

Federal Policy Proposal:**Youth Expungements****Leyda M. Garcia-Greenawalt****University of Illinois at Champaign-Urbana*****Introduction***

Rehabilitating youths is one of the largest struggles we face as a nation. Do we treat them as minors or do we treat them as adults? How is this decision made? It is so easy for youths to get into either system – the child welfare or the juvenile justice system – but nearly impossible for them to exit either system and achieve success. Youths who are involved in the child welfare system are more likely to have a higher Adverse Childhood Experiences (ACE) score, meaning they are more likely to have been exposed to multiple traumatic events. The fact of the matter is the traumatic events in their lives (such as physical abuse, witness to violent crimes, etc.) are often what push youths to “act out” and thus get introduced to the juvenile justice system. An estimated 30 percent of children under the child welfare system’s jurisdiction become involved in the juvenile justice system (Smith, Ireland, & Thornberry, 2005). A dual jurisdiction study done in Arizona found youths involved in the child welfare system are more likely to be detained or sent to a group home (rather than being given probation) compared to youths who had no involvement in the child welfare system (Halemba, Siegel, Lord, Zawacki, 2004). As shown in other studies, people of color are also disproportionately overrepresented in both systems, putting them at an even greater disadvantage – African American youths in particular are at a greater risk of juvenile justice involvement (Herz, 2010; Herz et al., 2010).

Although there have been several federal and state-based initiatives focused on helping dually involved youths, more can be done. Potential legislative initiatives to be implemented should focus on clearing the name and record of the youth – youths who have been arrested after being involved in the child welfare system need to be able to have their record expunged from years prior and have the associated fees waived. Youths must not face limited employment or education prospects because of something they did years ago “just to get by” (such as theft due to poverty or loitering/trespassing due to homelessness). This proposal mandates the federal government must provide funding for those involved in both the criminal justice system and the child welfare system to get their criminal records expunged and to have the associated fees waived.

Personal Reflection

Growing up, I was rooted in my family. I was responsible for taking care of my siblings while my mother went out and did whatever was necessary for us to get by. A variety of men came into our lives throughout this time. All of them were just as bad as the last – they continuously physically abused my mom until they tore our family apart and we became victims of the child welfare system. Georgetown University reports a significant portion of dually involved youths “have witnessed domestic violence and have parents who have a history of criminal justice system involvement, mental health problems” (Herz et al., 2012). Stories circulate around my family about how I never smiled as a baby until I was about two years old – when my biological father went to prison. He was convicted of two armed robberies. Unfortunately, this wasn’t the first, or last time he would encounter the criminal justice system. Similarly, my mother had some run ins with law enforcement and was incarcerated for parts of my childhood and adolescence.

Statistically, I should have fallen into the justice system. I was by no means unfamiliar with what it means to be an addict, or an abuser, or a delinquent. In reality, I've never been even remotely close to delinquency. I've never had issues in school, nor have I ever been arrested. In my first two years in care, I had eight placements. A study done in Pennsylvania reported 90 percent of youths with five or more foster placements will enter the justice system (Kriskey 2010). The numbers say I should have been arrested at least once by now. As a foster care alumnus looking back, I refuse to let any youths fall through the cracks in the systems due to the trauma they experienced during their childhood.

The Problem

A large percentage of our nation's foster youths are going to prison. According to research conducted at Georgetown University, "a majority of these [dually involved] youths have special education issues, problems at school, and mental health and/or drug use problems" (Herz et al., 2012). The lack of mental health resources, and the fact that both the foster care system and the juvenile justice system are made up disproportionately of people of color, is what contributes to what we know today as the school-to-prison pipeline, and foster youths are at a much higher risk. A study examining the dually involved populations in Chicago, Cleveland, and New York City found "crossover rates ranged from 7 to 24%. African American males, and children who experienced congregate care¹ were at highest risk for juvenile justice involvement" (Cutuli, et al., 2016). There are four generalized ways a youth becomes dually involved; these will be referred to as pathways (Kriskey, 2010). The figure below exhibits how encounters with the child welfare and justice systems occur.

¹ Congregate care is a placement that consists of 24-hour supervision, such as a group home or residential treatment facility.

	Starting Point	Occurrence	Result
Pathway 1	Youth has an open child welfare case	→ Youth is arrested	→ Youth enters the delinquency system
Pathway 2	Youth is arrested	→ Youth has a previously closed child welfare case	→ Referral is made to child welfare
Pathway 3	Youth is arrested—no previous contact with child welfare	→ Upon investigation, maltreatment is discovered	→ Referral is made to child welfare
Pathway 4	Youth is arrested, adjudicated, and placed in a correctional placement	→ Time in correctional placement ends, but there is no safe home to return to	→ Referral to child welfare

As the chart shows, the only pathway that leads into the delinquency system, is when the youth already has an open child welfare case. Otherwise, in all other cases, the youth is referred to the child welfare system to receive services, rather than entering the justice system.

Most states in the United States allow for juvenile expungements to occur at age 18. It is crucial for a youth, particularly a foster youth, to have their record expunged because failing to do so can lead to a variety of missed opportunities in the workforce. Sequoia Griffin, now an author and founder of Key Purpose Books, LLC, experienced incarceration twice in her adolescence. Now in her late twenties, she has yet to get her record cleared because of the costs associated with doing so. She hired a lawyer for nearly \$2,000 to get the cases dismissed and was told it would take 6 months to remove them completely. On top of the \$1,700 Griffin had already paid out-of-pocket, the courts required an additional \$1,000 to expunge the record completely. Griffin shared when she was 23, she was hired at a new job and later fired after a month because her employer discovered a prior arrest. She also has an interest in becoming a Court Appointed Special Advocate (CASA) but is afraid her criminal record will prohibit her from doing so.

To further matters, fees for expungement range by state. Some states, like Colorado for instance, pretend as if the crime never occurred once the youth turns 18 – the record will never

be found on background checks and the youth is not required to disclose that there ever was a case to anyone. In most states though, this is not the case. The fees associated with a record expungement are typically what keep youths from getting their record expunged, thus limiting their job opportunities and higher education prospects.

Unique Challenges

Dually involved youths face unique challenges in that they receive different treatment in the juvenile justice system, compared to those who have no child welfare involvement. Child welfare-involved youths are less likely to be diverted from the juvenile justice system (Halemba, Siegel, Lord, Zawacki, 2004). A bias presents itself in the juvenile justice system against youths who have a child welfare history (Ryan, Herz, Hernandez, Marshall, 2007). Additionally, as previously stated, these youths experience more trauma than the general population – more “exposure to multiple traumatic events, often of an invasive, interpersonal nature, with the potential to have more wide-ranging and long-term impact” (Grisso & Vincent, 2014).

Current Initiatives/Policies

Acknowledgement is due for the initiatives that are currently in place to protect the rights of dually involved youths. Georgetown University’s McCourt School of Public Policy has founded the Center for Juvenile Justice Reform (CJJR). The center, according to the National Juvenile Justice Network, “trains public and private agency leaders focused on effective policies and practices in working across systems”.

As previously mentioned, looking at state policies, Colorado has the least restrictive policies surrounding record expungement. Taking a look at the state of Iowa, however, a juvenile record can be accessed at any time by the general public. In most cases, though, the record gets automatically expunged at the age of 21. Looking at my home state, Illinois (the fifth largest

child welfare system in the country), juvenile records are kept confidential, although they could be disclosed depending on the circumstance (i.e. if an employer orders a background check). Even in Illinois, this is the type of policy that hinders youths from becoming successful.

Our society prides itself on the ability to pay one's own debts in restitutions. How is a former foster youth/former juvenile delinquent supposed to be able to pay restitutions or give back to the community after they were discriminated against because of their juvenile criminal record? Instead, the youth is forced to fall back into a lifestyle that breeds crime because they have no other (legal) means of earning money. The barriers to employment are particularly serious for youths of color for whom institutional racism becomes an additional challenge to employment.

Policy Recommendations

Everyone should have the opportunity to have their records reviewed for expungement regardless of their crime. After all, if we all were judged by the actions of our youth, we probably wouldn't be where we are today. Congress shall pass legislation requiring states to include expungement processes in their state plan under Title VI-E.

- Expungement of juvenile records of current and former foster youths and the fees associated with the expungement shall be paid for by the state child welfare system, respectfully. Funding is also to be used for adults who started in the juvenile justice system while child welfare involved and then moved to an adult penitentiary.
- 8 percent of Title IV-E funding shall be appropriated for fees associated with expungement.
- The state plan should allow for youths to be notified of such a process prior to exiting care, as well as provide rehabilitation/re-entry resources and funding for research.

As a condition of their state plan for Title VI-E funding, states need to:

- make dually involved youths aware of their ability in accordance with state law to expunge their juvenile record
 - connect them with appropriate legal assistance to expunge the records;

- establish a pool of funding for a federal demonstration project that allows states to establish a program that assists dually involved youths in expunging their criminal records in accordance with state law (including connecting them to legal assistance, explaining their options under state law);
 - training dollars could be used to train states how to support youths.

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