

# JUSTICE FOR KIDS



KEEPING KIDS **OUT** OF THE  
JUVENILE JUSTICE SYSTEM

EDITED BY NANCY E. DOWD

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*Keeping Kids Out of the  
Juvenile Justice System*

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NEW YORK UNIVERSITY PRESS

*New York and London*

NEW YORK UNIVERSITY PRESS  
New York and London  
www.nyupress.org

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First published in paperback in 2013

References to Internet websites (URLs) were accurate at the time of writing.  
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Library of Congress Cataloging-in-Publication Data

Justice for kids : keeping kids out of the juvenile justice system /  
edited by Nancy E. Dowd.

p. cm. — (Families, law, and society series)

Includes bibliographical references and index.

ISBN 978-0-8147-2137-7 (cl : alk. paper)

ISBN 978-1-4798-3295-8 (pb : alk. paper)

ISBN 978-0-8147-2138-4 (ebook)

1. Juvenile justice, Administration of—United States. 2. Pre-trial intervention—  
United States. 3. Restorative justice—United States. 4. Juvenile delinquency—  
United States—Prevention. I. Dowd, Nancy E., 1949–

KF9779.J87 2011

364.360973—dc22 2011015752

New York University Press books are printed on acid-free paper,  
and their binding materials are chosen for strength and durability.  
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Manufactured in the United States of America

10 9 8 7 6 5 4 3 2 1

Justice for Kids

FAMILIES, LAW, AND SOCIETY SERIES

*General Editor:* Nancy E. Dowd

*Justice for Kids:*

*Keeping Kids Out of the Juvenile Justice System*

Edited by Nancy E. Dowd

*To all the kids who need our help,  
and who shared their stories so we would understand.*

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# Preface

NANCY E. DOWD

This project has been a labor of love and passion by people who care deeply about the juvenile justice system, and even more deeply about children. It is part of the Juvenile Justice Project of the Center on Children and Families at the University of Florida Levin College of Law. The project began with critical work by Shani King (the codirector of the center), Lauren Fasig, Meshon Rawls, Monique Haughton-Worrell, and Iris Burke, as well as the Center for the Study of Race and Race Relations (CSRRR) at the College of Law, directed by Katheryn Russell-Brown, together with Melissa Bamba, the CSRRR assistant director. The book has also benefited from connections with the Harvard Child Advocacy Project and the Georgetown Juvenile Justice Clinic, with critical contributions by Jessica Budnitz of the Child Advocacy Project and Kristin Henning, professor and codirector of the Juvenile Justice Clinic.

Two energetic research assistants contributed to the volume: Jessica Harrison (JD 2010) and Sarah Hensen (JD 2010). Debbie Willis, the coordinator of everyone and everything at the Center on Children and Families, also contributed enormously to the success of this project. The College of Law has been supportive of this project and this book in many tangible and intangible ways. Dean Robert Jerry and Senior Associate Dean William Page have been remarkable supports.

When you work in this area, sometimes there are particular sources of insight and inspiration, and for this book two in particular stand out: Shay Bilchik and Geoffrey Canada. Shay Bilchik has given us a road map for change. Geoffrey Canada has shown us what that looks like, in microcosm, in the Harlem Children's Zone. Both perspectives are essential, as are each of the specific pieces in the chapters here.

It has been an amazing process putting this book together. The authors have been dedicated and hard working, making this an easy task for me as the editor.

Our greatest hope is to make a difference.

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# Introduction: Justice for Kids

NANCY E. DOWD

Justice for kids, in the broad sense of meeting their needs, providing them with opportunities to grow, and supporting their families and communities, is rarely achieved by pushing them into the juvenile justice system. It is the contention of this book's contributors that America's juvenile justice system doesn't work: it hurts kids instead of helps them. Accordingly, the best thing we can currently do is keep kids out of the system. Better still, we should reconceptualize the juvenile justice system around children's needs. A system truly fashioned around the needs of kids has the potential to offer creative and lasting solutions to problems facing our youth.

This book focuses on preventing and reducing juvenile crime and fostering healthy child development grounded in evidence-based, effective interventions and systemic restructuring. The goal is not a Band-Aid fix or a rescue from a faulty system, but rather a complete system change. The scholars and experts featured in this book focus on what is wrong upstream, rather than how to rescue kids from a malfunctioning system that fails to bring justice to children and therefore does little to aid in their development toward healthy adults.

America's juvenile justice system is especially harmful to children of color, just as the adult criminal justice system is disproportionately weighted toward racial minorities. Indeed, as Michelle Alexander demonstrates in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), the adult criminal justice system labels, segregates, and marginalizes black and brown people, especially men. Alexander ties racial patterns in the adult system to differential policing and prosecution of drug offenses by race. The juvenile system reflects a similar pattern in the high rate of arrests and system involvement for nonviolent offenses, particularly drug offenses (Children's Defense Fund 2008).

Moreover, the racial composition of the juvenile justice system substantiates Alexander's ideas about the purpose of the adult system, and there is much evidence that the juvenile justice system feeds into the adult system.

The children who end up in the juvenile justice system disproportionately are the children who are not served, or are ill served, by other social systems, such as the child welfare, education, and mental health systems. This marginalization of children into the desired and the undesired, “our” children and “other” children, children of functional families and children of dysfunctional families, children who succeed in other social systems versus the failures, is a hallmark of the juvenile justice system. It particularly characterizes the children who end up in the deep end of the system, where offenders with long sentences and few services are more likely to continue to the adult system than to be rehabilitated for a chance at a normal adulthood.

### *The Context*

Children and youth interact with the juvenile justice system at a significant rate. While some children move quickly out of the system and go on to live productive lives as adults, others become enmeshed in the system, moving to deeper problems linked to reoffending or more serious offending, and even to the adult criminal justice system. An encounter as a child with the juvenile justice system, therefore, can pose the potential risk of a lifelong relationship with the criminal justice system.

A high percentage of teenagers engage in acts during their teen years that could be the basis of an arrest. For example, according to national statistics gathered by the federal Office of Juvenile Justice and Delinquency Prevention, one in eight high school students has been in a fight in school, and one in three has had property stolen or damaged in school. Over half of high school seniors report that they have used illegal drugs (OJJDP 2009). In addition, teenagers are subject not only to the laws for which adults could be charged but also to status crimes (running away, ungovernability, alcohol consumption, engaging in sexual intercourse, truancy) involving conduct that is legal for adults but forbidden to minors. According to a nationally representative survey of public and private high school students, an even higher percentage of teenagers than those who have used illegal drugs have consumed alcohol: three out of four seniors have tried alcohol at least once (OJJDP 2009). One in seven kids between the ages of ten and eighteen will run away (Seith 2002). By age nineteen, seven in ten never-married teenagers have engaged in sexual intercourse (Guttmacher Institute 2010).

Whether the conduct is a conventional crime or a status crime, its frequency, according to representative national data from a broad cross-section of teenagers, reflects a simple fact: for many kids, they are simply being

teenagers (ABA 2010). This conclusion rests on developmental, biological, and psychological data (Slobogin and Fondacaro 2009). Teenagers are particularly likely, as compared to adults, to fail to consider the consequences of their actions, or possible punishment. In other words, they are more reckless. Moreover, they are more strongly influenced by their peers, as evidenced by the fact that a majority of their criminal behavior occurs in groups (id.) Peer pressure may influence them, more than adults, to engage in criminal behavior. One researcher suggests that this is the case because emulating certain behaviors or certain peers makes them seem to *be* adults. Adults, for example, drink alcohol and do not have to recognize the authority of parents (Moffitt 1993).

Every day, 1,385 kids are arrested; every year, 2.11 million kids are arrested (CDF 2008; OJJDP 2009). In nearly half of those arrests, the most serious charges are larceny-theft, simple assault, drug abuse, disorderly conduct, or an alcohol violation (Snyder and Sickmund 2006, 125). Juveniles account for 16 percent of all violent-crime arrests and 26 percent of all property-crime arrests (CDF 2008). Of those who are arrested, 22 percent of arrests are handled by law enforcement and the juveniles are subsequently released (dismissed or diverted); 66 percent are referred to juvenile court; and 10 percent are directly moved to adult criminal court (Snyder and Sickmund 2006). There are two clear patterns overall. Roughly three-quarters of the kids in the juvenile justice system will only be arrested once or twice, and then they never come into the system again. For the remaining kids, a third arrest signals potentially serious, long-term involvement with the criminal justice system (ABA 2010).

The high rate of juvenile arrests is matched by a high rate of incarceration, either in pretrial detention or after sentencing. The United States has the highest rate of incarceration of any country in the world (CDF 2010). Approximately ninety-three thousand juveniles are in residential placement annually, at an estimated cost of \$240.99 per day per youth, or an annual cost of \$5.7 billion. The bulk of kids who are incarcerated have committed non-violent offenses (Justice Policy Institute 2009).

The kids who are arrested and who move into the juvenile justice system disproportionately are children of color, and boys. This is visible every day in juvenile courts. Black youth are 16 percent of the population aged ten to seventeen but constitute 52 percent of juvenile violent crime index arrest rates, and 33 percent of juvenile property crime index arrest rates (OJJDP 2009). Children of color are disproportionate to their percentage of the population in every stage of the juvenile justice system: arrests, formal charging instead

of diversion, transfer to the adult system for charging and prosecution, conviction, and residential placement (CDF 2007; OJJDP 2009).

Boys dominate the system, enough so that it might legitimately be called the “boys’ juvenile justice system,” as boys were and continue to be the focus of the system (Dowd 2010). Yet girls are now 30 percent of arrests (id.). Like boys, they are disproportionately girls of color. Boys and girls also are similar to the extent that most commit trivial offenses, and juvenile self-reports of conduct indicate a similar rate of offending except for the most serious, violent crimes, which boys commit more often. Girls’ offending is strongly linked to sexual abuse and control of sexuality, with higher rates of status offenses like running away. Boys are more likely to be arrested, but girls are treated more harshly once they are arrested (Chesny-Lind and Shelden 1992; MacDonald and Chesny-Lind 2001). For example, girls are more likely to be formally processed into the system for offenses like running away. They are also more likely than boys to receive detention for status offenses (MacDonald and Chesny-Lind 2001).

Gender-nonconforming youth are an additional disproportionate group in the system, mostly invisible (Valentine, this volume). An estimated 13 percent of youths in detention are lesbian, gay, bisexual, or transgendered (Majd, Marksamer, and Reyes 2009).

These patterns within the formal juvenile justice system are connected to a broader context that strongly predicts who will enter the system. That broader context begins at birth, in what has been called by the Children’s Defense Fund the “cradle to prison pipeline”:

So many poor babies in rich America enter the world with multiple strikes already against them: without prenatal care and at low birthweight; born to a teen, poor and poorly educated single mother and absent father. At crucial points in their development . . . more risks cumulate and converge. Lack of access to health and mental health care; child abuse and neglect; lack of quality early childhood education . . . ; failing schools; zero tolerance school discipline policies and the arrest and criminalization of children at younger and younger ages . . . ; neighborhoods saturated with drugs and violence; . . . rampant racial and economic disparities in child and youth serving systems; tougher sentencing guidelines; too few positive alternatives to the streets after school and in summer months. (CDF 2007, 3-4)

The link to poverty is strong, and it is well to remember the stark figures of poverty among America’s children: the number of children in poverty is one in five; the number in extreme poverty is one in twelve (CDF 2010).

In an ideal world, the risk factors children face would be ameliorated by superior social supports and social services, but in reality, too often resources designed to help and support children (child welfare, foster care, education, mental health care) either fail to do so, or even worse, function as pathways to the juvenile justice system. About three million cases of abuse and neglect are reported annually; without intervention, these children are 38 percent more likely to commit violent crimes (Bender 2010, 466). A high rate of maltreated kids end up in the juvenile justice system, but few services and little coordination exist between those systems, nor is there any strategy to disrupt the connection. With respect to mental health, 10-20 percent of children meet diagnostic criteria for a mental health disorder (American Psychological Association 2008), yet services for mental health are not universally available and are even less available to children than to adults. Despite the link between physical and emotional abuse and mental health, particularly PTSD and depression, there is little treatment available for children, and 70-92 percent of delinquent youth report suffering prior experiences with trauma (Bender 2010).

The foster care system, which includes approximately half a million children, has dismal outcomes by virtually all measures. Children in foster care begin with trauma associated with removal from their families as a result of abuse or neglect. Not only does the system fail to address those issues but also these children, as compared to their peers outside the foster care system, suffer from poor educational achievement, high unemployment, mental and physical health problems, high rates of pregnancy, and high risk for poverty and homelessness (Collins 2004; Casey Family Programs 2003; Casey Family Programs 2005). Because of the high propensity for these outcomes and the correlation between these factors and criminal offending, involvement in the foster care system is a predictor for children moving from this form of state custody to juvenile justice system supervision or custodial confinement (Collins 2004).

But perhaps the most glaring sign that something is wrong with the juvenile justice system is the failure of America's public educational system. Because all children theoretically should be served by the public school system, and school is mandatory, it is a universal system for children. Yet it is a system that increasingly follows a policy of removal and exclusion rather than support and education. The rate of suspension and expulsion has increased dramatically (Bay Area Reform Collaborative 2001; Glennon, this volume). This data includes preschool, which has an even higher rate of expulsions than K-12 (NAACP 2005). Suspension and expulsion are

strongly linked to dropout rates, and both often lead to involvement in the juvenile justice system; indeed, some disciplinary actions lead directly to the child being charged with a criminal offense in the juvenile system. This is the “school to prison pipeline,” a label that succinctly captures the counter-productive results of current policies of educational failure and disciplinary consequences. Every day 18,493 children are suspended from public school (CDF 2010). About one in fifteen teenagers is a dropout, with 2,227 teens leaving school for good each day (id.). Not surprisingly, a third of those in juvenile corrections are identified as having special learning needs (NAACP 2005).

In schools, as in the other social service systems, negative outcomes are disproportionate among children of color. While they are in school, children of color are more likely to be enrolled in classes for students with mental disabilities, emotional disabilities, and learning disabilities; are more likely to be disciplined; and are more likely to drop out of school (CDF 2010). Black children are three times more likely than white or Asian children and twice as likely as Hispanic children to be suspended, and they are three times as likely to be expelled, in comparison to their percentage of the school population (CDF 2010; NAACP 2005).

### *A Vision for Change*

An ecological, developmental approach can help fix our ailing juvenile justice system. The ecological approach considers both the individual child and children as a group in context, within a developmental framework. It uses an evidence-based approach to intervene early and often to ensure positive outcomes based on known risk and protective factors.

This ecological approach, grounded in the work of Uri Bronfenbrenner (1979, 1989, 1990; Bronfenbrenner and Ceci 1993) and James Garbarino (1995, 1985) and further developed by family law scholar Barbara Woodhouse (Woodhouse 2004, 2005) and many juvenile justice scholars (e.g. Slobogin and Fondacaro 2009), focuses on the interlocking systems or contexts that affect children’s development. Most significant are *microsystems*, those systems that have direct impact on children, including family, peers, and community. Where those systems overlap (*mesosystems*), they can either conflict with or mutually support each other. Children are also affected by the indirect impact of *exosystems*, such as their parents’ workplaces, the juvenile justice system, and, more broadly, the legal system. Finally, these contexts are enmeshed in the *macrosystem* of cultural ideals, biases, and beliefs. When

the contexts affecting children mutually support each other to achieve the positive well-being of children, then they should be made functional for all children; when they lack that goal or do not apply it to all children, they can be highly dysfunctional.

In a functional ecology—a healthy ecology for children—the value that ideally drives the system should be care and concern for all children, or what Barbara Woodhouse has identified as generist values (Woodhouse 2004). Alternatively, society’s interests in reducing crime and reducing costs might be the focus of the system (Slobogin and Fondacaro 2009).

Integral to this ecological model is a developmental perspective that is sensitive to the individual and general developmental stages of children (Scott and Steinberg 2008; Dodge 2001; Borgensneider 1996; Dahlberg and Potter 2005). Children are not static. Even if the context has some stability, the individuals within it are in constant flux, particularly in the evolution from child to young adult. Developmental data is critical to understanding the conduct of children and youth, particularly adolescents, when they commit acts that can be charged as status or criminal offenses. Perhaps more importantly, the early stages of child development prior to adolescence are essential to giving children skills to safely navigate to adulthood. Indeed, some of the most profound interventions, with the most promise of preventing delinquency, are those that occur early and often on the path to adolescence.

The factors that generate risk or protection for juvenile offending are now well known (Farrington and Welsh 2007). Just as this model is used to fight disease and foster health, so too it can be applied to attack delinquency and support children’s positive development into adulthood. Risk factors include, for example, low educational attainment, poor social skills, parental conflict, and economic deprivation; protective factors include, among others, involved parents, positive peers, supportive mentoring, high-quality education, and positive neighborhoods (id.). Evaluating existing systems based on known risk and protective factors exposes the failures of existing systems as well as their tendencies to propel children toward the juvenile justice system, with negative outcomes such as arrest records that will confound children’s ability to obtain employment both as minors and when they become adults (Maschi et al. 2008).

This empirically based approach to policy is epitomized by the 2001 surgeon general’s report, *Youth Violence: A Report of the Surgeon General*, which outlines the research on risk and protective factors and then goes on to identify effective programs for intervention and prevention. As the report notes,



in an ecological framework, interventions can be primary, secondary, or tertiary, and in a well-functioning system, these interrelate in a proactive, preventive way.

Primary interventions are preventive and universal, aimed at preventing the negative effects accompanying risk factors and strengthening protective factors. Secondary interventions focus more narrowly on at-risk children, seeking to reduce negative outcomes. Tertiary interventions focus on children who have come in contact with the system, and the goal is to prevent a reoccurrence or worsening of the situation (USHHS 2001). This approach of identifying evidence-based successful approaches to prevention is epitomized by the Blueprints Project, a violence-prevention project of the Center for the Study and Prevention of Violence at the University of Colorado, which has gathered data on model and promising programs (CSPV website).

The empirical data shows that intervention and prevention is most effective when it occurs early. The policy changes and interventions called for in this volume are particularly concentrated in the areas of primary and secondary interventions.

For many children, involvement in the juvenile justice system is linked to other problems. Those problems stem from the structure of work and family responsibilities and supports; the educational system and the “school to prison” pipeline; and family difficulties and the “foster care to prison” pipeline. Various systems and statutory structures affect the ecology of children’s development, and this book considers both broad and very specific analyses of existing systems and strategies for change. The goal is to critique and disrupt existing destructive pathways in order to create the supports and strategies required for children to succeed, as well as to identify some model programs and best practices.

In this book we seek to identify ways to intervene early, either among juveniles who have not yet come into the juvenile justice system or among those who are in the “shallow” end of the system, such as those involved with a first arrest or charged with a minor offense. We identify past strategies that have been effective and critique those that have failed, in order to explore interventions that keep children from further involvement with the system while effectively addressing the problems they face. While our discussion is geared toward all children, we focus in particular on issues of race, gender, and sexual orientation that skew the likelihood of involvement in the system.

All of the chapters in this book share the belief that strengthening justice for kids must be the core principle in juvenile justice. If the system remains as it is currently structured, keeping kids out of the juvenile justice system