

How Youth Are Defined: Criminal Justice System vs. Social Services Institutions

Alaina Brosseau

Department of Sociology, MacEwan University

Abstract

This project examines alternative measures to charging at-risk youth and the importance of transitional programs due to the ineffectiveness of punitive approaches. Punitive approaches are known for worsening issues with delinquent youth, such as recidivism. Youth are optimal to examine when tackling socioeconomic issues such as these because they are young enough that intervention can be done to set them on the right path. This intervention can prevent harms that would otherwise define them for the rest of their lives. There are shortcomings in the way society handles delinquent youth, and many are trapped in their criminal label. Because of this, they often continue to offend and 'rebel' against the system. Alternative measures to charging youth and transitional programs could make the difference in the way delinquent youth choose to move forward as adult members of society, potentially preventing criminal career formation.

Introduction

The way youth are defined in society impacts how they are addressed, perceived and interacted with. But what if the way society defines youth is not clear? In the case of at-risk-youth, there is a gap between the definition of what constitutes a youth when they are dealt with in the criminal justice system versus when they are dealt with in the social services system. This becomes problematic because it creates a group that does not get the help or support they need. In order to understand this issue fully, there are some key terms and concepts that need to be explored first.

An at-risk-youth is an individual who is lacking the characteristics, experiences, or resources a person needs in order to successfully transition into adulthood. This can be for a number of reasons: the youth may come from a family of low socio-economic status, they may be involved with a bad crowd or gang, they could be abusing or selling drugs or alcohol. They may be subjected to violence and abuse, or they may suffer from mental illnesses such as depression or suicidal thoughts. For the purpose of this paper, the concept of "success" includes academic achievement, job stability, and financial independence. At-risk-youth lack the ability to become positive contributing members of society, which often leads them to delinquent behaviors. One way these youth have been addressed is through the Youth Criminal Justice Act (YCJA). The criminal justice system is a system of law enforcement that is in charge of apprehending,

prosecuting, defending and sentencing individuals who are convicted or suspected of any criminal offence. One of the key purposes of the YCJA is to use alternative measures to charging at-risk-youth (Minister of Justice and Attorney General of Canada, 2013). The purpose of alternative measures is to divert the youth from delinquent behavior that would otherwise lead to reoccurring conflicts with the criminal justice system. The YCJA is applied all throughout Canada as it is federal legislation, however, Ricciardelli and colleagues (2017) state that even with common knowledge of the YCJA across the country, there are still limitations with the legislation. One of the main limitations they address is cohesion between police forces and the community programs that are being implemented to reduce charges. Another key limitation is the inability to help youth once they turn 18. When a youth is involved with the criminal justice system, they are only defined as a youth from the age of 12 until 18.

There are cracks in the way we define youth through different institutional settings that can be counter-productive to alternative measures used by the YCJA. For example, the YCJA only works until they turn 18 and then they are turned over to the adult justice system. This can be problematic because non-profit organizations define youth to be as old as 24, sometimes even 26. Often once the youth age out of the system, they drop off and will revert back to their old delinquent behaviors. In Canada, youth who get involved with the justice system are regulated under YCJA. The YCJA was implemented in 2003 because Canada had the

highest level of youth incarceration within western societies (Ricciardelli, Crichton, Swiss, Spencer, & Adorjan, 2007). This was due to lack of provisions and guidelines for professionals to follow when dealing with delinquent youth. The YCJA now uses extrajudicial measures which are alternatives that avoid legal proceedings when dealing with delinquent youth. Examples of these measures are verbal warnings, written warnings, rehabilitation programs, life skill and career programs, educational programs, compensation to the victim, volunteering and so on. Ricciardelli and colleagues (2007) explain that in order to divert youth away from involvement in the criminal justice system, police and the provincial government worked together to create these diversion programs that focused more on rehabilitation. Some of these programs are pre-charge programs, that give youth the option to get help instead of punishment; others are called post-charge programs and help youth get back on their feet and learn skills to keep them from going back.

Non-governmental organizations (NGOs) are trying to combat the issues that arise from limiting the definition of youth to under 18 within the criminal justice system by raising the age of youth programming, but is this just prolonging the effects of being aged out of the system? Transitional programming gives these individuals support to get on their feet and adjust to adulthood in a more effective way than aging them out. There is a strain on the relationship between the criminal justice system and the social service institutions. Because of this strain, resources for those aged 18 to 26 are much more limited in the criminal justice system, which causes these individuals to face a harsh reality.

In contrast to the criminal justice system, social service institutions commonly define youth from the age of 12 until the age of 26. Social service institutions have recognized that having youth age out of the criminal justice system at the age of 18 can be detrimental to their wellbeing. Aging out is a term used when describing youth who are leaving a formal care system because they have hit the age of 18. Because of this, some social service institutions have implemented transitional programs. Transitional programs are defined as programs for youth aged 18 to 26 who are in need of extra support in order to become functionally independent adults. Programming usually includes a combination of treatment, life and career skills, and relationship building.

This paper examines the alternatives that are in place to charging at-risk youth and how the definitions of youth affect individuals being aged out. Outcomes of being aged out usually result in the youth becoming adults with low socio-economic status, continued gang involvement, incarceration and so on. Alternative measures are often also referred to as extrajudicial measures and are defined as additional options

to avoid legal proceedings. These extrajudicial measures can include community service, participating in restorative justice practices, sentencing circles, letters of apology and so forth. The criminal justice system representatives often have the choice of using alternatives to charging. Another option they have is alternative sanctions, which are options other than confinement and punitive approaches for youth that have been charged and found guilty. A few examples of alternative sanctions would be fines, confiscation of the criminal's property, restraining orders or removal of license. Youth who are given the option to join these programs that help build life and work skills are those who have received alternative measures to charging, while other youth who are given conditions of participation for these programs instead of juvenile detention have received alternative sanctions.

There are two types of sanctions, formal and informal (Thomas and Bishop, 1984). Formal sanctions are administered at an institutional level as they are often written, official documents. They are part of constitutional legislation, more commonly understood as law enforcement mechanisms. Examples of formal sanctions would be fines, restraining orders or imprisonment. Formal sanctions are used to enforce cultural values that are deemed appropriate and acceptable to society. Informal sanctions operate at an individual level rather than at an institutional or societal level and are comprised of interactions between individuals. They are associated with social norms that are intended to guide the way the youth behave. Examples of informal sanctions are shame, criticism, disapproval, and, in an extreme form, social exclusion. Informal sanctions are not legal mechanisms, but they do occur often within society. The main premise behind informal sanctions is that they will motivate the youth to act according to desired social norms.

The correctional system has turned to these two sanction options when dealing with youth because of the ineffectiveness found when using penal approaches such as confinement and prison sanctions. Ineffectiveness refers to how youth are not prepared or taught to be better functioning members of society. Instead punitive approaches often make their issues worse, causing recidivism. Which then leads one to question how does the lack of transitional programming invalidate the effects of youth alternatives to charges?

Overview of Theoretical Frameworks

At-risk-youth need to have pro-social physical and social environments in order to make positive behavioral decisions. One way this is achieved is through social service supports in different institutional settings. Deprivation of supportive services can lead one to a decreased quality of life, which makes it taxing for an individual to create social bonds within the community. This is seen especially with youth because they use these social bonds to gain a sense of

belonging and cultural norms. Without these social bonds they tend to revert back to delinquent behaviors and do not develop into effective adults.

Merton's strain theory (1938) draws attention to the pressures placed on individuals within society to meet socially acceptable goals, even when the individual lacks the means to achieve these goals. Merton believed that when an individual is unable to achieve their goals in a legitimate way, they may resort to illegitimate means in order to achieve their goals.

Robert Agnew revised Merton's strain theory in 1992, which helps further explain youth's involvement with delinquency. Agnew proposed general strain theory, which suggests that some people will engage in unhealthy coping mechanisms to deal with various life stressors. Examples of unhealthy coping mechanisms would be drug abuse, alcoholism, theft, vandalism and other criminal activities. He also introduced additional sources of strain—beyond the economic sources that Merton focused on—that are important for examining youth involvement with crime. Additional sources of strain include low social control, strains of high magnitude, those that are perceived unjust, and strains that seem to encourage invalid coping mechanisms (Carey, 2015).

Agnew proposes emotional states to be a factor in criminality as well, as an individual who is dealing with negative emotions such as depression, fear or anger may turn to crime as a coping mechanism, albeit an illegitimate one. Carey explains that in Agnew's general strain theory, the three types of coping mechanisms are cognitive, behavioral and emotional. Minimalization of negative feelings is an example of cognitive coping. For example, if an individual says, "I cannot make this better, so it does not matter" or "Oh well, it is good enough", the individual is reassuring themselves cognitively in order to brush aside the real problems.

Behavioral coping is when the individual tries to solve their negative feelings through action. For example, "in the case of an unhappy marriage, an individual could seek a divorce as a solution to their problem" (Carey, p.2). This would be an example of a legitimate behavioral coping mechanism, however, when an individual resorts to criminal behavior, this can result in an illegitimate form of coping for their negative emotions. For example, the individual who is in an unhappy marriage might choose murder instead of divorce. (Carey, 2015). The individual is looking toward behavioral coping for permanent relief of their negative feelings through action.

The final coping mechanism outlined by Agnew's revision of general strain theory is emotional coping. Emotional coping is not a permanent resolution to their negative emotions but rather the individual just reduces them. This can be done

through fresh air, exercise, socializing, eating wholesome foods, staying hydrated and getting proper sleep. Emotional coping can also become criminal when the individual looks to reduce their negative emotions through alcohol or drug abuse, or other delinquent behaviors (Carey, 2015).

Most youth that get involved with delinquent behaviors will experience a removal of a positive stimuli around the same time they are presented with negative stimuli, which causes strain (Agnew 1992). The revisions made by Agnew also help to explain why alternative measures are beneficial for young offenders. Implementing alternative measures allows for the reintroduction of a positive stimuli, while eliminating negative stimuli. In this example the positive stimuli would be engaging the youth in a career and life skills program and the negative stimuli that is eliminated is juvenile detention.

Social structures around an individual affect their pro-social functionality as members of society. When social structures are not readily available, youth can begin to feel lost and lack the positive stimuli that social structures would provide. These young people may get discouraged and feel as if they fall short of the societal expectation and are not able to achieve socially accepted goals in an appropriate way. Not having the proper transitional resources available for these at-risk-youth is troubling, because they begin to seek out connection and when they do not get a positive relationship or connection, they will resort to negative stimuli because of a need to belong to something. This is when an at-risk-youth will start engaging in delinquent behaviors, which often lead to criminal involvement. Nino, Ignatow, and Cai (2017) state that strain can be focused on negative relationships that youth develop. Negative relationships contain the "loss of positive stimuli, the presentation of negative stimuli, and goal blockage" (Nino, Ignatow, & Cai, 2017, p. 301). As seen in Agnew's general strain theory, an individual can experience strain when positive stimuli are lost and negative stimuli is introduced. Negative relationships can then be seen as a prominent source of strain in a youth's life because they feel unsupported. Youth are also a vulnerable group because they constantly seek to fit in somewhere, and youth who only experience negative relationships often lack a sense of belonging. With this, they then lash out in frustration and turn to unusual coping skills such as delinquent behaviors. Sometimes, these delinquent behaviors are also a way for them to seek approval from groups or individuals who also engage in criminal behaviors.

As suggested by general strain theory, an individual who has good social supports, good peer relationships and proper morals are less likely to engage in delinquency, and will have an easier time becoming functioning members of society. Although institutions such as the criminal justice system have gotten better at providing these alternatives and

supports with youth 12 years to 18 years old, there is a gap in the alternative measures available to those who may still be defined as youth in society, but who no longer fall under the YCJA (i.e., those up to 26 years old). But an individual that age is deemed legally responsible, without the opportunities like those involved with the YCJA would be offered. There are harsher consequences, procedures and legislation for those involved criminal justice system ages 18 and over. There is a discrepancy in the definition of youth between social institutions and the criminal justice system. This gap in the definition of youth leaves a group of individuals who are not under direct control by social service institutions, and therefore, become socially dysfunctional. It has been argued that alternative measures are beneficial, and having success in these programs such as supportive programming for life skills, career skills or housing resources has shown a greater need for them within communities. These programs are seen in most urban cities, such as in Edmonton, where there are non-profit organizations like John Howard Society and Boyle Street Community Centre who have an extensive youth division and accept youth up to the age of 24 or 26. How can society help those youth aged 18 to 26 stay out of the criminal justice system? And what resources are available for those who are defined as youth in society, but as adults in the Constitution?

Alternative Measures to Charging Youth 18-26

The following information was gathered from the general public regarding youth aged 12-17, but with the changing definitions within society, it can be suggested that the opinions of the public would then extend to youth ages 18 to 26. Geurin, Otis and Royse (2013) state that the opinion of the public, for youth ages 12 to 17, is supportive toward the implementation and usage of alternative measures when dealing with youth offenders. The public seems to understand that there are many factors contributing to the youth's delinquent behaviors, and support giving youth a chance to get their lives on track. Because of this, Geurin and colleagues (2013) suggest this gives the youth an opportunity to turn their interactions with the criminal justice system into a positive healing experience. They note the severe consequences that occur when an individual is confined and agree that punitive approaches keep recidivism stagnant, or increase the rates which is ultimately wasting taxpayers' money. Geurin and colleagues (2013) also make note of a reduction of recidivism when an individual is engaged in programs that are geared toward healing and rehabilitation. In other words, alternative measures help reduce youth recidivism for those ages 12 to 17, but has not yet been extended to those ages 18 to 26. This can be tied back to strain theory because by engaging in alternative measures, these individuals begin to form healthy connections which allow for an introduction of a positive stimuli and the

removal of a negative stimuli. Agnew's theory would see this as an introduction of a positive relationship leading to prosocial involvement, decreasing the strain within the individual's life. Confinement and punitive approaches would be viewed as negative stimuli in this case and would lead to a greater strain for the youth.

Carrington and Schulenberg (2004) point out that although the routines for dealing with youth and adults seem similar in some areas, they are in fact, quite different. There is more leniency with the youth, and stronger agreement about the importance of helping them overcome their criminality. Alternative measures give youth the attention they need to develop and overcome their mistakes, while traditional punitive approaches tend to create the revolving door effect of repeat offending. This recidivism transfers over into their adult sentencing which begins at age 18, typically resulting in harsher and longer sentences. The YCJA instills a sense of belonging and hope in the troubled youth as they begin to look for the light in their path. The tools that are used to help these youth in the YCJA offer suggestions for revision in our criminal justice system when defining youth and how they are reprimanded in their early years of adulthood. There should be a stronger bond between the criminal justice system and the social service institutions that promotes better transitional programs to ease these youth into their early years of adulthood.

There are many programs for delinquent youth and they are offered within a variety of institutional settings such as the church, the police force, schools, community centres and social service institutions. Churches have youth groups that encourage prosocial behaviors and relationships, which teach youth to have fun in safe environments. Schools and community centres have similar ideals in that they have groups youth can join or activities to engage them and fill their time. Programs such as these are aimed at strengthening healthy social bonds which give these delinquent youth a sense of belonging. The hope is that these programs will pick up the pieces where the youth have fallen off the track and help get them where they need to be. However, the number of programs available for individuals over the age of 18 decreases significantly. In addition to this decrease, these programs that are still available for those 18 to 26 are still geared toward the early stages of youth independence, meaning they help the youth start the process but do not give adequate life skills and tools for them to transition successfully. These programs are too basic and do not offer the proper support an individual requires to become an independently functioning member of society. These programs can be all inclusive and accepting spaces for youth nonetheless, but even with this continued support, what happens when the law gets becomes less forgiving once they turn eighteen?

Youth Aging Out: Transitional Programming

There are limited resources to help youth aged 18 to 26, but there are some available. The Edmonton John Howard Society (2019) offers programs for youth until the age of 24 such as the REE*START program. REE*START is a program that helps young people develop support systems and skills to help them transition into adulthood, which can be short term or long term. They also offer supports in the justice system, such as in court or while incarcerated. They also offer a housing program called NOVA, which is for low-risk youth up until the age of 24. Although this specific organization has great options for youth over the age of 18, the Constitution for youth changes drastically once they turn 18 and the way they get treated and charged within the criminal justice system is drastically different. Courtney, Valentine, and Skemer (2019) state that for at-risk-youth, transitioning to adulthood is a difficult task, often one filled with uncertainty and exposure to high risks of experiencing poor outcomes. Because these youth often have little to no positive relationships in their lives, they give up when they experience these poor outcomes. Giving up often means returning to a life full of delinquent behavior for survival, and sticking to what they know. Courtney, Valentine, and Skemer (2019) also point out that there is not enough research on this group of marginalized youth undergoing transition to adulthood. They suggest more research into the effectiveness of interventions for these young people is necessary. Interventions could be evaluated through the implementation of more transitional programs that guide and support these youth, and give them someone to lean on if and when they face a poor outcome. Transitional programs offer positive relationships to these youth, which allows them to decrease the strain they feel as acting members of society, but require cooperation from multiple institutions.

What resources are there for youth who are being supported by members of the criminal justice system from ages 12 to 17? When discussing the issue of youth with some of the members of the Edmonton police force, they explained that in their youth programs, as soon as the individual turns 18, they have to let them go from their program. Officers reported that when this disconnect from aging out of their program occurs, some youth will revert to old habits if they feel like their bonds have been broken or they have not gotten to a place of independence. For those who get aged out before they achieve their goals, the police mentioned they will try to refer them to places like the John Howard Society. However, there is no guarantee because of budget limitations, and waitlists. For the youth who do get in to these programs, this is like starting from square one. They are given the unrealistic expectation to open up and trust a stranger with their care plan, while losing the relationship they gained from the police officer. Often times, they will

feel as if they have been abandoned and there is no point to making a new relationship because they will just be abandoned again, which creates negative bonds for the youth. According to Nino and colleagues (2017), general strain results from these negative relationships, and then the young person may engage in delinquent behaviors. Another issue with the programming at places like John Howard Society is limited resources. Since they are a non-governmental organization, they lack the means to properly support the youth in depth, and are only able to offer short-term solutions—a few years at best. They have a decent foundation and are headed in the right direction, but without being on the same page as institutions such as the police force and the criminal justice system when it comes to defining youth, they cannot get at-risk-youth the proper help they need. These kinds of organizations are struggling because there is a disconnect within our societal expectations.

The Disconnect Between the Criminal Justice System and Social Services

Because negative relationships can have a strong impact on a youth's decisions to engage in delinquent behaviors, the strain on the relationship between the criminal justice system and the social services and programs causes these youth to revert back into old behaviors. By using different definitional standards when deciding how to deal with a population, these youth get left behind. Defining someone as an adult just because of a birthday does not help them become a functioning member of society. Those under the age of 26 are considered youth who Monahan, Skeem and Lowenkamp (2017) describe having a “diminished culpability” when they commit crime.” They explain this to be the case for three reasons: youth do not have the maturity needed to behave responsibly, they are vulnerable to peer pressures and other negative influences, and they have not found their sense of belonging and character. It is important to make sure institutions are on the same page with what is considered a youth for society, because otherwise these alternative measures are allowing a prolonged negative impact from being aged out and left to fend for themselves. There need to be programs implemented within the criminal justice system to help integrate youth who have turned 18 into a functional and independent lifestyle.

Discussion

It is important that transitional programs are properly implemented and impactful at the micro, macro and the meso levels. At the micro level, implementing better transitional programs within multiple institutions will strengthen a youth's sense of belonging and reduce their recidivism rates. It will help them form relationships that have stronger and

longer lasting bonds, which ultimately will help them reach their goals. In relationships with positive role models, they can look for guidance and support throughout their lives. These relationships can be with community workers, social workers, police officers and other members of social service and criminal justice system institutions. These relationships are all stable relationships that give the young person continual motivation, and provide them with purpose and success in their lives. Goals in this sense would be youth-specific and could range between getting a stable job, to getting a university education, to having a stable and safe living environment. This will also enable them to reduce the effects societal strain has on them individually. It is pointless to spend up until their 18-birthday giving these youth access to supports if they are going to be taken out of them immediately the next day—usually with little to no guidance on where to go next, while overcoming the negative impacts from losing a positive relationship. For the individual, aging out causes fear, anxiety and uncertainty that is so unmanageable they turn toward delinquent behaviors. In order for youth to learn how to form positive relationships and how to become independent from the system, they need a network of supporters that can guide them through each stage, including transitioning from underage youth to adulthood.

The meso level is in-between micro and macro levels, and is often less talked about. Organizations, institutions and communities would reside at the meso level and they are also known to link connections between micro-level and macro-level institutions. At this level, there needs to be more consistency. The criminal justice system and social service institutions need to have similar program options and work together more cohesively to give youth stronger relationships. The criminal justice system could improve how they support youth transitioning out from the YCJA by having programs to educate them on how the legislation changes once they hit 18 instead of having them fend for themselves. In this instance, the meso level acts as an advocate for at-risk-youth by creating programs suitable to their needs, so they can be better contributors to their community. Creating programs such of these increases some costs, but by charging youth less and using alternative measures, the costs of them being confined can be reallocated toward alternative programming. Adding such programs also calls for expansion of the criminal justice system which calls for more buildings, management, employees and materials. By adding this expansion, it can be argued that it will give back to the economy by creating jobs, and turning these at-risk-youth into functional members who can also contribute to the economy.

Legislation needs to be re-evaluated at the societal level. There are limitations to the criminal justice system that do

not allow for youth aged 18 to 26 to engage in such alternative measures which makes it hard if they are charged. The way legislation is written in regard to youth and how they are defined, dictates how institutions are able to handle youth which leads to behaviors and patterns that form at the individual level. There is a fine line, because if legislation is reconsidered in terms of definitions of youth, it needs to ensure that it is not just raising the age to 26, ultimately delaying the aging out effects. Instead, legislation needs to consider how to encompass this group of 18-26-year olds in order to aid them in successfully engaging in programs that promote prosocial involvement. If society wants crime amongst youth to decrease, alternative measures need to be put in place so these young people have a sense of belonging. Without prosocial options, at-risk-youth will never have the ambition or hope to try to change their delinquent behaviors and their negative associations will continue to increase. Changing this definition could cause some implications, such as delaying maturity or reducing society's expectations of these youth. Nonetheless, it is imperative that society recognizes this issue as one that needs to be addressed at all three levels for there to be success. But it starts with meso-level institutions creating safe avenues of support for these delinquent youth to teach them how to cope with strain in a positive way. This means programs that unite the criminal justice system and the social service institutions in order to create a network of positive role models and supports for these delinquent youth.

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