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Wisconsin Juvenile Secure Out-of-Home Placement: Before 2017 Act 185 Implementation (Corrections-- Juvenile Corrections)

INTRODUCTION

Wisconsin has a unique bifurcated juvenile justice system for secure out-of-home placement options available to a court at the time the judge makes the final dispositional order. To place a juvenile in secure out-of-home placement, a judge must determine whether the state or county should have custody of the juvenile and whether the juvenile should be placed at a state or county facility. From custody and placement decisions, a judge has three options to place a juvenile: (a) in state custody in a state facility; (b) in county custody in a state facility; or (c) in county custody in a county facility. State secure facilities are currently Lincoln Hills, Copper Lake, and Mendota Juvenile Treatment Center (MJTC).

The juvenile courts access two of these options through two statutory dispositional options that result in a juvenile being placed in a state juvenile correctional facility: (a) a direct secured correctional placement in a state facility; and (b) the disposition of the juvenile as a serious juvenile offender (SJO) with placement in a state facility. The state must accept placement of a juvenile in a state facility under these two provisions if ordered to do so. A juvenile court may also place the juvenile in a county juvenile detention center for up to 365 days, if the county board has authorized such placements. If a county maintains such a facility. It should be noted that while there are approximately 39,000 juvenile (17 or under) arrests a year, there are currently less than 300 juveniles (17 or under) in state and county secure post-dispositional placements in Wisconsin.

Given the bifurcated nature of Wisconsin's juvenile justice system and reporting requirements, a number of statistics (such as number of credits completed toward a high school diploma) and performance measures (such as recidivism) are available with regards to juveniles placed in state juvenile facilities. These same statistics are not as readily available for juveniles placed in a county juvenile detention center, and is not required to be collected by the state. This gap in data makes estimating the fiscal effect of any proposed changes to the juvenile justice system difficult to determine. In addition, each county has different programming and resources available to juveniles, which makes comparisons between counties or counties and the state problematic.

A significant change to the juvenile justice system was enacted as 2017 Act 185. The act removes the option for courts to place a juvenile in a state juvenile correctional facility and county custody at disposition through a correctional placement starting January 1, 2021. The short-term effect of Act 185 will be to transfer approximately 100 juveniles with correctional placements in a state facility back to their counties of origin. Act 185 pairs this transition of juveniles from state to county facilities with a commitment to regional and program focused state and county facilities. In order to facilitate this transition, Act 185 allocated money for the construction of new state facilities and grants are to be made available to counties to build Secure Residential Care Centers for Children and Youth (SRCC).

Despite the changes made by Act 185 in the second year of the biennium, under the 2019-21 biennial budget bill, the Committee is being asked to make budgetary decisions such as establishing a daily rate for state facilities, establishing operating costs for state facilities, making capital budget decisions related to county and state juvenile facilities, potentially providing support for county run juvenile facilities, and determining operational costs for the Mendota Juvenile Treatment Center. However, given the lack of information about juveniles currently in county juvenile detention facilities, it is difficult to determine the number of state or SRCC beds that should be built and, therefore, whether the funding provided under Act 185 is sufficient. Further, given the role of the county courts in placing juveniles, it is uncertain if the balance of state and county secure juvenile beds created after Act 185 goes into effect will be the balance of beds necessary going forward. Thus, budgeting at this time without knowledge of proposed changes to statute and capitol building program is not possible. As a result, budgeting for historically routine juvenile justice items will need to be addressed in the current budget bill and in subsequent legislation, which may provide certainty regarding populations, operations, and building needs.

This paper and the papers that follow will describe in more detail the current secure juvenile placements in Wisconsin and how Act 185 may change the balance between county and state secure placements. This paper provides information on correctional placements (direct correctional and SJO program) and secure facilities at both the county (juvenile detention centers) and state (Lincoln Hills, Copper Lake, and Mendota Juvenile Treatment Center) level as the system existed before the implementation of Act 185.

Dispositional Option: Secured Juvenile Correctional Placement

A court may place any adjudicated juvenile in a juvenile correctional facility if the following conditions are met: (a) the juvenile was found delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more; and (b) the juvenile was found to be a danger to the public and to be in need of restrictive custodial treatment.

If the court has determined that a juvenile is not appropriate for placement in the SJO Program, the following conditions are deemed to provide sufficient evidence for a finding that the juvenile is a danger to the public and in need of restrictive custodial treatment: (a) the juvenile has committed any one of various violent acts that would be a felony if committed by an adult; (b) the juvenile possessed, used or threatened to use a firearm while committing a delinquent act that would be a felony if committed by an adult; or (c) the juvenile illegally possessed or went armed with a dangerous weapon.

Dispositional Option: Serious Juvenile Offender Program

The Serious Juvenile Offender program was created under 1995 Wisconsin Act 27. Under the program, a juvenile is subject to an SJO placement for certain acts, as follows: (a) if the juvenile is 14 years of age or more and has been adjudicated delinquent for committing a delinquent act that is equivalent to certain Class A, Class B, or Class C felony offenses; or (b) the juvenile is 10 years of age or more and has been adjudicated delinquent for attempting or committing first-degree intentional homicide or for committing first-degree reckless homicide or second-degree intentional homicide. An SJO disposition may only be made for these juveniles if the judge finds that the only other disposition that would be appropriate is placement in a juvenile correctional facility.

For a juvenile receiving a disposition as a serious juvenile offender, the court is required to make the order apply for a period of five years if the adjudicated act was a Class B or Class C felony offense, or until the juvenile reaches 25 years of age if the adjudicated act was a Class A felony offense. The disposition includes the concept of Type 2 status, which allows the Department to administratively transfer a juvenile through an array of component phases, including both juvenile correctional facility and community placements.

All components of the SJO disposition, described below, are state funded; counties have no financial responsibility for a juvenile placed in the SJO program. The SJO program is funded under a separate, general purpose revenue (GPR) appropriation (with 2018-19 funding of \$19.1 million) and is authorized to pay the costs of: (a) the care of juveniles, including aftercare services, who have been adjudicated as serious juvenile offenders; and (b) the care of juveniles waived into adult court and sentenced to state prison, but placed by Corrections at a juvenile correctional facility or a secured residential care center for children and youth. Counties are required to pay the costs of all other adjudicated juveniles. The average daily population for the SJO program was 143 in 2017-18.

Under the SJO program, a juvenile is subject to supervision, care and rehabilitation that is more restrictive than ordinary supervision in the community. The program provides for component phases (various sanctions) that are intensive, highly structured and based on both public safety considerations and the participant's needs. The Department of Corrections determines that one or more component phases are provided to each juvenile in the program. The Department is authorized to contract with the Department of Health Services, a county department or any public or private agency for the purchase of goods, care and services for SJO participants. The available component phases include the following:

- Placement in a juvenile correctional facility. If the juvenile committed a Class A felony offense, he or she is subject to a mandatory minimum period of confinement of not less than one year within the duration of the order.
- Placement in alternate care, including placement in a foster home, treatment foster home, group home, residential care center, or secured care center for children and youth.
- Intensive or other field supervision, including community supervision.
- Electronic monitoring.

- Substance abuse outpatient treatment and services.
- Mental health treatment and services.
- Community service.
- Restitution.
- Transitional services for education and employment.
- Other programs as prescribed by Corrections.

The Department may provide the sanctions listed above in any order, provide more than one sanction at a time and return to a sanction that was used previously for a participant. A participant is not entitled to a hearing on the Department's exercise of authority regarding the selected sanctions unless a hearing is required by rule. (The community placement components under SJO are classified as Type 2 secured correctional placements. Such placements allow Corrections to provide less restrictive placements while keeping the juvenile in a custodial status that allows for a return to a more restrictive placement, without a hearing, if the conditions of the placement are violated by the juvenile.)

A juvenile under the SJO program always begins his or her placement in a juvenile correctional facility. The Office of Juvenile Offender Review has the authority to release a participant to community supervision at any time after the participant has completed two years of participation in the SJO program. Community supervision under SJO is provided by Corrections at state expense. The Department may discharge a participant from the program and from departmental supervision and control at any time after the participant has completed three years of participation in the program.

Secured Juvenile Facilities: County Juvenile Detention Facilities

Under current law, a county board, or two county boards jointly, may establish a juvenile detention facility for holding juveniles in secure custody. Secure detention may be used if the juvenile is subject to a disposition that includes placement in secure detention.

Corrections has the statutory authority to establish standards and regulations for juvenile facilities to ensure compliance with both federal and state law. This authority is administered under Chapter DOC 346 of the Wisconsin Administrative Code. As of October, 2018, there are 13 county-operated juvenile detention facilities approved by Corrections, with a combined capacity of 483 beds. Counties may expand their existing secure juvenile detention bed capacity, under provisions in DOC 346, through the use of double-celling. Several counties have increased capacity in this manner.

Counties are allowed to keep juveniles at county facilities for 365 days subsequent to disposition. The Department of Corrections' Office of Detention Facilities (ODF) has statutory authority, in accordance with s. 301.37, for the regulation and oversight of local detention facilities including county jails, houses of correction, secure juvenile detention centers, unlocked Huber

facilities and municipal lockups. Through the Office of Detention Facilities, the Department establishes reasonable standards for the design, construction, repair, maintenance, operation and management of these facilities.

Secured Juvenile Facilities: State Juvenile Correctional Facilities

The Division of Juvenile Corrections (DJC) in the Department is authorized to operate juvenile correctional facilities. Currently, there is one facility for males and one facility for females for juveniles adjudicated delinquent. Both the male and female juvenile facilities are located near the town of Irma in north-central Wisconsin (Lincoln County), Lincoln Hills School for juvenile males; and Copper Lake School for juvenile females. In addition, DJC runs the Grow Academy, a non-secure residential program with an agricultural science-based curriculum and treatment program for male juveniles, utilizes a facility in Oregon (Dane County).

The Department of Health Services (DHS) also operates a secured mental health unit for juveniles transferred from other juvenile correctional facilities. The Mendota Juvenile Treatment Center, located at the Mendota Mental Health Institute (Dane County), provides treatment to male juvenile offenders with complex emotional and behavioral problems. Following treatment, juveniles either are placed in the community or are returned to the facility from which they were transferred. Corrections currently utilizes 29 beds at the Center. In 2018-19, Corrections is providing \$4,200,300 [\$1,365,500 general purpose revenue (GPR) and \$2,834,800 program revenue (PR)] to DHS as reimbursement for the costs of the facility's operation. This facility is discussed in greater detail in a subsequent paper.

Funding for the state costs of the juvenile justice system in 2018-19 totals \$71.3 million. Approximately half of the total is for the SJO program, community supervision, general operations, and alternate care services. Of the total, \$32.2 million is allocated to the operation of the state's juvenile correctional facilities. The table below shows the funding and positions allocated to each juvenile facility in 2018-19, the funding allocated to DHS for mental health treatment, and the actual average daily population (ADP) for each facility in fiscal year 2017-18.

Secured Juvenile Facilities, 2018-19

Facility	2018-19		2017-18
	Funding	Positions	Actual ADP
Lincoln Hills School	\$22,207,000	249.25	138
Copper Lake School	4,786,900	56.75	19
Grow Academy	<u>943,600</u>	<u>12.00</u>	<u>5</u>
Subtotal	\$27,937,500	318.00	162
Mendota Juvenile Treatment Center	\$4,298,100		28
Total	\$32,235,600		190

Funding the Juvenile Justice System

Under current law, counties are financially responsible for the costs of juvenile delinquency-related services, except for: (a) the care of a juvenile who has been adjudicated as a serious juvenile offender; and (b) juveniles under the original jurisdiction of or waived into adult court and sentenced to state prison, but placed by the Department at a juvenile facility. The Department of Corrections retains oversight over direct juvenile justice services, such as juvenile correctional facilities, the serious juvenile offender program, and community supervision. The state charges each county for the cost of its juveniles placed in the state's juvenile correctional facilities (except for wards of the state and serious juvenile offenders, as noted above) and for subsequent community placements and programming for juveniles returning to the community following placement in a juvenile correctional facility.

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