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The Juvenile Justice System and Youths with Disabilities

Synthesized by Eve Müller

Introduction

This synthesis brief summarizes key findings from five monographs produced by the National Center on Education, Disability and Juvenile Justice (EDJJ)¹ and the Center for Effective Collaboration and Practice (CECP).² The document is organized according to the following sections:

- federal efforts to address issues relating to youth with disabilities in the juvenile justice system based on Osher et al. (2002);
- prevalence rates and identification issues based on Rutherford et al. (2002);
- accommodating youth with disabilities throughout various stages in the judicial process based on Osher et al. (2002);
- improving prevention, providing more efficient services and reducing recidivism for youth with disabilities based on Leone et al. (2002);
- current educational practices for youth with disabilities in the juvenile justice system based on Howell and Wolford (2002);
- advocating for children with behavioral and cognitive disabilities based on Smith et al. (2002); and
- policy recommendations based on Leone et al. (2002) and Rutherford et al. (2002).

¹ Project Forum extends its thanks to Peter Leone, Executive Director of EDJJ, for reviewing a draft of this document.

² The five monographs, all published in 2002, include K. Howell and B. Wolford, *Corrections and juvenile justice: Current education practice for youth with behavioral and cognitive disabilities*; P. Leone, M. Quinn, and D. Osher, *Collaboration in the juvenile justice system and youth serving agencies: Improving prevention, providing more efficient services, and reducing recidivism for youth with disabilities*; D. Osher, J. Rouse, M. Quinn, K. Kendziora, and D. Woodruff, *Addressing invisible barriers: Improving outcomes for youth with disabilities in the juvenile justice system*; R. Rutherford, M. Bullis, C. Anderson, and H. Griller-Clark, *Youth with disabilities in the corrections system: Prevalence rates and identification rates*; and C. Smith, J. Esposito, and S. Gregg, *Advocating for children with behavioral and cognitive disabilities in the juvenile justice system*.

Additional statistical information was included from documents produced by Quinn and colleagues (2005), the Bureau of Justice Statistics (2005) and the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) (OJJDP, 2005; Sickmund, 2002). Complete references for source documents can be found in the bibliography under “Source Documents.”³ Project Forum at the National Association of State Directors of Special Education (NASDSE) produced this synthesis brief as part of its Cooperative Agreement with the U.S. Department of Education’s Office of Special Education Programs (OSEP).

Federal Efforts to Address Juvenile Justice and Disability Issues

The Coordinating Council on Juvenile Justice and Delinquency Prevention (CCJJDP), an independent body within the executive branch of the federal government, was established by the Juvenile Justice and Delinquency Prevention Act of 1974. The main function of CCJJDP is to coordinate all federal juvenile delinquency prevention programs, all federal programs and activities that detain or care for unaccompanied juveniles and all federal programs relating to missing and exploited children.⁴

In March 1997, the Center for Effective Collaboration and Practice at the American Institutes for Research (AIR) facilitated a focus group of experts sponsored by OJJDP, the National Institute for Literacy, the National Recreation and Park Association, the U.S. Department of Education’s Office of Special Education and Rehabilitative Services and the Office of Vocational and Adult Education. The purposes of this meeting were two-fold: (1) to discuss and analyze the relationship between disabilities and participation in the juvenile justice system and (2) to make recommendations to the CCJJDP concerning the links between disabilities, juvenile delinquency and the juvenile justice system. Participants concluded that the inability of community institutions – including the juvenile justice system – to respond to disabilities contributed to higher arrest rates for youth with disabilities as well as more restrictive placements, longer placements and higher recidivism rates.⁵

In October 1998, Project Forum at NASDSE convened a policy forum for OSEP in conjunction with OJJDP. Similar to the previous meeting, the purpose of this policy forum was to help determine the federal government’s role in achieving better educational results for youth with disabilities involved with or at risk of involvement in the juvenile justice system.⁶

Several initiatives have begun to address the issues identified by the 1997 focus group and the 1998 policy forum. For example:

³ EDJJ monographs can be ordered from the EDJJ website at www.edjj.org. Project Forum did not review the references cited in any source documents.

⁴For more information on CCJJDP go to <http://www.juvenilecouncil.gov>.

⁵ See Osher et al. (2002) for a detailed list of conclusions reached by the focus group.

⁶ For recommendations generated by policy forum participants, see Project Forum’s proceedings document, *Students with disabilities in juvenile justice programs: Directions for federal support* at <http://www.nasdse.org/publications.cfm>.

- OSEP and OJJDP jointly funded EDJJ. EDJJ is a collaborative project involving partners from the University of Maryland, Arizona State University, the University of Kentucky, AIR and the Parent Advocacy Coalition for Educational Rights Center (PACER) in Minneapolis. The research, training and technical assistance activities of EDJJ involve school and community-based prevention activities, education programs in juvenile correctional settings and transition activities as youth leave juvenile corrections and return to their communities.
- The National Survey to Determine Special Education Services for Juvenile Offenders with Disabilities was funded by the U.S. Department of Education's Office of Correctional Education. This project, spearheaded by AIR and supported by EDJJ, has identified the extent to which special education services are provided to incarcerated youth with disabilities.⁷

Prevalence and Identification Issues

According to the Bureau of Justice Statistics (2005), the incarcerated population grew an average of 3.4 percent annually between 1995 and 2003. At the end of 2003, 3.2 percent of U.S. adult residents were on probation, in prison or on parole; nearly 1.5 million individuals were housed in state or federal prisons; and local jails held or supervised nearly 763,000 prisoners.

Juvenile Crime

Crimes committed by juveniles fall into two broad categories: *criminal offenses*, which are acts that are illegal regardless of an individual's age (e.g., theft, rape, first-degree murder) and *status offenses*, which are offenses that are illegal only when committed by a minor (e.g. possession or consumption of alcohol, truancy, curfew violations and running away from home). Adjudication as a delinquent results when a juvenile commits either a criminal or status offense and is found guilty of that offense in a court proceeding. Depending on the crime, a juvenile may be fined, sentenced to parole or probation or incarcerated in a correctional facility. In response to the perceived increase in violent juvenile crimes, many states have enacted laws to transfer juvenile offenders who commit serious crimes to adult courts and the adult correctional system.

In 1999, approximately 134,000 youth were incarcerated in public and private juvenile correctional facilities in the United States (Sickmund, 2002).

Youth with Disabilities

Youth with disabilities are disproportionately represented within correctional facilities. The estimated prevalence of youth with disabilities in juvenile correctional systems ranges from 30 to 70 percent (Casey & Keilitz, 1990; Murphy, 1986; Rutherford, Nelson & Wolford, 1985), with

⁷ Survey findings are summarized in the section below, "Prevalence and Identification Issues." More detailed information can be found in Quinn et al. (2005).

the most recent study finding that at least 37 percent of youth in state juvenile correction facilities are eligible for special education and related services under the Individual with Disabilities Education Act (IDEA) (Quinn, Rutherford, Leone, Osher & Poirier, 2005).⁸

Disabilities most commonly represented among juvenile inmates include the following:

- *Emotional disturbance* (ED): Nearly 17 percent of the incarcerated juvenile population has been identified as having ED in comparison to only .73 percent of public school students (Quinn et al., 2005).⁹
- *Specific learning disability* (SLD): More than 14 percent of the incarcerated juvenile population has been identified as having SLD in comparison to only 4.28 percent of public school students (Quinn et al., 2005).
- *Mental retardation* (MR): Nearly 3.5 percent of the incarcerated juvenile population has been identified as being mentally retarded in comparison to only .87 percent of public school students (Quinn et al., 2005).

Offenders with MR and other disabilities experience disadvantages because they often do not understand the implications of the rights being read to them; may confess quickly when arrested; may have difficulty communicating with a lawyer and other court personnel; are more likely to plead guilty; are more often convicted; are less likely to plea bargain for a reduced sentence; are less likely to have their sentences appealed; are less likely to be placed on probation or in other diversionary noninstitutional programs; and serve longer sentences for the same crimes than offenders without disabilities.

Accommodating Youth with Disabilities Throughout Various Stages in the Judicial Process

Behavioral characteristics associated with cognitive and other disabilities are often magnified when a child or youth comes into contact with the justice system. These youth often have difficulty behaving appropriately toward law enforcement and other authority figures and are often unable to understand the consequences of their behavior. Therefore, they are more likely than other youth to be taken into custody. This section walks through the various stages of a youth's involvement with the justice system and discusses ways that disabilities can be accommodated so that outcomes for these youth may be improved. Specific recommendations are included.

⁸ The reasons for discrepancies in disability prevalence estimates include inconsistent definitions of disabilities, inadequate special education screening and assessment procedures in correctional facilities, problems implementing special education programs in correctional settings as a result of inadequate staffing and funding for special education, and difficulty obtaining prior school records to determine prior identification of need for special education services.

⁹ Information on the prevalence of each disability category within the public school population can be found at www.ideadata.org.

Custody/Detention

In each state there is a legal process for determining when a juvenile should be detained. Youth with disabilities are often at risk of being held rather than released. Because of the nature of their disabilities, they may say the wrong things (e.g., socially inappropriate utterances that may anger authorities, admissions of guilt, etc.) or fail to understand what the officer is saying or the written materials given to him or her to sign. The assessment process for youth detained by authorities should require that staff at all facilities ask whether the youth is taking any medications and whether he or she has any diagnosis that qualifies as a disability under IDEA or the Americans with Disabilities Act (ADA). If so, accommodations should be made for participation in any programs and explanation given of detention policy/rules. Some short-term detention facilities provide for continuation of the youth's educational needs. A policy requiring contact with the youth's school to obtain his or her individualized education program (IEP) should also be in place so that those youth who qualify under IDEA may continue their educational programs.

Initial Appearances

The initial appearance takes place shortly after the youth enters detention. It may be for another detention hearing, after the petition/charge is formally brought, or for both of these reasons. If the formal petition is on file, the juvenile court will explain the constitutional/statutory rights to the juvenile and his or her parent/guardian. For those juveniles with an identified disability, accommodations are required (e.g., more time for the explanation of rights, a quiet atmosphere, elimination of possible distractions in the courtroom). If the parent testifies that the juvenile has a disability, then the court is alerted that accommodations will need to be made for the juvenile at other hearings. If the child benefits from medications and the detention center does not have access to those medications, the court should enter an order providing for the administration of the medications.

Prosecution Filing Decisions/Diversion

Some youth can voluntarily enter a diversion program and avoid having to go through the formal processes of court proceedings. All such programs provide that, if the youth meets the terms of the diversion contract, the charges/petition will not be processed against the juvenile and will not go on his/her record. The law requires that the person making a decision to divert a youth make accommodations for any disability.

Adjudication Hearing/Trial

If the juvenile does not acknowledge involvement in the delinquent activity, then a hearing must be held. Should the juvenile acknowledge involvement, then the court must be careful to go through a process to ensure that the juvenile knows what he/she is doing and is voluntarily admitting to the allegations. During the hearing, the court – if so informed – should make accommodations for juveniles with identified disabilities. This could be as simple as providing

an interpreter for a deaf juvenile or making more subtle accommodations for a juvenile diagnosed with attention deficit hyperactivity disorder (ADHD).

Post-Adjudication Evaluations

Every state has an assessment process after adjudication during which various aspects of the juvenile's actions, influences to which the juvenile may have been subjected, restitution to any victims and safety of the public in formulating an appropriate disposition/sentence is examined. The evaluation should also determine which programs will best assist the juvenile in becoming a productive member of society. Parents should be asked if the juvenile is receiving treatment for mental health problems, taking any medications or has an IEP in school. If the probation department has expertise in the areas of learning and other disabilities, then some prescreening should be available to determine the need for more in-depth evaluations. For less-specialized offices, training in preliminary screening should be required with a final determination to be made by medical or mental health professionals.

Dispositions/Sentences

The juvenile courts should use a continuum of program options for delinquent children and their families. Because services for youth with disabilities are severely lacking in most juvenile justice systems, it would be beneficial if disposition orders required that juveniles be given information to help them understand their disability and strategies to manage their disability. The juvenile justice system should work collaboratively with the various schools in which their juveniles are placed. A checklist for the probation officer should consider whether the child is a special education student and, if so, whether there is an IEP. If the IEP is available prior to the disposition report, the officer should look at how the court disposition can enhance the IEP (e.g., court-ordered tutoring and study halls). In some cases, the court will have no choice but to remove a juvenile from his/her home and possibly the community. In this case, a judge must have options for appropriate placement of a juvenile with a disability. Judges and hearing officers should communicate that they expect the facilities in which they place juveniles to be qualified to provide appropriate special education services for students with disabilities.

Revocations/Further Dispositions

When a probation officer or institutional worker finds that juveniles are not abiding by the plan, they must decide if the infraction is serious enough to warrant further juvenile court intervention. Personnel trained to understand behavioral and cognitive disabilities should examine whether the youth's disability played a role in the transgression. Questions such as the following ought to be asked: Was it because a juvenile stopped taking his or her medications or was the supervision to be provided by the family or others missing? If the juvenile is in an institution, has the institution made accommodations in its programs for the disabled youth? If the institution does not make accommodations, then it may be prohibited from taking action against the juvenile if the juvenile's actions were the result of the disability.

Training of Judges, Lawyers and Others

Juvenile court judges, family court judges and other judges with juvenile court jurisdiction need training in more than traditional aspects of the law. Judges need to provide leadership by making time for continuing education regarding the needs of juveniles with disabilities and require staff to engage in continuing education on the latest techniques for accommodating various disabilities affecting youth. Juvenile courts should require such training for guardians *ad litum*¹⁰ and legal counsel who represent juveniles. The judge of a juvenile court should never consider appointing a legal counsel who has not been trained in representing juveniles with disabilities.

Improving Prevention, Providing Efficient Services and Reducing Recidivism

“Reactive” solutions, such as building more prisons or adding more beds in existing facilities, are not only less effective, but also cost more than proactive approaches such as preventing crime and providing educational supports to offenders and their families (Greenwood, Model, Rydell, & Shiesa, 1996). Research also shows that the single-strategy approaches to issues of violence and delinquency reduction simply do not work (Lipsey, 1992; Tolan & Guerra, 1994). What does appear to work is a reorientation of services offered by a variety of agencies and organizations that exist in every community to serve youth, including youth with disabilities, who have had contact with the juvenile justice system. Education, juvenile justice, mental health, child welfare and recreation services may all have a role to play. Too often, however, youth – particularly youth with cognitive and behavioral disabilities – have difficulty effectively utilizing these services. Youth may be shuttled between agencies that do not communicate with one another, allowing for gaps in services and/or expensive duplication of services. While change is not easy, it has been shown to work when these agencies collaborate with one another to provide comprehensive services using a positive approach in order to support youth and their families at every stage of need. For some youth, prevention efforts may facilitate graduation from high school and prevent them from ever coming in contact with the juvenile justice system. Other youth may need more targeted interventions to help them transition out of the corrections system and back into their schools and communities without recidivating.

Proactive Approaches

A number of “risk factors” have been identified that increase the likelihood that a child will become delinquent. Risk factors may exist at a number of levels (i.e., individual or peer group, family, school and/or community). Risk factors include antisocial peer groups; lack of impulse control; poverty; family conflict; schools lacking clear behavioral expectations and supports; lack of coordination among school and community services; low morale and expectations; accessibility of drugs and firearms; and frequent and/or unassisted transitions. A number of “protective factors” that appear to insulate children who are considered at risk for juvenile delinquency have also been identified, including strong and supportive bonds between youth and adults; healthy beliefs and clear standards for behavior; and support for realizing those standards.

¹⁰ A guardian *ad litum* is one who is appointed to prosecute or defend a suit on behalf of a minor or one who is otherwise incapacitated.

Experts agree that the most promising approaches to preventing and reducing juvenile delinquency focus on both risk and protective factors (Walker & Bullis, 1996).

The OJDDP (1995) in collaboration with the National Council on Crime and Delinquency and Developmental Research and Programs, Inc., identified effective prevention and intervention programs across the nation. This effort identified “best practices” as well as “potentially promising practices.” The team recommended a comprehensive strategy for reducing risk factors and increasing protective factors at four different levels of intervention: immediate community-level sanctions for nonviolent, first-time offenders, immediate sanctions for serious offenders, secure care for the most violent offenders and a high quality aftercare system to provide the youth with supports for successful community reentry.

A 22-person study group (Loeber & Farrington, 1998) that OJJDP convened to analyze current research on risk and protective factors regarding serious and violent juvenile offenders recommended four similar priorities for communities (OJJDP, 1998).

- Community organizations need to be organized to reduce risk factors for delinquency and to increase protective factors.
- Early intervention in “at risk” families is needed to reduce serious and violent offending.
- Better screening of court-referred youth is needed to identify those with multiple problems as a basis for early juvenile justice intervention to prevent the progression to more serious and violent behavior.
- Intake officers must be provided with better tools to distinguish between types of offenders.

The OJJDP recommendations are consistent with a traditional public health model that combines universal prevention with selected preventative interventions for “at risk” individuals (Institute of Medicine, 1994). These recommendations are also consistent with schoolwide approaches to prevention and treatment, which involve a three-tiered system for designing interventions of varying intensity to meet the needs of all students (Dwyer et al., 1998).

A Three-tiered Prevention Model

A three-tiered system provides a model for a comprehensive community-based strategy to prevent the development or intensification of juvenile delinquency. As outlined by the OJDDP (1995), the progressive steps in this model are as follows:

- *Primary Prevention:* The “universal” interventions that take place at this level promote a positive school climate that includes structure, monitoring, supervision and clear behavioral expectations for all students in the school. Research has shown that by providing these universal interventions, approximately 80 percent of the students in the school will have no significant discipline problems. The principal focus at this level is to develop programs and supports that enable families, schools and communities to provide a healthy environment in which all children and youth can grow (e.g., conflict resolution,

peer mentoring, mediation programs to reduce school suspensions). Community-based organizations are an important part of collaborative efforts to prevent juvenile violence and delinquency (e.g., communicating healthy beliefs and standards to youth and providing access to high quality, well-chaperoned activities during the time of day when juvenile crime is at its peak).

- *Secondary Prevention:* The next level focuses on children who are considered at risk for behavioral problems or about 15 percent of the population.¹¹ These interventions and supports are more individualized and are often conducted in small groups. The focus at this level is on providing more individualized programs and supports to individuals who are exposed to multiple risk factors or whose behavior suggests they are at immediate risk. Secondary prevention interventions are usually less intrusive and costly than those necessary once a problem has become more serious. These interventions include such strategies as social competence training, peer mediation, medication for neurological disorders and mental illness, home visitation of pregnant teenagers, family preservation¹², family therapy, early intellectual enrichment, prevention of gang formation and involvement, intensive police patrolling and mandatory laws for crimes involving handguns.
- *Tertiary Prevention:* This final level includes collaboration with a number of outside agencies. Youth with severe behavioral and cognitive disabilities, especially those who engage in persistent patterns of delinquency and violence, often require comprehensive, long-term and collaborative services (Walker et al. 1996).¹³ Programs at this level must be culturally competent, child-centered, highly individualized and based on information gathered through a comprehensive assessment. The focus of these interventions should be to provide a youth with the supports and skills necessary to remain in the community or to successfully integrate back into their communities without recidivating (e.g., interpersonal skills training, cognitive-behavioral treatment, individual counseling, programs promoting education and literacy, highly individualized education plans, high quality aftercare programs).

Current Educational Practices for Youth with Disabilities

Based on extensive observation and interviews, researchers have found that common practices within correctional/juvenile justice settings frequently fail to live up to those practices mandated by IDEA to ensure a free and appropriate public education (FAPE). For example:

¹¹ These students also have access to primary prevention.

¹² According to the Childwelfare League of America's website, family prevention services (FPS) are "comprehensive, short-term, intensive services for families delivered primarily in the home and designed to prevent the unnecessary out-of-home placement of children or to promote family reunification" (National Resource Center for Family Centered Practice, 1994).

¹³ These students also have access to primary and secondary prevention.

- Evaluations are frequently driven by a concern for eligibility rather than identifying information that will help teachers instruct students.
- Transition services are often ignored in favor of basic skill instruction.
- IEPs are often poorly written (e.g., there is a lack of individualization, objectives are not aligned with evaluation, instructional interventions are not described, no relationship exists between related service time noted on IEPs, student need, and classroom discipline is not addressed).
- Progress towards goals is reported infrequently.
- General education teachers rarely attend IEP meetings.
- Parent surrogates do not always meet students and/or review files prior to IEP meetings.
- Students receiving services within inclusive settings often lack necessary accommodations.
- Special education services are not always provided to students in restricted settings (e.g., lock-up, detention, isolation).

Authors recommend the following instructional practices for students with disabilities in the juvenile justice system:

- Base instruction on a functional and curriculum-based evaluation of students' needs.
- Focus on specific and measurable outcomes.
- Use methods that have been validated for the topics taught in the class.
- Teach students *how to learn* as well as provide them with stimulating content.
- Use teacher-directed instruction including explanation, demonstration and guided practice.
- Ensure active student engagement through the use of peer tutoring and cooperative learning.
- Teach appropriate social skills.
- Include continuous monitoring of student progress.
- Provide intensive instruction.

Advocating for Students with Disabilities

The barriers faced by youth with disabilities who are at risk of entering the juvenile justice system are complex. The process of building collaborative interagency relationships among education, mental health, child welfare, juvenile justice and health providers is challenging. Successful case or class advocacy for youthful offenders with disabilities requires a multi-pronged response that utilizes a variety of approaches. Advocacy strategies to consider include:

- *research* (e.g., requesting federal or private funds to support a federal research agenda on the linkages between disabilities and juvenile offenders, encouraging local and state officials and institutions of higher education [IHEs] to support community-based research on effective prevention and intervention; provide forums to share current research about disabilities and juvenile offenders);

- *public education and working with the media* (e.g., develop seminars and training events for professionals who have contact with youthful offenders; develop and disseminate information about successful interventions);
- *individual case advocacy* for youth and their families (e.g., assign staff to work with young people with disabilities who have been arrested and their families; operate a hotline to refer families to attorneys who can provide individual representation);
- *coalition building* among concerned families, advocates and professionals (e.g., develop long-range action plans that will help broaden support for prevention programs for this population; select one or two priority activities for the coalition's initial work);
- *legislative or administrative advocacy* (e.g., create a list of legislative budget decisions that would support prevention, early intervention and diversion programs; identify concerned local and/or state legislators who want to improve initial assessments of youth who have been arrested); and
- *litigation* (e.g., investigate confinement conditions in local and state juvenile facilities to determine if litigation would improve treatment and services to youthful offenders with disabilities; investigate the number of youths confined in local and state juvenile facilities to determine how many have undiagnosed disabilities that qualify for services under IDEA; monitor changes made as a result of litigation to ensure that they are implemented).

Policy Recommendations

Although much research is still needed in the area of service for youth with disabilities in the juvenile justice system, several policy recommendations for state and local education agencies emerged from the synthesized documents:

- There is a need for legislation easing the exchange of information between public schools and correctional systems in order to improve the intake and assessment processes for youth with disabilities.
- Outcome-oriented systems of care that employ uniform definitions, provide individualized and family-centered services, and respond promptly, flexibly and effectively during crises need to be created.
- Coordination among educational, mental health, social and other support services to youth and their families need to be improved.
- Funding streams, both public and private, should be blended.
- Common training for families, educators, human service workers, administrators, board members and advocates should be provided in order to support collaboration, encourage cross-disciplinary orientations and sustain local networks.

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