidance, evaluators question which abilities and areas of understanding to consider when offering clinical opinions on whether juveniles are fit.

**Suggested Statutory Changes**

Although most juveniles are developmentally immature, this does not mean that all are unfit, just as not all juveniles are unfit because of mental illness. Rather, if fitness deficits are present and developmental immaturity is responsi-
ble for those deficits, then this immaturity should be considered an acceptable basis for a determination of unfit if the fitness deficits rise to that level. As a psychologist evaluating juvenile fitness in Illinois, the following suggestions are offered to address the issues raised above, to provide greater guidance for evaluators of fitness and the courts, and to better serve youth involved in juvenile justice proceedings.

Article V of the Juvenile Court Act should contain provisions governing fitness determinations of juveniles in juvenile proceedings. This would bring Illinois in line with over 20 states that already have statutory schemes for juvenile fitness. Legislators should consider adding developmental immaturity to the two existing predicate conditions (mental and physical) for a finding of unfitness.

Identifying developmental immaturity as an acceptable source of unfitness is consistent with research recognized by the Supreme Court in *Roper v Simmons* regarding the significance of adolescent brain development. Multiple commentators have suggested that fitness statutes should reflect the impact that developmental immaturity can have on juvenile fitness. For instance, it has been suggested that juvenile competency statutes need to “come in line with developmental theory” in order to provide juveniles with “appropriate protections.” Similarly, a proposed model for state legislation recommended that juvenile statutes include “chronological immaturity” as an acceptable source of juvenile unfitness, which was defined as a condition based on “chronological age or significant lack of developmental skills.” Although some adolescents are more or less developmentally immature in relation to adults than same aged peers, concerns raised by some about the need to avoid over-generalizations are addressed when evaluators of fitness take an individualized approach to assessment.

In modifying the adult standard for juveniles, legislators should also provide greater statutory guidance on the specific areas of knowledge and understanding that one would expect a juvenile in juvenile proceedings to possess. Similarly, clarification on the abilities expected of a juvenile in order to assist in his defense would provide evaluators with further guidance on the factors to include in a report and consider when offering requisite opinions on fitness.

Finally, if or when juvenile fitness statutory provisions are developed, legislators should consider the least restrictive setting as the default placement for
fitness services, meaning that services should occur on an outpatient basis unless there are reasons warranting inpatient treatment. This would be consistent with the Juvenile Court Act’s goal to keep juveniles in the home when possible.34

JUDICIAL SUPPORT OF STATUTORY CHANGE

In preparing for this article, I engaged in discussions with judges presiding over delinquency proceedings in Cook County’s Juvenile Court. A number of judges were in favor of a separate fitness statute for juveniles and as a practical matter, some stated that developmental immaturity is already being considered when making fitness determinations. One judge35 thought it would be a great idea to have a different standard for juvenile fitness in Illinois, explaining that it did not make sense not to have a different standard for juveniles versus adults. The same judge opined that developmental immaturity is a key difference between juveniles and adults which ends up working its way in to juvenile fitness proceedings, but that the way in which it is worked in should not be haphazard. Another judge36 was in favor of an Illinois juvenile fitness statute that recognizes developmental immaturity as a factor that may impact juvenile fitness, although this judge did not think that developmental immaturity alone should be sufficient to render a juvenile unfit. One judge37 opined that juveniles do not need to have as good an understanding of proceedings as adults, and was in favor of a lower fitness standard in juvenile proceedings. Another judge38 thought that the adult fitness standard was appropriate for use in juvenile proceedings but that there should be a lower fitness threshold for juveniles in juvenile proceedings than for adults in adult proceedings. This judge opined that developmental immaturity is covered by the term ‘mental condition,’ which is one of the two predicate adult statutory conditions needed for a finding of unfitness.

CONCLUSION

A juvenile fitness statute addressing the issues identified in this article is consistent with Illinois’ position at the forefront of juvenile justice. As home to the nation’s first juvenile court, Illinois should have fitness provisions appropriate to juvenile court proceedings and consistent with the rehabilitative mission of the juvenile court. Accurate appraisal of juvenile functioning and needs will
provide children and adolescents with the services and protections they
deserve.

NOTES

1 Pate v. Robinson, 383 U.S. 375, 385 (1966). ("We believe that the evidence introduced on
Robinson's behalf entitled him to a hearing on this issue [of his fitness for trial]. The court's
failure to make such inquiry thus deprived Robinson of his constitutional right to a fair trial.").
2 Richard E. Redding & Lynda E. Frost, Adjudicative Competence in the Modern Juvenile
Court, 9 VA. J. SOC. POL'Y & L. 353, 368 (2001).
3 The parens patriae doctrine grants the state authority to act as the supreme guardian of
children, and power to protect the best interests of children.
5 Jennie L. Shufelt & Joseph J. Cocozza, Youth with Mental Health Disorders in the Juvenile
Justice System: Results from a Multi-State Prevalence Study, RES. AND PROGRAM BRIEFS (Nat'l
6 Redding & Frost, supra note 2, at 368.
8 Dusky, supra note 7, at 402.
9 Drope, supra note 7, at 171.
11 725 ILL. COMP. STAT. 5/104-17(b) (2008).
12 Elizabeth S. Scott & Laurence Steinberg, Less Guilty by Reason of Adolescence: Developmental
Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 AM. PSYCHOL. 1009,
1012 (2003).
13 Id.
14 Id. at 1012-13.
15 Sarah-Jane Blakemore & Suparna Choudhury, Development of the Adolescent Brain: Implica-
16 Brief of American Medical Association, et al. as Amici Curiae Supporting Respondent,
17 IVAN KRUH & THOMAS GRESSO, EVALUATION OF JUVENILES' COMPETENCE TO STAND
TRIAL 46 (2009).
18 Jodi L. Viljoen & Twila Wingrove, Adjudicative Competence in Adolescent Defendants:
Judges' and Defense Attorneys' Views of Legal Standards for Adolescents in Juvenile and Criminal
Court, 13 PSYCHOL. PUB. POL'Y & L. 204, 217 (2007).
19 Id. at 219.
24 Karl Menninger & Thomas R. McMahon, Fitness to Stand Trial in Juvenile Court: The
Loyola Public Interest Law Reporter

31  Johnson, supra note 27, at 1094.
32  Id. at 1091.
34  705 ILL. COMP. STAT. 405/1 (2008).
35  Interview with Anonymous Judge (Jan. 27, 2010).
36  Interview with Anonymous Judge (Jan. 27, 2010).
37  Interview with Anonymous Judge (Feb. 10, 2010).
38  Interview with Anonymous Judge (Jan. 27, 2010).
COST-EFFECTIVE CRIME PREVENTION: ECONOMIC ANALYSIS OF THE CHICAGO CHILD-PARENT CENTERS EARLY EDUCATION PROGRAM

by Judy A. Temple, Barry A. White & Arthur J. Reynolds

Early intervention or prevention programs may be intended to improve the lives of youth, but increasingly their appeal is based on their high rate of return to the public. The developing consensus is that early intervention programs targeted toward economically-disadvantaged children are an important component in promoting educational success and reducing crime. Numerous authors have discussed the relationship between early intervention and juvenile and/or adult crime,¹ and the economic benefits are remarkable.
This article summarizes a recent cost-benefit analysis of the Chicago Child-Parent Center (CPC) early childhood intervention with a focus on the effect of the CPC preschool program on reductions in juvenile and adult crime. The CPC program is an established preschool program that has been offered to children residing in high-poverty Chicago neighborhoods for over 40 years. Funded by Title I of the Elementary and Secondary Education Act of 1965 and established in 1967, the CPC is, after Head Start, the nation’s oldest federally-funded preschool program.

Because the CPC program is described in detail in previous reports, here we summarize the main features. Located in or close to public elementary schools, CPCs provide child education and family-support services to children between the ages of 3 and 9. Within a structure of comprehensive services, the intervention emphasizes the learning of basic skills in language arts and math through relatively structured but diverse experiences that include teacher-directed, whole-class instruction, small-group activities and frequent field trips. Literacy experiences such as word analysis, oral communication and listening skills are emphasized. Parents were encouraged to participate at the centers, and a staff member facilitated a variety of activities in the parent resource room.

The recent cost-benefit analysis of the CPC program indicated that the economic benefits of the program far exceeded the initial costs. Specifically, the CPC preschool program provided a total return to society of $10.83 per dollar invested and a net benefit (excess of benefits over costs) of $83,708 per participant. Benefits to the public (other than program participants and families) were $7.20 per dollar invested. The primary sources of benefits were increased earnings and income tax revenues, averted criminal justice system and victim costs, and reduced expenditures for child welfare services, special education and grade retention. Importantly, reductions in the costs of crime accounted for almost 70 percent of the returns to the public (or $4.99 of $7.20). Due to the importance of these public benefits, the promise of targeted high-quality preschool programs as a cost-effective tool for preventing crime has caught the attention of youth advocates, policymakers and taxpayers alike.

Cost-benefit analysis (CBA) of interventions or prevention programs enhances the policy use of research for promoting the well-being of children in several ways. First, by combining information on the dollar value of program effects or outcomes with relevant cost information, the CBA framework assists in determining whether the expected returns from a policy or program are worth the
initial costs of investment, which aids in the efficient allocation of limited resources (e.g., tax dollars). Returns in excess of costs indicate investment potential. Second, the CBA framework allows for the calculation of benefits and costs for different stakeholders. Returns to program participants can be estimated separately from returns to the rest of society. Importantly, the estimation of the returns to the public may enhance voter interest in supporting particular policies or programs. Finally, the CBA framework allows for a comparison of the returns from alternative policies or programs. Not only does CBA assist in identifying which programs generate benefits in excess of costs, CBA aids in the ranking of alternative policies.

PREVIOUS ESTIMATES OF THE RETURNS FROM EARLY INTERVENTION

The most well-known preschool program with demonstrated cost-effectiveness is the High/Scope Perry Preschool Program. The Perry Preschool Program began in 1962 with a cohort of 123 three- and four-year-old low-income African-American children randomly assigned to a high quality preschool program with a parental home visiting component. Program enrollment was associated with improvements in cognitive skills, school achievement and performance, economic status, and reductions in criminality. Researchers have conducted comprehensive cost-benefit analyses at ages 19, age 27, and most recently as of age 40. Findings showed that total economic benefits of the program substantially exceed program costs, which for the two years totaled $18,261 per child in 2007 dollars. Most of the benefits were due to increased earnings and reduced crime costs. Roughly two-thirds of the total benefits came from criminal justice system savings and reduced victim costs. Depending on the assumptions used in the cost-benefit analyses, estimated social rates of return vary from 7 percent to 16 percent per year. The age 40 study calculated that the benefit-cost ratio was as high as $17.07 per dollar invested, while a recent reanalysis suggested a somewhat lower but still substantial ratio ranging from approximately $7 to $12 per dollar invested.

In addition to economic analysis of the Perry Preschool Program, the knowledge base on the long-term benefits and costs of preschool participation includes two studies of the Chicago Child-Parent Center program. The first cost-benefit analysis of the CPC program used information on preschool participation and school success at the end of adolescence and involvement in juvenile crime to estimate the benefits and costs associated with the program as of age
21. The preschool program in particular demonstrated the greatest social benefits—$7.14 to $10.15 per dollar invested, as measured by increased life-time earnings potential, lower rates of delinquency and crime, and reduced need for remedial education and child welfare services. Also assessed was the school-age component of the CPC program, in which children experienced small class sizes and additional resources up to second or third grade. The benefit of the school-age component was smaller but still exceeded the costs.

One significant limitation of the first cost-benefit analysis was that the estimated life-time earnings benefit and the reduction in adult crime costs were projected from educational attainment by age 20 and juvenile delinquency by age 18, respectively. While conventional methods were used to project lifetime earnings and reductions in adult crime associated with CPC preschool participation, obviously estimates based on information observed further into adulthood are valuable.

Furthermore, due to excluded program effects or outcomes, the economic benefits of the CPC program reported in the earlier study appear to have been underestimated. Recently, researchers in the Chicago Longitudinal Study (CLS) completed an updated and more thorough cost-benefit analysis of the CPC program based on data through age 26. This study incorporated additional information on educational attainment and adult crime, and included a discussion of the potential benefits associated with health and well-being, including substance use and related health-compromising behaviors, mental health, public aid receipt and utilization of health care services. In a study of the impact of CPC preschool participation using data from early adulthood, researchers found that preschool program participation was associated with higher rates of educational attainment and health insurance coverage and lower rates of depressive symptoms, felony arrest, incarceration and of out-of-home placement in the child welfare system.

**SAMPLE AND DESIGN**

The CLS is an investigation of the life-course of a cohort of 1,539 children (93 percent African-American, 7 percent Hispanic) from low-income families born in 1979-1980 who attended kindergarten in 1985-1986. The original sample included the complete cohort of 989 children who completed preschool and kindergarten in 20 CPC sites and 550 well-matched low-income children who
did not attend the program in preschool but instead participated in a full-day kindergarten intervention program in five randomly selected schools and in schools affiliated with the CPCs. Prior to kindergarten entry, 15 percent of the comparison group attended Head Start preschool with the remaining children in home care. Thus, the comparison group enrolled in the usual early childhood interventions available to low-income children. School-age services were provided in first to third grades in affiliated schools regardless of children’s preschool or kindergarten experience. To understand the long-term effects of CPC program participation on youth in Chicago’s most disadvantaged neighborhoods, the CLS has followed the majority of program and comparison group participants from school entry through age 26.

Since 1985, academic performance and achievement data as well as information on the well-being of program and comparison group participants have been collected from school records, participant and family surveys, and administrative records through age 26. Table 1 shows the distribution of program and comparison group participants for which educational attainment and criminal justice system involvement by age 26 is known. Arrest and incarceration information is known for 96 percent of the original program group and 95 percent of the comparison group with no evidence of selective attrition.9

### TABLE 1
Patterns of Participation of Original Intervention and Comparison Groups in the CLS

<table>
<thead>
<tr>
<th>Study category</th>
<th>Total Sample</th>
<th>Preschool Intervention Group</th>
<th>Comparison Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Participants’ Characteristics at Start of Study</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original Sample</td>
<td>1539</td>
<td>989</td>
<td>550</td>
</tr>
<tr>
<td>No. of Lost cases in Post-program Years</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Moved**</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>From ages 6-10y</td>
<td>69</td>
<td>41</td>
<td>28</td>
</tr>
<tr>
<td>After age 10y</td>
<td>52</td>
<td>30</td>
<td>22</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Child death</td>
<td>18</td>
<td>12</td>
<td>6</td>
</tr>
<tr>
<td>Follow-up Study Characteristics of Participants at Age 24-26, No. of cases with data</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Educational attainment</td>
<td>1373</td>
<td>893</td>
<td>480</td>
</tr>
<tr>
<td>Arrest and incarceration</td>
<td>1473</td>
<td>950</td>
<td>523</td>
</tr>
</tbody>
</table>

*Preschool intervention group refers to students who had one or two years of participation in the Child Parent Center preschool program. **These categories account for attrition from the original study sample of 1,559. Cases were lost during post-program years because they moved from Chicago and could not be located, were deceased, or either did not have sufficient identifying information to track, refused to participate or were incarcerated (other). At age 24, the total number of deceased cases in the study was 41.
GROUP COMPARABILITY

In order to estimate the causal effect of preschool on the longer-term outcomes of high school completion and criminal behavior, it may be important to understand how the characteristics of the CPC preschool participants and the comparison group participants compare on a range of socio-economic characteristics known to be associated with school success and involvement in crime. Table 2 shows the characteristics of the program and comparison groups at age 26. The age 26 sample includes the 1,373 CLS participants with known educational attainment. Child and family characteristics were measured from administrative records (birth records, public aid receipt) and family surveys assessing preprogram characteristics from birth to age 3. The p-values show the significance of the group differences at follow up and at the beginning of the study (original sample). The p-values above 0.50 generally suggest that the program and comparison groups are similar on those characteristics.

Table 2 suggests that at the age 26, program and comparison groups were similar on most attributes including low birth weight, race, child welfare history, single-parent status, mother’s employment, financial problems, family conflict and economic disadvantage (i.e., TANF receipt and eligibility for subsidized meals). These characteristics can be thought of as factors that affect developmental risk or reduce the probability of school success. It is common to add up all the indicators of risk to create a risk index. Here the risk index, which is the sum of eight dichotomous family risk indicators, indicates that the preschool group and comparison group faced similar numbers of developmental risks. Each group experienced an average of 4.3 risk factors early in life. However, the program group had a higher proportion of females, a higher proportion of parents who completed high school, and a higher rate of enrollment in high-poverty schools. The latter difference is the result of the centers being located in the most economically disadvantaged areas. Although the groups are similar, the estimates of intervention effects are obtained through regression analysis to account for any observable background differences between groups.
### TABLE 2

**Equivalence of CPC Preschool Intervention and Comparison Groups on Pre-Program Attributes for the Adult Follow-up Study**

<table>
<thead>
<tr>
<th>Child/Family Characteristics**</th>
<th>Preschool Intervention Group (N=893)</th>
<th>Comparison Group (N=480)</th>
<th>p-value</th>
<th>p-value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample recovery, %</td>
<td>90.3</td>
<td>87.3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>African American child, %</td>
<td>93.4</td>
<td>93.1</td>
<td>.85</td>
<td>.59</td>
</tr>
<tr>
<td>Female child, %</td>
<td>54.1</td>
<td>48.3</td>
<td>.04</td>
<td>.11</td>
</tr>
<tr>
<td>Low birth weight (&lt;2500g), %</td>
<td>11.5</td>
<td>14.7</td>
<td>.10</td>
<td>.11</td>
</tr>
<tr>
<td>= 60% low income families in school attendance area, %</td>
<td>77.6</td>
<td>72.9</td>
<td>.05</td>
<td>.04</td>
</tr>
<tr>
<td>= 40% of persons living in poverty in area of residence, %</td>
<td>69.9</td>
<td>54.0</td>
<td>.000</td>
<td>.000</td>
</tr>
<tr>
<td>Child welfare case history by age 4, %</td>
<td>2.9</td>
<td>5.0</td>
<td>.05</td>
<td>.08</td>
</tr>
<tr>
<td>Parent under age 18 at child birth, %</td>
<td>16.4</td>
<td>18.2</td>
<td>.40</td>
<td>.29</td>
</tr>
<tr>
<td>Mother did not complete high school, %</td>
<td>50.5</td>
<td>58.7</td>
<td>.004</td>
<td>.001</td>
</tr>
<tr>
<td>Single parent family status, %</td>
<td>76.3</td>
<td>74.9</td>
<td>.58</td>
<td>.59</td>
</tr>
<tr>
<td>Mother not employed, %</td>
<td>64.5</td>
<td>59.6</td>
<td>.09</td>
<td>.11</td>
</tr>
<tr>
<td>Child eligible for subsidized meals, %</td>
<td>83.1</td>
<td>82.4</td>
<td>.76</td>
<td>.39</td>
</tr>
<tr>
<td>Participate in TANF program, %</td>
<td>62.4</td>
<td>60.4</td>
<td>.48</td>
<td>.59</td>
</tr>
<tr>
<td>Four or more children in family, %</td>
<td>16.4</td>
<td>19.7</td>
<td>.14</td>
<td>.27</td>
</tr>
<tr>
<td>Family problems, %</td>
<td>6.2</td>
<td>5.2</td>
<td>.48</td>
<td>.48</td>
</tr>
<tr>
<td>Undesirable early home environment, %</td>
<td>7.5</td>
<td>6.2</td>
<td>.41</td>
<td>.40</td>
</tr>
<tr>
<td>Missing 1 or more risk factors, %</td>
<td>13.9</td>
<td>11.3</td>
<td>.91</td>
<td>.72</td>
</tr>
<tr>
<td>Risk index (0 to 8), mean (SD)</td>
<td>4.32 (1.74)</td>
<td>4.28 (1.79)</td>
<td>.73</td>
<td>.39</td>
</tr>
</tbody>
</table>

*The adult follow-up sample had known educational attainment by August 2005. P values show the significance of mean (or percentage) group differences for age 25-26 and the original samples. The preschool comparison group participated in an alternative full-day kindergarten but had no CPC preschool participation. School-age and extended intervention groups had similar profiles as the CPC preschool group. **Data on child and family characteristics were collected from birth to age 3 based on multiple administrative records and parent surveys. Data on TANF (Temporary Assistance for Needy Families) and subsidized meals were collected up to age 8. Sample sizes ranged from 1234 to 1373 (follow up sample). They ranged from 1342 to 1539 for the original sample. x Variable included in the risk index. y Eligibility defined at <130% of the federal poverty level. z Defined as frequent family conflict, financial problems, or parental substance abuse from age 0 to 5 years.

### Child-Paren Center Program

CPCs are located in the poorest neighborhoods in Chicago. The mean rate of family poverty in 1989 for the community areas serving the CPCs was 41 percent versus 17 percent for other areas. These relatively high poverty neighborhoods were not being served by other preschool programs including Head Start when CPC location decisions were made. At the time of the CLS sample’s participation, each of the CPCs served approximately 100 to 150 children aged 3 to 5 years. Each center is directed by a head teacher and two coordinators. The parent-resource teacher coordinates the family-support component.
The school-community representative provides outreach to families. All of the teachers have bachelor’s degrees and are certified in early childhood.

CBA Conceptualization and Methods

The CPCs have the potential to significantly influence the current and future well-being of participants. As a public investment in the human capital of children and as an intervention that offers support to families, the CPC program is expected to positively affect school performance and attainment, social-emotional functioning, health behaviors and economic self-sufficiency. Based on ecological or human capital views of the importance of early childhood experiences on later life-course development, the economic benefits of the CPCs are potentially sizeable.

The most recent cost-benefit analysis of the Child Parent Center program follows standard economic procedures to estimate the present value of program benefits for six main categories:

- Reductions in expenditures for K-12 remedial education, including special education and additional schooling for retained students.
- Reductions in criminal justice system expenditures for juvenile and adult arrest and treatment.
- Reductions in child welfare system expenditures associated with maltreatment.
- Averted tangible and intangible costs to crime victims as a result of lower rates of arrest and to victims of child maltreatment.
- Reductions in expenditures for mental health and substance abuse treatment associated with depressive symptoms and substance misuse.
- Increases in projected earnings and income tax revenues as a result of higher educational attainment.

We also monetized the estimated effects of the CPC program on daily tobacco use because smoking is known to result in significant costs to the individual smoker and costs to society. However, because of the uncertainty of costs associated with tobacco use, the estimated benefit assessed by reduced mortality is not included in the primary analysis. However, the benefit is considered as part of the sensitivity analysis.
Consistent with the previous study, the calculations in the cost-benefit analysis of CPC participation followed a number of commonly-used steps. First, program costs and benefits are calculated in dollar terms and then dollar values are converted to 2007 dollars to adjust for inflation. Second, the present values of future costs and benefits are computed by applying a 3 percent annual discount rate to age 3 for all levels of participation, and finally the present value of program costs is subtracted from the present value of program benefits to obtain the net present value of the program per participant. Alternatively, program benefits are divided by costs to obtain the dollar return for every 1 dollar invested (benefit-cost ratio). Because it is common to estimate life-time earnings from educational attainment, future earnings were projected through age 65.12

DATA ANALYSIS

We estimated the effects of preschool participation on various outcomes including high school completion and juvenile and adult crime. Our regression estimates reflect the difference in outcomes between the treatment and comparison groups in percentage points or levels of performance while holding constant other individual and family characteristics. The amount of economic benefit was estimated by multiplying this effect by the monetary estimate of the outcome (such as the benefit in terms of the expected increase in life-time earnings from completing high school or the cost-savings associated with a given reduction in crime). The other variables included in the regression models are race/ethnicity, gender, receipt of child welfare services, parent education, single parent family status, teen parenthood, mother’s employment status, four or more children in the family and school-poverty rate of the kindergarten sites and whether or not the child participated in the school-age component of the CPC program. When possible, these variables were measured during the period of birth to age 3.

RESULTS

Summary of Main Effects of CPC

Table 3 summarizes the primary and economically-important effects of CPC preschool participation. Outcomes included in the economic analysis are emphasized. Detailed results on the relationship between the educational inter-
ventions and additional adult outcomes and K-12 school adjustment and achievement are available in various reports.  

**TABLE 3**

*Estimated Effects for Preschool Participation in the Child-Parent Centers*

<table>
<thead>
<tr>
<th>Domain and Measure</th>
<th>Preschool Group (n=950)</th>
<th>Comparison Group (n=523)</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>School remedial services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Grade retention by age 15, %</td>
<td>23.0</td>
<td>38.4</td>
<td>-15.4***</td>
</tr>
<tr>
<td>Special education by age 18, %</td>
<td>14.4</td>
<td>24.6</td>
<td>-10.2**</td>
</tr>
<tr>
<td>Number of years of special ed. from ages 6 to 18</td>
<td>0.73</td>
<td>1.43</td>
<td>-0.70*</td>
</tr>
<tr>
<td>Child maltreatment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any indicated abuse or neglect from ages 4 to 17, %</td>
<td>9.9</td>
<td>17.4</td>
<td>-7.5***</td>
</tr>
<tr>
<td>Any out of home placement, %</td>
<td>5.2</td>
<td>8.5</td>
<td>-3.3*</td>
</tr>
<tr>
<td>Juvenile arrest by age 18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Petition to juvenile court, %</td>
<td>16.9</td>
<td>25.1</td>
<td>-8.2**</td>
</tr>
<tr>
<td>No. of petitions to juvenile court</td>
<td>0.45</td>
<td>0.78</td>
<td>-0.33*</td>
</tr>
<tr>
<td>Educational attainment by age 25</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High school completion, %</td>
<td>79.7</td>
<td>72.9</td>
<td>6.8**</td>
</tr>
<tr>
<td>Highest grade completed</td>
<td>12.08</td>
<td>11.80</td>
<td>0.28**</td>
</tr>
<tr>
<td>Completed .5 credits at a 4-year college, %</td>
<td>10.9</td>
<td>7.1</td>
<td>3.8*</td>
</tr>
<tr>
<td>Adult crime by age 26</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any felony arrest, %</td>
<td>13.3</td>
<td>17.8</td>
<td>-4.5*</td>
</tr>
<tr>
<td>No. of felony arrests</td>
<td>0.32</td>
<td>0.44</td>
<td>-0.12*</td>
</tr>
<tr>
<td>Health and mental health</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reported any depression symptom, %</td>
<td>12.8</td>
<td>17.4</td>
<td>-4.6*</td>
</tr>
<tr>
<td>Substance misuse, %</td>
<td>14.3</td>
<td>18.8</td>
<td>-4.5*</td>
</tr>
<tr>
<td>Daily tobacco use, %</td>
<td>17.9</td>
<td>22.1</td>
<td>-4.2</td>
</tr>
<tr>
<td>Health insurance by age 26</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any health insurance, %</td>
<td>76.7</td>
<td>66.6</td>
<td>10.1***</td>
</tr>
<tr>
<td>Economic status</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of months of Food Stamps, ages 18 to 24</td>
<td>17.50</td>
<td>18.78</td>
<td>-1.28*</td>
</tr>
<tr>
<td>Occupational prestige by age 24</td>
<td>2.79</td>
<td>2.55</td>
<td>0.24*</td>
</tr>
</tbody>
</table>

** *** p < .001 ** p < .01 * p < .05 + p < .10. The sample size for the preschool intervention measures ranges from 1281 for school remedial services to 1473 for adult crime by age 26. Coefficients are from linear, probit, or negative binomial regression analysis. Coefficients for school remedial services and juvenile delinquency measures are adjusted for sex of child, race/ethnicity, the risk index, program sites, and earlier/later program participation. All other coefficients are adjusted for the 8 indicators of preprogram risk status, gender, race/ethnicity, child welfare history, and a dummy-coded variable for missing data on risk status. Sample comparisons are based on published studies whenever possible. Occupational prestige in the CLS sample ranges from 1 to 8, with 4 indicating moderate prestige.

CPC preschool participation was consistently associated with measures of well-being in early adulthood, including educational attainment, occupational prestige and reduced criminal behavior. Preschool participants had significantly higher rates of high school completion (79.7 percent vs. 72.9 percent) and completed more years of school. In addition, preschool participants had lower rates of felony arrest by age 26 (13.3 percent vs. 17.8 percent), which was also consistent with other measures of involvement in the criminal justice system such as number of felony arrests, incarceration, and conviction. CPC preschool participants also had lower rates of depressive symptoms in early adulthood.
and had higher rates of health insurance coverage, lower rates of substance misuse and fewer months receiving food stamps by age 26.\textsuperscript{14}

Among K-12 outcomes, preschool was associated with significantly lower rates of grade retention, special education placement, child maltreatment and out-of-home placement and juvenile arrest. Although not displayed, differences in reading and math achievement were also found up to ninth grade.\textsuperscript{15}

Cost-Benefit Estimates

The present value of costs and benefits of the CPC preschool program are reported in Table 4. Each value is the average per program participant. Benefits are either measured by age 26 or projected through adulthood (age 65) using conventional methods employed in the CBA literature. We distinguish among societal, general public and individual participant benefits. Society includes participants and the general public.

\begin{table}
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{Benefit or Cost} & \textbf{Participants} & \textbf{General Public} \\
\hline
\textit{Preschool Program} & & \\
\hline
\textbf{Measured effect} & & \\
Child care & 4,387 & 4,387 \\
Child abuse and neglect & 4,240 & 3,090 & 7,330 \\
\hline
\textbf{Education} & & \\
Grade retention & - & 880 & 880 \\
Special education & - & 5,317 & 5,317 \\
College tuition & (98) & (196) & (294) \\
\hline
\textbf{Earnings/compensation} & 22,445 & 6,399 & 28,844 \\
\hline
\textbf{Criminal behavior} & & \\
Ages 10-18 & - & 24,240 & 24,240 \\
Ages 19-44 & - & 18,222 & 18,222 \\
\hline
\textbf{Health} & & \\
Depression & - & 494 & 494 \\
Substance misuse & - & 2,800 & 2,800 \\
\hline
\textbf{Total benefits} & 30,974 & 8,512 & 8,512 \\
\hline
\textbf{Program costs} & 8,512 & 2,800 & 2,800 \\
\textbf{Net present value} & 30,974 & 52,733 & 83,708 \\
\hline
\textbf{Benefit-cost ratio for the public} & - & \$7.20 & \$10.83 \\
\textbf{and for society} & & & \\
\textbf{Benefit-cost ratio for crime benefits} & - & \$4.99 & \$4.99 \\
\textbf{only} & & & \\
\hline
\end{tabular}
\caption{Costs and Benefits of the Chicago Child-Parent Center Preschool Program per Participant (2007 dollars, 3\% real annual discount rate)}
\end{table}

At an average cost of \$8,512 per participant, participation in CPC preschool was associated with an average economic return to society of \$92,220. The
largest benefit category was crime related savings, which was 46 percent of the benefits ($42,462). Estimated crime savings from age 10 through 65 consisted of savings from reduced juvenile delinquency ($24,240) and reduced adult criminal behavior ($18,222). Saving from reduced adult crime included reduced criminal justice system expenditures for arrest, trial and processing, and treatment of offenders ($3,313) and reduced tangible and intangible criminal victim costs ($3,474 and $11,435, respectively). Tangible victim costs include the costs of property loss and damage from crime and intangible costs include the costs of pain and suffering or the loss in quality of life from being a victim of a crime. Projected increases in life-time earnings and associated income tax revenues constitute 31 percent of societal benefits, followed by savings associated with reduced child maltreatment (8 percent), special education (6 percent) and substance misuse (3 percent). The many details involved in generating these monetary benefits, especially for crime reduction, are described in two recent reports.16

As a ratio of benefits to costs, CPC was associated with a return of $10.83 per dollar invested in the program. Savings from reduced juvenile and adult crime were $4.99 per dollar invested. Benefits to the general public, which exclude benefits to participants and their families, totaled $61,246. The ratio of public benefits to costs was $7.20 per dollar invested. Crime savings were by far the largest category, representing 69 percent of public benefits.

Benefits for Child and Family Subgroups

Our age 26 cost-benefit analysis also investigated the net benefits of preschool participation for various child and family subgroups in order to see who benefits most from preschool participation. While the reader is directed to the longer paper17 for a lengthier discussion, we briefly mention some of those results here.

Length of preschool participation. Approximately half of the preschool participants attended for one year and the other half for two years. Our analysis found that the societal return per dollar invested for one year of preschool was higher than for two years (ratios of $13.58 vs. $8.54 per dollar invested). The main findings on duration of participation indicated that rates of high school completion and delinquency and crime are equivalent for 1- and 2-year participants but the 2-year participants had significantly lower rates of special educa-
tion and child maltreatment. Importantly, participation in one year of preschool was enough to achieve the observed effects of crime reduction.

**Gender.** Male preschool participants had a comparatively higher return than females ($17.88 vs. $2.67). This occurred because males’ educational attainment and criminal behavior were more affected by preschool participation. For example, 75 percent of male preschool participants completed high school compared to 58 percent for comparison counterparts. Most of the crimes were committed by men so it would be expected that preschool would have a greater effect on crime for men versus women.

**High family risk status.** Children with 4 or more family risk factors (e.g., low parent education, single parent family status; low family income) had greater benefits from preschool than those with fewer family risk factors ($12.81 vs. $7.21). Most of the differences came from educational attainment and child abuse and neglect.

**Parent education.** Preschool participants whose parents were high school dropouts had higher economic returns than those whose parents were high school graduates ($15.88 vs. $5.33 per dollar invested). Excluding the benefits to preschool participants and focusing solely on the returns to the public, the public economic returns also favored the higher risk group, but to a lesser extent ($10.43 vs. $3.33). The main sources of these differences were earnings and averted crime costs.

**High poverty neighborhood.** In a comparison of preschool effects between children from the highest poverty neighborhoods (60 percent or more of children residing in low-income families) and the other children in the sample, the children in the poorest neighborhoods had returns from the CPC preschool ($17.92 vs. $4.05) and school-age programs ($7.84 vs. $1.22) that were 4 to 10 times higher than children residing in less disadvantaged areas. These differences were largely accounted for by educational attainment and crime prevention.

**DISCUSSION**

Economic analysis of the costs and the longer-term benefits of enriched, targeted preschool programs demonstrate that preschool can be a relatively
cost-effective preventative intervention. This article has summarized some of the findings of the recent cost-benefit analysis of the CPC preschool program. The CLS, which focuses on a cohort of mostly African-American children who entered kindergarten in the Chicago’s poorest neighborhoods in 1985-1986, finds significant effects of preschool participation on high school completion and involvement in the juvenile and adult justice system. This is an important population to study because urban minority children have some of the highest high school dropout rates in the US. Also, urban African-American men, in particular, face higher probabilities than other demographic groups in the US of being arrested for crimes as juveniles or adults.

Compared to the United States as a whole, students in the CLS were at greater risk of school dropout and involvement in crime because of the impoverished nature of their neighborhoods, but participants in the CPC educational intervention program had notably better education outcomes and a lower probability of involvement in crime.

Approximately 73 percent of the students in the comparison group completed high school or received a GED. For participants in the enriched preschool program offered by the CPCs, their probability of completing high school or obtaining a GED was about 80 percent. Similarly, 25 percent of the comparison groups were involved in juvenile crime as reflected by having petitions written to the juvenile court. The preschool participants’ probability of having petitions to the juvenile court for involvement in crime was approximately 17 percent. There also was a significant difference in the percent of individuals who had a felony arrest. Preschool participants had a 13 percent probability of having a record of felony arrest while the other students in the sample had an 18 percent probability.

Economic analysis of these benefits and costs indicate that benefits of the CPC program exceed the costs by a ratio of almost $11 to $1.\textsuperscript{18} Clearly investments in quality preschools for children at higher risk of school failure have a tremendous payoff. Participation in the CPC preschool program is associated with significant and sizeable reductions in high school dropout and involvement in juvenile and adult crime. After assigning monetary values to a range of benefits arising from preschool participation including reductions in school remedial services, reductions in child abuse and neglect, improvements in health, increases in earnings and income tax revenues arising from greater educational attainment and reductions in the justice system costs and victim costs associ-
ated with crime, we found that the program costs of $8,512 were more than covered by the estimated program benefits of $92,220.

Regarding preschool’s effect on crime, the CLS has collected comprehensive data on justice system involvement from Cook County, state, and federal sources. The fact that participation in preschool was associated with a 8.2 percentage point reduction in the probability of an individual having a petition to the juvenile court and that preschool is associated with a 4.5 percentage point reduction in the probability of an individual having a record for any felony arrest provides the starting point for the economic analysis of benefits and costs associated with preschool’s potential as a cost-effective tool used to prevent crime. While the cost-benefit analysis of the CPC program involves estimating the benefit associated with a range of positive outcomes, a large portion of the benefits, particularly to the public or the nonparticipants, is accounted for by the effect of preschool on crime.

CONCLUSION

While overall the benefit-cost ratio to society was almost $11 to $1 when taking into account all the estimated benefits associated with preschool participation, the crime benefit by itself accounts for approximately $5 of this return. From this societal perspective (which includes the benefits of preschool to the participants themselves) the reduction in crime accounts for almost half (46 percent) of the social benefit associated with preschool. No other category of benefits plays such an important role in explaining the benefits of this intervention to society.

Importantly, we find that the effect of preschool varies by different characteristics of students and families or neighborhoods. We find that preschool participation has an especially significant effect on criminal behavior for boys, for children of parents with low levels of education, and for participants who lived in the poorest neighborhoods. This pattern of “compensatory” findings suggests that targeting educational interventions to the most disadvantaged children will generate the highest rates of return.
NOTES


3 See Chicago Child Parent Centers, supra note 2; Long-term Effects, supra note 2; Age 21 Cost-Benefit Analysis, supra note 2; See generally Lorraine Sullivan, Let Us Not Underestimate the Children (1971).


5 See Belfield et al., supra note 4; Heckman et al., supra note 1.


See School-based Early Childhood Intervention, supra note 6.

Id.


See Aos et al., supra note 1; Barnett, supra note 4; See generally Lynn A. Karoly, Investing in Our Children: What We Know and Don’t Know About the Costs and Benefits of Early Childhood Interventions (1998).


See School-based Early Childhood Intervention, supra note 6; White et al., supra note 13.

See Chicago Child Parent Centers, supra note 2.

See Age 26 Cost-Benefit Analysis, supra note 7; White et al., supra note 13.

See Age 26 Cost-Benefit Analysis, supra note 7.

Id.
THE SCHOOL-TO-PRISON PIPELINE: HOW SCHOOLS ARE FAILING TO PROPERLY IDENTIFY AND SERVICE THEIR SPECIAL EDUCATION STUDENTS AND HOW ONE PROBATION DEPARTMENT HAS RESPONDED TO THE CRISIS

by KRISTINA MENZEL

Under the Individuals with Disabilities Education Act (IDEA),¹ schools are required to identify and provide services for students with special
education needs. This includes those mentally ill students whose mental illness interferes with their ability to get a “free, appropriate, public education.”

Unfortunately, these needs are not always met by the schools, lending to the significant number of mentally ill minors ending up in the Juvenile Justice System. To reverse this trend, resources must be made available to ensure that every student has the necessary resources. Changes also need to be made to the IDEA to better encompass the range of mentally ill students needing services. Finally, the Juvenile Justice System needs to better take into consideration instances where conduct was a manifestation of a disability that was not properly serviced. Once a student has become involved in the Juvenile Justice System, programs should be established to help ensure that proper services are in place so that future incidents can be avoided. The Cook County Juvenile Probation Department has started a division, the Educational Advocacy Division, to address issues with improperly serviced students once they are placed on probation.

If all these things are done then perhaps we can begin to see a return on the investment we make in our special needs children. We’ve seen that it can work; we just have to take one child at a time.

The Pipeline

“Detecting mental health problems among children may well be the first step to preventing or mitigating violence at school.” In their 2006 National Report on Juvenile Offenders and Victims, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) noted that “school crime was common in 2003 – 1 in 8 students were in a fight [and] 1 in 3 had property stolen or damaged.” Although limited studies have been conducted regarding the link between violence and mental health disorders in youth, there is some evidence to suggest this relationship, especially if substance abuse is involved or the youths have not been receiving any treatment for their mental illness.

In their Amicus Brief to the Seventh Circuit Court of Appeals for the case Jamie S. v. Milwaukee Public Schools, the ACLU noted that “the school-to-prison pipeline” is the product of, among other factors, “the practices and policies of school districts” that result in the criminalization of in-school behaviors. They further note that “another manifestation of the school-to-prison...
pipeline is that students are being arrested and funneled into the juvenile justice and criminal justice systems for minor incidents at school" and that “the reality is that a large number of the incidents now resulting in long-term suspensions are for adolescent behaviors that could be – and once were – handled by a trip to a principal’s office or a call home to a parent.” Unfortunately, if the student is already court involved, a suspension, even without a referral to court, “may violate a student’s court agreement and may lead to . . . punishments that push the student deeper into the Juvenile Justice System.”

The unfortunate fact is that many of these students suffer from mental illness. “One in ten children and adolescents suffer mental illness severe enough to cause some level of impairment. . .yet fewer than one in five of these children receive necessary treatment.” In its 2008 Annual Report, the Federal Advisory Committee on Juvenile Justice noted that “as many as 70 percent of youth in the juvenile justice system have diagnosable mental health conditions,” yet the overall rates of mental illness in the general adolescent population is only in the range of 11-19 percent. In addition, “recent studies show that up to 85 [percent] of children in juvenile correction facilities have disabilities that make them eligible for special education services, yet only 37 [percent] had been receiving any kind of services in their home school.”

THE IDEA

In 1975, Congress passed the Education for All Handicapped Children Act of 1975 (EAHCA) in an attempt to insure that all children, regardless of any disabilities, would receive a “free, appropriate, public education.” Congress passed the EAHCA recognizing that, at the time, more than half of the children in the United States with disabilities were not receiving an appropriate education, and emotionally disabled students were the least served of all. The purpose behind the EAHCA and its progeny, the IDEA, is to ensure that special needs students get an education that meets their individual needs.

In 1990, the Education for All Handicapped Children Act of 1974 (EAHCA) was amended to become the IDEA. The IDEA provides that a school must provide services to a student who has an “emotional disturbance” which is defined as:
a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

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

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

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

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

(E) A tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8 (b)(4).20

Unfortunately, this description does not indicate exactly how severe the symptoms must be, how much they must interfere with a child’s educational performance or how long the symptoms must be in evidence, thus lending them to subjective interpretation.21 It also does not address the fact that the causes and manifestations of an emotional disturbance can differ greatly from child to child, thus making even the most well-intentioned evaluator confused as to whether a given child fits into the definition.22

A further problem with the IDEA’s definition of an emotional disturbance is that it excludes children that are considered socially maladjusted.23 “There is no federal regulation that defines social maladjustment, however, it has been described as a ‘persistent pattern of violating societal norms with lots of truancy, substance and sex abuse, i.e., a perpetual struggle with authority, easily frustrated, impulsive, and manipulative.”24 This is considered to be an attempt to exclude so-called “voluntary behavior.”25

Recent research into adolescent brain development, however, makes it clear that trauma can have a lasting effect on the development of the teen brain.26 “Persistent trauma results in a state of hyper vigilance, anxiety and impulsivity.”27 This can affect behavior and, as trauma can be as simple as being raised in poverty or consistently witnessing violence either inside or outside the home, it raises the question as to whether even the behavior of so-called “socially maladjusted” children is truly voluntary. Also, “conduct that is disruptive and anti-social can easily be characterized as the product of intentional choice and poor character rather than the manifestation of a mental impairment.”28

Even when students with emotional disabilities are properly identified as such, there is no guarantee that they will receive the appropriate services. Once a
student is identified as having an emotional disorder, the IDEA requires the school to meet with the parents, the child, the child’s teacher, and other “experts” to determine what services are needed to provide the minor with an appropriate education.\textsuperscript{29} From this meeting, an Individualized Education Plan (IEP) is formulated.\textsuperscript{30} The IEP “sets forth a written statement that includes a child’s current educational status, educational goals and the steps to achieve those goals.”\textsuperscript{31} Additionally, “if the child’s behavior impedes the child’s learning or that of others, the IEP must include ‘strategies, including positive behavioral interventions, strategies and supports to address that behavior.’”\textsuperscript{32}

The IDEA also requires schools to consider whether supplemental aids or services or the provision of ‘related services’ may alleviate problems, including behavioral problems, such that the child will benefit from his program or will able to be educated with non-disabled peers. 20 U.S.C. § 1412(a)(5); 34 C.F.R. §300.114(a)(2)(ii). The expansive provision regarding related services includes family counseling, psychological services, social work services, therapeutic recreation services, and medical and psychological evaluations. 38 20 U.S.C. § 1401(17); 34C.F.R. § 300.13.\textsuperscript{33}

Once a student is identified as a special education student, however, the discipline procedures the school must follow for any rule infractions become more complicated.\textsuperscript{34} The school must determine if the infraction was a “manifestation of the student’s disability.”\textsuperscript{35}

The IDEA states that this determination must be conducted by the IEP team and other qualified personnel. In making the manifestation determination, the team must consider evaluative, diagnostic and other relevant information (including information provided by the parent or child), observations of the student and the student’s IEP and placement. In deciding whether the misconduct is a manifestation of the disability, the team must determine if the student’s disability impaired his or her ability to understand the impact and consequences of the misbehavior and if the disability impaired the student’s ability to control the behavior.\textsuperscript{36}

In addition,

The team must find that the behavior was a manifestation of disability if:
• in relation to the behavior the child’s IEP or placement was inappropriate; OR
• in relation to the behavior, special education services, supplementary aids and services, and behavior intervention strategies were not implemented in a manner consistent with the child’s IEP and placement; OR
• the child’s disability impaired the ability to understand the impact and consequences of the behavior; OR 
• the child’s disability impaired the ability to control the behavior. 20 U.S.C. § 1415(k)(4)(C).37

If the infraction was not a manifestation of the student’s disability, the student can be disciplined like any other student.38 If, however, the behavior is found to be a manifestation of the student’s disability, the student cannot be expelled.39 Additionally, since the 1997 amendments to the IDEA, a school may not directly petition the courts to find a minor delinquent in order to avoid its responsibilities.40 However, the IDEA specifically states that it does not prohibit a school from reporting a crime to the proper authorities, although the school must then furnish the authorities with the student’s special education and disciplinary records.41 However, “the legislative history explains that schools may not report crimes even to ‘appropriate’ authorities when doing so would circumvent the schools obligations under the IDEA.”42 Once the authorities are called, however, the IDEA also specifically indicates that these requirements are not meant to impede either law enforcement or the judiciary from performing their duties.43

So what happens when the student’s criminal behavior is a manifestation of the student’s disability, but could have been prevented if the proper services had been in place?

THE COOK COUNTY JUVENILE PROBATION’S EDUCATIONAL ADVOCACY DIVISION

In 2005, the Cook County Juvenile Probation Department, which covers the city of Chicago and suburban Cook County, began a pilot program called the Educational Advocacy Program. Since then the program has evolved into a regular division of the Juvenile Probation Department, which is tasked with handling the special education needs of the minors placed on probation or housed in the Cook County Juvenile Temporary Detention Center.

The Educational Advocacy Division consists of probation officers that are specially trained in both educational matters and the needs of special education students.44 Their job largely consists of advocating on behalf of their clients in the Chicago Public School System.45 Cases are generally referred to the Educational Advocacy Division by the court when a minor is placed on probation...
and there appear to be special education issues or at the request of one of the parties. A referral can also come from an attorney or the client’s regular probation officer. When they first get a new case, a few each week, they must get consents for disclosure of confidential school information signed and then they go to the schools. Approximately 90 percent of their clients have already been determined to be in need of special education services, but often the schools are unaware of this fact, which can be due to school overcrowding or the failure of records to follow a student from school to school. The officer must then track down all of the student’s prior records and prior IEP’s before they can even begin advocating for services for their clients. This can be quite time consuming as many students have moved repeatedly and often the records from prior schools never made it to the new school.

The typical client is 15 to 16-years-old with a first grade reading level, or lower. Often the clients are not attending school and are gang involved because they have become tired of the frustration they experience in school when they do not receive the proper services and have difficulty learning. They are also often embarrassed by their disability and in the gang no one makes fun of their disability. When the client has a current IEP, they are generic and vague and often the schools are not providing the services indicated. Another frustration for the officers is that as soon as school officials discover Educational Advocacy’s involvement with the client, their first concern usually is as to why the minor is on probation and why the officer is at the school, not what the student’s educational needs are.

Once the officers begin to look at the clients’ records, they find that IEP’s have been followed less than 5 percent of the time. The officers must be smart and specific about their requests for services and experts as the clients mean a lot for work for the schools and an increased burden on already over-stretched resources. The officers attempt to work with the school to get a new IEP if one has not been done recently, and to make sure the appropriate services are in place. Unfortunately, the schools are often resistant because they see the clients as troublemakers and do not wish to waste resources on them. If it becomes necessary, the officers have pro-bono attorneys willing to help the clients with due-process hearings where the IEP’s can be challenged.

The officers often face an uphill battle. Schools are over-crowded and see the probation officers as a way of getting rid of “problem students.” When minors who are already on probation get in more trouble, it is the police the schools
call first, not the probation officers and the records the IDEA requires the schools to tender to the appropriate authorities are almost never tendered to the police.\textsuperscript{56} This may be due to the schools not being aware at first that they are dealing with a special education student, due to the large number of students they service, or it may be due to a lack of awareness that they are required to tender this information. Added to these difficulties is the fact that many Chicago Public Schools use Chicago police officers as security guards and it is unclear whether or not these officers have any special training, especially as to dealing with emotionally disturbed children.

When Educational Advocacy probation officers are able to get individualized and tailored services in place, they often feel they make a real difference.\textsuperscript{57} They see that when students are properly assisted they become motivated to stay in school and they get in less trouble.\textsuperscript{58}

CONCLUSION

If we are to have any hope of ending the school-to-prison pipeline, we must look to the needs of our special education students. Resources have to be made available to ensure that every student has whatever services are necessary to afford an equal, and safe, opportunity to a free, appropriate education. This will require a fresh perspective in the schools and a willingness to take a new look at old policies of discipline. Teachers and staff need to be properly trained to understand how to appropriately handle their students with emotional disabilities. The IDEA needs to be amended to remove the current limitations as the “social maladjustment” so it can be brought more in line with current research on the adolescent brain. Schools need to make sure that they are aware of which students are special education and that any crimes committed by them on school grounds are handled appropriately, with the proper information given to the authorities if they are, in fact, needed. The juvenile justice system needs to adjust to consider instances where such conduct was a manifestation of a disability that was not properly serviced.

If all these things are done, then perhaps we can begin to see a return on the investment we make in our special needs children. We’ve seen that it can work; we just have to take one child at a time.
NOTES

1 20 U.S.C § 1414 et seq.
3 Id.
4 The opinions expressed in this article are my own and do not reflect the opinion of my employer.
5 Interview with Bridgette Anderson, Sylvia Rivera & Rosalinda Banuelos, Probations Officers, Cook County Juvenile Probation Dep’t, Educ. Advocacy Div., in Chicago, Ill. (Mar. 22, 2010).
6 Mount, supra note 2, at 103.
8 Mount, supra note 2, at 107.
9 Brief for ACLU, et al. as Amici Curiae Supporting Petitioner at 6-7, Jamie S. v. Milwaukee Public Schools, No. 09-2741 (7th Cir. June 09, 2009).
10 Id. at 7.
11 Id. at 8.
12 Id. at 10.
13 Mount, supra note 2, at 103.
15 Id. at 3.
16 Mount, supra note 2, at 105.
17 Id.
18 Id.
19 Id.
20 Id. at 113-14.
21 Brief for ACLU, supra note 9, at 16.
22 Id.
23 Mount, supra note 2, at 114.
24 Id.
25 Id.
27 Id.
28 Brief for ACLU, supra note 9, at 16.
30 Mount, supra note 2, at 106.
31 Id.
32 Special Education Advocacy, supra note 29, at 4-6 (quoting 20 U.S.C. § 1414 (d)(3)(B)).
33 Brief for ACLU, supra note 9, at 22.
34 Special Education Advocacy, supra note 29, at 4-15.
35 Id.
36 Allan G. Osborne, Jr., Discipline of Special Education Students under the Individuals with Disabilities Education Act, 29 Fordham Urb. L. J. 513, 530 (2001).
37 Special Education Advocacy, supra note 29, at 4-16.
38 Mount, supra note 2, at 118.
39 Mount, supra note 2, at 117.
40 Special Education Advocacy, supra note 29, at 4-16.
41 Id.
42 Id. at 4-25.
43 Id. at 4-16.
44 Interview with Bridgette Anderson, Sylvia Rivera & Rosalinda Banuelos, supra note 5.
45 Id.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
54 Id.
55 Id.
56 Id.
57 Id.
58 Id.
SERVICE FOR ALL: MENTAL HEALTH SERVICES FOR AT-RISK CHILDREN

by MIQUEL LEWIS, Psy.D., MICHAEL FLETCHER, Psy.D. & RANDELL STRICKLAND

"My son is out of control. . .somebody better come get him 'cause I can't do it anymore." These are the words of countless parents who cry out; better still, scream out for help from juvenile justice professionals. To hear parents plead to a court system to take their child into custody is both disheartening and understandable. Research has helped the field of juvenile justice in knowing that children's behavior is influenced by many factors in their environment, including drugs and alcohol. As systems implement strategies to address the ever-changing needs of youthful offenders the next "great thing" will be to make mental health service and substance abuse treatment...
available before an act of violence or other criminal behavior necessitates court intervention. This article will articulate the scope and magnitude of emotional and behavioral health needs of adolescents, and the need for early intervention to reduce delinquent behavior.

The presence of mental health needs in juvenile offenders is well documented. The call for appropriate assessment and intervention is equally documented. Advocates for juvenile justice and mental health system reform have long called for more effective diversion of youth to mental health programs, in lieu of juvenile justice processing.

Studies on prevalence rates of mental health in persistently delinquent youth range from 30 percent to 40 percent. Further, youth substance abuse is estimated at better than 40 percent among at-risk youth. A growing body of research suggests that low-income and minority youth are at great risk for a wide range of problematic outcomes affecting their personal well-being, particularly those youth living in urban communities. A study in Cook County, Illinois, found that, excluding conduct disorder, 60 percent of males and 68 percent of females in juvenile detention met diagnostic criteria for one or more psychiatric disorders as outlined in the *Diagnostic and Statistical Manual of Mental Disorders* (3rd ed., rev), a clinical reference guide. These findings are significant because the research, the first of its kind in the nation, provided a baseline for understanding the treatment needs of children in a detention setting.

Indeed, mental health and substance abuse are overlapping issues. Thus, children and families need the coordinated efforts of educational, child protection, juvenile justice, and mental health systems. More than 10 percent of the youth in juvenile justice systems manifest symptoms of clinical depression whereas it is estimated that better than 40 percent of delinquent youth demonstrate signs of substance abuse. These findings are significant, in that they provide the framework for identifying appropriate services for delinquent youth. Ensuring that public safety is achieved through standards of accountability and implementation of evidence-based interventions where the need exists. The proof is in the research, youth are experiencing emotional and behavioral trauma at alarming rates. Perhaps, more alarming still is the result of these youths’ experiences. The traumatic response to precipitating factors is often inappropriate, and illegal.
ENVIRONMENTAL DETERMINANTS TO MENTAL ILLNESS

When children are exposed to violence, they suffer not only the immediate trauma of the incident, but this trauma creates a “socially toxic” environment that tends to negatively affect “normal development” and their future well-being. Studies have found that exposure to traumatic stimuli at a young age results in short-term and long-term consequences, affecting children throughout their developmental phases and into adulthood. Such children are at increased risk for teen pregnancy, drug use, and mental health problems. Of children exposed to violence, those who are directly abused or neglected are more likely to be arrested as juveniles, as adults, and for violent crimes. Long-term consequences of exposure to violence involve a greater risk of early and chronic involvement with the juvenile justice system and, later, the criminal justice system. These youth are also more likely than their peers to be in abusive relationships, and to later neglect or abuse their own children.

Youth exposed to violence report significant levels of depression, anxiety, and low self-esteem and are three times more likely than their peers to abuse or become dependent on a large range of substances. Many of the symptoms experienced by these youth are characteristic of post-traumatic stress disorder (PTSD). Furthermore, youth exposed to violence score lower on math and verbal tests and report negative interactions with their teachers. Although community violence is difficult to measure, a few surveys do measure youths’ perception of safety in their own communities. A national study found that 46 percent of the youth surveyed had changed their daily routines because of safety concerns and about 12 percent had changed their routes to and from school for the same reason. In October 2009, a survey conducted by this author of 29 minors on probation for weapons-related offenses from Chicago, Illinois’ Englewood community participated in discussions about violence and their role in the community. When asked, “What do you fear most?” 21 out of 29, or 72 percent, responded “dying.” In a separate discussion when 15 youth from the same community neighborhood were asked the same question, 12 minors, or 80 percent, provided the same response.

Given the results of separate focus groups it is obvious that minors, even those found guilty of violent offenses, report fear of violent crime. To better understand the responses of the minors consider, for a moment, the “self-fulfilling prophecy.” It is said that a person who believes he/she is violent will become
violent. In urban communities across the country the impression of the dominant culture is that youth of color are violent. This impression is digested by youth of color daily through print and television media. Whereas “success breeds success” is a mantra for successful people, youth in urban communities interpret a darker, harsher mantra – “survive or die trying.” Yes, it would be an easy assumption to suggest that any person, adult or adolescent, who engages in violent behavior, would fear retribution. Yet, 65 percent of the focus group participants reported possessing a weapon and never using it because of fear of “the threat of violence” based on their experiences in the community.17

In 2007, an assessment of service availability in three Chicago community neighborhoods Englewood, Lawndale, and Lincoln Park/Lakeview was conducted. The Lawndale and Englewood community neighborhoods were selected due to the volume of referrals to Cook County Juvenile Court received and because of the significant African American and Latino populations in the community neighborhoods.18 The Lincoln Park/Lakeview community served as a comparison community due to the relatively low population numbers of African American and Latino residents.19 The results revealed that mental health and substance abuse services, where needed, were available in limited supply. In fact, the Lawndale community had one “slot” for every 1,200 minors requiring mental health or substance abuse treatment. Similarly, in the Englewood community, access to service was limited to one out of more than 900 minors needing service.20 Unequal access to service is indicated to be a contributing factor to the disproportionate involvement of youth of color in juvenile justice systems. As illustrated, when service providers are unable to meet the demand for services youth needs are untreated. As a matter of public health, limited access to resources exacerbates treatment issues.

BARRIERS TO EFFECTIVE TREATMENT OF JUVENILES WITH MENTAL HEALTH ISSUES

There is broad agreement that multi-agency collaboration among child-serving agencies including mental health, juvenile justice, education and others is required to overcome the limitations of unilateral treatment – that is, treatment provided through one agency without coordination with other service providers – and provides the array of services needed to effectively treat offenders with mental health needs.21 Unfortunately, major barriers to collaboration exist. These include the high cost of specialized mental health interventions, cate-
gorical funding at federal, state and local levels, and differing philosophies in juvenile justice and mental health. Although both systems grew out of the child guidance movement and were based on similar rehabilitative ideals, the juvenile justice system has the added responsibility of protecting young offenders and the communities in which they live. Novel approaches to treating delinquency include get-tough practices such as mandatory adult sentencing, increased sentencing lengths, scared straight programs and boot camps. Other unique approaches include non-system diversion, residential corrections, behavioral interventions and peer-based programs.

Research shows that these approaches do not rehabilitate youth, show no deterrent effect, or, in some cases, actually exacerbate recidivism. On the other hand, get-nice approaches such as after-school hangouts, sports programs, peer mediation, self-esteem programs and providing information about the negative impact of delinquency have little empirical support.

Promising Service Delivery Strategies

Toward improving access to service for all minors, at the earliest indication of maladaptive behavior it is important to consider programs with potential. The movement for evidence-based programs requires the critical evaluation of efficacy, which is not standard practice. Few studies exist that specifically examine programs to treat youth in juvenile justice with mental health problems. It is probable that absent appropriate assessment the complexity of co-occurring mental health problems and delinquent behavior decreases the likelihood of effective behavior change. Screening instruments such as the Massachusetts Youth Screening Instrument, 2nd Version (MAYSI-2) assist in detection of mental health and substance abuse issues. The Circuit Court of Cook County, Illinois maintained a proactive approach in identifying causal factors and administering interventions that meet the need. In February 2007, the Circuit Court of Cook County, Illinois focused attention on early screening of mental health and substance abuse issues. The Cook County Juvenile Probation Department began using the MAYSI-2 to help department staff accurately identify minors with mental health and/or substance abuse needs. This early identification of treatment need is yet another innovation in system response to service matching for children.
The local landscape on prevalence rates of mental health issues in juvenile justice mirrors that of the national data. The mental health needs of these children are recognized as a paramount concern. The pleas of parents for help from systems have been heard and action has been taken. There have been significant developments in the treatment of juvenile offenders and a number of innovative interventions have emerged with promising results. Effective interventions often have an ecological approach, focusing on increased intersystem collaboration and comprehensive service planning in multiple domains.28

Programs, which strategically encompass individual, parent, family and community systems and that address the multiple determinants of delinquency, have demonstrated effectiveness for reducing symptomatology, criminal activity and recidivism.29 Additionally, emerging criminological theory emphasizes the importance of social support in preventing crime.30 Programs with demonstrated effectiveness that combine an ecological approach with an element of social support include multi-systemic therapy (MST), functional family therapy (FFT) and wraparound-service planning.31 These services might include clinical therapy, substance use treatment, special education, medication, caregiver support, public assistance, employment, housing, medical health care, mentorship programs, transportation and coordination of services with other sectors such as juvenile justice and child welfare. Systems examining varied approaches to reducing institutionalization and improving outcomes for youth and communities would, likely, benefit from exploration of collaborative response models.

Causes of crime are linked to erosion of social control. Whereas acts of violence might be attributed to an individual, theories of social control assert that “collective liability” should be considered.32 Thus, all levels of control (private, parochial, and public) will be required to re-establish community safety.33 Key partners in a collaborative model include family and close friends (private), nearby neighborhood resources (parochial), and police, mental health professionals, child welfare departments, and schools (public).34 Community inclusion in the decision-making is a collaborative approach to addressing the effects of childhood exposure to violence.35

In 2009, Chicago Public Schools (CPS) and Chicago Police Department (CPD) launched safety initiatives, with the proposed purpose of reducing school-related shootings: “Culture of Calm” and “Safe Passage.”36 Each initiative is framed to promote safe environments inside school facilities and en-
hance safety efforts in community neighborhoods when students are traveling to and from school. While these initiatives are not proposed to resolve the mental health or substance abuse issues observed in the youth population, CPS and CPD have begun outreach to other system agencies with mental health, behavior change and substance abuse programs. Based on these programs it is anticipated that youth will experience increased levels of support and decreased anxiety related to victimization.

**Promising Local Level Programs and Initiatives**

The Juvenile Court, originally conceived as Family Court, sets a standard of behavior improvement for every child in its care. Whereas protecting the public safety is the primary charge of the Court, returning children to the community with enhanced skills is a critical component to the mission of the Court. Further, there is growing public opinion that delinquent behavior can be corrected through community-based programming. This is critical to the need for decreased reliance on institutional responses to juvenile crime. Child welfare systems have been charged with and have developed evidence-based program and initiatives. Programs with promise for improved outcomes include:

**The Juvenile Drug Program** is an expedited treatment program for youth in the inner city whose arrest evidences drug related issues requiring immediate access to a variety of treatment modalities. The program utilizes a consortium of dedicated community-based treatment providers that assess the level of intervention and deliver treatment and therapeutic services to youth and their families.

**The Family Reunification (R.U.R. UNIT)** focuses on expediting the release of youth from the Juvenile Temporary Detention Center to a family member or relative as designated by the court. This unit also provides early crisis intervention and access to community-based resources for youth when a family member is unavailable to receive them back into their homes.

**The Violence Prevention/Intervention Program** targets youth charged with delinquent acts and proposes options for addressing aggression with appropriate emotional responses. Youth and their families participate in intensive group discussions focusing on breaking the cycle of violence and accessing...
community-based resources. This program is offered to youth in conjunction with the screening initiative and the arraignment calendar.

The Street Dreams Employment Program focuses on developing job readiness skills of youth on probation and facilitating interviews and job placements with public and private sector organizations. This program interacts with the Department’s General Equivalency Diploma (GED) and Vocational Programs that were implemented in December 1996.

The Animal Assisted Therapy Program provides youth with the experience of interacting with animals as a way of encouraging responsibility, reducing communication barriers and creating new models of behavior.

The Girls’ Evening Reporting Center was established for female youth to incorporate a gender-responsive curriculum and specially designed activities delivered between the hours of 4:00 p.m. to 9:00 p.m. as an alternative to secure detention.

The Art Therapy Program provides therapeutic services to at-risk youth. Conducted by probation officers with Masters Degrees in art therapy, the program builds on the department’s treatment and rehabilitation philosophy within the guidelines of Balanced and Restorative Justice. Art helps youth develop constructive outlets for self-expression and encourages self-awareness, self-esteem and personal growth.

The Juvenile Advisory Council (J.A.C.) is a unique partnership between probation staff and young men and women who are former court clients who work together to develop a client-based perspective on the department’s programs and policies. Approximately 25 council members, comprising youth representatives and probation staff, meet monthly, conduct regularly scheduled programming for hundreds of court youth and parents [Probation Orientation and Exit Interviews], plan bimonthly training workshops and regularly present their work at professional conferences.

The Educational Advocacy initiative advocates for youth to receive the appropriate educational services as guaranteed by Federal and State law from the initial stages of their court involvement; supports the goal of reducing truancy and school related technical violations of probation; and increases parental awareness about their child’s educational rights. Initiated as a pilot in 2005,
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Educational Advocacy was implemented department-wide in 2006. In addition, an Education Task Force has been convened to advocate for the appropriate educational needs of students, educate families and court personnel on education laws, collaborate with the educational community and enhance the academic development of students.

CONCLUSION

The difficulty that juvenile justice and mental health systems, parents and community groups face in making mental health and substance abuse services available for children reminds us of the oft-told query: “Which came first the chicken or the egg?” Indeed, what comes first the crime or the behavioral/emotional symptoms? Rational minds, clearly observe that acts of crime by children are inappropriate responses to traumatic experiences. We have been exposed to extensive research that informs us that when children, particularly in urban environments, are exposed to crime, drugs, and abuse, they behave badly. Progressive societies are challenged to find alternative methods to age-old issues. Punitive response to criminal behavior does not reduce crime. In fact, incarceration is more expensive and less effective than rehabilitative services. Program evaluation has yielded promising results for the effectiveness of treatment versus incarceration. As reported by Lipsey, a review of 400 treatment programs indicated two-thirds of them benefited the target population.

Given the findings outlined in this article, it is arguable that resources are better utilized when they are made available to children at the onset of behavioral and/or emotional distress. A progressive society deserves progressive interventions that demonstrate behavior change in children and supports positive development. Policy makers would certainly be serving the public interest to consider reallocation of government funds to community-level rehabilitation programs, which are proven effective strategies.

Additional consideration should be given to programs and strategies for at-risk youth and families who seek assistance but are not requiring court supervision. This public health challenge finds promise for resolve in community development through behavioral enrichment interventions. Systems would serve the public need through early assessment of problem behavior in children, prior to an arrest. Parents who reach out for help with their son or daughter should not be turned away.
NOTES

1 See generally Thomas Grisso, Why We Need Mental Health Screening and Assessment in Juvenile Justice Programs, in MENTAL HEALTH SCREENING AND ASSESSMENT IN JUVENILE JUSTICE (Thomas Grisso, Gina Vincent & Daniel Seagrave eds., 2005); Thomas Grisso, Adolescent Offenders with Mental Disorders, 18 THE FUTURE OF CHILDREN 143, 148 (2008).

2 Id. at 146.


7 Id.


14 Study conducted by Miquel A. Lewis, Disproportionate Minority Contact Project Administrator, Circuit Court of Cook County, Juvenile Probation Department, in Chicago, Ill. (Oct. 2009) (on file with author).

15 Id.

16 Id.

17 Id.

18 Id.

19 Englewood community population is approximately 98% African American, 1% Latino, <1% White. Lawndale community population is approximately 53% African American, 45% Latino, and 1.5% White. Lincoln Park/Lakeview is approximately 3.7% African American, 6.7% Latino, and 88% White. U.S. CENSUS BUREAU (2000).

20 Cook County Juvenile Court Clinic Provider Database (2007).

21 Charles M. Borduin, Innovative Models of Treatment and Service Delivery in the Juvenile Justice System, 23 J. CLINICAL CHILD & ADOLESCENT PSYCHOL. 19 (1994); Jospeh Cocoza 

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22 Fagan, supra note 21; Goldstrom et al., supra note 21.
23 Murphy, supra note 21.
25 Chaiken, supra note 24.
26 Borduin, supra note 21.
27 The John D. and Catherine T. MacArthur Foundation funded the Department’s implementation and evaluation of the MASYI-2. The MASYI-2 is a brief tool in which youth report on their experiences of symptoms related to mental health problems and substance abuse over the past few months.
28 Goldstrom et al., supra note 21.
30 Lipsey, supra note 29.
34 Id.
37 Id.

39 Id.
40 Id.
41 Id.
42 Id.
43 Id.
44 Id.
45 Id. at 6.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
52 Id.
53 Id.
54 Id.
55 Id.


57 Lipsey, supra note 29.
ENCOURAGING THE USE OF COMMUNITY INVOLVEMENT AND RESTORATIVE PRACTICES AS TREATMENT FOR TRAUMA WITH BLACK JUVENILE OFFENDERS

by Uduakobong Ikpe, M.S. & Kendell L. Coker, Ph.D.

THE STORY OF “AB”

A B was a 13-year-old Black male from the inner city of Memphis, TN. He was arrested for sexually assaulting an elderly neighbor. Routine screening by the court mental health professional found that AB suffered from a plethora
of mental health symptoms including anxiety, disorganized behavior, lack of concentration and nightmares amongst others. He reported that he moved to Memphis from Chicago, IL because his mother was a substance abuser who regularly placed him and his older brother in “scary and messed up” situations. When the possibility of mental health disturbance was discussed with AB, he became very angry.

Prior to making recommendations to the court, the mental health professional was contacted by the alleged victim. She explained that she was a retired special education teacher and that she knew something about AB was “not right.” She explained that he was seen at all hours of the night roaming the neighborhood alone in a high-crime area. She felt that some sort of intervention was necessary before a one-time incident became a pattern. As his neighbor and fellow community member, she felt obligated to call his attorney, who directed her to the mental health professional. She indicated that she wanted AB to get treatment because she thought he was being neglected. She also wanted him to move out of his current home and into the home of a family member that she knew would monitor his actions. Contact was made with a family member who was willing to help AB. Still, AB refused to take ownership of his actions or to agree to terms that would improve his mental health, even though he had already fully confessed to the offense.

In the end, AB returned to the neighborhood on probationary status and the victim was left feeling helpless and greatly saddened. She later told the mental health professional that she felt justice was not served for herself or AB. The mental health professional was left thinking that restorative practices could have intervened and put an end to an unfortunate, yet all too common scenario. This article will discuss restorative justice and a proposed model that is a promising alternative to incarceration and the disproportionately harsh treatment Black youth are subjected to in the legal process while concurrently meeting their mental health needs.

**The Racial Disparity Against Black Youth in the Juvenile Justice System**

Juvenile delinquency is a critical issue that needs to be addressed. When the question arises as to why it is so important, the answer appears to be fundamentally obvious. Our youth represent our future. Thus, our society will only
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be as successful as those who are raised in it. Additionally, some of the adults’ lives, currently in the penal system, could have been more productive, rather than criminal, if they had received the proper mental health interventions and services earlier in life. This is particularly evident when researching juvenile delinquency and the co-occurrence of mental health issues in juvenile offenders.

By focusing adequate resources and targeting services to meet the needs of juvenile justice populations we may reduce crime rates in the future. In order to properly address the concern about children involved in the juvenile justice system, we must first demonstrate an accurate understanding of the problem, who is affected by it most and why. Some of the most alarming statistics are concerning youth violence.

In 2006, there were 5,958 murders among young people between the ages of 10 and 24. Homicide was the second leading cause of death among the 10 to 24 year olds and 84 percent were killed with a firearm. In 2007, 18 percent of youth reported carrying a weapon, with 5.2 percent carrying a gun, within the 30 days preceding a Center for Disease Control (CDC) survey. In that same year, there were well over 1,000 juveniles arrested for murder, over 3,000 for rape, and over 57,000 arrested for aggravated assault. With regard to school violence, approximately 27 percent reported stealing or intentionally damaging school property and 12 percent reported being in a physical fight on school property in the 12 months prior to taking the survey. These statistics are presented to show the magnitude of the problem and demonstrate the level of help our youth need. However, these statistics do not show the whole picture. They cloud two significant issues which Congress and public health agencies nationwide saw fit to address in recent years: disproportionate minority contact and mental health needs in juvenile justice settings.

The numbers above do not reveal the discrepancy between Black/African Americans, White/Caucasians and other ethnic groups. For instance, although homicide was the second leading cause of death for all young people, it was the highest cause of death for Blacks by a significant amount. Homicide rates among Blacks were 62.2 per 100,000, 21.5 per 100,000 among Hispanics, and 3.4 per 100,000 among Whites. Furthermore, Black youth receive harsher treatment in the juvenile justice system than their White counterparts for similar offenses. Despite only making up 17 percent of the total population of youth, they make up 30 percent of youth arrested. In comparison to
White youth, Black youth are 50 percent less likely to be diverted before adjudication and 50 percent more likely to be detained before adjudication. Public perception, though erroneous and often from the mouths of politicians, help fuel the image that Black youth are crime prone and these number are not mere reflections of inequities in society. But their comments fail to point out the many disparities. For instance, Black youth are twice as likely to be arrested for property and drug offenses. Although Black youth are 40 percent more likely to be involved in a physical altercation they are “300 percent more likely to be arrested for aggravated assault and other offenses.” Moreover, Black youth are nine times more likely to receive an adult sentence than White youth.

This disparity has long-term ramifications for Black youth because a disproportionate amount of them may not have the same promises for a positive future, given what we know about the negative effects of incarceration on youth. Youth transferred to the adult system are more likely to recidivate than those who remain under the jurisdiction of juvenile court.

It is important to understand some of the forces that cause crime in predominately Black inner city communities and the psychological needs of these youth as a result. This is a critical point because, given Black youth’s disproportionate contact with the juvenile justice setting, we must understand what “pressures” lead them into the system and how this impacts them so we can find proper ways to treat them. Some argue that class is the ultimate racial equalizer but Black youth are more likely to have their poverty status pose as a both a catalyst for delinquency and a barrier to more effective legal representation.

Because of factors such as poverty, family disruption, class segregation, race and other social inequalities, juvenile violence is "primarily a function of community context." Unfortunately, this, in conjunction with the alarmingly high homicide and assault rates for Black youth mentioned earlier, suggests that many of these youth are exposed to violent crime on a pervasive scale. Typically, statistics show the number of youth murdered or harmed, but not how many of them witnessed the event that can be just as traumatic. The literature on juveniles and mental health show that many of the same youth who may become involved with the juvenile justice system come from communities where violence exposure is dangerously high. Studies have continued to document the relationship between violence exposure, victimization, and de-
In short, a significant factor playing a role in juvenile delinquency particularly among inner city Blacks is trauma.

**Exposure to Violence as a Source of Trauma in the Inner City and Its Effects**

What is trauma? The concept “trauma” has a very broad definition because it can encompass a wide spectrum of experiences. Some commentators have defined trauma as an experience of a threatening or overwhelming event that leads to an extreme stress reaction. The American Psychiatric Association incorporates a stressful event such as witnessing and/or being the target of a threatening situation and the person experiences intense fear, helplessness, or horror, into the definition. Trauma is the result of some experience of victimization either as the actual victim or witnessing it. Studies have shown that significant amounts of Black children were either victimized or witnessed victimization at some time in their life. One such study found that 91 percent of Black children living in inner city neighborhoods witnessed violence and another study found the amount of victimization to be as high as 70 percent.

Trauma, in turn, is a contributing factor for many of these juveniles’ delinquent behavior. Chronic exposure to violence and trauma among Black inner city youth can lead to a feeling of helplessness and inescapable vulnerability. Thus, they must find alternative ways to cope with their environment that may be maladaptive. To further illustrate the association between the various types of trauma and criminal justice involvement, neglected children have similar arrest rates for violent crimes as physically abused children. In comparison to those without trauma histories, these differences in arrest rates are apparent as early as eight-years-old. One study found that as high as 50 percent of Black male and females who were victims of abuse or neglect had an arrest for violence. Yet other studies, as mentioned above, have shown high rates of community violence and the link between trauma in the context of community violence and arrests for violent crime. Research shows that these victimized inner city youth are increasingly likely to participate in violence, associate with other negative peers and obtain guns for protection.

These youth must receive an intervention to help them cope with the trauma they experience. Trauma has a significant impact on a juvenile’s mental health, which “influences their ability to handle stress, relate to other people, and
make decisions." A juvenile’s ability to regulate and control his/her anger is affected by trauma. Furthermore, when children are unable to cope with their angry feelings, they are more likely to act out in the form of violence thus increasing the likelihood of being arrested. Even when it comes to trauma, race remains a factor for the juvenile’s contact with the justice system. Black children with abuse and neglect histories were more significantly likely to be arrested than White youth with abuse histories from similar backgrounds.

The above research shows the strong link between trauma and the aggressive, acting out behavior of juvenile offenders and establishes the pervasiveness of trauma in inner city Black communities. Studies have demonstrated an imperative need for trauma intervention programs as a prevention method for crime and recidivism. Current interventions provide treatment to these youth outside of their communities only to send them back home where they will be exposed to the same risk factors that may have been responsible for their incarceration. Therefore, interventions must not only address the trauma, but also the community factors that have been argued, because of sociocultural and/or economic factors, to either promote violence and crime or failing to prevent it.

FROM JUVENILE JUSTICE TO RESTORATIVE JUSTICE AS A TREATMENT OF TRAUMA

The current criminal justice system is inadequate in terms of its failure to meet the needs of those affected by it. A great deal of literature has espoused the idea that the juvenile justice system has fallen short of its original tenants of providing rehabilitation to its targeted participants: children. From its inception, the juvenile justice system sought to act as a parental figure to the youth that committed crime. The goal being to help children who had lost their way in order to protect their wellbeing and to ensure that they could be guided towards becoming productive members of society; positive contributors in their communities. However, a lack of due process ended the solely paternalistic nature of that court and gave way to a hybrid in which the main goal was rehabilitation. The idealistic theory that rehabilitation was the sole need for the court to address was at odds with the factual reality that these children were causing social harm. They were negatively impacting their communities in ways that, over time, led to more negative results. Eventually, the juvenile
Still, the theories that resulted in the creation of the original juvenile justice system remain true. Developmentally, children lack the same ability to regulate their behavior in the same manner expected of adults. This becomes particularly evident in children with mental health issues. Today’s juvenile justice system is teeming with youth suffering from mental health problems. The numbers suggest that 1/5 of the adolescents in the juvenile justice system also receive mental health services. Some theorists believe that mental disorders and juvenile delinquency have common antecedents. This is indicative of the need for modalities that can successfully integrate treatment needs and those of the juvenile justice system.

Restorative justice is an alternative to the traditional adjudicatory system wherein the victim, offender and community are considered the primary stakeholders for which the specific criminal behavior has the greatest impact. That is, each stakeholder is afforded the opportunity to determine how best to resolve the matter before him or her. It is the interaction between the stakeholders that creates empathy within the offender and sympathy from the victim. It also empowers the community. This makes restorative justice unique in relation to other forms of alternative dispute resolution and can effectuate the most positive change possible for the stakeholders involved. In the United States today, there are approximately 773 programs nationwide and about 94 percent of all states use some form of restorative processes. The types of crime usually referred to such programs are vandalism, minor assaults and theft. However, there are occasionally serious violent crimes that have been referred to and handled in a restorative justice manner.

The restorative process generally takes several sessions and requires all relevant parties to have case preparation prior to attending the group conferences. Most restorative justice programs focus primarily on the victim’s wellbeing and how the outcome affects him/her. This is of the utmost importance and is an integral part of any successful restorative justice program. The informality of the process allows for the type of creativity necessary to address multiple issues including offender needs. In fact, as of late, many restorative justice programs seek to ameliorate offenders’ dysfunctional attributes. Restorative justice group conferencing has been described as being “dramatic, emotionally
charged, and potentially capable of producing significant transformation of individual participants, as well as collective conflicts.56

Restorative justice theories in the juvenile justice system suggest that restorative justice has the ability to reduce recidivism rates in juveniles by allowing the offender to be accountable for his/her actions while empowering victims.57 Furthermore, restorative justice practices can be used to provide communities with a means of recourse for the social harm caused by crime.58 It can be argued that the application of such practices amongst Black juvenile delinquents will uplift and include the community. This reduces the occurrence of violence amongst Black youth and, in turn, the amount of trauma experienced by these youths.

Various programs have been implemented that focus specifically on using the community as a means of reducing trauma symptoms in urban youth.59 Restorative justice models should be considered for application in the juvenile justice system that has alarming rates of contact with the Black youth, as it is a means of reaching this at risk population on at a greater scale. Furthermore, restorative justice may have the capacity to reduce the amount of confinement for Black juveniles because such programs are often implemented on diversionary levels prior to the criminalization of its participants.60 By affording Black offenders the opportunity to participate in such programming, both the chances of minority contact and minority confinement with the justice system may be greatly reduced.

An exploration of community-based restorative justice programs in Northern Ireland discussed how these programs have been utilized to change the culture of violence long since established in the area.61 According to Anna Eriksson (2008), violent communities create environments that perpetuate the use of violence as a means of resolving interpersonal conflicts.62 Furthermore, she postulates that the use of restorative justice can lead to the reduction of violence on a communal level.63 In these programs, local community members, specifically ex-leaders of the paramilitary groups, act as a moral compass for juvenile offenders and also bring an increased level of respect and legitimacy to the programming.64 This is extremely important due to the lack of involvement felt by these youths thus limiting their belief the justice system is geared towards helping and including them. The situation in Northern Ireland is one that is very similar to the inner workings of the inner city community where Black youth are often exposed to violence associated with the presence of
gangs, high rates of substance abuse and poverty. Restorative justice programs, similar to the ones found in Northern Ireland, offer a promising alternative to the current adjudicatory nature of the juvenile justice system.

Though it is true that there are many restorative justice programs throughout the world that rely heavily on community involvement, few programs utilize ex-gang members or ex-convicts whose credibility with the offending youth is high. The involvement of these individuals, with whom the juvenile offender can identify, will lend validity to the process that cannot otherwise be developed. It may be best that any restorative justice programs established in Black communities seek to include these often-marginalized community members that are also often revered by juvenile offenders. It is possible that the presence of respected individuals who insist upon the youth being held accountable and taking ownership for his/her actions will lead to increase in modeling appropriate behaviors which can lead to a reduction in the use of violence in order to resolve conflict and, as such, reduce the amount of traumatic exposure Black youth experience. The proposed model for restorative justice programs will incorporate the use of various community members in order to reduce disproportionate contact and confinement within the Black community, as well as, treat the trauma caused by exposure to violence by reducing that exposure.

**THE PROPOSED MODEL FOR THE TREATMENT OF TRAUMA USING RESTORATIVE PRACTICES**

This model will operate much like a restorative group conference rather than the typical victim-offender mediation program. Community involvement will be one of the most important and unique aspects of the program. Surveys of such programs in the United States found that an average of 7 individuals, including the victim, offender and facilitator attend the conferences with the participant number reaching as high as 22. This means that anywhere between 4 and 19 community members are involved in the conferencing process. In this model, there shall be no exact amount of community members required for involvement. Rather, certain criteria shall be considered in order to meet the specific stakeholders’ needs. All victim-offender mediation programs require voluntary participation by the victim and, usually, the offender.

This proposed model shall not stray from this formula. Participation shall be voluntary on the part of both the victim and offender. Referral to the program
may occur at either of two points: prior to adjudication much like diversionary program or post-adjudication as a probationary option. The point of entry is important because either can address the amount of contact an offender has with the justice system by diverting them prior to criminalization. It can address the disproportionate confinement issue by requiring several conferencing sessions that can act as an intervention for the offender rather than confining the child to a rehabilitative program that limits the child’s freedom while failing to treat his/her mental health needs.

Conferences shall occur at an accessible neutral location agreed upon by both parties. Examples of such locations include local community centers, churches/faith-based locals, schools or designated rooms within the juvenile courthouse. Several case preparation sessions should occur with the offender and members of the community who will also attend the conferencing. The focus of these sessions shall be treatment intervention. Anger management, problem-solving, assertiveness training and conflict resolution shall be reviewed with the offender prior to conferencing with the victim. These are interventions that are commonly used for the treatment of trauma and will increase the positive participation in the actual conference by the offender since he/she has previously learned how his/her actions could have been mitigated by making a different choice. The interventions will help in understanding how his/her mental health issues have impacted their current legal situation.

The case preparation conferences shall be provided with help of trained volunteers with backgrounds similar to that of the juvenile as well as a mental health professional and other effected community members and leaders. Once it is determined that the juvenile is prepared to address the victim in an empathetic manner and that alternative means of conflict resolution have been taught to the juvenile, he/she shall meet with the victim in order to further address the restorative needs of the stakeholders involved. This may include requiring the juvenile to attend more intervention programming, provide restitution, take ownership of his/her actions in the form of an apology, all of the above or other solutions agreed upon by the stakeholders involved.
CALL FOR MORE RESEARCH ON RESTORATIVE JUSTICE WITHIN THE JUVENILE JUSTICE SYSTEM

The use of restorative justice practices is an emerging area and thus has limited research regarding currently implemented programs. It has been argued that there is little connection between the theories of restorative justice and the actual implementation and practice of these programs.69 This article seeks to add to the literature available on possible interventions for the reduction of trauma exposure in inner city Black youth, while touching on other areas that can be ameliorated by restorative practices.

Any program that chooses to follow the proposed model should do so experimentally with the hopes of gaining more incite on which areas need improvement. This will maximize the positive mental health outcomes for the offender, improve the community by reducing the amount of juvenile recidivism created by a culture of violence and empower and heal victims. This model serves as an example of ways restorative practices can be used to improve various aspects of the Black community and aid Black juvenile offenders. Further research should be conducted focusing on the matters briefly touched upon by this article, such as how restorative practices can aid in the reducing the disproportionate contact and confinement amongst Black youth as compared to their counterparts from different racial backgrounds. It is important that the situations like that of AB, discussed at the beginning of this article, not be avoided but embraced by the community in order stop the cycle of violence and trauma which so severely plagues Black youth.

NOTES
3 Elizabeth Cauffman et al., Predicting First Time Involvement in the Juvenile Justice System Among Emotionally Disturbed Youth Receiving Mental Health Services, 2 PSYCHOL. SERV. 28 (2005).
4 Center for Disease Control, Youth Violence, Facts at a Glance (Summer 2009).
5 Id.
6 Id.
7 Id.
8 Id.
9 Neelum Arya & Ian Augarten, *Critical Condition: African American Youth in the Justice System*, 2 RACE & ETHNICITY 16 (2008). In 1988, under the Juvenile Justice and Delinquency Prevention Act (JJDPA), Congress required states to address racial disparities in the juvenile justice system. In 1992, Congress made addressing this issue a “core requirement” of the Act and in 2002, Congress broadened the language by changing it from disproportionate minority “confinement” to disproportionate minority “contact.”

10 The term Black will be used throughout this article instead of African American in part because not all Blacks in this country identify themselves as African American, but African American connotes Blacks. Thus, Black is the more inclusive categorization.


12 *Id.*

13 Arya & Augarten, *supra* note 9, at 1.

14 *Id.*

15 *Id.* at 17.

16 In 2005, William Bennett, Secretary of Education under the Reagan Administration said, “If it were your sole purpose to reduce crime you could abort every black baby in this country, and your crime rate would go down. . . that would be an impossible, ridiculous and morally reprehensible thing to do, but your crime rate would go down.” William Saletan, *Natural Unborn Killers: The Bigotry of Bill Bennett’s Low Expectations*, SLATE, Oct. 4, 2005, available at http://www.slate.com/id/2127378/; In defense of Bennett’s remarks Andrew C. McCarthy, Former Federal Prosecutor said, “Some identifiable groups, considered as a group, commit crime at a rate that is higher than the national rate. . .Blacks are such a group. That is simply a fact. . .plus he was right, which ought to count for something even in what passes for today’s media critiques.”; Andrew C. McCarthy, *Shameful Attacks: Bill Bennett Stresses Our Morality. . .and Pays the Price*, National Review Online, Sept. 30 2005, http://old.nationalreview.com/mccarthy/mccarthy200509301104.asp.

17 Arya & Augarten, *supra* note 9, at 20.

18 *Id.*

19 *Id.* at 8-9; See generally Finn-Aage Esbensen & David Huizinga, *Juvenile Victimization and Delinquency*, 23 YOUTH & SOC’Y 202 (1991).

20 Arya & Augarten, *supra* note 9, at 5.


22 Hawkins et al., *supra* note 21.


28 *Id.*


M.M. Omizo et al., Teaching Children to Cope with Anger, 22 ELEMENTARY SCHOOL GUIDANCE AND COUNSELING 241-45 (1988).

Davis, supra note 2, at 215.

See generally Youth Violence Implications, supra note 29.

It is important to remember that a large percentage of Blacks who live in the inner city do not commit crimes and function extremely well psychologically. This article primarily addresses that smaller percentage of individuals for whom community circumstances have a more negative impact on.


Elizabeth S. Scott & Laurence Steinberg, Rethinking Juvenile Justice 82-117 (Harvard University Press 2008).

Id. at 61-81.

Id.

In re Gault, 387 U.S. 1 (1967) is the groundbreaking case in which the US Supreme Court held that the juvenile justice system, at that time, did not protect the due process rights of children as it failed to afford them the right to counsel, the right to confront witnesses and the right against self-incrimination and the right to timely notice, amongst other due process rights afforded to all people by the 14th Amendment.

Scott & Steinberg, supra note 40, at 82-117.

Id. at 91-92.

See generally Scott & Steinberg, supra note 40.

Cauffman et al., supra note 3, at 34.

Id. at 28.

Currently, the juvenile justice system seeks to balance the need for rehabilitation with the necessity of public safety. Public safety has become the overriding focus of the system. This has led to an increase in laws addressing the transfer youth once considered less culpable for their actions to adult court.


52 Bazemore & Schiff, supra note 51, at 107.

53 According to the National Survey of Victim-Offender Mediation Programs, criminal acts such as assault with bodily injury, assault with a deadly weapon, negligent homicide, domestic violence, sexual assault, murder, and attempted murder have all been mediated through restorative justice programs, as noted in the survey. National Survey of Victim-Offender Mediation Programs in the United States, 8 CTR. FOR RESTORATIVE JUST. & PEACEMAKING, U. OF MINNESOTA (2000).

54 See generally Bazemore & Schiff, supra note 51.

55 Id.

56 Bazemore & Schiff, supra note 51, at 3.

57 Id. at 17.


59 Youth Violence Implications, supra note 29, at 12-16.

60 National Survey, supra note 53.


62 Id.

63 Id. at 233.

64 Id. at 233-39.

65 Not every case will be appropriate for referral to this program, but it is presented as a general approach that must be tailored to meet the needs of each victim, offender, and community as necessary. Also, screening must occur to determine if there are mental health needs that can be appropriately addressed using this intervention at the outset.

66 Though this model will closely resemble a restorative group conference, much of the process also resembles successful victim-offender mediation programs.

67 Issues such as the nature of the crime, the number of victims, the extent to which community members are directly affected by the outcome of the matter, the victims’ and the offenders’ desire for community members to be present, amongst other relevant issues shall be considered when determining how many members of the community to involve as well as which community members to involve.

68 When appropriate, ex-gang members or ex-convicts who are considered by the community to be genuinely rehabilitated shall participate as trained volunteers to assist in modeling appropriate behavior in terms of future decision-making and conflict resolution while adding a certain level of legitimacy to the program from the perspective of the youthful offender.

69 Bazemore, supra note 51, at 20.
CHILDREN ARE NOT LITTLE ADULTS: DEVELOPMENTAL DIFFERENCES AND THE JUVENILE JUSTICE SYSTEM

by LINDA M. B. UTTAL, J.D. & DAVID H. UTTAL

Children’s thinking differs fundamentally from that of adults.¹ The difference between children and adults is not simply that children know less; they know and learn in qualitatively different ways than adults do.² The differences between an adult and an infant are so obvious that no one would suggest that they should be treated similarly by the legal system. But when it comes to older children and adults, we sometimes forget that they are still developing. It is now well documented that developmental differences persist through the teen years and perhaps even into early adulthood.³
The legal system has finally begun to appreciate the need for a return to a developmental perspective on juvenile law. Perhaps the best evidence for this growing appreciation is the *Roper v. Simmons* case in which the U.S. Supreme Court eliminated the juvenile death penalty. The majority opinion authored by Justice Anthony Kennedy states “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.” Psychological and physical evidence of the cognitive and emotional differences between children and adults played a prominent role in the Court’s decision. The Court’s words point us back to why the Juvenile court was established: for rehabilitation, not to punish children as if they were adults.

As important as the U.S. Supreme Court’s decision is, it is really just the beginning. A systematic reform is needed that recognizes the cognitive and emotional differences between children and adults. In this article, I will argue that juvenile justice reform cannot focus only on the courts but must include all institutions within or affiliated with the juvenile justice system, including police and probation officers, prison and jail guards, school personnel, social workers and in some cases the general public. I will convey briefly some guidelines and suggestions for needed reforms for the appropriate treatment of children before and during their interaction with the juvenile justice system. This article focuses on early interaction. The real goal is to have NO entry into the juvenile justice system. The reforms needed beyond the entry are numerous and perhaps the subject for another article.

My perspective on these issues is informed by both research and practice. Serving as the Chief of the Cook County Juvenile Justice Division, I experience on an almost daily basis the consequences of the failure to fully appreciate the cognitive and emotional differences between youth and adults. It has become clear to me that mistakes made early in the process can have a profound effect on the ultimate success or failure of a juvenile’s court case. My aim here is to help reduce some of these mistakes, by pointing out that seemingly simple (and well intended) actions can often turn out to be harmful. In most cases, these errors result from a lack of appreciation of unique characteristics of the adolescent mind.
EARLY CONTACT: ARREST AND BEFORE

Imagine this scenario: A high school student is acting up in school, perhaps yelling or shouting obscenities. Security guards are called to assist the teacher. The guards try to diffuse the situation, and one puts his or her hand on the student’s shoulder. The child reacts violently, thrashing and eventually hitting the guard. The guard calls for police support; the child is arrested and charged with a felony, aggravated battery. What started out as an issue of school discipline has now ended in a felony charge.

The guard did not intend for things to end up this way. But it turned out that the child had a relatively minor case of Asperger’s Syndrome. She seemed normal but could not stand to be touched.

Or, imagine another situation. Two suburban middle-school girls are walking home together. A boy chases them and threatens to sexually attack them. The girls are able to outrun the boy and get home safely. Then, to try to identify the perpetrator, the principal calls in the suspect - and conducts a one on one show-up to determine if the boy is the “one.” This practice hurts everyone involved. The girls are now terrified (again), because they were forced to confront their possible attacker—who may not have known who they were before. The boy is hurt because the police system is now biased against him; they assume he is guilty, even though the evidence thus far would hardly stand up in court. Even a prosecutor would find this situation intolerable, as the only witnesses to the crime have been biased, and their bias could easily be demonstrated when the defense attorney cross-examines them.

These situations are not hypothetical; I have observed them both. I would like to say that these sorts of occurrences are rare or atypical, but I am afraid they are not. They happen because the adults involved, despite having good intentions, may not appreciate the unique characteristics of children’s thinking.

Prior to children being charged reform is needed in the approach on the street, in the classrooms and in the police station.

The movement for police departments to include training for officers dealing with youth is not new. What is new is the number of police officers working as school security officers. There needs to continue to be an effort to fund
such training and to include training on Crisis Intervention, such as how to approach a child who may have a mental illness that may cause an unexpected and undesired reaction. Police training on the development of youth includes dialogue with the youth in their community. One model of training police officers in dealing with youth was developed in Boston by the Juvenile Justice Center of Suffolk University Law School. Police officers need to be trained on how to recognize a child in crisis and get training on where to take the youth for mental health crisis intervention rather than to the local detention center.

As in our example above, rather than laying hands on the minor who may suffer from Asperger’s Syndrome, another approach is required. Some schools are attempting to stop the principal or security officer from calling the police and beginning the trip to juvenile court by reforming school codes of conduct to include more Balanced and Restorative Justice approaches to incidents which may arise. The Chicago Public Schools mandate that all parties who have a stake in an incident collectively identify and address the harm done and determine what is needed to correct the situation fully. Some of the methods include Peacemaking Circles, Peer Juries, Victim Impact Panels and Victim Offender Conferencing. With the support of community organizations, schools have started employing these balanced and restorative practices for minor infractions, but there is no reason they could not be used for more serious incidents of misconduct. For instance, in the City of Chicago, community organizations use peacemaking circles to address gang problems in the community. By implementing more programs to keep children in school and address the problems of school conduct violations without resorting to juvenile court, we will keep more youth from starting down the path that result in court action.

ARREST: INTERROGATION AND MIRANDA

According to Application of Gault a minor is entitled to protection from self-incrimination. Much has been written on youth and the understanding of their Miranda warnings.

In Illinois, the Miranda warnings given to children are same as those given to adults. But this does not mean that children understand them in the same way that adults do. For example, if you are a 14-year-old and are told you have
a right to a lawyer - where do you think you would get one? You certainly have no money, no names, you are in custody, and all you want to do is go home. The idea of obtaining a lawyer is probably as foreign as obtaining a banker or real estate agent—it is something that youth almost certainly never think about and would have no one to turn to in an emergency. One reform to protect the child’s rights would be having a law so that there cannot be any interrogation of children without an attorney present.

Currently, Illinois has a concerned adult statute in which a Youth Officer or parent could be present during the interrogation. I have yet to see a youth officer advise a minor to remain silent, so not to incriminate himself. Often if a parent or guardian is present they may tell the minor “to tell the truth” so that they can go home, not realizing that an incriminating statement may follow. Obviously this is not good legal advice, but without an attorney or informed adult present, it is the kind of advice children are likely to get. Illinois made a step in the right direction by requiring an attorney to be present during the entire custodial interrogation, for homicide and other enumerated offenses if they were committed by a minor under the age of 13. Localities may find the cost of this sort of measure prohibitive, but I propose to not require an attorney is more costly to our youth and the justice system.

Many lawyers, researchers and advocates have examined how the court can determine if a minor’s statement, or that of a minor with severe mental impairment, was given voluntarily and without coercion. After examining a multitude of cases it is suggested the only way to safeguard the constitutional rights of those in police custody, and to preserve the information regarding how the statement was gathered is to require videotaping of not just statements, but of all of the interrogation.

Protection needs to be given so that minors who participate in court ordered treatment cannot have statements used against them. For instance, statements made during an assessment, screening or treatment for mental illness, addiction, therapy and treatment of sexual offenses could not be held against the child.
Juvenile Court: Age of Jurisdiction

Cook County is the birthplace of the Juvenile Court. The founders set out to have a court system in which the unique developmental differences of children should be recognized. One of the basic reasons for the Court was the concern over the children being kept in jail. Over the years some of the protections of the Juvenile Court have eroded as more laws have been passed to transfer younger children to adult court. Increasing the age of Juvenile Jurisdiction to take into consideration the mental development of the minors is fundamental. Illinois is one of 19 states that still hold the age of minors charged with felonies to 17. In January 2010, the age of Juvenile Court Jurisdiction was raised to 18 for misdemeanors. Now with the developmental research showing the vital stages of adolescent brain development into the early 20s, the legislature should revisit where they have drawn the line in the sand and adjust the ages to comply with that which science has established.

One example of a law that has since been successfully reversed is the Illinois drug transfer law adopted in 1985 and 1990. The law created the automatic transfer of minors ages 15 and 16 to adult court if they were charged with delivery of a controlled substance within one thousand feet of a school, or public housing. In August 2005, these automatic transfers were no longer allowed and there was a decrease in transfers to adult court by nearly two-thirds. Children who are transferred to adult court are significantly more likely to re-offend. The most striking fact is that after the law was changed to keep these cases in Juvenile Court there was not a huge influx of cases overloading the Juvenile system, rather there was almost no change in the number of Juvenile Court caseloads after the rollback of the drug transfer law thus public safety was not compromised by this change in the statute.

Continued Adaptation of Laws with Developmental Research Findings

Other areas of potential reform are numerous. Currently, as fiscal budgets are cut for community organizations, we have to reinvigorate the support of them, as they are the future of the children in our community. We need to focus on strategies of no entry.
Illinois continues to apply the same competency statute it uses for adults in Juvenile Court. Stakeholders need to convene a task group to draft a new competency statute which would take the minor’s mental development into consideration. Additionally, more research and consideration as to the role trauma has on juveniles needs to be considered. As discussed above, there needs to be reform within the schools, police training and laws to reflect what developmental research has shown regarding the adolescent brain. To look at how we initially encounter children and take the opportunity to address them and their needs in a manner which acknowledges their developmental level will help us achieve the goal of no entry.

The number of other issues to be examined once a child is involved in the Juvenile Justice system and should be changed is countless and really beyond the mission here. As we look at the youth and how they are treated we have to ask ourselves is it Illness or Delinquency and then look at how we are responding.

NOTES

2 See Id.
5 Id. at 569.
6 See Id.
7 David S. Tanenhaus, Juvenile Justice in the Making 26 (Oxford University Press 2004); See Roper, 543 U.S. 551.
8 The following opinions are my own and do not reflect the opinion of my employer.

12 News Release, Suffolk Univ. Law Sch., http://www.law.suffolk.edu/about/news/pressar-ticle.cfm?ID=101 (discussing Suffolk University Law School’s Juvenile Justice Center’s training initiative aimed at promoting more peaceable, positive interactions between MBTA Police officers and youth in Boston communities. The program is made possible through supportive grants from the Mabel Louise Riley Foundation ($72,000) and the Boston Foundation ($45,000)).


14 E.g., BD. OF EDUC. OF THE CITY OF CHI., STUDENT CODE OF CONDUCT (2009).

15 Id. at 48-54.

16 Chicago Area Project, Community Justice for Youth Institute, and many others assist in the training and facilitating many of the Balanced and Restorative Justice Programs implemented in Chicago.


21 705 ILL. COMP. STAT. 405/5-405 (1999).


23 705 ILL. COMP. STAT. 405/5-170 (2005).


25 See Richard A. Leo et al., Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century, 2006 WIS. L. REV. 479 (2006) (discussing that young children and adolescents tend to be immature, naively trusting of authority, acquiescent, and eager to please adult figures and that these traits predispose them to be submissive when questioned by police).

26 See LOURDES M. ROSADO & RIYA S. SHAH, PROTECTING YOUTH FROM SELF-INCrimina-TION WHEN UNDERGOING SCREENING, ASSESSMENT AND TREATMENT WITHIN THE JUVENILE JUSTICE SYSTEM 55 (Juvenile Law Center, 2007), available at www.jlc.org/files/publications/protectingyouth.pdf (discussing model Legislation that has been drawn up by the Juvenile Law Center).

27 TANENHAUS, supra note 7, at 25.

28 Id. at 6.

29 Id. at 6.

30 Id. at 24.


34 705 ILL. COMP. STAT. 405/5-130 (2) (2006).
35 705 ILL. COMP. STAT. 405/5-130 (2) (2006).
Many youth in the juvenile justice system have a mental health disorder. In fact, a congressional study concluded that approximately “2,000 youth are incarcerated everyday simply because community mental health services are unavailable.” Specifically, in Illinois, almost two-thirds of youth in the Department of Juvenile Justice have been diagnosed with a mental health disorder. However, due to the lack of standardized screening and assessment practices and inadequate mental health treatment, many may slip through the cracks. Even if some do receive treatment, they may not receive enough attention. The Public Interest Law Reporter Symposium and Issue, “Delinquency or Illness? The Intersection of Mental Health and Juvenile Justice,” sought to explore issues facing youth with mental health and behavioral disorders who come in contact with the juvenile justice system.
Both presenters and authors elaborated on the difficulties of serving youth who “do not belong” in the juvenile justice system. With the influx of youth in the juvenile justice system, who could be better served in the mental health, child welfare or educational systems, their mental health conditions tend to worsen. Why? Because these young people are placed in correctional facilities that are not designed for and are ill-equipped to provide appropriate care for them, resulting in further deterioration of mental health conditions, over-reliance on control measures and severe stress on staff and resources in the facilities.

The question when it comes to youth in the juvenile justice system, and particularly those with mental illness, is: “What do we have to do between the time juveniles are first picked up and the time they return home to reduce the chances that they will be back in the criminal justice system in the future?” Our presenters and authors discussed implementing scientifically-sound systems of early screening and assessment; diverting children from juvenile detention facilities into home and community-based programs; utilizing restorative methods to respond to youth crime; and employing evidence-based practices at all levels of the juvenile justice system. These are only some of the areas that are relevant to a discussion on how to improve and respond to the mental health needs of youth that come into contact with the justice system.

Effective management of juveniles with mental health disorders will require coordination and collaboration among a variety of professionals and systems. This cooperation includes law enforcement, corrections, courts, schools, child welfare and public health agencies to create a continuum of care for youth who are in the justice system or are at risk of entering the justice system. If the sole reason that a juvenile comes in contact with the justice system is because of his or her mental health issues, the justice system should be better equipped to adequately meet the needs of the individual youth. Some argue that improving screening and assessment measures will prevent these juveniles from being arrested or once arrested diversion measures should be readily utilized. Only when all of the aforementioned entities reach a consensus will we begin to have a lasting impact on youth with mental health and behavioral disorders so that they do not end up in the juvenile justice system.
NOTES


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