Published in final edited form as:

J Prev Interv Community. 2019 ; 47(2): 67–75. doi:10.1080/10852352.2019.1575564.

Critical Issues for Youth Involved in the Juvenile Justice System: Innovations in Prevention, Intervention, and Policy

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Abstract

This introduction to the themed issue presents a targeted review of historical and contemporary trends in the prevention, intervention, and policy response to juvenile justice system-involved youth. These trends underscore oft-overlooked ideological assumptions that implicate individual-level problem definitions, a pattern of victim blaming tendencies despite having a workforce increasingly trained in assessing context, and a system whose rehabilitative mandate is at odds with the social demand to maintain itself and its structures through keeping youth system-involved. Further, contemporary trends point to efforts that redirect blame from individual youth to families, and which ultimately ignore the broader sociopolitical context of mass incarceration that has selectively disenfranchised those same families. These and other critical paradoxes are underscored, with particular attention to the dilemmas raised by the invited articles within this issue – which push interdisciplinary frameworks in a direction that concretizes and advances solutions for critical issues in youth justice prevention and intervention.

Keywords

Youth; children; juvenile justice; intervention; prevention; gender; history

Youth involved in the legal system comprise a largely underserved population despite multiple formal contacts with professionals over the course of their system-involvement. In the United States, about one million youth under the age of 18 are arrested annually, with Black youth arrested at two or three times the rate of their White counterparts for the most common offenses (OJJDP, 2015). Juvenile courts process about 3,000 delinquency cases each day (Hockenberry & Puzzanchera, 2017) and confine youth at a cost of \$250 per day per youth (Justice Policy Institute, 2009). In about one-quarter of cases, youth who are confined have not been formally charged with a crime (i.e., status offenders; OJJDP, 2015). Despite the costs, there is little evidence to suggest that initial crimes predict future offending, or that interventions-as-usual disrupt or predict offense patterns (Sickmund & Puzzanchera, 2014).

Understanding the complexity of the juvenile justice system requires knowledge of the locality within which one is working. However, there are important commonalities useful for

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understanding the systems' structure and function. Across contexts, the juvenile justice system constitutes both bounded (e.g., detention) and unbounded (e.g., probation) settings and spaces responsible for serving youth charged with committing illegal offenses (i.e., delinquency), or who constitute persons in need of supervision due to commission of status offenses, including truancy or running away from home. As with the adult criminal system, youth already involved in the legal system may also be monitored to examine the degree to which they comply with systems' orders; non-compliance in turn heightens risk for technical violations, which can constitute separate charges (Sickmund, & Puzzanchera, 2014).

Further, the population of youth who are at risk for juvenile justice system entry is large. Across most jurisdictions, youth can become involved in the legal system in a number of ways, each of which is important to understand for ecological research, prevention, and intervention. Specifically, youth can become legal system-involved: a) after police contact leading to or not leading to arrest, b) upon referral to community-based diversion services, c) after a court petition has been filed against them, d) through formal probation (often with multiple levels designating the intensity of supervision required), e) through detention in shorter term facilities often but not always at pre-sentencing (akin to adult jail), e) through placement in longer term facilities through sentencing (akin to adult prison), and f) through formal aftercare services that are typically mandated after youth have been released from longer-term residential facilities.

This themed issue addresses key areas for youth across the spectrum of legal system involvement, and highlights innovative empirical work with direct implications for prevention, intervention, and policy; and employing a range of methodological approaches – including archival, focus group, interview, and longitudinal analysis. Moreover, the work described within this issue reflects and highlights contemporary ideological and institutional challenges necessary for understanding the structure and function of the juvenile legal system. This understanding is critical because it can serve to root any individual study in a systems' change framework, and underscores the necessity of innovation within and outside of the legal system (Krisberg, 2005). Further, the challenges and innovations described by each article reflect the historical context of the legal system by highlighting how the system is positioned to respond to youth, how the system actually functions and for whom, and what types of change are most attainable. To contextualize the empirical work within this issue, the next section describes contemporary patterns characterizing the response of the legal system. This is followed by a description of common themes and challenges highlighted across the empirical articles in this issue.

A Brief Overview of Contemporary Patterns of the Juvenile Legal System

Despite its seemingly common place in the United States and most western nations, the juvenile legal system is often de-historicized and assumptions are made about its necessity that are not reflective of its history (Hawes, 1991). In the late 1800s, advocates, professionals, and community members organized to create a systematic response to protect children who were residing in unsafe living conditions or who were subject to abuse or neglect (Hawes, 1991). With the formalization of child protection came a set of infrastructures that could allow the state to take custody of children, temporarily or

permanently, and could house them for the primary purpose of ensuring their basic needs were met (Garland, 1985). At its core, these efforts centered the rights of children to the most basic human needs, including shelter, safety, food, and basic material resources.

At the turn of 20th century, adolescence and childhood were also increasingly viewed as distinct developmental stages, and efforts were launched to decouple youth crime from adult crime, leading to the first juvenile court in 1899 (Binder, Geis, and Bruce, 2001; National Center for Juvenile Justice, 1991). One of the primary purposes of creating a legal system for juveniles was to focus on treating the “youthful offender” instead of focusing on the offense itself. This translated into a focus on rehabilitation of individual children and was followed by policy that mandated treatment as part of juvenile justice (e.g., Davis, 1974; JJDP 1974; Simpson, 1976).

The tough on crime era described for criminal justice in the 1980’s and 1990’s translated into a paradigm shift for juvenile justice as well, with rehabilitation becoming a far less realized goal than child arrest and child confinement, which ultimately peaked in 2002 (OJJDP, 2015; Sickmund & Puzzanchera, 2014). The past 15 years have brought substantial reforms for juvenile legal system-involved youth. Since the peak of tough on crime reform implementation in 2002, the population of juveniles in custody has been cut in half (OJJDP, 2015). Federal and state-level mandates have called for the de-institutionalization of low level status offenses that are not considered criminal in the adult system (e.g., truancy) and which were bringing youth into the system in larger numbers prior to policy reform efforts. However, national data suggest that these reforms have not resulted in positive impacts for all populations of youth served by the legal system. In particular, the legal system’s reforms have been most pronounced for White, higher socioeconomic status youth that the system identifies as heterosexual, male, and largely non-gang involved or representing higher resourced communities (e.g., Kempf-Leonard, 2007).

A number of key national shifts are important to contextualize the current function of the legal system for the youth it continues to disproportionately arrest and confine. The first is related to what scholars have called the school to prison pipeline, with some noting that the term “pipeline” itself is a misnomer given that schools can themselves serve as liberation-restricting settings (e.g., Morris, 2016). While the first School Resource Officer (SRO; also called “school police”) program was implemented in 1953 in one county, there are currently an estimated 20,000 officers occupying public and private schools (Thurau & Wald, 2009; Weiler & Cray, 2011). Since the emergence of school shooting incidents beginning with Columbine in 1999, a formalized workforce of school police now occupy 40 states in the US, contributing to selective peaks in sanctions for racial, ethnic, and sexual minoritized youth (Theriot, 2009). In the decade prior to 2007, the presence of a formalized school police workforce increased by almost 40% (Thurau & Wald, 2009; Weiler & Cray, 2011). School-based arrests for youth have disproportionality grown in tandem with the increased presence of school police (Theriot, 2009).

Certainly, ideologies associated with the “War on Drugs” and “tough on crime” era permeate the institutional shifts that reframed schools as spaces in which students have a right to education, and transformed them into contexts enforcing “zero tolerance” policies (Casella,

2003; Giroux, 2003). These institutional shifts are instantiated as policies and practices including school-based arrests, out-of-school suspensions, and expulsions, often for minor misconduct. These policies disproportionately affect students of color and students with disabilities. In urban jurisdictions, an estimated 1 out of 4 new charges filed against youth are school-related and 1 out of 6 occur in cases where there was no underlying criminal behavior (Theriot, 2009).

Second, there has been a growth in family violence-based offenses, particularly for youth the system classifies as girls. This trend has gone hand in hand with “re-labeling”, a term used to describe a pattern in which minor and often-domestic actions (e.g., fighting with a parent) are “re-labeled” to encompass misdemeanor offenses at minimum (e.g., simple assault) and felony offenses at worst (e.g., aggravated assault). The most comprehensive reviews of research in this area suggest that family violence based offenses (Sherman, 2009) and re-labeling (Javdani, Sadeh, & Verona, 2011) have contributed to greater increases (or lower decreases) of arrests and confinement for girls during a time when overall juvenile arrest rates declined, as clearly outlined by Rosenthal in this issue. Further, this family violence pathway is coupled with a shift in ideology redirecting blame from youth to families who have experienced intergenerational poverty and disenfranchisement through mass incarceration (Cunningham & Henggeler, 1999).

Third, recent evidence suggests a pattern through which youth are subject to greater accountability once they are in the system through the many mechanisms of formal monitoring that are implemented to track youth’s legal progress (Espinosa, Sorensen, & Lopez, 2013). Specifically, the term “bootstrapping” has been used to describe a phenomenon wherein youth charged with lower level offenses are asked to comply with system orders and are charged with technical violations when their compliance is questioned. This process creates an opportunity for the system to consider youth who are not in compliance as more serious offenders and to increase sanctions even when youth’s original charges would not warrant as serious of a response (Chesney-Lind & Shelden, 2013). As with other patterns described, these processes have disproportionate impact on girls of color (Javdani et al., 2011).

In relation to this trend, there is increasing evidence that policy shifts at the state and national levels to promote de-institutionalization are implemented selectively in practice. One concrete way in which this is happening is through the creation of non-secure or limited secure residential facilities, which tend to be smaller group-home based settings that do not require the high security measures of secure facilities (Costello & Worthington, 1981). As such, youth who do not have a juvenile delinquency petition (i.e., youth who have not committed a crime) can be housed in these facilities involuntarily even in cases where these facilities function as locked spaces in which youth do not have the freedom to leave or move with relative freedom (e.g., go to the bathroom; leave their locked rooms). This creates a structure through which youth who are brought to the attention of the legal system for issues such as truancy or violating parents’ curfews can be confined in spaces that ultimately function as small detention centers (Hockenberry & Puzzanchera, 2015). Given this infrastructure, youth of color and girls are impacted by this selective de-institutionalization most (Boshon & Frazier, 1995).

Finally, youth whose own safety is at risk and who are considered victims can at once be classified as offenders and be subject to the monitoring and accountability protocols that permeate all aspects of the legal system (Acoca, 1998; Schaffner, 2006). This is possible because of exemptions in federal policy that allow for court orders to be filed with subjective discretion (i.e., Valid Court Order exemption of the Juvenile Justice Delinquency Prevention Act, 1974). Scholars have underscored the prominence of this pattern for youth classified as girls, describing a sexual abuse to prison pipeline (Saar, Epstein, Rosenthal, & Vafa, 2015) through which girls are held accountable for survival behaviors (Sherman & Balck, 2015) even when such behaviors occur in the context of severe trauma (Covington, 1998) or through commercial sexual exploitation – a system in which youth ostensibly have no legal capacity to consent (e.g., Albanese, 2013; Greenbaum, Crawford-Jakubiak, et al., 2015). In essence, this reflects a process by which youth become part of the legal system “for their own protection” but do not receive access to viable options to enhance their safety (Justice Policy Institute, 2009; Ratliff, 1999).

Cross-cutting Themes and Challenges

In part, the overview above underscores the tendency of systems to create self-sustaining infrastructures through which today’s solutions become tomorrow’s problems (Rappaport, 2002). However, an important amendment to this rule is also evident; that socio-structural power disparities critically impact whether and how contemporary *or* historical solutions become particularly problematic for marginalized youth and families. Indeed, prior systems’ solutions may never have functioned as such for youth of color, girls, and increasingly, LGBTQ youth. The articles in this issue bring several themes and challenges to light, reflecting often overlooked ideological assumptions that implicate individual-level problem definitions and a highly resourced system not meeting its rehabilitative mandates.

First, the rehabilitative mandate of the juvenile justice system is seemingly at odds with the pressure to operate near capacity and maintain ‘enrollment’ – even when ambitious goals are within reach. This is a challenge most critically called into question by Rosenthal in their description of national patterns that have brought the number of girls confined in long term facilities to such lows that it seems unfathomable to keep girls’ facilities open; particularly when these youth’s histories of multiple traumas are increasingly documented. This is related to a theme alluded to across articles, underscoring that individual change in youth is sought over and above system reform, despite increasing attention to youth’s contexts.

Second, as articulated by Walden, Joseph, & Verona, the most underserved youth are also the least likely to be effectively treated when in juvenile justice custody. Indeed, this is due to the structure of the system itself, which can encompass youth for years but fails to provide consistent access to effective services and functions instead as a “revolving door” – even when evidence based practices are provided at no cost through university-community partnerships.

Third, the legal system is increasingly made up of a contemporary workforce that is trained and can readily identify multiple and complex traumas in youth’s lives, as Anderson and Walerych’s study clearly demonstrates. However, the ideological and attributional

frameworks – as alluded to by Anderson and evidenced by Burson, Godfrey, and Singh – function to create social binds, particularly for girls, in ways that assume that youth are unable to change because of trauma-related damage, and simultaneously puts forth formal sanctions that require youth to change. This represents a cooptation of the term “trauma-informed” to describe care that may actually function to paint youth with trauma histories as inherently broken. Indeed, as described by Burson and colleagues, individual blame attributions are most readily made for youth with the greatest contextual pressures and who experience the least effective systems’ response.

Finally, youth’s literacies and strengths in virtual and “real” spaces are often overlooked – despite youth’s readiness to engage them and their power in predicting healing as described by Sichel, Javdani, Ueberall & Liggett; and Trawick, Aber, Allen, & Fitts, respectively. This final theme underscores the critical need to examine the function of research and intervention on the juvenile legal system itself, in order to ensure that its focus does not suppress youth’s strengths and reify the power of systems to subjugate them.

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