The Reauthorization of the Juvenile Justice and Delinquency Prevention Act (2018)

The Juvenile Justice and Delinquency Prevention Act (JJDPA), originally passed in 1974 and most recently reauthorized in December 2018, incentivizes the adoption of particular juvenile justice policies by granting funding to states that meet core requirements (Juvenile Justice Reform Act of 2018). The JJDPA is intended to protect the rights of justice-involved youth while promoting community safety (Juvenile Justice and Delinquency Prevention Act, 2002). The JJDPA has been highly effective in shaping states’ juvenile justice systems; all but three states (Wyoming, Connecticut, and Nebraska) have elected to follow JJDPA requirements in exchange for juvenile justice funding (Johnson, 2018). Additionally, the JJDPA created an office within the Department of Justice dedicated to managing federal juvenile justice endeavors: the Office of Juvenile Justice and Delinquency Prevention (OJJDP; Juvenile Justice and Delinquency Prevention Act of 1974). The OJJDP promulgates guidance regarding and implements the JJDPA, oversees the grant programs that fund juvenile justice efforts, and coordinates federal responses to juvenile delinquency (Juvenile Justice and Delinquency Prevention Act, 2002).

Over the course of its history, the JJDPA has undergone substantial modification each time it has been reauthorized (Juvenile Justice and Delinquency Prevention Act, 2002). The initial version of the JJDPA had two core requirements for states to receive juvenile justice system funding: the deinstitutionalization of status offenders and the separation of incarcerated or detained juveniles from adult prisoners (Juvenile Justice and Delinquency Prevention Act of 1974). Additionally, the initial JJDPA created the Formula Grants program, which provides funding to state and local efforts focused on creating and evaluating policies and projects that seek to develop support programs for juveniles and improve the juvenile justice system (Finklea, 2012). In 1980, the JJDPA added a third core requirement: that justice-involved youth cannot be detained or incarcerated in adult facilities (with some exceptions; Finklea, 2012). However, the 1980 reauthorization also represented a shift away from rehabilitation, with a greater emphasis placed on sanctioning justice-involved youth (Finklea, 2012). The 1992 reauthorization added a fourth core requirement for states to receive funding: states must address disproportionate minority confinement (broadened to disproportionate minority contact in the 2002 reauthorization; Finklea, 2012). Finally, the 2002 reauthorization added incentive grants to states that develop programs to prevent juvenile delinquency, such as educational, recreational, leadership, job training, substance abuse, and health programs (Juvenile Justice and Delinquency Prevention Act, 2002).
In the 13 years since the 2002 reauthorization of the JJDPA expired, there have been repeated attempts to reach a compromise regarding key provisions for a new reauthorization (Hager, 2018). In December 2018, a reauthorization was finally passed and signed into law (Juvenile Justice Reform Act of 2018). The 2018 reauthorization of the JJDPA, which will go into effect beginning in 2020, retains the four core requirements for states to receive funding. States must continue to comply with requirements regarding the deinstitutionalization of status offenders, avoiding placing youth in adult jail or lockup, maintaining sight and sound separation between justice-involved youth and adult inmates when youth are housed near adults, and reducing racial and ethnic disparities in the juvenile justice system (Juvenile Justice Reform Act of 2018).

The deinstitutionalization of status offenders requirement calls for alternative options to incarcerating juveniles charged with status offenses (conduct that would not be considered a crime if committed by an adult). However, this requirement retained a controversial exception allowing for the incarceration of youth who committed a status offense who violated a valid court order (often called the VCO exception; Coalition for Juvenile Justice, 2014). In practice, this permits judges to incarcerate youth for status offenses by ordering a youth not to engage in particular behavior (e.g., running away from home; skipping school) and incarcerating a youth who fails to comply (Coalition for Juvenile Justice, 2014). Although many stakeholders advocated against retaining the VCO exception, the 2018 bill’s sponsors reportedly struck a deal keeping the VCO in exchange for the bill’s passage (Johnson, 2018). The retention of the VCO exception likely means that a minority of states will continue to incarcerate status offenders. The 2018 legislation limits the detention of status offenders to a maximum of 7 days (Juvenile Justice Reform Act of 2018).

The two requirements regarding separating justice-involved youth from adults were expanded in the 2018 reauthorization to juveniles being tried as adults (Juvenile Justice Reform Act of 2018). The new text of the JJDPA prohibits juveniles awaiting trial as adults from being housed in adult jails or lockups from having sight or sound contact with adult inmates, “unless a court finds…that it is in the interest of justice.” The statute indicates that, in reaching this determination, judges should consider the juvenile’s age, physical and mental maturity, mental state, alleged offense, delinquency history, availability of adult and juvenile facilities meeting the youth’s needs and protecting public safety, and “any other relevant factor” (Juvenile Justice Reform Act of 2018). To place a youth in an adult facility, a judge must hold a hearing and issue written findings, review hearings must be held regularly, and placement is limited to 180 days. Previously, the JJDPA prohibited detaining youth in the juvenile justice system in adult jails or lockups except in rural areas where no juvenile facilities are available and required that juvenile justice-involved youth be separated from adult inmates, but these provisions did not apply to youth processed in the criminal justice system (Juvenile Justice and Delinquency Prevention Act, 2002). This change has been celebrated as a substantial victory by juvenile justice advocates (Johnson, 2018) and follows moves by some jurisdictions to remove youth tried as adults from adult facilities (Arya, 2018).
The 2018 reauthorization provides additional guidance regarding the requirement that states work to address disproportionate minority contact, now broadened to “racial and ethnic disparities” (Juvenile Justice Reform Act of 2018). Specifically, it requires states to analyze data to identify the stages of juvenile justice processing that contribute to racial and ethnic disparities among justice-involved youth and develop a plan with measurable objectives to address these issues. This change will likely increase the availability of data on juvenile justice system disparities and may create opportunities for further research in this area.

In addition to revisions to the core requirements, the JJDPA’s reauthorization in 2018 added other protections for juveniles, such as increased screening of children who may be victims of sex trafficking or may suffer from mental illness or substance abuse, an emphasis on evidence-based assessment and treatment, greater educational continuity for detained juveniles, and eliminating the practice of using restraints on pregnant girls (Juvenile Justice Reform Act of 2018; Johnson, 2018). Additionally, the 2018 Act asks states to develop a more formalized reentry process for justice-involved youth returning to the community (Juvenile Justice Reform Act of 2018).

Due to the government shutdown, the OJJDP—which is responsible for implementation of this reauthorization—has not yet provided guidance regarding how the changes in the 2018 iteration of the JJDPA may impact state-level juvenile justice systems and programs (Office of Juvenile Justice and Delinquency Prevention, 2019). However, the passage of the JJDPA is expected to have a significant impact on state juvenile justice systems—with implications for both clinicians and researchers. As the OJJDP issues guidance, states will initiate policy shifts, likely leading to new opportunities at the intersection of psychology and the law: for clinicians, to conduct evidence-based treatment; for forensic evaluators, to contribute to assessments regarding the appropriateness of youth incarceration in adult facilities; and for researchers, to explore the impact of policy shifts and analyze newly available data.

References


