Spotlight on Juvenile Justice: Intersecting the Child Welfare System

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Julian was 8 years old when he entered the child welfare system. He and his younger sister, Jessica, were placed in protective custody after school staff discovered that they were physically abused and witnessed domestic violence. Jessica further disclosed sexual abuse by the mother's boyfriend, who was subsequently incarcerated. The siblings were placed together in several foster homes until a biological aunt took custody for two years. Both children struggled with behavioral problems in school and home and responded to mental health treatment. The mother participated in substance use treatment, and the children reunified with her by the time Julian was 11 years old.

Crossover youth include youth who have experienced maltreatment and engage in delinquent behaviors.[1] Dual-system youth – or crossover youth with prior or current involvement in both the child welfare and juvenile justice systems (45-70% of juvenile justice-involved youth)[1] – represent a particularly vulnerable population. When compared with juvenile justice-involved youth without maltreatment or child welfare history, crossover and dual-system youth are disproportionately Black or Indigenous American, female, and/or sexually minoritized, and have higher mental health needs and service use.[1] A study examining young adult outcomes in New York City found that nearly 15% of foster care youth and 57% of dually involved youth experienced incarceration within 6 years of leaving the child welfare system.[2] In addition to poor outcomes associated with juvenile or criminal justice involvement, dually involved youth are at increased risk for poor adulthood outcomes related to education, employment, physical and mental health, homelessness, and further criminal justice involvement.[2]

For crossover and dual-system youth, racial disproportionality is even more pronounced. For example, a Los Angeles County study found that 43% of dual-system youth were Black, although Black youth accounted for 7.4% of the child population, 13% of maltreatment reports, and 29% of foster care youth in the same county.[3] This article, the third in the series following the case of Julian, will examine some of the factors contributing to the overlap between maltreatment, child welfare, and juvenile justice, while highlighting how the compounding effects of racism heighten racial disproportionality. We will then review Julian's pathway through child welfare to incarceration through the lens of maltreatment, identifying key intervention points at an individual and societal level.

Structural Racism Within Child Welfare

It is critical to understand the historical context that contributes to current racial and ethnic disproportionality within child welfare. Similar to the juvenile justice system, structural racism undergirds the US child welfare system. Until the early to mid-1900s, racially minoritized youth were systematically excluded from child welfare systems.[4] It is well understood that higher rates of poverty are associated with higher rates of maltreatment which, in turn, are associated with higher mental health needs and increased likelihood of child welfare system involvement. However, this must be understood in the context of federal redlining policies that began in the 1930s and led to racial residential segregation and the unequal distribution of economic, social, and educational resources between White and racially minoritized communities. Resource inequity between racially minoritized and White communities had a lasting impact on opportunities for upward economic mobility. Thus, residential segregation and resulting wealth and income disparities contribute to and reinforce the racial inequities that persist within the child welfare system.[4]

Institutional racism within the child welfare system contributed to the racial and ethnic disproportionality that is still observed today. Aid to Families with Dependent Children (AFDC), established with the passage of the 1935 Social Security Act, is a grant program that resulted in cash welfare payments for needy children without adequate parental support. Historically, states were allowed wide discretion to deny financial benefits completely or to remove children from homes deemed immoral and unsuitable.[1] At a time when most case workers were White, these policies gave them subjective discretion to decide which home environments were deserving of financial assistance. Widowed, White mothers and their children often qualified for government aid, whereas many Black, single mothers were disqualified.[2] In 1959 and 1960, Florida and Louisiana removed over 14,000 and 23,000 children, respectively, from their welfare programs due to unsuitability. The majority of these children were Black. In 1962, the Social Security Act was amended with a new intervention strategy focused on removing children from neglectful home environments. In 1974 the Child Abuse Prevention Treatment Act established mandatory reporting laws leading to the rapid increase in the number of child abuse allegations and out-of-home placements.[1] Together these policies disproportionately affected Black families, increasing the number of Black and other racially minoritized youth involved in the child welfare system.

In 2019, American Indian/Alaskan Native youth made up 1% of all US children, but accounted for 2.6% of children placed in foster care.[5] Black youth, representing 14% of US children, accounted for 23% of foster care youth.[6] Racially minoritized youth, specifically Native American/Alaskan Native, Black, and multi-racial children, are more likely than nonminoritized youth to experience substantiated maltreatment allegations, multiple out of home placements, and less likely to be given birth-family reunification.[6-8] Continued racial disproportionality within the child welfare system is best understood through a confluence of structural racism, institutional racism within child welfare policies and structures, and racial biases that may affect individual decision-making.[4]

Pathways From Child Welfare to Incarceration

A wealth of data indicates the link between maltreatment and juvenile justice involvement is related to multiple factors including: the experience of maltreatment (including severity, chronicity, and type), child welfare status, dependency status or history, and race.[1] While youth with maltreatment history are at increased risk for juvenile justice involvement, the *pathway* from child welfare to juvenile justice is complex. At the individual level, a child with unrecognized and/or untreated posttraumatic stress disorder (PTSD) who displays "irritable behavior and angry outbursts typically expressed as verbal or physical aggression toward people or objects," a cardinal *DSM-5* criterion of PTSD,[9] at school may be suspended, expelled, or even arrested for the behavior, especially if they attend a school that has less mental health resources and greater law enforcement presence. A youth with PTSD who engages in "reckless or self-destructive behavior," another PTSD criterion,[9] in the community, perhaps using substances to avoid distressing thoughts or feelings associated with the traumatic events, may be arrested for behaviors directly related to their mental health, especially if they live in a neighborhood with greater law enforcement presence.

There are some clear policies and laws that increase the crossover risk and, in some cases, directly steer child welfare youth into juvenile justice. For example, despite the passage of Safe Harbor laws – laws prohibiting prosecution of children who are victims of sex trafficking – in the majority of states, youth continue to enter and remain involved in juvenile justice for prostitution and masking charges (status or minor offenses such as petty theft or providing false identification that are more indicative of sex trafficking), even though the commercial sexual exploitation of children is very clearly a child welfare issue.[10] In another example, youth continue to be arrested for status offenses, behaviors considered criminal because the individual is younger than 18 years of age such as: truancy, running away, underage drinking, or even being incorrigible or beyond parental control. Child welfare youth face disproportionate risk of committing status offenses. For example, youth in

the child welfare system that are placed in group homes may interact more frequently with law enforcement if group home staff call police to address behaviors such as running away, fighting, or substance use. Black youth and girls have historically been disproportionately represented for status offense cases, especially running away.[11] The overrepresentation of child welfare youth within the juvenile justice system is likely a better proxy for unmet mental health needs often related to maltreatment and experiences with trauma.

How can this historical context guide our clinical work with individual children and families? Referring back to the case example, we understand that Julian's history of maltreatment and subsequent child welfare system involvement increase his risk of juvenile justice entry, but risk does not tell us exactly how he got there. Though an individual's pathway is always unique, there are some commonalities in the child welfare to juvenile justice pipeline. Let's work backwards to help us understand Julian's pathway into juvenile justice as well as individual and structural intervention points.

We know from the first article in the series that Julian entered the juvenile justice system at 16 years old following his alleged participation in a robbery with older peers. We learn that Julian became involved with a peer group that resorted to poverty-related crimes as a means for economic survival. These older peers influenced his decision to participate in the robbery, incentivized to make "easy money." Youth exposed to trauma are at greater risk of associating with gang-involved peers for reasons such as: social and economic support and protection.[12] For Julian, once he was reunified with his mother, his child welfare and mental health services were discontinued. He continued to experience trauma-related symptoms which negatively affected his academic performance as well as led to behaviors that resulted in off-campus suspensions. At home, parental supervision remained poor, and Julian began spending more time in his neighborhood where he found his peer group. His mother, having addressed her own substance use as a requisite for reunification, was now working two jobs as a single parent which left her out of the house much of the time. She could not afford to stay home with Julian each time he was suspended from school and had limited resources for alternative supervision. Julian's mother also had a history of childhood maltreatment contributing to her own low academic achievement and justice system involvement which limited her options for housing and resources. We must continue to ask "why" with a structural and historical lens as looking back often uncovers larger societal issues including outcomes connected to structural racism.

Intervention Paths

Crossover and dual-system youth are some of the most vulnerable youth in our communities, representing the need for urgent, individualized, and comprehensive intervention. For Julian, while many of his maltreatment-related risk factors are historical and therefore not modifiable, he most certainly has resilience given the adversity he has had to navigate. And, there is still abundant opportunity for robust evidence-based interventions to reduce recidivism, decrease current distress and impairment, and prevent future harm.

At a societal level, when we examine the underlying intervention points, child maltreatment – one of the single most costly and harmful public health problems in the US[13] – must be fundamentally addressed. We have multiple evidence-based interventions to both treat maltreatment associated outcomes and prevent maltreatment in the first place. We can also prevent the maltreatment to incarceration pathway. One large California study found that the child welfare-involved youth who were most at-risk for juvenile justice involvement were the individuals who received no services following child maltreatment investigations, girls, and neglect victims, suggestive of foci for targeted intervention. Further, Black and Hispanic children who had received in-home services or foster care placement following index maltreatment investigation had lower incarceration risk compared with individuals whose cases closed after investigation.[14] We can also address systemic factors associated with higher risk of delinquency (eg, placement instability, higher number of placements, group home placement)[1] by ensuring

children who do need removal from home have access to stable, high-quality foster care in conjunction with appropriate mental health services. Moreover, not all children who are maltreated or involved with child welfare engage in delinquency or enter the juvenile justice system. Protective factors found to lower risk of maltreatment to delinquency include being connected to school, high-quality parental relationships, and neighborhood connections.[1] However, even maltreatment is an outcome associated with poverty, parental stress, health and housing inequity, rooted in structural racism. It is only when we address the roots of inequity, in conjunction with evidence-based interventions and policy change, that we can most effectively serve our youth.

Take Home Summary

Crossover and dual-system youth are some of the most vulnerable youth in our communities, representing the need for urgent, individualized, and comprehensive intervention. Moreover, for crossover and dual-system youth, racial disproportionality is even more pronounced. Interventions should be made at the individual level and at the structural level to most effectively serve our youth.

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The authors have reported no funding for this work.

Disclosure: Dr. McBride has received royalties from American Psychiatric Publishing, Inc. Drs. McClendon, Salem, and Mallorca have reported no biomedical financial interests or potential conflicts of interest.

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This article was edited by J. Corey Williams, MD, MA.