White Paper

Decriminalizing Youth with Disabilities: Lessons from the “Youth Transition Demonstration”

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Introduction

There is a significant body of research that suggests that young people with disabilities are more likely than young people without disabilities to be linked to delinquent behaviors. In a 2012 study, Delinquency among Adolescents with Disabilities, the authors analyzed nationally representative data and found that having a learning or emotional disability is positively associated with stealing, destroying property, carrying a gun, gang membership and being arrested. Also, compared with their non-disabled peers, youth with disabilities are more likely to grow up in households that are poor, and growing up in poverty has long been associated with the likelihood of engaging in delinquent behaviors (Shandra and Hogan, 2012).

In 2014, in its Retro Report Series, essays that re-examine the leading stories of decades past, the New York Times focused on the image of super-predator youth that swept the nation in the mid-1990s. Social scientists predicted that a wave of menacing, impulsive, brutal, remorseless youth would terrorize society in the years ahead. Politicians and the news media sensationalized the fears sparked by the criminologists and a collective panic ensued. It had a strong racial component insofar as the young black urban male became the poster child for the super-predator. Many states passed laws making it easier to prosecute juveniles as adults. Schools implemented zero-tolerance policies. Indeed, much of the “bad” behavior that is attributed to youth with disabilities today can be traced back over twenty years to the ubiquitous policies, practices and laws that were inspired by the super-predator syndrome.

The general public overestimates the amount and type of juvenile crime. In a recent study respondents estimated that 41% of all crime is committed by youth under 18 years of age, and
that 27% of those crimes is violent. Actual data shows that 19% of crimes is committed by youth, and 5% of juvenile arrests is for violent crime (Haegerich, Salerno, Bottoms, 2013). Social commentators have coined the term “ephebiphobia” (from the Greek meaning “youth” and “fear”) to refer to an exaggerated and irrational fear of youth in some older adults and in some societies, including our own (Giroux, 2003). These abiding fears and misperceptions make decriminalizing youth that much more difficult than it was to criminalize them in the first place.

According to the 2013 report, *Keeping Kids in School and Out of Court*, in 2012, in NYC public schools, there were 49,558 suspensions, 882 school related arrests, and 1,666 summonses. Arrests and summonses are the responsibility of New York City Police Department school safety agents. Students who are 16 and older who are arrested are treated as adults and referred to the NYC Criminal Court. Summonses issued to students 16 years and older require that they appear in Criminal Court for arraignment and if they do not appear warrants may be issued. Many of the suspensions, summonses and arrests were for minor misbehaviors such as “insubordination” or “horseplay” or for “resisting arrest” even when there was no underlying criminal offense. These disciplinary overreactions can set in motion a chain of events that can drastically alter the lives of special education students who are four times more likely to be suspended than students who are not in special education. Nationwide, data collected by the federal Office for Civil Rights showed that special education students were twice as likely to receive multiple suspensions, be referred to law enforcement, and be arrested in a school related incident (Letter from the U.S. Education Secretary Arne Duncan, January 8, 2014). Once they are pushed out of the classroom prematurely, youth with disabilities are at greater risk of dropping out altogether and becoming “disconnected,” that is, neither in school nor working. Over their youth years, 18% of disconnected youth is arrested (Belfield, Levin and Rosen, 2012). Further, according to the 2015
report, *Breaking the School-to-Prison Pipeline for Students with Disabilities*, a large majority of youth in juvenile detention facilities is eligible for special education, but only a small percentage ever receive such services. Zero-tolerance policies incentivize schools to suspend their legal obligation to provide a Free and Appropriate Public Education (FAPE) to youth with disabilities through age 21 under the Individuals with Disabilities Education Act (IDEA). Thus, a questionable discipline policy serves as a loophole that primes the pump of a school-to-prison pipeline that criminalizes young people with disabilities.

**CUNY’s Youth Transition Demonstration Project (YTD)**

A promising demonstration project conducted by the John F. Kennedy, Jr. Institute at The City University of New York (CUNY) showed significant results in reducing the percentage of youth with disabilities who had contact with the justice system. The intervention was based on a philosophy of positive youth development (PYD) and incorporated best practices in supporting transition age youth who were receiving Supplemental Security Income (SSI). As an alternative to policies founded on a pervasive fear of youth PYD offers an approach that emphasizes the strengths and resiliencies of young people.

CUNY received funding from the Social Security Administration to conduct a random assignment Youth Transition Demonstration Project (YTD) that targeted 14 to 19 year olds who were receiving SSI and living in the Bronx, New York. SSI is a federal program administered by the SSA. It pays a cash stipend to children with severe disabilities. Child SSI recipients have their eligibility for SSI re-determined under adult eligibility criteria at age 18. The overall purpose was to test promising practices that could help SSI youth make a successful transition to adulthood. A 2009 analysis of 17 and 18 year old SSI recipients found that 43% had been
suspended from school and 16% had been arrested. Among those with behavioral disorders 52% had been suspended and 28% had been arrested (Hemmeter, Kauff, and Wittenburg, 2009). These findings emphasize the importance of one of the primary areas of interest of the study, namely, the degree of contact between SSI youth and the justice system.

CUNY’s YTD included core services that spanned 12 months and were delivered at either Lehman College or Hostos Community College, two CUNY colleges, both in the Bronx. During the academic year the young people attended a Saturday program that included recreational activities, group workshops on self-determination and career development, and individualized supports, including person-centered planning and SSI benefits counseling. Parents were also invited to attend the Saturday program. They participated with their children in the person-centered planning and benefits counseling sessions and networked with other parents in a variety of bilingual informational and parent advocacy forums. The youth and parents received free metro cards; lunch was provided. Finally, during the summer the youth participated in a Summer Youth Employment Program (SYEP) on the CUNY campuses.

The enrollment start date for CUNY’s YTD was August 2006 and the project end date for the last cohort was September 2010. In all, eight hundred and eighty-four youth were assigned to either a treatment or a control group. Having been randomly assigned, baseline characteristics were similar for both groups. About two-thirds were male and 43% were Black. More than two-thirds reported being Hispanic, across all racial groups. The average age was 16 years, and 93% were still attending school. The primary disabling conditions for two-thirds of the sample was learning disabilities and cognitive or developmental disabilities. Two-thirds had never worked for pay. Nearly all the youth lived with their families, and 80% lived with a single parent. The Bronx is one of the poorest Congressional Districts in the country with approximately 30% of its
almost 1.5 million residents living below the poverty level. All the youth in the study were low-income insofar as they were all receiving SSI, which is means-tested. The income of 42% of their families was less than $10,000 per year; 85% had family incomes of less than $25,000 per year.

Mathematica Policy Research (MPR) issued a three-year follow-up evaluation of the CUNY demonstration project in November 2014 (Fraker, Mamun, et al., 2014). The evaluators found that the project had a statistically significant impact on contact with the justice system. In the third year after their enrollment in the study, 4% of treatment group youth reported that they had been arrested or charged with a delinquency or a criminal complaint compared with 8% of control group youth. MPR noted two mechanisms that may have contributed to this outcome: total youth income and parental involvement. The summer youth employment and the recreation components of the intervention may also have contributed to this desirable outcome.

**Total Youth Income (Disability Benefits and Earnings)**

CUNY’s demonstration project had a statistically significant impact on total youth income. In the three-year follow-up, on average, youth in the treatment group had a total income (disability benefits and earnings) of $7,497, which was $1,729 more than youth in the control group. SSA granted treatment group youth a waiver to delay the effectuation of a negative age-18 SSI eligibility determination along with other waivers that allowed recipients to retain more of their earnings without losing their disability benefits. MPR was not able to determine if the waivers had any significant impact on retaining benefits or increasing earnings. Nevertheless, insofar as poverty is linked to delinquency, MPR suggested that “by increasing youth total income, the project reduced the motivation for participants to engage in criminal activities.”
It is still too early to determine what percentage of treatment group youth will have enough earnings in future years to achieve a successful transition to adulthood. In the third year after enrollment control group youth were more than twice as likely to be off SSI than treatment group youth. Many youth who no longer get benefits look for alternative sources of income. They are twice as likely to be employed and also to have higher average earnings, than those still on SSI (Hemmeter, Kauff, and Wittenburg, 2009). Thus one would expect control group youth to have a higher percentage of earners and higher average earnings than treatment group youth. However, there were no significant differences in these outcomes. The better than expected treatment group earnings outcomes may bode well. At the time of the evaluation they averaged 19 years of age, and most were still in school. Many would not yet have been in a position to have substantial earnings. If in future years they have enough earnings to achieve at least a degree of self-sufficiency, it would reduce the likelihood of their coming into contact with the justice system whether they were still receiving SSI benefits or not.

The CUNY YTD had an impact on an additional indicator related to the economic well-being of SSI youth, namely the high cost of health care. For treatment group youth, 94% were covered by either public or private health insurance at the time of MPR’s 36-month survey, compared with 87% of youth in the control group, a statistically significant difference. Having health insurance coverage mediates health care costs, especially for youth with disabilities who have specific health conditions and/or other health-related vulnerabilities. Reducing health expenditures means that a greater percentage of total youth income can go toward other basic needs associated with self-sufficiency such as housing, food and transportation.
Parental Involvement

MPR speculated that another mechanism that could have contributed to the better outcome with the justice system was the active engagement of the parents of treatment group youth especially in the Saturday program. Integrating the parent in decision-making about their child, and respecting and valuing them as active partners, is considered a best practice by the National Center on Education, Disability and Juvenile Justice. In the CUNY YTD, parents were assigned “parent peer mentors” who helped them understand and address the challenges they faced in supporting their children. Parents engaged with their children in person-centered planning and SSI benefits counseling. They practiced parent advocacy skills and networked with other more experienced parents. Information was provided that helped them understand and access a broader array of services and benefits.

Person-centered planning was the centerpiece of the CUNY YTD parent and family involvement priority. It is a facilitated process in which youth with disabilities and their “circle of support” engage in planning for the future. This intervention, which was founded on PYD principles and thus emphasized the young person’s unique strengths and abilities, rather than deficits or disabilities, is described in detail in the 2011 article, Person-Centered Planning in a Transition Program for Bronx Youth with Disabilities (Croke and Thompson, 2011). In total 65% of treatment group youth participated. They and their parents and other family members had ownership over the decision-making process in the development of individualized plans spanning educational, career and quality of life goals.

The purpose of the CUNY demonstration project was to test promising practices that could help SSI youth, whether they retained their disability benefits or not, make a successful transition to adulthood. In the third year after enrollment in the study, 11% of youth in the
treatment group were no longer receiving SSI benefits compared with 26% in the control group, a statistically significant difference. Intensive benefits counseling coupled with greater parental involvement likely contributed to this outcome. The age-18 redetermination waiver may also have been a factor. According to a 2009 article, Changing Circumstances: Experiences of Child SSI Recipients Before and After the Age-18 Redetermination for Adult Benefits, recipients who had suspensions and arrests prior to age 18 were 41% less likely to be on SSI at age 19. The authors speculated that these youth may have lacked the “social connections” to navigate the SSA bureaucracy to maintain their eligibility (Hemmeter, Kauff, and Wittenburg, 2009). SSI is an important anti-poverty program that provides a significant cash benefit to low-income youth with disabilities. If eligible youth with inadequate social supports and a record of suspensions and arrests lose their disability benefits, it can reinforce a dangerous cycle of poverty and criminality. Preventive interventions that actively engage parents and guardians in the benefits process would likely improve outcomes for this population.

**Summer Employment**

There is evidence that the treatment group’s participation in the Summer Youth Employment Program (SYEP) also played a part in the project’s desirable negative impact on arrests and criminal and delinquency complaints. The SYEP, which is administered by the NYC Department of Youth and Community Development (DYCD), is the largest summer youth employment program in the country. It provides paid summer employment for NYC youth for seven weeks in July and August and pays them the NYS minimum wage for working 25 hours per week. Since there were more applicants than available SYEP slots, individuals were randomly selected by lottery. Treatment group youth in CUNY’s demonstration project who were not chosen through the lottery still participated in the exact same summer jobs program but
were paid through Reaching Up, Inc., a private non-profit organization founded by John F. Kennedy, Jr. Since 93% of the treatment group was still in school, and since two-thirds had never worked for pay, a summer employment program was an appropriate intervention. CUNY wanted treatment group youth to have a paid work experience and then continue their full-time school enrollment in the fall. A short-term summer program avoided direct conflicts between work and school. It also provided incremental earnings and structured activity during a high-crime season.

In a recent study, *The Effects of Youth Employment: Evidence from New York City Summer Youth Employment Program Lotteries*, the authors compared outcomes of individuals who participated in SYEP because they were randomly selected to receive a job, to outcomes of individuals randomly not selected. They found that participation decreased the probability of incarceration and decreased the probability of mortality. They concluded that the SYEP “appears to put youth on a path that leads away from dangerous outcomes” (Gelber, Isen and Kessler, 2014, p.5). In another recent article, *Summer Jobs Reduce Violence among Disadvantaged Youth*, the author reported on a large-scale random assignment study of a summer jobs program in Chicago targeting low-income youth enrolled in high-violence public schools that provided 8 weeks of part-time summer employment at the Illinois minimum wage. During the 16-month follow-up, violent crime arrests among the treatment group decreased 43% compared to the control group (Heller, 2014). These random assignment trials provide corroborating evidence that short-term summer employment programs targeting poor urban youth are associated with significant longer-term reductions in arrests and incarcerations.

According to a 2013 Center for Labor Market Studies report, summer employment rates for teens have declined dramatically for over a decade, from 52% in 2000 to 31% in 2012. What
is also disturbing is that the higher the household’s income, the more likely it is that a teenager will get a summer job. Only 21% of teens from families with an annual income of under $20,000 had a summer job in 2012, compared to 38% from families with an annual income of between $100,000 and $200,000 (Sum, Khatiwada, et al., 2013). For many young people a summer job is a rite of passage. In addition to the modest earnings and the less likelihood of having contact with the justice system, it is the coming-of-age experience as part of adolescent development that might prove to be the longest lasting benefit.

Recreation

It is likely that the recreation component of CUNY’s YTD also contributed to the desirable negative impact on arrests and criminal and delinquency complaints. CUNY’s inclusive recreation program is described in detail in the 2013 article, *Inclusive Recreation for Transition-Age Youth: Promoting Self-Sufficiency, Community Inclusion, and Experiential Learning* (Kunstler, et al., 2013). Treatment group youth chose among sports/physical fitness, creative arts or photography/graphic design options. Two hundred thirty-five treatment group youth participated in the Saturday morning program that was scheduled throughout the school year. The finding that treatment youth had significantly less contact with the justice system is consistent with research that shows that sustained participation in quality out-of-school-time recreation programs is linked to decreases in delinquency, youth violence and crime. For example, a 2010 report, *The Rationale for Recreation Services for Youth: An Evidence-Based Approach*, includes a literature review of the research that links recreation programs with a reduction in juvenile delinquency. Several cited studies estimate significant cost-savings in investing in recreation compared to juvenile crime costs. At the very least, providing safe havens limits opportunities for youth to become entangled in dangerous peer pressure situations.
involving drugs or alcohol use or other risky behaviors that could lead to trouble with the justice system.

According to the U.S. Office for Victims of Crime, youth with disabilities are two to three times more likely to be victims of violent crimes compared to those without disabilities. Previously, to protect them, many parents of treatment group youth in CUNY’s YTD kept their children in their Bronx apartments during the weekend. However, perhaps because they themselves were actively engaged at the same time on the college campus, parents felt that CUNY’s recreation program provided a safe community-based environment where their children could engage in supervised age-appropriate behaviors, learn social skills, improve their health, and interact with college student and adult mentors, without fear of being victimized, bullied or abused. Thus, inclusive recreation programs not only reduce juvenile crime but also reduce the violence that is disproportionately visited upon youth with disabilities.

MPR’s three-year evaluation of the CUNY YTD was not designed to determine which components of the comprehensive intervention were most responsible for the reduction of the share of youth with disabilities who were arrested or charged with a delinquency or criminal complaint. On the other hand, there is evidenced-based research that each of the components—increasing total youth income, parental engagement, summer youth employment and recreation—deters contact with the justice system. Since the long-term costs of juvenile crime, to the individual and to society, are so high, the savings from reductions in contact with the justice system among SSI youth could be substantial. In this regard, MPR noted that: “these impacts have the potential to swing the findings from a comprehensive benefit-cost analysis strongly toward positive net benefits.” SSA is planning a five-year follow-up to see if CUNY’s YTD intervention will have a longer lasting impact.
Recommendations to Decriminalize Youth with Disabilities

The most important thing to know about transition-age youth with disabilities is that they are youth, and therefore policies, practices and laws that impact all youth also affect those with disabilities, sometimes to an even greater extent. Even if it was once a short period of time that served as a bridge from school directly to work and economic self-sufficiency, in contemporary society “transition” has become an emerging stage of life in its own right, which may span multiple years, even a decade. Today it is not uncommon for young people to stay in school longer, live at home even after college, and remain financially dependent on their parents into early adulthood. Frequently their entry into the labor market is intermittent and inadequate to support an independent lifestyle. Today a high school diploma does not guarantee a job that provides economic self-sufficiency. Reforms should be consistent with the current reality of a prolonged age of transition.

Much of the “bad” behavior that is attributed to youth originates not with the individual but with the “bad” policies, practices, and laws that unfairly intrude on their lives. These may be generated by scary conceptions of young people that are influenced by the stigma of disability, racial stereotypes and age-old conflicts between the generations. Efforts are now underway on multiple fronts to decriminalize youth with disabilities as well as those who are poor, Black and Latino. The following recommendations to continue decriminalizing youth with disabilities are based upon evidence-based research and best practices associated with PYD:
Modification of SSA Policies

Currently as recipients near age 18, SSI rules create incentives for youth and their parents to make choices that may adversely affect employment outcomes. For example to reduce the likelihood of losing disability payments through the redetermination process many youth shun even time-limited work opportunities. SSA should consider a policy option suggested by MPR senior researcher David Wittenburg (2011) in his testimony before Congress, to extend benefits beyond age 18 to age 21, without an eligibility redetermination, as long as youth who receive SSI are either in school or working. Such a change would make SSI rules consistent with provisions in IDEA and provide more opportunities for recipients to remain in school while entering the workforce incrementally. It would also be more aligned with a prolonged transition-age period that is common today. Parents of SSI youth between the ages of 18 and 21 would have a vested interest in advocating at the local school level for dismantling pipelines to prison and implementing best practices in disciplining but still retaining their children with disabilities. To further support an incremental approach to entering the labor force, SSA should continue to expand waivers that allow SSI youth to retain more of their earnings without losing their benefits. Taken together these policy recommendations would most advantage those 18-21 year old SSI recipients who stay in school and/or work and thus are more likely to successfully transition off SSI in the future.

Public-Private Partnerships to Support Summer Employment for Low-Income Youth

There is now compelling evidence from multiple sources that summer youth employment reduces arrest and incarceration rates, including for youth with disabilities. Recognizing the efficacy of these programs private companies and foundations are increasingly joining with cities and non-profits to expand slots. For example, in 2015, the Mayor’s Fund to Advance NYC
launched its Center for Youth Employment, a public-private partnership to support an expansion of youth employment initiatives including a doubling of summer jobs for young people living in shelters or foster care (The City of New York, 2015). JPMorgan has invested $5 million in summer youth employment initiatives in 14 U.S. cities (JPMorganChase, 2015). Making these types of targeted investments in “inclusive” summer youth employment can especially benefit youth with disabilities including those on SSI.

**Investing in Inclusive Recreation Programs**

Similar investments in out-of-school-time recreation programs are recommended. A 2014 report, *Recreation Center Closings in Baltimore: Reconsidering Spending Priorities, Juvenile Crime, and Equity*, showed that the closure of recreation centers due to municipal budget constraints disproportionally affected poor neighborhoods with the greatest concentrations of youth. The preponderance of the evidence suggests that investing in recreation programs is a cost-effective way to reduce juvenile crime. Designing such investments to be “inclusive” would insure that sponsored programs benefited all youth including those with disabilities.

**Changing School Discipline Policies**

There is a growing movement to decriminalize youth in many school districts by reforming over-zealous zero-tolerance discipline policies. For example, in February 2015 the NYC Department of Education (DOE) altered its policy on public school discipline by ending school suspensions by principals without prior approval from the DOE central office. In summer 2015, a new task force, the NYC Mayor’s *Leadership Team on School Climate and Discipline*, released its first set of recommendations. One of its objectives is to reduce disparities in the number of Black, Latino and special education students who are suspended. A new mission
statement on school discipline includes goals to reduce suspensions as a discipline tool and “eliminate the use of summonses and arrests for minor school misbehaviors.”

**Expanding “Restorative Justice” Practices**

Restorative Justice is among the most promising reforms that are being piloted in school districts across the country including the NYC DOE. This approach has been especially effective in reducing the number of youth with disabilities who are suspended or referred to the courts (Stenhjem, 2005). Responses to misbehavior can include “peer circles,” youth court and other interventions that are designed to have young people confront their misconduct and take positive actions to make amends. If incorporated into school policies these techniques can also provide an opportunity to determine if a disability was a factor in the incident, to see if the student had adequate support services, and to allow differences to be worked out in a constructive manner, without resorting to the justice system.

**Changing the Age of Jurisdiction of Family Courts in New York**

New York and North Carolina are the only two states that deem all youth 16 and over as adults for any criminal charges, including non-violent offenses and misdemeanors. These laws exacerbate the problems already caused by zero-tolerance discipline policies. In 2014 the NYS *Commission on Youth, Public Safety, and Justice* made a series of recommendations on the best ways to change the age of jurisdiction of family courts from 16 to 18. The Commission noted that part of the motivation for these reforms at this time is the “significant decrease in violent crimes committed by young people since the 1990’s” which has “replaced outsized fears of young ‘super predators’ with a more meaningful focus.” Legislation has not yet been enacted.
Reducing Job Discrimination Based on Criminal History

Employers are increasingly using a person’s criminal history to screen for employment. In some instances this practice can violate the Civil Rights Act. Thus, youth with disabilities who have had contact with justice system and who are or have been on SSI may face job discrimination that makes it that much more difficult for them to achieve economic self-sufficiency. This additional barrier to employment may be a factor in the particularly poor earnings outcomes of SSI youth who are arrested prior to age 18 but are no longer receiving benefits at 19 years of age (Hemmeter, Kauff, and Wittenburg, 2009). In 2012 the U.S. Equal Employment Opportunity Commission issued guidelines that require employers to only consider convictions as they relate to job responsibilities. Over the last decade many cities and counties have removed the question regarding conviction history from their employment applications. Several states have changed their hiring practices in public sector employment to reduce discrimination based on arrest and conviction records. In 2015, NYC adopted an ordinance restricting employer inquiries into a job applicant’s arrest record and criminal history (Lewis, 2015). These new “Ban the Box” laws could reduce illegal barriers to employment faced by many youth with disabilities, including SSI youth, who have had previous contact with the justice system.

Expunging Juvenile Records

Arrests and court involvement leads to the creation of juvenile records for too many young people with disabilities, including those who have only committed misdemeanors. Some states allow widespread access to these records, which once disclosed are nearly impossible to recall, and can have long-term consequences in areas such as employment. In many states the process to seal or expunge a juvenile record is lengthy and costly. Advocacy groups have
identified best practices in maintaining the confidentiality of juvenile records that should be implemented in every state (Shah, Fine and Gullen, 2014).

**Conclusion**

Policies that mainly derive from a sensational characterization of young people as dangerous, fail to build upon the truly admirable qualities of youth that are most needed in local communities. Like the fearful Greek god Kronos we have imprisoned our own children. Perhaps this ambiguity in the American psyche, between fearing and punishing youth versus valuing and trusting them, is timeless, a modern-day version of the generational antagonism between youth and age. Even if so, today, for the sake of both young and old, we need a more balanced approach that is more informed by the assets and creative potential inherent in young people. From the biblical “prodigal son” to Shakespeare’s Prince Hal there is a rich cultural tradition that emphasizes the redemption and rehabilitation of wayward youth. The recent incorporation of PYD concepts into the field of juvenile justice has been termed “positive youth justice” (Butts, Bazemore and Meroe, 2010). It offers an approach other than punishment and retribution especially for youth who have only been involved in non-violent offenses and/or foolish misbehaviors. In addition to changing unfair policies, practices and laws, and advocating for additional resources for evidenced-based best practices, as a society we need to embrace images of youth that recognize their strengths, resiliencies, ideas, naiveties, enthusiasms and diverse voices.
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