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Double Jeopardy: Youth Involved in Dual Systems of Child Welfare and Juvenile Justice

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Editor's Comments

This edition of ***Practice Notes*** is directed to the population of youngsters who are dually involved in the Child Welfare and Juvenile Justice systems. The problems of "dual jurisdiction" have been the subject of several studies. Most of these studies noted that the impact of dual systems' involvement drains scarce resources. The unintended duplication of case management efforts contributes to a decrease in effectiveness and timeliness due to the number of professionals involved (sometimes with conflicting goals). Prolonged detention for youth may also be a consequence.

When the mental health screening legislation was enacted by the Minnesota legislature during the 2003 session (amending both the Children's Mental Health Act and the Minnesota Juvenile Code), an opportunity was created for collaborative work between two highly regulated systems dealing with vulnerable children. In essence, this legislation directed the two systems, frequently dealing with the same population, to pursue mental health screening. The purpose was clear: early identification of mental health problems, through a screening process, could be a crucial response to the growing concern for the mental health of children in high-risk situations. The intent—prevention—was widely supported. It is important to note that the legislation was framed in an aura of voluntary participation. For the Child Welfare system, parental notification to screen was required. The opportunity to withhold permission to screen had to be provided. On the Juvenile Justice side, only when the youngster had received a judicial finding of

delinquency or had committed subsequent offenses could the mental screening be ordered by the court.

How is this opportunity for collaboration, cooperation, and consultation working?

As might be expected, in a state with 87 counties administering a requirement that engages two systems with two different purposes, there will be a variety of responses. Uncovering the implementation of this legislation is a challenge. At first glance, there appears to be relative inactivity on the part of the Child Welfare system in mental health screening, but this is due to the exemptions which are granted under this legislation: children in foster care may have already received a screening or diagnostic assessment or they may already be under the care of a mental health professional. This is particularly true for older youth.

Collaboration is a work in progress: teaming and review committees involving multi-disciplinary staffs are appearing throughout the state. Family Group Decision-Making is perceived as a useful device in some counties, as a way of constructing a "wrap around" case plan. Informal staff consultations are generally identified as a way of cooperating, as noted in the Department of Corrections survey.

Initiatives in interdepartmental collaborations in large urban and metropolitan counties are taking shape. Hennepin County has issued a "Memorandum of Understanding" known as a "Joint Care Management Initiative" (Memo, September 2004, Daniel E. Engstrom, Assistant County Administrator and Fred LaFleur, Director, Community Corrections). This is intended to create an integrated Child Welfare and Juvenile Justice program, with shared staff from both systems providing a coordinated service plan for youth at risk. Other counties—Anoka, for example—have developed protocols for responses to their "double jeopardy" youngsters.

What follows is an early report on patterns of responses and persistent challenges.

This edition of ***Practice Notes*** is offered as an effort to promote more effective responses on behalf of a population of very troubled youth who may require life-long support and care, if untreated.

Esther Wattenberg, Editor

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Minnesota Trends: Dual System Youth

Preliminary data reveals that approximately 30% of youth *ages 10-17* who were involved in a Child Welfare case that reached a permanency decision in 2002 became dual-system youth between 2002-2003. The involvement of the Juvenile Justice system in the lives of these Child Welfare youth resulted from the filing of a delinquency charge, status offense, or juvenile petty offense.[1]

Delinquents Under 10 and Dual System Youth

- Between 1997-2001, 92% of the delinquent youth under age 10 in Hennepin County's Targeted Early Intervention program lived in families with at least one child protection or child welfare case opening.[2]
- In Ramsey County's All Children Excel program, 80% of the delinquent youth under age 10 in the long-term intervention group lived in families involved in the child welfare system and 45% of these delinquent youth had a mental health diagnosis.[3]

1. Criminal Juvenile Analytical Database maintained by the State Court Administrator's Office, received July 14, 2005.

Permanency decisions include reunification, transfer of legal custody, foster care for a specified time period, long term foster care,

living independently, termination of parental rights, and dismissal. Delinquency filings include Felony, Gross Misdemeanor, and Misdemeanor level offenses. Status offenses are those acts that are unlawful for a juvenile, but are not crimes if committed by an adult. Examples of status offenses include minor consumption of alcohol, underage smoking, curfew violations. Juvenile petty offenses include most offenses that would be a misdemeanor if committed by an adult.

2. "Targeted Early Intervention: Delinquents Under 10." A Factsheet published by the Hennepin County Attorney's Office, May 2001.

3. Beuhring, T. & Melton, H. (2002). Ramsey County All Children Excel: Promoting Resiliency in Children at Risk for Serious and Violent Delinquency. Preliminary Outcome Evaluation Study, Report to Ramsey County Board of Commissioners.

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Nationwide Trends: Understanding the Factor of Mental Health

- More than half of the youth in Child Welfare and more than half of the youth in Juvenile Justice have some type of mental health disorder.
- The most common mental health disorders for youth in Child Welfare and youth in Juvenile Justice include:
  - Conduct disorders/Oppositional Defiant Disorder (ODD)
  - Depression
  - Attention Deficit and Hyperactivity Disorder (ADHD)
  - Post Traumatic Stress Disorder (PTSD)
  - Mania
- Approximately 50% of these youth meet the criteria for 2 or more mental health disorders

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Abram, K., Teplin, L., McClelland, G., & Dulcan, M. (2003). Comorbid psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry*, 60 (11), 1097-1108.

McMillen, J.C., Zima, B., Scott, L., Auslander, W., Munson, M., Ollie, M., & Spitznagel, E. (2005). Prevalence of psychiatric disorders among older youths in the foster care system. *Journal of the American Academy of Child and Adolescent Psychiatry*, 44(1), 88-95.

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Maltreatment and Delinquency: A Disturbing Connection

- Children placed in substitute care at an older age are more likely to engage in delinquency
- 16% of children placed in substitute care receive at least one delinquency petition at some point compared to only 7% of children who have been maltreated but are not removed from their family
- Children who have been maltreated have an average of 47% higher delinquency rates than children who have not been neglected or abused
- The relationship of placement instability and delinquency is not well understood. One study suggests that multiple placements depletes "a child's stock of social capital which weakens social attachments and social controls" and it is this that increases the probability of delinquency.[1]

According to a qualitative study, youth in foster care may be linked to delinquent acts because:

- Group home placements encourage association with delinquent youth
- Group home staff and foster parents have a tendency to call the police for otherwise "normal" adolescent behavior[2]

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1. Ryan, J. & Testa, M. (2005). Child maltreatment and juvenile delinquency: Investigating the role of placement and placement instability. *Children and Youth Services Review*, 27(3), 227-249.

2. Morris, L. “Youth in foster care who commit delinquent acts.” *Children’s Voice*, Child Welfare League of America, January/February 2005.

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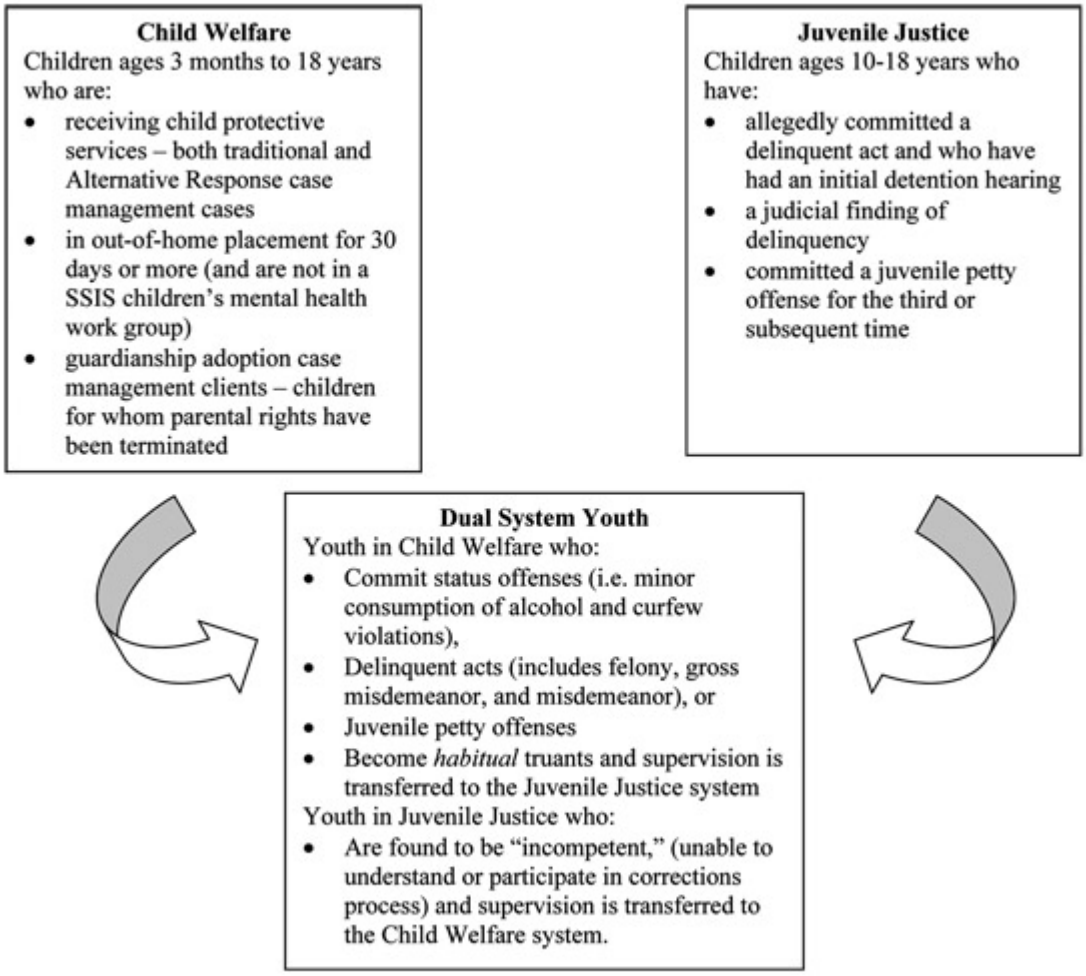
The Obligation to Screen

The Law: During the 2003 session, the Minnesota Legislature amended the Minnesota Comprehensive Children's Mental Health Act and the Minnesota Juvenile Code to require that, as of July 1, 2004, children in the Child Welfare and Juvenile Justice systems receive a mental health screening. The purpose of the mental health screenings is to detect mental health problems early and identify children who may need further mental health evaluation.

Who receives a mental health screening?



Exemptions:

- Screening and/or diagnostic assessment has been performed within the previous 180 days
- Child or youth is under the care of a mental health professional
- Parent or legal guardian refuses permission to screen, in writing, to the court or county agency
- Unable to locate child or case management case is closed within 30 days of opening

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Wyss, B. (2004). DHS implements child welfare and juvenile justice mental health screening (Bulletin 04-68-05). St. Paul, MN: Minnesota Department of Human Services.

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Two Systems and Their Screening Instruments

Mental Health Screening – "Screening is a relatively brief process designed to identify children and adolescents who are at increased risk of having disorders that warrant immediate attention, intervention or comprehensive review. Identifying the need for further assessment is the primary purpose for screening. Mental health screening instruments are never used to diagnose a child, but instead to inform parents and those working with families about matters needing further assessment." (p. 4, Bulletin 04-68-05)

	Child Welfare	Juvenile Justice	
Mental Health Screening Tools*	Pediatric Symptom Checklist	Massachusetts Youth Screening Instrument (MAYSI-2)	The Problem Oriented Screening Instrument for Teenagers (POSIT)
Ages	6 to 16 years	12 to 17 years	12 to 19 years
When is the Screening Initiated	Within 5 working days if the child is placed out of home for more than 30 days and is not receiving case management services	If in detention, after the initial detention hearing; If not in detention, after adjudicatory hearing	
Screen Completed By	Parent or guardian**	Youth's self-report	
Areas Addressed	Psychosocial functioning	Alcohol/drug use, distressed behavior, suicide ideation, thought disturbances, and traumatic experiences	Substance abuse, mental & physical health, family relationships, education, & aggressive behavior
Results***	For children ages 6-16, a score of 28 or higher reveals the need for a further mental health assessment	Scores may indicate: Clinically Insignificant, Caution, and Warning. Referral for further mental health assessment is indicated by: at least two Cautions or at least one Warning.	Each Functional Area listed above is scored as: Low, Middle, or High Risk. Referral for further mental health assessment is indicated by: 2 or more Areas scored as Middle Risk or any Area scored as High Risk

Next Steps

If the results of the screening identify potential mental health problems, the child is referred to a mental health professional in order to receive a diagnostic assessment and the child and family should be offered appropriate mental health services if a diagnosis is made. The county must take an active role in helping the family access a diagnostic assessment.

*All of the above screening tools are available in English and Spanish and for other languages it is recommended that interpreters are used. Child Welfare also utilizes the Ages and Stages Questionnaire: Social Emotional screening for children ages 3 to 60 months.

** There is a youth self-report available through the Pediatric Symptom Checklist, but it is not widely used in practice.

***Staff Training: After receiving the appropriate training for the screening instruments, the screenings can be administered by corrections professionals, social service providers or mental health practitioners.

Wyss, B. (2004). DHS implements child welfare and juvenile justice mental health screening (Bulletin 04-68-05). St. Paul, MN: Minnesota Department of Human Services.

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Dual-System Youth and Mental Health Screening: Questions and Answer

Q: What are the charges that would bring a foster care youth into the Juvenile Justice system?

A: There are three charges that are commonly identified:

- Delinquency charge (includes felony, gross misdemeanor, and misdemeanor level offenses)
- Status offense – those acts that are unlawful for a juvenile, but are not crimes if committed by an adult (i.e. minor consumption of alcohol, underage smoking, curfew violations)
- Juvenile petty offense (includes most offenses that would be a misdemeanor if committed by an adult)

Q: When a foster care youth is charged with delinquency which agency, Child Welfare or Juvenile Justice, initiates the mental health screening?

A: This is usually a mutually agreed upon understanding on which agency will take the lead.

Q: Are Child Welfare and Juvenile Justice required to receive parental permission in order to conduct the mental health screening?

A: Yes, in most circumstances. Before conducting a mental health screening, the court or county must notify the child's parent or guardian and provide them with the opportunity to prevent the screening. When a child has received a judicial finding of delinquency or when they have committed a third or subsequent juvenile petty offense, the court must order a mental health screening to be completed. Even within the court order, parents still have an opportunity to prevent the screening.

Q: How is the case plan for dual-system youth created?

A: Information gathered from the field reveals that direct practice in creating the case plan for dual-system youth varies by county. Best practice demonstrates that creating the case plan should be a collaborative and consultative process, involving representatives from both Child Welfare and Juvenile Justice. Some counties have created policies that aid in the communication and division of responsibilities between Child Welfare and Juvenile Justice caseworkers.

Q: Which agency has primary supervision of the dual-system youth?

A: Based on findings from the Department of Corrections survey, many counties stated that primary supervision is decided on a case-by-case basis. Processes for deciding primary supervision may include court orders, joint placement committee, or a developed policy or criteria. The majority of counties that responded to the survey agreed that when a delinquent youth is placed in foster care Juvenile Corrections maintains primary supervision responsibility for that youth.

Q: Are there circumstances when a delinquent youth is referred by Juvenile Justice to the Child Welfare system?

A: Yes, when a delinquent youth is deemed "incompetent" to follow the Juvenile Justice process the youth can be transferred to the Child Welfare system. Rule 20 in the Minnesota Rules of Juvenile Procedure defines "incompetence" as the child's inability to "consult with a reasonable degree of rational understanding with the child's counsel; or understand the proceedings or participate in the defense due to mental illness or mental deficiency." [1] In this circumstance, one option for the court is to file a CHIPS petition in order for the youth to receive necessary social services and a possible out-of-home placement under Child Welfare. Agreement on supervisory responsibility is mutually agreed upon.

Q: Can information between the Child Welfare and Juvenile Justice systems be exchanged?

A: No, in most cases, the Minnesota Government Data Practices Act[2] limits the full exchange of information. Usually, each system needs a court order or a release of information signed in order for interagency communication to occur. Some counties, such as Anoka, have created policies in order to facilitate interagency communication. Under certain conditions, information sharing in a multi-disciplinary child protection team may be arranged according to Minnesota Statute 626.558.

1. Minnesota Court Rules 2004, Rules of Juvenile Procedure, Rule 20.

2. “Minnesota Government Data Practices Act,” Minnesota Statute 2004, Chapter 13.

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Persistent Challenges

Conversations with practitioners reveal that the accessibility and availability of mental health services is a problem for particular populations of youth, including rural youth and youth of color. Despite the high percentages of youth in Child Welfare with some type of mental health disorder, research shows that approximately only one-fourth of youth with mental health needs receives necessary mental health treatment.[1]

Practice and research confirm the ethnic and cultural disparities that exist in accessing mental health services in Child Welfare and Juvenile Justice. In the Child Welfare system, African-American youth are less likely than Caucasian youth to receive mental health services prior to placement, during case management, and following their placement.[2] A 2000 study of Child Welfare data in Minnesota concurs with these findings and reveals that African American families were less likely to receive counseling services than Caucasian families.[3] In the Juvenile Justice system, Caucasian youth have higher rates of mental health disorders than African American youth, except for conduct disorder or any other disruptive behavior disorder, and substance abuse disorders.[4] Youth of color are often misdiagnosed or not diagnosed at all. Additionally, African American males are more likely to be referred to the Juvenile Justice system than to the mental health treatment system.[5]

Two issues of special interest have emerged in the implementation phase of the mental health screening legislation: (1) Data Privacy, and (2) Protecting Civil Rights. Currently, when a youth first appears in either system there is no method to identify whether or not the youth qualifies as a dual jurisdiction case. The level of communication between the two systems is limited by the Minnesota Government Data Practices Act.[6] In most circumstances, each system needs a court order or a signed release of information for interagency communication to occur. Some counties have created policies in order to facilitate interagency communication. The Anoka County shared cases policy[7] delineates procedures for communication between Corrections and Social Service caseworkers, including data-sharing, meetings, and other direct communication between the caseworkers, and notification of changes within the case.

Additionally, the mental health screening poses incrimination concerns in the Juvenile Justice system. In the majority of counties, the mental health screening is given to pre-adjudicated youth who are moving toward a delinquency petition and are waiting for their adjudicatory hearing. Public defenders and other advocates are concerned that the mental health screening could potentially violate the rights of pre-adjudicated youth, because the youth's responses to questions in the screening could reveal their guilt in a delinquent act. In Hennepin County, the MAYSI-2 is not given to pre-adjudicated youth in detention in order to avoid potential incrimination. The screening is then given after the hearing and only to the youth who receive an adjudication of delinquent. Further, the probation officers shred the MAYSI-2 directly after the screening is scored and recorded, in order to address incrimination concerns.

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1. Burns, B.J., Philips, S., Wagner, H., Barth, R., Kolko, D., Campbell, Y. & Landsverk, J. (2004). Mental health needs and access to mental health services by youths involved with child welfare: A national survey. *Child and Adolescent Psychiatry*, 4(8), 960-970.

2. Garland, A. & Besinger, B. (1997). Racial/ethnic differences in court referred pathways to mental health services for children in foster care. *Children and Youth Services Review*, 19(8), 651-666.

3. "Children's Services Study of Outcomes for African-American Children in Minnesota's Child Protection System," Report to the 2002 Minnesota Legislature, Minnesota Department of Human Services.

4. Abram, K., Teplin, L., McClelland, G., & Dulcan, M. (2003). Comorbid psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry*, 60 (11), 1097-1108.

5. "Factsheet: Mental health and youth of color in the juvenile justice system," National Mental Health Association.

6. "Minnesota Government Data Practices Act," Minnesota Statute 2004, Chapter 13.

7. "Policy Statement: Shared Cases between Social Services and Corrections," Anoka County Corrections and Social Services/Mental Health Department, retrieved on June 16, 2005.

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The Test of Collaboration: Findings from a State Survey

David Johnson, Director of the Community Juvenile Services Unit in the Department of Corrections, directed a statewide survey of corrections departments on issues dealing with mental health screening and dual-system youth. The responses came from 36 counties, chiefly rural with a small sample of metro counties. Large urban counties did not respond to the survey. A summary of the findings below is the first report of county practices.

Generally, when a youth is "found to be delinquent" local juvenile corrections assumes the responsibility for the mental health screening. Occasionally, Child Welfare is consulted. However, Juvenile Corrections takes the lead role for further assessments. The caseloads of dual involved youth are generally small (in rural counties 0 – 8, although one rural county reported 15) but complicated.

The Issue of Primary Supervision

- When a *previously non-delinquent youth in foster care commits a delinquent act*, there is a negotiated decision in order to determine primary supervision responsibility for the youth. Many counties commented that they decide primary supervision responsibility based on a case by case basis.
- The majority of counties agreed that when a *delinquent youth is placed in foster care*, Juvenile Corrections maintains primary supervision responsibility for that youth.
- Primary foster care supervision responsibility may be decided by court, joint placement committee, or by another manner such as a locally set policy or criteria.

Recommendations for Best Practice
Individual responses from counties in the Department of Corrections survey revealed the following best practices for working with dual system youth:

- Effective communication

  > "I believe in any situation good communication is essential to ensure both the positive delivery of services and measurable outcomes are archived and maintained. Good communication also helps to avoid turf issues that may arise in "dual systems" of supervision."

- Flexibility in order to create individualized case plans (programming and service delivery)

  > "Both agencies (corrections and social services) must be flexible in determining programs and service delivery plans because each case is unique, necessitating specific case planning, identifying varying roles for each agency in each individual case."

- Utilization of Family Group Decision-Making practices

  > "We in corrections encourage the Family Group Decision-Making process and are referring many of our dual-jurisdiction cases to the FGDM project so that decisions are made in a more open and collaborative way."

- Other recommendations include the following:
  - Hold regular team meetings
  - Both agencies must be flexible in development of policy on case management and financial obligation
  - Create a collaborative case plan

Mental Health Screening Survey, Department of Corrections, Community Juvenile Services Unit, May 2005.

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Best Practice for Working with Dual Jurisdiction Youth

Information Sharing

- Courts must have a method for identifying a dual jurisdiction case as soon as it enters the system
  - Routine screening for court involvement in abuse and neglect matters when a delinquency referral occurs
  - Routine screening for court involvement in delinquency matters when a dependency petition is filed
  - Formal protocols of notifying both Child Welfare and Juvenile Justice of dual involvement
  - Use of Structured Decision-Making tools
  - One-stop interagency intake screening and assessment centers

Coordinating Service Delivery

- Child Welfare and Juvenile Justice must develop a protocol for handling and supervising 'dual jurisdiction' cases. Coordination must occur through case assignment, case flow management, and case planning and supervision.

Interdisciplinary Training

- Interdisciplinary training for Child Welfare and Juvenile Justice case workers should be developed and required

Other Recommendations

- Attorneys knowledgeable about the Child Welfare and Juvenile Justice systems should be available to the youth
- Courts should notify all adults legally responsible for a youth in foster care when that youth has a delinquency hearing
- Enhance training of foster parents and group care staff so that police involvement occurs only when absolutely necessary
- Child Welfare and Juvenile Justice should work together to develop initiatives to address prevention
- Ensure that each youth receives a guardian ad litem to represent them through the court process, and appoint a court liaison to notify Child Welfare workers when a youth faces a delinquency charge

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Morris, L. "Youth in foster care who commit delinquent acts*." The Link: Connecting Juvenile Justice and Child Welfare*, Child Welfare League of America, Summer/Fall 2004.

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Further Reading

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Tuell, J. (2003). Promoting a coordinated and integrated child welfare and juvenile justice system: An action strategy for improved outcomes. Child Welfare League of America, Juvenile Justice Division.

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For futher information about news and events at the Center for Advanced Studies in Child Welfare or archived issues of ***Practice Notes*** go to http://ssw.che.umn.edu/cascw.

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