
Volume 19 | Issue 2

2016

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Recommended Citation

Nikki Whetstone, *I Am A Victim Too: Applying the "Dual-Victim-Offender" Framework to Reform New York's Family Court*, 19 CUNY L. Rev. (2016).

Available at: <https://academicworks.cuny.edu/clr/vol19/iss2/10>

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Acknowledgements

Nikki would like to thank her husband, Eric Whetstone, and CUNY Law Professor Ann Cammett for their overwhelming support, encouragement, and guidance

CUNY Law Review Footnote Forum

April 1, 2016

Recommended citation:

Nikki Whetstone, *I Am a Victim Too: Applying the “Dual Victim-Offender” Framework to Reform New York’s Family Court*, 19 CUNY L. REV. F. 76 (2016), <http://www.cunylawreview.org/i-am-a-victim-too-applying-the-dual-victim-offender-framework-to-reform-new-yorks-family-court-system> [<https://perma.cc/ZEF8-TWHN>].

I AM A VICTIM TOO: APPLYING THE “DUAL VICTIM-OFFENDER” FRAMEWORK TO REFORM NEW YORK’S FAMILY COURT

*Nikki Whetstone**

INTRODUCTION

New York has two separate judicial systems within Family Court: one for children who are considered “victims,” and another for those who are considered “offenders.” Children whose parents are suspected of abuse/neglect are placed in dependency court, under the guise that the state must step in as *parens patriae* to protect the well-being of the child.¹ On the other hand, children who are accused of committing a crime are placed in delinquency court, with the purpose of protecting society and holding the youth accountable for their actions, while also attempting to rehabilitate them.² However, often the same social and familial circumstances lead children to become involved in both systems, simultaneously yet separately becoming both the “victim” and the “offender” in the eyes of the court. Despite recent efforts to reform the family court system, New York fails to address the needs of youth who are involved in both delinquency and dependency court.

This paper first examines the separate theoretical and historical foundations of both New York dependency and delinquency court, including their differing rationales and treatment of children. Part II of this

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¹ See generally N.Y. FAM. CT. ACT § 1011 (McKinney 2015).

² See generally FAM. CT. ACT § 301.1.

paper evaluates the correlation between victimization and offending, and the connection between dependent youth and their subsequent involvement in the delinquency system (“dual-status youth”). Finally, part III explores the “dual victim-offender” framework and offers this as a lens to be used by Family Court to inform their view of children and, in turn, reform the way children are treated in the system.

I. HISTORICAL FOUNDATION OF CHILDREN AND THE COURT SYSTEM

A. *Delinquency Court*

The concept of “delinquency” was not established in New York until 1909.³ Prior to that, New York followed common law principles of criminal responsibility and tried all defendants in criminal court regardless of age.⁴ Children aged 16 and older were considered adults and tried in criminal court.⁵ In addition, children aged 7–14 also could be tried as an adult in criminal court as long as the state demonstrated “beyond all doubt and contradiction” that the child knew the difference between “good and evil” and understood the consequences of their actions.⁶ Conviction resulted in the child being placed in an adult prison to serve his or her sentence.

In the early-to-mid 19th century, the children’s rights movement began to gain momentum in the United States.⁷ The movement’s 20th century accomplishments included federal maternity and infancy health programs,⁸ the enactment of child labor laws,⁹ and the establishment of public benefit programs¹⁰ to help alleviate the rampant effects of poverty on children.¹¹

³ MERRIL SOBIE & GARY SOLOMON, 10 NEW YORK FAMILY COURT PRACTICE § 10:1 (2d ed. 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See id.*

⁸ *See generally* Maternity and Infancy (Sheppard-Towner) Act, ch. 135, 42 Stat. 224 (1921) (lapsed 1929).

⁹ *See generally*, e.g., Fair Labor Standards Act, Pub. L. No. 75-178, ch. 676, 52 Stat. 1060 (1938) (codified at 29 U.S.C. §§ 201-219).

¹⁰ *See generally*, e.g., Child Nutrition Act of 1966, Pub. L. 89-642, § 17, 80 Stat. 885 (codified as amended at 42 U.S.C. § 1786) (creating the Special Supplemental Nutrition Program for Women, Infants and Children (“WIC”)); Social Security Act, Pub. L. No. 74-271, §§ 401-406, ch. 531, 49 Stat. 620 (1935) (repealed 1996) (creating the Social Security’s Aid to Dependent Children); 42 U.S.C. § 402(d) (2015) (granting benefits to children of deceased Social Security beneficiaries).

¹¹ David Walls, *Children’s Rights Movement*, SONOMA ST. U., <http://www.sonoma.edu/users/w/wallsd/childrens-rights-movement.shtml> [<https://perma.cc/2FTA-UQYB>].

Within this children's rights movement, advocates also focused on reforming how the criminal system handled children who committed a crime.¹² Reformers viewed the criminal system, which focused on the punishment of the defendant, as particularly inadequate in the context of children-offenders who needed rehabilitation.¹³ Out of this movement, in 1824, a charitable organization established an alternative placement program for "juveniles" convicted of a crime.¹⁴ Children under the age of 14 were eligible for placement in the New York House of Refuge instead of a prison sentence.¹⁵ Asylums were also established to house very young children.¹⁶

However, despite this rehabilitation movement, children who were sent to a house of refuge were often placed in a worse situation than those who were sent to prison or left on the streets.¹⁷ Children were placed in a house of refuge without any formal hearing, conviction or sentence.¹⁸ These houses of refuge had deplorable conditions and often developed into sweatshops.¹⁹ Many children were sent to farms in western United States.²⁰

The horrendous conditions in the houses of refuge and juvenile prisons led to a second wave of reformation in the mid-to-late 19th century that sought to establish a better alternative.²¹ In 1899, Illinois established the country's first juvenile court system.²² Shortly thereafter, New York courts began issuing lesser sentences for juveniles in recognition that children needed to be treated differently than adults, and the New York Penal Law was amended to provide courts with the discretion to lower a felony charge to a misdemeanor for children under the age of 14.²³

New York continued to reform the criminal justice system by expanding the specialized treatment of children and establishing the concept of "delinquency" with the New York Penal Law of 1909 ("1909 Act").²⁴ The

¹² John P. Woods, *New York's Juvenile Offender Law: An Overview and Analysis*, 9 FORDHAM URB. L.J. 1, 3 (1980).

¹³ *Id.*

¹⁴ *Our City Charities: The New-York House of Refuge for Juvenile Delinquents*, N.Y. TIMES (Jan. 23, 1860), <http://www.nytimes.com/1860/01/23/news/our-city-charities-the-new-york-house-of-refuge-for-juvenile-delinquents.html?pagewanted=all>.

¹⁵ Woods, *supra* note 12, at 3.

¹⁶ Merrill Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 301.1 (McKinney 2015).

¹⁷ Woods, *supra* note 12, at 3-4.

¹⁸ *Id.* at 3

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 4.

²³ *Id.*

²⁴ Woods, *supra* note 12, at 4; N.Y. PENAL LAW § 2186 (1909) (now codified at N.Y.

state established that children under the age of 16 would be classified as delinquent if they committed an act that would have been deemed a crime if committed by an adult.²⁵ As such, the delinquent child could not be convicted of a crime or sent to an adult prison, but would be given a suspended judgment, probation, or be sent to an institution.²⁶

The 1909 Act is significant in the evolution of delinquency court for several reasons. First, it announced the framework of this new delinquency system: to view children as in “need of care and protection of the state” as opposed to treating the child as the “commission[er] of a crime.”²⁷ In addition, the 1909 Act incorporated the “best interest of the child” standard into the disposition of children in the delinquency system.²⁸ The statute requires the court to “consider the needs and best interests of the respondent as well as the need for protection of the community.”²⁹

However, all delinquency proceedings remained in criminal court and were heard by criminal court judges.³⁰ It was not until 1922 that New York City established the state’s first independent children’s court.³¹ The Children’s Court, a division under the Domestic Relations Court, provided a tribunal for delinquency and dependency proceedings independent from criminal court.³² The rest of New York State established similar independent children’s courts; however, the state lacked consistency in what laws applied to this new court system and how they would be applied.³³

In the years following the establishment of the Children’s Court, courts struggled with how to treat the children in their system and what rights children were afforded.³⁴ Courts began treating delinquency proceedings as distinct from criminal proceedings.³⁵ The court system undertook a philosophical transformation; courts held that delinquency proceedings were not part of the criminal system, but rather an informal system with a quasi-civil component.³⁶ The delinquency system was recognized for its

PENAL LAW §§ 30.0, 70.05 (McKinney 2016)).

²⁵ Woods, *supra* note 12, at 4.

²⁶ *See id.* at 4-6.

²⁷ Sobie, *supra* note 16.

²⁸ *Id.*

²⁹ N.Y. FAM. CT. ACT § 301.1 (McKinney 2015).

³⁰ SOBIE & SOLOMON, *supra* note 3, § 10:1.

³¹ Sobie, *supra* note 16.

³² Woods, *supra* note 12, at 5.

³³ *Id.*

³⁴ SOBIE & SOLOMON, *supra* note 3, § 10:1.

³⁵ Woods, *supra* note 12, at 5, 7; Jeffrey A. Butts & Ojmarrh Mitchell, *Brick by Brick: Dismantling the Border Between Juvenile and Adult Justice*, 2 CRIM. JUST. 2000 167, 170, https://www.ncjrs.gov/criminal_justice2000/vol_2/02f2.pdf [<https://perma.cc/8P4Z-S8ZS>].

³⁶ *Id.*

rehabilitative purpose and developed under the principle of *parens patriae*: the state is the “parent” or protector of children who cannot protect themselves.³⁷ With this foundational change, criminal procedural standards no longer applied to delinquency proceedings.³⁸

For many years, case law provided the only instruction for the purpose of delinquency court: to provide guidance and redemption of neglected and delinquent children.³⁹ In 1962, the Family Court Act (FCA) was passed in New York providing due process rights to children in delinquency proceedings.⁴⁰ In 1967, the Supreme Court decided *In re Gault*, which established that children have a federal constitutional right to due process in delinquency court.⁴¹ The FCA, along with the 1967 decision in *In re Gault*, changed the way children were viewed in delinquency court by reestablishing the procedural due process rights of children.⁴² This reestablishment of procedural due process rights resulted in the delinquency system moving back toward a quasi-criminal system and away from the *parens patriae* framework.⁴³

In 1976, the New York Juvenile Justice Reform Act (JJRA) codified the historical “best interest of the child” purpose of the delinquency court system, but also added the consideration of “the need for protection of the community.”⁴⁴ This addition created a divide in how courts reconciled the two competing considerations. In 1979, three cases interpreted this purpose clause and the history of the delinquency system differently. The court in *People v. Young* determined that the JJRA codified the long-standing best interest purpose of delinquency court, but also changed the purpose by adding a secondary consideration in the protection of the community.⁴⁵ While the court in *In re Rudy S.* agreed with the *Young* court regarding the best interest consideration, it held that this dual purpose had been long-standing in the history of delinquency court.⁴⁶ The court in *Rudy S.* asserted that the protection of the community had been part of the delinquency court’s purpose since its inception, and the JJRA merely codified it.⁴⁷ Either way, the JJRA is problematic for forcing courts to look at and weigh this

³⁷ See *People v. Lewis*, 260 N.Y. 171, 177 (1932).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Sobie, *supra* note 16.

⁴¹ See generally *In re Gault*, 387 U.S. 1 (1967).

⁴² Sobie, *supra* note 16.

⁴³ *Id.*

⁴⁴ Juvenile Justice Reform Act of 1976, ch. 878, 1976 N.Y. Laws § 2 (codified at N.Y. FAM. CT. ACT § 301.1 (McKinney 2015)).

⁴⁵ *People v. Young*, 99 Misc. 2d 328, 330 (N.Y. Fam. Ct., Monroe Cty., 1979).

⁴⁶ *In re Rudy S.*, 100 Misc. 2d 1112, 1119 (N.Y. Fam. Ct., Richmond Cty., 1979).

⁴⁷ See *id.*

secondary interest in the protection of the public, as it can prevent the courts from acting in the child's best interest.

On the other hand, the court in *In re Elizabeth J.* interpreted the statute as requiring the court to look at the best interest and needs of the child throughout the entire delinquency process, while additionally weighing the protection of the community only during the dispositional phase.⁴⁸ This interpretation assumes that a disposition based solely on the needs and best interest of the child does not adequately protect the community. However, this reasoning is flawed; acting in the child's best interest to ensure the best possible outcome for that youth will, in turn, also protect the community. It is never in the child's best interest to place them in a position where they will reoffend. Despite the codified definition of the delinquency court's purpose in the JJRA, the varying interpretations of the definition which are found in *Young, Rudy S.*, and *Elizabeth J.* demonstrate that there is still ambiguity and confusion regarding how the courts are to decide delinquency cases.

Almost thirty years after the JJRA codified the delinquency court's purpose, the court in *In re Robert J.* rearticulated this purpose: "to empower Family Court to intervene and positively impact the lives of troubled young people while protecting the public."⁴⁹ That court maintained the problematic dual purpose of delinquency court and failed to clarify their relationship.⁵⁰ As evidenced by the courts' varying interpretations, it is unclear how the two competing delinquency court purposes are to be weighed and applied.

States began adopting harsher treatment of youth in the 1990s as a result of an unfounded criminology theory of the "superpredator."⁵¹ This theory hypothesized that the United States would see a dramatic increase in violent crimes committed by youth in the coming decade.⁵² Proponent of the "superpredator" theory, John DiIulio, announced a "new breed of children" who are "so impulsive, so remorseless, that [they] can kill, rape, maim, without giving it a second thought."⁵³ Due to the perpetuation of this hysteria by criminologists and politicians, youth became increasingly stigmatized and a generalized fear grew in communities across the country.⁵⁴ States, including New York, responded by increasing enumerated offenses and lowering age requirements of transfer laws, as well as

⁴⁸ *In re Elizabeth J.*, 98 Misc. 2d 362, 363-65 (N.Y. Fam. Ct., N.Y. Cty., 1979).

⁴⁹ *In re Robert J.*, 2 N.Y.3d 339, 346 (2004).

⁵⁰ *Id.*

⁵¹ Editorial Board, *Echoes of the Superpredator*, N.Y. TIMES (Apr. 13, 2014), http://www.nytimes.com/2014/04/14/opinion/echoes-of-the-superpredator.html?_r=0.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

mandating harsher sentences.⁵⁵

This theory of the “superpredator” was wholly disproved when studies concluded that youth offenses, including violent crimes, decreased from 1993 to 1997.⁵⁶ In 2001, Mr. DiIulio admitted that the “superpredator” theory was completely false, stating, “If I knew then what I know now, I would have shouted for prevention of crimes.”⁵⁷ Unfortunately, most of the harsh laws enacted during the 1990s in New York remain in effect today despite the debunking of the “superpredator” theory.⁵⁸

There has been a recent effort in New York to reform juvenile justice laws. There is currently a “Raise the Age” campaign to raise the age requirement for criminal prosecution from 16 years of age.⁵⁹ A bill was proposed in the New York Assembly which would have raised the jurisdictional age to 18 by amending or repealing portions of New York penal law, executive law, criminal procedure law, and the FCA.⁶⁰ The purpose of this bill acknowledged several fundamental principles of juvenile justice, including the need for children to be treated in an age-appropriate manner, and that juvenile incarceration has not been effective in the deterrence or prevention of crimes.⁶¹ However, this bill never made it out of committee.⁶²

Despite these recent reform efforts, the harsh laws initiated during the 1990s “superpredator” era are still in place.⁶³ In addition, the courts have failed to reconcile the two competing purposes of acting in the child’s best interest and protecting the community. The delinquency system retains a problematic foundation which jeopardizes the well-being of its children.

⁵⁵ *Id.*

⁵⁶ MICHAEL BOCHENEK, HUMAN RIGHTS WATCH, NO MINOR MATTER: CHILDREN IN MARYLAND’S JAILS (1999), http://pantheon.hrw.org/reports/1999/maryland/Maryland-02.htm#P359_42894 [<https://perma.cc/7JCX-Y236>].

⁵⁷ Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES (Feb. 9, 2001), <http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>.

⁵⁸ *See, e.g.*, N.Y. PENAL LAW § 30.00(1) (McKinney 2015) (enumerating offenses for which thirteen, fourteen and fifteen-year-olds can be tried as adults); *see also* N.Y. PENAL LAW § 130.91 (McKinney 2015) (enumerating sexual offenses for which thirteen, fourteen, and fifteen-year-olds can be tried as adults); N.Y. PENAL LAW § 70.05 (McKinney 2015) (providing guidelines for sentencing juveniles as adults).

⁵⁹ RAISE THE AGE N.Y., <http://raisetheageny.com> [<https://perma.cc/FKA8-XHCB>].

⁶⁰ A.B. 3668, 200th Leg., Reg. Sess., (N.Y. 2013).

⁶¹ *Id.*

⁶² *New York Assembly Bill 3668*, LEGISCAN, <https://legiscan.com/NY/bill/A03668/2013> [<https://perma.cc/WRC9-6LRE>].

⁶³ *Echoes of the Superpredator*, *supra* note 51.

B. Dependency Court

Until the mid-1800s, children who were abused or neglected were treated the same as delinquent children.⁶⁴ These dependent children were placed in poorhouses, large orphan asylums, and refuge houses alongside delinquent children.⁶⁵ New York had abuse and neglect laws that prohibited the use of excess corporal punishment and allowed the court to remove abused/neglected children from their caregiver.⁶⁶ However, these laws were rarely enforced.⁶⁷ Society in the United States at this time generally viewed children as the property of the father.⁶⁸ Courts held that a husband was legally permitted to physically punish his wife and children because he was legally responsible for their actions.⁶⁹ Parents had sole control and discretion over their children, who were also deemed their parents' property.⁷⁰ As such, abuse and neglect laws were very rarely utilized, except in extreme situations.⁷¹ These abuse/neglect laws were generally used to intervene in the lives of poor families where the child was deemed pre-delinquent due to the conduct of the child or the parent.⁷² For example, these laws were used to remove children from a parent due to substance abuse, criminal conduct, or "other vices" because it exposed the child to an "idle and dissolute life."⁷³

Child protection laws evolved and expanded throughout the 19th century.⁷⁴ *Ex parte Crouse*⁷⁵ was the first case to establish the court's role

⁶⁴ See William Wesley Patton, *Child Protective Services – Historical Overview, Current System*, STATEUNIVERSITY.COM, <http://education.stateuniversity.com/pages/1828/Child-Protective-Services.html> [<https://perma.cc/8ZD8-6ENY>].

⁶⁵ *Id.*

⁶⁶ MARVIN VENTRELL, *EVOLUTION OF THE DEPENDENCY COMPONENT OF THE JUVENILE COURT* 11 (1998), <http://www.juvenilelawsociety.org/upload/evolutionofthedependencycour.pdf> [<https://perma.cc/SW5F-PYZP>].

⁶⁷ *Id.* at 16-17.

⁶⁸ See Joan B. Kelly, *The Determination of Child Custody*, 4 CHILD. & DIVORCE 121, 122 (1994).

⁶⁹ See, e.g., *Bradley v. State*, 1 Miss. (1 Walker) 156, 156-57 (1824).

⁷⁰ VENTRELL, *supra* note 66, at 6.

⁷¹ See John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 450 (2008).

⁷² *Id.* at 450-51.

⁷³ *Id.* at 450.

⁷⁴ See *Mary Ellen Wilson*, AM. HUMANE ASS'N, <http://www.americanhumane.org/about-us/who-we-are/history/mary-ellen-wilson.html> [<https://perma.cc/FP9C-E5UZ>]. This movement began with the case of Mary Ellen Wilson. *Id.*

⁷⁵ *Ex parte Crouse*, 4 Whart. 9, 11 (Pa. 1839).

as *parens patriae* in cases of abuse/neglect.⁷⁶ The court held that when a parent fails to adequately care for their child, the state has the duty to protect the child by intervening in the family, including the right to remove the child and step into care for him/her.⁷⁷ In 1875, the Society for the Prevention of Cruelty to Children (SPCC) was founded in New York as a private organization to enforce child protection laws.⁷⁸ The city contracted with the SPCC to investigate and prosecute abuse/neglect claims, and to remove and place abused/neglected children.⁷⁹

It was not until the 1960s with the passing of the FCA and the *In re Gault* decision that dependent children were distinguished from delinquent children in the court system. *In re Gault's* holding that children in delinquency proceedings had a right to due process⁸⁰ simultaneously cemented the fact that dependent children did not have such a right. As such, dependency court, a court deeply founded in the principle of *parens patriae*, was formally separated from delinquency court. In addition, the FCA refocused child protection laws and enforcement on parental acts of abuse and neglect as opposed to economic conditions.⁸¹

NY FCA § 1011 established the purpose of dependency court: to “help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being.”⁸² Dependency court permits the state to “intervene against the wishes of a parent on behalf of a child so that his needs are properly met.”⁸³ Most dependency cases begin with a Child Protective Services (CPS) investigation and report of suspected abuse/neglect under NY Social Services Law § 413. Under NY Social Services Law § 411, the purpose of CPS is to protect abused or maltreated children “from further injury and impairment” as well as to provide “rehabilitative services for the child or children and parents involved.”⁸⁴ New York’s statutory law puts forth the view that abused and maltreated children are “victims” in need of protection and that the role of dependency court is as *parens patriae*. Dependency court’s purpose focuses solely on

⁷⁶ VENTRELL, *supra* note 66, at 14.

⁷⁷ *Id.*; *Ex parte* Crouse, 4 Whart. at 10.

⁷⁸ N.Y. SOC’Y FOR THE PREVENTION OF CRUELTY TO CHILDREN, <http://www.nyspcc.org> (last visited Feb. 23, 2016).

⁷⁹ Patton, *supra* note 64.

⁸⁰ 387 U.S. 1 (1967).

⁸¹ *See, e.g.*, Merrill Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 1011 (McKinney 2015) (defining the purpose of dependency court to protect children from “injury or mistreatment and to help safeguard their physical, mental, and emotional well-being”); Merrill Sobie, Practice Commentaries, N.Y. FAM. CT. ACT § 611 (McKinney 2015) (establishing grounds for permanent neglect).

⁸² *See* N.Y. FAM. CT. ACT § 1011 (McKinney 2015).

⁸³ *Id.*

⁸⁴ N.Y. SOC. SERV. LAW § 411 (McKinney 2015).

the wellbeing of the child. This differs significantly from the delinquency court's purpose which must balance the wellbeing of the child against the needs of the community.⁸⁵

II. THE CORRELATION BETWEEN DEPENDENCY AND DELINQUENCY

A. The "Victim-Offender Overlap"

Many studies have been conducted over the years analyzing what circumstances lead an individual to become a victim or perpetrator of crime. "Criminology" uses a multidisciplinary approach to explain the causes of criminal behavior and how to prevent criminal behavior in society.⁸⁶ On the other hand, "victimology" attempts to explain who generally becomes a victim of a crime and why, as well as the psychological effects of such victimization on the victim.⁸⁷ Until relatively recently, victimology was a subcategory of criminology and lacked much evidential study.⁸⁸ It was not until the mid-20th century when criminologists began comparing the characteristics and experiences of offenders and victims that they discovered the "victim-offender overlap."⁸⁹

The National Crime Survey (NCS) (a self-reporting victimization survey) became a prominent source for this information in the 1970s.⁹⁰ These surveys completely changed the views of criminologists regarding who was considered the typical "victim" and "offender."⁹¹ Prior to these studies, criminologists generally posited the typical victim as the "white middle-aged woman" and the typical offender as the "unmarried young black man."⁹² The surveys revealed that the same demographic group that was viewed as the typical offender, i.e., unmarried young black men, was also the same demographic that predicted the highest likelihood of victimization.⁹³ Further research revealed that offenders and victims shared many of the same life experiences.⁹⁴ This "victim-offender overlap"

⁸⁵ See *infra* Part III.

⁸⁶ See Chad Posick, UNTANGLING OFFENDING AND VICTIMIZATION: A COMPARATIVE STUDY OF THE VICTIM-OFFENDER OVERLAP 21 (2013), https://repository.library.northeastern.edu/downloads/neu:2467?datastream_id=content [<https://perma.cc/B2GG-XA7C>].

⁸⁷ See *id.* at 22.

⁸⁸ *Id.* at 22-23.

⁸⁹ *Id.* at 27.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 24-25.

⁹³ See *id.* at 26.

⁹⁴ *Id.* at 27.

discovery, that the same factors generally predict both victimization and offending, revolutionized how criminologists viewed the typical victim and offender. The Office of Juvenile Justice and Delinquency Prevention, which highlighted the importance of these studies, provided “an accurate picture of juvenile offending and victimization risk is integral to a strategy to decrease violence.”⁹⁵

The development of the “victim-offender overlap” led many social scientists to begin studying criminology and victimology together in the hopes of developing a unified theory of predicting who is likely to be an offender or a victim.⁹⁶ From this, they discovered that victims and offenders are often one and the same.⁹⁷ This led to the development of the “cycle of violence”, the theory that “violence begets violence.”⁹⁸ This theory holds that those who are victims of violence (whether by direct or vicarious trauma) are more likely to become perpetrators of violence, and vice versa.⁹⁹ Specifically, the “cycle of violence” theory found a link between victimization through childhood/adolescent maltreatment and later becoming an offender.¹⁰⁰

In 1978, the New York State Assembly’s Select Committee on Child Abuse issued a “Summary Report on the Relationship Between Child Abuse and Neglect and Later Socially Deviant Behavior.”¹⁰¹ This report came out of the Committee’s investigation into the administrative and legislative shortcomings of New York’s child protective system. In its investigation, those in the child protective field brought to light the “social cost” of child maltreatment—that the same children who were declared dependent due to abuse/neglect were later becoming involved in the delinquency system.¹⁰²

Judge Nanette Dembitz of the New York City Family Court testified, “the root of crime in the streets is the neglect of children.”¹⁰³ At the time of

⁹⁵ *Id.* at 25 (citing Rolf Loeber et al., *Juvenile Delinquency and Serious Injury Victimization*, JUV. JUST. BULL. (Aug. 2001), <https://www.ncjrs.gov/pdffiles1/ojdp/188676.pdf> [<https://perma.cc/Z92S-NFK7>]).

⁹⁶ G.C. Curtis, *Violence Breeds Violence—Perhaps?*, 120 *Am. J. Psychiatry* 386, 386-87 (1963).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ JOSE D. ALFARO, N.Y. STATE ASSEMB. SELECT COMM. ON CHILD ABUSE, SUMMARY REPORT ON THE RELATIONSHIP BETWEEN CHILD ABUSE AND NEGLECT AND LATER SOCIALLY DEVIANT BEHAVIOR (1978), <https://www.ncjrs.gov/pdffiles1/Digitization/50515NCJRS.pdf> [<https://perma.cc/8ASE-EFPZ>].

¹⁰² *See id.* at 11.

¹⁰³ *Id.* at 2.

the report, there were very few, if any, empirical studies relating to the correlation between child maltreatment and delinquency. However, this investigation announced a “definite relationship between child maltreatment and juvenile misbehaviour and criminality.”¹⁰⁴ Specifically, the Committee found that delinquency occurred at a higher rate among families who had a reported history of abuse/neglect than among those in the same community who did not have such a history.¹⁰⁵ The report also found that an abused/neglected child was up to five times more likely to be found delinquent or ungovernable than a child in the general population.¹⁰⁶

Many studies conducted since the 1990s have validated the connection between victimization through child abuse/neglect and a heightened likelihood of becoming a juvenile delinquent or adult criminal offender.¹⁰⁷ In 1994, the National Institute of Justice completed a study on the “cycle of violence,” specifically focusing on the link between child abuse/neglect and criminal behavior.¹⁰⁸ The study, which followed over 1,500 children for twenty-seven years, determined that children who had a substantiated case of abuse/neglect in dependency court were 59% more likely to be arrested as a juvenile delinquent, 28% more likely to be arrested as an adult, and 30% more likely to be arrested for a violent crime.¹⁰⁹ Therefore, the study suggests that not only does “violence beget violence,” but also child maltreatment of any kind (including both neglect and abuse) begets violence.¹¹⁰ Another study found that, while children of parents who were physically abused had the same likelihood of being abused as the general population, children of parents who were neglected or sexually abused were twice as likely to suffer the same abuse.¹¹¹

In 2005, a study found that, controlling for socio-demographic characteristics and prior delinquent behavior, maltreated children (including both abuse and neglect) were more than twice as likely to be arrested, commit a general offense, commit a violent offense, and use drugs through

¹⁰⁴ *Id.* at 3.

¹⁰⁵ *See id.* at 11.

¹⁰⁶ *Id.* at 12.

¹⁰⁷ *See, e.g.,* C. Smith & T.P. Thornberry, *The Relationship Between Childhood Maltreatment and Adolescent Involvement in Delinquency*, 33 *CRIMINOLOGY* 451, 471 (1995); C.S. Widom, *Child Abuse, Neglect, and Violent Criminal Behavior*, 27 *CRIMINOLOGY* 251, 265 (1989).

¹⁰⁸ Cathy S. Widom & Michael G. Maxfield, *An Update on the “Cycle of Violence”*, NAT’L INST. OF JUST., RES. IN BRIEF (Feb. 2001), <https://www.ncjrs.gov/pdffiles1/nij/184894.pdf> [<https://www.ncjrs.gov/pdffiles1/nij/184894.pdf>].

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.*

¹¹¹ Widom, *supra* note 107, at 271.

early adulthood than those who were not maltreated.¹¹² While historically neglect has not been studied with regard to its impact on the delinquency of youth,¹¹³ this study demonstrated that it in fact has a comparative effect to abuse.¹¹⁴ In addition, while neglect has its highest impact on delinquency in late adolescence, the negative effect of other types of abuse, such as sexual abuse, tends to manifest later in adulthood.¹¹⁵

Therefore, these studies show a correlation between, not only victimization and criminal perpetration, but also specifically neglect/abuse and delinquency. The current binary court system does not take into account the causal connection between dependency and delinquency nor does it adequately address the needs of these children to prevent a continuation of the cycle of violence.

III. APPLYING A NEW THEORETICAL FRAMEWORK TO THE FAMILY COURT SYSTEM

The current family court system must be altered to account for the causal connection between dependency and delinquency in order to provide adequate services to children involved in these systems. Firstly, it is important to establish both a language and system that appropriately identifies children involved in both systems so that their specific needs can be met. In addition, a new framework must be used to view children in the dependency and delinquency systems and the role of the court in order to establish the necessary reforms.

A. “Dual Status” Youth

The RFK National Resource Center for Juvenile Justice (“the Center”), founded in Boston in 2004, has recently developed new language to enhance discussions surrounding issues relating to youth who have been involved with both dependency and delinquency court.¹¹⁶ The Center defines the term “dual status youth.”¹¹⁷ In addition to this general term of

¹¹² Carolyn A. Smith et al., *Adolescent Maltreatment and Its Impact on Young Adult Antisocial Behavior*, 29 CHILD ABUSE & NEGLECT 1099, 1100 (2005).

¹¹³ The author’s research revealed no studies on this subject.

¹¹⁴ Smith et al., *supra* note 112, at 1111, 1113.

¹¹⁵ *Id.* at 1113.

¹¹⁶ *Dual Status Youth Reform*, ROBERT F. KENNEDY CHILDREN’S ACTION CORPS, <http://www.rfkncjj.org/our-work/dual-status-youth-reform/> [https://perma.cc/K8X9-U52B].

¹¹⁷ *Dual Status Youth: The Importance of Early Intervention and Successful Coordination*, STATUS OFFENSE REFORM CTR. (Aug. 15, 2014), <http://www.statusoffensereform.org/blog/role-early-intervention-preventing-delinquency->

“dual status youth,” the Center encourages distinction between different levels of involvement in the dependency and delinquency courts to reform these systems to better meet the needs of youth by developing more specific terms. Under the Center’s terminology, “dually identified youth” are those who were previously involved in the dependency system and who are currently involved in the delinquency system.¹¹⁸ “Dually involved youth” are those who are currently involved in both systems.¹¹⁹ Finally, “dually adjudicated youth” are those who have had both a finding of neglect in dependency court and a finding of delinquency in the juvenile justice system.¹²⁰

This newly-developed terminology is important to the reformation of the dependency and delinquency systems. It forces society to become conscious of this specific category of youth and the issues pertaining to them. While the correlation between dependency and delinquency has been established for decades, dual status youth, and the issues they face, are addressed independently by each system. This terminology would provide courts with the tools necessary to effectively discuss the issues pertaining to these youth and develop a cohesive plan in addressing them. It would assist jurisdictions in looking at dual status youth in a holistic manner and in developing a new area of law that directly focuses on them.

B. *The “Dual Victim-Offender” Framework*

In addition to implementing new terminology, it is also important to develop a new theoretical framework for addressing the issues of dual status youth. The current methods for dealing with delinquent youth are faulty. The delinquency system has had severe issues in both shaping its goals/premise and in its implementation.¹²¹ The delinquency system’s history shows that there is a serious tension in balancing its goals of acting in the child’s best interest while simultaneously acting to protect society. This has manifested in a tension of whether the delinquency system should be punishment-based or rehabilitative.¹²² In addition, over the past several centuries, the delinquency system has failed to successfully implement its policy goals, specifically in protecting youth. In many instances, the delinquency system has placed children in far worse conditions than they

dual-status-youth [<https://perma.cc/T4EL-2HGT>] [hereinafter Dual Status Youth].

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See supra* Part I.

¹²² Sobie, *supra* note 16.

were previously in.¹²³

It is crucial for delinquency courts to view youth not simply as “perpetrators,” but as whole individuals with a history of victimization and trauma. In “The ‘Monster’ in All of Us: When Victims Become Perpetrators,” Abbe Smith presents the life of Aileen Wuornos to criticize the dichotomy of the “victim” and “perpetrator” labels.¹²⁴ Wuornos suffered severe physical and sexual abuse and neglect during her life.¹²⁵ She engaged in sex work when she was a teenager, and eventually was convicted of killing seven men who were her clients.¹²⁶ Smith’s article challenges the view that “there is a great divide between people to whom terrible things are done and people who do terrible things.”¹²⁷ Smith states, “It is the rare perpetrator who has not also suffered.”¹²⁸ She argues that the criminal justice system often embraces victims and then shuns those same individuals when they become perpetrators.¹²⁹ She criticizes victim advocates and supporters who “abandon them [victims] when they repeat the behavior by acting out against others.”¹³⁰ Ultimately, Smith argues for prosecutors to make “these critical connections” between victim and perpetrator.¹³¹ In the same way that Smith applies this “dual victim-offender” framework to Aileen Wuornos, this framework needs to be applied to dual status youth. Without this comprehensive understanding, the state’s use of punitive measures while ignoring preventive and rehabilitative measures perpetuates the “cycle of violence.” This framework needs to be used in the context of dual status youth to inform the reformations necessary to both dependency and delinquency systems to provide a holistic response to the needs of these youth.

C. *Reforming the Dependency and Delinquency Systems*

Applying the dual victim-offender framework to dual status youth would lead to an entire restructuring of the family court system. Currently, the dependency and delinquency court systems are diametrically opposed; the same youth is viewed in one context solely as a “victim” and in the other context solely as an “offender,” despite the known close relationship

¹²³ Woods, *supra* note 12, at 3-4.

¹²⁴ Abbe Smith, *The “Monster” in All of Us: When Victims Become Perpetrators*, 38 SUFFOLK U. L. REV. 367 (2005).

¹²⁵ *Id.* at 371-76.

¹²⁶ *Id.* at 368-69.

¹²⁷ *Id.* at 393.

¹²⁸ *Id.* at 369.

¹²⁹ *See id.* at 393.

¹³⁰ *Id.*

¹³¹ *Id.*

between the two. The dual victim-offender framework shows that the court system needs to be structured so as to effectively treat a youth's involvement in both systems, acknowledging the "critical connections" between the two.¹³² As such, the dependency and delinquency court systems should be united under one court system utilizing the same service providers and workers on an individual case to ensure a cohesive and holistic plan for dual status youth.

Perhaps most importantly, this unified system must encompass the dual victim-offender framework in its purpose. This new system must act with the sole purpose of advancing the best interest of the child. The balance of the interests of the child against the perceived safety concerns of society needs to be eliminated. The best interest of the child will be advanced and any concerns for the safety/protection of the public will be adequately addressed if the courts focus on rehabilitation.

Until a new uniform system is introduced, it is important for the records of dual status youth to be shared between all providers and parties in both the dependency and delinquency systems. While there are confidentiality laws in place to protect subject youth under NY SSL § 442-a, such laws must be amended to clearly permit the sharing of information between dependency and delinquency in order to effectuate a holistic approach in the cases of dual status youth. Even in circumstances where disclosure is permitted, parties involved in the cases are often unwilling to share information in fear of violating the confidentiality statute.¹³³ Therefore, not only must the statute clearly permit such disclosure, but all workers on the case must also be accurately informed of the law to ensure communication among all parties in both systems.

In addition to sharing information and records for those youth already involved in both systems, it is important that youth at risk of becoming dual status are identified when they first enter the system in order for the family to receive preventive services. The 1978 Summary Report concluded that the state needed to address the drastic lack of rehabilitative services provided to families involved in dependency court in order to counteract the negative effects of the abuse/neglect.¹³⁴ The Committee records stated, "If we do not help children in trouble, they will grow up to make trouble."¹³⁵ Nearly 30 years later, the 2005 study on the correlation between dependency and delinquency similarly argued for strengthened preventive and rehabilitative services for families dealing with abuse/neglect.¹³⁶

¹³² *Id.*

¹³³ *Dual Status Youth*, *supra* note 117.

¹³⁴ ALFARO, *supra* note 101, at 30-33.

¹³⁵ *Id.* at 34.

¹³⁶ Smith et al., *supra* note 112, at 1115.

Several studies have determined that early intervention in the lives of at-risk families has reduced both child abuse/neglect and future delinquency.¹³⁷ Such services include nurse home visits for at-risk pregnant women, parent skills training, health screenings, abuse screenings, and other various social services.¹³⁸ Despite the strong evidence of a correlation between dependency and delinquency, both court systems fail to currently provide adequate preventive resources for families involved in the court system. Therefore, it is imperative not only to identify children at risk of becoming dual status early, but also to make preventive and early intervention resources available to their families.

Unfortunately, because these reforms will initially require a significant monetary investment and the culture of the courts currently value punitive measures over rehabilitation, these reforms will meet resistance. Nevertheless, such measures must be adopted to provide adequate services to children involved in the systems.

CONCLUSION

The delinquency court system developed out of a recognition that children should be treated differently than adults. Delinquency court evolved over the following decades to act as *parens patriae* in the best interest of the child. However, this simultaneously resulted in a loss of children's procedural due process rights. Eventually, the JJRA and *In re Gault* reestablished these rights for children while adding a second consideration of the protection of the community to the delinquency court's purpose. This tension in purposes often results in the punitive treatment of children found to be delinquent, jeopardizing their best interest. Historically, dependent children were not distinguished from those who were delinquent in the eyes of the court and both were sent to an asylum or house of refuge. Eventually, the dependency court system was established separate from delinquency court with the purpose of protecting children in cases where their parents failed to do so.

The maintenance of separate family court systems ignores the causal connection between dependency and delinquency. Children who are the subject of abuse and neglect are more likely to later become perpetrators of violence. The current family court system fails to acknowledge this

¹³⁷ JANET K. WIIG ET AL., ROBERT F. KENNEDY CHILDREN'S ACTION CORPS, GUIDEBOOK FOR JUVENILE JUSTICE & CHILD WELFARE SYSTEM COORDINATION AND INTEGRATION: A FRAMEWORK FOR IMPROVED OUTCOMES xv (3d ed. 2013), <http://www.rfknrcjj.org/images/PDFs/Guidebook-for-JJ-and-CW-System-Coordination-and-Integration-Cover.pdf> [https://perma.cc/CMT6-E483].

¹³⁸ *Id.* at 143.

connection and perpetuates the cycle of violence by imposing punitive measures in delinquency court. The family court system must implement a new “dual victim-offender” framework to change the way it views and treats its children. This framework would require the courts to view delinquency as a product of past trauma and violence and treat dual status children in a holistic manner. In addition, the courts must also provide social services to families in dependency court to prevent the initiation of this cycle. The “dual victim-offender” framework must be implemented in the court system to ensure that dependent and delinquent children receive appropriate services.

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