

DEPARTMENT OF HUMAN SERVICES

Juvenile Waiver Work Group

INTERIM REPORT

&

PRELIMINARY

RECOMMENDATIONS

May 2005

Department of Human Services

Juvenile Waiver Work Group

INTRODUCTION

Department of Human Services Director Marianne Udow formed the Juvenile Waiver Work Group in September of 2004 to develop recommendations on how to address a variety of issues related to the juvenile waiver process including the impact of the waiver process on juveniles, our communities and the justice system in Michigan. Other areas of concern included: minority overrepresentation as a result of the waiver system, determination of juvenile competency during the justice process and the impact of incarceration of youth on crime. In general, the Work Group was charged with considering the scope and future need for juvenile services in the adult prison system. "Clearly there is a need to balance these concerns with the safety of our communities and our need to appropriately adjudicate serious acts of juvenile delinquency", stated the Director in her letter of invitation to participate. Work Group members are listed on page four.

PROCESS

In order to develop a set of preliminary recommendations in early January, as requested by Director Udow, the Work Group organized into four committees. It was agreed that the committees would provide recommendations to the full Work Group and only those that were agreed to without objection would be recommended to the Director in a preliminary report in early January. After the Director's review the recommendation would be included in an Interim Report in March. The Work Group would reserve recommendations that did not receive unanimous support by early January for further review after that time. Both the adopted recommendations and the issues requiring additional study would be provided to the Director in the Work Group reports. Committees included:

- Competency Committee
- Services Committee
- Policy and Legislative Committee
- Data Committee

SUMMARY OF PRELIMINARY RECOMMENDATIONS

Adopted by the Work Group without Objection

1. ***Recommendation regarding Data Collection:*** Use existing and/or new committees within DHS and other State Departments to collect, or determine the process for collecting data, on juvenile waivers in order to assess the effects on public safety, accountability, rehabilitation, deterrence, and system and cost efficiency/effectiveness. The data will be provided to the Juvenile Waiver Workgroup. The following data is necessary to inform policy and practice:
 - Data by county on juveniles waived and juveniles processed through the juvenile justice system including: age, details of crime, prior offense/delinquency history, gender, race, family and community circumstances and consequences of waiver/juvenile treatment with regard to placement, sentencing, cost, rehabilitation, recidivism.
 - Data on victims: age, gender, race, family and community circumstances.
 - Data by county comparing the proportionality of sentences for waived juveniles compared to those of adults for similar crimes.

The Waiver Workgroup will review the data and, if indicated by the data, the group will address:

- Review needs for adapted or new data processes and associated costs at the state and local levels.
 - Revision of juvenile waiver statutes based on a systematic review of the data. A key component of this effort should be the development of a legislative statement to describe the purpose of waivers in order to guide decision making and to serve as a guide for evaluating the implementation of the waiver policies.
 - Causes, patterns, and issues of the overrepresentation of youth of color in the adult system and variations in decisions to treat juveniles as adults across and within counties.
 - Monitoring of decisions to treat juveniles as adults and the consequences of these decisions.
 - Resources for more comprehensive community-based and residential juvenile programs that will reduce the need for waivers.
2. ***Recommendation Regarding Research on Juvenile Competency:*** As part of the Juvenile Waiver Workgroup process, DHS should convene a group of legal and medical experts to gather and assess the body of research on juvenile competency issues.
 3. ***Recommendation regarding the Michigan Youth Correctional Facility:*** A) The DHS should collaborate with the MDOC to replace in FY 2006 the Michigan Youth Correctional Facility (MYC) as the adult prison that houses juveniles who are waived and sentenced as adults. B) In FY 2006, the DHS and MDOC should establish more effective and cost efficient facilities to house juveniles and other youthful offenders that include age appropriate programming in the areas of education, health and rehabilitative services that are age and gender appropriate and that are consistent with the recommendations of the Services Committee recommendations regarding management practices, education standards, medical and prisoner re-entry services .

Juvenile Work Group

Membership

Competency

Beth Arnovits – MCCD
 Deborah Labelle – ACLU
 Jim Furbush – Wolverine Human Services
 Jeff Shook – Institute for Social Research

Services/Special Populations

Leonard Dixon – Bureau of Juvenile Justice DHS
 Stacy Hickox - MPAS
 Jim Wotring – DCH
 Rosemary Saari – Institute for Social Research
 Felix Sharpe – Bureau of Juvenile Justice DHS

Funding/Resources

Scott Dzurka – Mich. Assoc. CMH Boards
 Dan Chaney – Wayne Co. Dept. Comm. Justice
 Jeriel Heard – Wayne Co.

Legislation/Policy

Rep. Alexander Lipsey
 Pat Babcock – Public Policy Assoc.
 Lynn Johndahl – Michigan Prospect
 Shelli Weisberg - ACLU
 Stuart Dunning III – Ingham Co. Prosecutor*
 (*Assisted by PAAM staff)
 Dennis Schrantz – DOC
 Kate Hanley – Bureau of Juvenile Justice DHS
 Mike Thomas – Saginaw Co. Prosecutor

Data/Research

Gordon Kukulis – Lutheran Child & Family
 Services

Adolf Armbruster – Holy Cross Children's Services

Department of Human Services

Juvenile Waiver Work Group

Background: Committee Reports

NOTE: The Work Group did not “endorse” the Committee Reports. They were used to develop the recommendations.

Juvenile Waiver Work Group Committee Recommendations Regarding Data Collection

COMPETENCY COMMITTEE RECOMMENDATION

Recommendation: Use existing and/or new committees within DHS and other State Departments to collect or determine the process for collecting data on juvenile waivers in order to assess the effects on public safety, accountability, rehabilitation, deterrence, system and cost efficiency/effectiveness to report to the Juvenile Waiver Workgroup. The following data is necessary to inform policy and practice:

- Data by county on juveniles waived and juveniles processed through the juvenile justice system including: age, details of crime, prior offense/delinquency history, gender, race, family and community circumstances and consequences of waiver/juvenile treatment with regard to placement, sentencing, cost, rehabilitation, recidivism.
- Data on victims: age, gender, race, family and community circumstances.
- Data by county comparing the proportionality of sentences for waived juveniles compared to those of adults for similar crimes.

The Waiver Workgroup will review the report and, if indicated by the report, the group will address:

- Review needs for adapted or new data processes and associated costs at the state and local levels.
- Revision of juvenile waiver statutes based on a systematic review of the data. A key component of this effort should be the development of a legislative statement to describe the purpose of waivers in order to guide decision making and to serve as a guide for evaluating the implementation of the waiver policies.
- Causes, patterns, and issues of the overrepresentation of youth of color in the adult system and variations in decisions to treat juveniles as adults across and within counties.
- Monitoring of decisions to treat juveniles as adults and the consequences of these decisions.
- Resources for more comprehensive community-based and residential juvenile programs that will reduce the need for waivers.

Requires Change in Policy: None

Requires Change in Legislation: None

Requires Change in Budget: Initial budget impact will be staff time. Long term will be significant but unknown.

Short Term Impact

Moderate Term Impact

Long Term Impact

Rationale: There has been no complete systemic review of the effects of the 1988 and 1996 legislative reforms in Michigan. Consequently, a coordinated effort between state agencies and local courts is necessary in order to provide a complete and accurate picture of the effects of the waiver reforms and their implications on both juveniles and the public so that appropriate laws and policies may be developed. This will require an identification of the questions that must be addressed and the data needed to address these questions.

Support Research/ Information/ Data: Attempts to gain an understanding of both decisions to treat juveniles as adults and the implications of these decisions are limited in Michigan due to the lack of reliable data at both the state and county levels (Sarri and Shook, 2004). To date, no state or local agency or organization has provided information that allows for a thorough evaluation of the effects of the 1988 and 1996 legislative reforms, including:

- factors that influence decisions to treat juveniles as adults
- variation in decisions across counties
- effects of sentencing youth to adult prisons on public safety and the development of these youth
- effects of these reforms on both the adult and juvenile justice systems
- long-term consequences of these policies such as recidivism and subsequent labor market outcomes

There are various state level sources of data that can provide *some* information relevant to these issues in Michigan. Sarri and Shook (2004) have attempted to use these sources to provide a picture of the effect of this legislation. This attempt is still incomplete, largely due to the lack of systemic data at both the state and local level, a reluctance of courts to provide necessary information, and the fact that data requests are still pending in both state agencies and courts.

Juvenile Waiver Work Group
Committee Recommendation Regarding Research on Juvenile Competency

COMPETENCY COMMITTEE RECOMMENDATION

Recommendation: As part of the Juvenile Waiver Workgroup process, DHS should convene a group of legal and medical experts to gather and assess the body of research on juvenile competency issues.

Requires Change in Policy: None

Requires Change in Legislation: None

Requires Change in Budget: Would require staff support from DHS/DHS and may require contract support.

Short Term Impact

Moderate Term Impact

Long Term Impact

Rationale: Some observers indicate recent cognitive research on adolescent brain development may question the presumption that a juvenile who commits a crime can be equated with “an adult” for purposes of culpability, responsibility and punishment. The underdeveloped areas of impulse control, lack of psychosocial maturity, and unformed abilities to conceptualize long term consequences are all relevant to a juvenile’s culpability for criminal offenses. Yet there is no mechanism in place to assess and advise the prosecutor or the court on the individual juvenile’s mental maturity and culpability for the charged offense. Michigan’s 1996 package of juvenile legislation broadened the categories of crimes by juveniles that could result in direct filing for prosecution as an adult; lowered the age for which a juvenile could be treated as an adult for both prosecution and sentencing; and limited the option of blended sentence for juveniles. All of these changes took place without the benefit of subsequent research and no changes have occurred in recognition of new data and information. If further assessment indicates that changes in policy and practices are supported by scientific research the Waiver Workgroup may develop recommendations for: 1) development of standard assessment forms; 2) training of court personnel, prosecutors and defense attorneys; 3) changes in law; 4) implementation of assessments and application of results.

Support Research/ Information/ Data: See MCCD, Current Research Related to Juveniles Waived to the Adult Justice System.

Juvenile Waiver Work Group
Committee Recommendation Regarding the Michigan Youth Correctional Facility

COMPETENCY & SERVICES COMMITTEES RECOMMENDATIONS

Recommendation: A) In FY 2005 the DHS should collaborate with the MDOC to replace the Michigan Youth Correctional Facility (MYC) as the adult prison that houses juveniles who are waived and sentenced as adults. B) In FY 2006, the DHS and MDOC should establish more effective and cost efficient facilities to house juveniles and other youthful offenders. The facilities should include age appropriate programming in the areas of education, health and rehabilitative services that are age and gender appropriate and that are consistent with the recommendations of the Services Committee recommendations. Areas of recommendations include management practices, education standards, medical services and prisoner re-entry services (attached).

Requires Change in Policy: Alter MDOC policy regarding the operations of the private contract for MYC.

Requires Change in Legislation: Revise legislative appropriation law re: the funding of MYC.

Requires Change in Budget: The \$19 million in expenditures currently associated with operating MYC under contract with a private corporation and the lease of the privately owned facilities should be used for the custody and programming for youth in most cost effective facilities. Other young offenders who are currently housed at MYC but who are not waived juveniles may be appropriate for the improved programming also.

Short Term Impact

Moderate Term Impact

Long Term Impact

Rationale:

- Juveniles have been waived, sentenced and placed in adult prison without competency testing for determination of the mental maturity and without the provision of age specific, appropriate rehabilitation programming. The small number of juveniles who are under the age of 18 and placed in adult facilities at any one time does not justify the existence of an entire MDOC facility for juveniles "waived and sentenced as adults".
- Juveniles have been placed and maintained in MYC, which is designated as a maximum-security facility- Level V. This exceeds the majority of juveniles appropriate custody level and/or necessary level of supervision for their safe management creating unnecessary cost expenditures and unfairly subjecting juveniles to decreased privileges and harsher treatment.
- Placement of juveniles sentenced as adults in MYC may increase the likelihood of negative impacts on rehabilitation and heightens the probability of recidivism by depriving juveniles of those programs found to be most closely associated with decreased recidivism and rehabilitative benefits. This in turn increases long term costs.
- The high cost of running the MYC as a level V facility is unjustified by: 1) The low number of juveniles waived as adults; 2) The absence of appropriate and effective programming for juvenile which could justify additional costs; 3) The use of MYC to house prisoners whose true custody level is Level I or II and who were sentenced for crimes committed when they were adults.

Support Research/ Information/ Data: See attached statistics and research summary.

Michigan Department of Corrections
Juveniles Waived as Adults/Non-Waiver Youth in Prison
 (All data as of 1/4/2005)

- Number of juveniles waived as adults (JWA) & sentenced to prison in 2004: 92
- Number of JWA housed in prison under the age of 17: 21
- Number of JWA housed in prison, ages 17 and 18 years old: 111
- Number of JWA housed in prison who are 19 years old: 83
- Total Number of juveniles waived as adults housed at MYC: 154
- Number of juveniles waived as adults housed at other locations: 61
- Number of youthful "at risk/vulnerable" non-waiver youth at MYC: 326

MDOC Inmates 19 years Old or Less
Waiver Compared to Non-Waiver Cases

Housing	Waiver	Non-Waiver	Total
MYC	154	326	480
Non-MYC	61	422	483
TOTAL	215*	748	963

Given the ages often reached by juveniles in waiver cases by the time of prison admission, the waiver population that is 19 years old or younger does not accumulate to a particularly large number. The commitment year distribution for current waived juveniles who are still under age 20 is: 36% admitted to prison in 2004, 35% in 2003, 19% in 2002, and 10% in 2001 or earlier. Youthful non-waiver cases are more common because offenders are considered to be adults under Michigan criminal law at the age of 17.

MDOC Inmates 19 years Old or Less
Comparison by Age and Housing

Age	MYC	NON MYC	Total
16 or less	19	2	21
17 years old	46	13	59
18 years old	161	114	275
19 years old	254	354	608
TOTAL	480	483	963*

These data include waived juveniles under the age of 19 housed in prisons, camps, and SAI-Prison. Some waived juveniles under the age of 19 are housed at facilities other than MYC because of gender, gang membership, fighting, and special offender notices which identify enemies from whom the offender must be separately housed. MYC is a male facility. Waived female juveniles are primarily housed at Scott Correctional Facility.

Juvenile Waiver Work Group Service Committee Recommendations

RECOMMENDATIONS ADDRESSING YOUTH'S TREATMENT

Recommendation: Behavior management practices should be tailored to youths' treatment needs including:

- Grievance procedures, due process procedures and recommended levels of punishment posted at each facility within sight of all residents.
- Create disciplinary hearing councils composed of youth and staff to hear allegations of rule infractions.
- Staff should encourage youth to use internal grievance procedure to alert staff to inadequacy of services in areas of education, health and transition.
- Copy of grievance and resolution forwarded to staff in overseeing agency's central office, i.e., DHS or MDOC, with copies to Children's Ombudsman Office and Michigan Protection & Advocacy Service, Inc.

Requires Change in Policy: Some changes in DHS and MDOC policies may be required, including policies concerning discipline and use of segregation.

Requires Change in Legislation: None.

Requires Change in Budget: May require additional or more professional staffing at some locations.

Short Term Impact

Moderate Term Impact

Long Term Impact

Rationale: Educating youth about due process rights reduces the incidence of infractions while controlling behavior appropriately. This process helps to teach and ensures that youth are provided with services, which will make them successful both within the institution and after transition back into the community.

Support Research/ Information/ Data:

1. Lipsey, M. (1992) "Juvenile Delinquency Treatment: A Meta-analytic Inquiry into the Variability of Effects" in Meta-analysis for explanation. Edited by Cook, T., Cooper, H., Cordray, Hartmann, H., Hedges, V. Light, R., Louis, T., and Mosteller, F. New York: Russell Sage.
2. Lipsey, M. & Wilson, D. (1998) "Effective Intervention for Serious Juvenile Offenders: A Synthesis of Research" in Serious and Violent Offenders: risk Factors and successful Interventions. Edited by Loeber, R. and Farrington, D. Thousand Oaks: Sage.
3. McEwen, C. (1978) Designing Correctional Organizations for Youth. Cambridge: Ballinger Publ.
4. Guarino-Ghezzi, S and Loughran, E. (2004). Balancing Juvenile Justice. New Brunswick, NJ: Transaction.
5. Mattingly, Maureen (2004). "Missouri Lowers Recidivism" Juvenile Justice Updates. Oct/Nov, 1-2.
6. Bloom, B., Owen, B., Deschenes, J. & Piper, E (2001). Improving juvenile justice for females", Crime and Delinquency. 47: 4, 558-572.
7. Mihalic, S., Irwin, K. Ballard, D. and Elliott, d. (2004) Successful Program Implementation: Lessons from Blueprints. Juvenile Justice Bulletin. Washington, DC: U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention.

RECOMMENDATIONS REGARDING STANDARDS FOR EDUCATIONAL SERVICES

- Recommendation:** Each facility will meet certain standards for the provision of educational services including:
- Quality Assurance staff from the overseeing department's central office will review any grievances and visit each facility to periodically review whether appropriate educational services are being provided.
 - Adopt a general high school curriculum, which meets minimum standards for North Central Assoc. accreditation.
 - Adopt and follow procedures for identifying youth who should be declared eligible for special education services up to age 26, including obtaining special education records from previous placements and screening and assessing all youth entering the facility.
 - Provide a comprehensive vocational program for all youth.
 - Expedite the consent process for special education evaluations when parents are unresponsive.
 - Ensure that Individualized Education Programs (IEPs) satisfy all requirements of the Individuals with Disabilities Education Act (IDEA) and state law.
 - Ensure that all youth receive the amounts of special education services required by their IEPs.
 - Provide education and training in the areas of life skills, cross-cultural and interracial training, preventative health and sex education, drug use education and skills necessary to improve family interactions.

Requires Change in Policy: These recommendations require minor changes to policy, but mainly concern enforcement and oversight of current policies.

Requires Change in Legislation: None.

Requires Change in Budget: Additions to professional staffing may be required.

Short Term Impact

Moderate Term Impact

Long Term Impact

Details/Rationale:

- Education is essential to improve the likelihood of the youth's success upon reentry into the community.

Support Research/ Information/ Data:

1. Lochner, L. and Moretti, E.. (2004). "The effects of education on crime: evidence from prison inmates," *American Economic Review* .94(1).
2. Lochner, L. (2004) "Education, work and crime: a human capital approach," *International Economic Review*. Aug, 45:3.
3. Druian, G. & Butler, J.(2004) "Effective school practices and at-risk youth: what the research shows," in *School Improvement Research Series: Research you can use*. Portland, OR: Northwest Regional Education Laboratory.

RECOMMENDATIONS REGARDING MEDICAL SERVICES

Recommendation: The medical needs of youth must fully addressed through the delivery of appropriate medical services including:

- Develop adequate screening of all youth to include:
 - a. Obtaining records from previous placements and any other treating health professionals, administration of standard of care mental screening/assessment procedure using standardized assessment tools, and administration of an adequate suicide prevention screening guideline.
 - b. Ensure that all youth with mental illness or any other disability are placed where they can be safely and appropriately treated.
 - c. Develop and implement policies regarding medications including requiring appropriate medical and parent/guardian authorization for the dispensing of psychotropic medication, periodic reassessment and monitoring of appropriateness of psychotropic medication, and ensuring that all psychotropic medications are dispensed by appropriately trained medical care staff.
 - d. Ensure that all youth with mental health needs have adequate and current comprehensive individual treatment plans that reflect the appropriate input of the youth and the treatment team.
 - e. To delivery services the facility should have a minimum of one mental health counselor for every 25 youth, one clinical psychologist for every 45 youth and one full time licensed child psychiatrist for every 100 youth.
(Source: National Mental Health Association, 1999, *Checking Up on Juvenile Justice Facilities*, p. 11).
 - f. Develop an effective suicide prevention protocol.
 - g. Train direct care staff in the rehabilitative and/or mental health treatment plans of the youth in their care and to achieve competency in areas such as: stages of adolescent development, communication skills, behavior management and management of aggressive behavior, basic training relating to issues concerning youth with disabilities, and crisis prevention and intervention.
 - h. Youth with serious mental health issues, posing a danger to self or others, should be placed in a "crisis" or "respite" bed designated at the facility, rather than being placed in standard detention, isolation or segregation. Staff shall continue to provide youth with mental health and educational services as recommended in IEP and treatment plan while youth is in isolation or a crisis/respite bed.
- Quality Assurance staff from the overseeing department's central office will review any grievances and visit each facility to periodically review whether appropriate medical and mental health services are being provided.
- Ensure that all youth entering the residential system receive adequate screening including obtaining a medical history and conducting all required lab work including ear, nose and throat screening, pregnancy testing, HIV, tuberculosis, sexually transmitted diseases, drug & alcohol use, vision, hearing and dental.
- Institute a confidential and effective sick call system for youth needing immediate medical attention.
- Provide treatment for immediate medical needs and for chronic illnesses either within the facility or through referral to medical care outside of the facility, utilizing Medicaid funding for such treatment whenever possible.
- Provide youth with preventative health care services, including a comprehensive and current health education program and an active program of health fitness, including at least one hour per day of large muscle physical activity.
- Quality Assurance staff from the overseeing department's central office will review any grievances and visit each facility to periodically review whether appropriate reentry services are being provided.
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Requires Change in Policy: Some changes to overseeing agency policy may be necessary but most recommendations concern oversight of current policies.

- Requires Change in Legislation: None.
- Requires Change in Budget: Some additional professional staffing may be necessary

Short Term Impact

Moderate Term Impact

Long Term Impact

Rationale: Good health and particularly mental health is essential for a youth's success both within the facility and upon reentry into the community.

Support Research/ Information/ Data:

1. Osofsky, H. and Osofsky, J. (2001) "Violent and aggressive behaviors in youth: a mental health and prevention approach," *Psychiatry* 64:4, 285-295.
2. Fagan, T.J. & Ax, R. (2003) *Correctional Mental Health Handbook*. Thousand Oaks, CA: Sage, 2003.
3. Cadora, E., Gordon, M. and Swartz, C. (2002). *Criminal Justice and Health and Human Services: An Exploration of Overlapping Needs, Resources and Interest in Brooklyn Neighborhoods*. Washington: U.S. Dept. of Health and Human Services, Conference, Jan. 30-31, 2002.
4. Lyons, J., Baerger, D., Quigley, P., Erlich, J. and Griffin, E. (2001) Mental Health service Needs of Juvenile Offenders: A Comparison of Detention, Incarceration and Treatment Settings," *Children's Services*. 4:2, 69-85.

For standards for mental health treatment see National Mental Health Assoc., 1999, *Checking Up on Juvenile Justice Facilities*

REQUIRING
ADDITIONAL
STUDY

Department of Human Services

Juvenile Waiver Work Group

**ISSUES
REQUIRING
ADDITIONAL
STUDY**

ISSUES REQUIRING ADDITIONAL STUDY

1. The current minimum age for a juvenile to be subject to adult punishment under the Prosecutorial (automatic) waiver is 14 years of age. Under the Designation Proceedings in Family Court there is no minimum age at which a juvenile can be tried in the same manner as an adult. Further study of research and equitable treatment will be conducted to assist in developing recommendations on the minimum age for adult status.
2. The age of jurisdiction of the juvenile court in Michigan ends on the 17th birthday. Research on the impact of raising juvenile jurisdiction to 18 will be examined.
3. Blended sentencing under prosecutorial and judicial designation is currently an option in the Michigan judicial system. This provides a model that can effectively achieve the goals of public safety, accountability, rehabilitation, deterrence, and system and cost efficiency/effectiveness. However, this option is used inconsistently and is underutilized in a majority of counties.
4. Other states have developed a mechanism for reverse waivers, which allow for consideration of a petition for juveniles sentenced as adults without adequate competency testing. This option will be researched to determine the impact on juveniles and public safety.