

Dual-System Youth: The Need for Systems Integration to Improve Outcomes  
for Foster Youth who Commit Delinquent Acts

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Over 3 million referrals were made to Child Protective Services during FY 2006 for suspected child abuse, with just over 900,000 of those cases substantiated (U.S. DHHS, 2008b, p. xiv). Of those children, just over 300,000 entered the foster care system that year, resulting in a total of 510,000 children in out-of-home placements on September 30, 2006, the last day of the latest fiscal year for which preliminary data is available from the U.S. Department of Health and Human Services (U.S. DHHS, 2008a, p. 1). This figure represents over a half-million youth on that day living in placements away from their families, typically as a result of abuse or neglect that made their homes unsafe living environments. Foster care is often a temporary situation, with nearly one-third of children who left foster care during fiscal year 2006 leaving after less than 5 months and nearly one-half leaving within a year of entry (U.S. DHHS, 2008a, p. 4). Nevertheless, nearly one-quarter of the children still in care on September 30, 2006 had already spent 3 or more years in care (U.S. DHHS, 2008a, p. 1). This represents a significant population of vulnerable children at risk of future negative outcomes as a result of early negative life experiences and uncertainty of their futures in unstable or non-permanent placements.

Out-of-home care “encompasses the placements and services provided to children and families when children must be removed from their homes because of child safety concerns, as a result of serious parent-child conflict, or to treat serious physical or behavioral health conditions which cannot be addressed within the family” (Child Welfare Information Gateway, 2008). The purpose of out-of-home care is to provide services to children and families to provide for the “best interests of the child,” a doctrine that has become a staple of child welfare reform movements. During the 19<sup>th</sup> century, the progressive movement responded to child victims of abuse and juvenile offenders in much the same way. Established in 1899, the juvenile court was granted broad powers as a “child-saving” institution that would keep juvenile offenders away

from the corrupting influences of adult prisons and “would play the role of ‘parent or guardian to the child’ and act as an elder brother to their parents, offering encouragement and helpful advice on how to improve their homes” (Walker, 1998, p. 115). The system intended to treat juveniles brought before the court as juveniles in need of assistance, care, or supervision, with a decreased focus on the offense or other reason they were brought before juvenile courts.

The juvenile court intended to respond to all aspects of juvenile welfare, but “in practice, there was always a tension between social welfare and social control—that is, focusing on the best interests of the individual child versus focusing on punishment, incapacitation, and protecting society from certain offenses” (McCord et. al., 2001, p. 154). In 1974, the Juvenile Justice and Delinquency Prevention Act mandated the removal of non-delinquents from secure institutions and required the deinstitutionalization of status offenses (del Carmen and Trulson, 2006, p. 146). This landmark piece of legislation reflects a shift in perceptions of the role of the juvenile courts. The broad role of the juvenile court to respond to juveniles in need of assistance in general decreased as its role over non-delinquent youth decreased. This furthered a separation of the child welfare system, which was responsible for abused and neglected children, and the juvenile justice system, which maintained control over youth considered delinquent. During the last few decades, public concerns over juvenile crime and a focus on the rights of juveniles led to a juvenile justice system that began to more closely resemble the adult criminal justice system. At the same time, concerns over the levels of abuse children were experiencing, often at the hands of their parents, furthered the view that innocent children needed to be removed from their parents to prevent such abuse. These simultaneous shifts in focus resulted in an increased separation of the two systems.

The tension between the systems is most prevalent in the systematic response to the population of foster children who become involved in the juvenile justice system through their own commission of delinquent acts. This population of “dual-system youth” challenges the dichotomous viewpoint of innocent child victims of abuse as a separate and distinct group from juveniles involved in delinquency and crime. While processing children through the child welfare system and placing them into foster care is seen as a means of removing children from dangerous home environments and placing them in more healthy, stable environments in order to decrease their risk of experiencing negative outcomes, in actuality this is not always the case. This paper focuses on the connection between foster care and juvenile delinquency, the factors and theories that attempt to explain the involvement of foster youth in delinquency, and the impact of foster care status on treatment in the juvenile justice system. While the separation of the juvenile justice system from the child welfare system did not offer the improved outcomes for foster youth that it promised, this paper argues that a bridge can be built between the two systems that changes the way foster children are treated in the juvenile justice system. Children in need of assistance cannot be separated into two dichotomous groups: child victims and juvenile offenders. Policy changes that recognize the unique needs of the thousands of youth each year who are involved in both systems must be made to improve outcomes for these youth.

### **I. Systems Separation: History of the child welfare and juvenile justice systems in the United States**

Most literature on the history of the child welfare and juvenile justice systems in the United States begins with an overview of the involvement of individuals and organizations as “child savers” in the 19<sup>th</sup> century. The first official, state-sanctioned separation of juvenile justice from the adult criminal justice system occurred with the creation of the first juvenile court

in 1899 (Trost, 2005, p. 2 and Creekmore, 2007, p. 78). The juvenile court emphasized the doctrine of *parens patriae*, in which the state had the authority to “intervene if doing so was in the child’s best interests,” which resulted in a system that had little legal distinction between “a juvenile who committed a criminal act, a juvenile who was considered a wayward youth, and a child who came from a home with unwilling, destitute, or deceased parents” (McNamara, 2008, p. 7). The goal of the juvenile court was not to correct the behaviors of juvenile offenders through punitive measures, but rather to act in the best interests of the child, regardless of the reason he or she came before the court. The focus of the juvenile court was not intended to be on the offenses of the child, but on addressing the needs of the child as a whole in order to prevent at-risk children from engaging in future criminal behavior, regardless of whether the risk of criminality was as a result of the child’s own prior behavior or abuse or neglect (Duquette, 2007, p. 232). Trost (2005, p. 73) writes that the early juvenile court “treated both dependency and delinquency cases, and it sent children to both public and private agencies, correctional as well as charitable institutions (reform schools as well as orphanages).”

The juvenile court as a separate institution from the adult criminal justice system was intended to provide better outcomes for youth by preventing them from continuing on a path that led to criminality. This intention led to five marked distinctions between the juvenile court and the adult criminal justice system, at least in terms of treatment of delinquent offenders: “individualized rehabilitation and treatment, civil jurisdiction, informal procedure, confidentiality, and incapacitation of children separate from adults” (Abrams & Ramsey, 2007, p. 1005). In practice, this led to a juvenile court with broad powers to determine “dispositions” for youth who came before the court as a result of a wide variety of behaviors, ranging from “incorrigibility” to serious criminal actions. Sealander (2003, p. 28) notes that, while most

children received probation and were allowed to return home, many others were put in “detention” without being charged with a specific offense where- rehabilitation, although a goal of the juvenile court, was far from a reality.

As early as the 19<sup>th</sup> century tension existed between the juvenile justice system and child welfare policies. During the Progressive Era, child welfare policies focused on “child neglect, pension laws and ways to keep children out of exploitative labor markets” (Creekmore, 2007, p. 78). This perception of child welfare is radically different from the view of child welfare today, reflecting a greater focus on society’s actions toward children rather than the behavior of parents toward their own children. Although ostensibly meant to protect children, the actions of children’s aid societies were often viewed as chastising poor, urban, and often immigrant parents and families. The attempts of children’s aid societies in the late 19<sup>th</sup> century to force white, middle-class values on the urban poor increased “tension between children’s rights to protection, parents’ rights to discipline offspring, and states’ duties to both groups” (Sealand, 2003, p. 57). The government had less direct influence over child welfare at this time, with much work being done by private children’s aid societies. With the primary focus on the perceived problems with high levels of immigration and the plight of the urban poor, rather than on individual instances of abuse and neglect, concern for child welfare faded in the early 1920s as immigration declined (Sealand, 2003, p. 60).

Real changes in the juvenile justice system and child welfare system did not occur until the middle of the 20<sup>th</sup>-century, with the belief that the needs of youth were not being met. Despite the stated goals of the juvenile court, many youth were not afforded individualized treatment. An overburdened system that did not have the time or resources to devote a significant amount of time to individuals resulted in many juveniles receiving neither the

guidance the juvenile court was supposed to offer nor the protection of individual rights afforded in the adult criminal justice system. In the 1960s Supreme Court decision, *In re Gault* (1967, 387 U.S. 1, p. 18), Justice Fortas wrote for the majority, “The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness.” As a result of this decision and others during the same time period, juveniles were afforded greater rights, including the right to counsel and the right against self-incrimination. While this was meant to protect juveniles from the arbitrariness that existed in the juvenile justice system prior to this point, in practice it furthered a shift away from the *parens patriae* doctrine that characterized the juvenile justice system since its inception. The focus of the system shifted toward protecting the rights of the juvenile, which at times conflicted with the best interests of the juvenile.

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act. This piece of legislation essentially “separated the treatment of delinquents and status offenders” and “earmarked the care of status offenders to community agencies since status offenses were seen as treatable and offenders should not be stigmatized with a delinquency label” (McNamara, 2008, p. 9). This legislation intended to improve outcomes for youth brought before the court for committing status offenses or who had not engaged in criminal actions by encouraging diversion away from court and institutionalization. By the mid-1970s, however, “more juvenile cases were transferred to adult courts, and juvenile sentences (called dispositions) emphasized punishment (‘accountability’) instead of treatment” (Creekmore, 2007, p. 79). By 1997, all fifty states passed laws that made it easier to transfer juveniles to adult court and allowed the prosecution of

youth over age fourteen for felonies, reflecting the belief that, if children had the same constitutional rights as adults, they should be held accountable for their criminal conduct (Sealand, 2003, p. 44). Transfer policies focused to a much greater extent on the nature of the crime committed, a far cry from the supposedly individual-focused goal of the early juvenile court. Although the ability of the juvenile court to act *in loco parentis* in cases where youth had not engaged in any actual criminal conduct was significantly reduced, for youth adjudicated delinquent, punishment, not rehabilitation, took precedence.

During the last several decades, the child welfare system also underwent numerous policy changes that resulted in a system increasingly separated from the juvenile court. The 1960s saw a shift in the function of the child welfare system as the work of C. Henry Kempe brought new attention to the issue of child abuse. The right of children to be safe in their own homes resulted in all fifty states passing child abuse reporting laws by 1967, beginning with California in 1963 (Sealand, 2003, p. 64). The Child Abuse Prevention and Treatment Act of 1974 (CAPTA) reiterated this emphasis on child safety as Congress provided funding to states that expressed a commitment to developing services to prevent and treat child abuse and neglect through the establishment of twenty-four-hour toll-free hotlines to report abuse, expansion of the list of mandated reports, and appointment of lawyers or guardians-ad-litem to children in abuse and neglect cases (Abrams & Ramsey, 2003, p. 285). Increased reporting requirements resulted in a ten-fold increase in the number of children removed from their homes and placed in foster care, with 510,000 children in foster care by 1980 (Sealand, 2003, p. 68). In response, the 1980 Adoption Assistance and Child Welfare Act “required states to make reasonable efforts to prevent placement of children in foster care and to reunify children with their families when placement was needed” (Abrams & Ramsey, 2003, p. 286).



Since 1980, the child welfare system has undergone a number of changes. Most notably, the 1997 Adoption and Safe Families Act attempted to limit the amount of time that children spent in foster care by making it easier to terminate parental rights and move children into adoptive homes when it became clear that parents were not likely to be rehabilitated (Abrams & Ramsey, 2003, p. 379). Attempts to reduce the number of youth in foster care have not been extremely successful, with over half a million children in care on an average day. As the juvenile justice system moved away from individual consideration in favor of more punitive dispositions for juvenile offenders, the child welfare system attempted to develop policies that would focus on the best interests of the child. These shifts in the last few decades have further separated the young “criminal” in the juvenile justice system from the child “victim” in the child welfare system. The treatment of youthful offenders in the last few decades leaves little room for individualized consideration of the backgrounds of youth, particularly foster youth who pose a unique problem for the system. The experiences of these youth and their involvement in the child welfare system place them at an increased risk of future criminality and involvement in a system that has become increasingly less likely to take this background into account.

## **II. The extent of the problem: The disproportionate involvement of foster youth in the juvenile justice system**

Foster children are at an increased risk for juvenile delinquency as a result of their experiences, as well as at a greater risk for criminality extending into adulthood. Research indicates that foster youth are involved in the juvenile justice system at rates far greater than children not in care. In California, the Corrections Standards Authority found that 20% of the 11,000 youth in juvenile detention facilities are foster youth (Jung, 2007). Similarly, Jonson-Reid and Barth (2007, p. 514) conducted a study of 10 counties in California and found that 19%

of entries into the California Youth Authority were youth with investigated child abuse reports. In Los Angeles in particular, Ryan et. al. (2007b, p. 1041) found that 1,200 youth in the child welfare system experience their first arrest each year, accounting for 7% of first-time offenders. Despite accounting for only 2% of the youth population in New York City in 1997, Ross, Conger, and Armstrong (2002, p. 473) found that foster youth comprised 15% of youth admitted to department of juvenile justice detention facilities. Another study found that 42% of youth with a probation placement also had an active dependency petition for part of the calendar year for which the probation placement was active (Halemba et. al., 2004, p. 13). While the separation of the child welfare system from the juvenile justice system intended to avoid treating abused and neglected youth in the same manner as juvenile delinquents, youth in the child welfare system nevertheless come into contact with the juvenile justice system at rates disproportionate to their numbers in the youth population.

Data from across the country indicate that youth in foster care are highly likely to be arrested at least once. While the actual percentage of foster youth who are arrested varies by location, the numbers are consistently high, indicating that the issue of dual-system youth is a significant issue that needs to be examined. A study of youth leaving foster care in three Midwestern states found that roughly half had experienced at least one juvenile arrest, one-third had experienced one or more overnight stay in juvenile detention, and one-fifth had been convicted of at least one crime (Courtney, 2005 as cited in Ryan et. al., 2007a, p. 84). Another study of youth who will turn 18 in foster care found that roughly two-thirds of boys and half of girls had a history of delinquency (Courtney, 2004 as cited in Doyle, 2007, p. 1583). In Chicago, a study of 15,039 foster youth found that 17% came before the Juvenile Court of Cook County at some point (Doyle, 2007, p. 1599). Looking at 294 adolescents leaving foster care in the

Midwest, Ryan et. al. (2007a, p. 87) found that 12% experienced at least one arrest before age 16 and 45% experienced at least one arrest between ages 16 and 22. A longitudinal study of 278 African American males in foster care, with an average age of 12.8, found that 11% had at least one delinquency petition after the first interview (Ryan et. al., 2008, p. 126). In the U.S. Virgin Islands, over one-third of youth being served by the Department of Human Services enter the juvenile justice system at some point (Concodora, 2008, p.15). In Arizona, the statistics are worse: the Arizona Court Improvement Project Re-Assessment, a 2002 report completed by the National Center for Juvenile Justice, found that 71% of dependent youth over the age of 15 had been involved with the juvenile justice system for a delinquency charge at least once (Halemba et. al., 2004, p. 3).

Foster youth are not only more likely to be arrested as juveniles than their peers not in care, they are also more likely to be arrested at a younger age and more likely to recidivate. Compared to their peers with no experience in the child welfare system, dependent youths are arrested more often throughout adolescence and begin offending at an earlier age (Ryan et. al., 2007a, p. 84). Data from Arizona found that youth with a history of involvement with the child welfare system were twice as likely (62% compared to 30%) to recidivate than their peers if referred to the juvenile court for a delinquency offense (Halemba et. al., 2004, p. v). In another study, Ryan et. al. (2007b, p. 1042) found that youth from the child welfare system who became involved with the juvenile justice system were typically younger than youth with no involvement in the child welfare system. In a study of 531 incarcerated juvenile offenders in Oregon, Alltucker (2006, p. 479, 485, 487) found that 78% of “early start” delinquents, youth first arrested at or before the age of 14, had foster care experience and youth with foster care experience were four times more likely to be “early start delinquents” than their peers with no

foster care experience. The increased risk of recidivism among foster youth, whether an indication of an increased likelihood that foster youth go on to commit more crimes or are more likely to be re-arrested than their counterparts due to a bias in the system, suggests that current attempts of the juvenile justice system to respond to such dual-system youth are ineffective at best. This suggests the need for a change in the way the juvenile justice system responds to foster youth and the way services are provided in order to decrease the likelihood that dependent youth will engage in delinquent behavior or continue to reoffend.

When compared to their non-dependent peers, foster youth are more likely to not only continue committing delinquent offenses as juveniles, but more likely to continue offending into adulthood as well. The Survey of Adult State and Federal Correctional Facilities found that nearly 20% of prison inmates under age 30 spent time in foster care and, of those inmates who had prior convictions, 25% had spent time in foster care (Doyle, 2007, p. 1583). This does not necessarily indicate that foster care involvement directly increases the likelihood of involvement with the adult criminal justice system. Greater involvement in the juvenile justice system may increase adult criminality or other factors may increase the likelihood of involvement in all systems. Nevertheless, some correlation exists between foster care, juvenile delinquency, and adult criminality. Foster youth, when compared to their non-dependent peers, are more likely to be arrested at a younger age, more likely to be arrested more than once, and more likely to continue offending and to be re-arrested well into adulthood. Research suggests that a separation of abused and neglected youth from delinquent youth cannot truly be possible since involvement in the child welfare system, particularly the foster care system, is linked to future involvement in the juvenile justice system. The greater likelihood that foster youth will be rearrested as juveniles and as adults indicates that the needs of this population are not being met and that

systematic changes need to be made to improve the response to foster youth who commit delinquent acts in order to reduce their involvement in future delinquency and adult criminality.

While foster youth represent a disproportionate number of youth in the juvenile justice system compared to their percentage of the youth population, this can be attributed, in part, to foster youth actually committing more crimes than their peers who are not in care. Research indicates that a significant number of foster youth experience at least one arrest as a juvenile. Higher arrest rates among foster youth may be attributed to foster youth actually committing more delinquent acts than their peers or may be the result of systematic biases or problems that increase the amount of contact foster youth have with police and the juvenile justice system. Research supports both of these claims, indicating that there is no single factor that leads to increased involvement in the juvenile justice system among foster youth. The following section will address some of the factors that are correlated with higher rates of delinquency among foster youth and will examine how experiences of foster youth may increase their likelihood to commit delinquent acts, in light of theories of juvenile delinquency. Section IV will evaluate the claim that, regardless of actual numbers of delinquent acts, foster youth are significantly more likely to become involved in the juvenile justice system due to disparate treatment by the system. Research indicates that there is at least some support for the claim that differential treatment and foster care status may result in youth from the child welfare system being treated more punitively than their peers for similar acts.

### **III. Theories of delinquency: Factors influencing the involvement of foster youth in juvenile delinquency**

The easiest and simplest explanation for the high rates of arrest of foster youth when compared to other juveniles is that foster youth actually commit a higher number of delinquent

acts than their peers. This is difficult to determine, particularly given the radically different experiences of youth in foster care. The term “foster care” may be used to refer to a variety of out-of-home placement types, including non-relative family foster homes, relative (or kinship) family foster homes, group homes, or residential care placements, or treatment foster homes (Child Welfare Information Gateway, 2008). Children and youth may be placed in care for a variety of reasons. The National Survey of Child and Adolescent Well-Being (NSCAW) studied 727 children who had already been in care for 12 months by the time the study began in October 1999. The study looked at the primary reasons children were placed in foster care and found that the most common reason for placement was neglect (60%), followed by physical abuse (10%), sexual abuse (8%), and other types of abuse or neglect, including abandonment and emotional abuse (14%). Eight percent of children came to the attention of child welfare for other reasons not involving their direct maltreatment, such as mental health problems or situations of domestic violence (Administration for Children and Families, 2008, p. 2). Children may be reunited with their parents, may be adopted from foster care after parental rights are terminated, or may spend years in care unable to return to their parents but not able to be adopted. Although time in care is typically short, with one-third of children who left foster care during fiscal year 2006 leaving after less than 5 months, nearly one-quarter of the children still in care on September 30, 2006 had already spent 3 or more years in care (U.S. DHHS, 2008a, p. 1).

These factors, along with many others, affect the individual experiences of youth in care. The experiences of an infant spending a brief period of time in foster care before being adopted are very different from those of a teenager who ages out of the foster care system after experiencing a multitude of different placements. Research cannot concretely find that foster care causes delinquency, since the experiences of youth in care may be extremely different.

Little self-report research has been done to determine if foster youth actually engage in more delinquency than other youth. Research in this area, however, suggests that some of these factors and some of the experiences of youth in foster care may be highly correlated with delinquency statistically, a finding that can be supported by general theories of juvenile delinquency.

The primary reason youth enter foster care is neglect, with many other youth entering care as a result of physical abuse, sexual abuse, or emotional abuse that makes their homes unsafe environments (Administration for Children, Youth and Families, 2008, p. 2). While the type and severity of abuse experienced varies on a case-by-case basis, the causal relationship between experiencing abuse or neglect and placement in foster care makes this an important starting point when examining potential factors that may increase the likelihood that children in care will become involved in the juvenile justice system. In the U.S. Virgin Islands, a study of dually involved youth found that more than half had some history of maltreatment (Concodora, 2008, p. 15). Ryan and Testa (2005, p. 228) indicate that studies have found that youth who experience maltreatment are 9% to 29% more likely to engage in delinquent behavior compared to their non-maltreated peers.

Agnew (2009, p. 232) indicates that the connection between experiencing abuse and future delinquency is moderate. This moderate connection may be attributed to increased strain on the child causing him to turn to delinquency as a means of ending the abuse, social learning in which the child comes to see violence as an appropriate means of solving problems, or reduced control as a result of a decreased attachment to pro-social others and a decreased stake in conformity. While child abuse may have a moderate connection with delinquency, this connection is not sufficient to indicate that foster youth are at an increased risk of delinquency

when compared to children who experience abuse but do not enter care. Doyle (2007, p. 1584) indicates that “those children who are removed are likely those who would benefit most from placement.” Ethical considerations prevent researchers from leaving children at a high risk for abuse in their homes in such an environment, resulting in comparison groups that are not necessarily similar. Maltreated children placed in foster care may be more likely to engage in delinquency than maltreated children left in their homes as a result of having experienced more severe abuse, not as a result of foster care. As removal from the home is more likely to occur when the potential for harm to the child in the home is highest, higher rates of delinquency among foster youth may be further evidence of the connection between child abuse and delinquency, rather than evidence of a causal relationship between foster care and delinquency.

Several studies have attempted to control for maltreatment type and severity to determine whether a correlation between foster care and delinquency exists. In the mid-1980s, Runyan and Gould used a matched cohort design to compare outcomes for 114 children in foster care and 106 similarly maltreated children who were left in their own homes. They found that 39% of the children in foster care demonstrated “behavioral difficulties,” most commonly stealing but also including fighting, lying and running away, compared to 12% of youth who remained at home (Runyan & Gould, 1985, p. 564). Doyle (2007, p. 1599) found that, “large benefits to foster care placement are unlikely for children on the margin, at least in terms of juvenile delinquency.” Evidence from these studies is contrary to the expected outcome that placement in foster care should reduce delinquency among children who experience abuse by removing them from the source of abuse and reducing the duration of abuse. When examining youth on the margin of placement where an individual child welfare investigator played a significant role in the decision of whether to place a child, Doyle (2008, p. 748) found that youth put in care were three times



more likely to be arrested, convicted, and imprisoned as adults compared to those who were allowed to remain at home. This indicates that, after controlling for abuse severity, foster care experience has some additional impact on future criminality beyond the effects of abuse and neglect. If experiencing child abuse or neglect were significantly correlated with future delinquency, removal of children from abusive situations and placing them in foster care would reduce the likelihood that these children would go on to engage in delinquency, an argument that is not supported by research.

Agnew (2009, p. 232) notes, “abuse is less likely to lead to delinquency among those who receive social support from others and do well in school.” For children and juveniles in out-of-home placements, experiences of abuse and neglect are often compounded by other negative experiences and factors. The extensive needs of children who are placed in foster care often go unmet, increasing the likelihood that youth will engage in future delinquent behavior. Experiences in foster care may exacerbate educational difficulties and other problems that develop as a result of early experiences of abuse. Children who experience abuse report lower levels of motivation in school, and are typically perceived by their teachers as less ready to learn than their peers and typically require a greater level of individualized attention (Erickson et. al., 1985 as cited in Ryan et. al., 2007b, p. 84).

There has been a significant amount of research examining the connection between educational difficulties and future delinquent behavior. Agnew (2009, p. 242) notes that some research suggests that negative school experiences and delinquency are caused by the same third variables, including early family experiences, although he indicates that school experiences have a small causal effect on delinquency. The difficulty of controlling for other variables makes it impossible to determine with certainty whether a causal relationship exists between child abuse,

educational difficulties, and future involvement in delinquency. Theories of delinquency seem to indicate that there is likely to be at least some causal effect, even if research may not be able to eliminate the influence of other factors. Teachers may label abused or neglected children as lazy or difficult if they are unaware of the child's situation and only perceive the child as less motivated, less ready to learn, or requiring additional attention than their peers. This labeling may in turn lead to further acting out in school and later delinquent behavior. Difficulties in school are likely to cause additional strain for youth who have experienced abuse, particularly if schools do not have the resources to provide more individualized attention.

Educational difficulties experienced by abused and neglected youth are often compounded for foster youth. When compared to other children who have experienced abuse, youth in foster care typically experience increased disruption as placement in foster care often requires a change in schools. A study of 3,026 youth in New York City who had left the foster care system found that more than 40% did not start school immediately after entering care, more than 75% did not remain in their schools once placed in care, and nearly 65% transferred schools in the middle of the academic year (Chipungu & Bent-Goodley, 2004, p. 436). This increased disruption in education results in additional academic difficulties for youth who are already at risk for reduced academic achievement. Time away from school may increase strain among youth struggling to catch up in a new school in the middle of the year or may reduce attachment to school as youth are faced with new teachers and an unknown peer group. This is also problematic, as "when children are not enrolled in school, the likelihood of offending, both short term...and long term...increases" (Ryan et. al., 2007a, p. 88). Of children in care during their older adolescence, only about 56% graduate from high school (Weiss, 2006, p. 27). This indicates that, not only are foster youth potentially at risk for increased delinquency during time

away from school as a result of initial placement in care and placement changes, this risk increases for the significant number of foster youth who leave school before completing their high school diploma.

While foster care placement removes the source of abuse a child experiences, factors involved with the placement in foster care may further educational delays and further increase strain on children. Foster youth “have lower grade point averages, change schools more frequently, earn fewer credits toward graduation, [and] have lower scores on state testing” than their peers and attend college at a rate less than one-fourth of the rate of the general high school population (13% compared to 60%) (Weiss, 2006, p. 27). A study of private foster care agencies further found that “more than one third of children in care had written language skills below grade level,” “close to one-third had math and reading skills below grade level,” and “thirty to forty percent of youths in foster care are in special education” (Chipungu & Bent-Goodley, 2004, p. 436). Difficulties in attaining goals through the pro-social path of high school achievement and college attendance may increase strain for foster youth, thereby increasing the likelihood of future delinquent behavior. A study of dual-system youth in the U.S. Virgin Islands found that 90% had educational difficulties (Concodora, 2008, p. 15). While research has not been able to fully establish the causal connection among abuse, educational difficulties, and juvenile delinquency, it is nevertheless evident that educational difficulties pose a significant problem for foster youth already at risk of negative outcomes and may increase the likelihood that foster youth become involved in future delinquent behavior.

Additional factors that have some impact on the rate at which foster youth become involved in delinquency are factors more directly resulting from placement in foster care. While the experiences of youth in foster care differ significantly, certain factors of foster care

placement may increase the likelihood of delinquent behavior. Reduced parental monitoring may result in greater opportunities for youth in care to engage in delinquent behavior, while foster parents are likely to have less direct control over youth in their care than parents in general have over their own children. Morris and Freundlich (2004, p. 29) interviewed several young adults with histories of involvement in both the child welfare and juvenile justice systems. One youth stated, “If kids lived with their family, maybe they’d try not to get in trouble...so what if their group home or foster family finds out – they’re not the real parents. You figure you got nothing to lose because you’re not with your family.” This indicates a perception on the part of foster youth that foster families and group-home caretakers generally have little control over them since they are not their real parents.

The likelihood that this perception would increase delinquent behavior is explained by general control theory. Agnew (2009, p. 134) summarizes general control theories and applies them to juveniles, arguing that a juvenile may be more likely to engage in delinquency if he experiences little direct control (including firm rules, monitoring of his behavior, sanctions for rule violations, and reinforcement of conventional behavior), a low stake in conformity, favorable beliefs toward delinquency, and low self-control. Unlike youth who remain with their families, placement in care may reduce a juvenile’s stake in conformity if he feels that, having already been separated from his family and possibly neighborhood and friends, he has little left to lose by engaging in delinquent behavior. Some research on youth in care supports this argument. In their study of 278 African American males in foster care, Ryan et. al. (2008, p. 130) found that children who indicated that they were required to tell their caretaker where they were going and that their caretaker knew their friends were generally less likely to experience a subsequent delinquency petition than youth whose foster parents were less involved. Although

just one study, this suggests that a higher degree of monitoring may have a protective factor that could prevent some youth from becoming involved in delinquency, even if abuse experiences and educational difficulties tend toward the opposite effect.

Another factor of placement in care that may affect delinquency rates is the type of placement itself. While the term “foster care” tends to bring to mind parents caring for a non-relative child placed in their care, actual placement types include a much greater range of placements including relative foster homes (“kinship care”) and group homes. In addition to some of the factors already mentioned, young people in group homes typically associate with more delinquent peers than youth in family foster homes (Ryan et. al., 2007b, p. 1036). Despite the separation of the child welfare and juvenile justice systems, dependent youth from the child welfare system may at times be placed in group homes with delinquent youth, particularly if dependent youth have acted out in prior foster care placements. One study of 1,550 youth released from a residential home for troubled young men in Michigan found that approximately one-quarter were sentenced to adult corrections within seven and a half years of release and that, strikingly, the likelihood of later arrest did not differ significantly among young men initially placed due to dependency or abuse and those placed for committing status offenses or engaging in delinquency (Taylor, 2006, p. 36).

In addition to reduced direct control and monitoring in group homes, Morris (2005, p. 35) notes that “because many group homes serve youth from many different backgrounds and experiences, youth who haven’t engaged in delinquent activity before entering care may suddenly find themselves living and associating with youth who have been delinquent.” While the separation of the child welfare system from the juvenile justice system was supposed to result in different treatment of dependent and delinquent youth, in practice this has not always

occurred. Dependent youth are generally separated from serious, violent juvenile offenders, although they may be placed in group homes with youth who have committed status offenses or have engaged in minor delinquency. Agnew (2009, p. 117) describes social learning theory, which argues that juveniles are most likely to engage in delinquency when others “(1) differentially reinforce their delinquent behavior, (2) teach them beliefs favorable to delinquency, and (3) provide delinquent models for them to imitate.” The close association of youth in group homes increases the likelihood that dependent youth will associate with delinquent peers who model delinquent behavior. If group home caretakers are unwilling or unable to effectively sanction such behavior, dependent youth may be increasingly likely to engage in such delinquent behavior themselves.

The resulting increase in delinquent behavior among dependent youth in group homes, may be explained by the life-course theory of delinquency advanced by Moffitt, as well as social learning theory. Moffitt (1993, p. 461) argues that some youth with no history of delinquent behavior may “mimic” the behavior of their peers with a history of delinquent behavior in order to attain access to mature status, power, and privilege that they see their lifecourse-persistent peers as possessing. Moffitt argues that youth may engage in delinquency during their adolescent years as a means of responding to a “maturity gap” that prevents them from engaging in many of the privileges of adulthood. This may be a particular area of concern for abused and neglected youth who may be forced to take on more adult responsibilities at a younger age, without the accompanying privileges of adulthood. Many dependent youth in group homes indicate that they began selling drugs when they saw their peers in group homes involved in selling drugs (Morris, 2004, p. 31). Youth in care with no history of delinquency may engage in

delinquent behavior during their teen years if they perceive their frequently delinquent peers as having increased freedom and status.

While certainly not all foster youth engage in delinquency, with many overcoming the negative effects of early abuse and educational difficulties through placement in a stable, loving foster home, many youth experience a significant number of placement changes that create further problems. Placement instability seems to be one factor that contributes to increasing difficulties for foster youth, regardless of other factors such as initial placement type or abuse or neglect experiences. A significant number of youth in foster care experience multiple placements. In 1990, researchers found that nearly one-third of youth in care experienced three or more placements (U.S. House of Representatives as cited in Ryan et. al., 2008, p. 120) while a later study of Illinois foster children found that 38% had experienced at least 4 different placements (Hartnett et. al. as cited in Ryan et. al., 2008, p. 120). Doyle (2007, p. 1584) notes that one-quarter of foster youth experience three or more moves and most foster children experience at least one change in placement, which results in serious problems for foster children's development.

Experiencing frequent changes in placement is correlated with an increase in delinquency. Ryan et. al. (2008, p. 128) found that, of 278 African American males in foster care that he interviewed, 62% had already experienced at least one change in placement while 39% anticipated changing placements within the next year. Those who anticipated a change in placement were slightly more than twice as likely to commit a delinquent act during the study period, indicating that youth who perceive their placements as unstable are more likely to engage in delinquency. In another study, adolescents who experienced three or more changes in placement while in care were more likely to be classified as "chronic offenders" or "desisters"

than “nonoffenders” (Ryan et. al., 2007a, p. 87). The connection between placement instability and future delinquency, like the connection between educational difficulties and delinquency, is difficult to determine with any degree of certainty. In a study conducted in the mid-1980s, Runyan and Gould (1985, p. 565) noted that, while there is a strong correlation between placement changes and future delinquency, youth moved out of their first placement because their foster parents were unable to deal with their behavior were significantly more likely to become involved in delinquency than youth moved for other reasons. In one study in which youth were interviewed about their experiences in foster care, one youth indicated that she was placed into a group home because her foster parents “gave up on me and didn’t want to deal with me anymore” (Morris & Freundlich, 2004, p. 33). While placement changes may lead to increased delinquent behavior, other factors such as abuse or educational difficulties may lead youth to exhibit behavioral difficulties which foster parents are unable to cope with, thus precipitating placement changes.

Problems arising from placement instability reflect many theories of juvenile delinquency. Youth who experience frequent placement changes typically already demonstrate a number of risk factors for involvement in future delinquent or criminal behavior and experience increased strain as placement changes force them to readjust to a new environment. As noted earlier, frequent placement changes may result in more time away from school if youth are moved to placements that make attending their current school impossible. Frequent changes in placement, especially when accompanied by changes in schools, may reduce a young person’s commitment to conventional others and stake in conformity. Morris (2004, p. 4) notes that many of the youth she interviewed “did not feel connected to their foster parents or caretakers and adopted an attitude of disregard and a sense of unaccountability.” Frequent placement changes



exacerbate this view as youth do not have time to develop relationships with caregivers or do not attempt to do so if they will likely be moved again soon. While motives for changing a child's placement vary, youth may also experience direct labeling if their caretakers make it clear to them that their behavior is the cause of the placement change or an internalized labeling if youth feel that no one wants them or the placement change is somehow their fault. Combined with the lack of connectedness to family and school, this may lead youth to turn to delinquent peers to seek a sense of family and belonging.

#### **IV. Child welfare bias: The impact of foster care status on juvenile justice system involvement**

Researchers have not successfully pinpointed the exact reasons that some youth engage in juvenile delinquency while others do not, although many plausible theories have been advanced. Factors such as early negative experiences, including abuse and neglect, overlap with problems such as difficulty in school and the effects of foster care placement itself, especially the effects of multiple placements, to increase the likelihood that foster youth will become involved in the juvenile justice system. While the specific causal effects of any one of these factors on later delinquency cannot be determined with a high degree of certainty, it is clear that foster youth are involved in the juvenile justice system at a rate disproportionate to their numbers in the general youth population. In addition to the increased likelihood that foster youth may become involved in delinquent acts, foster care status affects the way youth are perceived by the juvenile justice system and may result in a greater involvement in the system compared to youth from more stable home environments.

Without significant self-report surveys on the involvement of foster youth in delinquent behavior as compared to their peers, research is insufficient to determine the extent to what

extent foster youth are actually involved in delinquency. As discussed in Section III, foster youth are very likely to engage in some level of delinquent behavior given their experiences. Nevertheless, research has also indicated that there may be some systematic biases against foster youth that result in their involvement in the juvenile justice at a rate higher than their peers. In the 1980s, Runyan and Gould (1985) noted that the use of recorded behavioral problems as its measurement of delinquency was problematic, although they did find a correlation between foster care and delinquency. The authors note that higher numbers of observed incidents of behavior problems among foster youth, including assault, shoplifting, drug use, and other types of delinquency, may be attributable to the “bias of increased observation of children in foster care by foster parents and social workers” (Runyan & Gould, 1985, p. 564). The authors suggest this as one possible explanation for the increased involvement of foster youth in the juvenile justice system.

Given that neglect, including failure to supervise, accounts for 60% of entries into foster care (Administration for Children and Families, 2008, p. 2), foster parents may observe the behaviors of foster children to a greater extent than parents of children allowed to remain at home under similar circumstances. Runyan and Gould (1985, p. 565) found that youth who were moved to new placements as a result of their own behavior were significantly more likely to engage in delinquency as their peers who were moved for other reasons. One explanation for this is that characteristics of the youth or third factors may contribute to both behavior problems and delinquency. Foster parents may supervise and observe youth with behavior problems or multiple placements more closely than other children. As a result, the belief that some foster youth are potentially more likely to engage in delinquent behavior, even if untrue, may lead to increased observation of delinquent behaviors that do occur.

In addition to increased observation of minor delinquent behavior among foster youth, research indicates that the reaction to such behavior may be different in the case of foster youth as compared to youth in their own homes. Runyan and Gould suggest this possibility, stating, “although the police and courts are generally independent of social services, it may be that foster children are more likely to be charged with assault because of decreased tolerance for violence among foster parents or social workers” (1985, p. 567). In a study that conducted interviews of foster parents, Morris (2005, p. 35) found that thirteen of seventeen foster parents interviewed had called the police when a problem arose with children in their care, rather than calling their agency. Although the study was extremely small and therefore insufficient for determining that this is a major reason for the involvement of foster youth in the juvenile justice system, it nevertheless indicates that this is an area for concern. Interviews of youth in group homes in the same study indicated that group home staff and foster parents had a tendency to call police for otherwise “normal” adolescent behavior, rather than responding to such behavior internally (Morris, 2004, p. 4). Foster parents untrained to respond to mental health issues or behavioral problems that stem from experiences of abuse or neglect may perceive minor behavioral issues as significant problems. Ross, Conger and Armstrong (2002, p. 475) note that staff in some group care facilities may even call police and use arrest as an intentional means of removing children they perceive as difficult from their care. “Typical” adolescent behavior such as fighting that would normally be handled by parents in a stable home environment may be labeled “assault” and involve police interaction.

Lack of coordination and a limited flow of information between the child welfare system and the juvenile justice system may create conflict and pose additional problems for foster youth who commit delinquent acts. Separation of the child welfare and juvenile justice systems has

resulted in problems for foster youth from the moment they become involved in the juvenile justice system. Siegel and Lord (2004, p. 1) summarize this problem in the statement, “in too many instances, the two kinds of cases weave their way down separate paths, before separate judges, in pursuit of separate goals, and without any coordination, cooperation, or even communication.” When a foster youth commits a delinquent act and comes to the attention of the juvenile justice system, intake, detention, or probation officers may not know that the juvenile is involved with the child welfare system or may not know whom to contact regarding the juvenile (Ryan et. al., 2007b, p. 1038; Siegel & Lord, 2004, p. 3). Lack of integration between the systems often forces front-line juvenile justice workers to rely on contact information for foster parents or caseworkers provided by foster youth and juvenile justice workers may have trouble getting in touch with an adult responsible for the juvenile, particularly after regular business hours (Siegel & Lord, 2004, p. 3). Juveniles may not have contact information for their foster parents or caseworkers or may be unwilling to provide such information if they fear repercussions, such as a change in placement, if their foster homes become aware of their delinquent behavior. As a result, juvenile justice workers and child welfare workers may be unaware of the other’s existence entirely (Siegel & Lord, 2004, p. 1)

Even in cases where juvenile justice workers are aware of, and able to contact, a juvenile’s child welfare caseworker, the two systems may be unclear on how to proceed with the juvenile’s case. Morris (2004, p. 8) notes that, although child welfare and juvenile justice workers intend to work toward the best outcome for youth, “a good deal of confusion exists regarding the specific responsibilities of each of the systems.” She further states, “probation officers and caseworkers, for example, frequently are uncertain of their roles and how to interact with the ‘other’ system, which results in gaps in service” (Morris, 2004, p. 8). The child welfare

system's view of the juvenile justice system, and vice versa, as the "other" system, indicates a perception that the systems are completely separate, with separate goals and ideals.

Child welfare workers may be unclear of their role in a juvenile's case once the youth has been brought to the attention of the juvenile justice system for committing a delinquent act. In some instances, caseworkers may believe that they are no longer responsible for a child in such cases (Ross et. al., 2002, p. 475). This is particularly likely to be true in cases where the caseworker was the one to call police in an effort to remove a difficult child from their purview. Although in many states this assumption is incorrect, in some states, such as California, the child protection case is closed when a delinquency case is opened (Ryan et. al., 2007b, p. 1047). The juvenile justice system, however, is not able to provide the same services as the child welfare system, making it unlikely that the full spectrum of the youth's needs will be met. The juvenile justice system is not equipped to respond to both delinquent behavior and safety concerns within the home that first brought the child to the attention of the child welfare system (Ryan et. al., 2007b, p. 1047). While the juvenile justice system began to afford youth more substantial rights in the 1960s, the later shift toward a more punitive system resulted in a decreased focus on the "best interests of the child" in favor of protecting society from criminal youth. This shift in focus resulted in a system that is unable to address the issues that may have impacted the youth's involvement in delinquent behavior in the first place.

Foster youth are significantly more likely to be detained before hearings than their peers, who are likely to be released to their parents. A number of factors may increase the likelihood of pretrial detention for foster youth. Detention hearings may occur without a caseworker present if they are held soon after a juvenile is brought in before the caseworker can be contacted, or caseworkers may choose not to attend hearings if they believe that their responsibility for the

juvenile ends when the juvenile justice case opens (Siegel & Lord, 2004, p. 3). Detention hearings are also likely to occur without a foster parent present. Foster parents, as temporary caregivers, may not see themselves as having a responsibility to advocate for youth in their care in delinquency proceedings (Morris & Freundlich, 2004, p. 4), may not know what to do, or may not want a juvenile who has committed a delinquent act back in their home (Siegel & Lord, 2004, p. 3). Ross et. al. (2002, p. 476) note that juvenile courts often have little choice but to hold youth in detention awaiting hearings when no parent, foster parent, caseworker, or other adult is able or willing to take the juvenile.

Pretrial detention poses significant problems for foster youth. Ross et. al. (2002, p. 477) note that pretrial detention is problematic for youth in general as it may harm educational attainment and result in a loss of income by keeping youth from school and work, but is significantly more problematic for foster youth. Siegel and Lord (2004, p. 3) note that, although many group homes can hold a youth's placement for up to three days, they may fill that spot if they are unaware of the youth's involvement in the juvenile justice system or may not want the juvenile to return if the delinquent behavior occurred at the group home or the youth is perceived as a behavioral problem. Pretrial detention may therefore result in a change of placement once the youth is released. In addition to a disruption of education or work while in pretrial detention, this placement instability may force foster youth to quit their jobs or transfer schools (Ross et. al., 2002, p. 477), resulting in further educational disruptions and a greater likelihood of future delinquency, as discussed earlier. Despite these problems, foster youth are very often held in pretrial detention as a result of their foster care status, not their potential to engage in future delinquency (Ross et. al., 2002, p. 478).

Ryan et. al. (2007b, p. 1044) found that no child welfare bias existed with regard to first time case dismissal, with foster youth just as likely as their peers to have their first case before the juvenile justice system dismissed. Even if a case is ultimately dismissed, foster parents or group home staff may not want a juvenile they perceive as a behavioral problem in their care, resulting in placement changes and a greater likelihood of engaging in future delinquency. For those youth who go on to hearings, child welfare involvement poses additional problems. Attorneys assigned to represent foster youth often have little knowledge of a foster child's developmental level and have very little time, if any, to develop a relationship with the juvenile before a hearing (Witkin, 2005, p. 1). While the Supreme Court case *In re Gault* made the juvenile justice system more like the adult system by affording juveniles the right to an attorney, in practice this has not translated into a system that fully protects the rights of juveniles. In reality, the bare minimum guarantee of an attorney does not guarantee that a juvenile's attorney will be fully aware of his juvenile justice case and his history of child welfare involvement. The separation of the two systems has resulted in youth often being represented by different attorneys in their child welfare and juvenile delinquency cases (Siegel & Lord, 2004, p. 1). The slight increase in rights afforded juveniles in delinquency proceedings came at the expense of more extensive knowledge of a juvenile's history and background when making decisions.

While foster youth are more likely than their peers to be arrested or placed in pretrial detention, research has found that child welfare bias is greatest in sanction decisions. Ryan et. al. (2007b, p. 1038) indicate that foster youth are less likely than their peers to receive probation, particularly if foster families are unwilling or unable to stay involved in a juvenile's delinquency case. Youth in foster families are less likely to be perceived as coming from "good" families and thus less likely to be considered good candidates for rehabilitative efforts or probation than youth

who appear in court with their parents (Ryan et. al., 2007b, p. 1039). Through interviews with five professionals with experience in the child welfare and juvenile justice fields, Morris and Freundlich (2004, p. 24) found that judges might perceive foster youth who appear in court without family present as having no support and may feel that secure placements are necessary to confine such youth. Research suggests that this is likely. In their study of nearly 70,000 first-time offenders entering the juvenile justice system in California between 2002 and 2005, including nearly 5,000 foster youth, Ryan et. al. (2007b, p. 1045) found that the foster youth were more likely to be placed in a correctional setting, even after controlling for age, race, gender, and offense type. Placement of foster youth in correctional or secure placements, including group homes, is problematic as such placements are less likely to reduce future delinquency than other sanction types and may not be able to provide services to address the unique issues that contribute to foster youth engaging in delinquent behavior (Ryan et. al., 2007b, p. 1046).

The tension between the child welfare and juvenile justice systems is particularly prevalent in the area of funding. Petro (2006, p. 12) notes that, “Many jurisdictions have specific categories for which funds are allocated to pay only for services to youth and families meeting certain criteria or being under the jurisdiction of a specific agency.” In the case of foster youth involved in the juvenile justice system, lack of clarity in where funds are to come from can create additional tension between two systems with limited financial resources. Involvement of a case in two separate and distinct systems can result in duplication of case management efforts, additional costs by requiring the involvement of professionals from both systems, and reduced likelihood that the case will be handled effectively and quickly (Halemba et. al., 2004, p. 3). The added financial resources necessary to maintain a case in both systems is problematic from a



funding standpoint, while conflict over which system is to provide funding for treatment or rehabilitative programs, such as counseling, is problematic for foster youth who may not receive the services they need in a timely manner.

Lack of coordination and communication between the child welfare and juvenile justice systems poses a number of unique challenges for foster youth who engage in delinquent behavior. The separation of the systems, coupled with increasingly punitive sanctions in the juvenile justice system, has resulted in somewhat harsher treatment of foster youth compared to their peers who commit similar minor delinquent acts. Research has indicated that foster youth are more likely to come to the attention of the juvenile justice system for minor behavior, more likely to be held in detention awaiting hearings, less likely to receive probation, and more likely to be placed in secure facilities. Lack of coordination and lack of financial resources may prevent foster youth from receiving access to treatment and rehabilitative options and increase the likelihood that they will engage in future delinquency.

#### **V. Promising Practices: Policies and programs to improve outcomes for dual-system youth**

In recent years, the government, child welfare system, and juvenile justice system have become increasingly aware of the extensive involvement of foster youth in the juvenile justice system and the unique challenges faced by this population. In 2002, the Juvenile Justice and Delinquency Prevention Act (JJDP A) was reauthorized, with changes made that establish requirements to improve systems integration and coordination between the child welfare and juvenile justice systems (Tuell, 2003, p. 4). The Juvenile Justice and Delinquency Prevention Act of 2002 requires that, in order to receive funding grants, state plans must implement a system to ensure that all child welfare records and child protective service records relating to a juvenile brought before the court be made known to the court (JJDP A, 2002). Furthermore, state plans

should “establish policies and systems to incorporate relevant child protective services records into juvenile justice records for purposes of establishing and implementing treatment plans for juvenile offenders” (JJDP, 2002). Policies and programs over the last several years have attempted to meet the challenge of improving outcomes for foster youth involved in the juvenile justice system. As Wiig and Widom (2003, p. 11 as cited in Tuell, 2003, p. 1) note, “Critical to this challenge is the embrace of common goals and common responsibility to interrupt the trajectory of juvenile and criminal offending that seems to be the destiny for at least some of these victims of child abuse and neglect.”

Integrating the response of the child welfare and juvenile justice systems to improve outcomes for foster youth requires that states allow for both systems to have jurisdiction over a case. This is not a radical change as most states already allow for dual jurisdiction of cases. In a study of fourteen different jurisdictions representing twelve states, Herz et. al. (2006, p. 1) found that every jurisdiction allows concurrent jurisdiction, and either appoint a liaison to oversee dual-system youth or allow one of the agencies to serve as the lead agency. A significant majority of states already allow for dual jurisdiction, with only two states (Massachusetts and Kansas) using an “on hold” system, in which child welfare cases are suspended temporarily for youth under the supervision of the juvenile justice system, and only two states (California and Colorado) requiring a termination of a child welfare case upon a finding of delinquency (Ryan, 2007b, p. 1038). Forcing child welfare to close a child’s case upon a finding of delinquency forces the juvenile justice system to take responsibility for all aspects of a child’s case, although it is not as equipped to address factors that led to a child’s removal from the home (Ryan, 2007b, p. 1047). While the original juvenile court intended to address all of a youth’s issues, including

dependency and delinquency issues, the modern juvenile justice system is not prepared to address such issues to the same extent as the child welfare system.

In a report on the issue of crossover and dual jurisdiction youth, the American Bar Association recommends that legal restrictions on dual jurisdiction should be eliminated and “calls for foster youth to be treated fairly and not simply to have their dependency case and foster care support ended because they happened to be in foster care at the time of their offense” (ABA, 2008, p. 4). Allowing the systems to have dual jurisdiction recognizes that the systems have different specialties, but allows for them to work together through a holistic approach to a youth’s needs. As noted in the previous section, child welfare officials may use the police and juvenile justice system to remove difficult children or children with behavioral issues from their care. Requiring the child welfare system to continue to be involved in a youth’s case after the youth becomes involved in the juvenile justice system by eliminating restrictions on dual jurisdiction can potentially reduce this problem and encourage child welfare workers to seek alternative solutions to deal with foster youth rather than involving the police.

A significant problem for foster youth coming before the juvenile justice system is that the juvenile justice system is often not aware of the juvenile’s status as a foster child. Significant research in this area indicates the need for improved screening when a child is brought into the juvenile justice system in order to better identify foster youth earlier in the process. Siegel and Lord (2004, p. 3) acknowledge that simply asking a juvenile if he has an open child welfare case may not be sufficient and more accurate screening of both the child and the family is necessary to identify risk factors such as parental incarceration, substance abuse, or mental illness in order to determine if more targeted intervention will be needed. Sharing databases to improve identification of dual jurisdiction youth is potentially problematic, however, given limits on the

ability of current systems to fully collect data and potential legal and privacy issues that need to be addressed before adequate screening can occur (Tuell, 2003, p. 6). Additionally, an inventory of resources should be developed that compiles the resources of multiple disciplines, including child welfare, juvenile justice, substance abuse, mental health, and educational programs and services (Tuell, 2003, p. 6). This improved screening and assessment and more adequate assessment of necessary resources reflects the original goal of the juvenile justice system to be a holistic approach to improve the lives of juveniles, rather than focusing solely on children as delinquent offenders.

Judges who hear delinquency cases involving foster youth, as discussed earlier, often perceive foster youth as less likely than their peers to be candidates for rehabilitation, especially when they appear in court without an adult. In her research, Morris (2004, p. 8) noted that this was a substantial problem and suggests that all adults legally responsible for a youth should be notified of the youth's involvement in the juvenile justice system. Furthermore, child welfare workers should not abandon a child once the child becomes involved in the juvenile justice system, a problem that can be addressed in part by requiring all states to allow dual jurisdiction over cases. Once notified, any adults responsible for the youth, including child welfare workers, foster parents, group home staff, guardians-ad-litem, or court-appointed special advocates should be encouraged to attend all delinquency proceedings involving that youth (Morris, 2005, p. 36). Simply having an adult with responsibility for the youth present can drastically improve the judge's perception of the youth's stability and likelihood to be rehabilitated. Nevertheless, problems remain with this approach. In some instances foster parents or group home workers may be unwilling to get involved, even if they are informed of hearing dates and times, particularly if they were the ones who contacted the police regarding the juvenile. Morris (2005,

p. 35) notes that this approach would also require additional training and support for foster parents and group home staff so that they can effectively intervene when youth engage in minor delinquency, rather than calling the police.

The next area that needs significant change is the area of case assignment. Changes in case assignment for dual jurisdiction youth can take a number of different forms. One such approach is the “one family, one judge” approach in which a single judge hears all matters related to a family, making the judge better informed of a family’s court history and prior issues that have been brought before the court involving that family (Siegel & Lord, 2004, p. 6). As indicated previously, one significant problem for foster youth brought before judges in delinquency cases is the general negative assumption judges have about foster care and the general belief that foster children need a secure placement since they are less likely to meet the terms of probation. Allowing a single judge to hear all matters, whether involving dependency or delinquency issues, increases the likelihood that a judge will be able to make a more informed decision for the specific child brought before the court, rather than a decision based on assumptions about foster youth in general. In a study of fourteen jurisdictions, Herz et. al. (2006, p. 1) found that six jurisdictions were already using this approach to deal with dual jurisdiction cases.

Another, similar, approach is the use of dedicated dockets. Under this system, the juvenile court reserves a block of time to hear dual jurisdiction cases, thereby increasing the likelihood that child welfare professionals will be able to attend cases involving all foster youth in the juvenile justice system (Siegel & Lord, 2004, p. 6). In practice, however, this approach is not feasible in all jurisdictions. This approach is likely to be more successful in jurisdictions that have a significant number of dual jurisdiction cases, but may not be necessary in areas with small

numbers of such cases. The American Bar Association recommends that “a single judge hear dual jurisdiction cases under a special crossover case docket utilizing a ‘problem-solving court’ or ‘therapeutic jurisdiction approach” (ABA, 2008, p. 4). Herz et. al. (2006, p. 1) note that none of the fourteen jurisdictions surveyed use specialty courts specifically for dual system youth, although many indicated an interest. Petro (2006, p. 15) indicates that such an approach could follow the model of specialty child welfare courts that use one judge to hear all cases in that category.

In addition to judges with little knowledge of a youth’s history of involvement with the child welfare system, many foster youth have different attorneys for each proceeding in which they are involved and attorneys are given little time to prepare their cases. A study of over 200 dual-jurisdiction cases in Arizona found that it was rare for the same attorney to represent a child in both dependency and delinquency cases, a problem that “can add to the complexity and fragmentation tied to these cases and may also add significant costs” (Halemba et. al., 2004, p. 76). The American Bar Association (2008, p. 1) recommends that all juvenile defense counsel be provided training on foster care issues. Research in this area indicates that a child’s attorney is often in one of the best positions to provide information about the child and attorneys should be trained on both dependency and delinquency issues so that they can represent a child in all cases (ABA, 2008, p. 4 and Morris, 2004, p. 8). However, Herz et. al. (2006, p. 1) found that continuity of legal counsel for juveniles across dependency and delinquency cases was used at that time in only a small number of jurisdictions. Siegel and Lord (2004, p. 7) suggest that, although continuity of counsel is an approach worth pursuing, many issues including the time commitment necessary to handle all aspects of a dual jurisdiction case and financial limitations that result in attorneys in this area having high caseloads may make it difficult to find attorneys

willing to work such cases.

The next category of reforms deals with the way dual jurisdiction cases are managed after they are assigned. Rather than creating a specialty court, such changes attempt to improve coordination of the two agencies within the existing juvenile justice system. Siegel and Lord (2004, p. 7) suggest that it may be effective for all parties involved to meet in prehearing conferences to ensure that everyone involved is aware of the issues, sharing information, coordinating efforts, and complying with orders. Combining dependency and delinquency review hearings can decrease the number of hearings all parties need to attend, reduce strain on court calendars and reduce the need for continuances as a result of scheduling conflicts (Siegel & Lord, 2004, p. 7).

The next area requiring significant improvement in coordination and collaboration between the child welfare system and the juvenile justice system is the area of case planning and supervision. In the current system, a juvenile's child welfare case plan and juvenile justice case plan may be entirely distinct, potentially resulting in either both systems failing to provide some necessary services and resources or a duplication of some services. Siegel and Lord (2004, p. 9) suggest that child welfare case plans and juvenile justice case plans should be submitted simultaneously to the judge, preferably in one document. Joint case planning can also be achieved by creating separate interagency liaisons responsible for ensuring that communication between agencies occurs and that appropriate services are provided (Siegel & Lord, 2004, p. 9).

Joint case planning and provision of services runs into some confidentiality issues. One potential concern is that information gathered from youth as a result of their dependency case, such as through diagnostic decision-making tools, could potentially be used in a juvenile's delinquency case to support a finding of guilt or increase punishment (ABA, 2008, p. 3). The

American Bar Association (2003, p. 3) emphasizes that “treatment related settings should create a ‘safe’ environment, where these youth can feel free to reveal what could be incriminatory information, but not have that information used for additional purposes.” While it is unclear to what extent this is actually a problem, it is an issue of which child welfare and juvenile justice workers need to be aware. The separation of the juvenile court into two distinct systems resulted in many problems for foster youth through lack of communication between the two systems, but attempts to reconcile this lack of communication should ensure that information is shared for the purpose of improving outcomes for this population, rather than for increasing punishment in the juvenile justice system.

Attempts to provide services to foster youth in the juvenile justice system may be stalled by funding issues. In interviews with professionals working in the child welfare and juvenile justice systems, Morris and Freundlich (2004, p. 25) found that three of the five people interviewed felt that the creation of a single “pot of money” to provide services would reduce tension between the two agencies regarding who has financial liability for dual system youth. Professionals in both systems may potentially be more willing to seek out additional services for youth if there is less conflict over which agency bears the financial burden for such services. With a more readily available source of money for dual system youth, services can be provided more efficiently without delays in determining which agency must provide funding. Action strategies to improve the collaboration of the child welfare and juvenile justice systems should include a comprehensive review of funding sources to find “opportunities for blended or decategorized funding, which allows funds to be used in a needs-based approach to serve the children and families in the jurisdiction” (Tuell, 2003, p. 6). Morris and Freundlich (2004, p. 98) note that the reauthorization of the Juvenile Justice and Delinquency Prevention Act allocated



funding that states can pursue for such cases. This flexible funding approach supports the original ideals of the juvenile justice system by providing funding for a variety of necessary services that meet the needs of children and their families, rather than providing funds in only limited situations.

Some of these elements are already being used in jurisdictions across the country to improve outcomes for foster youth in juvenile delinquency proceedings. Many jurisdictions, including Allegheny County, PA, Bernalillo County, NM, Maricopa County, AZ, Palm Beach County, FL, and Sarpy County, NE use a “one judge” approach to hear delinquency and dependency cases, with the latter two also maintaining continuity of counsel in dependency and delinquency cases where possible (Herz et. al., 2006, p. 6). In Bexar County, TX and Tarrant County, TX a Child Protective Services (CPS) liaison works across agencies to prevent duplication of services, clarify the role of each agency, and to coordinate the implementation of policies from each agency (Herz et. al. 2006, p. 8). Other jurisdictions with programs that include one or more components to improve coordination between child welfare and juvenile justice include King County, WA, Los Angeles County, CA, South Dakota, the U.S. Virgin Islands, Arizona, and Colorado (Tuell, 2008). Some of these components may be used in either a formal program or informally to meet the needs of dual system youth in those areas.

A number of more developed programs have developed to attempt to improve outcomes for foster youth in the juvenile justice system. One early program, launched in 1998 in New York City, is a project called “Project Confirm” (now ACS Confirm). The project uses an improved notification system to “increase the appearance rate of child welfare representatives (case managers, caseworkers, and child care workers) who have a legal responsibility to attend hearings and the authority to accept custody of youth released by the court” (Conger & Ross,

2001, p. 11). “Project Confirm” screeners are contacted by police after a youth is arrested or Department of Juvenile Justice (DJJ) detention workers when family court is closed and search the Administration for Children’s Services (ACS) database to determine if the juvenile is a foster youth (Conger & Ross, 2001, p. 11). If a juvenile is identified as a foster youth, the program contacts the probation officer assigned to the juvenile, and the liaison at the appropriate foster care agency or the child’s ACS case manager, who instructs the child’s case worker to contact the project for additional information (Conger & Ross, 2001, p. 11).

The next component of Project Confirm is court conferencing. Through court conferencing, a field coordinator meets with all involved parties, including child welfare workers and the probation officer, to ensure that each party is aware of its responsibilities (Conger & Ross, 2001, p. 13). Conger and Ross (2001, p. 13) note that “court conferencing seeks to give probation officers and prosecutors charged with making recommendations to the court more knowledge about the child, to give judges the opportunity to ask child welfare workers questions, and to ensure that in the event of a release, a person authorized to accept a foster minor is present.” This system seeks to improve communication between the agencies to ensure that probation officers and judges have ample opportunities to learn more about the background of the individual child and to use this information when making decisions about the child. Other elements of the program include community conferencing and general information sharing, with Project Confirm serving as an information hub for child welfare and juvenile justice workers and policy makers to seek information on how other agencies work (Conger & Ross, 2001, p. 13).

Project Confirm is one of the few significant programs that has been evaluated for effectiveness. During its first year of operation (July 1998 to June 1999), Project Confirm fielded calls regarding 95% of juveniles arrested in New York City after business hours and

provided screening and notification services to more than 90% (266 out of 295) of juveniles determined to be eligible (Ross et. al., 2002, p. 483). Court conferencing was phased in during the first year which, combined with the notification system, resulted in a case worker appearance rate of 93% (Ross et. al., 2002, p. 485). Overall, 45% of foster youth were released from court in 1998, the same rate as the general youth population, with foster youth who appeared with a child welfare representative significantly more likely to be released than those who appeared without a child welfare representative (48% compared to 30%) (Ross et. al., 2002, p. 486). Only five of the 102 released youth went to emergency placements to await release and four went to new foster care placements, with the remainder returning to their original foster care placement (72 youth) or returned to a family member (18) (Ross et. al., 2002, p. 486).

This evaluation indicates that Project Confirm is able to improve outcomes for at least some youth. This program is able to address some problematic issues for foster youth, including the lack of case worker attendance at hearings, which in turn significantly increased the rate of release for foster youth who come before the juvenile justice system. The number of foster youth detained or assigned to new placements after implementation of the program was reduced, an important result given the increased likelihood of future delinquency among youth who experience significant placement instability. Nevertheless, the project is only a small step toward reducing disparity for this population of youth. Evaluation of the program found that, before the implementation of Project Confirm, foster youth charged with serious felonies or prior detentions were 5.7% more likely than non-foster youth to be detained, a disparity that jumped to 12.1% under the program (Conger & Ross, 2001, p. 22). While the reason for this is not entirely clear, evidence that the project actually resulted in worse outcomes for foster youth charged with serious felonies indicates that a different approach needs to be taken for this group. Another

problem with the program is that children arrested during court hours are not referred and may still appear in court without a case worker present, indicating that the program needs to be expanded to require police to contact the program directly whenever a juvenile is arrested (Ross et. al., 2002, p. 487). This program only includes a few of the elements that can be used to improve outcomes for foster youth, improved screening and notification and court conferencing, but has shown some promise.

Most programs and jurisdictions that attempt to respond to the needs of foster youth in the juvenile justice system include only a small number of elements, such as improved screening and notification, consolidated dockets, or “one family, one judge” approaches. While each of these elements is able to have some positive impact on the lives of foster youth, more work is needed to develop programs that are more fully able to implement a variety of elements to improve outcomes for this population. Most programs that are currently operating have not been sufficiently evaluated or been subject to rigorous research but should be evaluated for their ability to improve outcomes for dual system youth or their ability to improve communication and coordination between the child welfare and juvenile justice systems (Petro, 2006, p. 16). Rigorous evaluations of more elaborate programs in this area can assist in development of further programs to attain these goals. Additionally, attempts to improve outcomes for this population need to include more targeted policies, including specialized qualifications or training for case managers, reduced case load sizes for all parties, family-centered interventions, gender-specific programming for girls, and programs that specifically target very young offenders (Siegel & Lord, 2004, p. 10-13).

## **VI. Conclusion**

The issue of disparate outcomes for foster youth in the juvenile justice system has

developed into a significant problem over the last few decades as a result of the separation of the juvenile court into two different systems, often times with two different goals. Attempts to improve outcomes for abused and neglected children in the child welfare system and to protect society from juvenile offenders have failed to take into consideration the significant overlapping population between the systems. The early negative life experiences that result in children being placed into foster care, including abuse and neglect, significantly increase the likelihood that these children will engage in delinquent behavior. Experiences in foster care, such as educational disruptions and placement instability, often increase strain and negative labeling and decrease attachment to society for these youth. Despite attempts to improve outcomes for dependent youth, foster care experiences often further increase the likelihood that they will become involved with the juvenile justice system. Ideally, programs and policies will address these issues to reduce the need for foster care and to reduce the likelihood that children who are placed in foster care will engage in delinquent behavior that necessitates the involvement of the juvenile justice system.

While prevention programs can help alleviate these problems, in the meantime the needs of youth already in the foster care system need to be addressed. Once involved with the juvenile justice system, systematic biases increase the probability that foster youth will be detained before trial while decreasing the likelihood that such juveniles will receive less-restrictive dispositions, such as probation. In order to improve outcomes for this population of youth, systematic reforms need to improve coordination and communication between the child welfare and juvenile justice system in order to apply a holistic approach to meet the needs of foster youth. While the original juvenile court was problematic in its own way, a return to the goal of meeting the needs of juveniles and their families, with a decreased focus on the reasons juveniles are brought before

the court, can improve outcomes for the significant population of youth that are involved in both systems. Janet Wiig, Director of the Juvenile Justice Division at the Child Welfare League of America, notes that communities “need to have a small number of key players from the various agencies who see the problems that need to be addressed and agree to sit down and begin identifying the desired unproved outcomes for youth” (Concodora, 2008, p. 2). While it is unlikely that the two systems will ever return to a single, unified system, commitment from a small group of key players to improving communication and coordination between the child welfare and juvenile justice systems can improve outcomes for foster youth. History has shown that society’s response to dependent and delinquent youth has undergone numerous changes over the last century. Changes in the earliest 20<sup>th</sup>-century should recognize that juveniles cannot be neatly divided into the categories of dependent and delinquent youth and that system-wide changes are not only possible, but necessary to improve the outcomes for some of America’s most vulnerable youth.

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