

Advocating For Children with Behavioral and Cognitive Disabilities in the Juvenile Justice System

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There is a desperate need for greater advocacy on behalf of young people with cognitive and other disabilities who find themselves at risk of entering or who are in the juvenile justice system. Their impairments can manifest as learning disabilities, attention deficit/hyperactivity disorder, mild mental retardation, and an array of conditions that can be described as mental illness. Most of these young people are unaware of the connection between their disabilities and their problematic behavior. They rarely receive a comprehensive assessment of their impairments or receive services or supports for their disabilities. Many face other challenges as well, including substance abuse, poverty, family conflicts, and racism.

Five major agencies serve youth with disabilities who are at risk of entering the juvenile justice system: education, mental health, child welfare, juvenile justice, and health. Advocacy to improve services for these young people must address both the individual and the collective responsibilities of all five child-serving agencies. Consequently, organizing advocacy for this population presents a number of opportunities and challenges given the different perspectives, funding streams, and eligibility criteria of each child-serving system.

Studies reveal that cognitive and other disabilities are prevalent among juvenile and adult offenders (Brier, 1994; Bilcheck, 1998; Edens & Otto, 1997; and Wexler & McClelland, 1996). Some studies show that up to 75 percent of young offenders have a cognitive deficit, including a learning disability (Henteleff, 1996). A recent study of 2,000 adjudicated youth revealed that nearly 50 percent had histories consistent with a diagnosis of attention deficit hyperactivity disorder (Goldstein & Goldstein, 1992).

Juvenile justice systems—as opposed to adult corrections systems—place great emphasis on rehabilitating offenders to prevent them from participating in criminal behavior after they exit the system. The goal of rehabilitation is to benefit the individual child as well as society as a whole. Sadly, both juvenile and adult offenders experience high rates of recidivism. One judge in Dallas, Texas, acknowledged the problem: “The numbers are appalling...whatever we’re doing, it doesn’t seem to be appropriate for the kinds of young offenders and their families we’re seeing today”(Everbach, 1995, p.1A).

This bulletin describes some barriers that hinder the ability of youth with cognitive and other disabilities to receive appropriate interventions that might help them avoid contact with the justice system or learn new patterns of behavior after they have been incarcerated. Further, the bulletin suggests principles to guide advocacy for this population, both to help reduce their risk of entry into the juvenile justice system and to increase services for those who are already incarcerated so that the risk of recidivism may be reduced.

Barriers Faced by Youth with Cognitive Disabilities

Too often, the needs of children with disabilities in the juvenile justice system are not addressed or their conditions go undiagnosed. Often this leads to disastrous outcomes for both the young people and society. Among the barriers faced by these youth are the following:

- Many child-serving professionals (e.g., probation officers, child welfare workers) have little understanding of how cognitive and other disabilities affect children’s behavior.
- The general public believes that young people who act out can control their actions, but choose to misbehave.
- Parents are often blamed when their children misbehave because it is assumed that they cannot control them.
- Children with disabilities often have parents with similar impairments, although these adults have never been diagnosed and have never received appropriate treatment or services.

- Policy-makers, child-serving professionals, and society often do not agree that youth with disabilities deserve specialized services, especially when they have been charged with criminal violations.
- Policy-makers generally respond to juvenile crime by passing tougher legislation that causes youthful and adult offenders to be treated similarly.
- Families, communities, and child-serving agencies lack appropriate information, training, and support to help youth who have disabilities.
- Resource limitations force child-serving agencies to make arbitrary decisions about which youth with disabilities qualify for services.
- Public financing generally supports restrictive, residential placements for youth with behavioral problems, especially once they have been charged with a criminal offense.
- The juvenile justice system is not designed to adequately identify and provide services for troubled youth with disabilities who need specialized educational or mental health treatment and services.
- Funding mechanisms and eligibility criteria inhibit collaboration among the different agencies that serve youth with disabilities.
- Comprehensive, family-oriented, community-based interventions for youth with mental disabilities are inadequate or nonexistent.
- Agency and court personnel frequently tell families that the only way to obtain community-based mental health services for their children is to relinquish custody of them to the state. Families are consequently extremely reluctant to ask public agencies for help because they fear losing their children.
- Families whose children are placed in the juvenile justice system find the experience so painful and demoralizing that they frequently need help to navigate it and to obtain appropriate assistance for their children.

To help them deal with these barriers, youthful offenders with disabilities need services that address the full range of their educational, vocational, emotional, social, and medical needs. The timing and intensity of services and interventions will vary. However, like many physical illnesses, behavior problems that are diagnosed and treated early can be treated less expensively, more efficiently, and more effectively than problems that are caught later. Therefore, prevention is generally acknowledged as the most cost-effective strategy to reduce juvenile delinquency and should be the primary focus of programs serving youthful offenders with disabilities (see Leone, Quinn, and Osher this series). A critical companion to prevention is early intervention. Together, these strategies can help ensure that small problems do not develop into big ones.

Developing a Needs-Driven Approach

Rehabilitative efforts may be unsuccessful in part because they fail to consider the effects of disabilities on children's learning and behavior. Data on program outcomes substantiate the importance of matching services to individual needs to increase program effectiveness and reduce recidivism. One expert (Anderson, 1998) reports that 80 evaluations of rehabilitation programs revealed an important distinction between programs that matched individual services with the offenders' needs and learning styles and those that did not. The analysis showed that when programs aligned interventions with individual needs, recidivism was reduced by as much as 50 percent. Another analysis (Lipsey & Wilson, 1993) affirmed the value of programs that use behavioral, skill-oriented, or multi-modal approaches.

When systems take a needs-driven (Cessna, 1993) approach as soon as children are identified as having problematic behaviors, youth with cognitive disabilities can benefit. The goal should be to help young people with cognitive disabilities avoid incarceration by providing them with the tools they need to develop alternative life paths. If children are identified after antisocial behaviors are firmly entrenched, they will need a greater number of comprehensive, intensive interventions than if they had been reached earlier. Research, however, shows that even then needs-driven interventions

can make a difference (Howell, 1995). And, even though these programs cost more than early intervention and prevention programs, they are still less expensive than incarceration (Greenwood, Model, Rydell, & Chiesa, 1996). Unfortunately, there are few such programs.

A needs-driven approach for youth at risk of entering or already involved in the juvenile justice system would be characterized by five core concepts:

A disability perspective should be part of the adjudication process. The young offender should be thoroughly assessed so that appropriate services and treatment can be obtained.

Youth should receive the necessary assistance to develop academic, social, emotional, and behavioral skills through training, support, and remediation. Studies show that poor academic performance is related to antisocial behavior and that both are influenced by characteristics such as low intelligence, inattention, hyperactivity, and impulsivity (Maguin, & Loeber, 1996).

Youth should have opportunities to maximize their strengths and develop positive skills so they can become productive community members. Programs should help youth develop the ability to form meaningful relationships that connect them with their families, schools, and communities.

Youth should receive assistance with their “spiritual journey” so that they may find meaning in their own lives. The nihilism and aimlessness that are evident in youth culture indicate that a number of young people are searching for meaning and direction.

Youth should receive appropriate support and interventions to help them avoid initial incarceration, but these services also should be available to them during incarceration and after release. With strained family resources and limited knowledge of how to get help, most families have difficulty providing support to their children in trouble (Wilson, 1983). Since some mental disorders, including learning disabilities and attention deficit hyperactivity disorder, are often inherited (Pennington, 1991), parents may have difficulty negotiating the system and successfully advocating for their children because of their own disabilities and will need an advocate to help them help their children.

Principles Guiding Advocacy for Youth with Cognitive Disabilities

To avoid the personal and social costs of delinquent behavior, the nation needs more appropriate treatments for youth with disabilities that are at risk of entering the juvenile justice system. These treatments should rehabilitate antisocial behavior and promote responsible citizenship so that both the individuals and society can benefit. Youth with cognitive disabilities can become productive members of society if their impairments are addressed early and they have opportunities to develop their abilities and skills.

Using Federal Legislation as a Model for Advocacy

Developing a long-range plan to help youth with disabilities avoid contact with the juvenile justice system requires acknowledging the need to intervene early, partly by enforcing the existing Federally-mandated entitlement to special education and related services. The Individuals with Disabilities Education Act (IDEA), modified by the IDEA Amendments of 1997 (P.L. 105-17) protects the right of youth with disabilities to receive a free appropriate public education (See Tulman, (this series) for a discussion of legal issues related to children and youth with disabilities in the juvenile justice system). There are eight key principles that can guide advocacy and services for youth with cognitive disabilities who are at risk of entering, or who are already placed in, the juvenile justice system. These principles build upon the philosophy of IDEA.

Principle 1: Enforce the legal requirement that schools identify and evaluate children suspected of having cognitive disabilities so that appropriate services can be planned and provided.

Principle 2: Provide child-serving professionals, communities, and families with the information, skills, and tools they need to help children and youth with cognitive disabilities.

Principle 3: Establish a continuum of graduated interventions and sanctions.

Principle 4: Provide a range of placement options in the least restrictive environments so that young people can remain in regular environments to the greatest extent possible. This approach

recognizes that it may be necessary to remove youth from their communities in order to address severe problems or ensure public safety.

Principle 5: Encourage interagency cooperation to maximize the resources available and provide comprehensive services that address the multiple needs of children and their families.

Principle 6: Provide accommodations, supports, and services for youthful offenders as they make the transition from incarceration back into the community. This will help ensure that they are educated, ready for employment, and able to live independently.

Principle 7: Provide safeguards to protect the civil rights of youth with cognitive and other disabilities, both before and during incarceration.

Principle 8: Provide support for children, families, and communities during all phases of the adjudication process.

Advocacy for Youth with Cognitive Disabilities Who Are at Risk of Entering or Who Are Placed in the Juvenile Justice System

At the present time, youthful offenders are not a popular group given the high visibility of violence in schools. Historically, there has never been a strong voice advocating for this population of young people because advocacy groups tend to represent the general interest of one group only—either low-income children, or children with disabilities, or children in the juvenile justice system (See Table: Type of Advocacy Group Focus). Unfortunately, there is often little crossover in terms of advocacy among these groups. The sad consequence is the absence of comprehensive advocacy that could help improve services and supports for youthful offenders with disabilities.

Table: Type of Advocacy Group Focus

	Youth with Disabilities	Juvenile Justice	Low-Income Children
Key Interest	• special education and	• prevention	• income assistance

Areas	<p>related supports</p> <ul style="list-style-type: none"> • community-based programs as alternatives to institutional care • access to health and mental health services 	<p>programs</p> <ul style="list-style-type: none"> • alternatives to incarceration for less serious offenders • disproportionate minority confinement, runaway and homeless youth 	<ul style="list-style-type: none"> • access to health care • improving child welfare services • decreasing time spent in foster care
Expertise to Share for Juvenile Justice Issues	<ul style="list-style-type: none"> • understanding connections between mental and cognitive impairments and behavior • developing family-focused treatment plans • organizing and training parents 	<ul style="list-style-type: none"> • improving treatment and services for youth who are incarcerated • promoting prevention programs to reduce incarceration of youth 	<ul style="list-style-type: none"> • developing broad-based coalitions to achieve policy changes • organizing legislative and administrative advocacy for policy changes

Case or Class Advocacy

Representing specific individuals on a case-by-case basis is generally called “case advocacy,” while representing the interests of a group of individuals is referred to as “class advocacy.” The goals of case and class advocacy for children and youth with disabilities are remarkably similar: Both seek

to remove barriers to services and treatment; to increase the availability of necessary accommodations; and to promote the maximum degree of self-sufficiency and economic independence. Although advocates have similar goals when undertaking case or class advocacy, the strategies they use to achieve their goals may differ.

Individuals who may benefit from case advocacy often lack basic information about their legal rights and the availability of services. They may require varying degrees of assistance and support from advocates to obtain the services that they need or to which they may be legally entitled.

Class advocacy involves a number of individuals who face many of the same obstacles listed above. These individuals, however, want to use their collective experiences to change public attitudes, correct misinformation, and promote policies that would address their own situations.

Advocacy Strategies

The barriers faced by youth with disabilities who are at risk of entering the juvenile justice system are complex because they involve a number of different child-serving agencies. The process of building collaborative interagency relationships among education, mental health, child welfare, juvenile justice, and health providers is challenging, but it can be done. Successful case or class advocacy for this group of youthful offenders requires a multi-pronged response that utilizes a variety of approaches. Advocacy strategies to consider include:

Research. The goal of advocacy here is to promote research about the nature of cognitive disabilities and effective treatments and services to ensure that youth with cognitive disabilities may avoid contact or further involvement with the juvenile justice system.

Public Education and Working with the Media. The goal of this strategy is to develop and distribute accurate information based on solid research findings to strengthen public and political interest in helping youth with disabilities to avoid contact or further involvement in the justice system.

Individual Case Advocacy of Youth and Their Families. The goal of this strategy is to provide information to help individual families obtain necessary services for their children who have cognitive impairments and refer them, when necessary, to sources of legal assistance.

Coalition Building. The goal of coalition building is to build a strong constituency among families, advocates, and professionals who can help change negative public policies affecting youthful offenders with cognitive disabilities.

Legislative or Administrative Advocacy. Policy-makers and child-serving professionals do not always agree that youth with behavioral problems deserve special attention. This issue influences the extent to which both the public and policy-makers support making services available.

Litigation. The goal of this strategy is to obtain the least restrictive environment for youthful offenders with cognitive disabilities to better address their disabilities and to improve access to treatment for those who are incarcerated.

Conclusion

This bulletin has described the need for the development of child-serving systems that would better identify youth with cognitive disabilities as soon as they display problematic behaviors. This practice would increase the likelihood that these young people could receive and benefit from appropriate interventions that may help them avoid contact with the justice system. Alternatively, if these youth are already incarcerated, they need appropriate treatment and services that can help them learn new patterns of behavior.

Currently, there is no organized advocacy effort on behalf of youth with cognitive and other disabilities involved in or at risk for involvement in the juvenile justice system. There is, however, an urgent need for one. Advocacy for this population should be guided by certain principles that are based on the special education law such as the Individuals with Disabilities Education Act (IDEA). This bulletin has suggested some specific advocacy strategies that would begin to address the immediate and long-term needs of youth with disabilities.

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