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Family Engagement and Juvenile Justice: *The Evolution of Parens Patriae*

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Amanda was a troubled and precocious 9-year-old girl from a large urban city who was arrested and placed in detention for theft. After 30 days in detention, she was released to her parents, who were known by authorities to have a difficult marriage. Three months after her release, Amanda ran away from her parents' home and began living in another part of town with a woman who allowed Amanda to help around the house. True to her history of pilfering, Amanda stole money from her benefactor, and was again arrested and detained. When asked about her wrongdoings, Amanda seemed to be unapologetic, apathetic, and nonchalant about the offenses she committed. She did not feel she had done anything wrong. She spent 18 months in detention until she was released to a foster family, where her behaviors vastly improved.

While "Amanda's" case could mirror many contemporary cases from across the nation, it is based on a factual vignette of a girl committed to the House of Refuge in New York City in April 1825. The House of Refuge was the solution to urban America's orphan crisis where youth were seemingly abandoned by their parents, congregated on the streets, and resorted to delinquent behaviors. Prior to the House of Refuge, youth were detained in adult jails like adult criminals.

The organization responsible for this innovative approach to intervene in the lives of neglected, abandoned, and delinquent children was the Society for the Reformation of Juvenile

Delinquents.¹ To offer an explanation for youths' incorrigible behaviors, the Society asserted, "parents of...children, are, in all probability, too poor, or too degenerate, to provide them with clothing fit for them to be seen at school; and know not where to place them in order that they may find employment, or be better cared for. Accustomed, in many instances, to witness at home nothing in the way of example, but what is degrading; early taught to observe intemperance, and to hear obscene and profane language without disgust; obliged to beg, and even encouraged to acts of dishonesty, to satisfy the wants induced by the indolence of their parents."² Whether the realities of the time warranted this perspective or whether these originators of the juvenile justice system were so singularly focused on changing the plights of youth whose parents they presumed were inept, it is clear that not only were parents assumed to be the genesis of youthful offending, they were also deemed so harmful that they needed to be dismissed from consideration as part of the solution.

To be fair, the historical antecedents leading to the diminished relevance of parents in children's lives was rooted in earlier

1 *Documents Relative to the House of Refuge: Instituted by the Society for the Reformation of Juvenile Delinquents in the City of New-York, in 1824.* Digitized by the Internet Archive in 2013.
http://archive.org/details/documentsrelativ00soci_0

2 Ibid

legal doctrine. The zeitgeist driving juvenile justice in the early 19th century was based on the doctrine of “*parens patriae*,” which literally means “parent of the fatherland.” The concept is rooted in English common law and dates back to the Middle Ages.³ Initially, *parens patriae* referred to the monarchy’s role as father of the country to assume control over subjects’, thus orphans’, property. The concept has evolved to be a central tenet of the juvenile justice system whereby the State assumes the role as surrogate parent for youth whose parents are incapable or unwilling to care for their own children.

Seventy years after the inception of Houses of Refuge, the United States continued to follow a similar path with regard to its view of parents. *The Act to Regulate the Treatment and Control of Dependent, Neglected, and Delinquent Children* was passed in 1899 in Illinois.⁴ In addition to establishing the legal authority for the nation’s first dedicated juvenile court, it further broadened the concept of *parens patriae*. The Act established the foundations for many functions of current-era juvenile courts, such as prohibiting youth from being jailed with adults; distinguishing between delinquent and dependent youth; and, issuing summons for youth’s custodians. However, the overarching purpose of this Act was parental surrogacy. Section 21 of the Act stated, “This act shall be liberally construed, to be the end that its purpose may be carried out, to-wit: That the care, custody, and discipline of a child shall approximate as nearly as may be that which should be given by parents...”

Historically, the 19th century presented different cultural contexts and challenges for the inaugural juvenile court systems. During the industrial revolution, many parents living in industrial communities were unable to properly care for and supervise their children. As a result, streets were frequently occupied by young children who were abandoned, neglected, or abused who often resorted to stealing, prostitution, or “vagrancy.” In contrast to the Draconian system of detaining children with adults, the Illinois Act built upon the principles applied in the New York House of Refuge to develop a system that recognized that those children needed a system that was commensurate with youth’s levels of need – including the need for parental guidance. Still, parents were omitted from consideration as potential solutions to youth’s delinquency and neglect.

Modern-day evolution of the *parens patriae* doctrine recognizes society’s responsibility to care for children if their parents are unable to do so. There remains the underlying assumption that parents are incompetent and, either knowingly or unwittingly,

contribute to delinquent behaviors. While there have been a plethora of improvements to the modern juvenile justice system, such as use of screening/assessment tools, improved probation practices, use of evidence-based practices, improved dual status youth system integration, and implementation of trauma-informed care, there still remains in many jurisdictions a sustained philosophical approach that assumes parents are inept, incapable, or unwilling to care for their children. This underlying assumption creates significant harmful impacts to youth outcomes by destabilizing intact families, omitting elemental contributors of delinquent behaviors, and, most importantly, failing to engage one of the most impactful resources for enhancing youth outcomes: families.

That being said, there is a significant correlation between juvenile justice system involvement and the interactional characteristics between a child and their principal caregivers. A significant percentage of adolescent anti-social behavior can be accounted for by less than healthy family interaction patterns.⁵ Decades of clinical research demonstrate that early relational problems between children and their caregivers correlate to the onset of delinquent behavior in early adolescence. Those interactional problems can have a significant impact on the developing brain of a child. Healthy brain development depends on a sturdy foundation built by appropriate input from a child’s senses, and stable, responsive relationships with caring adults. If an adult’s responses to a child are unreliable, inappropriate, or simply absent, the developing architecture of the brain may be disrupted, and subsequent physical, mental, and emotional health may be impaired.⁶ The effects of these early developmental issues are on daily display in the juvenile justice system, especially among those children who first present themselves to the system prior to approximately age 14.

It is not unusual by the time a child first appears in juvenile court that a severe breakdown has occurred in the parent-child relationship. Parents are frequently at wits’ end and exhausted by chronic conflict and defiant behavior. It is common to hear a parent say they are simply done and are turning the child over to the court system to “fix.” For decades, juvenile justice practitioners have largely taken those parents up on their offer to step aside or, perhaps more commonly, have simply dismissed them as they were considered to be both the root of the problem and incapable of assisting in its resolution. On a very practical level, it may seem easier to focus on the youth because the family issues appear intractable. To further complicate our ability to engage family members in the effort to enhance behavioral changes for children in the juvenile justice system, parents frequently report they feel blamed

3 Shelden, R.G. (2005). *From Houses of Refuge to Youth Corrections: Same Story, Different Day*. Paper prepared for the Midwestern Criminal Justice Association Annual Meeting, Chicago.
<http://www.sheldensays.com/Res-twelve.htm>

4 *The Illinois Juvenile Court Act of 1899*. Illinois Revised Statutes, p. 131.
http://homicide.northwestern.edu/docs_fk/homicide/laws/ill_juvenile_court_act_1899.pdf

5 Dishion, T.J., Patterson, G.R., & Griesler, P.C. (1994). Peer adaptations in the development of antisocial behavior. In Huesmann L.R. (Ed.) *Aggressive Behavior*. pp. 61-95.

6 Center on the Developing Child, Harvard University
<https://developingchild.harvard.edu/science/key-concepts/brain-architecture/>

and disrespected in their interactions with juvenile justice professionals and, as a result, are more resistant to being engaged with a system in which they feel demeaned.

The reality is adult family members don't set out to create environments in which their children are at higher risk of entering the justice system, to negatively impact their social and emotional development, or to adversely affect their brain development. There are hosts of underlying reasons why those situations occur, including an absence of examples of supportive and responsive role models; personal histories of trauma or toxic stress; constant struggles to maintain the most basic needs for survival; difficulties with mental health or substance abuse; and, often, their own personal history of interaction with the justice system.

Research has identified a common set of factors that predispose children to positive outcomes in the face of significant adversity. These counterbalancing factors include supportive adult-child relationships; a sense of self-efficacy and perceived control; opportunities to strengthen adaptive skills and self-regulatory capacities; and sources of faith, hope, and cultural traditions.^{7,8} Significantly, a positive and supportive relationship with an adult is perhaps the most important of those factors. When positive influences are operating effectively, they have a tendency to counterbalance the adverse, and can reduce or eliminate problematic behavior. Unfortunately, many adults in the lives of justice-involved children lack these same factors in their lives and struggle with the core capacities to meet their own needs, let alone those of their children. The development of the capacity of adult caregivers to meet their children's needs for consistency, boundaries, and the skills essential for self-control is at the root of many of the evidence-based interventions that have proven successful. Demonstrated effective approaches such as Multisystemic Therapy (MST) and Functional Family Therapy (FFT) are characterized by being family-centered and focus on building the skills of all family members.

What juvenile justice practitioners have realized for some time is that the approach of pushing the family to the side is a poor way to address the long-term needs of children in the system and is unlikely to result in significant improvement in positive youth outcomes. Children generally remain in their family of origin or, if they are removed, will most likely return to their family. The family is, therefore, essential in promoting improved outcomes.

7 Center on the Developing Child at Harvard University. (2015). *The Science of Resilience (InBrief)*. <https://developingchild.harvard.edu/resources/inbrief-the-science-of-resilience/>

8 **Additional Recommended Resource:** National Scientific Council on the Developing Child. (2015). *Supportive Relationships and Active Skill-Building Strengthen the Foundations of Resilience: Working Paper No. 13*. <https://developingchild.harvard.edu/resources/supportive-relationships-and-active-skill-building-strengthen-the-foundations-of-resilience/>

That fact is widely acknowledged by juvenile justice professionals. In a nationwide survey, juvenile justice probation leaders cited improved parental engagement as a top priority. They also indicated it is one of the most operationally and financially challenging problems facing their systems.⁹ Juvenile probation officers place a high value on parental involvement in the probation process. Such involvement has been demonstrated to be linked to reduced recidivism.¹⁰ Those professional opinions are supported by extensive research in related fields. Parental involvement is demonstrated as a critical element to support positive outcomes across child mental health, youth substance abuse, and educational services.¹¹ Family engagement is demonstrated to be a critical change element across numerous evidence-based interventions for justice-involved youth.¹²

What this research strongly suggests is that meaningful family engagement is a core element in those interventions which met the rigorous research standards necessary to be described as evidence-based. Juvenile justice programming, for a variety of reasons, has not been the subject of extensive research. The 2012 Schwalbe study is, therefore, a bit of an anomaly. The study was a meta-analysis looking at the effect on recidivism of diversion programs involving over 19,000 youth. Five types of diversion programming were identified. Those included case management, youth court, individual treatment, family treatment, and restorative justice. The only diversion programs identified as showing a positive correlation for reduced recidivism were family treatment and restorative justice. It is worth observing that effective family treatment requires the active engagement of family members and restorative justice practices almost always involve the participation of family members as part of the process.

Despite the evidence and the recognition of the need to improve our interactions with parents and other family members, most juvenile justice systems struggle with how to implement those improvements. It is the authors' observation that this is primarily due to the difficulty involved in rethinking the way we do business. There is a fundamental tension between those processes which are likely to improve family

9 Center for Juvenile Justice Reform & American Public Human Services Association. (2008). *Bridging Two Worlds: Youth Involved in the Child Welfare and Juvenile Justice Systems, A Policy Guide for Improving Outcomes*.

10 Schwalbe, C. (2012). *Toward an Integrated Theory of Probation*. *Criminal Justice and Behavior*, 39, 185-201.

11 Atkinson, L. & Butler, S. (1996). *Court-ordered Assessment: Impact of Maternal Noncompliance in Child Maltreatment Cases*. *Child Abuse and Neglect*, 20, 185-190.

Dowell, K.A., & Ogles, B.M. (2010). *The Effects of Parent Participation on Child Psychotherapy Outcome: A Meta-Analytic Review*. *Journal of Clinical Child & Adolescent Psychology*, 39(2), 151-62.

Tanner-Smith, E.E., Wilson, S.J., & Lipsey, M.W. (2013). *The Comparative Effectiveness of Outpatient Treatment for Adolescent Substance Abuse: A Meta-Analysis*. *Journal of Substance Abuse Treatment*, 44(2), 145-58.

12 McCart, M.R., & Sheidow, A.J. (2016). *Evidence-Based Psychosocial Treatments for Adolescents With Disruptive Behavior*. *Journal of Clinical Adolescent Psychology*, 45(5), 529-563.

engagement and our adherence to the presumptions of *parens patriae*. The chart below shows the range of options.¹³

Most juvenile justice professionals likely find their comfort level on the right side of the chart. There is a sense (or illusion) of control on that side. Those who have expertise simply dictate what will happen. Little or no effort is made to include the family as an active participant. Conversely, the further one migrates to the left side of the chart, juvenile justice professionals can feel like they are abandoning their control, i.e. not doing their job. From the perspective of the family, the far right side of the chart can build resentment and feed a common family narrative about “the system.” The further one migrates to the left side of the chart, the family correctly perceives their opinions matter and their expertise about their family is both valuable and informs the system’s responsiveness to their needs.

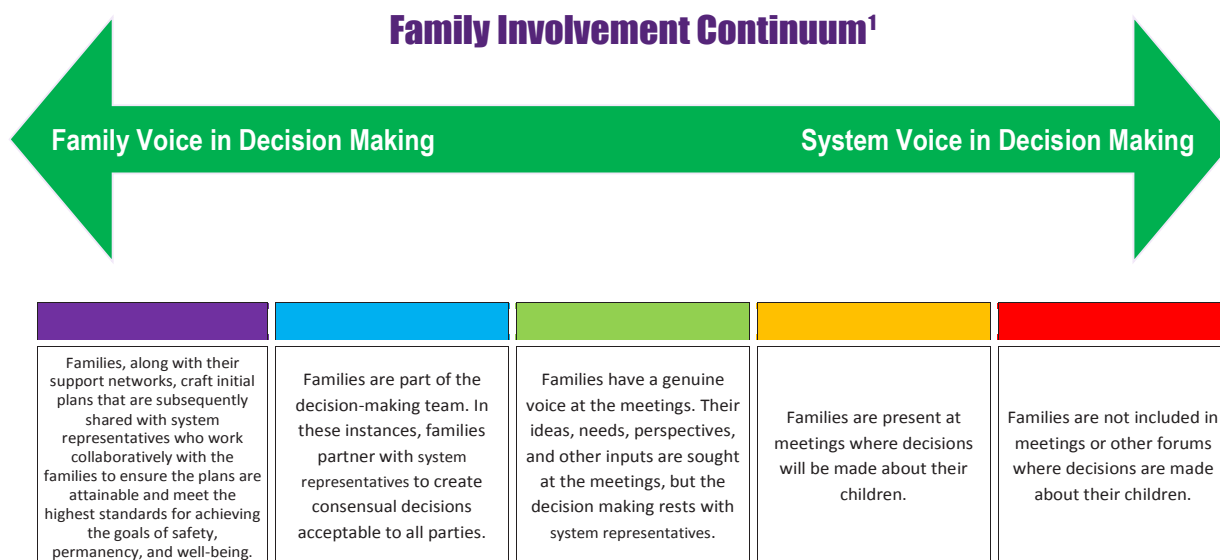
The implications of this tension are immense in terms of any jurisdiction’s effort to improve its interactions with the families of youth who have entered the juvenile justice system.

Any effort to improve family engagement will have common elements. Those include intensive staff training on the benefits of family engagement; sustained training and implementation of non-judgmental guiding techniques, such as Motivational Interviewing; a review of policies and practices of the court and probation in an effort to identify those points where improvements could be made to enhance family involvement; and, perhaps most importantly, a commitment from leadership to the underlying premise that the success of the child is dependent on helping the family develop its own capacity to manage the child’s behavior.

Another concept affecting recidivism is family perceptions of system fairness. Fairness of the juvenile justice system is an overlooked aspect of reducing recidivism. Adolescents and, by extension, families, have shown improvements in recidivism when they perceive the system to be fair.¹⁴ Inclusion of family members in decisions that affect the family structure, including decisions related to juvenile justice cases, is another method of impacting youth and family outcomes.



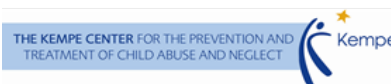
Family Group Decision Making
An Introductory Overview of Family Group Decision Making



¹Taken from: Merkel-Holguin, L., & Wilmot, L. 2005. Analyzing family involvement approaches. In J. Pennell & G. Anderson (Eds.), *Widening the circle: The practice and evaluation of family group conferencing with children, young persons, and their families*. Washington, DC: NASW Press.

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National Center on Family Group Decision Making
2018 – FGDM Introductory Overview Handouts



13 Merkel-Holguin, L. and Willmot, L. (2005). Analyzing Family Involvement Approaches in J. Pennell & G. Anderson (Eds.), *Widening the Circle: The Practice and Evaluation of Family Group Conferencing with Children, Young Persons, and Their Families*. Washington, DC: NASW Press.

14 Mulvey, E.P. & Schubert, C.A. (2012). *Some Initial Findings and Policy Implications of the Pathways to Desistance Study, Victims and Offenders*, 7(4), 407-427. <https://doi.org/10.1080/15564886.2012.713903>

At least one jurisdiction familiar to the authors has committed to partnering with families in meaningful ways. An effort is made to acknowledge and address the challenges a family may face regarding court-scheduled hearings (i.e., parents are consulted about dates and times when hearings would be less inconvenient). Following a youth's initial appearance, probation staff approach parents or other family present and (without discussing the underlying facts of the case) acknowledge that the process can be daunting and uncomfortable, and inquire of the family about their own experience with the process. In the aggregate, that feedback is taken into account and helps to inform system improvements. From the outset, the family is acknowledged as central to the process and critical to the ultimate success of their child. For cases involving moderate-to high-risk youth, Family Group Decision Making (FGDM) is utilized to develop case plans prior to sentencing.

FGDM has informed case planning and case reviews in child welfare settings for some time, and is now being employed with more frequency in the juvenile justice context. This process seeks to expand the traditional definition of "family" to include all of those people in a child's life who might be able to support the success of the youth. Family can, in this context, include all of the natural community supports in the child's life. In addition to primary caregivers, the "family" can include grandparents, aunts, uncles, siblings, family friends, neighbors, coaches, clergy—really any person who has some connection to the youth. In the juvenile justice context, this more inclusive family is, with the help of a trained facilitator, asked to develop a plan for dealing with what can be a single behavioral issue or a more complex constellation of issues that can sometimes encompass problematic behaviors of the adults in the child's life that are impacting the child. In a reversal of the traditional model where judges, probation officers, and behavioral health treatment providers dictate the terms of the case plan, the professionals are present in supporting roles to describe what resources they can provide to assist the family. The family is then left alone to develop its plan which is then presented to the larger group that includes the professional staff. In its purest form, the professional staff doesn't override the family's plan but can raise concerns the family may not have considered. The overarching goal in this process is to facilitate a circumstance in which the family is central to developing what becomes their own plan to address the identified issues, with the professional staff providing support, information, and resources. The expanded definition of family adds additional

voices to the planning process and those people inevitably become part of the plan by providing supports, which can include supervision at scheduled times, transportation, employment, pro-social activities and other resources that help to reduce barriers which might otherwise diminish the chances for success.

In conclusion, there is substantial evidence that engaging families should not be merely part of habilitative efforts¹⁵ by the juvenile justice system. Rather, they should be the locus of our engagement. Delinquent behaviors exhibited by youth are, in some ways, functional and are best explained in the context of a larger social system: the family. Given that the formation, reinforcement, and maintenance of youth's behaviors come from families, it seems most advantageous to utilize the same ecological system to learn, reinforce, and maintain more functional behaviors.

Further, in consideration of the much-discussed diminished cognitive processing abilities of youth due to immature brain development,¹⁶ engaging families in the habilitative process creates a more robust opportunity for changing environmental contributors and enhancing protective factors. Current knowledge of adolescent brain development reveals that youth are developmentally immature, which affects their decision-making.¹⁷ Yet they are inextricably connected to parents/families, which compels juvenile justice systems to engage families.

Alignment of concepts proven to be key contributors to reducing recidivism – such as family engagement – with the philosophy and practice of juvenile jurisprudence is another step in the evolution of the juvenile justice system. When juvenile justice system practices match practices known to improve youth outcomes, we will realize immediate and long-term benefits. Communities, schools, and families will thrive, which will have significant impacts for generations to come.

15 Samenow, S.E. (2015). *In 2016: Habilitation, Not Rehabilitation: A Critical Aspect of Criminal Justice Reform*. Psychology Today (Posted December 27, 2015).

<https://www.psychologytoday.com/us/blog/inside-the-criminal-mind/201512/in-2016-habilitation-not-rehabilitation>

16 Jensen, F.E. (2015). *The Teenage Brain: A Neuroscientist's Survival Guide to Raising Adolescents and Young Adults*. Harper: New York.

17 Steinberg, L., & Scott, E.S. (2003). *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*. *American Psychologist*, 58(12), 1009-1018.

<https://doi.org/10.1037/0003-066X.58.12.1009>

About the Authors

Judge Mark Ingram is a Magistrate Judge in the Fifth Judicial District for the State of Idaho where he hears juvenile justice matters in three counties. Judge Ingram was appointed to the bench in 2001 and has specialized in juvenile issues since 2007. He is currently the chairperson of the Idaho Supreme Court's Juvenile Justice Advisory Committee, the chair of the Idaho Juvenile Training Council, and a member of the Idaho Juvenile Justice Commission. Judge Ingram has been a champion of juvenile justice reform in Idaho by leading efforts to improve the quality of probation officer training; developing the infrastructure for ongoing probation system reviews throughout the state modeled on the RFK National Resource Center Probation System Review process; enhancing the court's case flow management for juvenile cases founded on developmental principles; improving system interactions with juveniles and their families; and promoting restorative practices as the foundation for addressing the needs of juveniles, their families, and victims of juvenile offenses. When not engaged in these efforts, Judge Ingram can usually be found on a trout stream with fly rod in hand.

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