

The Foster-Care-to-Prison Pipeline



Ashly Marie Yamat¹

Justice Policy Journal • Volume 17, Number 2 (Fall 2020)

© Center on Juvenile and Criminal Justice 2020, www.cjcj.org/jpj

Abstract

At any given time, hundreds of thousands of children in the United States are in need of a home. The inability of some parents to provide support has caused foster care to develop into a common pathway into the juvenile justice system. Despite efforts to provide safe and supportive alternate living situations, our foster care system has shown to be highly controversial in its practice, leaving children at high risk of juvenile delinquency. This paper will examine the current climate that wards of the state live in and further explore how foster care creates a direct pipeline for children to become offenders in the juvenile justice system. Included are suggestions for improvement and a discussion of how the foster care system may move forward in the best interest of its children.

Introduction

An estimated one fifth of the United States population consists of children who range between the ages of 0 and 17 (U.S. Census Bureau, 2018). As a child develops

¹ University of Nevada-Las Vegas

Corresponding Author:

Ashly Marie Yamat
ashlymarieyamat@gmail.com

and grows, countless factors contribute to their likelihood of success and overall well-being. Today, for example, a large number of children are living in what are considered “nontraditional families”; that is, families that break the mold of “two married parents in their first marriage” (Pew Research Center, 2015). Parental support plays a key role in giving a child the proper foundation for their future success. Compared to several decades ago, today’s household structures show more variation, shifting the way many children are raised.

The various households in which children in America are being raised include single-parent families dependent on a sole income, households of non-marital cohabitation, or temporary foster care families. In fact, data provided by the Pew Research Center shows that almost a quarter (23%) of all children in this country live in a single-parent household, a percentage which is the highest in the world (Kramer, 2019). High school dropout rates among children in these single-parent families are higher than those living in two-parent families; additionally, dropout rates are especially high for minorities with only one parent in the home (NYU, 2015). These statistics further indicate family poverty level as single-parent households are more likely to both live in poverty and be minorities. About two-thirds of black youth live under a single-parent roof (Kids Count Data Center, 2020). When looking at the trends surrounding children in these situations, the rates of suspension and expulsion from school is the highest among minority students, but especially among those living in poverty (Sparks & Klein, 2019). Factors like varying household structure and low economic support are a few examples that can strongly affect a child’s school experience. In turn, a child’s time in school can provide a direct pathway into the juvenile justice system, even for minor misbehavior. Today, this link between education and juvenile delinquency is commonly known and referred to as the “school-to-prison pipeline.”

The current literature on the “school-to-prison pipeline” finds that it is “more likely that students will enter the juvenile justice system than attain a quality education” (Shelden & Troshynski, 2020, p.304). Many kids are simply at a disadvantage because of their lack of stability or resources in life, and the education system plays an important role in determining their future path. Shelden and Troshynski mention such a pipeline exists between school and the juvenile justice system because of things like zero tolerance policies or unwarranted increases in school police presence (2020, p.305). Consequently, discrepancies in a fair and equal education system have caused thousands of already disadvantaged children to experience loss in a new manner.

While acknowledging that the connection between school and juvenile justice is prevalent, there lies a different but similar pipeline that must also be explored.

Here, the relationship between a child's upbringing – or lack thereof – and the juvenile justice system explains how upwards of 90% of foster children will come into contact with the juvenile justice system before leaving child welfare (Juvenile Law Center, 2018). The examination of this phenomenon is crucial to advocating for the well-being of children – specifically children who find themselves in foster care and at a higher risk for entry into the juvenile justice system. The main issue is that foster care, a system built to assist children, has significant deficits that are allowing them to fall through the cracks and into the hands of law enforcement. The foster care system houses a large percentage of youth who already have or will eventually be touched by the juvenile justice system. Children in the foster care system commonly juggle many difficulties ranging from inconsistent levels of supervision to blatant disregard by a system claiming to want to help. These systemic challenges, which are often overlooked, lead to inequity and an inability by the foster care to safeguard children. As children are funneled from their foster homes into juvenile detention it is important to understand how one broken system works hand in hand with the another through what is known as the “foster-care-to-prison pipeline.”

Foster Care

Child welfare agencies are responsible for keeping children safe from abuse and neglect. When an agency determines that a child is not safe at home, they can be removed from that environment and place into “substitute care” (Shelden & Troshynski, 2020, p.484).

In 2018, the Children's Bureau reported that nearly 450,000 children were circulating in the United States' foster care system.² The concept of foster care dates back to the seventeenth century, as it was meant to “evoke a nurturing alternative to orphanages” (Rymph, 2018, p.177). Here, orphaned children could find guidance and care in what was known as “apprenticeship” (Rymph, 2018, p.18). Even then, there was growing concern over children without parents and where they might be placed in the meantime. The need for foster care has grown significantly, shown through the astounding annual rise in the number of foster

² The ratio of male to female children within the foster care system is almost equal: 52% male and 48% female. For original data see Children's Bureau, Adoption and Foster Care Analysis and Reporting System (AFCARS) data, specifically “Numbers at a Glance.”

children entering the system (Children’s Bureau, 2018).³ As one of the most high demand sectors of the child welfare system, the lives of countless children depend on foster care to provide them with a home, educational resources, and support for their other basic needs.

Since its inception, foster care has been through many changes to become the program it is today. Currently there are several variations of foster care available to meet a child’s specific needs. The most common forms include private foster homes and group homes – also known as congregate care – where several other children may be housed (Shelden & Troshynski, 2020, p.393). In addition, options such as kinship care – when other relatives take on the child in question – and “foster-to-adopt” care are also available when the situation deems fit.⁴ Centuries of development yielded the current system described again by Rymph as a “modern, bureaucratic, and publicly licensed system of supervised foster care” (2018, p.17). At its face value, foster care is widely available, presents as a good living alternative for children without other options, and seems to provide for all of the needs of a child. However, the attempt to portray our current system as a nurturing and stable environment simply does not account for the full reality life in foster care. In the midst of trying to secure effective care for children, many problems are left unresolved. This is due in part to the problematic errors put in place by the system, such as improper caretaking, lack of program or facility resources, highly unreasonable standards, and an unattained level of real care that is necessary for children – especially foster children – to thrive under their difficult circumstances.

These shortcomings are not new concerns, but rather an ongoing cycle, as described by Craig in the mid-nineties, “If the foster care system were considered a business...judged in terms of unnecessary human suffering inflicted by mismanaged systems...it would have been forced into bankruptcy long ago” (1995, p.11). When such standards fall short of being met, it is effectively creating a system where the suffering of our children is inevitable.

It is a system, according to the Child Welfare Information Gateway, that is meant to be a “temporary service” that provides care for children whose parents they otherwise cannot live with” (2020). Statistics seem to speak differently, as revealed again by the Children’s Bureau, which shows that on average a foster child spends 8.3 years of their life in the system (2018).⁵ Keep in mind that a child is defined as

³ Between the years of 2014 and 2017, the number of children in foster care had risen by nearly 30,000 children.

⁴ For further definitions on types of foster care, see AdoptUSKids, “About foster parenting” (2020).

⁵ For original data, see Children’s Bureau, Adoption and Foster Care Analysis and Reporting System (AFCARS) data, specifically “Children in Foster Care on September 30, 2018”.

being between the ages of 0-17; therefore the aforementioned statistic represents nearly half of a young person's childhood. This "temporary service" title that foster care is given implies that children are not meant to permanently stay "foster children", but that is obviously not always the case. According to Sheldon and Troshynski, "Black youths are twice as likely to be placed in foster care as white youths" and other children such as "LGBTQ and those with mental illnesses" are disproportionately placed in foster care as well (2020, p.393). Children coming into foster care are of all backgrounds and all have different needs. At this point in the system, children may face harsh conditions that break down their foundation of support and hinder their success.

It should come to no surprise that foster care is "plagued with scandals" (Sheldon and Troshynski, 2020, pp. 394-395). Several issues of ethical and reasonable practice have been found within the system. These include but are not limited to abusive tactics, hunger and starvation, disregarding mental health, failing to provide basic necessities, and sexual harassment and abuse. Finding the precise number of cases where abuse was present in a foster home is difficult (Ibid.). In many instances, state oversight agencies fall short of investigating these critical failures of the system (Wexler, 2017) and the actual prevalence of abuse within foster care may be higher than what is reported. This is just one problem of many within our current foster care system. In looking at how all of these issues arise in a system with the word "care" in its name, we must analyze a significant player in this system: the caretaker.

Foster Parents

There are several ways in which those who wish to help foster children may find themselves with the ability to do so. Foster parents or caretakers play one of the biggest roles in foster care as they are the ones who take on the duty of caring for children by providing them with a temporary home. These individuals can begin fostering in their own private homes or in a "group home" setting. The unfortunate reality is that many of these foster parents are ill-equipped to deal with the hardships that fostering will bring into their lives. It takes much preparation and understanding to bring someone else's child into your home and many foster parents fall short. In some cases this results in long-lasting and damaging consequences for the children.

Some foster placements are larger than others. When more foster children are living in one place, there can be additional challenges, including a possibility that

they are receiving improper care. While some foster parents are extremely successful in providing children with a safe home, even one foster home falling short of expectations is a major cause for concern. According to Cooley and Petren (2011, p.1968), “foster parents often report that agencies provide inadequate assistance, support, and information.” Simply put, foster parents who are at the core of ensuring an effective system, lack the resources to be successful. No matter the difficulty or hardship that fostering may bring, this reality does not excuse some of the tactics that select foster parents resort to when attempting to take control in certain situations.

It is a foster parent’s job to look after the children placed in their care and maintain a well-structured home for them. Often times this includes children being active in the upkeep of their house or facility through mandated chores or tasks. These caretakers may also structure certain aspects of a child’s experience in the foster home in ways such as room assignments, daily schedules, restrictions on common items and other various measures. Misunderstandings and disagreements are very common within foster households and, in certain situations, a caretaker or superior might respond to conflict or undesired behaviors with a call to law enforcement. This may stem from the fact that many foster parents lack training in how to deescalate situations without turning to local authorities. If a conflict arises and the foster parent does not have the skills needed to address the disruption, they may rely on a police response.

When opting for law enforcement intervention in their foster home, a caretaker is doing one of two detrimental things. First, calling law enforcement takes away the possibility of less extreme remedies that could successfully resolve the situation. For example, in some foster homes, local police are considered the first line of defense against two foster youth getting into a verbal or physical argument. As an alternative, foster parents could resort to softer ways of addressing the situation, such as mediation or lost privileges for those involved. Second, bringing local police into a foster home puts the foster child at high risk to become involved in or re-entering the juvenile justice system. Foster caretakers are one of the gatekeepers in determining a child’s involvement with the juvenile justice system. When they call upon law enforcement to respond to problems within the home, it becomes much more likely that a child will end up being accused of committing delinquent or criminal acts. When we finally shine a light on caretakers, one can see how foster care fuels the pipeline into juvenile detention.

The Foster-Care-to-Prison Pipeline

The relationship between a child being placed in foster care and ending up in the juvenile justice system is a serious and extremely relevant issue among foster programs today. In addition, a number of foster children have no stability and face several different home placements over the course of their time in foster care. The Juvenile Law Center reports that about “90% of youth with 5+ foster placements will enter the justice system” (2018). That is 90% of youth whose lives will forever be changed, as any involvement in juvenile detention can yield a huge negative impact on future success (Shelden & Troshynski, 2019, p.392) As previously described, foster care is meant to establish strong support for children as they continue growing as young people in society. However, in many cases, the system is overbearing and strict, offering weak support, allowing children to engage in risky behavior, and placing them in dangerous and threatening situations. When a foster child finds themselves turning towards other means of support – like committing crimes with others or involvement in gangs – they are at risk of embarking on a dangerous path with damaging effects that could last a lifetime. It is an irony of the foster care-to-prison pipeline that youth entering the foster care system are some of the most vulnerable people in our society, yet many leave with less care and more trauma, particularly if they have had contact with the justice system.⁶

Foster children are set up to fail in various ways. Due to a lack of proper caretaking or a poor foster home environment, many slip through the cracks. When children lack strong parental or guardian support, they may begin employing survival tactics. This can include selling and using drugs, running away from their foster home, being truant from school, and other miscellaneous illegal activities. When children enter a foster home, such as a group home, such behaviors may become easier or even necessary for survival. As previously described, group home settings suddenly mix foster children of many different backgrounds. According to Shelden and Troshynski (2020, p.394), “youth placed in group homes are 2.5 times more likely to be involved in the justice system” (Juvenile Law Center, 2018) and are exposed to the serious, long-term effects of justice system involvement – a harm that could have been prevented.

If “by age 17, more than half of the juveniles in foster care have been arrested, convicted, or confined overnight in a correctional facility” (Shelden & Troshynski,

⁶ In the case of *Kent v. Ohio*, Supreme Court Justice Abe Fortas wrote: “There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds; that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.” *Kent v. United States* (383 U.S. 541, 1966).

2020, p.394), the current system is failing these children. Children who are subject to the scrutiny of the juvenile justice system must face the tough standards of the juvenile court and its sometimes overly punitive dispositions. The juvenile court was established with “[the original] mandate to rehabilitate, not punish wayward youth”, though little evidence has shown that “confining young people does anything to advance this” (Bernstein, 2014, p.7). Once foster children are funneled from their homes into the criminal justice system, they are met with hardships and difficulties that are irreversible, no matter how small their crime may have been or short a sentence is imposed. Essentially, at the moment that a foster child walks into a police station, juvenile facility, or courtroom, the damage has been done.

Conclusion

The foster-care-to-prison pipeline has serious negative effects on a child’s life. The rates at which foster children are placed in the juvenile justice system are unacceptably high. Due to the foster care system’s many flaws, foster children feel its repercussions in their daily lives and many suffer through years of mistreatment. These already disadvantaged youth must hurdle through unreliable levels of care, run-ins with law enforcement, and the unnerving reality that the walls of a juvenile detention facility may wait just around the corner for them. With the high percentage of foster children who are disproportionately likely to face a criminal sentence, there are many ways in which broken procedures could be fixed. Foster care advocates argue that better legislation must be enacted to protect the interests of foster youth who are at risk of being subject to the juvenile justice system. One example is that there are currently only 13 states that protect foster youth from being discriminated against on the basis of sexual orientation or gender identity (Juvenile Law Center, 2018). Legal protections must be expanded in all areas of discrimination to which foster children are subject.

The care necessary to effectuate positive outcomes for all youth is simply not present in the current foster care system. Foster children constantly teeter back and forth between the pitfalls of child welfare’s inability to care for them and the dangerous reach of the juvenile justice system. Analyzing some of the reasons why foster children are more inclined to end up in juvenile detention or prison yields this theory: the current system is extremely flawed in its characteristics, practices, and capacity to provide the right quality of care for children, many of whom are putting their hope in a broken system. The foster care system should be restructured to uphold the basic rights of the children in its care. In policies outlined by Children’s Rights, we are reminded that “youth in child welfare...under the Fourteenth Amendment...[have] rights to...reasonably safe living conditions;

freedom from psychological harm; ...[and] adequate care” (2017, p.7). These should serve as guidelines when advocating for greater protections within the foster care system. Incorrect caretaking can be remedied through proper training and background checks.

Much must be done to sever the relationship between the juvenile justice system and the foster care system, including a push for stronger legislation that protects foster children. Moving forward, advocates should bring attention to the current state of foster care, its connection to juvenile delinquency, and the ways in which the system may further be improved; if not for the sake of the system, then for the foster children whose lives depends on it.

References

- AdoptUSKids. (2020). About foster parenting. [Blog post]. Retrieved from: <https://www.adoptuskids.org/adoption-and-foster-care/overview/foster-parenting>.
- Anspach, R. (2018, May 25). The Foster Care to Prison Pipeline Impacts America's Most Vulnerable Youth. Retrieved from: <https://www.teenvogue.com/story/the-foster-care-toprison-pipeline-what-it-is-and-how-it-works>.
- Child Welfare Information Gateway. (2020). Foster Care. Retrieved from: <https://www.childwelfare.gov/topics/outofhome/foster-care/>.
- Children's Bureau. (2018) Adoption and Foster Care Analysis and Reporting System (AFCARS) Retrieved from: <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>.
- Children's Rights. (2017, April). Safe Havens Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care. Retrieved from: http://www.childrensrights.org/wp-content/uploads/2017/04/TGNC-Policy-Report_2017_final-web.pdf.
- Cooley, M.E. & Petren, R.E. (2011). Foster parent perceptions of competency: Implications for foster parent training. *Children and Youth Services Review*, 33(10), 1968–1974. doi: 10.1016/j.childyouth.2011.05.023.
- Craig, C. (1995) “What I need is a mom”: the welfare state denies homes to thousands of foster children. *Police Review*, 73, 40-49.

- Juvenile Law Center. (2018, May 26). What is the foster care-to-prison pipeline? [Blog post]. Retrieved from: <https://jlc.org/news/what-foster-care-prison-pipeline>.
- Kent v. United States* (383 U.S. 541, 1966). Retrieved from <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=383&invol=541>.
- Kids Count Data Center (2020). Children in single-parent families by race in the United States. Retrieved from: <https://datacenter.kidscount.org/data/tables/107-children-in-single-parent-families-by-race#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/432,431>
- Kramer, S. (2019, December 12). U.S. has world's highest rate of children living in single-parent households. Retrieved from: <https://www.pewresearch.org/fact-tank/2019/12/12/u-s-children-more-likely-than-children-in-other-countries-to-live-with-just-one-parent/>.
- New York University (NYU). (2015, February 19). Teens From Single-Parent Families Leave School Earlier. Retrieved from: <https://www.nyu.edu/about/news-publications/news/2015/february/teens-from-single-parent-families-leave-school-earlier.html>.
- Pew Research Center. (2015). Parenting in America: The American family today. Retrieved from: <https://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/>.
- Ryan, J.P., Marshall, J.M., Herz, D., & Hernandez, P.M. (2018). Juvenile delinquency in child welfare: Investigating group home effects. Duluth, MN: University of Minnesota. Retrieved from: <https://experts.umn.edu/en/publications/juvenile-delinquency-in-child-welfare-investigating-group-home-ef>.
- Rymph, C.E. (2018). *Raising government children: a history of foster care and the American welfare state*. Chapel Hill: The University of North Carolina Press.
- Shelden, R.G. & Troshynski, E.I. (2020). *Delinquency and Juvenile Justice in American Society* (3rd ed.). Long Grove, IL: Waveland Press.
- Sparks, S.D., & Klein, A. (2019, February 20). Discipline Disparities Grow for Students of Color, New Federal Data Show. Retrieved from: <https://www.edweek.org/ew/articles/2018/04/24/discipline-disparities-grow-for-students-of-color.html>.

U.S. Census Bureau. (2020). Current Population Reports, Estimates of the population of the United States by single years of age, color, and sex: 1900 to 1959 (Series P-25, No. 311); Estimates of the population of the United States, by age, sex, and race: April 1, 1960, to July 1, 1973 (Series P-25, No. 519); Preliminary estimates of the population of the United States by age, sex, and race: 1970 to 1981 (Series P-25, No. 917); and Intercensal estimates for 1980–1989, 1990–1999, and 2000–2009. The data for 2010 to 2018 are based on the population estimates released for July 1, 2018. Data beyond 2018 are derived from the national population projections released in September 2018.

Wexler, R. (2017, September 20). Abuse in Foster Care: Research vs. the Child Welfare System's Alternative Facts. Retrieved from <https://youthtoday.org/2017/09/abuse-in-foster-care-research-vs-the-child-welfare-systems-alternative-facts/>.

About the Author

Ashly Marie Yamat is a recent graduate of the criminal justice department at the University of Nevada, Las Vegas. This paper was an independent study project in the Spring of 2020. Areas of interest include juvenile delinquency, social inequality and trial advocacy. She plans to seek a dual Master of Social Work (MSW) and juris doctorate (J.D.) by attending law school next fall. Her email is: ashlymarieyamat@gmail.com.