
THE DEVELOPMENTAL PERSPECTIVE AND INTERSECTIONALITY

*Theresa Glennon**

The *Temple Law Review* and Juvenile Law Center cohosted this Symposium to mark Juvenile Law Center's fortieth anniversary of groundbreaking work on behalf of children and youth. We also honored the many years of extraordinary leadership provided by Bob Schwartz, a cofounder and Executive Director of Juvenile Law Center for many years.¹ The articles do more than celebrate Juvenile Law Center's significant work. In line with Juvenile Law Center's mission, collectively, the Symposium articles set forth important new directions for litigation, policymaking, and research by analyzing the legal significance of developmental research on adolescents.

The developmental perspective, with its scientific underpinning, has initiated a paradigm shift in courts, legislatures, and academia away from the excessively punitive approach toward juveniles that developed in the 1980s.² This punitive approach reached into our schools as well, through zero-tolerance school discipline policies, establishing a school-to-prison pipeline.³ The punitive approach rejected a clear demarcation between adolescence and adulthood for purposes of culpability and reform, replacing it with a vision that placed some youth beyond the bounds of childhood. The authors here restore that distinction. They also consider how we should regard the developmental work young adults continue to do into their twenties.⁴

The adolescent development research has been critical to the recent accomplishments that have ended the juvenile death penalty and mandatory life without parole.⁵ As we move forward from these momentous victories, we should continue to expand our understanding of the story of the lust for punishment directed at juveniles over the past forty years to inform our

* Professor of Law, Beasley School of Law at Temple University. My thanks to the *Temple Law Review* and Juvenile Law Center for including this piece in their Symposium issue, and to Rebecca Schatschneider for extremely helpful feedback on an earlier draft.

1. As recent graduates of Temple Law School, Robert G. Schwartz, Judith Chomsky, Marsha Levick, and Philip Margolis cofounded Juvenile Law Center in 1975. In 1982, Robert Schwartz was named Executive Director, a role he fulfilled until 2015.

2. Ursula Kilkelly, *Advancing the Rights of Young People in Juvenile Justice: The Impact of Juvenile Law Center*, 88 TEMP. L. REV. 629, 644–65 (2016).

3. Martin Guggenheim & Randy Hertz, *Selling Kids Short: How "Rights for Kids" Turned into "Kids for Cash,"* 88 TEMP. L. REV. 653, 665 (2016); Catherine Ross, "Bitch," *Go Directly to Jail: Student Speech and Entry into the School-to-Prison Pipeline*, 88 TEMP. L. REV. 717, 721–25 (2016).

4. E.g., Alexandra O. Cohen, Richard J. Bonnie, Kim Taylor-Thompson & BJ Casey, *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMP. L. REV. 769, 787 (2016).

5. Kristen Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 419–25 (2013).

advocacy and practice now and in the future. This Article targets two crucial aspects of this story. First, why did the dominant society fail to see the adolescent development issues? How did it fall prey to the “superpredator” theory and other mythologies about our children and youth?⁶ Research makes it clear that individual and majority societal perceptions of adolescence are related to other traits, such as race, sexual orientation, and gender identity and expression. The willingness to see juveniles as fully culpable cannot be separated from other stories—those of race, gender, disability, sexual orientation and gender identity, adverse childhood experiences, and poverty—that have most profoundly affected our perceptions of juveniles and led us to treat them inappropriately in light of their abilities and experiences. Second, how should we think about development issues with populations in which most youth diverge from “normal” adolescent development?⁷ Most of the adolescents in the juvenile justice system face developmental challenges that may make them less likely to have either achieved or be able to express certain developmental goals. Their variance from these “normal” developmental trajectories may deeply affect both how they are viewed by others and what assistance they need to support their development.

The developmental science so aptly explained and applied in this Symposium serves an important purpose of reminding the courts that children and youth have characteristics—such as immaturity, impetuosity, and vulnerability to peer pressure—that reduce their culpability.⁸ They also are amenable to improvement of their behavior.⁹ The science is especially useful in contesting the very harshest treatment of youth. It supports a ban on the use of the death penalty for crimes committed by juveniles and the end of mandatory life sentences without the possibility of parole (LWOP).¹⁰ However, as a massive amount of evidence demonstrates, racial and other disparities pervade every facet of school discipline, interactions with police, arrests, and processing through either the juvenile or adult justice systems.¹¹ Because most aspects of these systems involve discretionary judgments, these biases are not separate stories from the development story—they are inextricably linked and must be viewed and discussed together.

This Article encourages those in systems who work with children and youth, policymakers, courts, advocates, and researchers to incorporate the multiple perspectives of these other stories into the developmental story. These

6. See Kilkelly, *supra* note 2, at 644.

7. Elizabeth Scott, Thomas Grisso, Marsha Levick & Laurence Steinberg, *Juvenile Sentencing Reform in a Constitutional Framework*, 88 TEMP. L. REV. 675, 702 (2016) (noting that science does not yet have a way to conclude that an individual youth has a mature or immature brain).

8. *Id.* at 104–05.

9. *Id.* at 105–06.

10. Kilkelly, *supra* note 2, at 634–35.

11. E.g., ZENOBIA BELL & ANA RASQUIZA, NAT’L CTR. FOR YOUTH LAW, IMPLICIT BIAS AND JUVENILE JUSTICE: A REVIEW OF THE LITERATURE 3 (2014), <http://youthlaw.org/wp-content/uploads/2015/06/Implicit-Bias-Juvenile-Justice-Lit-Review-for-ncyl-web3.pdf>; PRUDENCE CARTER, MICHELLE FINE & STEPHEN RUSSELL, DISCIPLINE DISPARITIES SERIES: OVERVIEW 2 (2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_Overview_010915.pdf.

perspectives are integral to understanding how government actors and the public have viewed and continue to view adolescent development, and how those beliefs have shaped government actions. They also help us consider the needs of children and youth whose developmental trajectories vary considerably from the norms of adolescent development on which this research focuses. Finally, this Article considers how these various perspectives interrelate. The intersectionality approach is more destabilizing to current practices than a “development-plus” approach.¹² Intersectionality means recognizing the deep interconnections among all of these factors. They are present in the very moment that school discipline, arrest, charging, conviction, and sentencing choices are made. If these perspectives are ignored, the adolescent development story risks becoming another way for schools and the juvenile and adult criminal systems to make small adjustments but leave in place bias, disparate treatment, and failure to meet the actual needs of court-involved youth. Advocates and researchers should remind those involved in these systems, all the time, that factors such as race and sexual orientation affect their very ability to “see” issues of development. So, too, median or average development norms are unlikely to fully explain the experiences and development of most of the children entering school discipline and juvenile and adult criminal systems. Full incorporation of these perspectives requires dramatic changes in how we treat all children and youth. Our “developmental jurisprudence”¹³ must include turning our lens on the accuracy of our perceptions and the complex needs of our youth.

Investigating all of these bases—race, ethnicity, gender, disability, sexual orientation and gender identity, family and community environment, poverty, and trauma—is beyond this short Article. Rather, in the following sections, this Article suggests the ways in which these factors affect how we view children and youth caught up in school discipline and juvenile offender systems by focusing on the distorted views of youth of color and sexual and gender minority youth. I use the word “we” in this Article to acknowledge my own limited perspective on these issues, and also to encourage readers to recognize how they may distort and dehumanize those who feel “other” to them. That recognition may be the first step toward effecting significant changes, especially for those readers who are in positions of power and authority over the children and youth whose lives are most at risk from our biased view.

This Article also considers the developmental challenges and traumatic life experiences of children and youth caught up in the school discipline and juvenile and adult criminal systems. These factors affect how they are viewed and what they need to move forward after they have violated school rules or criminal norms. These categories interact in complex ways. Developing our understanding of those interrelationships and dedicating ourselves to looking at ourselves and the children and youth before us in complex and individualized

12. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 141.

13. See Emily Buss, *Developmental Jurisprudence*, 88 TEMP. L. REV. 741, 741 (2016).

ways can help us understand their stories and imagine how we may react differently—and more productively—to those stories.

I. THE RACIAL LENS

Perhaps the most powerful story affecting our treatment of children and youth in schools and juvenile and adult criminal justice systems is race.¹⁴ It is an essential key to understanding why policymakers, prosecutors, judges, and the public “forgot” what “any parent knows”¹⁵—that adolescents are different than adults. Unnamed racial bias, implicit or otherwise, distorts the lens through which many view youth of color. It will keep us from understanding when and why we have turned away from seeing children and youth as innately innocent, and it will undermine the real-world impact of the powerful new scientific evidence concerning child and adolescent development.

It is not clear that the United States has ever treated African American children and youth as children. Professor Kenneth Nunn explains that we have never viewed African American youth as adolescents. When we first began to separate the treatment of children and youth from the treatment of adults, we excluded African American children from this separation.¹⁶ In the mid-1800s, when societal conceptions of children first developed, and child labor laws were first introduced, black children were omitted because, as slaves, they were deemed property, not persons.¹⁷ Nunn argues that despite the end of slavery, African American and other youth of color remain the children of “the other.” They have never been accorded the privilege of childhood or adolescence. Thus, at every stage of the school discipline and juvenile justice processes, racial disparities exist, and the deeper youth go into these processes, the more heightened these disparities become.¹⁸ While some have viewed African American and other children of color as collateral damage in the shift toward a more punitive approach to youth crime, Nunn argues that they are in fact central to this shift. African American youth are viewed by the majority group as “other,” as a threat to self, and this otherness is deeply embedded in our consciousness and our societal structures.¹⁹ Since children are already viewed as “other” to adults, this combination leads many white adults to view minority children as threatening and frightening.²⁰ He quotes Pamela Smith, who concludes:

Age or the vulnerability of youth does not shield Black children from the reach of racism. Instead, Black children are just as much the victims

14. See Samantha Buckingham, *A Tale of Two Systems: How Schools and Juvenile Courts Are Failing Students*, 13 U. MD. L.J. RACE RELIGION GENDER & CLASS 179, 190–92 (2013).

15. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

16. Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DEPAUL L. REV. 679, 679 (2002).

17. *Id.* at 679–80.

18. *Id.* at 685–87.

19. *Id.* at 698–700.

20. *Id.* at 700–04.

of racism's long-reaching effects as are adults. Indeed, racism touches nearly every aspect of the child's life through discrimination, poverty, unemployment, economics, education, and the breakdown of the Black family structure.²¹

This disparate treatment of the "other," which has often denied youth of color the benefits of being viewed as children, was at the heart of the juvenile justice system from its inception.²² It was central to the increasingly punitive and adult system treatment of youth that began in the 1980s.²³ And it continues today, even as juvenile punishment is on the decline.²⁴ Kristen Henning argues that "decision makers, such as police, probation officers, and prosecutors, treat youth of color more harshly than white youth in part because of an implicit bias to ignore developmental immaturity in youth of color."²⁵

She cites several studies demonstrating that actors in the juvenile justice system, such as police officers and probation officers, see black offenders as more mature and therefore more culpable. They are more likely to relate black offenders' criminal activity to internal character flaws rather than to environmental factors such as peers, dysfunctional families, or difficulties at school. This leads them to recommend longer and harsher sentences for black offenders.²⁶ Other researchers have identified this as a dehumanizing effect, where the basic perception of innocence accorded to children is not given to black Americans by white study participants.²⁷ These disturbing views are widely shared by the public. Both liberal and conservative white Americans' support for LWOP increases when they have been primed to view the offenders as black.²⁸

21. *Id.* at 706 (citing Pamela J. Smith, *Reliance on the Kindness of Strangers: The Myth of Transracial Affinity Versus the Realities of Transracial Educational Pedism*, 52 RUTGERS L. REV. 1, 8 (1999)).

22. Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1363–68 (2013); Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative "Backlash,"* 87 MINN. L. REV. 1447, 1460–61 (2003); Priscilla A. Ocen, *(E)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1611–14 (2015).

23. Henning, *supra* note 5, at 417–18.

24. *Id.* at 409–11; see JOSHUA ROVNER, SENTENCING PROJECT, POLICY BRIEF: RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 1 (2016), <http://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests> (stating that the racial gap between black and white youth arrested and placed in secure commitment increased by fifteen percent in ten years, even as the overall rate of commitment declined, and other racial and ethnic disparities saw no improvement).

25. Henning, *supra* note 5, at 419–25.

26. *Id.* at 420–23. These unconscious biases were found across a group of diverse police officers and probation officers. *Id.* at 421.

27. *E.g.*, Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 529, 532, 535, 539 (2014).

28. Henning, *supra* note 5, at 423–24. In an earlier study, white and Asian American viewers increased their support for more punitive policies after seeing photos of African American and Hispanic offenders, while African American and Hispanic American viewers actually significantly decreased their support for more punitive policies. Franklin D. Gilliam, Jr. & Shanto Iyengar, *The Superpredator Script*, NIEMAN REPORTS, Winter 1998, at 45.

Henning concludes, “Thus, while courts may forgive or excuse white youth for engaging in reckless adolescent behavior, courts often perceive youth of color as wild, uncontrollable, and morally corrupt and hold them fully culpable for their conduct.”²⁹

Researchers have begun to explore how the racial lens used by school and juvenile justice system actors may affect boys and girls differently.³⁰ Boys, for example, are socialized to appear “strong” no matter what is going on, and participating in criminal activity may, for those in disfavored racial and class positions, be the only acceptable way to express their masculinity.³¹ For girls of color, assumptions about their “moral character” affect the use of discretion, contributing to their overrepresentation in the juvenile justice system.³² Experiencing personal discrimination may also affect youth offending, for example, by increasing negative emotions that may lead to criminal activity.³³ These ideas only begin to uncover the ways in which race, and other lenses such as gender and class, may affect the perceptions of system actors—perceptions that shape their use of discretion in decisions about these children and youths’ lives. Those perceptions may themselves affect youth behavior. We must consistently acknowledge that how we “see” development is distorted by the racial lens, otherwise youth of color are likely to be robbed not only of the protections of the innocence of childhood, but also of the tremendous benefits to be gained from the important adolescent development research discussed by the Symposium’s authors.

II. THE “DEVIANT” LENS

Lesbian, gay, bisexual, transgender, and questioning or queer (LGBTQ) children and youth are often perceived as deviant by cisgender and heterosexual school officials, peers, and members of their communities and families.³⁴ Their

29. Henning, *supra* note 5, at 424.

30. See, e.g., Theresa Glennon, *Knocking Against the Rocks: Evaluating Institutional Practices and the African American Boy*, 5 J. HEALTH CARE L. & POL’Y 10 (2002) [hereinafter Glennon, *Knocking Against the Rocks*]; Theresa Glennon, *Looking for Air: Excavating Destructive Educational and Racial Policies to Build Successful School Communities*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 107 (Nancy E. Dowd ed., 2011); Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502 (2012); Athena D. Mutua, *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*, 13 NEV. L.J. 341, 346 (2013); Ocen, *supra* note 22, at 1593; KIMBERLÉ WILLIAMS CRENSHAW, PRISCILLA OCEN & JYOTI NANDA, *BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED* (2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/54d23be0e4b0bb6a8002fb97/1423064032396/BlackGirlsMatter_Report.pdf.

31. Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC’Y 201, 219–21 (2008) (describing the psychological literature on the emotional development of boys, which argues, in part, that male crime and prison behavior are the ways of doing “normal” masculinity available to those in disfavored racial and class positions).

32. Nanda, *supra* note 30, at 1515–16.

33. Monica J. Martin et al., *The Enduring Significance of Racism: Discrimination and Delinquency Among Black American Youth*, 21 J. RES. ON ADOLESCENTS 662, 664–65 (2011).

34. Jaclyn M. White Hughto, Sari L. Reisner & John E. Pachankis, *Transgender Stigma and*

sexual and gender nonconformity leads them to be viewed, like African American children and youth, as “other.”³⁵ This may be especially true if their sexuality or gender identity falls outside still-developing norms.³⁶ This framing of deviance prevents many from perceiving LGBTQ youth as adolescents, undermining them in many ways. We have failed to adequately research or understand the school and juvenile justice experiences of LGBTQ students, but new research shows that they, too, are subjected to disparate punishment in public schools, including exclusions from school, that could put them at greater risk for entering the school-to-prison-pipeline.³⁷ Researchers find that “LGBTQ youth are twice as likely as their heterosexual [and, presumably, cisgendered] peers to be detained for non-violent offenses such as running away, prostitution, and truancy.”³⁸

LGBTQ students often find themselves in families, communities, schools, and other settings that are dangerous for them.³⁹ They are at greatly increased risk for being injured, threatened with a weapon, or bullied in school, and their teachers are less likely to help them, raising their risk for getting into physical fights, bringing weapons to school for protection, or staying away from school entirely. The school harassment LGBTQ students face leaves them at greater risk for charges such as disorderly conduct, truancy, and assault. Students who express their identity through non-gender-conforming clothes, hair, or

Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions, 147 SOC. SCI. & MED. 222, 222 (2015) (“[T]ransgender individuals are considered deviant for having a gender identity or expression that is discordant with the gender typically associated with their assigned birth sex and experience widespread stigma as a result.”).

35. *Id.* at 224.

36. See, e.g., John P. Elia, *Bisexuality and Schooling: Erasure and Implications for Health*, 14 J. BISEXUALITY 36, 37 (2014) (stating that schools engage in institutional erasure of bisexuality and sexual fluidity).

37. E.g., Kathryn E.W. Himmelstein & Hannah Brückner, *Criminal Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 PEDIATRICS 49, 54–55 (2010); MARIELLA ARREDONDO ET AL., DOCUMENTING DISPARITIES FOR LGBT STUDENTS: EXPANDING THE COLLECTION AND REPORTING OF DATA ON SEXUAL ORIENTATION AND GENDER IDENTITY 1–2 (2016), <http://www.indiana.edu/~atlantic/wp-content/uploads/2016/03/SOGI-Brief-Final.pdf>; V. Paul Poteat, Jillian R. Scheer & Eddie S. K. Chong, *Sexual Orientation-Based Disparities in School and Juvenile Justice Discipline: A Multiple Group Comparison of Contributing Factors*, 108 J. EDUC. PSYCH. (forthcoming 2016) (manuscript at 9–11), https://www.researchgate.net/profile/V_Poteat/publication/280934868_Sexual_orientation-based_disparities_in_school_and_juvenile_justice_discipline_A_multiple_group_comparison_of_contributing_factors/links/55cc9f3408aeb975674c922a.pdf; Shannon D. Snapp et al., *Messy, Butch, and Queer: LGBTQ Youth and the School-to-Prison Pipeline*, 30 J. ADOLESCENT RES. 57, 75–79 (2014) (stating that LGBTQ youth punished for public displays of affection, violating gender norms, and fighting to protect themselves are more likely to experience family rejection and homelessness, which increases the likelihood of entering juvenile or adult criminal justice systems).

38. Snapp et al., *supra* note 37, at 58; see also Jody Marksamer, *And by the Way, Do You Know He Thinks He’s a Girl? The Failures of Law, Policy, and Legal Representation for Transgender Youth in Juvenile Delinquency Courts*, 5 SEXUALITY RES. & SOC. POL’Y 72, 73–74 (2008).

39. Julie A. Nice, *The Responsibility of Victory: Confronting the Systemic Subordination of LGBT Youth and Considering a Positive Role for the State*, 23 TEMP. POL. & CIV. RTS. L. REV. 373, 375 (2014).

mannerisms face harassment and punishment for their “choices,” and they may be disciplined for gendered violations of the school dress code.⁴⁰

Researchers have linked these disparities in treatment to multiple contributing factors, such as victimization, commission of punishable infractions, and differential treatment of LGBTQ and heterosexual and cisgendered youth.⁴¹ The impact on LGBTQ youth of color is especially disparate.⁴² Thus, the stigma and harassment LGBTQ youth face, often on a daily basis in the schools they are required to attend, places them not only at greater risk for mental health problems and suicide, but also punishment through the juvenile justice system. LGBTQ youth are disproportionately incarcerated in juvenile justice systems.⁴³ African American girls who identify as lesbian, gay, or bisexual are incarcerated at especially high rates.⁴⁴ Discrimination affects those perceived to be LGBTQ as well.⁴⁵

Thus, LGBTQ children and youth are caught in a vicious cycle. They are subjected to harassment and harm in many settings for being “deviant,” and they are denied adequate protection from that harassment and harm again, because they are perceived as being deviant.⁴⁶ This leads them to either experience trauma that undermines their mental health, potentially leading to suicide, or leads them to strike back or act to protect themselves, or both. Once they strike back, their “deviancy” becomes the basis for targeting by police officers and being viewed as dangerous, resulting in their referral into the juvenile justice system.⁴⁷ Once in the system, they are at heightened risk for physical, sexual, and emotional abuse in juvenile facilities, deepening the trauma they have already experienced.⁴⁸ This victimization narrative, however, itself serves to limit our perspective on the complex lives of LGBTQ youth and their own efforts to become their own advocates.⁴⁹

40. Holly V. Franson, Comment, *The Rise of the Transgender Child: Overcoming Societal Stigma, Institutional Discrimination, and Individual Bias to Enact and Enforce Nondiscriminatory Dress Code Policies*, 84 U. COLO. L. REV. 497, 499 (2013); Snapp, *supra* note 37, at 67–68 (recounting as examples stories of males suspended for wearing hair extensions or putting on makeup when female students were allowed to wear extensions or apply make up without contest).

41. E.g., Poteat et al., *supra* note 37, at 1–2.

42. See Barbara Fedders, *LGBT Youth in the Child Welfare and Juvenile Justice Systems: Charting a Way Forward*, 23 TEMP. POL. & CIV. RTS. L. REV. 431, 436 (2014).

43. *Id.* at 434–35; Kristi Holsinger & Jessica P. Hodge, *The Experiences of Lesbian, Gay, Bisexual, and Transgender Girls in Juvenile Justice Systems*, 11 FEMINIST CRIMINOLOGY 23, 23 (2016) (although estimated to represent six percent of the youth population, they make up thirteen to fifteen percent of the juvenile justice system population).

44. Holsinger & Hodge, *supra* note 43, at 25 (stating that 32.5% of African American girls in detention facilities identified as LGB, compared to 21% of white girls, 4.3% African American boys, and 6.3% white boys).

45. Mary Ziegler, *Perceiving Orientation: Defining Sexuality After Obergefell*, 23 DUKE J. GENDER L. & POL'Y 223, 225 (2016).

46. See Nice, *supra* note 39, at 374–75.

47. Fedders, *supra* note 42, at 435–36.

48. *Id.* at 436.

49. Andrew Gilden, *Cyberbullying and the Innocence Narrative*, 48 HARV. CIV. RTS.-CIV. LIB.

Involvement in school discipline for acts related to their sexual orientation, such as public displays of affection or dress code violations, can also lead school officials to “out” LGBTQ youth to their parents.⁵⁰ This places them at risk of familial rejection.⁵¹ Parents may throw their children out of the house, or if they withdraw their love and support for their child, the child may run away.⁵² As many as forty percent of homeless youth identify as LGBTQ, and homelessness itself is a great risk factor for involvement in the juvenile justice system.⁵³ Prosecutors may charge teens who end up in conflict with their families or living on the streets as “incorrigible.”⁵⁴ Living on the streets can also expose these youth to victimization and trauma, which may lead to serious mental health concerns.⁵⁵

Thus, the “deviance” lens through which many cisgender and heterosexual officials in our education and juvenile justice systems view LGBTQ youth keeps them from seeing their full developing identities, treating their sexual orientation or gender identity as the only important yet troubling aspect of their development. Even those adults who seek to be allies for LGBTQ youth may fall into viewing them as “at-risk,” which frames their development as abnormal.⁵⁶ At the same time, adolescent development research often excludes LGBTQ youth, rendering them invisible.⁵⁷ Children and adolescents who are creatively developing their sexual and gender identities may confound mainstream ideas about adolescent development.⁵⁸ Thus, adolescent development research about court-involved youth should “focus more attention on the development of sexual identity and gender identity during adolescence and young adulthood” for all children and youth,⁵⁹ and their experiences should be included in our efforts to

L. REV. 357, 361 (2013).

50. Snapp et al., *supra* note 37, at 66; Evan Ettinghoff, Note, *Outed at School: Student Privacy Rights and Preventing Unwanted Disclosures of Sexual Orientation*, 47 LOY. L.A. L. REV. 579, 598 (2014); Aisha Schafer, Comment, *Quiet Sabotage of the Queer Child: Why the Law Must Be Reframed to Appreciate the Dangers of Outing Gay Youth*, 58 HOW. L.J. 597, 601–05 (2015).

51. Schafer, *supra* note 50, at 603.

52. Fedders, *supra* note 42, at 432–33. Of course, their families may also be accepting, or the family relationships may be complicated. See, e.g., Christopher G. Schroeder, *Sanctuary or Prison: Queer Youth and the Family, Household and Home*, 16 SOC. & CULTURAL GEOGRAPHY 783, 785 (2015).

53. Fedders, *supra* note 42, at 433.

54. JEROME HUNT & AISHA MODDIE-MILLS, CTR. FOR AM. PROGRESS, *THE UNFAIR CRIMINALIZATION OF GAY AND TRANSGENDER YOUTH: AN OVERVIEW OF THE EXPERIENCES OF LGBTQ YOUTH IN THE JUVENILE JUSTICE SYSTEM 2* (2012), https://www.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.

55. Fedders, *supra* note 42, at 433–34.

56. Susan Talburt, *Constructions of LGBT Youth: Opening Up Subject Positions*, 43 THEORY INTO PRACTICE 116, 118 (2004).

57. Diane E. Elze, *Research with Sexual Minority Youths*, 18 J. GAY & LESBIAN SOC. SERVS. 73, 83 (2007).

58. Diederik F. Janssen, *Re-Queering Queer Youth Development: A Post-Developmental Approach to Childhood and Pedagogy*, 5 J. LGBTQ YOUTH 74, 87 (2008).

59. Anthony R. D’Augelli & Arnold H. Grossman, *Researching Lesbian, Gay, and Bisexual Youth: Conceptual, Practical, and Ethical Considerations*, 3 J. GAY & LESBIAN ISSUES EDUC. 35, 50–51

protect court-involved youth from unduly harsh treatment and empower them to develop as they wish.

III. NEEDS BEYOND NORMS

Children and youth who receive school discipline and enter the juvenile or adult criminal justice systems are not a representative sample of the larger society of adolescents. Besides racial, sexual, and gender minority status, and other disparities in these systems, court-involved youth are much more likely to have significant learning disabilities or emotional disabilities.⁶⁰ They are also much more likely to have experienced trauma, or “adverse childhood experiences.” Children who live in poverty are at much greater risk of encountering environmental hazards, such as lead paint and lead in water, that create disabilities.⁶¹ Some of these disabilities have been linked to greater rates of youth offending.⁶²

Up to seventy-five percent of the youth in juvenile justice systems have been found to have a mental health disorder, and almost all of those have complex cases, with two or more diagnoses.⁶³ Common disorders include behavior disorders, substance use disorders, anxiety disorders, mood disorders, and attention deficit/hyperactivity disorder.⁶⁴ By one estimate, mental health disorders are responsible for fifteen percent of male juvenile offending and twenty percent of female juvenile offending.⁶⁵ One study found that youth who were sentenced as adults had significantly higher rates of mental health disorders than the rates found in youth in the juvenile system.⁶⁶

Rather than treating juveniles through community-based mental health

(2006).

60. See Joseph B. Tulman & Douglas M. Weck, *Shutting off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y. L. SCH. L. REV. 875, 882–83 (2009–2010); Simone S. Hicks, Note, *Behind Prison Walls: The Failing Treatment Choice for Mentally Ill Minority Youth*, 39 HOFSTRA L. REV. 979, 981–82 (2011).

61. Emily A. Benfer & Amanda Walsh, *When Poverty Is the Diagnosis: The Health Effects of Living Without on the Individual*, 4 IND. J.L. & SOC. EQUALITY 1, 4–6 (2016). Lead has a disparate effect on racial and ethnic minority group children. Brandi M. White, Heather Shaw Bonilha & Charles Ellis Jr., *Racial/Ethnic Differences in Childhood Blood Lead Levels Among Children <72 Months of Age in the United States: A Systematic Review of the Literature*, 3 J. RACIAL & ETHNIC HEALTH DISPARITIES 145, 149–52 (2016).

62. See, e.g., Carimah Townes, *How the Flint Water Crisis Could Send an Entire Generation to Prison*, THINK PROGRESS (Jan. 22, 2016, 10:58 AM), <http://thinkprogress.org/justice/2016/01/22/3741585/flint-juvenile-justice-catastrophe/> (quoting Flint Mayor Karen Weaver, stating that lead poisoning leads to learning disabilities, and predicting an increase in juvenile crime).

63. Elizabeth Spinney et al., *Racial Disparities in Referrals to Mental Health and Substance Abuse Services from the Juvenile Justice System: A Review of the Literature*, 39 J. CRIME & JUST. 153, 155 (2016) (collecting studies); Lee A. Underwood & Aryssa Washington, *Mental Illness and Juvenile Offenders*, 13 INT’L J. ENVTL. RES. & PUB. HEALTH 228, 230 (2016).

64. Spinney et al., *supra* note 63, at 155.

65. Erin M. Espinosa, Jon R. Sorensen & Molly A. Lopez, *Youth Pathways to Placement: The Influence of Gender, Mental Health Need and Trauma on Confinement in the Juvenile Justice System*, 42 J. YOUTH & ADOLESCENCE 1824, 1826 (2013).

66. Spinney et al., *supra* note 63, at 155.

services, which might prevent offending or offer a better route out of criminal activity, government has responded to these high rates of mental illness by generating more treatment services inside the juvenile justice system.⁶⁷ Some researchers have argued that “[p]utting so much of the community’s limited mental health resources into juvenile justice programs generates the opportunity to criminalize youth with mental health difficulties, or place youth in the most restrictive form of care in order to get them the best resources.”⁶⁸ Historically, reductions or limitations in community-based services leads to higher rates of youth referrals to the juvenile justice system.⁶⁹

Incarcerated youth have also experienced significantly higher levels of trauma, averaging up to 5.4 traumatic episodes in one study.⁷⁰ Traumatic experiences, or adverse childhood events, have been linked to dramatic changes in brain development—changes that can increase concerns related to misconduct, such as increased impulsivity.⁷¹ For example, trauma undermines prefrontal cortex maturation, undermining the development of self-regulation.⁷² These traumatic experiences include parental incarceration, violent victimization, and exposure to violence, poverty, and family disruption.⁷³ These childhood traumas lead to increased risks, including for substance abuse disorders, conduct disorders, and delinquency. Estimates for exposure to trauma by juvenile justice-involved youth are in the range of seventy-five percent to ninety-three percent, about triple the exposure levels in the general population.⁷⁴ Exposure to trauma is also endemic to placement in juvenile detention and adult prison. Fifty-six percent of juveniles in residential facilities report at least one type of violent victimization in custody, and many others witness or are aware of such events and fear for their own safety. Thus, placement in juvenile or adult detention adds to the cumulative exposure to trauma, deepening its risks and harm.⁷⁵ Few studies provide the voices of incarcerated youth struggling with mental health issues or trauma, but those that do can aid us in understanding

67. Underwood & Washington, *supra* note 63, at 235–36.

68. *Id.* at 234.

69. *Id.*

70. *Id.*; see also Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, J. JUV. JUST., Spring 2014, at 1, 3; Jack P. Shonkoff et al., *The Lifelong Effects of Early Childhood Adversity and Toxic Stress*, PEDIATRICS e232, e237–38 (2012). Youth on probation, too, show high levels of trauma and Post-Traumatic Stress Disorder. Helen W. Wilson et al., *Trauma History and PTSD Symptoms in Juvenile Offenders on Probation*, 8 VICTIMS & OFFENDERS 465, 467 (2013).

71. Stephanie A. Guinasso, Sara B. Johnson & Anne W. Riley, *Multiple Adverse Experiences and Child Cognitive Development*, 79 PEDIATRIC RES. 220, 221–22 (2015); Bruce S. McEwen & John H. Morrison, *The Brain on Stress: Vulnerability and Plasticity of the Prefrontal Cortex over the Life Course*, 79 NEURON 16, 22–23 (2013).

72. Michelle Evans-Chase, *Addressing Trauma and Psychosocial Development in Juvenile Justice-Involved Youth: A Synthesis of the Developmental Neuroscience, Juvenile Justice and Trauma Literature*, 3 LAWS 744, 749 (2014).

73. *Id.* at 744–45.

74. *Id.* at 745.

75. *Id.* at 747.

how it affects them and how they perceive their own developmental needs.⁷⁶

Appropriate care and treatment, however, can lead to dramatic improvements in these brain changes to promote improved cognitive and mental health; so how adolescents with these traumatic experiences are treated can make an extraordinary difference in their life trajectories.⁷⁷ Yet, mental health services in the community serve few of those in need.⁷⁸ They are especially difficult for racial and ethnic minority groups to access, and those services that are available are often of poor quality.⁷⁹ Clinician bias affects the type and quality of treatment offered.⁸⁰

Research shows that at the intersection of race, mental health, and exposure to trauma, minority youth are less likely, once they enter the juvenile system, to be referred for mental health and substance abuse treatment.⁸¹ A referral for mental health treatment may well prevent placement in secure confinement, so denying youth of color access to such treatment may be one reason for the higher rates of secure confinement experienced by youth of color.⁸² Thus, we must understand how race and mental health intertwine with adolescent development in order to truly serve most court-involved youth.

A developmental perspective informed by intersectionality could encourage changes to juvenile facilities to prevent greater exposure to trauma, as well as to keep juveniles out of those facilities when possible. An intersectionality-informed approach might incorporate programming, such as mindfulness meditation, that would bring universal interventions to children and youth in their schools to assist in the development of “connections within and between self-regulatory areas of the pre-frontal cortex.”⁸³ Incorporating these interventions universally in schools and other settings where children and youth are commonly found can allow students to be “normal,” rather than forcing them to be referred for and locate services outside their daily settings.⁸⁴ Sandra Bloom, a trauma researcher, proposes that trauma-informed care should be common in schools, especially in low-income neighborhoods, where schools should serve as sanctuaries for their students.⁸⁵ She argues that we should shift

76. See, e.g., Tina Maschi, Jennifer Perillo & Deborah Courtney, *Releasing Their Stories: A Qualitative Study of Juvenile Justice-Involved Youth with Histories of Mental Health Issues and Violence*, 1 J. FORENSIC SOC. WORK 132 (2011).

77. McEwan & Morrison, *supra* note 71, at 24–25.

78. Glennon, *Knocking Against the Rocks*, *supra* note 30, at 22–23.

79. *Id.* at 22–26.

80. *Id.* at 26.

81. Spinney et al., *supra* note 63, at 163–64 (showing that the majority of studies reviewed found racial disparities in referrals for treatment in the juvenile justice system).

82. *Id.* at 166.

83. Evans-Chase, *supra* note 72, at 751.

84. See, e.g., David S. Black & Randima Fernando, *Mindfulness Training and Classroom Behavior Among Lower-Income and Ethnic Minority Elementary School Children*, 23 J. CHILD & FAM. STUD. 1242 (2014).

85. H. Mark Stanwood & Gini Doolittle, *Schools as Sanctuaries*, 13 RECLAIMING CHILD. & YOUTH 169, 170 (2004).

the question from “what’s wrong with you?” to “what has happened to you?”⁸⁶ As one Philadelphia school counselor who has been trained to work with traumatized children puts it:

“[Trauma-informed education care is] saying, ‘What can we do to intentionally work with children . . . and minimize the stress so that then children are able to think and function in school’ And not saying ‘Oh, you’re just an angry kid, you know, you need to do X, Y and Z.’ But saying you’re angry, and I want to understand why, because I value you.”⁸⁷

This counselor’s training permitted her to view a new student who ran away from school shortly after entering it not as a troublemaker or truant, but as a child who needed help to feel safe in this new environment.⁸⁸ The counselor’s actions demonstrate the complex interactive nature of observing and being observed. Her understanding of trauma allowed her to interpret the student’s actions in an empathetic manner. Instead of imposing a vision of the student as misbehaving and in need of punishment, which most likely would have led him to feel less in control and more likely to violate yet other school rules, she made it possible for the student to become calm and cooperative. We cannot understate the power of this reframing of our children’s actions and its ability to empower them to heal and move forward in their lives. Not only do we need to understand “normal” adolescent brain development, but we also need to understand the ways in which a youth’s disabilities or life experiences may have dramatically affected both their development and our perceptions of them and their developmental maturity. Understanding how our own perceptions and responses to children and youth greatly affect their behavior and life chances is a crucial first step to an inclusive approach to meeting the needs of all children and youth.

CONCLUSION

The advances in research on adolescent development have already led to important systemic reforms in our systems for responding to criminal actions by children and youth. They have also led to encouraging signs that schools are rethinking their use of school discipline and disrupting the school-to-prison pipeline. These advances, however, may encounter significant barriers unless they take into account two important concepts. The first is that those charged with the care of our children and youth may have perceptions of adolescent development that are distorted by other aspects of youth identity and experience, such as race, sexual orientation, gender identity, disability, or trauma. The second concept is that the development of children and youth

86. *Id.* at 170 (quoting Sandra Bloom).

87. Kevin McCorry, *In Philadelphia, School Counselors Take on At-Home Trauma in the Classroom*, PULSE (May 14, 2016), <http://www.newsworks.org/index.php/thepulse/item/93331-school-counselors-take-on-at-home-trauma-in-the-classroom?l=ce> (interviewing Pam Turner-Bunyon, school counselor, Feltonville Intermediate School).

88. *Id.*

diverges for many reasons, including disability challenges and exposure to adverse childhood experiences. The complex interactive processes at work in the lives of our children and youth defy our desire for a simple heuristic.⁸⁹ We should embrace intersectionality, reject the “othering” of some children and youth, and allow all of them to inform our understandings of the developmental paths they walk. An intersectional approach to this important developmental research can help us create a developmental jurisprudence that brings with it the promise of major reform in the treatment of all court-involved youth.

89. See generally Brianne Dávila, *Critical Race Theory, Disability Microaggressions and Latina/o Experiences in Special Education*, 18 RACE ETHNICITY & EDUC. 443 (2015) (observing the complex interactions of disability and race in special education classes).