Difficult to Place: Youth With Mental Health Needs in California Juvenile Justice, Summary of Findings, Youth Law Center (June 2005)

Editor's note. Sue Burrell and her colleagues at the Youth Law Center in San Francisco represent the gold standard for legal advocacy on behalf of juveniles. This abbreviated version of a much longer Report is a national outline for the dilemmas of juveniles with mental illness held in pre-placement detention.

With all of our chest-beating about being a nation that cares about our children, what we do is a far cry from what we profess. The section on "Directions for Future Work" is a terrific outline for achieving progress.

Public attention has recently been focused on the incarceration of children with mental health needs. This is a summary of Youth Law Center's California-based research into one aspect of that issue—the incarceration of youth with mental health needs who have received a juvenile court disposition order to a non-secure placement, but who remain incarcerated in a secure setting because they have not yet been placed.

As advocates, we have long been concerned about the extended detention of youth with serious mental health issues, incarcerated for weeks and months after a court order for a non-secure disposition. The findings in this Summary support that concern—both for the well-being of the youth, and for the facilities that struggle to serve them. And from a legal standpoint, counties with serious placement delay problems may face litigation in individual cases where youth with mental health needs are harmed, or systemic litigation for violation of due process protections of the Americans With Disabilities Act.

This work was undertaken to learn as much as possible about the length of time youth with mental health needs spend awaiting placement, and from the counties' perspective, the reasons for delay; what problems this causes for the youth; and what problems it causes for the system itself. We also wanted to find out whether counties have experienced successes in dealing with this population that may be shared and replicated.

The current system doesn't provide a way to say "No" at the front door for the most troubled youth.

• A significant number of placement youth with mental health needs are held on relatively minor offenses. Much of the "criminal" behavior appears to be within the expected universe for youth with mental illness, serious emotional disturbance, or developmental disabilities.

Counties report the following problems in serving this population:

• The current system doesn't provide a way to say "No" at the front door for the most troubled youth. Case files indicate that seriously disturbed youth are often brought into the juvenile justice system during a crisis in mental hospitals, shelters, and group homes, and the juvenile justice system simply takes them in.

• The awaiting placement youth have increasingly complicated mental health treatment needs. Many have received diagnoses of serious mental health problems, including schizophrenia, bipolar disorder, depression, and serious emotional disturbance. In one county, placement youth accounted for the bulk of in-custody referrals for crisis hospitalization.

• Most juvenile halls are limited in their ability to provide anything but crisis intervention services. This means that services often are not available to keep...
Facilities that do provide high-level supervision often do so at the expense of the rest of the institutional programs.

- Youth from reaching a crisis state, and services end as soon as the crisis is over.
- This results in a crisis cycle for youth with serious mental health issues awaiting placement; depression, suicidal behavior, head-banging, and self-inflicted wounds are commonly experienced.
- Youth are often cared for by facility staff lacking the training to deal with complex mental health issues. The situation is terrible for everyone — frustrated staff resort to drastic control measures: use of mechanical restraints, locked room time, and pepper spray. Staff struggling to deal with unpredictably violent behavior have been seriously injured.
- Also, because juvenile halls are not designed for or staffed to provide one-on-one or other intensive supervision, youth with serious mental health problems may be isolated in an effort to keep them "safe." This, in turn, leads to increased mental and physical deterioration. Facilities that do provide high-level supervision often do so at the expense of the rest of the institutional programs. Moreover, the lengthy periods of detention for awaiting placement youth use up valuable bed-space needed for youth who truly require detention.
- Inadequacies in mental health services at juvenile halls make it even harder to place youth with serious mental health issues, because their deterioration in detention makes them less "presentable" to potential placements.

Barriers to placing youth with serious mental health needs include the following:

- Counties lack sufficient mental health resources to do educational and special education assessments that might assist in disposition and placement. With proper assessment, a portion of the youth detained in juvenile hall and those who repeatedly fail probation could be safely treated in the community. Without it, unmet mental health care needs may result in further intrusions into the justice system and additional periods of detention.
- Counties lack the ability to provide institutional services that might stabilize the youth and prevent the need for placement, or increase the chances of acceptance into a treatment facility. Current services in the halls are insufficient to help the minors to present themselves in a positive light — instead of in a deteriorated and dysfunctional state when interviewed by group home staff for placement. Also, most halls are unable to provide ongoing services, such as medication management, that would help prepare them for successful placement. In addition, the halls do not have the capacity to provide pre-disposition services for confused and frustrated families, which could reduce the need for placement or increase placement options.
- Counties struggle to provide staffing resources and training dedicated to meet the needs of the placement population.
- The pressures of crowded docketts, high caseloads, short court timelines, lack of expertise on mental health and placement issues, and frequent rotations of court personnel (defenders and probation) contribute to dispositions that may not meet minors' mental health needs, prolong detention, and result in a revolving door to detention.
- Counties need increased high-level mental health facilities for youth with serious mental health needs, and specifically for youth that cannot be appropriately handled in an open setting. Counties specifically voice the need for:
  1. Inpatient Psychiatric Hospitals and Community Treatment Facilities ("CTFs")
  2. Outpatient mental health for youth and families after release from residential care
  3. Facilities to handle acute psychiatric crises ("5150s")
- Several counties also report as a barrier, lack of access to rate classification level (RCL) 14 group homes in proximity to the county. Level 14 homes are reserved for seriously emotionally disturbed youth, and are required to provide the highest level of staffing pursuant to California Department of Social Services licensing standards (Calif. Welf. & Inst. Code sections 11462, 11462.01)
- Counties experience problems in getting IEPs completed by school districts, resulting in substantial delay for placement. Also, counties report continuing problems with providers improperly requiring IEPs for placement, despite recent legislation that prohibits requiring an IEP for acceptance into a group home (A.B. 1588, Stats. 2004, adding Education Code section 56135).
- In some counties, there are difficulties in getting county mental health to serve incompetent minors, and this is exacerbated by the absence of a specific statutory mechanism for dealing with incompetent minors.
- Communications problems may impact placement. Providers express frustration with practical problems such as finding the right probation person by email, or the fact that some office phones do not have voicemail. Providers urge the need for more joint meetings and trainings with probation and providers; the need for improved case management by social workers or placement staff, and providers' need for more child information at the time of placement.
- Youth are rejected by providers for inappropriate reasons, particularly given the providers' contractual obligations through Community Care Licensing Division. Case rejection forms supplied by the counties include being too old (turning 18 in a few months); reading at the 6th grade level; having only 100 high school units; having bulimia; being a drug user; hearing voices; having no remorse for one's victim; walking with a cane; needing a particular medication, and having serious mental health issues.
- Counties lack programs addressing particular issues, including programs for fire-setters, chronic runaways, youth with severe emotional disturbance, asssultive youth, gang involved youth, undocumented aliens, sex offenders, sexual predators, and non-ambulatory youth, youth with disabilities such as hearing impairment, youth with chronic or recurring medical conditions, youth with developmental disabilities receiving Regional Center services, "low functioning" youth (who have a low IQ but are not eligible for Regional Center services), youth needing certified drug treatment, youth who refuse...
to take prescribed medication, pregnant minors; youth experiencing gender identity issues, and youth with a history of suicide attempts or hospitalization. Also lacking are cross-over programs, e.g., for youth who are both hard-core chronic delinquents and seriously emotionally disturbed, and programs to serve developmentally delayed minors who also have mental health issues or sex offender issues. Finally, counties speak of a shortage of programs to serve youth returning to the community after being in residential or institutional placement.

Some programs do not actually provide the services promised by their program statements, or that are commensurate with their licensing classification level. Accountability is lacking, as budget constraints and staffing shortages have limited the frequency and scope of audits by Community Care Licensing.

- The system to initiate provider payment and establish Medi-Cal benefits for youth is cumbersome because a number of units and individuals must be contacted. This makes it difficult to access services in a timely manner.

- Problems with Medi-Cal interfere with placement. Some programs are unwilling to wait for reimbursement (six to eight week delay), e.g., for prescription changes if the youth runs out of medication within first thirty days of the program. Other problems with the Medi-Cal system include the struggle to identify providers, waiting lists, streamlining the referral process, and making the process user-friendly for families. A typical problem is that the court will not release a minor until mental health services are in place, but the services cannot always be arranged while the minor is in the hall due to funding issues, waiting lists, or coordination issues.

- Limitations on institutional access to Medi-Cal impede placement. Counties urge that being able to access Medi-Cal funding would provide much needed mental health and substance abuse services in the juvenile hall. With established services in the juvenile hall, community services could be developed to transition minors back into the parent’s home for continuity of services. [Note — we are not sure whether the counties making this point are fully aware of what Medi-Cal actually allows, or whether these statements are directed at the parts of institutional confinement where reimbursement is clearly prohibited, and the desire is to change those limitations.]

- Many high-level group homes require mental health “patch money” in addition to the regular group home payment for the placement of a minor with serious mental health issues. Because the county does not have the resources to pay all of the patch money, some minors spend a lot of time in the juvenile hall while the placing officers attempt to find placements that will accept them without the patch money.

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- Funding for aftercare programs for children and families is limited. This is an essential service piece to insure supervision enabling youth to successfully complete probation after release from institutional care, and ultimately to make sure they and their families learn the skills needed to prevent reentry into the juvenile justice system.

Successes in Reducing Placement Delay For Youth With Mental Health Needs

The counties also provided information about successes in reducing barriers, problems, or service gaps in placing youth with mental health needs. There are many successes to report including a number of solutions that could be used to address barriers discussed in the preceding section.

- Improving Mental Health Services to Youth in Juvenile Hall Several counties have developed treatment units in their juvenile hall. These units provide safe, structured, therapeutic services that significantly reduce the incidence of self-harm, acting out and deterioration experienced by youth with serious mental health issues. They also help youth to understand and manage their emotional and behavioral issues in a constructive way.

- Increasing the Involvement of Local Departments of Mental Health in institutional mental health issues, including screening and monitoring of youth with active mental health crises; and provided such a unit has now decided that juvenile hall is an inappropriate setting for the housing of youth with serious mental health conditions, and the county is exploring the creation of a separate specialized facility to meet their needs.

- Increasing Inter-Agency Collaboration. Although having an interagency committee is required for placement of youth in RCL 13 and 14 group homes (Calif Welf & Inst Code section 11462.01), several counties use these committees in a broader way. Thus, some counties use these committees to look at options such as placement in a community treatment facility, State hospital programs, RCL 12 facility, transitional/emancipation housing, adult mental health programs, the Regional Center, wraparound services or other community-based services. Inter-agency committees are also held out as helpful forums to discuss “difficult” cases, to identify funding options, and to work through inter-agency barriers.

- Improving Access to Funding. Some counties have entered into inter-agency agreements to secure funding for placement in high-end, residential mental health treatment facilities. Other counties have enhanced funding by getting their probation departments certified as Medi-Cal providers; this enables the county to get reimbursed for at least some aspects of the placement assessment process. Yet other...
The State and local jurisdictions need to tackle the almost universal need for at least some inpatient or secure mental health treatment capacity.
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- Counties need to determine examine ways to care for and house youth with serious mental health needs pending resolution of their cases in a setting other than juvenile hall.
- Counties that still experience lengthy case processing delays should learn from counties that have reduced delay by redistributing resources, increasing interagency coordination, enhancing case review, and providing better staff development.
- Advocates, probation and juvenile courts need to be better informed about placement and community-based service options. The 15-day court reviews under Welfare and Institutions Code section 737 should vigorously address the efforts made, the reasons for delay, whether the youth may be held in a non-secure setting pending placement, precisely what more is needed to implement the dispositional order, and whether alternative dispositional plans should be considered.
- Counties should track and analyze opened placements. Was it a bad match to begin with, or is there something that needs to be looked at in the placement itself? Is there a way to provide respite or crisis services to the youth and the provider to "save" placements that otherwise seem to be working?
- Counties may also benefit from addressing specific placement failure issues. For example, since almost every county expresses frustration with placing youth who run away, a study of the reasons for running away should be undertaken, and used to develop solutions.
- In developing additional programs and services, counties should look to the research and evaluations on programs already validated as cost-effective. As a starting point, the following publications may be useful:
  - The Mental Health Services Act (Proposition 63) and Juvenile Justice Youth, Multi-Association Joint Committee (California Mental Health Director's Association, Chief Probation Officers of California, and United Advocates for Children of California, 2004), http://www.cmhda.org/documents.html

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much "counseling" is instead provided by ordinary line staff without credentials or training in psychotherapeutic treatment.

Judges, attorneys, family members, and friends of incarcerated girls have little chance of learning exactly how girls in OCFS facilities are treated, not least because Tryon and Lansing are located hundreds of miles away from New York City, the place most incarcerated girls hail from, and because girls' access to means of communication is strictly limited. Girls are cut off from the outside world in other ways too. Once a girl is placed in an OCFS facility, she loses the state-funded lawyer who represented her in court, unless an appeal or other post-adjudication legal proceeding is underway.

Girls incarcerated in New York's juvenile system who wish to seek redress for infringements on their rights have few options. In most cases, the only place to which they can turn is the same facility and at times the very same staff members responsible for the wrongs about which they are complaining. Girls' primary means of drawing attention to problems they experience within a facility is the filing of written grievances. All of the girls HRW/ACLJ interviewed said they found the grievance process frustrating and ineffective, most commonly because their grievances were ignored. Thus hidden from public scrutiny and without an effective mechanism for seeking redress, girls in Tryon and Lansing continue to endure harmful treatment and neglect.

One important reason that the abusive treatment and other problems described in this report continue is the absence of genuinely independent oversight of the Tryon and Lansing juvenile facilities. Combined with the facilities' isolated rural location and restrictions on incarcerated children's contact with the outside world, the facilities operate in an informational vacuum. Inadequate funding for existing monitors, such as the facilities ombudsman, as well as OCFS's failure to maintain a functioning Independent Review Board as required by law, are partly to blame. The ombudsman's office is also weak because it is part of OCFS, answerable to and physically located within OCFS headquarters. New York's Child Protective Services (CPS) is likewise a sub-part of OCFS and its existence is not known to many incarcerated girls. Another established monitor, New York's Office of the Inspector General, does not provide the necessary oversight because OCFS represents only a small piece of its broad mandate, and because it conducts no regular monitoring visits to OCFS's locked facilities. Although judges, legislators, and other state officials have the power under state law to visit the facilities at will, this power is rarely if ever invoked. In response to efforts by outside investigators to gather information on how OCFS runs its juvenile facilities, the agency's leadership has proven itself secretive and adverse to scrutiny, effectively leaving the public in the dark. Within this institutional scheme, children are left to fend for themselves.
A Report: Juvenile Justice & Mental Health

Editor’s note: Joyce Burwell, working with the American Institutes for Research in Washington, D.C., has prepared a relatively brief yet very informative Report aimed at family members, non-clinical juvenile justice practitioners, administrators, and other system of care stakeholders. By System of Care the author refers to a comprehensive spectrum of mental health and other necessary services which are organized into a coordinated network to meet the multiple and changing needs of children and adolescents with severe emotional disturbances and their families.

The report makes some important points in the Introduction, a section on costs, one on implications for systems of care communities, and epidemiological data. These sections are reproduced here:

Introduction

Identifying and responding to the mental health needs of youth in contact with the juvenile justice system is clearly being recognized as a critical issue at the national, state, and local levels (Covuri & Skowrya, 2000) increasing numbers of youth entering the juvenile justice system through delinquency arrests.

CRIPA Does Baltimore Justice Center

In October 2003, the Justice Center in Baltimore, Maryland opened its doors as a pre-adjudication and post-adjudication awaiting-placement facility for boys aged 12 to 18. In September and October 2005 the Department of Justice (DOJ) conducted investigations pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). Governor Ehrlich Jr. was then graced with a damning CRIPA Report on August 7, 2006.

The findings, in brief, are:

In particular, we find that children confined at the Justice Center suffer significant harm and risk of harm from the facility’s failure to: (i) adequately protect children from youth violence; (ii) adequately safeguard youths against suicide; and (iii) adequately provide behavioral health care services. In addition, the facility fails to provide required education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400–1482 (West, Westlaw through July 3, 2006). (Report at 2-3)

Suicide Risks

The Report noted environmental suicide hazards at the Center. In particular, there was concern for the mezzanine railings in the housing units, the design of the bed frames, and the configuration of the bathroom safety rails

Apparentely no youth committed suicide in a fashion related to these risks but multi-

also in this issue


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