

Youth Justice and Mental Health in Perspective

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Abstract

Research identifies that a significant proportion of youth within the justice system possess some form of mental health disorder, and that the presence of an emotional disorder can provide important explanatory value regarding the causes of crime. Evidence is now overwhelming that services within the youth justice system need to account for the causes of crime in order to effectively reduce the likelihood of reoffending. Such an ethic within youth justice service delivery not only reduces symptoms and risk within the youth and their families but also is linked to increasing community safety through reductions in reoffending. This review characterizes the relevance of mental health disorder in considering the needs of anti-social youth, and how this appreciation is linked to the delivery of effective services as well as what constitutes supportive youth justice legislation



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Background and Context

The youth justice system, relative to the systems governing child welfare and children's mental health, is arguably the most contentious of the three branches of children's services. While maintaining the safety of at-risk children who may experience maltreatment or responding to the needs of a depressed or suicidal youth can readily garner the public's empathy and advocacy, helping those youth whose behaviour creates risk for the community's safety – be it property or person – often draws nothing from the public but their enmity. This review highlights an understanding of the context in which youth who come into conflict with their communities can receive more informed and effective responses from service providers and support from the public, specifically in the context of an appreciation of the extent and nature of mental health disorder.

What Kinds of Crime Do Youth Commit?

Statistics Canada's *The Daily* (2008) reported that in 2006 approximately "180,000 young people were implicated in some violation of the *Criminal Code*, excluding traffic offences"; this translates to 6.8% of the Canadian youth population aged 12–18. The vast majority of crimes committed by young persons are of a property nature (i.e., theft or break and enter) with an estimated 25% involving some form of assault. Another young person is the most likely target of youth violence. Gender breakdowns suggest that males commit the majority of crimes; although over the past decade, there has been an increase in the rate of crimes committed by females, particularly in violence-related offenses.

Who Are the Youth Who Commit Crime?

Research tells us that the vast majority of youth who enter the youth justice system do so when they are in their early to mid-adolescence, committing less serious property-related offenses, and age out of anti-social behaviour as they enter later adolescence and early adulthood. The more chronic and persistent youthful offenders are found to be those who begin their anti-social careers early through the committal of minor offenses but do not desist with time; rather, they increase both the frequency and severity of their offending pattern throughout their adolescence (Loeber and Stouthammer-Loeber 1996; Moffitt 1993).

Similar to findings in the literature in adult corrections, youth who are in conflict with their communities reflect risk in areas related to their thoughts and perceptions or their *justifications* and *rationalizations* related to their criminal activity (Andrews and Bonta 2008). Further, in the context of youthful offending, again in the general case, systemic approaches to understanding influences on youth committing crime highlight the roles of families, peers and school as critical socializing agents in developing attitudes that are either less or more favourable toward criminal activity. These general concepts regarding

young people who are in conflict with their community reflect that the vast majority of youth who are apprehended by the police are involved in court diversion programs, or what are referred to within legislation as alternative measures, are either on probation or in custody within the youth justice system. The balance of this review focuses on those youth who come into conflict with their community and who possess some form of mental health disorder. A review is provided of the literature that furthers understanding regarding the link between mental health disorder and youth crime, and addresses the practice and policies that need to be in place to further community safety by addressing the needs of emotionally and behaviourally disordered youth.

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Situating Mental Health Disorder with Youthful Offenders

Data reported by the International Society of Psychiatric–Mental Health Nurses (2008) reflect that 50–75% of youth in the justice system possess some form of mental health disorder: “One fifth or 20% of all children and adolescents ... experience a diagnosable mental health disorder before the age of 21. ... [However] the number of adolescents with undiagnosed mental health disorders committed to the juvenile justice system has exploded with estimates that between 50% and 75% of the youth who are committed to juvenile justice have diagnosable mental health problems” (2008). However, studies have reflected that when the sample of youth in detention or custody is considered separately from the general youth justice population, more precise estimates are available, as these youth will be more likely to have had some form of assessment prior to their placement. These estimates reflected that approximately 60% of the males and more than two thirds of the females met the diagnostic criteria for a mental health disorder or had a diagnosis-specific impairment for one or more psychiatric disorders. These data included the fact that half of the males and almost half of the females had a substance abuse disorder, and more than 40% of males and females met criteria for disruptive behaviour disorders. Affective disorders were also prevalent, especially among females; more than 20% of females met the criteria for a major depressive episode. Rates for most mental health disorders were higher among females (Teplin et al. 2002). (This fact is elaborated upon in a later section as it is worthy of separate comment.)

Why are the rates so high? Several issues can be indentified to address why the rate of mental health disorder in the youth

justice population is in excess of three times the rate in the general adolescent population: stigma, availability of resources, misunderstandings regarding what the youth justice system provides and a lack of coordination between children's service sectors.

Stigma

The stigma attached to being considered in need of some form of emotional support as an adolescent continues to restrict many from accessing or responding positively to the possibility of psychological service. While emotional difficulties go untreated, young people act out in ways that belie the fact of their problems, which means that ultimately they are sanctioned through youth justice for their behaviour.

Availability of Resources

There is a lack of community resources that relate specifically to the nature of emotional disorders. This shortage affects the population of children and adolescents who have a mental health disorder, some of whom subsequently come into contact with the youth justice system.

Misunderstandings Regarding What the Youth Justice System Provides

While most youth justice systems have as their mandate services that attempt to meet the psychological needs of offenders, these services are often not supported to meet the exceptional demands of seriously disordered young offenders. Yet, too often, there is a belief that once in the justice system the youth will be "taken care of," and other service providers may consequently default to the youth justice system.

Lack of Coordination between Children's Service Sectors

Most children's service systems suffer from a lack of coordination across service sectors and jurisdictional boundaries, such as between child welfare, children's mental health and youth justice. Young people who have co-morbid mental health difficulties shared by a behavioural component that has the potential to bring them into the youth justice system sometimes suffer from this lack of coordination. For example, Judy Finlay, Ontario's child advocate from 1991 to 2007, reported on children emerging from the child welfare system entering the youth justice system: "Ironically, the youth's last chance for rehabilitation is often in the very system [child welfare] that is the least equipped to deal with his or her mental health needs" (Findlay 2003: 1)

Etiology of Mental Health Disorder in Anti-social Youth

The larger question, however, relates to the nature of the mental health disorder in certain children and youth that increases their likelihood of becoming part of the youth justice system. The

following section addresses issues related to the etiology of child and youth mental health and behavioural disorder that is linked to young people who enter the youth justice system and who possess an emotional disorder. It summarizes the correlates of mental health disorder, the impact of maltreatment, substance abuse and relevant gender differences.

Mental Health Correlates

Research suggests that the estimate of one in five youth having a diagnosable mental health disorder is true not only for Ontario but also generally across cultures (Offord et al. 1987). The link between childhood and adolescent factors and anti-social behaviour can include the following: attentional problems, motor restlessness and attention seeking; emotional concerns consistent with depression including withdrawal, anxiety, self-deprecation and social alienation; family characteristics such as a variety of negative parenting strategies including coerciveness, authoritarian behaviours, a lack of child supervision and a family situation that might include violence, inter-parental conflict and poor communication (Leschied et al. 2008). These findings have been reported in numerous US and UK studies over the past two decades; recent Canadian-based data reported a similar pattern based on trajectory studies of youth who enter the young offender system. (In a forthcoming special issue of the *Canadian Journal of Criminology and Criminal Justice* featuring research related to prevention, four separate studies based on Canadian youth show considerable overlap in the trajectory of characteristics that determine those youth most at risk for reoffending. That list of risk factors will be of interest in identifying an overlap with mental health risk as well.

Legacy of Maltreatment

Children who experience either maltreatment or exposure to violence in their families of origin are twice as likely to report clinically significant elevations for emotional and behavioural disorder compared with children and youth who do not report maltreatment. Not only does the impact of being maltreated set the stage for the development of serious emotional disorder, for some it also translates into their own perpetration of violence and, hence, entry into the youth justice system. As mentioned above, there is a high correlation between the childhood experience of violence, either directly or vicariously through exposure within the family, and the subsequent committal of violence. Specifically in girls, this fact is reflected in elevated depression, suicidal ideation and self-harming behaviour.

Substance Abuse

Research suggests that the use of illegal substances accounts either directly or indirectly for a substantial number of youth-related offenses. MacKinnon-Lewis et al. have asserted, "Youth involved with the juvenile justice system frequently have more

than one co-occurring mental and substance use disorder” (2002: 355). Substance abuse is embedded in a series of early life circumstances, including coercive family processes, social stress, poverty, poor academic outcomes and social disengagement. It is difficult to disentangle the effects of substance use and anti-social disorder as many of the predictors for anti-social behaviour overlap with the predictors of substance use, such as inconsistent parental discipline and harsh, punitive parental practices; low parental monitoring of a child/youth behaviour; deviant peer associations; depression; low self-esteem; and poor academic achievement. What is inescapable is the strong link between substance use, alcohol consumption and involvement in an anti-social lifestyle.

Gender Differences

Unique to the studies on co-morbidity with violence and risk is that girls who behave aggressively report higher levels of depression and suicidal ideation than do boys. Indeed, a review of this literature indicates that girls with higher scores on aggression reported elevations on depression at a rate close to 40%. In addition, relative to boys who are aggressive, girls report higher rates of diagnosis of attention deficit hyperactivity disorder, involvement in substance abuse and suicide risk. More than for boys, when girls act violently, it is important to assess for the presence of an underlying mental health disorder.

Effective Services for Mental Health Disordered Youth in the Justice System

So, what does the knowledge relating mental health disorder and youth in the justice system mean to services and the law? The following sections review knowledge regarding evidence-based treatments and legislation that can support the delivery of an effective youth justice system that considers the significant percentage of youth who possess a mental health disorder.

The general principles regarding effective interventions for children and youth translate what the literature reflects as constituting effective services with justice-involved youth who have a mental health disorder. (For a more detailed description of effective services in youth justice, please refer to Leschied [2008].) These intervention strategies include the following:

- **Targeted services** that capitalize on the knowledge that mental health disorder and youth anti-social behaviour are linked and can be bi-directional. That is, youth who are involved in the justice system and who may do so as a result of family-based maltreatment, for example, have an increased likelihood of experiencing a mental health disorder; and the presence of a mental health disorder increases the risk that a child or youth will act out anti-socially.
- **Empirically based services** that reflect the extensive body of knowledge regarding effective service, such that prevention

and intervention strategies are guided by the literature that has evaluated service outcomes.

- **Multiple pathways** that acknowledge the link between mental health disorder and youth anti-social behaviour, and interventions that reflect the coincidental occurrence of a variety of risk factors.
- **Gender-informed services** that acknowledge that the link between mental health disorder and anti-social behaviour are unique with respect to gender. For example, the literature reflects that girls are more likely to experience an underlying mental health disorder such as depression and suicidal ideation relative to boys.
- **Services that are developmentally appropriate.** For services to be effective, they need to be age appropriate and connect meaningfully with the children and youth who are the receivers of the services.
- **Acknowledgement of service implementation as a “science” in its own right.** In order to be effective, services need to be implemented in ways consistent with the principles of effective service delivery (a useful source is found in Bernfeld et al. 2001).

Legislation Reflects Public Response

Legislation is often viewed as the touchstone upon which a community’s response is measured when judgments are made regarding the youth justice system. Over the past 30 years, Canadians have seen three major changes to the law as it affects youth who are in conflict with their community. These legislative responses have influenced the nature and extent to which the mental health needs of youthful offenders are taken into consideration.

The Juvenile Delinquents Act, in effect since 1908, lasted for almost eight decades before being repealed in 1984. The act created a court and justice process that was informal, placing an emphasis on the role of judges who broadly interpreted the *best interest* of the child provisions under the law in providing dispositions that could reflect the *parens patriae* or social welfare role of the court.

The Young Offenders Act (YOA), which replaced the Juvenile Delinquents Act, was legislation that reacted against the lack of due process provided young persons, as well as reigning in the social welfare role of the court in seeking a greater balance for accountability for youth behaviour. However, one major, unintended consequence of this legislation was the dramatic increase in the rate of placements of youth in custody, which, through to the end of the 1990s, reflected that Canada had the highest rate of incarceration per capita for youths proceeding through the court in any Western industrialized nation. Importantly, treatment and rehabilitation provisions within the YOA were seen as less important relative to the need to ensure behavioural accountability.

Extensive revisions were subsequently made to the YOA, in part as a reaction to the punitive nature of its interpretation, along with an increasing respect for the fact that high rates of incarceration, while being expensive, were not “purchasing” as much community safety as could a system predicated on balancing accountability with addressing the needs of youth. Following extensive community consultation, the YOA was repealed in 2003, replaced by the Youth Criminal Justice Act (YCJA), which is currently the federal law that governs youth justice in Canada. Hallmarks of the YCJA include an emphasis given to extrajudicial measures that attempt to ensure that the court process is reserved for the most serious offenders – a move away from the concept of general deterrence, with its belief that sanctions alone could be a meaningful response to youth offending. YCJA emphasizes that the nature of the *offender* is critical to the process as much as the nature of the *offense*.

Does the YCJA support the delivery of mental health services to young offenders? Effective legislation should ensure that the court is held as a last resort for the most serious and chronic offenders; the court is flexible to the extent that alternative resources both within the community and within the system itself can be readily accessed for mentally disordered youth; and that once youth are within the youth justice system, there are adequate resources from relevant professional disciplines that can both assess and treat them. Benchmarked against previous legislation in Canada, there is much to support within the YCJA. One significant advancement in some Canadian youth justice jurisdictions has been the inception of youth justice mental health courts, which provide inclusive, cross-disciplinary services targeting emotionally disordered youth at all points within the process from policing, through diversion from the courts, to dispositions that include custody. (For an excellent overview of the operations of mental health courts, see Schneider et al. 2007.)

However, even the most casual observer of the Canadian youth justice system is aware that ideology is never entirely divorced from the debate in regards to youth justice. Proposals to increase sanctions and resurrect deterrence as a reason for youth justice dispositions frequently emerge. Therefore, vigilance in informing the public and legislators with respect to what we know about how to effectively address the causes of crime – which, not incidentally, is also linked to increasing community safety – is a critical part of the function of researchers and service providers.

Dedication

During the course of writing this review for *Healthcare Quarterly*, Professor Emeritus Don Andrews of Carleton University passed away following a brief illness. Through his research and enthusiastic support for both colleagues and students, Don became a beacon in guiding the debate on risk assessment and effective service in youth and adult justice systems. His reach was inter-

national in scope, his influence pervasive within the Canadian correctional research community. This article is written in the spirit of how Don thought about the issues in guiding correctional practice and policy. **HQ**

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