

## **Youth of Color and MHSA Prevention and Early Intervention: More Reasons the Guidelines Should Include Youth in Juvenile Justice Beyond the “First Point of Contact”**

It is critical that the Prevention and Early Intervention (PEI) Guidelines be written flexibly enough to permit the use of funds for youth who may be past the front door of juvenile justice. Youth of color are particularly at risk of entering juvenile justice for mental health related behavior that is not immediately recognized.

As a group youth of color are poorer and have less access to mental health services, so they may begin to act out as a result of untreated mental health disorders. Further, their misbehavior is often not identified as related to emerging mental health issues until they are undergoing court processing or are already in the system. Timely access to care may prevent their mental illness from becoming severe and disabling.<sup>1</sup>

### **Disproportionate Minority Representation in Juvenile Justice is Exacerbated by Lack of Access to Mental Health Services**

Youth of color are disproportionately represented (as compared with their proportion in the general population) at every stage of California juvenile justice, from arrest through case disposition.<sup>2</sup> In 2005, the juvenile arrest rate for Blacks was 2.55 times higher than for Whites, and for Hispanics, it was 1.25 times higher than Whites.<sup>3</sup> At the same time, Whites were diverted from the system nearly 3 times as often as Blacks and significantly more often than Hispanics.<sup>4</sup> Data for 2005 indicates that Blacks were detained at a rate 1.63 times higher than that of Whites, and Hispanics were detained at a rate 1.27 times that of Whites.<sup>5</sup> In 2005, 81.6% of those placed in secure facilities were youth of color, and at the deepest end of juvenile justice, 87.9% of wards committed to the Division of Juvenile Justice (formerly Youth Authority) were youth of color.<sup>6</sup>

Youth in the juvenile justice system of all races and ethnicities have a much higher incidence of mental health disorders than youth in the general population.<sup>7</sup> Thus 20% of students with emotional disturbance are arrested at least once before they leave school, as compared with 6% of all students. By the time youth with emotional disturbance have been out of school for 3 to 5 years, 58% have been arrested.<sup>8</sup> A growing body of evidence suggests that a primary reason for the high incidence of mental health disorders among youth in juvenile justice is lack of access to community mental health services. Sometimes referrals come from police or other public agencies, and sometimes at the request of desperate families. A 2005 survey report prepared for Congressman Henry Waxman found that lack of access to community mental health services regularly forces youth into California juvenile justice.<sup>9</sup> Sixty-three percent of responding California counties said that they needlessly hold youth in detention because of lack of access to services outside the juvenile justice system.<sup>10</sup>

The Surgeon General has found that underutilization of mental health services is linked with poverty, and is significantly greater for youth of color.<sup>11</sup> This means that minority youth are less likely to receive the care they need. And because multiple service systems have responsibility for children, poor children of color with behavioral issues do not necessarily come to the attention of the “right” system. The Surgeon General has noted studies from California finding that African American youth are overrepresented in arrests, detention, and incarceration in the juvenile justice system, and in the schools are overrepresented in educational classes for the severely emotionally disturbed. The same studies have found that Hispanic children are more likely than whites to be detained in juvenile justice facilities.<sup>12</sup>

### **Youth of Color Are Particularly at Risk of Entering Juvenile Justice for Mental Health Related Behavior That Is Not Immediately Recognized**

Apart from the issue of access to care, there is increasing evidence that youth of color face particular problems in having their mental health needs recognized, and that this itself may increase justice system exposure. Research has long suggested that many psychiatrically disturbed, abused and neglected youth of color are channeled into correctional facilities while their white counterparts are recognized as in need of help and directed toward therapeutic facilities.<sup>13</sup> Even mental health professionals may be less likely to see antisocial behavior by youth of color as the product of mental disorder than when the identical behavior is by youth who are white.<sup>14</sup> As one researcher put it, they are caught in the crossfire between a system that views them as “sick,” and one that sees them as “bad,” and both systems are failing them.<sup>15</sup>

Youth of color are at particular risk of mental disorders because of environmental stressors including poverty; parents with mental health or substance abuse problems; family disruption (including foster care, physical or sexual abuse, or neglect); poor prenatal care and low birthweight; and chronic community violence.<sup>16</sup> Unfortunately, their behavior is not always seen through the lens of mental health. Researchers urge that behavior by youth of color is often de-contextualized and misdiagnosed as “anti-social,” “manipulative and willful,” or “aggressive.”<sup>17</sup> Behavior such as substance abuse, which may represent an attempt to “self-medicate” to manage mental health symptoms, is misunderstood and labeled delinquent.<sup>18</sup>

### **Youth in Juvenile Justice Need Early Intervention to Prevent Unnecessary Suffering and Worsening of Mental Health Conditions, Resulting in Protracted Incarceration**

Youth with behavioral or emotional disturbance who wind up in juvenile justice, all too often are locked up in facilities that are ill-equipped to handle their needs.<sup>19</sup> Both the circumstances of detention and the dearth of mental health services cause many youth with mental health issue to deteriorate further while in custody. Many are subjected to control measures, including isolation and mechanical restraints. This makes it harder to treat them later on and unnecessarily prolongs their detention because they become more difficult to place.<sup>20</sup> Because of disproportionality, youth of color are especially likely to suffer from these systematic inadequacies. These youth are very much in need of early intervention services that could prevent incarceration (or reduce its length) and link them with community services and family supports.

Early intervention services would be particularly useful in assuring that youth receive proper assessment, and this could be especially important for youth of color, who are at risk of being missed or mislabeled. This, in turn, may prevent the need for juvenile court jurisdiction or may help to assure that youth of color receive timely treatment. Early intervention may prevent further mental deterioration, reduce the amount of time youth are detained, and/or prevent the need for residential placement.

**Inclusion of Youth Beyond the “First Point of Contact” with the Juvenile Justice System is Necessary to Meet MHSA’s Prevention and Early Intervention Goals of Reducing Incarceration and Reducing Disparities in Access to Mental Health Services**

The provisions of the MHSA for PEI specifically call for program strategies that reduce the negative outcomes from untreated mental illness, including incarceration, prolonged suffering, and removal of children from their homes. (Welf. & Inst. Code § 5840(d) (2), (5), and (7).) With respect to youth of color, the MHSA expresses the intent of ensuring that individuals not “suffer inadequate or insufficient treatment due to language or cultural barriers to care.” (Mental Health Services Act, §2 (a).)

In addition, the MHSOAC County and State Level Policy Direction includes as one of California’s 5 Key Community Mental Health Needs, a focus on “Disparities in Access to Mental Health Services,” providing that “PEI efforts will reduce disparities in access to early mental health interventions due to stigma, lack of knowledge about mental health services, or lack of suitability (i.e., cultural competency) of traditional mainstream services.” The MHSOAC Policy Direction explains that county plans will be judged, among other things, on whether they “use promising and demonstrated strategies effective in reducing racial, ethnic, cultural, language, gender, age, economic and other disparities in mental health services (access, quality) and outcomes.” (MHSOAC, Jan. 26, 2007).

Achieving these goals requires guidelines recognizing that, because of the existing disparities in mental health services, youth and particularly youth of color, may need PEI services after the “first point of contact” with the juvenile justice system, because their mental health needs may not be identified until after their first contact. Limiting PEI priority to youth whose mental health needs are identified at “first point of contact” with the juvenile justice system, as currently proposed, would disadvantage youth of color in particular in accessing needed services, and exacerbate, rather than reduce, disparities in access to mental health services.

This does not in any way suggest, nor would the MHSA allow, PEI funds to be used to supplant juvenile justice system services. Rather, they should be used to address mental health service needs to prevent the onset of a mental disorder or to prevent mental illness from becoming severe or disabling, and thereby reduce suffering, reduce incarceration or removal from home. In some instances this may be accomplished by providing liaison services to assure services through other funding streams.

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<sup>1</sup> Mental Health Services Act (MHSA), Calif. Welf & Inst. Code § 5840(a).

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- <sup>2</sup> California Department of Justice, *Juvenile Justice in California 2005*, pgs. 83-88.
- <sup>3</sup> *Id.* at p. 84.
- <sup>4</sup> *Id.* at p. 85.
- <sup>5</sup> *Id.* at p. 86.
- <sup>6</sup> *Id.*, at p. 67.
- <sup>7</sup> Cocozza, J., & Skowrya, K., *Youth with Mental Health Disorders: Issues and Emerging Responses*, VII Juvenile Justice, No. 1, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (April 2000),, pgs. 3-13, at p.5.
- <sup>8</sup> Burrell, S. and Warboys, L., *Special Education and the Juvenile Justice System*, U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Bulletin (July 2000), p. 1-2.
- <sup>9</sup> *Incarceration of Youth Who are Waiting for Community Mental Health Services in California (January 2005)*, prepared for Rep. Henry A. Waxman, pgs.5-6.
- <sup>10</sup> *Id.*, at p. 4.
- <sup>11</sup> *Report of the Surgeon General on Mental Health* (2000), Chapter 3, Section 8, "Service Delivery."
- <sup>12</sup> *Id.*
- <sup>13</sup> Isaacs, M., Assessing the Mental Health Needs of Children and Adolescents of Color in the Juvenile Justice System: Overcoming Institutionalized Perceptions and Barriers, in Cocozza, J. (ed.), *Reponding to the Mental Health Needs of Youth in the Juvenile Justice System* (2002), at p. 153; Drakeford, W., and Garfinkel, L., *Differential Treatment of African American Youth*, The National Center on Education, Disability and Juvenile Justice (2000).
- <sup>14</sup> Pottick, K., *et al.*, *Judging Mental Disorder in Youth: Effects of Client, Clinician, and Contextual Differences*, 75 *Journal of Consulting and Clinical Psychology*, No. 1, pgs 1-8 (2007), at p. 6.
- <sup>15</sup> *Id.*, at pgs. 141-142.
- <sup>16</sup> *Id.*, at p. 143.
- <sup>17</sup> Underwood, L., Rawles, P., *Screening and Assessing the Mental Health and Substance Abuse Needs of African-American Youth*, 2 *Juvenile Correctional Mental Health Report*, No. 4 (May/June 2002, pgs. 49-50, 56-62, at pgs. 50, 56.
- <sup>18</sup> *Id.*, at p. 56.
- <sup>19</sup> *Incarceration of Youth Who are Waiting for Community Mental Health Services in California*, *supra*, at pgs.5-6.
- <sup>20</sup> Burrell, S. and Bussiere, A., *Difficult to Place: Youth With Mental Health Needs in California Juvenile Justice* (August 2005), Youth Law Center, at pgs. 8-9.