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 breast-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. We hoped, too, that the work would provide further insight into the issues brought to light by the report, *Incarceration of Youth Who Are Waiting for Community Mental Health Services in California* (January 2005), issued by Congressman Henry Waxman.

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

Some of the counties produce excellent data, but for others, providing basic data about placement delay seems quite difficult. In responding to our request, some counties had to do special data runs or even hand-calculate length of post-disposition detention for placement youth. Also, counties reported the data in a variety of ways, so it was impossible to assemble it to provide a meaningful cross-county comparison over a prescribed period. Nonetheless, the data we received reveals that:

- **The absolute number of youth awaiting placement is shrinking, but average (median) post-disposition delay still exceeds 30 days.**
- **All but one county reports having individual youth waiting more than 90 days for placement, and a number of youth spending more than a year awaiting placement.** Moreover, post-disposition data may reveal only part of the delay because it fails to fully capture delay for youth who repeatedly cycle through juvenile halls as placement "failures." In one responding county, a youth may spend three months in custody prior to placement, and when he "blows out" of the placement after only a few days, he will return to juvenile hall pending placement for three to four months. It is also clear that additional youth are not counted as awaiting placement because they are "aging out" until their 18th birthday in juvenile hall, and still others spend long periods of pre-disposition time in the hall because of incompetence or other issues that impede adjudication of their case.
- **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

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*In Fall 2004, Youth Law Center sent a Public Records Act request to 10 California counties: Alameda, Contra Costa, Fresno, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara Counties. Youth Law Center had made a similar request in 2001, requesting this information from the counties that, according to California Board of Corrections data, had the most youth awaiting placement at the time of a one-day snapshot. The same list of counties was used for the 2004 request. The full report, now being finalized, expands this Summary with information from individual counties with respect to statistical data, barriers and successes.

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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 uses 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.

Facilities that do provide high-level supervision often do so at the expense of the rest of the institutional programs.

- **Counties struggle to provide staffing resources and training dedicated to meet the needs of the placement population.**
- **The pressures of crowded dockets, 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. 1858, Stats. 2004, adding Education Code section 56155.7)
- **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 e-mail, 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, assaultive 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

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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.
- **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.

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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 program development (sharing information on best practices in treatment, funding, staffing needs, training needs, security issues, and transitional issues)
- **Instituting Specialized Placement Units** in juvenile hall for youth awaiting placement who present mental health issues. The services include mental health assessment; individual, group and family therapy; medication evaluation and therapy; life skills; parent support groups and other services to help stabilize behavior and improve functioning. The services are also designed to reduce the chance of placement failure or running away. However, one of the counties that started 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 those 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 program, 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

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counties have made a concerted effort to involve probation staff in Medi-Cal and Healthy Families outreach, for which the department, in turn, may seek reimbursement for Medi-Cal administrative costs

- **Improving Case Processing and Placement Services**. Some counties have improved placement capacity through development of a group home assessment team within the placement unit. The teams monitor providers' delivery of service and physical conditions in placements to inform placement decisions and assure that service needs of placed minors are met
- **Using Juvenile Mental Health Courts** to serve youth with specific kinds of serious mental illness, organic brain impairment or developmental disabilities. These courts help to assure comprehensive assessment, and because of enhanced inter-agency collaboration, have had success in accessing services that have been difficult to access in the past, including IEP's, and Regional Center services. The courts make special efforts to try to serve youth in the community instead of sending them to secure facilities such as camp or CYA, where they probably would not receive appropriate mental health services. These programs are notable for their ongoing involvement in cases, and willingness to adjust services where needed.
- **Developing Post-Disposition Placement Programs**. Youth in such programs are thoroughly assessed and stabilized pending placement. One county found that youth in their placement program spend less time pending placement, experience fewer failed placements, and have lower rates of rearrest than youth awaiting placement without the benefit of the program
- **Expanding Community-Based Services.** Several counties report that use of S.B 163 wraparound services has facilitated the "step-down" of some probation minors from high-level group homes (Levels 10-14) to the home of a parent or guardian, or enabled them to keep minors at home with wraparound services in lieu of initial placement in a group home. Counties report good success in using wraparound services to meet the particular needs of the youth in the family setting, and specific evidence-based treatment modalities including Functional Family Therapy, and Multi-Systemic Therapy. One county also mentions its success in implementing a transitional housing program to help serve older youth with mental health needs in residential settings where they can also receive therapeutic services — funded through the Independent Living Program for Emancipated Foster Youth
- **Tinkering With Existing Resources to Address Targeted Needs.** Counties have collaborated with new partners to address particular needs. For example, one county worked with a local intermediate care facility to get a few inpatient beds to serve its youth. Counties have also worked with existing providers to add beds for particular population such as girls. Still others have convinced providers to open new facilities locally with particular program components, such as family services.

The State and local jurisdictions need to tackle the almost universal need for at least some inpatient or secure mental health treatment capacity.

Directions for Future Work

What can we learn from these responses? First, progress is possible, even in the fiscally cruel world in which public systems operate. Secondly, counties already have a great deal to teach each other with respect to particular approaches and solutions. And while our research hardly represents the totality of issues, barriers, and resolutions for California counties, it does suggest a number of areas for additional focused work: Counties uniformly spoke of youth who "do not belong" in juvenile justice, and who deteriorate further once in the system. Through legislation and policy decisions State and local jurisdictions need to develop better front door mechanisms to reject such cases but assure that youth and their families receive needed mental health services

- Counties need to track the time and expense of placement delay (in money and system resources, impact on the child, and efficacy of services), as well as placement failure. It was disturbing, given the compelling problems for placement youth and the system itself, that some counties found it difficult to produce even basic data. Counties need to be able to show the cost of *not* placing youth quickly and appropriately, as well as the cost of doing things right.
- Information on delay should be used by counties to strategically develop missing pieces of the continuum of services, though working with existing providers or developing new programs.
- The State and local jurisdictions need to tackle the almost universal need for at least some inpatient or secure mental health treatment capacity. This does not have to be and should not signal a return to long-term hospitalization. Instead, whether it involves Community Treatment Facility beds, regional treatment centers for seriously emotionally disturbed youth (for example, Humboldt's New Horizons program), or another kind of residential treatment, the program should provide for short-term stabilization followed by intensive supportive services in the community
- At the same time, counties should learn from the success of other counties in recognizing that a substantial number of youth slated for high-level group home beds could be more affordably, and in many cases, better served in family-based wraparound and other services in the community.
- Counties should learn from the success of others in engaging their provider community to develop specific programs to fill gaps, for example, placement beds for girls. This approach should be expanded to other service gaps, as well as additional community based services or aftercare services that might eliminate the need for long term placement.
- Much more can be done to maximize Medi-Cal funding for mental health services to individual placement youth, including during the awaiting placement period.
- Mental Health Services Act (Prop 63) and Juvenile Justice Crime Prevention Act funds offer additional resources for placement/mental health related projects, and local planning groups should be strategic in using these funding streams to fill gaps in their service continuum.

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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 failed 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:
- *From Promise to Practice: Mental Health Models that Work for Children and Youth*, Fight Crime Invest in Kids, California (2005), http://www.fightcrime.org/ca/toolkit/index.php
- *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
- *Outcome Evaluation of Washington State's Research-Based Programs for Juvenile Offenders*, by Robert Barnoski ,Washington State Institute for Public Policy's, (January 2004), http://www.wsipp.wa.gov/rptfiles/04-01-1201.pdf

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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 call home, 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/ACLU 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. ■

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JUVENILE CORRECTIONAL MENTAL HEALTH REPORT

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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.

Apparently no youth committed suicide in a fashion related to these risks but multiple hanging attempts were uncovered. These hazards, in my judgment, are rather obvious and should have been dealt with even before this facility opened its doors.

Nonetheless, it is significant that a CRIPA letter condemns a design defect before serious harm has occurred. On the other hand, the DOJ, as it invariably does, follows condemnation with a series of muffled remedial measures: remove, replace, or remedy suicide hazards and do a better job monitoring suicide watches.

Still, . . .

Mental Health Care

The Justice Center was found deficient as to assessments, treatment, case management, communication and records, and as to confidentiality. It will come as no surprise that inadequate staffing is the main culprit; four of eight social worker positions were vacant, three of four addiction counsel positions were vacant, and two of three supervisory positions were vacant. To label the mental health staff as skeletal, is to understate the problem.

The Report's attention to detail and process in this area is rather detailed and useful. What follows, then, is the full text of that section:

> **Inadequate Mental Health Screening and Assessments**
>
> Generally accepted professional standards require that all youths entering

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A Report: Juvenile Justice & Mental Health*

Editor's note: Joyce Burrell, 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. Those sections are reproduced here:

Introduction

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

Joyce Burrell, Juvenile Justice & Mental Health: Working Together for the Best Outcomes for Youth With Serious Emotional Disorders, American Institutes for Research, (2006), available at http://www.tapartnership.org/advisors/juvenile_justice/downloads/JJ_MH_Pub.pdf

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