

EDJJ NOTES

A publication of the National Center on Education, Disability, and Juvenile Justice
January 2004 www.edjj.org Volume 3, Number 2

In the News

The Policy of Prosecuting
Juvenile Offenders as Adults:
A Summary of Key Issues

By
Jeffrey M. Poirier, M.A.

Too often society believes that punishment is the only natural consequence for delinquent acts and that juveniles must experience negative consequences to deter such behavior in the future. As the American Prosecutors Research Institute (2002) points out, community safety and offender accountability are two key underpinnings of the juvenile justice system.¹ While rehabilitation should be concomitant with accountability, recent policy has primarily focused on providing more severe penalties to youthful offenders. Throughout the 1990s, almost every state changed its laws so that youth charged with serious crimes could be more easily tried as adults.² This trend is exemplified by Proposition 21, a ballot initiative approved by California voters in 2000. Among other changes, Proposition 21 required that juveniles as young as 14 who are charged with certain serious offenses be treated as adults in the California criminal court system.³ This article examines (a) Proposition 21; and (b) key issues related to the waiver or

transfer of juveniles to the criminal courts (e.g., public safety, harm caused to juveniles, developmental differences, and racial and disability disproportionality).

Proposition 21

The Gang Violence and Prevention Act of 1998, or Proposition 21, was approved by ballot initiative in California on March 7, 2000. The Act changed California law pertaining to the treatment of juveniles and adults who are charged with and convicted of gang-related offenses, as well as violent and serious crimes. The statute has reduced confidentiality protections, increased the number of youth tried in adult court, and increased the number of juveniles held in adult correctional facilities.⁴

(Article continues)

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About EDJJ

EDJJ is a technical assistance, training, research, and dissemination center designed to develop more effective responses to the needs of youth with disabilities in the juvenile justice system and those at-risk for involvement with the juvenile justice system.

The center is a collaborative project of the University of Maryland, University of Kentucky, Arizona State University, American Institutes for Research, and The Pacer Center.

Prior to Proposition 21, criminal records of juveniles were confidential except for youth charged with the most serious felonies. Minors at least 14 years-old could be tried in adult court for certain offenses only if the prosecutor filed a petition with the juvenile court to transfer the case to adult court and the juvenile court approved the transfer at a hearing. However, if the juvenile was a repeat offender and committed certain types of violent crimes, then no petition was necessary and the juvenile had to be prosecuted in adult court.⁵ Further, juveniles declared delinquent were placed either on probation, in a juvenile detention facility, or in the California Youth Authority (CYA) and were always housed separately from adults until the age of 18, even if tried in adult court.⁶

Proposition 21 has reduced confidentiality for juvenile offenders by making it easier for law enforcement agencies to disclose the names of juveniles under certain circumstances and charge juveniles for certain offenses directly in adult court. Serious sex offenses and certain types of murder charges are now ineligible for juvenile court. Other changes brought by Proposition 21 require juveniles 16 years or older convicted in adult court to be sentenced to the California Department of Corrections rather than the CYA.

Key Issues

The practice of transferring juveniles to criminal court generally, and Proposition 21 specifically, have received considerable scrutiny from researchers, psychologists, and professional associations. Notably, eight nationally recognized groups, including the Children's Defense Fund, Child Welfare League of America, National Mental Health Association, and National Urban League released an amicus brief denouncing and challenging the tenets of Proposition 21.⁷ Policies that facilitate the transfer of youth

to criminal court and the adult penal system have implications for the youth they affect. These issues transcend debates over the role of the juvenile justice system (i.e., punishment vs. rehabilitation) because of their implications, which are highlighted below.

Public Safety

Proponents of prosecuting youth in criminal courts claim that harsher penalties more effectively lower crime and motivate juvenile offenders to reform because of the threat of transfer to criminal court.⁸ However, there is no evidence that threat of waiver to criminal court is a significant factor.⁹ Research has shown that juveniles transferred to and convicted in criminal court are more likely to recidivate after release from prison than those who were not. Youth in the juvenile justice system are also more likely to describe their experiences as rehabilitative and to report that they expect not to re-offend, while those in adult prison indicate they are learning new ways to commit crime and will likely re-offend.¹⁰

Harm Caused to Juvenile Offenders

Prosecuting juveniles in criminal courts and sentencing them as adults raises significant concern regarding their well-being and safety since these juveniles, "face greater threats to their life, limb, and future" (p. 9).¹¹ Youth in adult facilities are five times more likely to report being a victim of rape than are youth in juvenile detention. Further, youth in adult facilities are twice as likely to be beaten by staff, 50% more likely to be attacked with a weapon, and 7.7 times more likely to commit suicide.¹²

Developmental Differences

The transfer of youth to adult court raises questions about their developmental ability and maturity to participate as defendants in their trials in criminal courts.¹³ Theory and research suggest that youth may not have the capacity to act as defendants in their trials. Further, research on the developmental

capacity of juveniles suggests that they may be less culpable for their actions.

Racial and Disability Disproportionality

Many youth within the juvenile justice system have a disability. The prevalence of students identified as eligible for special education and related services in detention and correctional facilities is approximately four times that of the general population.¹⁴ Minority youth are also overrepresented in juvenile corrections. In fact, minority youth are overrepresented in criminal court, even when controlling for the type of offense.¹⁵ Although African-American juveniles comprise 15% of the U.S. population ages 10-17, they account for 26% of juvenile arrests, 30% of delinquency cases in juvenile court, and 46% of cases waived to criminal court.¹⁶ Minority youth and youth with disabilities are thus disproportionately affected by policies that prosecute juvenile offenders in criminal court, and this raises critical questions of the fairness and equity of waiver policies.

Conclusion

Efforts to treat juveniles more harshly, as evidenced by Proposition 21, are a result of prevailing notions that juvenile crime is rampant and the juvenile justice system is too lenient and ineffective.¹⁹ The prevailing philosophy is that transferring juveniles to criminal court and adult prisons will ensure justice is served and improve public safety. However, when considering policies that increase the transfer of youth to criminal court, it is important to consider four critical issues: (a) the negative consequences for youth (e.g., harm to their physical and mental well-being); (b) the negative consequences for society (e.g., increased youth crime due to incarceration in adult prisons); (c) the inability of juveniles to appropriately defend themselves in adult court; and (d) the disproportionate impact of these policies on minority youth and youth

with disabilities. Appropriate public policy concerning juvenile offenders must be based on a clear analysis of overrepresentation issues and the impact on troubled youth and society – and the important role of rehabilitation must not be ignored.

¹American Prosecutors Research Institute (APRI). (2002). *Bringing balance to juvenile justice*. Retrieved December 17, 2003 from http://www.ndaa-apri.org/publications/apri/juvenile_justice_monograph_nov_2002.html

²Grisso, T., & Schwartz, R. G. (Eds.). (2000). *Youth on trial*. Chicago: The University of Chicago Press.

^{3, 4, 5, 6}Legislative Analyst's Office. (2000).

Proposition 21. Retrieved December 17, 2003 from http://www.lao.ca.gov/Initiatives/2000/21_03_2000.html

^{7, 8}Building Blocks for Youth (BBFY). (2001). *Amicus brief: In the Supreme Court of the State of California*. Retrieved December 17, 2003 from <http://www.buildingblocksforyouth.org/statebystate/brief.html>

⁹Building Blocks for Youth (BBFY). (2001). *Amicus brief: In the Supreme Court of the state of California*. Retrieved December 17, 2003 from <http://www.buildingblocksforyouth.org/statebystate/brief.html>; Fagan, J. (1995). Separating the men from the boys: The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders." In J. Howell, B. Krisberg, J. D. Hawkins, & J. Wilson (Ed.), *A sourcebook: Serious, violent, and chronic juvenile offenders*. Thousand Oaks, CA: Sage Publications, Inc.; Redding, R. (1999). Examining legal issues: Juvenile offenders in criminal court and adult prison. *Corrections Today*, 61, 92-95, 120-124.

^{10, 11, 12}Shiraldi, V., & Ziedenberg, J. (1999). *The Florida experiment: An analysis of the impact of granting prosecutors discretion to try juveniles as adults*. Washington, DC: Justice Policy Institute.

¹³Grisso, T., & Schwartz, R. G. (Eds.) (2000). *Youth on trial*. Chicago: The University of Chicago Press.

¹⁴Quinn, M. M., Rutherford, R. B., Leone, P. E., Osher, D., & Poirier, J. M. (In press). Students with disabilities in detention and correctional settings. *Exceptional Children*.

¹⁵Juszkiewitz, J. (2000). *Youth crime/adult time: Is justice served?* Washington, DC: Prepared by Pretrial Services Resource Center for the Building Blocks for Youth Initiative; Poe-Yamagata, E., & Jones, M. (2000). *And justice for some*. Washington, DC:

Prepared by The National Council on Crime and Delinquency for the Building Blocks for Youth Initiative.

¹⁶Building Blocks for Youth (BBFY). (2001).

Amicus brief: In the Supreme Court of the State of California. Retrieved December 17, 2003 from <http://www.buildingblocksforyouth.org/statebystate/brief.html>

^{17, 18} Vito, G. F., Tewksbury, R., & Wilson, D. G. (1998). *The juvenile justice system*. Prospect Heights, IL: Waveland Press, Inc.

¹⁹Quinn, M. M., & Poirier, J. M. (In press). Linking prevention research with policy: Examining the costs and outcomes of the failure to prevent EBD. In R. B. Rutherford, M. M. Quinn, & S. R. Mathur (Eds.), *Handbook of research in behavioral disorders*. New York: Guilford Press.

Youth Transition From a Secure Care Facility

By
Megan McGlynn, Ph.D.

Little formal research exists on what happens to youth as they return to the community from a secure care setting. Existing research tends to focus on single aspects of transition and often misses the global experiences of youth as they transition from a correctional facility to the community. Statistics will tell the story of how many youth recidivate or return to secure care, but statistics do not provide information on youth experiences and the contextual variables in which these experiences took place.

The following is a summary of research, supported by EDJJ at Arizona State University, designed to examine the short-term transition status of youth leaving a long-term facility. This research took place in 2002, with 50 youth from Arizona's largest long-term secure care facility. Following a description of the methodology, results and conclusions from four phases in the study are discussed: (a) the pre-release

file review; (b) the pre-release interview; (c) the post-release follow-up; (d) the post-release interview.

Methodology

As part of the conditions of parole, youth are often expected to be constructively engaged (e.g., attending school, holding a job, participating in community activities). Researchers¹ have defined engagement or success following release as exhibiting three of the following four criteria: (a) currently employed, going to school, or both; (b) not re-arrested since release; (c) not institutionalized for substance abuse or emotional problems since release; and (d) self-report of being satisfied with the current post-release situation.

For this study, the definition of engagement was modified and students were given an engagement score at two months post-release based on the following criteria: 0 - not engaged in school, work, or other positive activity (e.g., unpaid work, church camp); 1 - engaged in one positive activity; and 2 - engaged in two or more positive activities (e.g., going to school and holding a job). If a youth returned to a secure care placement such as ADJC, a county jail, or parole violation center, they were given a score of 0.

Phase One: Pre-release File Review

The Phase One file review revealed that the mean age of first contact with the justice system was 12 years old, a mean of 9.17 prior contacts with the system before incarceration, and a mean of 5.02 prior incarcerations for the youth in this study. Generally, these youth were referred to the system at an early age, referred often, and were repeatedly incarcerated. Repeated contacts with the justice system did not appear to change their criminal behavior. It seems, at least from this limited sample, that the justice system was not successful in delivering effective punishment or offering effective support to deter youth from

continued delinquent behavior and subsequent incarceration. The impact of the sanctions delivered as a result of these contacts with the justice system may be an important area for future study.

Phase Two: Pre-release Interview

The information the youth gave during the pre-release interview was limited with regard to their knowledge of transition planning and their perceptions of what their plans actually were. The youth answered questions, but often appeared to give answers that would please staff. When asked if they had a transition plan, they responded that they did not have a plan but they knew what they needed to do after release. When asked to be specific, most could not go beyond saying, "stay out of trouble". The majority of the youth did not know if they had a formal transition plan or what was in it. It appears that students were not involved in the design of their formal transition plan, or if they were involved, it did not appear to have much of an impact on them. The youth did not appear to have ownership of their transition planning.

During the pre-release interview, participants answered the question about the influence of their friends on their eventual transition success or failure quickly and clearly. Many of them viewed their friends as an obstacle, rather than a support system after release. The clarity with which the youth reported this was powerful. They were very aware of their friends' influence on them and knew it would be negative. It was one of their biggest perceived obstacles to their short-term transition success. Breaking away from a peer group was difficult and painful for these youth, especially since there was no replacement peer group. The justice system may need to look at developing different positive support systems for these youth as they try to develop positive peer groups within their communities. Possibly this can happen if

professionals in communities and in the justice system work together to provide continued support of these youth after release.

Phase Three: Post-release Follow-up

The post-release follow-up phase of this research focused on the engagement status of the youth at two months after release. For the 50 participants, 26 received a score of zero, indicating they were not engaged in any positive activity or were re-incarcerated. Another 19 received a score of 1, indicating engagement in one positive activity. Five youth were engaged in two positive activities and received a score of 2.

Engagement status was then compared to the information gathered in the first phase file review. Multiple Regression was used to compare engagement status with risk factors such as age of first arrest, special education status, and number of prior incarcerations. This analysis was used to predict the probability of these risk factors having a significant effect on the short-term engagement status. The risk factors examined in this study have traditionally have been used to predict success after release. However, none of the risk factors had a statistically significant relationship to short-term engagement. From the results of this study, the practice of using risk factors to predict success after release was not supported. However, the studies' small sample size suggests that additional research is necessary.

Although no relationship was found between the variables examined (e.g., age of first arrest, current age, number of prior contacts with the justice system, ethnicity, number of prior incarcerations, special education status), the lack of a relationship may be important. The juvenile justice system often presents youthful offenders as highly likely to return to incarceration. This study revealed that short-term transition status or engagement appears to be unrelated

to factors traditionally thought to lead to recidivism. Continued research is necessary to identify factors not traditionally studied. Also, youth should have access to a broad range of programs and supports to increase the likelihood of providing the services necessary for successful transition.

Phase Four: Post-release Interview

The post-release interview portion of this study, which examined the youths' experiences, brought to light several themes related to transition. The process of finding a school that would accept and support them was a constant struggle. Often the youth were told by school personnel they were unable to start right away or would have to repeat classes they had already taken. The reluctance on the part of school staff to serve these youth appeared to exist regardless of their special education status. The youth were mostly unaware of their rights under federal and state mandates, or if they were aware of them, they were reluctant to identify themselves as special education students and request appropriate services. The youth also discussed their inability or unwillingness to find new peer groups that participated in positive activities. The youth shared stories of engaging in illegal activities with the same peer group they were associated with before their incarceration. The youth shared their feelings about the expectations of the group and how they felt excluded if they did not engage in those activities.

Conclusion

Youth released from correctional facilities face many negative factors as they attempt to successfully transition back into their communities. It is often assumed that these youthful offenders can successfully reintegrate if only they are willing. In most instances, these youth return to the same environment, with many of the same factors that initially contributed to or supported

their delinquency. Unfortunately, the youth are often expected to overcome the situation with little or no support. This research was designed to highlight the many factors youth are faced with when transitioning back to their communities.

¹Todis, B., Bullis, M., Waintrup, M., Schultz, R., & D'Ambrosio, R. (2001) Overcoming the odds: Qualitative examination of resiliency among formerly incarcerated adolescents. *Exceptional Children* 68, 119-139

Research to Practice Self-Management

This is Part II of a three-part series on promoting student self-management of behavior

In Part I of this three-part series on self-management, we discussed the effective use of self-monitoring. In Part II, we will build on the concept of self-management and focus on self-evaluation. It is important to keep in mind that the components of organizing a self-management system described in Part I also apply (i.e., selecting a target behavior; operationally defining the behavior; selecting an appropriate system of data collection; instructing the student in the use of the data collection system; monitoring at least one practice of data recording session; allowing the student to use self-recording independently; and monitoring the results).

Within self-evaluation, students are asked to compare their behavior to a set criteria.¹ This approach is particularly appropriate for commitment facilities, where education and corrections professionals develop a positive relationship with youth.

One example of self-evaluation is applicable to schools and facilities that provide a type of point system in which youth earn points for a facility store or certain privileges based on their behavior. Although, the development of a point

system is beyond the scope of the current discussion, a self-evaluation system can be easily implemented in schools and facilities where a system is in place. For example, youth may be given a certain number of points for each class period in which they follow school rules. A self-monitoring system would require each youth to write down the number of points he/she earned in a given class, where one point was awarded for each rule followed during that class. Students then hand the sheets back to the teacher for review. The teacher reviews the student scores and initials the sheet if he/she agrees with the student's self-evaluation. If the teacher disagrees, the point sheet can be returned to the student with the direction, "Re-evaluate your behavior."

The procedure is relatively simple and youth provide honest and accurate evaluations of their behavior 70 – 93% of the time.¹ However, some students will have difficulties with the self-evaluation of behavior. Planned approaches to students who have difficulties will help prevent situations from escalating. For example, a bonus point can be given to students based on accurate reporting, regardless of their score for a given period. It is just as important for a youth to recognize and accept that he/she has not earned points as it is for a student to recognize that he/she earned all points.

Another possible problem is that the student rips up the point sheet. Above all, this situation requires calm and restraint from the education or correctional professionals. For such an action, students may be required to buy a new point sheet with his/her points. However, sufficient time should be provided for the student to calm down before giving him/her a new sheet. Also, to assure that a copy of daily scores is maintained, there should always be a staff copy of the points earned by students.

A self-management program should not be a static and inflexible plan.² Any program will require continued evaluation and modifications. Additionally, the incentives must be sufficient to motivate students and the lessons and activities must be reinforcing in order for students to want to participate. However, perhaps the most important component of any successful behavior program is teacher and correctional professional consistency of program implementation.

Self-evaluation provides students the opportunity to practice analyzing their own behavior in a controlled environment where professionals can provide positive feedback and reinforcement for accuracy and hold students accountable for inaccurate self-evaluation. The ability to assess one's own behavior is a critical skill for incarcerated youth to successfully transition to school, work, and the community.

¹Hughes, C. A., Ruhl, K. L., & Misra, A. (1989). Self-management with behaviorally disordered students in school settings: A promise unfulfilled? *Behavioral Disorders, 18*, 118-128.

²Lam, A. L., Cole, C. L., Shapiro, E. S., & Bambara, L. M. (1994). Relative effects of self-monitoring on-task behavior, academic accuracy, and disruptive behavior in students with behavior disorders. *School Psychology Review, 23*(1), 44-58.

From Youth
In Corrections

I Am You

By John

When I am cold
Be there to warm me,
Be my shield,
let no one harm me,
Sing to me
As if I were a child.

Wrap me up
in blankets of love,
Let me study
the beauty of
Your heart, your mind,
And your soul.

You are all
I am none,
Do not misuse
The heart you've won.
I am you
Treat me that way.

EDJJ NOTES

Vol. 3, No. 2, January 2004

A free on-line newsletter of the National Center on Education, Disability, and Juvenile Justice (EDJJ). EDJJ is a technical assistance, training, research, and dissemination center that is jointly funded by the Office of Special Education Programs, U.S. Department of Education, and the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice. This publication is supported by Grant No. H324J990003, U.S. Department of Education.

Editor: Joe Gagnon

George Mason University
Graduate School of Education
4400 University Ave. MSN 4B3
Fairfax, VA 22030

Project Director: Peter Leone
University of Maryland
Department of Special Education
1308 Benjamin Building
College Park, MD 20742

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Conference Focus

Join your colleagues for a solutions-focused national summit to learn “**what works**” to achieve better outcomes for youth involved with the juvenile courts or at-risk for delinquency. The conference will feature national leaders addressing the latest evidence-based strategies and programs for:

- School & community-based delinquency prevention
- Education & special education in juvenile corrections
- Transition/aftercare services

Did You Know?

A substantial number of court-involved youth experience school failure and have learning, emotional or behavioral disabilities.

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- Luncheon address by Jimmy Santiago Baca, author of *A Place to Stand*, describing his involvement in juvenile courts and corrections
- Opportunities to visit Denver-area programs
- View films related to conference topics
- Receive extensive resource materials

Who Should Attend

EDJJ welcomes practitioners, researchers, policymakers and advocates from multiple youth-serving agencies and professional disciplines including education and special education, juvenile justice and corrections, courts and law enforcement, delinquency prevention, mental health, family organizations, transition and aftercare. The conference is designed to maximize networking for participants.