



CHILD WELFARE AND JUVENILE JUSTICE:

Two Sides of the Same Coin

By Shay Bilchik and Judge Michael Nash

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Over 900,000 children in the United States were victims of abuse and/or neglect in 2006. (U.S. Department of Health and Human Services [DHHS], 2008). As professionals

dedicated to the well-being of our young people know, childhood maltreatment and neglect can cause a host of short- and long-term negative consequences. Early physical abuse and neglect may impede development and cause adverse alterations to important regions of the brain, which can have long-term cognitive, emotional, and behavioral consequences (Karr-Morse & Wiley, 1999). Children abused early in life may exhibit poor physical and mental health well into adulthood.

These effects are strongly correlated with low academic achievement, substance abuse, and myriad other problems which burden not only the individual, but carry heavy societal costs as well. Alarming, approximately one-third of those who are maltreated or neglected will mistreat their own children, making these adverse effects intergenerational and seemingly intractable (U.S. DHHS, 2008).

Over the last forty years, researchers have repeatedly demonstrated the connection between childhood maltreatment and delinquency. Many of our maltreated youths cross over into the juvenile justice and other systems of care, as child abuse and/or neglect increases the risk of arrest as a juvenile by 55% and the risk of committing a violent crime by 96% (Widom, 1989). Obviously, not every abused and neglected child will experience adverse outcomes or commit delinquent acts. Young people living in stable communities with safe schools, access to health care, and supportive adult and peer relationships are more likely to thrive. Those lacking these and other protective factors risk “crossing over” from the child welfare system to the juvenile justice and other systems of care. Unfortunately, “tough on crime” policies within juvenile or adult justice systems often result in young people being punished with developmentally inappropriate sanctions, putting those who have experienced abuse and neglect at an even greater disadvantage in overcoming the many negative effects of childhood maltreatment.

Because no one agency can provide the continuum of services needed to address the challenges “crossover youths” face, professionals have begun to reach across systems of care in an attempt to bolster protective factors for at-risk youths. Judges in both delinquency and dependency courts are in a unique position to foster collaboration among agencies so that the multi-dimensional needs of crossover youths may be met. Judges may utilize a range of strategies that can actively engage stakeholders while holding them accountable; changes meant to address the multi-faceted needs of our most challenged young people can be institutionalized within the courts; and judges can ensure that the data provided to and collected in the courtroom will further the development of the best practices in serving crossover youths. Strong judicial and administrative leadership, coupled with a comprehensive knowledge of the characteristics and needs of this population, is essential in any jurisdiction’s movement toward effective interagency collaboration.

PATHWAYS: THE TRAJECTORIES TOWARD MULTI-SYSTEMIC INVOLVEMENT

There are several pathways a youth may follow in becoming known to multiple systems of care. Understanding the developmental arc associated with these transitions is essential in crafting prevention and intervention strategies. Many young people transition directly from the child welfare system to the juvenile justice system. In Los

Angeles, for example, these youths are likely to enter the juvenile justice system at a younger age and remain therein for longer periods of time. Some youths’ cases are closed with the child welfare agency for a period of time before they commit a delinquent act; other delinquent minors never have formal contact with the child welfare system, but self-report a history of maltreatment. Finally, some juvenile justice youths find that the home they left before committing a delinquent act is no longer a welcoming or appropriate place to return. These young people therefore make the transition from the juvenile justice system into the child welfare system.

New research continues to inform policymakers and practitioners on effective ways to alter the developmental arc that leads to crossover. For example, maltreatment that occurs only during childhood is not a significant predictor of adolescent delinquency in some studies, although it is significantly associated with the aforementioned adverse educational, mental, and physical outcomes (Thornberry, 2008). Recent studies show that persistent maltreatment extending from childhood to adolescence, and maltreatment during adolescence only, are significantly correlated with increased risk of juvenile and young adult delinquency (Thornberry,

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2008). The programmatic implications of this new research are that child welfare services to cover adolescent victims of maltreatment should be enhanced and must address the unique aspects of adolescent development. Expanding services in response to peer-reviewed research will lend dynamism and efficacy to the relatively recent phenomenon of working across systems of care to interrupt developmental pathways that lead to delinquency.

THE DEMOGRAPHICS OF THE CROSS-OVER POPULATION

Race is an important predictor as to whether a youth will become known to multiple systems. Crossover is a significant contributor to disproportionate minority contact with the juvenile justice system among African-American youths, as they are twice as likely as similarly situated white youths in the child welfare system to be arrested (Herz & Ryan, 2008). Exacerbating this trend is the presence of disproportionate minority contact in both systems, with disparity existing at almost all decision points. In Los Angeles, African-American youths are 14% of the total population, but make up 30% of the child welfare population and 41% of foster care placements. African-American youths are 54% of the total population that moves from child welfare to juvenile justice (Ryan, Herz, Hernandez & Marshall, 2007).

Young people known to both the child welfare and juvenile justice systems are mostly male, but crossover contributes disproportionately to females entering the juvenile justice system. Females are the fastest growing population in the juvenile justice system. In Los Angeles, a larger proportion of females enter the juvenile justice system from child welfare than from any other single referral source (Ryan et al., 2007). Crossover females suffer from concurrent be-

*Editor’s Note: This article is the first in a two-part series on the topic of crossover youths—young people involved in both the child welfare and juvenile justice systems. This installment describes this population, the pathways they follow and the challenges they experience. While it begins to address the role that courts can play in addressing the needs of these young people, the second installment of the series, to be featured in the Winter 2009 issue of *Juvenile and Family Justice Today*, will provide detailed examples of court and multi-system responses.*



behavioral and emotional problems, like their male counterparts, and are more likely to become pregnant than juvenile justice-only females. Female crossover youths also suffer from a lack of gender-specific programming in both systems.

In Los Angeles, crossover youths have common family histories of criminal behavior, mental health problems, substance abuse, and domestic violence. Seventy-two percent of crossover youths in Los Angeles County had at least one parent with a history of substance abuse, a quarter had at least one parent with mental health problems, and 36% had a family history of criminal behavior. These percentages are similar to studies and surveys of crossover youths performed in other jurisdictions (Herz & Ryan, 2008). Given these dynamics, family-centered interventions, rather than treatment programs that solely target the “problem child,” are more likely to reduce recidivism and institutional commitments (Siegel & Lord, 2004).

CROSSOVER YOUTHS: UNIQUE CHALLENGES AND COMPLEX NEEDS FOR INTERVENTION AND PREVENTION

Crossover youths often present a co-occurrence of problem behaviors in many areas of their lives. Even when a crossover youth grapples with only one disorder, the intensity of treatment needs is often greater than that of a youth known to a single system. For example, many crossover youths experience educational difficulties, ranging from truancy to poor academic performance. Foster children suspended from school are more likely to engage in delinquent behavior. Working with educators to keep at-risk youths in school with appropriate individualized service provision is essential to both preventing crossover and intervening supportively when a youth is already burdened by the treatment requirements of multiple systems of care.

The majority of crossover youths in many studies have substance abuse and/or mental health issues. In two studies conducted in Arizona and California, 80% and 83%, respectively, of crossover youths exhibited substance abuse and/or mental health problems (Herz & Ryan, 2008). Young people involved in the child welfare or justice system may face punitive consequences for aberrant behavior caused in part by an inadequately addressed substance abuse or mental health problem. Crossover youths penetrate more deeply into systems, thereby increasing the costs of treatment and reducing the odds of successful social reintegration.

Young people moving across systems may lose eligibility for educational, mental health, or behavioral health services and may experience disruptions in their relationships with attorneys, judges, and advocates. The need for services may intensify due to crossover and in response to the trauma of continued abuse or the nature of the delinquent act itself. Continuity of services, combined with an assessment of whether service provision must be amplified, is essential. Judicial leadership can facilitate cross-system collaboration to ensure that crossover youths and their families maintain access to services and continuity of representation.

SERIOUS OFFENSES AND HARSH OUTCOMES: PUBLIC SAFETY, SYSTEMIC BIAS, AND THE NEED FOR COLLABORATION

Although most maltreated youths do not become delinquent, maltreated youths are more likely to commit violent or serious crimes than those with no history of abuse or neglect (Thornberry, 2008). From a public safety perspective, addressing the needs of young people at-risk for crossover as soon as problem behaviors present themselves is vital. Inadequate provision of services for this vulnerable population transforms from an issue of systemic inefficiency to personal tragedy when crossover youths engage in violent behavior. Healthy development is dependent on caregivers consistently investing in the supervision and education of children, thereby helping children form attachments and obligations tying them to pro-social role models and reducing their likelihood of engaging in delinquent behavior. Creating and maintaining these positive bonds is essential in reducing violence in our communities.

Unfortunately, the limitations of one system can increase the burden of others. For example, multiple child welfare placements can increase the risk of delinquency. Out-of-home placements also increase risk of crossover. Virtually all crossover youths in Los Angeles (98%) had at least one out-of-home placement. Nationwide, children in out-of-home care settings are twice as likely to commit delinquent acts as those receiving in-home services, due to frequent disruptions of care. Group home settings are especially

problematic and have the largest effect in terms of crossing over (Thornberry, 2008). Child welfare youths in group homes see their families less and are less likely to reunify with them. Additionally, problem behaviors are exacerbated when youths are placed with other behaviorally challenged young people. In Los Angeles County, youths with at least one group home placement have two and one half times greater risk of delinquency compared to similar youths in other foster care settings (Ryan et al., 2007).

Crossover youths tend to penetrate deeper into the juvenile justice system, as child welfare youths receive harsher treatment than non-crossover youths in courts. Crossover youths are ten percentage points more likely to be detained than non-crossover youths, even controlling for race, age, prior offense history, and current offense (Herz & Ryan, 2008). Judicial decisions resulting in detention are strongly associated with a youth having been in an out-of-home child welfare placement at the time of offense, a history of running away from placements, previous crossover referrals, or substance abuse problems. Harsher court outcomes reduce the likelihood that crossover youths will receive appropriate treatment. It is unsurprising that crossover youths are twice as likely as juvenile justice-only youths to recidivate. Without appropriate treatment, crossover youths are more likely to have health problems, persistent drug addiction, and to continue criminal behavior into adulthood.

PREVALENCE OF CROSSOVER YOUTHS AND CURRENT SYSTEM RESPONSES

The prevalence of crossover youths nationwide is difficult to ascertain. Very few jurisdictions are equipped to systematically track the number of crossover youths, much less their outcomes. Studies estimate that between 9% and 29% of child welfare youths engage in delinquent behavior (Smith & Thornberry, 1995). An Arizona study reveals that the prevalence of crossover increases as young people penetrate deeper into the juvenile justice system, with as many as 42% of all youths in probation placement being known to both systems (Halemba, Siegel, Lord, & Zawacki, 2004). Similar studies performed in other jurisdictions confirm that as sanctions become more severe in the juvenile justice system, the proportion of youths known to multiple systems increases.

An efficiently integrated information sharing system would track the number of crossover youths as well as the specific needs they present. Because many jurisdictions lack appropriate mechanisms for information sharing, it has been difficult to mobilize diverse systems of care toward collaboration. When agency professionals and judges are unaware of multi-system involvement, crossover cases can drain resources due to duplicative or contradictory case management and service provision. Where courts are aware of a youth's dual-jurisdictional status, the substantive responsibilities of each agency can be vague or assigned inconsistently. Depending on which agency is assigned primary responsibility, a crossover youth may lose access to essential services due to the strict eligibility requirements of many funding streams.

Cross-system collaboration is also often stymied by a perceived conflict in agency mandates. While child welfare agencies focus heavily on safety, juvenile justice agencies strive primarily to reduce recidivism and improve community safety. Research over the past few decades, however, has emphasized that long-term well-being requires multi-dimensional efforts. There has been a subsequent rise of a more unified vision of child well-being across agencies, which includes: return or maintenance of youths in their homes; positive engagement of youths and families; academic success; behavioral and physical

health; and preparation of young people for adulthood, all of which are related to the core work of these systems referenced above (Herz & Ryan, 2008). Federal legislation, such as the Juvenile Justice and Delinquency Prevention Act (JJDP) and the Child Abuse Prevention and Treatment Act (CAPTA) include provisions to provide guidance, technical assistance, and funding for cross-systems work.

THE JUDICIAL ROLE IN FOSTERING CROSS-SYSTEM COLLABORATION

Judicial decisions can either contribute to or alleviate the systemic problems presented by crossover youths. Judges should capitalize on the credibility of the bench by bringing together relevant stakeholders in crafting sustainable policies to address the complex needs of crossover youths. Court administrators⁴ can make docketing decisions in concert with the judge assigned to the juvenile/family court that can greatly improve outcomes for crossover youths and their families. The activities suggested below fall within the judicial canon of ethics, and judicial leadership is critical in any jurisdiction's evolution toward integration.

Early Use of Objective Assessment Tools

The judge or court administrator is responsible for ensuring the ability of courts to promptly and accurately identify crossover cases. In the absence of a fully automated and integrated information system, delinquency courts can work with child welfare agencies to consistently identify whether an arrested youth has current or past contact with the system; child welfare agencies should also offer liaisons so that juvenile justice officials have a consistent point of contact once dual-system status is confirmed. Because detention hearings occur rapidly, having liaisons available at each agency, preferably some of whom are available outside of normal business hours, can potentially reduce the disproportionate detention of crossover youths, as judges are more likely to detain a child, absent reliable information about the youth's legal guardian, regardless of the severity of the offense (Siegel & Lord, 2004). A judge can advance a Memorandum of Understanding (MOU) between agencies to provide for these resources.

Judicial, child welfare, and juvenile justice professionals should collaborate in implementing an objective risk and needs assessment. These tools should ideally be used both before and after adjudication in delinquency court, as making an objective risk and needs assessment may prevent crossover in some cases where child welfare youths commit minor infractions. Early assessment will enable agencies and courts to focus resources on the most serious cases while diverting low-level cases to more appropriate community-based programs. Assessments should be holistic and should ascertain risk and needs of parents and younger siblings (Siegel & Lord, 2004).

Case Assignment and Jurisdiction

The one family/one judge approach is ideal, as it enables judges to put a youth's delinquency in the context of broader family issues and reduce the likelihood of recidivism using a holistic approach. Continuity of counsel for both the dependency and delinquency cases is also ideal. Where combining delinquency and dependency cases is infeasible, use of a dedicated docket may reduce scheduling conflicts for dual-involved youths and their families.

When a child becomes known to multiple agencies, localities assign jurisdiction in a number of ways: concurrent, where both agencies retain responsibility for the youth; "on hold," where the juvenile justice agency temporarily assumes responsibility for the youth; or transfer, where a child welfare case is closed when a youth is adjudicated as de-

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and implementation in their jurisdictions.

As its primary activity, the Center sponsors two Certificate Program sessions annually, one for individuals and one for multi-system jurisdictional teams. The best practices identified and developed through its expert faculty and surveying of the juvenile justice and child welfare fields serve as “drivers” in the related Breakthrough Series Collaborative (BSC). Through the

Center, BSC participants have access to a wide range of experts and leaders who can facilitate systems change.

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linquent. Concurrent jurisdiction is positive in that it allows a youth and his or her family to maintain eligibility for services offered by both agencies. However, a judge must demonstrate strong leadership when agencies attempt to place the primary burden of supervision on one another due to scarce resources. In “on hold” or “transfer” cases, judges must ensure that child welfare agencies stay involved to assure that the youth will have a suitable placement to return to when juvenile justice system involvement ends. Again, the role of the judge in creating and promoting MOUs between stakeholders smoothes service provision and facilitates collaborative case management.

Case Management and Post-Adjudication

Once a child welfare youth is adjudicated delinquent, it is essential to involve all stakeholders in the management of service provision, responsive case planning, compliance with court orders, and delivery of incentives. Because of the complexity and intensity of needs exhibited by crossover youths, multi-system responsibility for service provision is necessary. Judges may mandate that child welfare workers, probation officers, a parent or guardian, and other stakeholders be present at hearings. Court administrators may also assemble a trained team of child welfare and juvenile justice professionals specifically dedicated to the management of all crossover cases. This team approach will enable staff to better understand the complex issues facing crossover youths, making appropriate placements and service provision more likely.

The judge’s role does not end when the case is adjudicated; rather, the judge should ensure that agency professionals are working collaboratively to promote successful completion of court-mandated programs. This is especially important for transition-age youths, as provision of essential services may prevent adult criminality. This extended judicial role requires manageable caseloads, as complex crossover cases may take more time and effort than single-jurisdiction cases. Having adequate staff, facilities, and resources will ensure timely and appropriate processing of dual-jurisdiction cases.

Information Gathering and Assessment

The early use of objective assessment tools and greater interagency collaboration can reduce the disparities in treatment of crossover youths, especially youths of color. Courts can judge the efficacy of reforms through the timely gathering and analysis of data on crossover cases. Solid data can be a catalyst for collaboration; when child-serving agencies know collaboration saves resources and produces better outcomes for children, stakeholders will be more invested in the sometimes difficult process of integration.

CONCLUSION

Judges and court administrators play a critical role in ensuring the best possible outcomes for crossover youths. The prestige and respect garnered by the judiciary, coupled with the power to bring disparate stakeholders together, can enable judges to become the

catalysts behind critical system reform. The research only confirms what many in the field already know; abused and neglected children are more likely to commit delinquent acts and have problems integrating into our communities both as adolescents and adults. Collaboration will translate to healthier, more capable youths in the short-term and to safer, more stable communities in the long run. Taking on a leadership role in systems integration is not easy, but it is essential for judges dedicated to serving young people, their families, and their communities.

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Judge Michael Nash is the Presiding Judge of the Juvenile Court in the Los Angeles (Calif.) Superior Court. He was elected Secretary of the National Council of Juvenile and Family Court Judges in July 2008.

¹ Court administrators handle calendaring in some jurisdictions.

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