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# INVESTIGATIONS AND LITIGATION IN JUVENILE JUSTICE



The threat or use of litigation has prompted much of the progress made in the past fifteen years in ensuring adequate mental health services for youth detained or committed to juvenile justice facilities. Both public interest law groups and the U.S. Department of Justice's (DOJ) Civil Rights Division have been responsible for initiating these legal actions.

During the 1980's and until the early 90's, "tough on crime" policies brought about a tripling of the number of youth held in secure settings. Though this dramatic increase in detained youth has stabilized, the "tough on crime" orientation and the rapid increase in population were instrumental in creating a culture in juvenile settings that emphasized an adult model of corrections. The orientation of policy makers and of facility staff shifted away from a rehabilitative approach.

The consequences of this shift were often catastrophic for youth with emotional or behavioral disorders and their families. Youth with serious

mental health disorders were not adequately screened upon entering these facilities, nor were they diverted to more appropriate settings. Understaffing of mental health and medical staff was common within many jurisdictions' facilities. Even when these services were available, the perspectives of mental health and medical staff were frequently overruled by custody staff concerns around security and population management. Suicide rates soared. Youth with psychotic disorders were "managed" with psychotropic medications, and they were often punished by being placed in isolation or restraints.

Worsening of youths' mental health problems was more common than either stabilization or recovery. Recidivism rates (committing new crimes and being rearrested) greater than 70% had become common. Because of the adult orientation of juvenile justice, secure settings limited access for parents and guardians—thus often exacerbating the youth's sense of isolation and disengagement from

family. Rarely were attempts made to engage family members in an integrated rehabilitation approach. Even telephone calls and visiting were discouraged. In addition, a disproportionate number of youth sentenced to these secure settings were and still are minority youth.

Congress passed legislation in 1980 as a way to provide remedies for these issues, but it wasn't until the mid 90's that the federal government began taking aggressive action. Congress authorized the Department of Justice Civil Rights Division to protect the constitutional rights of youth in juvenile detention and correctional institutions. The relevant legislation is the Civil Rights of Institutionalized Persons Act (called CRIPA). CRIPA authorizes the Attorney General to investigate conditions in juvenile institutions and bring litigation when necessary in order to realize systemic "fixes." The Judiciary Committee report that accompanied the bill that became CRIPA called the Act "the single most effective method for redressing systemic

deprivations of institutionalized persons' constitutional and federal statutory rights." The work of DOJ under CRIPA is to seek systemic, policy, and programmatic remedies rather than representing individual youth in actions against jurisdictions. Monetary damages are not sought, but remedies in the form of settlements or consent decrees often require significant infusions of new resources by and to the identified jurisdiction in order to support the required reforms.

Since its inception, DOJ's Civil Rights Division has investigated over 115 juvenile correctional facilities. After an investigation, a "findings" letter is issued. To date most investigations have been resolved without contested litigation and with states or other jurisdictions signing either a consent decree, a settlement agreement, a memorandum of understanding, or a court order.

CRIPA investigations focus on three sources of Federal rights: 1) The Constitution—particularly the 8<sup>th</sup> (cruel and unusual punishment) and the 14<sup>th</sup> (due process) amendments. 2) The Individuals with Disabilities Education Act (IDEA) and 3) the Americans with Disabilities Act (ADA). Identified areas of concern fall into the categories outlined in Table 1.

Investigations of these issues are conducted by consultants and attorneys with expertise in juvenile justice. The investigations are designed not only to ascertain whether a pattern of violations exists, but also to provide direct feedback and assistance to the site on appropriate professional standards.

### A Case Study

The State of Louisiana offers an extraordinary example of improvement. At the outset, the state's secure juvenile facilities had a pervasive adult correctional orientation, and maltreatment of youth was endemic. By 2006 Louisiana's system was being hailed by both local advocates and the Justice Department as a progressive model for the rest of the country.

**TABLE 1. PROTECTION OF JUVENILES' RIGHTS: AREAS OF CONCERN**

*Protection from Harm Concerns:*

- *Impact of crowding—60-youth units are not uncommon, creating dangerous settings*
- *Mix of young offenders with older juveniles, creating opportunities for abuse*
- *Mix of juveniles with minor offenses with those committing serious offenses, offering negative modeling opportunities*
- *Other abusive practices (inappropriate and coercive staff-youth relationships; easy access to drugs and alcohol)*

*Suicide Prevention Concerns:*

- *Insufficient assessment of youth at risk for suicide*
- *Inadequate mental health services for youth on suicidal precautions*
- *Unsafe housing of youth at risk of self-harm*
- *Inadequate supervision of youth on suicide precautions and in seclusion*
- *Lack of staff preparedness for suicide attempts and other acts of self-harm*

*Inadequate Educational Instruction of Youth with Disabilities Concerns:*

- *Inadequate assessment*
- *Inadequate individualized education programs (IEPs)*
- *Lack of related services—speech, hearing, and occupational and physical therapies*
- *Lack of adequate instruction for youth with disabilities*
- *Inadequate vocational education for youth with disabilities*
- *Lack of multi-lingual materials*

*Inadequate Medical Care Concerns:*

- *Inadequate access to medical treatment*
- *Inadequate health assessment*
- *Inadequate medical treatment of chronic conditions and physical injuries*
- *Inadequate medication administrative practices*
- *Inadequate dental care*

*Inadequate Mental Health and Substance Abuse Services Concerns:*

- *Inadequate screening, identification, and assessment*
- *Inadequate follow-up clinical assessment, treatment planning, and case management*
- *Inadequate psychotropic medication management*
- *Inadequate mental health and substance abuse counseling (i.e., evidence-based practices)*
- *Lack of family involvement*
- *Failure to place youth in court-ordered treatment such as sex offender or substance abuse treatment*
- *Inadequate staff training in behavior management principles*

*Inadequate Transition Planning Concerns:*

- *Rehabilitative needs/achievements inadequately communicated to parole counselors, families, and community providers*
- *Inadequate transition of youth to community mental health and substance abuse services*

The circumstances for detained youth in Louisiana's secure facilities in the late 1990's were appalling. Louisiana had one of the highest rates of youth in secure facilities in the United States: 582 juveniles per 100,000. Facilities were crowded, violent places with poorly trained staff that used physical force and threats as their primary "strategy" for managing youth.

Youth with mental health and developmental disabilities were neither identified nor appropriately treated. Facilities were located long distances from the youths' communities and the absence of public transportation made it very difficult for families to visit. Seventy-three percent of the youth were incarcerated for non-violent offenses. Sixty percent of these youth

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had sentences of three years or more with a quarter of these serving more than five years!

A Department of Justice CRIPA investigation was initiated and the findings were startling. The four large “juvenile prisons” were found to be fostering unsafe and inhumane conditions. In a five-month period at one facility housing 178 youth, 40 youth required treatment in an emergency room for either broken bones or injuries requiring stitches. Youth exhibiting suicidal behavior were punished with long periods of isolation, often in restraints. Every child interviewed reported being hit or kicked or threatened by facility officers. Older youth preyed on younger youth as well as on those with cognitive and emotional challenges.

As a consequence of these findings, a federal judge required the state to immediately initiate comprehensive remedies. In the settlement with Louisiana, the Justice Department delineated over 100 pages of detailed obligations and responsibilities with

timetables and monitoring mechanisms. A key component was the requirement that the juvenile justice system contract with Louisiana State University to provide medical, dental, and mental health services.

Since the settlement, the number of youth held in Louisiana’s secure facilities has been cut in half. One of the four facilities has been closed. National experts have helped the state develop programs that enhance youth strengths and build a positive peer culture. Both the Casey Foundation and MacArthur Foundation have funded comprehensive systems change initiatives in support of the strides Louisiana has made in reforming its system. Although violence still occurs, it is the exception rather than the rule. Non-violent youth are routinely diverted to community based programs. All youth have quality medical and mental health screening and assessments. Treatment programs are utilizing evidence based practices. The system now emphasizes the importance of engaging families and guardians in

the rehabilitation of their children.

The vast majority of the CRIPA investigations have resulted in major remedies with significant and measurable improvement in the areas of concern. There is positive momentum in juvenile justice towards more community-based diversion of juvenile justice youth, greater emphasis on implementing evidence-based practices in working with these youth, and the expectation that families will be active members in the rehabilitation process. Perhaps in the future this momentum will become self-sustaining, and threatened litigation will become less important as a driver of positive change in juvenile justice.

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