



Non-Judicial Drivers into the Juvenile Justice System for Youth of Color



W. Haywood Burns Institute

Prepared for The
California Endowment's
Boys & Men of Color
Initiative

Introduction

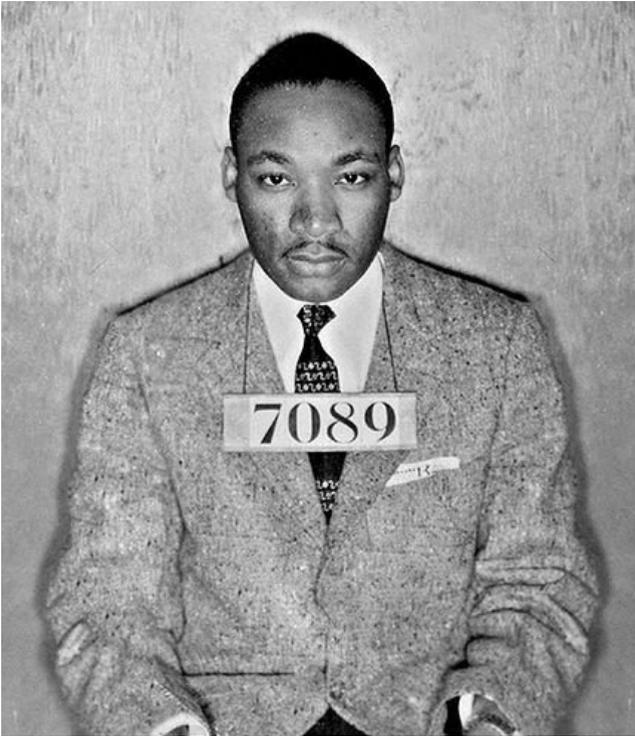


photo: Montgomery County Sheriff's Department

MARTIN LUTHER KING AFTER THE MONTGOMERY BUS BOYCOTT

Dr. Martin Luther King, in his legendary I Have A Dream Speech, stated the nation's failure to provide civil rights to its Black citizens was a moral breach of contract. That breach established a promissory note for justice that needed to be tendered. In his brilliant use of words and metaphors, Dr. King said at the time, he refused to believe that the "bank of justice" was bankrupt.

Dr. King's assessment made eminent sense four decades ago in 1963. However, during the latter part of the decade of the turbulent 60's, the country was willing to pay whatever price the citizens were told was necessary for "law and order." And pay we did. Between 1971 and 1990, the expenditures for incarceration have increased a whopping 313 percent. Since Dr. King's speech we have instituted a war on drugs, (brilliantly detailed in Michelle Alexander's book "The New Jim Crow") waged a similar war on children by criminalizing normal adolescent behavior and become the world's largest jailer. All of these factors are the result of almost a half century of "tough on crime" political slogans that touched emotions, but ultimately were not well informed. Ignorance, in this case, comes with a huge price tag that can no longer be sustained.

As costs increase, practitioners in the justice community have noted a rising number in young people coming to their doors from schools and with behavioral health issues. Indeed, while legislators have lavished billions of dollars on incarceration, other child serving agencies have been gutted. These facts were made clear in a report recently released by the National Sheriffs Association and the Treatment Advocacy Center. The report documented that there are more mentally ill people in jails and prisons than in hospitals.¹ Likewise San Diego's Chief of Police, William Lansdowne noted that cuts in community and preventive behavioral health services have resulted in "mental illness being one of the city's most growing public safety concerns."² In short, we have opted for an expensive pound of illusory cure rather than a more intelligent ounce of prevention.

The racial and ethnic inequities present in our current justice system create the perception that incarceration is the most appropriate option for black and brown people with high needs, such as mental illness, but

1. More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States (2010)

2. Police: More Calls Involve Mental Illness (Voice of San Diego, Feb 4, 2010)

3. John A. Rich, M.D., M.P.H., is the chair of and a professor in the Department of Health Management and Policy at the Drexel University School of Public Health, where he is also the director of the Center for Nonviolence and Social Justice. A 2006 MacArthur Fellow, Rich founded the Young Men's Health Clinic in Boston and is the former medical director of the Boston Public Health Commission. He was elected to the Institute of Medicine in 2009.

low risk for public safety. The youth justice system—an often neglected sub-category of the larger justice system—has startling levels of racial and ethnic disparities. The most recent California data reveals that, African American youth represent 6 percent of the overall youth population, but 26 percent of youth in detention. Also, youth of color comprise almost 90 percent of the cases transferred from juvenile to adult court even though they represent only 75 percent of the juvenile justice population. Once transferred to adult court, African-American youth in California receive a sentence of life without parole 18 times more often than White youth.

There are structural and institutional drivers that are not directly related to crime that propel young people of color disproportionately into the justice system. Undiagnosed trauma or “adversity” as John Rich³ describes it drives youth of color into the justice system.

Similarly, behavioral health professionals are concerned about inequities in the response to youthful behaviors by educators, clinicians and law enforcement that serve as drivers into the justice system as well. Thoughtful justice professionals, such as Police Chief Landsdowne and other experts interviewed, recognize that they inherit the failures of other systems; the failure to recognize and treat educational and health issues for a vulnerable population of youth.

The over-incarceration of youth of color cannot go unchecked in the future. The BI believes it is important to lend our institutional talents to naming and ending the practice of incarcerating youth of color that have high needs but do not pose a high risk to public safety.

This report summarizes work funded by the California Endowment (CalEndow) and performed by the W. Haywood Burns Institute (BI) in 2010. The BI conducted a strategic inquiry into the structure, policies and practices in the health and behavioral health disciplines which increase the numbers of youth of color incarcerated in the youth justice system. Specifically, the BI completed a literature review, analyzed numerous reports, created a bibliography of the most salient materials and conducted interviews with experts. It is the BI’s hope that our analysis and recommendations will assist the CalEndow plan and execute a strategy that significantly reduces or eliminates this pervasive practice amongst youth serving agencies.

Cover of Michelle Alexander’s “The New Jim Crow”

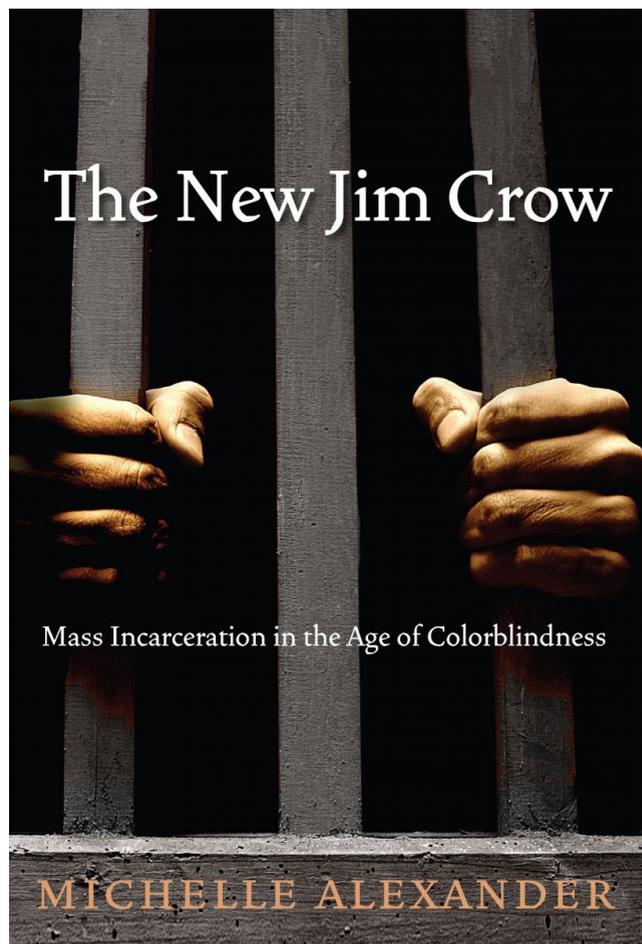


photo: Courtesy of The New Press



The Legacy of Over-Incarceration for Youth of Color

Although no two youth justice systems are exactly the same, there are several common decision points within the process at which over-representation can be measured. These include processes prior to judicial appearance such as cite and release, arrest, diversion after arrest, referral to a detention facility, and admission to detention. At each key decision point, youth justice practitioners exercise judgments about how the young person and their families should be handled.

Monitoring these decision points reveals that youth of color are funneled deeper into the system for behaviors similar to their White counterparts when controlling for offenses. For example, data reveal that White youth are more likely to be diverted from formal processing than are youth of color. Additionally, more youth of color are referred and admitted to detention than White youth for similar behaviors.⁴

These data reflect a long history of disparate treatment for youth of color and demonstrate the powerful forces that efforts to change this dynamic will encounter. From the earliest days of our nation, race conscious policies dictated that the detention of youth of color would be different for White youth coming into contact with the justice system for the same categories of offense. Throughout the 1800's, the exclusion of Black youth from White juvenile facilities often resulted in their placement in adult prisons. Black children were also incarcerated younger than White children, had fewer opportunities for advancement upon discharge and suffered a disproportionately higher death rate.

As Black youth were experiencing disparate treatment within the burgeoning justice system, Native tribes not yet displaced by federal policies were attempting to maintain restorative justice practices as discipline, such as family meetings and talking circles. But in 1885 Congress passed the Major Crimes Act, essentially obliterating centuries-old restorative justice approaches to youth misbehavior and replacing them with a punitive model that persists today on and around Indian reservations.

Ironically, as many youth justice professionals are now pushing for a return to restorative justice practices based on traditional tribal models, Native youth continue to suffer the fallout of centuries-long displacement and occupation. They still have less access to services and are granted

The Carlisle Industrial School

(Top to bottom) Navajo youth when they arrived at the Carlisle Reform School and after being enrolled and "reformed."

The Carlisle school was the first off-reservation boarding school, and became a model for Indian-boarding schools in other locations. It was one of a series of nineteenth-century efforts by the United States government to assimilate Native American children from 140 tribes into the majority culture.

Children were commonly kidnapped from reservations, given English names, forced to cut their hair, conform to European styles of dress and break ties with all native customs. Physical and sexual abuse were common in these schools. Hundreds of children died in these schools, many while trying to escape.

When the "noble experiment" at Carlisle ended, nearly 12,000 children had been through the school. Students came from 140 tribes from all over the United States. Less than 8% graduated from the full program, while well over twice that percentage ran away.

photos: The Library of Congress

4. And Justice for Some, Poe and Yamagata (2004)



disproportionately harsher sanctions including secure confinement and transfers to the adult criminal system. This is particularly true for California tribes and Rancherias seeking recognition and sovereignty.

The problems that many youth advocates confront today were present even in the earliest days of the juvenile court. Judicial policies and practices that reflected the cultural norms of the day were first documented four decades after the establishment of the juvenile court by researcher Mary Huff Diggs. In her review of 53 courts across the country, Diggs reported, “It is found that Negro children are represented in a much larger proportion of the delinquency cases than they are in the general population. An appreciably larger percent of the Negro children came in contact with the courts at an earlier age than was true with the [W]hite children.” Diggs continued, “Cases of Negro boys were less frequently dismissed than were [W]hite boys. Besides, they were committed to an institution or referred to an agency or individual much more frequently than [W]hite boys.

It is important to recount this history to fully understand the entrenchment of racial and ethnic disparities in today’s youth justice system. In its early history, the inequitable treatment of youth of color in the juvenile justice system was the result of intentional and blatant race-based policies. Today, our policies appear race-neutral, but remain covertly steeped in the legacy of overincarceration for social control rather than public safety.

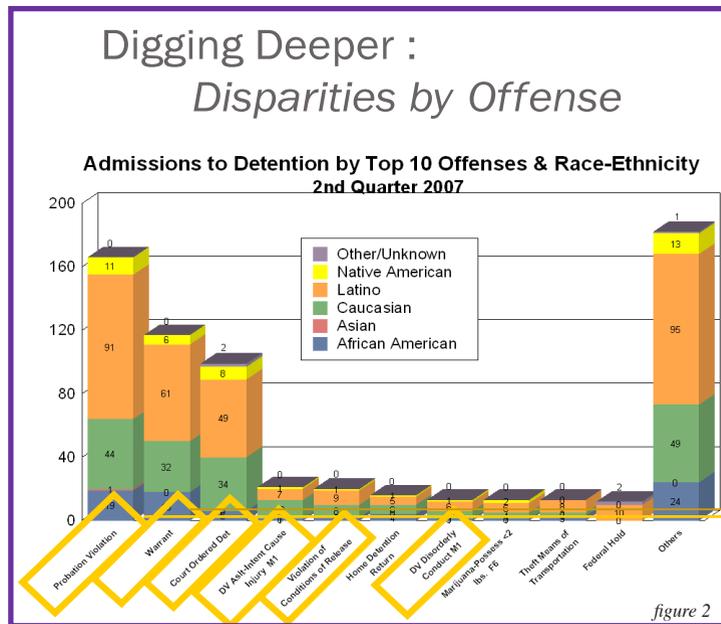
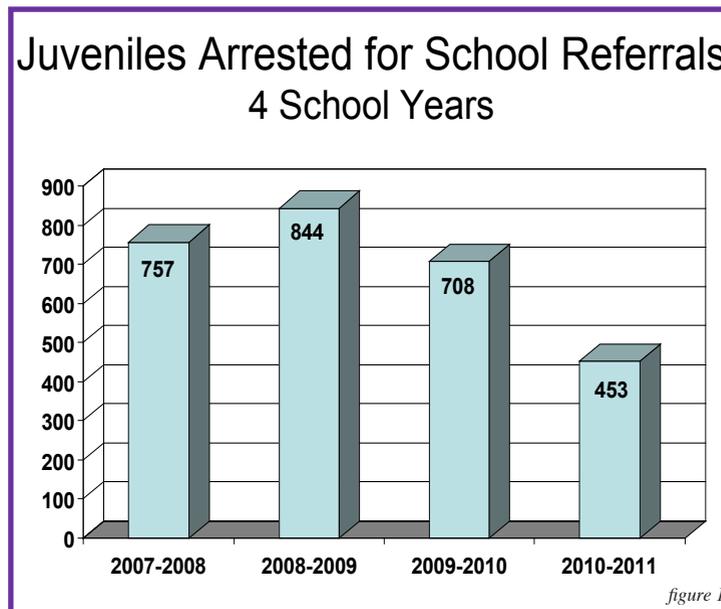
Photo: a young black man shackled around his ankles. Courtesy of the Library of Congress.

DANGERS AND EXPENSE OF INCARCERATION

There should be no doubt that the use of incarceration as a primary instrument of social control for young people has never shown evidence of successfully changing the behaviors of youth in trouble with the law. Indeed, incarceration can be dangerous and harmful to adolescents. Moreover, it is a tremendously expensive system to maintain.

A compilation of research published in the *Dangers of Detention*⁵ found that detention has “a profoundly negative impact” on the well being of children. Negative consequences with respect to a young person’s health, behavioral health, education and employment outcomes were correlated with being in detention. These findings are supported in specific findings by a variety of studies. For example, the American Association of Pediatrics issued a report holding that adolescents entering correctional care facilities were at higher risk than unincarcerated youths for: 1) sexually transmitted diseases (STDs); 2) drug use and abuse; 3) issues regarding pregnancy and parenting; 4) human immunodeficiency virus (HIV) infection; and 5) preexisting mental health disorders.⁶

Importantly, the study found only one third of the incarcerated youth examined had a regular source of medical care, and only about one fifth had a private physician. More than half of the families of adolescents with a pre-existing medical



problem seemed to be unable or unwilling to assist in ensuring the adolescent receive proper medical care after release. Similarly, a study by Matlack and McGreevy⁷ found “the social milieu of prison settings does not facilitate healthy social skills development.”

In addition to the myriad poor life outcome indicators for youth of color resulting from the overuse of detention, it is also a huge strain on resources. The Pew Report, *1 in 31: The Long Reach of American Corrections*⁸ details the exponential growth in incarceration spending. Total corrections’ spending has reached almost 68 billion dollars— an increase of 336 percent since 1986. Meanwhile, recidivism rates continue to hover between 50-60 percent. This expensive and poor use of dollars cannot be ignored. Good public policy demands incarceration be used as a last resort and not an alternative for failing schools, health provision and behavioral health services.

Non-Judicial Drivers into Youth Incarceration

Trauma

Juvenile justice research is replete with evidence of the connection between low-risk

youth involved in the justice system and a variety of unmet health and education needs. The BI’s experience, working in over 70 counties in California and throughout the country, is that referrals from schools have increased dramatically. Figure 1 depicts data from a typical BI county showing that school referrals represent nearly 40 percent of the approximately 2000 annual arrests. The reduction noted in 2010/11 is after a policy change refusing to accept those youth in detention.

5. The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities A Justice Policy Institute Report, by Barry Holman and Jason Zidenberg (2009)

6. Id.

7. Family correlates of social skill deficits in incarcerated and nonincarcerated adolescents (1994)

8. 1 in 31 U.S. Adults are Behind Bars, on Parole or Probation (2009)

Similarly, research is increasingly making clear to practitioners the connection between post traumatic stress disorder and detention. Once again, our direct experience in sites reveals that the majority of youth of color are detained because they have high needs but are a low risk to public safety by committing new crimes (Figure 2). Unfortunately, this emerging body of work is not widely known in the justice sector necessitating the development of curricula and training in the CalEndow sites, *see recommendation 3*.

When the BI does a more granular examination of these low level behaviors, it is clear that children are not being referred to local confinement facilities because of criminal behavior but rather for unmet health and behavioral health needs.

According to interviews and research conducted by the BI pursuant to this grant, unmet health needs for youth and families begin with the inability to access health care. Communities of color have little access to health care because a high percentage of their residents use Medicaid. Medicaid reimbursements are woefully low. Typically, doctors are reimbursed 8 cents for every dollar spent on a Medicaid patient compared to private insurance companies which reimburse 35 to 40 cents on the dollar. It is far more lucrative for a doctor to take care of wealthy patients who are well insured or who will pay their expenses out of pocket. The resulting health disparities gap contributes to the unmet needs of youth of color.

The Adverse Childhood Experiences (ACES)⁹ study is a seminal piece of research regarding childhood trauma and life outcomes. The ACES study found a child exposed to four or more adverse experiences is 40 times more likely to have learning and behavioral problems. Adverse experiences include, a parent being arrested, a parent going to jail, witnessing or being a victim of domestic violence. The child's instincts lead them to develop compensatory coping mechanisms to survive in the household. These coping mechanisms create long term dysfunctional behavior because the neurological pathways become over utilized as a mode of survival.

Author and physician, John Rich brings insight to this phenomenon by defining trauma as a state that occurs when an individual's internal resources are insufficient to deal with an external threat. The human body is wired to handle threats with a fight or flight response. This anatomical response mobilizes every single resource an individual has to fight off perceived threats. The fight or flight system of individuals who have experienced trauma, is constantly activated and they are hyper-aroused. A chronically activated fight or flight response predisposes an individual to be overweight, have diabetes, elevated blood pressure and an increased pulse rate.

A young person of color who is hyper-aroused is at an increased risk for exhibiting behaviors which get them referred to the youth justice system because youth serving professionals are not aware of the impact of persistent trauma. It is these youth that constitute the high need/low risk population the BI witnesses languishing in detention unnecessarily. Once referred to the youth justice system, youth of color are being further traumatized. Dr. Rich states that we are "treating the wrong problem with the

wrong treatment."

Another physician, Dr. Nadine Burke¹⁰ states, in her experience incarcerating a young person is a traumatic experience that piles trauma on top of trauma. The system is structurally unable to heal traumatized young people. In addition, the young person is now in a setting where the vast majority of their peers are also traumatized, thereby triggering more negative behaviors. They also learn aversive coping mechanisms from one another. The result is the youth justice system creates a community where the norm is total dysfunction. Both physicians state categorically that we are slowly reaching a point where it is unsustainable to continue the revolving door of youth incarceration rather than meeting their needs with trauma-informed services in the community.

Trauma-Informed Alternatives

Each child exposed to trauma has a different susceptibility to its effects as illustrated in the work by Victor Carrion,¹¹ director of the Early Life Stress Program at Stanford University. Children range in their resiliency to trauma, however, there is a certain point at which even the most resilient child will suffer effects. The BI experiences this in a variety of settings. For example, when a child with trauma enters the educational system exhibiting behavioral problems, they are often referred to the youth justice system. Zero tolerance policies do not lend themselves to a trauma informed approach.

According to the work of Sandra Bloom,¹² teachers and administrators want to suppress aggressive behavior rather than address its causes. Schools in neighborhoods of concentrated poverty, have turned into centers of escalated violence with cameras, cops, and metal detectors. Everything about that environment does nothing to calm the trauma predominantly youth of color experience. In order to establish a trauma informed sanctuary with a set of principles and protocols, educators must become sophisticated in understanding what trauma does to the body, to young people, as well as the teachers themselves.

Child serving systems should develop screening instruments that ask specific questions about how the child is doing and how their family is functioning. This approach requires a multidisciplinary team to address the myriad of challenges for the child and family. The need for medical, dental, psychological and social services can more likely be met through this one stop methodology, *see recommendation 4*.

Dr. Rich's contribution to CalEndow's publication on trauma-informed practice is excellent; however, the direct service programs cited are not governmental agencies or system decision-makers. The BI believes it is time for agencies related to the justice system and bureaucracies to embrace this approach. In that vein, the BI has been working with the new leadership of the Alameda County Probation Department to embark on a trauma-informed approach within the department. It is still in the embryonic stages; however, it is important for CalEndow to be informed about its development and implementation.

9. The ACE Study is an ongoing collaboration between the Centers for Disease Control and Prevention and Kaiser Permanente.

10. Nadine J Burke, MD, MPH, FAAP, AE-C is the founding physician and Medical Director of the Bayview Child Health Center, a community-based satellite clinic of California Pacific Medical Center.

11. Child and adolescent psychiatrist at Stanford's Lucile Packard Children's Hospital

12. Dr. Sandra L. Bloom is a Board-Certified psychiatrist, graduate of Temple University School of Medicine

photo Jenn Ackerman, *Trapped*

Behavioral Health

Dr. David Arredondo¹³ is intimately familiar with the provision of behavioral health services in the youth justice system in Santa Clara County. He works closely with the specialized Juvenile Mental Health Court and observes the juvenile detention facilities that have become an unfortunate referral source for too many young people with behavioral health issues. He notes that youth detention facility staff are ineffective and sometimes inhumane in their typical responses to the needs of children with behavioral health problems. He does not believe that placing youth in secure confinement reduces harm, but in fact, may have the opposite effect. He avers that congregate living environments are almost always harmful to young people with behavioral health issues because of negative peer influences, the lack of staff skills and interest to intervene appropriately.

While there is a clear need to use detention for a very small number of dangerous youth, Dr. Antoinette Kavanaugh,¹⁴ a consulting therapist for the Cook County Juvenile Court, recommends family-based community alternatives to detention. A better approach for youth with behavioral health problems, says Kavanaugh. However, she notes that youth of color with behavioral health issues are referred to the youth justice system for behaviors that their White counterparts are not.

A typical example agreed upon by both experts involves a youth whose parents are not getting along at home, who comes to school and is teased by other students before class. Frustrated, the young man kicks a garbage can sitting close to the door which bounces near the teacher. This conduct creates an important decision point. Youth of color are too often sent to the youth justice system when the teacher calls the “school resource officers” to implement zero tolerance policies, while White youth are diverted towards non-judicial evaluative services. Once in detention the young person’s problems are exacerbated and they can easily be propelled deeper into the system.

Ms. Cherie Townsend is the current director of the Texas Youth Commission (TYC), which is the state’s largest

youth confinement agency. She sees firsthand the young people with behavioral health problems that are turbo-charged into the deep end of the system. Ms. Townsend reports that 65 percent of all youth sent to TYC have behavioral health needs. Of that 65 percent, an astonishing 45 percent are on psychotropic medications. In her opinion the use of psychotropic medications is primarily for controlling behavior rather than addressing symptoms.

Ms. Townsend agrees with the experts cited above that the youth justice system can exacerbate a young person’s behavioral health problems. She also believes that behavioral health providers refer young people that are aggressive to the youth justice system too quickly. Ms. Townsend says her system is not really appropriate and these young people need school based and community service responses. Secure confinement facilities were built to be correctional in nature. In order to reduce harm the Texas Youth Commission has had to “de-prison” young people by changing the environment of their facilities and realigning resources. They have created a special facility just for this population. It is not her preferred solution but it is, at least, designed to provide intensive behavioral health services, *see recommendation 5*.

A related issue is the state of behavioral health practices in the larger community which drive young people of color into the youth justice system. It is not unusual for young people of color, especially those living in communities of concentrated poverty, to experience depression or self-medicate with alcohol or drugs. For these youth rarely are there options in their communities for evaluation and treatment. There is agreement amongst all the experts interviewed that access to crisis intervention, school-based and community behavioral health services are practically non-existent. Moreover, what little services exist often are not culturally or linguistically appropriate. Importantly, the infrastructure of the health, education and behavioral health sectors are not sufficient to counteract the “tough on crime” rhetoric that has criminalized adolescence and driven youth of color into the justice system in unconscionable numbers, *see recommendation 7*.

13. Dr. Arredondo is the founding director of The Children’s Program, Solomon and Applied Neuroscience and The Office of Child Development.

14. Antoinette Kavanaugh PH.D Forensic Clinical Psychologist

Evidence Based Practices

In order to fully engage non-judicial drivers for youth of color into the justice system, the BI believes it is important to discuss evidence based practices (EBP's) in this report. The health, behavioral health and education sectors are becoming steeped in reliance on EBP's. EBP's are those clinical and administrative practices that have been proven to consistently produce specific intended results. EBP's have been studied in both controlled clinical trials as well as larger treatment environments.

For example, according to researchers Stanley Huey, Jr and Antonio Polo,¹⁵ cognitive behavioral therapy (a commonly referenced EBP for youth in the justice system) is a moderately effective EBP for Latino and African-American youth. It has not been shown to be effective for other ethnicities (such as Pacific Islanders and Native Americans). This notion of limited utility of EBP's for communities of color is a significant issue. Academics and researchers with the funds and ability to conduct randomized clinical trials believe these treatments are fundamentally appropriate for all races and ethnicities, while communities of color claim most of the trials are conducted on well educated and resourced White people and therefore are not appropriate for their communities.

In response, one technique being used by various practitioners is adaptation. Adaptations take an EBP and adapt it for language, ethnic matching of the clinician or geographic setting. Indeed, Ken Martinez, Psy.D.¹⁶ has introduced the notion of Community Defined Evidence (CDE) which involves practices that yield positive results as determined by community consensus but have not been measured empirically. Some practitioners reject adaptations claiming they vary too much from the original EBP dictates and are therefore too dissimilar to maintain fidelity and trustworthy results.

This debate has tremendous consequences regarding alternatives to detention for youth of color. Many community based organizations (CBO's) are not able to conduct the randomized trials necessary to become an EBP, yet understand the total ecology of the neighborhood, family and youth. CBO's make the case that they understand the complexities of the lives of youth of color and are able to get positive behavior results. These are called "promising practices" and should be recognized and encouraged. The BI analysis of this debate is to base results in the notion of "quality" as determined by youth and families and provide services accordingly. This is an area that needs more exploration.

Conclusion

Last year the Bureau of Justice Statistics released a report documenting abuse of young people in secure confinement facilities,¹⁷ reminding us in stark detail that incarcerating youth is expensive, unproductive and harmful. In 2009, the U.S. Department of Justice released a report graphically documenting the persistent brutality and routine neglect of youth of color with behavioral health issues in secure confinement facilities. The report summarized the results of a two-year investigation and highlighted abuse including a 300-pound guard forcing a girl to the ground so violently (she threatened to urinate on the floor) that she suffered a concussion. Another girl with behavioral health issues was placed

in isolation for three months without treatment. She apparently deteriorated in the process, never changed out of her pajamas and was forcibly restrained at least 15 times.

MIT Professor Simon Johnson coined the phrase "intellectual capture" to explain why critical economic assumptions made by special interests go unexamined and unchallenged by the public or politicians. Non-judicial drivers into detention for youth of color are a signal that our notions of crime and punishment for young people have us intellectually captured and clueless. Society at large, as well as opinion shapers, elites and those who wield power seem to be afraid to say what we all know to be true. Using locked cells to change the behaviors of teenagers is ineffective, expensive, and more likely to increase crime.

In times of fiscal austerity, using detention as school, therapy or a health clinic is unwise, unaffordable and unsustainable. Detention should only be used for those young people who are a proven public safety risk. This report makes recommendations to the CalEndow¹⁸ to reduce the stream of young people being referred to detention for basic services by suggesting rational and accountable practices; so we as a society no longer continue to be intellectually captured by the myth of "tough on crime."



photo: Blind Glass

15. Assessing the Effects of Evidence Based Psychotherapies with Ethnic Minority Youth (2008)

16. Ken Martinez, Psy.D. Mental Health Resource Specialist Technical Assistance Partnership American Institutes for Research Washington, D.C.

17. Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09 (2010)

18. Characteristics of Juvenile Suicide in Confinement (2009)

Recommendations

1. Work with CalEndow sites to create policy statements on the appropriate and inappropriate uses of detention.
2. Develop training materials for CalEndow site youth serving practitioners in the education and justice sectors about non-judicial drivers into detention.
3. Provide trainings for CalEndow site youth serving practitioners in the education and justice sectors about non-judicial drivers into detention.
4. Identify a particular CalEndow site to pilot a trauma-informed system in the education and justice sectors (Alameda).
5. Conduct a current scan of the CalEndow Healthy Returns Initiative sites to determine if best practices are in place for youth in the justice system with behavioral health needs.
6. Identify a particular CalEndow site to enhance the use of community alternatives to incarceration for children with high need but moderate risk to public safety.
7. Develop policy paper to counteract “tough on crime” rhetoric with tools developed above.
8. Convene two strategic forums on “evidence based practices” and its potential impact on CalEndow site programs.



180 Howard St suite 320
San Francisco, CA
94105
415.321.4100
415.321.4140 fax
www.burnsinstitute.org

W. Haywood Burns Institute