

LEGISLATIVE WHITE PAPER
For presentation to Legislative Law and Justice Interim Committee
February 24, 2012

The Youth Justice Council (YJC) is an advisory council to the Montana Board of Crime Control and was appointed by Executive Order of the Governor to advise his office and the Legislature on juvenile justice issues. This position paper was developed to fulfill that responsibility.

Overall Best Practices for Youth:

- Address youth mental health needs holistically before they come in contact with the juvenile justice system;
- Use integrated, evidence-based, proactive prevention and intervention approaches;
- Recognize brain development is not complete until early to mid-twenties;
- Keep youth connected to their homes, families, and communities whenever possible for best outcomes;
- Reserve secure confinement for youth who commit a delinquent act and pose either a public safety or flight risk; and
- Don't mix low level youth offenders with high level youth offenders or adult offenders.

Issue 1: Juveniles are coming into contact with the juvenile justice system for reasons related to mental health, substance abuse and co-occurring disorders.

Background

As demonstrated in the table¹ on the following page, the numbers of juvenile crime have been trending down since 2000 in every crime category except *Crimes Against Persons*, *Drug Offenses*, *Drug Paraphernalia Offenses* and *Other Offenses* (includes any offense that does not fall within one of the 25 standard crime categories). The largest number of juvenile offenses falls within the category of *Crimes Against Property* followed by *Status Offenses*, which are offenses that would not be illegal if the juvenile were an adult. These include such transgressions as Minor in Possession (MIP), runaway, truancy, or curfew violation.

According to the American Academy of Child and Adolescent Psychiatry, behavior caused by or related to mental illness often precipitates entry into the justice system. While as many as 65 to 75 percent of youthful offenders have one or more diagnosable psychiatric disorders, most juvenile detention facilities are not well-equipped to deal with these issues.

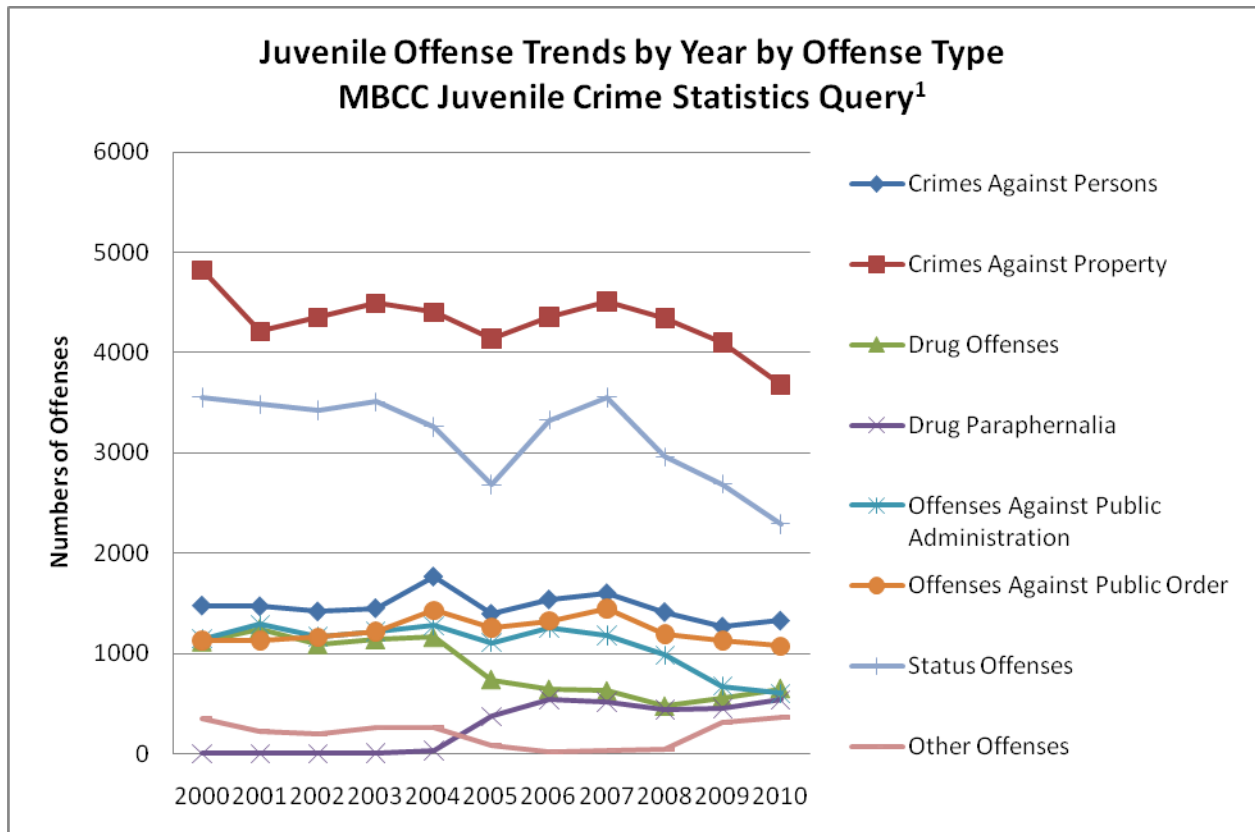
In Montana 915² unduplicated kids were detained and committed within Montana's juvenile justice system in 2010; 57%³ of the youth in custody were there for nonviolent offenses, as

¹ Statistics are from the MBCC Juvenile Crime Statistics Query:
http://mbcc.mt.gov/juvenilequery/juv_get_inputs.aspx

Statistics for 2005 may vary because of the transition to a different reporting service that year. Drug paraphernalia offenses were not separated from drug offenses prior to May 2009. The historical counts have been updated to reflect this change back to 2005.

² Derived from the Juvenile Detention Reporting System (JDERS) database maintained by MBCC

compared to a national rate of 68%⁴. Many mental health disabilities manifest as physical or verbal aggression, self-harm, and offenses such as substance abuse or property crime. These youths' behaviors tend to escalate once they come into contact with the juvenile justice system and their delinquent peers. For many, however, the illness is not recognized or diagnosed until they come into contact with the juvenile justice system. In Montana, juvenile probation often serves as the default access to identification and access to services.



Montana's small, widespread populations make it extremely challenging to build and maintain a comprehensive roster of services. This forces families and/or providers to travel long distances to give or receive services. Extreme poverty, single parent/sole provider families, lack of reliable transportation, lack of public transportation, and the high cost of gasoline all add to the transportation challenges. Other gaps result from the limited capacity of Montana's three youth psychiatric residential treatment facilities, which deny admission if there isn't available space, an appropriate treatment program or ability to ensure safety for the youth or others. Those denied admission, while few in number, must seek treatment in other states or are defaulted into the juvenile justice system.

³ Derived from the Juvenile Courts Administration and Tracking System (JCATS) database maintained by MT Office of Court Administration.

⁴ Derived from the Easy Access to Juvenile Court Statistics 1985-2008.

<http://ojjdp.gov/ojstatbb/ezajcs/asp/selection.asp>

Even in many of Montana's largest communities, little is available in terms of crisis response and assessment for youth, which often means choosing between the sheriff and the emergency room. Even after crisis response and/or assessment, there are few support services for caregivers, who typically lack the training that would help them understand behaviors, treatment regimens, medications and/or behavior management techniques. Often, parents feel compelled to refer a child to youth probation or put him/her in a treatment facility simply because they have limited skills or resources available to maintain the child at home.

Most children have difficulty transitioning from childhood to adult status. That transition can be even more difficult for youth with mental health issues, particularly when there are few or no services available to help them and their families navigate the adult system of care.

The Children's Mental Health Bureau implemented the Vroon VanDenBerg model of high fidelity wraparound as a pilot project that showed great success in mitigating many of these problems in Montana. The Bureau, with support of the Systems of Care Committee, was able to secure a combination of funding from the Montana Mental Health Trust Fund and from the Substance Abuse and Mental Health Services Administration (SAMHSA) to provide the training necessary to implement the model statewide using a Medicaid waiver. However, there are many families who need assistance to obtain early assessments and access to appropriate prevention and intervention services for their youth with mental health issues who do not meet the Medicare criteria. More needs to be done to help youth and families/caregivers negotiate the transition from the juvenile to the adult system of care.

YJC Recommendations

1. Focus on early screening and assessment, identification and early intervention to prevent youth with mental health disabilities from entering the juvenile justice system.
 - a. Use one standardized assessment tool at intake to differentiate between: those who have thinking and behavior that needs to be addressed in a secure and closely supervised environment for the safety of themselves and others; and those who have mental health disabilities that can be treated in the home or community.
 - b. Work with children through the lens of the whole continuum of needs and with the various systems influencing the child (e.g., physical health, family, school, peers).
 - c. Encourage family involvement.
 - d. Provide high fidelity wrap around facilitation in medical, early childhood programs, and schools to ensure that youth and family determined needs drive the plan for assessment and services for youth up to the age of 21.
 - e. Create Regional Assessment Centers where *anyone* can refer a child/family assessment. No one is denied because of inability to pay.
2. Analyze Existing Systems and Data
 - a. Gather data to determine how many youth with mental health disabilities are in the juvenile justice system.

- b. Determine the number of youth with mental health disabilities in the juvenile justice system during the last five years; and
 - c. Analyze the data to identify gaps in services and capacity.
 - d. Identify the necessary changes that would allow the mental health system to deliver services seamlessly to youth and families.
 - e. Improve access to mental health services by cataloging existing services and resources into a formal, easily accessible matrix.
3. Build Capacity
- a. Fund ongoing training for law enforcement officers, public defenders, detention officers, teachers, juvenile probation officers and others so that they can recognize mental illness and make appropriate referrals.
 - b. Create a centralized funding mechanism that makes assessments available for all referring agencies or parents.
 - c. Support smaller, community-based services and encourage family participation. Reserve the larger facilities for youth with severe mental health disabilities.
 - d. Create parity in reimbursement rates with physical health treatment.
 - e. Utilize, and retain fidelity with, evidence-based practices.

Issue 2: Juveniles are coming into unnecessary contact with the juvenile and criminal justice systems because existing legislation was not informed by modern research on adolescent brain development.

Background

According to the MacArthur Foundation in their Adolescent Development and Juvenile Justice Issue Briefs⁵, “One of the pillars of the American justice system is the assurance that those who stand accused of crimes be mentally competent to understand and participate in their trials.” The Foundation performed the first comprehensive assessment of juvenile capacities to participate in criminal proceedings using measures of both trial-related abilities and developmental maturity comparing the responses of youth and adults in a series of hypothetical legal situations, such as plea bargains, police interrogations, and attorney-client interactions. They also measured emotional maturity, “in this context ... the ability to take into consideration long term consequences (future orientation), perceive and comprehend risks, deflect peer influence, and weigh whether to comply with authority figures.” Their findings pointed to the need for a broader legal construct of competency that recognizes that cognitive and psychosocial immaturity may compromise the critical decision-making ability of many young criminal defendants in either adult or juvenile courts. They suggest protections such as mandatory competency evaluations for any youth sent to criminal court to be tried as an adult.

⁵ MacArthur Foundation Adolescent Development & Juvenile Justice Issue Brief 1, page 1
http://www.adjj.org/downloads/9805issue_brief_1.pdf

A composite of research, facts and findings put together by a collaboration of Cornell University, University of Rochester, and the NYS Center for School Safety in May 2002⁶, disclosed that studies using magnetic resonance imaging (MRI) have found that the teen brain is not a finished product but a work in process. Findings by the National Institute of Mental Health show that the greatest changes to the parts of the brain that are responsible for functions such as self-control, judgment, emotions, and organization occur between puberty and adulthood possibly explaining certain teenage behavior that adults can find mystifying such as poor decision-making, recklessness, and emotional outbursts. Research by Duke University and research on humans by Brown, et al. (2000) offers evidence that heavy, on-going alcohol use by adolescents can impair brain functioning. Brown's research suggests that abuse of alcohol by teens may have long-term negative effects on the make-up of their brains.

When peace officers aren't trained in/or don't use age appropriate de-escalation methods designed for the immature emotional development of youth, they can and do trigger emotional outbursts escalating youth behaviors that result in more serious charges such as disorderly conduct or assault.

Training for peace officers on adolescent behavior and methods for de-escalation of youth cannot be added to the current Peace Officers Basic Training at MLEA without eliminating other training currently in the curriculum or increasing the numbers of hours in the basic curriculum.

District court Judges, county attorneys, and public defenders aren't required to receive any specialized training in adolescent brain development or even training in the differences between the criminal justice statutes and the Youth Court Act, even though they are required to conduct or staff hearings for both youth and adults. The function of Youth Court Judge is often rotated among all judges within multi-judge districts because greater career building opportunities are afforded by justice professionals specializing in the criminal justice system in MT than are afforded justice professionals specializing in the juvenile justice system. As a result, the juvenile justice system has become the "step child" of the criminal justice system in MT.

MCA 41-5-206 sets forth the legislative intent for handling of criminally convicted youth. This Act provides county attorneys with the discretion to file the cases of youth 12 years old and older who commit certain offenses, for transfer to adult court. Cases of youth who commit these offenses that are age 17 and older are required to be filed in adult court.

A suit filed by the ACLU in Lewis and Clark County District Court alleging illegal and inhumane treatment raises the question whether Montana's Adult Correctional Facilities and staff are

⁶ ACT for Youth Upstate Center of Excellence Research, Facts, and Findings a collaboration of Cornell University, University of Rochester, and the NYS Center for School Safety
http://www.actforyouth.net/resources/rf/rf_brain_0502.pdf

appropriately equipped to deal with the developmental, educational, and mental health needs of youth.⁷

YJC Recommendations

1. Remove the statutes that enable youth to be transferred or direct filed into adult court.
2. Provide Training on Adolescent Development Issues:
 - f. Require basic training for all law enforcement officers include training in child/adolescent behavior, with intensive training in appropriate methods to de-escalate situations with youth.
 - g. Require all officers of the court to complete intensive training in child/adolescent development, including appropriate methods to de-escalate situations with youth, and special training on the differences between the criminal justice laws and the Youth Court Act prior to handling any juvenile cases.
3. Appoint a designated Youth Court Judge or Special Master for Youth Court in each of the larger court districts.

Issue 3: A youth in need of intervention who violates probation could be charged as a delinquent offender and placed in secure confinement under MCA 45-7-309.

Background

The Youth Court Act MCA 41-5-1431 (3) clearly limits the available dispositions for a delinquent youth or a youth in need of intervention found to have violated a term of probation, to the judgment of disposition that could have been made in the original case. However MCA 45-7-309 currently does not reference this limitation for youth.

If a judge decided to securely detain youth based solely on the current wording of MCA 45-7-309, those detentions would be in conflict with the Youth Court Act.

The conflict was discovered during staff perusal of SB230 in the 2008 Session. Senator Shockley, Valencia Lane, attorney for the Law and Justice Interim Committee, Judy Wang, Missoula County Attorney, Bob Peake, Supreme Courts Administration, Lily Yamamoto and Cil Robinson, came up with acceptable language to insert in SB 230, to make the required clarification. However, SB 230 and the attendant change to 45-7-309 did not pass, due to concerns unrelated to the proposed change to 45-7-309.

YJC Recommendation

The legislature amend 45-7-309 to add a third section that says,
“(3) A youth cannot be found delinquent solely for committing the offense of criminal contempt.”

⁷ Helena Independent Record December 17, 2009, ACLU Says Youth Tortured at State Prison
http://helenair.com/news/local/state-and-regional/article_c6b09d48-eacd-11de-92b3-001cc4c002e0.html

Issue 4:**Results of the Detention Utilization in Montana Study by Dennis Wagner, PhD of the National Center on Crime and Delinquency****Background**

A 2000 legislative audit recommended that the Montana Board of Crime Control review the use of the general funds administered by the Board in accordance with Part 19 of the Youth Court Act. The amount of funding had been cut several times over the years and detention regions were concerned that funding was no longer adequate to meet the needs of the detention regions to maintain regional juvenile detention facilities. The Board, through technical assistance provided by the Federal Office of Juvenile Justice, engaged Dennis Wagner, PhD of the National Center on Crime and Delinquency to do a detention utilization study of the detention regions in Montana. The results of that study are provided.

Study Findings

1. No region has a detention crowding issue.
2. The county cost of detention is a major issue everywhere because it can place a very high and unpredictable burden on county tax revenue.
3. A small number of long term detentions account for a very large portion of county costs. While regional participants identified a number of issues that contribute to long stays, most believe that they do not have the authority to remedy problems involving court scheduling or public defenders.
4. There was general concern expressed about state funding for detention. Criticism ranged from the fact that it was too low to the formula used to dispense it and the juvenile placement funds.
5. No formal mechanism has been established by the state for securing collaboration among stakeholders. Current ad hoc arrangements appeared to be working among county commissioners, probation, law enforcement, and detention staff. Involvement of judges, public defenders, and public prosecutors in these efforts were not as evident.

NCCD Recommendation:

The state assumes responsibility for putting together a statewide task force of key stakeholders to identify possible resolutions to the problems of placement failures, court delays, and public defender staffing.

YJC Recommendations:

Expand on NCCD's recommendation #4 to include tribes, to rethink and retool the regional detention concept for juveniles to provide:

1. A means to accomplish the original legislative intent
2. Controls to prevent the over building of detention;
3. Monitor the results of the Annie E. Casey Foundation Juvenile Detention Alternatives Initiative (JDAI) pilot sites for promising ways to prevent the overuse of detention and increase the use of alternatives to detention; and identify emerging detention issues.