

SB91

# Recommendations to the Law and Justice Interim Committee

EXHIBIT 1  
DATE 1/30/2009  
SB 91

## A White Paper

Respectfully submitted by the Youth Justice Council  
August 19, 2008

The Youth Justice Council (YJC) is a Governor-appointed advisory body mandated under the Federal Juvenile Justice and Delinquency Prevention Act (JJDP) and established under Executive Order by the Governor. The YJC provides leadership around policy and planning on juvenile justice issues. This position paper reflects three key issues and the parallel recommendations identified by the Youth Justice Council to address those issues.

Key Issue I: Detention Reform

### Detention Reform

#### Concern 1: Lack of Chief Juvenile Defender

**Recommendation:** The YJC supports the Office of the State Public Defender in its recommendation to create the position of Chief Juvenile Defender. This would provide standardized representation across the state, with oversight from the highest levels.

#### Concern 2: Lack of juvenile-specific career specialties

**Recommendation:** The YJC supports the Office of the State Public Defender in its desire to establish *Juvenile Defense* as a career specialty for attorneys.

#### Concern 3: Overreliance on juvenile detention

**Recommendation:** Continue to monitor and support the three existing Juvenile Detention Alternatives Initiative (JDAI) pilot sites to demonstrate that jurisdictions can establish more effective and efficient juvenile detention systems. [For more information on JDAI see Appendix 1.]

- Eliminate inappropriate or unnecessary use of secure detention.
- Find best practice alternatives to detention that reduce failures to appear and additional incidences of delinquent behaviors while youth are waiting to appear.
- Redirect public finances to support successful reform strategies.
- Improve conditions in secure detention facilities.

#### Concern 4: Lack of legal representation for juveniles during the Probable Cause (detention) Hearings

**Recommendation:** The YJC supports legal representation/legal counsel for juveniles in all Probable Cause Hearings, consistent with Bill Draft LC0198 [included as Appendix 2].

## Mental Health Issues

**Concern:** Many youth with mental health issues enter the juvenile justice system due to lack of early identification and appropriate intervention.

**Recommendation:** Develop and fund regional assessment centers for youth, where screening and assessment is made accessible for youth with mental health and behavioral issues. Ensure that the regional assessment centers are open to all referral sources (e.g., schools, parents and community agencies). [For more information on Juvenile Assessment Centers, see Appendix 3.]

**Recommendation:** Ensure that assessments are accomplished for the holistic continuum of needs associated with youth (e.g., physical health, developmental disabilities; family issues; and/or co-occurring mental health, drug or alcohol issues). All youth services should be geared toward parallel support of families.

**Recommendation:** Identify and develop a dedicated, sustainable funding source targeted to proactive screening, assessment and assessment centers.

## Juveniles in Adult Courts

**Concern 1:** Youth languish in detention awaiting multiple hearings and transfer orders, contrary to successful outcomes.

**Concern 2:** Significant public cost is attached to juvenile cases filed in District Court. In addition to the cost of housing youth for the extended detention stays, public funds are used to compensate for time and resources dedicated by county attorneys, public defenders, judges, juvenile probation officers and other court staff.

**Concern 3:** Recent research on brain development indicates that the prefrontal cortex is not mature until the mid-20s. This part of the brain has been dubbed "the area of sober second thought." Prior to maturity, teenagers can lack the ability to control impulse and make sound judgments. [An overview of recent brain research has been included in Appendix 5.]

**Concern 4:** Prosecutors lack flexibility and discretion when a 17-year-old youth commits any of the offenses enumerated in 41-5-206 (1). [The text of 41-5-206, Subsections 1 and 2 have been included under Appendix 4.]

**Recommendation:** Provide more flexibility for prosecutors to act in the best interests of the youth by changing the language of the current Statute from "**shall file** in district court" to "**may file** in district court."

# Appendices

APPENDIX	DESCRIPTION
1.	Juvenile Detention Alternatives Initiative (JDAI)
2.	Bill Draft LC0198
3.	Juvenile Assessment Centers
4.	MCA 41-5-206, Subsections 1 and 2
5.	Overview of Recent Juvenile Brain Development Research
6.	Additional Resources
7.	Common Terms
8.	YJC Members

## The Annie E. Casey Foundation Juvenile Detention Alternatives Initiative

- *Reducing the unnecessary confinement of youth in our country.*

The purpose of the Juvenile Detention Alternatives Initiative (JDAI) is demonstrating that jurisdictions can safely reduce reliance on secure detention. To test the hypothesis, detention reforms will equip juvenile justice systems with values, skills, and policies that will improve results in other system components.

JDAI focuses on the juvenile detention component of the juvenile justice system because youth are often unnecessarily or inappropriately detained at great expense, with long-lasting negative consequences for both public safety and youth development.

JDAI promotes changes to policies, practices, and programs to:

- reduce reliance on secure confinement;
- improve public safety;
- reduce racial disparities and bias;
- save taxpayers' dollars; and
- stimulate overall juvenile justice reforms.

Since inception in 1992, JDAI has repeatedly demonstrated that jurisdictions can safely reduce reliance on secure detention. There are now approximately 100 JDAI sites in 22 states and the District of Columbia.

Montana is the most recent state to join the JDAI movement. Three detention facilities (in Havre, Missoula and Great Falls) are incorporating JDAI practices with the intent of making the juvenile justice system more efficient and addressing disproportionate minority contact.

For more information:

- The Annie E. Casey Foundation JDAI Resources page:  
[www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx](http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx)
- An overview of the Annie E. Casey Foundation's work on juvenile justice issues:  
[www.aecf.org/Home/OurWork/JuvenileJustice.aspx](http://www.aecf.org/Home/OurWork/JuvenileJustice.aspx)

The Pathways to Juvenile Detention Reform series of 13 publications:

<http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx>

**Unofficial Draft Copy**

As of: July 23, 2008 (10:32 am)

LC0198

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act revising the youth court act; requiring a youth to be represented by an attorney at a detention hearing unless the right to an attorney is waived after consulting with an attorney; amending sections 41-5-331 and 41-5-333, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-331, MCA, is amended to read:

**"41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights.**

- (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:
  - (a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.
  - (b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.
- (2) A youth may waive the rights listed in subsection (1) under the following situations:
  - (a) when the youth is 16 years of age or older, the youth may make an effective waiver, subject to the provisions of 41-5-333(2);
  - (b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver, subject to the provisions of 41-5-333(2); or
  - (c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel."

{Internal References to 41-5-331:

OK 41-5-1503}

## Unofficial Draft Copy

As of: July 23, 2008 (10:32 am)

LC0198

Section 2. Section 41-5-333, MCA, is amended to read:

"41-5-333. Custody -- hearing for probable cause -- procedure.

- (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.
- ~~(2)~~ A youth must be represented by counsel at a probable cause hearing unless the right to counsel is waived after consultation with an attorney prior to the hearing.
- ~~(2)~~~~(3)~~ A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:
  - (a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or
  - (b) is excused by the court for good cause.
- ~~(3)~~ ~~(4)~~ At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411."

{Internal References to 41-5-333: None.}

- END -

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Appendix 2 : Bill Draft LC0198, continued

## Juvenile Assessment Centers

According to the National Center for Mental Health and Juvenile Justice, approximately 70 percent of youth in the juvenile justice system suffer from mental disorders, with 25 percent experiencing disorders so severe that their ability to function is significantly impaired.

Some states have created centralized juvenile intake centers (also known as Juvenile Assessment Centers) where all youth referred to the juvenile justice system undergo comprehensive intake and assessment services. Juvenile Assessment Centers (JACs) are processing centers that serve as the single point-of-entry and administer an integrated case management process designed to link youth with appropriate services based on a comprehensive initial assessment. JACs seek to divert youth from unnecessary penetration into the juvenile justice system. JACs are also characterized by co-location of agencies that provide services to youth and families.

The recommendation to create regional assessment centers is intended to provide a means for early identification of mental health and other behavioral concerns within the overall youth population, and is not limited to youth involved with the juvenile justice system. Beyond early identification, the regional assessment centers would also offer a mechanism for early intervention through referrals to appropriate services. The intent is to prevent escalation of the difficulties that can result in referrals to the juvenile justice system. Care must be taken in developing regional assessment centers and associated services to ensure that they operate to reduce the number of youth referred to the juvenile justice system rather than widen the net.

### For more information:

- *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System.* Prepared for the National Center for Mental Health and Juvenile Justice. [www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf](http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf)
- The Miami-Dade Juvenile Assessment Center, Florida. [www.ncmhjj.com/Blueprint/programs/Miami-Dade.shtml](http://www.ncmhjj.com/Blueprint/programs/Miami-Dade.shtml)
- National Center for Mental Health and Juvenile Justice. [www.ncmhjj.com/](http://www.ncmhjj.com/)
- Models for Change: Systems Reform in Juvenile Justice. [www.modelsforchange.net/](http://www.modelsforchange.net/)

MCA 41-5-206: Filing in district court prior to formal proceedings in youth court.

- (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:
  - (a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:
    - i. sexual intercourse without consent as defined in 45-5-503;
    - ii. deliberate homicide as defined in 45-5-102;
    - iii. mitigated deliberate homicide as defined in 45-5-103;
    - iv. assault on a peace officer or judicial officer as defined in 45-5-210; or
    - v. the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or
  - (b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:
    - i. negligent homicide as defined in 45-5-104;
    - ii. arson as defined in 45-6-103;
    - iii. aggravated assault as defined in 45-5-202;
    - iv. sexual assault as provided in 45-5-502(3);
    - v. assault with a weapon as defined in 45-5-213;
    - vi. robbery as defined in 45-5-401;
    - vii. burglary or aggravated burglary as defined in 45-6-204;
    - viii. aggravated kidnapping as defined in 45-5-303;
    - ix. possession of explosives as defined in 45-8-335;
    - x. criminal distribution of dangerous drugs as defined in 45-9-101;
    - xi. criminal possession of dangerous drugs as defined in 45-9-102(4) through (6);
    - xii. criminal possession with intent to distribute as defined in 45-9-103(1);
    - xiii. criminal production or manufacture of dangerous drugs as defined in 45-9-110;
    - xiv. use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
    - xv. escape as defined in 45-7-306;
    - xvi. attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).
- (2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

## Research on the Developing Brain

*“...they may not appreciate the consequences or weigh information the same way as adults do. So, [although] somebody looks physically mature, their brain may in fact not be mature.”*

— Deborah Yurgelun-Todd, PhD, McClean Hospital Harvard University Medical School

There is strong evidence that the brain – in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable – is still maturing until the early 20s. Striking growth occurs in the temporal and parietal lobes, the areas specializing in language, auditory and spatial relations, between ages 6 and 13. While these areas appear to be largely mature in the teen brain, the last part of the brain to mature is the prefrontal cortex, which confers the capacity for reasoned decision-making, judgment and impulse control.

Dr. Elizabeth Sowell, a member of the UCLA brain research team, has led studies of brain development in persons ranging in age from adolescence to adulthood. She and her colleagues discovered that the frontal lobe undergoes far more change during adolescence than at any other life stage. Because this is the last part of the brain to develop, even when youth are fully capable in other areas, they cannot reason as adults can.

Incomplete brain development causes reactive behavior that becomes more impulsive and intense during stressful situations. Many experts contend that when teenagers experience high emotion or intense pressure, conditions are ripe for the immature circuitry in the front part of brain to be overwhelmed, resulting in inexplicable behavior and poor judgments.

Dr. Tom Grisso, a leading researcher on forensic mental health issues in juvenile justice, has studied juvenile competency. His most substantial study revealed that 15-year-olds don't understand the concept of waiving and while many 16-year-olds understand the concept, they didn't have adult cognitive processing abilities, experience or knowledge. During initial questioning and the detention hearing, it is likely that the juvenile will do and say things an adult would not. Given immature cognitive ability, youth are less culpable because they are less able to make sound judgments about defense, to understand what is happening during trial and to act appropriately in such a setting.

For more information:

- *The Relevance of Brain Research to Juvenile Defense*. American Bar Association: Criminal Justice, Winter 2005. 19 Crim. Just. 51. [www.nijn.org/media/resources/public/resource\\_241.pdf](http://www.nijn.org/media/resources/public/resource_241.pdf)
- Juvenile Justice Center. American Bar Association. Washington, DC. *Adolescence, Brain Development and Legal Culpability*. 1/2004. [www.abanet.org/crimjust/juvjus/Adolescence.pdf](http://www.abanet.org/crimjust/juvjus/Adolescence.pdf)

## Appendix 6 : Additional Resources

Jones, Judith B. *Access to Counsel*. US Department of Justice Office of Juvenile Justice and Delinquency Prevention. OJJDP Juvenile Justice Practices Series: Juvenile Justice Bulletin. June 2004.  
<http://www.ncjrs.gov/pdffiles1/ojjdp/204063.pdf>

Juvenile Justice Center. American Bar Association. Washington, DC. *Adolescence, Brain Development and Legal Culpability*. 1/2004. [www.abanet.org/crimjust/juvjus/Adolescence.pdf](http://www.abanet.org/crimjust/juvjus/Adolescence.pdf)

Montana Board of Crime Control Youth Justice Council. *2007 Annual Governor's Report*.  
<http://mbcc.mt.gov/JuvenileJustice/JJPublications/%2707annualgovreport.pdf>

Montana Judicial Branch. (2007). *Youth Court At-a-Glance*. Office of the Court Administrator. Helena: Montana Supreme Court.  
[www.courts.mt.gov/dcourt/youth\\_court/Youth%20Court%20Report%20Card%202007.pdf](http://www.courts.mt.gov/dcourt/youth_court/Youth%20Court%20Report%20Card%202007.pdf)

National Center for Mental Health and Juvenile Justice. *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*. 2007. <http://www.ncmhjj.com/Blueprint/default.shtml>

Office of Juvenile Justice and Delinquency Prevention (OJJDP) Model Programs Guide:  
[www.dsgonline.com/mpg2.5/mpg\\_index.htm](http://www.dsgonline.com/mpg2.5/mpg_index.htm)

Skowrya, Kathleen and Coccozza, Joseph PHD. *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*. The National Center for Mental Health and Juvenile Justice.  
[www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf](http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf)

The Annie E. Casey Foundation. *A Road Map for Juvenile Justice Reform Essay*. 2008.  
[http://www.kidscount.org/datacenter/db\\_08pdf/2008\\_essay.pdf](http://www.kidscount.org/datacenter/db_08pdf/2008_essay.pdf)

The Annie E. Casey Foundation JDAI Resources page:  
[www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx](http://www.aecf.org/Home/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources.aspx)

The Annie E. Casey Foundation. *Kids Count 2008 Data Book Montana Profile*.  
<http://www.kidscount.org/datacenter/databook.jsp>

The Annie E. Casey overview of the Foundation's work on juvenile justice issues:  
[www.aecf.org/Home/OurWork/JuvenileJustice.aspx](http://www.aecf.org/Home/OurWork/JuvenileJustice.aspx)

The Pathways to Juvenile Detention Reform series of 13 publications:  
<http://www.aecf.org/KnowledgeCenter/PublicationsSeries/JDAIPathways.aspx>

*The Relevance of Brain Research to Juvenile Defense*. American Bar Association: Criminal Justice, Winter 2005. 19 *Crim. Just.* 51. [www.nijn.org/media/resources/public/resource\\_241.pdf](http://www.nijn.org/media/resources/public/resource_241.pdf)

US Department Office of Health and Human Services the Surgeon General. *Report of the Surgeon General's Conference on Children's Mental Health: A National Action Agenda*. 2000.  
<http://www.hhs.gov/surgeongeneral/topics/cmh/childreport.htm#sum>

**ADJUDICATION:** The process in which the prosecutor files a formal petition and the youth is brought before a judge or special master and found to be delinquent or a youth in need of intervention or care.

**CORRECTIONAL FACILITY:** a public or private, physically secure residential facility under contract with the Department [of Corrections] and operated solely for the purpose of housing adjudicated [formally sentenced], delinquent youth.

**DETENTION:** the holding or temporary placement of a youth in the youth's home under home arrest, or in a facility other than the youth's home for:

- a) the purpose of ensuring the continuing custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;
- b) contempt of court or violation of a valid court order; or
- c) violation of a youth parole agreement.

**DETENTION FACILITY:** a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility. (subsection 15)

**EVIDENCE-BASED PRACTICES (EBPs):** Demonstrated, effective intervention involving standardized treatments shown through controlled research to result in improved outcomes across multiple research groups.

**JUVENILE PROBATION OFFICERS:** state employees who work for the Judicial Branch and who work with youth from the time they come into contact with the juvenile justice system, up until the point they are committed to a correctional facility (e.g., Pine Hills or Riverside correctional facilities).

**JUVENILE PAROLE OFFICERS** are the employees of the Department of Corrections who deal with youth re-entering the community after commitment to a correctional facility; probation officers work with youth (e.g., Pine Hills or Riverside).

**WAIVER:** Intentional relinquishment of a right, claim, or privilege.

Appendix 8 : Youth Justice Council Members

**The Youth Justice Council**

- Pam Kennedy, Chair
- Rosie Buzzas
- Dennis Dronen
- Donna Falls Down
- Dale Four Bear
- Chantelle Gournay
- Honorable Pedro Hernandez
- Tara Houde
- Penny Kipp
- Jennifer Kistler
- Ted Lechner
- Father Jerry Lowney
- Joy Mariska
- Kim Miller
- Wayne Stanford
- Katie Yother
- Terri Young

<http://mbcc.mt.gov/JuvenileJustice/JuvJustice.asp>

The Montana Board of Crime Control (MBCC) is administratively attached to the Department of Justice and charged with staffing the Youth Justice Council (YJC).

**Montana Board of Crime Control Staff**

- Roland M. Mena, Executive Director
- Lily Yamamoto, Community Justice Bureau Chief
- Sheryl Burrigton, Juvenile Justice Specialist
- Stacye Dorrington, Program Specialist
- Cil Robinson, Juvenile Justice Planner

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