

**RESIDENTIAL TREATMENT FOR
MONTANA'S JUSTICE-INVOLVED YOUTH**

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For the
Juvenile Justice Working Group of the
Law and Justice Interim Committee

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Residential treatment a necessary component

Ideally, mentally ill youth will be diverted to appropriate treatment before becoming involved in the juvenile justice system. However, when the illness is not recognized, treatment are not met, or a youth is seriously ill, the youth may exhibit dangerous behaviors, such as suicide attempts, self-mutilation, or verbal or physical aggression against classmates, parents, or other authority figures. Some youth may commit serious criminal offenses against property or persons. To protect the youth as well as the public, and to provide appropriate treatment, secure residential placements are an important component in the continuum of care for justice-involved mentally ill youth.

Residential programs range from non-secure to secure and include:

- institutions;
- training schools;
- hospitals;
- group homes;
- shelters;
- foster care;
- treatment facilities;
- camps, ranches, or wilderness programs; and
- other programs.

Policy issues

Testimony and information received to date indicates a two-fold concern about residential placements in Montana for justice-involved youth: (1) that there is a gap in state residential treatment alternatives, and (2) that the statutes need to be clarified.

No dedicated state-funded beds

The first part of the concern, which surfaced in testimony about how juvenile probation, county attorneys, judges, and the Department of Corrections are having trouble finding treatment alternatives for a some difficult to serve youth. These youth are sometimes described as having "blown out" of other placements because they present safety risks and as being aggressive, belligerent, defiant, and generally "out-of-control". Various presenters have pointed out that Montana lacks a children's equivalent to the Montana State Hospital or community-based alternative that provides dedicated state-funded treatment beds for these difficult to serve youth. Instead, the state contracts for these services. However, private providers may decline to accept a youth, for a variety of reasons, some based on capacity and financial concerns (i.e., not enough beds and not enough providers willing to accept medicaid rates), some based on simply not wanting to deal with the difficult behaviors. Consequently, some of these youth are placed out-of-state. A few may not be placed.

How big is the gap and what would fill it? This is difficult to determine. First, how many youth actually fall into this category depends on well assessment and evaluation works to help identify their needs. Second, some of these youth may not actually fall into this category if earlier interventions were available. Part of the picture may be discerned by looking at current out-of-state placements. As of January 25, 2008, 63 justice-involved youth were in out-of-state placements: 53 were placed by youth probation, 7 were placed by youth corrections from either Pine Hills or Riverside, and 3 were placed from parole. The youth in these placements have a variety of diagnoses.

Current law

The other aspect of the concerns raised in testimony is about statutory deficiencies. A few of these statutory "problems" are discussed below.

Disposition alternatives

Section 41-5-1512, MCA, which is provided below, outlines the disposition alternatives available to a judge in a formal proceeding for a youth in need of intervention or a youth who violated a consent adjustment. The statutory language relevant to this discussion is highlighted in bold italics. The definition of a youth in need of intervention is also provided below.

41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply: ...

... (51) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:
(a) commits an offense prohibited by law that if committed by an adult would ***not*** constitute a

criminal offense, including but not limited to a youth who:

- (i) violates any Montana municipal or state law regarding alcoholic beverages; or
- (ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior;** or
- (b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the **youth placement committee**.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the

concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the cost containment review panel.

[emphasis added]

Some general observations regarding the above statute are as follows:

- Judges do have a wide range of alternatives that, if the capacity exists in the community, may be used effectively to divert youth to appropriate treatment.
- However, the statute authorizes commitment to a mental health facility. As previously noted, there are no state-funded youth mental health facilities in Montana to which the judge may order the commitment.
- Commitment to a mental health facility is tied to the civil involuntary commitment statutes for adults, which includes criteria about self-sufficiency that are irrelevant for determining a youth's level of disability.

- Although a youth may be placed in a "youth assessment center" for up to 10 days, there are no assessment centers. The statute authorizes probation officers to act as "assessment officers". The lack of youth assessment centers, which would provide a safe and secure place for a mental health assessment may result in youth with mental health problems being placed in a youth detention center rather than being diverted to appropriate treatment.

Statute prohibiting placement in a correctional facility

Another statute that may need to be revised is section 41-5-1504, MCA. This statute prohibits a youth with a mental disorder from being placed in a youth correctional facility. The statute reads as follows:

41-5-1504. Finding of suffering from mental disorder and meeting other criteria -- rights -- limitation on placement. (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

Two general observations about this statute are as follows:

- The statute is unclear about who makes the finding and how.
- The definition referenced for a "mental disorder" is broad and the additional criteria that must be met is related to whether an adult can provide for his or her basic needs and live independently. However, a youth cannot live independently, even if the youth is not mentally ill. Thus, for a youth, the additional criteria is meaningless. So, the determination of whether or not a youth may be placed in the correctional facility is subject to interpretation based solely on the definition of "mental disorder". The definition provided in section 53-21-102, MCA, is as follows:

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

The Youth Services Division of the Department of Corrections has suggested a revision to section 41-5-1504(2), MCA, as follows:

(2) A youth who, prior to ~~placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1)~~ adjudication under 41-5-1513, has been diagnosed with a major depressive disorder, bi-polar disorder, schizophrenia, dysthymic disorder, or severe post traumatic stress disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, may not be committed or sentenced to a state youth correctional facility.

Licensure of residential programs

With respect to the licensure of youth residential treatment programs, there is a statutory "loop hole".¹ Statutes authorizes and directes the Department of Public Health and Human Services (DPHHS) to license the following types of service providers for residential services:

- foster homes;
- kinship foster homes;
- group homes;
- shelter care;
- child care; and
- transitional living programs.²

Grouped together, these programs are defined in statute as "youth care facilities". Thus, secure residential treatment centers are not covered. Nonetheless, administrative rules governing the licensure of "youth care facilities" includes licensure of "residential treatment centers". These rules cite other statutes as the authority for the rules. However, this disconnect between the statutory and administrative law is confusing.

¹ Residential services refers to any service provided by taking the youth out of the youth's home.

² Section 52-2-603, MCA.

Other states and best practices

Transform mental health

Montana is not alone in the struggle to divert justice-involved youth with mental health needs to appropriate treatment. Nationally, there is a push to find solutions in the context of a comprehensive "transformation" of the mental health system. According to the latest research supported by the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention,³ residential and secure treatment should be handled as part of a comprehensive, multi-disciplinary, multi-agency approach for the entire population of youth who need treatment services.

However, the mental health "system" is often characterized as fragmented and lacking in sufficient resources to meet current needs. There are not enough mental health professionals, multiple agencies trying to deliver multiple services are difficult to coordinate, and funding is "stove piped" so only certain "eligible" populations and certain "eligible" services receive the dollars that are available for treatment services. The goal of transformation is to collaborate, coordinate, and blend human and financial resources to deliver the programs and services that work the best.

Navigate the public policy land mines

There are land mines to navigate in this mental health/juvenile justice collaboration. One is the concern that the mental health system cannot even meet the needs of the "eligible" population, let alone handle juvenile or adult offenders who are not eligible for medicaid or other public assistance dollars while they are incarcerated. So, the hope is that by diverting youth to treatment, crime and recidivism will be reduced and precious resources will be saved from having to be spent on costly programs or institutions that, critics say, only turn juvenile delinquents into hardened criminals. Then, this savings can be reinvested into the front end of the continuum to improve early intervention and diversion programs. The catches are that: (1) treatment beds will likely cost more in the short term than an institutional bed; (2) some secure residential treatment capacity will always be needed; and (3) secure residential treatment facilities have some fixed or built in costs.

³ At the LJIC's meeting on November 30, 2007, committee members received a staff summary of the 2007 report entitled *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*.

Assess needs and use successful strategies

With all of this in mind, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) has published a guide of model programs that include some discussion of residential programs. Also, because disproportionate minority confinement (DMC) is a serious problem not only in Montana, but nationally, the OJJDP has developed a technical assistance manual and a national data base of effective strategies to assist states to collect data, identify problems, and implement strategies proven to reduce DMC. If the working group makes residential placement and DMC a priority issue, these resources could be further explored to help develop options for Montana.

Review of recent activities

Background provided

At its meeting on November 30, 2007, the full Law and Justice Interim Committee (LJIC) received information and testimony from presenters and panelists covering the gambit of juvenile justice, including the philosophy and development of state juvenile justice systems and the Youth Court act, a national study of a blue print for change about justice-involved youth with mental health issues, two case histories, and panel discussions on probation, youth courts, correctional facilities, and treatment service providers.

Agencies began a dialogue

The Department of Corrections, Judicial Branch, and Department of Public Health and Human Services on December 10, 2008, hosted a statewide METNET conference to begin a dialogue on whether Montana should consider developing in-state or regional options for dedicated, state-funded beds for the residential treatment of youthful offenders with serious mental health needs. Additionally, at the working group's January meeting, Youth Services forwarded to the working group a draft revision to section 41-5-1504, MCA, which prohibits the placement of a mentally ill youth in a youth correctional facility.

More information and initial priorities set

On January 10, 2008, the full LJIC heard testimony and engaged in discussions about the juvenile justice challenges regarding Indian Youth and about disproportionate minority contact. The next day, the Juvenile Justice Working group learned about the Juvenile Detention Alternatives Initiative (JDAI) and discussed its work plan priorities. One of the priorities set by the working group was detention and secure placements, with the understanding that detention

would be handled in the context of monitoring the JDAI activities in Montana, which will be discussed in another staff paper.⁴

Also, in January, the working group learned about the Children's Systems of Care Planning Committee (SOC), which was enacted by the legislature in 1993, with statutory updates in 1995 and 2003. Current law provides that the SOC is responsible for promoting "the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting".⁵

As instructed by the working group in January, a letter has been sent to Mary Dalton, DPHHS, and the SOC committee members, informing them of the working group's interest in residential and secure placements and asking them to present its recommendations to the working group.

Finally, the working group's February 28 agenda includes an information briefing about "systems of care" and the activities of SOC.

Options for action

The working group has several options:

A. Request additional information, data, and analysis

To gain a better understanding of the needs and weigh options concerning residential treatment the working group could request additional data and analysis. For example, the working group could request further information about:

- out-of-state placements;
- in-state residential treatment capacity and use for justice-involved youth;
- mental health screening and assessment prior to sentencing to a youth correctional facility;

⁴ Montana Legislative Services Division, Minutes, Juvenile Justice Working Group of the Law and Justice Interim Committee, January 11, 2008, pg. 5.

⁵ Section 52-2-304(1)(b), MCA.

- mental health screening and assessments for youth after they are committed to a youth correctional facility;
- model programs and best practices.

In considering this option the committee should keep in mind the workload and timelines involved and that model programs and best practices can be looked at in the context of JDAI.

B. Wait for the findings and recommendations that may come from other efforts

Mental health needs assessment study: The contracted mental health study now underway under the auspices of the Children, Families, Health and Human Services Interim Committee will provide a comprehensive needs assessment of Montana's publically-funded mental health system. Although the study is not focused on youth corrections specifically, the assessment should provide insight on whether there is a need for additional residential placement options and if so, what options may be the best fit for Montana.

Children's Systems of Care Planning Committee: The working group has sent a letter to the SOC requesting their recommendations and could wait to hear from them. However, depending on the SOC's meeting schedule and work plan, any recommendations may not be timely enough for the working group.

C. Request draft legislation for discussion

The working group could take the general observations contained in this briefing paper on the statutes discussed above, combined with the discussion and testimony received to date, and instruct staff to draft legislation to stimulate further discussion. The working group would need to provide specific instructions about what the working group intends to accomplish with the legislation.